

Date: October 12, 2021
To: U.S. Department of State
From: The undersigned arts organizations
Re: 60-Day Notice of Proposed Information Collection: DS-160, Online Application for Nonimmigrant Visa and DS-156, Nonimmigrant Visa Application (86 FR 44766, 8/13/21)

We submit our comments in response to the Department of State's, "60-Day Notice of Proposed Information Collection: DS-160, Online Application for Nonimmigrant Visa and DS-156, Nonimmigrant Visa Application" (86 FR 44766, 8/13/21), as part of DOS's efforts to: evaluate the necessity of the information collection and the accuracy of DOS's estimate of time and cost burden; enhance the quality, utility, and clarity of the information collected; and minimize the reporting burden on respondents.

(1) There are numerous software and technical issues with the DS-160 that must be fixed.

Crashes, failure-to-load issues, time-outs, lockouts, and other internet bugs that plague the DS-160 Online Nonimmigrant Visa Application (DS-160) frustrate artist visa applicants' ability to properly complete the form, causing unnecessary delays for U.S. petitioners and the artists. DOS should take immediate action to update its systems technologies in order to improve the overall reliability of the DS-160 Online Nonimmigrant Visa Application. When specific technical issues arise, an online chat assistant service could help applicants troubleshoot the DS-160 website. If issues with the website make completing the DS-160 online impossible for a given applicant, the chat assistant could circumvent the process by directing them to a hard copy of the form and providing them with an e-mail address to submit a scan of the form directly to a particular consulate. Finally, it would be helpful to provide a link whereby applicants could contact DOS's IT team to report major issues such as when a DS-160 form page is completely broken.

(2) We recommend that the following question from Part 2 of the Security and Background Section form be removed or amended: "Have you ever been arrested or convicted for any offense or crime, even though subject of a pardon, amnesty, or other similar action?"

Individuals are properly advised to answer this question truthfully, but the consequences of a truthful answer are potentially grossly unjust, and as such, this question encourages non-compliance. Many individuals are unfairly arrested or even convicted, only to have their arrest or conviction later overturned. Nevertheless, a truthful answer to this question is likely to result in an unjust delay or denial of benefits. The question requires disclosure of information that, without context, is very likely to be improperly derogatory. Requiring an applicant to make such a potentially derogatory admission encourages non-compliance.

The interests of justice would be better served by an amendment of the question to read:

"Have you ever been convicted for any offense or crime, from which you received no pardon, amnesty, or other similar exoneration?"

The information collection from this particular question as it stands is unlikely to be accurate, places applicants in an unnecessarily legally problematic position, is unnecessary in order for DOS to perform its security and background work, and unnecessarily burdens applicants.

(3) We recommend that the following question from Part 2 of the Security and Background Section form be removed or amended: “Have you ever violated, or engaged in a conspiracy to violate, any law relating to controlled substances?”

This question is deeply problematic for two reasons: First, around the world and especially in the United States, laws regarding the use of controlled substances are in flux, frequently contradictory, or are intentionally unenforced. Second, despite the fact that recreational use of controlled substances is astoundingly widespread, an affirmative answer to this question is likely to disallow the applicant from admissibility. There is an imbalance between common real world experience, as impacted by the aforementioned contradictory laws around the world, and the ramifications of reflecting those experiences truthfully on this form. The result is to encourage applicants to submit untruthful answers. The question requires disclosure of information that, without context, is very likely to be improperly derogatory. Requiring an applicant to make such a potentially derogatory admission encourages non-compliance.

The interests of justice would be better served by an amendment of the question to read:

“Have you ever been convicted of violating any law relating to controlled substances?”

The information collection from this particular question as it stands is unlikely to be accurate, places applicants in an unnecessarily legally problematic position, is unnecessary in order for DOS to perform its security and background work, and unnecessarily burdens applicants.

(4) We recommend that the social media section requiring applicants to reveal their social media presence and username or handle, under Address and Phone Information, be removed or amended.

Because performing artists are public figures, their social media is often voluminous, and the content is largely beyond the control of the artists themselves. Moreover, U.S. artists might fear that exercising their own right to free speech would -- through their association with foreign artists -- both endanger their foreign associates and bring government scrutiny to their own work. Finally, there is a concern that other countries may deem similar measures appropriate and impose them reciprocally on U.S. artists. In this way, the proposed information collection arguably chills the free speech of U.S. artists who work globally.

Already many international artists are reluctant to come to the U.S. due to the pandemic and because they perceive it as a hostile environment. U.S. arts presenters and professionals are reluctant to bring foreign artists to U.S. audiences due to the ever-increasing costs and unpredictabilities in the artist visa process. Addressing these issues with the DS-160 would do much to promote the United States’ reputation abroad and its ability to attract international talent.

Signed:

U.S. ORGANIZATIONS

Artistic Freedom Initiative
Association of Performing Arts Professionals
CEC ArtsLink
China Residencies
globalFEST
High Concept Labs
International Society for the Performing Arts
KMP Artists
League of American Orchestras
Lisa Booth Management
Live Sounds
McKnight International Choreographer
Residency Program
NAPAMA/Association of North American
Performing Agents and Managers
National Independent Talent Organization
National Independent Venue Association
National Performance Network
National Sawdust
New York City Center
NHWWC, LLC
Rhizome Consulting, LLC
Tamizdat
Western Arts Alliance
Western States Arts Federation (WESTAF)
Wisconsin Union Theater
Young Classical Artists Trust

INTERNATIONAL ORGANIZATIONS

British Musicians' Union, United Kingdom
British Underground, United Kingdom
Canadian Arts Presenting Association
(CAPACOA), Canada
FamGroup, Canada
New Zealand Music Commission, New Zealand
On the Move — The Cultural Mobility
Information Network, Belgium
Pearle* Live Performance Europe, Belgium
Sounds Australia, Australia
Taklit Artist & Concert Management, France