

## **Difficulties experienced by UK musicians getting P-1 and O-1 visas to tour or perform in the US**

*This paper is jointly submitted by the Association of Independent Music, the Musicians Union [still to hear back from the Association of British Orchestras and UK Music], coordinated by Kerry McCarthy MP, ahead of meeting with Culture Minister, Ed Vaizey, on 14<sup>th</sup> June 2011.*

British music contributes significantly to UK culture and society, as well as to economic productivity. The UK music industry generates over £6 billion per annum, provides more than 130,000 UK jobs - and contributes significantly to exports. British orchestras are world-class. The \$100million worth of business generated by Adele from Number 1 sales in the Singles and Album Charts in the US flows back to the UK via her privately owned UK record label and is taxable. UK Trade & Investment stress the importance of performing in the US to the export of UK music to the US market. But bands are increasingly facing an uphill struggle to succeed in the US, thanks to tough visa requirements. And performing to a US audience is prohibitive to all but London-based orchestras. The importance of performing to driving exports has been highlighted by the growing involvement of UKTI in trying to help UK bands expedite their visas for big music industry events, such as SXSW.

While there has been no change in immigration law, those applying for P-1 and O-1 visas for artists wishing to perform in or tour the US, have experienced a step-change in how visa applications are adjudicated by US Citizenship and Immigration Services (USCIS). The visa process has become considerably more costly and complex, making it an administrative quagmire for those involved.

Although last year USCIS promised to turnaround P and O visa applications within 15-20 days, the reality is nowhere near. Many cases tell of an increase in unwarranted Requests for Evidence (RFE) as part of the petition process. The uncertainty caused by these delays mean that musicians have had to resort to paying the additional Premium Processing cost of \$1,225 in order to expedite their visas. But there has also been a concurrent increase in rejections, for which there is no appeal, nor explanation given, and no refundable costs. Musicians and their promoters have wasted considerable money, as well as cancelled tour dates. The system is making it too expensive and unpredictable to book tours in the US, and is not favouring the honest.

These concerns came to a head with **SXSW 2011**, when 12 bands had to drop out completely due to visa difficulties while many of the 136 who did attend faced significant difficulties and costs in getting visas. The record label Wichita wasted £30,000 on an event to showcase 6 of its bands, of which 3 of them did not receive their visas in time or had their visas denied. It had to find 3 other bands, at very short notice, from other labels to complete the line-up. Although SXSW has grown from being an industry insider event to one which is now open to the paying public (which means it is now less likely to be defined as 'cultural exchange'), it is still very much a showcase event, for which musicians do not get paid. The event primarily showcases upcoming bands which haven't yet made it,

but which therefore faced particular difficulties meeting the eligibility criteria for 'international reputation' which must be reached to be granted a visa. There would be justification for arguing that the invitation to perform at SXSW should in itself demonstrate the required level of attainment and recognition; of the 599 UK artists applications received, only 265 were invited to attend. UKTI feel that while a number of problems were due to bands lack of knowledge about the process and failure to apply early enough – for which much greater education is needed – considerably more could be done to identify practical solutions to smoothing the problems.

This is also a growing issue of concern to music industries across the world – the Canadian Independent Music Association, the Australian Performing Rights Association, Music Export Germany and Norway, Initiative Music gGmbH, Swiss Music Export, Brasil Music Exchange, Austrian Music Ambassador Network, are among those who are known to be pursuing this problem with their national governments. This issue has also come to a head because of legal action taken by the fashion industry; in May this year USCIS was successfully challenged in court for placing restrictions on the ability of UK models to attend catwalk shows and photo shoots in the US at short notice.

There is an overwhelming need to cut the costs and red tape of a system which keeps growing in its complexity, causing increasing difficulties for – and placing an administrative burden on - the UK music industry. There are a number of key concerns about this system which are:

1. Cost
2. Delays – and their escalating costs;
3. Arbitrary decision-making
4. Unfairness

## **Cost**

Data supplied by Traffic Control Group, which provides visa and immigration services to music industry - <http://www.trafficcontrolgroup.com>.

**US costs per petition** (1 petition covers 1 solo artist or band, If the band has crew, or the solo performer backing musicians and/or crew, they count as a 2<sup>nd</sup> petition):

Government filing fee:	\$320.00
Union advisory letter:	\$250.00 <sup>1</sup>
Cost of filing a petition:	\$680.00 <sup>2</sup>

**Total:** **\$1,250.00**

### **UK Costs – for 4-piece band**

Embassy fees for 4 US visas	£400.00
Calls to Appointment Line @ £1.20/minute	£48.00
Return of passports by SMS	£15.00

**Total** **£463.00**

Traffic Control Group fee <sup>3</sup>	£280.00
VAT	£56.00
<b>Total:</b>	<b><u>£792.00</u></b>

## **Delays – and their escalating costs**

- The total processing times for O and P arts-related visa petitions was meant to have been reduced to a maximum of 45 days by requiring USCIS to treat as a Premium Processing case (15-day turn-around), free of additional charge, any arts-related O and P visa petition that it fails to adjudicate within 30 days. And in July 2010, USCIS announced plans to reduce processing for these visas to 15-20 days. But this is not close to the

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<sup>1</sup> US operates a system of checking with the American Federation of Musicians, so that union approval must be given to each applicant, who will determine and ensure that the applicant is not displacing domestic labour, but who also charges for making this assessment. UK previously checked with Musicians Union in older immigration systems, which have since been overturned.

<sup>2</sup> Filing an I129 Petition is usually done by an attorney on behalf of a US Company representing a band, performer or orchestra. These fees can vary hugely, but fee given here is that charged by Tamizdat, who can act as a petitioner on behalf of acts that have no US representative company. Tamizdat is very much on the cheap end and the cost can be as much as eight times that quoted.

<sup>3</sup> Visa applications require professional support from organisations such as Traffic Control Group, or a very experienced and knowledgeable tour manager.

experience of people going through this process, with processing times varying between **45 days to 6 months**.

- If visas are needed in less than 3 months, the US Government operates a **Premium Processing** Visa (which guarantees to process petitions within 15 calendar days) at **an additional cost of \$1,225**.<sup>4</sup> It is widely felt that once this fast-track system was introduced, all non PP applications took much longer and could not be relied on to be completed within any certain timeframe, a timeframe which keeps getting extended with delays due to unwarranted Requests for Evidence.<sup>5</sup> This has resulted in – intentionally or unintentionally - growing numbers of applications having to go through the expedited process to ensure the visas are ready in time. Many with experience of the system feel it has become a money-making enterprise for USCIS.
- The costs can become prohibitively expensive for non-London based bands or orchestras. After the initial Petition has been submitted and approved on behalf of the whole band or orchestra, every single member needs to attend the US Embassy in London in person, for fingerprinting, a retinal scan and an interview. The travel/overnight stay costs associated with this make it prohibitive for non-London based orchestras to play in the US. e.g. The Halle, based in Manchester, had to cancel a booking because of these additional costs, which would have involved 3 buses of 80 people.

### **Arbitrary decision-making**

#### **a. Proving international reputation.**

- Bands have an additional requirement to provide a substantial bundle of evidence (at least 30 pages) showing that the artist/ band has an international reputation and has attained a high level of achievement for a “sustained and substantial” period of time.
- The evidence which is required as proof of international reputation is increasingly anachronistic:
  - Only printed magazines are accepted, print-offs from websites are not permissible, not even those with huge, international readerships.
  - These must reach back at least 12 months, which increasingly does not reflect how quickly post-internet bands can break a

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<sup>4</sup> Although there is a process for expediting petitions which have experienced delay through no fault of the petitioner or an unforeseen emergency, the US Performing Arts Visa Working Group says: “The traditional expedite is not helpful, nor a viable expedite option for petitioners, unless there are clear, uniform policies appropriately followed and administered by USCIS”

market. These bands, such as the Arctic Monkeys, rise rapidly thanks partly to exposure on the internet, but then find themselves having to prove to immigration officials that they're famous.

- The US Performing Arts Visa Working Group has claimed that: "The California Service Center demands excessive evidence of distinction and otherwise builds ever-higher evidentiary barriers to petition approval". AIM suggests that there is a clear need to set out the ground rules for meeting this eligibility criteria (e.g 10-15 pieces of international press), as bands supply information only to be told much later in the process it is insufficient, by which point it is often too late to expedite the visa in time, wasting considerable money.
- The tour itinerary detailing booking of good-sized venues, often with substantial advanced sales, are not taken into consideration in this assessment. And even if visas have been granted to the band in the past, this is not taken into consideration either.

**b. The 75% rule.**

- The rules require that at least 75% of the members of the group must have a substantial and sustained relationship with the group for at least one year.
- One artist who was due to start a three week US tour, playing to audiences of around 2000 people a night, was told that there was no reason why he needed to take an English drummer with him as he could hire one in the States. Edwyn Collins was due to play SXSW and was given visas for all the band except Paul Cook, the drummer and formerly of the Sex Pistols. Similarly, the visa application for Steve Ignorant's drummer was also rejected.

**c. Length of visa.**

- Previously P visas would be valid for a year. But now that 12 month period will need to be accounted for with booked tour dates, otherwise separate visas will need to be applied for, for separate sets of dates, or one-off appearances, within a 12-month period.
- Even arriving at US borders with an instrument, but without a visa, can incite severe penalties (eg a finite ban on obtaining a visa for the US).
- When visa applications are rejected, no reason needs to be given, there is no right of appeal and no refund of costs

**Unfair**

- While the system has been getting harder for musicians, sports people attending promotional events in the US do not have to apply for visas. There is also a lack of reciprocity with arrangements for entering the UK; we only propose that US operates on the same level of trust as the UK.

### **US musicians entering the UK to perform**

- When bands and orchestras are playing at a recognised festival (such as the Proms, Glastonbury) they do not need entry clearance. The list of exempt festivals is held by UKBA. In these circumstances, bands and orchestras can perform in the UK for no cost and do not need to give biometrics or attend an interview at the UK embassy in New York.
- US musicians currently apply through Tier 5 or Tier 2 of the Points Based System (Tier 1 is for exceptionally talented individuals intending to base themselves in the UK). Arts organisations have to become sponsor organisations and must: provide proof that applicant is eligible to work in the UK; monitor any breaches of conditions of migrant's stay.
  - When British orchestras are bringing in American soloists or conductors they need to bring them in under Tier 5 of the PBS system. However, there is a category of T5 called "Creative and Sporting" which makes the allowance that if the artist is a national of a country that is on the Visa Waiver list (eg the USA) then they can come in to the UK to work with no prior entry clearance (ie a visa). All they need is a valid Certificate of Sponsorship issued by the host orchestra or an agent.

*More information in this section will be provided by Traffic Control Group.*

### **Benefits to the US in improving the system:**

- The League of American Orchestras list some of the key benefits to the US in improving the reliability and affordability of its artists visa process, including:
  - The opportunity for the American public to experience international artistry;
  - Economic and employment opportunities are attached to events at which international guest artists perform;
  - There is a high risk that foreign guest artists will be unable to enter the US in time for their engagements, creating high economic risks for non-profit organisations and the local economies they support.<sup>6</sup> US orchestras will find it almost impossible to secure an

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<sup>6</sup> [www.americanorchestras.org/images/stories/adv\\_gov\\_pdf/TA\\_Visa\\_Brief.pdf](http://www.americanorchestras.org/images/stories/adv_gov_pdf/TA_Visa_Brief.pdf)

internally renowned musician or opera singer last minute if the one booked suddenly falls ill – Royal Opera House, in comparison, can secure a replacement in 48 hours.

- This results in lost business to and income for music promoters and venue owners, who are increasingly working together to campaign for changes to improve the reliability and reduce the cost of the system. Considerable money is also attached to music tourism which is connected to the big US festivals. Data for the UK shows that the major concerts and music festivals in the UK attract 7.7million tourists, who spend £1.4billion during the course of their trip, which is boosting the UK economy to the tune of £864million (data supplied by UK Music for 2009).
- Their role as cultural leaders – hosting events which showcase world talent, and receive worldwide coverage – curtailed.
- These cases do not deny work to US citizens, nor threaten its music sector's unionised workforce.

### **Proposals for change**

We hope that the Department for Culture, Media and Sport, perhaps in conjunction with the Creative Industries Council, can:

- **Convene a meeting with key stakeholders in this process – UK Trade & Investment** (Pippa McEvoy & Phil Patterson), **USCIS**, the **US Embassy**, **Traffic Control Group** (Katie Ray), **Tamizdat** (Matthew), as well as **music sector representatives** (UK Music, Musicians Union, Association of Independent Music) – to positively identify practical solutions to smooth the process and to resolve issues ahead of SXSW 2012. This would also benefit other comparable showcase events. The event organisers, UKTI, Traffic Control Group, Tamizdat and music sector organisations feel they have done everything they can now do to improve the process (UK bands are now officially invited on 15<sup>th</sup> October to give bands sufficient time to arrange visas) but now feel that USCIS and the US Embassies need to make some efforts to address the problems. In the run up to SXSW there are 150-200 UK bands trying to get US visas, along with hundreds of bands around the world: there would be a great advantage to exploring routes for addressing how to manage this when it reoccurs towards the end of this year.

The meeting could raise with USCIS the following suggestions to make the process work more smoothly:

1. To consider implementing their proposed plan to reduce processing for visas to 15-20 days, announced in July 2010.

2. To consider exempting particular showcase events and festivals from visa requirements, such as SXSW, Coachella Festival and CMJ festival, along the same lines as currently happens for Glastonbury, the Proms, etc.
3. If UCSIS do not look favourably on such an exemption, the system could certainly be clearer and more transparent, to the extent that this is consistent with security concerns – so that musicians don't have to either pour money into the system or risk cancelling their tour, including:
  - a. Clearer eligibility criteria for demonstrating international reputation, so that record labels etc do not waste huge amounts of money applying for visas for bands that will be rejected.