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June 19, 2014

Ms. Lori Scialabba
Acting Director,
United States Citizenship & Immigration Services
111 Massachusetts Avenue, NW
Washington, DC 20001

Dear Acting Director Scialabba:

As you know, the House Judiciary Committee has primary jurisdiction over the United States Citizenship & Immigration Services (USCIS) visa petition review process. With that in mind, we write to inquire about the statutorily mandated process for O-1 and O-2 visa petition evaluations.

Sections 214(c)(3)(A) and (B) of the Immigration and Nationality Act (8 U.S.C. 1184)¹ provide that, for aliens seeking entry for a motion picture or television production, USCIS can approve a petition only "after consultation with the appropriate union representing the alien's occupational peers *and* a management organization in the area of the alien's ability." The joint role of these consulting organizations in the O-1 and O-2 review process is to provide non-binding advisory opinions to USCIS. These advisory opinions are valuable because consulting organizations have expertise in the motion picture industry. In particular, they understand how to evaluate a beneficiary's qualifications as compared to U.S. workers employed in the same category and how to identify characteristics and trends in petitions that raise the potential of fraud.

It has been suggested that USCIS has a regular practice of granting O-1 and O-2 visas to beneficiaries over objections raised by consulting organizations. It seems that, at the very least, USCIS should be notifying these organizations when it approves petitions over their objections.

¹ The Attorney General shall approve a petition –

- (A) With respect to a nonimmigrant described in section 101(a)(15)(O)(i) only after consultation in accordance with paragraph (6) or, with respect to aliens seeking entry for a motion picture or television production, after consultation with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability, or
- (B) With respect to a nonimmigrant described in section 101(a)(15)(O)(ii) after consultation in accordance with paragraph (6) or, in the case of such an alien seeking entry for a motion picture or television production, after consultation with such a labor organization and a management organization in the area of the alien's ability.

However, we are told that such organizations are rarely if ever notified regarding the outcome of petitions to which they object. Ensuring transparency in the adjudication process for any visa program is essential to a secure and effective immigration policy and therefore we are concerned about the reported potential for fraud in O-1 and O-2 visa petitions. The current lack of transparency regarding in the O-1 and O-2 review process may play a role in facilitating unqualified foreign workers entering the country on fraudulently obtained visas.

Decisions to grant these visas are of the utmost importance to Congress for both enforcement reasons and to protect American jobs. We should therefore consider how best to ensure that the objections of consulting organizations with expertise in the motion picture industry are given proper weight. With this in mind, we ask you to provide prompt responses to the following questions:

- 1) With respect to O-1 and O-2 visas in the motion picture and television industries, how many petitions did USCIS receive in 2012 and 2013, and what is the breakdown of approvals and denials? Please indicate the labor and management organizations that provided advisory opinions for each petition.
- 2) How many of these petitions were objected to by either the labor *or* management organizations that provided advisory opinions?
- 3) How many of these petitions were approved over the objections of either the labor *or* management organizations that provided advisory opinions?
- 4) To what extent has USCIS focused its petition analysis on "red flags" such as speculative or fictional itineraries and would-be employers who are of questionable validity?
- 5) In cases where these petitions were approved over objections, why did USCIS fail to notify the consulting organizations and provide a rationale for why the petition was approved over their objections?

We look forward to your prompt response.

Sincerely,



Bob Goodlatte
Chairman



John Conyers, Jr.
Ranking Member