



June XX, 2011

Executive Summary

USCIS Stakeholder Engagement: O Evidentiary Standards

Overview

On April 28, 2011, the Office of Public Engagement hosted a stakeholder engagement to discuss evidentiary standards as related to the 'O' nonimmigrant visa. USCIS understands that it is important to acknowledge the realities and dynamics of these industries and how they fit within the present regulatory framework. Therefore, the purpose of this teleconference was to seek suggestions and feedback on the evaluation of evidence submitted with Form I-129, Petition for Nonimmigrant Worker, when filed on behalf of O-1 nonimmigrants and the adjudicatory standards for these petitions within the current regulatory framework.

This was an opportunity to hear from stakeholders on the evidentiary standards for establishing extraordinary ability or achievement, in the alien's specific field of endeavor, in order to obtain valuable input for consideration in drafting a policy memorandum on this topic. The purpose of a draft policy memorandum is to provide additional guidance to ensure consistency in adjudication of petitions filed under the O-1 classification and to clarify the adjudication standards for these petitions. USCIS solicited input to obtain insight into the issues most important to stakeholders and help us draft a comprehensive memo that will strive to take into account the realities of the various industries while remaining within the parameters of the current statutory language and existing regulations.

Principal Themes

Extraordinary Ability: Science, Education, Business, Athletics

USCIS was interested in hearing individual stakeholder views on the standard of evidence as it relates to this category in general. More specifically, USCIS was interested in stakeholder feedback on what is meant by regulatory terms such as 'sustained national or international acclaim' and 'very top of the field of endeavor'. Stakeholder feedback was also requested for views on what could be deemed as comparable evidence and how the eight forms of documentation should be appropriately weighed for this category. These comments are summarized below.

One stakeholder requested clarification on the standard indicating that the beneficiary must be 'nationally' acclaimed. There is some ambiguity as to whether the term nationally refers to the nation

that the beneficiary is from or the United States. Another stakeholder indicated that there seemed to be a discrepancy in the amount of weight that is given to documentary evidence versus testimonial evidence. One stakeholder stated that the 'field of endeavor' definition should be clarified and narrowly tailored by examining it via a subset of the field. It was noted that in fields such as those who are dancers, USCIS seemed to give more weight to those who were performers versus those who excelled at teaching and coaching dancers.

A request was also made to distinguish O-1 evidentiary standards versus those of the EB-1 (E11) category evidentiary standards. While these categories appeared to have the same standard by regulation, stakeholders indicated that in reality they believe it is much more difficult to obtain an approval for an EB-1 with the same evidence provided as compared to an O-1 category.

One stakeholder commented that USCIS should exercise flexibility in accepting comparable evidence when none of the regulatory criteria apply to a specific industry. An individual's achievements may not always fit into the narrow regulatory criteria required for the O-1 category. As a result, beneficiaries need to rely on the comparable evidence provision to establish eligibility for the classification. The stakeholder indicated that USCIS needs to broaden its evidentiary scope to include more modern media such as blogs and other electronic media.

Another stakeholder commented that in the field of Athletics, USCIS should allow beneficiaries to establish extraordinary ability in the field of endeavor even when they are performing in a role other than an athlete.

One stakeholder provided feedback on the requirement for a high salary. They requested that USCIS provide clarification on how salaries are evaluated given the differences in currencies. Is the standard for 'high salary' the income for the country that the beneficiary is from, or the United States? In cases where an individual is from a third world country, a high salary for that country is possibly below U.S. poverty levels.

Extraordinary Achievement: Motion Picture and Television

USCIS was interested in hearing individual stakeholder views on the evidentiary standards for O non-immigrants in the Motion Picture and Television arena. USCIS was interested in stakeholder feedback on what it means to have a 'demonstrated record of achievement'. Stakeholder feedback was also requested for views on how the six forms of documentation should be appropriately weighed for this category. Individual stakeholder comments are summarized below.

One stakeholder commented that USCIS needed to become more flexible in their evidentiary analysis as to the success of the artist as it relates to Motion Picture and Television. In the industry, the success of any given film or television project can be measured in various ways both post-production and pre-production. This can be done by reviewing post production box office results and by looking at pre-production factors such as who has agreed to work on the project. Additionally, the proof of success of a project by way of awards should be broadened to include show awards and ensemble cast awards rather than just individual performance awards. USCIS needs to adopt the industry standards and become more flexible to allow adjudicators to take into account real world scenarios

Another stakeholder provided feedback regarding Requests for Evidence issued by the Service Centers which they considered to be cost prohibitive. Another stakeholder indicated that a Request for Evidence stated that U.S. Department of Labor wage standards are not appropriate. USCIS Service Center Operations requested any unusual Requests for Evidence be reported by stakeholders through the SCOPS.RFE@dhs.gov email box. This email box will not be responding to your email, however

management will review the RFE. In the meantime, the applicant should still respond to the RFE during the required timeframe.

Extraordinary Ability: Arts

USCIS was also interested in hearing individual stakeholder views on evidentiary standards as they relate to the Arts. Specifically, USCIS was interested in stakeholder feedback on what it means to be 'prominent' in the field of endeavor. Stakeholder feedback was also requested for views on what could be deemed as comparable evidence and how the six forms of documentation should be appropriately weighed for this category. Individual stakeholder comments are summarized below.

One stakeholder commented that USCIS should be mindful of the purpose and goal of the classification; the statutory intent and the spirit of the law is to attract individuals to enter the U.S and should therefore accommodate "crossover" beneficiaries. For example, an individual who is a star in one field should be able to use the O visa in order to be a part of a project in another field in which they do not excel. For example, an individual who may be a music star in their country should be able to use the O visa in order to enter the U.S. to be the star of a television show or movie that is based on their musical talents even though they are not considered extraordinary in the field of television or movies.