

Submitted by Susan Chertkof, Recording Industry Association of America, Inc.

**Before the
DEPARTMENT OF HOMELAND SECURITY
Washington, D.C.**

In the Matter of:

U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit	Request Requirements DHS Docket No. USCIS 2021-0010
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**COMMENTS OF THE
MUSIC MANAGERS FORUM – US, THE NATIONAL INDEPENDENT VENUE
ASSOCIATION, THE RECORDING ACADEMY AND THE RECORDING INDUSTRY
ASSOCIATION OF AMERICA, INC.**

The Music Managers Forum – US, the National Independent Venue Association, the Recording Academy and the Recording Industry Association of America, Inc. (together “Commenters”) are pleased to provide these comments in response to the Proposed Rule published by the Department of Homeland Security (“DHS”) on January 4, 2023. *See* 88 Fed. Reg. 402.

The Music Managers Forum – US (“MMF-US”) is the leading trade association in the U.S. for artist managers and self-managed artists. It is a 501(c)(6) non-profit trade association that provides a diverse platform to connect, educate and advocate for the music management community. Its goal is to further the interests of managers and their artists in all fields of the music industry, including in live performance, music publishing, recording, investment, copyrights, and streaming, and strives to engage in smart, cutting edge, informative and innovative programs, and initiatives, as well as advocacy efforts to improve the businesses, careers and professional growth of its members and related community.

The National Independent Venue Association (“NIVA”) is the national trade organization working to preserve, promote, and advocate for the ecosystem of independent live venues, promoters, and festivals throughout the United States. NIVA works to advance the live entertainment sector and empower members with business and policy resources to better serve artists, fans, and their surrounding communities. In support of this work, NIVA advances diversity and equity across independent live entertainment and ensures that music and comedy venues, festivals, and promoters have a voice at the federal, state, and local levels.

The Recording Academy (“Academy”) represents the voices of performers, songwriters, producers, engineers, and all music professionals. Dedicated to ensuring the recording arts remain a thriving part of our shared cultural heritage, the Academy honors music's history while investing in its future through the GRAMMY Museum®, advocates on behalf of music creators,

supports music people in times of need through MusiCares®, and celebrates artistic excellence through the GRAMMY Awards® — music's only peer-recognized accolade and highest achievement. As the world's leading society of individual music professionals, the Recording Academy works year-round to foster a better world for creators.

The Recording Industry Association of America (“RIAA”) is the trade organization that supports and promotes the creative and commercial vitality of music labels in the United States. Its membership – which includes several hundred companies, ranging from major American music groups with global reach to artist-owned labels and small businesses – make up the world’s most vibrant and innovative music community, working to help artists reach their potential and connect with fans while supporting hundreds of thousands of American jobs. In support of its mission, the RIAA works to protect the intellectual property and First Amendment rights of artists and music labels; conducts consumer, industry, and technical research; and monitors and reviews state and federal laws, regulations, and policies.

Introduction

As the world’s leading music and entertainment economy, the United States is a common destination for foreign artists who come to record in American studios, collaborate with American partners, and conduct often-lengthy promotional and live performance tours. Such tours typically include concerts, festival appearances, promotional appearances on television, podcasts, and other marketing vehicles, award show appearances and so on. When U.S. record labels, including RIAA’s members, sign foreign artists to recording contracts, they assume they will be able to bring those artists to the U.S. for all these purposes – each of which benefits American employers and drives substantial economic activity in communities throughout the United States.

The fee increases that the U.S. Citizenship and Immigration Services (“USCIS”) are proposing would undermine those benefits by rendering many foreign artists and their needed support personnel (including back-up musicians and singers, dancers, managers, stage builders, lighting specialists, etc.) unable to enter the U.S. for these purposes. The proposed fee increases would negatively impact the live performance industry, the community businesses that rely on those live performances, and the broader music economy. And the harm would fall most on artists and ensembles working in less commercial genres and less established new voices and those working in diverse styles who will often be least able to afford these substantially higher fees.

In addition to the increased fees, we have concerns about the proposed new \$600 surcharge; the proposed increase to the turnaround time for premium processing (negating the benefits of that costly priority service); and the proposed cap of 25 beneficiaries per petition, necessitating multiple, higher-fee visa petitions, where currently only one is required.

For these reasons, Commenters oppose the proposed visa fees hikes and their timing and certain associated rule changes.

Discussion

There are a number of components to the proposed fee increase that together add up to a significant amount of money. First, there is the fee itself, which is slated to rise from \$450 to \$1055 (for O visas) and to \$1015 (for P visas). Those changes represent increases of 129% and

121%, respectively. In addition, the proposed fees include a proposed \$600 surcharge that will bring the total costs of O and P visas to \$1,655 and \$1,615, respectively, and reflect increases of 260% and 251%. For a variety of reasons (including slow and unpredictable average processing times by USCIS, as well as last-minute touring decisions), most foreign artists and their support teams end up paying for premium processing. The fee for premium processing was increased as recently as October 2020 from \$1440 to \$2500, *see* Continuing Appropriations Act, 2021 and Other Extensions Act, Pub. L. No. 116-159 (2020), which represents an additional 74% increase. Adding those fees to the numbers above brings the total cost of a typical O visa application to \$4,155 and a typical P visa application to \$4,115.

USCIS has also proposed two concerning rule changes. First, it seeks to extend the premium processing time from 15 calendar days to 15 business days, which will mean an extra week of processing time for most petitions. Under that proposal, applicants who pay for premium processing will get slower service going forward, notwithstanding the recent 74% increase in the fee. Second, the proposed fee schedule limits each visa petition to 25 beneficiaries, even though artist ensembles and their support teams are often far larger than 25 people. Under the proposed rule, groups larger than 25 people will have to submit a separate petition and pay a separate fee for each group of 25 beneficiaries that need visas. Requiring artists to pay the higher proposed fees not once --but multiple times -- will amplify the financial impact of the proposed hikes.¹

The timing for these increases – as applied to the live music sector – could not be worse. As is well known, the live music sector – both the middle-class artists who depend on touring to make ends meet and the live venues where those artists perform -- were hit extremely hard by the Covid-19 pandemic. *See, e.g.,* Joanne Klimovich Harrop and Sean Stipp, *Musicians, venues still feeling pandemic closures effect*, Tribune-Review (Mar. 20, 2021), <https://apnews.com/article/entertainment-pandemics-music-industry-music-coronavirus-pandemic-8770f1bc9350c817d61de09077ed58dd>; Chelsea Strubb, *Surge in COVID cases hurts concert venue*, (Jan. 3, 2022), <https://www.wnep.com/article/news/local/luzerne-county/surge-in-covid-cases-hurt-concert-venue-karl-hall-wilkes-barre-a-j-jump-karl-hall-luzerne-county/523-3006c8f0-ea60-4060-aa70-57c1df6f0ffb>. Touring artists and local venues that survived the pandemic are just starting to recover from their pandemic-related economic losses. Now is not the time to impose a fee hike and possible visa approval delays² on this important sector -- particularly one of this magnitude.

In a March 2023 survey, NIVA member venues, festivals, and promoters shared that they host an average of 34 shows with international talent, which represents more than one quarter of the total

¹ The 25-person cap will also create logistical problems. First, to the extent that sister petitions are assigned to different USCIS adjudicators, they will likely move at different speeds and, worse yet, could receive differing decisions. One way to address this concern is to ensure that all “sister petitions” are assigned to the same adjudicator. Second, there will be significant confusion when the multitude of individuals covered by sister petitions with different petition numbers are unable to identify which petition number applies to them when they visit their local embassy or consular office to obtain their actual visas. Last, the need to file multiple petitions will create complications when juxtaposed against the rule that 75% of the members of a group applying for a P-1B visa must have belonged to the group for at least one year, as each sister petition will be required to meet the 75% threshold.² In its March 2023 survey, NIVA members reported delays and cancellations related to securing visas for international performers, with one venue reporting negative impacts on 40 performances due to visa-related interruptions.

number of shows each year for the average member and a much higher percentage for other members. Festivals like Austin, Texas' South by Southwest (SXSW) hosted 504 international acts in 2022 over a week and a half period. Even clubs like The Crocodile in Seattle, Washington, known as a legendary U.S. Rock club, hosted 150 international acts in 2022. For Latin promoters such as Pnk Moon and Anaheim Xalos, international performances could comprise up to 100% of their annual shows.

For independent venues, festivals, and promoters across the country, the proposed more than quadrupling of visa fees for international performers will have significant impacts on their operations and the loss of international performances due to increased costs could slow the recovery of a live entertainment sector that is still bouncing back after pandemic-related closures.

Of course, the benefits of live music extend well beyond the artists, their record labels, and the venues that present them. With every performance and tour comes an economic boost to community restaurants, hotels, transportation, and other businesses. *See* 50 States of Music, <https://50statesofmusic.com/>, which found that the music industry contributes \$170 billion to the nation's GDP; the report also provides the industry's contribution to the economy of each individual state. To the extent that the proposed fee hikes and processing delays reduce the number of foreign artists touring the US, that means more dark nights at venues and lost ancillary economic benefits that would have flowed to the surrounding community, and everyone associated with the tour.

Higher visa fees will translate into increased costs for artists, including legal fees, which will increase costs for venues to compensate them fairly for their performances and could make it harder for venues and festivals to continue to operate amidst these increased costs. American music fans will also suffer if the fee increases mean that they have access to fewer performances or if the fee hikes get passed on to them in the form of higher ticket prices. And by limiting the diversity and richness of music styles and genres available to American fans and domestic artists, the development of music and the culture itself will suffer as fewer foreign artists with new voices and styles are able to afford to tour the U.S.³ The proposed rule's impact on equity is the antithesis of the equity goals set forth in the U.S. Department of Homeland Security's Equity Action Plan, *see* <https://www.dhs.gov/publication/equity>, which aims to "tangibly improve the lives of every person across the nation, in particular, those who have been underserved, marginalized, and adversely affected by persistent poverty and inequality."

Such a significant hike in visa processing fees for foreign applicants would likely invite reciprocal treatment for U.S. citizens by other countries. The resulting escalation (compounded by the number of foreign countries of interest to U.S. artists) would likely either reduce the

³ To the extent that the fee hikes create a chilling effect on the arts, they also seem to be at odds with the President's September 30, 2022 Executive Order on Promoting the Arts, the Humanities, and Museum and Library Services. available at [Executive Order on Promoting the Arts, the Humanities, and Museum and Library Services - The White House](https://www.whitehouse.gov/briefing-room/presidential-actions/2022/09/30/executive-order-on-promoting-the-arts-the-humanities-and-museum-and-library-services/) See Executive Order on Promoting the Arts, the Humanities, and Museum and Library Services, The White House (Sept. 30, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/09/30/executive-order-on-promoting-the-arts-the-humanities-and-museum-and-library-services/>.

number of American artists who are able to visit other countries to build and maintain their international fanbase or reduce the number of countries that each artist can visit. This loss of revenue and opportunity for promotion (both on stage and through other promotional appearances) would have a significant negative impact on individual artists and the teams that rely on them. Further, the compounded costs for record labels – given the number of artists signed and the number of countries each artist would ideally like to visit – and the limits placed on artist exposure could jeopardize labels' ability to maintain and grow diverse artist rosters.

We urge USCIS to cancel or postpone the proposed fee hikes that apply to O and P visas for those in the live music sector. These increases will have devastating consequences for so many industries, including ours, causing a ripple effect across our entire economy without fixing – and perhaps even exacerbating – the documented shortcomings of the current visa-granting system. While even large, for-profit companies will find it hard to absorb cost increases of this magnitude without any advance warning, such sudden increases will be extremely difficult for the not-for-profit sector to weather, given its reliance on donations and annual fund drives. Rather than increasing the visa fees, USCIS should focus on lowering its costs by implementing much-needed improvements to its visa processing system.

Thank you for the opportunity to file comments in this important matter.

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Respectfully Submitted,

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[SIGNATURES CONTINUE ON NEXT PAGE]

5



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6