

AILA Department of State Liaison Committee
April 12, 2018

AGENDA

Blanket L

1. AILA members report what appears to be a recent increase in the frequency with which U.S. consulates (e.g., Vancouver, Toronto, London) are rejecting blanket L applications as “not clearly approvable.”

- a. Has VO given any new guidance to consular posts about the documentary requirements for eligibility for blanket L classification?

Answer: 9 FAM 402.12 contains the most recent and up to date guidance on blanket L eligibility. As always, we welcome submissions to LegalNet of individual adjudications that appear to be contrary to the applicable guidance.

- b. If so, how does this guidance differ from that which appears at 9 FAM 402.12-8(A-C)?

Answer: See above.

- c. Does State follow the guidance found in the AAO decision *Matter of G*?

Answer: We believe that the guidance in the FAM is consistent with this decision. However, where analysis similar to the AAO’s decision is required to determine if a particular applicant will work in a “managerial capacity,” the visa application may not be *clearly* approvable.

2. 9 FAM 402.12-14(B)(a) describes the job duties that must be performed for a position to be considered “managerial” for L-1A purposes. The duties may involve either the management of personnel or an essential function. AILA members report increasing instances of blanket L applications for function managers being denied on grounds that the worker will not directly manage personnel.

- a. Is the guidance found in 9 FAM 402.12-14(B)(a) still current?

Answer: Yes.

- b. Has State provided new guidance to consular officers relating to function managers?

Answer: No.

- c. If new guidance has been provided, how does it differ and what is the statutory or regulatory basis for the change?

Answer: See above.

Visa Revocations for Domestic Violence

3. Members report instances of visa holders who have been arrested for domestic violence offenses in the United States being contacted by consulates to advise them that their visas have been revoked. This appears to be happening before the individual is convicted of any offense. We understand that the Department can revoke a visa at any time even if the visa holder is in the United States. However, we would appreciate clarification of the following:

- a. Is domestic violence now an offense for which a visa may be prudentially revoked while the holder is in the United States?

Answer: As a matter of long-standing policy, the Department prudentially revokes a visa when it receives information that a visa holder has been arrested for any crime, including domestic violence, that may result in a visa ineligibility.

- b. Has there been any policy change expanding the number or types of offenses for which a visa may be revoked prior to a conviction?

Answer: There has been no policy change expanding the number or types of offenses for which a visa may be revoked prior to conviction.

- c. Are there any other offenses that are currently being considered for which visas may be prudentially revoked following an arrest but prior to a conviction? If so, what are they?

Answer: As explained in part (a), the Department already prudentially revokes a visa when it receives information that a visa holder has been arrested for any crime that may result in a visa ineligibility.

Visa Revocations and USCIS Benefits

4. During our last meeting we discussed the issue of USCIS refusing immigration benefits to individuals whose visas had been prudentially revoked following a DUI arrest. Based on reports from AILA members, it appears that this is an ongoing issue. Following our meeting on October 19, 2017, we understand that it is State's position that prudential revocation of a visa is effective only upon the departure of an individual from the United States. We also understand that State intended to follow-up with DHS concerning the issue of when prudential revocation of a visa is deemed to take effect. Please provide an update on this issue, including whether State and DHS have had the opportunity to discuss this issue and if appropriate, the outcome of those discussions.

Answer: We have worked with USCIS on draft guidance to their adjudicators on this issue. To our knowledge that guidance has not been finalized yet. The Department would appreciate AILA members sharing specific examples of this for use in further discussions with USCIS colleagues.

Reasons for Visa Revocation

5. Under 9 FAM 403.11-4 (A), a visa holder must, when practical, be allowed the opportunity to show why the visa should not be revoked. However, this is difficult to do when the visa holder does not know, even generally, the circumstances that led post to believe they are no longer eligible for the visa already issued. Most applicants in this situation are given a standard 214(b) notice; however, INA §214(b) is too broad to apprise an individual of the reason for revocation with enough specificity to rebut the allegation. Since a request under the Freedom of Information Act yields only information previously submitted by the applicant and posts/LegalNet will not provide substantive information on the reason for the refusal, there does not appear to be any way in which the applicant can meaningfully respond. Would State, therefore, provide guidance on how applicants may be provided with the reasons for visa revocation to permit them to respond in a meaningful way?

Answer: Thank you for bringing this to our attention. The referenced provision, 9 FAM 403.11-4 (A), does not reflect the substance of Department regulations and we will review it. Authorized Department officials may revoke visas at any time, in their discretion, based on concerns of possible ineligibility, without making any eligibility determination. Consequently, while consular officers should attempt to provide notice to a visa holder prior to revoking the visa, when practicable, the notice may not include an explanation of the reason for revocation. Prior notification may not be practicable if, for example, the contact information in the DS-160 is not current or, as can often be the case when 214(b) concerns arise after issuance, the consular officer thinks the visa holder may travel to the United States if contacted prior to revoking. The forum to address visa eligibility issues is the visa interview upon reapplication.

National Vetting Center

6. The February 6, 2018 Presidential Memorandum, “**Optimizing the Use of Federal Government Information in Support of the National Vetting Enterprise**” directs the establishment of an interagency National Vetting Center “to identify individuals who present a threat to national security, border security, homeland security, or public safety.” The National Vetting Governance Board is to be composed of “six senior executives, one designated by each of the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Central Intelligence Agency.” Please provide an update on efforts to create the National Vetting Center, including a time frame as to when it is anticipated that the National Vetting Center will be operational.

Answer: The Department of State is a participant with other agencies in the establishment of the National Vetting Center (NVC), as described in NSPM-9. However, the memorandum directs the Department of Homeland Security to establish the center and appoint a director. Questions regarding the establishment of the NVC should be directed to DHS.

Shorter Visa Validity

7. The revised FAM provision at 9 FAM 403.9-4(B) (U) gives consular officers greater latitude to issue visas for less than the full validity and number of entries permitted by reciprocity. The corresponding cable urges consular officers to issue limited-validity visas, when they have due cause to do so and, particularly when “the applicant’s bona fides in the immediate near term are not in question, but the stability of the applicant’s longer-term ties to his or her residence abroad are in doubt.” AILA members are reporting shorter visa validity in certain cases, particularly on visas issued in Chennai. We note that this new policy appears to be a departure from the approach that has been taken for some time by State to avoid unnecessary repeat visa applications.

a. Does State anticipate an impact on adjudications and visa appointment wait times as a result of this policy change?

Answer: This guidance represents a clarification of existing guidance and policy. We do not anticipate that this clarification will have an impact on visa wait times.

b. Will a waiver of the visa interview be considered for NIV applications that were issued with a shorter validity than that permitted by the reciprocity schedule?

Answer: A prior visa with limited visa validity would not generally be a disqualifying factor for interview waiver. However, per 9 FAM 403.5-4(A)(c), a consular officer may still require an interview of any applicant if he/she doubts the alien’s credibility or veracity.

c. Will the new provision affect L visa validity?

Answer: The discretionary authority accorded by 22 CFR 41.112(c)(1) and (2) applies to all nonimmigrant visas.

d. In addition to the academic course of study, will State take into consideration Optional Practical Training for F-1 students when determining the validity period of the visa?

Answer: As an F-1 student may apply and qualify for Optional Practical Training (OPT) only after the student has commenced a program of study in F-1 status in the United States, the consular officer adjudicating that student’s F-1 application would not be expected to take into consideration the possibility that the student may later seek to participate in OPT when determining whether the student should be issued a full-validity visa or limited visa. We also highlight that 9 FAM 403.9-4(C), paragraph b. advises consular officers to be judicious in utilizing their discretionary authority to limit visas.

e. How is “long term” defined and what type of information/documentation should be provided to establish long term ties?

Answer: The information/documentation would vary depending on the applicant's individual circumstances. The example in 9 FAM 403.9-4(C)(c)(3) is illustrative of the types of information/documentation that could establish long term ties.

For example, in a country with 10-year visa reciprocity, this could apply in the case of a 17 year-old high school senior who has not yet been accepted to university and seeks to travel on a family trip with his or her family, when the consular officer believes the applicant overcomes 214(b) at the time of the interview, but would wish to re-interview the applicant in the future. That could constitute reason to issue a visa with less than the full 10-year validity permitted by the Reciprocity Schedule. In contrast, in the same country, a 17 year-old applicant accepted to the country's most competitive university and who plans to later attend medical school may be an applicant to whom a consular officer would approve a full validity visa.

- f. Is satisfaction of INA §214(b) sufficient to receive a visa that is valid for the full reciprocity period?

Answer: Most nonimmigrant visa applicants must satisfy INA §214(b) in order to be issued a visa; however, their doing so does not guarantee they will receive a full validity visa. Visa validity may be limited only in accordance with 22 CFR 41.112(c), and only if warranted in an individual case.

E-2 for Israel

8. Please provide an update on the status of the agreement between the United States and Israel that would provide a basis for E-2 visas for Israeli citizens.

Answer: There is no "agreement" with Israel that would provide a basis for E-2 visa classification for Israelis. Public Law 112-130 authorized E-2 visa classification for nationals of Israel if that government provides similar status to nationals of the United States. Israel is still in the process of making certain regulatory changes that we expect will enable the Department of State to determine that Israel meets the similarity of status requirement. We are not in a position at this time to estimate a date for the availability of E-2 visas for nationals of Israel.

Reapplication During Administrative Processing

9. May an applicant whose is undergoing extended administrative processing (one year or more) file a new application? Is there any potential benefit or detriment to doing so?

Answer: Individuals may file a new application if they have another visa application pending administrative processing. There is no harm in doing so, but likely no benefit, either, unless the applicant has undergone a change in circumstances or has new information to provide in the visa application or interview.

Third Country National Processing

10. Several posts, such as Caracas, have language on their websites explaining that anyone who is lawfully present in the jurisdiction may make an application at the local consular post, subject to INA §214(b) requirements. However, this information is not standardized across post websites or on the main Department website. Would State consider asking posts to include language on their websites, similar to that on the Caracas website at <http://www.ustraveldocs.com/ve/ve-gen-faq.asp#qlistgen5> and/or perhaps including it on travel.state.gov?

Answer: Travel.State.Gov currently has visa application information for third country nationals (TCNs) at: <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/nonimmigrants-present-visiting-canada-mexico.html>. This information is specific to visitors applying for U.S. nonimmigrant visas at our Embassies or Consulates in Mexico and Canada. Visa appointment availability and procedures for TCNs may vary according to U.S. embassy or consulate, based on capacity and resources. Posts with TCN-specific procedures, such as Jamaica, list this information on their embassy or consulate websites.

11. It appears that Mission Mexico limits first-time visa applications to those who are Mexican nationals or who reside in Mexico. Third country nationals may only apply for renewals in the same category or for B or C visas so they can transit to their home countries to make a new visa application. See <https://mx.usembassy.gov/visas/third-country-nationals>. This seems to be in conflict with the position that an applicant may apply wherever he or she is lawfully present. Please confirm whether anyone lawfully present in Mexico may make a visa application in any category or whether there is a specific rule for applications in Mexico based on their proximity to the United States and anticipated workload issues.

Answer: Mission Mexico's policy of accepting NIV applications is in accordance with the guidelines found in 9 FAM 403.2-4. Pursuant to 22 CFR 41.101, consular sections must accept applications from individuals resident in posts consular district, but consular sections are given discretion when accepting applications submitted by non-resident applicants who are physically present in the consular district. The Department has determined that definition of "residence" under INA 101(a)(33) to mean the location where the alien actually lives and under most common circumstance where the alien conducts his or her life. Please note that the referenced webpage concerns individuals who are "physically present" in Mexico rather than actually "resident" in Mexico. Consequently, Mission Mexico has developed guidelines for accepting certain applications submitted by individuals who are not actually resident in Mexico and continues to accept all applications submitted by TCNs who reside in Mexico on FM2 and FM3 residence permits.

E Visa Corporate Registration Validity

12. At posts like London where corporate entities are "registered" as E Visa entities and given a registration number that can be used on subsequent visa applications without having to resubmit corporate documents, the practice has always been that E visas for employees were issued until the registration expired, regardless of the amount of time remaining on the registration at the time of the visa application. It appears that this policy may have changed, as individuals

applying close to the time that the corporate registration will expire are receiving emails from the post suggesting that they cancel their appointments until the entity is re-registered.

- a. Please confirm the current policy relating to corporate E visa registrations and the amount of time that must remain on the current registration for a full-validity visa to be issued.
- b. If the policy has changed and there is a minimum validity after which no new visas may be issued using the existing registration, can a new applicant submit corporate documents as is done at posts that do not follow a registration protocol or must the company file a new corporate registration before a new applicant may apply for a visa?
- c. If the policy has changed and there is a minimum validity after which no new visas may be issued using the existing registration, can VO instruct posts to include language to that effect on the registration letters to avoid last minute cancellation of appointments?

Answer: Corporate “registration” of E Visa entities in certain posts is done for the convenience of the applicants and E entities. Per 9 FAM 402.9-2 and 22 CFR 41.11, the burden of proof is on the applicant to demonstrate that he or she meets all the requirements for E visa eligibility. A consular officer may request whatever documentation is needed to determine eligibility under 22 CFR 41.105(a)(1) and may limit visa validity if warranted in an individual case under 22 CFR 41.112(c). E entity pre-verification is a means of helping applicants save time by verifying information about the company structure prior to interview. The parameters of this service are set on a post-by-post basis and there is currently no overall set policy on E visa corporate “registrations.” As E Visa cases are complex and take significant time to process, applicants should keep in touch with post to confirm interview dates and if additional documents are required.

Affidavit of Support

13. In cases covered by INA §204(l), (where a U.S. citizen petitioner dies before the visa appointment), will filing a Form I-134 suffice or must the visa applicant present a Form I-864W affidavit of support? AILA has heard inconsistent reports with some posts requiring an I-864W but other posts are willing to proceed with the I-134.

Answer: The death of the petitioner/sponsor does not relieve the applicant of the need to have a valid and enforceable Affidavit of Support (Form I-864), if otherwise required. The substitute sponsor must meet all the sponsor requirements that would have applied to the visa petitioner, had the visa petitioner survived and is required to provide a properly filed and sufficient I-864. (*See* 8 CFR 213a.2(c)(2)(iii)(D).) A substitute sponsor of a properly executed Form I-864 must be the spouse, parent, mother-in-law, father-in-law, sibling, child (at least 18 years of age), son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, or grandchild of the sponsored alien, or the legal guardian of the sponsored alien. (*See* INA 213A(f)(5)(B) and 9 FAM 302.8-2(C)(3).)

14. In January 2018, significant changes to the “Public Charge” provisions at 9 FAM 302.8 were implemented. Notably, the following language at 9 FAM 302.8-2(B) was deleted:

A properly filed, non-fraudulent Form I-864 in those cases where it is required, should normally be considered sufficient to meet the INA 212(a)(4) requirements and satisfy the totality of the circumstances analysis.

In making the public charge determination, the new FAM 302.8-2(B) requires consular officers to examine the visa applicant's "age, health, family status, assets, resources, financial status, education, and skills," and appears to direct officers to only view the affidavit of support as a "positive factor" in the totality of the circumstances public charge analysis.

- a. Please describe the policy considerations that led to these changes in the FAM and the decision to deemphasize the relevance of the affidavit of support in the public charge analysis.

Answer: The Visa Office revised 9 FAM 302.8 on the visa ineligibility for public charge under section 212(a)(4) of the INA as part of the review of grounds of inadmissibility directed by the President in Section 3 of his March 6, 2017, Presidential Memorandum on Implementing Immediate Heightened Screening and Vetting. The new guidance more accurately reflects the statutory provision found at section 212(a)(4)(B) of the INA, which lists factors that must be taken into account when assessing public charge (age, health, family status, assets, resources, financial status, education, and skills). In addition to these factors, section 212(a)(4)(B)(ii) provides that consular officers "may also consider any affidavit of support under section 213A".

- b. 9 FAM 302.8(B)(1)(d)(1) states that non-cash and/or supplemental benefits "should not be considered to be benefits when examining the applicant under INA §212(a)(4) and may only be considered as part of the totality of the applicant's circumstances in determining whether an applicant is likely to become a public charge." Please elaborate as to how the receipt of non-cash benefits may be considered in weighing the totality of the circumstances.

Answer: The revised FAM notes clarify that consular officers must consider the totality of the applicant's circumstances and likelihood that he or she will become a public charge. Prior acceptance of non-cash assistance benefits is just one data point in a totality of the circumstances analysis and would not necessarily result in an ineligibility for public charge. The consular officer will consider whether an applicant who in the past received such benefits or is currently receiving such benefits will be likely to resort to public cash assistance or long term institutional care. Whether the prior receipt of non-cash benefits tips the totality of circumstances analysis toward a public charge ineligibility finding is something that will need to be determined on a case-by-case basis in light of the individual applicant's totality of circumstances.

J Visas and the DS-3035

15. Question #17 on Form DS-3035 asks the applicant to indicate the date/place of first entry using a J-1 visa and the issuing post for the J-1 visa. However, in some instances, the J-1 exchange

visitor may have entered the U.S. in another nonimmigrant status, changed status to J-1 and have not departed the U.S. Under this scenario, the correct response to #17 is “Not Applicable” yet it is not possible to leave the fields blank or enter N/A.”

- a. Can State request a data correction for the form to accommodate an “N/A” response?

Answer: VO is aware of the issue and determining an appropriate solution.

- b. In the meantime, how should question #17 be answered by someone who has never applied for a J-1 visa or used it to enter the U.S.?

Answer: This is not a required field and may be left unanswered.

16. Question #17 of the DS-3035 also provides a list of consular posts in the form of a drop-down menu from which the applicant is instructed to select the consular post at which he or she applied for the J-1 visa. However, the drop-down menu appears to be incomplete. For example, the post at Hyderabad is missing. There is no option to manually type the consular post, nor may the field be left blank; this forces the applicant to choose an incorrect post when the correct post is missing from the menu.

- a. Can State please correct this omission?

Answer: VO is aware of the issue and determining an appropriate solution.

- b. In the meantime, please indicate how State would prefer applicants to notify the Waiver Review Division that the incorrect post was selected because the correct post was not an available choice?

Answer: Applicants may provide the correct information in the “Statement of Reason” section on the form.

Misrepresentations and INA §212(a)(6)(C)

17. AILA members report that misrepresentations made by a visa applicant that are unrelated to an effort by the applicant to obtain an immigration benefit have resulted in a 212(a)(6)(C) finding even though the misrepresentation was not material and did not shut off a line of inquiry by the consul that was relevant to the visa decision. For example, an applicant could admit to the consul that he or she obtained a driver’s license with an incorrect birthdate, not in order to gain entry to the United States or any immigration benefit but to enable the applicant to drive. Will LegalNet consider requests for review from attorneys whose clients have been found inadmissible under INA §212(a)(6)(C) if there is evidence that the misrepresentation was not material?

Answer: Yes, inquiries arguing that a misrepresentation was not material or not for an immigration benefit, and therefore should not serve as the basis for an INA §212(a)(6)(C) finding, can be sent to LegalNet for review.

18. The Administrative Appeals Office in January 2014 issued a non-precedent decision finding that an applicant misrepresenting his country of origin as Mexico in order to facilitate faster removal to Mexico rather than to his actual home country was not material as any benefit derived was not intended to gain entry to the United States. (See **Appendix A**). However, members report that applicants with I-601A approvals are being refused under INA §212(a)(6)(C) at the time of their immigrant visa interviews for having misstated their country of origin as Mexico when they were detained by ICE or Border Patrol, leading to an extended period outside the United States to process an I-601 application. There is a distinction between voluntary return and voluntary departure; while the latter may be considered a “benefit” under the INA, the former is an informal policy and is not a benefit. The Board of Immigration Appeals has published case in law explaining the distinction and describing the manner of establishing through documentation which procedure was utilized. (Appended at **Appendix A**) Please clarify the State’s position on this issue. Would State consider, like the AAO and BIA, distinguishing between these two procedures and in the case where “voluntary return” can be established, adopting a policy that this is not a (6)(C) situation?

Answer: The Department appreciates AILA bringing this non-precedent AAO decision to its attention. The Department will review the opinion and will consider whether new or additional guidance is necessary. If an applicant has been refused under INA 212(a)(6)(C)(i) on grounds that the applicant believes are legally incorrect, the applicant or his/her attorney may contact LegalNet.

19. Applicants denied under section 212(a)(6)(C) are generally provided no information by the consular officer to identify what misrepresentation they have allegedly made and are simply given a pre-printed sheet stating the ground under which they have been found inadmissible. This makes it impossible for the applicant to rebut the finding at a subsequent visa interview, or to make a credible request for waiver relief.

a. Unless the information which led the consul to impose 212(a)(6)(C) is classified, would State consider instructing consular officers to identify the misrepresentation made by the applicant?

Answer: Most applicants are informed orally by the consular officer of the section of law on which the refusal is based along with the factual basis for the refusal at the time of adjudication. See 9 FAM 403.10(A)(1) and 504.11. The INA requires only that the consular officer provide applicants with a written notice that “states the determination” and “lists the specific provision or provisions of law under which the alien is inadmissible....” INA section 212(b)(1).

b. If a consular officer refuses to provide any detail about an alleged misrepresentation, would it be appropriate for counsel to submit a request to LegalNet to obtain it?

Answer: No. LegalNet is a dedicated email channel available only for case-specific questions on the interpretation or application of immigration law, not the facts underlying a

consular determination. For a list of the types of issues that LegalNet addresses, please see 9 FAM 103.4-2(c).

Visa Processing Times

20. At present, only visa *appointment wait times* are available on the “Visa Appointment & Processing Wait Times” webpage at <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/wait-times.html>. The lack of processing time information has been problematic for clients/attorneys when planning future travel. Would the Visa Office be able to provide this information on the new website?

Answer: “Visa appointment and processing wait time” refers to the estimated wait time to receive an interview appointment. It does not include any time required for administrative processing of applications, which may affect a small number of applications, or the time required to return the passport to applicants, either by courier services or the local mail system. The time required for administrative processing will vary based on individual circumstances of each case. The time required for document delivery can vary from country to country, and can change unexpectedly based on local conditions. The most accurate resource for information on document delivery is the individual embassy or consulate website.

Crimes Involving Moral Turpitude (CIMT) and Treatment of UK Cautions

21. We have previously raised issues regarding how certain crimes committed abroad, and certain types of penalties, are treated by posts when determining if an applicant has been convicted of (or admitted to) a crime and/or whether the crime is considered a CIMT. The most discussed examples are how Assault Occasioning Actual Bodily Harm (ABH) is viewed by the U.S. Embassy in London, and how a Caution in U.K. law is treated by State. We understand that the CIMT issue is one of synchronization between State and CBP, and that while State does not consider ABH a CIMT, CBP may not have the same opinion. We also understand that State and CBP are working on a “list” of crimes considered CIMTs.

- a. Please provide an update on the status of discussions between State and CBP.

Answer: State is not currently pursuing general discussions with CBP regarding possible inconsistent treatment of an alien’s criminal convictions, although we may raise the question any time a live case raises such concerns.

- b. Does State and CBP intend to make the list of CIMTs public, through publication of policy guidance, cable, or FAM update?

Answer: State and CBP are not working to develop an agreed list of crimes considered to be CIMTs.

22. State has confirmed that applicants with Cautions for CIMTs issued before July 10, 2008 would not generally require a waiver of inadmissibility due to the change, and that the Caution would not generally be considered an admission of guilt; however, Cautions issued after that date may lead to a finding of inadmissibility. In light of the discussions between State and CBP regarding the list of CIMTs:

- a. Has there been any change by State regarding the treatment of Cautions as agreed by the U.S. Embassy London in 2014?

Answer: If there is a change, it would be made public.

- b. Does State anticipate any change to the practice of treating Cautions as admissions of the essential elements of an offense?

Answer: State does not anticipate any changes regarding our treatment of Cautions in the UK.

- c. Does State anticipate that the discussions with CBP will alter this policy?

Answer: No.

U.S. Citizen Passport Renewal at U.S. Embassy London

23. AILA has become aware of new difficulties experienced by U.S. citizens renewing passports at the U.S. Embassy in London (and Consulates in Edinburgh and Belfast). The following two issues have been raised repeatedly:

- a. The option to pay for renewal of a passport by credit card via the courier delivery service was eliminated at the beginning of the year. The new payment form is an international bankers draft drawn on a U.S. bank. Though the Embassy website advises that these drafts are available in the U.K., it appears they are only available for a very small minority of applicants who are customers of one of the few institutions that have a U.S. presence (HSBC and Citibank). This forces applicants to schedule an appointment and apply in person, which is extremely inconvenient for many individuals who do not live near one of the posts. Is there anything being done to make payment options more accessible, such as permitting debit card transactions by post?

Answer: CA is presently exploring possible methods for applicants to pay their U.S. passport renewals fees abroad without having to travel to the nearest consular office. CA is working with the U.S. Treasury on the matter and hopes to have a solution developed later this year.

- b. There appears to be an issue with the forms the U.S. Embassy's website wizard has applicants complete when applying for a passport renewal. On several occasions, applicants have completed a DS-82 or DS-11 form, sometimes both as the information on the post's website is not clear regarding which form is required, and then being instructed to complete the same form by hand

at the interview. Can State please confirm which form is required for an in-person passport renewal at an Embassy and whether there is an issue with the version of the form on the website or wizard, or whether there may be another reason that a pre-filled form is not being accepted?

Answer: Generally passport renewals are completed on a DS-82 if all of the criteria is met for the bearer's most recent PPT:

- Is submitted with your application
 - Is undamaged (other than normal "wear and tear")
 - Was issued when you were age 16 or older
 - Was issued within the last 15 years
 - Was issued in your current name (or you can document your name change with an original or certified copy of your marriage certificate, divorce decree, or court order)
- If the Embassy is requiring the person come in-person to complete an application, my guess is that he or she doesn't meet the above criteria.

There are no special requirements for applicants appearing in person to submit a passport application. If they meet all requirements for using the Form DS-82 for renewals, they may submit that form at the consular section. Otherwise, they must use the Form DS-11.

There is no general requirement that forms be completed by hand at the window; however, if an officer determines that an applicant completed a form incorrectly, then the applicant may be required to complete a new form at the window.

If you wish to provide case identifiers, we can look into the particular situation and follow up with the attorney representing the applicant, if he has submitted a power of attorney to the consular section.

Last year there was an issue with our wizard, which was confusing applicants by erroneously stating they were applying for a DS-11, but actually (correctly) populating a DS-82 or DS-5504. We fixed this issue in December 2017 so users should no longer experience this problem.

Travel Ban Waiver Processing

24. Based on previous communications, we understand that State is unable to comment on the substance of certain issues relating to the travel ban due to ongoing litigation. However, reports from AILA members indicate that there appears to be inconsistent information being disseminated by posts regarding the process for presenting a waiver application. Some posts appear to have a pre-printed letter that is given to applicants subject to the ban advising them that there is no waiver available while others provide a letter telling applicants that they are either not eligible for a waiver or that an application for a waiver is being reviewed. (See **Appendix B**)

- a. Could State confirm that the waiver related documentation given to all affected applicants is the same at every post? If not, would State be willing to work with posts to harmonize the information that is being provided about the waiver process?

Answer: We believe the substance of waiver-related information given to applicants is consistent worldwide. There is no waiver application. After the visa interview, applicants may be advised that a waiver is not available in their case or that they are being considered for a waiver. If AILA has encountered what it interprets to be inconsistencies in the information provided to applicants, please provide the details and we will follow up, as warranted.

- b. Would State be willing to supplement the information it provided on its website in December 2017 with additional information regarding the waiver process, in particular the method by which Consular Officers evaluate the three waiver criteria?

Answer: The information on travel.state.gov remains the publically available information regarding the waiver process: As specified in the Proclamation, “consular officers may issue a visa based on a listed waiver category to nationals of countries identified in the [Proclamation] on a case-by-case basis, when they determine: that issuance is in the national interest, the applicant poses no national security or public safety threat to the United States, and denial of the visa would cause undue hardship. There is no separate application for a waiver. An individual who seeks to travel to the United States should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for a waiver.”

O-2 Visa Issuance London

24. AILA members report that the consular post in London is requiring O-2 applicants to wait until the related O-1 visa is issued before applying for the O-2 visa and that they require the O-2 to bring evidence of the O-1 visa having been issued to the O-2 interview. However, there are times that the O-2 must travel to the U.S. in advance of the O-1 to prepare for an event at which the O-1 nonimmigrant will perform. Please confirm that an O-2 may be issued before the related O-1. Would VO be willing to remind London of this policy?

Answer: VO does not have a policy addressing that situation. We understand there are situations where an O-2 visa holder may need to travel in advance of an O-1 visa holder; however, there are policy reasons for adjudicating the O-1 first and we do not see why the applicants’ desired order of travel should dictate the order of their applications. We will discuss the matter internally and consider the need for guidance for the field.

H-4 and L-2 Dependents

25. AILA has received reports from members that consular posts in Cairo and Guangzhou are refusing visa applications filed by H-4 and L-2 spouses because their names are not on the Form I-797 approval notice. (See **Appendix C**). However, only the name of the principal beneficiary of a Form I-129 petition is on the I-797 as the spouse is not included in the petition. Please confirm that an I-797 is not required for a dependent of an I-129 beneficiary. Would VO be willing to remind posts of this policy?

Answer: In many cases, the names of derivatives of petition-based applicants do appear on the I-797. However, VO policy requires officers to verify through our online database that the H-1B or L-1 beneficiary has a valid petition prior to issuance of a derivative visa; paper-based proof, such as an I-797, may not be used to verify. VO will remind officers of this.

Designation of Consular Post for LGBT Immigrant Visa Applications

26. In previous meetings we had discussed issues concerning LGBT applicants for immigrant visas based on marriage to a U.S. citizen of the same gender who were afraid to apply in their home countries because their LGBT status may be discovered. The National Visa Center (NVC) previously established a process whereby an applicant could contact the NVC to request a friendly third country by providing a list of several alternative countries to which the applicant was eligible to travel and providing the reasons the applicant could not apply in his/her home country. This process was important because USCIS was refusing I-130 applications that listed countries other than the beneficiary's home country for visa processing. Members report that the NVC is no longer implementing this policy and will not consider alternative posts.
- a. Please confirm if this policy is still in effect and if not, why the policy has changed.
 - b. Please clarify how applicants can request an alternative post in an LGBT friendly country?

Answer: Our policy has not changed. NVC continues to transfer cases with post concurrence and will assign cases identified by USCIS for an alternate location. Cases that are expedited to post (such as K-1s) may not have sufficient time to be assigned to an alternate post before file transfer. To better facilitate NVC's handling of the request, please include a scan of the full I-129F in addition to the information noted below:

- a. USCIS receipt number;
- b. Petitioner name;
- c. Applicant name and date of birth;
- d. Desired U.S. Embassy or Consulate (**Note:** it is recommended that you provide two or three Posts where the applicant would be able and willing to appear for processing); and
- e. Any additional information regarding the request (such as a general description of the reasons why the applicant is afraid or unable to appear at the embassy or consulate in his or her home country to apply for the visa).

NVC will contact the designated posts to request that they take jurisdiction over the case. Please note that certain consulates may not be able to take jurisdiction based on workload.

If the case file has been transferred from NVC or is currently held at an embassy or consulate, the guidelines for requesting a transfer of an immigrant visa application to another location still exist (see 9 FAM 504.4-9). These guidelines note how immigrant visa applicants may seek processing in a third country and have never been specific to LGBT applicants. In some countries, conditions may exist that will preclude an embassy or consulate from accepting a case, but, within the limits of their workloads, our embassies and consulates are sympathetic to those whose circumstances require them to seek processing of their cases outside their home country. If interested in submitting a request with a "third

country”, the applicant should first consult the embassy/consulate website for procedural steps. The applicant must then send the request, along with a justification for the request, to the intended receiving post.

END