



U.S. Citizenship and Immigration Services

Draft Memorandum for Comment



USCIS seeks your input on the draft memoranda listed below. These memoranda are drafts of proposed or revised guidance to USCIS Field Offices and Service Centers. They are not intended as guidance for the general public, nor are they intended to create binding legal requirements on the public. Until issued in final form, the draft memoranda do not constitute agency policy in any way or for any purpose.

- [Clarifying Guidance on "O" petition Validity Period Revisions to the Adjudicator's Field Manual \(AFM\) Chapter 33.4\(e\)\(2\) AFM Update AD10-36 \(Final date for comments: May 24, 2010.\)](#)

Each memorandum is available for comment for ten business days after posting. The final date for comments is after each link.

Comment Process: Please email all comments to opefeedback@uscis.dhs.gov. Please put the title of the relevant memorandum in the subject line of your message. The most helpful comments will refer to a specific portion of the memorandum, explain the reason for any recommended change, and include data, information, or authority that support the recommendation. USCIS may distribute any comments received (including any personal information and contact information) on its public website or to those who request copies. By providing comments, you consent to their use and consideration by USCIS, and you acknowledge that your comments may become public. USCIS cannot guarantee that it will acknowledge or respond to any comments submitted.

Background and Additional Legal Information: Final field guidance documents have previously been available for public review on USCIS's website (www.uscis.gov) as part of the Adjudicator's Field Manual (AFM). In a new effort to promote transparency and consistency in USCIS operations, the Agency will now periodically post drafts of new or revised draft memoranda for public comment to assist USCIS in improving immigration services. Some memoranda will not be posted, e.g., those containing information that is law enforcement sensitive, confidential, or otherwise protected from disclosure under the Freedom of Information Act. USCIS is not required to solicit public comment on the draft memoranda under the Administrative Procedure Act, nor does this informal comment process replace any statutory or other legal requirement for public comment on agency action.



PM-602-XXXX

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 and is binding on 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. We remind adjudicators that 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." 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. In determining the validity period, 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 one event. Whenever possible, 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 only engage in employment 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 of 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 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 in connection with that event or events. 8 C.F.R. 214.2(o)(2)(ii)(C) defines the evidentiary standard to identify 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 place parameters on the validity period as equating to 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. 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.

Therefore, if the activities on the itinerary are related in such a way that they could be considered one event, the petition should be approved for the requested validity period. A series of events that involve the same performers and same or similar performance, such as a tour by a performing artist in venues around the United States, would constitute an “event” so to allow the full period requested.

In determining the validity period, adjudicators should evaluate the totality of the evidence submitted under the pertinent statute and regulations to determine if the activities on the itinerary are related in such a way that they would be considered one event. Whenever possible, Service Centers should approve a petition for the length of the validity period requested where the law and regulations permit.

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
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		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 Office of Service Center Operations.

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