

Date: May 29, 2024

To: U.S. Department of State

From: Tamizdat on behalf of the Performing Arts Visa Working Group, including the undersigned arts organizations

Re: Form DS-5535, 30 Day Notice of Proposed Information Collection: Supplemental Questions for Visa Applicants (89 FR 33437, 4/29/24)

We submit our comments on behalf of the Performing Arts Visa Working Group, including the undersigned arts organizations, in response to Department of State's "30 Day Notice of Proposed Information Collection: Supplemental Questions for Visa Applicants" (89 FR 33437, 4/29/24), regarding Form DS-5535. This DOS proposal seeks to extend the use of the DS-5535.

We strongly object to the form DS-5535 in its entirety, as well as to the supplementary questions that have been incorporated from the DS-5355 into the DS-160 (requiring applicants to provide all social media handles, phone numbers, and email addresses used during the last five years), because:

The "extreme vetting" questions on the DS-5535 exacerbate an artist visa process that is already unpredictable, arbitrary, unnecessarily burdensome, and an impediment to U.S. culture and commerce, especially with respect to its impact on U.S. arts organizations working with artists from Muslim-majority countries and the Global South.

The U.S. artist visa process has become so complex and unpredictable that obtaining O and P visas is a major impediment to the presentation of international culture in the U.S. The DS-5535 adds an untenable layer of unpredictability to the process. Protocols for when consular staff should require the form are vague and subjective; once requested, not even congressional intervention has proven successful in expediting the processing. When the DS-5535 form is required, the processing time of a visa application often increases from approximately one week to more than six months. The arbitrary and capricious use of the DS-5535 further hobbles U.S. arts presenters in their efforts to compete on the world market for international artists and undermines the critical work of U.S. cultural diplomacy and exchange. In recent years, DS-5535 processing delays have impacted, canceled, or delayed tours for numerous world-renowned artists, including Malian singer Hawa Kassé Mady Diabaté, Malian band Songhoy Blues, Nigerien band Tal National, Mauritanian band Noura Mint Seymali, and Somalian singer Farxiya Fisk—among many others.

The "discretionary" use of the form is prone to discriminatory abuse.

In practice, the form is predominantly used by non-immigrant visa units at U.S. consulates in Africa and the Middle East, where its use rarely correlates to legitimate security concerns. Instead it is apparently being used in situations when, prior to the DS-5535, consular officers would have issued a 221(g) temporary refusal. In these situations, the use of the DS-5535 effectively shuts down any time-sensitive visa process, rendering a *de facto* denial without the procedural burden of a denial.

The DS-5535 and amended DS-160 forms’ questions have a chilling effect on artistic expression and free speech.

Performing artists are public figures, their social media is often voluminous, and the content is largely beyond the control of the artists themselves. The forms’ required disclosure of social media handles is seen internationally as excessively invasive. Many artists have declined to tour in the U.S., rather than subject themselves these invasive questions. The impact of the questions is to chill international freedom of expression, and limit U.S. audiences’ access to the artistic expression of international artists.

There is no public evidence that these intrusive and burdensome questions serve or have served to protect national security or otherwise further national interests. Moreover, the Department of State has failed to institute procedures that protect against the misuse of the information collected through these supplementary questions. Accordingly, we object to the “extreme vetting” questions in the DS-5535 and the supplementary questions (5 years of social media handles, phone numbers, and email addresses) that have been incorporated from the DS-5535 into the DS-160, on the grounds that they impede international cultural exchange, damage commerce, chill free speech, and facilitate discrimination against non-immigrant artists, especially those from from Muslim-majority countries and the Global South.

Signed:

Association of Performing Arts Professionals (APAP)

Elsie Management

Folk Alliance International

League of American Orchestras

Marauder

North American Performing Arts Managers and Agents (NAPAMA)

OPERA America

Tamizdat

Theatre Communications Group

The Recording Academy