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## U.S. VISA OPTIONS FOR THE ENTERTAINMENT INDUSTRY

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### I. OVERVIEW

Since many production companies are interested in taking their business and/or professionals to the U.S., it has become increasingly difficult for members of the entertainment profession to cross the U.S. border. Below, we provide your company with a range of possible visa options to facilitate the entry of your producers, directors, and other essential support personnel such as film crew and technicians into the U.S.

There are a number of non-immigrant (temporary) visa categories available for professionals in the entertainment industry. In determining what type of visa a director, producer, or other members of the production team will need, it is important to consider the type of work they will engage in, the wages they will receive, and the entity they will be affiliated with in the U.S.

The process for petitioning for these visas generally requires the prospective U.S. employer or agent to file a Form I-129 Petition for Non-Immigrant Work with the U.S. Citizenship and Immigration Services (USCIS). In addition, the petition is accompanied by significant supporting documentation and a detailed legal submission. The Bomza Law Group assists with the preparation of the entire petition package including compilation of the most relevant supporting document and presentation of the strongest legal arguments. Most petitions are eligible for Premium Processing Service, which means that the USCIS can adjudicate the petition within 15 business days for an additional charge of USD\$1000. Upon approval of the petition and depending upon the nationality of the individual, they will appear for a consular interview or present themselves for admission at a U.S. Port of Entry to obtain the final visa stamp.

### II. NON-IMMIGRANT (TEMPORARY) VISA OPTIONS

#### a. B-1 VISA – BUSINESS VISITOR

Before looking at the various work visa options, it is possible that your industry professional may be permitted to enter the U.S. as a Business Visitor and not require a visa at all. Travelling to the U.S. as a Business Visitor generally requires the industry professional to engage in legitimate commercial or professional activities while the principal place of business and actual accrual of profits remain predominantly in the foreign country. The main advantage of the Business Visitor category is that there is no petitioning

process with USCIS in advance. Canadian citizens may apply for entry directly at the border with the recommended documentation.

The B-1 Business Visitor visa may be appropriate in the following circumstances:

1. Individuals entering the U.S. to participate in a cultural program *sponsored by a foreign government* in order to perform to a non-paying audience, and having all expenses, including per diem, paid by the foreign government.
2. Members of the entertainment profession seeking entry to the U.S. for academic activities (lecturing, guest teaching, performing in an academic-sponsored festival) which last no longer than 9 days at any single institution and the artist or entertainer has not accepted honorariums from more than 5 institutions/organization in the previous 6 month period;
3. Members of the entertainment profession travelling to the U.S. to participate in a competition for which there is no payment other than an award or prize;
4. A musician seeking entry solely to use facilities for recording purposes and the recording will be distributed and *sold only outside the U.S.* and there will not be any public performance.

Most other industry professionals will require a work visa to enter the U.S. and engage in their work. Below are the most commonly used visas in the entertainment profession.

#### **b. I VISA – MEMBERS OF THE FOREIGN MEDIA**

*Visa Description:* Since representatives of the foreign media are not permitted to enter the U.S. under the Visa Waiver Program or as Business Visitors, the I visa is the perfect visa option for your industry professionals who are members of the foreign media and wish to travel to the U.S. on assignment to engage in their line of work. Representatives of the foreign media include members of the press, radio, or film whose *activities are essential to the foreign media function*, such as reporters, film crews, editors and persons in similar occupations. Members of the foreign media who are engaged in the production or distribution of film, including employees of independent production companies, may also qualify for the I visa if the material being filmed will be used to disseminate information or news and are generally associated with journalism. The I visa category also permits film production and distribution which is informational or educational.

If you determine that your project is more commercial in nature or for entertainment value, you might consider the O-1 visa or P-1 visas described below.

In addition, foreign journalists working for an overseas branch of a U.S. media organization may be eligible for the I visa, as long as they are seeking entry into the U.S. to report on U.S. news events for a foreign audience and they will continue to be remunerated by the foreign-based office. Freelance journalists may also be eligible for an I visa if they are under a contract to a media organization.

*Derivative Visas:* A derivative I visa may be issued for dependents, a spouse and minor children of the principal I visa holder. A derivative I visa holder is not permitted to work in the U.S.

*Visa Duration:* I visas are generally issued for the duration needed to complete the project and may be extended in one year increments.

#### **c. O VISA – INDIVIDUALS OF EXTRAORDINARY ABILITY**

*Visa Description:* The O-1 visa category is a great visa option for those individuals who demonstrate extraordinary ability in the industry. This visa category is appropriate for individuals who have risen to the top of their field in the arts or motion picture and television production, as demonstrated by sustained national or international acclaim. “Extraordinary ability” means that the industry professional has a high level of achievement in the arts, evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that the person is described as prominent is renowned, leading, or well-known in the field. To qualify for this visa, the petitioner must demonstrate either (1) that the individual has been nominated for or has received a significant national or international award, *or* (2) that the individual meets *at least three* of the following criteria:

1. Has performed or will perform services as a lead/starring participant in productions or events with distinguished reputations as shown by critical reviews, ads, publicity releases, publications, contracts or endorsements;
2. Has received national or international recognition for achievements through critical reviews, other published materials by or about the beneficiary in major papers, trade journals, magazines, etc.;
3. Has performed in a lead, starring or critical role for organizations and establishments that have a distinguished reputation evidenced by media articles, testimonials, etc.;
4. Has a record of major commercial or critically acclaimed success;

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5. Has achieved significant recognition from organizations, critics, government agencies, and/or recognized experts;
6. Has commanded or will command a high salary or other remuneration in relation to others in the field.

Members of the entertainment profession seeking entry in connection with *motion picture or television productions* must satisfy an additional standard, namely that they must demonstrate a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered, to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field. In general, a consultation from the appropriate labor union or peer group with expertise in the field is required before an O visa petition can be adjudicated.

The O-2 visa classification is for individuals accompanying the O-1 visa holder in a specific event or performance. O-2 individuals must be an integral part of such events and they must possess critical skills and experience in the field.

*Derivative Visas:* The O-3 category is for dependents, including the spouse and minor children of the O-1 visa holder.

*Visa Duration:* O-1 visas are generally issued for the duration of the event or activity, with a maximum length of 3 years, and are eligible for extensions in 1 year increments.

**d. L-1 VISA – INTRA-COMPANY TRANSFER – MANAGERS/EXECUTIVES OR SPECIALIZED KNOWLEDGE PROFESSIONALS**

*Visa Description:* L-1 visas are an excellent opportunity for production companies who either want to expand into the U.S. market or to transfer industry professionals to a U.S. division. There are three initial requirements for an L-1 visa application: (1) the employee must have been employed by the foreign entity outside the U.S. for at least one year in the past three years, (2) the employee must have worked as an executive/senior manager (L-1A), or specialized knowledge capacity (L-1B), and (3) the employee is being transferred to either a U.S. new office, parent, branch, subsidiary, or affiliate of the foreign employer. This visa category is ideal for production companies who have U.S. affiliates or who are considering expanding their business to the U.S. market.

*Derivative Visas:* The L-2 visa category is for dependents, including the spouse and minor children of the principal L-1 visa holder. The L-2 visa holder is eligible to obtain work authorization upon entering the U.S. and filing the appropriate application.

*Visa Duration:* L-1A visas (executives/senior managers) are valid for up to seven years, and the L-1B visa (specialized knowledge workers) is eligible for up to five years. Employees entering to open a new office are eligible for an initial visa of one year.

**e. H-1B VISA – SPECIALITY OCCUPATION PROFESSIONALS**

*Visa Description:* This visa is for professionals in specialty occupations who are seeking to enter the U.S. to work in their field of expertise. This visa category may be appropriate for your industry professionals who have a temporary offer of employment from a U.S. employer and who possess a bachelor's degree or its equivalent as demonstrated through professional experience. "Specialty occupations" may include film and video directors, producers, writers, and editors, among many others. Where the individual is entering the U.S. to work for a U.S. company and they are offering the industry professional a prevailing wage, the H-1B visa is a great long-term option.

*Derivative Visas:* H-4 visas are for dependents, including the spouse and minor children of the principal H-1B visa holder. H-4 visa holders are not permitted to work in the U.S.

*Visa Duration:* The H-1B visa is issued for an initial three year period and may be extended for an additional three year period.

**f. P VISA – PERFORMING GROUPS AND CULTURALLY UNIQUE PERFORMERS**

*Visa Description:* P-1 visas are for entertainment groups (two or more individuals) who are internationally recognized as outstanding and who seek entry to the U.S. to perform at a specific entertainment performance. The P-1 visa is not for individual performers. The P-1 visa is evaluated on the group's reputation. Furthermore, the petitioner must establish that (1) the group has been established and performing regularly for a period of at least one year, (2) each member has had a sustained and substantial relationship with the group ordinarily for at least one year, and (3) the group has been internationally recognized in the discipline for a sustained and substantial period of time. Moreover, "internationally recognized" is defined as a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country. International recognition may be demonstrated through the group's nomination for or receipt of a significant international award, or by establishing *at least three* of the following criteria:

1. Performed as a starring or leading entertainment group in productions or events which have a distinguished reputation;
2. Achieved international recognition and acclaim for outstanding achievement;

3. Performed services as a leading or starring group for organizations and establishments that have a distinguished reputation;
4. Established a record of major commercial or critically acclaimed successes;
5. Achieved significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field;
6. Either commanded a high salary or will command a high salary or other substantial remuneration for services comparable to others similarly situated in the field.

In general, a consultation from the appropriate labor union or peer group with expertise in the field is required before a P visa petition can be adjudicated, except if the petitioner can demonstrate that no appropriate organization exists.

P-2 visas are for individuals coming temporarily to the U.S. to perform as an artist or entertainer, individually or as part of a group, under a *reciprocal exchange program* between the United States and a foreign country.

P-3 visas are for individuals coming temporarily to the U.S. to perform, teach, or coach as an artist or entertainer, individually or as part of a group under a commercial or noncommercial program that is *culturally unique*.

*Derivative Visas:* P-4 visas are for dependents, spouse and minor children of the principal P visa holder. P-4 visa holders are not permitted to work in the U.S.

*Visa Duration:* P-1 visas are generally issued for the duration needed to complete the event or performance, and not to exceed one year. The same rules apply for the P-2 and P-3 visas. Extensions may be granted to P visas holders for up to one year at a time in order to continue the activity for which they were admitted.

### **III. RECOMMENDED STRATEGIES**

Before deciding that your industry professional needs a visa, take a look at whether they fit into the Business Visitor category. Contact the Bomza Law Group to assist you in determining visa eligibility for your industry professionals and the best-suited visa option for each individual. If we determine that your industry professional does not quite fit as a Business Visitor, we will help you explore the other visa options and find the most appropriate category for the selected individual and your company's needs. Early planning is strongly recommended. If your company knows that it will have a production in a few months or a year, initiating the visa application process sooner rather than later is to everyone's advantage. We will ensure that your applications are detailed and have a strong

set of supporting documents to facilitate favorable processing. Additionally, we will assess each individual's admissibility, taking into consideration any past immigration violations or criminal history. Finally, we understand that there is a degree of subjectivity in these applications and will make sure that we assist your company in putting its best-foot-forward in submitting the strongest application possible.

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