

## Performing Arts Visa Working Group

July 23, 2010

U.S. Citizenship and Immigration Services  
Department of Homeland Security  
111 Massachusetts Avenue, NW  
Washington, DC 20529-2210

*Via Web Portal*

Re: DHS Docket No. USCIS–2009–0033

On behalf of the Performing Arts Visa Working Group, we submit these comments in response to the proposed rule published in 75 Fed. Reg. 33446-33488 (June 11, 2010) to adjust the U.S. Citizenship and Immigration Services (USCIS) immigration and naturalization benefit application and petition fee schedule.

The Performing Arts Visa Working Group is a coalition of national organizations that includes the American Federation of Musicians, Association of Performing Arts Presenters, Dance/USA, League of American Orchestras, North American Performing Arts Managers and Agents, OPERA America, Performing Arts Alliance, and Theatre Communications Group, collectively representing more than 18,000 members. Descriptions of the involved organizations are attached.

The working group is dedicated to improving opportunities for international cultural exchange. As an industry, 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 O and P visa petition process. 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.

At 33457, the published rule states, "For the FY 2010/2011 period, USCIS is identifying in this fee rule a new set of goals and performance improvements that are aimed at increasing accountability, providing better customer service, and increasing efficiency." We urge USCIS to ensure that any fee increase is accompanied by significant policy improvements, and that specific action is taken to measurably improve the adjudication procedures related to the O and P visas for international artists. Any increase in the regular processing fee must be accompanied by proven and consistent implementation of the current 14-day statutory requirement for regular O and P processing times and immediate improvements to the quality of petition adjudication.

Previous USCIS failure to make improvements in the regular petition process has resulted in forcing many nonprofit performing arts organizations to pay the \$1,000 Premium Processing fee, which is unaffordable. We therefore oppose the USCIS proposal to increase the Premium Processing fee to \$1,225. Given the extreme harmful inefficiencies of the regular petition process, which often forces nonprofit performing arts organizations to use the Premium Processing Service, the proposed increase in the Premium Processing fee would impose an excessive burden on nonprofit performing arts petitioners.

In a July 20 national O and P stakeholder's forum, USCIS announced plans to reduce regular processing to 14 days and to improve the policy guidance and training for adjudicators regarding the standards of evidence required for O and P visas. We applaud USCIS for this stated commitment, and encourage USCIS to expand these efforts to include a broader array of urgent areas of concern. Provided below are further details regarding the needed improvements to O and P artist visa processing.

**Reduce the maximum processing times for adjudicating regularly-filed O and P petitions.**

The processing times for O and P petitions filed by the regular petition process are currently unpredictable and can vary dramatically. The impact of the erratic timeframe in which petitions are processed is amplified by the sheer volume of unwarranted Requests for Evidence (RFEs) and denials issued by service centers. In implementing the Premium Processing Service (PPS), Legacy INS made it clear that it intended the PPS to be voluntary, not mandatory. The unpredictability of regular processing times, and the delays caused by unjust Requests for Further Evidence, frequently forces O and P petitioners to premium process their petitions at a cost the non-profit performing arts sector cannot afford. To engage foreign guest artists and facilitate international cultural exchange, the arts community must be able to rely upon the 14-day maximum regular visa processing period as required by statute and verified by USCIS as their stated goal.

**Improve the reliability and consistency of adjudications of O and P petitions.**

The USCIS has announced an effort underway to review O and P adjudication procedures, as discussed in an April 12, 2010 stakeholder meeting at the California Service Center (CSC). While this effort is in progress, there remain serious concerns with the O and P adjudications process, which require immediate attention.

- CSC is applying the standard of distinction as it pertains to the arts under INA §101(a)(46) in a manner inconsistent with statute, regulations, and nearly twenty years of practice by Legacy INS and now USCIS. CSC demands excessive evidence of distinction and otherwise builds ever-higher evidentiary barriers to petition approval.
- CSC imposes requirements on P-3 "culturally unique" petitions that are contrary to the regulations, including an incorrect definition of what constitutes a "culturally unique event," and it imposes an impermissibly restrictive interpretation of what constitutes a culturally unique program, performance, or presentation.
- CSC does not recognize the effect of prior O and P adjudications on beneficiaries for whom new petitions are being filed for new events, even after brief absences, where there can be no reasonable basis to question the beneficiary's continued eligibility for the classification sought.
- Both CSC and the Vermont Service Center informally adopted a practice of limiting the gaps between O and P engagements to no more than 45 days. No regulation supports this practice and, until it began considering its policy towards itinerary gaps, the agency had not operated under such a rule. We are pleased that USCIS issued on July 20 a final policy memorandum on this topic in respect to the O classification. As stated in detailed comments submitted by the Performing Arts Visa Working Group to USCIS on May 24, 2010, we support the

memo's call for granting, whenever possible, the total requested visa approval period and urge USCIS to expand this policy to include the P visa category.

We applaud USCIS for elevating the O and P petition process as a priority for review and further appreciate the recent effort by the USCIS Service Center Operations division to invite stakeholder feedback regarding petitioner experiences. At this juncture, we urge USCIS to act as swiftly as possible to implement policy, training, and adjudication improvements that will advance the cultural and artistic interests of the United States.

**Implement uniform policies to improve access to the “traditional expedite” service.**

The USCIS has made traditional expedite processing available at no additional fee in cases where petitioners, through no fault of their own, experience an unforeseen emergency, and where failure to expedite the petition will result in serious harm, economically or otherwise, to the petitioner. Since implementing the Premium Process Service, the USCIS has allowed non-profit organizations to remain eligible for the traditional expedite. However, the USCIS standards for granting expedited processing requests are unclear, often forcing petitioners to file the Premium Processing Service and pay the current \$1,000 fee. The traditional expedite is not helpful, nor a viable expedite option for petitioners, unless there are clear, uniform policies appropriately followed and administered by USCIS.

Finally, we urge USCIS to ensure that implementation of any fee increase takes place with adequate advance notice to petitioners and effective related training for adjudicators. In the weeks surrounding the previous fee increase in 2007, 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 the proposed fee increase does not result in unwarranted petition rejections.

We have sought to illustrate in these comments that an increase in regular processing fees must be accompanied by consistent improvement in the adjudication procedures and processing timeframe for O and P petitions, and that the proposed increase in the Premium Processing Fee would impose a significant burden on the nonprofit performing arts community. Thank you for the opportunity to comment on this proposed rulemaking.

Sincerely,

**American Federation of Musicians**  
**Association of Performing Arts Presenters**  
**Dance/USA**  
**League of American Orchestras**  
**North American Performing Arts Managers and Agents**  
**OPERA America**  
**Performing Arts Alliance**  
**Theatre Communications Group**