



**U.S. Citizenship
and Immigration
Services**

O Nonimmigrant Classifications Question and Answers

Q: When can a U.S. agent file as a petitioner for an O beneficiary?

A: The regulations allow agents to be petitioners in the following scenarios:

- A U.S. agent can file for traditionally self-employed workers, or workers who use agents to arrange short-term employment with numerous employers
- A foreign employer who authorizes an agent to act on his/her behalf.

A U. S. agent may be:

- The actual employer of the beneficiary
- The representative of both the employer and the beneficiary
- A person or entity authorized by the employer(s) to act in place of the employer(s) as its agent.

Q: What evidence is required with a petition filed by a U.S. agent?

A: A petition filed by an agent is subject to additional evidentiary requirements listed under 8 CFR 214.2(o) (2)(iv)(E). The evidence required depends on whether the agent is filing as an agent performing the function of an employer; as a person or company in business as an agent and filing for multiple employers; or as an agent for a foreign employer.

Q: How does an agent establish to USCIS that it is an agent performing the function of an employer?

A: When an agent performing the function of an employer petitions for the beneficiary, the petition must include the contractual agreement between the agent and the beneficiary which specifies the wage offered and other terms and conditions of employment. This can be a summary of the terms of the oral agreement or a written contract.

USCIS relies on the contractual agreement that must be provided with the petition to determine whether the agent is functioning as the employer of the beneficiary. The contractual agreement should establish the type of working relationship between the agent and beneficiary and should clearly lay out how the beneficiary will be paid. In totality, if the terms and conditions of employment show a level of control over the beneficiary's work being relinquished to the agent, then the agent may establish that it is performing the function of an employer. This determination will be on a case by case basis and will be based on the contractual agreement, whether written or oral.

Q: What evidence is required to satisfy the “wage offered” requirement when an U.S. agent files as an agent performing the function of an employer?

A: The petition must be submitted with evidence regarding the wage offered. However, the regulations do not contain a prevailing wage requirement. Furthermore, no particular wage structure is required. A detailed description of the wage offered or fee structure and that the wage offered/ fee structure was agreed upon may satisfy this requirement.

Q: When an agent performing the function of an employer files a petition, are contracts required with the employers where the beneficiary will be employed?

A. No, in the case of an O petition filed by an agent performing the function of an employer, a contract is not required between the beneficiary and the entities that will ultimately use the beneficiary's services.

Q: What is the itinerary requirement for agents performing the function of an employer?

A: A petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of work. There are no exceptions to the itinerary requirement when the petition is filed by an agent performing the function of an employer. However, USCIS does give some flexibility to how detailed the itinerary must be and does take into account industry standards when determining whether the itinerary requirement has been met. As such, the itinerary should at a minimum indicate what type of work the beneficiary will be engaged, where, and when this work will take place.

Q: When an U.S. agent files for a traditionally self-employed worker, on behalf of multiple employers, are contracts required with the employers where the beneficiary will be employed?

A: Yes, a contract between the employer and the beneficiary is required to be submitted with an O petition filed by an agent. The contract between the "traditionally self-employed" worker and the importing employer provides USCIS with evidence that an actual position exists and the O worker is coming to the United States to fill that position. An O worker cannot "self-petition."

USCIS will accept either a written or an oral contract. The contract must demonstrate what was offered by the employer and what was accepted by the employee. If an oral contract was entered into, the document evidencing the oral contract does not have to be signed by both parties to establish that there is an oral agreement. However, it must document the terms of the employment offered and that the beneficiary has agreed to the offer. Such evidence may include but is not limited to:

- E-mails between the contractual parties
- A written summation of the terms of the agreement
- Any other evidence which demonstrates that an oral agreement was created

When the beneficiary uses a U.S. agent to file the petition, the agent, by regulation, represents both the beneficiary and the employer(s). The regulations also require that when the agent represents the beneficiary and employer(s), the petition must be accompanied by a complete itinerary of the events or activities. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers and the names and addresses of the establishments, venues, or locations where the services will be performed.

Q: Can the U. S. agent be the actual employer of the beneficiary?

A: Yes, a U.S. agent can be the actual employer. When an agent petitions for the beneficiary as the employer the petition must include the contractual agreement between the agent and the beneficiary which specifies the wage offered and other terms and conditions of employment. This can be a summary of the terms of the oral

agreement or a written contract.

Q: Can a U.S. agent who is the employer/petitioner for the beneficiary, also serve as an agent for other (multiple) employers?

A: Yes, a U.S. agent may be the actual employer and may file a petition on behalf of the beneficiary as his or her agent and on behalf of other employers of the beneficiary. In this scenario, the agent is required by regulations to provide:

- The contract between the petitioner (agent) and the beneficiary
- A complete itinerary which lists specific dates of each service or engagement
- The names and addresses of the establishments, venues, or locations where the services will be performed
- Contracts between the beneficiary and the employer(s) for the duration of the visa

The contracts that must be provided to USCIS can either be a summary of the oral agreement or a copy of the written contract. In addition, the petitioner must provide evidence establishing that the petitioner is authorized to act as an agent for the other employers. This may be satisfied with a document signed by the beneficiary's other employer(s) which states the agent is authorized to act as their agent for the limited purpose of filing the petition. If the petitioner does not establish that the petitioner is authorized to act as an agent for the other employers, the petition may only be approved for the petitioner's event.

Q. Can additional performances or engagements be added to a petition?

A. Yes, a petitioner may add additional performances for an O-1 artist or entertainer during the validity period of the petition without filing an amended petition.

In cases where there have been any other material changes in the terms and conditions of the employment or the beneficiary's eligibility, as specified in the original I-129, an amended I-129 petition must be filed.

Q. Can a partially or fully self-incorporated person petition for himself or herself in the O classification?

A. The regulations require that an O petition be filed by a U.S. employer, a U.S. agent, or a foreign employer through a U.S. agent. The regulations also state that an O-1 alien may not petition for himself or herself. The Immigration and Nationality Act requires that an O petition be filed by an importing employer. Documentation of ownership and control of the business may be requested in this circumstance to verify that the petitioning entity is a bona fide employer in the United States, that the petition is not based on speculative employment, and that the terms and conditions of actual employment qualify for O classification.

Q. Can a foreign employer be a corporation owned by the beneficiary?

A. Yes, but the petition must be filed by a U.S. agent. A foreign employer may be a corporation owned wholly or in part by the beneficiary but the foreign employer must utilize a U.S. agent to file the petition. The petition can not be based on speculative employment and the terms and condition of the actual employment must qualify for O classification. USCIS may request information regarding the foreign employer and documentation to establish that there is work in place for the beneficiary in the United States.

A foreign employer who, through a U.S. agent, files a petition for an O nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

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