

ARTIST VISAS FOR THE U.S.

Navigating the visa process for performing artists

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Do I even need a work visa!?!?

If you're performing before an audience and you're not a U.S. citizen, U.S. law states that you must have a work visa. There are a handful of exceptions where a work visa may not be necessary. Here are the three most important:

- (1) **Industry showcases** where the principal purpose of the audience in attendance is NOT to be entertained, but rather to consider working with the artist in the future
- (2) **Cultural programs** where event is 100% sponsored by your home country's government and the audience is non-paying
- (3) For **Managers**: If the purpose of the manager's trip is not essential for the artist's performance

If one of these exceptions applies, you can use ESTA or a B-1/B-2 Tourist/Business visa, otherwise you will need to obtain a work visa

ESTA or Visa?

Important to note, whether you're allowed to enter the country depends on if the U.S. Immigration Officer at the border or airport believes you when you explain what you'll be doing!

Sometimes it is safer to have a visa than to travel on ESTA, which relies on the discretion of a U.S. Immigration officer upon entry. Whether or not you need a work visa depends on your activities, even if you're not being paid.

If a U.S. Immigration officer suspects you're coming to perform without a work visa and you don't meet one of the exceptions, you'll probably be denied entry to the U.S. and they may make it very hard to enter the U.S. again in the future, even if you do eventually get the proper visa.

What kind of visa do I need?

O-visa classification:

- O-1: Individual/solo artists of “extraordinary ability”
- O-2: Essential support staff (backing band, crew)

P-visa classification:

- P-1: Members of an “internationally recognized” ensemble
- P-1S: Crew/Support Personnel for the ensemble

- P-3: “Culturally unique” artist or group
- P-3S: Crew/Support personnel for the

How do I get a work visa?

STEP #1: Filing the work visa petition

- *What is a “petition”?*: The application that your petitioner will send to the United States Citizenship and Immigration Services (“USCIS”) to prove your eligibility for the work visa.
- *Identifying your “petitioner”*: The US government doesn’t allow the applicant to file the petition, they will require a U.S. based person/entity to file the petition on your behalf. This entity is your petitioner/sponsor.
- *Gathering evidence for your petition*: The petition needs to prove that you have bona fide U.S. employment for the time-period you are seeking, and that you are qualified for the visa classification you are seeking.

Petition issues:

Sometimes the reviewing USCIS officers will believe that the petition is not sufficient to issue an approval.

- *Request For Evidence (“RFE”)*: An RFE would be issued if the USCIS is not convinced that the artist is eligible for the visa. This gives you a second chance to provide evidence to meet their standards.
- *Denial*: If after you respond to the RFE and the reviewing USCIS officer is still not convinced that you are eligible, the petition will be denied and you will need to apply again in the future.

STEP #2: Applying for the work visa

After the petition is approved, you will need to obtain a work visa printed into your passport by your local US embassy/consulate.

- *Completing the DS-160 Form:* This is the first step after the petition is approved. Each visa applicant must complete an online form.
- *Paying the visa issuance fee:* This is usually around \$190 per applicant paid directly to the embassy.
- *Schedule/attend an interview:* The interview is quick and simple, the consular officers are looking to make sure that:
 - The applicant is in fact the person who was on the petition
 - The applicant is not a security risk
 - The applicant intends to return to their home county

STEP #3: Entering the U.S.

Inspection by an officer from Customs and Border Protection (CBP):

- When you travel to the U.S. and show your work visa, the officer will verify that you have the correct visa type for the planned activities.
- The officer will **usually** admit the visa holder for the full duration of your visa, but not always.
- The officer will record the entry information into an online form called the I-94 travel record.

It's important to check your I-94 online after being admitted by CBP – you will be able to lookup the travel record and ensure that it matches your visa info.

How long does the process take?

Petition Processing: The USCIS has two processing rates, “Regular Processing” (\$460) and “Premium Processing” (\$2500). Regular Processing doesn’t guarantee a fixed response time and can take anywhere from 4-weeks to 4-months. Premium Processing guarantees a response in 15-calendar days or less.

Visa Processing: Unless there are complications (concerns about a criminal record, prior visa violations, or threat to U.S. security), the embassy/consulate process generally takes about 2-4 weeks total, from when you begin the DS-160 forms to when you have your passport back from the embassy with the visa printed into it.

How long do work visas last?

- **O-visas** can be valid for up to 3-years max
- **P-visas** can be valid for up to 1-year max

Work visa durations aren't guaranteed from simply applying, the USCIS will only approve a visa duration for as long as you can prove you have US work, so getting long-term visa durations approved can sometimes be tricky.

Once the visa is approved, for most applicants, work visas are multiple-entry visas, and it's often possible to obtain visas that cover more than just an immediate performance.

What about U.S. taxes on the income of touring artists?

- With very few exceptions, foreign performers should expect to have at least 30% of their pay withheld by the promoter or presenter, which must be delivered to the U.S. government. This is a withholding, not a tax. If the artist completes and files a tax return at the end of the tax year, some or all of these withheld funds may be refunded.
- There is one way to potentially avoid this withholding: If a “Central Withholding Agreement” (“CWA”) is filed with the IRS more than 45-days before the start of the US work, there is a good chance that there will be no withholding and the only owed taxes will be due after the US work.
- It is in the artist’s best interest to obtain a U.S. Social Security Number. Refer to ArtistsFromAbroad.org for more info.

Who can help me with this process?

A label, manager, agent, festival, promoter, or presenter may be able to help or refer someone who can help –it's always best to ask around your network for recommendations – but here are two great resources:

- ***ArtistsFromAbroad.org*** – Provides an excellent breakdown of the U.S. artist visa process
- ***Tamizdat.org/AVAIL*** – Pro bono legal assistance organization that can help if you already have a petition filed, but have encountered problems.