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Via Federal eRulemaking Portal

Re: DHS Docket No. USCIS-2021-0016
OMB Control Number 1615-NEW

On behalf of the undersigned organizations, we submit these comments in response to the collection of information published in Federal Register Volume 86, Issue 157 (August 18, 2021) on plans by the Department of Homeland Security for USCIS to separate Form I-129, Petition for Nonimmigrant Worker, (OMB control number 1615-0009) into several individual forms. Specifically, these comments address the proposal to create separate versions of the Form I-129 (OMB Control Number 1615-NEW). While we support the overall aim to streamline the process by tailoring the I-129 so that one form is not used for so many classifications, we believe that O and P arts petitions should be kept together on the same form, rather than requiring P petitions to be filed via the proposed I-129MISC. This proposal to separate the I-129 mirrors what USCIS sought to do in 84 Fed. Reg. 62280 (November 14, 2019), to which we also raised concerns. Arts petitioners for U.S. engagements have long used the same form I-129 to request approval of the following classifications: O-1B, O-2, P-1B, P-2, P-3, and P-S classifications for the temporary engagement of artists in the U.S. To separate Os from Ps is inefficient and would create needless confusion. In addition, there are a couple of discrepancies we would like to highlight in this revived but ill-conceived proposal.

We collectively wish to reiterate important concerns regarding key points in this 2021 proposal which were previously addressed in comments submitted by the League of American Orchestras on December 16, 2019 relating to a proposed fee increase. While we are gratified that the I-129O would not impose a 25-beneficiary cap on support personnel accompanying an O-1B beneficiary, the I-129MISC retains that cap for P

beneficiaries, which unjustly raises costs and creates several needless problems for arts ensembles that have more than 25 performers. Not only would the ensembles themselves face exponential costs based only on the size of their groups, but the multiplying effect of entering essentially the same information onto petitions that are part of a whole would certainly risk confusion and processing delays at USCIS.

Ever-rising costs, delays, and unpredictability in the visa process have always created high economic risks for U.S. arts organizations, the local economies they support, and the local audiences they serve. The best course of action, therefore, is to streamline processes and create consistency wherever possible, and not to incur new fees that fail to serve a discernible purpose to the public. In reviewing the draft Form I-129O and Form I-129MISC in detail, compared alongside the current I-129 instructions, we wish to share the following additional observations and suggestions from the perspective of U.S.-based arts petitioners filing for O and P artists.

Convert the I-129O into an I-129OP that could also be used for P petitions

The newly proposed Form I-129O provides a welcome streamlining of the O petition. The streamlining of the current I-129 from 36 pages to a total of 12 for the I-129O is a very welcome change. Removing sections that do not pertain to beneficiaries that are seeking O (or P) visas greatly reduces confusion on the petitioner's side. Also, eliminating separate supplement pages and instead incorporating the requested data into the I-129O will help ensure petitioners do not mistakenly complete the wrong supplement pages, forget to include the required supplementary information, or needlessly print and submit more pages than are required.

Simply put, the proposed Form I-129MISC is an inappropriate option for P visas. P classification petitioners have so much in common with O classification petitioners, that they should be completing the same form. The I-129O should really become the I-129OP with very minor modifications to include the few additional fields that pertain to Ps. We strongly urge USCIS not to include the P visa category on the proposed I-129MISC. Due to the similar nature of the work and the shared type of information the forms request of O and P arts petitioners, it would be perfectly logical and consistent -- and still a much-streamlined process compared to current practice -- to combine these onto the same form. In doing so, USICS would support the ability of arts petitioners that

routinely engage both O and P guest artists to learn and complete one new form. This would surely also be of benefit to USCIS adjudicators as well.

In comparing the forms side by side, there are two items that ought to appear on both forms but only appear in one at present: 1) In Part 3 - the I-129O should provide fields that allow petitioners to "Provide all other names the beneficiary has used (nicknames, aliases, maiden name)" -- many O-1B beneficiaries perform using different versions of their legal names, and it has been useful to have this section available for such occasions. Otherwise, supporting evidence that refers to a stage name alias may not make sense to a USCIS adjudicator who does not have this part of the I-129 to inform them if a beneficiary uses additional names. 2) In Part 4, the I-129MISC does not currently include fields to indicate labor organization information, explanation of nature of event, services to be performed. Arts petitioners engaging P classification artist beneficiaries would need to complete these fields, which reinforces why it makes sense to simply incorporate some of the P questions into the proposed I-129O form.

Other minor modifications to make the I-129O suitable for P would be simple and straightforward without unduly increasing the overall length of the petition. O petitioners are already accustomed to skipping fields that do not apply to them, so to do so with a very few P-specific questions would not be problematic and would on the whole make for a more consistent process for petitioners accustomed to using one form for all artists.

Abolish the 25-beneficiary cap on O and P arts petitions

To further elaborate on the concern about the 25-beneficiary cap, to require multiple petitions for large performing groups would be more expensive, duplicative, and make the entire petition process rife with new risk for errors and delays. We are pleased to see there is no cap applied to O-2 beneficiaries and that the instructions for Form I-129O note petitioners "may, however, include multiple beneficiaries seeking O-2 classification on the same petition if they will all be assisting the same O-1 for the same events or performances, during the same period of time, and in the same location. If these conditions do not apply, you must file a separate petition." This same logic and exception should be applied to P-1B, P-3, and P-support beneficiaries. When all beneficiaries are being engaged for the same events or performances, during the same

period of time, in the same location, there is no justification to force separate reviews of separate petitions that are in all meaningful respects going to be identical.

The arts are unique and should be recognized as such: a large ensemble such as an orchestra or an opera company is a clearly recognized entity that performs together as a cohesive whole. The logistical challenges created by requiring multiple petitions that arbitrarily separate performers of a single known entity raises many possibilities for error, delays, and staggered approvals that would threaten efficient consular processing and the ability to complete U.S. engagements. After more than a year of suspended activities and decimated budgets due to the effects of COVID-19, it would be highly damaging to create a new condition that would increase paperwork and fees without justification or benefit. The following considerations for an arts exception to this limit should be taken into account:

- The nature of the performing arts is uniquely location-, date-, and time-specific, and the ability to deliver a promised performance relies upon **all** beneficiaries receiving approval at the same time and as one group. The fate of all performers of an established ensemble must be made as one single decision, not as separate ones.
- The evidentiary requirements for obtaining P approval for an ensemble, whether for P-1B or P-3, relies upon proving international recognition of that group in a variety of ways, as well as demonstrating for P-1B that a minimum of 75% of members has been with the group for at least one year. An unnecessary burden is created should petitioners have to ensure that beneficiaries are grouped so that the 75% rule is met for each component petition if, for example, an ensemble totals 100 members, and requires 4 separate petitions. Further, whether beneficiaries for O and P arts petitions are grouped on the same petition or split into multiple petitions due solely to this proposed cap, the evidentiary material, contract, itinerary, and so on still refer to the entire group as a whole, not to individual beneficiaries, therefore it would be inefficient, duplicative, and time-consuming to require multiple petitions that provide the same information. This would create a greater printing, shipping, and adjudicating burden for identical petitions that ought to be considered as a single entity.

- We note that the Form I-129MISC lacks the option for indicating when a batch of 25 beneficiaries are part of a larger whole and that there may be one, two, or more additional petitions comprising the full ensemble. If component filings corresponding to the same performing group were to be assigned to multiple USCIS adjudicators, there is the potential for different conclusions to be reached regarding the applicable criteria, which would cause further delays in timely adjudication. There is also the likelihood that different adjudicators would process their workloads at different speeds, which would force a large ensemble to wait longer than otherwise to proceed onto consular processing. Even if the same USCIS adjudicator were to receive all related petitions for a large ensemble, reviewing each petition separately and confirming that all the supporting information is the same would be a tremendous waste of USCIS time and staff resources for processing, notification, updating online case status, and uploading petitions into the Petition Information Management System–all for multiple cases that belong to a single entity.

Due to these considerations, and the tremendous importance of furthering cultural interests to U.S. audiences, we argue for an exception to be made in favor of **maintaining the current policy of filing a single petition for a single group regardless of its size**.

Additional form-specific suggestions and observations:

- If a cap *must* be imposed--which we urgently oppose--there should be an additional field for the petitioner to note the grand total of beneficiaries that comprise a formal group in the event that total exceeds 25. The instructions do not provide guidance on this point other than to reiterate that additional filings must be made if there are more than 25 beneficiaries. In cases when a group contains more than 25 members, USCIS should be aware it is adjudicating one of multiple petitions belonging to a large ensemble.
- For the I-129O, new Part 4 fields to provide information about labor organizations helpfully consolidate information that is currently sought in the separate O & P Classifications Supplement pages. However, we recommend re-inserting the

note from the Supplement pages that specifies that Part 4, Items 19-22 only need to be completed if the petition being submitted does not include the labor consultation. The current practice is that those items are only completed when one is *not* including the labor consultation, so we simply request consistency with long-established practice, otherwise USCIS adjudicators may mistakenly believe a consultation is not part of the petition.

- We recommend re-inserting the Yes/No question from the current I-129 that prompts the petitioner as to whether the beneficiary has a valid passport. The I-129O does provide fields for entering passport information if the beneficiary is currently in the U.S. at the time the petition is being filed, but the question as to whether the beneficiary has a valid passport has served as a helpful reminder to petitioners to double-check that beneficiaries have sufficient validity remaining on their passports.
- For the I-129MISC, or ideally on a combined I-129OP, we recommend adding “P-1B – individual entertainers to join U.S. based internationally recognized entertainment group” as an option in the list of requested Nonimmigrant Classifications in Part 2. USCIS has for ten years been approving P-1B petitions of this nature, following a December 31, 2011 USCIS policy memorandum (PM-602-0053) that provided guidance that “supersedes prior policy guidance regarding the definition of “internationally recognized entertainment groups” and provides corresponding updates to the AFM.” The memorandum concluded, “the P-1B classification should include individual entertainers coming to the United States to join U.S. based internationally recognized entertainment groups” therefore, the list of P options would be more complete and accurate if it included this additional condition of the P-1B. Corresponding with this suggestion is the use of “beneficiary or group” in the accompanying instructions for the form on page 1 under "What is The Purpose...". Note that the description for P-1B in the instructions already correctly notes its applicability for “Entertainer or Entertainment Group” on page 16 of the I-129MISC instructions.
- Page 5 of the I-129O in Part 4, Question 1 contains a typo in the abbreviation of Customs and Border Protection as CPB rather than CBP.

- Page 1 of the I-129O Instructions contains a typo in a reference to “Form I-29O” under the first section titled “Purpose of the Form I-129O” – the numeral “1” is missing and it should read “Form I-129O” right before listing the two items that comprise Form I-129O.

The process by which U.S. petitioners seek O and P approval to engage international guest artists must be one that is clear and designed to facilitate efficient and reliable processing. USCIS has put forward proposals to divide the Form I-129 into separate versions; while we appreciate a more tailored approach, the division of the forms goes too far by separating O and P arts petitions. We respectfully submit these comments on the Form I-129O and the I-129MISC as it pertains to P petitions relegated to the wrong form and to the punitive beneficiary cap, which we hope provides the perspective of arts petitioners in a helpful way. As expert stakeholders representing the U.S. arts sector, we are committed to equipping petitioners with complete information about compliance with USCIS requirements, such as the website, www.ArtistsfromAbroad.org, which provides trusted guidance on O and P visas to countless arts petitioners seeking to understand and navigate the visa process. We are happy to assist USCIS however we can in supporting international cultural activity through improved visa policy. Thank you for the opportunity to comment on this proposed rule.

A2IM (American Association of Independent Music)
American Federation of Musicians of the United States and Canada
Association of Performing Arts Professionals
Carnegie Hall
Dance/USA
globalFEST
League of American Orchestras
National Independent Talent Organization
National Independent Venue Association
NAPAMA (North American Performing Arts Managers and Agents)
OPERA America
Performing Arts Alliance
Recording Academy
Tamizdat
Theatre Communications Group
WESTAF (Western States Arts Federation)
Western Arts Alliance