



U.S. Citizenship
and Immigration
Services

Interoffice Memorandum

To: Prakash Khatri
USCIS Ombudsman

From: Dr. Emilio T. Gonzalez
Director, USCIS

Date: October 3, 2006

Subject: Response to Recommendation #29, O Nonimmigrant Visas

Ombudsman Recommendation

U.S. Citizenship and Immigration Services (USCIS) is in receipt of a USCIS Ombudsman's memorandum dated June 30, 2006 recommending that USCIS amend O petition rules to facilitate "extraordinary ability" aliens' employment in the United States by extending the maximum initial validity of O petitions from three to five years, and increasing the maximum extension length from one to five years.

As discussed in the memorandum, current regulations permit O visas for aliens with extraordinary ability in the arts, sciences, business, education or athletics to be issued initially for an amount of time up to three years, and such visas are renewable thereafter for individual one-year extensions without limit. The consequence of this regulatory standard is that an O beneficiary who is granted the maximum length work permit must seek annual extensions after three years, with seven extensions needed to work for ten consecutive years.

In the memorandum, reference is made to the frequent complaints heard by the Ombudsman from employers regarding the time consuming, resource intensive process of extending an O petition. Specifically, you state that employers of O nonimmigrants complain that renewals involve significant economic costs due to work disruption, actual travel costs and uncertainty of outcome as to whether or not the O petition extension will actually be approved (e.g. complaints have stated that requests for O petition extensions are routinely screened as vigorously as original O petitions, and thus they are again subject to adjudicators' discretion at both the USCIS petition approval stage and at the Department of State (DOS) visa issuance stage).

As you noted, this problem began on July 16, 2004 when the DOS discontinued its domestic visa reissuance service for several visa classifications, including the O nonimmigrant visa classification. Thereafter, O nonimmigrants seeking to renew their travel status had to make annual excursions abroad for a new O visa with which to reenter the United States and resume their jobs. In a footnote within your memorandum you

acknowledged that although aliens with approved O nonimmigrant petition extensions do not need to leave the United States to revalidate work permits extended by USCIS, such aliens do have to apply abroad for the corresponding O nonimmigrant visa which allows travel from and re-entry into the United States during the pendency of their O nonimmigrant status. You also emphasized that because O nonimmigrants need to maintain travel flexibility for both personal and professional reasons, annual excursions abroad to obtain new O nonimmigrant visas are a practical necessity.

Because of the significant disruption caused by the DOS cessation of domestic visa revalidation, you have recommended that USCIS seek the appropriate administrative remedies that will better enable the United States to attract these extraordinarily talented O nonimmigrants.

USCIS Response

Thank you for taking the time to formulate and propose these recommendations which, if implemented, would certainly serve to lessen the inconvenience suffered by O employers and O nonimmigrants, particularly when foreign travel is required by the O nonimmigrant in the years following initial O visa petition validity. USCIS is certainly interested in further fostering the goal of attracting the "best and brightest" in the world talent pool and facilitating ease of travel for those talented individuals to and from the United States.

Generally, current USCIS regulations for O nonimmigrants state that an O petition can be approved only after the employer consults with an appropriate peer group, labor organization, or management organization in the area of the alien's ability. This regulatory requirement applies to requests for extensions of O nonimmigrant status as well. The purpose of this consultation is to assist USCIS in determining whether the alien's current status in his or her field qualifies the alien for O nonimmigrant status. It is possible, particularly in the case of athletes or entertainers, that an alien who previously met the high standard for classification as an O nonimmigrant at the initial stage of O petition approval might not qualify as an O nonimmigrant several years later.

Furthermore, USCIS is committed to ensuring the security of our nation by requiring appropriate security checks at each renewal stage, and your recommendation would only subject an O nonimmigrant to a USCIS security screening once every 5 years. This may simply be too long of a period between security checks, particularly since the FBI has expressed concern in the past that terrorists may attempt to use artists and entertainer visas to infiltrate the United States.

Although USCIS believes that 5 years may simply be too long between extensions of the O nonimmigrant visa, USCIS is willing to look at a period of time between the current regulations and your recommendation, possibly three years of initial validity for the O-1 visa holder with a requirement that the alien seek an extension of validity once every three years. USCIS will begin internal discussion on this issue, and will advise you when a decision has been made by USCIS. Please be advised that if a decision has been made to go forward with any such change, the clearance process review and regulatory change will take some time because DHS currently has numerous regulatory changes pending.