

## **9 FAM 41.56 ATHLETES, ARTISTS, AND ENTERTAINERS**

*(CT:VISA-1570; 10-04-2010)  
(Office of Origin: CA/VO/L/R)*

### **9 FAM 41.56 RELATED STATUTORY PROVISIONS**

*(CT:VISA-1570; 10-04-2010)*

See INA 101(a)(15)(P) (8 U.S.C. 1101(a)(15)(P)), INA 214(a)(2)(B) (8 U.S.C. 1184(a)(2)(B)), INA 214(c), in part (8 U.S.C. 1184(c), in part).

#### **INA 101(A)(15)(P)**

- (15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens:
- (P) an alien having a foreign residence which the alien has no intention of abandoning who—
    - (i) (I) is described in section 214(c)(4)(A) of this title (relating to athletes), or
    - (II) is described in section 214(c)(4)(B) of this title (relating to entertainment groups);
    - (ii) (I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and
    - (II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers;
    - (iii) (I) performs as an artist or entertainer, individually or

- as part of a group, or is an integral part of the performance of such a group, and
- (II) seeks to enter the United States temporarily and solely to perform, teach, or coach as such an artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique; or
- (iv) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien;

**INA 214(A)(2)(B)**

- (B) (i) The period of authorized status as a nonimmigrant described in section 101(a)(15)(P) shall be for such period as the Attorney General may specify in order to provide for the competition, event, or performance for which the nonimmigrant is admitted. In the case of non-immigrants admitted as individual athletes under section 101(a)(15)(P), the period of authorized status may be for an initial period (not to exceed 5 years) during which the nonimmigrant will perform as an athlete and such period may be extended by the Attorney General for an additional period of up to 5 years.

**INA 214(c), in part**

- c. (1) The question of importing any alien as a nonimmigrant under section 101(a)(15)(H), (L), (O), or (P)(i) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information, as the Attorney General shall prescribe. The approval of such petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant..
- (4)(A) For the purposes of section 101(a)(15)(P)(i)(a), an alien is described in this subparagraph if the alien—
  - (i) Performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, and
  - (ii) Seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

- (B) (i) For purposes of section 101(a)(15)(P)(i)(b), an alien is described in this subparagraph if the alien—
    - (I) Performs with or is an integral and essential part of the performance of an entertainment group that has (except as provided in clause(ii)) been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time,
    - (II) In the case of a performer or entertainer, except as provided in clause (iii), has had a sustained and substantial relationship with that group (ordinarily for at least one year) and provides functions integral to the performance of the group, and
    - (III) Seeks to enter the United States temporarily and solely for the purpose of performing as such a performer or entertainer or as an integral and essential part of a performance.
  - (ii) In the case of an entertainment group that is recognized nationally as being outstanding in its discipline for a sustained and substantial period of time, the Attorney General may, in consideration of special circumstances, waive the international recognition requirement of clause (i)(I).
  - (iii) (I) The one-year relationship requirement of clause (i)  
(II) shall not apply to 25 percent of the performers and entertainers in the group.  
(III) The Attorney General may waive such one-year relationship requirement for an alien who because of illness or unanticipated and exigent circumstances replaces an essential member of the group and for an alien who augments the group by performing a critical role.
  - (iv) The requirements of sub clauses (I) and (II) of clause (i) shall not apply to alien circus personnel who perform as part of a circus or circus group or who constitute an integral and essential part of the performance of such circus or circus group, but only if such personnel are entering the United States to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time or as part of such a circus.
- (C) A person may petition the Attorney General for classification of an alien as a nonimmigrant under section 101(a)(15)(P).

- (D) The Attorney General shall approve petitions under this subsection with respect to non-immigrants described in clause (i) or (iii) of section 101(a)(15)(P) only after consultation in accordance with paragraph (6).
- (E) The Attorney General shall approve petitions under this subsection for non-immigrants described in section 101(a)(15)(P)(ii) only after consultation with labor organizations representing artists and entertainers in the United States.
- (5)(B) In the case of an alien who enters the United States in nonimmigrant status under section 101(a)(15)(O) or 101(a)(15)(P) and whose employment terminates for reasons other than voluntary resignations, the employer whose offer of employment formed the basis of such nonimmigrant status and the petitioner are jointly and severally liable for the reasonable cost of return transportation of the alien abroad. The petitioner shall provide assurance satisfactory to the Attorney General that the reasonable cost of that transportation will be provided.
- (6)(A) (iii) To meet the consultation requirement of paragraph (4)(D) in the case of a petition for a nonimmigrant described in section 101(a)(15)(P)(i) or 101(a)(15)(P)(iii), the petitioner shall submit with the petition an advisory opinion from a labor organization with expertise in the specific field of athletics or entertainment involved.
- (B) To meet the consultation requirements of subparagraph (A), unless the petitioner submits with the petition an advisory opinion from an appropriate labor organization, the Attorney General shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization within 5 days of the date of receipt of the petition. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, that representatives shall be the appropriate labor organization.
- (C) In those cases in which a petitioner described in subparagraph (A) establishes that an appropriate peer group (including a labor organization) does not exist, the Attorney General shall adjudicate the petition without requiring an advisory opinion....
- (E) (i) The Attorney General shall establish by regulation expedited consultation procedures in the case of nonimmigrant artists or entertainers described in section 101(a)(15)(O) or 101(a)(15)(P) to accommodate the exigencies and scheduling of a given production or event.

- (ii) The Attorney General shall establish by regulation expedited consultation procedures in the case of nonimmigrant athletes described in section 101(a)(15)(O)(i) or 101(a)(15)(P)(i) in the case of emergency circumstances (including trades during a season).

## 9 FAM 41.56 RELATED REGULATORY PROVISIONS

(CT:VISA-1570; 10-04-2010)

See 22 CFR 41.56

### **Section 41.56 Athletes, artists and entertainers.**

- (a) *Requirements for P classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(P) if:
  - (1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and either
  - (2) With respect to the principal alien, the consular officer has received official evidence of the approval by DHS of a petition to accord such classification or of the extension by DHS of the period of authorized stay in such classification; or
  - (3) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.
- (b) *Approval of visa.* The approval of a petition by DHS does not establish that the alien is eligible to receive a nonimmigrant visa.
- (c) *Validity of visa.* The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, confirmation, or extension of stay required in paragraph (a)(2) of this section.
- (d) *Alien not entitled to P classification.* The consular officer must suspend action on the alien's application and submit a report to the approving DHS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(P) is not entitled to the classification as approved.

[57 FR 31450, July 16, 1992; as amended at 61 FR 1833, Jan. 24, 1996]