

## **Sec. 214.2(o) Aliens of extraordinary ability or achievement .--**

### **(1) Classifications .--**

(i) General. Under section [101\(a\)\(15\)\(O\)](#) of the Act, a qualified alien may be authorized to come to the United States to perform services relating to an event or events if petitioned for by an employer. Under this nonimmigrant category, the alien may be classified under section [101\(a\)\(15\)\(O\)\(i\)](#) of the Act as an alien who has extraordinary ability in the sciences, arts, education, business, or athletics, or who has a demonstrated record of extraordinary achievement in the motion picture or television industry. Under section [101\(a\)\(15\)\(O\)\(ii\)](#) of the Act, an alien having a residence in a foreign country which he or she has no intention of abandoning may be classified as an accompanying alien who is coming to assist in the artistic or athletic performance of an alien admitted under section [101\(a\)\(15\)\(O\)\(i\)](#) of the Act. The spouse or child of an alien described in section [101\(a\)\(15\)\(O\)\(i\)](#) or [\(ii\)](#) of the Act who is accompanying or following to join the alien is entitled to classification pursuant to section [101\(a\)\(15\)\(O\)\(iii\)](#) of the Act. These classifications are called the O-1, O-2, and O-3 categories, respectively. The petitioner must file a petition with the Service for a determination of the alien's eligibility for O-1 or O-2 classification before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures applicable to these classifications. (Paragraph (o) revised 8/15/94; 59 FR 41818 -41842)

### **(ii) Description of classifications .--**

#### **(A) An O-1 classification applies to:**

(1) An individual alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and who is coming temporarily to the United States to continue work in the area of extraordinary ability; or

(2) An alien who has a demonstrated record of extraordinary achievement in motion picture and/or television productions and who is coming temporarily to the United States to continue work in the area of extraordinary achievement.

**(B) An O-2 classification applies to an accompanying alien who is coming temporarily to the United States solely to assist in the artistic or athletic performance by an O-1. The O-2 alien must:**

(1) Be an integral part of the actual performances or events and possess critical skills and experience with the O-1 alien that are not of a general nature and which are not possessed by others; or

(2) In the case of a motion picture or television production, have skills and experience with the O-1 alien which are not of a general nature and which are critical, either based on a pre-existing and longstanding working relationship or, if in connection with a specific production only, because

significant production (including pre- and post-production) 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.

(2) Filing of petitions .--

(i)

General

. Except as provided for in paragraph (o)(2)(iv)(A) of this section, a petitioner seeking to classify an alien as an O-1 or O-2 nonimmigrant shall file a petition on Form I-129, Petition for a Nonimmigrant Worker, with the Service Center which has jurisdiction in the area where the alien will work. The petition may not be filed more than 6 months before the actual need for the alien's services. An O-1 or O-2 petition shall be adjudicated at the appropriate Service Center, even in emergency situations. Only one beneficiary may be included on an O-1 petition. O-2 aliens must be filed for on a separate petition from the O-1 alien. An O-1 or O-2 petition may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent. For purposes of paragraph (o) of this section, a foreign employer is any employer who is not amenable to service of process in the United States. A foreign employer may not directly petition for an O nonimmigrant alien but instead must use the services of a United States agent to file a petition for an O nonimmigrant alien. A United States agent petitioning on behalf of a foreign employer must be authorized to file the petition, and to accept service of process in the United States in proceedings under section [274A](#) of the Act, on behalf of the foreign employer. An O alien may not petition for himself or herself. (Revised 4/16/97; [62 FR 18508](#))

(ii) Evidence required to accompany a petition . Petitions for O aliens shall be accompanied by the following:

(A) The evidence specified in the particular section for the classification;

(B)

Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and

(D) A written advisory opinion(s) from the appropriate consulting entity or entities.

(iii)

Form

of

documentation

. The evidence submitted with an O petition shall conform to the following:

(A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.

(B) Affidavits written by present or former employers or recognized experts certifying to

recognition and extraordinary ability, or in the case of a motion picture or television production, extraordinary achievement of the alien, shall specifically describe the alien's recognition and ab achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(C) A legible photocopy of a document in support of the petition may be submitted in lieu of original. However, the original document shall be submitted if requested by the Director.

(iv) Other filing situations .--

(A) Services in more than one location . A petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of work and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located. The address which the petitioner specifies as its location on the petition shall be where the petitioner is located for purposes of this paragraph.

(Revised 4/16/97; [62 FR 18508](#).)

(B) Services for more than one employer . If the beneficiary will work concurrently for more than one employer within the same time period, each employer must file a separate petition with the Serv Center that has jurisdiction over the area where the alien will perform services, unless an established agent files the petition.

(C) Change of employer . If an O-1 or O-2 alien in the United States seeks to change employers, the new employer must file petition and a request to extend the alien's stay with the Service Center having jurisdiction over the new place of employment. An O-2 alien may change employers only in conjunction with a change of employers by the principal O-1 alien. If the O-1 or O-2 petition was filed by an agent, an amended petition must be filed with evidence relating to the new employer and a request for an extension of stay.

(D) Amended petition . The petitioner shall file an amended petition on Form I-129, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or the beneficiary's eligibility as specified in the original approved petition. In the case of a petition filed for an artist or entertainer, a petitioner may add additional performances or engagements during the validity period of the petition without filing an amended petition, provided the additi onal performances or engagements require an alien of O-1 caliber.

(E) Agents as petitioners . A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A United States Agent may be: The actual employer of the beneficiary, the representative of both th employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employ er as its agent. A petition filed by an agent is subject to the following conditions:

(Paragraph (o)(2)(iv)(E) revised 4/16/97; [62 FR 18508](#)).

(1) An agent performing the function of an employer must provide the contractual agree between the agent and the beneficiary which specifies the wage offered and the other terms and conditions of employment of the beneficiary.

(2) A person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary, if the supporting documentation includes a complete itinerary of the event or events. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers, and the name addresses of the establishments, venues, or locations where the services will be performed. A contract between the employers and the beneficiary is required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(3) A foreign employer who, through a United States agent, files a petition for a nonimmigrant alien is responsible for

complying with all of the employer sanctions provisions of section [274A](#) of the act and 8 CFR part [274a](#)

(F) Multiple beneficiaries

. More than one O-2 accompanying alien may be included on a petition if they are assisting the same O-1 alien for the same events or performances, during the same period of time, and in the same location.

(G) Traded professional O-1 athletes . In the case of a professional O-1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after acquisition by the new organization, within which time the organization is expected to file a new Form I-129. If a new Form I-129 is not filed within 30 days, employment authorization will cease. If a new Form I-129 is filed within 30 days, the professional athlete shall be deemed to be in valid O-1 status, and employment shall continue to be authorized, until the petition is adjudicated. If the new petition is denied, employment authorization will cease. (Added 4/16/97; [62 FR 18508](#) )

(3) Petition for alien of extraordinary ability or achievement (O-1) .--

(i) General

. Extraordinary ability in the sciences, arts, education, business, or athletics, or extraordinary achievement in the case of an alien in the motion picture or television industry, must be established for an individual alien. An O-1 petition must be accompanied by evidence that the work which the alien coming to the United States to continue is in the area of extraordinary ability, and that the alien meets the criteria in paragraph (o)(3)(iii) or (iv) of this section.

(ii) Definitions . As used in this paragraph, the term:

Arts

includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts. Aliens engaged in the field of arts include not only the principal creators and performers but other essential persons such as, but not limited to, directors, set designers, lighting designers, sound designers, choreographers, choreologists, conductors, orchestrators, coaches, arrangers, musical supervisors, costume designers, makeup artists, flight masters, stage technicians, and animal trainers.

Event

means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. Such activity may include short vacations, promotional appearances, and stopovers which are incidental and/or related to the event. .

group of related activities may also be considered to be an event. In the case of an O-1 athlete, the event could be the alien's contract.

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above ordinarily encountered to the extent that a person described as prominent is renowned, leading, well-known in the field of arts.

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

Extraordinary achievement with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person recognized as outstanding, notable, or leading in the motion picture or television field.

Peer group means a group or organization which is comprised of practitioners of the alien's occupation. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, such a representative may be considered the appropriate peer group for purposes of consultation.

(iii) Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

(iv) Evidentiary criteria for an O-1 alien of extraordinary ability in the arts. To qualify as an alien of extraordinary ability in the field of arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A)

Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform, services as a lead or star or participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements;

(2) Evidence that the alien has achieved 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;

(3) Evidence that the alien has performed, and will perform, 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;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command 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

(C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

(v)

Evidentiary criteria for an alien of extraordinary achievement in the motion picture or television industry. To qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

(A)

Evidence that the alien has been nominated for, or has been the recipient of, significant national

international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform, services as a lead or star participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements;

(2) Evidence that the alien has achieved 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;

(3) Evidence that the alien has performed, and will perform, 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;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

## Sec. 214.2(o)(4)

### (4) Petition for an O-2 accompanying alien . --

(i)

#### General

. An O-2 accompanying alien provides essential support to an O-1 artist or athlete. Such aliens may not accompany O-1 aliens in the fields of science, business, or education. Although the O-2 alien must obtain his or her own classification, this classification does not entitle him or her to work separate and apart from the O-1 alien to whom he or she provides support. An O-2 alien must be petitioned for conjunction with the services of the O-1 alien.

### (ii) Evidentiary criteria for qualifying as an O-2 accompanying alien .--

(A) Alien accompanying an O-1 artist or athlete of extraordinary ability . To qualify as an O-2 accompanying alien, the alien must be coming to the United States to assist in the performance of the O-1 alien, be an integral part of the actual performance, and have critical skills and experience with the O-1 alien which are not of a general nature and which are not possessed by a U.S. worker.

(B) Alien accompanying an O-1 alien of extraordinary achievement . To qualify as an O-2 alien accompanying an O-1 alien involved in a motion picture or television production, the alien must have skills and experience with the O-1 alien which are not of a general nature and which are critical based on a pre-existing longstanding working relationship or, with respect to the specific production, be significant production (including pre- and post-production work) 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.

(C) The evidence shall establish the current essentiality, critical skills, and experience of the O-2 alien with the O-1 alien and that the alien has substantial experience performing the critical skills and essential support services for the O-1 alien. In the case of a specific motion picture or televi production, the evidence shall establish that significant production has taken place outside the United States, and will take place inside the United States, and that the continuing participation of the alie essential to the successful completion of the production.

### (5) Consultation .--

(i) General . --

(A) Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for an O-1 or O-2 classification can be approved.

(B) Except as provided in paragraph (o)(5)(i)(E) of this section, evidence of consultation shall be in the form of a written advisory opinion from a peer group (which could include a person or persons with expertise in the field), labor and/or management organization with expertise in the specific field involved.

(C) Except as provided in paragraph (o)(5)(i)(E) of this section, the petitioner shall obtain a written advisory opinion from a peer group (which could include a person or persons with expertise in the field), labor, and/or management organization with expertise in the specific field involved. The advisory opinion shall be submitted along with the petition when the petition is filed. If the advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. Advisory opinions must be submitted in writing and must be signed by an authorized official of the group or organization.

(D) Except as provided in paragraph (o)(5)(i)(E) and (G) of this section, written evidence consultation shall be included in the record in every approved O petition. Consultations are advisory and are not binding on the Service.

(E) In a case where the alien will be employed in the field of arts, entertainment, or athletics, and the Service has determined that a petition merits expeditious handling, the Service shall contact the appropriate labor and/or management organization and request an advisory opinion if one is submitted by the petitioner. The labor and/or management organization shall have 24 hours to respond to the Service's request. The Service shall adjudicate the petition after receipt of the response from the consulting organization. The labor and/or management organization shall then furnish the Service with a written advisory opinion within 5 days of the initiating request. If the labor and/or management organization fails to respond within 24 hours, the Service shall render a decision on the petition without the advisory opinion.

(F) In a routine processing case where the petition is accompanied by a written opinion from a peer group, but the peer group is not a labor organization, the Director will forward a copy of the petition and all supporting documentation to the national office of the appropriate labor organization within 5 days of receipt of the petition. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, that representative shall be the appropriate labor organization for purposes of this section. The labor organization will then have 15 days from receipt of the petition and supporting documents to submit to the Service a written advisory opinion, comment, or letter of no objection. Once the 15-day period has expired, the Director shall adjudicate the petition in no more than 14 days. The Director may shorten this time in his or her discretion for emergency reasons, if no unreasonable burden would be imposed on any participant in the process. If the labor organization does not respond within 15 days, the Director will render a decision on the record without the advisory opinion.

(G) In those cases where it is established by the petitioner that an appropriate peer group, including a labor organization, does not exist, the Service shall render a decision on the evidence of record.

(ii) Consultation requirements for an O-1 alien of extraordinary ability .--

(A)

Content

. Consultation with a peer group in the area of the alien's ability (which may include a labor organization), or a person or persons with expertise in the area of the alien's ability, is required in an O-1 petition for an alien of extraordinary ability. If the advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. If the advisory opinion is favorable to the petitioner, it should describe the alien's ability and achievements in the field of endeavor, describe the nature of the duties to be performed, and state whether the position requires the services of an alien of extraordinary ability. A consulting organization may also submit a letter of no objection in lieu of the above if it has no objection to the approval of the petition.

(B) Waiver of consultation of certain aliens of extraordinary ability in the field of arts .

Consultation for an alien of extraordinary ability in the field of arts shall be waived by the Director in those instances where the alien seeks readmission to the United States to perform similar services within 2 years of the date of a previous consultation. The director shall, within 5 days of granting the waiver, forward a copy of the petition and supporting documentation to the national office of an appropriate labor organization. Petitioners desiring to avail themselves of the waiver should submit a copy of the prior consultation with the petition and advise the Director of the waiver request.

(iii) Consultation requirements for an O-1 alien of extraordinary achievement .

In the case of an alien of extraordinary achievement who will be working on a motion picture or television production, consultation shall be made with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability. If an advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. If the advisory opinion is favorable to the petitioner, the written advisory opinion from the labor and management organizations should describe the alien's achievements in the motion picture or television field and state whether the position requires the services of an alien of extraordinary achievement. If a consulting organization has no objection to the approval of the petition, the organization may submit a letter of no objection in lieu of the above.

(iv) Consultation requirements for an O-2 accompanying alien .

Consultation with a labor organization with expertise in the skill area involved is required for an O-2 alien accompanying an O-1 alien of extraordinary ability. In the case of an O-2 alien seeking entry for a motion picture or television production, consultation with a labor organization and a management organization in the area of the alien's ability is required. If an advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. If an advisory opinion is favorable to the petitioner, the opinion provided by the labor and/or management organization should describe the alien's essentiality to, and working relationship with, the O-1 artist or athlete and state whether there are available U.S. workers who can perform the support services. If the alien will accompany an O-1 alien involved in a motion picture or television production, the advisory opinion should address the alien's skills and experience with the O-1 alien and whether the alien has a pre-existing longstanding working relationship with the O-1 alien, or whether significant production will take place in the United States and abroad and if the continuing participation of the alien is essential to the successful completion of the production. A consulting organization may also submit a letter of no objection in lieu of the above if it has no objection to the approval of the petition.

(v) Organizations agreeing to provide advisory opinions .

The Service will list in its Operations Instructions for O classification those peer groups, labor organizations, and/or management organizations which have agreed to provide advisory opinions to the Service and/or petitioners. The list will not be an exclusive or exhaustive list. The Service and petitioners may use other sources, such as

publications, to identify appropriate peer groups, labor organizations, and management organizations. Additionally, the Service will list in its Operations Instructions those occupations or fields of endeavor where the nonexistence of an appropriate consulting entity has been verified.

(6) Approval and validity of petition .--

(i)

Approval

. The Director shall consider all of the evidence submitted and such other evidence as may be independently required to assist in the adjudication. The Director shall notify the petitioner of the approval of the petition on Form I-797, Notice of Action. The approval notice shall include the alien beneficiary's name, the classification, and the petition's period of validity.

(ii) Recording the validity of petitions . Procedures for recording the validity period of petitions are as follows:

(A) If a new O petition is approved before the date the petitioner indicates the services will begin, the approved petition and approval notice shall show the actual dates requested by the petitioner, not to exceed the limit specified by paragraph (o)(6)(iii) of this section or other Service policy.

(B) If a new O petition is approved after the date the petitioner indicates the services will begin, the approved petition and approval notice shall generally show a validity period commencing with the date of approval and ending with the date requested by the petitioner, not to exceed the limit specified by paragraph (o)(6)(iii) of this section or other Service policy.

(C) If the period of services requested by the petitioner exceeds the limit specified in paragraph (o)(6)(iii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(iii) Validity .--

(A) O-1 petition . An approved petition for an alien classified under [section 101\(a\)\(15\)\(O\)\(i\)](#) of the Act shall be valid for a period of time determined by the Director to be necessary to accomplish the event or activity, not to exceed 3 years.

(B) O-2 petition . An approved petition for an alien classified under [section 101\(a\)\(15\)\(O\)\(ii\)](#) of the Act shall be valid for a period of time determined to be necessary to assist the O-1 alien to accomplish the event or activity, not to exceed 3 years.

(iv)

Spouse and dependents

. The spouse and unmarried minor children of the O-1 or O-2 alien beneficiary are entitled to a nonimmigrant classification, subject to the same period of admission and limitations as the alien beneficiary, if they are accompanying or following to join the alien beneficiary in the United States. Neither the spouse nor a child of the alien beneficiary may accept employment unless he or she has been granted employment authorization.

(7) Denial of petition .--

(i) Notice of intent to deny . When an adverse decision is proposed on the basis of derogatory information of which the petitioner is unaware, the Director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(ii) Notice of denial . The petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial under 8 CFR part [103](#) .

(8) Revocation of approval of petition .--

(i) General .

(A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under [section 101\(a\)\(15\)\(O\)](#) of the Act and paragraph (o) of this section. An amended petition should be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the Director who approved the petition.

(B) The Director may revoke a petition at any time, even after the validity of the petition has expired.

(ii) Automatic revocation . The approval of an unexpired petition is automatically revoked if the petitioner, or the named employer in a petition filed by an agent, goes out of business, files a written withdrawal of the petition, or notifies the Service that the beneficiary is no longer employed by the petitioner.

(iii) Revocation on notice .--

(A) Grounds for revocation . The Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if it is determined that:

(1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(2) The statement of facts contained in the petition was not true and correct;

(3) The petitioner violated the terms or conditions of the approved petition;

(4) The petitioner violated the requirements of section 101(a)(15)(O) of the Act or paragraph (o) of this section; or

(5) The approval of the petition violated paragraph (o) of this section or involved gross error.

(B) Notice and decision. The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The Director shall consider all relevant evidence presented in deciding whether to revoke the petition.

(9) Appeal of a denial or a revocation of a petition.--

(i) Denial. A denied petition may be appealed under 8 CFR part [103](#).

(ii) Revocation. A petition that has been revoked on notice may be appealed under 8 CFR part [103](#). Automatic revocations may not be appealed.

(10)

Admission

. A beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may only engage in employment during the validity period of the petition.

(11) Extension of visa petition validity. The petitioner shall file a request to extend the validity of the original petition under [section 101\(a\)\(15\)\(O\)](#) of the Act on Form I-129, Petition for a Nonimmigrant Worker, in order to continue or complete the same activities or events specified in the original petition. Supporting documents are not required unless requested by the Director. A petition extension may be filed only if the validity of the original petition has not expired.

(12) Extension of stay.--

(i)

Extension procedure

. The petitioner shall request extension of the alien's stay to continue or complete the same event or activity by filing Form I-129, accompanied by a statement explaining the reasons for the extension. The petitioner must also request a petition extension. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. The alien beneficiary must be physically present in the United States at the time of filing of the extension of stay. Even though the request to extend the petition and the alien's stay are combined on the petition, the Director shall make a separate determination on each. If the alien leaves the United States for business or personal reasons while

extension requests are pending, the petitioner may request the Director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa.

(ii) Extension period

. An extension of stay may be authorized in increments of up to 1 year for an O-1 or O-2 beneficiary continue or complete the same event or activity for which he or she was admitted plus an additional 10 days to allow the beneficiary to get his or her personal affairs in order.

(iii) Denial of an extension of stay

. The denial of the request for the alien's extension of temporary stay may not be appealed.

(13)

Effect of approval of a permanent labor certification or filing of a preference petition on O classification.

The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying an O-1 petition, a request to extend such a petition, or the alien's application for admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as an O-1 nonimmigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States.

(14) Effect of a strike .--

(i) If the Secretary of Labor certifies to the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place where the beneficiary is to be employed, and that the employment of the beneficiary would adversely affect the wages and working conditions of U.S. citizens and lawful resident workers:

(A) A petition to classify an alien as a nonimmigrant as defined in [section 101\(a\)\(15\)\(O\)](#) of the Act shall be denied; or

(B) If a petition has been approved, but the alien has not yet entered the United States, or has entered the United States but has not commenced employment, the approval of the petition is automatically suspended, and the application for admission on the basis of the petition shall be denied.

(ii) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (o)(14)(i) of this section, the Commissioner shall not deny a petition or suspend an approved petition.

(iii) If the alien has already commenced employment in the United States under an approved petition and is participating in a strike or labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Secretary of Labor, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers but is subject to

following terms and conditions:

(A) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act and regulations promulgated thereunder in the same manner as are all other O nonimmigrants;

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage workers; and

(C) Although participation by an O nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, an alien who violates his or h status or who remains in the United States after his or her authorized period of stay has expired will subject to deportation.

(15) Use of approval notice, Form I-797. The Service shall notify the petitioner on Form I-797 whenever a visa petition or an extension of a visa petition is approved under the O classification. beneficiary of an O petition who does not require a nonimmigrant visa may present a copy of the approval notice at a Port-of-Entry to facilitate entry into the United States. A beneficiary who is required to present a visa for admission, and whose visa will have expired before the date of his or her intend return, may use Form I-797 to apply for a new or revalidated visa during the validity period of the petition. A copy of Form I-797 shall be retained by the beneficiary and presented during the validity of the petition when reentering the United States to resume the same employment with the same petitioner.

(16) Return transportation requirement. In the case of an alien who enters the United States under section 101(a)(15)(O) of the Act 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. For the purposes of this paragraph, the term "abroad" means the alien's last place of residence prior to his or her entry into the United States.