



April 13, 2011

Executive Summary

## **“O” Nonimmigrant Visas - Agents as Petitioners Stakeholder Teleconference**

### **Background**

On March 24, 2011, the USCIS Service Center Operations Directorate (SCOPS) and the Office of Public Engagement (OPE) hosted a teleconference regarding the subject of agents performing the function of employer for the “O” nonimmigrant visa classification. The purpose of the session was to present an overview of the regulatory requirements for agents who are filing as petitioners, provide a description of the contracts and itineraries required, and address topics suggested by stakeholders in advance of the teleconference. The session was for USCIS to provide information and address questions from individual stakeholders.

Prior to the teleconference, USCIS updated the [O-1 Visa: Individuals with Extraordinary Ability or Achievement](#) page and the related [O Nonimmigrant Classifications Questions and Answers](#) document on its website. The latest Questions and Answers provide expanded information about evidentiary requirements for agents filing as petitioners.

Below is a summary of USCIS’ ongoing work in the O visa category during the past year:

- May/June 2010 – USCIS completed a Cross Center Review (CCR) on the O-1 Visa Classification. This CCR initiated a more detailed review of agents filing as petitioners in the O-1 visa classification.
- July 2010 – USCIS revised its O webpage to provide a more detailed description of contracts and itineraries and also the regulatory requirements for agents filing as petitioners. OPE shared this webpage update with stakeholders.
- Late summer/early fall 2010 – USCIS provided narrowly tailored Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs) specifically addressing agents filing as petitioners and contract and itinerary requirements so that petitioners could meet the regulatory threshold requirements. In addition to other applicable deficiencies, the RFEs and NOIDs specifically request documentation to show that actual work exists and is not speculative. INA 101(a)(15)(O) states that the O-1 visa classification is for an alien who “seeks to enter the United States to continue work in the area of extraordinary ability”

and INA 214(c) indicates there must be an importing employer. The O-1 visa classification is not intended for speculative work. When USCIS has received documentation that is responsive to the RFE and/or NOID and establishes by a preponderance of the evidence eligibility for the O classification, USCIS has approved the petition.

## **Discussion Topics**

### **Agents in General**

The regulation at 8 CFR 214.2(o)(2)(iv)(E) allows agents to file as a petitioner in the following scenarios:

- A U.S. agent can file for traditionally self-employed workers, or workers who use agents to arrange short-term employment with numerous employers; or
- A U.S. agent can file on behalf of a foreign employer who authorizes the agent to act on his/her behalf.

A U.S. agent may be:

- The actual employer of the beneficiary;
- The representative of both the employer and the beneficiary; or
- A person or entity authorized by the employer to act for, or in place of, the employer as its agent.

A petition filed by an agent is subject to additional evidentiary requirements under 8 CFR 214.2(o)(2)(iv)(E). The evidentiary requirements depend on whether the agent is filing as an agent performing the function of an employer; as a person or company in business as an agent and filing for multiple employers; or as an agent for a foreign employer.

### **General Contract Requirement**

The regulation at 8 CFR 214.2(o)(2)(ii), which applies to all O petitions, requires a copy of any written contract between the petitioner and the beneficiary or, if a written contract does not exist, a summary of the terms of the oral agreement under which the beneficiary will work.

USCIS will accept an oral agreement as evidenced by the summation of the elements of the oral agreement. This evidence may include but is not limited to:

- emails between the contractual parties;
- a written summation of the terms of the agreement; or
- any other evidence demonstrating that an oral agreement was entered into.

The summary of the terms of the oral agreement must contain:

- what was offered by the petitioner; and
- what was accepted by the beneficiary.

The summary does not need to be signed by both parties to establish the oral agreement. However, it must document the terms of which the beneficiary will be coming to United States to work and that the beneficiary has agreed to that offer.

### **General Itinerary Requirement**

The regulation at 8 CFR 214.2(o)(2)(ii), which applies to all O petitions, states that an explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities, if applicable, are required. The petitioner must establish that there are events or activities in the beneficiary's field of extraordinary ability for the validity period requested (e.g. an itinerary for a tour or a series of events). It is important to note that if services will be performed by the beneficiary in more than one location, an itinerary with the dates and locations of work must be included. In cases where an itinerary is required, under the general O provisions, or under those specific to agents, USCIS provides some flexibility in determining if the itinerary requirement has been satisfied.

Some stakeholders requested general clarification on whether it is necessary to submit an amended petition based on a change to an itinerary. The regulations provide that a petitioner may add additional performances, events, or competitions for an O petition without the requirement of filing an amended petition. The July 20, 2010 memo on "O Petition Validity" also explains that the regulations allow a petition to be approved to cover not only the actual event or events but also services and/or activities in connection with that event or events.

### **Agents Performing the Function of an Employer**

**Contract requirement:** A Form I-129 filed by an agent performing the function of an employer must include the contractual agreement between the agent and the beneficiary. This contractual agreement must specify the wage offered and other terms and conditions under which the beneficiary will work. This can be a written contract or summary of the terms of the oral agreement if a written contract does not exist.

The petition must be submitted with evidence regarding the wage offered and it should clearly lay out how the beneficiary will be paid. It is important to note that the regulations do not contain a prevailing wage requirement and therefore no particular wage structure is required. A detailed description of the wage offered or fee structure and that the wage offered or fee structure was agreed upon may satisfy this requirement.

USCIS relies on the contractual agreement (whether written or a summary of the terms of the oral agreement) that must be provided with the petition to determine whether the agent is functioning as the employer of the beneficiary. As the petitioner, it is important to indicate that you are filing as an agent performing the function of an employer and substantiate that claim with a detailed description of the terms and conditions of the agreement. The contractual agreement should establish the type of working relationship between the agent and beneficiary. If the terms and conditions of the contractual agreement show a level of control over the beneficiary's work being relinquished to the agent, then the agent may establish that it is performing the function of an employer. This determination will be on a case by case basis. A

contract is not required between the beneficiary and the entities that will ultimately use the beneficiary's services when the petition is filed by an agent that has established that it is performing the function of an employer.

**Itinerary requirement:** A petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of work. There is no exception to this regulatory requirement. When an itinerary is required by regulation, USCIS relies upon the itinerary, in addition to other evidence, to make a determination on whether actual work exists for a beneficiary that will be placed at multiple work sites and how much time is necessary for the beneficiary to complete the event(s).

Some stakeholders requested clarification on whether the submission of contracts, which contain specific information on an artist's performances and obligations, will satisfy the itinerary requirement. As discussed, the itinerary requirement helps to ensure that the beneficiary is coming to the United States for actual and not speculative work. USCIS will normally take into account industry standards when determining whether the itinerary requirement has been met; and while each determination is fact specific, an itinerary is not required to take on a specific form. The regulations contain minimum documentary evidence for all O-1 petitions – the petition must be submitted with an explanation of the nature of the events or activities, the beginning and end dates for the events or activities, and a copy of any itinerary. As such, the itinerary should at a minimum indicate what type of work the beneficiary will be engaged, where, and when this work will take place.

It is not expected that every engagement would be included in the itinerary but rather, each engagement with the outside entity that will ultimately use the beneficiary's service, would be provided with an estimated beginning and end date and general location indication. For example, in the modeling context, a document indicating that the model will be modeling on numerous occasions for a specific designer beginning in March and ending in September may suffice.

### **Agents for Multiple Employers**

**Contract requirement:** These agents must submit the contract between the petitioner (agent) and the beneficiary and contracts between the beneficiary and the entities for which the beneficiary will work.

The contract between the "traditionally self-employed" beneficiary and those entities with which the beneficiary is contracted to work for provides USCIS with evidence that actual work exists and the O-1 alien is coming to the United States to continue to work in his or her field of extraordinary ability. This is important because an O worker cannot "self-petition" and the employment cannot be speculative.

USCIS will accept either a written contract or a summary of an oral agreement if a written contract does not exist. If an oral agreement was entered into, the summary does not have to be signed by both parties to establish that there is an oral agreement. However, it must document the terms under which the beneficiary will work and conditions of the agreement. Such evidence may include but is not limited to:

- E-mails between the contractual parties;
- A written summation of the terms of the agreement; or
- Any other evidence which demonstrates that an oral agreement was entered into.

A U.S. agent may file as the beneficiary's employer and on the same petition file on behalf of the beneficiary as his or her agent and on behalf of the entities for which the beneficiary will work. In this agent filing, the beneficiary will be working within the same time period for the petitioning employer and one or more entities that are ultimately arranging for the beneficiary's services. The petitioning employer must establish that it is in business as an agent by providing evidence that the petitioner is authorized to act as an agent for the other entities. If the petitioner does not establish that the petitioner is authorized to act as an agent for the other entities, but the petition is otherwise approvable, it may only be approved for the qualifying event for which the petitioner will be directly employing the beneficiary.

### **In Business as an Agent**

In this context, it is important to clarify, as stakeholders requested, the definition of "a person or company in business as an agent". In the November 20, 2009 memo on "Requirements for Agents and Sponsors Filing as Petitioner for the O and P Visa Classifications", USCIS acknowledged that the regulations do not specify the evidence for establishing that a petitioner is "in business as an agent". The "in business as an agent" scenario typically arises when a petitioner files on behalf of the beneficiary as his or her agent and on behalf of other entities for which the beneficiary will work. In this scenario, USCIS focuses on whether the petitioner can establish that it is duly authorized to act as an agent for the purposes of filing the petition. This means that the petitioner does not have to demonstrate that it normally serves as an agent outside the context of this petition. This requirement may be satisfied, for example, if the petitioner/agent presents a document signed by the entities for which the beneficiary will work, which states that the petitioner is authorized to act as an agent for the limited purpose of filing the petition with USCIS.

This type of "agency" filing should not be confused with the concept of concurrent employment. If the beneficiary will be employed concurrently for more than one employer within the same time period, each employer must file a separate petition. The beneficiary can only work for multiple employers, without the need to file a separate petition for each employer, if a person or company in business as an agent files the petition on behalf of the beneficiary and as a representative of the other multiple employers. A contract between the employers and the beneficiary is required. The regulations for this type of "agency" filing are very specific. Supporting documentation must include a complete itinerary of the event or events, a contract between the employers and the beneficiary and the burden is on the agent to explain the terms and conditions of the employment.

**Itinerary requirement:** When the agent represents the beneficiary and multiple entities who have contracted with the beneficiary to use the beneficiary's services, the petition must be accompanied by a complete itinerary of the events or activities. The itinerary must specify the dates of each service or engagement, the names and addresses of the entities contracting for the services and the names and addresses of the establishments, venues, or locations where the

services will be performed. A petitioner may add additional performances for an O-1 artist or entertainer during the validity period of the petition without filing an amended petition.

### **Agents for Foreign Employers**

The regulation at 8 CFR 214.2(o)(2)(i) states that a foreign employer may not directly petition for an O nonimmigrant alien but instead must use the services of a United States agent to file a petition. Agents filing I-129 petitions for foreign employers must submit the minimum general documentary evidence required for all O-1 petitions, which includes:

- Copies of any written contracts between the petitioner and the beneficiary or a summary of the terms of the oral agreement under which the beneficiary will be employed;
- An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and
- A written advisory opinion from the appropriate consulting entity or entities.

While the regulations do not require additional supporting documents for this type of agent filing, it is important to note that the foreign employer, who petitions for an O nonimmigrant using a U.S. agent, is responsible for complying with all applicable employer sanction provisions.

### **Follow Up Items**

During the teleconference, USCIS indicated that it would provide additional clarification, through an executive summary, on certain points raised during the call. This section provides this information.

### **Amended Petitions**

Stakeholders repeatedly raised concerns about when USCIS requires the filing of an amended petition. The regulations provide that a petitioner must file an amended petition where there has been a material change in the terms and conditions of employment or beneficiary's eligibility as specified in the original petition and also requires an amended petition where the beneficiary has changed employers. USCIS recognizes the public's concerns with how the regulations regarding amended petitions are interpreted and is currently determining how to provide the appropriate guidance that clarifies the standards in the various filing scenarios.

As discussed above, an amended petition is not required when the petitioner adds additional performances or engagements during the validity period of the petition.

### **Self-petitioning**

Stakeholders have raised concerns with the interpretation of the O-1 regulation prohibiting self-petitioning and recent decisions issued by USCIS in this regard. USCIS is aware of these

concerns and is actively working on forthcoming guidance to clarify the regulatory prohibition and its applicability.



## U.S. Citizenship and Immigration Services

# O Nonimmigrant Classifications Question and Answers

### **Q: When can a U.S. agent file as a petitioner for an O beneficiary?**

A: The regulations allow agents to be petitioners in the following scenarios:

- A U.S. agent can file for traditionally self-employed workers, or workers who use agents to arrange short-term employment with numerous employers
- A foreign employer who authorizes an agent to act on his/her behalf.

A U. S. agent may be:

- The actual employer of the beneficiary
- The representative of both the employer and the beneficiary
- A person or entity authorized by the employer(s) to act in place of the employer(s) as its agent.

### **Q: What evidence is required with a petition filed by a U.S. agent?**

A: A petition filed by an agent is subject to additional evidentiary requirements listed under 8 CFR 214.2(o)(2)(iv)(E). The evidence required depends on whether the agent is filing as an agent performing the function of an employer; as a person or company in business as an agent and filing for multiple employers; or as an agent for a foreign employer.

### **Q: How does an agent establish to USCIS that it is an agent performing the function of an employer?**

A: When an agent performing the function of an employer petitions for the beneficiary, the petition must include the contractual agreement between the agent and the beneficiary which specifies the wage offered and other terms and conditions of employment. This can be a summary of the terms of the oral agreement or a written contract.

USCIS relies on the contractual agreement that must be provided with the petition to determine whether the agent is functioning as the employer of the beneficiary. The contractual agreement should establish the type of working relationship between the agent and beneficiary and should clearly lay out how the beneficiary will be paid. In totality, if the terms and conditions of employment show a level of control over the beneficiary's work being relinquished to the agent, then the agent may establish that it is performing the function of an employer. This determination will be on a case by case basis and will be based on the contractual agreement, whether written or oral.

### **Q: What evidence is required to satisfy the "wage offered" requirement when a U.S. agent files as an agent performing the function of an employer?**

A: The petition must be submitted with evidence regarding the wage offered. However, the regulations do not contain a prevailing wage requirement. Furthermore, no particular wage



structure is required. A detailed description of the wage offered or fee structure and that the wage offered/ fee structure was agreed upon may satisfy this requirement.

**Q: When an agent performing the function of an employer files a petition, are contracts required with the employers where the beneficiary will be employed?**

A. No, in the case of an O petition filed by an agent performing the function of an employer, a contract is not required between the beneficiary and the entities that will ultimately use the beneficiary's services.

**Q: What is the itinerary requirement for agents performing the function of an employer?**

A: A petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of work. There are no exceptions to the itinerary requirement when the petition is filed by an agent performing the function of an employer. However, USCIS does give some flexibility to how detailed the itinerary must be and does take into account industry standards when determining whether the itinerary requirement has been met. As such, the itinerary should at a minimum indicate what type of work the beneficiary will be engaged, where, and when this work will take place.

**Q: When an U.S. agent files for a traditionally self-employed worker, on behalf of multiple employers, are contracts required with the employers where the beneficiary will be employed?**

A: Yes, a contract between the employer and the beneficiary is required to be submitted with an O petition filed by an agent. The contract between the "traditionally self-employed" worker and the importing employer provides USCIS with evidence that an actual position exists and the O worker is coming to the United States to fill that position. An O worker cannot "self-petition."

USCIS will accept either a written or an oral contract. The contract must demonstrate what was offered by the employer and what was accepted by the employee. If an oral contract was entered into, the document evidencing the oral contract does not have to be signed by both parties to establish that there is an oral agreement. However, it must document the terms of the employment offered and that the beneficiary has agreed to the offer. Such evidence may include but is not limited to:

- E-mails between the contractual parties
- A written summation of the terms of the agreement
- Any other evidence which demonstrates that an oral agreement was created

When the beneficiary uses a U.S. agent to file the petition, the agent, by regulation, represents both the beneficiary and the employer(s). The regulations also require that when the agent represents the beneficiary and employer(s), the petition must be accompanied by a complete itinerary of the events or activities. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers and the names and addresses of the establishments, venues, or locations where the services will be performed.

**Q: Can the U. S. agent be the actual employer of the beneficiary?**

A: Yes, a U.S. agent can be the actual employer. When an agent petitions for the beneficiary as the employer the petition must include the contractual agreement between the agent and the

beneficiary which specifies the wage offered and other terms and conditions of employment. This can be a summary of the terms of the oral agreement or a written contract.

**Q: Can a U.S. agent who is the employer/petitioner for the beneficiary, also serve as an agent for other (multiple) employers?**

A: Yes, a U.S. agent may be the actual employer and may file a petition on behalf of the beneficiary as his or her agent and on behalf of other employers of the beneficiary. In this scenario, the agent is required by regulations to provide:

- The contract between the petitioner (agent) and the beneficiary
- A complete itinerary which lists specific dates of each service or engagement
- The names and addresses of the establishments, venues, or locations where the services will be performed
- Contracts between the beneficiary and the employer(s) for the duration of the visa

The contracts that must be provided to USCIS can either be a summary of the oral agreement or a copy of the written contract. In addition, the petitioner must provide evidence establishing that the petitioner is authorized to act as an agent for the other employers. This may be satisfied with a document signed by the beneficiary's other employer(s) which states the agent is authorized to act as their agent for the limited purpose of filing the petition. If the petitioner does not establish that the petitioner is authorized to act as an agent for the other employers, the petition may only be approved for the petitioner's event.

**Q. Can additional performances or engagements be added to a petition?**

A. Yes, a petitioner may add additional performances for an O-1 artist or entertainer during the validity period of the petition without filing an amended petition.

In cases where there have been any other material changes in the terms and conditions of the employment or the beneficiary's eligibility, as specified in the original I-129, an amended I-129 petition must be filed.

**Q. Can a partially or fully self-incorporated person petition for himself or herself in the O classification?**

A. The regulations require that an O petition be filed by a U.S. employer, a U.S. agent, or a foreign employer through a U.S. agent. The regulations also state that an O-1 alien may not petition for himself or herself. The Immigration and Nationality Act requires that an O petition be filed by an importing employer. Documentation of ownership and control of the business may be requested in this circumstance to verify that the petitioning entity is a bona fide employer in the United States, that the petition is not based on speculative employment, and that the terms and conditions of actual employment qualify for O classification.

**Q. Can a foreign employer be a corporation owned by the beneficiary?**

A. Yes, but the petition must be filed by a U.S. agent. A foreign employer may be a corporation owned wholly or in part by the beneficiary but the foreign employer must utilize a U.S. agent to file the petition. The petition can not be based on speculative employment and the terms and condition of the actual employment must qualify for O classification. USCIS may request information regarding the foreign employer and documentation to establish that there is work in place for the beneficiary in the United States.

A foreign employer who, through a U.S. agent, files a petition for an O nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

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[Plug-ins](#)



## U.S. Citizenship and Immigration Services

# O-1 Visa: Individuals with Extraordinary Ability or Achievement

The O-1 nonimmigrant visa is for the individual who possesses extraordinary ability in the sciences, arts, education, business, or athletics, or who has a demonstrated record of extraordinary achievement in the motion picture or television industry and has been recognized nationally or internationally for those achievements.

The O nonimmigrant classification is commonly referred to as:

- O-1A: individuals with an extraordinary ability in the sciences, education, business, or athletics (not including the arts, motion pictures or television industry)
- O-1B: individuals with an extraordinary ability in the arts or extraordinary achievement in motion picture or television industry
- O-2: individuals who will accompany an O-1, artist or athlete, to assist in a specific event or performance. For an O-1A, the O-2's assistance must be an "integral part" of the O-1A's activity. For an O-1B, the O-2's assistance must be "essential" to the completion of the O-1B's production. The O-2 worker has critical skills and experience with the O-1 that cannot be readily performed by a U.S. worker and which are essential to the successful performance of the O-1
- O-3: individuals who are the spouse or children of O-1's and O-2's

## General Eligibility Criteria

To qualify for an O-1 visa, the beneficiary must demonstrate extraordinary ability by sustained national or international acclaim and must be coming temporarily to the United States to continue work in the area of extraordinary ability.

Extraordinary ability in the fields of science, education, business or athletics means a level of expertise indicating that the person is one of the small percentage who has risen to the very top of the field of endeavor.

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the field of the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

To qualify for an O-1 visa in the motion picture or television industry, the beneficiary must demonstrate extraordinary achievement evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent the person is recognized as outstanding, notable or leading in the motion picture and/or television field.

## Application Process O-1 Visa

The petitioner should file Form I-129, Petition for Nonimmigrant Worker, (see Form I-129, Petition for Nonimmigrant Worker, link to the right) with the USCIS office listed on the form instructions. The petition may not be filed more than one year before the actual need for the alien's services. To avoid delays, the Form I-129 should be filed at least 45 days before the date of employment.

The petitioner must submit Form I-129, Petition for Nonimmigrant Worker, and the following documentary evidence:

### Consultation

A written advisory opinion from a peer group (including labor organizations) or a person designated by the group with expertise in the beneficiary's area of ability.

If the O-1 petition is for an individual with extraordinary achievement in motion picture or television, the consultation must come from an appropriate labor union and a management organization with expertise in the beneficiary's area of ability.

### Exceptions to the Consultation Requirement:

If the petitioner can demonstrate that an appropriate peer group, including a labor organization, does not exist the decision will be based on the evidence of record.

A consultation may be waived for an alien with extraordinary ability in the field of arts if the alien seeks readmission to perform similar services within 2 years of the date of a previous consultation. Petitioners should submit a waiver request and a copy of the previous consultation with the petition.

### Contract between petitioner and beneficiary

A copy of any written contract between the petitioner and the beneficiary or a summary of the terms of the oral agreement under which the beneficiary will be employed.

NOTE: USCIS will accept an oral contract, as evidenced by the summation of the elements of the oral agreement. Such evidence may include but is not limited to: emails between the contractual parties, a written summation of the terms of the agreement, or any other evidence which demonstrates that an oral agreement was created.

The summary of the terms of the oral agreement must contain:

- what was offered by the employer
- what was accepted by the employee

The summary does not have to be signed by both parties to establish the oral agreement. However, it must document the terms of the employment offered and that the beneficiary has agreed to the offer.

### Itineraries

An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities, if applicable (see

the memorandum “Clarifying Guidance on “O” petition Validity Period” link to the right). The petitioner must establish that there are events or activities in the beneficiary’s field of extraordinary ability for the validity period requested, e.g. an itinerary for a tour or a series of events.

## **Agents**

A U.S. Agent may be the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or a person or entity authorized by the employer to act for, or in place of, the employer as its agent.

### **Agent for Multiple Employers**

Please note that a petitioner who will be filing as an agent for multiple employers must establish that it is duly authorized to act as an agent for the other employers. The required conditions can be found at the link to the right (see the memorandum “Requirements for Agents and Sponsors Filing as Petitioners for the O and P Visa Classifications”). Additionally, agents filing I-129 petitions for multiple employers must include with the petition:

- Supporting documentation including a complete itinerary of the event or events which specifies the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed
- Contracts between the actual employers and the beneficiary; and
- An explanation of the terms and conditions of the employment with required documentation.

Once the visa petition is approved by USCIS, the beneficiary can apply at a U.S. embassy or consulate for the visa. Department of State (DOS) establishes visa application processing and issuance fees. For more information on visa application processing and issuance fees, see the “Department of State, [travel.state.gov](http://travel.state.gov)” link to the right.

### **Agent Performing the Function of an Employer**

An I-129 filed by an agent performing the function of an employer must include:

- The contractual agreement between the agent and the beneficiary which specifies the wage offered and other terms and conditions of employment. This can be a summary of the terms of the oral agreement or a written contract. A contract is not required between the beneficiary and the entities that will ultimately use the beneficiary’s services.
- A petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of work. There are no exceptions to the itinerary requirement when the petition is filed by an agent performing the function of an employer. However, USCIS does give some flexibility to how detailed the itinerary must be and does take into account industry standards when determining whether the itinerary requirement has been met. As such, the itinerary should at a minimum indicate what type of work the beneficiary will be engaged, where, and when this work will take place.

Please note that USCIS relies on the contractual agreement that must be provided with the petition to determine whether the agent is functioning as the employer of the beneficiary. The contractual agreement should establish the type of working relationship between the agent and beneficiary and should clearly lay out how the beneficiary will be paid. In totality, if the terms and conditions of employment show a level of control over the beneficiary's work being relinquished to the agent, then the agent may establish that it is performing the function of an employer. This determination will be on a case by case basis and will be based on the contractual agreement, whether written or oral.

The petition must be submitted with evidence regarding the wage offered. However, the regulations do not contain a prevailing wage requirement. Furthermore, no particular wage structure is required. A detailed description of the wage offered or fee structure and that the wage offered/ fee structure was agreed upon may satisfy this requirement.

### **Agent for Foreign Employers**

Agents filing I-129 petitions for foreign employers must submit the minimum general documentary evidence as required for all O-1 petitions which include:

- Copies of any written contracts between the foreign employer and the beneficiary or a summary of the terms of the oral agreement under which the beneficiary will be employed
- An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities
- A written advisory opinion from the appropriate consulting entity or entities.

The regulations do not require any additional documentary requirements for an agent filing on behalf of a foreign employer, however, it is the foreign employer who is responsible for complying with all applicable employer sanctions provisions.

### **Evidentiary Criteria for O-1A**

Evidence that the beneficiary has received a major, internationally-recognized award, such as a Nobel Prize, or evidence of at least (3) three of the following:

- Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor
- Membership in associations in the field for which classification is sought which require outstanding achievements, as judged by recognized national or international experts in the field
- Published material in professional or major trade publications, newspapers or other major media about the beneficiary and the beneficiary's work in the field for which classification is sought
- Original scientific, scholarly, or business-related contributions of major significance in the field
- Authorship of scholarly articles in professional journals or other major media in the field for which classification is sought
- A high salary or other remuneration for services as evidenced by contracts or other reliable evidence

- Participation on a panel, or individually, as a judge of the work of others in the same or in a field of specialization allied to that field for which classification is sought
- Employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation

If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish eligibility.

## **Evidentiary Criteria for O-1B**

Evidence that the beneficiary has received, or been nominated for, significant national or international awards or prizes in the particular field, such as an Academy Award, Emmy, Grammy or Director's Guild Award, or evidence of at least (3) three of the following:

- Performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts or endorsements
- Achieved national or international recognition for achievements, as shown by critical reviews or other published materials by or about the beneficiary in major newspapers, trade journals, magazines, or other publications
- Performed and will perform in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation as evidenced by articles in newspapers, trade journals, publications, or testimonials.
- A record of major commercial or critically acclaimed successes, as shown by such indicators as title, rating or standing in the field, box office receipts, motion picture or television ratings and other occupational achievements reported in trade journals, major newspapers or other publications
- Received significant recognition for achievements from organizations, critics, government agencies or other recognized experts in the field in which the beneficiary is engaged, with the testimonials clearly indicating the author's authority, expertise and knowledge of the beneficiary's achievements
- A high salary or other substantial remuneration for services in relation to others in the field, as shown by contracts or other reliable evidence

If the above standards do not readily apply to the beneficiary's occupation in the arts, the petitioner may submit comparable evidence in order to establish eligibility (this exception does not apply to the motion picture or television industry).

## **Application Process O-2**

The petitioner must file a petition with USCIS for the O-2 visa. The petitioner should file Form I-129, Petition for Nonimmigrant Worker, (see the "Form I-129, Petition for Nonimmigrant Worker" link to the right) with the USCIS office listed on the form instructions. An O-2 alien must be petitioned for in conjunction with the services of the O-1 artistic or athletic alien. The petitioner may not file the Form I-129 more than one year before the O nonimmigrant will begin employment. To avoid delays, Form I-129 should be filed at least 45 days before the date of employment.

The petitioner must submit Form I-129, Petition for Nonimmigrant Worker, and the following documentary evidence:



## Consultation

If the O-2 petition is for support of an individual with extraordinary ability in athletics or the arts, the consultation must be from the appropriate labor organization; or

If the O-2 petition is for support of an individual with extraordinary achievement in motion pictures or television, the consultation must come from an appropriate labor organization and a management organization with expertise in the skill area involved.

Exceptions to the Consultation Requirement:

If the petitioner can demonstrate that an appropriate peer group, including a labor organization, does not exist the decision will be based on the evidence of record.

## Agents

See above for details on Agents.

## Evidentiary Criteria for O-2

The evidence should establish the current essentiality, critical skills, and experience of the O-2 beneficiary with the O-1 beneficiary and that the beneficiary has substantial experience performing the critical skills and essential support services for the O-1.

In the case of a specific motion picture or television production, the evidence should establish that significant production has taken place outside the United States and will take place inside the United States, and that the continuing participation of the O-2 beneficiary is essential to the successful completion of the production.

## Post Petition Approval

Once the visa petition is approved for O-1/O-2 by USCIS, the beneficiary can apply at a U.S. embassy or consulate for the visa. Department of State (DOS) establishes visa application processing and issuance fees. For more information on visa application processing and issuance fees, see the “Temporary Workers Visas Department of State” link to the right.

## Period of Stay/Extension of Stay

Initial Period of Stay	Extension of Stay
Up to 3 years	USCIS will determine time necessary to accomplish the initial event or activity in increments of up to 1 year.

As an O nonimmigrant, the beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may only engage in authorized employment during the validity period of the petition.

## Extension of Stay

The petitioner must request an extension of stay to continue or complete the same event or activity by filing the following documentation with USCIS:

- Form I-129, Petition for Nonimmigrant Worker
- A copy of the beneficiary's Form I-94, Arrival/ Departure Record
- A statement from the petitioner explaining the reasons for the extension

In order to assist USCIS in adjudication of your request for extension, the statement should describe the event or activity that was the basis for the original approval and confirm that the extension is needed in order for the beneficiary to continue or complete the same event or activity as described.

The beneficiary's spouse and children must file Form I-539, Application to Extend/Change Nonimmigrant Status, and submit any supporting documents to extend their stay.

For more information see the "Form I-539 Application to Extend/Change Nonimmigrant Status" link to the right.

## Family of O-1 and O-2 Visa Holders

Any accompanying or following to join spouse and children under the age of 21 may be eligible to apply for an O-3 nonimmigrant visa, subject to the same period of admission and limitations as the O-1/O-2 nonimmigrant. They may not work in the United States under this classification, but they may engage in full or part time study on an O-3 visa.

## Changing Employers

If you are an O-1 nonimmigrant in the United States and you want to change employers, then your new employer must file a Form I-129 with the USCIS office listed on the form instructions.

If the petition was filed by an agent, an amended petition must be filed with evidence relating to the new employer and a request for an extension of stay.

## Material Change in Terms and Conditions of Employment

If there has been any material change in the terms and conditions of the beneficiary's employment or the beneficiary's eligibility, the petitioner must file an amended petition on Form I-129 with the Service Center where the original petition was filed.

Note: There are special rule for athletes. When professional athletes with O-1 nonimmigrant status are traded from one team to another, employment authorization will continue with the new team for 30 days during which time the new employer must file a new Form I-129. The simple act of filing the Form I-129, within this 30-day period, extends the employment authorization at least until the petition is adjudicated. If the new employer does not file a new Form I-129 within 30 days of the trade, the athlete loses his or her employment authorization. The athlete also loses his or her employment authorization if the new Form I-129 is denied.

## Return Transportation

If the employment of an O nonimmigrant beneficiary is terminated for reasons other than voluntary resignation, the employer must pay for the reasonable cost of your return transportation to the O nonimmigrant's last place of residence before entering into the United States. If an agent filed the petition for the employer, the agent and the employer are equally responsible for paying these costs.

Last updated: 03/16/2011

[Plug-ins](#)



U.S. Citizenship  
and Immigration  
Services

# Teleconference Invitation

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## “O” Nonimmigrant Visa - Agents as Employers

**Thursday, March 24, 2011**  
**1:00pm – 3:00pm (EDT)**

USCIS invites any interested parties to participate in a teleconference on **March 24, 2011** at **1:00PM** (Eastern Time) regarding the subject of agents performing the function of employer for the “O” nonimmigrant visa classification. USCIS will present an overview of the regulatory requirements for agents filing as petitioners, provide a description of the contracts and itineraries required and address suggested topics as submitted by stakeholders.

### **To Participate in the Teleconference**

To participate in the teleconference, send an email to the Office of Public Engagement at [public.engagement@dhs.gov](mailto:public.engagement@dhs.gov) by March 23, 2011 and reference “O Visa” in the subject line of your email. Include your full name and the organization you represent in the body of the email.

### **Agenda Items**

If you would like to submit agenda items or questions you must send them as an attachment (Word document or PDF). Please submit all suggested items and questions to the Office of Public Engagement no later than March 16, 2011.

### **To Join the Call**

On the day of the engagement please use the information below to join the teleconference. We recommend calling in 10 minutes prior to the start of the call.

Call-in Number: 1-800-593-9902

Passcode: 9468256

We look forward to engaging with you!