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January 31, 2011

Office of Public Engagement
United States Citizenship and Immigration Services
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Via e-mail: opefeedback@uscis.dhs.gov

Re: AILA Comments on USCIS Draft Policy Memorandum: Clarifying Guidance on Definition of "Internationally Recognized" for the P-1 Classification; Revisions to the Adjudicator's Field Manual (AFM) Chapter 33.5(a) AFM Update AD 11-03

The American Immigration Lawyers Association (AILA) submits the following comments on the USCIS draft memorandum, "Clarifying Guidance on Definition of 'Internationally Recognized' for the P-1 Classification."

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 draft memorandum 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

As a preliminary matter, we'd like to take this opportunity to thank USCIS for fulfilling its obligations under INA §214(c)(6)(D) to adjudicate complete O and P petitions within 14 days. The impact of this commendable effort has already been felt, particularly in the non-profit performing arts sector, and is bound to enhance international cultural exchange.

The draft memorandum is but another helpful step toward lowering the immigration barriers encountered by O and P petitioners and beneficiaries. We agree that individual artists performing with U.S-

based groups should be eligible for the P-1B classification. Indeed, we believe this was the policy of legacy INS from April 1, 1992, until release of the June 29, 1993 memorandum, "Proper Utilization of the P-1B Nonimmigrant Classification." We suggest a few points of clarification, and raise an additional concern not directly addressed in the memorandum.

Clarify the Guidance Respecting P-1S Support Personnel

The draft guidance seeks to amend Chapter 33.5(a)(1) of the AFM to read: "The P-1B nonimmigrant who is a member of an internationally recognized entertainment group must be coming to the United States to perform with or as an integral and essential part of the performance." Because the statute and the regulations use the phrase "integral and essential part of the performance" with respect to support personnel, we assume the draft memorandum extends the same treatment to individual P-1S personnel. Even so, to avoid confusion, we ask that the memorandum explicitly state that individual P-1S beneficiaries may come to the U.S. to provide support to U.S.-based groups as well.

Clarify Aspects of the Process

The draft guidance at Chapter 33.5(a)(2) states:

> If the person is already in the United States in P-1 status, and a new employer wishes to petition for him or her, that new employer will use Form I-129 for the petition and to request an extension of stay for the person.

To clarify this language, we suggest the following:

> If the person is already in the United States in P-1 status, and a new employer wishes to petition for him or her, that new employer will use Form I-129 to file for a change of employer or to add one, and to request an extension of stay for the individual.

The next paragraph states:

> The petitioner will file Form I-129 with the service center having jurisdiction in the area where the alien will work. If the alien will perform services in more than one location, the petitioner will filed [*sic*.] it with the service center that has jurisdiction over either the area where the petitioner is located or the area specified by the petitioner's address on the petition. If the beneficiary will work for more than one employer within the same time period, each employer must file a separate petition with the service center, unless the petitioner is an established agent.

The USCIS instructions to the newly-revised Form I-129, combined with our service center experience, suggest that by "area where the alien will work" and "location," USCIS means "address." Thus, if work will be performed at multiple addresses, or locations, the petitioner's address governs service center jurisdiction, even if all the work will occur within the jurisdiction of a single service center. Confusion over this very issue has caused unnecessary delays, due to the rejection and subsequent refiling of petitions. The AFM guidelines on service center jurisdiction should be more clearly and concisely worded.

Clarify the Reference to an "Established Agent"

The draft guidance at Chapter 33.5(a)(2) includes two references to qualified petitioners. The first paragraph states, "P-1 petitions may be filed by a U.S. employer, a U.S. sponsoring organization, a U.S. agent, or a foreign employer through a U.S. agent." The second paragraph states, "[i]f the beneficiary will work for more than one employer within the same time period, each employer must file a separate petition with the service center, unless the petitioner is an established agent."

The memorandum should incorporate by reference the definition of "agent" as contained in the November 20, 2009 Memorandum, "Requirements for Agents and Sponsors Filing as Petitioners for the O and P Visa Classifications,"[1] so that the reference to "established agent" is consistent with that memorandum, and it is clear that petitioners need not demonstrate that they normally serve as agents outside the petition process. In this regard, kindly note that the current online guidance regarding agents as petitioners prominently features outdated guidance issued October 7, 2009, while giving the subsequent clarifying memo issued on November 20, 2009 insufficient prominence.[2]

Clarify the Reference to Vermont Service Center Jurisdiction over Certain Athletes

Note 2 at the end of the memorandum states that "[p]etitions filed for hockey players or baseball players as P-1s must be filed … at the Vermont Service Center." Page 19 of the most recent I-129 instructions, however, states that P-1 petitions for "Major League Sports Organizations" should be filed with Vermont, and page 13 of the instructions defines "Major League Sports" far more broadly that just hockey and baseball players.

Expand July 20, 2010 "O" Guidance to the P Classification

As noted above, we have one additional concern regarding the P classification that is not addressed in the memorandum. We believe that the AFM should advise adjudicators that the "Clarifying Guidance on 'O' Petition Validity Period Revisions to the Adjudicator's Field Manual (AFM) Chapter 33.4(e)(2) AFM Update AD10-36," should also be applied

[1] *Published on* AILA InfoNet at Doc. No. 09113064 (*posted* Nov. 30, 2009).
[2] http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f8d93c24bda24210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD.

to the P classification.[3] This guidance affirms that the statute and regulations do not place specific time limits on the allowable gaps between events in an approved O classification period. The memorandum asks the service centers, whenever possible, to "approve a petition for the length of the validity period requested where the law and regulations permit and there are no other competing national security or fraud concerns." Artists and entertainers entering in the P visa classification, as groups and individuals, should have the benefit of the same clarity.

Conclusion

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

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

[3] *Published on* AILA InfoNet at Doc. No. 10072061 (*posted* July 20, 2010).