

Immigration Advice: Performing in the US and Canada

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If you plan on performing outside of your country, you must have all personal identification and travel documents in order, and specifically, ensure you have obtained the appropriate work permits.

The AFM assists US and Canadian musicians, and those from abroad, to obtain the appropriate North American work permits for bookings outside of their home country.

Being recognized by US Citizenship and Immigration Services (USCIS) as the union consultant and authorized petitioner for temporary work permits (P-2 Visas), gives the AFM the ability to consult on and/or petition for US work permits for musicians. Additionally, the AFM is the only recognized union body for professional musicians in both the US and Canada.

Further, and in accordance with USCIS and Human Resources and Skills Development Canada/Citizenship and Immigration Canada (HRSDC/CIC) policies and regulations, AFM's administration of foreign performer permits is supported by a USCIS-approved reciprocal exchange agreement between the AFM in the US and AFM's Canadian Office. This agreement allows for the exchange of musicians between the two countries. Under this agreement Canadian AFM members who wish to work in the US may be eligible for a P-2 Visa and US members wishing to work in Canada may be eligible for an IMM-1102 Permit without requiring approval from HRSDC.

The AFM office in New York and AFM Canadian Office directly provide the required immigration consulting services on visa applications for both member and nonmember musicians. And the P-2 Visa (for performing in the US) assistance, which is detailed further below, is a member-specific service available exclusively to Canadian AFM members.

Immigration consultation and permits sought by artists such as dancers, actors, stage managers, stage technicians, operatic singers, and writers must be issued by the appropriate US or Canadian artist union having jurisdiction over that specific area of entertainment.

Classifications of US Permits

There are several visa options available to musicians performing in the US:

- O-1 Visa is for an individual artist who is internationally renowned.
- P-1 Visa is similar to an O-1, but is for groups who are internationally renowned.
- P-3 Visa is for groups that are culturally unique; i.e. musicians performing folk music of their home country.
- P-2 Visa is specific to artists (solo or group) who are emerging artists, as well as those of stature/international recognition entering the US under a USCIS-approved reciprocal exchange program.

It should be noted that proof, by way of music industry award nominations/wins, articles, interviews (web, print, radio), is required as part of the O-1 and P-1 petitions.

An O-1 Visa allows musicians to work in the US for up to three years, while P-1, P-2, and P-3 Visas allow musicians to work up to one year. Subject to USCIS approval, all visa classifications allow the possibility of a one-year extension, if the original performance contract is extended by the same engager, requiring the same services under which the original permit was granted.

The processing times for all classes of artist visa are 95-125 calendar days through regular processing, and approximately 25 days through premium processing. Suggested time frames will help to ensure the musicians receive all original visa documentation prior to the date of travel. Original paperwork provides for better ease of entry.

Musicians who are landed immigrants to Canada and musicians (Canadian Citizens) who are required to include a US (criminal) waiver with their petition, can expect processing times of up to 55 calendar days on premium petitions and 125 days on petitions filed through the regular processing unit. If either situation affects you, please e-mail lwhite@afm.org for additional information prior to contracting in the US.

The processing fees charged by USCIS for all artist visas is \$320, covering regular processing. The premium processing fee is \$1,000 in addition to the petition fee; the premium fee and petition fees must be remitted under separate money orders. All fees quoted above are payable to the Department of Homeland Security. NOTE: When applying for visas for technicians and others such as road/tour managers, back-up singers, and dancers, all fees are double.

P-2 Visas

The P-2 Visa still proves to be the most popular class sought by Canadian musicians. In 2008, the AFM processed approximately 1,500 P-2 regular and premium processing petitions. This represents P-2 Visas for 900 entertainment units consisting of one musician up to orchestras of 60 or more, and 150 P-2 Visas for technicians and other supplemental workers integral to the performances.

P-2 Visas filed under both regular and premium processing require the same basic information, briefly: completed applications, copies of passports for all travelling, complete contracts and/or a detailed tour itinerary (subject to AFM approval), and the appropriate USCIS and AFM processing fees. The AFM's nominal administration fees of \$35 to process musicians only and \$70 to process musicians travelling with technical/supplementary workers (petitioned for under P-2 Visas) help offset necessary administrative expenses incurred by P-2 Visa filing, such as an overnight courier to USCIS.

The AFM will process all complete applications within 24–72 hours of receipt; this time is accounted for within the minimum processing times provided above. Specifically, with respect to Premium Processing files, while USCIS gives a 15-day guarantee to provide a response, this response can be in the form of an Approval or Receipt Notice, a Request for Additional Information, or a Rejection. This is also part of the reason AFM strongly suggests filing time minimums (based on the situation), as we are then better able to resolve any problems with processing prior to the time you are required to be in the US.

P-2 Visa applications (provided in downloadable pdf fill/save format), and additional information can be found at the website www.afm.org. If you follow the application packet checklist exactly you will have all the information needed to successfully complete your application. Or, if you are ready to apply now, you may e-mail Lidia McGeown (lmcgeown@afm.org) with last-minute clarifications.

NOTE: P-2 Visa applications with fees must all be submitted in one complete package, and delivered to the AFM's Canadian office by courier or mail. Forms and fees cannot be processed electronically.

O-1, P-1, and P-3 Visas

The AFM has not yet expanded its services to also petition for the O-1, P-1, and P-3 Visas, though this has been loosely discussed and considered over the years. Although AFM does not specifically petition for these permits, USCIS still requires a letter from the appropriate union. For artists and groups that feature instrumental music as its main component, the AFM is the appropriate union.

This AFM consultation letter must be filed with your petition and is required by USCIS to establish that the musician or group traveling to the US meets the standard of being internationally renowned (for O-1 and P-1 Visas) or culturally unique (for P-3 Visas), and confirmation that the terms of the engagement meet the minimum US entertainment industry standards. Therefore, essentially no permit, whether for union or nonunion musicians, will be processed by USCIS without some involvement and approval from the AFM.

The fee charged for AFM consultation services on non-member petitions is \$200, or \$250 for expedited requests. However, in late 2007 we began waiving this fee for Canadian AFM members who opt for the O-1, P-1, or P-3 Visas over the P-2, as we have deemed this service should be included as one of the many services received by virtue of AFM membership. Musicians applying for these visas should contact Steve Gelfand (sgelfand@afm.org) for more information.

Musicians Performing in the US with More than One Band

If you are a musician who regularly performs with more than one band, be it US or Canadian bands, or a combination of both, you need your own individual P-2 Visa. USCIS only recognizes one classification at a time. So applying for a P-2 Visa to perform with one band, when another band has already obtained a visa for you will not cover all performances with all bands. Bottom line: if USCIS is not previously advised of your performances, you are technically performing those engagements illegally.

You will need a signed acknowledgment by the bandleader, band management, or booking agent, which outlines how many US performances you will be needed for and what your role and compensation will be. A copy of the contract or tour itinerary for each band is also required.

US Showcase Performances Not Requiring a Visa

Artist visas are required for unpaid showcase performances that are held in front of a paying audience, including venues that allow free entry but set a drink minimum requirement per patron.

The AFM is still able to provide support letters for B-1 Visa entry for the following showcase-type performances: a) closed to the general public, with industry professional only audiences (e.g., labels, managers); b) free to the public audiences or parking lot performances (e.g., outside record stores); c) in connection with a music conference, with the performance taking place within the conference hotel, with the stage set up in the tradeshow or conference area; d) in situations where a Canadian entity (e.g., Travel Nova Scotia) is engaging a Canadian musician for their convention, which just so happens to be held in the US, but the musician is paid in Canadian dollars by a Canadian entity. In these instances, it is also only the convention patrons/delegates that are attending the show.

Musicians wishing to apply for a showcase support letter should contact Susan Whitfield (swhitfield@afm.org).

Passport Requirements

Since 2007 the AFM has been mandating copies of passports when applying for P-2 Visas. As of this year, USCIS will turn back a petition when proof of passport is not filed. As of July 1, 2009, passports will be required when entering the US by land (and sea) as well.

Although Canadians are technically exempt from the requirement to hold a passport with a minimum six-month validity period when entering the US, that exemption is more accepted for people entering for short vacations—not for business or under work permit.

Never roll the dice. In the end, the border official has the final say on your entry—even if you hold approval for a visa issued by a USCIS Service Center. Especially, if you are applying for a yearlong tour in the US, it is safest to ensure your passport is valid for one year and six months to cover your entire permit, and then some.

US Tax Withholding

As previously reported in the IM, in mid-2007 the US started enforcing laws and regulations concerning taxation and withholding of tax on foreign artists. In general, anyone working and earning compensation in the US is required to pay US income tax on those earnings. The Internal Revenue Service (IRS) requires anyone in the US who is paying a foreign artist, promoter, manager, or an agent, to automatically withhold 30% taxes on all US income of that foreign artist. In most situations, because individual earnings are below a certain threshold (\$17K annual gross, is the last figure we were aware of), a 100% return on taxes withheld in advance is likely.

A good resource to learn more about US withholding tax is the League of American Orchestras and Association of Performing Arts Presenters Artists Abroad Website: www.artistsfromabroad.org.

Internally at the AFM, we are doing our best to fully educate ourselves on the process required for musicians to obtain Individual Tax Identification Numbers (ITINs), and for bands that tour regularly in the US, we are investigating how they can incorporate their band in the US (one Canadian band found this to be the best option). We encourage musicians who wish to perform in the US to explore these options prior to commencing work in the US.

While neither option will result in musicians (individuals or entities) being able to avoid the requirement for US tax reporting, it may avoid upfront withholding of 30% and having to file an application for a return on the withholding through the IRS. Also, it is my understanding that most times the engager and IRS look to the full compensation being earned by the band. Overhead and the more nominal individual earnings are not considered at the time of performance/withholding.

We are receiving more questions/information from AFM members that US engagers are requiring foreign musicians to have and provide an ITIN before they enter into an engagement contract them. So, it's best to be as proactive as possible, especially if you plan to work regularly in the US. Apply for your ITIN as soon as possible.

US Citizens Working in Canada

Much like the AFM's headquarters in New York, the AFM's Canadian Office provides consultation services to both members and non-members, including US Citizens and musicians entering Canada from abroad.

The AFM Canadian Office is the national office that makes determinations on the fee standards and working conditions for all musicians in Canada. It is recognized, by the Federal government, CIC, and HRSDC, as the sole bargaining agent of, and consulting organization for, all musical engagements in Canada.

Musicians wishing to work in Canada for venues that are not deemed work permit exempt will need to obtain a Temporary Employment Authorization by way of a favourable Labour Market Opinion (LMO). To qualify for temporary employment authorization, most (Service Canada) regional offices require a union concurrence letter to be filed with the Foreign Worker Application form. A LMO is essentially an approval for the Canadian Border Officer to issue a temporary work permit to the foreign entertainer(s) at their time of entry into Canada. As also noted above, under CIC guidelines AFM members are exempt from requiring an HRSDC approved Labour Market Opinion.

The work permit fee is \$150 for a single musician or \$450 for a band of two to 14 players. Permits are valid for three months at a time, based on confirmed/steady work over that three-month period. In some instances, when performing a steady engagement (i.e., house band or symphony) with one engager, a permit will be issued for six months.

Processing times are far less than those required by the US. The entire process, including obtaining Service Canada approval, will take no more than two months, but in most cases far less than that. This time frame also includes applying for and obtaining the union consultation letter. Complete requests will be processed and returned within 48 business hours of receipt. While most (HRSDC)

Service Canada offices process LMO's for entertainers within one week, some offices can take up to six weeks to return a favourable LMO.

Exemption from Temporary Employment Authorization (Work Permit)

Big touring entourages of 15 people or more do not typically require a work permit, as they are usually not in Canada for very long and playing for only a few nights.

Also, when performing at a recognized music festival or large concert venue, it is not likely that a work permit will be required. However, we strongly advise, even when the venue is work permit exempt, that you obtain an AFM letter of support to assist entry into Canada. Unfortunately, it appears that the different and various Canadian borders and officers can all interpret the exemption code differently. The AFM letter demonstrates that the appropriate Canadian union body is aware of and has reviewed/assessed the engagement prior to entry, and helps to further support your claim that you do not require a work permit for this particular performance.

Musicians from the US and abroad wishing to apply for entry to Canada should contact Susan Whitfield (swhitfield@afm.org).

NOTE: If you have a previous criminal history (including DUI) that is less than 10 years old, and you wish to obtain temporary work authorization for Canada, please contact Liana White (lwhite@afm.org) for additional information prior to making travel arrangements. The processing time provided above is not applicable in these situations and can become quite lengthy.

In closing, it is always advisable to research immigration requirements at the first suggestion of you/your band might be booked outside of your home country. E-mail addresses have been provided throughout the article so you may ask questions. Again, the AFM website is also a useful resource for this information.

On behalf of all of us at AFM, we wish you every success in your professional musical endeavours across the respective borders.