

9 FAM 41.55 ALIENS WITH EXTRAORDINARY ABILITY

(a) Requirements for O classification.

(TL:VISA-153; 9-10-96)

An alien shall be classifiable under the provisions of INA 101(a)(15)(O) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and *either*

(2) With respect to the principal alien, the consular officer has received *official evidence of the approval by INS of a petition to accord such classification or of the extension by INS of the period of authorized stay in such classification*; or

(3) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

[Amended 61 FR 1832, Jan. 24, 1996.]

(b) Approval of visa.

(TL:VISA-50; 11-15-91)

The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa.

[Added by 57 FR 31446, Jul. 10, 1992.]

(c) Validity of visa.

(TL:VISA-50; 11-15-91)

The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) or (a)(3) of this section.

[Added by 57 FR 31446, Jul. 10, 1992.]

(d) Alien not entitled to O classification.

(TL:VISA-50; 11-15-91)

The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(O) is not entitled to the classification as approved.

[Added 57 FR 31446, Jul. 16, 1992].]

9 FAM 41.55 Related Statutory Provisions

INA 101(a)(15)(O)

(TL:VISA-50; 11-15-91)

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens-...

(O) an alien who—...

(i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability, but only if the Attorney General determines that the alien's entry into the United States will substantially benefit prospectively the United States; or

(ii)(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,

(II) is an integral part of such actual performance,

(III)(a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or (b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing longstanding working relationship or, with respect to the specific production, because significant principal photography will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and

(IV) has a foreign residence which the alien has no intention of abandoning; or

(iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

[Added by Pub. L. 101-649, Section 207(a)(3), 104 Stat. 5023; 8 U.S.C. 1101(a)(15); November 29, 1990.]

INA 101(a)(46)

(TL:VISA-70; 11-15-92)

(46) The term “extraordinary ability” means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.

[Added by Pub. L. 102-232, Section 205(a), 105 Stat. 1740; 8 U.S.C. 1101; December 12, 1991.]

INA 214(a)(2)(A)

(TL:VISA-70; 11-15-92)

(A) The period of authorized status as a nonimmigrant described in section 101(a)(15)(O) shall be for such period as the Attorney General may specify in order to provide for the event (or events) for which the nonimmigrant is admitted.

[Added by Pub. L. 101-649, Sec. 207(b)(1), 104 Stat. 5025; 8 U.S.C. 1184; November 29, 1990. Amended by Pub. L. 102-232, Sec. 205(D), 105 Stat. 1740; 8 U.S.C. 1101; Sec. 303(A)(11), 105 Stat. 1740; 8 U.S.C. 1184; December 12, 1991]

INA 214(c), in part

(TL:VISA-70; 11-15-92)

(c)(1) The question of importing any alien as a nonimmigrant under section 101(a)(15)(H), (L), (O), or (P)(i) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant...

(3) The Attorney General shall approve a petition—

(A) with respect to a nonimmigrant described in section 101(a)(15)(O)(i) only after consultation in accordance with paragraph (6) or, with respect to aliens seeking entry for a motion picture or television productions, after consultation with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability or

(B) with respect to a nonimmigrant described in section 101(a)(15)(O)(ii) after consultation in accordance with paragraph (6) or, in the case of such an alien seeking entry for a motion picture or television production, after consultation with such a labor organization and a management organization in the area of the alien's ability.

In the case of an alien seeking entry for a motion picture or television production, (i) any opinion under the previous sentence shall only be advisory, (ii) any such opinion that recommends denial must be in writing, (iii) in making the decision the Attorney General shall consider the exigencies and scheduling of the production, and (iv) the Attorney General shall append to the decision any such opinion. The Attorney General shall provide by regulation for the waiver of the consultation requirement under subparagraph (A) in the case of aliens who have been admitted as nonimmigrants under section 101(a)(15)(O)(i) because of extraordinary ability in the arts and who seek readmission to perform similar services within 2 years after the date of a consultation under such subparagraph. Not later than 5 days after the date such a waiver is provided, the Attorney General shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization....

(5)...

(B) In the case of an alien who enters the United States in nonimmigrant status under section 101(a)(15)(O) or 101(a)(15)(P) and whose employment terminates for reasons other than voluntary resignation, the employer whose offer of employment formed the basis of such nonimmigrant status and the petitioner are jointly and severally liable for the reasonable cost of return transportation of the alien abroad. The petitioner shall provide assurance satisfactory to the Attorney General that the reasonable cost of that transportation will be provided.

(6)(A)(i) To meet the consultation requirement of paragraph (3)(A) in the case of a petition for a nonimmigrant described in section 101(a)(15)(O)(i) (other than with respect to aliens seeking entry for a motion picture or television production), the petitioner shall submit with the petition and advisory opinion from a peer group (or other person or persons of its choosing which may include a labor organization) with expertise in the specific field involved.

(ii) To meet the consultation requirement of paragraph (3)(B) in the case of a petition for a nonimmigrant described in section 101(a)(15)(O)(ii) (other than with respect to aliens seeking entry for a motion picture or television production), the petitioner shall submit with the petition an advisory opinion from a labor organization with expertise in the skill area involved....

(B) To meet the consultation requirement of subparagraph (A), unless the petitioner submits with the petition an advisory opinion from an appropriate labor organization, the Attorney General shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization within 5 days of the day of receipt of the petition. If there is a collective bargaining representation of the employer's employees in the occupational classification for which the alien is being sought, that representative shall be the appropriate labor organization.

(C) In those cases in which a petitioner described in subparagraph (A) establishes that an appropriate peer group (including a labor organization) does not exist, the Attorney General shall adjudicate the petition without requiring an advisory opinion....

(E)(i) The Attorney General shall establish by regulation expeditious consultation procedures in the case of nonimmigrant artists or entertainers described in section 101(a)(15)(O) or 101(a)(15)(P) to accommodate the exigencies and scheduling of a given production or event.

(ii) The Attorney General shall establish by regulation expedited consultation procedures in the case of nonimmigrant athletes described in section 101(a)(15)(O)(i) or 101(a)(15)(P) in the case of emergency circumstances (including trades during a season)....

[Amended and added by Pub. L. 101-649, Sec. 207(B)(2)(B), 104 Stat. 5025; 8 U.S.C. 1184; November 29, 1990. Amended and added by Pub. L. 102-232, Sec. 204(1), 105 Stat. 1740; Sec. 207(A), 105 Stat. 1741; Sec. 204(6), 105 Stat. 1738; 8 U.S.C. 1184; December 12, 1991.]