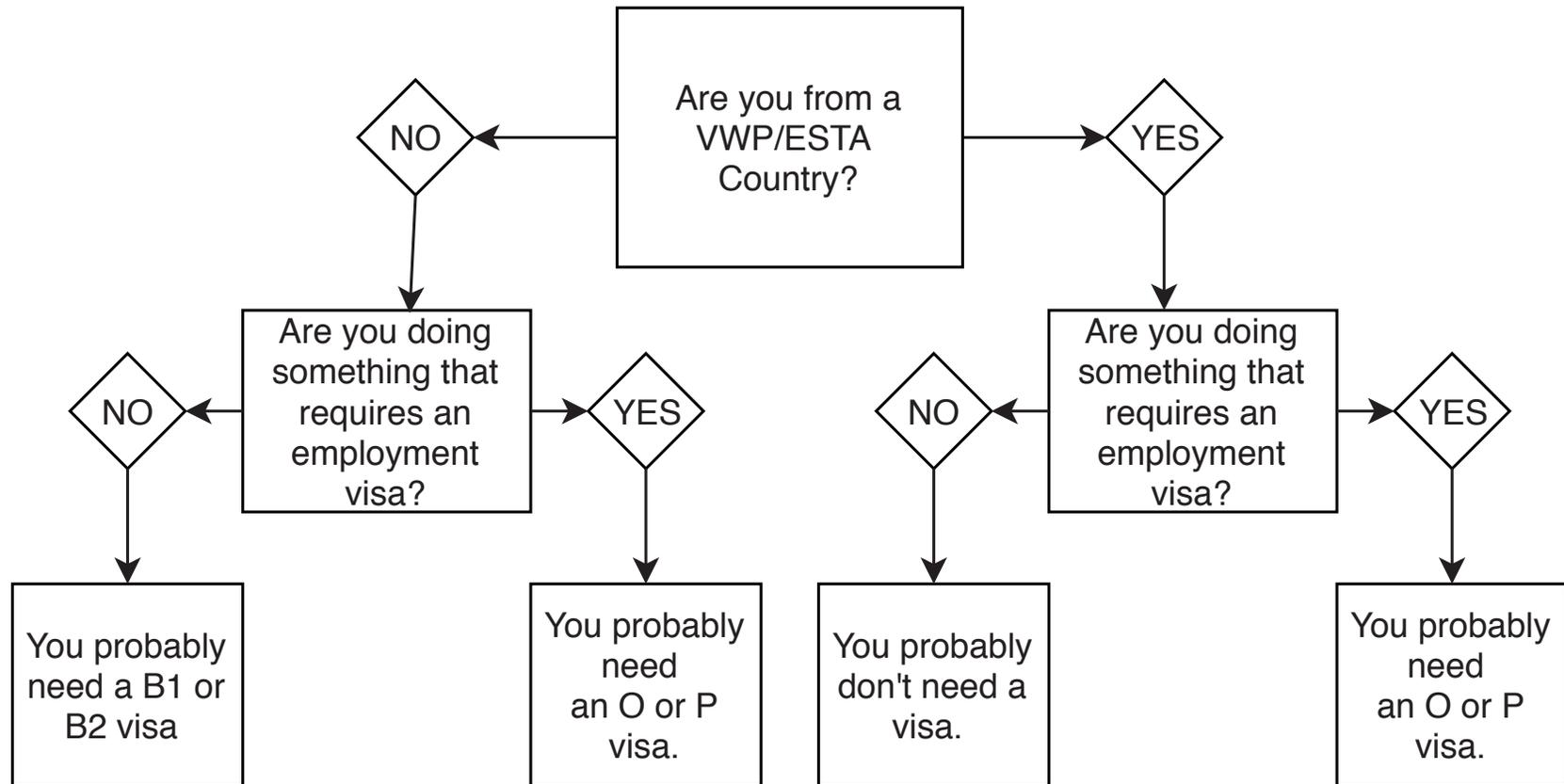




Navigating the Labyrinth: U.S. Visas for Performing Artists

THE FIRST QUESTION: *Do I even need a visa!?!?*



What is a “Visa Waiver Country?”

The U.S. has treaties with many countries that allow for “visa free travel” for most citizens who are coming to the U.S. for leisure or for limited work-related activities. But if you have a criminal record or a prior visa problem, you will probably need a visa. This is also called “ESTA.”

What activities require a 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 several important exceptions where an work visa may not be necessary. Here are the three most important:

- (1) if the event is **industry showcase** where the principle purpose the audience is in attendance is NOT to be entertained, but rather to consider working with the artist in the future
- (2) if the event is 100% **sponsored by your home country’s government** and the audience is non-paying
- (3) Also, for **managers**, if you are a music business professional, and your coming to the U.S. is not essential for a performing artist's performance— you're an agent, promoter, label rep, etc.—there's a good chance you do not need a work visa.

I’m from a visa waiver country and my activities don’t require a visa...

Why do you say I “probably” don’t need a visa?

Sometimes it’s safer to have a visa than to not, because the Visa Waiver/ESTA will only work if U.S. Immigration Officer at the border or airport believes you!

Wait! Can't I just come on ESTA?

Nope... Not legally anyway.

Every year many artists claim they are coming as tourists when they enter the U.S. to perform. This is not legal. Many artists get away with it. Many do not. If a U.S. Immigration officer suspects you're coming to perform, 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 later you do get the proper visa. If you're serious about the future of your career in the U.S., it's wise to get the proper visa.

THE SECOND QUESTION: ***Okay Fine. I need a work visa.*** ***What kind of visa do I need?***

There are many different kinds of visas issued by U.S. embassies and consulates around the world, and each is for a specific situation or person:

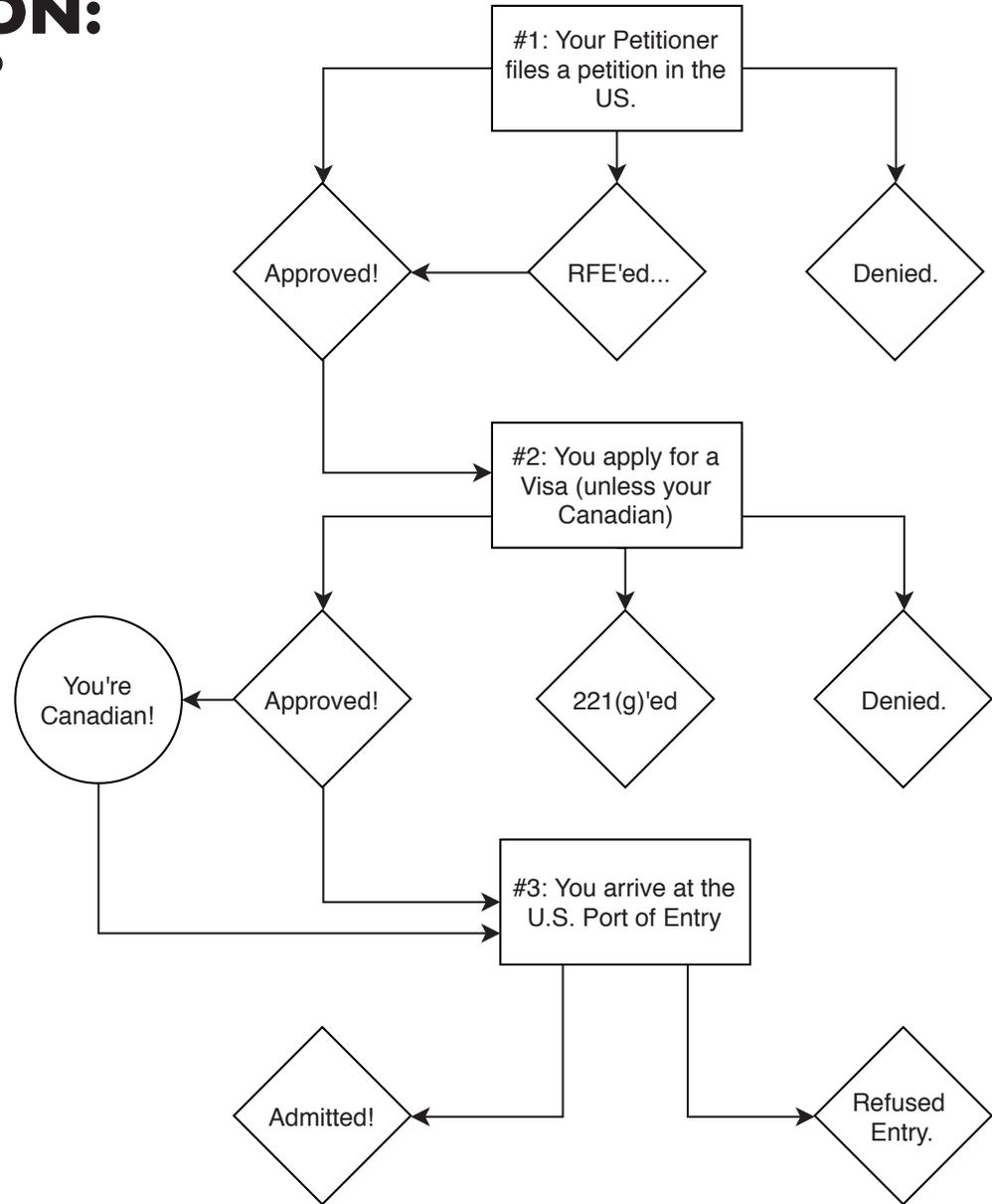
O Visas

- O-1 for individual solo artists
- O-2 for supporting artists or crew of individual solo artist

P Visas

- P-1 for members of an ensemble
- P-2 for artists performing as part of a recognized cultural exchange
- P-3 for a culturally unique artist or group
- P-1S for crew members of an ensembles
- P-2S for crew members of a cultural exchange group
- P-3S for crew members of culturally unique artist or group

THE THIRD QUESTION: *How do I get a visa?*



Step #1, Filing the petition

Who is my “petitioner?”

To get a work visa, some U.S. entity needs to first file a “petition” with U.S. Citizenship and Immigration (“USCIS,” formerly the “INS”). This entity is your petitioner. A petitioner can be a U.S. citizen or a U.S. company or U.S. organization. Many artists ask their U.S. label, agent, manager to be their petitioner.

What is a “petition?”

The petition is the application your petitioner files. It needs to prove that you are qualified for the visa you are seeking, and that you have bonafide contracted employment for the time period you are seeking.

Why would I be RFE’ed?

If the Service is not convinced that you are eligible, they will issue a “Request for Evidence.” This is your second chance to provide sufficient evidence to meet their standards. Some RFEs are well written and instructive. Others are crazy or arbitrary.

What would I be denied?

Oh there are so many possible reasons! Mostly, it’s because they are not convinced you meet the standard of eligibility, or because they don’t think your employment is legitimate.

Step #2: Applying for your visa

If USCIS approves the petition, you will complete a visa application online (the DS-160 form), and then you'll schedule an interview at a U.S. embassy or consulate. At the interview the consular officer will determine if some factor indicates that the artist is ***ineligible*** for the visa.

What is a “221’g”?

If, by the end of your interview, the consulate can't decide whether or not to approve your visa, they will “provisionally deny” your application pending... whatever it is they need to figure out. Sometimes this “administrative processing takes 24 hours, and sometimes it lasts years.

Why would I be denied?

Oh there are so many reasons!

Because of a prior criminal record.

Because of a prior visa violation.

Because of an error on your visa application.

Because they don't believe that you're planning to do what you say you're planning to do.

Because they are not convinced you're not planning to emigrate to the U.S.

Because—let's be candid here—you fit a profile that they find suspect.

Because you're from a country affected by Trump's travel ban.

Note: Canadians don't have to do Step Two.

Step #3: Entering the United States

When you travel to the U.S. you will be “inspected” by an officer from Customs and Border Protection (“CBP”). The officer will make sure you have the required visa for the activities you have planned, and will admit you for a period of time which is *usually* the duration of your visa, but not always. Their decision will be recorded in an online form called the I-94, which you can lookup online.

Why would I be denied entry?

This happens pretty frequently to people traveling on Visa Waiver (ESTA), because—right or wrong—the officer thinks the individual is up to something. This doesn’t happen very often to people who have visas, and almost never happens to people have employment visas.

THE FOURTH QUESTION:

How long does it take to get a work visa?

How long it takes really depends on two factors: luck and how much you are willing to pay the US Government.

STEP ONE: Once your petition is prepared and filed, USCIS typically takes anywhere from 10 to 120 days to process it. USCIS's processing can be significantly expedited by paying the Government's \$1225 "Premium Processing" fee, which typically reduces the processing time to 15 calendar days or less.

STEP TWO: Once the petition is approved, one can usually schedule a consular interview within two weeks (though shorter and much longer waiting times occur). Once the consular interview has been completed, most beneficiaries receive their passports back within a week. However, if the consular staff has concerns about a possible criminal record, prior visa violations, or a potential threat to U.S. security, consular processing can be delayed by weeks or months. Beneficiaries who most frequently experience significant "administrative processing" delays are young males from developing countries or countries with strained relations with the U.S.

What if I'm denied?

You probably won't be if you start early enough. If you're far enough along in your career to be offered serious shows in the U.S., chances are your petition will be approved. 99% of the visa problems faced by artists could have been avoided by leaving more time to complete the visa process. Seriously!

THE FIFTH QUESTION: ***How long do work visas last?***

U.S. visas can last for up to one year for members of groups, and up to three years for soloists and supporting personnel. The good news is that for most people, U.S. work visas are multiple-entry, and it's often possible to obtain visas that cover more than just an immediate performance. The bad news is that getting longer durations can be tricky, and multiple entry visas and longer durations are not available to beneficiaries from all countries.

Who can help me with this process?

Certainly, if you are working with a U.S. label, manager, agent, festival, promoter or presenter, they may be able to help you, or they may be able to refer you to someone who can help you.

There are two great resources:

www.artistsfromabroad.org is an enormously helpful resource with excellent information on the U.S. artist visa process, as well as tax issues faced by artists touring in the U.S.

www.tamizdat.org/AVAIL is a *pro bono* legal assistance organization, funded by the U.S. Government, to help artists through the US visa process. They can help if you already have a petition filed, but have encountered into problems.

Does the process have to be this hard?

Maybe not, and we are trying to fix it.

For the last two years, working on a grant from the National Endowment for the Arts, Tamizdat has been exploring long term solutions to systemic problems with the U.S. visa system for performing artists. The product of that work is a comprehensive *White Paper on Artist Mobility to the U.S.*, aiming...

- to identify the most significant problems in the current system
- to locate the legal or operational origins of those problems; and
- to propose workable solutions to those problems.

The White Paper will guide policymaking at Homeland Security and the Department of State and help the international performing arts community work together with the U.S. government to improve the visa process. We are assembling a powerful coalition of arts organizations, NGOs and government bodies who endorse the effort, and work together to advocate with U.S. government agencies, to move toward a broad-based comprehensive strategic plan to focus advocacy on achievable solutions.