Performing Arts Visa Working Group

July 23, 2010

U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, NW
Washington, DC 20529-2210

Via Web Portal

Re: DHS Docket No. USCIS–2009–0033

On behalf of the Performing Arts Visa Working Group, we submit these comments in response to the proposed rule published in 75 Fed. Reg. 33446-33488 (June 11, 2010) 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 is a coalition of national organizations that includes 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, and Theatre Communications Group, collectively representing more than 18,000 members. Descriptions of the involved organizations are attached.

The 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. 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.

At 33457, the published rule states, “For the FY 2010/2011 period, USCIS is identifying in this fee rule a new set of goals and performance improvements that are aimed at increasing accountability, providing better customer service, and increasing efficiency.” We urge USCIS to ensure that any fee increase is accompanied by significant policy improvements, and that specific action is taken to measurably improve the adjudication procedures related to the O and P visas for international artists. 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.

Previous USCIS failure to make improvements in the regular petition process has resulted in forcing many nonprofit performing arts organizations to pay the $1,000 Premium Processing fee, which is unaffordable. We therefore oppose the USCIS proposal to increase the Premium Processing fee to $1,225. Given the extreme harmful inefficiencies of the regular petition process, which often forces nonprofit performing arts organizations to use the Premium Processing Service, the proposed increase in the Premium Processing fee would impose an excessive burden on nonprofit performing arts petitioners.
In a July 20 national O and P stakeholder’s forum, USCIS announced plans to reduce regular processing to 14 days 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, and encourage USCIS to expand these efforts to include a broader array of urgent areas of concern. Provided below are further details regarding the needed improvements to O and P artist visa processing.

**Reduce the maximum processing times for adjudicating regularly-filed O and P petitions.**
The processing times for O and P petitions filed by the regular petition process are currently unpredictable and can vary dramatically. 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. In implementing the Premium Processing Service (PPS), Legacy INS made it clear that it intended the PPS to be voluntary, not mandatory. The unpredictability of regular processing times, and the delays caused by unjust Requests for Further Evidence, frequently forces O and P petitioners to premium process their petitions at a cost the non-profit performing arts sector cannot afford. 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, as discussed in an April 12, 2010 stakeholder meeting at the California Service Center (CSC). While this effort is in progress, there remain serious concerns with the O and P adjudications process, which require immediate attention.

- CSC is applying the standard of distinction as it pertains to the arts under INA §101(a)(46) in a manner inconsistent with statute, regulations, and nearly twenty years of practice by Legacy INS and now USCIS. CSC demands excessive evidence of distinction and otherwise builds ever-higher evidentiary barriers to petition approval.

- CSC imposes requirements on P-3 “culturally unique” petitions that are contrary to the regulations, including an incorrect definition of what constitutes a “culturally unique event,” and it imposes an impermissibly restrictive interpretation of what constitutes a culturally unique program, performance, or presentation.

- CSC does not recognize the effect of prior O and P adjudications on beneficiaries for whom new petitions are being filed for new events, even after brief absences, where there can be no reasonable basis to question the beneficiary’s continued eligibility for the classification sought.

- Both CSC and the Vermont Service Center informally adopted a practice of limiting the gaps between O and P engagements to no more than 45 days. No regulation supports this practice and, until it began considering its policy towards itinerary gaps, the agency had not operated under such a rule. We are pleased that USCIS issued on July 20 a final policy memorandum on this topic in respect to the O classification. As stated in detailed comments submitted by the Performing Arts Visa Working Group to USCIS on May 24, 2010, we support the
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We applaud USCIS for elevating the O and P petition process as a priority for review and further appreciate the recent effort by the USCIS Service Center Operations division 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 current $1,000 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.

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 increase in 2007, 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 consistent improvement in the adjudication procedures and processing timeframe for O and P petitions, and that the proposed increase in the Premium Processing Fee would impose a significant burden on the nonprofit performing arts community. Thank you for the opportunity to comment on this proposed rulemaking.

Sincerely,

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  
Theatre Communications Group
American Federation of Musicians
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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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.

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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
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.

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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 over 420 member theatres nationwide.

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