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P Visa Overview

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The P-Visa category covers entertainers and athletes who cannot qualify under the extraordinary ability standard for the O-category. The P-1 category is set aside for:

1. Alien athletes who compete individually or as part of a team at an internationally recognized level; and
2. Aliens who perform with or are an integral and essential part of the performance of an entertainment group that has received international recognition as "outstanding" for a "sustained and substantial period of time". An important distinction to keep in mind between athletes and entertainers in this subcategory is that individual athletes may be admitted into the U.S. as P-1 aliens, but individual entertainers may not be. The only basis for approval of a P-1 petition for a single entertainer is when the entertainer will be coming to the U.S. to join a foreign-based entertainment group.

Procedures For P Visa Classification

- i) The filing of a petition (Form I-129) with the USCIS in order to obtain permission to employ a P-alien for a temporary period. An employer may file the P petition up to one year in advance of a scheduled event, competition or performance.
- ii) Before the petition can be approved, a consultation requirement must be met; the law requires the submission of an advisory opinion from a labor organization with expertise in the alien's specific field. The petition may establish that a labor organization does not exist.
- iii) The P- petition may be filed for multiple P-alien if they are members of a group or team seeking classification based on the reputation of the group or team as an entity.
- iv) Essential support personnel cannot be included in the same petition as the principal P-alien or group. Separate petitions must be filed for support personnel.
- v) Substitution of aliens is permissible in the P-category once a petition has been approved, but only with regard to teams or groups. Substitution is not allowed with regard to individual principal aliens or support personnel in the P-category.

vi) Following approval of the petition, the foreign national must take the approval notice for the petition to the U.S. Consulate to apply for the P-visa.

Duration of Stay

i) Except for individual P-1 athletes, the initial period of stay for P nonimmigrants can be approved for the amount of time necessary for the specific competition, event or performance, for a period of up to one year.

ii) With regard to individual P-1 athletes, an initial period of stay can be approved for five years, up to a total of ten years.

iii) In the case of a P-1 athlete or team, the event may be the duration of the alien's contract, if the contract is longer than the season.

iv) In the case of a P-2 petition, the event may be the duration of the reciprocal exchange agreement.

v) An extension of stay for a P-1 individual athlete and support personnel can be granted for an additional period of five years, for a total period of stay not to exceed ten years.

vi) Extensions of stay for all other P nonimmigrants and support personnel can be granted in increments of up to one year to continue or complete the same event or activity for which they were admitted.

vii) In addition, extensions may be granted to complete additional, similar or comparable performances, engagements or competitions not listed in the initial petition.

Positions Requiring Services of P-1 Classification

A P-1 alien seeking classification as an athlete in an individual capacity must be coming to the U.S. to perform services in a competition or event which require an internationally recognized athlete. Members of an entertainment group or athletic team must be coming to the U.S. to perform services in an event, performance or competition, which require an internationally recognized entertainment group or athletic team.

1. P-1 ATHLETES AND ATHLETIC TEAMS

Regarding athletes and athletic teams, the USCIS rules state that a petition for an athletic team must be accompanied by evidence that the team as an unit has achieved international recognition in the sport. Petitions for an athlete who will compete individually, and not as part of a team, must be accompanied by evidence that the athlete has achieved international recognition in the sport based on his or her reputation. ?International recognition? means a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well known in more than one country. Evidence of international recognition may include:

- a. A tendered contract with a major U.S. sports league or team, or a tendered contract in an individual sport commensurate with international recognition in that sport, if such contracts are normally executed in the sport (if such contracts are not normally executed in the sport, a contract need not be submitted).
- b. Documentation of at least two of the following:
 - i) Participation in a prior season with a major U.S. sports league.
 - ii) Participation in an international competition with a national team.
 - iii) Participation in a prior season for a U.S. college in an intercollegiate competition.
 - iv) A statement from an official of a major U.S. sports league or an official of the governing body of the sport detailing how that alien or the team is internationally recognized.
 - v) A statement from a member of the sports media or a recognized expert in the sport, which details how the alien or the team is internationally recognized.
 - vi) International rankings of the individual or team.
 - vii) Significant honors or awards in the sport received by the individual or team. NOTE: Under current USCIS policy, players under contract with teams in Major League Baseball or the National Hockey League are required only to submit their contracts with such teams to establish their P-1 credentials.

2. ENTERTAINMENT GROUPS

Regarding entertainment groups, the rule provides that P-1 classification can be accorded to an entertainment group to perform as a unit based on the international reputation of the group. With some exceptions, two principal requirements apply to entertainment groups:

- a. The group must have been internationally recognized as outstanding in the discipline for a sustained and substantial period of time.
- b. Seventy-five percent of the members of the group must have had a sustained and substantial relationship with the group for at least one year and must provide functions integral to the group's performance.

(1) One-year membership requirement

Evidence must be submitted that seventy-five percent of the entertainment group and accompanying essential support personnel have been performing regularly with, or providing essential support services to the entertainment group for a period of one year; intermittent employment with the group cannot be counted towards the one-year membership requirement. Several exceptions, however, apply to this one-year membership requirement:

- a. The one-year requirement can be waived because of illness or unanticipated and exigent circumstances affecting a group member or when an alien augments the group by performing a critical role; and
- b. The one-year requirement is inapplicable to circus performers and essential circus

support personnel. In addition, final rules issued in August 1994 clarified that while at least seventy-five percent of the members of a P-1 entertainment group and their essential support personnel must have been part of the same group for at least one year, such aliens need to have been performing under the same group name for the required one-year period. Additionally, the entertainment group need not have been internationally recognized during the entire one-year period.

(2) International recognition requirement

To be eligible for P-1 status, the entertainment group must have been internationally recognized in the discipline for a sustained and substantial period of time. Under the USCIS rules, international recognition can be established by:

a. The group's nomination or receipt of significant international awards or prizes for outstanding achievement in its field; or

b. By three of the following types of documentation which establish that the entertainment group has:

- Performed or will perform as a starring or leading entertainment group in production or events which have a distinguished reputation (as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements)
- Achieved international recognition and acclaim for outstanding achievements in its field as evidenced by reviews in major newspapers, trade journals, magazines or other published material.
- Performed and will perform services as a leading or starring group for organizations and establishments that have a distinguished reputation (as evidenced by articles in newspapers, trade journals, or testimonials).
- A record of major commercial or critically acclaimed successes (as evidenced by such indicators as ratings, standing in the field, box office receipts, record cassette or video sales, and other achievements in the field as reported in trade journals, major newspapers, or other publications).
- Achieved significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field (such testimonials must clearly indicate the author's authority, expertise and knowledge of the alien's achievements).
- Commanded or now commands a high salary or other substantial remuneration for services comparable to others similarly situated in the field (as evidenced by contracts or other reliable evidence)

(3) Exceptions to international recognition requirement

The USCIS may waive the international recognition requirement in the case of an entertainment group, which has been recognized nationally as being outstanding for a sustained and substantial period of time, in consideration of special circumstances such as when an entertainment group cannot demonstrate international recognition because of limited access to news media or consequences of geography. Circus groups are also exempt from the international recognition standard, in addition to the one-year

requirement for circus and essential support personnel. In this case only the national recognition requirement need be met.

(4) P-1 circus personnel

The one-year group membership requirement and the international recognition requirement are not applicable to alien circus personnel who perform as part of a circus or circus group, or who constitute an integral and essential part of the performance of such circus or circus group. In such cases, the petitioner must only establish that the alien or aliens are coming to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time or as part of such a circus.

(5) Special note regarding solo entertainers, young artists and new groups

The USCIS has underlined that P-1 petitions may not be approved for individual foreign entertainers. The only basis for approval of a P-1 petition for a single entertainer is when the entertainer will be coming to the U.S. to join a foreign-based entertainment group (e.g., an alien orchestra member coming to the U.S. to play with an orchestra already on tour here).

3. P-1 ESSENTIAL SUPPORT PERSONNEL

The USCIS defines an essential support alien as a highly skilled, essential person determined to be an integral part of the performance of a P-1 alien or group, because he or she performs support services which cannot be readily performed by a U.S. worker and which are essential to the successful performance of services by the P-1 alien or group. Such aliens must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-1 alien or group. A statement describing the alien's essentiality, critical skills and prior experience with the P-1 alien or group must be submitted with the petition.

4. THE P-2 CATEGORY

The P-2 category covers artists and entertainers, including individuals or groups, who seek to be admitted through a reciprocal exchange program between a foreign-based and U.S.-based organization, which are engaged in the temporary exchange of artists and entertainers. The exchange of artists or entertainers must be similar in terms of caliber of artists or entertainers, terms and conditions of employment, and number of artists or entertainers involved in the exchange. A petition for P-2 classification must be accompanied by:

- a. A copy of the formal reciprocal exchange agreement between the U.S. organization which is sponsoring the aliens and an organization in a foreign country which will receive the U.S. artists or entertainers.
- b. A statement from the U.S. sponsoring organization describing the reciprocal exchange of U.S. artists or entertainers.
- c. Evidence that an appropriate labor organization in the U.S. was involved in negotiating or has concurred with the reciprocal exchange of U.S. and foreign artists.
- d. Evidence that the aliens for whom P-2 classification is being sought and the U.S. artists and entertainers subject to the reciprocal exchange agreement are artists or entertainers with

comparable skills, and that the terms and conditions of employment are similar.

(1) Essential Support Personnel

The definition of essential support persons applicable in the P-1 category also applies to P-2 support personnel.

5. THE P-3 CATEGORY This category covers artists and entertainers, including groups, who will perform under a program that is culturally unique. The USCIS adopted the view that the performers must be part of a program that is culturally unique. The artist or entertainer must be coming to the U.S. for cultural events to further the understanding or development of his or her art form, and be sponsored primarily by educational, cultural, or governmental organizations which promote such international cultural activities and exchanges. Petitioners have to submit evidence addressing the cultural uniqueness of the performance and evidence that all performances are culturally unique.

A U.S. employer or sponsoring organization must submit the application on behalf of the intending non-immigrant worker utilizing Form I-129. The application must be accompanied by the following documents:

1. A copy of the written contract between the petitioner (agent) and the beneficiary (artist or entertainer) or a summary of the oral agreement.
2. A copy of the itinerary and/or a description of the cultural event. If multiple events or performances, the dates and locations must be provided.
3. Affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or the group's skills in performing, presenting, coaching or teaching the unique or traditional art form (the credentials of the expert must be stated, including the basis of his or her knowledge of the alien's or group's skills).
4. Copies of reviews from newspapers, journals or other published material which indicate the artist or group's performance is culturally unique.
5. Additional documentation to show that the performance or presentation is culturally unique.
6. Written consultation or report from a professionally related labor organization.

Agents representing multiple employers must establish that they are authorized to act as an agent and qualify to act as the petitioner.

The spouse and any unmarried children under 21 may apply for P-4 status. P-4 visa holders may not seek employment, but may attend school or college.

Essential support personnel to the artist or entertainer may also apply for P-3 visas. Form I-129 is also filed and must be accompanied by the following:

1. Written consultation or report from a professionally related labor organization.
2. A written statement documenting the support person's essential skills and experience as it relates to the P-3 artist or entertainer's event(s).
3. A copy of the written contract between the employer and the support person or a summary of the oral agreement describing the terms of the agreement as it relates to the services provided to the artist or entertainer.

6. POSITIONS REQUIRING SERVICES OF P-1 ALIENS

A P-1 alien seeking classification as an athlete in an individual capacity must be coming to the U.S. to perform services in a competition or event which requires an internationally recognized athlete. Members of an entertainment group or athletic team must be coming to the U.S. to perform services in an event. Performance or competition, which require an internationally recognized entertainment group or athletic team.

Special Conditions

Obtaining P-status for an alien requires three steps:

- a. Obtaining an advisory opinion from a labor organization (or submitting evidence that such an organization does not exist).
- b. Approval by the USCIS of a P-petition supported by the advisory opinion.
- c. Issuance by a U.S. consulate of a P-visa based on the approved petition.

NOTE: Also keep the following in mind: Freelancing Not Permitted:

- a. P-classifications may only be permitted to perform services in "specific identified" events, performances, competitions, or engagements.
- b. P-status may not be granted to an alien to enter the U.S. to freelance in the open market.
- c. The alien or group will be admitted only for the duration of the event, performance, competition, or engagement listed in the petition and extensions may be granted solely to complete the same activity. Filings by foreign employers and U.S. agents: A foreign employer may file a petition only through a U.S. agent. The USCIS rules permit "United States Agents" to file petitions in cases involving workers who are traditionally self-employed or who use agents to arrange short-term employment on their behalf with numerous employers, and in cases in which a foreign employer authorizes the agent to act in its behalf. Filing Permanent Residence Papers: The USCIS rules provide that an alien may legitimately come to the U.S. for a temporary period as a P-nonimmigrant, and, at the same time, lawfully seek to become a permanent resident. In such instances the P-petitioners should set forth the legitimate and temporarily limited need for the alien's services in the United States, combined with an explanation regarding alien's intent to return to his or her home country to await issuance of an immigrant visa prior to returning to the U.S. Employer Obligation to Pay for Return Abroad: One obligation imposed by the 1990 Act, is for employers to pay for the return trip of P-employees whose employment is terminated prior to the expiration of the authorized period of stay. Family Members of P Aliens The family members (spouse and unmarried children under

21) of the principal alien are classified in the P-4 category. They cannot engage in employment in the U.S. unless they are independently qualified. ** For Expedited Processing: For an additional filing fee of \$1,000.00 made payable to the ?Department of Homeland Security,? USCIS now permits expedited processing of these cases. This is referred to as ?Premium Processing.? Premium processing guarantees action on the case (approval, denial or request for evidence) within 15 days of filing.

Nonimmigrant Visas:

P Visa [2]

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