

O & P CLASSIFICATIONS

Listed here are the USCIS Classifications under which an artist or performing group and their support personnel can enter the United States. It is the responsibility of the artist or artist's manager to provide the U.S. petitioner with the necessary and appropriate documents that support the artist's classification.

Download *O & P Visa Criteria & Documentation*

First & Foremost:

The ONLY classifications for performing artists are O (individuals) and P (groups of 2 or more).

Never ever ESTA, B1/B2 (if not eligible for ESTA), H – these are for “visitor/tourist/business meetings”

If caught at the border entering with a B-1/B-2 visa or ESTA for the purposes of public performances, unless you get a CBP officer that is either ignorant of the statutes (not likely) or you actually have a case for your B1/B2 or ESTA you will be denied entry and put on the next flight back. Your ESTA status can be revoked indefinitely and if officer is in an especially bad mood may bar you from an O or P for 5 years or more.

Yet – still artists attempt this – CBP officers are very savvy when it comes to quickly googling someone's name and lo and behold state: “I see you are performing at The Crossroads tomorrow night”.

Narrow exception for conference showcase or audition provided the booking conference or audition is:

- (a) closed to the public (which means the performance is restricted to producers, promoters, agents, managers, or people who may actually engage the artist)
- (b) no tickets are sold
- (c) no fees are paid to the artist (other than actual, itemized expenses)
- (d) the artist does not intend to perform anywhere else or under any other circumstances whilst in the U.S.

However, recently

- higher rate of denied entries by CBP officers on people entering for conferences like APAP, SXSW and Arts Midwest, on the grounds that the artist/group is actually working.
- it's now advised artists go and apply for B-1/B-2 visas at a U.S. Consulate, which allows a consular officer to basically give his/her/their stamp of approval, thus alleviating the need for CBP to vet the artist's intended purpose in the US. and that they have no other performances during the trip
- still need to present the consular office with the same sort of documentation as they would a CBP officer, but at least there is more opportunity to discuss the nature of the trip with the consular officer.
- if trying to enter with ESTA or applying for a B1/B2 at the consular level need:
 - letter from conference or audition stating that closed to public, no fee being paid artist, no tickets being sold

I tend to err on the side of caution and recommend applying for a B-1/B-2 from a consular office.

But, if you are going to go through that trouble, and have confirmed performance dates around the same time as the conference or audition, then might as well just get an O or P, which would then erase any doubt from CBP's mind about their ability to "work" in the US.

O & P Visa Classifications

O-1B - For an individual artist of extraordinary ability/distinction

O-1 visas are for a principal performer or creator - the person who has significant creative input or responsibilities. including performer, director, set designer, lighting director, sound designer, choreographer, conductor, arranger, costume designer, make up artist, fight master, stage technician or animal trainer.

An O-1 visa can be approved for up to a maximum of three (3) years. One must have signed contracts, deal memos or letters of intent that span the time period requested. Gaps between USA performances cannot exceed 5-5.5 months. A 3 year is extremely difficult to obtain as presenters/promoters generally will not commit that far in advance. The average O-1B is usually between 6 months and 1.5 years.

O-2 - Essential Support Personnel (including support performers) accompanying the principal O-1 Performer of Extraordinary Ability or Achievement.

You qualify for an O-2 visa if you are an integral part of the performance, motion picture or television production of the principal O-1. The O-2 person(s) are "essential support personnel" for the O-1 performer.

For the O-2 one must submit documented evidence demonstrating the person has "critical and essential skills and experience" based on a long-standing working relationship with the O-1 artist (at least 1 year) and/or perform an essential role that cannot be readily performed by other persons. This usually takes the form of a statement describing the production and the specific roles and essentiality each support person plays. Attached to this statement are brief bios (1-2 paragraphs) on each support person describing in more detail when first started working for the principal artist and their responsibilities with principal artist, and a bit on past work experience and education.

O-2 support personnel includes support musicians, sound and light technicians, road managers, stage managers, costume persons, rehearsal coach, make up person, wardrobe, etc. – anyone essential to the principal O-1.

The O-2 petition is a separate petition from the principal O-1, though submitted to USCIS in conjunction with the O-1B petition. The duration of the O-2 visa will be the same as the principal O-1B.

P-1B - Internationally Recognized Entertainment Group

(music ensembles, dance, theatre, circus companies, performance groups)

The definition of an "internationally recognized entertainment group" is similar to that for an O-1 (extraordinary ability/distinction), and equally stringent. It is the reputation of the group that must be demonstrated, not the individual achievements of its members. The group must be acclaimed in more than its home country, though cases can be made to override this due to geographical or political circumstances, and, in the case of Canadian or Mexican artists, the United States is the logical next territory. USCIS may also be flexible with its definition of *international recognition* if the group in question has an outstanding national reputation that has led to invites to perform outside its home country.

75% rule:

With the P-1 75% of the group's members must have been with the group for at least one (1) year. Full-time employment is not a requirement, but the members must be regularly employed by the group. USCIS will waive the 75% rule if:

- someone in the group is replaced (at the time of the petition) due to illness or "exigent circumstances"
- the alien(s) is augmenting the group temporarily for a particular production/event
- for dance, theatre and circus companies it is often the case that performers move on or are injured and there is an acceptable clause one uses in the petition.

USCIS offers no tips for duos and trios, but in general, USCIS is somewhat flexible with this ruling for them – especially if the duo, trio, quartet fully satisfies the P-1B requirements.

A P-1 visa is approved for up to a maximum of one year for a specific performance or tour. One must have signed contracts, deal memos or letters of intent that span the time period requested. Gaps between USA performances with a P-1B cannot exceed 2.5 months.

Tip:

In cases where one cannot satisfy the criteria for a P but there is say one person within the group that could qualify as an O, it can sometimes be more efficient and safer to designate that person as an O-1 and all other personnel as O-2 support personnel.

P-1S Support Personnel to principal P-1B

If the principal P has essential support personnel one files an accompanying P-1S petition. As with the O-2 it is a separate petition, though submitted to USCIS in conjunction with the principal P-1 petition.

Support personnel include sound and light technicians, road managers, stage managers, costume persons, rehearsal coach, make up person, etc. – anyone essential to the principal P-1.

You must submit documented evidence establishing the "essential role, critical skills and experience" of the support person(s) to the group. This takes the form of a statement describing the production and the specific roles and essentiality each support person plays. Attached to this statement are brief bios (1-2 paragraphs) on each support person with their past experience, when first joined the principal P-1B and duties on the road.

P-2 - Participant(s) in a Reciprocal Exchange Program

You qualify for a P-2 if you are coming to the USA temporarily to perform as an artist or entertainer, individually or as part of a group, under a reciprocal exchange program between an organization in the U.S. and an organization in another country.

The sponsoring organization in the U.S. must file the petition.

P-2 petition must include:

1. written consultation with the appropriate labor organization(s);
2. a copy of the formal reciprocal exchange agreement between the U.S. organization(s) sponsoring the aliens, and the organization(s) in a foreign country which will receive the U.S. artists;
3. a statement from the sponsoring organization describing the reciprocal exchange, including the name of the receiving organization abroad, names and occupations of U.S. artists or entertainers being sent abroad, length of their stay, activities in which they will be engaged and the terms and conditions of their employment;
4. evidence the aliens and the U.S. artists are experienced artists with comparable skills and that the terms and conditions of employment are similar

For **Canadian** artists and groups – both the American Federation of Musicians and the Actors Equity Association exchange between Canadian and American chapters. The American Federation of Musicians will be the petitioner, and you should contact the Toronto office for details. Actors Equity will provide the necessary exchange documentation for your presenter to submit.

Petitions for support personnel must be filed on a separate form but submitted in conjunction with the petition for the main performer(s).

A P-2 visa is approved for up to a maximum of one year.

P-3

Culturally Unique Performers, Performing Groups, Teachers or Coaches

You qualify for a P-3 visa if you are a "culturally unique" individual performing artist or entertainment group coming to perform, teach or coach under a commercial or non-commercial "culturally unique" program.

"Culturally unique" means "a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe or other group of persons." For the P-3 classification there is no specific time the members have to have been together.

USCIS allows one to be fairly broad in demonstrating "culturally unique". Generally letters from recognized experts, testimonials and affidavits are sufficient. One can also demonstrate cultural uniqueness through press reviews, articles, letters from foreign governments, awards, prizes and other promotional materials.

The P-3 individual or group must be performing for a culturally unique event or series. This can be demonstrated with the support letter(s) submitted by the presenter(s) describing the cultural series the performer or group will be on and a statement from the performer or group that they will be presenting a program of culturally unique repertoire.

A P-3 visa is approved for up to a maximum of one year for a specific performance or tour. Extensions for continuing or completing the same activity must be requested on a new I-129 Form and may be approved in one-year increments.

Spouses and Dependents

The spouse and unmarried children accompanying an O or P performing artist or essential support person may qualify for an O-3 or P-4 visa (depending on the related performer's visa classification). Accompanying dependents must provide evidence of their relationship to the beneficiary at the time of application for the beneficiary's visa (at a U.S. embassy and consulate, POE or pre-flight inspection).

One does not include spouse or dependents on the beneficiary's USCIS Form I-129.

If the spouse/dependent(s) are **Canadian** citizens, presenting proof of relationship, together with principal beneficiary's I-797 Approval Notice and valid passport suffices at a port of entry or pre-flight inspection.

If the spouse/dependent(s) are not Canadian citizens, they will use the principal beneficiary's I-797 Approval Notice to obtain their visas at a U.S. consulate abroad.

The spouse/dependent(s) of an alien with an O or P visa are not allowed to work, unless they file their own I-129 petition. The duration of a dependent's stay in the U.S. is the same as the primary beneficiary.

Tip:

Avoid spouse/dependent(s) joining the principal beneficiary after he/she is in the U.S. Obtain visas for spouse and dependents at the same time you do for the principal beneficiary.