

## **Consensus Recommendations for Performing Arts Visa Policy**

February 1, 2022

The performing arts are an essential part of our global society, and in the United States there is a rich cross-section of cultures and art forms. Engaging international artists is a critical component of the arts and entertainment sector and essential to cultural diplomacy. Guest artists not only bring global talent to U.S. audiences, but the experience of performing alongside international talent is an enriching experience for U.S. artists as well. Unfortunately, by nature arts programming is uniquely time- and date-specific, so a delayed or poorly adjudicated visa petition can have severe financial and reputational consequences for a U.S. arts employer. With these many considerations in mind, a broad coalition of performing arts stakeholders have presented urgent policy requests to U.S. Citizenship & Immigration Services, the U.S. Department of State, and Customs & Border Protection. The following recommendations reflect priority areas of action by federal agencies that would present immediate relief and restore confidence in the visa process. The recommendations are organized by agency of jurisdiction, and many of which have been submitted through the Federal Register or during direct recent engagements with agency personnel. For more information about these prior submissions, please see [Appendix B](#).

### **Regarding U.S. Citizenship and Immigration Services**

- I. Maximize the arts sector’s contributions to economic recovery amid COVID-19:** Arts and cultural activity are central to economic recovery efforts, because cultural events generate a ripple effect in the travel, tourism, restaurant, and lodging industries. The full re-opening of the cultural economy relies on cost-effective means of restarting planned international performance events.
  - A. PRIORITY POLICY ASK: In the context of the COVID-19 pandemic, a win/win measure for the arts community and for CIS would be to provide the petitioners of a limited set of O and P petitions with a viable mechanism for seeking to amend petition validity dates (See [Appendix B](#), USCIS I.A).
  
- II. Implement reliable and efficient I-129 processing times:** Cultural performances are date-, time-, and location-specific. To schedule, confirm, and market highly sought-after international artists, U.S. presenters must have a visa process that is efficient and reliable. Few petitioners can afford premium processing, so most U.S. arts presenters depend on USCIS to meet the statutory mandate for regular visa processing.
  - A. PRIORITY POLICY ASK: CIS has helpfully reinstated eligibility for “expedited processing” for nonprofit petitioners whose request is in furtherance of the cultural or social interests of the United States, but for this option to be usable, USCIS must provide clearer guidance on the eligibility conditions, process, and expected processing time for accessing this service (See [Appendix B](#), USCIS II.A).
  - B. PRIORITY POLICY or “CHANGE TO CODE OF FEDERAL REGULATIONS/CFR” ASK: A policy memorandum or Policy Manual amendment, or amendment to the Code of Federal Regulations (“Federal Regulations,” “Regulations,” or “CFR”), should affirm that the Service must follow the existing statutory provision at INA §214(c)(6)(D) requiring that a fully-submitted O or P petition be adjudicated within 14 days (See [Appendix B](#), USCIS II.B).

- C. SYSTEMIC IMPROVEMENT: Many of the problems that our sector experiences are the result of seemingly minor but impactful procedural and training issues. In aggregate, these problems create significant impediments to culture and business. We recommend a number of minor but specific changes to the USCIS Policy Manual and policies that guide these procedures and training for adjudicators regarding the standards of evidence required for O and P visas (See [Appendix A](#), USCIS II.C for Executive Summary and [Appendix B](#), USCIS II.C for comprehensive proposed solutions).

**III. Support inclusion through fair implementation of evidentiary requirements and affordable fees:**

International cultural exchange uniquely supports a diversity of viewpoints in the public discourse, and contributes to international peace and mutual understanding. The United States should be easing – not increasing—the visa burden for arts organizations engaging international guest artists so that U.S. audiences can benefit from the diversity of the world’s cultures.

- A. PRIORITY POLICY ASK: Amend policy guidance to strengthen deference to prior adjudications of artist visa petitions—another win/win measure that minimizes the burden on and waste of CIS and performing arts sector resources (See [Appendix B](#), USCIS III.A).
- B. PRIORITY POLICY ASK: Amend policy guidance to simplify evidentiary requirements for beneficiaries with “frequent filer” petitioners, which would conserve both government and performing arts sector resources (See [Appendix B](#), USCIS III.B).
- C. PRIORITY POLICY ASK: Prevent disproportionate fee increases for O and P visa petitions, which often raise insurmountable cost barriers to the visa process.
- D. SYSTEMIC IMPROVEMENTS: Various policy practices around evidentiary requirements impede U.S. performing arts presenters from presenting international artists to U.S. audiences. We recommend a number of specific changes to the USCIS Policy Manual and policies to address these inequities and we recommend specific training measures for adjudicators regarding the standards of evidence required for O and P visas (See [Appendix A](#), USCIS III.C for Executive Summary and [Appendix B](#), USCIS III.C for comprehensive proposed solutions).

**Regarding U.S. Department of State**

- I. **Provide the performing arts sector with equitable access to interview waivers, consular interviews, and other services amidst COVID-19:** COVID-related capacity issues have severely impeded consular posts’ timely processing of O and P applications. Therefore, greater consideration should be given to the time- and date-specific nature of arts events, and timely issuance of O and P visas must be a State Department priority.

- A. PRIORITY POLICY ASK: After two years of COVID-related interruptions and cancellations, it cannot be emphasized enough just how essential it is that the performing arts sector be able to rely on the visa process to make plans and continue presenting. Until such time as routine consular visa processing is universally available at U.S. consulates around the world, DOS should strongly encourage all posts to grant interview waivers as broadly as possible to all eligible O and P applicants. Moreover, contracted public performances should be considered grounds for approving a request for an expedited consular interview (See [Appendix B](#), DOS I.A).
- B. PRIORITY “CHANGE TO CODE OF FEDERAL REGULATIONS/CFR” ASK: The COVID-19 pandemic has created staggering losses throughout the performing arts sector. Some of this damage could be alleviated by amending applicable provision of the Code of Federal Regulations (“Federal Regulations,” “Regulations,” or “CFR”) to provide that, for a limited number of artist

visa applicants whose tours were impacted by the COVID-19 pandemic, visa validity dates may be altered to accommodate rescheduled tours and engagements. (See [Appendix B](#), DOS I.C).

## **II. Support inclusion through clear and consistent decision- and rulemaking:**

- A. PRIORITY POLICY ASK: Provide artists with clear and reliable guidance regarding whether certain scheduled activities may be appropriately undertaken without an employment-based visa (See [Appendix B](#), DOS II.A).
- B. PRIORITY POLICY ASK: Publish a list of *bona fide* industry showcase events upon which performing artists may rely when determining whether they may enter the U.S. to attend on B-1 status (See [Appendix B](#), DOS II.B).
- C. PRIORITY POLICY ASK: Discontinue the use of Form DS-5535, which has proven to facilitate discrimination against non-immigrant artists, especially those from the Global South (See [Appendix B](#), DOS I.B).
- C. SYSTEMIC IMPROVEMENTS: A number of specific changes to DOS’s Foreign Affairs Manual and policies could increase efficiencies at DOS and contribute greatly to an improved artist visa process (See [Appendix A](#), DOS II.C for Executive Summary and [Appendix B](#)).

### **Regarding U.S. Customs and Border Protection**

- I. Support DOS’s efforts to provide U.S. presenters of international performing artists with fair and inclusive access to immigration benefits:** The enormous burden on consular posts, particularly due to the onset of COVID-19, has at times prevented them from issuing visas in a timely fashion, despite a timely approved I-129. CBP can assist in two key ways that will enable arts engagements to proceed as scheduled.
  - A. PRIORITY POLICY ASK: Provide CBP at ports of entry with guidance advising that it should consider the I-193 “Application for Waiver of Passport and/or Visa” for any performing artists or essential support personnel arriving in the U.S. if these individuals have certain approvals and documentation in hand (See [Appendix B](#), CBP I.A).
  - B. PRIORITY POLICY ASK: CBP should align its policies and procedures with the aforementioned DOS policy proposals at DOS II.A and DOS II.B, above. (See [Appendix B](#), U.S. Customs and Border Protection).