

**Department of State/AILA Liaison Committee Meeting
October 3, 2019**

Introduction

The Department of State's Visa Office (VO) welcomes the opportunity to discuss issues of mutual concern with AILA's Department of State Liaison Committee. VO believes these discussions can provide clarity to the public on current immigration policies and procedures, which is a benefit to all involved. Following are VO responses to issues raised by AILA in anticipation of this meeting. Following the meeting, VO responses to these questions will be published on the website of the Bureau of Consular Affairs at travel.state.gov.

Form DS-160 and DS-260

1. If an applicant completes a Form DS-160 for one consular post and then applies for a nonimmigrant visa at a different post, is a new DS-160 required? For example, an applicant completes and submits a DS-160 for London and then applies for a nonimmigrant visa in Sydney. The FAQs state that the consular post should be able to access the application from the bar code.¹ It appears, however, that not all posts adhere to this policy.

While it is technically possible for a DS-160 to be transferred from one post to another, the time that it takes to transfer the DS-160 is unpredictable; the transfer may impose additional burdens on posts; the transfer is complicated if the originally listed post recorded the applicant as a no-show; and a busy post (and applicants) may conclude it is far more efficient to work with a new application, than to wait for the DS-160 to transfer.

2. DS-160 Preparation Issues:
 - a. Does preparation of a second DS-160 to correct a mistake in an initially prepared form have any adverse effect on a nonimmigrant visa application?
 - i. **The applicant is given the opportunity to review the DS-160 prior to submission. Once an application has been submitted, it is locked and cannot be changed unless the consular section unlocks it for the applicant to make the changes and re-submit. An applicant would not be adversely affected if he or she chooses to submit a second DS 160 and schedules another interview based on that barcode,**
 - b. If an applicant schedules a nonimmigrant visa application appointment using the bar code information from a submitted DS-160 and then realizes s/he made a mistake in the data entered, can the applicant complete another DS-160 which has new bar code data without having to reschedule a visa interview appointment?

¹ See DS-160 Frequently Asked Questions, available here <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/forms/ds-160-online-nonimmigrant-visa-application/ds-160-faqs.html>

Attending an interview with a different bar code than the one scheduled with may cause processing delays necessitating that the applicant reschedule, and is not recommended.

- c. If a new DS-160 is prepared to correct inaccurate data included on the initial form, the information will not match the data on the Form DS-160 that was used to schedule the interview. Will the difference in bar code information cause the applicant to encounter difficulty being admitted to the consular post on the day of the interview?

Embassy entry processes can vary from post to post. Depending on the format of the gate entry list, if the staff has sufficient identifying information, attending an interview with a different bar code than the one scheduled may not cause complications upon entry.

- d. Are there any mistakes on a DS-160 that can be corrected at the time of the interview (e.g., non-material information) or should all mistakes be corrected on a new DS-160 application?

The DS-160 applications are locked upon submission. Consular staff may enter remarks, but generally the original data remains as submitted. Depending on the nature of the correction (e.g., wrong visa class chosen), an application may be unlocked for the applicant to make corrections and resubmit. However, this may necessitate rescheduling the interview and returning to the embassy at a later date.

- e. If an applicant completes and submits a DS-160 and then obtains a new passport is it necessary to submit a new DS-160 or can the consulate amend the passport information at the interview? Does using a new passport with a new passport number that is not the one used to schedule the interview present any problem entering the consular post?

It is not necessary for the applicant to submit a new DS-160. Once the DS-160 is submitted, it can be unlocked by the consular officer for purposes of making certain changes, but the passport number in the CEAC cannot be changed. The applicant should be able to enter the consular section, but should be sure to bring both the new and old passports to the interview. The consular staff can enter remarks concerning the new passport information on the DS-160 and consular officers should be able to process the case in our adjudication systems using the new passport.

- 3. How is information requested on a DS-160 about social media usage used to determine visa eligibility?

The Department collects this information from visa applicants for identity resolution and vetting purposes based on statutory visa eligibility standards.

- a. Is political speech evaluated for content that merits greater scrutiny? Under what circumstances might political speech preclude issuance of a visa?

In adjudicating visa applications, consular officers do not determine whether information or statements constitute “political speech.” All available information is reviewed and vetted based on statutory visa eligibility standards.

- b. Is social media information provided on a DS-160 reviewed at the consular post where an application is filed or is a centralized office assigned review of this information?

There is no centralized office assigned to review social media-related information on a DS-160. Consular officers review all information on the DS-160 to assess eligibility based on statutory visa eligibility standards and follow the same procedures, if information suggests an alien may be inadmissible on any grounds, that the officer would follow if the information did not relate to social media. DS-160 forms are accessible by other US government agencies that have roles in the visa applicant vetting process.

4. Pursuant to 9 FAM 403.2-3 9(a)(1) an application for a nonimmigrant visa must be electronically signed by the applicant. In limited circumstances 9 FAM 403.2-5(B)(2) authorizes a third party, including a person with a “legitimate interest” in the applicant, to electronically sign the application. Does this provision of the FAM permit an applicant’s attorney to electronically submit a DS-160 application in situations where the applicant is illiterate, and no other family member or guardian is able to sign the application?

Yes, when an applicant’s attorney reasonably may be determined a person having either legal custody of, or legitimate interest in, the applicant.

5. When logging into DS-160 and DS-260 forms, the Consular Electronic Application Center (CEAC) website twice requests verification that the person interacting with the site is not a robot. When completing a form, after only about 5 minutes or when moving to a new page, the login screen again appears. Frequently, the software then logs out the DS-form often without saving any of the data provided. Is it possible to remove the redundant requests for verification that the applicant is not a robot?

The captcha program identifies the user as a human and is a security feature designed to protect the website against bots and other vulnerabilities. We do not anticipate removing the captcha security feature. The application prompts all applicants to respond to captcha questions when creating or accessing previously created applications. The captcha question also appears on the *Sign and Submit* page before the applicant signs the application. Captcha will be triggered after three failed attempts to provide correct login information when retrieving an application. Captcha will also appear when the application has timed out at approximately 20 minutes. Applicants are advised to use Internet Explorer and Chrome browsers. Safari is not compatible with the application. To avoid loss of data it is recommended that applicants save the application at the end of

each page. Since incomplete applications are stored by the system for 30 days only, it is also advisable that applicants save their applications to their own servers.

Form DS-5535

6. Does State track the number of Forms DS-5535 requested by consular posts on a monthly or annual basis and, if so, can that data be made public?

State does not track the number of applicants requested by a consular officer to provide responses to the questions contained in Form DS-5535 as our systems do not have this specific capability. While every visa applicant is required to submit a Form DS-160 or DS-260 visa application, a consular officer may request responses to the questions contained in Form DS-5535 only when the consular officer determines that information is needed to confirm identity or conduct more rigorous national security vetting of that particular applicant.

7. Is any different treatment accorded to artists and entertainers when reviewing Forms DS-5535 to account for the limited timeframe associated with tour schedules?

There are no special procedures established for processing the visas or related to administrative processing for artists or entertainers as opposed to other visa classes. Applicants should apply early, and when petitions are required, submit them as early as possible, to allow for the best chance that all processing is completed in time for intended travel.

Public Charge Issues

8. On August 14, 2019, the Department of Homeland Security (DHS) issued a [final rule](#) regarding inadmissibility on public charge grounds under INA 212(a)(4) following a notice and comment period.² The rule is set to take effect on October 15, 2019. There are marked contrasts between the new DHS regulations and the public charge provisions in the FAM. State previously expressed an interest in having consistency between the FAM provisions³ and the regulations, once DHS finalized the public charge rule. Indeed, in its comments in the DHS final rule, DHS expressed the expectation that modifications to related public charge provisions are forthcoming from the Department of State and the Department of Justice.⁴
 - a. Does the Department of State intend to modify the public charge provisions in the FAM to make them consistent with the new DHS rule?

² See Final Rule on Public Charge Ground of Inadmissibility, available here <https://www.uscis.gov/legal-resources/final-rule-public-charge-ground-inadmissibility>

³ See 9 FAM 302.8 (U) Public Charge – INA 212(A)(4) available here <https://fam.state.gov/fam/09fam/09fam030208.html>

⁴ See 84 FR 41292, 8/14/19, available here <https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds>

- b. Has the Department of State started reviewing its public charge provisions in light of the new DHS rule?
- c. To what extent, if any, will DHS provide input into changes to the Department of State's public charge provisions in the FAM?
- d. When might we expect to see changes to the public charge provisions of the FAM?

The Department of State is evaluating any changes that may be needed in Department regulations or Foreign Affairs Manual guidance to consular officers, in light of the DHS final rule.

9. The DHS regulation introduces Form I-944, Declaration of Self Sufficiency⁵ as the primary basis for determining whether an applicant is inadmissible on public charge grounds. Does State plan to adopt the use of Form I-944, or a similar worksheet to obtain facts necessary to inform its consideration of the totality of the circumstances when analyzing admissibility under INA 212(a)(4) public charge?

We do not plan to adopt Form I-944 for consular officers' use in collecting information from visa applicants. We are considering our own form.

10. Among the most significant differences between the new DHS public charge regulation and the current provisions of the FAM, is the way prior or current use of public benefits by the applicant, the applicant's sponsor, family member, or household member are evaluated. The new DHS regulations exclude consideration of the receipt of benefits by the applicant's family members and focus only on the applicant. By contrast, the FAM specifically includes past or current receipt of public assistance of any type by not only the visa applicant, but also his/her family member in the household, the sponsor, and any member of the sponsor's household. Does State plan to update the FAM to more closely align with the DHS regulations with respect to consideration of the past or current use of public benefits by anyone other than the applicant?

Please see response to question 8.

11. The new DHS final rule introduces the concept of "heavily weighted" positive and negative factors as part of its prospective inquiry based on the totality of the circumstances. Does the Department of State plan to adopt a similar approach with positive and negative factors?

Please see response to question 8.

12. Consideration of the public charge issue in the context of an application for change or extension status filed in the United States has also changed under the new DHS public charge regulations. Does State plan to make any changes to the FAM for nonimmigrant visa applicants at consular posts? If so, how will this additional information be collected

⁵ The actual form I-944 does not exist as of the time the question was drafted. A draft version of the form is available here

<https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=SR%2BO&D=USCIS-2010-0012>

from applicants?

Please see responses to questions 8 and 9.

13. Given that DHS will be taking a closer look at public charge considerations when adjudicating nonimmigrant visa applications, will State defer to DHS' determination with respect to public charge when an applicant appears at the post for issuance of a new visa?

To the extent the questions is whether consular officers will rely on past DHS public charge findings, no. Consular officers will evaluate whether the inadmissibility ground applies at the time of visa application.

14. The new DHS public charge rule appears to embrace public charge bonds and provide detail on minimum bond amounts, information about the circumstances for bond cancellation, and introduces new forms for the public charge bond contract between USCIS and the obligor (I-945) as well as for cancellation of public charge bonds (I-356).⁶ However, the FAM expressly indicates "the public charge bond should be used sparingly."⁷ In years past State has limited its use of bonds to overcome a public charge denial. Based on the favorable approach to bonds by DHS regarding the new regulations in 8 CFR 213, is State considering a similar approach and process for public charge bonds?

We will not discuss internal deliberations.

15. The DHS regulations exempt several visa categories from public charge consideration. The regulations also exempt the receipt of certain public benefits in narrow circumstances from the public charge analysis. Will State update the FAM to mirror the DHS exemptions set forth in the new regulations in 8 CFR 212.21 and 8 CFR 212.23?

Please see answer to question 8.

16. The significant increase in 212(a)(4) refusals appears to be ongoing. During our April 11, 2019 meeting, State indicated that aside from the 2018 FAM update and a series of webinars reviewing the update for consular officers in 2018 and 2019, there had not been any additional formal guidance on how to evaluate eligibility under 212(a)(4).⁸
- a. Has additional guidance been provided since April 2019?
 - b. Did all posts participate in these webinars? If not, which posts participated?
 - c. Would it be possible for State to release statistics showing refusals issued by each consular post, as well as the reason for these refusals in 2017 and 2018?

⁶ See Draft versions of the Form I-945 and I-356, available here <https://www.regulations.gov/docketBrowser?rpp=50&po=0&dct=SR&D=USCIS-2010-0012>

⁷ See 9 FAM 302.8-2(B)(2)(g)(1), available here <https://fam.state.gov/fam/09fam/09fam030208.html>

⁸ See AILA DOS Liaison Q&As (4/11/19), available here <https://www.aila.org/infonet/aila-dos-liaison-qas-4-11-19>

We are not prepared to discuss internal guidance or release additional statistics at this time. Each year's Report of the Visa Office provides a summary of Immigrant and Nonimmigrant Visa Ineligibilities by individual ground of ineligibility.

17. A denial under INA 212(a)(4) for Public Charge requires a showing that the immigrant visa applicant is "more likely than not" to become a public charge, which is a high standard. Does State intend to provide official legal guidance to posts regarding this standard?

As noted above, we are evaluating any changes that may be needed in Department regulations or Foreign Affairs Manual guidance.

Administrative Processing

18. Visa applications may remain pending for exceptionally long periods of time, for example one year or more with no additional requests for documents. Can State please confirm the recommended process and timing for escalating a status inquiry on a case undergoing administrative processing within a consular post? Are there any additional steps for follow up aside from continued check-ins with the post?

There are no additional steps aside from follow up with the adjudicating post.

Nonimmigrant Visa Issues

19. Can a petition-based nonimmigrant worker visa be issued covering a period of validity that includes the date range included in both an existing, unexpired approval notice and an approved extension petition when the validity period of the extension petition has not yet begun?

Pursuant to 9 FAM 402.10-11 (D), "If an alien is the beneficiary of two or more H petitions and does not plan to depart from the United States between engagements, you may issue a single H visa valid until the expiration date of the last expiring petition, reciprocity permitting. In such a case, the required notations from all petitions must be placed below the visa." Similar guidelines apply to Q, P, and O visa adjudications.

20. Please confirm how reciprocity fees are calculated?

INA section 281 provides that visa fees "shall be prescribed by the Secretary of State, if practicable, in amounts corresponding to the total of all visa, entry, residence, or other similar fees, taxes, or charges assessed or levied against nationals of the United States by the foreign countries of which such nonimmigrants are nationals or stateless residents..." In accordance with section 281, reciprocity fees are assessed to eliminate the gap between

the U.S. visa fee and the relevant fees imposed by the foreign country, to the extent practicable.

Presidential Proclamation 9645

21. Please confirm AILA's understanding that consular officers are authorized to find that visa applicants, subject to the travel restrictions imposed by Presidential Proclamation 9645 (PP 9645), satisfy the hardship and national interest components for waiver eligibility if the information contained in the visa application and gathered during interviews otherwise demonstrates eligibility.

Yes, that is correct. Consular officers also are also authorized and required to evaluate the third criterion for PP 9645 waiver eligibility: that the applicant's entry would not pose a threat to the national security or public safety of the United States.

22. Based on previous discussions with State, AILA understands that if a consular officer has already found that a visa applicant satisfies the hardship and national interest components for waiver eligibility under PP 9645, they may refuse additional documents tendered by an applicant that are intended to support waiver eligibility. This practice has led to confusion among visa applicants who may be making a false connection between the refusal of documentation in this context and a visa refusal under 212(f) pending security clearance review.
 - a. What instructions, if any, are conveyed to consular posts about the messaging provided to visa applicants that have satisfied the hardship and national interest components for waiver eligibility but whose application must be refused under 212(f) while waiting for a security clearance?

Sometimes, applications require administrative processing before a consular officer can make a final decision on waiver eligibility. For example, consular officers may need to consult with the Visa Office to determine if an applicant is eligible for a waiver. This can happen for a variety of reasons. Consular officers give a standard letter to applicants if any administrative processing related to PP 9645 is required for their application (text is below):

The consular officer is reviewing your eligibility for a waiver under the Proclamation. To approve a waiver, the consular officer must determine that denying your entry would cause you undue hardship, that your entry would not pose a threat to the national security or public safety of the United States, and that your entry would be in the national interest of the United States. This can be a lengthy process, and until the consular officer can make an individualized determination on these three factors, your visa application will remain refused under Section 212(f). You will be contacted with a final determination on your visa application as soon as practicable.

- b. Are there any circumstances in which a visa applicant subject to PP 9645 can submit documentation to aid in the national security and public safety review process?

The consular officer will request additional documentation if needed to make a determination on waiver eligibility.

23. The Department of State's Quarterly Report on Implementation of Presidential Proclamation 9645 released in the second quarter of FY2019 indicates that the Department of State envisions implementation of an automated front-end screening process to determine whether visa applicants satisfy the national security and public safety waiver criterion with a target for the system to be operational by the end of the federal FY19.⁹ Please confirm the status of this system.

In July 2019, the Department and partner agencies initiated a pre-interview enhanced automated screening and vetting process for all immigrant and nonimmigrant visa applicants, including those subject to P.P. 9645.

24. Please confirm the number of visa applicants subject to PP 9645 that are waiting for national security and public safety screening at this time.

A visa application must either be issued or refused at the visa interview. If a consular officer does not have information required to determine whether an applicant is eligible for a waiver under PP9645, but administrative processing may provide such information, then until administrative processing is completed, the application will remain refused pursuant to PP 9645. The Department is unable to extract the exact number of applicants that are under administrative processing to determine waiver eligibility.

However, the new automated system for security vetting occurs prior to interview and provides consular officers with the information required to make post PP 9645 waiver determinations much more quickly. The new system is expected to significantly increase the speed and efficiency of the vetting process for both currently pending and future P.P. 9645-subject applications while enhancing security standards. While it is too early to ascertain the full impact on new P.P. 9645-subject applications, initial evidence indicates that consular officers are now able to make most waiver decisions within a few days of the visa interview. In the short time this system has been in place, the month-to-month change in visas issued pursuant to a waiver rose from a steady 10 to 12 percent from before the new system, to more than 50 percent each month. This is evidence that under the new system, applicants who qualify for a waiver will receive their visas much sooner. Meanwhile, the Department is working diligently to review and process to conclusion existing P.P. 9645-subject cases. Through September 14, 2019, the Department issued more than 7,600 visas pursuant to a waiver of P.P. 9645. We anticipate that a majority of

⁹ See Quarterly Report of Implementation of Presidential Proclamation 9645 – March 2019, available here <https://travel.state.gov/content/dam/visas/presidentialproclamation/Combined%20-%20Report%20on%20Implementation%20of%20PP%209645%20December%2007%20to%20March%2031%202019.pdf>

pre-July 2019 waiver cases pending with the Department, most of which require some degree of manual review, should be completed within the next six months.

25. Please confirm the number of visa applicants subject to PP 9645 that have completed the national security and public safety screening and have been issued a visa at this time.

As of September 14, 2019, 7,679 visas were issued to applicants who were found eligible for a waiver. As required by PP 9645, all applicants must meet the no threat to national security/public safety prong of the waiver and have been vetted accordingly.

Mission India

26. There is an ongoing issue with the validity of certain marriage documents in India, which seem to form the basis for certain grounds of ineligibility. It seems that couples engaging in Arya Samaj weddings, which are legal marriages in India but do not require the formalities of a traditional Hindu wedding, are being refused visas under INA § 212(a)(6)(C) for presenting what officers seem to deem a fake marriage certificate. Moreover, when one party to the Arya Samaj has an existing NIV and the spouse applies for a visa, the visa holder's visa is revoked under INA § 212(a)(6)(E)(i) for alien smuggling and the spouse's application is refused under INA § 212(a)(6)(C). Finally, when couples who were married in an Arya Samaj ceremony and subsequently have a Hindu marriage ceremony (which is permissible under the laws of India) present their Hindu marriage certificate at the NIV interview, their applications are being refused under INA § 212(a)(6)(C) and they are being told that the new marriage certificate must be fraudulent because they were already married.
 - a. Further to our previous discussion with State on this issue, has there been any additional review by Mission India of the case examples that AILA has provided? Has State further engaged with Mission India on this issue?

Yes, but the Department disagrees with AILA's presentation of the issue in the preamble to the question and attempts to clarify its position in the response that follows.

The Department has reviewed a number of visa cases involving couples whose visa applications were refused under INA § 212(a)(6)(C)(i) and INA § 212(a)(6)(E) in connection with an Arya Samaj marriage certificate. The underlying principle in determining the validity of a marriage for U.S. immigration purposes is that the law of the place of marriage celebration controls, with limited exceptions. If the marriage is considered valid in the place of celebration, then the marriage is deemed to be valid for visa adjudication purposes. A religious marriage ceremony will be recognized as valid for visa adjudication purposes if, absent evidence of fraud, the civil authorities in the place of celebration recognize it as valid. Under the Hindu Marriage Act of 1955, a Hindu marriage may be solemnized according to the customary rites and ceremonies of either party. The Department will defer to the religious authorities as to what particular rites and ceremonies are required to complete such a marriage.

Hindu marriages completed in the Arya Samaj tradition are legally recognized in India by civil authorities, and the Department will accept as legally valid, absent evidence of fraud, a marriage performed in an Arya Samaj temple, and properly registered with civil authorities, that meets the requirements of the Hindu Marriage Act.

Where a couple procures a marriage certificate from a religious authority without performing any rites and ceremonies, as required by law, the Department would not consider the couple to have a legally valid marriage under the Hindu Marriage Act or for the purposes of U.S. immigration law. Similarly, where a couple performs only an engagement ceremony and procures a marriage certificate based on their engagement ceremony without performing additional marriage rites and ceremonies, the Department would not consider the couple to have a legally valid marriage under the Hindu Marriage Act or U.S. immigration law. While the question of what marriage rites and ceremonies are customary and required is one left to the appropriate religious authorities, whether a visa applicant has actually performed marriage rites and ceremonies is a factual determination for a consular officer to make.

Mission India has reevaluated a number of cases brought to our attention by AILA. In certain cases, they have determined that the marriage was legally valid for immigration purposes and proceeded to issue the visas if the applicants were otherwise qualified. In other cases, they have determined that the couple failed to perform any of the legally required marriage rites and ceremonies, such that the claimed marriage is not legally valid, and the Department has concluded that there was no legal error in the consular officer's determination. We are still evaluating a handful of cases with Mission India that are pending LegalNet review.

If you have outstanding cases that have not received a response through LegalNet, we ask that you reply again to LegalNet so we can ensure that a proper review of your clients' cases has been performed.

- b. In cases where a 212(a)(6)(E)(i) finding is made, a waiver may be available for NIV applications. However, IV waivers of this ground are only available in very limited circumstances that would not apply in most of these cases. Would State consider reviewing these applications again and, as the finding must be made by a consular officer and the recommendation for a waiver must be made by a consular officer, removing the finding instead of recommending a waiver so that the possibility of immigrating in future is not precluded?

You can contact the Department through LegalNet to request review of any finding of ineligibility for legal error. While we cannot remove an appropriate ineligibility determination in order to ameliorate the immigration consequences of the ineligibility finding, we will review any case where the refusal may have been made in error. Similarly, if an applicant has additional evidence that may impact the consular

officer's factual findings, those can be submitted to the consular section where their visa application is pending.

I Visas

27. AILA members are reporting a recent trend of apparently heightened scrutiny of I visa applications, particularly in London. The level of scrutiny appears to be particularly acute for sports journalists. Has any new policy guidance been issued regarding eligibility for I visas?

The FAM guidance for I visas was updated in August of 2018. The new guidance expanded the definition of "media representative" to include representatives of "new media" such as independent "bloggers" and those involved in other social media platforms. There has been no additional guidance concerning sports journalists.

28. AILA members are reporting that a "home office" standard is being applied to I visa adjudications in which any non-U.S. production company making a documentary in the United States for distribution outside of the country, will not qualify for I visas status if the non-U.S. company has a U.S. company as its ultimate parent. Please confirm if there is a "home office" standard for I visa eligibility and, if so, what is the basis for this standard?

I visas are for bona fide representatives of foreign media, including members of the press, radio, film, and other foreign information media, travelling temporarily to the United States to engage in activities associated with their profession that are essential to the work of the foreign information media outlet. Per 22 CFR 41.52 (a), activities in the United States while in I visa status must be for an information media organization that has its home office in a foreign country. The regulation was first promulgated in 1987. See 52 FR 42605.

29. Please confirm that the validity of an I visa is not limited to a specific employer. For example, if an individual is in possession of an unexpired, I visa obtained based on an application made while working for one foreign media outlet and seeks admission in future working for another foreign media outlet, please confirm that the same I visa can be used. What additional documents, if any, should be carried with the visa holder as evidence of the intended nature of the travel to the U.S. as a foreign journalist for subsequent projects?

Visa validity is based on the reciprocity of the visa applicant's nationality. In the above mentioned scenario, the same I visa could be used. The bearer of a U.S. visa has permission to seek entry to the United States; CBP makes the determination at port of entry as to whom it will admit. It is recommended that an I visa holder who has changed outlets travel with a contract from the new foreign media outlet. A "freelance" media representative who regularly works for a variety of foreign media outlets, **may** be expected to present a valid contract for services at port of entry,

B-1 Visas

30. There is an absence of any guidance on the correct nonimmigrant visa category for a crewmember of a private aircraft. Although it addresses private yachts and certain foreign airline employees, the FAM is silent on this point. The C/D-1 visa categories are limited to commercial carriers. Visitors without a visa (commonly referred to as “ESTA” travelers) are limited to passengers on signatory carriers. Please confirm if the correct nonimmigrant visa category for a crewmember of a private aircraft is B-1. If so, would State consider adding a note in 9 FAM 402.2-5(C) indicating that crewmembers on private aircraft qualify for B-1 classification as “Aliens Coming to United States to Pursue Employment Incidental To their Professional Business Activities”?

Yes, B-1 is the correct nonimmigrant visa category for a crewmember of a private aircraft. We will take the recommendation to add a note in 9 FAM 402.2-5(C) under advisement.

E Visas

31. AILA understands that the period of validity of E visas for French citizens has been reduced to 15 months due to reciprocity. It is AILA’s understanding that comparable French visas for U.S. citizens have duration of four years. Please provide the basis for the reduction of E visa validity to 15 months for French citizens.

Section 10 of E.O. 13780 mandates that we review all nonimmigrant visa reciprocity agreements and arrangements to ensure that they are, with respect to each visa classification, truly reciprocal insofar as practicable with respect to validity period and fees, as required by sections 221(c) and 281 of the INA, 8 U.S.C. 1201(c) and 1351, and other treatment. The review of France’s visa regime is a part of a much larger review of visa reciprocity for U.S. citizens around the world. If another country does not treat United States nationals seeking nonimmigrant visas in a truly reciprocal manner, the Secretary of State shall adjust the visa validity period, fee schedule, or other treatment to match the treatment of United States nationals by that foreign country, to the extent practicable. Where practicable, the Department reduces visa validity on a proportional basis to approximate the treatment a U.S. citizen would receive for a period of time and fee comparable to the visa application fee (MRV), to avoid the need to charge a reciprocity fee. The validity period for E visas for French citizens is currently under review.

32. An applicant for an immigrant visa, in fear for his or her physical safety, may wish to request filing an application in a country other than the country of home or residence abroad. This situation may arise, for example, after filing an asylum application in the United States and the individual then becomes eligible to apply for permanent resident status on different grounds, such as marriage to a US citizen. In this situation, to which consular post should such a request be made, the home country post or an alternate post?

Immigrant visa cases are sent to the embassy or consulate serving the beneficiary’s address as indicated on the petition. An applicant may contact the embassy or consulate where the

case is sent to request transfer to another location for processing if they are no longer located in that consular district.

33. AILA received a report from a member indicating that the U.S. consular post in Riyadh, Saudi Arabia has requested the personal information of the U.S. resident attorney on more than one occasion for completely different visa applications. Information requested included the attorney's date and place of birth, residence address, dates of each residence, and details of his international travel. AILA understands that, absent circumstances suggesting conspiracy, there is no law authorizing an investigation into the background of a visa applicant's legal counsel. Please confirm that an attorney's biographical information is not relevant to a visa application and requesting such information is inappropriate.

There is no systematic effort to collect personal information from visa applicants' legal counsel and we concur that there are no grounds to do so. Consular Section Riyadh confirmed it once asked an attorney for personal information in error when the attorney's email address was confused with the applicant's email address. When the attorney raised objections, consular staff clarified that they were seeking information about the applicant. When completing the DS-160 or DS-260 application form, the applicant's email address should be provided to ensure that any requests for supplemental information are sent to the applicant for their action.

34. AILA members report that certain posts (*e.g.*, London) have been undertaking efforts to standardize adjudication of certain nonimmigrant visa categories through a process called "consular norming." Reportedly, this involves creating certain objective metrics to determine visa eligibility. Please confirm:
- a. What is "consular norming?"
 - b. Is this a Department policy or a local post policy?
 - c. Is there any provision within the FAM guidance that authorizes or discusses consular norming?

9 FAM 601.4-2 (U) lays out the Department's policy on Adjudication Standards and Supervisory Case Review. Essentially, "adjudication standards are a shared understanding among adjudicators, guided by consular managers, about how to adjudicate cases at a particular post in the local context... Establishment of adjudication standards, and monitoring to ensure that line officers adjudicate according to these *norms*, are part of the performance management cycle: Managers must train adjudicators on the standards; ensure all consular officers in the section meet periodically to discuss and calibrate standards, which should be adjusted as needed due to changing local conditions and through metrics such as validations studies; conduct adjudication reviews to monitor how officers are putting them into practice; provide feedback (both positive and negative); and feed these data into the performance management process."

35. AILA members are reporting that the Embassy in Mexico City is requesting a copy of the Form I-797, Notice of Action **and** a copy of the I-129 valid and signed by a consular officer from applicants for individual L-1 petitions. Individual L applicants do not obtain a

Form I-129 stamped, endorsed or annotated by a consular officer. Applicants filing to renew L-1 visas who may otherwise be eligible for waiver of the consular interview are forced to schedule a consular appointment. Since consular appointments for Mexico City are backlogged three to five months, this practice is resulting in renewal applicants waiting 3 to 5 months for a 12-month visa.

- a. Please confirm that the attached information sheet should state that L applicants need to bring either a copy of the I-797 (for individual petition) **or** a copy of the I-129S endorsed by a consular officer for blanket L applications.

It would be helpful if, at the October 3 meeting, AILA can provide additional information about the attached sheet, including where and how AILA members have encountered it. The Visa Office is open to following up with Embassy Mexico City about this, as needed.

- b. Is State willing to instruct Mission Mexico to correct the instruction sheet and, if so, can such instructions be shared with the contractors at the Applicant Assistance Centers?

See answer to question a above.

- c. Please confirm that both individual petition and blanket L applicants may renew their visas by requesting an interview waiver.

An L visa holder who is seeking to renew his/her visa in the same L category within 12 months of his/her last visa's expiration date within the consular district of his/her normal residence potentially is eligible for interview waiver. (9 FAM 403.5-4(A)(1)). Eligibility for interview waiver does not automatically entitle any applicant to a waiver of the interview requirement.

General Post Issues

36. AILA members are reporting a significant increase in the amount of time required to obtain NIV and IV appointments at many consulates across all regions. AILA understands that summer months may present challenges for appointment scheduling due to an increase in demand and the rotation of consular offices to new positions. The perceived increasing amount of time required to obtain visa application appointments, however, appears to represent a broader structural change in appointment availability. Please confirm:
 - a. Does State monitor visa appointment availability and, if so, has there been an actual increase in the average waiting time for visa application appointments over the past year?
 - b. If the average visa application appointment waiting time has increased, to what does State attribute this increase?

Does State anticipate waiting times for visa application appointments will continue to increase? AILA understands that State reports Nonimmigrant Visa Wait times on its website.¹⁰ The actual wait times for visa application appointments currently being reported by AILA members appear to be much longer than the posted wait times. Please confirm how frequently this data is updated and whether the information on this site is dependent on post participation or obtained through another method such as the visa appointment system vendor.

Posts are responsible for entering their wait time information directly into the Consular Consolidated Database on a monthly basis, and that information is then replicated to the Travel.State.gov website. The direct link to the section which provides information on embassy wait times is: <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/wait-times.html>

While this is monitored, we do not have statistics that are shareable. In some posts, average wait times have increased, in others they have decreased. These factors have to do with availability of adjudicators at posts, and applicant demand for visas. The posted wait times do not account for all possible appointment types, so posted wait times might not coincide with certain requested services.

37. AILA members are reporting that consular officers are finding applicants inadmissible under 212(a)(9)(B) for accruing unlawful presence for more than 180 days even when the applicants were in possession of valid I-94s during their stay. These findings are made after determining that the applicant may have violated previous nonimmigrant status (*e.g.*, by engaging in employment while present in B-1 or B-2 status). The FAM states that unlawful presence occurs when an “alien is present in the United States after the expiration of the period of stay authorized by the [Secretary of Homeland Security] or is present in the United States without being admitted or paroled.”¹¹ Accordingly, applicants who violate their status do not automatically begin to accrue unlawful presence.

Please confirm that State abides by the injunction issued by the U.S. District Court for the Middle District of North Carolina which preliminarily enjoins implementation of USCIS’s policy memoranda, [PM-602-1060](#) and [PM-602-1060.1](#), dated May 10, 2018 and August 9, 2018 respectively. Please also confirm that State continues to follow the prior guidance that unlawful presence begins to accrue only after the expiration of a period of authorized stay as indicated on Form I-94, after a determination by an immigration officer or immigration judge that an individual has violated his/her status, or when an individual is present without admission or parole.¹² Would State be willing to review case examples of these inadmissibility findings?

The Department is not aware of consular officers finding applicants inadmissible under 212(a)(9)(B) for accruing unlawful presence for periods of time in which the applicant’s

¹⁰ See Visa Appointment Wait Time, available here <https://travel.state.gov/content/travel/en/us-visas.html>

¹¹ See 9 FAM 302.11-3(B)(1), available here <https://fam.state.gov/FAM/09FAM/09FAM030211.html>

¹² See Court Order from U.S. District Court for the Middle District of North Carolina, available here https://www.uscis.gov/sites/default/files/USCIS/files/Unlawful_Presence_PM_Court_Order.pdf

stay was authorized as demonstrated by an I-94, unless DHS, an IJ or the BIA made a formal finding of a status violation. If AILA has examples of cases where a consular officer applied a ground of ineligibility under 212(a)(9)(B) and you believe the applicant did not accrue at least 180 days of unlawful presence, the Department would be interested in reviewing those cases.

As for the issues raised in the second paragraph, the Department refers AILA to publically available version of 9 FAM 302.11 for our guidance to consular officers on unlawful presence.

Public Facing Email Addresses

38. In past meetings with AILA, State confirmed its expectation that each consular post is expected to establish a public-facing email address for inquires. AILA appreciates State's willingness to review the compiled list of posts that do not appear to have a public facing email address. Please confirm if State has had an opportunity to review this list and whether it has followed up with any of the listed posts?

Thank you for the list you shared earlier. We are working with posts to ensure that they do have publically available points of contact for applicants.

Prudential Revocation Policy

39. Based on previous discussions AILA understands that the arrest for certain offenses of a nonimmigrant physically present in the U.S. may result in the prudential revocation of the individual's visa. State has previously explained that, depending on the circumstances or reasons for revoking the visa of an individual present in the U.S., the revocation may have immediate effect or may take effect only upon the individual's departure from the U.S. The notification of prudential revocation received by an individual present in the U.S. does not indicate when the revocation takes effect. During the April 11, 2019 meeting with AILA, State indicated that it would consider the feasibility of indicating in the revocation notice of persons present in the U.S. whether the revocation is effective immediately or upon departure.¹³ Please confirm if State is able to provide such information in revocation notices and, if so, when this language is anticipated to be added.

Following our previous meeting in April, the Visa Office modified the revocation notice it sends to posts to include language instructing consular officers, unless explicitly instructed otherwise, to inform visa holders that the revocation is effective upon departure if the alien is in the United States at the time of the revocation.

40. AILA members continue to report instances of Department of Homeland Security (DHS) denial of immigration benefits (such as an extension or change of nonimmigrant status) or placing individuals in removal proceedings solely due to the prudential revocation of a nonimmigrant visa following a DUI arrest. Do visa revocation notices provided by State to other departments or agencies, whether through notes in a database or otherwise, clearly

¹³ See AILA DOS Liaison Q&As (4/11/19), available here <https://www.aila.org/infonet/aila-dos-liaison-qas-4-11-19>

indicate whether the revocation is effective immediately or only upon the individual's departure from the U.S.?

As noted above, DHS is copied on all visa revocation notices issued by the Visa Office, and these notices communicate the effective date of the revocation. Prudential revocations based solely on DUI arrests are processed by consular posts overseas, which notify the alien of the revocation but do not notify DHS separately. If a revocation is effective immediately, the Visa Office explicitly states so in the lookouts it enters into shared databases and instructs the issuing post to specify this in case notes.

41. AILA understands that State engages regularly in communications with DHS to harmonize prudential visa revocation policies. Please provide an update on this interagency dialogue including whether there are any plans to issue written policy guidance by State, DHS, or both. If there currently are no such plans, please provide an estimated timeline by which guidance may be released.

The Visa Office is in ongoing discussions with DHS regarding potential additional means, other than those described above, to communicate a prudential revocation's effective date to DHS personnel. Beyond that, we don't discuss internal deliberations or internal guidance to posts.

J-1 Issues

42. What is the status of the interim final rule ([RIN 1400-AE48](#)), Visas: Two-Year Home-Country Physical Presence Requirement? AILA understands that an interim final rule is likely to be issued in December 2019. Is this correct? What is State's reasoning for proposing to release this as an interim final rule? Has there been an opportunity for notice and comment on a prior version of the rule? If not, would State consider releasing its proposed rule in draft format to allow for notice and comment?

The Department is not likely to issue an interim final rule in December 2019 and is still considering the matter. We will not comment on pending deliberations.

Visa Denials Based on Reason to Believe Grounds

43. Several grounds of inadmissibility are based on "reason to believe" certain activity occurred or is occurring, short of a formal arrest, prosecution, or even investigation. These include INA §§ 212(a)(2)(I), 212(a)(2)(C), and 212(a)(3)(A) and (B). These sections are broadly written to include, for example, aiding, abetting, assisting, and colluding. Section 212(a)(3)(A)(ii) references "any unlawful activity." Some of these sections also include non-culpable spouses and children and contain a five-year period. "Reason to believe" may be defined as probable cause or an even (slightly) higher standard.¹⁴ AILA understands that, through the CCD and CLASS, consulates can access law enforcement databases

¹⁴ See 9 FAM 40.23 N. 2 and 9 FAM 302.9-4(B)(3)(g), available here <https://fam.state.gov/fam/09FAM/09FAM030209.html>

including (but not necessarily limited to) IDENT, IAFIS, TECS, and with clearance, NADDIS. According to a 2012 report by the Department of State, 70% of records in CLASS come from other law enforcement agencies, including DHS, DEA and FBI. However, law enforcement agency (LEA) databases are not designed or intended to address visa inadmissibility, but are communication tools designed to facilitate agents' investigations, with a liberal protocol as to what information may be included, such as unsubstantiated reports of an informant, an historical investigation wherein the target was cleared, and historical information that never led to any investigation at all. Adverse entries are rarely revised, yet stale and unverified information remains.

AILA members report that a "hit" in an LEA database frequently leads to visa denial; indeed, it appears that consulates defer to any notation, without further investigation or follow up. Under INA § 222(f), the applicant and counsel are hard pressed to ascertain why a seemingly well-qualified NIV or IV applicant is denied.¹⁵ Information is particularly hard to obtain in the case of an NIV applicant. Where applications are referred for administrative processing, applicants and their counsel often do not ever receive a final response and the methods of following up (as discussed in previous liaison meetings) are in many circumstances futile. Accordingly, we respectfully ask the following:

- a. What instructions or protocol do consular officers follow in reviewing a visa application wherein a lookout or "hit" for one of the above grounds arises, yet the textual information does not indicate an arrest or prosecution?
- b. Is there a time limitation after which a LEA entry or lookout which did not lead to formal investigation may be disregarded by a post?
- c. Under what circumstances, or after what period of time, will an applicant be allowed to present countervailing evidence to overcome the reason to believe?
- d. Is State willing to remind posts to indicate the actual section of law that forms the basis for refusal of a visa?
- e. Without admitting or conceding inadmissibility on a "reason to believe" ground, may an applicant apply for an INA § 212(d)(3)(A) or (B) waiver, as appropriate?

Section 105 of the INA gives the Department authority "to maintain direct and continuous liaison with" U.S. law enforcement and intelligence entities "for the purpose of obtaining and exchanging information for use in enforcing the provisions of (the INA) in the interest of the internal and border security of the United States." The Department makes every effort to exercise this authority to ensure we have the most up to date information that may be relevant to assessing a visa applicant's eligibility for a visa.

Consular officers use the information in CLASS to inform their lines of questioning for visa interviews, for purposes of determining an applicant's visa eligibility. Unless the alien has previously been found inadmissible by a consular officer or immigration officer with DHS, our databases provide a starting point for inquiry.

The Department notes that all its lookout systems are intended to provide the officer with as much good information as is available to the U.S. government to ensure consular

¹⁵ See 9 FAM 603.2-3(c), 2-8., available here <https://fam.state.gov/fam/09FAM/09FAM060302.html>

officers make fully informed adjudications based on the applicable legal standards.

Consistent with INA 212(b), the Department instructs officers to provide a written notice to applicants of the basis for a refusal. See 9 FAM 403.10-3(A)(1) and 9 FAM 504.11-3(A)(1). The Department, through various means, periodically reminds consular officers of the requirements of 212(b).

If an applicant would like to request a waiver of an ineligibility finding made by the consular officer, he or she should communicate that to the consular officer. An applicant who requests a waiver is not required to admit or concede that the ineligibility finding is correct as a legal or factual matter.

USCIS Overseas Office Closures

44. In a recent announcement, USCIS stated its plan to maintain operations at seven international USCIS offices. For those remaining offices that will be closing, USCIS stated that the DOS “will assume responsibility for certain in-person services that USCIS currently provides at international field offices”.¹⁶ Please confirm the functions currently handled by USCIS overseas offices, such as humanitarian parole, international adoption services, and military naturalizations, that will soon be handled by consular offices. What training will consular officers receive in order to perform these services?

USCIS will continue to provide services for military naturalizations – that service cannot be delegated to Consular Affairs. CA will assume all services that we currently provide where there is no USCIS presence including but not limited to: I-130 processing for active duty military and in exceptional circumstances, I-600 and I-360 applications, DNA and paper fingerprint collections, I-730 refugee and asylee follow-to-join interviews and boarding foils, and I-131A boarding foil requests.

45. Prior to 2011, U.S. consulates generally accepted direct filing of family-based immigrant petitions, Form I-130 by U.S. citizens residing within a consulate’s jurisdiction. However, after 2011, State ceased to accept direct I-130 filing by U.S. citizens except in exceptional circumstances warranting exercise of discretion. Similarly, USCIS Overseas Offices also only accepted direct I-130 petitions from U.S. citizens residing within their jurisdiction, requiring all others to file the I-130 at a USCIS Service Center. With the closure of most USCIS Overseas Offices, far fewer U.S. citizens would be able to submit their I-130 petitions directly at a USCIS office abroad. Please confirm:

- a. Would State be willing to consider resuming the practice of accepting direct I-130 filing at its consular posts?

We will accept I-130s for active duty military and under exceptional circumstances as currently provided.

¹⁶ See USCIS Will Adjust International Footprint to Seven Locations, available here <https://www.uscis.gov/news/news-releases/uscis-will-adjust-international-footprint-seven-locations>

- b. Does State have plans to manage an anticipated increase in requests for direct consular I-130 filing?

We do not anticipate this to be a large workload increase.

- c. Under what circumstances might posts be willing to entertain a Form I-407, Record of Abandonment of Lawful Permanent Resident Status filing?

In rare circumstances whereby the applicant has an immediate need to prove abandonment of status; typically for A and G visa applicants.

Immigrant Visa Issuance

46. AILA members report that some recipients of immigrant visas are not receiving a sealed immigrant visa packet pursuant to procedures detailed at 9 FAM 504.10-2.¹⁷ Instead, they are receiving an immigrant visa with an annotation that reads “IV DOCS ONLINE” in lieu of the sealed immigrant packet.

- a. Please clarify the circumstances where no envelope is provided to immigrant visa applicants but the annotation “IV DOCS ONLINE” is provided.

MIV cases.

- b. Please confirm which consular posts have already or will soon implement this new procedure.

This is now conducted at all posts worldwide.

- c. If this is a pilot project, please provide an estimate of when it will be expanded to all posts.

See response to b.

- d. Please confirm that State is in dialogue with CBP to coordinate the implementation of the new process.

Yes. In fact, VO representatives conducted a site visit to IAD recently to observe this electronic processing and to answer any questions they had.

- e. Does State plan to update the FAM to reflect this new process?

It has been updated.

¹⁷ See 9 FAM 504.10-2, available here <https://fam.state.gov/fam/09FAM/09FAM050410.html>