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Department of Homeland Security
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Washington, DC 20529-2140

Via Federal eRulemaking Portal

Re: DHS Docket No. USCIS-2021-0016
OMB Control Number 1615-NEW

The undersigned organizations together submit these comments in response to the collection of information published in Federal Register Volume 87, Issue 31 (February 15, 2022) on updated plans by the Department of Homeland Security for USCIS to separate Form I-129, Petition for Nonimmigrant Worker into several individual forms. Specifically, these comments address the updated proposals for Forms I-129O, I-129MISC, and their accompanying documents. We maintain our support for the overall aim of streamlining the petition process by tailoring the Form I-129 to more specific groupings of classifications, and we are very gratified to see the updated forms and instructions for the proposed I-129O and I-129MISC incorporate several recommendations offered in our comments to the previous collection of information (posted on August 18, 2021). There are a few remaining issues and concerns, however.

First and foremost, we strongly believe that O and P arts petitions must be kept together on the same form rather than separating them and requiring P petitioners to use the proposed I-129MISC. As we have noted in multiple prior comments (this proposal was first raised in 84 Fed. Reg. 62280 posted on November 14, 2019), arts petitioners for U.S. engagements have historically used the same Form I-129 to request approval of the following classifications: O-1B, O-2, P-1B, P-2, P-3, and P-S classifications for the temporary engagement of artists in the U.S. To separate Os from Ps now would be inefficient and illogical given how similar the requested information is, and it would create needless confusion.

The updated notice in the Federal Register posted in February 2022 states that these forms “serve the purpose of standardizing petitions or applications filed for these various nonimmigrant classifications and ensuring that basic information required for assessing eligibility is provided by the petitioner or applicant.” We fully support this goal of standardizing petitions. In fact, the O and P classifications could very easily use the same form with minor adjustments to the updated draft Form I-129O. The goal of standardizing petitions and applications would then be far more easily achieved, for P arts petitions have far more in common with O than with H-3, Q, or R petitions. It truly makes no sense for the P classification to be grouped otherwise, and from a data collection point of view, we believe it would be far more useful to be able to calculate the total number of O and P filed petitions rather than calculate Os separately and attempt to estimate what percentage of I-129MISC filings are P petitions.

I-129O: Errors and Recommendations

- **Passport Yes/No Question:** We request again the re-insertion of a Yes/No question from the current I-129 (Part 4, Item 2) that asks whether the beneficiary has a valid passport. While the updated I-129O provides fields to enter passport information if the beneficiary is currently in the U.S. at the time the petition is being filed, the earlier Yes/No question about whether the beneficiary possesses a valid passport has served as a helpful reminder to petitioners to confirm all beneficiaries have sufficient validity remaining on their passports.
- **Confusing duplication:** The updated draft Form I-129O duplicates two Items in Part 4 in a confusing manner. In Part 4, Item Numbers 12-18 request information about an appropriate labor organization, whether the advisory opinion is included, and to describe the nature of the event, etc. The brief instruction on the Form if one answers “No” to Item Number 13 is very confusing in that it directs the petitioner to provide information about “which organizations you have sent a duplicate of the petition” in the fields that are designated for describing the nature of the event and the services the beneficiary will perform. Those fields should be used for their stated purpose only. Instead, Item Number 19 should be deleted, since it replicates Item Number 12, and the instruction for Item 20 should be

substituted for the instruction currently given for Item Number 13. Items 13 and 20 are identical, except the instruction if one answers “No” to Item Number 20 much more logically directs a petitioner to provide information about the organization(s) which are receiving a duplicate of the petition in what are currently Item Numbers 21-24 – those fields should remain.

- **Typographical error:** Page 5 of the I-129O in Part 4, Item Number 1 still contains an error in the abbreviation of Customs and Border Protection – it should be abbreviated as “CBP” instead of “CPB.”
- **Turning I-129O into I-129O&P**, which could then be used by P petitioners as well, would require the following very simple adjustments:
 - Form I-129O Part 2, Item 1 should expand to list P nonimmigrant classification options. While doing so, an option should be added for: “**P-1B** – individuals performing as a member of an internationally-recognized entertainment group” since that is a valid use of the P-1B that even some USCIS adjudicators have forgotten about.
 - Item Number 2 from I-129MISC should be inserted as the new Item 2 in Form I-129O. (This item asks whether a P-1A or P-1S petition is associated with one of the Major League Sports designations).
 - Form I-129O Part 2, Item Number 2 asks for the total number of O-2 beneficiaries included in the petition. This could be reworded to request “Total number of beneficiaries included in this petition” – this would revert to the phrasing from the Form I-129 that petitioners have been using and accommodate both O and P petitions.
 - Form I-129MISC Part 2 Item Number 4 should be inserted into I-129O after what is currently Part 2 Item 3, which requests Basis for Classification. (NB: in its current location on the Form I-129MISC, it mistakenly refers to Item Number 2 rather than Item Number 3).
 - Form I-129MISC Part 3, Item Number 1 should be the new Part 3, Item Number 1 in the Form I-129O, which would allow P entertainment groups to provide a group name. The rest of Part 3 is identical between the forms and would not require alteration except to the numbering.

- In Part 4, I-129MISC Item Number 8 could be added into the I-129O in that same section. The immediately following questions in the I-129O about labor organizations and advisory opinions would remain but refer to both O and P rather than simply O-1 or O-2 beneficiaries. With these changes, P petitioners using a combined I-129O&P Form would no longer need to use a supplement form.

I-129MISC Omissions and Recommendations

- We are very relieved to see the updated draft Form I-129MISC Instructions (posted February 15, 2022 with a watermarked date of 01/24/22) removes the previous limitation of no more than 25 beneficiaries per petition. This cap would have been extremely harmful, greatly exacerbated the visa process, and imposed unfair financial burden for duplicative work. We thank you for hearing and responding to our concerns. It is vital that larger ensembles or support teams be able to utilize a single petition when working as a single entity.
- As noted above in the recommendations for a unified I-129O&P Form, where P classifications are listed in any form and instructions, the list should include the additional, valid use of P-1B as follows:

“P-1B – individuals performing as a member of an internationally-recognized entertainment group”

USCIS revised its P-1B policies in 2011 in PM-602-0053 to permit eligibility for foreign individuals performing as a member of U.S.-based groups. This eligibility must be explicitly included, for even service center adjudicators have shown in recent months an unfamiliarity with this eligibility, which resulted in an erroneous Request for Evidence that took so long to resolve that the eventual approval was too late to allow the engagement to be fulfilled. Given the highly time-sensitive nature of arts engagements, this affirmation of the use of P-1B by individuals must be included in the I-129, for the sake of both adjudicators and petitioners.

Thank you for considering the input of countless arts petitioners, employers, agents, and artists represented by our organizations. We note that in addition to removing the beneficiary limitation, the most updated drafts of Form I-129O, I-129MISC, and their accompanying items incorporate several other corrections we noted in our prior comments, such as restoring fields for O beneficiaries to provide nicknames, aliases, etc., correcting a typographical mistake, and reinserting a helpful explanatory note when certain items need to be completed or not. Thank you.

The Forms completed by U.S. petitioners seeking O and P approval to engage international guest artists must be clear, efficient, and reasonably simple. We applaud the progress thus far, but we urge DHS and USCIS to remember the practical concerns that arise from completing and filing these documents. Consistency and logic dictate that O and P arts petitions utilize the same form given they request the same type of information. To separate them would serve no discernible purpose or provide any benefit that would outweigh the confusion of petitioners.

We respectfully submit these comments on the updated Form I-129O and the I-129MISC. As expert stakeholders representing the U.S. arts sector, we are committed to equipping petitioners with complete information about compliance with USCIS requirements, such as the website, www.ArtistsfromAbroad.org, which provides trusted guidance on O and P visas to artists and petitioners seeking to understand and navigate the visa process. We are eager to assist USCIS in supporting international cultural activity through improved visa policy. Thank you for this opportunity to comment.

A2IM (American Association of Independent Music)
American Federation of Musicians of the United States and Canada
Association of Performing Arts Professionals
Carnegie Hall
Dance/USA
globalFEST
League of American Orchestras
National Independent Talent Organization

National Independent Venue Association
NAPAMA (North American Performing Arts Managers and Agents)
OPERA America
Performing Arts Alliance
Recording Academy
Tamizdat
Theatre Communications Group
WESTAF (Western States Arts Federation)
Western Arts Alliance