



June 17, 2011

Executive Summary

USCIS Stakeholder Engagement: O Nonimmigrant Visas

Overview

On April 13, 2011, Director Mayorkas, and the Office of Public Engagement hosted a stakeholder engagement to discuss issues related to the 'O' nonimmigrant visa. During the engagement, Director Mayorkas outlined the agency's strategies for improving the application and adjudication process including the possibility of involving experts from various industries to inform USCIS of the particulars of their respective industries so that adjudicators and the public could benefit from a greater understanding of the process. Director Mayorkas also noted that RFE templates for the O classification will be posted on the website in the near future and stakeholders are encouraged to review and comment on the language. Additionally, the Director reiterated the process by which stakeholders may contact the service centers in regards to emergency cases.

Principal Themes

Informing USCIS:

Stakeholders provided comments to USCIS related to efforts to better inform USCIS, including adjudicators who are working on the O-1 petitions, about the specific nature of the stakeholder's industry. One stakeholder commented that a wide variety of the various professional organizations that represent particular industries should be consulted to get the most accurate picture of how an industry works. While in general, USCIS efforts to gather feedback about industry particulars was seen as a positive step, one stakeholder commented that, due to the California Service Center's common practice of reassigning their officers to work on different petition types, the effort of educating the current staff would need to be repeated for new adjudicators. One stakeholder suggested that USCIS dedicate a group of consistent, long term staff solely to adjudicate O-1 petitions. Another stakeholder commented that USCIS should take into account that performers who bring in higher numbers of fans operate quite differently than performers with smaller audiences, although both types of performers are of O caliber.

Request for Evidence Issues at the Service Centers:

A number of stakeholders expressed concern with what they considered to be an increase in the number of requests for evidence (RFE) issued at the California and Vermont Service Centers. One stakeholder

commented that there is a lack of clear guidance from USCIS which attributes to inconsistent adjudication of O-1 petitions. Furthermore, stakeholders commented that guidance that has been put forth by USCIS at different times in the form of RFE templates, policy memos, and the Adjudicators Field Manual has caused confusion for USCIS adjudicators as well as for the petitioners. Stakeholders noted that it is not clear what the overarching authority is that adjudicators are following. Stakeholders further commented that they believe there will be economic ramifications for the purported increased numbers of Requests for Evidence, Notices of Intent to Deny, and Denials because petitioners may choose to operate overseas rather than attempt to bring workers to the United States for engagements such as modeling shoots or musical recordings.

The Term Employer in the O Context:

Stakeholders provided feedback to USCIS on what they believe the term “employer” as used in the O context means. One stakeholder commented that, while sometime an agent is an “employer” in one sense they are not an employer in the traditional sense (e.g. one who would give their employee a W-2 tax form). Another stakeholder commented that there are an infinite number of different “employment” relationships between agents, managers, bookers, employers, etc. Several examples of these relationships provided by stakeholders included artist-created and artist-owned entities acting as agents, independent contractors, self-employed agents, and venues featuring the artist. Given these examples, stakeholders commented that the term “employer” has very different meanings for various industries and USCIS should take this into consideration during the adjudication of petitions.

Itineraries:

Stakeholders provided a number of comments related to the itinerary requirement. One stakeholder noted that it can be difficult to provide specific timeframes in a situation where the artist is responsible for the final product and thus the artist essentially dictates the timeframe for completion. Furthermore, once the product is complete, it may be turned over to an agent to promote the product. In this type of work scenario it is difficult for a petitioner to provide an itinerary. Another stakeholder commented that, in the modeling industry, it is often difficult to pre-determine event dates three years in advance. There are a few yearly events, such as fashion week in NYC, however others are last minute bookings. Stakeholders commented that the exclusive agreement between the modeling agency and the model should be enough and should be accepted by USCIS in lieu of an itinerary.

Consultations:

Several stakeholders commented that the labor organizations responsible for issuing the consultations are often imposing stricter requirements and/or putting conditions on the issuance of a consultation. This in turn is making it difficult for petitioners to provide consultations in support of a petition. One stakeholder also commented that it was a burden on petitioners to wait 15 days for a consultation. It was noted that although consultations are required, they are advisory and not compulsory.

Communication with USCIS:

Stakeholders provided their feedback to USCIS on how the agency can strengthen its communication with its stakeholders. One stakeholder requested to engage with USCIS on a policy level in order to discuss the regulations more substantively. Another stakeholder inquired about the length of time it would take to receive feedback from SCOPS once they send an email to the service center email addresses. USCIS advised that the general timeframe for a response is 15 days.

Next Steps

On April 28, 2011, USCIS hosted an engagement to discuss issues related to evidentiary requirements for O-1 nonimmigrant petitions. Major issues discussed included increased flexibility in acceptance of comparative evidence as well as taking into consideration the realities of these industries in our more technologically advanced world. In addition, stakeholders again emphasized the need for USCIS to consider the nuances of various industries as they adjudicate these petitions. A memo on evidentiary requirements for O-1 nonimmigrant petitions will be drafted and posted on USCIS.gov in the near future for public comment.