

WCC Q&A: US Visas for Artists and Cultural Professionals with Tamizdat & League of American Orchestras

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World Cultures Connect hosts the second online **Q&A** with experts on topics relevant to international working. For the second in the series, on 10 June 2015 WCC invited Matthew Covey of **Tamizdat** the **AVAIL** (Artist visa assistance and information line) and Najean Lee from the **League of American Orchestras** to share their advice on US visas for artists and cultural professionals. Below is a summary of the conversation.

What topics are you interested in for our next **Q&A**? Email wcc@visitingarts.org.uk with your suggestions!

This document is a summarised version of the questions asked during the Q&A on international cultural mobility funding on 10 June 2015 by Visiting Arts / World Cultures Connect in cooperation with Tamizdat and League of American Orchestras.

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Mary Helen Young (MHY): I want to welcome our experts Matthew Covey and Najean Lee - and I'll let them introduce themselves...

Matthew Covey (MC): Hello! Matthew Covey here. I am a founding director of Tamizdat, a non-profit that helps performing artists navigate the US visa process. I am also an immigration attorney.

Najean Lee (NL): And I'm Najean Lee - I'm not an attorney but the director of government affairs & education advocacy at the League of American Orchestras, where I've worked for the past 8 years on a range of policy issues, including visa policy!

What are the general categories for artists performing in the US?

NL: Performing guest artists should look to the O and P classifications. You can find an overview here:

<http://www.artistsfromabroad.org/immigration-procedures/choosing-the-right-visa-category/o-and-p-visaclassifications>

O is always for individuals. P is generally for groups but in some cases can be used by individuals, like a culturally unique individual or a foreign guest artist performing with an established U.S. group.

MC: Also, if a performing artist is coming to the US as a student, there are several other

classification that allow limited opportunities. These are the F 1 and J visa classifications.

How do you perform on a tourist visa? Is that allowed and what are the rules around that?

MC: That's a question that is a source of huge confusion. When a professional performing artist is coming to the US, legally the best strategy is to assume that that person has to enter the US on an employment -based visa—usually a P or O visa.

You start looking for an exception to that rule that might allow you to avoid the P or O. There are several significant exceptions that allow performing artists to perform in the US either on Visa Waiver/ESTA or with a "tourist" visa (B1/B2). These exceptions are very narrow, so you have to be very careful with them. These are the most commonly utilized exceptions:

Exception (1): Bona fide Industry showcase: If an artist is performing in a context where the principal purpose that the audience is in attendance is NOT for the sake of being entertained, but for the sake of evaluating the artist in the interest of considering their future employment, generally the artist does not need an employment visa. As a general rule, if the artist is getting paid OR if the audience is paying to see the performance, the rule does not apply.

Exception (2): Home-sponsored Cultural Program exception: A professional entertainer may perform without an employment visa if the entertainer: (1) Is coming to the United States to participate only in a cultural program sponsored by the sending country; (2) Will be performing before a non-paying audience; and (3) All expenses, including per diem, will be paid by the member's government.

Exception (3): Coming to the US to record: A musician may enter the US without an employment visa if... (1) The musician is coming to the United States in order to utilize recording facilities for recording purposes only; (2) The recording will be distributed and sold only outside the United States; and (3) No public performances will be given.

There are a number of other exceptions, but those are the big three: (1) showcase, (2) cultural ambassador, and (3) recording.

NL: We have some of this detailed here:

<http://www.artistsfromabroad.org/immigration-procedures/choosing-the-right-visa-category/other-nonimmigrant-categories/b-1-business-visitors-b-2-tourists-and-visa-waiver-program/>

While there is an "Askus" feature on artists from abroad that does allow for submitting questions, the answers are limited to the scope of the site, which focuses primarily on O and P.

How difficult is it when you encounter an immigrant official that doesn't know all these rules very well?

MC: Mary Helen, that's an excellent question. Whenever one deals with the US immigration system, you have to think about what the law is, but also about how the law played out in reality. While all these exceptions are settled laws, you should never assume that a CBP officer at a border or at the airport will know or understand them. As such, it's always good to have a letter from your US promoter, studio, or consulate that explains what the artist is coming to do, what exception applies, and specifically details WHY the exception applies, specific to the contractual context of the engagement.

MHY: Could this Askus feature be expanded so that a visa professional could respond?

NL: artistsfromabroad.org is managed by the League of American Orchestras and the Association for Performing Arts Presenters -- while we had immigration attorneys advise the content and we stand by the guidance there, further scenario-specific questions should be directed to a qualified attorney.

MHY: Thanks for all of this! And changing track a bit... So if you follow Najean's link: <http://www.artistsfromabroad.org/immigration-procedures/choosing-the-right-visa-category/o-and-p-visaclassifications/>

...you will see that the O & P visas ask for either "extraordinary ability" or "international renown".

Can you help us understand what that means for an individual artist or group?

NL: Sure - I'll start with the O-1B, which can be tricky for artists that are newly establishing their careers because USCIS looks for clear evidence of "lead or starring role" experience. The clearest layout of these expectations for O-1B can be found here:

<http://www.artistsfromabroad.org/immigration-procedures/completing-the-forms/o-1b-petitions-individualartists-of-extraordinary-ability/proving-extraordinary-ability>

For P-1B, the criteria are here:

<http://www.artistsfromabroad.org/immigration-procedures/completing-the-forms/p-1b-petition-grouperformers/proving-international-recognition-and-exceptions/>

For P-3 here: <http://www.artistsfromabroad.org/immigration-procedures/completing-the-forms/p-3-petitionculturally-unique-performers-teachers-or-coaches/proving-cultural-uniqueness/>

MC: Just as an aside: when you read the O and P regulations, they sound incredibly daunting. We find that it's not very common that an artist whose career has developed to the point where they have real work in the US, but they are ineligible for a P or O visa. Most of the time, if you're far enough along in your career to have real work, you generally can be eligible for a visa. Not always, but most of the time.

NL: Generally, the strongest evidence tends to be performance coverage in well-known newspapers or journals, reviews of recordings, documentation of awards (and details about how prominent those awards are). For an O-1B, you need to show the artist has had a solo or "lead" role, and ideally with internationally renowned groups.

Is it possible to apply for a visa that allows work when you are already in the US on a tourist visa?

MC: Most UK citizens enter the US without a formal visa, using the "ESTA" visa waiver program. Someone in the US on ESTA/Visa Waiver cannot transition to an employment status while in the US. They would have to leave the US, obtain an employment based status, and then return. However, if they sought a B1/B2 visitor visa (which is not required, but is generally available to UK citizens) and entered on that visa, a "change of status" could be filed to transition you to an employment status. Keep in mind, however, that that transition is not simple,

and general could not be done in less than three weeks, costs a lot of money, and is only available to relatively few individuals whose skills and job offer qualify them for a status.

How can governmental agencies further assist in opening the door to the US for our artists? Can other governments influence the process?MC: I assume by “government agencies”, you are asking how non-US government agencies might better assist.

On a case-by-case basis, you can make sure that artists have access to qualified advice and counsel.

On an advocacy level, there are several major efforts in the US to reform practices and policy, and I would say that familiarizing yourself, participating in, and aligning your organization with those efforts is probably the most effective way; certainly the gravity of government bodies will help the work already being done.

NL: In terms of understanding U.S. efforts when it comes to visa policy, you can find information here:

<http://americanorchestras.org/advocacy-government/visa-and-tax-for-foreign-guest-artists/takeaction.html>

There's a 2-page visa issue brief that outlines the efforts of the broader non profit arts community - this version of the brief is orchestra-specific but the "ask" reflects what we're all seeking and what numerous national arts orgs in the U.S. have agreed upon.

For other countries with arts-friendly visa policies, I definitely encourage you to keep us in the loop so we can leverage that information with our policymakers in the name of creating the most friendly environment for cultural exchange.

MC: And TamizdatAVAIL is an artist visa assistance and advocacy project that we run, funded by the National Endowment for the Arts. The link to TamizdatAVAIL is:

www.tamizdat.org/avail

TamizdatAVAIL is a non-profit project that provides both urgent and long term solutions to pervasive U.S. visa problems faced by the international performing arts community.

MHY: Big thank you to Matthew and Najean for their time and valuable advice! We will conclude now, thanks to everyone who participated.

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