

**Department of State/AILA Liaison Committee Meeting  
January 20, 2022**

**Introduction**

The Department of State's Office of the Assistant Legal Adviser for Consular Affairs (L/CA), in coordination with the Visa Office in the Bureau of Consular Affairs, appreciates the opportunity to discuss issues of concern to the American Immigration Lawyers Association (AILA). We believe these discussions, and publication of Department responses to issues raised by AILA on Travel.State.Gov, are valuable opportunities to provide insight and clarity concerning the Department's current immigration policies and procedures. Following are Department responses to issues raised by AILA in anticipation of the meeting scheduled for January 20, 2022.

**November 8, 2021 Vaccine and Testing Requirements for International Travel**

1. Starting on November 8, 2021, per an [October 25, 2021 Presidential Proclamation](#), nonimmigrants intending to travel by air to the United States are required to be fully vaccinated against COVID-19 with limited exceptions. Please address the following questions:

- a. To what extent, if at all, are consular posts and/or the broader DOS engaged in assessing whether an individual is eligible for an exception to the new vaccine and testing requirements?

**Consular sections' role in the process is to ensure that an individual's request for an exception is filled out in full, and to transmit to CDC the completed requests..**

- b. Are DOS and/or consular posts involved in the process of determining whether a humanitarian exception to these requirements exists?

**Consular sections' role in the process is to ensure that an individual's request for an exception is complete, and to transmit requests to the CDC.**

- c. Are consular posts involved in transmitting to the CDC, information regarding individuals who fit the humanitarian exception?

**Consular sections' role in the process is to ensure that an individual's request for an exception is complete, and to transmit that request to the CDC.**

- d. If so, do consulates accept such requests on behalf of nonimmigrants who do not require a visa, but instead plan to travel to the U.S. under an existing nonimmigrant visa or under the Visa Waiver Program/ESTA? Or do posts only entertain such requests on behalf of individuals who present themselves for visa issuance?

**Embassies and consulates transmit these requests for all travelers.**

- e. If consular posts are involved in transmitting information in support of a humanitarian exception to CDC, what is the process, if any, for making such a request of a consular post outside the context of a visa interview?

**Travelers should contact the consular section of the nearest embassy or consulate using the information provided on that embassy's or consulate's website.**

2. Are DOS and/or consular posts involved in the process of determining whether a nonimmigrant qualifies for an exception to the vaccination requirements because their travel would be in the national interest? Specifically, have the DOS and/or consular posts provided any nonimmigrants with "an official U.S. Government letter (paper or digital) documenting approval of the exception" as outlined in [CDC's guidance](#)?

**Consular sections transmit to the traveler the CDC's approval or denial of an exception request.**

### **November 29, 2021 Regional COVID-19 Travel Ban**

3. Notwithstanding the administration's announcement that it would revert to science-based methods, including vaccines and testing, rather than regional COVID-19 travel bans, to control the spread of the virus, on November 26, 2021, prompted by concerns about the Omicron variant, President Biden issued [Presidential Proclamation 10315](#) imposing a virtually identical COVID-19 travel ban on those who were physically present in Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, South Africa and Zimbabwe within 14 days of traveling to the U.S., commencing on November 29, 2021. Will national interest exceptions (NIEs) to the November 26, 2021 Presidential Proclamation be adjudicated consistent with the criteria the DOS applied to the recently rescinded COVID-19 travel bans? If not, please provide details on DOS's involvement in adjudicating NIEs under this proclamation and the criteria which will be employed in adjudicating NIEs thereto.

**The President issued Proclamation 10329 on December 28, 2021, revoking Presidential Proclamation 10315.**

4. Prior to rescission of the COVID-19 health-related bans covering Brazil, China, Ireland, Iran, Schengen Area Europe, South Africa and the UK, the DOS issued guidance that NIEs granted under any of these geographic bans would (1) be valid for 12 months and that (2) such NIEs would remain valid for travel within 14 days from any one of the banned countries. The proclamations on which these NIEs were based have since been rescinded. Please confirm AILA's understanding that DOS does not consider NIEs issued within the last twelve months under these prior proclamations to remain valid as exceptions to the most recent travel ban which took effect on November 29<sup>th</sup>.

**The President issued Proclamation 10329 on December 28, 2021, revoking Presidential Proclamation 10315 and the NIEs under the previous proclamations are no longer valid.**

5. Members report receiving cancellation notifications from various southern African consulates, which state, for example, “*The U.S. Consulates General in South Africa are conducting visa interviews and accepting interview waiver applications only for applicants who are not subject to the Proclamation.*” As was decided in the *Kinsley v. Blinken* refusal to adjudicate visas for individuals from countries subject to regional travel restrictions violates INA 212(f). Given this, will CA provide guidance to consulates in impacted countries that they cannot cancel visa appointments solely due to Presidential Proclamation 10315 and promptly reschedule those visa appointments that were inappropriately cancelled?

**The President issued Proclamation 10329 on December 28, 2021, revoking Presidential Proclamation 10315.**

### **Interplay Between Vaccine Requirements and November 29<sup>th</sup> COVID-19 Health-Related Ban**

6. At the time of this writing, citizens of Malawi, Mozambique and Namibia who possess nonimmigrant visas other than B-1/B-2 visas are exempt from the November 8<sup>th</sup> vaccine requirements under the exemption for citizens of countries with limited COVID-19 availability, per [CDC guidance](#). However, Malawi, Mozambique and Namibia are among the eight countries subject to the November 29<sup>th</sup> COVID-19 health-related ban. Please address the following:
  - a. Please confirm AILA’s understanding that the November 8<sup>th</sup> vaccine requirements and the November 29<sup>th</sup> travel ban present independent requirements that citizens of Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, South Africa and Zimbabwe *may* be required to overcome in order to travel to the United States.

**The President issued Proclamation 10329 on December 28, 2021, revoking Presidential Proclamation 10315.**

- b. Please confirm AILA’s understanding that the November 29<sup>th</sup> COVID-19 health – related ban does not apply to citizens of Malawi, Mozambique and Namibia (as well as citizens of the other eight countries subject to the COVID-19 health-related ban) if they were not *physically present* in one of those eight countries within fourteen days of their travel to the U.S.

**The President issued Proclamation 10329 on December 28, 2021, revoking Presidential Proclamation 10315.**

### **Consular Processing Backlogs and Operations**

7. For over 18 months, the global pandemic severely curtailed consulates' ability to process immigrant and nonimmigrant visa applications. Although many regional travel bans are rescinded and the vaccinated population is increasing, consulates continue to experience extensive backlogs and it takes several months to obtain routine visa appointments. In an apparent attempt to address the delays in delivery of consular services, Secretary Blinken, in his remarks before the House Foreign Affairs Committee on June 7, 2021, noted that the Department planned on recruiting 500 new foreign and civil service officers and had allocated \$320 million of its budget for consular services.
  - a. Is DOS able to share its plans to recruit and utilize these additional human and financial resources to address the availability of IV and NIV appointments worldwide?

**With regard to FSO generalists, the Department is planning to hire above attrition in FY 2022. The majority of these generalists will be assigned to a consular position after initial training. Additionally, the Department continues to recruit Limited Non-career Appointment (LNA) Consular Professionals. With very limited LNA hiring in FY 2020 and a pause on LNA hiring in FY 2021 due to CA's budgetary constraints, CA plans to hire more than 60 LNAs in FY 2022.**

- b. What is the timetable for increasing staffing at consulates and training new officers and cross-training existing officers to help alleviate the backlog?

**CA is working with State's office of Global Talent Management to ramp up hiring in FY 2022, but many posts will not see these new officers until the second half of FY 2022 or FY 2023, particularly for officers assigned to positions requiring language training. Increased hiring will not have an immediate effect on reducing current visa wait times. Because local pandemic restrictions continue to impact a significant number of our overseas posts, extra staff alone is not sufficient to combat wait times for interviews.**

8. Can Consular Affairs please advise regarding efforts to resume routine consular services? Has the rescission of several of the COVID health-related travel bans enabled impacted posts in achieving or approximating routine visa processing?

**Consular sections abroad must exercise prudence given COVID's continuing unpredictability. The emergence of the Omicron variant has prompted countries to reevaluate plans to relax travel bans, thereby leading consular sections abroad to recalibrate plans to resume services. Some posts have already fully resumed routine**

**services. Others, in an abundance of caution and out of concern for the health of both consular staff and clientele, are slowly reintroducing some routine services.**

9. Throughout the pandemic, AILA observed that consular posts were dealing with staffing shortages and local COVID restrictions while simultaneously being provided with a host of priorities to execute. When resources are scarce and there are more priorities than there are resources to execute them, then nothing can effectively be prioritized. On [November 19, 2021](#), DOS rescinded the priority scheme that was implemented in November 2020, providing posts with broad discretion to prioritize visa appointments. Can Consular Affairs please comment on the rationale behind its decision to rescind its prioritization scheme? Has the resumption of local post discretion in prioritizing visa interviews assisted posts in clearing out their backlogs?

**The COVID-19 pandemic significantly limited visa operations starting with the suspension of routine visa services on March 20, 2020. As some routine visa services began to resume in July 2020, the Bureau issued prioritization guidance, giving preference to U.S. citizen services, immigrant visas, students, and other key travelers. Many Embassies and Consulates have been able to do a tremendous amount of work during this period, while still adhering to the prioritization guidance and keeping our staffing and consular customers safe. In November 2021, the Department lifted the prioritization framework allowing posts to expand routine visa services and to balance consular services based on local conditions, resources, and priorities. We recognize many posts still have COVID-related occupancy restrictions on space and significant staffing challenges. However, as global travel recovers and resources begin to increase, posts should begin to rebalance workload across consular services to respond to the demand of the rebounding travel sector using all tools and resources available to maximize processing efficiencies.**

10. One potential result of post control over visa interview prioritization is that certain visa classifications might be deprived of appointments for lengthy periods of time. To the extent this might occur, what, if anything, can these constituencies do to alert the post and or Consular Affairs to an urgent need for an appointment?

**If an applicant has an unforeseen emergency travel need (such as travel for urgent medical care, to attend a funeral, or another urgent humanitarian concern), they may qualify for an expedited appointment, depending on availability, at an embassy or consulate. To request an emergency or expedited appointment for a nonimmigrant visa, applicants must first submit the online visa application form (DS-160), pay the application fee, and schedule the first available interview appointment, and then follow instructions to request an emergency appointment. More information, including specific contact information, is available on the individual embassy or consulate's website. The discretion to approve or deny an emergency appointment request lies with the individual embassy or consulate, and it is important that applicants fully describe how they meet the emergency appointment criteria listed.**

11. AILA members report that the “[Visa Wait Times](#)” page does not appear to reflect what they are seeing on the ground. Can CA please comment as to how frequently the Visa Wait Times are updated and whether that process requires each post to update its own information?

**Nonimmigrant visas appointment availability is subject to local conditions and resources. The NIV wait time tool on [travel.state.gov](https://travel.state.gov) is available at <https://travel.state.gov/content/travel/en/us-visas.html>. Individual embassies and consulates are required to directly update information about their visa wait times. The visa appointment wait time feature of this website is updated on a weekly basis. Applicants are encouraged to regularly review the visa wait time tool on [travel.state.gov](https://travel.state.gov) to ensure they are viewing the most up to date information.**

12. In a policy brief entitled, [Reopening America - How DOS Can Reduce Delays and Eliminate Backlogs and Inefficiencies to Create a Welcoming America](#), and in a subsequent meeting with White House staff, AILA raised a number of common sense proposals to address the backlog. In light of the Bureau of Consular Affairs’ [November 19 announcement](#) that it would “focus on reducing wait times for all consular services at our embassies and consulates overseas,” is DOS considering implementing any of the following temporary measures—

- a. Expanding interview waivers to include certain first-time interviews (in low fraud risk situations and where biometrics could be captured by a separate facility)
- b. Encouraging posts to implement a process to reauthorize nonimmigrant visa renewals applications by drop box within 48 months of visa expiration
- c. Expanding the use of video interviews.
- d. Reinstating stateside visa processing while relying on existing USCIS resources and infrastructure to capture biometrics
- e. Temporarily introducing automatic 24-month visa renewals for visas that have expired during the pandemic and meet certain low risk criteria (such as those questions asked for interview waiver or ESTA eligibility), or where there is an existing approved USCIS petition.

**To facilitate international travel, including nonimmigrant work and student travel, the Department authorized consular officers to waive the in-person interview for certain individual petition-based H-1, H-3, H-4, L, O, P, and Q visa applicants on a case-by-case basis, at the consular officer’s discretion, subject to certain statutory limitations on the authority to waive interviews. The Department also extended consular officers’ discretionary authority, on a case-by-case basis, to waive the in-person interview for certain H-2, F, M, and academic J visa applicants and applicants renewing any visa within 48 months of expiration of a visa in the same category. The Bureau of Consular Affairs also is considering other measures in consultation with the Office of the Legal Adviser.**

## Interview waiver program

13. AILA recognizes that consular officers are facing challenges with competing priorities and insufficient staff to handle all of the demands adequately. AILA applauds [DOS's expansion](#) of the NIV waiver authority, to allow consular officers to waive the in-person interview requirement for NIV applicants in the same classification whose NIV expired within 48 months. The current policy is set to expire on December 31, 2021. Is DOS considering further extending this expansion to assist with reducing backlogs and to protect applicants and consular staff from COVID-19?

**The Department extended consular officers' discretionary authority, on a case-by-case basis, to waive the in-person interview for applicants renewing any visa within 48 months of expiration of a visa in the same category.**

14. If yes, the extent to which this authority is currently being implemented, if at all, in terms of the accepted visa expiration period (12 vs. 48 months) and the types of NIVs that are eligible, has been inconsistently adopted by posts. For example, London will only allow interview waiver option for J, O and P visa holders whose visas in the same classification expired within the last 12 months. In addition, posts such as Monterrey (Mexico), Paris, and Sao Paulo are not providing the interview waiver as an option at all for visa renewal applicants. Taking into account local post autonomy, alongside the imperative of eliminating backlogs, is DOS rethinking how to provide resources and guidance to facilitate posts' ability to consistently execute backlog reduction efforts such as the highly efficient interview waiver program?

**Consular officers may require an in-person interview for any visa applicant potentially covered by an existing interview waiver, based on local circumstances, the applicant's individual circumstances, or any other factor the officer believes may be relevant to visa eligibility. This reflects the Department's view that consular officers in the field are most familiar with relevant local factors, such as fraud trends. For similar reasons, posts may opt to interview all applicants of a particular visa class or classes. Accordingly, the Visa Office anticipates that the percentage of visa applicants requiring an in-person interview will vary by post, depending on relevant circumstances in the country.**

## Recognition of Charlie Oppenheim

15. AILA would like to acknowledge Charlie Oppenheim's longstanding service to DOS as Chief of the Immigrant Visa Control and Reporting Division. Under Charlie's leadership, DOS modernized and automated the visa controls process. Charlie further served as an active ambassador of DOS, enthusiastically sharing his knowledge of the visa control process and visa bulletin predictions with the public and with AILA members for over six years through the "Check-in With Charlie column." Charlie's December 3, 2021, retirement leaves an important vacancy at DOS during a unique time in the history of numerical controls. Can DOS please confirm its timeline within which it intends to fill this important vacancy? Can DOS confirm how Charlie's responsibilities will be filled in

the interim between Charlie's retirement and a successor assuming this role?

**The Visa Office cannot comment on HR processes. An acting chief is in place until the hiring process is completed.**

16. During the November Visa Bulletin Chats with Charlie segment, DOS announced that it would use its YouTube channel for future engagements relating to the Visa Bulletin as well as other topics. Can DOS please elaborate on its plans in this regard?

**The Bureau of Consular Affairs will continue to engage with the public through its TravelGov social media platforms and is considering our way forward.**

17. Beyond issuance of the Visa Bulletin itself, what plans does DOS currently have to communicate to the public regarding the numerical controls process and to preview potential upcoming advancements and retrogressions in the Final Action Dates?

**The Bureau is constantly evaluating the most effective ways to communicate with the public.**

## **E Visas**

18. AILA is happy to see that consular adjudications of NIVs are increasing at many posts. Notwithstanding this progress, [there are reports](#) of a sharp decline in E visa processing and that some posts have completely stopped processing any E visas, including Ankara, Bogota, and Bridgetown. In fact, it has been over a year since Bogota has adjudicated an E application. E-1 and E-2s are important for U.S. economic growth and their issuance is also important in terms of the U.S.'s relationship with treaty countries. Can DOS please confirm why several posts have completely ceased adjudicating E visas and what the plan is to increase E visa processing?

**During the pandemic, the Visa Office disseminated guidance to embassies/consulates to process certain urgent categories of nonimmigrant visa applicants, even while suspending routine operations. Although the E visa class is important to U.S. economic growth, our focus at that time was on diplomats/officials, cases with extreme humanitarian circumstances, medical professionals, and visa classes associated with food production and the supply chain. Concentrating on these priorities sometimes made it difficult for posts to process cases such as E1/E2 visas. As posts resume routine services, many posts are now able to process E visa applicants, although how soon an applicant is able to schedule an appointment will vary from post to post.**

19. Does CA suggest any improvements that AILA members can make in how they present E visa applications to help facilitate adjudication and reduce burdens on consular officers?



**While E visa applications represent a small percentage of all visa applications adjudicated by officers, they are more complex than most other nonimmigrant visa classes. Each post has the discretion to increase the proportion of E visa applications it adjudicates, as it deems most appropriate based on demand, capacity, and any other relevant factors. E visa applicants, therefore, are advised to thoroughly review information on website of the embassy or consulate at which they will apply.**

20. The Travel.state.gov page for “Treaty Trader & Investor Visas” states the following for Trade for Treaty Trader and Treaty Investor purposes” – Examples:

*These are some examples of types of enterprises that constitute trade under E visa provisions.*

- *international banking*
- *insurance*
- *transportation*
- *tourism*
- *communications*

AILA is concerned that this guidance seems to conflate the Treaty Trader and Treaty Investor categories and may confuse our members and the public. The Treaty Trader and Treaty Investor categories have distinct requirements. For example, trade is not a requirement for Treaty Investor purposes. Would DOS be willing to review and possibly clarify this language?

**This page has been updated to reflect that the examples provided are illustrative and not exhaustive and that they are also examples of industries in which “trade” may occur.**

21. Thank you for restoring the reminder to Consular Officers at 9 FAM 402.9-2 to adjudicate E visa cases in the spirit of enhancing or facilitating economic and commercial interaction between the United States and the treaty country. This August 2021 reminder has particular importance in light of the July 2019 [Government Accountability Office report](#), “*Nonimmigrant Investors: Action Needed to Improve E-2 Visa Adjudication and Fraud Coordination.*” Among the GAO’s findings were that over 70% of officers interviewed stated that that “E-2 visas are among the most difficult nonimmigrant visas to adjudicate”(page 24). Consular officers at 10 of 14 posts indicated that it is “challenging” to determine substantiality of capital investment amounts (page 36). Consular officers also found it “particularly difficult” to determine if a business is real and operating (page 36). The GAO called for additional E-2 training and resources to achieve the level of competency expected from key roles pursuant to the *Standards for Internal Control in the Federal Government* (pages 39-40). In response to the report, on page 84, DOS wrote that it agrees with the need to provide more training for E-2 adjudications and will work to ensure staff have the training and resources available.

- a. Above and beyond the reminder about the spirit of E visa adjudications, are additional E-2 training sessions and material resources (subject matter trainers and reference literature) being provided to achieve expected levels of efficiency?

**The Visa Office has created additional training that has been embedded in a course entitled “Visa Issues for Mid-Level Officers.” The Foreign Service Institute (FSI) included this as an elective option inside of the course - as not all posts process E visas and it may not be beneficial to everyone taking the course.**

- b. Would DOS consider, as a possible method for achieving consistency and efficiency, creating a centralized adjudication team of subject matter experts (in D.C. or at a regional level) who can review the substantive sections of E-2 cases pending in multiple jurisdictions, thus relieving local Consular Officers from much of the time-consuming and labor-intensive research, study and analysis connected with individual cases?

**We recognize the particular challenges associated with the adjudication of E-2 cases and are always interested in ideas for improving the support we provide consular officers, so we appreciate your suggestion.**

## **China**

22. Can Consular Affairs please advise as to how its visa processing capacity at posts in China compares to what it was in 2019? Specifically, have the Chinese government restrictions on personnel been alleviated? At what percentage capacity is IV processing in Guangzhou now relative to what it was at the end of 2019?

**Mission China continues to confront COVID-related restrictions that have affected visa processing capacity. The Department is working to return Mission China posts to pre-COVID staffing levels by the end of FY 2023. Staffing at the Consulate General in Guangzhou is now near pre-pandemic levels, which has contributed to a reduction in pent-up demand for IV appointments from over 23,000 in January 2021 to less than 2,500 in December.**

## **Afghan Issues**

### *Third Country National Processing*

23. AILA understands that the Administration is undertaking efforts to coordinate inter-agency support for vulnerable Afghans, and especially those that worked with U.S. special forces. Given the termination of U.S. operations in Kabul and dire humanitarian circumstances faced by this population, AILA members have questions regarding processing and issuance of visas and boarding foils for Afghan applicants. Identification of third country processing posts has proven challenging for a variety of reasons. According to recent stakeholder meetings, AILA understands that DOS is developing a plan to allow for overseas processing of Afghan evacuees in third countries.

- a. Please provide any information regarding the current status of that plan, including which posts will adjudicate the following applications:
  - i. SIVs
  - ii. Humanitarian Parole
  - iii. Immigrant Visas
  - iv. Nonimmigrant Visas
  - v. P Referrals

**Following the suspension of operations at Embassy Kabul on August 30, 2021, we are unable to provide consular services in Afghanistan for nonimmigrant visa applicants and immigrant visa applicants, including applicants for Special Immigrant Visas. Subject to local COVID-19 restrictions on processing applications for those not resident in their consular district, we have encouraged posts to open their appointment schedules in a manner as balanced and equitable as possible to applicants present in their consular districts that are not residents or nationals of the country, with resident-like status given to residents of a country in which there is no visa processing post.**

**Additionally, we continue to process SIV applications at every stage of the SIV process, including by transferring cases to other U.S. Embassies and Consulates around the world where applicants are able to appear. We recognize that it is currently extremely difficult for Afghans to obtain a visa to a third country or find a way to enter a third country. We are developing processing alternatives so that we can continue to deliver these important consular services for the people of Afghanistan who qualify for these benefits. Developing such processing alternatives will take time and will depend on cooperation from third countries, as well as the Taliban.**

**Consular posts do not adjudicate humanitarian parole or P referral cases (see following questions for consular sections' limited role in these processes).**

24. As Afghans fled Afghanistan under desperate situations, many were dispersed in various countries around the world without much prior planning. This has led to confusion and inconsistent responses from consulates as to whether they may be eligible to apply for a U.S. visa or boarding foil from the third country. For example, an AILA attorney recently shared an email from the post in Islamabad noting that they would be unwilling to accept an IV transfer case from Kabul. They noted "we have not been designated a processing post for IVs for Afghans and not accepting transfer cases." Later, the post changed its position and was willing to transfer the case to Islamabad, but out of "fairness" to other IV applicants would not expedite the request.

- b. Would DOS consider creating a policy allowing Afghan applicants to apply for SIVs in whatever country where they are located? A more generalized policy would help to cut down on confusion and could potentially save lives.

**SIV applicants may apply for their visa at any immigrant visa processing embassy or consulate to which they are able to travel. We have provided guidance to all posts**

**that they should prioritize Afghan SIV processing for those cases that are documentarily complete and ready for interview as they recalibrate visa prioritization. The National Visa Center (NVC) automatically expedites interview-ready Afghan SIVs who have requested to be processed at a post outside of Afghanistan.**

- c. Would DOS consider expediting Afghan cases given the humanitarian crisis?

**Non-SIV Afghan visa applicants may request expedited appointments, which may be approved on a case-by-case basis. As noted above, Afghan SIV cases are already being prioritized and the NVC automatically expedites interview-ready Afghan SIVs who have requested to be processed at a post outside of Afghanistan.**

25. Is DOS engaged with third country governments to facilitate entry of Afghans into those countries? If so, which ones? If not, why not?

**The Department is unable to facilitate visas to third countries for Afghans. We are communicating with SIV holders and certain SIV applicants in Afghanistan and are looking to relocate as many SIV holders and certain SIV applicants with travel documents as space is available. This includes principal applicants/visa holders and their immediate family members (spouse and unmarried children under 21). Our ability to relocate SIV holders and certain SIV applicants also depends on the Taliban living up to its commitment of free passage.**

26. *SIV Processing* - Please advise of the process by which an Afghan can request that their SIV interview be scheduled in the third country in which they are physically present.

**Interview-ready SIV applicants may have their cases transferred to a U.S. embassy or consulate outside of Afghanistan that processes immigrant visas by submitting a request to the National Visa Center at [NVCSIV@state.gov](mailto:NVCSIV@state.gov), including their name, date of birth, and case number.**

27. *Humanitarian Parole* - When USCIS issues the conditional parole approval, how is that conditional approval transmitted to DOS? How is that communication impacted by the movement of the applicant to another country?

**When USCIS issues conditional parole approval, they email a parole authorization memo to the U.S. embassy or consulate identified on the Form I-131. If the parole beneficiary moves to a new location, the petitioner, beneficiary, or attorney would be responsible for contacting USCIS and the consular section in the new location to request a new authorization memo from USCIS for the new location.**

28. *I-730 Refugee/Asylee Relative Petition* – Once the I-730 is approved by USCIS, what are the next steps in terms of inter-agency communication and transmittal to DOS? When the case number is created, does the NVC send an email notification to the applicant and the

attorney of record?

**USCIS mails approved I-730 petitions to the NVC. Upon receipt, NVC tracks the petition into the system, creates a case and assigns a case number. NVC emails or mails a notification to the attorney of record on the case, if no attorney of record is present, the notification will be sent to Petitioner and Beneficiary. If a valid email is present, that is the default delivery method for the notification otherwise a hard copy will be mailed. The NVC then mails the case to the overseas processing post (Consular section or USCIS) on a two-week cycle.**

29. At what post(s) should Afghans who have fled to Iran apply for visas or humanitarian parole foils (based on USCIS approvals or conditional approvals)?

**Afghan nationals may contact any U.S. embassy or consulate to apply for a visa or to complete processing of USCIS-approved humanitarian parole. If USCIS has instructed them to obtain a medical exam through a panel physician, keep in mind that only some NIV processing posts have panel physicians (all IV posts do).**

30. AILA members report that consulates have been cancelling F and J nonimmigrant visa interviews for Afghans, with no explanation and no new date for visa interview. What has led to these cancellations and what efforts are being made to provide new appointment dates for these applicants?

**Any nonimmigrant applicants who may have had their interviews cancelled are welcome to request a new interview. Subject to local restrictions, consular sections have been encouraged to interview applicants temporarily present in their consular districts in a manner that is as balanced and equitable a manner is possible, with resident-like status given to residents of a country in which there is no visa processing post.**

#### *Adjudication Statistics*

31. According to the [DOS website on SIVs](#), a total of 34,500 SIVs have been allocated since December 19, 2014, and DOS will continue to issue these visas until “all visa numbers allocated under the Act are issued.” Please provide the following information on SIV processing—
- How many additional SIVs have been issued?
  - How many are currently pending at NVC?

**Data on the SIV program is available in the quarterly Joint Department of State and Department of Homeland Security reports on [travel.state.gov](http://travel.state.gov).**

32. Would DOS be willing to provide statistics as to how many humanitarian parole foils for Afghans have been processed and at what posts? Thousands of Afghan humanitarian parole applications have been filed at USCIS since August 2021. Does DOS meet

regularly with USCIS to determine the pace at which these cases are being adjudicated so as to aid in planning for DOS's adjudication of the humanitarian parole foils at posts?

**We defer to USCIS on statistics regarding humanitarian parole adjudications.**

33. AILA understands that the Refugee Processing Center (RPC) is operated by the DOS Bureau of Population, Refugees, and Migration (PRM) in Arlington, Virginia and provides the necessary technical support to assist DOS/PRM in achieving its annual U.S. Refugees Admission Program (USRAP) objectives. As of August 2, 2021 Afghan nationals affiliated with the U.S. government may be referred to USRAP if they meet certain eligibility criteria. In order to qualify for the P-2 visa, a U.S. government agency must refer that person to USRAP. AILA members would like to understand more about the referral process and how these visas are handled by RPC and DOS in general.

- a. How many P-2 referrals have been made to USRAP for Afghans since January 1, 2021?
- b. How many P-2 referrals for Afghans are currently in the queue pending adjudication?
- c. How many DOS officers/staff are involved in adjudicating these P-2 referral requests?
- d. What are the main U.S. agencies currently making these referrals?
- e. Once a referral has been made, what are the next steps taken by DOS?
- f. Can you provide an estimated timeframe for steps involved in this process?

**The Bureau of Consular Affairs does not have a direct role in refugee processing and does not have responsive information to share.**

*Evidentiary Issues*

34. As is widely known, Afghan SIV applicants face significant threat to personal safety as well as serious logistical impediments to obtaining all of the documentation required for submission of a COM letter. For example, Afghans lack access to technology, identification documents, and may not be able to locate and communicate with former supervisors in order to obtain the required letter of recommendation. Based on these challenges, would DOS consider revisiting the need for a letter of recommendation? Will DOS consider allowing the applicant to document the required criteria through other types of evidence that verifies their employment?

**A positive recommendation or evaluation from the applicant's supervisor, the person currently occupying that position, or a more senior person is required by the Afghan Allies Protection Act of 2009.**

**The Department is working with the Department of Defense (DOD) on an effort to help provide employment information for SIV applicants who worked for DOD contractors or sub-contractors to assist in employment verification and in the Chief of Mission's (COM's) determination that the applicant provided "faithful and valuable service" to**

**the U.S. Government, one of the most burdensome portions of the process for both SIV applicants and their employers.**

35. Given the dire circumstances faced by Afghan nationals, AILA appreciates [USCIS's flexibility with regard to the I-134 affidavit of support requirement](#) for humanitarian parole under 8 USC Section 1182(d)(5). Please confirm that DOS is following USCIS's lead and is taking an equally flexible stance with regard to the I-134 at the time of the consular interview.

**Consular officers do not review the I-134 at the time of the consular interview or make any determinations regarding parole eligibility. The consular officer's role is to confirm identity, collect biometrics, run systems checks, and if there are no concerns to flag for USCIS, issue the boarding foil.**

36. *Waiver of Visa Application Requirements:* Given the dire humanitarian emergency faced by Afghans, would DOS consider waiving some of the visa application requirements?

**We are not currently considering a new blanket waiver of any visa application requirements for Afghan nationals.**

**We continue, as much as possible, to expedite processing of SIV applications at all other stages of the process that can be performed remotely, such as assessing applicants for COM approval and DHS's adjudication of the petition for special immigrant status. We are committed to working with Congress and our interagency partners on ways to further streamline the SIV process. This effort is of utmost importance to the U.S. government.**

37. *Passport Requirements* - Every day that U.S. allies remain in Afghanistan, they risk violence and death at the hands of the Taliban. A significant number of Afghans have pending or approved humanitarian parole or SIV applications or have been selected for DV-2022; however, they cannot complete processing because they lack Afghan passports. Afghan nationals who do not have passports face a nearly impossible task in trying to obtain them, as applying to the Taliban government for passports would be akin to handing them over to their oppressors and could potentially render them excludible based on terrorism (TRIG) grounds.

g. Would DOS consider waiving the passport requirement for humanitarian parole and other Afghan visa applications or accepting alternative forms of evidence?

**A passport is still a necessary and important identity document for international travel. However, in certain circumstances, with U.S. Customs and Border Protection (CBP) concurrence in granting a passport waiver, we can place a physical visa on a secure form instead of on a passport.**

- h. Has the DOS asked the DHS Secretary to waive the passport requirement for the 2,189 Afghan DV-2022 selectees who cannot obtain passports from the Taliban?

**The Department has not requested the passport requirement for Afghan DV selectees be waived.**

- i. What, if anything, is the DOS doing to assist these individuals in obtaining travel documents to facilitate their evacuation from Afghanistan?

**The Department is unable to facilitate visas to third countries for Afghans, nor does the Department have control over the actions of third-party entities responsible for travel documents, including the Taliban.**

- j. The Taliban is designated as a [terrorist organization](#). Providing material support to a designated terrorist organization, including providing funds to a terrorist organization or its members, can render an individual excludible from the United States under INA 212(a)(3)(B). Can DOS please address whether it views paying a passport application fee to the Taliban as material support which would trigger the terrorism grounds of inadmissibility?

**As described in INA 212(a)(3)(B)(iv)(VI), “material support” to a terrorist organization includes any provision or transfer of funds. The Department considers the facts of each application on a case-by-case basis. We appreciate the implications of the question and agree the issue warrants careful consideration.**

### *Staffing*

- 38. In the weeks leading up to and following the withdrawal of U.S. military from Afghanistan, it seemed that the entire DOS apparatus globally was involved in evacuation and visa processing efforts. AILA appreciates the tireless commitment and dedication exhibited by the DOS during this time. Can Consular Affairs please comment on the extent to which its resources continue to be involved in this effort--
  - a. Given that certain countries are easier for Afghans to travel to (such as, Iran, Pakistan, UAE, Qatar, and Tajikistan) has DOS assigned or has DOS considered assigning additional resources to posts in those countries (with the exception of Iran)?
  - b. Specifically, do officers at posts around the world and at DOS headquarters continue to assist in these efforts?
  - c. What specific assistance do these remote resources provide?

**We are committed to providing access to Afghan immigrant visa applicants, who may request their cases be transferred to any immigrant visa processing post to which they can safely travel. We continue to prioritize Afghan applicants for immigrant, special immigrant, and diversity visa processing. We do add resources to posts around the world as needed to address significant workload challenges.**



## **Alternative Embassy/Consulate IV and NIV Processing**

39. 9 FAM 504.4-8(E)(1) defines a “homeless visa applicant” as “one who is a national of a country in which the United States has no consular representation or in which the political or security situation is tenuous or uncertain enough that the limited consular staff is not authorized to process IV applicants.” As of the date of this writing, this section lists the nationalities currently considered “homeless”; namely, Cubans, Eritreans, Iranians, Russians, Libyans, Somalis, South Sudanese, Syrians, Venezuelans and Yemenis, and notes the respective IV processing posts that are designated for each of these nationalities. AILA appreciates the recent addition of Russia to this list. Although the Embassy in Kabul, Afghanistan closed in late August of this year, Afghans are notably missing from the list of homeless nationalities. Since there is no consular representation in Afghanistan, Afghans satisfy the “homeless” definition above. Can DOS please advise whether it is in the process of designating specific IV processing posts for Afghan nationals?

**Currently Afghan nationals may contact any IV processing post to which they are able to travel for consular services.**

40. AILA acknowledges the dedication of consular officers at the Embassy in Port-au-Prince who continue to process a limited number of immigrant and nonimmigrant visa applications in a very complex environment. Given the tenuous political and security situation in Haiti, has Consular Affairs considered designating Haitians as a homeless nationality under 9 FAM 504.4-8(E)(1) and appointing other posts in the region to assist Embassy Port-au-Prince with IV applications? Would other posts in the region be willing to accept third country national (TCN) nonimmigrant applicants from Haiti?

**U.S. Embassy Port au Prince still provides consular services, though appointment availability has been impacted by COVID, security concerns, and recent fuel shortages. As conditions permit, U.S Embassy Port au Prince will also process a limited number of cases for spouses, fiancés, children, parents, and siblings of U.S. citizens and spouses and children of U.S. Lawful Permanent Residents. Haitian IV applicants may request to transfer cases to other posts where they are able to travel. For IV case transfers, nonresident third country nationals must be physically present in the consular district with permission from the host government to remain there legally for the time it takes to process the case.**

41. 9 FAM 504.4-8(E)(2)(b) indicates that homeless nationals physically present in a third country “are processed at the same IV processing post as are nationals of that country” and further notes that “(p)osts *must accept* for processing any IV applicant who is physically present in their consular district, provided the applicant has the permission of the host government to remain there legally for a period sufficient to complete processing of the application” and unless they have been determined not to be refugees. (emphasis added). It is AILA’s understanding that the process by which IV files are transferred from NVC to post involves the post’s monthly request for a certain number of files for specific

IV categories. Based on the above, the FAM appears to compel the designated posts and posts in which homeless individuals are physically present to accept homeless cases on the same basis as it does for its own nationals. Please confirm the following:

- a. When a post requests IV files from the NVC, does the NVC aggregate the documentarily qualified cases with current priority dates for citizens of the host country where the consulate is located, plus those of individuals physically present in that country plus those of nationals for whom they are a selected IV processing post, and then send the files based on when they became documentarily qualified as well as based on earliest priority date, regardless of nationality?

**As post-specific conditions permit, NVC will schedule immigrant visa interviews based on post capacity. Posts generally don't request specific files; instead, they provide interview capacity by visa category. Posts will determine the volume of visa services that they can provide while prioritizing the health and safety of consular staff and applicants. Upon visa availability, NVC fills their available appointment capacity in a first-in, first-out manner based on the date the case was deemed documentarily complete.**

- b. AILA members have reported situations in which designated IV posts appeared only to entertain IV applications for nationals of the country where they were located/in residence. Does this FAM section prevent posts from being able to request a specific number of visas for nationals of the host country (to the possible detriment of homeless applicants designated for or physically present in their consular district)?

**We recently advised posts that they rarely should refuse to accept IV applications for those physically present but not resident in the consular district, subject to local restrictions and post capacity. We also informed posts that, with regard to 'homeless' nationalities, they should schedule them in a manner as balanced and equitable as possible, with resident-like status given to residents of a country in which there is no visa processing post. Applicants seeking to transfer a case should be willing to process the case entirely at the other location, including conducting a medical examination there.**

**To change the processing location, the most effective way for legal representatives is to send the request through NVC's online Public Inquiry Form, along with proof of residency and an address in the new country of jurisdiction.**

**In the event the residency of an applicant remains in question, NVC will forward the request to the appropriate U.S. Embassy or Consulate for their**

**consideration. The consular officer makes a factual determination depending upon the case's unique circumstances and may deny a transfer request if the applicant's legal residency in the new jurisdiction is not established.**

- c. Does this FAM provision prevent posts designated to process homeless nationality cases from being able to request a specific number of IV cases broken down by nationality?

**See above response.**

42. 9 FAM 504.4-9 governs the transfer of IV files and notes that it is the “applicant’s responsibility to locate a post willing to accept the case and to ask the receiving post to request transfer of the petition on their behalf.”

- a. What factors does a post consider when making a determination of its willingness or ability to accept a TCN file for processing?
- b. Is the discretionary authority to accept IV cases under 9 FAM 504.4-9 inapplicable to posts designated to accept homeless nationality cases under 9 FAM 504.4-8(E)(2)(b)?

**a. When posts consider requests to transfer immigrant visa cases for processing, they consider factors such as local restrictions, demand and post capacity, and whether the applicant is physically present in the consular district and has the permission of host government authorities to legally remain for the time it takes to process the immigrant visa.**

**b. Designated posts process the IV cases for applicants of homeless nationalities. They must be physically present and have host government permission to remain there for the time it takes to complete processing.**

43. Due to the lack of a diplomatic mission in Iran, U.S. IV applicants are directed to Abu Dhabi, Ankara, or Yerevan for interviews. However, all three posts are denying interview transfer requests, stating that they are not processing third country nationals due to COVID-19. Does the DOS have a plan to remedy this issue for immediate relatives of U.S. citizens? For diversity visa selectees?

**The U.S. embassies in Ankara, Abu Dhabi, and Yerevan are designated processing posts for applicants resident in Iran who indicate their preferred processing posts. These applicants do not need to have their cases transferred if they intend to process at the designated processing post they selected. However, they would need to request transfers if they would like to change to another processing post. We are not aware of any of these posts categorically denying transfer requests. If AILA has additional information that illustrates the nature of the concern animating this question, we would be happy to consider it.**

**While posts work through the IV case backlogs, CA encourages posts to accommodate IV case transfer requests from non-resident TCNs physically present in the consular district with permission to remain there legally for the time needed to complete IV processing. If the IV case is with NVC, IV applicants seeking to change processing posts should contact NVC to request a case transfer. For FY 2022 diversity visa (DV) cases still at KCC, all applicants seeking reassignment, including applicants assigned to posts where there are no visa services available, should contact KCC at KCCDV@state.gov to request a case reassignment.**

**As worldwide restrictions due to the COVID-19 pandemic begin to ease, and in line with the President's proclamation regarding the safe resumption of international travel, the Bureau of Consular Affairs is focusing on reducing wait times for all consular services at our embassies and consulates overseas while also protecting health and safety of our staff and applicants. Although local conditions and restrictions at individual consular posts may continue to fluctuate, embassies and consulates have broad discretion to determine how to prioritize visa appointments among the range of visa classes as safely as possible, subject to local conditions and restrictions.**

44. AILA understands that per 9 FAM 403.2-4(B) individuals may apply for nonimmigrant visas at posts in any consular district where they are physically present, but that ultimately, each post sets priorities regarding whether and how many third country national applicants to accept. Based upon this framework, DOS has not designated NIV posts for homeless nationalities as it has in the IV context. During the pandemic, nonimmigrants sought opportunities to apply for visas in third countries, either to remove themselves from applicability of a regional travel ban, or because the post in their home country was not issuing appointments for the visa classification sought. COVID pressures and increased requests for TCN processing seemed to make posts less receptive to TCN processing. This has had a more acute impact on homeless nationalities, who lack an effective home country consulate and are at the mercy of a post being willing to accept them. This often leaves these individuals without recourse. Given the unique challenges posed by the pandemic, and to ensure some degree of access to nonimmigrant visa interviews for this population, would DOS be willing to entertain NIV post designations for homeless nationalities on a temporary basis?

**The Department generally does not designate posts for NIV applicants. Posts are able and encouraged to apply in any locale where they are physically present, subject to local restrictions, as long as the post in that location processes the relevant categories of cases. The Consular Affairs Bureau recently advised posts to work to open their appointment schedules, in as balanced and equitable a manner as possible, to IV and NIV applicants present in their consular districts, with resident-like status given to residents of a country in which there is no visa processing post.**

## Immigrant Visa Appointments

45. AILA understands that posts had an inventory of IVs awaiting interview at the time the pandemic began that had not been processed. Please confirm whether it is DOS's expectation that posts *should* interview these applicants first, prior to requesting new documentarily qualified case files from NVC.

**Previously, posts were working through any immigrant visa backlogs due to the pandemic according to the tiered prioritization that was rescinded in November 2020. Processing of immediate relative and K visa applications, and family preference cases consistent with Congressional direction remains a priority. NVC continues to schedule IV cases ready for interview, working with posts to adjust for interview capacity.**

46. Members whose clients' files were at post pending interview when routine visa services were suspended report contacting a post's customer service line to "reactivate" a case, only to be directed in an endless loop of completing an inquiry and then being redirected back to customer service. What is the most effective way to get IV cases at post back into the interview queue?

**As posts resume routine visa services, the best way to contact a post's immigrant visa unit regarding an IV case is through the method described on their website and on any interview documents provided by post.**

## KCC

47. It is AILA's understanding that KCC policy disallows a DV selectees who are documentarily qualified to transfer their cases to another consulate until the case is scheduled at the assigned consulate. This is problematic for homeless nationalities or those where the U.S. consular post has closed in the interim, such as for DV selectees assigned to Moscow, Kabul, or Baghdad. In light of the impossibility that its policy creates for homeless nationalities, would KCC consider modifying its policy to effect immediate case transfers for DV selectees from homeless nationalities?

**First, KCC has temporarily halted document review for DV-2022 and is scheduling cases, in rank order, once processing of the selectee's DS-260 is complete, the case number is current, and there is an appointment available at the assigned post. Second, it will also be helpful to define terms. For DV purposes, a case can be reassigned to another post prior to scheduling and transfer to post. Reassignment simply moves the selectee from the queue of cases to be scheduled at one post, to the queue for a different post. Any selectee, including those mentioned above, can write to [KCCDV@state.gov](mailto:KCCDV@state.gov) to request reassignment prior to scheduling, and we encourage anyone assigned to a post that is closed to do so. Once a case is scheduled, then a transfer instead of a reassignment must be requested as described in the question. All cases originally assigned to Embassy Moscow have been reassigned to Embassy Warsaw in accordance with the designation of that post for IV processing. For cases assigned to Kabul and**

**Baghdad, it is our policy to approve reassignment without qualification to any requested DV-processing post. Please be aware that DV selectees, like all immigrant visa applicants, must be physically present in the consular district where the embassy or consulate is located at the time of interview and have permission to remain in country by the host government for a period sufficient to complete making and processing of the visa application.**

48. In the past, AILA members with DV questions were able to speak with a KCC officer by telephone, but this method of communication was discontinued. Would KCC be willing to reinstate telephonic inquiries as part of its customer service initiatives?

**The call center at KCC was closed to mitigate risk to our staff during the pandemic. No decision has been made at this time to reopen that call center. Doing so would also draw resources currently being used to keep our response time on emails low, and to process and schedule DV cases.**

## **PIMS**

49. Members recently reported O-1/O-2 visa issuance delays due to PIMS not being updated with petition approval at the time of applicant interview at posts such as London, Frankfurt, Madrid, Sao Paolo, Mexico City, and Frankfurt, among others. Based on AILA's last meeting with [KCC from April 25, 2019](#), once approved petitions arrive at KCC, processing times by KCC for approved petitions were: one day for O, P, T, and U visa petitions; and three days for all other petition categories. Does the PIMS entry process and processing times remain the same? Would KCC consider publishing approximate timelines for PIMS entry process of the petition approval for the various visa categories on the Department's public-facing website for the public's reference?

**That accurately reflects our processing guidelines, and the contractor is currently meeting requirements for processing I-129 documents. Please ask petitioners and applicants not to schedule appointments until they have received an approval notice. In many cases we also depend on petitioners providing the optional second copy of their documents to USCIS, and USCIS providing KCC with that copy. While electronic processing and transmission is increasing, we still receive a significant portion of I-129 documents by USCIS shipping those documents to us. We are working on process improvements that will increase the number of PIMS records created based on approval notices alone, but posts may require additional information not present on an approval notice in order to complete processing of some applications.**

50. During the April 2019 meeting, the KCC confirmed that it was working to implement a digital NIV petition file transfer process with USCIS that would eliminate the need to file duplicate copies. What is the status of this process?

**We are working closely with USCIS on the expansion of ELIS processing and electronic transmission to new visa classifications. This system allows us to automate several steps**

**and eliminates the need to scan documents since it is digital from start to finish. We also continue to work on the project we believe you are referring to, in which hardcopy I-129 documents are scanned and transmitted to KCC electronically.**

## **Nurses**

51. Members report many documentarily qualified RNs from the Philippines waiting for IV interviews. Considering the pandemic and the critical nursing shortage in the U.S., would DOS consider increasing IV officer staffing in Manila and prioritization of nurse IV appointments?

**Recognizing the importance of healthcare workers, we have asked that our top healthcare IV issuing posts, including Manila, prioritize these appointments when possible. Worldwide, we expect to adjudicate 5,000 visa applications for healthcare workers and their family members between December 1<sup>st</sup> and the end of February. Manila alone is expected to adjudicate nearly 4,000 visa applications for healthcare workers and their family members during this period. These numbers are, of course, estimates. Changing conditions related to the ongoing pandemic and other factors may positively or negatively impact the actual numbers. Manila has already reported an almost 100 percent increase in cases processed in this FY, over those processed in prior FYs, including those before the pandemic. We have prioritized filling vacant officer positions in Manila in order to accommodate demand for healthcare and other IVs.**

52. AILA understands that nurses who will work at a facility engaged in pandemic response and have an approved U.S. IV petition with a current priority date for an Immediate Relative, Family Preference, or Employment-Based Preference case may review the website of their nearest U.S. embassy or consulate for procedures to request an emergency visa appointment. Would Embassy Manila please consider establishing a separate email address for nurse expedite requests?

**Please continue to use the existing visa inquiry form at:**

**<https://ph.usembassy.gov/visas/immigrant-visas/immigrant-visa-inquiry-form/>.**

**Consular staff at Embassy Manila will prioritize any inquiries from healthcare workers.**

53. As a result of priority date backlog delays, some nurses with approved I-140 petitions and cases pending at NVC have sponsors who are no longer active (*i.e.*, the employer withdrew the offer of permanent employment). Some of these nurses have new petitioners and newly approved I-140s. The NVC has scheduled some of these nurses for interviews based upon the old/inactive case and the nurses have appeared for the interview with proof of the new I-140 and NVC case number. When this occurs, members report inconsistency in how these cases are handled. Some posts/officers have allowed the nurses to proceed with the interview based upon the new petitioner, while others have refused the visa and required them to go through the NVC process again with the new petitioner. It seems to be a waste of time and resources to require the nurse to go through a second NVC process. Is DOS willing to consider issuing guidance to posts

encouraging them to proceed with the interview in such cases to avoid unnecessary waste?

**We currently are not considering changing 9 FAM 502.1-2(D), so if the employer is different, post should return the petition to USCIS. Per 9 FAM 302.1-5(B)(14), post should also return the unused certificate to the approving office of USCIS under cover of a memorandum because the job offer has been withdrawn. Per 9 FAM 302.1-5(B)(10), invalidation of the labor certification automatically revokes the petition in accordance with the DHS regulations at 8 CFR 205.1(a)(3)(iii).**

## **Ciudad Juarez**

54. AILA appreciates Ciudad Juarez's (CDJ) efforts to reform its platform for accepting attorney inquiries. The new inquiry template allows attorneys to select the subject of their inquiry from a drop-down menu but eliminates the text box which previously allowed attorneys to provide additional context. further describe the issue and to identify an issue that does not fall within the drop-down options. AILA members found this text box to be extremely helpful in conveying the topic of their inquiry. Is the post in CDJ willing to consider returning this feature to the inquiry template?

**This feature is still present on the public inquiry form for attorneys. Attorneys must answer all required fields before being presented with the comment box to enter their specific question.**

55. Is the post in CDJ willing to consider reinstating the function that allowed a G-28 to attach to the inquiry template? The ability to include a G-28 is critical to ensuring the applicants' right to legal representation, will ensure that the post responds to inquiries by attorneys whose G-28 is not already on file, and would be more efficient.

**Currently, our inquiry forms do not offer this functionality. We understand the importance of an efficient process to submit G-28 forms and are investigating an alternative method of submission and receipt.**

56. AILA greatly appreciates the resumption of immigrant visa appointments in CDJ. During the resumption of IV processing, notification for IV appointments was sporadic and was often issued within just days of the interviews. It has been extremely difficult and sometimes impossible for applicants to arrange travel and complete appointments for biometrics and a medical exam. This is especially important in the context of the I-601A process as the purpose of the program is to minimize disruption of the family unit and avoid lengthy separation.

What is the current process for scheduling IV appointments in CDJ? Are NVC and CDJ working on a solution to allow at least a few weeks' lead time between notification of the appointment and the interview?



**We constantly strive to implement new ways to improve the applicant experience and at the same time reduce the number of applicants who do not arrive on time for interview appointments. Ciudad Juarez and NVC are jointly working on a new solution which will be utilized for applicants who will be scheduled for appointments in February 2022 and beyond. Post and NVC will continue to closely monitor scheduling to ensure all visa applicants receive timely notification of their interview appointments.**

## **Other Consular Processing Cases/Issues**

### ***Waiver Review Division***

57. Our members are witnessing delays of numerous months in WRD updating its case status system to reflect receipt of USCIS's I-613 request for a waiver recommendation. Despite communications with both WRD and USCIS and congressional inquiries, the cases are not resolved, with some members reporting that they are only obtaining relief after filing APA delay/mandamus actions. In other cases, USCIS resends the I-613 request multiple times, but DOS still does not acknowledge receipt. Is WRD aware of these issues? If so, are there any plans to update the system and develop a plan to act on these requests? Would WRD be amenable to working with USCIS to establish a process by which members can inquire to resolve situations in which USCIS claims to have sent an I-613 but WRD has not received it/

**CA regularly engages with USCIS on a variety of issues and will raise this issue with them.**

### ***I-601A Revocations and Inadmissibility***

58. DOS verbally confirmed in a [March 5, 2020 Liaison meeting with AILA](#) that a visa refusal following a finding of ineligibility under 212(a)(4) will cause a Form I-601A provisional waiver to be automatically revoked pursuant to DHS regulations. A refusal under 221(g), however, does not require a finding of ineligibility and may simply indicate a deficiency with the application or the supporting documents presented with it.

Please confirm our understanding that where an application is refused under 212(a)(4) but the deficiency could have been readily cured with new or additional documentation, an attorney may contact LegalNet to request review of the refusal.

Where supported by the facts, LegalNet may point out to a post that changing the refusal from 212(a)(4) to a 221(g) would be appropriate. If so, a revoked I-601A will be reinstated.

If our understanding is correct, please note that there have been recent case examples where this has not happened. Is there a mechanism to raise these types of cases?

**Department comments made during the March 2020 Liaison meeting were based on the FAM notes in effect at that time. Specifically, the public charge notes at 9 FAM 308.2 instructed consular officers to make a public charge determination in certain instances (e.g., if a sponsor's income was insufficient to meet 125 percent of the Federal Poverty**

**Guidelines based on family size and/or needed a joint sponsor who had not submitted necessary documentation) rather than refusing the case under INA 221(g). As a result, many applicants at that time who were refused based on public charge overcame their refusal with the submission of additional evidence. Consequently, there was an increase in provisional I-601A waivers that would have been revoked if not for the accommodation made by the Department noted in the question. The FAM notes in effect during the March 2020 Liaison meeting were enjoined on July 29, 2020, and subsequently replaced. We believe the current FAM notes and adjudication practices gives applicants more opportunities to provide additional evidence, if it appears to the officer that additional evidence may be available, before making a public charge finding. LegalNet has noted a decrease in public charge related inquiries since the current FAM notes were adopted. Thus, there appears to be less need for Department-level intervention in these cases.**

**An attorney may contact LegalNet if they believe a public charge finding in a specific case is inconsistent with current FAM guidance. Please remember that LegalNet cannot review factual findings made by the consular officer. If case-specific circumstances warrants additional review, L/CA will raise this issue with the post in question.**

### *Denials in Honduras and Guatemala for Alleged Criminal Organization Membership*

59. Our committee has received several reports from various AILA attorneys that the embassies in Guatemala and Honduras have denied both IV and NIV applicants for alleged association with or ties to criminal organizations. In all cases, the applicants were young. In one instance, they were the minor children of a successful U recipient. In another case, the teen was (allegedly) denied for having a child with a “gang” member. In one case, the denial was based on INA § 212(a)(3)(B).

The proliferation of illegal armed groups in Central America is tragic and complicated. Innocent people, often youths, are conscribed involuntarily; teen girls are subject to assault and abuse. We opine the incidence of voluntary assistance and association of youths who are your applicants is quite limited and are concerned that the IV and NIV applicants being denied are in fact victims. With the above in mind:

- a. Is there policy or guidance in the Central American visa sections regarding increased scrutiny into these factual scenarios?
- b. What, if any, training is provided to officers in this region to differentiate between gang members and involuntarily conscribed victims?
- c. Is there a specialized database that contains information about supposed armed organization association, and what is the source and reliability of information therein?
- d. What does DOS view as the appropriate ground of inadmissibility where there is no arrest or conviction? It does seem that the terrorism grounds at INA § 212(a)(3)(B) are not intended for local group activities and the allegation would be fact intensive.

- e. Considering consular non-reviewability, AILA asks that if persons are being denied based on an allegation of criminal affiliation, they be notified with meaningful information and given a follow up interview to respond, which may include legal argument.
- f. Considering the considerable stakes involved (victims being denied unification with family in the U.S.), we ask that a separate channel be set up to raise these issues with DOS at a higher level.

**When assessing an individual visa applicant, our consular staff are bound by U.S. immigration law and must adhere to the guidance in the Foreign Affairs Manual. All inadmissibility findings are based on the facts of each individual visa application. Case-specific inquiries raising issues of legal interpretation can be sent to the Department via LegalNet.**

**A visa applicant is found ineligible under INA 212(a)(3)(A)(ii) when a consular officer finds facts supporting a reason to believe the applicant is a member of a criminal organization identified at 9 FAM 302.5-4(B)(2). Except in limited cases, consular officers must request an advisory opinion and receive Department concurrence prior to finding an alien ineligible under INA 212(a)(3)(A)(ii).**

**Our adjudicators receive training on a regular basis. This training includes local conditions and trends in areas controlled by criminal organizations. Generally, whether the circumstances of an arrest or a criminal conviction would result in visa ineligibility is dependent upon the specific facts.**

### *Administrative Processing*

60. In a liaison meeting at the outset of the pandemic, we discussed that there were fewer SAOs accumulating due to fewer visa interviews, but that any progress in reducing the SAO backlog was offset by the fact that agency employees required to clear SAOs were working from home and had less frequent access to those sensitive databases. What is the current state of the SAO backlog? Is the backlog decreasing, is it roughly the same, or is it increasing? In light of the administration's desire to increase transparency, would DOS be willing to report statistics on the number of pending SAOs, as well as those cleared within a given period?

**The SAO backlog remains substantial for similar reasons reported at the outset of the pandemic. Though we were able to process numerous longer-standing SAOs in the time when the inflow of SAOs was reduced, the inability to be fully staffed in-office did and continues to hinder our ability to put a significant dent in the SAO backlog. We will continue to strive to minimize the length of administrative processing and remain able to clear the vast majority of SAOs within a 30-day period. There are no plans to publish additional statistics on SAOs at this time.**

### *Consular I-212 Filings*

61. USCIS's Form I-212 instructions state that I-212's filed by nonimmigrants located outside of the U.S. must be filed overseas and to contact the U.S. consulate nearest them for filing instructions. Please describe the process of how to file I-212's at U.S. Consulates overseas. In particular, please advise where the public can find instructions for how to file such requests with Embassy New Delhi.

**As reflected in paragraph (b)(1) of 9 FAM 302.11-2(B)(5) (U) Permission to Reapply or Consent to Reapply (CTR), a Form I-212 may not be required in certain situations; however, when it is required, to determine how best to file a I-212, an applicant or a legal representative should first determine whether there is a DHS office at the relevant embassy or consulate. If not, they should email the consular section asking how best to proceed. In the case of New Delhi, they should contact the USCIS New Delhi Field Office: <https://www.uscis.gov/about-us/find-a-uscis-office/international-offices/india-uscis-new-delhi-field-office>.**

62. According to Visa Medicals-London, there was a change in procedural/technical guidance requiring that any IV applicant who was arrested at any time for an alcohol-related offence must undergo additional screening. Can you please provide us with a copy of that new guidance?

**The relevant guidance can be found in the FAM at:**

**<https://fam.state.gov/fam/09fam/09fam030202.html>.**

**The guidance on alcohol-related offenses is 9 FAM 302.2-7(B)(3)(b) and (c):**

**b. (U) Referring Applicants to the Panel Physician: To ensure proper evaluation, you must refer applicants (immigrant and nonimmigrant) to the panel physician when they have:**

- (1) (U) A single alcohol related arrest or conviction within the last five years;**
- (2) (U) Two or more alcohol related arrests or convictions with the last ten years;**

**or**

- (3) (U) If there is any other evidence to suggest an alcohol problem.**

**c. (U) Medical Examination Required: Applicants, including NIV applicants, who are referred to a panel physician due to alcohol-related offenses must receive a full medical exam evaluation, less the vaccination requirements for nonimmigrant visa applicants. Chest X-rays and any other necessary testing must be conducted for the exam to be considered complete.**

### *UK Cautions*

63. British police are estimated to give out over 200,000 cautions each year; they are issued at the scene for minor crimes. Cautions do not need to be disclosed under the UK Rehabilitation of Offenders Act. However, the DOS considers the Caution to include an admission of guilt

if issued after July 10, 2008, possibly forming a criminal ground of inadmissibility. To qualify as an “admission to the essential elements” of a crime involving moral turpitude or a controlled substance violation, the elements of the underlying statute must be explained to the individual, and a knowing, explicit admission must be made. 9 FAM 302.3-2(B)(4); *Matter of K-*, 9 I&N Dec. 715 (BIA 1962). In the context of visa processing, the foreign statute (in this case, minor British crime) must be compared to a U.S. counterpart—in the situation of Cautions, the Washington D.C. Code. 9 FAM 302.3-2(B)(2); *Matter of Katsanis*, 14 I&N Dec. 266, 268 (BIA 1973). Hence many steps are involved in the analysis: identification of the underlying crime, determination that a complete reading and admission were obtained, and comparison to a comparable D.C. Code violation. Added to this analysis is the potential difficulties in applicants obtaining documents.

AILA understands that in July 2008 and later in 2014 there was a change in Visa Office policy based on changes to the language on a Caution. Today, DOS policy is that a Caution could be a 9 FAM 302.3-2(B)(4) admission; however, in practice, the FAM requires the following, which are not present in the Caution scenario:

- (3) (U) An officer must give the applicant a full explanation of the purpose of the questioning. The applicant must then be placed under oath and the proceedings must be recorded verbatim.
- (4) (U) The applicant must then admit all the factual elements which constituted the crime. See *Matter of P--*, 1 I. & N. Dec. 33 (BIA 1941).
- (5) (U) The applicant’s admission of the crime must be explicit, unequivocal, and unqualified. See *Howes v. Tozer*, 3 F.2d 849 (1st Cir. 1925).

In the Caution scenario, there is no evidence of a verbatim recording of the admission, nor of a recitation of all the factual elements of the crime involving moral turpitude, and, as a result, the “admission” is not explicit as to those elements.

AILA respectfully requests that the DOS reconsider their policy regarding Cautions as triggering an admission to the essential elements of crime. Reconsideration of this policy, which affects many visa applicants, is merited as a matter of substantive legal analysis, as well as based on the philosophy behind the Caution as a “warning” for minor crimes, not intended to have punitive consequences.

**The Department acknowledges AILA’s request to reconsider Department policy and will give consideration to modifying our FAM guidance in light of points raised in the inquiry. However, the Department maintains that a caution issued after July 2008 constitutes a legally-valid admission under 9 FAM 302.3-2(B)(4).**

**On July 10, 2008, the change to the process by which police in the UK administered cautions was publicly announced. The most significant change was that the offender must have agreed to having committed each of the essential elements of the underlying offense. Additionally, the caution form itself changed to specifically include language stating that accepting the caution could potentially prevent international travel and/or immigration. The post-2008 requirements for the caution process are laid out in the UK’s Criminal**

**Justice Act 2003 (as amended by the Commissioners for Revenue and Customs Act 2005, the Police and Justice Act 2006 and the Criminal Justice and Immigration Act 2008) and the accompanying “Revised Code of Practice for Conditional Cautions.” These requirements are consistent with requirements under U.S. law that an alien must be given an adequate definition of the crime, including the essential elements of the offense, in terms that he or she understands as summarized in 9 FAM 302.3-2(B)(4)(a)(2) and (4).**

**Furthermore, the 2008 revisions required that “the full implications [of the caution] must be explained and provided in writing to the offender.” For a conditional caution, the offender must sign a document which contains “the details of the offense, an admission by him that he committed the offense, his consent to being given a conditional caution, and the conditions attached to the caution.” These requirements mean that, consistent with the UK code, a defendant receiving a caution after the year 2008 was given a full explanation of the purpose of the questioning, and that the proceedings were documented, which mirrors the requirements set forth in 9 FAM 302.3-2(B)(4)(a) (3).**

**Additionally, the 2008 revisions mandated that “under no circumstances should suspects be pressed, or induced in any way to admit offences in order to receive a simple caution as an alternative to being charged.” The revisions also required that the person receiving the caution must have had access to legal counsel if he or she requested it, the person cannot have been mentally unstable or impaired by drugs or alcohol at the time of the caution proceedings, and the communications must have been in the person’s native language. These requirements are consistent with the U.S. requirements that admissions be voluntary as required under BIA precedent and summarized in 9 FAM 302.3-2(B)(4)(a)(5).**

**The only requirement for admissions at 9 FAM 302.3-2(B)(4)(a) that is not required for a UK caution is that the individual be placed under oath at the start of the proceedings and a verbatim transcript of the proceedings must be kept. The lack of an oath requirement under UK law does not mean that a caution cannot constitute an admission for the purpose of applying section 212(a)(2)(A). The requirement that “[t]he applicant must be placed under oath and the proceedings recorded verbatim” was a policy determination and applied when consular officers obtain the admission; however it is not required by any administrative or judicial decisions, and nor does DHS include this in their policy guidance to Customs and Border Protection. (See AILA Doc. No. 14041600, April 9, 2014.)**

## **Foreign Affairs Manual (FAM) Revisions**

Procedures for drafting, clearing, formatting, and issuing FAM material are given in 2 FAH-1, Foreign Affairs Manual Standards. The public’s interactive link to view 2 FAH-1 has been extremely helpful and informative in the past, but has been inaccessible to the public for an extended period. Will the Department be restoring this link, or has there been a formal decision to make 2 FAH-1 unavailable to the public?

**As of June 18, 2019, the previous version of 2 FAH-1 H-110 (CT;FPH-6; 04-13-2011) is unassigned. Further questions about 2 FAH should be addressed to**

**PublicFamFahSearch@state.gov.**

64. The public has precious few opportunities to learn of policy and procedural changes to 9 FAM. For example, the 81 listings on the 9 FAM Change Transmittal Listings available on the date of this writing, contained 56 technical/plain language correction listings, and 13 “Unavailable” listings. In other words, 85% (69 of 81) listings were technical, grammatical or classified. In the past, the DOS would notify the public of a new policy, or a change in policy, affecting an urgent or compelling situation by publishing a cable (ALDAC) on its website, prior to being codified in the FAM. This practice was very helpful so the public understood changes that may impact their cases.

- a. Is the DOS planning any revisions to the Foreign Affairs Manual in the near future given the change of administration and fast-moving policy changes?

**The Department amends the FAM when warranted by changes in policy or to clarify existing guidance. FAM amendment procedures have not changed. ALDACs related to 9 FAM changes are sent only for substantive changes the Department determines warrant publication. Technical or grammatical changes to 9 FAM changes are not announced by ALDAC.**

- b. If there are scheduled revisions, how will these changes be communicated to the public?

**FAM revisions are not published on any set schedule. ALDACs will continue to be sent as warranted.**

## **Renunciations**

65. Are any posts processing citizenship renunciation requests? When will renunciation adjudications resume?

**Yes, some posts are processing requests for CLNs, but others are not. Resumption of services at a U.S. embassy or consulate depends on a wide variety of factors, including local conditions and the need to protect the health and safety of post staff and visitors during the pandemic.**

## **Consular Reports of Birth Abroad**

66. [Form DS-2029](#) has not yet been revised to reflect the Department’s updated interpretation and application of INA Section 301, as announced in May 2021. Under this updated policy, there is no longer a requirement that a child’s genetic parents be married to one another for a child to be considered born in wedlock. A child is now considered to be born in wedlock when the child’s legal parents are married to one another at the time of birth and at least one of the legal parents has a genetic or gestational relationship to the child.

The current version of Form DS-2029 asks: “Were you married to the child's other biological parent when the child was born? (Page 2, Q 20). This question is the source of confusion to applicants and consular officers alike, given the updated policy which was announced six months ago. Can you please inform us when the form will be updated?

**Because of the Department's updated interpretation of INA Section 301, language changes may be required on Form DS-2029, Consular Report of Birth Abroad. The forms review process for the DS-2029 was only recently completed, and the next OMB renewal process for the DS-2029 is scheduled to begin in Q1 of 2023. The Department plans to update the form with this substantive change. To the extent that the question is causing confusion, applicants can refer to travel.state.gov at <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/us-citizenship/Assisted-Reproductive-Technology-ART-Surrogacy-Abroad.html> and <https://www.state.gov/u-s-citizenship-transmission-and-assisted-reproductive-technology/> for clarification and additional information.**

#### **Right to Counsel/Attorney Representation at Interview**

**67.** A July 2021 FAM update (9 FAM 602.1-3) advises consular posts that “when post believes an attorney or other U.S.-based intermediary has behaved unethically or there is *another good reason* to do so, it may limit or even eliminate that individual’s access to post and authority to correspond on the applicant’s behalf.” (Emphasis added.) In addition to unethical behavior, please provide examples of good reasons that would justify a post taking this action? Do posts typically consult with the Office of Legal Adviser before taking such action?

**As 9 FAM 602.1-3(b) notes, in addition to unethical behavior, post may limit or eliminate an intermediary’s access to correspond on the applicant’s behalf if they engage in visa fraud. We have no comment on such internal Department communications.**

End