

# CMAAMatters

CHAMBER MUSIC AMERICA

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## An Inconvenient Truth *There's no getting around it—foreign artists need U.S. work visas. But while the process may be difficult, it's anything but impossible.*

by BRIAN TAYLOR GOLDSTEIN, ESQ.

A French string quartet with a U.S. tour scheduled later in the season, shows up at the U.S. consulate in Paris to apply for visas. One minuscule problem: the birthdates on their visa petitions (MMDDYY) don't match the birthdates on their passports (DDMMYY). The result? The U.S. denied their visas, and the group was forced to cancel its American engagements.

This is not an isolated incident. There's the German cellist, prevented from playing with an American group because years before, living in the U.S. on a student visa, he had given a considerable number of professional performances. Or the group that applied for the wrong type of visas and found out too late to make its U.S. performances. None of this is surprising: the whole procedure for obtaining visas for foreign artists and ensembles is legendarily a quagmire of unclear requirements, labyrinthine procedures and unpredictable outcomes.

But while the process can be daunting, it is not insurmountable. For every artist who is denied a visa and for every engagement that is canceled, thousands of artist visas get issued. In most cases, nobody has to hire an attorney or pay outrageous fees. The visa requirement shouldn't keep foreign artists from performing here, or American presenters from booking overseas ensembles.

When is an artist required to have a work visa as opposed to entering the U.S. as a visitor? Almost always. One pervasive myth is that a work visa is not necessary unless an artist is being paid. In fact, U.S.

law defines "work" as any performance *regardless* of whether an artist receives payment. Even artists who perform for free, or receive payment outside of the U.S., must get work visas.

### THE BASICS

Work visas for musicians fall into two broad categories: "O" visas for individual artists and "P" visas for groups. The process for obtaining these visas involves three steps:

- 1 A U.S.-based petitioner—for instance, a presenter seeking to engage a foreign group—must file a petition for visa approval on behalf of the artist with United States Citizenship and Immigration Services (USCIS). The filing fee is (as of November 23, 2010) \$325.
- 2 Once this petition is approved, the artist or group must appear personally at a U.S. consulate and apply for the visa itself. Another filing fee is assessed.
- 3 Upon entering the U.S., the artists will need to present their visas to a Customs and Border Patrol (CBP) officer.



### ALL IN THE TIMING

Be sure to leave enough time for the process. The USCIS usually takes 30–45 days to review a visa petition; if you want a guaranteed review of 15 days or less, you will need to pay a premium processing fee of \$1,225 (as of November 23), in addition to the basic filing fee. If all goes well, you'll get an Approval Notice, but the USCIS may deliver a Request for Evidence, asking for more materials to justify your petition. This will add upwards of a month to the process. After the re-review, USCIS will either approve or deny the petition. Denials can and do happen. In that event, your best option is to file a new petition and try again.

Allow plenty of extra time for Step Two: the artists' applications to the U.S. consulate. Depending on the consulate, a

visa appointment may be available in as little as three days; it can also take up to three months. (Approximate wait times for appointments at every consulate can be found on the State Department's website at [www.travel.state.gov](http://www.travel.state.gov).) If all goes well, a visa may be issued the next day or in a few days. However, like everything else, processing times vary greatly from consulate to consulate. And any element that arouses the consular officer's suspicion—past arrests, visits to any country deemed a terrorist threat—can delay the process, usually by 30 days or more.

In short, the more time you can allow, the more time you will have to deal with delays, mistakes, and unexpected complications. Visa petitions can be submitted to USCIS up to a year before the first engagement date. Waiting until a few weeks before an engagement to submit the petition to USCIS or assuming that a consulate will be able to schedule appointments when convenient for the artist will only lead to disappointment.

## THE VISA PETITION

Any U.S. citizen, organization, or permanent resident (green card holder) can file a visa petition. A presenter or an agent/manager can serve as the petitioner; so can an American ensemble engaging a foreign artist. If an artist will be performing on a tour, then any one of the presenters on the tour can be the petitioner on behalf of itself and the others. However, each of the tour presenters will have to submit a form authorizing the petitioner to act on its behalf.

The petition must demonstrate that an artist's skills (for "O" visas) or an ensemble's

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level of international recognition (for "P" visas) justify working in the U.S. These requirements demand a fair amount of supporting evidence: documentation that the artist or group has performed at prestigious venues, received significant awards, garnered critical acclaim, released successful recordings, or gotten the praise of experts. All of this will end up in front of the USCIS officers who review visa petitions. Never underestimate their ignorance of the music field! Most USCIS examiners are unfamiliar with the performing arts and do not listen to jazz or classical music. (Once, when the Metropolitan Opera applied on behalf of a singer, a USCIS officer famously argued that the petition didn't specify where the house was located or provide evidence that it was a distinguished venue.)

Far too many petitions are denied because the petitioner didn't submit enough material: the artist's biography and handful of newspaper articles printed from a website will not be enough. It is essential that a petition not merely list an artist's accomplishments, but explain—in excruciating detail—the significance of each. If an artist has won an award, explain why the award is significant. If the group has performed at a prestigious festival or concert hall, explain that only

distinguished artists perform there. If necessary, include letters from experts in the field supporting your arguments.

A prominent artist management company reacted in shock when one of its petitions was recently returned with a Request for Evidence. But a quick review of the petition revealed the problem: the company had provided the necessary forms, engagements dates, signed contracts, and even a lovely biography of the group, but only three newspaper reviews (in Dutch) and no other supporting evidence. The moral: you should provide as many programs, reviews, articles and CD booklets as you can. Everything must either be in English or accompanied by a translation. In short, imagine your petition will be reviewed by a 10-year-old. If a child wouldn't conclude that your artist is distinguished, don't assume that a USCIS examiner will, either.

Visa petitions are approved for specific lengths of time—called "classification periods"—during which the artist will be permitted to enter the U.S., perform, and then leave. The length of the classification period depends on the number of engagements and the type of visa. A petition can be submitted for a visa to cover a single engagement or a tour of multiple engagements—up to three years for an O visa and one year for a P visa. The petition must include an itinerary that lists and identifies each engagement, as well as a written confirmation of each engagement. While signed contracts are preferable, you can also use emails, letters of interest, holds, deal memos, and confirming memorandums.

If there are significant gaps between engagements (usually more than 60–90 days), the USCIS may not approve the full classification period requested. If the group has a series of engagements in September and no other dates until March, the approved classification period will probably cover only the September dates. A new and separate petition would then have to be submitted for the March dates, requiring another trip to the consulate for new visas. A group can, however, add or delete engagements throughout the classification period.

## APPLYING AT THE CONSULATE

Once the petition is approved, the artists must schedule an appointment at a U.S. consulate. Each and every artist

## Further Research

I could only offer a sketch of the visa process in this article. A thorough understanding of the subject requires research into its nuances and variances—how to obtain visas for technical and support crew, restrictions on travel for artists from certain countries, the applicability of U.S. taxes and other matters. Meanwhile, just when you think you've mastered the subject, USCIS and the consulates can peremptorily change rules and regulations.

Fortunately, the website **Artists from Abroad** ([www.artistsfromabroad.org](http://www.artistsfromabroad.org)) offers a definitive navigational guide to the visa process. Maintained by the League of American Orchestras and Association of Performing Arts Presenters, and regularly updated by my law firm, FTM Arts Law ([www.FTMartslaw-pc.com](http://www.FTMartslaw-pc.com)), it contains an exhaustive analysis of the entire process, including filing instructions, tips, strategies, FAQs, sample forms and petitions, timelines, fees, and links to consulates.

listed on the visa approval—whether it's the four members of a string quartet or 80 members of an orchestra—will need to go through this process: filling out an application form, making an appointment and going to the consulate for an interview. The application form demands extensive, sometimes invasive personal information: parents' and siblings' names, professional affiliations, social clubs and groups, military service, criminal records, medical conditions, prior visits to the U.S. The artists will each also have to pay a visa application fee, typically \$100–\$200.

Although every consulate has its own procedures and policies for making appointments, paying fees and submitting applications, it's generally done online through the consulate's website. (The State Department's website has the URLs for individual consuls.)

On the day of the appointment, each artist will be interviewed by a surly and brusque consular officer. Depending on the situation, the interview can last anywhere from a few seconds to several minutes, with the officer asking questions about the artist's background, professional experience, planned engagements, or any other information drawn from the application. While the USCIS examiner is charged with determining visa eligibility and classification periods, the consular officer is charged with determining whether an individual has filed a fraudulent petition or poses a security threat. This is where past indiscretions can jump up and bite. A background check on an Australian musician once revealed a past disorderly

conduct arrest: when he was 18 he climbed a water tower and dropped his pants. It added a 60-day delay to the process.

After the interview, the artist will be sent away to await a determination. Regardless of whether or not the USCIS has approved the visa petition, the consulate has broad and unfettered authority to deny a visa for any reason—or no reason—and while the artist can reapply, the decision and whims of the consulate are not appealable.

#### GETTING IN

Step Three—entry into the U.S.—presents another hurdle. Even after the consulate issues the visa, the decision whether to admit an artist into the U.S. is made at the discretion of the CBP officer at the point of entry. It is unusual for a CBP officer to refuse entry. But it can happen if an artist says something inconsistent with the visa category or classification period. For example, a member of a chamber ensemble was once

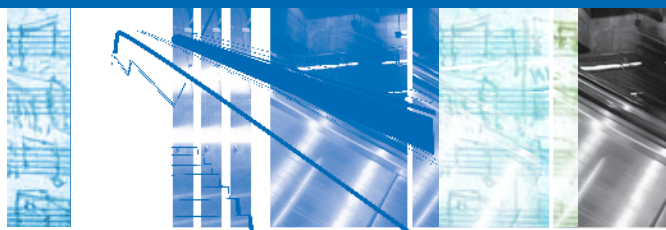
denied entry when he told the CBP officer that, in addition to performing with his group, he had been engaged to perform as a soloist: solo performances are not allowed on a P visa.

Despite all of the challenges, far more succeed in obtaining visas than fail. The best way to guarantee positive results is to take the time to understand the process. There are no shortcuts, no easy answers, and no simple tricks. In fact, the tiniest mistake—such as signing a form in black ink, as opposed to the required blue ink, or failing to disclose prior criminal records to the consulate—can lead to a rejected visa. But armed with information, patience, thoughtfulness, and discipline, artist visas can be relatively easily obtained—and the doors to international artistic collaboration can remain open.

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## Don't Be Sneaky

Considering how complicated and frustrating the visa process may be, you might be tempted to try to get around it: advising artists to enter and perform as visitors. Two problems: it's illegal, and it doesn't necessarily work. Take the case of a Canadian jazz musician who never bothered to get a visa for his U.S. engagements. For years, he got away with it. But earlier this year, a CBP officer got suspicious when he noticed the musician traveling with his instrument. Before letting him through, the officer Googled him, found all of his upcoming U.S. gigs, and sent him back. In this case, the artist just lost out on his bookings. But others have been barred from the U.S. for three to five years.



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### DateLine

#### CMA Events and Opportunities

**Chamber Music America 33rd Annual National Conference, *The Next Generation: Traditions and Trends***—January 13-16, 2010, New York, NY. FMI: [www.chamber-music.org](http://www.chamber-music.org)

**Residency Partnership Program**—Support for ensembles and presenters to create residency projects that bring live music and related educational programs to communities nationwide. Residencies may feature traditional, contemporary/classical, jazz or world music.

**DEADLINE: February 11, 2011**  
FMI: [www.chamber-music.org](http://www.chamber-music.org)

**New Jazz Works: Commissioning and Ensemble Development**—Support for the creation and performance of new works in the jazz idiom. These three-year grants supply commissioning funds, support for performances, travel, recording of the commissioned work, and opportunities for professional development.

**DEADLINE: March 11, 2011**  
FMI: [www.chamber-music.org](http://www.chamber-music.org)

**Classical Commissioning Program**—Support to ensembles and presenters for new ensemble works. Grants provide funds for the composer's fee, ensemble honorarium and copying costs.

**DEADLINE: April 8, 2011**  
FMI: [www.chamber-music.org](http://www.chamber-music.org)

#### Other Events and Programs

##### CONFERENCES

**Jazz Education Network Conference**—January 6-8, 2011, New Orleans, LA.  
FMI: [www.jazzednet.org](http://www.jazzednet.org)

**Association of Performing Arts Presenters Conference**—January 7-11, 2011, New York, NY. FMI: [www.apap365.org](http://www.apap365.org)

**International Society of the Performing Arts Conference**—January 11-13, 2011, New York, NY. FMI: [www.ispa.org](http://www.ispa.org)

##### GRANT SUPPORT

**USArtists International**—Funding for U.S.-based music ensembles that have been invited to participate in international festivals.

**DEADLINES: December 13, 2010** for events taking place March 1, 2011– February 28, 2012; **April 22, 2011** for events taking place July 1, 2011–June 30, 2012  
FMI: [www.midatlanticarts.org](http://www.midatlanticarts.org)

##### ACMP: The Chamber Music Network

—Support for adult amateur chamber music workshops, including coaches' salaries, reduced registration fees, and scholarships.

**DEADLINE: December 31, 2010**  
FMI: [www.acmp.net](http://www.acmp.net)

**Aaron Copland Fund for Music/Recording Program**—Support for organizations that record contemporary American music. **DEADLINE:**

**January 15, 2011**  
FMI: [www.coplandfund.org](http://www.coplandfund.org)

**Cary New Music Performance Fund**—General operating support to small-budget, grassroots, and emerging organizations in New York City that focus primarily or exclusively on new music.

**DEADLINE: February 18, 2011**  
FMI: [www.meetthecomposer.org](http://www.meetthecomposer.org)

**Pennsylvania Performing Arts on Tour**—Fee support to presenters based in DE, MD, NJ, NY, OH, PA, VA, WV, Washington, DC, and the US Virgin Islands to present the work of artists and companies on the PennPAT Artist Roster.

**DEADLINE: February 15, 2011** for events scheduled June 1, 2011 – May 31, 2013.  
FMI: [www.pennpat.org](http://www.pennpat.org)

**Commissioning Music/USA**—Support to not-for-profit performing and presenting organizations for the commissioning of new works. **DEADLINE: March 18, 2011**  
FMI: [www.meetthecomposer.org](http://www.meetthecomposer.org)