

April 11, 2012

U.S. Visa Rules Deprive Stages of Performers

By [LARRY ROHTER](#)

Everything seemed set for the American debut last month of Pitingo, the rising young flamenco singing star: the Grand Ballroom at Manhattan Center had been booked, tickets and program prepared, a publicity budget spent, nonrefundable airline tickets purchased. But when he went to the United States Embassy in Madrid to pick up his visa, he learned that his name was on the “no fly” list.

Embassy officials knew that Pitingo, whose real name is Antonio Manuel Álvarez Vélez, is not a terrorist, and that the real target was someone else who shared his very common name. But procedures are procedures, and by the time the confusion was sorted out it was too late for Pitingo to fly to New York, and his concert had to be canceled. His management and the concert promoters incurred losses of nearly \$25,000.

The case of Mr. Álvarez is not an isolated one. In the decade since the attacks on the twin towers, American visa procedures for foreign artists and performers have grown increasingly labyrinthine, expensive and arbitrary, arts presenters and [immigration](#) lawyers say, making the system a serious impediment to cultural exchanges with the rest of the world.

Some foreign performers and ensembles, like the Hallé orchestra from Britain, have decided that it is no longer worth their while to play in the United States. Others have been turned down flat, including a pair of bands invited to perform at the [South by Southwest](#) festival in Austin, Tex., last month, or have ended up canceling performances because of processing delays, as was the case last month with the Tantehorse theater troupe from the Czech Republic, which was booked to perform in suburban Washington.

Overall, according to Homeland Security Department records, requests for the standard foreign performer’s visa declined by almost 25 percent between 2006 and 2010, the most recent fiscal year for which statistics are available. During the same period the number of these visa petitions rejected, though small in absolute numbers, rose by more than two-thirds.

“Everything is much more difficult,” said Palma R. Yanni, a former president of the American Immigration Lawyers Association who also handles artists’ visas. “I didn’t think it could get worse than it was after 9/11, but the last couple of years have been terrible. It just seems like you have to fight for everything across the board, even for artists of renown. The standards have not changed, but the agency just keeps narrowing the criteria, raising the bar without notice or comment, reinterpreting things and just making everything more restrictive. We call it the culture of no.”

A foreign artist seeking authorization to perform in the United States must navigate a system that involves a pair of government departments. Homeland Security, created in 2003, evaluates the

initial application and then, if approval is granted, the State Department, assuming it is satisfied with the results of an in-person interview with the performer, issues a visa at an embassy abroad.

Congress requires the process to be financially self-sustaining, rather than depend on taxpayer support, which in practice means that fees are typically higher than those of other countries. Homeland Security even offers an expedited “premium processing fee” of \$1,225 per application — over and above the standard \$325 filing fee — that is supposed to guarantee a response within two weeks, but arts administrators complain that the agency sometimes fails to meet its own deadline.

As part of the process the arts group sponsoring performances in the United States must also submit written proof of the artist’s qualifications, all duly translated into English. Even then there is no guarantee of timely approval of a visa request, since there are often additional “requests for evidence” of a performer’s artistic worth or personal background. The government advises performers and ensembles to submit paperwork at least 90 days before they hope to receive a visa, but arts administrators say that delays of up to six months are not unusual.

“There’s no two matters that play out in the same way,” said Jonathan Ginsburg, a Washington-based immigration lawyer whose firm, Fettman, Tolchin & Majors, represents the North American Performing Arts Managers and Agents association and other arts groups. “You can’t for a moment let your guard down, or something nasty is going to happen.”

Complicating matters even more are American rules for foreign performers that do not allow for applications before tour contracts are signed. “If you get stuck in a six-month security delay, that’s the end of the road, and you pretty much miss your show,” said Matthew Covey of Tamizdat, a Brooklyn company that last year filed more than 800 visa applications for foreign arts organizations.

Government agencies say that the enhanced procedures they have adopted are needed to safeguard American citizens. “We want to facilitate legitimate travel to the U.S., but we need to keep security as our highest priority,” said a State Department spokesman, who invoked department rules that do not allow him to be identified by name.

In many cases foreign troupes must also pay a “consultation” fee of up to \$500 to an American union to certify that its performances will not adversely affect the interests of American artists. “It’s a revenue stream for the unions, with no cap in sight,” Mr. Ginsburg said.

As a result, some large ensembles are now simply avoiding the United States. In 2006, for example, the Hallé orchestra of Manchester, England, canceled an American tour that was to include a performance at Lincoln Center after orchestra administrators calculated that complying with visa regulations for a group of more than 100 musicians and staff members was going to cost them more than \$70,000.

“This palaver of getting visas is mind blowing,” John Summers, the orchestra’s chief executive, said at the time.

In many cases delays in obtaining visas, arts administrators and immigration lawyers say, are simply the result of a slow and cumbersome bureaucracy. But they point to other cases, especially those involving artists with recognizably Arab or Muslim names. European diplomats and arts administrators say that when they submit visa requests for their orchestras or theater and dance ensembles, any performer with such a name is almost automatically subjected to what is known as “additional administrative processing.”

“It seems to be a question of the names, of anything that sounds like it could belong to a bad guy,” Mr. Ginsburg said. “Ostensibly it is not U.S. policy to profile. But they are looking for other words to describe the same thing.”

Government agencies deny that any such discriminatory policy exists. Homeland Security “strictly adheres to a zero tolerance policy that prohibits profiling on the basis of religion, race or ethnicity,” said Chris Bentley, a spokesman for United States Citizenship and Immigration Services at the department. “Every case is decided individually based on the facts and the law.”

Problems emerged last summer when the British theater director Tim Supple brought a pan-Arab ensemble to Toronto to perform the much-acclaimed new version of the “One Thousand and One Nights,” a version revised to reflect the events of the Arab Spring. The company had no difficulty obtaining visas for Canada and Britain, but an engagement at the Chicago Shakespeare Festival had to be canceled when 9 of the troupe’s 40 members were subjected to the additional scrutiny and time ran out.

“One has to respect everyone’s right to protect their own security, but it’s a growing problem that needs to be addressed,” said Roy Luxford, the show’s producer, based in Britain. “Everyone got Canadian visas in two weeks and British visas in 8 to 10 days.

“It has become overly onerous and a real barrier to undertaking any sort of normal tour” if you try to combine American dates with appearances in other countries, Mr. Luxford continued. “If all the rhetoric about open societies and cultural exchange is to be believed, then the agencies involved in that process need to own up to that.”