



NOV 20 2009

HQ 70/6.2.18
HQ 70/6.2.19

Memorandum

TO: Service Center Directors

FROM: Donald Neufeld 
Acting Associate Director, Domestic Operations

SUBJECT: Requirements for Agents and Sponsors Filing as Petitioners for the O and P Visa Classifications

Purpose

This memorandum clarifies the standards for adjudicating O and P petitions filed by a petitioner acting as a U.S. agent for a beneficiary or beneficiaries who will be working for more than one employer within the same time period. This guidance applies only to O and P petitions where the petitioner is filing on behalf of multiple employers. This memorandum also reaffirms the definition of a U.S. sponsoring organization for the P Visa Classification.

Background¹

The O visa program is available to non-immigrants with extraordinary ability in the sciences, arts, education, business or athletics, or in the motion picture and television field. O-1 and O-2 petitions may only be filed by a U.S. employer, a U.S. agent, or a foreign employer through a U.S. agent.²

The P-1 visa program is available to non-immigrants who are internationally recognized athletes, individually or part of a team, or a member of an internationally recognized entertainment group. P-1 petitions may only 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.³

¹ Currently, O and P petitions are adjudicated at the California Service Center (CSC) or at the Vermont Service Center (VSC) depending on the location of the proposed employment. The VSC has sole jurisdiction over all P-1 Major League Sports petitions.

² See 8 CFR 214.2(o)(2)(i).

³ See 8 CFR 214.2(p)(2)(i).

Both the O and P regulations provide that if the beneficiary will work concurrently for more than one employer within the same time period, each employer must file a separate petition with the Service Center that has jurisdiction over the area where the alien will perform services, unless a U.S. agent files the O or P-1 petition.⁴

Guidance for O and P-1 Petitions Filed by a U.S. Agent

A petition filed by an agent is subject to several conditions. A petition involving *multiple* employers may be filed by a person or company in business as an agent that acts as an agent for both the employers and the beneficiary, if⁵:

- The supporting documentation includes a complete itinerary of the event or events (for “O”) or services or engagements (for “P”).
- The itinerary 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.
- The contracts between the employers and the beneficiary are submitted; and
- The agent explains the terms and conditions of the employment and provides any required documentation.

An agent may be the actual employer of the beneficiary. In order to be eligible to file a petition on behalf of the beneficiary as his or her agent and on behalf of other (multiple) employers of the beneficiary, the petitioning employer must meet the conditions described above and establish that it is “in business as an agent” (as described below).

The regulations do not specify the evidence for establishing that the petitioner of multiple employers is “in business as an agent.” Adjudicators should consider evidence that shows that it is more likely than not that the petitioner is in business as an agent for the series of events, services, or engagements that is the subject of the petition. The focus should be on whether the petitioner can establish that it is authorized to act as an agent for the other employers *for 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.

The petitioner/employer, seeking to serve as an agent for the beneficiary and/or for other employers, must establish that the petitioner is duly authorized to act as their agent. An adjudicator may determine that this requirement has been satisfied if, for example, the petitioner/agent presents a document signed by the beneficiary’s other employer(s) which states that the petitioner is authorized to act in that employer’s place as an agent for the limited purpose of filing the O or P (whichever is applicable) petition with USCIS.⁶

⁴ See 8 CFR 214.2(o)(2)(iv)(B) and 8 CFR 214.2(p)(2)(iv)(B).

⁵ See 8 CFR 214.2(o)(2)(iv)(B) and (E)(2) and 8 CFR 214.2(p)(2)(iv)(B) and (E)(2). All O petitions must include contracts between the employers and the beneficiary. 8 CFR 214.2(o)(2)(iv)(E)(2). Contracts may be required for P petitions only in questionable cases. 8 CFR 214.2(p)(2)(iv)(E)(2).

⁶ Note, no particular form or specific language is required to be submitted with a petition to establish agency. Nor should an RFE be issued requiring a particular form or specific language in the agency agreement. Instead,

Other examples of probative evidence that may demonstrate that the petitioner “is in business as an agent” may include: a statement confirming the relevant information [itinerary, names and addresses of the series of employers] signed by the petitioner and the series of employers); other types of agency representation contracts; fee arrangements; or statements from the other employers regarding the nature of the petitioner’s representation of the employers and beneficiary. While evidence of compensation could help establish that the petitioner is in business as an agent, compensation is not a requirement to establish an agency. Again, each case must be evaluated based on the specific facts presented.

Assuming that the petition is approvable and the petitioner has established that it is authorized to act as an agent in order to file the petition on behalf of the other employers, the validity period should last for the duration of the qualifying events not to exceed the maximum allowable validity period for the classification being sought.⁷ If the petition is approvable but the petitioner has not established that it is authorized by the other employers to file the petition on behalf of the other employers (after a Request for Evidence, if documentation was not provided with the filing), the validity period should be limited to the qualifying events for which the petitioner will be directly employing the beneficiary not to exceed the maximum allowable validity period for the classification being sought.

P Petitions Filed by a U.S. Sponsoring Organization

A P petition filed by a U.S. sponsoring organization is subject to specific guidelines. A sponsor is defined as:

“...an established organization in the United States which will not directly employ a P-1, P-2, or P-3 alien but will assume responsibility for the accuracy of the terms and conditions specified in the petition.”⁸

A sponsoring organization can qualify as a petitioner if it can provide evidence, such as a written contract between it and the beneficiary, that although it will not directly employ the beneficiary, it will guarantee the terms and conditions of employment of the beneficiary, such as a written contract between it and the beneficiary. A company or organization that is directly employing the beneficiary may not file a petition as a sponsoring organization.

This guidance applies only to P petitions where the petitioner indicates that it is a U.S. sponsoring organization. Under existing regulations, petitioners may not file as a sponsoring organization for O petitions.

adjudicators should focus on whether the petitioner/agent has shown that it has obtained authorization from the other employer(s) to file a petition on their behalf.

⁷ See 8 CFR 214.2(o)(6)(iii) and (o)(12)(ii) and 8 CFR 214.2(p)(8)(iii) and (p)(14)(ii). See also Memorandum from Donald Neufeld, Acting Associate Director, Domestic Operations, USCIS “Procedures for Applying the Period of Authorized Stay for P-1 Nonimmigrant Individual Athletes” HQ 70/6.2.19 (March 6, 2009) and “Procedures for Applying the Period of Authorized Stay for P-1S Nonimmigrant Individual Athletes’ Essential Support Personnel” HQ 70/6.2.19 (July 14, 2009).

⁸ See 8 CFR 214.2(p)(2)(i) and (3).

Use

This memorandum is intended solely for the instruction and guidance of USCIS personnel in performing their duties relative to adjudications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner. In addition, the instructions and guidance in this memorandum are in no way intended to and do not prohibit enforcement of the immigration laws of the United States.

Questions regarding this guidance should be directed through appropriate channels to the Business Employment Services Team of the Office of Service Center Operations.