

O NONIMMIGRANT CLASSIFICATION

TALKING POINTS:

- Unlike some of the other employment-based classifications, the statute and regulations do not require petitioners for O nonimmigrant workers to establish that the foreign national will not displace or otherwise negatively impact the wages and working conditions of U.S. workers. The O-1 classification, however, requires the petitioner to demonstrate that the foreign worker has extraordinary ability in the sciences, arts, education, business or athletics, or extraordinary achievement in the motion picture or television industry. The O-2 classification for support workers requires the beneficiary to have, among other requirements, essential skills that are not of a general nature. As such, only individuals with the requisite extraordinary ability or achievement, or essential support skills, are eligible for these nonimmigrant classifications.
- The statute mandates a consultation process. Petitioners seeking O classification are generally required to submit an advisory opinion from an appropriate peer group, a labor organization, and/or a management organization (that represents the foreign worker's occupational peers) describing the nature of the work to be done and the foreign worker's qualifications. This advisory opinion, provided by an appropriate peer group, labor organization, and/or management organization, as applicable, is an important piece of evidence in the record on which the determination of eligibility is made. As such, the objections contained in a negative advisory opinion are considered carefully by USCIS officers and supervisors during the adjudicative process.
- In the case of O-2 essential support workers assisting O-1 artists or athletes, petitioners must submit evidence that establishes the O-2's current essentiality, critical skills, and experience with the O-1. USCIS reviews all of the evidence pertaining to the foreign worker's skills and experience, including the advisory opinions from the labor and/or management organization, if applicable, to determine if the evidence establishes, by a preponderance of the evidence, that the foreign worker qualifies for an O-2.

Fraud and Abuse Vulnerabilities

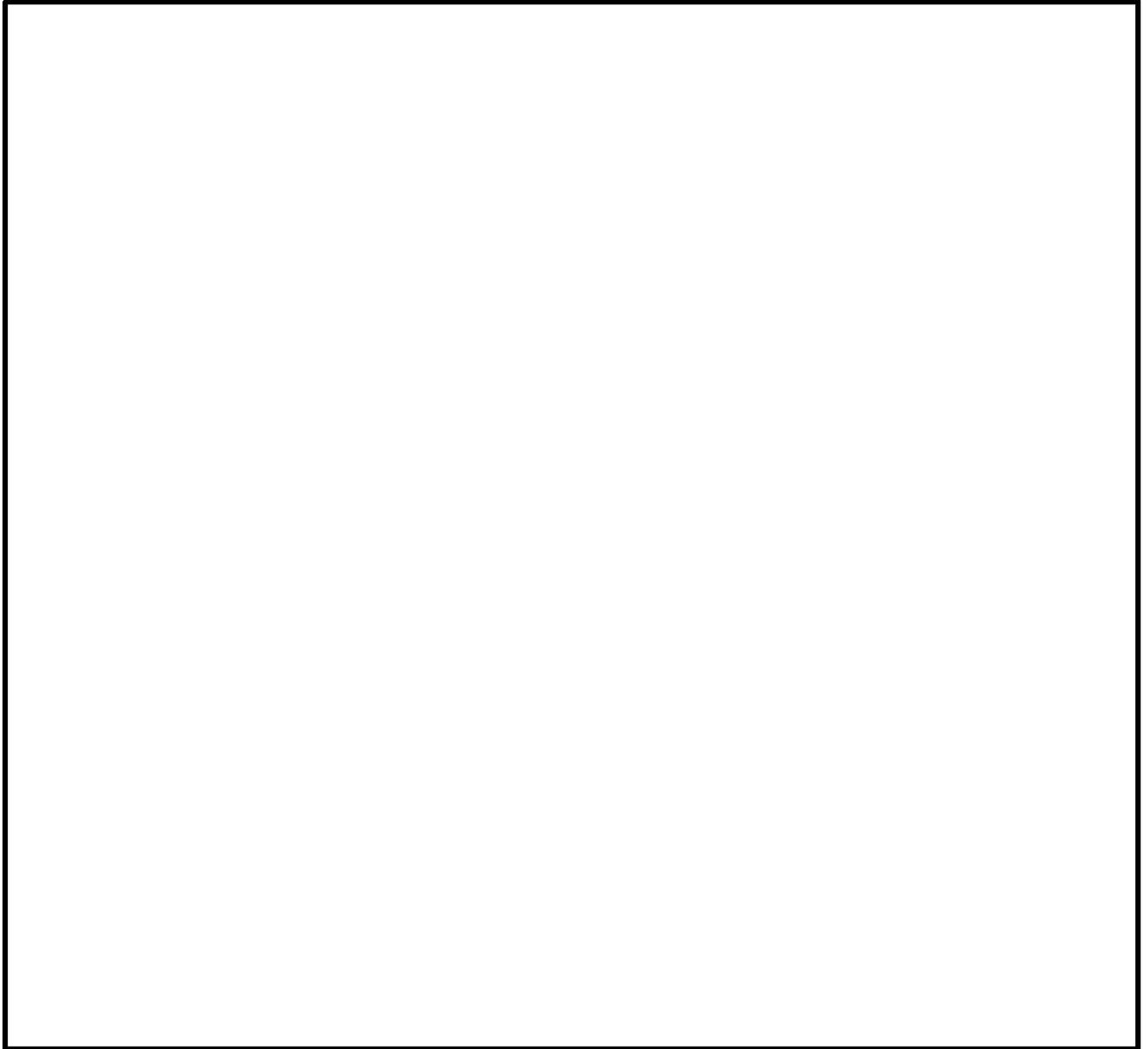
- For O-1 and O-2 nonimmigrant workers where an advisory opinion from a peer group, labor union, and/or management organization is required, the opinion can either state simply that the group has no objection or provide a detailed opinion of the work to be done and the alien's qualifications. To meet this requirement, the petitioner typically pays a non-refundable fee to a peer organization in the field of work to obtain the advisory opinion. If the organization believes that the individual qualifies for the classification, it may issue a "no-objection" letter to that effect. This letter accompanies the petition and can be considered supporting evidence. USCIS has encountered instances of fraudulent or falsified "no-objection" letters claiming to be from labor organizations that represent actors, musicians, and artists in support of some O-1 visa petitions. USCIS relies on these letters to determine whether the O-1 nonimmigrant worker possesses the extraordinary ability, or has demonstrated the requisite achievement necessary to obtain an O-1 visa.
- USCIS has also identified instances of material misrepresentation concerning the work locations or events where O-1 nonimmigrant workers will perform their duties. A petitioner

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may provide supporting documentation in the form of an itinerary or event schedule in order to establish that the worker will be performing work in his or her area of extraordinary ability or achievement. USCIS verification of some of these events has established that the event was not scheduled or it was fabricated.

(b)(7)(e)

Anti-Fraud Efforts



BACKGROUND:

- The O-1A nonimmigrant classification is for foreign workers coming temporarily to the United States who have extraordinary ability in the sciences, education, business, or athletics (not including the arts, motion picture, or television industry) which has been demonstrated by sustained national or international acclaim. The individual must be one of the small percentage who have arisen to the very top of their field as demonstrated by sustained national or international acclaim.

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- The O-1B nonimmigrant classification is for foreign workers coming temporarily to the United States who have extraordinary ability in the arts or extraordinary achievement in the motion picture or television industry. Extraordinary ability in the field of arts means distinction. Extraordinary achievement with respect to motion picture and television productions means a very high level of accomplishment.
- The O-2 nonimmigrant classification is for foreign workers coming temporarily to the United States solely to assist in the artistic or athletic performance by an O-1.
 - O-2 workers must be filed for on a separate petition from the O-1;
 - The O-2 may not work separate/apart from the O-1 to whom support is provided; and
 - The O-2 worker must be petitioned for in conjunction with the services of the O-1.
- To qualify as an O-2 worker supporting an O-1 artist or athlete, the person must be coming to the United States for a specific event or events, and:
 - Be an integral part of the actual performance, and
 - Have critical skills and experience with the O-1 which are not of a general nature and which are not possessed by a U.S. worker.

To qualify as an O-2 worker supporting an O-1 in the motion picture or television industry, the worker must have skills and experience with the O-1 that are not of a general nature based on:

- a pre-existing long-standing relationship, **or**
- in the case of a specific production, rather than a pre-existing long-standing relationship, significant pre-or post-production work that will take place in and outside the United States and the person's continued participation is essential for the successful completion of the production.

Consultations

- In addition to providing evidence of the eligibility of the beneficiary (the foreign worker), petitioners must, generally, provide a consultation letter before a Form I-129, *Petition for a Nonimmigrant Worker*, requesting O nonimmigrant classification can be approved.¹
- A consultation in the form of an advisory letter should address the nature of the proffered work and the beneficiary's qualifications.
 - For motion picture and television production ("MPTV"), consultations with a labor organization and a management organization in the area of the alien's ability are required (O-2 MPTV also require the two advisory letters).
 - An advisory opinion, either favorable or not favorable, is an important part of the petitioning process, but is not binding on USCIS.
 - Under the preponderance of the evidence standard, a petition with a negative consultation could still be approved if the totality of the evidence established that, more likely than not, the beneficiary is eligible for the benefit sought. Likewise, a positive consultation may not necessarily lead to an approval of the petition if the totality of the evidence established that, more likely than not, the beneficiary is not eligible for the benefit sought.

¹ O-1B Arts may have the consultation waived if the beneficiary seeks readmission to the United States to perform similar services within 2 years of the date of the previous consultation.

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- The consultation process provides USCIS with valuable information from expert sources concerning the beneficiary's ability, achievements and work situation.
 - Petitioners for an O-1A or O-1B Arts beneficiary may submit an advisory opinion from an appropriate U.S. peer group (which could include a person or persons with expertise in the field), a labor organization and/or a management organization.
 - Petitioners for an O-2 beneficiary accompanying an O-1A or O-1B Arts foreign worker must submit an advisory opinion from a labor organization.
 - Petitioners for an O-1B and O-2 Motion Picture and Television (MTV) beneficiary must submit an advisory opinion from a labor organization and a management organization.
 - In cases where it is established by the petitioner that an appropriate peer group, including a labor organization does not exist, USCIS will render a decision in the absence of an advisory opinion.

Validity Periods

- An O-1 may be initially granted a validity period for up to three years to accomplish the event or activity.
- The regulations state that a petitioner may file a request to extend the validity of the original petition in order to continue or complete the same activities or events specified in the original petition. As such, O visa holders may request an extension of stay for the alien to continue or complete the same event or activity by filing Form I-129, Petition for a Nonimmigrant Worker, with explanation for the extension. The extension of stay may be authorized in increments of up to 1 year. While supporting documents are not required unless requested by the Service Center Director, officers do review any contract or a summary of an oral agreement as well as evidence of the event or activity the beneficiary is continuing from the original petition.