

Artists and Entertainers: Options for Working in the U.S.



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July 31, 2024 | **IMMIGRATION**

If you've ever known a professional artist or entertainer, you probably understand what their main focus is: their creativity. Regardless of industry or genre, it's crucial that artists and entertainers spend as much time as possible creating content, exploring new frontiers and otherwise innovating. The last thing that artists or entertainers want to think about is the dull logistics of immigration requirements — but not doing so can have deep consequences.

Artists and entertainers have a number of options if they wish to work in the United States. For those with some notoriety in their artistic field, an extraordinary ability visa (O-1) might be the way to go. Either directly through a specific employer or through an agent (covering multiple engagements), there is a nonimmigrant visa available to creatives who can demonstrate distinction in their field. This is a handy visa since, although an itinerary of events is required for approval, U.S. immigration may be willing to grant the visa for up to three years if they are convinced that future engagements will follow the same pattern as existing, upcoming engagements.

Supporting entertainers or staff may also be eligible for O-2 status if they are considered essential to an O-1 beneficiary's artistic performance and are coming solely to assist in that performance as O-2 accompanying beneficiaries. To qualify, the government must be convinced that the beneficiary is an integral part of the actual

performance or event and that they possess critical skills and experience with the O-1 that are not of a general nature and that U.S. workers do not possess. For O-2 beneficiaries accompanying an O-1 beneficiary in the television or motion picture industry, they must have skills and experience with the O-1 beneficiary that are not of a general nature and skills that are critical due to a pre-existing or long-standing working relationship with the O-1 beneficiary.

Individual performers or those who are part of a group entering the United States to perform under a reciprocal exchange program can also obtain P-2 status. To qualify for this status, you must be an artist entering the United States through a government-recognized reciprocal exchange program.

Artists may also avail themselves of “J-1 cultural exchange” opportunities. These are short-term visas that allow foreign artists to travel to the United States for cultural exchanges. The visa allows exchange visitors to participate in approved programs that promote the exchange of knowledge and skills for people in the arts. Eligible opportunities may include internships, training programs, teaching, studying, observing and consulting, among others.

There may also be treaty-based options for nonimmigrant visas if the artist or entertainer is starting their own business in the United States or purchasing an existing business and investing a significant amount of money into it. So long as the artist or entertainer is planning to hire at least one U.S. worker and the business will also produce enough income to support more than just him/her and their family, it may be possible to obtain an E-2 treaty investor visa, depending on the country of origin of the applicant. The ultimate ownership of the company must be majority-held by someone or a group of individuals with the same nationality as the visa applicant. Likewise, if the artist or entertainer has been providing services or goods to U.S. clients from their home country, they may be eligible for an E-1 treaty trader visa. To obtain this type of visa, one must show that there have been multiple instances of trade with the United States over time. Even as few as three or four instances of trade over a one-year period may qualify an individual for this type of visa.

One word of caution: Despite being otherwise eligible for a visa or status to work in the United States as an artist or entertainer, travel across borders may be difficult if you have ever committed or admitted to the elements of having committed certain crimes. For example, U.S. artist Jelly Roll —legal name Jason DeFord — has admitted publicly to having problems going to other countries besides his native United States due to past felonies. Robbery and drug-related convictions in his past mean that he is limited in where he can provide live performances around the world. The United States is no exception to these types of rules and may not admit someone with a criminal record without a waiver of inadmissibility.

So, working in the United States may require the artist or entertainer to both obtain a visa or work authorization permission and then go through the process of obtaining a waiver of inadmissibility —lengthening the overall process time for obtaining status to come to the United States for work, sometimes significantly. In certain instances — such as where the crime resulting in inadmissibility has recently occurred — the artist or entertainer may need to wait a period to demonstrate sufficient rehabilitation before being granted a waiver of inadmissibility.

It is wise to reach out to immigration counsel to determine what is the best and most logical option for you if you work as an artist or entertainer. Each individual’s talent and accomplishments will be unique, and what works for one artist or entertainer may be very different from what works best for another.

Please reach out to Elizabeth M. Klarin (eklarin@lippes.com), partner and Immigration Practice Team member, to learn more about the options for artists and entertainers working in the United States.

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