

AILA/Department of State Liaison Meeting

October 9, 2014

Agenda

Organizational Chart

1. Please provide an updated organizational chart for Consular Affairs/Visa Office.

See attachment.

Ongoing Technical Challenges Communicating with Posts

2. We recognize and appreciate the challenges involved in managing the high volume of inquiries that posts receive about visa procedures from members of the public and attorneys. Worldwide efforts to outsource routine consular inquiries to call centers have clearly helped insulate consular sections from being overwhelmed with the kinds of routine inquiries that can be handled by a contract call center, but have created new difficulties for our members who need to contact individual sections and managers on non-routine and time sensitive matters and cannot do so without first going through these outsourced operations. Not only do these centers frequently take several days to respond to inquiries, but vexing technical obstacles seem to arise with unsettling frequency. We have previously raised with you problems involving communication with posts in India, and our members have also reported systemic difficulties with inquiries to posts in Australia and Switzerland being routed to the help desk in India, but the problems continue.

Which office in VO is responsible for managing and overseeing the operation of third party contractor and subcontractor call centers and information services? Would it be possible for the Director of that office to attend our next liaison meeting so that we can discuss these issues in more detail and hear about ongoing efforts to address communications problems?

The Office of the Executive Director in CA is responsible for managing and overseeing the Global Support Strategy Program, a 10-year multi-billion dollar contract to offer visa application support services for our visa-processing posts. Those services include information services, appointments, fee collection, document delivery, greeters, and in some cases, biometric collection. GSS has replaced all previous user pays services at 172 posts to provide better accountability, transparency, and customer service in the support activities supplied by commercial entities to consular sections around the world.

The two GSS contractors, Stanley and CSC, provide a range of basic information services to visa applicants; via telephone, interactive websites, e-mail, in person, online chat, Skype, SMS and social media, as dictated by local circumstances and task order requirements, to potential applicants, including information about visa categories, visa

fees and the local application process. Most content is established and pre-approved for global use but allows for post-specific information.

Applicants with specific questions about their visa cases may contact a call center or submit an electronic inquiry. If the question is more involved than what is on their normal scripts, the question will be elevated to the embassy/consulate for a response. In every country, there are specific service standards for response times, generally two to three working days; for Mission India, it is two days.

Just as businesses do, the call centers handling inquiries are not always in the same country as the customer. However, there is no instance in which that fact would result in any greater turn-around time in responding than we have outlined above.

We note, however, that no embassy or consulate will pre-adjudicate any visa case. Applicants with specific questions about their situations should apply for a visa and speak directly with a consular officer. Applicants who have had their interviews will be given specific instructions on what further information may be required to complete their case.

CCD Delay Follow-Up

3. AILA acknowledges and thanks the Department of State (State) and Customs and Border Protection (CBP) for their quick, joint response to the travel challenges deriving from the technical problems with the Consular Consolidated Database (CCD) in the period after July 20, 2014. The response plan outlined by State and CBP in a teleconference on August 4, 2014 for CCD-related delays in nonimmigrant visa issuance included a procedure, pursuant to 22 CFR §41.2(j) and 8 CFR §212.1(g), for affected individuals to request a special travel permission from State and for CBP to waive the visa requirement under INA §212(a)(7)(B) at ports of entry. AILA understands that this plan was a temporary measure intended to address the particular circumstances arising specifically from CCD problems. However, several questions remain relating to the response plan.

- a. Please confirm that the CCD response plan was a temporary measure intended to address the short-term challenges arising from the CCD problems.

Yes, this was a temporary solution reached by interagency agreement which is no longer in place.

- b. Have the temporary measures taken by State and CBP in response to the CCD problems (e.g., creation of the 24/7 joint task force, the requirement of obtaining special travel permission requests prior to applying for a waiver) been dismantled at this time? If not, please confirm the date, event or occurrence after which these temporary measures will end.

This measure is no longer in effect.

- c. Please confirm that it is not necessary for nonimmigrants to obtain special travel permission from State in order to request a waiver pursuant to 22 CFR §41.2(j) and/or

8 CFR §212.1(g) due to emergent circumstances not arising from CCD-related visa issuance delays.

At this time we are not experiencing any CCD-related visa delays.

- d. Please confirm that Department of Homeland Security Directors continue to have discretionary authority under 22 CFR §41.2(j) to waive visa requirements in emergency situations under appropriate circumstances without the prior concurrence of State.

We are not aware of any continued requirements or removal of DHS' discretionary authority under 22 CFR §41.2(j), but we refer you to DHS.

ESTA Responses Following CCD Delay

4. The visa issuance delays occasioned by Consular Consolidated Database (CCD) problems during the period after July 20, 2014 have created questions about the visa application records of the affected applicants. AILA members report that Visa Status Checks in the Consular Electronic Application Center (CEAC) reflect that nonimmigrant visa applications were "refused" even though the applicants ultimately received the visa following resolution of the CCD issues. As a result, there is uncertainty as to how individuals affected by the CCD software issue should respond to questions concerning prior visa refusals on future visa applications and Electronic System for Travel Authorization (ESTA) applications. Normally, a delay in the issuance of a visa for any reason must be indicated as a visa refusal when completing a visa application or ESTA application. Where the delay was not the result of an issue relating to the individual application, but was due solely to the CCD systemic slowdown, please advise:

Thank you for bringing this issue to our attention. However, we are not aware of any such issues at this time. The Department of State invites AILA to provide specific examples of this alleged issue at the upcoming meeting. Our systems analysts will review these cases to determine what correlation there is, if any, between the CCD technical problems and visa refusals. The Department does, however, seek clarification from AILA, as to what types of "refusals" their members are referring to, i.e. 214(b) or 221(g), as this will help to formulate a forthcoming written response.

- a. Should an individual affected in this way indicate on a subsequent visa application that a visa previously was refused?
Should an individual affected in this way indicate on an ESTA application that a visa previously was refused?
- b. Other than filing a FOIA request, how can an individual confirm whether the CEAC reflects a visa refusal due to the CCD software-related issuance delay?
- c. If an individual is refused an ESTA authorization due to an inadvertently incorrect response to the ESTA question about a prior visa refusal, what procedure should be followed to correct the CCD record?

- d. Is State willing to coordinate with CBP to develop a protocol to resolve denied ESTA authorizations that were the result of inadvertent incorrect responses on the application following the CCD system problems?

Reciprocity

5. In [April 2013](#), the Visa Office advised AILA as follows: “The Department has proposed to the Government of Mexico that our two governments restart a regular bilateral consular dialogue with visa reciprocity as one of the topics on the agenda. Assistant Secretary Jacobs was recently in Mexico and had preliminary discussions about such talks and we expect such discussions to continue.”

Please update us on the progress relating to visa reciprocity made in this bilateral consular dialogue with Mexico. Is visa reciprocity a topic on the agenda in our bilateral consular dialogues with Brazil, China, and Russia?

Thank you for your interest in our visa reciprocity discussions with Mexico, Brazil, China, and Russia. As you are aware, U.S. visa validity is determined on the basis of reciprocity. U.S. law requires the validity of visas, including the number of entries and fees, to be based – insofar as practicable – on the treatment accorded to U.S. citizens. The goal of visa reciprocity is to obtain progressive visa regimes while encouraging international travel that benefits U.S. citizens and the U.S. economy. Our overseas missions continually look for opportunities to advance these objectives, but as a matter of policy and respecting the confidentiality of bilateral exchanges, we cannot comment on any pending negotiations.

PIMS Upload Timing

6. Visa petition processing times at the USCIS service centers have become increasingly unpredictable making it more difficult for visa applicants to plan their travel. Also, family and business exigencies and the prohibitive cost of making last-minute travel arrangements impose far greater costs on foreign nationals traveling to the U.S. To this end:
 - a. Once it receives a petition from a USCIS service center, how long does it take KCC to upload data to PIMS?

KCC uploads petition data for the O, P, T and U classifications, as well as USCIS expedited cases, in one day. All other classifications are uploaded in three days.

- b. Are there any particular visa classifications or that take longer than the norm to upload to PIMS? If so, please explain.

The primary reason there may be a delay in the upload of a petition to PIMS is if KCC does not receive a copy of the approved petition from USCIS. We request

AILA to remind members that they must include a copy of the petition for KCC when filing it with USCIS, even if the beneficiary will not immediately apply for a visa (see Question 7).

Additionally, if KCC receives an unusually high volume of work, short backlogs may occasionally occur, causing petitions for change of status or extension of status to take one or two days longer to upload. This should rarely affect consular processing, as these beneficiaries are not intending to apply for a visa at the time the petition is approved. KCC uploads these petitions into PIMS so that they are available for any future visa application the beneficiary may make on the basis of the same petition.

- c. Is there an expedite procedure? If so, how does it work, and is that something invoked by USCIS?

Any case that has been expedited according to USCIS procedures will be uploaded into PIMS in one business day. There is no way to expedite a case directly with KCC.

- d. Finally, by what method does USCIS deliver petition or petition information to KCC, and how long does that take?

Expedited cases are delivered by fax or email. All other cases are delivered by courier. Courier shipments typically arrive at KCC three business days after USCIS dispatches them.

PIMS – “Returning Workers”

7. Our members have seen issues with PIMS at posts in countries where visa validity is limited by reciprocity. Typically, the applicants return to their home countries to apply for a new visa based on the same underlying approved petition that was used for the initial visa and are told that a new visa cannot be issued because there is no record in PIMS that the applicant would be a “returning worker.” Additionally, the applicants are told they need an “updated petition” to be filed by the employer despite the fact that the underlying petition is valid for at least another year. Applicants have been told that the post cannot communicate with KCC directly and that the employer or attorney of record needs to have the PIMS record updated to indicate that the beneficiary will be returning to the U.S. before a visa can be issued. Please provide guidance on the “returning worker” designation in PIMS and whether this is something that KCC should be adding to the PIMS record for beneficiaries whose visas will be issued for a shorter period than the petition approval based on reciprocity.

There is no such designation in PIMS. This question may relate to the fact that KCC frequently does not receive petitions from USCIS for beneficiaries who changed or extended their status with USCIS while in the United States. In these cases, if the beneficiary later travels overseas and requires a new visa to return to the United States, there will be no petition record in PIMS. In these instances, KCC must take additional

steps in order to verify petition approval prior to posts being able to adjudicate a visa application. We remind attorneys that they must submit a duplicate copy of each petition when filing with USCIS, even if the beneficiary will not immediately apply for a visa. If this explanation does not apply to the cases referred to in this question, please provide a specific example so that we may research further.

We will remind visa processing posts that when required, they may contact KCC directly to request that a CLAIMS record be uploaded into PIMS in lieu of a scanned I-129.

Renunciation of U.S. Citizenship or LPR Status

8. Is there a distinction between procedures for relinquishment, as opposed to renunciation, of U.S. citizenship? If so, what uniform procedures, if any, do consular officers abide by?

As AILA is aware, under section 349 of the Immigration and Nationality Act, the person or party alleging loss of citizenship must show that the person who allegedly lost his or her U.S. citizenship performed one of the statutorily enumerated acts of expatriation voluntarily and with the intention of relinquishing citizenship. The statutory requirements of intent and voluntariness have a constitutional dimension, and must be assessed on a case by case basis. The Department has developed procedures and guidelines for consular officers abroad and for departmental officials to employ in loss cases that are intended to guide the official in assessing and confirming commission of an expatriating act, voluntariness, and intentional loss. These procedures and guidelines are published on the State Department website and are available at 7 FAM 1260 (for a renunciation) and 7 FAM 1220 (for a non-renunciation relinquishment), see <http://www.state.gov/m/a/dir/regs/fam/07fam/c22713.htm>. The 7 FAM 1220 provisions were recently revised to provide further substantive and procedural guidelines in non-renunciation cases and to provide additional background information and guidance; the revisions were published on August 26 and September 19, 2014.

9. What guidelines do consular officers have to determine whether lawful permanent resident status has been abandoned? If abandonment actually occurred before the filing of the pertinent documents with the consulate, is the date of abandonment viewed retroactively or as of the date of filing?

Per 9 FAM 42.22 N3, DHS reserves the right to determine loss or retention of lawful resident status. However, in a case in which the applicant comes to the Embassy or Consulate to abandon residence and voluntarily surrenders the Form I-551, Permanent Resident Card, a consular officer should request that the applicant complete the Form I-407, Abandonment of Lawful Permanent Resident Status, and accept the alien's permanent resident card and return the card to DHS. A consular officer may not require a visa applicant to relinquish the Form I-551 as a condition to issuance of either an IV or NIV. Consular officers should keep in mind it is not the statement renouncing residence, but the absence of a fixed intent to return, that results in the loss of LPR status.

In that situation, the consular officer is merely accepting the applicant's statement that they are abandoning/have abandoned their LPR status, and so is not making an independent determination.

A consular officer only makes such a determination when an LPR has been outside the U.S. for one year or more, does not have a valid Form I-551 or re-entry permit, and applies at the Embassy or Consulate for a an SB-1 visa as a returning resident. In such a case, in order to issue an SB-1 visa, a consular officer must be satisfied that:

- (1) The alien departed the United States with the intention of returning to an unrelinquished residence; and
- (2) The aliens stay abroad was for reasons beyond the aliens control and for which the alien was not responsible.

9 FAM 42.22 provides guidance for the consular officer in making such a factual determination, and the consular officer's determination is reviewed by a consular manager.

10. Is there an inter-agency (DOS and DHS) system to verify relinquishment or renunciation of one's U.S. citizenship or abandonment of one's lawful permanent resident status?

The Department and DHS do not have an automated system for informing one another about an individual's loss of LPR status. Instead, whenever an alien willingly surrenders the Form I-551 (Permanent Resident Card) at a consular post overseas, the consular officer must ask the alien to complete Form I-407, (Abandonment of Lawful Permanent Resident Status). The consular officer then accepts the card and returns it, with the Form I-407, to the USCIS Texas Service Center with an attached cover memo that includes an explanatory statement. USCIS will transmit the Form I-407 and cover memo to the relevant district office for review and inclusion in the alien's immigration file. The Form I-407 is only for the relinquishment of LPR status, not for expired cards of LPRs who intend to keep their status.

With regard to loss of U.S. citizenship abroad under INA 349(a)(5), the statute specifies that a renunciation is taken by a diplomatic or consular officer abroad in a form prescribed by the Secretary of State. Similarly, with respect to loss of citizenship under INA 349(a)(1)-(4), INA 358 provides that whenever a diplomatic or consular officer has reason to believe that a person in a foreign state has lost his or her U.S. nationality, that officer shall report to the Department of State which, if it concurs, issues a Certificate of Loss of Nationality (CLN). Per 22 CFR 50.40 and 50.50, and 7 FAM 1241, the Department provides CLNs to interested federal agencies; 7 FAM 1241 reads in relevant part:

CA/OCS/L provides copies of approved Certificates of Loss of Nationality (CLNs) to the following Federal agencies pursuant to statutory requirements:

- (1) U.S. Citizenship and Immigration Services (USCIS);
- (2) Federal Bureau of Investigation (FBI);
- (3) Internal Revenue Service (IRS)."

Issues Concerning Mission Australia

11. Issues arising out of Mission Australia are being reported with increasing frequency. The most commonly raised issues are as follows. We respectfully request that these be addressed with posts in Australia as deemed appropriate:

- a. In [October of 2013](#) we discussed concerns that consular officers in London were advising applicants that there is a specific time period that they must wait following a conviction to apply for a visa. This issue has now appeared in Mission Australia, which advises on its website at http://canberra.usembassy.gov/arrests_convictions/arrests-and/or-convictions-info.html “As a general guide, a Consular Officer will not recommend a waiver within 5 years of the completion of a sentence...” While this advice goes on to state that there is no set time period, the 5-year general rule is misleading and seems to be contrary to established policy as set forth in 9 FAM 40.301 N4 (“Factors to Consider When Recommending a Waiver”). We would appreciate it if this language could be removed and replaced with something that accurately reflects the policy. We would also appreciate it if all posts could be reminded of this policy so that accurate information is provided to all applicants.

Mission Australia is removing the sentence you have highlighted from their website.

- b. It appears that the various posts within Mission Australia have differing policies and procedures regarding visa applications. Therefore, we would appreciate access to these local rules to guide visa applicants and attorneys on post-specific procedures. Would State agree to publish these rules? Our members would be especially interested to have specific guidance on the following:

- i. Acceptable methods to provide evidence in support of nonimmigrant visa applications;

Evidence is usually sent to Mission Australia by either mail or email. In certain situations (example: a case refused under INA 221g) a consular officer may request that an applicant mail evidence, so the original hard copy version of a document can be examined. Regardless, an applicant should hand carry any evidence requiring review at the time of the interview.

- ii. Third Country Nationals applying for visas in Australia;

When reviewing applications from Third Country Nationals, consular officers will refer to the reciprocity table of the applicant’s origin for information on document availability (<http://travel.state.gov/content/visas/english/fees/reciprocity-by-country.html>). In certain situations Mission Australia may contact colleagues at the relevant U.S. Embassy/Consulate for information not contained on the reciprocity page.

- iii. Processing times for certain visa applications, e.g., K-3.

The wait times for nonimmigrant visa appointment slots and average nonimmigrant visa processing times for each of the consular sections in Mission Australia are listed on the following website:

<http://travel.state.gov/content/visas/english/general/wait-times.html>. Similar information is not calculated for immigrant visa applications. As noted on that website, the wait times indicated do not include K or V visa applications, the processing of which is similar to immigrant visas.

- c. Please provide general procedures for communicating with the consulates in Australia, and in particular, how to communicate on non-routine or urgent matters.

All of the visa processing consulates in Mission Australia allow for applicants and their attorneys to contact them during their business hours. Applicants are also encouraged to contact Mission Australia's call center outside of business hours. In addition, applicants and attorneys can request expedited appointments through the following website: <http://www.ustraveldocs.com/au/au-niv-visaapply.asp#>

- d. Members have had difficulties with E-2 submissions notwithstanding having followed the published guidance. Please provide more detailed guidance on E-2 procedures for Mission Australia, including checklists, if available. Can E-2 applications be submitted both electronically and by courier and if so, is there a preferred method for filing? Are there any limitations (number of pages, etc.) on electronic filings? How can an applicant or attorney communicate with the posts if they are still experiencing problems after following the guidelines?

See below.

- e. Please advise whether the E-1 and E-2 procedures in Australia have changed with respect to company registration and subsequent E-1 and E-2 visa applications for executives, managers and essential skills employees.

Historically, once a company was registered with E-1 or E-2 status, the registration would remain valid for approximately 4 or 5 years, or until the principal investor renewed his visa. During this time, employees of the registered company could apply for E-1 or E-2 visas at any post in Australia (not just the post where the company was registered) and these employee applicants were not required to present a complete company registration binder. Recent member experience indicates that this practice is no longer in place, which, if true, would appear to contradict the information in Mission Australia's "ustraveldocs" appointment system.

Members have also been told that officers in Sydney do not have access to files in Melbourne. This is a departure from information provided by past CCCs of Mission

Australia that all posts in the country should be operating in unison and with consistency. If we could be provided with unified rules for submission of E visa applications across Mission Australian we would appreciate it.

Thank you very much for bringing this to our attention. We have reached out to Mission Australia, and they are working to address your concerns. Mission Australia is in the process of updating its online presence, including instructions for all visa applicants.

Security Advisory Opinions

12. Previously, VO provided AILA with details regarding Security Advisory Opinions (SAOs) including average processing times (of Mantis/Donkey) and numbers of SAOs processed in a fiscal year (FY). In the interest in transparency and to provide visa applicants with a reasonable expectation of average processing times, we ask that VO please provide an updated processing time report of the most common SAOs, and provide the number of SAOs (by category) that were processed during the most recent FY.

As we publicly note on [Travel.state.gov](https://travel.state.gov), most administrative processing is completed within 60 days. It is not possible to make a more detailed report public.

In addition,

- a. Recognizing that the Public Inquiry Line regarding administrative processing takes the caller to a recorded message and does not afford the caller with an opportunity to speak to a live person, what are the alternative methods for following up on an overdue SAO? If a case is long overdue (more than 1 year) are there any additional means for resolution or direct contact within VO?

The Visa Public Inquiry Line does in fact lead to a live operator, after the recorded voice prompts or after pressing “0”. Besides inquiring at post, this is the most effective way to inquire after cases.

- b. As 9 FAM Appendix E, 404 instructs posts to use the phrase “necessary administrative processing” and to not reveal to an applicant/attorney that a case is pending clearance, how can an applicant be certain that their case is pending an SAO? In the interest of transparency, we ask VO to please reconsider allowing Consular Officers to reveal to a visa applicant and their attorney whether they are subject to an SAO, including the type of SAO instead of simply providing a general administrative processing letter.

The term “administrative processing” covers a wide variety of clearances, steps and procedures. It is not possible to provide more detail to applicants as this would be an extra resource burden on consular officers, the type of SAO may change upon review, and the type of SAO is an in-house term that is not relevant to the applicant. The

term “administrative processing” is a useful term of art, and there are no plans to revise 9 FAM Appendix E.

- c. Please elaborate on the impact the DS-160 and DS-260 have made on the SAO clearance process. Have processing times improved?

We are constantly engaging with our interagency partners to improve processing times and have achieved considerable success. The DS-160 and DS-260 clearly present information to the officer at the time of interview and even before, however it is not possible to directly attribute any particular improvement in processing times to these forms alone. Rather they reflect our continued commitment to improving processing.

- d. What recent improvements have been made in tandem with other federal agencies involved in the clearance process to reduce overall processing times and resolve overdue applications?

We are constantly engaging with our interagency partners as shown by sustained improvements in processing times; for example the Kingfisher Expansion (KFE) program that has been operational now for over a year. We will continue working with our partners at the working and policy levels.

Administrative Processing Delays

- 13. We are cognizant of the fact that we had a good discussion about administrative processing at our [last liaison meeting](#), and we thank you for your insight into the process. However, AILA continues to receive a significant amount of inquiries regarding administrative processing delays, including several in Guangzhou, China pending for more than one year.

We acknowledge that each case presents unique circumstances. However, when a case remains pending beyond 8 to 12 months (for example), there is an understandable concern that the case has been sidetracked or processing has stopped entirely. How long should an attorney wait to send an inquiry for an administrative processing case and what is the most effective procedure for doing so? Publication of additional information on administrative processing, including the reasons as to why a case might be held for administrative processing, and a reliable, effective method for inquiring into the status of a case would serve the interests of government transparency and assist visa applicants in making important personal choices.

The most effective place to inquire is the post of application through the usual procedures found on the Embassy or Consulate’s website. You may also contact Public Inquiries and speak to an operator.

- a. We would appreciate receiving updated guidance on the types of inquiries/issues that can be brought to the attention of LegalNet, to which they would likely respond, as

well as approximate processing time within which we can reasonably expect a response.

Please review 9 FAM Appendix E, 804.1 for information on the purpose and scope of LegalNet. There have been no updates since this guidance was published in May. You should receive an initial response to a LegalNet inquiry within seven working days. Inquiries that request a legal advisory opinion may take more time to receive a response. If you have not received a final response within thirty days, you may submit a follow-up email to LegalNet.

- b. For example, we contacted the Public Inquiries Line to ask what 3rd country post would entertain Israeli applications and were told to direct these factual questions to LegalNet. Despite the guidance we have received to the contrary (i.e. being told only to send questions of law to LegalNet), it appears that certain factual inquiries are still being routed to LegalNet.

We apologize if one of the staff manning our Public Inquiries line mistakenly referred a non-legal question such as how to request an immigrant visa case transfer to LegalNet, and we have reminded the staff that this is not an appropriate response. As indicated in 9 FAM 42.61 PN1.1-1, to transfer an immigrant visa case, the IV applicant (beneficiary) must request in writing that the intended receiving post accept the *case*. There is no prescribed form or format for such a request, and the applicant may make the request by letter, facsimile or electronic mail. The applicant must send the request, along with a justification for the request, to the intended receiving post. There is no list of designated alternate processing posts.

J-1 Issues

14. During the [fall 2013 liaison meeting](#), we were informed that the State Department was working on a new version of Form DS-3035 which would allow users to save and edit the form prior to submission. Can you share with AILA members the Department's plan and timing for rolling-out this new version of the form?

The Office of Computer Systems and Technology is still working on the new version of Form DS-3035 that will allow users to save and edit the form prior to submission. At this time, we have no schedule for the rolling-out of the form. The Waiver Review Division (WRD) will inform AILA when the new form is operational.

15. During prior liaison meetings we noted that an attorney other than the correct attorney of record periodically receives the I-612 J-1 waiver receipt and approval notices. This continues to be a problem for our members. Since resolution of this issue requires communication between the USCIS Vermont Service Center (VSC) as well as the State's Waiver Review Division (WRD), would WRD be willing to participate on an AILA hosted conference call with VSC in an attempt to resolve this issue?

We regret to learn that, in some instances, an attorney other than the attorney of record still periodically receives the I-612 J-1 waiver receipt and approval notice from the USCIS Vermont Service Center (VSC). As stated previously, however, we have not seen evidence that the WRD routinely forwards incorrect attorneys' names to the VSC. The name of the attorney is hand typed into the waiver recommendation letter using the attorney of record included on the G-28 form that is submitted with the applicant's case file. The recommendation letter is forwarded to the VSC electronically. The attorney of record listed on the G-28 also receives a paper copy of the recommendation letter that the WRD forwards to the VSC. In addition, the WRD is not receiving notices from attorneys indicating that the designated attorney listed on the paper copy of the recommendation letter was in error. We appreciate AILA's recognition of the sensitivity of our systems and its understanding that we are unable to provide further information about our system. We, therefore, decline your offer to participate in an AILA hosted conference call with the VSC concerning the I-612 J-1 waiver receipt notices that are issued by USCIS. Although we will make the VSC aware of AILA's continuing concern, we invite AILA to contact the VSC directly regarding this issue.

LGBT I-130/Consular Process and Request for Change of Consular Post, and Extending Option to Fiancé(e)s

16. At our [fall 2013 liaison meeting](#) we raised the issue of changing venue for immigrant visa processing based on an approved I-130 when the applicant has a fear of disclosing his or her sexual orientation in the home country. We thank State and the NVC specifically for addressing this issue by allowing applicants to contact NVC with their concerns and select an alternative "safe" third country for visa processing. While this is working well for I-130/immigrant visa cases, we are now seeing issues with I-129F/ K visa processing in LGBT cases. The applicant fiancé(e)s express the same fears for the same reasons as the LGBT immigrant visa applicants, however, the NVC does not have an adequate procedure in place to allow for change of venue in these cases. We have been advised that the I-129F/K visa cases stay at the NVC for only a few days before they are sent to the relevant post for processing. Once they are at post, it appears that the NVC cannot take action to change venue and the post cannot simply send the case to another post for processing. In some I-129F/K visa cases, our members have tried to speak to NVC (both the Creations and Inquiries Departments) to ask that venue be changed but were told that nothing could be done. Can you please provide us with a procedure to follow in such cases?

After NVC receives approved K-1 (fiancé) petitions from USCIS, they data enter information from the K-1 petition and create a case record in State's database. The interview post is assigned at NVC based on the preferred location indicated in line 36a and b on the I-129F form. Because NVC does not conduct document collection, the case file is forwarded to the assigned post within only 2-3 business days. NVC then sends a letter to the petitioner notifying him/her the case has been forwarded to the designated post for processing. The designated post will then contact the Principal Applicant with further processing instructions. Our goal with these cases is to expedite these cases as quickly as possible, due to their urgency.

Please note that designation of a U.S. embassy or consulate outside the country of the fiancé(e)'s last residence does not guarantee acceptance for processing by that foreign post. Acceptance is at the discretion of the designated embassy or consulate. However, once the K-1 case file has been forwarded to the designated post, NVC does not have the ability to reroute the case. Currently, if the K-1 visa applicant desires to have the file transferred from one post to another, they must send a written request to the new post with which they would like to interview. Their request should include the specific reason why the applicant would like to process at the other post and provide any evidence to support the request. Of course, because INA § 214(r)(2) provides for K-3 visa issuance "by a consular officer in the foreign state in which the marriage was concluded," K-3 visa processing must take place in that country unless there is no immigrant visa processing post located there, in which case filing must occur at a designated immigrant visa processing post in a third country.

If needed, NVC would be happy to facilitate communication with the desired post. Please send an email to NVCAttorney@state.gov and provide all the case specific information including the reason why the K-1 applicant would like to interview at the requested post and any other evidence to support the request. NVC will then email the post where the K-1 applicant would like to interview and request post to accept the transfer of the case file from the originally assigned post.

17. We understand that many applicants in countries that are hostile to LGBT people have a fear of having their U.S. citizen fiancé(e)'s names on their visas. We ask that K visas not be annotated with the U.S. citizen's name to avoid this issue, and suggest that perhaps the U.S. citizen's details can be stored in the CCD so that CBP can access this information on arrival without having to compromise the safety of the applicant. Any advice or assistance you can provide with regard to this matter would be appreciated.

On a case by case basis, applicants or their attorneys can request an alternative annotation on the immigrant visa foil, for example a first initial and last name only. Such a request should be made before an adjudication takes place, in order to allow a consular officer time to consider the request based on safety concerns.

Visa Revocation

18. We have learned of a number of instances in which nonimmigrants were contacted at their U.S. homes, by telephone and e-mail, by individuals identifying themselves as U.S. consular officials who notified them that their visas had been revoked. The nonimmigrants contacted in this manner include E-2 and TN workers and F-1 students. While no class of nonimmigrants appears to be specifically targeted, all such instances have involved, ostensibly, the U.S. Consulates General in Juarez and Tijuana. This practice, if it exists, would be inappropriate given the guidance at 9 FAM 41.122 N3 ("Under no circumstances should you revoke the visa of an alien believed to be physically in the United States.") Can you please advise whether consular officials are indeed contacting nonimmigrants in the U.S. to inform them of visa revocation?

Under 9 FAM 41.122 N4.3 the Department may revoke a visa. If the holder is in the United States the revocation becomes effective upon the holder's departure from the United States. Posts may contact these visa holders, as a customer service, to inform them that their visa is no longer valid for entry to the United States.

Annotated B-2 Visas for Accompanying Household Members

19. 9 FAM 41.31 N14.4 provides for issuance of B-2 visas to elderly parents, cohabitating partners, and other household members of principal nonimmigrants, who may be ineligible for derivative status.

Past DOS guidance directed consular officers to annotate the B-2 visas issued to such household members in order to facilitate admission to the U.S. as well as possible future requests for extension of status:

“Although accompanying partners may be issued B-2 visas to undertake stays of an extended duration, their initial period of admission may not be sufficient to accommodate their planned stay. INS regulations allow a maximum initial admission in B status of only one year, and most often INS grants B visitors an initial admission of six months. However, the initial period of admission is extendable in six months increments, and there is no absolute limit on the maximum length of stay available in B-2 status. **Posts should use visa annotations to indicate the purpose and length of stay in such cases, as that will increase the likelihood that the inspector grants the maximum possible admission period on initial entry and will facilitate subsequent extensions.**” (Emphasis added.) STATE 118790 (July 2001)

Although the provisions of N14.4 parallel those of STATE 118790, they do not specifically incorporate the guidance regarding annotations. Our committee has received member communications about cases in which B-2 visas issued to accompanying household members were not annotated, resulting in confusion at the ports of entry. Would you please consider amending 9 FAM 41.31 N14.4 so that it reads as follows?

9 FAM 41.31 N14.4 Cohabiting Partners, Extended Family Members, and Other Household Members not Eligible for Derivative Status

The B-2 classification is appropriate for aliens who are members of the household of another alien in long-term nonimmigrant status, but who are not eligible for derivative status under that alien's visa classification. This is also an appropriate classification for aliens who are members of the household of a U.S. citizen who normally lives and works overseas, but is returning to the United States for a temporary time period. Such aliens include, but are not limited to the following: cohabitating partners or elderly parents of temporary workers, students, and diplomats posted to the United States, accompanying parent(s) of minor F-1 child-student. B-2 classification may also be accorded to a spouse or child who qualifies for derivative status (other than derivative A or G status) but for whom it may be inconvenient or impossible to apply for the proper H-4, L-2, F-2, or other derivative visa, provided that the derivative individual intends to maintain a residence outside the United States and otherwise meets the B visa eligibility

requirements. If such individuals plan to stay in the United States for more than six months, they should be advised to ask the Department of Homeland Security (DHS) for a one-year stay at the time they apply for admission. If needed, they may thereafter apply for extensions of stay, in increments of up to six months, for the duration of the principal alien's nonimmigrant status in the United States. **Posts should use visa annotations to indicate the purpose and length of stay in such cases, as that will increase the likelihood that the inspector grants the maximum possible admission period on initial entry and will facilitate subsequent extensions.**

We appreciate you bringing to our attention the issues that these B-2 visa holders have had. We are in the process of revising the FAM to encourage consular officers to annotate the visas in such cases with the purpose and length of stay.

Blanket L Questions

20. At our [April 9, 2014 liaison meeting](#), AILA presented a proposal for the modification of current policy governing the endorsement of Forms I-129S presented by nonimmigrant workers applying for blanket L visas. A copy of the proposal is reproduced as **Appendix A**. We also attach at **Appendix B**, several issues that have arisen based on the fact that there is not yet clear guidance on this matter. In its written response to the liaison question, State indicated that:

- The FAM section governing endorsement of Forms I-129S [9 FAM 41.54 N13.6] was being updated;
- The update would address clarification regarding the requested length of Form I-129S validity;
- It would be necessary to discuss AILA's proposal with interagency partners, and public stakeholders.

Please confirm:

- a. Whether State has completed the update to 9 FAM 41.54 N13.6 with revised instructions concerning the endorsement of Form I-129S. If the revisions have not been completed at this time, what is the target date for completion?

These FAM updates are currently in clearance with DHS Policy and we hope to have them published in November.

- b. Whether consular officers will be instructed to endorse Forms I-129S for a three year period from the date of endorsement (as in the current FAM section) or for the period of employment requested by the employer (as in the AILA proposal);

The updates will instruct consular officers to endorse the I-129S for a period of three years or for the period requested by the petitioner, whichever is less.

- c. Whether consular officers will be instructed to endorse Forms I-129S for a period requested by an employer up to five years.

Not at this time, as discussions about that policy are still ongoing.

In the event that the revisions to 9 FAM 41.54 N13.6 have not yet been completed, please confirm:

a. Whether State has discussed the AILA policy proposal with any interagency partners and/or public stakeholders and, if so;

i. Please identify the interagency offices or partners, and/or public stakeholders.

Various divisions of USCIS and CBP.

ii. Have such discussions been completed or are additional discussions scheduled?

Discussions are ongoing.

iii. Have any legal obstacles to the adoption of AILA's proposal been identified?

Not at this time.

iv. Have any alternative policies to AILA's proposal been advanced?

There are a couple of possible alternate solutions, but none are formed enough to share with the public.

b. Whether State would be willing to meet with AILA and CBP to review the attached proposal and develop a comprehensive plan to address the endorsement of Forms I-129S;

While State is willing to participate in such a meeting, this is not something that would facilitate the discussion of the proposal.

c. Whether State agrees that nonimmigrant workers may present a new blanket L visa application following expiration of an original, endorsed Form I-129S and prior to the expiration of an original blanket L visa. *See*, 9 FAM 41.54 N20.1-1.

Correct, blanket L beneficiaries have two options to renew under the blanket L petition: either by filing a new L-1 visa application with new I-129S at an U.S. embassy or consulate overseas (even if they currently have a valid L visa); or by filing an extension of status application with USCIS, if they are still in the United States.

Visas for Derivatives/Principal in the U.S.

21. If a principal beneficiary's nonimmigrant petition extension was approved by USCIS within the United States, posts generally issue visas to derivative beneficiaries, even if the principal beneficiary remains in the U.S. and does not accompany the derivatives. (9 FAM 41.11 N6). Some AILA members have reported that various posts in Mission Mexico have denied visas for derivative beneficiaries, stating that the principal must be applying as well, despite the fact that the principal remained in the U.S. and held an extension of status approval. While we understand that there may be circumstances where the post needs to inquire of the principal regarding the underlying petition or issues of admissibility, it would appear that such situations are outside the norm. Please advise as to State's policy regarding issuance of nonimmigrant visas to derivative beneficiaries, where the principal remains in the United States lawfully. Under what circumstances would posts *not* follow the FAM guidance referenced, above?

The Department has reached out to Mission Mexico to inquire about this, but Mission Mexico has confirmed this is not a practice or policy of theirs. We ask that AILA share particular cases in which their members believe this happened, either in the past or the future.

Notarization of Translator's Certification of Accuracy

22. Certain posts require that certified English translations submitted in support of an immigrant visa application must be notarized. The "Immigrant Visa Instructions" state that "All documents not in English must be accompanied by certified English translations. A competent translator must certify the translation and swear to the accuracy of the document before a notary public." While the goal of obtaining accurate translations is understandable, requiring them to be notarized can be problematic due to widely different notary requirements and procedures in various jurisdictions around the world. Furthermore, the legal significance of a notarization varies among countries.

Federal law provides that: "Whenever ... any matter is required or permitted to be supported ... by [a] sworn declaration... such matter may, with like force and effect, be supported ... by [an] unsworn declaration ... under penalty of perjury." 28 U.S.C. §1760. In other words, if a post requires a notarized translator's certification, under Federal law, an unsworn declaration under penalty of perjury may be submitted in the alternative.

Please confirm State agrees that:

- a. **28 U.S.C. §1760** applies to any documentation presented to a post; and
- b. Unsworn statements in compliance with its provisions will be accepted with equal force and effect as a notarized statement.

Please see **Appendix C** involving Chinese notary law and process, which we provide as an example of a jurisdiction in which this notarization requirement seems to have troubling unintended consequences for applicants.

We have reached out to Mission China, and will provide a more detailed answer after receiving additional information. We note that, although the question states that translations can be supported by an un-notarized declaration pursuant to 28 U.S.C. §1760, there does not appear to be a statute numbered 28 U.S.C. 1760. This appears to be a reference to 28 U.S.C. § 1746 - Unsworn declarations under penalty of perjury.

APPENDIX A

APPENDIX A- Copy of AILA's proposal previously submitted on April 9, 2014

Blanket L Issues Requiring Inter-Agency Resolution

Summary of Issues:

Effective February 14, 2012, the U.S. Department of State (DOS) issued a final rule amending its regulations to allow issuance of L nonimmigrant visas for a period of time equal to the reciprocity schedule in effect for the country of visa applicants' citizenship. Accordingly, blanket L visas now may be issued with a validity period of up to the reciprocity limits. 22 CFR §41.112(b)(1). This is usually a period of 5 years. (Some L visas will be issued for a shorter period of one or two years due to reciprocity limitations.)

An individual applicant for a blanket L visa must present a Form I-129S prepared by the prospective U.S. employer demonstrating eligibility for L classification. 8 CFR §214.2(l)(5)(ii)(E). Form I-129S describes the job opportunity and indicates the intended period of employment. Although a blanket L visa may be issued with a validity period of 5 years, consular officers continue to endorse Forms I-129S for a period of 3 years.

The discrepancy between the 5 year validity of blanket L visas and 3 year validity of the endorsed Form I-129S creates a procedural conundrum for blanket L workers and their employers. Currently, there is no clear procedure available to continue using a blanket L visa during the two year period it remains valid following expiration of the endorsed Form I-129S. Establishment of a clear, easily implemented procedure is essential. A proposal appears below.

A second, distinct challenge derives from the discrepancy in the various expiration dates that appear on a blanket L visa, on endorsed Forms I-129S, on the Form I-94 admission record issued by U.S. Customs and Border Protection (CBP) officers, and the requested period of employment indicated by employers on Form I-129S. Employers have no clear guidance about which of these dates is the correct one to indicate as the authorized period of employment for purposes of completing Form I-9, Employment Eligibility Verification. Arguably, the correct date is the one indicated on the Form I-94 admission record issued by CBP as this is the period of authorized stay. This problem is particularly acute, however, as blanket L workers approach the end of the statutory 5 or 7 year limit on their eligibility for L-1 employment authorization as, in practice, they frequently are incorrectly admitted by CBP for periods of time in excess of the statutory limit.

Agencies Involved:

DOS, CBP, USCIS, ICE

Parties Impacted:

Employers utilizing blanket L petitions and individual blanket L workers

Summary of Impact:

See the discussion within

Proposed Solution:

Department of Homeland Security (DHS) regulations grant authority to DOS, CBP and CIS to endorse Forms I-129S and to CBP to admit nonimmigrant workers presenting endorsed Forms I-129S according to the following guidelines:

Consular officers may grant "L" classification only in clearly approvable applications. If the consular officer determines that the alien is eligible for L classification, the consular officer may issue a nonimmigrant visa, noting the visa classification "Blanket L-1" for the principal alien and "Blanket L-2" for any accompanying or following to join spouse and children. The consular officer shall also endorse all copies of the alien's Form I-129S with the blanket L-1 visa classification and return the original and one copy to the alien. When the alien is inspected for entry into the United States, both copies of the Form I-129S shall be stamped to show a validity period not to exceed three years and the second copy collected and sent to the appropriate Regional Service Center for control purposes. Service officers who determine eligibility of aliens for L-1 classification under blanket petitions shall endorse both copies of Form I-129S with the blanket L-1 classification and the validity period not to exceed three years and retain the second copy for Service records. 8 CFR 214.2(l)(5)(ii)(E).

Clarifying the period of time for which Forms I-129S can be endorsed

DOS consular officers, upon issuing a blanket L visa, are required to *endorse* Forms I-129S. 8 CFR §214.2(l)(5)(ii)(E). The regulation gives CBP authority to *admit* blanket L workers presenting an endorsed Form I-129S for a period of up to 3 years. The regulation is silent, however, about the period of time for which Forms I-129S may be endorsed by consular officers. There appears to be no limitation in DHS regulations that would preclude consular officers from endorsing a Form I-129S for a period of up to five years, congruent with the period of validity of a blanket L visa.

The same regulation, 8 CFR §214.2(l)(5)(ii)(E), imposes a 3 year limit on the period of time that a DHS Service officer may endorse a Form I-129S. A Service officer, however, would be endorsing a Form I-129S only in the context of a change or extension of status application for a nonimmigrant alien present in the U.S. or, for citizens of Canada, concurrently with admitting the worker to the U.S. This limitation, therefore, is consistent with the period of time for which a blanket L worker can be granted L status upon being admitted or when extending or changing status in the U.S.

In contrast, the regulation does not impose any such limit on the period of time for which consular officers can endorse a Form I-129S. Accordingly, it is reasonable to conclude that the drafters of the regulation understood how to impose a limitation on the period of validity for which Forms I-129S could be endorsed. The drafters chose not to impose limitations on the period of time for which consular officers can endorse them.

Current DOS policy, rather than regulations, limits the period of time for which a Form I-129S should be endorsed to 3 years. 9 FAM 41.54 N13.6. Endorsement of Forms I-129S for a period

up to 5 years would not require a change to existing regulations. DOS could issue new policy instructions to consular officers in the Foreign Affairs Manual (FAM) to effectuate the change.

Endorsing Forms I-129S for a period of 5 years would be consistent with practices used for other nonimmigrant worker visas. Currently, traders or investors who are citizens of countries with qualifying treaties or other agreements may be eligible to receive E-1 or E-2 visas valid for up to 5 years. Upon admission to the U.S., however, a nonimmigrant worker with an E-1 or E-2 visa may be admitted for a period of two years. Endorsing Forms I-129S with a 5 year period of validity while continuing to limit admission of blanket L workers for a period of 3 years would allow for the same efficiencies provided by the E visa category while maintaining a similar level of control over the employment of the nonimmigrant worker in the U.S.

Changing DOS policy in the FAM to allow endorsement of Forms I-129S for a period of 5 years is a solution superior to any alternatives. Two examples illustrate this point. First, CBP has regulatory authority to adjudicate Forms I-129S for citizens of Canada when presented concurrently with an application for admission to the U.S. 8 CFR §214.2(l)(17)(ii). There is no clear regulatory authority, however, for CBP to adjudicate Forms I-129S for citizens of any other country in any other context. In addition, there are practical challenges associated with assigning CBP authority to adjudicate Forms I-129S at international airports other than Pre-Clearance Stations in Canada. For example, it is unclear how CBP would address blanket L applications that are found to be documentarily insufficient to support admission. [If a blanket L petition is found to be documentarily insufficient at a border port of entry or pre-clearance station, returning to a home in Canada to collect required documents should not be as burdensome as returning to, for example, Perth, Australia.]

Second, upon expiration of a Form I-129S, it is possible for an individual to apply for a new blanket L visa even though the person may still be in possession of an unexpired L visa. Applying for a new blanket L visa while still in possession of one that is unexpired would be consistent with current practice for other nonimmigrant worker visa categories. Current DOS and CBP policies recognize that an initial H-1B visa remains valid for persons who have changed employers after receiving an initial H-1B visa and may be used to continue to apply for admission to the U.S. if presented with a copy of the Form I-797, Notice of Action pertaining to the H-1B petition filed by the new employer. Individual H-1B workers, however, may prefer to obtain a new H-1B visa that is endorsed with the name of the new employer rather than using the unexpired visa endorsed with the name of the original employer. Similarly, blanket L workers could apply for a new visa prior to expiration of the existing visa in order to obtain a newly endorsed Form I-129S from DOS. *See*, 9 FAM 41.54 N20.1-1.

Doing so, however, would frustrate the efficiencies and cost savings associated with issuing a blanket L visa valid for 5 years. Endorsing Forms I-129S for a period of up to 5 years, congruent with the L visa expiration date would eliminate this drain on DOS resources and be far more cost effective and efficient for employers and blanket L workers.

Employment Eligibility Verification challenges created by current policies

Consular officers routinely endorse Forms I-129S for a period of 3 years without reference to the period of employment requested by the employer on the form. Indeed, they are instructed to endorse the form for a 3 year period from the date of endorsement rather than the dates of employment requested by the employer. 9 FAM 41.54 N13.6. CBP officers routinely admit blanket L workers for 3 years from the date of admission, again without reference to the period of employment authorization requested by employers on Form I-129S, and also without reference to the 3 year period for which the Form I-129S was endorsed by the consular officer.

Although CBP policy requires officers to verify previous periods of stay in L-1 status and limit the stay of blanket L workers to the statutory limit, it is not clear that this practice is followed in most cases. Often, blanket L workers are actually admitted for a uniform 3 year period, part of which may exceed the statutory 5 or 7 year limit.

Employers completing Form I-9, Employment Eligibility Verification normally should indicate that a nonimmigrant L worker is authorized for employment through the expiration date of Form I-94, record of admission created by CBP. If a blanket L worker is incorrectly admitted for a 3 year period that exceeds the maximum period allowed by statute, there is no clear guidance addressing the date to which the worker is actually authorized to engage in employment. Should the correct period of employment authorization be 5 or 7 calendar years from the original date of admission (depending on whether the worker is classified L-1B or L-1A)? Is the correct period of employment authorization 5 or 7 calendar years plus the number of days that the individual was absent from the U.S. during that period? Currently, there are no answers to these questions.

Both blanket L employers and workers employed in blanket L status are exposed to certain risks as a result of these unanswered questions. When completing Form I-9, Employment Eligibility Verification, employers may inadvertently rely on the period of admission and apparent employment authorization granted to blanket L workers by CBP in excess of the statutory limit. Such employers may find they are accused by Immigration and Customs Enforcement of knowingly employing an alien who is statutorily ineligible for such employment. In addition, Blanket L workers may inadvertently rely on a period of admission beyond the statutory limit. By relying on a Form I-94, admission record incorrectly issued with an expiration date past the period of L status permitted by statute, such workers may be present in violation of their nonimmigrant status and risk being placed in removal proceedings.

Harmonizing DOS and CBP practices relating to blanket L visa and Form I-129S validity dates and the period of admission for blanket L workers should eliminate these problems. This can be achieved by simplifying and clarifying the date to which a blanket L worker may be admitted to the U.S. Specifically, consular officers should endorse Forms I-129S for the period of employment requested by the employer up to 5 years. CBP officers should admit blanket L workers for a period of 3 years or to the expiration date of the endorsed Form I-129S. This practice would provide a simple rule for CBP officers to follow. Both employers and blanket L workers could then safely rely on the period of admission and employment authorization conferred by the Form I-94 record of admission issued by CBP. Both would be less likely to inadvertently violate employment eligibility compliance and maintenance of status laws and regulations.

An employer wishing to continue the temporary employment of a blanket L worker past the expiration of an endorsed Form I-129S, would be required to send the worker to obtain a new blanket L visa at a consulate. An application for a second blanket L visa filed by a worker should include a Form I-129S requesting a period of employment up to the statutory limit of 5 or 7 years in L-1 status plus the number of any days that the individual was absent from the U.S. Consular officers would be required to verify the correct, remaining period of eligibility for L-1 classification, presumably an exercise that they already perform, and endorse Form I-129S for the period of employment requested by the employer, up to the statutory limit of eligibility.

Summary of recommendations

AILA strongly encourages DOS and CBP to adopt complementary policies allowing endorsement of Forms I-129S by consular officers for 5 years and to admit blanket L workers for up to 3 years or to the expiration date of the endorsed Form I-129S, as follows:

DOS:

- Allow employers to indicate an intended period of employment up to 5 years on Forms I-129S.
- Endorse Forms I-129S for the period of employment indicated by the employer, up to five years (or up to the statutory limit of L-1 eligibility for second visa applications).
- Issue blanket L visas with validity expiration dates equal to the endorsement expiration dates on Form I-129S, up to 5 years, subject to visa reciprocity limitations.

CBP:

- Admit nonimmigrant workers with blanket L visas for up to three years, or, if it will expire sooner than 3 years from the date of application for admission, admit to the expiration date of the endorsed Form I-129S. *See*, 8 CFR 214.2(l)(13)(ii). To illustrate: a. If the endorsed Form I-129S expires *more* than three years after the date of admission, admit for three years.
- If the endorsed Form I-129S expires *less* than three years after the date of admission, admit to the I-129S expiration date (which also would be the date of intended employment on the endorsed form).
- Admit blanket L workers with an expired L visa applying for admission under the automatic visa revalidation provisions of 22 CFR §41.112(d) through the unexpired period of initial admission or extension of stay indicated on the worker's Form I-94.

How Proposed Solution Is a Benefit to Agency(ies) and Applicants:

DOS: The efficient use of resources introduced by issuance of L visas up to 5 years will be realized through endorsement of Forms I-129S for an equal period of time or for the period of employment requested on Form I-129S, up to 5 years. Under the current system, employers in need of an endorsed Form I-129S after 3 years in order to obtain permission for their blanket L workers to continue enjoying the economic and procedural efficiencies of the blanket L petition are likely to send the workers back to U.S. consulates for a new visa even though the original one remains unexpired. Endorsing Forms I-129S for up to 5 years will eliminate this demand on DOS resources.

CBP: Under current procedures, CBP officers have to determine how much time blanket L workers have been present in the U.S. in order to ensure that they are not admitted beyond the statutory limit. Frequently, CBP officers fail to perform this calculation and admit blanket L workers for a period longer than permitted by law. Admitting blanket L workers for a uniform period of 3 years or to the expiration date of the endorsed Form I-129S, will maximize the likelihood that blanket L workers will not be admitted past the period authorized by statute. While the procedure would not eliminate the need for CBP officers to calculate previous periods of admission in L-1 status in order to verify eligibility of such workers for admission, it should make that process more efficient, thereby reducing errors and demands on resources to correct them.

Employers: Employers would have a clear, simple and easy to follow set of rules for obtaining and maintaining the lawful status of blanket L workers. They also would be less likely to inadvertently continue employing a blanket L worker past the period of time for which the individual is statutorily eligible to accept such employment in reliance on an incorrect, uniform 3 year period of admission, avoiding the risk of being accused by ICE of knowingly employing an unauthorized alien.

Blanket L workers: Blanket L workers would have a clear, simple and easy to follow set of rules for obtaining and maintaining lawful status in blanket L classification. They would be less likely to receive an incorrect period of admission from CBP and, in reliance on it, remain present in the U.S. past the period of time permitted by statute, thereby avoiding the risk of being found to be present in violation of their L status and being placed in removal proceedings.

APPENDIX B

APPENDIX B

- The Embassy in Amsterdam will endorse the I-129S for whatever dates are listed on Part 4, in contrast to 9 FAM 41.54 N13.6 which states that the I-129S should be endorsed for 3 years. For example, a recent applicant attended their interview with 5 years requested on the I-129S Part 4, which was endorsed with a stamp stating 'See Part 4' without specifying a 3-year limit in the Action Block.
- The Embassy in London often fails to properly endorse the I-129S as per 9 FAM 41.54 N13.6, just stamping the Action Block with a 'See Part 4' stamp and signing it, rather than writing in the validity dates, checking the approval box based on managerial experience or specialized knowledge and signing / dating it.
- Recently at the U.S. Embassy in Riyadh, a large number of Saudi applicants working for a multinational oil company had their I-129S forms stamped for 2 years, based on the reciprocity schedule, rather than 3 years, as per Part 4 on the I-129S and 9 FAM 41.54 N13.6
- Brazil and Mexico often fail to properly annotate visas based on Blanket approval notices with indefinite validity dates. These Consulates often annotate the visa with 'PED: No exp.,' rather than the date requested on Part 4 of the I-129S. This creates a real issue for Mexican nationals, in particular, who are only eligible for 1-year visas. When they travel to the US, the CBP officer sometimes only admits them for 1 year, rather than 3, as they see the visa validity as 1 year and the PED as 'No expiration,' whereas a PED with an actual date of 3 years might help them in properly admitting the applicant for the eligible period.

APPENDIX C

APPENDIX C – Chinese Notary Law and Process

We urge the U.S. Consulate in Guangzhou to delete its requirement that certified English translations submitted in support of an immigrant visa application must be notarized. The attached "Immigrant Visa Instructions" state that "All documents not in English must be accompanied by certified English translations. A competent translator must certify the translation and swear to the accuracy of the document before a notary public." While the goal of obtaining accurate translations is understandable, requiring them to be notarized is problematic:

1. Chinese notaries do not administer the sworn oath required by the Immigrant Visa Instructions. Instead, under the PRC Notary Law, the procedure for notarization of a party's declaration is that the notary must investigate, and may issue a notarial certificate upon verifying that the contents of the declaration are truthful and lawful. Arts. 25-35. See U.S. Dep't of State, China Reciprocity Schedule ("Notaries in China do not perform the same functions as their American counterparts. Chinese notaries affix their signatures and office seal to certificates that attest to the probity of claims made by the applicants. By regulation, notaries are empowered to issue certificates only after they conclude that the applicant's claims are true."). See also Matter of Chu, 19 I. & N. Dec. 81 (BIA 1984) (quoting an earlier version of the China Reciprocity Schedule, which states that "There is no manner of oath taking involved.")
2. Congress has assigned to consular officers the responsibility for fact-finding in connection with immigrant visa applications. See INA § 221. As mentioned above, in China, notaries themselves must investigate the truth of the contents of a document and must refuse to notarize documents determined to be inaccurate. PRC Notary Law, arts. 28-30. Chinese courts then must accept as fact the contents of notarized documents unless there is contrary evidence. PRC Civil Procedure Law, art. 67; see PRC Notary Law, arts. 2, 36. But, unlike Chinese courts, consular officers do not have the power to delegate fact-finding responsibilities to Chinese notaries. Nor should foreign notaries have the power, by refusing to notarize a document, to preclude an applicant from submitting it in support of a visa application or to preclude the consular officer from considering it.
3. The PRC Notary Law prohibits notarization of a document if the related matter violates "social morality." Art. 31(8). Since that term is not defined, it is conceivable that, for example, notarization of a declaration regarding the validity of a marriage could be refused on the ground that it is immoral for a gay or lesbian couple to marry. Or, in a case where a former Communist Party member is required under 9 FAM 40.34 N5.1 to explain his or her "political and ideological convictions," a notary may refuse on moral grounds to notarize a declaration reflecting views that diverge from the Party line.
4. Perhaps most importantly, requiring the release of private information about the petitioner and visa applicant, such as in the above two examples, may violate INA § 222(f) and 9 FAM 40.4 N8 related to confidentiality of visa records.