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March 11, 2011

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United States Citizenship and Immigration Services  
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Via e-mail: [scopsrfe@dhs.gov](mailto:scopsrfe@dhs.gov)

**Re: AILA Comments on Draft RFE Template: I-129 P-1A  
Athletes and Teams**

The American Immigration Lawyers Association (AILA) submits the following comments on the USCIS RFE Template for Form I-129, P-1A Athletes and Teams.

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this RFE template and believe that our members' collective expertise provides experience that makes us qualified to offer views that will benefit the public and the government.

**Introduction**

We thank USCIS for providing the opportunity to comment on the draft RFE template in the spirit of transparency. We welcome the development and use of such templates in an effort to bring greater clarity and consistency to benefits adjudications.

It is difficult to predict the overall impact these templates will have on the adjudication process, given that they will be applied to thousands of petitions with infinitely varied fact patterns. We hope, however, that the development of the templates represents the beginning of an ongoing dialogue between USCIS and the P nonimmigrant stakeholder community, as we work together to further the artistic and cultural interests of the United States.

In general, the templates largely reflect the language of the regulations, which unfortunately, is susceptible to multiple interpretations. There are also practical implications to a strict application of the regulatory requirements in adjudicating a P nonimmigrant petition. For example, petitioners for P-1 groups are supposed to list the “exact dates for which each member of the group has been employed on a regular basis by the group.”<sup>1</sup> However, in practice, USCIS may accept less than this because, for example, once a P-1 group member has been employed by the group for longer than a year, the exact date the member joined is immaterial. We hope, therefore, that adjudicators do not rely too literally on the templates’ exact language, and that the effect of the templates is to curb unacceptable practices while preserving commonsensical ones.

### **Comments on the I-129 P-1A RFE Template**

- 1. Page 1, Support Personnel Cannot Be Included on the Same Petition as Principal:** The template states that essential support personnel cannot be included on the same petition as the principal and that if included, “a favorable decision cannot be issued for the essential support personnel.” If USCIS policy in this situation is to drop support personnel but approve the principals, it would be helpful for USCIS, in addition to asking for a separate petition for support personnel, to add that it will proceed to adjudicate the petition solely with respect to the principals.
- 2. Page 2, Contracts:** A summary of the terms of an oral agreement is clearly permitted in lieu of a written contract. However, we have seen numerous RFEs asserting that unsigned summaries of oral contracts are not acceptable. If a summary of an oral agreement was signed, it would be a written contract. Adjudicators should be instructed that summaries of oral agreements need not be signed.
- 3. Pages 7–8, Agents and Sponsoring Organizations:** Under INA §214(c)(1), a petitioning employer is simply described as the “importing employer.” Yet, the O and P regulations, and by extension, the template, deploy an impressive array of terms—employer, U.S. sponsoring organization, U.S. agent, agent performing the function of an employer, agent representing both the beneficiary and multiple employers, agent representing both the beneficiary and the employer, foreign employer through a U.S. agent—in an apparent effort to parse particular types of petitioners and those for whom they are petitioning. Moreover, with the release of the November 20, 2009 Neufeld Memorandum, “Requirements for Agents and Sponsors Filing as Petitioners for the O and P Visa Classifications,” adjudicators and petitioners now spend considerable time mincing these terms and scrutinizing the documentary nature of relationships between concerned parties. In what was once a relatively straightforward process, petitioners are now on tenterhooks, wondering if they have devoted sufficient attention to the specificities of their relationship with the athletes and artists on the one hand, and venues on the other.

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<sup>1</sup> 8 CFR §214.2(p)(4)(iii)(B)(2).

In the real world, the entertainment and sports industries are fraught with all kinds of relationships between athletes, entertainers, performers, agents, managers, sponsors, and employers. Petitioners can be agents, employers, or both. Moreover, there are various kinds of agents and managers within those broad terms. Is it not sufficient that an agent who is not employing a beneficiary is not an employer, or that an employer petitioning solely in its own right isn't an agent?

In short, this section of the P-1A template may result in the waste of time and resources for both USCIS and petitioners, in an attempt to understand minute details in a vast array of industry relationships, which have been developed and sustained over time. We urge USCIS to reconsider this laundry list of variations and to withdraw the policy underlying it, in favor of one that bears a greater semblance to the reality of industry practice.

### **Conclusion**

AILA appreciates the opportunity to comment on this RFE template, and we look forward to a continuing dialogue with USCIS on issues concerning this important matter.

Sincerely,

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**Re: AILA Comments on Draft RFE Template: I-129 P-1B  
Entertainment Groups and Performers**

The American Immigration Lawyers Association (AILA) submits the following comments on the USCIS Request for Evidence (RFE) Template for Form I-129, P-1B Entertainment Groups and Performers.

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this RFE template and believe that our members' collective expertise provides experience that makes us qualified to offer views that will benefit the public and the government.

**Introduction**

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It is difficult to predict the overall impact these templates will have on the adjudication process, given that they will be applied to thousands of petitions with infinitely varied fact patterns. We hope, however, that the development of the templates represents the beginning of an ongoing dialogue between USCIS and the P nonimmigrant stakeholder community, as we work together to further the artistic and cultural interests of the United States.

In general, the templates largely reflect the language of the regulations, which unfortunately, is susceptible to multiple interpretations. There are also practical implications to a strict application of the regulatory requirements in adjudicating a P nonimmigrant petition. For example, petitioners for P-1 groups are supposed to list the “exact dates for which each member of the group has been employed on a regular basis by the group.”<sup>1</sup> However, in practice, USCIS may accept less than this because, for example, once a P-1 group member has been employed by the group for longer than a year, the exact date the member joined is immaterial. We hope, therefore, that adjudicators do not rely too literally on the templates’ exact language, and that the effect of the templates is to curb unacceptable practices while preserving commonsensical ones.

### **Comments on the I-129 P-1B RFE Template**

1. **Page 1, Support Personnel Cannot Be Included on the Same Petition as Principal:** The template states that essential support personnel cannot be included on the same petition as the principal and that if included, “a favorable decision cannot be issued for the essential support personnel.” If USCIS policy in this situation is to drop support personnel but approve the principals, it would be helpful for USCIS, in addition to asking for a separate petition for support personnel, to add that it will proceed to adjudicate the petition solely with respect to the principals.

2. **Page 2, Contracts:** A summary of the terms of an oral agreement is clearly permitted in lieu of a written contract. However, we have seen numerous RFEs asserting that unsigned summaries of oral contracts are not acceptable. If a summary of an oral agreement was signed, it would be a written contract. Adjudicators should be instructed that summaries of oral agreements need not be signed.

In addition, with regard to the terms of the written contract or oral agreement, we agree that a description of the services to be performed and the monetary terms are essential to understanding the nature of the performances and expectations of the parties. However, hours of work, working conditions, and fringe benefits are usually irrelevant in the entertainment industry because groups rarely negotiate contracts that cover these concerns. When it comes to the entertainment industry, a description of the services and amount to be paid should be sufficient.

3. **Page 5, Waiver of the One-Year Relationship:** This paragraph states, “If seeking a waiver, provide a detailed statement and evidence to support the request.” This section should provide additional information to better inform the adjudicator of the type of evidence that may reasonably be required to support a waiver request. Will a doctor’s note be required if the group drops below the 75% rule because one of the actors is ill? What if a dance troupe falls below the 75% rule because one of the performers is afraid to fly? What evidence would be required if a musician retires

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<sup>1</sup> 8 CFR §214.2(p)(4)(iii)(B)(2).

from a trio? Alternatively, we urge USCIS to forego a demand for evidence and simply ask the petitioner to provide a reasonably detailed explanation.

4. **Pages 8–9, Agents and Sponsoring Organizations:** Under INA §214(c)(1), a petitioning employer is simply described as the “importing employer.” Yet, the O and P regulations, and by extension, the template, deploy an impressive array of terms—employer, U.S. sponsoring organization, U.S. agent, agent performing the function of an employer, agent representing both the beneficiary and multiple employers, agent representing both the beneficiary and the employer, foreign employer through a U.S. agent—in an apparent effort to parse particular types of petitioners and those for whom they are petitioning. Moreover, with the release of the November 20, 2009 Neufeld Memorandum, “Requirements for Agents and Sponsors Filing as Petitioners for the O and P Visa Classifications,” adjudicators and petitioners now spend considerable time mincing these terms and scrutinizing the documentary nature of relationships between concerned parties. In what was once a relatively straightforward process, petitioners are now on tenterhooks, wondering if they have devoted sufficient attention to the specificities of their relationship with the artists on the one hand, and venues on the other.

In the real world, the entertainment industry is fraught with all kinds of relationships between entertainers, performers, agents, managers, sponsors, and employers. Petitioners can be agents, employers, or both. Moreover, there are various kinds of agents and managers within those broad terms. Is it not sufficient that an agent who is not employing a beneficiary is not an employer, or that an employer petitioning solely in its own right isn't an agent?

In short, this section of the P-1B template may result in the waste of time and resources for both USCIS and petitioners, in an attempt to understand minute details in a vast array of industry relationships, which have been developed and sustained over time. We urge USCIS to reconsider this laundry list of variations and to withdraw the policy underlying it, in favor of one that bears a greater semblance to the reality of industry practice.

## **Conclusion**

AILA appreciates the opportunity to comment on this RFE template, and we look forward to a continuing dialogue with USCIS on issues concerning this important matter.

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**Re: AILA Comments on Draft RFE Template: I-129 P  
Essential Support Workers**

The American Immigration Lawyers Association (AILA) submits the following comments on the USCIS RFE Template for Form I-129, P Essential Support Workers.

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this RFE template and believe that our members' collective expertise provides experience that makes us qualified to offer views that will benefit the public and the government.

**Introduction**

We thank USCIS for providing the opportunity to comment on the draft RFE template in the spirit of transparency. We welcome the development and use of such templates in an effort to bring greater clarity and consistency to benefits adjudications.

It is difficult to predict the overall impact these templates will have on the adjudication process, given that they will be applied to thousands of petitions with infinitely varied fact patterns. We hope, however, that the development of the templates represents the beginning of an ongoing dialogue between USCIS and the P nonimmigrant stakeholder community, as we work together to further the artistic and cultural interests of the United States.

In general, the templates largely reflect the language of the regulations, which unfortunately, is susceptible to multiple interpretations. There are also practical implications to a strict application of the regulatory requirements in adjudicating a P nonimmigrant petition. For example, petitioners for P-1 groups are supposed to list the “exact dates for which each member of the group has been employed on a regular basis by the group.”<sup>1</sup> However, in practice, USCIS may accept less than this because, for example, once a P-1 group member has been employed by the group for longer than a year, the exact date the member joined is immaterial. We hope, therefore, that adjudicators do not rely too literally on the templates’ exact language, and that the effect of the templates is to curb unacceptable practices while preserving commonsensical ones.

### **Comments on the I-129 P Essential Support Workers RFE Template**

1. **Page 2, Contracts:** A summary of the terms of an oral agreement is clearly permitted in lieu of a written contract. However, we have seen numerous RFEs asserting that unsigned summaries of oral contracts are not acceptable. If a summary of an oral agreement was signed, it would be a written contract. Adjudicators should be instructed that summaries of oral agreements need not be signed.
2. **Pages 4–6, Agents and Sponsoring Organizations:** Under INA §214(c)(1), a petitioning employer is simply described as the “importing employer.” Yet, the O and P regulations, and by extension, the template, deploy an impressive array of terms—employer, U.S. sponsoring organization, U.S. agent, agent performing the function of an employer, agent representing both the beneficiary and multiple employers, agent representing both the beneficiary and the employer, foreign employer through a U.S. agent—in an apparent effort to parse particular types of petitioners and those for whom they are petitioning. Moreover, with the release of the November 20, 2009 Neufeld Memorandum, “Requirements for Agents and Sponsors Filing as Petitioners for the O and P Visa Classifications,” adjudicators and petitioners now spend considerable time mincing these terms and scrutinizing the documentary nature of relationships between concerned parties. In what was once a relatively straightforward process, petitioners are now on tenterhooks, wondering if they have devoted sufficient attention to the specificities of their relationship with the artists, athletes, and support personnel on the one hand, and venues on the other.

In the real world, the entertainment industry is fraught with all kinds of relationships between entertainers, performers, agents, managers, sponsors, and employers. Petitioners can be agents, employers, or both. Moreover, there are various kinds of agents and managers within those broad terms. Is it not sufficient that an agent who is not employing a beneficiary is not an employer, or that an employer petitioning solely in its own right isn’t an agent?

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<sup>1</sup> 8 CFR §214.2(p)(4)(iii)(B)(2).

In short, this section of the essential support workers template may result in the waste of time and resources for both USCIS and petitioners, in an attempt to understand minute details in a vast array of industry relationships, which have been developed and sustained over time. We urge USCIS to reconsider this laundry list of variations and to withdraw the policy underlying it, in favor of one that bears a greater semblance to the reality of industry practice.

### **Conclusion**

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**Re: AILA Comments on Draft RFE Template: I-129 P-2  
Reciprocal Exchange Artists or Entertainers**

The American Immigration Lawyers Association (AILA) submits the following comments on the USCIS RFE Template for Form I-129, P-2 Reciprocal Exchange Artists or Entertainers.

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this RFE template and believe that our members' collective expertise provides experience that makes us qualified to offer views that will benefit the public and the government.

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In general, the templates largely reflect the language of the regulations, which unfortunately, is susceptible to multiple interpretations. There are also practical implications to a strict application of the regulatory requirements in adjudicating a P nonimmigrant petition. For example, petitioners for P-1 groups are supposed to list the “exact dates for which each member of the group has been employed on a regular basis by the group.”<sup>1</sup> However, in practice, USCIS may accept less than this because, for example, once a P-1 group member has been employed by the group for longer than a year, the exact date the member joined is immaterial. We hope, therefore, that adjudicators do not rely too literally on the templates’ exact language, and that the effect of the templates is to curb unacceptable practices while preserving commonsensical ones.

### Comments on the I-129 P-2 RFE Template

1. **General:** Because we are unaware of any P-2 exchange programs that do not involve Actors’ Equity and its U.K. and Canadian counterparts, or the U.S. and Canadian branches of the American Federation of Musicians, this template appears, at first glance, overly complex. The AFM serves as its own petitioner, and includes a description of the event, the contracts, its reciprocal exchange agreement and no objection letter. Though Actors’ Equity does not serve as petitioner, it provides the petitioner with a no objection letter and a copy of the reciprocal exchange agreement. These practices appear very straightforward as compared to the level of detail contained in the template.
2. **Page 1, Support Personnel Cannot Be Included on the Same Petition as Principal:** The template states that essential support personnel cannot be included on the same petition as the principal and that if included, “a favorable decision cannot be issued for the essential support personnel.” If USCIS policy in this situation is to drop support personnel but approve the principals, it would be helpful for USCIS, in addition to asking for a separate petition for support personnel, to add that it will proceed to adjudicate the petition solely with respect to the principals.
3. **Page 2, Contracts:** A summary of the terms of an oral agreement is clearly permitted in lieu of a written contract. However, we have seen numerous RFEs asserting that unsigned summaries of oral contracts are not acceptable. If a summary of an oral agreement was signed, it would be a written contract. Adjudicators should be instructed that summaries of oral agreements need not be signed.

In addition, with regard to the terms of the written contract or oral agreement, we agree that a description of the services to be performed and the monetary terms are essential to understanding the nature of the performances and expectations of the parties. However, hours of work, working conditions, and fringe benefits are usually irrelevant in the entertainment industry because groups rarely negotiate contracts that

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<sup>1</sup> 8 CFR §214.2(p)(4)(iii)(B)(2).

cover these concerns. When it comes to the entertainment industry, a description of the services and amount to be paid should be sufficient.

4. **Pages 5–7, Agents and Sponsoring Organizations:** Under INA §214(c)(1), a petitioning employer is simply described as the “importing employer.” Yet, the O and P regulations, and by extension, the template, deploy an impressive array of terms—employer, U.S. sponsoring organization, U.S. agent, agent performing the function of an employer, agent representing both the beneficiary and multiple employers, agent representing both the beneficiary and the employer, foreign employer through a U.S. agent—in an apparent effort to parse particular types of petitioners and those for whom they are petitioning. Moreover, with the release of the November 20, 2009 Neufeld Memorandum, “Requirements for Agents and Sponsors Filing as Petitioners for the O and P Visa Classifications,” adjudicators and petitioners now spend considerable time mincing these terms and scrutinizing the documentary nature of relationships between concerned parties. In what was once a relatively straightforward process, petitioners are now on tenterhooks, wondering if they have devoted sufficient attention to the specificities of their relationship with the artists on the one hand, and venues on the other.

In the real world, the entertainment industry is fraught with all kinds of relationships between entertainers, performers, agents, managers, sponsors, and employers. Petitioners can be agents, employers, or both. Moreover, there are various kinds of agents and managers within those broad terms. Is it not sufficient that an agent who is not employing a beneficiary is not an employer, or that an employer petitioning solely in its own right isn't an agent?

In short, this section of the P-2 template may result in the waste of time and resources for both USCIS and petitioners, in an attempt to understand minute details in a vast array of industry relationships, which have been developed and sustained over time. We urge USCIS to reconsider this laundry list of variations and to withdraw the policy underlying it, in favor of one that bears a greater semblance to the reality of industry practice.

## **Conclusion**

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**Re: AILA Comments on Draft RFE Template: I-129 P-3  
Culturally Unique Artists and Entertainers**

The American Immigration Lawyers Association (AILA) submits the following comments on the USCIS RFE Template for Form I-129, P-3 Culturally Unique Artists and Entertainers.

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this RFE template and believe that our members' collective expertise provides experience that makes us qualified to offer views that will benefit the public and the government.

**Introduction**

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In general, the templates largely reflect the language of the regulations, which unfortunately, is susceptible to multiple interpretations. There are also practical implications to a strict application of the regulatory requirements in adjudicating a P nonimmigrant petition. For example, petitioners for P-1 groups are supposed to list the “exact dates for which each member of the group has been employed on a regular basis by the group.”<sup>1</sup> However, in practice, USCIS may accept less than this because, for example, once a P-1 group member has been employed by the group for longer than a year, the exact date the member joined is immaterial. We hope, therefore, that adjudicators do not rely too literally on the templates’ exact language, and that the effect of the templates is to curb unacceptable practices while preserving commonsensical ones.

### Comments on the I-129 P-3 RFE Template

1. **Page 1, Support Personnel Cannot Be Included on the Same Petition as Principal:** The template states that essential support personnel cannot be included on the same petition as the principal and that if included, “a favorable decision cannot be issued for the essential support personnel.” If USCIS policy in this situation is to drop support personnel but approve the principals, it would be helpful for USCIS, in addition to asking for a separate petition for support personnel, to add that it will proceed to adjudicate the petition solely with respect to the principals.
2. **Page 2, Contracts:** A summary of the terms of an oral agreement is clearly permitted in lieu of a written contract. However, we have seen numerous RFEs asserting that unsigned summaries of oral contracts are not acceptable. If a summary of an oral agreement was signed, it would be a written contract. Adjudicators should be instructed that summaries of oral agreements need not be signed.

In addition, with regard to the terms of the written contract or oral agreement, we agree that a description of the services to be performed and the monetary terms are essential to understanding the nature of the performances and expectations of the parties. However, hours of work, working conditions, and fringe benefits are usually irrelevant in the entertainment industry because groups rarely negotiate contracts that cover these concerns. When it comes to the entertainment industry, a description of the services and amount to be paid should be sufficient.

3. **Page 4, Documentation of Culturally Unique Performances:** In the second bullet, the word “events” should be removed from the passage that reads “Evidence that all of the performances or presentations will be culturally unique [events], which may be shown by: ...” The inclusion of the word “events” may lead to confusion, as it could be interpreted to mean that the location, venue, or forum where the culturally unique performance or presentation will occur must, itself, be “culturally unique.”

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<sup>1</sup> 8 CFR §214.2(p)(4)(iii)(B)(2).

We make this suggestion because we have encountered RFEs that appear to insist that culturally unique activities take place in broader environments that themselves are culturally unique. For example, some RFEs have suggested that a culturally unique performance cannot occur within the context of a jazz festival not devoted to the same kind of music as that presented by the P-3 artist, or that a university venue by definition cannot host a culturally unique event.

4. **Pages 4–6, Agents and Sponsoring Organizations:** Under INA §214(c)(1), a petitioning employer is simply described as the “importing employer.” Yet, the O and P regulations, and by extension, the template, deploy an impressive array of terms—employer, U.S. sponsoring organization, U.S. agent, agent performing the function of an employer, agent representing both the beneficiary and multiple employers, agent representing both the beneficiary and the employer, foreign employer through a U.S. agent—in an apparent effort to parse particular types of petitioners and those for whom they are petitioning. Moreover, with the release of the November 20, 2009 Neufeld Memorandum, “Requirements for Agents and Sponsors Filing as Petitioners for the O and P Visa Classifications,” adjudicators and petitioners now spend considerable time mincing these terms and scrutinizing the documentary nature of relationships between concerned parties. In what was once a relatively straightforward process, petitioners are now on tenterhooks, wondering if they have devoted sufficient attention to the specificities of their relationship with the artists on the one hand, and venues on the other.

In the real world, the entertainment industry is fraught with all kinds of relationships between entertainers, performers, agents, managers, sponsors, and employers. Petitioners can be agents, employers, or both. Moreover, there are various kinds of agents and managers within those broad terms. Is it not sufficient that an agent who is not employing a beneficiary is not an employer, or that an employer petitioning solely in its own right isn't an agent?

In short, this section of the P-3 template may result in the waste of time and resources for both USCIS and petitioners, in an attempt to understand minute details in a vast array of industry relationships, which have been developed and sustained over time. We urge USCIS to reconsider this laundry list of variations and to withdraw the policy underlying it, in favor of one that bears a greater semblance to the reality of industry practice.

## **Conclusion**

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