

## Performing Arts Visa Working Group

July 6, 2016

Regulatory Coordination Division  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
20 Massachusetts Avenue, NW  
Washington, DC 20529-2020

*Via Web Portal*

Re: DHS Docket No. USCIS-2016-0001

On behalf of the Performing Arts Visa Working Group, we submit these comments in response to the proposed rule published in 81 Fed. Reg. 26903 (May 4, 2016) to adjust the U.S. Citizenship and Immigration Services (USCIS) immigration and naturalization benefit application and petition fee schedule.

The Performing Arts Visa Working Group includes the American Association of Independent Music, American Federation of Musicians of the United States and Canada, Association of Performing Arts Presenters, Dance/USA, Folk Alliance International, Fractured Atlas, League of American Orchestras, North American Performing Arts Managers and Agents, OPERA America, Performing Arts Alliance, The Recording Academy, South by Southwest Conference and Festivals, Tamizdat, and Theatre Communications Group. Descriptions of the participating organizations are attached.

The Performing Arts Visa Working Group is dedicated to improving opportunities for international cultural exchange. As an industry, we field many inquiries from, and provide technical assistance to, U.S.-based arts organizations and artist managers from all regions of the country and in communities of all sizes undertaking the O and P visa petition process. We also serve international arts organizations and artists with guidance for successfully navigating the U.S. visa requirements. Inviting foreign artists to perform in the U.S. enables American audiences to experience a diversity of artistic talent and encourages a supportive climate for U.S. artists to perform abroad.

### **Any fee increase must be accompanied by immediate and measurable improvements to the O and P artist visa process.**

We object to the steep increase in the filing fee and urge USCIS to consider a more gradual fee increase. Under the proposal, the fee for filing the I-129 petition for an O or P artist visa would increase from \$325 to \$460, a 42% increase in cost per-petition that will have a significant financial impact on U.S.-based petitioners. While we acknowledge that the visa process is primarily supported by fees, and that the last fee increase took place in November 2010, the proposed increase appears to be out of sync with the reported 9.4% increase (see 26923) in the workload volume for I-129 petitions since 2010. The petitioners served by our organizations are primarily nonprofit organizations, small entities, and artists whose mission is to serve their communities through the arts. The budgets that support presenting international artists are extremely lean, and accommodating the fee increase will be very challenging.

This proposal to increase the cost burden for those endeavoring to bring international artists to the U.S. comes at a time when confidence in the USCIS petition adjudication process is very low. At 26928, the published rule states, “As USCIS is nearly fully funded by fees, adjustment to the fee schedule is necessary to recover costs and maintain adequate service.” We urge USCIS to ensure that any fee increase is accompanied not merely by a maintenance of service, but by significant policy improvements. The current quality of service is insufficient, inconsistent, and creates harmful barriers to international cultural activity. Any increase in the regular processing fee must be accompanied by proven and consistent implementation of the current 14-day statutory requirement for regular O and P processing times and immediate improvements to the quality of petition adjudication.

**We support USCIS plans to make no increase to the Premium Processing Service fee.**

USCIS failure to make improvements in the regular petition process has forced many nonprofit performing arts organizations to pay the \$1,225 Premium Processing Service fee, or risk extreme financial and reputational harm by canceling planned performances by international guest artists. The Premium Processing Service comes at a cost that is both is unaffordable and unsustainable. Given the extremely harmful inefficiencies of the regular petition process, any increase in the Premium Processing fee would impose an excessive burden on nonprofit performing arts petitioners. We therefore support the decision by USCIS to make no further increase to the Premium Processing Service fee at this time.

**Reduce the maximum processing times for adjudicating regularly-filed O and P petitions.**

Section 214(c)(6)(D) of the Immigration and Nationality Act states that USCIS “shall” adjudicate a fully-submitted petition within 14 days. From the inception of the current O and P provisions on April 1, 1992, until the advent of premium processing in the summer of 2001, Legacy INS complied with this statutory requirement. With premium processing in place, however, Legacy INS and, later, USCIS compliance with this provision has been extremely inconsistent. In a March 30, 2016 national O and P stakeholder forum, leadership from USCIS Service Center Operations stated a commitment to reduce regular processing to the statutorily mandated 14-day timeframe and to improve the policy guidance and training for adjudicators regarding the standards of evidence required for O and P visas. We applaud USCIS for this stated commitment, but fear that these policy improvements will be too long in coming. We urge USCIS to immediately demonstrate measurable progress towards these goals.

The processing times for O and P petitions filed by the regular petition process are currently unpredictable and can vary dramatically, as acknowledged at 26910, where USCIS cites lagging processing times and extreme backlogs. The impact of the erratic timeframe in which petitions are processed is amplified by the sheer volume of unwarranted Requests for Evidence (RFEs) and denials issued by service centers. Petitions submitted for standard processing to the Vermont Service Center are currently subject to wait times exceeding 90 days. This has been the case for at least the past six months. To engage foreign guest artists and facilitate international cultural exchange, the arts community must be able to rely upon the 14-day maximum regular visa processing period as required by statute and verified by USCIS as their stated goal.

**Improve the reliability and consistency of adjudications of O and P petitions.**

The USCIS has announced an effort underway to review O and P adjudication procedures. While this effort is in progress, there remain serious concerns with the O and P adjudications process, which require immediate attention.

- USCIS Service Centers apply the standard of distinction as it pertains to the arts under INA §101(a)(46) in a manner inconsistent with statute, regulations, and more than twenty years of practice by Legacy INS and now USCIS. Service Centers demand excessive evidence of distinction and otherwise builds ever-higher evidentiary barriers to petition approval.
- We urge USCIS to inform stakeholders as new RFE templates are finalized. The RFE template effort underway will contribute to improved predictability in both the visa petition preparation and adjudication processes. In an ideal environment, the petitioners and adjudicators will approach the petition process with a consistent understanding of the requirements for petition preparation and adjudication. Above all, the RFE should be clear, concise, and provide petitioners – most of whom are not represented by U.S. counsel – with guidance that a layman can follow. Accordingly, the RFE templates will be most helpful if they are consistent with publicly available USCIS guidance regarding petition preparation.
- At 26910, USCIS states that it will create an improved process for more accurately reporting processing times online. We urge USCIS to take this action immediately. Outdated processing times as reported online inhibit the ability of petitioners to plan in advance of performances. The processing times reported publicly to petitioners are also the timeframes referenced by operators fielding calls through the National Customer Service Center (NCSC). The protocols established by NCSC dictate that the Center may not fully respond to the inquiries from callers until a petition falls outside the publicly-stated processing times. Until processing times are more accurately posted, NCSC fails to be a helpful resource to petitioners.

We applaud USCIS for elevating the O and P petition process as a priority for review and further appreciate the multiple recent efforts by the USCIS Service Center Operations division and Public Engagement offices to invite stakeholder feedback regarding petitioner experiences. At this juncture, we urge USCIS to act as swiftly as possible to implement policy, training, and adjudication improvements that will advance the cultural and artistic interests of the United States.

**Implement uniform policies to improve access to the “traditional expedite” service.**

The USCIS has made traditional expedite processing available at no additional fee in cases where petitioners, through no fault of their own, experience an unforeseen emergency, and where failure to expedite the petition will result in serious harm, economically or otherwise, to the petitioner. Since implementing the Premium Process Service, the USCIS has allowed non-profit organizations to remain eligible for the traditional expedite. However, the USCIS standards for granting expedited processing requests are unclear, often forcing petitioners to file the Premium Processing Service and pay the \$1,225 fee. The traditional expedite is not helpful, nor a viable expedite option for petitioners, unless there are clear, uniform policies appropriately followed and administered by USCIS. As USCIS works toward its stated goal of 14-day processing, it

must immediately reactivate the traditional expedite process, train National Customer Service Center staff to accommodate requests, and train Service Center personnel on administering the process.

**Adequately inform petitioners and train USCIS personnel on the fee increase schedule.**

Finally, we urge USCIS to ensure that implementation of any fee increase takes place with adequate advance notice to petitioners and effective related training for adjudicators. In the weeks surrounding the previous fee increases, petitions submitted with the appropriate fee were erroneously rejected by USCIS service centers, jeopardizing time-sensitive performing arts events. Appropriate steps must be taken to ensure that the proposed fee increase does not result in unwarranted petition rejections.

We have sought to illustrate in these comments that an increase in regular processing fees must be accompanied by immediate and consistent improvement in the adjudication procedures and processing timeframe for O and P petitions. In July 2010, then-Director Mayorkas publicly announced a commitment to reduce visa processing times to 14 days, and that promise was fulfilled with several years of improved processing times. In the remaining months of 2016, the Administration can once again take action that will feel like meaningful help to the U.S. arts community and our global partners by producing measurable improvements to the U.S. visa process. Thank you for the opportunity to comment on this proposed rulemaking.

Sincerely,

**American Association of Independent Music  
American Federation of Musicians of the United States and Canada  
Association of Performing Arts Presenters  
Dance/USA  
Folk Alliance International  
Fractured Atlas  
League of American Orchestras  
North American Performing Arts Managers and Agents  
OPERA America  
Performing Arts Alliance  
The Recording Academy  
South by Southwest Conference and Festivals  
Tamizdat  
Theatre Communications Group**

## PERFORMING ARTS VISA WORKING GROUP

### **American Association of Independent Music**

The American Association of Independent Music is an organization of independent music labels that promotes business opportunity, provides advocacy and representation, as well as networking opportunities for the independent label community. It represents a broad coalition of over 350 Independent, primarily American-owned record label small and medium-sized enterprises across all genres.

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### **American Federation of Musicians of the United States and Canada**

The American Federation of Musicians of the United States and Canada (AFM) is the largest organization in the world dedicated to representing the interests of professional musicians. The AFM's more than 100,000 members perform all styles of music: alternative, rock, classical, pop, gospel, jazz, country, folk, big band, reggae, contemporary Christian, to name just a few.

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### **Association of Performing Arts Presenters**

Founded in 1957, the Association of Performing Arts Presenters (Arts Presenters) is the largest service and advocacy organization for the presenting and touring field in the United States. With more than 1,700 members worldwide, Arts Presenters represents colleges and universities; performing arts centers; regional, state, and local arts agencies; festivals; historic theaters; community centers, artists and artists managements. Arts Presenters is committed to increasing community participation, promoting global cultural exchange and fostering an environment for the performing arts to thrive. A leader in the field, Arts Presenters works to effect change through professional development, resource sharing and civic engagement.

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### **Dance/USA**

Dance/USA, the national service organization for not-for-profit professional dance, seeks to advance the art form by addressing the needs, concerns and interests of professional dance. To fulfill its mission, Dance/USA offers a variety of programs for the membership and arts community, including data research and regional professional development, as well as works with organizations within and outside the arts field with whom common goals are shared. Dance/USA's membership currently consists of over 400 ballet, modern, ethnic, jazz, culturally specific, traditional and tap companies, dance service and presenting organizations, artist managers, individuals, and other organizations nationally and internationally. Dance/USA's member companies range in size from operating budgets of under \$50,000 to over \$30 million.

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**Folk Alliance International**

Folk Alliance International (FAI) exists to nurture, engage and empower the international folk music community — traditional and contemporary, amateur and professional — through education, advocacy and performance. In addition it seeks to strengthen and advance organizational and individual initiatives in folk music through networking as well as professional, field, and consumer development.

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**Fractured Atlas**

Fractured Atlas is a nonprofit technology company that creates business tools for artists and arts organizations, reaching a network of more than 400,000 artists across all 50 states and all 435 congressional districts. Based in New York and dedicated to eliminating barriers to artistic expression, Fractured Atlas provides fundraising support, insurance, technology, education, and other services critical to building sustainable careers and organizations.

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**League of American Orchestras**

The League of American Orchestras leads, supports, and champions America's orchestras and the vitality of the music they perform. Its diverse membership of more than 2,000 organizations and individuals across North America runs the gamut from world-renowned symphonies to community orchestras, from summer festivals to student and youth ensembles, from businesses serving orchestras to individuals who love symphonic music. Founded in 1942 and chartered by Congress in 1962, the League links a national network of thousands of instrumentalists, conductors, managers and administrators, board members, volunteers, and business partners.

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**North American Performing Arts Managers and Agents**

The North American Performing Arts Managers and Agents (NAPAMA) is a not-for-profit service organization, founded in 1979 and dedicated to promoting the professionalism of its members and the vitality of the performing arts. NAPAMA promotes the mutual interests of its members, their work with presenting organizations, government agencies, unions and other organizations serving the performing arts locally, nationally and internationally.

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**OPERA America**

OPERA America leads and serves the entire opera community, supporting the creation, presentation, and enjoyment of opera. Artistic services help opera companies and creative and performing artists to improve the quality of productions and increase the creation and presentation of North American works. Information, technical, and administrative services to opera companies reflect the need for strengthened leadership among staff, trustees, and volunteers. Education, audience development, and community services are designed to enhance all forms of opera appreciation. Founded in 1970, OPERA America's worldwide membership network includes nearly 200 Company Members, 300 Affiliate and Business Members, 2,000 Individual Members, and 11,000 subscribers to the association's electronic news service.

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**Performing Arts Alliance**

Founded in 1977, the Performing Arts Alliance (PAA) is a 501c4 multi-disciplinary coalition of 15 national service organizations from the professional nonprofit performing arts field. Through legislative and grassroots action, PAA advocates before Congress and key policymakers for national policies that recognize, enhance, and foster the contributions the performing arts make to America. The PAA network includes over 3,000 artists, ensembles, organizations, and supporters. PAA members include Alternate ROOTS, American Composers Forum, Association of Performing Arts Presenters, Chamber Music America, Chorus America, Dance/USA, Fractured Atlas, League of American Orchestras, National Alliance for Musical Theatre, National Association of Latino Arts and Cultures, National Performance Network, Network of Ensemble Theaters, New Music USA, OPERA America, and Theatre Communications Group.

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**The Recording Academy**

Established in 1957, The Recording Academy is an organization of musicians, songwriters, producers, engineers and recording professionals that is dedicated to improving the cultural condition and quality of life for music and its makers. Internationally known for the GRAMMY Awards - the preeminent peer-recognized award for musical excellence and the most credible brand in music - The Recording Academy is responsible for groundbreaking professional development, cultural enrichment, advocacy, education and human services programs. The Academy continues to focus on its mission of recognizing musical excellence, advocating for the well-being of music makers and ensuring music remains an indelible part of our culture.

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**South by Southwest Conference and Festivals (SXSW)**

SXSW dedicates itself to helping creative people achieve their goals. Founded in 1987 in Austin, Texas, SXSW is best known for its conference and festivals that celebrate the convergence of the interactive, film and music industries. The event, an essential destination for global professionals, features sessions, showcases, screenings, exhibitions, and a variety of networking opportunities. SXSW proves that the most unexpected discoveries happen when diverse topics and people come together. SXSW 2017 will take place March 10-19, 2017.

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**Tamizdat**

Founded in 1998, Tamizdat is a 501(c)(3) non-profit organization that facilitates international cultural exchange. It is involved with a wide range of activities, including festival showcases, tours, media distribution, education, and performing artist visa assistance. Each year, Tamizdat plays a critical role in bringing nearly 6,000 performing artists to the U.S.

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**Theatre Communications Group**

Theatre Communications Group (TCG), the national organization for the American theatre, offers a wide array of services in line with our mission: to strengthen, nurture and promote the professional not-for-profit American theatre. As the U.S. Center of the International Theatre Institute, a worldwide network, TCG supports cross-cultural exchange through travel grants and other assistance to traveling theatre professionals. TCG seeks to increase the organizational efficiency of our member theatres, cultivate and celebrate the artistic talent and achievements of the field, and promote a larger public understanding of and appreciation for the theatre field. TCG serves nearly 500 member theatres nationwide.

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