

Send Us Your Tired, Your Poor, But Only if They're 'Culturally Unique'

Immigration Caseworker AA0089 Has Some Thoughts About What Is Art

By MIRIAM JORDAN

LOS ANGELES -- When Jordan Peimer booked an Argentine band that fuses Jewish Klezmer music with tango, he thought he had the perfect act to headline his "Fiesta Hanukkah" concert.

"It is hard to imagine any band more fitting than Orquesta Kef," says Mr. Peimer, the program's director at the Skirball Cultural Center here. The event was designed to attract a Jewish audience and the city's burgeoning Hispanic community.

Watch a clip of Argentina's Orquesta Kef.

That was before the U.S. Citizenship and Immigration Services weighed in with some cultural commentary of its own. The band couldn't travel to the U.S., the agency ruled, because it didn't satisfy a "culturally unique" requirement for a performer visa called P-3.

"The evidence repeatedly suggests the group performs a hybrid or fusion style of music...[which] cannot be considered culturally unique to one particular country, nation, society, class, ethnicity, religion, tribe or other group of persons," read the denial. It was signed by caseworker CSC4672/WS24533.

Mr. Peimer was incensed. "How more culturally specific can you get than Jewish music of Latin America?" he asked. After Mr. Peimer did some venting on his Facebook page, a reader quipped that this is the era of "ethnomusicalsecurity."

In fact, immigration law gives an anonymous group of government bureaucrats a lot of cultural clout: They can decide which foreign ballerinas, musicians and artists qualify as "outstanding," or special enough to deserve a visa to enter the U.S.

Ultimately, most applications are approved. Some organizations and promoters representing artists complain that official judgments of artistic merit are often arbitrary, however.

Argentinian band Orquesta Kef was denied a performance visa.



Los Angeles concert promoter Grand Performances booked an Indian music ensemble called Jaipur Kawa Brass Band for a summer gig. U.S. consular authorities approved visas for six members of the band, but rejected two, including the band's only competent English speaker. No explanation was given. "U.S. Citizenship and Immigration Services processes the petition but State [consular office] must grant the visa," says a spokeswoman for the agency. "It is outside our area of jurisdiction." The State Department noted only that a common reason for refusal is a perceived intent by a non-immigrant visa applicant to immigrate to the U.S.

The U.S. sponsor for the all-male Brazilian hip-hop company Grupo de Rua applied for a P-1 visa, and submitted articles about the dance company's performances in Tokyo, Berlin, Paris and the Edinburgh Art Festival. Immigration officer number AA0089 requested "evidence the group had achieved international recognition and acclaim."

Immigration officials don't agree that appearances necessarily add up to that. "Being internationally acclaimed is not equivalent to performing on stages overseas," says the spokeswoman.

"We didn't know what to do," says Harold Norris, president of H-Art Management in New York. "We had to turn the whole case over to a lawyer" to get it approved, which it was, as the tour dates approached.

According to the Department of State Foreign Affairs Manual Volume 9, "internationally recognized" signifies "a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country."

Artists who wish to visit the U.S. for a performance typically need a P-1 visa; a P-3 visa, issued to entertainers participating in a culturally unique program; or an O-1 visa, for individuals with extraordinary ability in the arts, education or sciences. Once a visa is approved, artists visit a local U.S. consular office to get it stamped in their passport.

Immigration authorities say that in weeding out applicants they deem marginal, they are simply carrying out the intent of Congress in creating the visa categories. The P category is meant to promote the exchange of culture and the arts. The O category is sometimes called the "genius visa. "

Each year, more than 20,000 O and P petitions arrive at the offices of Citizenship and Immigration Services in St. Albans, Vt., and in Laguna Niguel, Calif., where 28 adjudicators review them. The artists' requests represent a small fraction of the visa caseload. The California office alone receives more than 1.3 million visa applications each year.

Adjudicators work in a mustard-yellow federal building whose pyramid silhouette, evocative of ancient Mesopotamia, has been featured in Hollywood films, including "Outbreak" and "Coma." In the cavernous mailroom, visa application packets arrive by the truckload.

"I would like to highlight that USCIS adjudicators work arduously -- sometimes completing receipt, adjudication and consular processing of petition in a matter of hours," says the spokeswoman for Citizenship and Immigration Services. Though the examiners also tackle visa petitions for software engineers and lettuce harvesters, "they get specific training to understand specific visa categories," she says.

Their decision-making has confounded big-city operas and small-town dance companies alike. Asian, Latin American and European artists have been barred from entering the U.S., at times causing low-grade diplomatic tension.

"It is essential for countries like the United States and the United Kingdom to maintain open borders for arts professionals," says Carrie Annand, a spokeswoman for the British Council, which deploys talent around the world.

The officials' rulings have led to delays, cancellations and additional expenses for orchestras, museums and nonprofit arts organizations.

"A Berlin Wall against cultural diversity" is how Bill Smith of the Eye for Talent agency describes it.

When Mr. Smith tried to get a visa for Mexican indie band Los de Abajo, which already had visited the U.S. several times, immigration adjudicators asked him for some details about his own office: "Color photos should show both the inside and outside of all production, warehouse and office spaces with equipment, merchandise, products and employees clearly visible," said the letter of June 12, 2009.

"I dutifully complied," says Mr. Smith. "Then they denied the visa." The reason: "The group's biography indicates their music is a combination of music...", said the denial, and fusion music, it said, is not "culturally unique." The group had to cancel its tour.

U.S. immigration authorities initially refused to renew a visa for Ashley Werhun, a Canadian dancer with the Trey McIntyre Project. The Boise-based dance company secured a visa for individuals with "extraordinary ability" in the arts after applying a second time.

Canadian Ashley Werhun competed against hundreds of dancers for a spot in the Trey McIntyre Project of Boise, Idaho. The award-winning dancer entered the U.S. on a one-year O visa, and toured 35 cities world-wide with the troupe.

Determined to keep Miss Werhun, the dance company filed a petition last February to renew her visa for the next season. "We thought it would be a slam-dunk," says company manager Shawn Testin.

Instead, they received a request for evidence that Miss Werhun was exceptional in her field and superior to others in the troupe. In a company of only 10 dancers, "we couldn't say she is our premier dancer," says Mr. Testin. "Every one is just as important as the other."

Despite providing "hundreds of pages of evidence," according to Miss Werhun, the company got a rejection. She returned to Canada. The company reworked its choreography to account for Miss Werhun's absence.

It hired immigration lawyers to file a new application. To up its chances, the company enlisted Idaho congressman Walt Minnick to lobby.

In late November, Miss Werhun's visa was approved. She rejoined the company in midseason. All told, the visa endeavor cost the nonprofit organization more than \$10,000, it says.

Write to Miriam Jordan at miriam.jordan@wsj.com

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