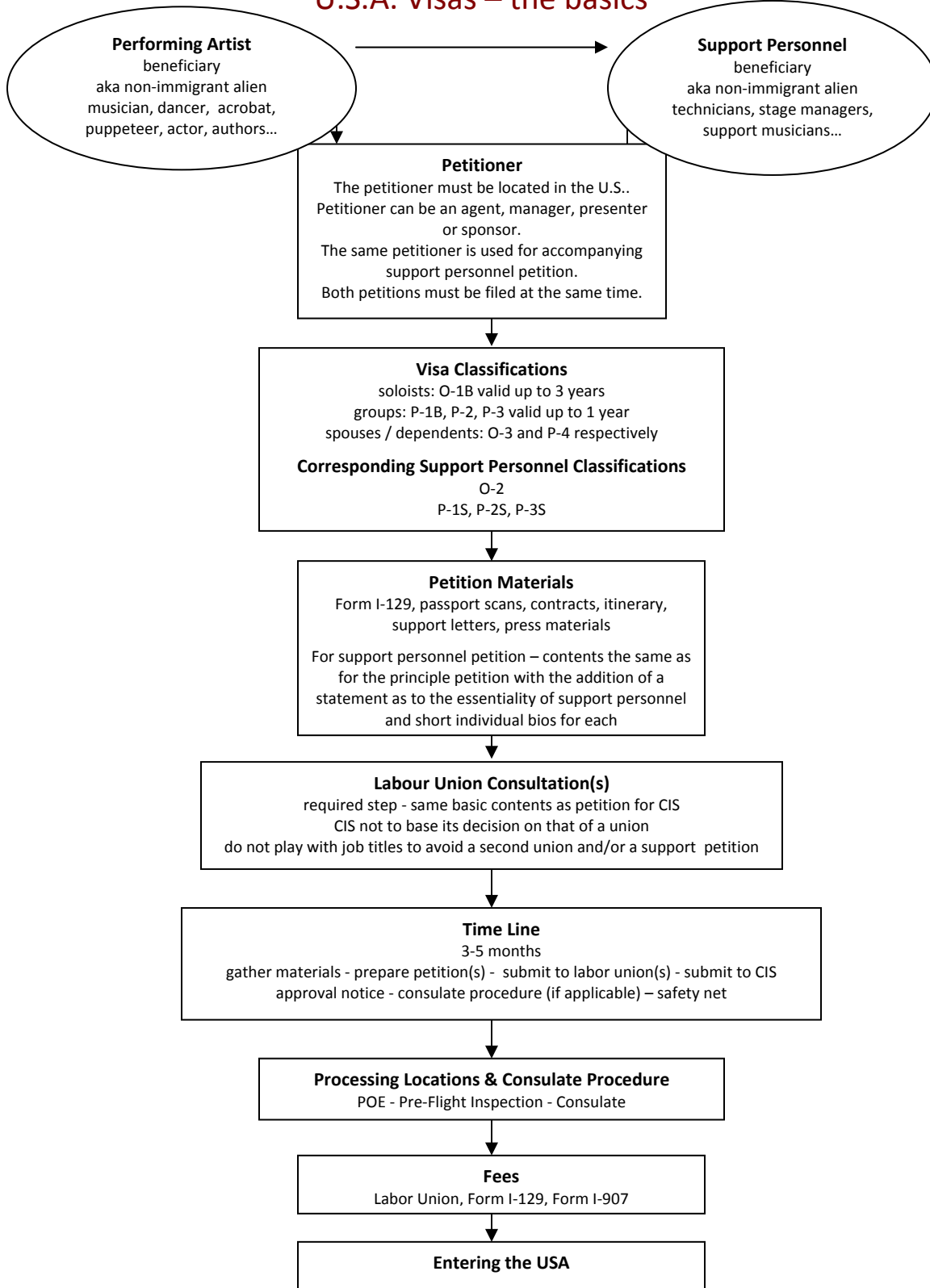


U.S.A. Visas – the basics



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The information given here is of a broad nature. The objective is to familiarize you with key terms and provide a basic knowledge of the visa process for foreign artists performing in the United States. Overall, look at the process as being similar to preparing a grant application. Many of the parts are similar: contracts, itinerary, press materials. Throughout, we will refer to the United States Citizenship & Immigration Service as CIS.

Performing Artist

The performing artist is the beneficiary(s) - aka non-immigrant alien(s).

This can be a musician, dancer, acrobat, puppeteer, actor, author....

Support personnel to the performing artist include: sound, light, instrument technicians, stage managers and directors, riggers, support musicians, choreographers, costume personnel....

Petitioner

The petitioner is the individual or organization that will submit the beneficiary's I-129 petition for non-immigrant worker and related documents to CIS in order to obtain an I-797 Approval Notice. The petitioner must be located in the United States. Agents, managers, presenters, organizers and sponsors appointed by the beneficiary may file I-129 petitions.

If there is a corresponding support petition, the same petitioner is used and the support petition must be filed at the same time as the principle petition. Choose your petitioner carefully. Be sure they have gone through the process recently, that they are current with any new regulations or fees.

Visa Classifications

There are two visa classifications for performing artists: O-1B for soloists and P for groups (2 or more persons). Within the P category are P-1B, P-2 and P-3. Each classification has a corresponding classification for support personnel: O-2 and P-1S, P-2S and P-3S respectively.

Soloists:

O-1B:

The O-1 can be valid for up to a maximum of 3 years. In order to qualify for 3 years, or a portion thereof, you must have contracts or deal memos that span the time period you want. Individuals may also apply for a P-3 culturally unique classification – see below.

Groups:

P classifications can be valid for up to 1 year. As with the O-1, you must have contracts or deal memos that span the time period you are requesting.

There are 3 P classifications for groups:

P-1B:

Members of an internationally recognized entertainment group – whether music, dance, theatre. At least 75% of the group must have been with the group for at least 1 year (unless said member is a temporary sub due to illness, schedule conflict etc). In documenting your P-1 status bear in mind that CIS is not interested in the individual members – but the group/ensemble/company as a whole. Further, the success of one particular production does not necessarily satisfy the P-1 criteria. CIS has shown some flexibility with the “internationally recognized” criteria for emerging Canadian artists, acknowledging that the United States is a logical new market.

P-2:

Participant in a reciprocal exchange program, usually with a labor union such as Actor's Equity or the AFM, wherein the USA union becomes the petitioner and arranges a reciprocal presentation in Canada. It is recommended you contact the appropriate union well in advance. If a group plans to tour the United States frequently, it is advisable to become established as a P-1.

P-3:

Culturally unique performer (including individuals), groups, teachers, coaches. You qualify for a P-3 visa if you are a “culturally unique” performing artist or entertainment group coming to perform, teach or coach under a commercial or non-commercial "culturally unique" program or event. “Culturally unique” means “a style of artistic expression or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe or other group of persons.” For the P-3 classification there is no specific time the members have to have been together. CIS allows one to be fairly broad in demonstrating “culturally unique”. One can demonstrate cultural uniqueness through press reviews, articles, letters from foreign governments, awards, prizes, testimonial letters from experts and letters of support from the presenter(s).

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Visa Classifications cont'd

O-3, P-4 Spouses & dependents:

Spouse/dependent(s) are NOT included on the principle beneficiary's petition and are not allowed to work.

A spouse and/or unmarried children who wish to accompany an O or P performing artist or support person may qualify for an O-3 or P-4 visa classification. If the spouse/dependent(s) are Canadian citizens, presenting proof of relationship, together with principle beneficiary's I-797 and valid passport suffices at a port of entry or pre-flight inspection. If the spouse/dependent(s) are not Canadian citizens, they will use the principle beneficiary's I-797 Approval Notice to obtain their O-3 or P-4 visa at a U.S. consulate abroad. They must provide evidence of their relationship to the beneficiary.

Notes and precautions:

- Do not pass off a technician as a member of a group to avoid a separate support personnel petition.
- Do not enter to perform without the appropriate visa.
- US border control personnel are very web savvy and frequently Google to check people they suspect of entering falsely or with the incorrect classification.
- A non-immigrant "O" or "P" work visa is required regardless of whether or not the artist is being paid. If a performance is open to the public, even with free admission, a work visa is required.
- If performing at a conference showcase that is closed to the public and for industry professionals only, one may enter on a visa waiver or on a B visa. In either case, a letter from the conference organization and/or a U.S. immigration attorney stating the details and nature of the performance is required.

Petition Materials

Every petitioner has his/her way of organizing and presenting a petition, and each case has its own particular slant. While there are common aspects to all petitions, your petitioner should provide you with a list of required materials for your particular case.

Common to all petitions are:

- USCIS Form I-129 – contains the basic facts of the petition - intended dates, beneficiary information, processing location, prior visas etc
- color jpeg scan of passport 2 page biographical spread
- performance contracts, deal memos and/or letters of intent / invitation
- itinerary
- press & other support materials
- *For support personnel petitions only:* statement regarding the essentiality of support personnel and individual bios

Notes:

Gaps between U.S. performances should not exceed 2 to 2.5 months. A petition submitted with gaps of +2.5 months may be denied or only approved for a portion of the requested time period.

Whether a company, or an individual, the petitioner must know if any personnel have been arrested/convicted of anything ANYWHERE in the world. If so you must provide court/police records pertaining to the arrest/conviction.

Contracts:

Ideally one submits fully executed performance contracts - or signed by at least 1 party (tech riders not necessary).

However, presenter bureaucracies can be slow in providing contracts and many a petition has been delayed as a result. A Deal Memo from the presenter that states the basics of the contract— presenter information, artist, date(s), venue, services to be performed, fee - is acceptable and often easier to obtain in a timely fashion.

Should you have tentative dates beyond your contracted dates, to extend your visa period as much as possible within your classification (up to 3 years O, up to 1 year P) one can submit the following documentation in support of these tentative dates:

- letter of interest (or invitation): a general letter from presenter to artist that expresses interest in presenting the artist - mention preferred date(s), fee range - specifics are not necessarily mentioned and it can be stated that "further negotiations required etc...." – demonstrates possible employment.
- email correspondence: gather and organize into 1 document pertinent email correspondence w/a presenter wherein possible dates and fees are mentioned - basically an electronic version of letter of interest
- If artist has management artist management may also request, in a formal letter to the artist, his/her availability for U.S. tours during a certain time period(s), backed with documentation on confirmed dates, dates in negotiation and tentative dates

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Petition Materials cont'd

Itineraries:

Most petitions are itinerary based. When preparing an itinerary every day within the period you are requesting must be accounted for. If the beneficiary will be departing and re-entering the U.S. during the visa period, non-U.S. days must also be accounted for - be they performances, rehearsals, teaching, holidays, though contracts are not required.

With an itinerary based petition it is important to:

- account for every day of the requested period
- be consistent in the entry of information
- demonstrate that the U.S. performances are part of an overall season tour plan and not the beneficiary's sole source of revenue – as demonstrated by the non-U.S. activities on itinerary

Press & support materials:

Whether applying for an O-1B or a P visa, with both you must document the artist's *extraordinary ability* (distinction) in the arts. While documenting *extraordinary ability* is varied and broad, CIS has a list of criteria by which it defines *extraordinary ability*, and your petitioner should be well versed in what materials will be required to support a particular beneficiary and classification. In simple terms, one must document that the artist is nationally and internationally known by their tours, the fees they command, the venues they perform in, recordings, critical acclaim, commercial successes, international awards (GRAMMY, Oscar, major competitions), testimonials and letters of support from presenters, peers, arts and government organizations and the like. For young, emerging artists it can be an arduous task involving a multitude of support documentation.

For the most part the press materials submitted with a petition include:

- artist / company biography
- performance highlights for past 2 seasons
- performance reviews, articles, CD reviews
- discography (if applicable)
- list of awards, competition wins (backed with scans of any award certificates)
- list of grants for past 2 seasons (if applicable)

Note that CIS looks upon artist (or management) generated press materials as "self-promotion". While these items are indeed important, CIS is more impressed with seeing scans of:

- original reviews and articles
- award certificates, competition wins
- testimonials and letters of support from presenters, peers, arts and government organizations useful – especially for young emerging artists

Dos and Don'ts:

- all materials must be in English
- foreign language bios, reviews, articles or excerpts thereof must be translated and the translations must be certified
- do not send CDS, DVDs or photos
- do not flood your petitioner with all manner of press documents and materials - let your petitioner tell you what they need to demonstrate your classification

Support Personnel:

If filing a corresponding support petition (O-2, P-1S, P-2S, P-3S), documentation is the same as for the principle beneficiary. However, one must also document the "essentiality" of the support personnel and when each began working for the principle. This is documented with a statement as to the necessity and duties of the support personnel with short individual bio(s) for each support person.

Labor Union consultation

Prior to sending the petition to CIS, one must obtain a labor consultation from the appropriate U.S. union(s).

These include: American Federation of Musicians (AFM), American Guild of Musical Artists (AGMA), American Guild of Variety Artists (AGVA), Actor's Equity (AE), Stage Directors and Choreographers Society (SDC), International Alliance of Theatrical Employees (IATSE).....

For the most part, the contents of the petition for labor union(s) is the same as for CIS. The AFM has a one-page questionnaire as well. Regardless of whether it is a positive or a negative consultation, CIS is not to base its decision on that of the union. Do not play with job titles to avoid a second or third union. Where there is no appropriate union (artistic directors), a declaration is included within the petition citing the statute that waives the union consultation in such cases and/or include letters from peer groups / organizations. There may be instances where personnel fall into both performer and support categories – obtain necessary union consultations that include all responsibilities of the beneficiary.

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Time Line

Rule of thumb: as soon as a USA tour is evident, even while dates are in negotiation, start preparing for the visa process. Your key to success is to start the process early.

At the outset:

- choose your petitioner
- determine your classification and time period
- be sure passports are valid for at least 6 months beyond the last departure date of the requested visa period – if not start renewal process immediately
- gather contracts and/or deal memos (letters of intent) and all other materials for your petitioner

If you are a Canadian citizen, or group with all Canadian citizens, there are 4 parts to the process time line:

1. gather materials & prepare petition(s): 2-3 weeks pending how organized artist & petitioner are
2. submit petition to labor union(s): 2-10 days pending the union and whether you use the union's expedite service (if available)
3. submit petition(s) to CIS: 7-10 days to receive I-797 Receipt Notice
4. CIS Form I-797 Approval Notice: 12-30 days from the date you submit the petition

For the above, therefore, plan between 1.5 – 2 months.

To this it is highly recommended you add a safety net of 15-20 days. The safety net allows time for the unexpected, the most common being a Request for Further Evidence (RFE) such as:

- further evidence of the artist's "extraordinary ability"
- an incomplete itinerary
- lack of a signature on the I-129
- contracts, letters of invitation do not match itinerary

If you are a Canadian company and have non-Canadian personnel there is the additional step, following receipt of the I-797 Approval Notice from CIS, of a U.S. Consulate interview and issuance of a visa into the beneficiary's passport .

If a Consulate procedure is required, add 3-4 weeks to your time line.

There are two ways to file a petition with CIS:

- Regular Processing – cases adjudicated in 15-30 days
- Premium Processing – cases adjudicated in 15 days

CIS service centers (Vermont and California) are currently making every effort to adjudicate Regular Processed petitions in 15-30 days, however, the service centers are not bound to this. Nonetheless, with proper planning, there should not be a need for Premium Processing and it's additional fee of usd\$1,225.00.

Processing Locations & Consulate Procedure

When approved, CIS will advise the Processing location designated on the USCIS Form I-129. This will be one of the following:

- port-of-entry (POE)
- pre-flight inspection (PFI)
- U.S. Consulate

For Canadian citizens who do not require a Consulate interview the CIS Processing Location will be either a POE if arriving in the USA by ground (i.e. Champlain, NY) or PFI if arriving by flight (i.e. Pierre-Elliott-Trudeau Airport, Montreal) or both as the artist requires.

The following is required to enter:

- USCIS Form I-797 Approval Notice
- copy of the petition
- valid passport

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Processing Locations & Consulate Procedure cont'd

If a Canadian company has non-Canadian personnel, they must apply for a visa to be issued into their passports at a U.S. Consulate following receipt of the I-797 Approval Notice.

It is very important that companies with personnel that must obtain a visa from a Consulate plan well ahead. It occurs too often that a company lets slip this last step in the process and find themselves on tour or otherwise unavailable for the Consulate procedure. Note: the designated consulate need not be in the country where the beneficiary resides.

Each consulate requires “x” number of days advance notice to schedule interviews and “x” number of days to process visa into passports - during which time the consulate retains beneficiary’s passport. Most consulates require an average of 5-8 days advance notice to schedule interviews and 1 to 3 days to process visas.

If the Consulate procedure is required, at the very outset of the visa process:

- determine at what Consulate(s) you will apply for the visa
- what is the Consulate’s wait times for scheduling interviews and processing of visas
- determine your window for the interview(s)
- familiarize yourself with the forms, fees and procedures for that particular consulate

Be prepared for the unexpected, a Consulate can conduct an in-depth security check at their own discretion. When they do it can take 1-4 weeks. Remember, even if the beneficiary has received a similar visa in the past, it does not guarantee they will receive one the next time around.

A Consulate interview cannot be scheduled until you have the CIS petition(s) Receipt Number(s). This is usually received 5-7 days following when the petition was sent to CIS.

Multiple processing locations:

If more than one processing location is required – for example a POE for Canadian personnel and a consulate for non-Canadian personnel, your petitioner will designate the consulate and the I-797 Approval Notice will list the consulate as the designated processing location.

However, within 72 hours the approval will be in the government’s PIMS (Petition Information Management System) data base. At that point, officers at a POE, PFI or consulate will have access to the case and will verify the approval in the computer system.

For more information download *Processing Locations & Consulate Procedures.pdf* from <http://www.gamisimonds.com/visas/>

Fees

Aside from the fee your petitioner may charge, there are the following fees:

Union Consultation: \$250.00 - \$300.00 per petition for regular service and \$300.00 - \$500.00 for expedite service (not all offer this)

CIS Form I-129 & Supplement: \$325.00 per petition (regardless of number of personnel on petition)

CIS Form I-907 Premium Processing (if needed): \$1,225.00 per petition

If the consulate procedure is required additional consulate fees are:

- \$190.00 per visa issued
- in some cases an issuance fee - the issuance fee is charged if the country from which the beneficiary comes from charges U.S. citizens a similar fee - to find out if you must pay an issuance fee go to: http://travel.state.gov/visa/fees/fees_3272.html

Entering the USA: I-94 Arrival/Departure Record to be phased out beginning April 30, 2013

When entering the USA foreign artists (with the exception of Canadians and Mexicans depending on when and where they enter) are required to provide information to Customs and Border Patrol (CBP) who then issue Form I-94 Arrival/Departure Record. The I-94 is proof of lawful entry, states the visa classification, the arrival date and visa departure date. The I-94 is given up at last departure from the USA.

As of **April 30, 2013**, United States CBP will no longer issue physical I-94 Arrival / Departure forms. The arrival / departure process will now be electronically automated. Upon arrival in the USA by air or sea, CBP will gather the same information automatically from the artist’s travel records and will enter the artist’s visa classification and departure date electronically. *Note:* as advance information is only transmitted for air and sea travelers, CBP will continue to issue paper form I-94 to those entering at land ports (meaning for Canadians and Mexicans).

When entering from air or sea, the CBP will stamp passports of each arriving artist with classification, arrival and departure dates. *Note:* at entry one can request additional days be added to visa period for holiday. It is at the sole discretion of the CBP whether or not to grant said request. Conversely, CBP also has the discretion to issue a sooner departure date.

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Entering the USA: cont'd

Should an artist(s) want a hard copy as evidence of admission and their immigration status, they can go to the web site www.cbp.gov/i94 (site goes live April 30, 2013), enter required information and then access and print their record number and admissions information as needed.

When departing the USA, the artist(s) does not need to do anything different. If the artist(s) did not receive a paper I-94, departure information will be entered electronically. If an I-94 was issued, continue to surrender these upon departure to CBP.

CBP will phase-in the Form I-94 automation at air and sea ports of entry throughout April and May, 2013. Foreign artists will continue to receive the paper Form I-94 if a particular air or sea port of entry has not yet been automated.

When entering the USA it is recommended that beneficiary have copy of I-797 Approval Notice and from the petition - contracts and itinerary. If not a bother, never hurts to have a copy of the complete petition. Beneficiary should be familiar with the petition: where going, staying, types of venues etc.

You can read more about CBP's plans and schedule to automate Form I-94 at:

http://www.cbp.gov/xp/cgov/travel/id_visa/i-94_instructions/i94_rollout.xml

CBP has also issued a fact sheet that includes frequently asked questions regarding the impact of automation, visa revalidation, passenger processing times, and more. You can access that at:

http://www.cbp.gov/linkhandler/cgov/newsroom/fact_sheets/travel/i94_factsheet.ctt/i94_factsheet.pdf