Date: **November 13, 2026**
To: **US Citizenship and Immigration Services, Department of Homeland Security**
From: **The Undersigned Performing Arts Organizations**
Re: **Proposed USCIS Rule - Removing Deference to Prior USCIS Determinations of Eligibility**

We submit the below response to US Citizenship and Immigration Services ("USCIS"), Department of Homeland Security's ("DHS") call for comment on the Proposed Rule, "Removing Deference to Prior USCIS Determinations of Eligibility" (*Removing Deference to Prior USCIS Determinations of Eligibility*, 91 Fed. Reg. 65119) (proposed Oct. 14, 2026) (to be codified at 8 C.F.R. pt. 214).

On behalf of the performing arts community, we object to this proposed new rule that would, "remove 8 C.F.R. § 214.1(c)(5)" (hereinafter, "Proposed New Rule") from the Federal Regulations.

The current Federal Regulations at 8 C.F.R. § 214.1(c)(5), with the heading "Deference to prior USCIS determinations of eligibility," state that, "When adjudicating a request filed on Form I-129 involving the same parties and the same underlying facts, USCIS gives deference to its prior determination of the petitioner's, applicant's, or beneficiary's eligibility. However, USCIS need not give deference to a prior approval if: there was a material error involved with a prior approval; there has been a material change in circumstances or eligibility requirements; or there is new, material information that adversely impacts the petitioner's, applicant's, or beneficiary's eligibility" (8 C.F.R. § 214.1(c)(5) (2025)).

It is worth noting that when DHS first proposed current 8 CFR 214.1(c)(5) in 2023, the Preamble stated, "Proposed 8 CFR 214.1(c)(5) would apply to all nonimmigrants using Form I-129, Petition for a Nonimmigrant Worker, and would include a request on Form I-129 involving the same parties and same material facts. Currently, the USCIS Policy Manual frames its deference policy as applying to requests for an 'extension of petition validity.' *The phrase* ***'extension of petition validity' may be misread as limiting USCIS's deference policy to petition extensions and excluding other types of requests*** *that could involve the same parties and same material facts.* ***Thus, DHS proposes to more broadly frame proposed 8 CFR 214.1(c)(5) as applying to 'a request filed on Form I-129'***[1] *and would not use the term "extension of petition validity" as found in the current USCIS Policy Manual*" (*Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements*, 88 Fed. Reg. 72870, 72880 (proposed Oct. 23, 2023) (to be codified at 8 C.F.R. pt. 214) (emphasis added).

Accordingly, **in addition to objecting to this Proposed New Rule**, we encourage USCIS to eliminate confusion and follow through on the agency's original intent to ensure that "extension of petition validity" is not "misread as limiting USCIS's deference policy to petition extensions and excluding other types of requests that could involve the same parties and same material facts" (*Id.*). **As such, to provide clarity, we recommend that USCIS rename 8 CFR 214.1(c) to "Extensions of Stay and Other Requests Filed on Form I-129" (replacing its current heading, "Extensions of Stay").**

Petitioner and government resources are wasted when USCIS does not give reasonable deference to its own prior determinations, where elements of eligibility have already been established. If a particular performing artist has previously been shown to have "extraordinary ability," or an ensemble "sustained international renown," by having the O-1B or P-1 petition approved, in most circumstances the artist or ensemble would not subsequently lose that ability or renown. Moreover, the employment contemplated by such an artist's new petition is often substantially the same as the employment presented in the prior petition.

[1] Note that the current Federal Regulations at 8 C.F.R. § 214.1(c)(5) *do* use the phrase, "a request filed on Form I-129," instead of "extension of petition validity."

In summary, we object to this proposed new rule that would remove 8 C.F.R. § 214.1(c)(5) from the Federal Regulations, and we recommend that for the sake of clarity, USCIS change the heading at 8 CFR 214.1(c) to "Extensions of Stay and Other Requests Filed on Form I-129."

Signed:

American Circus Alliance
American Federation of Musicians
Chorus America
Dance/USA
Elsie Management
Folk Alliance International
League of American Orchestras
Marauder
NAPAMA (North American Performing Arts Managers and Agents)
OPERA America
Tamizdat
Theatre Communications Group