

March 13, 2023

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Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Via Federal eRulemaking Portal
Re: DHS Docket No. USCIS–2021–0010
OMB Control Number 1615–0009

On behalf of the undersigned U.S.-based arts and cultural stakeholders, we submit these comments in response to the proposed rule published in 88 FR 402, FR Doc. 2022–27066 (January 4, 2023) to adjust the U.S. Citizenship and Immigration Services (USCIS) immigration and naturalization benefit application and petition fee schedule. The U.S. Department of Homeland Security’s (DHS) proposal recommends not just one but two substantial fee increases for Form I-129 petitioners, while also unfairly limiting petitions to a maximum of 25 beneficiaries per filing and increasing the timeframe of the Premium Processing Service from 15 calendar days to 15 federal working days. We object to these proposed changes, which would penalize an already fragile sector that is struggling to recover its own normal operations after COVID-19, and would have broader negative economic implications for local economies that are supported by arts events. International cultural activity would suffer irreparable harm if fee increases of such unprecedented magnitude were to go into effect.

Events in the United States that feature international artists are supported by an intricate web of stakeholders, whose concerns about the fee proposal and accompanying policy changes are expressed in these comments. Presenting organizations span nonprofit, educational, and commercial entities that present international featured solo artists, performers accompanying U.S.-based groups, and entire international ensembles in multiple disciplines of the arts, all requiring O or P non-immigrant employment-based visas. The burden of applying and paying for those visas is shared across artist managers and promoters, venues, U.S.-based artistic collaborators, festivals, and the international artists themselves. These stakeholders are located in communities of all sizes and in all regions of the U.S.

The increased costs associated with processing I-129 petitions for O and P visas are being proposed amid increasingly bureaucratic, unfair, onerous, and arbitrary practices in the processing of these petitions. The proposal to charge higher fees unfairly and unnecessarily burdens the arts community, when the agency should instead adopt common-sense improvements that would streamline visa processing, lower the cost to the agency, and restore confidence in the U.S. artist visa process. For years, U.S. stakeholders have provided USCIS with detailed plans for feasible improvements to USCIS processing of I-129 petitions for O and P visas, as outlined in our [Recommendations for Performing Arts Visa Policy](#) (previously submitted to USCIS and crafted across the Performing Arts Visa Working Group). These proposals are aimed at making the processes more efficient, more transparent, fairer, and more supportive of cultural diplomacy, almost universally without making any changes to any statute or regulation, and without endangering national security or U.S. labor interests. Until USCIS has reviewed and implemented these changes—which would substantially decrease USCIS costs—any I-129 fee increase for O and P visas is unconscionable.

The nature of scheduling and confirming international guest artists in the U.S. requires that the visa process at USCIS be efficient, affordable, and reliable so that U.S. audiences may experience extraordinary artistic and cultural events. Arts petitions are a sliver of the casework USCIS adjudicators contend with, but our time-sensitive circumstances and mission of promoting cultural interests in the U.S. and bringing sought-after international artistry to U.S. audiences should merit the support of the agency, rather than be treated as a source of additional fee revenue. Given years of unfulfilled promises to reduce backlogs, artist visa processing deserves to see measureable and sustained progress before any further fee increase is imposed.

Despite the concerns and objections raised by arts stakeholders to many of these same proposals in 2019, DHS finalized its proposal and responded that it “does not intend to deter or unduly burden petitioners requesting workers in the arts, but any preferential treatment provided to petitioners for performers and musicians is borne by other petitioners, applicants, and requestors. DHS declines to require other applicants and petitioners to subsidize the cost of petitioning for workers in the arts.” This new proposal not only renews all of the harmful proposals from 2019 but exacerbates our sector’s ability to operate by assuming a financial capacity that does not exist. Instead, DHS is openly doing the reverse of what it told the arts it could not do; it is now proposing that filers of Form I-129 and I-140 subsidize the cost of other immigration benefits. While the arts are supportive of extending immigration benefits to vulnerable populations, it is wholly inappropriate to place a surcharge of this magnitude onto these two categories of filers and imperil our own ability to engage O and P workers. DHS is proposing new and inequitable barriers that harm the ability of U.S. arts organizations to present international artists to local communities. The loss will affect not only the guest artists seeking to perform in the U.S. but will also affect U.S. artists and communities, and harm U.S. interests in international cultural exchange and diplomacy.

This proposal runs directly counter to the Administration’s Executive Order of September 30, 2022 on Promoting the Arts, the Humanities, and Museum and Library Services, which pledged to, “strengthen America’s creative and cultural economy, including by enhancing and expanding opportunities for artists, humanities scholars, students, educators, and cultural heritage practitioners, as well as the museums, libraries, archives, historic sites, colleges and universities, and other institutions that support their work.” The proposal will also impede the Administration’s aim to, “strengthen our Nation’s democracy, increase civic engagement and public service, bolster social cohesion, and advance the cause of equity and accessibility by lifting up more — and more diverse — voices and experiences through Federal support for the arts, the humanities, and museum and library services.” Equitable access to arts activity is reliant on a U.S. visa process that is affordable, reliable, and efficient.

We object to the dramatic and disproportionate scale of the fee increases proposed for O and P visa petitions, which amount to more than triple the prior cost for each visa petition filed. Under the proposal, an O petition fee would increase from \$460 to \$1,055 (a 129% increase in cost per petition) and the P petition fee would increase from \$460 to \$1,015 (a 121% increase in cost per petition). While the proposed rule states a weighted average increase of 40% across visa petitions, the proposed increases for O and P applications is unfair, indisputably out of proportion, and would lead to far fewer filings rather than increased revenue to USCIS. The scope of the actual impact on petitioners is even more dramatic, as each O and P petition would be increased further by \$600 due to a new Asylum Program Fee. The new total fee would be \$1,655 for each O visa petition for a 260% cost increase and \$1,615 for each P visa petition for a 251% cost increase. The current \$460 fee that accompanies the Form I-129 is

already unaffordable for many potential arts petitioners. For a petitioner that routinely engages eight international solo artists in a season, to jump from paying \$3,680 in filing fees to \$13,240 is a significant leap that would require new fundraising, cost-sharing to the detriment of other parts of the arts ecosystem, or opting to engage fewer artists due to unaffordability. This latest fee proposal would render this benefit completely inaccessible to many arts petitioners in the U.S. and could threaten the ability of some entities and their related industries to continue operations.

DHS is using a flawed and misinformed approach to estimating economic injury to I-129 arts employers by examining sales receipts and failing to recognize that a total operating budget is not indicative of a budgetary surplus that can absorb higher visa fees without severe consequences. The “ability to pay” in no way matches DHS assumptions. The portion of a budget that supports presenting international artists is extremely lean given significant costs such as employee payroll, venue operating costs, artist performance fees, and marketing. Accommodating any fee increase is always a challenge, and the financial burden associated with presenting international artists to American communities grew significantly following the December 2016 decision by DHS to impose a 42% increase in the regular filing fee. Additionally, because planned performances promoted to audiences are highly time-sensitive, many arts petitioners must pay the exorbitant \$2,500 Premium Processing Service fee to overcome unpredictable delays in visa petition processing.

The petitioners served by our organizations are primarily nonprofit organizations, small businesses, and people who serve their communities and related industries through the arts. The current proposal will surely prevent some organizations from presenting international artists, and while DHS anticipates that *some* filings may decrease, it is grossly miscalculating the ability of the arts sector as a whole to pay. The proposal states, “DHS is committed to reducing barriers and promoting accessibility to immigration benefits, and knows that the beneficiaries of Forms I–129 and I–140 fuel our economy, contribute to our arts, culture, and government, and have helped the United States lead the world in science, technology, and innovation.”¹ And yet it also states, “DHS acknowledges that applicants and petitioners may face additional difficulties in paying the proposed fees, and may be required to request a fee waiver if eligible, save money longer to afford the fees, or resort to credit cards or borrowing to pursue their or their family members’ immigration benefit.”² These two statements are in direct conflict with one another. The arts sector will not be able to realize its full artistic and economic impact if financially jeopardized by the costs of the visa process.

Imposing a 25-beneficiary cap for arts ensembles unfairly and grossly multiplies costs for performing arts organizations and creates new risks for USCIS confusion and processing delays. An internationally renowned orchestra or ballet company can easily exceed 100 performers in number, and the prospect of what previously would have entailed a single \$460 P-1B petition, now requiring filing four petitions at a total cost of \$6,460 goes far beyond what can be considered a reasonable fee increase. Furthermore, the logistical challenges of processing multiple petitions that arbitrarily separate performers of a single known entity raises far too many possibilities for error, delays, and staggered approvals that would further endanger consular processing and the ability to receive visas in time for U.S. engagements.

When the evidentiary standard for engaging an internationally renowned performing group relies upon demonstrating that the group has an established reputation and that 75% of the members

¹ Department of Homeland Security, Federal Register Vol. 88, No. 2, January 4, 2023. p. 453

² Department of Homeland Security, Federal Register Vol. 88, No. 2, January 4, 2023. p. 493

have been in the group for at least one year, this becomes much more difficult to document if one must divide a petition into separate pieces. Limiting the number of beneficiaries of a clearly established group will cause undue burden on practitioners to make sure each filing meets the 75% rule.

There is also a potential for multiple officers to be assigned to different component filings for the same group, arriving at different conclusions regarding the applicable criteria. This would then cause further delays in timely adjudication. Unlike the H-2 classification, in which a company can at least begin or maintain operations on some level as long as some of the petitions are approved, a performing arts group cannot present its production without all of its members. By requiring additional filings, DHS is also increasing the cost burden and USCIS staff required to adjudicate and process this inflated volume of petitions. When all of the elements of these petitions are identical other than the named beneficiaries, this is multiplying the work for both petitioner and adjudicator without providing any benefit to the process. Indeed, USCIS itself withdrew a proposed 25 beneficiary cap when it created new I-129O and I-129MISC forms and instructions in January 2022, indicating its agreement that O and P, as well as other classifications, should not be subjected to this flawed proposal.

The DHS proposal to lengthen the Premium Processing Service timeframe from 15 calendar days to 15 federal working days will diminish the service provided to petitioners. USCIS failure to make reliable improvements in the regular petition process has forced many performing arts organizations to pay the \$2,500 Premium Processing Service (PPS) fee, or else risk extreme financial and reputational harm by canceling planned performances by international guest artists. The Premium Processing Service comes at an ever-rising cost that is both unaffordable and unsustainable for most U.S.-based arts petitioners. USCIS instituted a nearly 15% increase in the premium processing fee effective October 2018, raised the PPS fee in December 2019, and then received Congressional approval to raise it by more than \$1,000 the next year during the COVID-19 pandemic. The necessity of paying this fee directly reduces the amount of money available for a production/performance and represents a significant portion of an organization's budget and costs. Arts engagements are time- and date-specific, and those organizations that must upgrade to the PPS are already making difficult budgetary decisions to free up those funds. Given the extremely harmful inefficiencies of the regular petition process, as well as the most recent increase to the Premium Processing fee, any change that extends the window of response time imposes a serious additional burden on performing arts petitioners and diminishes the value of supposedly "premium" expedited service when a timely response is needed. We therefore object to the proposal to change Premium Processing Service from 15 calendar days to 15 federal working days.

Any fee increase must be done with reasonable advance notice. USCIS has previously increased fees and implemented policy changes with little advance notice to petitioners, whose businesses are unable to turn on a dime to absorb sudden increases in expenses and associated staff capacity to navigate the visa process. We urge USCIS to ensure that implementation of any fee increase and processing changes takes place with adequate advance notice—months rather than days—to petitioners and provide for sufficient time for related adjudicator training. In the weeks surrounding the previous fee increases, 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 fee increases do not result in unwarranted petition rejections.

Immediate action is needed to reduce the regular processing times for O and P visas and improve the quality of visa processing. Congress recognized the time-sensitive nature of arts events when writing the 1991 federal law regarding O and P visas, in which the USCIS is instructed to process O and P arts visas in 14 days. Section 214(c)(6)(D) of the Immigration and Nationality Act states that USCIS “shall” adjudicate a fully-submitted petition within 14 days. From the inception of the current O and P provisions on April 1, 1992, the Legacy Immigration and Naturalization Service routinely complied with this statutory requirement. However, when Premium Processing Service (PPS) was introduced in June 2001, guaranteeing processing within 15 calendar days at a current additional cost of \$2,500 on top of the base filing fee, compliance with this provision by Legacy INS and, later, USCIS, has become extremely inconsistent. Following the creation of the PPS, regular O and P visa processing has varied widely, ranging from 30 days to six months. In the summer of 2010, USCIS pledged to meet the statutory 14-day regular processing time and promised public stakeholders that significant improvements would be made to the quality of artist visa processing.

For several years, petitioners experienced incremental improvements to processing times, only to encounter at-times lengthy and highly unpredictable delays once again. In a March 30, 2016 national O and P stakeholder forum, leadership from USCIS Service Center Operations stated a commitment to again reduce regular processing to the statutorily mandated 14-day timeframe and to improve the policy guidance and training for adjudicators regarding the standards of evidence required for O and P visas. We applauded USCIS for this stated commitment, but as feared, those policy improvements were unevenly applied and have for many years now been completely absent, which has jeopardized engagements for seasoned petitioners seeking to obtain visas far in advance of planned performance dates.

As of February 2023, the processing times posted by USCIS for O and P visas are 1 month at the California Service Center and 2.5 months at the Vermont Service Center—again exceeding the statutorily mandated time frame. In practice, the actual processing times for O and P petitions filed by the regular petition process often extend past these USCIS-reported estimates and can vary dramatically without notice, which threatens the ability of carefully planned events to continue.

As professional organizations on the frontlines of the artist visa process, we have long brought to the attention of USCIS the great uncertainty faced by artists and U.S. arts organizations in gaining approval for visa petitions. Any given petition can and has been subjected to lengthy and inconsistent processing times, uneven interpretation of statutory requirements and implementation of policies, increased expenses, unwarranted requests for further evidence to support petitions, and even the occasional groundless denial. Since 2007, filers of O and P arts petitions have steadily borne disproportionate fee increases with promises of improved processing that have yet to materialize in a consistent manner. Our suggestions, such as more consistent application of deference for prior beneficiaries, recognition of “frequent filers” as trusted and proven petitioners, and not least of all—better training of adjudicators to ensure reasonable assessment of evidence—would mitigate hours spent on adjudication, restore confidence in the consistency and quality of the petition process, and result in fewer petitioners having to resort to Premium Processing through no fault of arts petitioners.

High costs, delays and unpredictability in the visa process create high economic risks for U.S. arts organizations, businesses, and the local economies they support. Arts groups frequently sell tickets in advance, creating a financial obligation to their audiences. Inconsistency of the U.S. visa process for foreign guest artists—as well as broad travel restrictions that hinder cultural exchange—creates harmful results for everyone. The absence of

international guest artists costs American artists important employment opportunities. If an international guest artist cannot obtain a visa in time to make a scheduled performance, then the many American artists who were scheduled to work alongside the extraordinary guest artist lose a valuable and much-needed source of income, professional experience, and artistic promotion. In addition to these immediate costs, there can also be long-lasting harmful reciprocal effects on the ability of U.S. artists to tour, perform, and create art abroad.

As a collective of national and regional organizations that support thousands of U.S.-based arts and cultural stakeholders, we are dedicated to improving opportunities for international cultural exchange. 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 nonimmigrant O and P visa petition process. We also serve international arts organizations and artists by providing guidance for successfully navigating the U.S. visa requirements. The arts sector provides an important public service and advances international diplomacy by presenting foreign guest artists in highly valued performances, educational events, and cultural programs in communities large and small throughout the United States. International cultural exchange uniquely supports a diversity of viewpoints and contributes to international peace and mutual understanding. Vibrant arts activity and performances generate massive economic ripple effects that support tourism, local employment, and expenditures on parking, dining, and other services. 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.

We have sought to illustrate in these comments that an increase in regular processing fees must be proportional and accompanied by immediate and consistent improvement in the adjudication procedures and processing timeframe for O and P petitions. We strongly urge the United States to ease—not increase—the administrative burden for arts organizations engaging foreign guest artists so that U.S. audiences can equitably enjoy artistry from across the globe. As always, we stand ready to be of assistance in further informing USCIS how it can support international cultural activity through improved visa policy. Thank you for the opportunity to comment on this proposed rule.

Signatories to Arts Comments on Artist Visa Fee Increase

National Signatories

American Association of Independent Music
American Composers Forum
American Federation of Musicians of the
United States and Canada
Americana Music Association
Americans for the Arts
Americans for the Arts Action Fund
ArcArtists LLC
Artist Communities Alliance
Artist Rights Alliance
Arts Administrators of Color Network
Association of Art Museum Directors
Association of Performing Arts Professionals
Avokado Artists
Axis Artist Management, Inc.

Black Music Action Coalition
Bonfire Touring
Caribbean Cultural Center African Diaspora
Institute
Carnegie Hall
Center for Cultural Vibrancy
Chamber Music America
Chimera Music
Chorus America
Concerted Efforts
Craft Emergency Relief Fund (CERF+)
Dance/USA
Distance Management
Do It Booking
Dynamics Artists Management, LLC
Entourage Talent Associates, LTD

Fenway Recordings
Festival International de Louisiane
Folk Alliance International
Future of Music Coalition
Girlie Action Management
GlobalFEST
Goldengate Talent Agency
Ground Control Touring
HERE Arts Center
High Road Touring, LLC
Homunculus Music
In De Goot Entertainment
International Bluegrass Music Association
Invisual Creative Services
Jazz at Lincoln Center
Jenstar Productions
The Kurland Agency
League of American Orchestras
Leave Home Booking
Lincoln Center for the Performing Arts
Loudmouth Artist Management
Lucky Man Management
Machine Head
Madison House, LLC
Magnus Talent Agency
Marauder
Modiba Productions LLS
Mongrel Music
Music Artists Coalition
Music Managers Forum-US
NAPAMA, North American Performing Arts
Managers and Agents
National Alliance for Musical Theatre
National Assembly of State Arts Agencies
National Independent Talent Organization
National Independent Venue Association
National Performance Network
New Frontier Touring
New Music USA
OPERA America
Paladin Artists
Partisan Arts
PEN America
The Performing Arts Alliance
Pinnacle Entertainment, Inc.
RajiWorld
Recording Academy
Revel Talent Alliance

Rick Sales Entertainment Group
Skyline Artists Agency
Songwriters of North America
Sound Talent Group
SoundExchange
SRO Artists Inc
Surefire Agency
Tamizdat
TBA Agency
Theatre Communications Group
This Is Management
TKO
Union of Musicians and Allied Workers (UMAW)
Upward Spiral Music
Zeppelin Productions, Inc.

Regional Signatories

Midwood Entertainment LLC
Music Workers Alliance
New England Foundation for the Arts
Nomad Talent LLC
South Arts
Western Arts Alliance
WESTAF | Western States Arts Federation

State-level Signatories

Arizona Citizens for the Arts
ArtPride New Jersey
Arts Alliance Illinois
Arts North Carolina
Association of California Symphony Orchestras
Cal Performances
Californians for the Arts
Cultural Advocacy Coalition of Oregon
Dance/NYC
Inspire Washington
Kentuckians for the Arts
Lobel Arts
Lotus Education and Arts Foundation
Nebraskans for the Arts
North Carolina Presenters Consortium
North Carolina Theatre Conference
People's Theatre Project
Prototype Festival
SAY SI
Texans for the Arts
Utah Cultural Alliance
Wyoming Art Alliance