



INTERNATIONAL BLUEGRASS MUSIC ASSOCIATION

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Please note that the following information is not to be construed to constitute legal advice; it is intended for general informational purposes only.

By Carol Armstrong

The topic of U.S. Visas invariably is greeted by exasperated groans and a few choice words; some foreign guest artists ignore the rules and take their chances. But the outcome of "getting caught" is not worth the risk: ask anyone who has been escorted to "secondary" by a U.S. Customs and Border Patrol (CBP) officer, interrogated, and then placed on the next flight back home with an order not to return for five years or longer. They can tell you what "singin' the blues" really means.

Regulations state that foreign guest artists performing in the United States must have work-related visas. CBP officers sometimes?but not always?will allow entry on a "B" visa or visa waiver for one uncompensated performance if you present a letter from the organization. The best practice always is to enter on an "O-1B" or "P-1B" visa regardless of compensation.

Who qualifies?

"O-1B" visas are for individual performers, "P-1B" visas for musical groups. For more details, go to www.uscis.gov ^[2] and enter "O-1B" or "P-1B" in the search window.

O-1B visa.

This is for an individual with "extraordinary ability," further defined as "distinction," in the field of arts. To quote USCIS, "distinction means a high level of achievement in the field of the arts evidenced by a degree of skill and recognition substantially above the ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts."

Establishing "extraordinary ability"

A Grammy or similar significant national or international award or nomination will prove extraordinary ability. Fortunately, the bar is not that high. You can also qualify for an "O-1B" by meeting at least three other criteria.

As an example, if you have performed in productions that have a distinguished reputation and in a starring role for an organization that has a distinguished reputation, the critics have reviewed you in major newspapers, magazines and trade journals, and you can provide letters (try to include five) from experts in the field who can attest to your extraordinary ability, you should be eligible for an O-1B visa.

P-1B visa

Groups of two or more must be "internationally recognized, having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered" to qualify for P-1B visas. The USCIS adjudicators look at the group's reputation, not the achievements of the individual members or the acclaim of the production itself. In addition, at least 75 per cent of the group members must have had a substantial relationship with the group for at least one year. Under limited circumstances, USCIS will make an exception to this rule.

Establishing the P-1B standard.

The P-1B group also can establish the standard through a Grammy-caliber award or by meeting three other criteria. For example, you are a four-member band that has been performing together for three years and is known throughout Europe and in the United State. If you can submit to USCIS press releases, reviews and magazine articles showing that you performed at a production and for an organization that has a distinguished reputation, and the band has established a record of commercial and critically acclaimed success, then your band should qualify for a P-1B visa. You can also always include letters from five experts who can attest that your band is internationally recognized.

Documentation

Print and save every single piece of paper, review, article, letter, press release, contract, award and internet blog that mentions you and your achievements. Also, get your name in print and your music on playlists as often as you can, and document it. You can't just tell USCIS about your achievements; you must send written proof.

How much will it cost?

Fees are constantly changing. Always check www.uscis.gov ^[2] before you write the check. The current fees are \$320 for the I-129, \$1,000 for premium processing (optional but usually necessary), a possible \$250 fee for the required union consultation, and \$100 plus individual country costs per visa at the U.S. post abroad. If you hire an immigration attorney, you will want to factor in that fee as well.

Who is the Petitioner?

A "Petitioner" must file an I-129 petition with U.S. Citizenship and Immigration Services (USCIS) in Vermont or California. This is the first step in the process. You can download the form and directions at <http://www.uscis.gov> ^[2]

If you're in business as an agent and you're directly representing the beneficiary, or if you're employing the beneficiary directly, you can be the Petitioner. You need to get signed contracts from all of your booked gigs and from your Beneficiary confirming your representation.

But we're not agents?we're just a small non-profit group.

USCIS recently made this scenario more complicated. Let's say you're a non-profit group bringing a band to the U.S. to perform for your community organization. In addition, the group wants to perform for other organizations not related to you. You may still act as petitioner for all of those venues, but you must get written confirmation from **each** venue, and from the foreign artist, that you are, in fact, acting as the Petitioner on their behalf for immigration purposes as their "appointed agent."

You also need to enclose for each venue the contract between the employer and the beneficiary or a letter on the employer's letterhead that outlines the performance date and compensation terms. If you are working on other gigs, give all details in your letter to USCIS and ask for additional time on your visa. If USCIS declines, you can file for an extension after the group is in the country.

Sometimes USCIS will issue a request for evidence, or "RFE." Be sure to respond within the time required and, most importantly, send everything requested at one time. Otherwise USCIS may deny the petition.

Next step - consular officials

A U.S. consular official in the home country you indicated on the I-129 will be notified upon approval. Everyone will be interviewed before visas are issued; make sure the band members are familiar with the itinerary.

Embassies and consulates have different rules and appointment wait times; be sure to plan ahead and check the post's website for instructions. You will always need your I-797 approval notice. http://www.travel.state.gov/visa/temp/wait/wait_4638.html [3] (link to visa wait times).

<http://www.usembassy.gov/> [4] (links to consular posts - look for instructions on nonimmigrant visas)

Coming to America

Your visa will be imprinted in your passport. The CBP officer at the port of entry will inspect the visa and then issue an I-94. Be sure the dates are right and ask for a correction if they are not. Do not lose the I-94?the date on that card, *not* the visa, controls how long you can stay in the country.

This is a *very* brief overview; there is much more to know and many resources available. An outstanding website is www.artistsfromabroad.org [5]. Also feel free to send questions to me at carol@armstrongvisalaw.com [6].

Carol Armstrong has practiced law since 1991. She has served as Immigration Counsel to two United States Senators and she currently has a private immigration law practice in North Carolina. Representative artists include the Kruger Brothers, Martin Taylor and the Davidson Brothers. Her website is www.armstrongvisalaw.com [7]

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[3] http://www.travel.state.gov/visa/temp/wait/wait_4638.html

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