



The US Visa application process:

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Chapter 1: Work Visas.

(1) Q: What kind of visa do I need to perform in the U.S?

A: It's important that you establish which US visa is the most appropriate one to apply for. The crucial thing is to answer these questions objectively.

1. Are you a solo artist (with or without a band) of exceptional ability?

If yes then you should probably be seeking an O-1.

2. Are you in a band, jazz, or classical ensemble with sustained international renown?

If yes then you should probably be seeking a P-1.

3. Have you been invited to perform at an official music industry showcase event?

If yes then you should probably be seeking a B-1, but only if you have no paid gigs, and the principal reason the audience is in attendance is not to be entertained, but to consider hiring you in the future.

4. Do you perform folkloric or traditional music, and you are going to the US to give culturally unique presentations?

If yes then your best option may be the P-3.

(2) Q: For how long is an O visa valid?

A: It CAN be valid for up to 3 years. However you need to prove you have contractual work for that period of time. The O visa will only last as long as you have contracted work. Which could be one day, one week, or three years, or anything in between. For more information about how this is done, please see <http://www.artistsfromabroad.org/>

(3) Q: For how long is a P visa valid?

A: It can be valid for up to 1 year. However you need to prove you have contractual work for that period of time. The P visa will only last as long as you have contracted work. Which could be one

day, one week, or one year, or anything in between. For more information about how this is done, please see <http://www.artistsfromabroad.org/>

(4) Q: How do I prove I have extraordinary ability, that my band has sustained international renown, or that we are going to give culturally unique presentations?

A: You will need to prove all this through documentary evidence. For information about this, please see www.artistfromabroad.org.

(5) Q: Do I need a significant back catalogue?

A: It is possible to prove O-1 with only a short career, but the shorter the career, the harder it will be to amass enough evidence to prove your eligibility. The P-1 visa will require evidence that the ensemble has had renown for at least one year. The P-3 visa does not require any sustained career. For information about this, please see <http://www.artistsfromabroad.org/>

(6) Q: Who decides whether I am eligible?

A: The United States Citizen and Immigration Service (USCIS) decides if you have the necessary qualifications, and whether you have bona fide employment. They will make this determination based on the **petition** that your US petitioner files in the US on your behalf. Once a petition is approved, you will need to apply for the actual visa, at which point the US Department of State decides if some factor (a criminal record, for example) disqualifies you from eligibility.

(7) Q: Can future touring dates help?

A: For both O and P visa applications, you need to be able to show that you have contracted work that requires your presence in the US. If you have contracted performance dates, these contracts may be able to help you prove that you have *bona fide* contracted work scheduled in the US

(8) Q: Is it easier to apply for a P-1 rather than an O-1?

A: The P is applicable if you are a member of a band and that band is a renowned band. The O is applicable if you are a renowned solo artist. In some rare situations, when a solo artist principally performs with a group—as with ‘Sally Sheep & The Farmers’ (fictional example)—the artist may have the luxury of choosing whether to seek a P or O visa, but usually there is no option.

(9) Q: What if I am a solo artist with my own renown, but I typically tour with a band that has it’s own identity, e.g.: ‘Sally Sheep & The Farmers’?

A: As the solo artist of extraordinary ability, Sally Sheep could apply for an O-1, and The Farmers could seek O-2 visas as Sally’s essential support personnel; alternately, ‘Sally Sheep and The Farmers’ could simply seek a P-1 group visa that would cover the whole band, including Sally.

Chapter 2: ESTA, B Visa and Showcasing

(1): Q: Can I perform in the US under an ESTA/Visa Waiver or on a B-1 “Visitor Visa”?

A: Probably not. The rule is that *everyone always* needs a work visa (P or O) to perform in the US. There are several very narrow exceptions to this rule, including “the *showcase exception*”: if you are officially invited to perform at a recognised music industry showcase event, and the principal purpose that the audience is in attendance is not for the sake of being entertained, but for the sake of considering future business engagements with you, the argument can be made that a P or O visa is not necessary, and ESTA/Visa Waiver or a B-1 visa is sufficient.

(2) Q: I have heard that ESTA/Visa Waiver is unreliable, but the B-1 visa costs money and requires an interview. Which is better?

A: It is very important to understand that using the “showcase exception” loophole is always risky. If you choose to enter the US on ESTA/Visa Waiver, you are betting that the Customs Border Patrol (CBP) officer who inspects you at the port of entry will (a) understand the exceptions and (b) agree that it applies to your situation. If they do not understand the exception (fairly common) or determines that it does not apply to you (also common) you will be on the next flight home. For this reason, the MU does not recommend traveling to the US on ESTA/Visa Waiver for any activities that may even *resemble* employment. We recommend that artists seek B-1 visas from the local US consulate for showcases or recording sessions; in the best-case scenario, you’ll get the B-1 and be much less likely to encounter a problem at the border; in the worst-case scenario, you’ll find out the bad news before you board a plane, and may have time to rectify the situation. It should also be understood that ESTA/Visa Waiver should not be seen as a cost free alternative to a visa. If you are denied under an O or P then you cannot work in the US – using an ESTA/Visa Waiver is not a legal option.

(3) Q: What is the ‘Showcase Exception?’

A: Most people involved with the performing arts understand that broadly speaking, in all but a handful of very narrow exceptional circumstances; any performer needs an employment-based visa (usually a P or O visa) to be allowed to enter the US to perform. The most commonly used—and commonly misunderstood—of these exceptional circumstances arises from what is commonly referred to as “The Showcase Exception.” In fact, US law makes no reference to a “showcase exception” but the existence of the exception is widely accepted as an interpretation of one passage from the *Foreign Affairs Manual*:

9 FAM 402.2-5(B) ALIENS TRAVELING TO UNITED STATES TO ENGAGE IN COMMERCIAL TRANSACTIONS, NEGOTIATIONS, CONSULTATIONS, CONFERENCES, ETC: *Aliens should be classified B-1 visitors for business, if otherwise eligible, if they are traveling to the United States to... (e)ngage in commercial transactions, which do not involve gainful employment in the United States (such as a merchant who takes orders for goods manufactured abroad)*

The comment about a merchant taking orders is a reference to a 1966 case, “Matter of Hira,” where the government made distinction between “employment,” for which one must have an employment visa, and “seeking employment” for which one may be admitted as a visitor (B-1/B2 visa or ESTA/Visa Waiver). The exception is generally seen as applicable to the performing arts if an artist’s activities in the US involve displaying his or her talents as a performing artist pursuant to securing future engagements, and he or she is performing an unpaid showcasing of his or her skills that include composition, practice and performances, all developed overseas. The easiest way to think about this is that if the principal purpose that the audience is in attendance is not to be entertained, but to consider hiring the artist in the future, then the event may be a “bona fide showcase” and an employment-based visa is not required.

The danger with the “Showcase Exception” is that whether or not an artist’s activities fall within the exception is up to the subjective determination of consular officers at the embassies (if the artist is seeking a B-1/B2 visa) or the CBP Officer (if the artist is seeking to enter on ESTA/Visa Waiver), so it is always possible that what *you* think is clearly a *bona fide industry showcase* might not so clearly qualify in the opinion of the officer.

(6) Q: What is the UK Music industry understanding of a US showcase?

A: In the UK organisations such as British Underground, the MU and PRS foundation define a showcase event as one that is primarily an ‘industry facing’ event where members of the music industry, whose primary reason for attending is to further book you or your band for work in the

US. Whilst there may be audience members at the event who are not industry professionals, having an honest audience based reaction is an important aspect of the showcase experience.

Chapter 3: Process

(1) Q: What is the visa application process?

A: The US embassy in London has sent us the following information regarding the process:

Guide to the O and P Visas: The Application Process

Step One: File a Petition. The petitioner submits form I-129, all supporting documents, and any required fees on the applicant's behalf to the United States Citizenship and Immigration Services (USCIS) in the United States (not at the US Embassy or Consulate). The necessary supporting documents are specific to each visa category. Please visit the following website for detailed eligibility information and instructions: <https://www.uscis.gov/i-129>.

Step Two: Petition Adjudication by USCIS. USCIS will notify the applicant and petitioner when a petition is approved, through a Notice of Action (Form I-797). Applicants in possession of the Notice of Action or the Petition receipt number may apply for a visa.

Step Three: Apply for a Visa. Please visit the US Embassy and Consulates in the United Kingdom website for detailed information on the visa application process: <https://uk.usembassy.gov/visas/>.

- *Fill out form DS-160 and print the confirmation page, available at: <https://ceac.state.gov/genniv/>.*
- *Pay the MRV fee and schedule an appointment, via: <https://ais.usvisa-info.com/en-gb>. You will need Firefox or Chrome to open this link*
- *Attend an interview at the US Embassy in London or Consulate General in Belfast. For general instructions on employment-based nonimmigrant visas, please visit: <https://uk.usembassy.gov/visas/temporary-employment/treaty-trader-investor-and-alien-in-a-speciality-occupation/>.*
- *Applicants should bring all necessary documentation to the interview.*
 - *DS-160 confirmation page*
 - *Appointment confirmation letter*
 - *Valid passport*
 - *One recent passport-size photograph*
 - *Other documents that may be required based on visa category and/or an applicant's individual circumstances. Applicants should review the information under "petition based applicants" carefully to avoid unnecessary delays in case processing: <https://uk.usembassy.gov/visas/temporary-employment/required-documents/>.*
- *Successful applications take 3-5 workdays to process before the passport is handed to the courier for delivery; at least a further 2 workdays should be allowed for delivery.*
- *Some cases require additional administrative processing. Please see the following site for more information: <https://uk.usembassy.gov/visas/temporary-employment/processing-times/>.*
- *For applicants requiring waivers of ineligibilities, the process takes between 6 to 8 months from the date of the interview. Please see the following site for more information: <https://uk.usembassy.gov/visas/ineligibilities-and-waivers-2/>.*

B-1 Temporary Business Visitor

You may be eligible for a B-1 visa if you will be participating in business activities of a commercial or professional nature in the United States, including, but not limited to:

- Consulting with business associates
- Traveling for a scientific, educational, professional or business convention, or a conference on specific dates
- Settling an estate
- Negotiating a contract
- Participating in short-term training
- Transiting through the United States: certain persons may transit the United States with a B-1 visa
- Deadheading: certain air crewmen may enter the United States as deadhead crew with a B-1 visa

Eligibility Criteria

You must demonstrate the following in order to be eligible to obtain a B-1 visa:

- The purpose of your trip is to enter the United States for business of a legitimate nature
- You plan to remain for a specific limited period of time
- You have the funds to cover the expenses of the trip and your stay in the United States
- You have a residence outside the United States in which you have no intention of abandoning, as well as other binding ties which will ensure your return abroad at the end of the visit
- You are otherwise admissible to the United States

Application Process

For information on applying for a B-1 visa, see the [“Department of State”](#) link.

Aliens seeking a B-1 visa from certain countries may be able to enter the United States without a visa. For information about exemptions from the visa requirements, see the [“Customs & Border Protection”](#) page.

If you are in the United States in another valid nonimmigrant status, you may be eligible to change to B-1 status. To change to B-1 status, you must file a Form I-539, Application to Extend/Change Nonimmigrant Status. For more information, see the [“Change my Nonimmigrant Status”](#) page.

Information on understanding the requirements for a B-1 Visa are found here:

<https://www.uscis.gov/eir/visa-guide/b-1-business-visitor/understanding-b-1-requirements>

(2) Q: What is the point of the UK interview at the US Embassy?

A: If USCIS approves your petition you typically will need to go to your local US consulate for an interview. The Consulate may deny your visa application for many reasons, including a criminal record, a prior visa violation, a disease, or if they have reason to believe that you pose a risk of illegally emigrating to the US. In some rare situations, the Consulate will not only deny a visa application, but they may decide to return your petition to USCIS with a recommendation that USCIS reverse its approval, and *revoke* the petition; this should only ever happen if the consulate uncovers evidence that the petition was fraudulent, they believe they have access to material information to which USCIS did not have access, or if they believe the petition was approved in

clear error. Revocations should be very rare, and if it happens to you, you should definitely seek assistance.

(3) Q; Do I have to have my interview in London?

A: No you can also travel to Belfast where interviews take place. Costs of travel to interview can be written into your funding application. (See Chapter 4)

Recently there has been a spate of applicants being rejected for B-1 visas at the Embassy in London. Those artists who have arranged B-1 interviews in Belfast have had a greater success rate. Therefore, if you have time it's worth seeking and interview in Belfast. We believe the Embassy in London is the only one that disagrees with the 'showcase exception'.

(4) Q:I have an interview for a B-1 Visa is there anything I should say that would help?

A:If you are looking at showcasing under a B-1 Visa it is important that you are able to articulate to the consulate that you are applying for the B-1 due to recently reported incidents of unexpected ESTA revocations. You should be prepared to demonstrate that the event at which you are performing is a bona fide industry showcase within the US government's definition, which is annotated in this statute **9FAM 41.31.N8** via *Matter of Hira*.

(5) Q: What are the consequences of a B-1 Visa denial.

A: if you are denied a B-1 Visa then you are deemed ineligible to apply for an ESTA. You will be then encouraged to apply for an 'O' or 'P' visa

Chapter 4: Funding

(1) Q: How can I pay for my visa/

A: Visa costs including travel expenses for interviews at Embassies can be included in applications to the PRS Foundation International Showcase Fund and the Music Export Growth Scheme (MEGS) run by the BPI

<http://www.prsformusicfoundation.com/funding/international-showcase-fund/>

<https://www.bpi.co.uk/megs.aspx>

Chapter 5: Recording

(1) Q: I am heading to the U.S to do some recording. Do I need a work visa?

A: Maybe. If your recording session is pursuant to a contract with a US label or publisher, then legally you should have an employment visa (probably a P or O). If not, then the ESTA/Visa Waiver or B-1 visas are probably sufficient, under what is often called the "recording exception." However, it is very important to understand that using the "recording exception" loophole is always risky. If you choose to enter the US on ESTA/Visa Waiver, you are betting that the CBP officer who inspects you at the port of entry will (a) understand the exception and (b) agree that it applies to your situation. If he or she does not understand the exception (fairly common) or determines that it does not apply to you (also common) you will be on the next flight home. For this reason, the MU does not recommend traveling to the US on ESTA/Visa Waiver for any

activities that may even *resemble* employment. We recommend that artists seek B-1 visas from the local US consulate for showcases or recording sessions; in the best case scenario, you'll get the B-1 and be much less likely to encounter a problem at the border; in the worst case scenario, you'll find out the bad news before you board a plane, and may have time to rectify the situation. It should also be understood that ESTA/Visa Waiver should not be seen as a cost free alternative to a visa. If you are denied under an O or P then you cannot work in the US – using an ESTA/Visa Waiver is not a legal option.

If the artist is **NOT** recording pursuant to a contract with a US label (or other entity) then ESTA or B-1 is fine; so this would include a situation where the artist is recording pursuant to no contract at all. However, under the ESTA or B-1 you will be unable to sell your recordings in the US.

Disclaimer

This Q and A should not be relied upon as legal advice. Legal advice can be provided only in the course of an attorney-client relationship with reference to all the facts of a specific situation. Any information contained here is not a substitute for obtaining legal advice from a licensed attorney.

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