



o's and p's - the entertainment and sports visas

MSK Client Alert

March 2007

The "O" and "P" visas are for artists, entertainers, and many workers in the motion picture, television and related industries. Performers working in the areas of film, television, music and athletics no longer qualify for the "H 1B" nonimmigrant visa classification. Instead, they must apply for the "O" and "P" visa classifications which changed the standard of accomplishment and created a mandatory requirement for an advisory opinion from an appropriate peer group, labor and/or management organization.

1. What is the difference between an "O" and a "P" visa?

The "O" visa category is used when a temporary work permit is desired for a foreign national who is an artist or entertainer in the motion picture, television or music industry, video and other arts. An entertainer covers both above and below-the-line personnel. Under the regulations promulgated by the U.S. Citizenship and Immigration Service ("USCIS"), formerly known as Immigration and Naturalization Services, "O 1" visas are granted to individual artists or entertainers who have a demonstrated record of "extraordinary achievement" in the motion picture, television or music industry. "O 2" visas are available to accompanying foreign nationals who come to the United States to assist in the artistic performance of an "O 1" visa holder. "O" visas may be issued for up to three (3) years at a time.

The "P" visa category is used when the beneficiary of the visa petition is an internationally recognized entertainment group, individual athlete, or athletic team. An "entertainment group" consists of two or more persons who function as a unit that has been in existence for a minimum of one year. In addition, at least 75% of the members of the group must have performed entertainment services for the group for a minimum of one year. The "P" visa category also covers foreign entertainers and artists coming to the U.S. to participate in a reciprocal exchange program or a culturally unique program.

attorneys

Frida P. Glucoft
Howard D. Shapiro

practice areas

immigration
immigration



o's and p's - the entertainment and sports visas

2. *What is the standard of achievement for "O" and "P" visas?*

The standard of achievement for the previous "H 1B" visa was defined as "distinguished merit and ability." The USCIS had interpreted this to mean that the foreign national had to be "prominent" in his or her field of endeavor.

Under the "O" visa classification for motion picture, television, and music, an individual must have a demonstrated record of "extraordinary achievement." The USCIS regulations define "extraordinary achievement" as "a high level of achievement in the motion picture or television industry evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that the person is recognized as outstanding, leading or well-known in his or her field of endeavor."

To qualify for a "P" visa an athlete must have an internationally recognized reputation as an international athlete or be a member of a foreign team that is internationally recognized. Additionally, the athlete or team must be coming to the U.S. to perform services which require an internationally recognized group or team. An entertainment group must establish that the group has been internationally recognized as outstanding in the discipline for a sustained and substantial period of time to qualify for "P" visa status.

3. *What are the requirements for obtaining a union or guild consultation?*

Every "O" and "P" petition must be accompanied by a written advisory opinion from the applicable union, guild or a peer group.

In order to obtain a consultation, U.S. employers must send a copy of the petition and supporting documentation to the appropriate peer group, labor, and/or management organization. If a petition is filed with a written opinion from a peer group only, the USCIS will forward a copy of the petition to the national office of the appropriate labor organization where applicable for consultation before adjudication. If it is film or TV, a consultation letter must also be obtained from a management organization such as the AMPTP.

While the regulations state that the consultations are advisory in nature and not binding on the USCIS, unless strongly refuted, a negative consultation will most likely result in a denial of the visa petition.

4. *Are expedited procedures available to meet the production or recording scheduling needs?* In recognition of the exigencies and scheduling needs of motion picture and television productions, music touring, athletic competitions and recording schedules which often do not allow for extended processing periods, the USCIS has established a procedure for expedited consultation in certain cases.

In these cases, the USCIS shall contact by telephone the national office of the appropriate labor organization and provide the information regarding the foreign national and job position. The labor organization must respond by telephone within 24 hours. The labor organization must then furnish a written version of the consultation within three (3) working days, although the services does not have to wait for the written version.

If the labor organization fails to respond by telephone within 24 hours, the USCIS may render a decision without an advisory opinion.



o's and p's - the entertainment and sports visas

In addition, the employer may pay the \$1,000 expedited fee to the USCIS. This guarantees adjudication within 15 business days.

Conclusion

The "O" and "P" visa regulations have had a dramatic impact on work visas for the entertainment and sports industries. This impact has been felt particularly by foreign productions and co ventures wishing to shoot on location in the U.S.

For further information about the "O" and "P" temporary work visas, please contact one of the following Mitchell, Silberberg & Knupp attorneys practicing in immigration law.