

OUR PRACTICE

Artists & Entertainers

Artists, performing artists, entertainment groups, and support personnel have several classifications to choose from for temporary and permanent entries. Deciding which ones to use in specific situations can be tricky business requiring detailed understanding of all the eligibility rules and procedures. Time often is an important factor when performances have been scheduled. Typical options available include:

- **B-1 visitors**
- **O Extraordinary Ability Aliens and support personnel**
- **P Entertainment Groups with International Recognition and support personnel**
- **Certain other classifications**

Each is discussed below, although O and P artists share some aspects and are discussed together.

B-1 Entertainment Visitors

The U.S. government has recognized several types of entertainers who may become business visitors under the relatively simple standards and procedures generally applicable to the B-1 classification:

- Professionals coming to participate in a cultural program sponsored by the sending country, performing before a non-paying audience (voluntary donations to a charitable cause allowed), and receiving all expenses from the sending country's government
- Professionals coming to compete only for prizes or prize money and expenses
- Professionals coming to audition with a prospective employer and receiving only incidental expenses
- Unpaid amateurs coming to perform in a social and/or charitable context in a talent show or contest.

Normal rules for B-1 classification for business visitors apply.

O and P Status for Artists, Entertainment Groups, and Support Personnel

The O and P classifications apply in different ways to artists, performing artists, entertainment groups, and support personnel. Because some aspects are common to all sub-classifications, they are discussed collectively here after the substantive eligibility requirements and periods of stay unique to particular classifications are set forth. For all O and P purposes, arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

O-1 Individual Artists

Individual artists (but not teams) demonstrating extraordinary ability (defined for artists as distinction) may use the O-1 classification. To qualify, the position or event (which may include an entertainment season) must require extraordinary ability, and the alien's credentials must demonstrate that he or she has a degree of skill and recognition substantially above that ordinarily encountered. Extraordinary achievement for film and TV, ostensibly a lower standard, requires that the alien be outstanding, notable, or leading in the field. For either standard, the types of evidence are the same but are to be weighed differently. The individual showing can

consist of receipt of a major, internationally recognized award such as an Olympic gold medal, or some other evidence, but normally it must be established through showing of three or more of the following:

- Performance (past *and* upcoming) as a lead or starring participant in productions or events that have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;
- Achievement of national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;
- *Past* performance in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;
- A record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating standing in the field, box office receipts, credit for original research or product development, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;
- Significant recognition for achievements from organizations, critics, government agencies, or other recognized experts, in testimonials clearly indicating the author's authority, expertise, and knowledge of the alien's achievements;
- Command of a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or
- If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the alien's eligibility

The initial approval can be up to three years, with subsequent one-year extensions and no maximum limit.

P-1 Entertainment Groups

Performing members of foreign entertainment groups that have international recognition and have been performing under the same name for a year may seek P-1 status through a group petition. At least 75% of the performing members must have performed as part of the group for the last year, except when the group is an outstanding circus or when a replacement is needed through unanticipated and exigent circumstances. P-1 cannot be used by individual aliens coming to join a U.S. entertainment group. The group must demonstrate nomination or receipt of significant international awards or prizes for outstanding achievement or demonstrate three of the factors listed for O-1 artists above. When limited media access or geography have limited the group's international recognition, the immigration service ("USCIS") may accept evidence of national recognition.

Each performer's eligibility for P-1 status through a foreign group's petition is based on the international reputation of the group. For individuals' petitions, initial approval may be for up to five years, with extension in increments up to five years, but with a maximum total 10 years without a stay outside the U.S. For group petitions, initial approvals and extensions are given in increments up to one year, with no total maximum.

P-2 Reciprocal Exchange Program

An artist or entertainer, individually or as part of a group, may enter the U.S. in the P-2 classification as part of an international reciprocal exchange program. The exchange must be similar in terms of caliber of artists or entertainers, terms and conditions of employment, and numbers involved. A formal exchange agreement and consent of a U.S. labor union are absolutely required. Initial approvals and extensions are given in increments up to one year, with no total maximum.

P-3 Artists and Entertainers and Groups

An artist or entertainer, individually or as part of a group, may enter the U.S. in the P-3 classification as part of a culturally unique program conveying a unique or traditional art form. A teacher or coach may come individually without being associated with an entertainer or group if the program calls for such a participant. Initial approvals and extensions are given in increments up to one year, with no total maximum.

O-2 and P-2 Support Personnel

Personnel providing essential support to a foreign O or P artist or group, such as directors and make-up artists, may obtain O-2 or P-2 status through a petition to the USCIS on Form I-129 with an O/P Supplement. The required showing for eligibility is that the alien has essential, critical skills, substantial experience from working with the principal alien or group, and an integral part of the actual performance(s) that cannot be performed by a U.S. worker. A more generous standard applies to personnel supporting an O-1 film or television producer involved in an international project. A foreign coach or other worker supporting a U.S. artist may not use O-2 or P-2 status and thus must qualify for O-1 or some other status in his or her own right.

Consultations

Generally, an O or P petitioner (i.e., employer or agent) must send a copy of the petition and supporting documents to an appropriate labor union (if any, and in the entertainment industry there usually is) or peer group (again, if any) so that it can comment to USCIS about the merits of the petition, ideally to be submitted with the petition. Complex procedures arise if an applicable union is not cooperative in responding to a request to consult. Extensions do not require new consultations, but any meaningful change to the nature of the event involved will trigger a new consultation requirement.

Petitions and Procedures

A petition to the USCIS is a precondition for obtaining O or P visas or status, just as with the H or L classifications. Unlike H or L, however, an O or P petition may in many instances cover a group of aliens. Procedures for using petition approval to obtain visas or status, particularly when a group is involved, can be complex.

Family Members

A spouse or unmarried child under age 21 may receive O-3 or P-4 status to accompany or join the principal alien. The O-3 or P-4 dependent is not allowed to work in the U.S. O-3 or P-4 visa or status can never be obtained for any longer than the principal alien already has O-1, O-2, P-1, P-2 or P-3 visa or status approved. Other family members or significant others may apply for B visitor status to accompany the principal alien.

Return Transportation

An O or P petitioner and any employer involved must agree to pay the alien's cost of return travel if the work is terminated before the petition approval expires unless the alien quits or is fired for cause. USCIS refuses to get involved in enforcing this requirement appearing in the forms and statute, and in reality the alien almost never wants this anyway.

Other Classifications

Artists and groups may also try to use other more general classifications, such as H-2B, H-3, J-1 or Q.

Permanent Residence

There is no permanent residence category specifically assigned to artists or performers. However, extraordinary performers may qualify as priority workers in the first employment preference for which no backlog or labor certification requirement applies. Performing artists of exceptional ability can be certified under DOL's less burdensome special handling procedures as the most (rather than only available) qualified candidate. Certain performing artists (primarily teaching performers) can use the second preference for advance degree professionals. Otherwise, artists would use the third preference for skilled workers and fourth preference for unskilled workers under normal rules governing labor certifications and immigrant petitions.

How We Can Help

The Baker Donelson Immigration Group helps artists, entertainers, chefs, managers, promoters, record labels, studios, hotels, and other industry players pick and pursue a strategy for getting the international talent on time to the places needed. We prepare petitions together for performing groups to achieve more cost- and time-efficient processing where possible, and we coordinate multiple petitions when necessary. We work with unions, societies, and experts to solve the consultation requirement quickly. We streamline visa processing and make arrangements for family members. We get permanent residence for performers and their families.