

In Response to the COVID-19 Pandemic, the U.S. Performing Arts Sector Requests Assistance from U.S. Citizenship and Immigration Services and Department of State

League of American Orchestras & Tamizdat, April 1, 2020

Background: The COVID-19 pandemic is having a staggering impact on many sectors of the U.S. economy. One sector seriously impacted is the performing arts. Because public gatherings are essential to the performing arts economy, restrictions on public gatherings impacted this sector immediately; because much of the sector survives on very limited non-profit funding and razor-thin profit margins, the pandemic has devastated the sector.

In the best of times, the costs associated with bringing international performing artists to the U.S. are a major burden on the U.S. performing arts sector. This already challenging situation was compounded following the March 13, 2020 National Emergency Declaration, when performing arts organizations across the U.S. lost years of work and millions of dollars with the cancellation of months of performing arts programming.

As the U.S. government seeks to aid the U.S. economy, we, the below signed U.S. and international arts organizations, implore U.S. Citizenship and Immigration Services (“USCIS”) and Department of State to consider five simple, short-term provisions that will dramatically aid the U.S. performing arts sector once the COVID-19 pandemic subsides. The U.S. performing arts sector urgently requests the following accommodations. (A full explanation and the legal authority for these requests can be found in the following memo.)

- (1) **From USCIS, the sector requests immediate action to facilitate the amending of currently pending I-129 petitions for performing artist classifications.** In adjudicating O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S I-129 petitions that seek consular or POE processing with validity dates ending on or before June 15, 2020, USCIS should issue a Request For Evidence (“RFE”), and should consider petitioners’ requests to amend validity periods.
- (2) **From USCIS, the sector requests the creation of a viable mechanism for altering petition validity dates to accommodate rescheduled tours and engagements.** In regards to already approved petitions for O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S, with validity dates wholly or partially contained between the dates March 13, 2020 and August 31, 2020, (or in limited cases between February 2, 2020 and March 12, 2020), USCIS should require neither the filing of a complete new I-129, nor the submission of a filing fee, but should consider petitioners’ requests to amend validity periods.
- (3) **From Department of State, the sector requests the creation of a viable mechanism for altering visa validity dates to accommodate rescheduled tours and engagements.** For all I-129 O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S visa beneficiaries whose current visas have validity dates wholly or partially contained between the dates March 13, 2020 and August 31, 2020, Department of State should consider applicants’ requests to amend visa validity periods.
- (4) **From USCIS, the sector requests the timely resumption of Premium Processing service.** USCIS should commit to resuming Premium Processing service for all I-129 O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S petitions no later than June 1, 2020.
- (5) **From USCIS, the sector requests the timely resumption of the “traditional expedite” protocol for non-profit organizations.** USCIS should commit to reinstating the “traditional expedite” protocol for all I-129 O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S petitions no later than June 1, 2020.
- (6) **From USCIS, the sector requests a waiver of the I-539 fee for beneficiaries who are in the U.S. and whose validity period is expiring, but who are unable to depart the U.S.** USCIS should consider waiving the I-539 fee for O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S visa holders, upon a showing of their inability to depart.

Signed:

U.S. ORGANIZATIONS:

American Composers Forum
American Federation of Musicians of the United States and
Canada (AFM)
APAP/Association of Performing Arts Professionals
Arts Midwest
Boston University
BRIC Celebrate Brooklyn! Festival
CEC ArtsLink
Cedar Cultural Center
Chamber Music America
China Residencies
Chorus America
Dan McDaniel Management
Dance/USA
Folk Alliance International
Future of Music Coalition
globalFEST
High Concept Labs
League of American Orchestras
Lisa Booth Management, Inc.
Live Sounds
NAPAMA/Association of North American Performing
Agents and Managers
National Alliance for Musical Theatre
National Association of Latino Arts and Cultures
National Sawdust
Network of Ensemble Theaters
New Music USA
New York City Center
OPERA America
PEN America
Performing Arts Alliance
Recording Academy
SummerStage - City Parks Foundation
Sundance Institute
Tamizdat
The Society for the Preservation and Advancement of the
Harmonica
Theatre Communications Group
Trust for Mutual Understanding
World Music Institute

INTERNATIONAL ORGANIZATIONS

Arts and Theatre Institute, Czech Republic
Association of Independent Music, United Kingdom
Brasil Música e Artes, Brazil
British Musicians' Union, United Kingdom
British Underground, United Kingdom
Canadian Association of Stand-up Comedians, Canada
Canadian Live Music Association, Canada
Creo forbundet for kunst or kultur, Norway
Cultuurloket, Belgium
Dutch Music Export, Netherlands
Entertainment Agents' Association, United Kingdom
Incorporated Society of Musicians, United Kingdom
Music Managers Forum Canada, Canada
On The Move, The Cultural Mobility Information Network,
Belgium
Pearle* Live Performance Europe, Belgium
POP Montreal International Music Festival, Canada
Production Services Association, United Kingdom
PRS Foundation, United Kingdom
Safemuse – Safe Havens for Artists, Norway
Scottish Music Industry Association, Scotland
Sound Diplomacy, Music Cities Events & Music Cities
Network, United Kingdom
Sounds Australia, Australia
Taklit Artist & Concert Management, France

***Recommendations to U.S. Citizenship and Immigration Services and Department
of State From the U.S. Performing Arts Sector
In Response to the COVID-19 Pandemic***

League of American Orchestras & Tamizdat, April 1, 2020

- (1) **From USCIS, the sector requests immediate action to facilitate the amending of currently pending I-129 petitions for O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S, classifications.**

Issue: Hundreds of I-129 O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S petitions are currently processing at the USCIS Vermont and California Service Centers, seeking visa validity periods to cover performing arts engagements that have now been cancelled. USCIS officers have begun issuing Requests for Evidence that use stock template wording, stating that independent verification indicates that some of the employment appears to have been cancelled, and questioning the validity of all the contemplated employment. The sector needs assistance and clear guidance regarding the fate of these petitions.

Proposed Solutions: USCIS should immediately take the following measures, consistent with 8 CFR §103.2(b)(8)(iv) and 8 USC § 1184(a)(2)(a) and -(b):

- (a) In adjudicating all I-129 O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S petitions that seek consular or POE processing, with validity dates ending on or before June 15, 2020, the Service should issue a Request For Evidence (“RFE”) with the following wording:

“The employment contemplated by this petition appears likely to have been impacted by the COVID-19 pandemic and the resulting national emergency. Please submit evidence that the contemplated employment has not been cancelled; alternately, please submit

- a statement from the petitioner requesting a revised validity period,
- evidence of the rescheduling of the contemplated employment,
- for itinerary-based petitions, a revised itinerary, and
- a revised I-129 Page 5.”

USCIS should temporarily revise its RFE templates to include the above language. Chapter 10.5(a) of the *Adjudicator’s Field Manual* (or Volume 2, Parts M and N of the USCIS Policy Manual, if applicable) should also be temporarily revised through administrative action to include this guidance.

- (b) In adjudicating all I-129 O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S petitions seeking consular or POE processing, with validity dates wholly or partially between the dates March 13, 2020 and August 31, 2020, the Service should consider petitioners’ requests to amend validity periods, and apply the same standards of evidence to employment evidence duly submitted subsequent to the initial filing of the petition, based on the receipt of the following documentation:

- a statement from the petitioner requesting revised validity period,
- evidence of the rescheduling of the contemplated employment,
- for itinerary-based petitions, a revised itinerary, and
- a revised I-129 Page 5.

USCIS should issue a Policy Memorandum temporarily enacting the above measures so as to allow petitioners to amend validity periods. Facilitating the amending of the aforementioned I-129 petitions would mitigate the devastating impact of the pandemic on the U.S. performing arts sector. Chapters 33.4(e) and 33.5(e) of the *Adjudicator’s Field Manual* (or Volume 2, Parts M and

N of the USCIS Policy Manual, if applicable) should be temporarily revised through administrative action to include this guidance.

(2) **From USCIS, the sector requests the creation of a viable mechanism for altering petition validity dates to accommodate rescheduled tours and engagements.**

Issue: Thousands of I-129 O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S petitions have been approved for employment that cannot happen, or will be significantly delayed due to rescheduling. The refiling of these petitions would represent a debilitating administrative and financial burden on the already devastated performing arts sector, and a huge unnecessary administrative burden on the government.

Rule: The Immigration and Nationality Act provides that the validity periods for O and P visa holders will be for “such period as the Attorney General may specify in order to provide for the [event (or events)] [competition, event, or performance] for which the nonimmigrant is admitted” (8 USC 1184(a)(2)(a), -(b)).

Proposed Solution: For already approved I-129 O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S petitions with validity dates wholly or partially contained between the dates March 13, 2020 and August 31, 2020, USCIS should require neither the filing of a complete new I-129, nor the submission of a filing fee, but should consider petitioners’ requests to amend validity periods, and apply the statutory standards to employment evidence duly submitted subsequent to the initial filing of the petition, based on the receipt of the following documentation:

- a statement from the petitioner requesting revised validity period,
- evidence of the rescheduling of the contemplated employment,
- for itinerary-based petitions, a revised itinerary, and
- a revised I-129 Page 5.

For already approved I-129 O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S petitions with validity dates wholly or partially contained between the dates February 2, 2020 and March 12, 2020, if the petitioner presents sufficient evidence that the beneficiary's U.S. employment was cancelled due to COVID-19-related U.S. government mandated travel restrictions announced during that time period, USCIS should require neither the filing of a complete new I-129, nor the submission of a filing fee, but should consider petitioners’ requests to amend validity periods, and apply the regulatory standards to employment evidence duly submitted subsequent to the initial filing of the petition, based on the receipt of the following documentation:

- a statement from the petitioner requesting revised validity period,
- evidence that the beneficiary's U.S. employment was cancelled due to COVID-19-related U.S. government mandated travel restrictions announced during that time period,
- evidence of the rescheduling of the contemplated employment,
- for itinerary-based petitions, a revised itinerary, and
- a revised I-129 Page 5.

USCIS should issue a Policy Memorandum temporarily enacting the above measures so as to allow petitioners to amend validity periods for these already approved petitions. Facilitating the amending of the aforementioned I-129 petitions would mitigate the devastating impact of the pandemic on the U.S. performing arts sector. Chapters 33.4(e) and 33.5(e) of the *Adjudicator’s Field Manual* (or Volume 2, Parts M and N of the USCIS Policy Manual, if applicable) should be temporarily revised through administrative action to include this guidance.

(3) **From Department of State, the sector requests the creation of a viable mechanism for altering visa validity dates to accommodate rescheduled tours and engagements.**

Issue: Thousands of I-129 O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S petitions have been approved for employment that cannot happen, or will be significantly delayed due to rescheduling. The refiling of these petitions would represent a debilitating administrative and financial burden on the already devastated performing arts sector, and a huge unnecessary administrative burden on the government.

Rule: 22 CFR § 41.55(c) and 22 CFR § 41.56(c) state that, "the period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, [notification or confirmation] [confirmation or extension of stay] required in paragraph (a)(2) of this section. 9 FAM 402.13 and 9 FAM 402.14 reflect these Federal Regulation guidelines, providing that the validity of O and P visas may not exceed the period of validity approved to accord O or P status.

Proposed Solution: For all I-129 O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S visa beneficiaries whose current visas have validity dates wholly or partially contained between the dates March 13, 2020 and August 31, 2020, Department of State should consider beneficiaries' requests to amend visa validity periods, and apply the statutory standards to employment evidence, based on the receipt of the following documentation:

- a new DS-160,
- completion of a new consular interview,
- a statement from the petitioner requesting revised validity period,
- evidence of the rescheduling of the contemplated employment,
- for itinerary-based petitions, a revised itinerary.

22 CFR § 41.55(c) and 22 CFR § 41.56(c) should be temporarily revised to provide consular officers with more flexibility to amend visa validity dates for the aforementioned visa classifications (irrespective of the validity dates contained in the USCIS-approved petitions) and to incorporate the above proposed provisions and solution. 9 FAM 402.13 and 9 FAM 402.14 should be amended accordingly.

(4) **From USCIS, the sector requests the timely resumption of Premium Processing Service.**

Issue: In the best of times, the industry standards within the performing arts sector necessitate contracting timeframes that force U.S. performing arts institutions to rely on Premium Processing. In the aftermath of the COVID-19 pandemic, U.S. arts institutions will need to scramble to salvage programming, and Premium Processing will play an integral role in this effort.

Rule: Under 8 CFR §103.7(e), a person may request Premium Processing service, provided they fall into an employment-related benefit category specified by USCIS. The O-1, O-2, P-1, P-1S, P-2, P-2S, P-3, and P-3S classifications historically qualified for Premium Processing, but on March 20, 2020 USCIS announced the temporary suspension of Premium Processing for all I-129 and I-140 petitions due to the COVID-19 pandemic.

Proposed Solution: Predictability and transparency from USCIS and Department of State will be critical in helping the performing arts sector recover from the devastation of the COVID-19 pandemic. We request that USCIS publicly announce on its website its commitment to resuming Premium Processing service for all I-129 O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S petitions no later than June 1, 2020.

(5) **From USCIS, the sector requests the timely resumption of the “traditional expedite” protocol for non-profit organizations.**

Issue: In the best of times, the industry standards within the performing arts sector necessitate contracting and employment timeframes that force U.S. performing arts institutions to rely on Premium Processing. In the aftermath of the COVID-19 pandemic, U.S. non-profit arts institutions will need to scramble to salvage programming, but will still be suffering from the debilitating financial impact of venue closings.

Rule: USCIS Policy Memorandum, dated November 30, 2001, *Service Center Guidance for Expedite Requests on Petitions and Applications*, provided consideration for free traditional expedite service for non-profit organizations “in furtherance of the cultural and social interests of the United States.” Historically the USCIS website on traditional expedite requests reflected this policy memorandum, providing the expedite service for “non-profit entities seeking to further the cultural and social interests of the U.S.” Then, in early 2019, USCIS removed status as a non-profit cultural and social organization as an acceptable grounds for making an expedite request and revised Chapter 5 of the USCIS Policy Manual accordingly.

Proposed Solution: The reinstating of the “traditional expedite” protocol for non-profit organizations would provide substantial relief to U.S. non-profit arts institutions. We request that USCIS publicly commit to reinstating the “traditional expedite” protocol for all I-129 O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S, and P-3S petitions no later than June 1, 2020, and amend Chapter 5 of the USCIS Policy Manual to reflect this reinstated protocol.

(6) **From USCIS, the sector requests a waiver of the I-539 fee for beneficiaries who are in the U.S., who’s validity period is expiring, but who are unable to depart the U.S.**

Issue: Numerous aliens currently in the U.S. on valid O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S visas face the expiration of their visa validity period, but will be unable to depart the U.S. due to COVID-19-related travel restrictions.

Rule: Under 8 CFR § 103.7(b)(1)(X), the fee for filing an application to extend or change nonimmigrant status is \$370. 8 CFR § 103.7(c)(1) allows for situations in which fees may be waived, but it limits such fee waivers to the applications, petitions, appeals, motions, and requests listed at 8 CFR § 103.7(c)(3); this list does not include the Application to Extend/Change Nonimmigrant Status for O and P beneficiaries.

Proposed Solution: 8 CFR § 103.7(c)(3) on fee waivers should be temporarily revised to include the Application to Extend/Change Nonimmigrant Status for O and P beneficiaries. The waiver of the I-539 fee for all O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S visa holders will substantially reduce the burden for U.S. arts organizations seeking to aid their alien workers through the current crisis. We request that USCIS waive the I-539 fee for all O-1B, O-2, P-1B, P-2, P-3, P-1S, P-2S visa holders, when such waiver is requested with evidence of the beneficiary’s inability to depart.