Performing Arts Visa Working Group

Date: August 13, 2015

To: U.S. Citizenship and Immigration Services, Office of Policy and Strategy, Business and Foreign Workers Division

From: Performing Arts Visa Working Group

Re: Updates to the November 20, 2009 Memorandum on Requirements for Agents and Sponsors Filing as Petitioners for the O and P Visa Classifications

Via: ope.feedback@uscis.dhs.gov

We are writing in response to the request for comments on issues in the performing arts and entertainment field, posted by U.S. Citizenship and Immigration Services (USCIS) related to Updates to the November 20, 2009 Memorandum on Requirements for Agents and Sponsors Filing as Petitioners for the O and P Visa Classifications.

The Performing Arts Visa Working Group is an ad-hoc coalition of national organizations including the American Federation of Musicians, Association of Performing Arts Presenters, Dance/USA, League of American Orchestras, North American Performing Arts Managers and Agents, OPERA America, Performing Arts Alliance, The Recording Academy, and Theatre Communications Group, collectively representing more than 35,000 members. Descriptions of each of these national organizations are included in the attached document.

The working group is dedicated to improving opportunities for international cultural exchange, and to informing U.S.-based nonprofit arts petitioners about compliance with U.S. visa requirements, particularly as they pertain to the engagement of foreign guest artists through the O and P visa categories. Through interaction with arts-related visa petitioners, we frequently field inquiries from our member organizations and provide technical assistance for U.S.-based arts organizations and artist managers undergoing the visa petition process.

International cultural activity is a significant function of the U.S. arts sector, and the arts sector is a substantial economic engine for our country. Nationally, the nonprofit arts industry alone generates $135.2 billion of economic activity—$61.1 billion by the nation's nonprofit arts and culture organizations in addition to $74.1 billion in event-related expenditures by their audiences. This economic activity supports 4.13 million full-time jobs and generates $86.68 billion in resident household income.

The USCIS Policy Memorandum dated June 9, 2015 (PM-602-0115) contains several helpful clarifications, such as acknowledgement and acceptance of the various types of agreements that exist between a beneficiary and employer. As the PM recognizes, the petitioner is not always the actual employer of the beneficiary, but may be an appointed agent for immigration purposes—a scenario in which there usually is no formal "contract" between the appointed agent and the employer or beneficiary. The PM also provides helpful flexibility for approving requested lengths of classification periods for itineraries involving multiple engagements.

The November 20, 2009 memorandum "Requirements for Agents and Sponsors Filing as Petitioners for the O and P Visa Classifications" stated that "The petitioner/employer, seeking to serve as an agent for the beneficiary and/or for other employers, must establish that the petitioner is duly authorized to act as their agent" and the June 9, 2015 memorandum reiterates this agent option by stating that a U.S. agent may be "A person or entity authorized by the employer to act for, or in place of, the employer as its agent." This authorization frequently takes the form of the petitioner/agent presenting a document signed

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1 Americans for the Arts, Arts and Economic Prosperity IV National Statistical Report.
2 www.uscis.gov, - Temporary Workers, O-1 Visa – Individuals with Extraordinary Ability or Achievement.
by the beneficiary’s employers which states that the petitioner is authorized to act in that employer’s place as an agent for the limited purpose of filing the O or P petition with USCIS. In support of this practice, the General Contract Requirement section of the June 9, 2015 memorandum, beginning on page two, accepts “Any other evidence demonstrating the existence and content of an agreement”, which is helpful to the arts community since “contracts” generally do not exist between the employers and appointed petitioners, or between an appointed petitioner and beneficiary. However, on page nine, in the section addressing, “Agent Filing As a Representative of Both the Employers or Entities Requiring Beneficiary’s Services and Beneficiary,” the PM says that “Agents filing for multiple employers as a representative of both the beneficiary and employers or entities requiring beneficiary’s services must submit the contract between the petitioner (agent) and the beneficiary, or the terms of an oral agreement if a written contract does not exist.” Earlier in the PM, on page seven addressing “Agent as an Actual Employer and Filing on Behalf of Other (Multiple) Employers,” the memorandum accepts as satisfaction of the agent authorization document requirement the presentation by the agent-petitioner of “a document signed by the beneficiary’s other employer(s) which states that the petitioner is authorized to act in that employer’s place as an agent for the limited purpose of filing the petition with USCIS.” We respectfully request this same statement be repeated and included among the list of acceptable evidence under the “General Contract Requirement” on page three of the memorandum, and again reiterated on page nine, in order to avoid any confusion in light of those scenarios in which contracts with an appointed agent do not exist.

Under the section “Agent as an Actual Employer and Filing on Behalf of Other (Multiple) Employers” we are pleased USCIS states that “the validity period should last for the duration of the qualifying events not to exceed the maximum allowable validity period for the classification period being sought” and that earlier in the memorandum there is allowance for a petition’s validity date to include “short vacations, promotional appearances, or stopovers that are incidental and/or related to the event taking place during, before and/or after the dates listed in the contract.” There have been many instances in which petitioners have added a few days to the beginning and end of the requested classification period, to allow for travel, and yet USCIS has approved a classification period beginning on the date of the first performance, and ending on the date of the last performance. If an artist did not request or receive up to 10 extra days that are permissible under 8 CFR § 214.2(o)(10) or (p)(12) when entering the U.S., artists cannot make arrangements to depart on time. Implementing the validity period guidelines as outlined in the PM would be a significant improvement and relieve the burden such unintentional overstays impose. It would also be beneficial if this section on page seven of the memorandum referred to the July 20, 2010 USCIS policy memorandum on Clarifying Guidance on “O” Petition Validity Period Revisions to the Adjudicator’s Field Manual (AFM) Chapter 33.4(e)(2) AFM Update AD10-36, which clearly states there is no policy limiting the allowable gap between engagements in an itinerary. It bears repeating that we would greatly appreciate if that July 2010 memorandum regarding allowable gaps could be updated to include P artists and entertainers as well as O.

Lastly, we are very gratified to see that the memorandum clearly supports the ability of an O-1 petitioner for an artist or entertainer to add additional performances or engagements during the validity period of the petition without filing an amended petition, and for P petitioners to do the same within the validity period of the petition without filing an amended P petition. This clear statement of the ability for the petitioner to add engagements within a validity period is beneficial to promoting cultural exchange by more clearly allowing U.S. audiences to enjoy the experience of excellent international artistry.

On behalf of the nonprofit arts community, we appreciate this opportunity to comment as part of the ongoing efforts of USCIS to engage the public in open feedback and dialogue regarding stakeholder concerns and improvements to visa processing. While we are encouraged that USCIS is undertaking this formal public review and comment process, we would like to urge you once again to take immediate steps to address the full array of O and P artist visa concerns articulated in these comments, as well as in the following areas:

3 [www.uscis.gov](http://www.uscis.gov), Temporary Workers, O-1 Visa – Individuals with Extraordinary Ability or Achievement.
• Implementing consistent timeframes for regular O and P visa processing
• Keeping up-to-date USCIS online reports of average O and P processing times
• Instituting reliable procedures for accessing the Traditional Expedite process

Until spring of this year, arts-related petitioners experienced relatively consistent results in O and P visa processing at the Vermont and California service centers. However, experiences reported to us by petitioners indicate that this is no longer the case, particularly at the Vermont service center, which has seen average processing times extend to 6 weeks or more in several instances, thereby often forcing petitioners to pay an additional $1,225 per petition for premium processing (which was intended to be voluntary). We look forward to further communication with USCIS on the full array of policies impacting international cultural activity.

Sincerely,

American Association of Independent Music
American Federation of Musicians of the United States and Canada
Association of Performing Arts Presenters
Dance/USA
League of American Orchestras
North American Performing Arts Managers and Agents
OPERA America
Performing Arts Alliance
The Recording Academy
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.

Fawn Goodman, Director of Industry Relations
132 Delancey Street
New York, NY 10002
Tel: (646) 692-4877
Email: fawn@a2im.org

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.

Alfonso Pollard, Legislative-Political Director & Director of Diversity
5335 Wisconsin Ave., NW Suite 440
Washington, DC 20015
Tel: (202) 274-4756
Email: apollard@afm.org

Michael Manley, Director; Touring, Theatre, Booking and Immigration Division
1501 Broadway, Suite 600
New York, NY 10036
Tel: (917) 229-0231
Email: mmanley@afm.org

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.

Mario Garcia Durham, President & CEO
1211 Connecticut Ave. NW, Suite 200
Washington, D.C. 20036
Tel: (202) 212-6875
Email: mdurham@artspresenters.org
Performing Arts Visa Working Group

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.

Brandon Gryde, Government Affairs Director
1111 16th Street, NW, Suite 300
Washington, D.C. 20036
Tel: (202) 833-1717, Ext. 101
Email: bgryde@danceusa.org

League of American Orchestras

The League of American Orchestras leads, supports, and champions America’s orchestras and the vitality of the music they perform. The League works to stimulate the exchange of innovative ideas and practices and to promote unity across the orchestra field. The League delivers meaningful information, learning and leadership opportunities, grass-roots advocacy and other services to its diverse membership, which encompasses nearly 900 member symphony, chamber, youth, and collegiate orchestras of all sizes. Founded in 1942 and chartered by Congress in 1962, the League links a national network of thousands of instrumentalists, conductors, managers, board members, volunteers, staff members, and business partners.

Heather Noonan, Vice President for Advocacy
910 17th Street, NW, Suite 800
Washington, D.C. 20006
(202) 776-0215
Email: hnoonan@americanorchestras.org

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.

Eleanor Oldham, 2Luck Concepts
70 Reardon York
Canaan, NY 12029
(518) 781-3000
Email: tuluck@fairpoint.net
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.

Brandon Gryde, Government Affairs Director
1111 16th Street, NW, Suite 300
Washington, D.C. 20036
Tel: (202) 375-7523
Email: bgryde@operaamerica.org

Performing Arts Alliance
The Performing Arts Alliance is a national network of more than 4,100 members comprising the professional, nonprofit performing arts and presenting fields. For more than 30 years, the Performing Arts Alliance has been the premiere advocate for America’s professional nonprofit arts organizations, artists and their publics before the US Congress and key policy makers. Through legislative and grassroots action, the Performing Arts Alliance advocates for national policies that recognize, enhance and foster the contributions the performing arts make to America. The Performing Arts Alliance member organizations include: American Music Center, the Association of Performing Arts Presenters, Chorus America, Dance/USA, Fractured Atlas, the League of American Orchestras, the National Alliance for Musical Theatre, the National Performance Network, OPERA America and Theatre Communications Group.

Cristine Davis, General Manager
1211 Connecticut Avenue, NW, Suite 200
Washington, D.C. 20036
(202) 207-3850
Email: cdavis@thepaalliance.org

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.

Todd Dupler, Director of Government Relations, Advocacy & Industry Relations
529 14th Street, NW, Suite 840
Washington, DC 20045
(202) 662-1275
Email: Todd.Dupler@grammy.com
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.

Laurie Baskin, Director of Research, Policy & Collective Action
520 Eighth Avenue, 24th Floor
New York, NY 10018-4156
(212) 609-5900
Email: lbaskin@tcg.org