

GROSSMAN YOUNG & HAMMOND

TRANSCENDING BORDERSSM



O-1 Agents

Friday September 17, 2021

Presenters:

- Becki Young, Co-Managing Partner, Grossman Young & Hammond
- Denise Hammond, Senior Counsel, Grossman Young & Hammond
- Co-founder Tamizdat & Principal, CoveyLaw
- Jonathan Ginsburg, Principal, Fettmann Ginsburg PC

Introduction



Speakers



Becki Young

Becki L. Young, Partner, is a seasoned business immigration attorney with over 20 years of experience in the field. She has extensive experience facilitating the sponsorship of foreign professionals, trainees, interns and individuals of "extraordinary ability."



Denise Hammond

Denise Hammond, Senior Counsel, has focused exclusively on the practice of immigration law for more than 30 years. She represents highly accomplished individuals, including international medical graduates, scientists and researchers, artists, executives, and more.

Speakers



Matthew Covey

Matthew Covey has devoted his professional career to helping artists build bridges between international communities. Himself an accomplished musician turned lawyer, Covey is co-founder of Tamizdat, a non-profit that facilitates and advocates for international cultural mobility and exchange.



Jonathan Ginsburg

Jonathan Ginsburg is a principal in Fettmann Ginsburg PC, a law firm specializing in business matters and U.S. immigration and nationality law. He is an expert on the O and P nonimmigrant visa provisions together with their permanent residence counterparts.

Background on O-1 Agents & Regulatory History

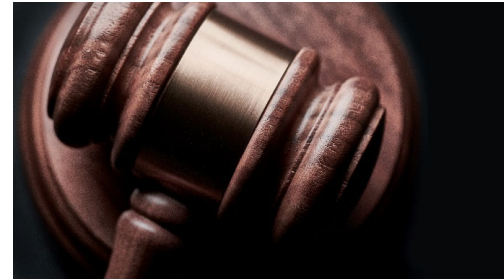


O-1 Agent Petitions: Legal Framework



O Visa Agency Legal Framework Sources

- INA § 101(a)(15)(o)
- 8 CFR § 214.2(o)
- 22 CFR § 41.55 and 9 FAM Ch. 41.55
- 2 USCIS Policy Manual Part M, Ch. 3 (C)
- USCIS Policy Memo, Req's for Agts & Sponsors Filing O & Ps, 11/20/09, AILA Doc. No. 09113064
- USCIS Agts as Petitioners Stakeholders Teleconf., 4/3/11, AILA Doc. No. 11030437
- USCIS website "O Nonimmigrant Classifications: Q&A"



O-1 Eligibility

- Persons of “extraordinary ability” in the sciences, arts, education, business or athletics
 - O-1A (science, education, business, or athletics) vs. O-1B (arts, motion pictures, TV)
 - O-1Bs can add performances without amended petition; O-1As cannot
- Can enter to perform services related to “event”
- Requires petition by “importing employer”



Who Can File O-1 Petitions?

- O-1 “importing employers”
 - US employer
 - US agent or
 - foreign employer through US agent
- When is agent necessary or useful?
 - For traditionally self-employed workers
 - For workers who use agents to arrange short term employment with multiple employers
 - Foreign employers must file through agent
 - Not amendable to service of process in § 274A enforcement actions

Who Can Serve as Agent?

- Any person or entity
 - Compensation unnecessary
 - Common law agency principles control
 - Agent must be authorized to act ***solely in O-1 context***
 - Talent/booking agent distinguished
- Petition filed by agent must meet:
 - basic evidentiary requirements and
 - special requirements depending on agent's role and who it is representing



Basic O-1 Evidentiary Requirements

- Evidence specified in the classification
- Written advisory opinion from consulting entity
- Copies of “any” written contracts between petitioner and beneficiary
 - if none, submit summary of terms of oral employment agreement
 - must show offer made and accepted
 - may include emails, deal memo’s/offers or other evidence showing agreement reached
 - Signatures not required
- Explanation of nature of event(s), start and end dates, and “copy of any itinerary”

Itinerary Requirements

- Basic requirement: All O-1 petitions must include copy of “any itinerary”
- Services in more than one location requirement:
 - must include itinerary with dates and locations
- Special itinerary requirements depending on agent-petitioner scenario
- Purpose: to demonstrate existence, type, time, place of activities/events
 - USCIS allows “some flexibility” per industry standards
 - “will model many times for Designer X from March through Sept”
 - Include brochures, ads, other confirmations of planned performances,
 - Can cover incidental/related events during, before and/or after listed dates, e.g., short vacations, promotional appearances, etc.





Special Evidence Required of Agents Representing Multiple Employers

- Petition involving multiple employers may be filed by one “in business as an agent” representing the employer/end users and beneficiary
 - Complete itinerary with dates, names, addresses of actual employers, venues
 - Contracts between beneficiary and employer/end users or summary of oral contracts explaining terms/conditions
 - Contracts or other proof of authorization to act as agent for beneficiary and employer/end users
 - Compensation could help but not required to prove agency relationship

Special Evidence Required of Agents “Performing the Function of Employer”

- Responsible for managing beneficiary and maintaining some control or exclusivity over services
 - Traditional W-2 employer-employee relationship not required
- Requires contract (or summary) between agent and beneficiary with wage and terms/conditions
 - Purpose: to prove that agent is functioning as employer
- Must submit “any itinerary” but detailed itinerary not required unless services to be performed at multiple locations
- Contracts between beneficiary and employer/end users not required
- Proof that petitioner is authorized to act as agent for end users not required (unless petitioner is also acting as their agent)
- Modeling agency case, *Matter of [name not provided]* (AAO 5/18/11)



Special Evidence Required of Agents for Foreign Employer

- Requires proof that petitioner is authorized to act as agent for foreign employer
- Agent must agree to accept service of process in employer sanctions enforcement cases
- Foreign employer can be corporation owned by beneficiary

Obligations of Agents

- Certifying accuracy of representations under penalty of perjury
- Filing amended petitions where required
 - O-1B can add events; O-1A cannot
- Joint and several liability for return transportation costs
- Compliance with Sec. 274A requirements



O-1 Agent Paradigms





O-1 Agent Paradigms

1. Actual Employer
2. Agent performing the function of the employer
3. Agent representing employer(s)
4. Agent representing foreign employer(s)
5. Actual employer & agent representing employer(s)

Discussion



Thank you!

