

Songwriting in the US – Visas – Yes or No?

I would like to preface these notes by saying that admission to the US is always at the discretion of the CBP officers at the border and that the penalties for contravening US immigration laws are severe. For almost any musician success in the US is part of their career plan. So it is wise to ensure that you have the correct visa for entry. For any employment for musicians in the US this would be an O visa for individuals or a P visa for groups,. Almost all the activities musicians would travel to the US for fall into the category of 'employment' for which a work visa is required. Please note that when we refer to a B category visa the same applies to travellers using the visa waiver, ESTA, programme.

The US 'FAM' Foreign affairs manual, has the following to say..

B visa status, is not appropriate for a member of the entertainment profession, (professional entertainer) who seeks to enter the United States temporarily to perform services. Instead, performers should be accorded another appropriate visa classification, which in most cases will be P, regardless of the amount or source of compensation, whether the services will involve public appearance(s), or whether the performance is for charity or U.S. based ethnic society.

That said obtaining an O or P visa costs, requires the applicants to have achieved a certain level of success and have a US company to act as petitioner. There will then be occasions when musicians wish to travel to the US before they are in the position to apply for a work visa. The question is what can they do there that does not constitute 'performing services' as per the above notes?

An important and influential decision as to activities permitted without a work visa was made in the case *In the Matter of Hira*, decided by the Board of Immigration Appeals.

A tailor measured customers in the U S for suits to be manufactured and shipped from abroad. The board held that this activity was an appropriate business activity for B-1 purposes because the principal place of business and the place where profits were accrued were in a foreign country.

In the light of the above if you wish to enter the US to write, or co-write, songs (that is to be inspired by the Appalachian Mountains and their accompanying folk traditions or to get real in Compton) then you can enter on a B1 business visa or visa waiver.

As mentioned previously the rules governing what is and is not permitted in the US can sometimes be a little unclear and it is always best to seek advice before attempting to enter if you are unsure as to whether a work visa is needed and if there is any doubt then err on the side of caution and get the correct visa.(P visas can have a validity of up to 1 year and O visas for 3.

Regarding recording (including demos) in the US. The regulations state that If the conditions below are met:

- "(1) The musician is coming to the United States in order to utilize recording facilities for recording purposes only;
- (2) The recording will be distributed and sold only outside the United States; and
- (3) No public performances will be given."

Then entry on a B visa or ESTA is permitted

Andy Corrigan

*Re-Production,
Laffitts Hall,
Framsden Road,
Pettaugh,
IP14 6DT
07774 748476 mobile
01473 892660 office
andy@re-production.co.uk
www.re-production.co.uk*