

# Labour Mobility Between Canada and the United States

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*Brief prepared by CAPACOA on behalf of the Canadian Arts Coalition.*

*CAPACOA and the Canadian Arts Coalition welcome comments from the arts sector about this position statement and recommendation. Comments may be emailed to Frédéric Julien, Director of Research and Development, at [frederic.julien@capacoa.ca](mailto:frederic.julien@capacoa.ca).*

## Background

### The Performing Arts Exception

While many cultural industries require some form of protection from foreign investments and from cultural exports, the performing arts sector stands out as an exception within the ‘cultural exception’. In the performing arts sector, exchanges with other countries generally do not represent a threat to cultural diversity, but actually provide a positive contribution to cultural diversity. There are, for example, many genres in the music, dance or theatre sector that cannot flourish without ongoing exchanges with their country of origin.

### Labour Mobility in Canada

The Canadian government has made every effort to enable greater labour mobility with other countries:

- In 2014, Canada expanded the [R186\(g\) work permit exemption](#), to include performances in bars, clubs and similar establishments. Previously, the work permit exemption was only available for performances in festivals and in performing arts centres. If any given tour included a performance in a bar, the foreign music band was required to pay a \$150 work permit fee for each individual artist and staff member, and the Canadian engager needed to pay a \$275 fee for a Labour Market Opinion (later changed into a Labour Market Impact Assessment, with a processing fee increased to \$1,000). The expanded work permit exemption removed both fees.
- In 2015, Canada streamlined the Temporary Foreign Workers Program, and, in 2016, made it easier for foreign performing artists to come to Canada for co-productions and longer term engagements, under the [International Mobility Program](#). Regulation [R205(b)] (exemption code C23) affirms: “Facilitating the entry of foreign nationals working in dance (e.g., ballet, contemporary), opera, orchestra and live theatre contributes to competitive advantages and reciprocal benefits for all Canadians, including Canadian performing artists and performing arts organizations.”

- The Government of Canada is currently in discussion with Canadian performing arts groups to find ways of [simplifying non-resident taxation](#). Non-resident taxation is currently the greatest administrative and financial barrier to labour mobility in the performing arts.

## Labour Mobility in the United States

U.S. immigration laws (and the particular ways in which they are enforced) make it extremely difficult for Canadian artists to enter the U.S., even for short term presenting engagements.

- First, it must be noted that, in most circumstances, [Citizens of Canada traveling to the United States do not require a nonimmigrant visa](#). This exemption is however circumvented by U.S. authorities, as explained below.
- While Canadians citizens do not require O or P visas to enter the U.S., they are required to demonstrate that USCIS has approved their O or P classification. This, in effect, means that Canadians performing artists are required to submit an I-129 application for O or P visas, even though they are visa exempt.
- The I-129 petition process is slow, time consuming and expensive. Since 2015, there have been ongoing significant [processing delays](#) for I-129 petitions. These delays are caused by a number of factors, including lack of resources and frequent *requests for further evidence* (often because USCIS officers do not understand the peculiarities of performing arts engagements. The Artists from Abroad website recommends filing I-129 applications “at least six month in advance, unless premium processing”. As a consequence of these delays, many touring artists are forced to pay a Premium Processing Service fee of \$1,225, even though they file their petition months in advance of the 14-days service standards for regular processing. The [fee for regular processing was increased](#) in December 2016, from \$325 to \$460, which is a significant burden for many touring artists, groups and companies

This cumbersome immigration process is obviously an issue for Canadian touring artists, but it also negatively affects U.S. presenters, festivals and performing arts organizations.

“International Artist Visa Processing” is one of three advocacy priorities for the [Performing Arts Alliance](#), a coalition of 14 U.S. industry associations representing over 30,000 arts organizations, artists, and arts supporters. In addition, to issues related to processing delays and high application fees, the Performing Arts Alliance claims that difficulties also include “inconsistent interpretations of requirements, and unwarranted requests for further evidence”. The Performing Arts Alliance affirms that “the nature of scheduling, booking, and confirming highly sought after guest soloists and performing groups requires that the timing of the visa process be efficient and reliable.” Consequently, the Performing Arts Alliance and its member have been working to raise awareness in Congress of the need for an improved visa process, with the goal of the [Arts Require Timely Service \(ARTS\) Act](#) being signed into law.

The American Association of Independent Music (A2IM), the American Federation of Musicians (AFM), and The Recording Academy have been supporting another bill in Congress. The [Bringing Entertainment Artists to the States \(BEATS\) Act](#) specifically aims to streamline the process for allowing Canadian artists to perform in the United States. The BEATS act would modernize the P-2 visa process for entertainment artists and speed up the admission process. It would also loosen the regulations around date and location changes in the tour once the original petition is filed.

## Recommendation

The modernization of the North American Free Trade Agreement presents itself as unique opportunity to enable greater reciprocal labour mobility between Canada, the United States, and Mexico.

With respect to labour mobility between Canada and the United States in particular, CAPACOA recommends the following amendment to [subsection 214.6 of NAFTA](#):

Add "Performing Artist" as an eligible profession for [NAFTA Professional \(TN\) Nonimmigrant](#) Status.

Under the TN status, as citizens of Canada seeking temporary entry as a business person to engage in business activities at a professional level, Canadian artists would be able to make application for admission with a Department officer at the United States Class A port-of-entry, at a United States airport handling international traffic, or at a United States pre-clearance/pre-flight station.

The requirement for credentials demonstrating professional status could be represent a challenge. However, regarding *Documentation demonstrating engagement in business activities at a professional level and demonstrating professional qualifications*, NAFTA 214.6(d)(3)(ii) states:

"This documentation may be in the form of a letter from the prospective employer(s) in the United States or from the foreign employer, and must be supported by diplomas, degrees **or membership in a professional organization.**" (bold characters are added)

We believe that a signed contract with a U.S. engager, and a letter or other form of documentation confirming membership in one of selected pre-approved professional organization should be sufficient to demonstrate professional level and professional qualifications.

## Justifications

1. The current visa classifications required to enter the United States already recognize the extraordinary nature of professional services rendered by performing artists:
  - [O-1B](#) classification for aliens of extraordinary ability in the arts;
  - [P-1B](#) classification for internationally renowned performing groups and essential support personnel; and, for individual foreign artists performing as a member of a U.S.-based internationally renowned performing group;
  - [P-2](#) classification for reciprocal exchange program;
  - [P-3](#) classification for culturally unique performers or groups, teachers and coaches.
2. Canada's work regulations ([R186\(g\)](#) and [R205\(b\)](#)) also affirm the unique status of performing artists, key creative personnel and talent.
3. Cultural exchanges between neighbour countries create affordable career development opportunities for emerging artists.
4. In some niche subsectors, such as contemporary circus or dance, a domestic market may not sufficient to ensure the long-term viability of art companies. For example, it is common for ballet companies to have reciprocity or exchange agreements with ballet companies in other countries.
5. Greater travel mobility would also facilitate last-minute engagements between border states and Canada (for example, when a last-minute cancellation requires a last minute replacement).

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June 9, 2017