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Samantha Deshommes, Chief  
Regulatory Coordination Division  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
20 Massachusetts Avenue, NW, Mailstop #2140  
Washington, DC 20529-2140

*Via Federal eRulemaking Portal*  
Re: DHS Docket No. USCIS-2019-0010  
OMB Control Number 1615-NEW

On behalf of the League of American Orchestras (“The League”) we submit these comments in response to the proposed rule published in 84 Fed. Reg. 62280 (November 14, 2019) to adjust the U.S. Citizenship and Immigration Services (USCIS) immigration and naturalization benefit application and petition fee schedule. Specifically, these comments address the proposal to create separate versions of the Form I-129 (OMB Control Number 1615-NEW) and in particular Form I-129O and I-129MISC, as they would be used to petition for the O-1B, O-2, P-1B, P-3, and P-S classifications for the temporary engagement of artists in the U.S..

The League of American Orchestras is the not-for-profit service organization for the field of symphony orchestras and has long been recognized by U.S. Citizenship and Immigration Services as a qualified organization for the purposes of issuing letters of peer consultation. Founded in 1942 and chartered by Congress in 1962, the League has a diverse membership of orchestras across North America and it links a national network of thousands of instrumentalists, conductors, managers and administrators, board members, volunteers, and business partners. There are more than 1,600 nonprofit orchestras in all 50 states, serving virtually every community, most with annual budgets of under \$300,000. Many of our member organizations present international artists as featured soloists and ensembles, guest conductors, and ensemble players within the orchestra. Further, the League maintains a dedicated website, Artists from Abroad ([artistsfromabroad.org](http://artistsfromabroad.org)), that provides highly valued guidance on navigating the O and P petition process. This website has been a trusted resource for more than fifteen years, has a global reach, and, in addition to directing the public to the necessary information to prepare visa petitions, provides timely news and updates whenever USCIS updates forms, fees, and procedures.

The League of American Orchestras also submitted comments related to the proposed fee increase on December 16, in collaboration with an array of national arts organizations. Those comments address a broader array of items in the DHS proposed rule, including the following key points:

- We object to the dramatic and disproportionate fee increase proposed for O and P visa petitions.
- Any fee increase must be accompanied by immediate and measurable improvements to the O and P artist visa process.

- The DHS proposal to lengthen the Premium Processing Service timeframe from 15 calendar days to 15 business days will diminish the service provided to petitioners, even as the cost of Premium Processing increases.
- Imposing a 25-beneficiary cap for arts ensembles unfairly multiplies costs for performing arts organizations and creates new risks for USCIS confusion and processing delays.
- USCIS must take steps to adequately inform petitioners and train USCIS personnel well in advance of implementing the fee increase schedule and related changes to the Form I-129.
- High costs, delays, and unpredictability in the visa process create high economic risks for U.S. nonprofit arts organizations, the local economies they support, and the local audiences they serve.

In reviewing the draft Form I-129O and Form I-129MISC in detail, comparing alongside the current I-129 instructions, we wish to share the following additional observations and suggestions from the perspective of U.S.-based arts petitioners filing for O and P artists.

**The newly proposed Form I-129O provides a welcome streamlining of the O petition.** The streamlining of the current I-129 from 36 pages to a total of 17 for the I-129O is a very welcome change. Removing sections that do not pertain to beneficiaries that are seeking O (or P) visas greatly reduces confusion on the petitioner's side. Also, eliminating separate supplement pages and instead incorporating the requested data into the I-129O will help ensure petitioners will not mistakenly complete the incorrect supplement pages, forget to include the required supplementary information, or needlessly print and submit more pages than are required.

**The newly proposed Form I-129MISC is an inappropriate option for P visas. The forms for P visas should be combined with the I-129O, or a separate P visa form should be created that replicates the Form I-129O with minor modifications as needed.** We caution USCIS against including the P visa category on the proposed I-129MISC, especially upon reviewing the proposed forms side by side as well as alongside the current Form I-129. Due to the similar nature of the work and the shared type of information the forms request of O and P arts petitioners, it would be logical to combine these onto the same form, or for a dedicated P form to mirror the Form I-129O so that P petitions can similarly benefit from Form I-129O's streamlined and consolidated approach. Combining the O and P onto a shared form would support the ability of arts petitioners that routinely engage both O and P guest artists to complete the new form accurately. A shared form for O and P petitions would provide much-needed consistency for both petitioners and USCIS adjudicators.

**Requiring multiple petitions for large performing groups would be more expensive, duplicative, and make the entire petition process rife with new risk for errors and delays. This cap should not be applied to P-1B, P-3, O-2, and P-S beneficiaries.**

The arts are unique and should be recognized as such: a large ensemble such as an orchestra is a clearly recognized entity that performs together. The logistical challenges created by requiring multiple petitions that arbitrarily separate performers of a single known entity raises many new possibilities for error, delays, and staggered approvals that would threaten efficient consular processing and the ability to complete U.S. engagements. The following considerations for an arts exception to this limit should be taken into account:

- The nature of the performing arts is uniquely location-, date-, and time-specific, and the ability to deliver a promised performance relies upon all beneficiaries receiving approval at the same time and as one group.
- The evidentiary requirements for obtaining P approval for an ensemble, whether for P-1B or P-3, relies upon proving international recognition of that group in a variety of ways, as well as demonstrating for P-1B that a minimum of 75% of members has been with the group for at least one year. An unnecessary burden is created should petitioners have to ensure that beneficiaries are grouped so that the 75% rule is met for each component petition if, for example, an ensemble totals 100 members, and requires 4 separate petitions. Further, whether beneficiaries for O and P arts petitions are grouped on the same petition or split into multiple petitions due solely to this proposed cap, the evidentiary material, contract, itinerary, and so on still refer to the entire group as a whole, not to individual beneficiaries, therefore it would be inefficient, duplicative, and time-consuming to require multiple petitions that provide the same information. This would create a greater printing, shipping, and adjudicating burden for identical petitions that ought to be considered as a single entity.
- We note that the Form I-129MISC lacks the option for indicating when a batch of 25 beneficiaries are part of a larger whole and that there may be one, two, or more additional petitions comprising the full ensemble. If component filings corresponding to the same performing group were to be assigned to multiple USCIS adjudicators, there is the potential for different conclusions to be reached regarding the applicable criteria, which would cause further delays in timely adjudication. There is also the likelihood that different adjudicators would process their workloads at different speeds, which would force a large ensemble to wait longer than otherwise to proceed onto consular processing. Even if the same USCIS adjudicator were to receive all related petitions for a large ensemble, reviewing each petition separately and confirming that all the supporting information is the same would be a tremendous waste of USCIS time and staff resources for processing, notification, updating online case status, and uploading petitions into the Petition Information Management System—all for multiple cases that belong to a single entity.

Due to these considerations, and the tremendous importance of furthering cultural interests to U.S. audiences, we argue for an exception to be made in favor of maintaining the current policy of filing a single petition for a single group regardless of its size.

#### **Form-specific suggestions and observations:**

- We recommend adding an “In Care of Name” field for petitioner’s primary U.S. office address at Part 1, Item 6 for the Form I-129O (as the I-129MISC does). For organizational petitioners, a point of contact should be listed in this “In Care of Name” field, especially since the Mailing Address fields are only to be completed if different from the office address. The alternative would be for both sections to be completed even if the address is the same, which would be largely duplicative.
- Part 2, Item 2 specifies a limit of 25 beneficiaries. If a cap *must* be imposed, there should be an additional field for the petitioner to note the grand total of beneficiaries that comprise a formal group in the event there are more than 25. The instructions do not provide guidance on this point other than to reiterate that additional filings must be made if there are more than 25 beneficiaries. In cases when a group contains more than 25 members, USCIS should be aware it is adjudicating one of multiple petitions belonging to a large ensemble.

- For the I-129O, new Part 4 questions about labor organizations helpfully consolidate information that is currently sought in the separate the O & P Classifications Supplement pages. However, we recommend re-inserting the note from the Supplement pages that specifies that Part 4, Item 18 information only needs to be completed if the petition being submitted does not include the labor consultation.
- We recommend re-inserting the Yes/No question from the current I-129 that prompts the petitioner as to whether the beneficiary has a valid passport. The I-129O does provide fields for entering passport information if the beneficiary is currently in the U.S. at the time the petition is being filed, but the question as to whether the beneficiary has a valid passport has served as a helpful reminder to petitioners to double-check that beneficiaries have sufficient validity remaining on their passports.
- For the I-129MISC, or any petition to be used for P classifications, we recommend adding “**P-1B** – individual entertainer to join U.S. based internationally recognized entertainment group.” USCIS has for almost ten years been approving P-1B petitions of this nature, following a December 31, 2011 USCIS policy memorandum (PM-602-0053) that provided guidance that “supersedes prior policy guidance regarding the definition of “internationally recognized entertainment groups” and provides corresponding updates to the AFM.” The memorandum concluded, “the P-1B classification should include individual entertainers coming to the United States to join U.S. based internationally recognized entertainment groups” therefore, the list of P options would be more complete if it included this additional condition of the P-1B. Corresponding with this suggestion is the use of “beneficiary or group” in the accompanying instructions for the form under the section “P-1B Entertainer or Entertainment Group” in the A-F list of evidentiary criteria. Note that the description for P-1B in the instructions already correctly and consistently notes its applicability for “Entertainer or Entertainment Group.”
- Any version of Form I-129 for P petitions should use “Petitioning Organization” rather than “Petitioning Enterprise” in order to be consistent with the I-129O.
- Page 1 of the I-129O Instructions contains a typo in a reference to “Form I-290” under the first section titled “Purpose of the Form I-129O” – the numeral “1” is missing and it should read “Form I-129O” right before listing the two items that comprise Form I-129O.

The American public enjoys performances by U.S. and international artists. The process by which U.S. petitioners seek O and P approval to engage international guest artists must be one that is clear and designed to facilitate efficient and reliable processing. USCIS has put forward proposals to divide the Form I-129 into separate versions—a decision we agree could lead to a more tailored approach to updates for some classifications that do not have to necessitate a new form for unaffected classifications. We respectfully submit these comments on the Form I-129O and the I-129MISC as it pertains to P petitions, which we hope provides the perspective of an arts petitioner in a helpful way. Through our Artists from Abroad website, we provide trusted guidance on the O and P process to countless arts petitioners seeking to understand and navigate the visa process, and we are happy to assist USCIS however we can in supporting international cultural activity through improved visa policy. Thank you for the opportunity to comment on this proposed rule.

Sincerely,



Jesse Rosen, President & CEO