

Consultation Requirements for Beneficiaries of O-1 Petitions

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INTRODUCTION

O-1 regulations contain a consultation requirement, which mandates that foreign nationals seeking to qualify as individuals of extraordinary abilities in the sciences, arts, education, business or athletics, or as individuals of extraordinary achievement in the motion picture or television industry, submit a written advisory opinion from the appropriate consulting entity.¹ The consultation requirement is more specifically defined as a written advisory opinion from a peer group, labor and/or management organization with expertise in the relevant field.² In fields that do not have a relevant labor or management organization, the consultation may be issued by a person with expertise in the field. This practice pointer will focus on obtaining consultations from the most commonly utilized labor and management groups in the arts and entertainment industries and will not address consultations from other sources.

The consultation requirements for individuals seeking O-1 status in the arts slightly differ from the consultation requirements for those seeking O-1 status in motion picture and television. In

¹ 8 CFR §214.2(o)(2)(ii)(D).

² 8 CFR §214.2(o)(5)(i)(B).

the field of the arts, the consultation must be from a peer group (which may include a labor organization, if one exists), or a person with expertise in the area of extraordinary ability. A favorable consultation should describe the individual's ability and achievements, the nature of the duties that will be performed, and state whether the job requires an individual of extraordinary ability. Alternatively, the consulting entity may submit a letter of no objection (*i.e.*, confirmation that it does not oppose the approval of the petition).³ The requirements are nearly identical for individuals of extraordinary achievement in motion picture and television productions, but they must submit two consultations—one from an appropriate union representing the foreign national's occupational peers, and another from a management organization in the area of the foreign national's ability.⁴

Petitioners often question which entities should be contacted for consultations, and the regulations address this by stating that U.S. Citizenship and Immigration Services (USCIS) should list the peer groups, labor organizations and management organizations which have agreed to provide advisory opinions in its operations instructions.⁵ This list is available on the USCIS website,⁶ but it is not an exhaustive list, and it is advisable to contact the consulting organizations for further detail and updated information prior to submitting consultation requests.

Practitioners who regularly practice in this area of immigration law have observed that different consulting entities have varying policies and attitudes toward issuing consultations, and we offer practice pointers to ensure issuance of a favorable advisory opinion from the most commonly used consulting entities.

CONSULTING ENTITIES IN THE FIELD OF ARTS

American Guild of Musical Artists (AGMA) generally covers vocalists, singers, opera singers, dancers, choreographers, stage managers, stage technicians, models, and others in the fashion industry. In particular, AGMA may cover positions not specifically under the jurisdiction of other unions.

- Send full copy of I-129 petition including itinerary, contracts (written or oral), and supporting documentation to:
1430 Broadway, 14th Floor
New York, NY 10018
Tel: (212) 265-3687
Fax: (212) 262-9088
Attention: Deirdre Dresch

³ 8 CFR §214.2(o)(5)(ii).

⁴ 8 CFR §214.2(o)(5)(iii).

⁵ 8 CFR §214.2(o)(5)(v).

⁶ www.uscis.gov/sites/default/files/ilink/docView/AFM/DATAOBJECTS/AFMapdx33-1.pdf (last accessed April 1, 2014.)

- \$250 per petition, or \$500 per petition for expedites, made payable to “American Guild of Musical Artists” or “AGMA.” AGMA will waive the processing fee for petitioners who are AGMA members.
 - o Regular processing is approximately 2 weeks
 - o Expedited processing is next day
 - o Cost is per petition, therefore O-1 and O-2 petition require separate fees as they require separate letters
 - o AGMA will not fax the consultation letter unless you have paid the expedite fee

American Federation of Musicians (AFM) has jurisdiction over musicians, orchestras, conductors and music producers.⁷

- Send AFM Questionnaire⁸ and full copy of I-129 petition including itinerary, contracts (written or oral), and other supporting documentation to:
 - 1501 Broadway, #600
 - New York, NY 10036
 - Tel: (212) 869-1330
 - Fax: (212) 764-6134
 - Attention: O Petitions to Raymond Hair; or P Petitions to Liz Blake
- \$250 per request or \$300 per request for expedites, made payable to “AFM Immigration Processing”
 - o Regular processing is 1-2 weeks
 - o Expedited processing is 2 business days
 - o Cost is per requested letter and AFM will include O-1 and O-2s on same letter, so only one fee required
 - o No personal checks accepted (corporate checks, cashier’s checks or money orders only)
 - o Suggested page limit of 20 pages
 - o P-2 Petitions for Canadian Musicians are filed with USCIS directly by AFM and should contact their Canadian Office at (416) 391-5161

Actors Equity Association (Equity) has jurisdiction over stage actors and stage managers

- For O-1, O-2, P-1, or P-1S petitions - send full copy of I-129 petition including itinerary, contracts (written or oral), and supporting documentation to:
 - o 165 West 46th Street
 - o New York, NY 10036
 - o Tel: (212) 869-8530
 - o Fax: (212) 719-9815
- \$250 per petition with check, made payable to “Actors Equity Association”

⁷ www.afm.org/departments/touring-travel-theatre-booking-immigration/visa-questions-and-answers.

⁸ www.afm.org/uploads/file/VisaQuestionnaire.pdf.

- P-3 Petitions for U.K. Equity Members – only send the cover letter, I-129 petition and minimal information on the performance. Do not send extensive material on the beneficiary

American Guild of Variety Artists (AGVA) has jurisdiction over live performances in non-book revues, comedians, skaters, circus acts, certain lecture and speaking artists, certain cabaret and night club performers, and sports-people appearing in non-competitive entertainment shows.⁹

- Send full copy of I-129 petition, including copies of biographical data page for each beneficiary, itinerary, contracts (written or oral), and supporting documentation to:
 - 363 Seventh Avenue, 17TH Floor
 - New York, NY 10001
 - Attention: Immigration Consultation
- \$250 per petition with check, made payable to “AGVA” or “American Guild of Variety Artists”
 - Regular processing is approximately 2 weeks, but depends on case load
 - Cost is per petition, therefore O-1 and O-2 petition require separate fees as it provides separate letters
 - No expedites
 - AGVA does not accept faxes or phone calls but will entertain jurisdiction questions by email to agvany@aol.com fully describing the act
 - AGVA consultation letter is returned by fax to the fax number specified in cover letter and will mail upon request in cover letter

American Culinary Federation (ACF) has jurisdiction over professional chefs, cooks, pastry chefs and other artists working in the culinary industry.¹⁰

- Send ACF Application Form,¹¹ full copy of I-129 petition including itinerary, contracts (written or oral), and supporting documentation to:
 - American Culinary Federation, Inc.
 - 180 Center Place Way Street
 - Augustine, FL 32095
- \$525 per petition or \$585 for expedites, made payable to “American Culinary Federation”
 - Regular processing is 1-2 weeks
 - Expedited processing is 3 business days
 - Processing fee is payable by check, money order or credit card
 - For questions contact (800) 624-9458, ext. 122, or lemmons@acfchefs.net.

⁹ www.agvausa.com/immigrationform.html.

¹⁰ www.acfchefs.org/ACF/Resources/Visas/ACF/Resources/Visas/.

¹¹ www.acfchefs.org/download/documents/careers/advisory_opinion_app.pdf.

International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators (IATSE) has jurisdiction over all technical and craft personnel including, but not limited to directors of photography, cinematography, sound engineers, lighting designers, photographers.

- Send full copy of I-129 petition including itinerary, contracts (written or oral), and supporting documentation to:
 - 207 West 25th Street, 4th Floor
 - New York, NY 10001
 - Attention: Colleen Paul – Live Performance; or Matthew Loeb – Motion Picture and Television
 - Tel: (212) 730-1770
 - Fax: (212) 730-7809
- \$250 per request or \$450 per request for expedites, made payable to “IATSE”
 - Regular processing is 5-7 business days
 - Expedited processing is within 48 hours
 - Cost is per requested letter and IATSE will include O-1 and O-2s on same letter, so only one fee required

CONSULTING ENTITIES IN THE FIELD OF MOTION PICTURE AND TELEVISION PRODUCTIONS

Alliance of Motion Picture and Television Producers (AMPTP) is management organization in the field of motion picture and television productions, which should be consulted on each O-1 extraordinary achievement petition for foreign nationals seeking to work in film and television productions, as well as post-production and other areas of the motion picture and TV industry.

- Send previous AMPTP and Guild/Union advisory opinion(s), signed I-129 Form, signed petitioner’s letter, signed deal memo(s) and/or contract(s), and background documents (resume, work experience, credits, awards, etc.) to:
 - Alliance of Motion Picture & Television Producers
 - 15301 Ventura Boulevard, Building E
 - Sherman Oaks, CA 91403
 - Attention: Immigration
- \$250 per request (except for member petitioners), made payable to “AMPTP”
 - The processing fee will cover an O-1 petition and O-2 petition with multiple beneficiaries (one consultation letter will be issued)
 - Processing is approximately 7 business days (no expedites available)
 - Submitted documentation should be no more than 50 pages
 - Incomplete submissions will not be processed, and AMPTP will send an e-mail requesting additional documentation
 - Questions can be submitted to immigration@amptp.org
 - Follow AMPTP guidelines¹²

¹² www.amptp.org/files/immigration.pdf.

- o Consultations are issued via e-mail

In addition to the AMPTP consultation, a consultation from an appropriate union or labor organization representing the foreign national's occupational peers should also be submitted.

Directors Guild of America (DGA) has jurisdiction over directors, unit production managers, assistant directors, and associate directors employed on theatrical or feature motion pictures, commercials, documentaries, live and prerecorded television programs.

- Send full copy of I-129 petition including itinerary, contracts (written or oral), and supporting documentation to:
Directors Guild of America – National Headquarters
7920 Sunset Boulevard
Los Angeles, CA 90046
Attention: Regina Render
- There is no processing fee
 - o Processing time is 2-3 weeks
 - o Prior or future work with major studios is key
 - o Deal memos for specific productions are important

Producers Guild of America (PGA) covers members of producing teams in film, television and new media, including all producer titles, line, story, and field production, as well as visual effects and post-production.¹³

- Send full copy of I-129 petition including itinerary, contracts (written or oral), and supporting documentation to:
Producers Guild of America
8530 Wilshire Boulevard, Suite 400
Beverly Hills, CA 90211
Attention: Scott Bengtson, O-1 Advisory Unit; or Jo-Ann West, O-2 Advisory Unit
- \$500 per request (no fee for member petitioners; \$300 fee for members of AMPTP), made payable "Producers Guild of America"
 - o Questions can be e-mailed to scott@producersguild.org
 - o Processing time is 3-7 days
 - o There is no additional fee to process an O-1 and O-2 for the same project

Screen Actors Guild – American Federation of Television & Radio Artists (SAG-AFTRA) has jurisdiction over performers in film, television and radio broadcasting, including actors, journalists and other artists (e.g., professional singers, stunt performers, airplane and helicopter pilots, dancers, stunt coordinators, puppeteers and body doubles) working in entertainment and news media such as film, digital motion pictures, television and radio broadcast programs, commercials, video games, industrials, Internet and all new media formats and programming.¹⁴

¹³ www.producersguild.org/?O1requirements.

¹⁴ www.sagaftra.org/union-info/o-1-visa-letters/o-1-and-p-visa-forms-and-letters.

The organization was formed on March 30, 2012, following the merger of the Screen Actors Guild (SAG) and the American Federation of Television and Radio Artists (AFTRA), which prior to the merger had to be consulted separately for advisory opinions.

- Send full copy of I-129 petition including itinerary, contracts (written or oral), and supporting documentation to:
Screen Actors Guild – American Federation of Radio & Television Artists
5757 Wilshire Boulevard, 7th Floor
Los Angeles, CA 90036
Attention: Steve Otroshkin, Legal Department
- \$250 per request, made payable to “SAG-AFTRA”
 - o Include copy of valid passport
 - o Direct questions to visa@sagaftra.org
 - o Processing period is 2 weeks
 - o For Spanish language applications, contact Herta Suarez at herta.suarez@sagaftra.org

Writers Guild of America (WGA) should be consulted by writers of feature film, television shows, movies, news programs, documentaries, animation, CD-ROMs and content for new-media technologies.

- Send full copy of I-129 petition including itinerary, contracts (written or oral), and supporting documentation to:
Writers Guild of America - West
7000 W 3rd St.
Los Angeles, CA 90048
Attention: Missy Brown – Agency Department
- There is no processing fee.
 - o Processing time is 3-7 days
 - o WGA will ask for additional documents if submission is insufficient to result in a favorable consultation

CONSULTING ENTITIES IN THE FIELD OF ATHLETICS

In the field of athletics, consultations from non-union sources (i.e., peer group consultations¹⁵) such as individual sports experts or associations are the norm, as there generally are no applicable unions. Of course the big four, National Football League, Major League Baseball, National Basketball Association and National Hockey League, and now Major League Soccer all have very strong unions, and it is fairly straightforward for players participating both on major and minor league teams to obtain the appropriate consultation. Each union must be contacted and appropriate documents submitted.

¹⁵ 8 CFR §214.2(o)(3)(ii).

Individual sports, such as the Professional Golf Association, International Tennis Federation, NASCAR (auto racing) do not have unions, thus a consultation from experts or the association are appropriate to include in the petition for an O or P visa. For other professional sports like horse racing, rugby, field hockey, skateboarding, or any other sport, the relevant association is usually helpful in providing a no-objection letter to satisfy the consultation requirement. If there is no association, then a letter from an expert in the sport will suffice.

Support personnel for the athlete (both O and P) also require a consultation. Again, usually there is no union, so an expert in the field or association is the appropriate source for consultations. Personal trainers and personal assistants are more common in the field of sports. If there are multiple support personnel, multiple consultations will be required.

WHAT TO DO WHEN YOU RECEIVE A NEGATIVE CONSULTATION

You are required to submit a negative consultation to USCIS. However, since consultations are not binding on USCIS,¹⁶ negative consultations are not the end of a petition. One suggestion is to find another union or peer group to include together with the negative consultation. Some occupations may have cross-jurisdictional unions that cover different parts of the foreign national's performance. For example, if Equity offers a negative consultation for an Actor/Singer/Dancer in a musical production, AGMA may offer a consultation or "no objection" letter for the Singer/Dancer portion of the performance. Moreover, practitioners should always address the negative consultation, argue why the advisory opinion is incorrect, and ask USCIS to make a decision based on the record provided.

WHAT TO DO WHEN YOU RECEIVE AN RFE STATING YOU HAVE CONSULTED THE WRONG UNION OR PEER GROUP

USCIS is continuously training new officers to adjudicate O and P Petitions. If USCIS *incorrectly* advises that you have consulted the wrong union or peer group, contact the union and ask their Immigration Specialist. With the exception of AGVA, most unions will be indignant and may offer to write another consultation letter asserting their jurisdiction over the position.

CONCLUSION

A favorable consultation issued by an appropriate peer group, labor or management organization is a critical element of a successful O petition in arts, entertainment or athletics. Unions and management organizations vary in their processes and requirements, and practitioners should take caution and review all available resources prior to submitting consultation requests.

¹⁶ 8 CFR §214.2(o)(5)(i)(D).