

# **THE MISSING CUBAN MUSICIANS**

by Ned Sublette

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**June 24, 2004**

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## Foreword

The 1990s witnessed a new, productive era of cultural and social relations between the United States and Cuba. By the end of the decade, tens of thousands of U.S. citizens were traveling to the island every year to participate in arts exhibitions, film festivals, dance classes and seminars on topics ranging from artistic pedagogy to organic agriculture to preventive medicine to international relations. Cuban artists were exhibiting and selling their work at museums and galleries throughout the United States. Scholars from dozens of United States academic institutions were working and studying on the island, utilizing their acquired knowledge and experiences to write articles and books. Many of their Cuban counterparts were able to work in the United States, first on a per diem basis and then later under more normal pay conditions. Serious journalists and scene writers alike flocked to the island, and seemingly a week never went by without yet another new feature article on Cuba in one daily newspaper or another.

The Cuba of the early 1990s was a society in economic and social shock following the collapse of the Soviet Union and the disintegration of the country's major trading partners. The U.S. response was twofold: first, to strengthen its unilateral economic embargo of the island, and; concurrently, to allow increased travel and contact between the two societies. The stated intent of the latter was to undermine Cuba's stability and government by facilitating the spread of "American values." In practice, however, most Americans traveling to Cuba, or interacting with Cubans visiting the U.S., learned a lot more from the Cubans than they taught them. It was to be expected: Cuba was, and remains to most U.S. citizens, one of the world's great enigmas. Americans arriving on the island – many of them traveling to a less affluent society for the first time in their lives – discovered that it was they, much more than the Cubans, who came into contact with a new universe of history, culture, politics, and values.

Cuban popular music helped make their entry into that new universe all the easier, and became one of the most powerful vehicles for international friendship, both on the island and in the US. At the writing of this report, most doors for musical exchange have slammed shut due to unilateral actions by the Bush Administration, along with most of the activities described above that became commonplace during the 1990s.

Musicologist, author, and producer Ned Sublette, the principal author of this report, describes herein the history of musical relations between Cuba and the U.S. up to the present. We thank him for his efforts, and particularly for his tireless dedication to building musical bridges between the two societies over the past nearly fifteen years. We also acknowledge the important contribution of attorney William Martínez in the form of three valuable appendices regarding visa processing, for his many suggestions and comments critical to the preparation of this report, and for his leading role over the years in making it possible for so many Cuban musicians to enter the country and play the role of Cuban cultural ambassadors to the U.S. Finally, we thank Scott Southard of the International Music Network and Isabel Soffler and Robert Browning of the World Music Institute for sharing their experiences and insights with us.

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Cuba has the same effect on American administrations that the full moon used to have on werewolves: they just lose their rationality at the mention of Castro or Cuba. . . . adviser after adviser to various administrations says to the Secretary of State and the President, "Look, there isn't really any strong constituency in the United States to improving relations with Cuba. . . . On the other hand, we have a small but very strident vocal opposition to any improvements in the persons of the right-wing group in the Cuban-American community."

-- Wayne Smith, former Head of Mission to U.S. Interests Section in Cuba, speaking in 1989<sup>1</sup>

## 1. INTRODUCTION

As of the date of this report, no Cuban music group has been allowed to enter the United States to perform since November 2003. The United States is systematically denying visas outright, across the board, to all performing artists who live in Cuba. This is ostensibly being done on grounds of national security, but the motivation is transparently political. In the process, the right of Americans to hear the music of Cuba's artists and exchange information with them has been treated as insignificant. Cuban artists who have lost performing dates in the U.S. in these last months are a who's who of world-class musical talent, including Orquesta Aragón, Omara Portuondo, Ibrahim Ferrer, Los Van Van, Jesús "Chucho" Valdés, Los Muñequitos de Matanzas, Maraca y Otra Visión, Carlos Varela, and many more.<sup>2</sup>

Until recently, Cuban musicians were routinely being allowed into the U.S. Though there was no shocking incident, much less any breach of national security, attributable to Cuban artists, this

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<sup>1</sup> quoted in Lynn Geldof, *Cubans*, Bloomsbury, London, 1991, p. 340.

<sup>2</sup> For some individual case histories, see Appendix II: Sample Instances of Visa Denials.

important cultural interchange was unilaterally stopped cold by the Bush administration. There is a very long list of Cuban artists who have previously performed in the U.S. but are now forbidden to enter the country. Out of all the countries in the world, it appears that this total denial of entry to the U.S. is unique to Cubans.

There are two underlying legal assumptions behind this:

- (1) that Cuba is a "state-sponsor of terrorism," and;
- (2) that all Cuban artists are "employees or agents of the Cuban government or are members of the Communist party."

The first is a complete fabrication; the second is highly questionable as an assertion of fact and is in any case irrelevant to issues of artistic freedom in the United States.

The rules governing entry to the U.S. for Cuban musicians are complicated and change frequently. At present they also entail a security clearance whose criteria are basically secret. Over the last couple of years, a number of cultural organizations wanting to present Cuban musicians in the U.S. have been blindsided by changing regulations without being clearly notified what was going on. The result has been painful financial losses.

In short, the Bush administration has been sending the message to all cultural and artistic presenters: do not deal with Cuban music, because we will see to it that you will get burned. This is consistent with the message of cultural isolationism that has been characteristic of the Bush administration. Meanwhile, despite decades of arm-twisting by the United States of other countries to fall in line, the United States is the only country that embargoes Cuba.

In a newly radical course, the Bush administration has recently indicated that there will be no entry of Cuban musicians into the U.S. while the present Cuban government exists. The May 2004 Report to the President from the Commission for Assistance to a Free Cuba, chaired by Secretary of State Colin Powell, introduces new, and even harsher, measures to just about every aspect of the U.S.-Cuba relationship. With respect to music, it says:

Cuban culture is famous for its contributions to fine arts, music, folklore, decorative arts, architecture, and sports. These strengths and sources of national pride could be maintained and strengthened *during and after transition* through a broad range of professional and cultural exchanges and other means. Specific exchange areas that could be implemented immediately include: music groups and individual performers; artists,

visual and performing; sports, both professional and amateur; and cooperation in major sporting events such as the Special Olympics. [italics added].<sup>3</sup>

The key words here are "during and after transition," meaning when a government acceptable to the U.S. administration is installed in Cuba after the departure from office of the Cuban head of state, Fidel Castro, and his brother and designated successor Raúl. Present U.S. policy is thus not to consider further professional and cultural exchange until then.

How might this "transition" be achieved? On March 22, 2004, on Miami television, Rep. Lincoln Díaz-Balart (R-FL), a longtime political colleague of Florida Governor Jeb Bush, publicly called for Mr. Castro's assassination and the infiltration of spies into Cuba disguised as foreign tourists. It is difficult to avoid the impression that the Bush administration's post-Castro vision for Cuba might resemble the violence and anarchy of post-Hussein Iraq.

At the time of President Kennedy's implementation of the embargo, U.S. policy treated Cuba as a focus in the cold war. But now, the driving force behind U.S. policy is a small, well-organized group of extremists who are tightly connected to the Bush administration through political ties and fund-raising power, and through their promise to deliver or withhold bloc votes in the presidential election. The favoritism of successive administrations towards this clique is one of the anomalies of American politics. It has damaged U.S. credibility in Latin America and worldwide. But no administration has gone farther than the George W. Bush administration to please the most extreme segment of this group.

This report is directed towards those who believe that:

- cultural exchange *now*, rather than "during and after transition," would be a much saner policy than the one advanced by the Bush administration, and;
- under the First Amendment, the government does not have the right to *a priori* deny Americans access to the music of an entire country.

In focusing on the issue of Cuban musicians performing in the U.S., it should be understood that most of the legal issues described apply equally to other performing artists (dancers and theatrical artists), as well as to other cultural workers, scholars, scientists, and athletes.

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<sup>3</sup> available at <http://state.gov/p/wha/rt/cuba/>

## 2. THE IMPORTANCE OF CUBAN MUSIC

### A. HISTORICALLY

Cuba, the largest island in the Caribbean, has always been a world power in music. Among connoisseurs, its music enjoys roughly the same prestige that Cuban cigars have in the world of tobacco. Though frequently marketed in the U.S. as novelty, Cuban music has repeatedly exercised a powerful pull over the imaginations of American musicians and dancers going back to the 19<sup>th</sup> century, and before. The influence of Cuban music shows up in ragtime, jazz, r&b, and rock and roll.

Prior to the Cuban Revolution of 1959:

- Cuba's rich percussion tradition transformed American rhythm, with such basic everyday instruments as the *tumbadora* (or conga drum), the *bongó* (bongo drums), and the *campana* (cowbell), coming into the world's pop music from Cuba.
- the mambo and the cha-cha-chá were familiar to every American radio listener. One of the biggest pop hits of the entire 1950s, Pérez Prado's cha-cha-chá "Cherry Pink and Apple Blossom White," was #1 for nine weeks in 1955 (surrendering the position to Bill Haley's "Rock Around the Clock").
- 50 million people watched *I Love Lucy* every week, whose leading man, Desi Arnaz, played a Cuban bandleader and whose theme song, heard every week, was composed by Cuban pianist Marco Rizo.
- Richard Berry lifted the famous 3-chord lick for his song "Louie, Louie" from a 1955 cha-cha-chá played by Cuban bandleader René Touzet. Many of the most familiar rock and roll hits of the 60s were built on rhythms and used musical devices common to Cuban music, though since Cuba was by then being treated by the U.S. government as a pariah state and had largely disappeared from the American cultural radar, it was not clear to the '60s teenage generation that bought the records where the musical ideas originally came from. A few randomly chosen examples would include "Twist and Shout," "Day Tripper," "Satisfaction," "Good Lovin'," and "Ain't Too Proud to Beg."

## **B. AT PRESENT**

Cuba is still a world power in music. The island today has more than 12,000 full-time professional musicians – an astonishing number for a population of 11 million. Imagine it as 1,200-plus full-time working 10-piece bands; by comparison, New York City's American Federation of Musicians Local 802 has about 10,000 members.<sup>4</sup>

Cuban music was always good, but the quality of Cuban music today is not an accident. Music is respected as a profession in Cuba, and the professional structure established for musicians includes education, recording, representation, and performing venues. Most musicians work through government-owned institutions, but some – especially the best-known ones – work more or less independently, making their own deals with foreign impresarios for recording and for touring outside the country.

Following the Cuban Revolution in 1959, the new Cuban government pursued an aggressive music education program, importing conservatory professors from eastern Europe to replace those who had left the country. It even established a remedial school, with the best Cuban musicians as faculty, at which already working professional players could sharpen their skills.

Cuba's numerous popular dance bands rehearse every day. They are directed by world-class virtuoso players – many of them children and grandchildren of musicians – who have conservatory training in classical music, are fluent jazz players, and are knowledgeable in Cuba's various African musical traditions. Nothing on this scale exists in the United States, or anywhere else.

Cuban musicians have been important attractions at music festivals worldwide for decades. The international breakthrough success of the 1997 *Buena Vista Social Club* album (the #1 pop album in Germany for four weeks) and subsequent feature film was only the tip of the iceberg in terms of exposing the breadth of Cuban musical talent, but it served to alert a mass audience to the availability of thousands of recorded titles by a bewildering number of artists.

With Cuba's fully literate musical work force, and its centuries-deep high level of musical culture still very much in evidence, music fans from all over the world make pilgrimages to Cuba. Aspiring musicians from all over the world go to Cuba to study. U.S. citizens, however, are forbidden to do so by their own government, except under very restrictive conditions.

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<sup>4</sup> 802 membership office, telephone inquiry, March 29, 2004



### **3. A BRIEF HISTORY OF POST-REVOLUTIONARY MUSICAL RELATIONS**

Through 1960, when the Cuban revolution began to nationalize U.S. holdings, Cuban music had been a constant presence in U.S. musical life. By the time of the 1962 Cuban missile crisis, it had largely disappeared from view in the U.S. In 1963, the Kennedy administration established the Cuban Assets Control Regulations, pursuant to the Trading With the Enemy Act of 1917, formalizing an embargo of Cuba.<sup>5</sup>

Meanwhile in Cuba, music continued to evolve. Though the Cuban music industry had been reduced to bare bones in the early days of the Revolution following the departure of impresarios, technicians and some musicians, a new generation of musicians in the 1960s began laying the groundwork for an impressive renaissance of Cuban music that grew through the 1980s and exploded in the 1990s.

During the Carter administration, a less combative stance toward Cuba created an important cultural opening, which allowed the limited resumption of diplomatic contacts, with the creation of "Interests Sections" in lieu of embassies. The U.S. ban on travel to Cuba was dropped, and direct charter flights began between the two countries. Musical openings began too:

- At the end of 1978, a bill of major Cuban performers headed by the legendary Orquesta Aragón came to the U.S. – though their scheduled December 29 performance at Lincoln Center was canceled when the U.S.-based Cuban-American terrorist group Omega 7 exploded a bomb in Avery Fisher Hall.
- In February 1979, Cuba's biggest popular stars, singer-songwriters Pablo Milanés and Silvio Rodríguez, played an East Coast tour which included stops at the Brooklyn Academy of Music and in Washington, DC.
- In 1979 Columbia Records organized an unprecedented three-night series of concerts called "Havana Jam," which took major U.S. recording artists, and U.S. music journalists, to Cuba.
- Cuba's best-known jazz group, Irakere, was signed to Columbia Records, released two albums, won a Grammy, and toured the United States opening for rock star Stephen Stills.

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<sup>5</sup> See the current regulations, 31 CFR 515, at [http://www.access.gpo.gov/nara/cfr/waisidx\\_01/31cfr515\\_01.html](http://www.access.gpo.gov/nara/cfr/waisidx_01/31cfr515_01.html). As per the recommendations of the Commission for Assistance to a Free Cuba, changes to these regulations will take effect June 30, 2004 and may be viewed at [http://www.treas.gov/offices/eotffc/ofac/sanctions/fr69\\_33768.pdf](http://www.treas.gov/offices/eotffc/ofac/sanctions/fr69_33768.pdf).

- In the spring of 1980, the Conjunto Folklórico Nacional, a major troupe established in 1960 which performs a wide repertoire of Cuba's diverse folkloric music and dance, toured the U.S.

The Conjunto Folklórico Nacional was not to return to the U.S. until 1995. When President Reagan took office, Cuba policy took a sharp turnaround, and by 1982 the window on communications was closing. The new administration, which was prosecuting its contra war against Nicaragua, charged that Cuba was supporting subversion in Central America, and the Carter-era advances were rolled back. The travel ban was reinstated. Once again, musical contact between the two countries largely ceased, though the doors never completely closed: a small, dedicated core of U.S. presenters and activists worked hard to keep contact alive, and there were important, if infrequent, performances by Cuban musicians in the United States. By this time, an American visiting Cuba could expect a follow-up visit from the FBI.

In the early days of the Reagan administration, National Security Advisor Richard Allen helped Miami Cuban businessman and Bay of Pigs veteran Jorge Mas Canosa create the Cuban American National Foundation (CANF), an organization modeled on the pro-Israel AIPAC lobby. The CANF brought extremist Cuban-American figures into regular contact with the mainstream of U.S. power, and functioned as a sort of outsourcing of Cuba policy to those figures by the Reagan and Bush I administrations, with a *quid pro quo* of fundraising activity and promises of bloc voting. In turn, various of their pet projects, such as Radio Martí, a propaganda broadcasting operation, were federally funded, enhancing the CANF's power as a center of patronage in South Florida.<sup>6</sup>

South Florida media by this time was a center of Spanish-language right-wing hate radio, a phenomenon that later became common in English in the rest of the country. In the paranoid worldview of this extremist subculture, Cuban musicians were considered to be nothing more than propaganda tools of Fidel Castro. A key part of the game plan of the Cuban-American right was, and still is, to control how the image of Cuba in this country is perceived, which means restricting Americans' ability to have direct contact with Cuba's best goodwill ambassadors – its musicians.

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<sup>6</sup> Following Mas Canosa's death and the public relations disaster of the Elián González affair, there was a split in CANF ranks; the Bush administration is today less allied with the somewhat more moderate present-day CANF than with a radical split-off called the Cuban Liberty Council, whose website advocates a four-point program: suspension of all remittances to Cuba, suspension of all travel to Cuba, imposition of multilateral sanctions (i.e., coercing other nations to fall in line), and, most ominously, preemptive warning of military action (a naval blockade) in the event of an emigrant exodus from Cuba. [http://www.cubanlibertycouncil.org/recom\\_eng.htm](http://www.cubanlibertycouncil.org/recom_eng.htm)

## **4. LEGAL ISSUES**

The rules that govern musical exchange between the U.S. and Cuba are complicated. The complexity itself seems to be part of the effort to discourage Americans from having any sort of relations with Cubans.

### **A. TRADING WITH THE ENEMY**

Ever since President Kennedy included Cuba in the list of nations covered by the Trading with the Enemy Act of 1917, commerce with Cuba has been embargoed, in order avoid generating revenues for the Cuban government. Under the terms of the embargo, it has for over 40 years been illegal for Americans to hire Cuban musicians. When Cuban musicians have been admitted to the U.S., it has only been on the condition that they *not be paid* for their work. They may only receive lodging, transportation, and reimbursement for expenses (i.e., per diems). Even Cuban musicians who routinely command large sums in Europe must appear in U.S. concerts for free. If an American record producer wants to hire a Cuban musician while that musician is in the U.S. and puts cash in his hand to record for him, that is a felony under U.S. law. Cuban musicians are thus treated by the U.S. government the same way that the U.S. government often accuses Cuba of treating its citizens: denying them the fruits of their labors.

### **B. A "STATE SPONSOR OF TERRORISM"?**

In 1982, President Reagan placed Cuba on the official U.S. list of "state sponsors of terrorism" because of its support for guerrillas in El Salvador.<sup>7</sup> Whatever the merits or demerits of this rationale, the issue disappeared entirely after the signing of the Esquipulas accords in 1987. Nonetheless, it has proved notoriously difficult to de-list a nation from this roster; the only nation that has ever been removed was Iraq, during the Iran-Iraq war (it was subsequently re-listed), and Libya may soon be removed.

Cuba's inclusion on this list is purely a matter of domestic politics, in order to give legal cover to the harshest of sanctions that the Bush administration can devise. It is, simply put, hogwash. Cuba has never called for terrorism against the United States, and there is no evidence that it has ever sponsored, or is engaging in support of, any terrorist attack against the United States.<sup>8</sup>

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<sup>7</sup> Landau, Anya K. and Wayne Smith, "Cuba on the terrorist list: In defense of the nation or domestic political calculation?" Center for International Policy, <http://ciponline.org/cuba/ipr/CubaontheTerroristList.pdf>

<sup>8</sup> The evidence adduced by State for the state-sponsor-of-terrorism charge against Cuba is quite flimsy; for a full treatment of it, see the Smith and Landau article cited in the previous FN. The U.S. State Department's website perhaps best explains the government's ongoing censure of Cuba: "Although Cuba signed and ratified all 12 international counterterrorism conventions in 2001, it has remained opposed to the US-led Coalition prosecuting the

Unfortunately, since September 11, 2001, having Cuba on the list of "state sponsors of terrorism" during a "war on terror" means that even harsher sanctions can be applied. The consequence of such a listing is a misdirection of resources which is actually deleterious to national security. The Treasury Department's Office of Foreign Assets Control, or OFAC, the agency charged with freezing Al Qaeda assets, vets every American who wants to travel to Cuba.<sup>9</sup> At the end of 2003, in a response to a direct inquiry by Sen. Max Baucus (D-MT), OFAC acknowledged that it had only four agents dedicated to tracking Osama bin Laden's and Saddam Hussein's wealth, but had *twenty-one* agents dedicated to Cuban embargo violations, which often amounted to no more than seizing rum and cigars from returning travelers.<sup>10</sup> "This is really astounding," said Sen. Byron Dorgan (D-ND). "I hope somebody in the administration will soon come to his or her senses and start directing our resources where they are needed. Politics is clearly diverting precious time, money and manpower away from the war on terrorism here."<sup>11</sup>

Ultimately, this policy results in the absurdity of keeping Americans from hearing some of the world's best musicians, who are classed with mass murderers in the State Department's worldview.

### **C. THE REAGAN PROCLAMATION**

On October 4, 1985, with the Kennedy-era embargo remaining in force, President Reagan issued Proclamation 5377,<sup>12</sup> which allows the President to deny entry of "any class of aliens into the United States [that] would be detrimental to the interests of the United States." The proclamation applies that proviso to those "considered by the Secretary of State or his designee to be officers or employees of the Government of Cuba or the Communist Party of Cuba." Because Cuba is a socialist state, in which all employed persons are compensated by state-directed companies, all

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war on global terrorism and has been actively critical of many associated US policies and actions." This charge could apply equally to anyone displeased with U.S. policies, including millions of American citizens. (<http://www.state.gov/documents/organization/20117.pdf>)

<sup>9</sup> New regulations established by the administration in May 2004 increase government red tape by requiring every Cuban in the U.S. who wants to make a family visit to Cuba to file an application for a "specific" (i.e., must receive explicit permission from the U.S. government, as opposed to merely traveling at will pursuant to a "general") license, thus generating over 100,000 new applications annually, to be processed at taxpayer expense. No additional funding has been offered to pay for this.

<sup>10</sup> "Four Treasury agents track bin Laden and Saddam money, while 21 work Castro," Associated Press, April 29, 2004.

<sup>11</sup> <http://dorgan.senate.gov/newsroom/record.cfm?id=221008>

<sup>12</sup> The Proclamation applies section 212(f) of the Immigration and Nationality Act of 1952, as amended [8 U.S.C. 1182(f)], to Cubans. Proclamation 5377 available at <http://shr.aaas.org/rtt/report/ax.htm> ; 212(f) available at <http://uscis.gov/lpBin/lpext.dll/inserts/slb/slb-1/slb-21/slb-2013?f=templates&fn=document-frame.htm#slb-act212>

Cubans are construed by the U.S. government to be Cuban government employees. A letter dated February 5, 2004, sent out by the U.S. Interests Section in Havana, states [caps in original]:

SINCE MOST CUBAN ARTISTS ARE COMPENSATED BY THE CUBAN GOVERNMENT,  
THEY ARE RIGHTLY CONSIDERED TO BE ITS EMPLOYEES.

This does not address the reality of working musicians, many of whom earn most of their income from exploitation of their work outside, and even within, Cuba. The letter continues:

THE PROCEEDS FROM THE SALE OF MATERIAL ASSOCIATED WITH A CUBAN  
ARTISTS WORK FINANCIALLY ENRICHES THE REGIME, NOT THE ARTIST.

There is no evidence to back up this assertion. Music functions in Cuba as something like what in the U.S. we call an enterprise zone. Many Cuban artists make their own deals with foreign record labels or touring entrepreneurs, and the money they earn is theirs to keep – though they must pay taxes on their income (thus helping fund Cuba's health care, education, and social services), and they often have a state agency acting as an intermediary, which takes a commission, as agencies do worldwide.

Pursuant to this line of reasoning, all Cuban musicians are classified as national security threats, and accordingly are denied entry to the U.S.

As a result of much work by dedicated U.S. promoters - frequently entailing extensive, costly, legal work - Cuban performers occasionally appeared in the U.S. in the years following Presidential Proclamation 5377. The cast of Havana's Tropicana nightclub came to New York for a performance at the Beacon Theater in 1988. The Smithsonian Institution's Folklife festival brought several important folkloric Cuban groups to Washington, DC in 1989, but that same summer Cuban jazz pianist Gonzalo Rubalcaba and his Grupo Proyecto were denied visas to play with Dizzy Gillespie in Central Park at the Public Theater's Festival Latino. The 9-week 1992 tour by folkloric group Los Muñequitos de Matanzas was a major popular success, and inspired a number of initiatives across the country to bring Cuban artists.

Pursuant to Presidential Proclamation 5377, musicians coming into the U.S. from Cuba had to have the presidential prohibition on their entry waived individually, thus creating a bureaucratic nightmare for would-be presenters and tour bookers as they had to have each member of a musical group individually vetted, with the likelihood of entry being approved for some members of an ensemble but denied for others. Thus in 1993 the distinguished Cuban folkloric singer Merceditas Valdés was denied admission – or, more accurately, the prohibition against her admission was not waived – to enter the U.S. with the Cuban folkloric group Yoruba Andabo, because she had in the 1950s appeared in commercial concerts in the U.S. That same year a visa

was given to the elderly Cuban folkloric singer Lázaro Ros, who knows some 500 songs of African origin that have survived in Cuba, but visas were denied to various members of the contemporary Cuban group Mezcla with which he was collaborating, so that Ros wound up appearing in the U.S. with American musicians with whom he had not rehearsed.

#### **D. THE BERMAN AMENDMENT**

In 1988 Representative Howard Berman (D-CA) attached what has become known as the "Berman Amendment" to the otherwise unrelated Omnibus Trade and Competitiveness Act. Signed into law by President Reagan, the amendment exempted from embargo "information and informational materials, including but not limited to, publications." Intended to protect U.S. citizens' First Amendment rights, this amendment has since explicitly legalized the exhibition in the U.S. of films, the publication of scientific articles, and the release of CDs from, Cuba, Iran, North Korea, etc. Pursuant to the Berman Amendment, hundreds of records by Cuban artists were released in the U.S. under license from the owners of the master recordings, which included Cuban government state agencies as well as individual Cuban artists and private record labels from around the world, all of whom are free to make deals with Cuban artists.

Despite obstacles to marketing and the difficulty of touring the artists in the U.S., this deluge of records created new audiences for numerous Cuban artists. However, Berman only allows the licensing of already-made recordings, and does not legalize deals for new recordings by Cuban musicians for U.S. companies; that is still considered Trading With the Enemy. It would have been a criminal act for a U.S. record company to produce *Buena Vista Social Club*, which was financed by the English company World Circuit; as it was, musical producer Ry Cooder, an American, paid a \$25,000 fine for having traveled to Cuba in 1996 to direct the recording session without U.S. Treasury Department permission, which might well have been withheld had he asked for it.

#### **E. THE TWO-TRACK POLICY**

With the disappearance of the Soviet Union and the end of the Cold War, the administration's previous rationale for isolating Cuba vanished. But, for reasons having to do with domestic politics, the sanctions remained. As a candidate, Bill Clinton endorsed the Cuban Democracy Act, better known as the Torricelli Bill, during a 1992 fundraising trip to South Florida, goading the first President Bush into signing it. In 1996, President Clinton signed into law the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, better known as Helms-Burton.<sup>13</sup> The texts

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<sup>13</sup> CDA available at: [http://www.state.gov/www/regions/wha/cuba/democ\\_act\\_1992.html](http://www.state.gov/www/regions/wha/cuba/democ_act_1992.html)  
CLDSA available at: <http://thomas.loc.gov/cgi-bin/query/F?c104:1:./temp/~c1045q95m9:e1007:>

of both these laws are shot through with political posturing, e.g.: "The consistent policy of the United States towards Cuba since the beginning of the Castro regime, carried out by both Democratic and Republican administrations, has sought to keep faith with the people of Cuba, and has been effective in sanctioning the totalitarian Castro regime."<sup>14</sup> In the words of President Clinton's advisor Richard Nuccio, these laws "moved the goalposts" for normalization of U.S. relations with Cuba quite far downfield. They make regime change in Cuba stated policy and also give legislative force to various provisions of the embargo previously embodied in administrative regulations.

These laws were the beginning of what became informally known as the "Two-Track Policy," in which "Track I" refers to the strengthening of the embargo, and "Track II" is the fostering of "people-to-people" contact between American and Cuban citizens. The intention of "people-to-people" is to subvert the Cuban government by exposing its citizens to American ideas of freedom and democracy. However, it has also had the blowback effect of exposing U.S. citizens to the absurdity of the embargo – and to the power of Cuban music.

## **F. EXEMPTION**

In 1996, Los Van Van, Cuba's most popular dance band, entered the U.S. for the first time. By that point, a full-scale Cuban music boom was getting underway in the U.S. American presenters had learned to follow the complicated rules for bringing Cuban musicians in. It was still illegal to pay them, but as far as audiences could see, there was no difference between Cuban musicians and any others. Over the next five years, most of the major figures in contemporary Cuban music made U.S. debuts, building up audiences through their spectacular performance abilities and through record releases, in spite of the lack of major media exposure for most of them.

In March 1999, without any formal announcement, the Clinton administration quietly made a determination to exempt broad categories of Cubans, including performing artists, from Presidential Proclamation 5377, thus opening the floodgates for Cuban musicians to enter. At that point, appearances by Cuba's best bands became a regular part of U.S. musical life.

Also in 1999, legal travel to Cuba by U.S. citizens, though still not freely possible, was made easier with the introduction of blanket "people-to-people" licenses to numerous institutions. These licenses allowed the institutions to vet group travel for many ordinary U.S. citizens, though only under specific sets of conditions, which are not supposed to include tourism.

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<sup>14</sup> CLDSA (2)(8).

However, since listening to Cuban music is pleasurable and may entail dancing, its legitimacy as a cultural, as opposed to touristic, mission has been challenged by administration hard-liners.

By the time of the presidential election of 2000, most important Cuban musicians had performed in the U.S., many of them several times. Americans who wanted to travel to Cuba for educational or cultural purposes could generally find a legal way to do so. A rich musical dialogue between Americans and Cubans was in progress.

## **5. 2001 AND BEYOND**

### **A. NEW MEASURES**

Though the Clinton administration was not friendly to Cuba, the new Bush administration was aggressively hostile from the beginning, and has steadily implemented the most extreme anti-Cuba measures yet.<sup>15</sup> These measures, which include openly using U.S. diplomatic personnel in the attempt to create an organized network of internal opposition within Cuba, enhanced propaganda broadcasting (commonly known in the intelligence trade as "psywar") into Cuba from a C-130 aircraft, and the strangulation of travel. Accompanied by spectacularly hostile rhetoric, all of these actions are consistent with the steps that would be taken prior to an invasion of the country, and sends an alarming message to Havana.

### **B. THE TRAVEL BAN INTENSIFIED**

In 2003 both houses of Congress voted to lift the U.S. ban on travel to Cuba.<sup>16</sup> Incredibly, the Republican Congressional leadership demonstrated an open disdain for the democratic process by stripping the relevant provision from the bill before sending it on to President Bush, for whom lifting the travel ban would have been politically inconvenient.

Many Americans have the impression that they can simply evade detection by traveling to Cuba through Canada, Mexico, or Jamaica. But it is a felony to do so, and it is also a felony to lie about it when re-entering the U.S. The Bush administration is aggressively prosecuting violators.

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<sup>15</sup> A summary of the most recent proposals are contained in the Report to the President from the Commission for Assistance to a Free Cuba, *op. cit.* in FN 3 above.

<sup>16</sup> The so-called "travel ban" is not actually a ban on travel to Cuba, which would be unconstitutional, but on spending money in Cuba, with the presumption that if one has traveled to Cuba one has spent money. This is why a traveler must obtain a license to go to Cuba from the Treasury Department.



Instead, the Bush administration intensified the travel ban. People-to-people travel to Cuba, a category invented in Washington, has been cut off by Washington. The Bush administration has refused to renew blanket licenses for such institutions as the Metropolitan Museum of Art, the American Museum of Natural History, and the National Trust for Historic Preservation. Meanwhile, permission for short-term student travel to Cuba under supervision of a degree-granting institution is to be scuttled as a part of the Commission for Assistance to a Free Cuba recommendations, unless "the program directly supports U.S. policy goals," *i.e.*, attempts to undermine the Cuban government. *All* legal, licensed U.S. travelers to Cuba are now being rigorously scrutinized – some say intimidated – at the airport by Homeland Security. In the 30 days following President Bush's October 10, 2003 Cuba policy speech, 8,800 travelers on 144 aircraft – 100 % of passengers – departing for Havana were searched. Though both houses of Congress voted to de-fund enforcement of the Cuba travel ban in 2003, the Bush administration instead began appointing new judges to hear backlogged cases of people accused of traveling to Cuba illegally.

### **C. RETURN OF THE REAGAN PROCLAMATION**

The Bush administration has reinstated the Reagan-era exclusion for the broad class of Cubans that included musicians, returning in theory to the pre-1999 condition, but in fact applying it so severely that now *all* Cuban musicians' visas are being routinely denied on grounds of national security. The previously quoted February 5, 2004, letter from the U.S. Interests Section in Havana states:

IN MARCH 1999, WE EXEMPTED BROAD CATEGORIES OF CUBANS, INCLUDING ARTISTS, FROM THE VISA RESTRICTIONS OF PRESIDENTIAL PROCLAMATION 5377. OUR PURPOSE THEN WAS TO ENCOURAGE PEOPLE-TO-PEOPLE EXCHANGES AND THEREBY HELP ADVANCE THE PROSPECTS FOR A DEMOCRATIC TRANSITION IN CUBA. WE DECIDED TO RETURN TO THE POLICY IN EFFECT BEFORE MARCH 1999, BECAUSE THE CASTRO REGIME HAS TAKEN ADVANTAGE OF THE EXEMPTION TO ENRICH THE GOVERNMENT, NOT TO ENHANCE PEOPLE-TO-PEOPLE EXCHANGES.

The last sentence is mendacious. There was no provocative action by the "Castro regime"; there was, however, a change of political will in Washington.

Presenters and others trying to bring Cuban artists into the U.S. have as a last resort often gone to their congresspeople to ask for help in running interference. While the efforts of congresspeople and their staffs have frequently proven helpful, and while Congress has spoken effectively on such issues as the travel ban and agricultural sales, there has been no consistent collective effort on the issue of cultural interchange.

## **D. THE SECURITY ADVISORY OPINION**

In the aftermath of the terrorist attacks of September 11 and the creation of the Department of Homeland Security, a new and murky set of bureaucratic obstacles appeared. A new security check was required, which typically took around three weeks. But with the Enhanced Border Security and Visa Entry Reform Act of 2002 ("BSA"), which directs the Secretary of State to implement enhanced security measures for the review of visa applicants, the delays stretched out unpredictably. Given the tight window of opportunity that musical presenters must work with, in the words of California attorney William Martínez, long delays are "tantamount to denial." The numerous accounts of canceled concerts in the last two years by artists from a large number of countries confirm that a presenter may be running a serious financial risk by booking any foreign-based artists, much less Cubans – or even a third-country citizen who was born in Cuba.

The complicated procedural steps necessary to bring a Cuban artist into the U.S. are summarized in an appendix to this document, compiled by attorney William Martínez. They involve the BCIS (immigration service), the State Department, the Department of Homeland Security, and even the FBI and the CIA.

First, the basic hurdles of immigration approval must be cleared, which entails a non-refundable \$1000 "premium processing fee" per person if approval is to take place within a reasonable time. Then, the State Department must provide a Security Advisory Opinion (SAO), clearing the applicant for entry. In a recent interview, William Martínez, an attorney with a great deal of practical experience in the matter, said:

There is very little that the petitioner can do to accelerate the security clearance process. The clearances are unexpedient and unwaivable. Working with a visa specialist of the local Congressional representative, the petitioner can advocate for a quicker clearance, but the reality is that Congressional offices, and even agencies within the process, are essentially ineffectual. The mantra of bureaucrats is one of helplessness. Files get lost. One agency isn't sure what the other is doing. A name check problem for one artist can jeopardize the entire group tour.

This security clearance step does not single out Cuba. All international travelers to the U.S. – even from "friendly" countries – must contend with it. The clearance criteria appear to be more stringent for people from various Middle Eastern countries, Russia, and China, than they are for people from western Europe, but there are no publicly available guidelines. However, since Cuba is officially, and spuriously, classed as a "state sponsor of terrorism", it is addressed by Sec. 306 (a):

No nonimmigrant visa under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) shall be issued to any alien from a country that is a state sponsor of international terrorism unless the Secretary of State determines, in consultation with the Attorney General and the heads of other appropriate United States agencies, that such alien does not pose a threat to the safety or national security of the United States. In making a determination under this subsection, the Secretary of State shall apply standards developed by the Secretary of State, in consultation with the Attorney General and the heads of other appropriate United States agencies, that are applicable to the nationals of such states.

With these cumbersome new procedures in place, arts and culture institutions, presenters, managers, and artists suffered from cancellation of long-planned events in both 2002 and 2003. In 2004, no Cuban musicians are being admitted, period. Even musicians born in Cuba but residing in other countries are experiencing significant delays in processing, which makes it much more difficult to employ them. The octogenarian pianist Bebo Valdés, who was born in Cuba in 1918, has lived in Stockholm for 40 years, and has entered the U.S. to perform on various occasions, missed several important performances in the U.S. because Homeland Security did not clear him on time. Again: delay is tantamount to denial.

According to Isabel Soffler of the World Music Institute, a major world-music presenter in New York, musicians from Iran, Algeria and Morocco have been obtaining visas and entering the U.S., albeit with delays and problems at the border.<sup>17</sup> Cuba appears to be the only nation whose musicians have been redlined entirely.

## **6. CONCLUSIONS AND RECOMMENDATIONS**

The United States is intentionally strangling the flow of art, music, ideas, and information between the U.S. and Cuba. In the process, it is limiting its citizens' freedom to travel, to have access to information, and to form and develop personal relationships with Cubans. While some might see these actions as punitive against Cuba, they can as easily be seen as a punishment of United States citizens by their own government, depriving us of access to one of the world's most highly developed music cultures.

### **A. GENERAL**

1. Cuba must be de-listed as a state-sponsor of terrorism. This is the cornerstone of a great deal of discriminatory activity, and it is, very simply, based on a complete falsehood.

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<sup>17</sup> Conversation with Louis Head, June 2004.

2. The U.S. travel ban to Cuba should be lifted. To do so would be to respect the wishes of Congress and the will of the American people.
3. U.S. immigration policy needs to be less unfriendly to international culture as a whole. The critical lack of communication between the U.S. and the world, which presently appears to be at some kind of breaking point, cries out for more, not less, cultural interchange.

## **B. SPECIFIC**

1. What is commonly known as the "212(f) exclusion" – the Reagan Proclamation's across-the-board ban on admitting Cubans – should be rolled back so that it fulfills its original function and not be used as an instrument to issue blanket denials of entry to individuals based on their country of citizenship.
2. The Department of Homeland Security should be able to expedite visas for musicians and other cultural workers as a special process, taking into account the fact that major arts presenters normally work 12-24 months in advance. More flexibility is needed on the part of all the major institutions involved in immigration and visa issuance procedure, including the US Citizenship and Information Service, the Department of State, and the Department of Homeland Security.
3. Exemptions to process should be provided for musicians, artists and cultural workers who have a track record of work in the U.S.
4. The State Department, Department of Homeland Security and other pertinent agencies of the executive branch should provide clear and timely notice regarding changes of policy and practice, so that business and financial interests of presenters, cultural institutions, academic institutions and others are not needlessly threatened.
5. The policy for clearing visitors to the U.S. needs to be made transparent. Steps need to be publicly specified, and there needs to be some kind of tracking process so that presenters can follow the progress of an application on a timely basis.
6. Adequate funding must exist to allow timely processing of security clearances, commensurate with the level of scrutiny mandated by law. Processing personnel are stretched very thin, and as of now, the extensive multi-agency security check required seems to constitute an unfunded mandate.

7. Newly placed barriers on U.S. citizens visiting Cuba need to be removed, so that American presenters can travel there to stay informed of musical developments in the ever-changing Cuban scene and coordinate planned travel by Cuban groups. If the travel ban is not to be removed entirely, "people-to-people" travel needs to be reinstated on a wide basis, so that a broad core of people involved with music and culture in general – musicians, journalists, academics, and even listeners – can become actively involved in the process of cultural interchange.
8. Members of Congress, particularly senators and congresspersons who are members of the respective working groups on Cuba in both houses, need to work together to facilitate cultural interchange with Cuba.

## 7. CONTRIBUTORS TO THIS REPORT

**NED SUBLETTE** is the author of *Cuba and its Music: from the First Drums to the Mambo* (Chicago Review Press). He co-founded the record label Qbadisc, which in the early 90s pioneered the marketing of contemporary Cuban music in the United States. He has led several music and culture seminars for North Americans in Cuba in association with Cuba Research and Analysis Group, and was instrumental in several important U.S. tours by Cuban artists in the 90s. He is a co-creator of *Hip Deep*, a series within a series of the public radio program *Afropop Worldwide*. He has produced or co-produced numerous albums by artists from the Caribbean and Africa, and recorded several albums as a singer-songwriter, including *Cowboy Rumba* (Palm Pictures, 1999). He is a 2003-2004 fellow at the Dorothy and Lewis B. Cullman Center for Scholars and Writers at the New York Public Library, and a 2004-2005 Tulane Rockefeller Humanities Fellow. He may be reached at [ned@qbadisc.com](mailto:ned@qbadisc.com).

**BILL MARTINEZ** is an immigration attorney who has also produced and managed cultural events in the San Francisco Bay Area since 1973. A native San Franciscan, he is a graduate of Balboa High School, the University of San Francisco and Hastings College of the Law. He has worked in the Community Law Collective ('74-'79), New College of California School of Law ('79-'83) and the Volunteer Legal Services Program of the Bar Association of San Francisco ('84-'93). In 1981, he co-founded the Encuentro del Canto Popular, a San Francisco-based Latin American music festival. His work with the Encuentro led him to become one of the nation's leading experts in U.S.-Cuba cultural exchanges and artists' visas. He co-founded the Latino Entertainment Partners which produced historically significant concerts of Cuban artists. He may be reached at [bill@billmartinez.com](mailto:bill@billmartinez.com).

## **Appendix I: Summary of Process for Obtaining Artists' Visas**

**Compiled by William Martínez, Attorney at Law**

Especially in our post-9/11, anti-terrorism times, with an already confounding, convoluted maze of bureaucracy made more complicated by additional layers of security, it is more important than ever to understand rules and components of the visa application process. The petitioner must carefully review the process, consider the economic realities, embargo-related legal limitations and, finally, the whims of the State Department's exercise of discretion for our "national interest", before proceeding.

### **Parties Involved in the visa process:**

- **Petitioners** - U.S.-based arts presenter or manager who, as employers, petition the USCIS invited artist and file the required petition
- **Beneficiary** - artists are the beneficiaries of the I-129 petition
- **Applicant** - the artist is also considered an applicant for the visa
- **USCIS** - United States Citizenship and Information Service determines the eligibility of a visa application based on the I-129 petition and supporting documents filed by the arts presenter/manager
- **USIS** - United States Interests Section, the Carter-era created equivalent of a U.S. consulate in Havana; this is where the Cuban artist files his application package for a visa. Ultimately, the agency which issues the visa.
- **State Department** - Within the Executive Branch, the Department of State is the lead U.S. foreign affairs agency, and the Secretary of State is the President's principal foreign policy adviser. Per their website: "The Department advances U.S. objectives and interests in shaping a freer, more secure, and more prosperous world through its primary role in developing and implementing the President's foreign policy. The Department also supports the foreign affairs activities of other U.S. Government entities including the Department of Commerce and the Agency for International Development. It also provides an array of important services to U.S. citizens and to foreigners seeking to visit or immigrate to the U.S."
- **Labor Unions** - in order to protect their constituents, the appropriate union for the artists field must submit a letter of consultation to accompany the I-129 application. The most commonly used unions: American Federation of Musicians, American Folklore Society and American Guild of Musical Artists
- **Department of Homeland Security** - national network of organizations and institutions involved in efforts to secure the United States, including the **USCIS**, the **Bureau of Immigration and Customs Enforcement (ICE)** and the **Bureau of Customs and Border Protection (CBP)**.

## Types of Visas

While there are many types of visas for temporary workers, most artists apply for an O, P or B visa. They are therefore described in greater detail.

- **B-1-** business visitor
- **B-2-** tourist visitor
- **O-1-** persons who have extraordinary ability in the sciences, arts, education, business or athletics or extraordinary achievements in the motion picture and television field
- **O-2-** persons accompanying an O-1 artist for a specific event
- **P-1-** individual or team athletes, or members of an entertainment group that is internationally recognized
- **P-2-** artists or entertainers who will perform under a reciprocal exchange program
- **P-3-** culturally unique artists or entertainers
- **J-1-** for participants in a designated Exchange-Visitor Program
- **Q-1-** for participants in an international cultural exchange program for the purpose of providing training, employment, and the sharing of the history, culture, and traditions of the applicant's home country

## Visa Forms

**I-94** the Record of Arrival-Departure, a white card that is filled out upon entry into the U.S. which notes the length of stay permitted. This time does not necessarily have to match the approval dates on the I-129 petition.

**I-129** this is the basic petition for a temporary worker that must be filed along with a filing fee of \$185, and supporting documentation. The I-129 is mainly used for **nonimmigrant** categories; thus, in most cases, workers who enter the United States under this petition must depart the U.S. when their maximum period of stay has been reached. Form I-129 may also be used to petition for an extension of stay or change of status for certain nonimmigrants. No I-129 petition is necessary if the artists is applying for a B-1 or B-2 visa, invited for a non-performing activity such as a workshop, lecture or demonstration.

**I-797** the Notice of Action form that indicates the approval/denial of the I-129 petition.

**DS-156** this form must be completed by every applicant who applies for a nonimmigrant visa to the U.S.

**DS-157** This Department of State form must be completed by all Cuban applicants.

**DS-158** This Department of State form must be completed by any Student or Exchange Visitor visa applicant.

## Filing Fees

While there are proposed changes to ease the burden to nonprofit petitioners, the current USCIS fees are (per applicant):

- \$185 for Regular Processing of I-129 form
- \$1000 for Premium Processing
- \$100 filing fee at the U.S. Interests Section

## How to Apply for a Cuban Artist Nonimmigrant Visa

The process for securing a visa begins with the arts presenters' forwarding a **letter of invitation or contract** to the artist. The letter of invitation should include a detailed itinerary, indicating venues and contact information.

As soon as the artists receive their letter of invitation, they forward it to their empresa (an association which represents them), which will then forward it to other Cuban agencies such as the Instituto Cubano de Música (Cuban Music Institute) and MINREX, the Ministerio de Relaciones Exteriores (Foreign Ministry). It is important that the artist communicate as needed with the Cuban agencies to insure that the exit permit and passport information is processed as soon as possible. When MINREX issues the exit permit, they will forward all travel information to the U.S. Interests Section (USIS- the equivalent of a U.S. consulate in Havana).

After forwarding the letter of invitation to the artist, assuming that the artist is being engaged to perform, the arts presenter must file a formal basic application, petition form I-129, to the USCIS (United States Citizenship and Information Service, formerly known as the INS or BCIS). Petitions should be filed as soon as possible, but no more than 6 months before the proposed employment will begin or the extension of stay is required.

To file the I-129 petition for artists, you need the following information:

- **contracts** with the various venues
- **itinerary** (be as specific as possible)
- information regarding **petitioner**
  - name of contact, address, phone
  - federal tax i.d.number
  - number of employees
  - year established
  - annual gross/net income
- description of **petitioner's presenting history**
- **letter of invitation and/or contract**
- **passport information**, including date of birth, where/when issued and date of expiration
- description of the **role of each artist**; how long have they been with the group

Since USCIS's timetable can be unpredictable for I-129 petitions (approximately 3 months per their regular processing unit), most petitioners are compelled to pay an additional fee of \$1000 for Premium Processing which guarantees a response within 15 days.

Once the I-129 petition is approved, the petitioner is sent a notice of approval, **Form I-797**. It is important to note that getting the USCIS' approval of the I-129 petition is not the same as getting a visa approved. It only confirms USCIS opinion that the applicant satisfies the requirements for that category of visa. It does not guarantee visa issuance to the artist who may still be found ineligible under provisions of the Immigration and Nationality Act (such as §212(f) and the Reagan Proclamation).

Ultimately, it is the U.S. Interests Section (USIS) in Havana that issues the visa. After the USCIS has approved the I-129 and sent notice to the USIS, the artist can file a visa application. Excerpts of the USIS' application process as outlined in their website are set out below.



## **Appendix I: Summary of Process for Obtaining Artists' Visas, p. 4**

To apply for a visa the artist submits to the USIS: the DS-156/157 forms, MINREX's exit papers, passport, two photos, \$100, a letter of invitation/contract, itinerary, original Form I-797 notice of approval of the I-129 petition and other supporting documents which add credibility to the engagements, authenticates the artist's identity or proves non-immigrant intent (i.e. no intention to abandon Cuba.) Assuming that all of the documentation is in order, the visa chief will send a cable to Washington requesting a security advisory opinion (SAO). It is at this point that the more rigid, post-9/11 Bush administration measures have been most felt.

## **Appendix II: Sample Instances of Visa Denials or Delays Leading to Cancellations** Compiled by William Martínez, Attorney at Law

**MARACA** – Grammy-nominated Orlando “Maraca” Valle and his group Otra Visión had previously toured the U.S. on numerous occasions without any problem. In January 2003, an I-129 was filed for a tour to begin at the end of June. Under the USCIS procedure, this was the earliest possible time to file the I-129. The I-129 was approved on February 4; the artists were satisfactorily interviewed and the U.S. Interests Section in Havana requested a SAO in early March. Despite heavy lobbying by three Congressional offices and dozens of supporters across the country, visas were only issued after 25 of 26 shows had been cancelled.

**CHUCHO VALDES** – This legendary pianist, co-founder of Irakere had performed in the U.S. on dozens of occasions since the mid-90s. In April 2003, Valdés had just finished a brief series, primarily in East Coast venues. He returned to Havana briefly, intending to return for an exclusive concert at Carnegie Hall featuring the top five pianists of the world. Although he had recently been in the U.S. only a few weeks prior to the Carnegie Hall event, and the I-129 was filed and approved by the USCIS in a timely manner. Valdés was not issued a visa until three weeks too late. One rationale offered by the State Department was that “We realize that Mr. Valdés was just in New York recently. But, you never know, he may have developed anti-U.S. feelings while he was back in Cuba even if he was only back in Havana for a few days.”

**JUAN FORMELL** – The leader of the acclaimed group Los Van Van, (along with two other Cuban artists) was denied for the Latin Grammy Awards in Miami on September 3, 2003, under §212(f) that asserted that his entry would be detrimental to our national interest. This was the first time that we began to see the return to §212(f). Three weeks later, he and the entire group Los Van Van were approved for performances in Key West, Florida. The State Department determined that Mr. Formell was not detrimental to the national interest for a show in the same region during the same month.

**ORQUESTA ARAGON** – This orchestra has performed for more than 60 years, including numerous tours of the United States since the mid-90’s. In the Spring of 2003, nine of eleven artists were issued visas for a brief tour. However, one of those delayed by security checks was the group’s leader, Rafael Lay, who had never previously had any visa problems. The tour struggled without him and several shows were directly affected by the absence of Mr. Lay. In the Fall of 2003, another tour was scheduled, but as with the prior tour, two crucial members’ (Dagoberto Pascual González Piedra and Roberto Espinoza Rodríguez) approval was delayed, threatening the entire tour. The pattern of having one or two artists in a group delayed or denied seemed to be more common.

**GRAMMY AWARDS** – This event has become a focal point for many of these visa issues. Many Cuban artists have been invited to attend the Grammy awards ceremonies, for the general awards show in the Spring, as well as the relatively new Latin Grammy Awards scheduled in September. After much advocacy and with a more accommodating federal policy, Cuban artists were generally able to attend Grammy shows. However, the past few Grammy awards shows have been occasions that the Bush administration used to demonstrate its firm, anti-Cuban policies, aware that their Miami-based constituents would be particularly scrutinizing their decisions.

As previously noted, in September 2003, the Bush administration chose the Latin Grammys to indicate, without formal announcement, their re-imposition of §212(f) to deny entry into the U.S.

## **Appendix II: Sample Instances of Visa Denials or Delays Leading to Cancellations, p. 2**

Since the September 2003 denials through February 2004, the application of §212(f) became the informal rule rather than the exception to the rule. This policy shift was finally formalized in the denial of the seven artists invited to attend the Grammy's in February 2004. Those artists (including winning nominees Ibrahim Ferrer and Manuel Galván of the Buena Vista Social Club), were formally denied by a letter that confirmed that the denial was based on §212(f). Visas would be denied whether a performance was to take place or not, or whether the Cuban government received a financial benefit. Even if there were no performances, according to the State Department representative, the mere presence of the Cuban artist at the Grammys would ultimately inure a benefit to the Cuban government indirectly through increased CD sales worldwide.

**ALAIN PEREZ RODRIGUEZ** – the Cuban-born bass player for the renowned Spanish flamenco guitarist Paco de Lucía was delayed by security clearances despite the fact that he has not lived in Cuba for several years. Mr. Pérez had been a Spanish resident for more than three years. Nevertheless, his Cuban nationality required delays which caused the cancellation of all of the West Coast shows for de Lucía's tour, and extreme financial hardship to the presenter who had petitioned for the visa.

It was thought that a Cuban who resided outside of Cuba would have a better chance at securing a visa. A Cuban who can demonstrate that they have resided outside of Cuba for more than one year can apply to the Office of Foreign Assets Control to "unblock" the applicant from the restrictions imposed by the embargo. Just as with Mr. Pérez's experience, while it helps to address one level of federal agency scrutiny that the applicant does not reside in Cuba, in the end, there may still be long delays even if the artist has been so "unblocked."

**Appendix III: Excerpts from US Interests Section (Havana) website**  
Compiled by William Martínez, Attorney at Law

see <http://usembassy.state.gov/havana/>

**How to Apply for a Nonimmigrant Visa**

[Have you been refused a visa? ¿Le fue negada la visa?](#)

An applicant may begin the application process at any time to determine his or her current eligibility for a nonimmigrant visa.

The U.S. Interests Section currently employs a telephone appointment system for nonimmigrant visas. Cuban applicants who are interested in traveling to the United States for a temporary visit should call the Interests Section at **833-1196** or **833-1198**, Monday-Friday, from 8:30am until 5:00pm, to schedule an appointment.

(No appointment is necessary for third country nationals, as they may arrive to the Section at 8:30am to complete an application and wait for their same-day interview.)

On the business day before the scheduled interview, applicants should come to the Interests Section to drop off their passports and pick up a visa application from the drop box located on Calzada at L Street.

On the day of the scheduled interview, applicants should arrive at the Interests Section at 7:30am with a completed application, a 50mm x 50mm photograph (black and white or color), and \$100 in U.S. currency for the non-refundable fee.

Cuban applicants who are approved for a nonimmigrant visa should be prepared to wait for several weeks or more after the initial interview for the visa to be issued. Consequently, applicants are advised to schedule interview appointments well in advance of anticipated travel since the Interests Section is unable to expedite any visa requests.

For additional information on nonimmigrant visas please call **833-1196** or **833-1198**.

**What to Expect on the Day of your Visa Interview**

Each applicant should be ready to discuss his or her ties outside the U.S. as well as the circumstances of his or her travel. The visa interview is a fact-finding exchange geared to elicit information to supplement information that is given on the application form.

**Application forms necessary:**

[Form DS-156](#) - This form must be completed by every applicant who applies for a nonimmigrant visa to the U.S.

[Form DS-157](#) - This form must be completed by all Cuban applicants.

[Form DS-158](#) - This form must be completed by any Student or Exchange Visitor visa applicant.

## Appendix III: Excerpts from US Interests Section (Havana) website, p. 2

An applicant's ties to his or her country as well as his or her purpose of travel will vary from applicant to applicant. It is solely the applicant's responsibility to demonstrate the legitimacy of his or her travel as well as ties outside the U.S. It is in the interest of the applicant to answer each question on the application and during the visa interview completely, truthfully, and as informatively as possible. We also ask that each applicant feel free to provide additional information that they feel is pertinent to his or her application that may not be asked on the application form or during their visa interview.

Documentation in most cases only elaborates upon statements made on the application form and during the visa interview. An applicant may bring any documents they desire to the visa interview, but documents rarely are a determining factor regarding an applicant's visa eligibility. Supporting documents must be sent to the applicant so that he or she may present them in conjunction with his or her visa application. We do not have the resources to store documentation that arrives in advance of an applicant's interview. Any documentation faxed or mailed to us before the interview will not be considered in the application.

### What to Bring to the Interview

An international passport, valid for at least 6 months beyond the return date of the proposed trip. Citizens of any country may apply at the Consular Section in Havana. However, it is usually to the applicant's advantage to apply in his or her place of permanent residence. A completed copy of each application form necessary for the type of visa which the applicant will be requesting.

Two passport-sized photographs on light background - in black and white or color - for each applicant, including children. The photo must be less than six months old.

\$100 for each applicant, including children. The Consular Section can only accept U.S. dollars (no 100 dollar bills, please) - no checks, money orders, or credit cards.

Because each applicant's case will vary, no single document guarantees a visa will be issued. In addition, documents rarely, if ever, determine the outcome of an interview. U.S. law requires that temporary travelers to the U.S. prove that their purpose of travel is legitimate and authorized under the type of visa requested and that they are not intending immigrants to the U.S. before a visa can be issued.

## SUMMARIES FOR O, P, J ARTISTS' VISAS

(See <http://uscis.gov>)

### O Visas

O) an alien who:

(i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability; or

### Appendix III: Excerpts from US Interests Section (Havana) website, p. 3

(ii)(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,

(II) is an integral part of such actual performance,

(III)(a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or

(b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing long-standing working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and

(IV) has a foreign residence which the alien has no intention of abandoning; or

(iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

ii) **Definitions.** As used in this paragraph, the term:

**Arts** includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts. Aliens engaged in the field of arts include not only the principal creators and performers but other essential persons such as, but not limited to, directors, set designers, lighting designers, sound designers, choreographers, choreologists, conductors, orchestrators, coaches, arrangers, musical supervisors, costume designers, makeup artists, flight masters, stage technicians, and animal trainers.

**Event** means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. Such activity may include short vacations, promotional appearances, and stopovers which are incidental and/or related to the event. A group of related activities may also be considered to be an event. In the case of an O-1 athlete, the event could be the alien's contract.

**Extraordinary ability in the field of arts** means distinction. Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

### Sec. 214.2(p) Artists, athletes, and entertainers .--

(1) **Classifications.**--

(i) **General.** Under section 101(a)(15)(P) of the Act, an alien having a residence in a foreign country which he or she has no intention of abandoning may be authorized to

## Appendix III: Excerpts from US Interests Section (Havana) website, p. 4

come to the United States temporarily to perform services for an employer or a sponsor. Under this nonimmigrant category, the alien may be classified under section [101\(a\)\(15\)\(P\)\(i\)](#) of the Act as an alien who is coming to the United States to perform services as an internationally recognized athlete, individually or as part of a group or team, or member of an internationally recognized entertainment group; under section [101\(a\)\(15\)\(P\)\(ii\)](#) of the Act, who is coming to perform as an artist or entertainer under a reciprocal exchange program; under section [101\(a\)\(15\)\(P\)\(iii\)](#) of the Act, as an alien who is coming solely to perform, teach, or coach under a program that is culturally unique; or under section [101\(a\)\(15\)\(P\)\(iv\)](#) of the Act, as the spouse or child of an alien described in section [101\(a\)\(15\)\(P\)\(i\)](#), [\(ii\)](#), or [\(iii\)](#) of the Act who is accompanying or following to join the alien. These classifications are called P-1, P-2, P-3, and P-4 respectively. The employer or sponsor must file a petition with the Service for review of the services to be performed and for determination of the alien's eligibility for P-1, P-2, or P-3 classification before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures applicable to these classifications. (Paragraph (p) revised 8/15/94; 59 FR 41818 - 41842)

### (ii) Description of classification --

(A) A **P-1** classification applies to an alien who is coming temporarily to the United States:

((1)) To perform at a specific athletic competition as an athlete, individually or as part of a group or team, at an **internationally recognized** level of performance, or

((2)) To perform with, or as an integral and essential part of the performance of, an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time, and who has had a sustained and substantial relationship with the group (ordinarily for at least 1 year) and provides functions integral to the performance of the group.

(B) A **P-2** classification applies to an alien who is coming temporarily to the United States to perform as an artist or entertainer, individually or as part of a group, or to perform as an integral part of the performance of such a group, and who seeks to perform under a **reciprocal exchange** program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states, and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers.

(C) A **P-3** classification applies to an alien artist or entertainer who is coming temporarily to the United States, either individually or as part of a group, or as an integral part of the performance of the group, to perform, teach, or coach under a commercial or noncommercial program that is **culturally unique**.

## J VISAS

**J)** an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director

## Appendix III: Excerpts from US Interests Section (Havana) website, p. 5

of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j), and the alien spouse and minor children of any such alien if accompanying him or following to join him;

### Sec. 214.2(j) Exchange aliens --

#### (1) General.

(i) Eligibility for admission. A nonimmigrant exchange visitor and his or her accompanying spouse and minor children may be admitted into the United States in J-1 and J-2 classifications under section **101(a)(15)(J)** of the Act, if the exchange visitor and his or her accompanying spouse and children each presents a SEVIS Form DS-2019 issued in his or her own name by a program approved by the Department of State for participation by J-1 exchange visitors. Prior to August 1, 2003, if exigent circumstances are demonstrated, the Service will allow the dependent of an exchange visitor possessing a SEVIS Form DS-2019 to enter the United States using a copy of the exchange visitor's SEVIS Form DS-2019. However, where the exchange visitor presents a properly completed Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, which was issued to the J-1 exchange visitor by a program approved by the Department of State for participation by exchange visitors and which remains valid for the admission of the exchange visitor, the accompanying spouse and children may be admitted on the basis of the J-1's non-SEVIS Form DS-2019. (Revised effective 1/1/03; **67 FR 76256**)

#### v) Employment.

(A) (A) The accompanying spouse and minor children of a J-1 exchange visitor may accept employment only with authorization by the Immigration and Naturalization Service. A request for employment authorization must be made on Form I-765, Application for Employment Authorization, with fee, as required by the Service, to the district director having jurisdiction over the J-1 exchange visitor's temporary residence in the United States. Income from the spouse's or dependent's employment may be used to support the family's customary recreational and cultural activities and related travel, among other things. Employment will not be authorized if this income is needed to support the J-1 principal alien. (Amended 6/3/95; **60 FR 21973**)

vii) Use of SEVIS. At a date to be established by the Department of State, the use of the Student and Exchange Visitor Information System (SEVIS) will become mandatory for designated program sponsors. After that date, which will be announced by publication in the Federal Register, all designated program sponsors must begin issuance of the SEVIS Form DS-2019. (Added effective 1/1/03; **67 FR 76256**)



**Appendix IV: CURRENT U.S. POLICY RE: ENTRY OF CUBANS INTO THE U.S.**  
**Distributed by US Interests Section - Havana, Cuba**

CURRENT U.S. POLICY RE: ENTRY OF CUBANS INTO THE U.S.  
(02/05/04)

FEB 5, 2004

CURRENT U.S. LAWS AND POLICIES GENERALLY DO NOT ALLOW ENTRY INTO THE U.S. BY OFFICERS AND EMPLOYEES OF THE CUBAN GOVERNMENT AND COMMUNIST PARTY. THERE ARE FEW EXCEPTIONS ALLOWED.

SINCE MOST CUBAN ARTISTS ARE COMPENSATED BY THE CUBAN GOVERNMENT, THEY ARE RIGHTLY CONSIDERED TO BE ITS EMPLOYEES. THE PROCEEDS FROM THE SALE OF MATERIAL ASSOCIATED WITH A CUBAN ARTISTS WORK FINANCIALLY ENRICHES THE REGIME, NOT THE ARTIST.

WE CONTINUE TO MAKE DECISIONS ON VISA APPLICATIONS FOR CUBAN ARTISTS ON A CASE-BY-CASE BASIS, AND WE ISSUE VISAS ONLY WHEN APPLICANTS QUALIFY UNDER U.S. LAW.

SPECIFICALLY, ALL CUBAN VISA APPLICANTS, INCLUDING ARTISTS SEEKING TO ATTEND THE GRAMMYS, ARE SUBJECT TO PRESIDENTIAL PROCLAMATION 5377 OF OCTOBER 4, 1985, ISSUED UNDER SECTION 212(f) OF THE IMMIGRATION AND NATIONALITY ACT.

IN MARCH 1999, WE EXEMPTED BROAD CATEGORIES OF CUBANS, INCLUDING ARTISTS, FROM THE VISA RESTRICTIONS OF PRESIDENTIAL PROCLAMATION 5377. OUR PURPOSE THEN WAS TO ENCOURAGE PEOPLE-TO-PEOPLE EXCHANGES AND THEREBY HELP ADVANCE THE PROSPECTS FOR A DEMOCRATIC TRANSITION IN CUBA.

WE DECIDED TO RETURN TO THE POLICY IN EFFECT BEFORE MARCH 1999, BECAUSE THE CASTRO REGIME HAS TAKEN ADVANTAGE OF THE EXEMPTION TO ENRICH THE GOVERNMENT, NOT TO ENHANCE PEOPLE-TO-PEOPLE EXCHANGES. VISA RECORDS ARE CONFIDENTIAL AND WE DO NOT COMMENT ON INDIVIDUAL CASES.

## **Cuba Research & Analysis Group**

The **Cuba Research & Analysis Group, Inc. (CRAG)** is a private non-profit organization formed in 1998 and based in Albuquerque, New Mexico whose mission is to *improve and enhance relations between the peoples of the United States and Cuba through research and educational, cultural and humanitarian activities*. An important objective is to establish ongoing bilateral projects in conformance with the laws of both the United States and Cuba. CRAG scholars, writers, and community and cultural activists have long term working relationships with a wide variety of institutions and individuals in Cuba. CRAG works to strengthen working relations and communications among such people and institutions in New Mexico, the Southwest and throughout the country.