



July 20, 2010

PM-602-0003

Policy Memorandum

SUBJECT: Clarifying Guidance on “O” *Petition Validity Period*
Revisions to the *Adjudicator’s Field Manual (AFM)* Chapter 33.4(e)(2)
AFM Update AD10-36

Purpose

This Policy Memorandum (PM) provides guidance for processing and adjudicating Form I-129, Petition for Nonimmigrant Worker, filed on behalf of O nonimmigrants, with regard to determining the appropriate validity period of an approvable petition when a gap exists between two or more events reflected in the itinerary.

Scope

Unless specifically exempted herein, this PM applies to all USCIS employees who adjudicate O-1 visa petitions.

Authority

INA 101(a)(15)(O); INA 214(a)(2)(A); 8 CFR 214.2(O).

Background

The validity dates for the O-1 visa classification are defined by the specific period of time required to perform or participate in a specific event(s). When reviewing an O-1 petition, the length of time between the scheduled events, also known as a “gap,” has sometimes been viewed as a gauge to determine whether an itinerary represented one continuous “event” or separate events requiring separate petitions.

In certain cases where there has been a significant “gap” between events, adjudicators have sometimes concluded that a single petition was filed for separate events rather than a continuous event. In such cases, the petition may have been approved only for a validity period equal to the length of time needed to accomplish what appeared to be the initial specific event rather than the continuous event as represented by the petition. There is no statutory or regulatory authority for the proposition that a gap of a certain number of days in an itinerary automatically indicates a new event. The regulations speak in terms of tours and multiple appearances as meeting the “event” definition.

Policy

The statutory and regulatory background provides flexibility on the length of validity period that may be granted. The statute and regulations allow for an approval of an O-1 petition for a period necessary to accomplish the event or activity, not to exceed 3 years. Adjudicators should evaluate the totality of the evidence submitted to determine if the activities described in the itinerary are related in such a way that they would be considered an “event” for purposes of the validity period. When the validity period requested is established through the submission of appropriate evidence, Service Centers should approve a petition for the length of the validity period requested where the law and regulations permit.

The AFM is updated accordingly.

Implementation

AFM Update, Chapter 33.4(e)

Chapter 33.4(e) is revised as follows:

(e)(1) Approval. If the petition is approvable from the evidence submitted, endorse the approval block and issue Form I-797 (through CLAIMS) showing the period of validity and the alien beneficiary's name and classification. If the petition is approved after the date the petitioner indicated services would begin, the approved petition will show a validity period commencing with the date of approval and ending with the date requested by the petitioner, not to exceed the period determined by the director to be necessary to complete the event or activity, and not to exceed 3 years.

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 engage in employment only during the validity period of the petition. An extension of stay may be authorized in increments of up to 1 year to 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.

Chapter 33.4(e)(2) is added as follows:

(e)(2) Validity Period. There is no statutory or regulatory authority for the proposition that a gap of certain number of days in an itinerary automatically indicates a "new event."

Nonimmigrants described in the O classification are “seek[ing] to enter the United States to continue to work in the area of extraordinary ability,” INA 101(a)(15)(O), and may be authorized for a period of stay necessary “to provide for the event (or events) for which the nonimmigrant is admitted,” INA 214(a)(2)(A). There is no requirement for a “single” event in the statute. Rather, the focus is on whether the alien will work in the

area of extraordinary ability. 8 CFR 214.2(O)(1)(ii)(1) mirrors this language. Further, 8 CFR 214.2(O)(1)(i) states that the O classification is for an alien coming to the U.S. “to perform services relating to an event or events.” Thus, there is a clear indication in the regulations that a petition may be approved to cover not only the actual event or events but also services and/or activities in connection with that event or events. 8 CFR 214.2(o)(2)(ii)(C) defines the evidentiary standard for identifying the event or activity relating to the events by requiring “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.” Unlike other nonimmigrant categories that have a specified time limit, a temporal period is not specified for the Os. The regulations state that the validity period shall be that which is “necessary to accomplish the event or activity, not to exceed 3 years.” 8 CFR 214.2(o)(6)(iii).

Under 8 CFR 214.2(o)(3)(ii) an event is defined as an activity such as, but not limited to, a scientific project, conference, convention, lecture, series, tour, exhibit, business project, academic year, or engagement. In addition, a job which may not have a specific engagement or project may also fall under this definition if the job is the “activity” within the alien’s area of extraordinary ability. Activities such as these may include short vacations, promotional appearances, and stopovers which are incidental and/or related to the event.

A group of related activities may also be considered to be an event. However, speculative employment and/or freelancing are not allowed.¹ A petitioner must establish that there are events or activities in the alien’s field of extraordinary ability for the validity period requested, e.g. an itinerary for a tour, contract or summary of the terms of the oral agreement under which the beneficiary will be employed, contracts between the beneficiary and employers if an agent is being utilized in order to establish the events.

If the activities on the itinerary are related in such a way that they could be considered an “event,” the petition should be approved for the requested validity period. For example, a series of events that involve the same performers and the same or similar performance, such as a tour by a performing artist in venues around the United States, would constitute an “event.” In another example, if there is a break in between events in the United States and the petitioner indicates the beneficiary will be returning abroad to engage in activities which are incidental and /or related to the work performed in the United States it does not necessarily interrupt the original “event.” The burden is on the petitioner to demonstrate that the activities listed on the itinerary are related to the event despite gaps in which the beneficiary may travel abroad and return to the United States. Those gaps may include time in which the beneficiary attends seminars, vacations,

¹ Pursuant to 8 CFR 214.2(o)(2)(iv)(D), 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 additional performances or engagements require an alien of O-1 caliber.

travels between engagements, etc.² Those gaps would not be considered to interrupt the original “event,” and the full period of time requested may be granted as the gaps are incidental to the original “event.” If a review of the itinerary does not establish an event or activity, or a series of connected events and activities which would allow the validity period requested, or if the petitioner is requesting a validity period beyond the last established event or activity, the adjudicator may, in his or her discretion, issue a Request for Evidence (RFE) so that the petitioner has an opportunity to provide additional documentation to establish the requested validity period.

Adjudicators should evaluate the totality of the evidence submitted under the pertinent statute and regulations to determine if the events and activities on the itinerary are connected in such a way that they would be considered an “event” for purposes of the validity period. If the evidence establishes that the activities or events are related in such a way that they could be considered an “event,” the adjudicator should approve the petition for the length of the established validity period.

The AFM Transmittal Memoranda table is updated as follows:

AD10-36 [date memo signed]	Chapter 33.4(e)	This memorandum revises AFM Chapter 33.4(e)(1) and adds 33.4(e)(2) to provide guidance for processing and adjudicating Form I 129, Petition for Nonimmigrant Worker, filed on behalf of O nonimmigrants.
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Use

This Policy Memorandum is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Business Employment Services Team of the Service Center Operations Directorate.

² Activities engaged in during the beneficiary’s trips outside the U.S. should not by themselves be used to limit a validity period. An adjudicator should primarily focus on the relatedness of the activities inside the U.S. to determine whether the beneficiary is engaged in an “event” for purposes of the validity period.