



## ARTIST RIGHTS AND SAFETY

# Why Artists Should Pay Attention to US Visas, Policy, and Cultural Exchange

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ESSAY BY

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*There is a shortage of global organizations working to secure the rights and safety of performers at risk, especially theatre artists, whose needs are often harder to meet in cities of refuge as they require other artists with whom to collaborate. Despite the excellent work of FreeMuse, PEN, ICORN, freeDimensional, and the Arts Rights Justice EU working group, we need more involvement from the general public and from artists in the free world. Some of the major issues we are dealing with in the field of artist rights and safety include reaching artists in peril, assisting artists to escape home country threats, coordinating placement and host options, supporting threatened artists (including legal, medical, educational, and artistic support), and spreading awareness to arts communities and beyond. This series will highlight the work that is being done around artist rights and safety in the theatre world, in the hopes that we can ignite dialogue, spark further exploration, and encourage more people to get involved in this growing field.*—Jessica Litwak, series curator

The performing arts have the unique potential to communicate people's experiences. This communication is the foundation of empathy and the spring that drives the engine of civil society. Cultural exchange, and the communication and empathy it fosters, is fundamental to maintaining a strong international civil society. For cultural exchange to thrive, the mobility of performing artists must not be impeded by bureaucratic barriers. Unfortunately, performing artists seeking to perform in the United States must undergo an extremely burdensome process in order to obtain the required employment visas. The process is so unpredictable that many international performing artists are reluctant to perform in the United States. Compounding this problem is an exorbitant increase in the expense of the US visa process, which—including government, union, and legal fees

—can reach more than \$10,000, with the current costs being more than twenty times what they were in 1991. Unfortunately, every year—and increasingly in the last year—the performing arts have been feeling the impact of a shift in US visa policy. Visa delays and denials have damaged a wide number of productions, and in many situations, have led to cancellations. It is tempting to feel powerless—to feel that there is nothing that the performing arts community can do to push back against cultural isolation. But all is not hopeless; there is much that we can do to keep America culturally connected to the rest of the world.

**[T]here remains a dangerous lack of information in the American theatre scene about how US immigration works. It is critical that as practitioners we 'up our game.'**

For the last twenty years, **Tamizdat**, a Brooklyn-based non-profit, has pursued a number of programs aimed at helping artists, arts organizations, and the US government work together to make sure that bureaucratic barriers of entry do not culturally isolate the US. Tamizdat has assisted more than 20,000 international performers reach audiences in the US. We have presented scores of panels and workshops at cultural conferences around the world. We run a visa crisis hotline that provides *pro bono* legal assistance to the international performing arts community, and we have taken the lead in pioneering legal strategies against cultural barriers like the current administration's travel restriction on individuals from Muslim majority countries. While there is much more to do, understanding what has been done and what can be done goes a long way toward empowering the performing arts community at a time when cultural connection is more important than ever.



### **Working Within The System**

The US artist visa system is labyrinthine, confusing, and difficult by design. It is also part of a broad system designed to serve specific purposes—to protect American security and to protect American jobs. While there certainly are conversation and debates we can have about whether those purposes are legitimate, or whether the laws successfully further those ends, over the last ten years of ever-strengthening enforcement one thing has become clear: artists and arts organizations who do not understand and comply with US law are putting themselves, their productions, and their partner institutions at risk. Unfortunately, however, there remains a dangerous lack of information in the American theatre scene about how US immigration works. It is critical that as practitioners we “up our game.”

Most people in the performing arts world understand that under certain circumstances, a performing artist needs a “work visa” (usually a “P” or “O” classification) to perform in the US. There is, however, an enormous amount of confusion about precisely when these visas are required: “It’s ok to perform in the US if you’re not getting paid, right?” (Generally not.) “It’s ok if the artist has a Canadian passport, right? (Usually not.) “It’s ok if I’m only doing a reading, right?” (Probably not.) “It’s ok if I’m only doing a filming, right?” (Almost definitely not.)

Well, then when does a performing artist need a visa? This is how lawyers do the analysis: you start from the assumption that if a foreign performer (meaning not a US citizen or national or permanent resident) wants to perform in the US *under any circumstance*, they must enter the US with an employment visa. Now, there are a number of limited number of exceptions to this rule. For our purposes here, there are four important “exceptions” under which an artist may enter the US as a “visitor” (meaning with a B1 or B2 visa or under the **ESTA / Visa Waiver Program**): The Industry Showcase Exception, the Embassy Programs Exception, the Academic Exception, and the Amateur Exception; each of these exceptions is very narrowly defined, and explaining them is beyond the scope of this essay, but for more information, one good source is Tamizdat’s *pro bono* Artist Visa Assistance and Information Line (**TamizdatAVAIL**), where a volunteer attorney will provide artists and arts organizations with limited assistance.

### **Work to Change The System**

The policies and procedures at **US Citizenship and Immigration Services** (USCIS) and the **Department of State** (DOS) have created significant obstacles to international artist mobility. With the support of the **National Endowment for the Arts**, Tamizdat is working to improve the US artist visa process. It has spent the last two years studying thousands of performing artists’ visa cases and identifying numerous systemic problems. Its research indicates that the vast majority of the problems arise not from flaws in the US statutes themselves, but from inconsistent and flawed interpretations and enforcement of those statutes by USCIS and DOS officers. USCIS and DOS officers are guided in their daily practice by administrative manuals that outline the official policies and procedures they must follow. These “interpretive rules” are at the core of most of the problems encountered by international performing artists. Fortunately, these interpretive rules are much easier to change than statutes; unlike changes to US statutory law, changes to interpretive rules do not need to be approved by Congress. Working from a wealth of case data, Tamizdat has developed a platform of administrative revisions that it believes will dramatically improve the US artist visa process, making it more efficient, equitable, affordable, and transparent, all without jeopardizing US security or labor interests. Its findings and recommendations are in Tamizdat’s **White Paper on Artist Mobility to the United States**. This White Paper has three goals:

(1) To identify the most significant problems in the current system used by international artists to obtain the authorization needed to legally enter the United States to perform;

- (2) To locate the legal or operational origins of these problems; and
- (3) To propose workable solutions to these problems.

With the broad support of international and domestic arts, legal, labor, and commerce NGOs, government bodies, and private business, we believe that the *White Paper* will be a useful guide to policymaking at the United States Department of Citizenship and Immigration Services and The United States Department of State, and will help the international performing arts community work together with the US Government to keep America culturally connected to the rest of our world.



JESSICA LITWAK

### THOUGHTS FROM THE CURATOR

There is a shortage of global organizations working to secure the rights and safety of performers at risk, especially theatre artists, whose needs are often harder to meet in cities of refuge as they require other artists with whom to collaborate. This series highlights the work that is being done around artist rights and safety in the theatre world, in the hopes that we can ignite dialogue, spark further exploration, and encourage more people to get involved in this growing field.

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## Topics

United States	Artist Rights and Safety	Cross-cultural Exchange and Cultural Mobility

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