

## O and P Visa "Agents" Face Stringent Requirements Under New USCIS Guidance

On October 7, 2009 USCIS issued clarification on requirements for agents filing as petitioners for the O and P nonimmigrant visa classification. O-1 foreign nationals may not file a petition on their own behalf, but rather, the regulations require an employer or agent petitioner in such cases. More specifically, USCIS rules allow for U.S. agents to file petitions in cases involving workers who are traditionally self-employed or who use agents to coordinate short-term employment with several employers, as well as in instances where a foreign employer authorizes an agent to act on its behalf. Previously, the rules were fluid enough to allow for virtually anyone to act as an agent, whether a company or individual, provided that an agreement existed between the agent and sponsored foreign national and the petition included a clear and detailed itinerary of events (such as exhibitions, shows, performances); freelancing has never been permitted.

In its guidance, USCIS noted that it has received numerous inquiries and filings involving petitions that name multiple employers but are filed by one of those employers on behalf of the other employers. USCIS stated that it does not consider such filings to be permissible under the regulations where the petitioner does not establish that it is in business *as an agent*. Either each employer for which the foreign national will be performing services must file its own O or P petition on the foreign national's behalf, or the agent-petitioner representing both the employers and the foreign national, must demonstrate that it is in business as an agent (e.g., with evidence of contracts).

This newly issued memorandum has been harshly criticized by several performing arts groups. The focus of the collective criticism is the additional burden being imposed on individual soloists who plan to perform at numerous venues in the U.S. Previously, a musical soloist, who wished to perform at various venues in the U.S., could designate one performing arts organization to petition on his or her behalf as an actual employer, acknowledging that the artist would also perform for other arts organizations. Only one petition (and one filing fee) was required. USCIS' change now requires that each performing arts organization where the soloist wishes to perform must file a separate petition, or that the soloist must retain an agent to arrange these engagements. These changes will significantly increase the time, expense and logistical complications for solo artists wishing to perform at numerous venues and will, undoubtedly hamper the continued growth and expansion of creative and performing art in the U.S.