

State of the Arts

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(09-19-06)

Visas for Cuban Artists

On February 5, 2004, regarding applicants for the Grammys, the State Department announced that they were returning to the policy set out in the Reagan Proclamation 5377 which asserts that all Cuban artists are “agents or employees of the Cuban government or are members of the communist party” since they are compensated for their services by the Cuban government and the artists pay a percentage of their earnings to the government (much like our payment of U.S. taxes).

Under the Clinton administration, this policy was waived in an effort to encourage “people-to-people” contact to “encourage a transition to democracy”. With the return to Reagan Proclamation, the State Department and Office of Foreign Assets Control suspended their people-to-people program based on their perception that the Cuban government was “manipulating and profiteering from the U.S. humanitarian policies” and “abusing the system by keeping ordinary citizens from direct contact”.

Thanks to this logic, since the return to the Reagan Proclamation policy, there have been essentially no visas issued to Cuban artists resident in Cuba. In a recent statement, the State Department maintained that last year, of the 44,000 visas issued, 18 were issued to Cuban artists. However, they don’t indicate if those artists were still resident in Cuba. Recently, a few Cuban artists such as Chuchito Valdes and Maraca have been issued visas, but these visas were issued based on their residence outside of Cuba. Even if it were true that 18 visas were issued to Cuban artists resident in Cuba, that is a drastic reduction in the numbers of visas issued to Cuban artists in 1998 (632), 2000, (688) and 2002 (489).

Despite the return to the Reagan Proclamation, State Department representatives insist that there has been a change in visa policy for artists, that “there is no blanket decision to block artists”, that they will “continue to make decisions on visa applications for Cuban artists on a case-by-case basis”.

OFAC licenses to U.S. travelers to Cuba

Concurrent with the tightening of their policy regarding visas issued to Cuban artists, the State Department and Office of Foreign Assets Control have made it increasingly more difficult for U.S. arts presenters and artists to participate in cultural exchanges or performances in Cuba. Last year, very few licenses were issued for artists to perform in Cuba. Among those issued under the “public performance” category were the Somei Yoshino Taiko Ensemble (August) and the rock group Audioslave (May).

Since then many applications of arts presenters including one we filed on behalf of Arts Presenters to visit with our counterparts in Cuba, as well as, those filed by the American Wind Symphony Orchestra (Pennsylvania), the Copland/Gershwin New Music Group (Santa Fe) and

Concerts for Humanity (Los Angeles/San Francisco), have either been rejected or placed on hold pending the State Department's new policy which the head of the Office of Cuban Affairs described as an "unprecedented anti-engagement mode".

We have been working with Congressman Howard Berman, whose Berman Act, restricts the executive branch from regulating the free flow of information, including cultural exchanges. Mr. Berman wrote twice to Condoleezza Rice requesting reconsideration of the denials or approvals of those applications still pending since the proposed activities still comported with existing law and especially in light of the contradiction evident in allowing the U.S. Interests Section to continue to invite artists to perform for events that they produced "to reach out and create bridges to the Cuban people".

OFAC representatives have disclosed that within the month the State Department is expected to announce their new policy which will eliminate public performances by U.S. artists in Cuba.

With many applications for public performances still pending or having been denied without any rational basis, we are glad that the State Department will be clarifying its policy regarding public performances in writing. Assuming that the State Department will be eliminating the public performance category for licensed travel to Cuba, we are preparing a litigation team to file a suit in federal district court. We will be contacting presenters and artists who wish to be plaintiffs once we have the new policy in writing.

Legal issues for visas or licenses

Our rights regarding visas for Cuban artists to come to the US or the rights of U.S. artists and presenters to participate in performances in Cuba are both based on 1st, 5th and 14th Amendment issues and Berman Act notions that the executive branch cannot inhibit the "free flow of information". Culture exchanges are modes of communication.