

**AILA/Department of State Liaison Meeting
October 6, 2016
AGENDA**

1. Foreign Affairs Manual Update

- a. At the [April 7, 2016, liaison meeting with AILA](#), the Visa Office (VO) indicated that it would update the Foreign Affairs Manual (FAM) to harmonize 9 FAM 403.9-4(E) (nonimmigrants may be admitted in TN status for a maximum period of one year) with 9 FAM 402.17-9 and 8 CFR §214.6(e) (authorizing admission of TN nonimmigrants for up to three years). What is the estimated date for completion of this change?

9 FAM 403.9-4(E) has been update to reference the correct maximum period of admission.

- b. On March 8, 2016, AILA presented to VO a set of policy recommendations relating to the FAM provisions outlining procedures for obtaining L classification. An abridged copy of the recommendations is attached at **Appendix A**. The recommendations identify a variety of apparently outdated or inaccurate provisions in the FAM. Does VO agree that these provisions should be updated and if so, what is the status of the necessary updates?

We are in the process of revising 9 FAM 402.12. While we are still consulting with DHS, we expect the revisions to address the duration of individual petition validity and Canadian L petition guidance. There is no set schedule for completing the revisions.

Regarding the calculation of time spent in status, for purposes of blanket petition validity, the Department relies on ADIS data to verify arrival and departure information. We have no plans to amend the FAM to allow for secondary evidence.

2. Follow Up on System Updates

At the [April 7, 2016](#), meeting with AILA, VO provided detailed information concerning the development of various data management systems improvements and pilot programs introducing procedural changes. Please provide an update on the following:

a. ConsularOne System

1. Is the ConsularOne Online Passport Renewal service still scheduled to be deployed domestically in calendar year 2017?

Yes, the Online Passport Renewal service is still scheduled to be deployed domestically in calendar year 2017.

2. Has a schedule been established for introducing the electronic Consular Report of Birth Abroad service for scheduling appointments and uploading documents?

Yes, the electronic Consular Report of Birth Abroad service is scheduled to deploy in the fall of 2017.

3. Is there an anticipated timeline to introduce nonimmigrant visa process functionalities?

Nonimmigrant visa functionality will be implemented in a future phase of the ConsularOne project. We expect formal requirements gathering to take place in calendar year 2018 and deployment of the modernized visa system in calendar year 2020.

b. Visa Modernization Proposal

1. Is the Enterprise Payment System (EPS) for passport applications on schedule to be implemented by the end of 2016?

Yes, the Enterprise Payment Service (EPS) will be deployed in December of 2016 and will be initially used by legacy systems. The Online Passport Renewal service will use EPS when deployed in calendar year 2017.

2. Are immigrant visa payment services still scheduled to be introduced at the same time that the EPS is implemented?

Yes, EPS will be used.

c. Modernized Immigrant Visa Pilot Program

1. The Consular Electronic Application Center (CEAC) portal for immigrant visa processing for six pilot posts was scheduled to launch in August 2016. What is the status of that initiative?

Due to a need to focus attention and resources on improving cyber security across government agencies, CA has revised the full end-to-end pilot start to Spring 2017, with a go-live target in April at the six round-one posts. Participants in the full pilot will be able to access an enhanced customer portal via CEAC through which they may update petition information while the case is at NVC, including adding/removing family members, updating Accompanying/Follow-to-Join status, updating contact information (including email addresses), adding sponsor information, and uploading scanned documents directly to their case. Case status changes will be emailed to anyone associated with the case whose email address has been added via CEAC, eliminating the need for the filing of new DS-261 forms.

The pilot CEAC portal is expected to launch in April, 2017. The pilot will allow applicants who file petition forms I-130 or I-129F to opt-in to the improved CEAC processing module if the applicant's case is processing in one of the following posts:

- Buenos Aires, Argentina
- Frankfurt, Germany
- Hong Kong, China

- Montreal, Canada
- Rio de Janeiro, Brazil
- Sydney, Australia

2. Has a schedule for expanding the MIV program to additional posts been established?

If the initial pilot testing is successful, we will expand the pilot to around eight more posts in late summer or fall of 2017. All petition types will be included by the time worldwide rollout begins, following successful completion and evaluation of the expanded pilot.

d. Interview Waiver Program

1. Are there any plans to further expand the Interview Waiver Program (IWP)?

In consultation with interagency partners, we will consider expanding IWP as we identify additional, secure applicant populations. Earlier this year, the Secretary of State determined that it was in the national interest to waive interviews, unless required in certain instances, for first-time Argentine nonimmigrant visa applicants in visa classes other than E, H, L, P, or R who are younger than 16 or 66 and older, effective May 16, 2016.

2. Has State identified any other options for improving visa application services through the IWP?

State views prudent use of IWP as an efficient and secure method to meet rising demand for nonimmigrant visas and continues to explore options for expanding its use under appropriate circumstances.

3. Is State considering reintroducing the domestic visa revalidation program for any visa categories?

We continue to explore options to improve our services for all categories of visa applicants, consistent with existing statutes, regulations, and our commitment to national security.

3. “Permanent Resident” for Purposes of Form DS-160. At the [April 7, 2016, liaison meeting](#), VO indicated that it planned to develop and post on travel.state.gov an FAQ explaining the meaning of the term “permanent resident” as contemplated by the recently added question on Form DS-160. What is the estimated date for the development and posting of the FAQ or integration of the definition into the DS-160 as a user note?

The Visa Office has drafted a help topic that will be displayed in the DS-160 to the right of the question. The help topic will be released with the next update the DS-160, which currently is not scheduled. In the interim, we have added the help topic to the DS-160 FAQs on the TSG.

- 4. Blanket L Issues.** Following our meetings in October 2015 and April 2016, VO addressed blanket L issues at length. However, employers utilizing the blanket L process and their workers continue to encounter a wide range of endorsement and annotation practices that do not comply with FAM policies and uncertainty remains about how to effectively and efficiently resolve them.

According to the [written responses from April 2016](#), applicants must seek correction of errors made either in the endorsement of Form I-129S or in the annotation on the blanket L visa foil through the issuing post.

- a. Based on our discussions, we understand that applicants can send incorrectly endorsed Forms I-129S back to the consulate (by courier, mail or other delivery service) for correction even if the individual is present in the U.S. Is this correct?

This is not correct. The visa applicant and/or legal representative should contact the consular section via the method noted on their website to notify them of the error and to request a correction. Whenever possible, such errors should be reported to the consular section for correction before the beneficiary's travel to the United States to prevent any problems at the port of entry.

- b. We also understand that annotation errors in the blanket L visa foil must be corrected while the individual is physically present within the consulate's jurisdiction since corrections require that the passport and visa be provided. Is this correct?

Yes.

- c. During the April 2016 meeting, VO also explained that it had established a team to sample consular compliance with the FAM blanket L Form I-129S endorsement and visa annotation policies. Since blanket L visa applicants continue to experience a wide variety of variations in endorsement and annotation practices, please confirm whether this was a one-time event or an on-going effort.

VO does not have an established team for consular compliance with endorsement and annotation policies. However, VO staff does provide guidance to posts and perform spot checks in an ongoing effort to ensure compliance with these policies. We welcome AILA periodically providing names of posts that have been most problematic in this regard, including descriptions of the frequency and examples of problematic endorsements and annotations on visas issued at the post, to allow us to conduct targeted follow-up. The information may be provided through the Chair of the State Department Liaison Committee to the Director of Legal Affairs.

- i. If so, is there a mechanism by which AILA could alert VO of consulates that have a pattern of incorrectly endorsing or annotating blanket L documents?

There currently is no such mechanism, but the information may be submitted by the Liaison Committee Chair to the Director of Legal Affairs, as offered above.

- ii. If not, would VO consider setting up an email address (or a dedicated subject heading for an existing email address) to receive such notifications? (We note that NVC has adopted such a practice for receiving alerts about process issues to successfully resolve them).

Thank you for your suggestion, however, VO does not currently have the staffing to attend to such a mailbox. We encourage AILA to continue to bring these concerns and specific examples to our attention during the regularly scheduled DOS-AILA meetings.

- d. Based on discussions with VO on October 8, 2015, we understand that an endorsed Form I-129S has the equivalent effect of a Form I-797, Notice of Action confirming approval of an individual L-1 petition in determining the period for which an individual is approved for L-1 classification. Is this correct?

Yes.

- e. Pursuant to 9 FAM 402.12-8(F)(c)(1): “The consular officer must determine the validity dates for the I-129S petition. For initial Blanket L applicants, this date should either be three years or based on the ‘Dates of intended employment’ as written in Part 4, question c [now Part 2, question 2] of the Form I-129S by the petitioner, whichever is less.” In response to questions posed at our April 7, 2016 meeting, VO indicated that: “Three years *from the date of adjudication* is the maximum period for which consular officers may endorse a Form I-129S (9 FAM 402.12-8(F)).” (Emphasis added). This additional limitation can substantially reduce the period of validity of an endorsed Form I-129S.

Nonimmigrant workers rarely apply for a visa immediately before relocating to the United States for a temporary assignment. Companies normally plan visa applications well in advance of the employment start date, and employees want to know that they will have a visa in hand prior to making decisions regarding housing, spousal employment, and their children’s education. The FAM appears to contemplate these practical considerations by authorizing posts “to accept L visa applications and issue visas to qualified applicants up to 90 days in advance of applicants’ beginning of employment status as noted on the Form I-797 or I-129S.” (9 FAM 402.12-17(A)(c))

By limiting the maximum period for which a Form I-129S may be endorsed to three years *from the date of adjudication*, however, blanket L workers and employers are penalized for planning ahead. AILA encourages VO to revisit the policy of limiting the maximum period of endorsement of Form I-129S to three years from the date of endorsement.

Consistent with State’s previously stated position that an endorsed Form I-129S has the equivalent effect of a Form I-797 for defining the period for which a beneficiary is approved for L-1 classification, AILA encourages VO to adopt a policy authorizing the endorsement validity dates for Forms I-129S to be either the “Dates of intended employment” as written in Part 2, question 2, of the Form I-129S or for a period of three years beginning on the indicated employment commencement date, whichever is less.”

Thank you for bringing this to our attention, we will take this suggestion under consideration.

- f. Members report that U.S. consulates in Mexico no longer place an ink stamp on endorsed Forms I-129S and instead write in the dates of endorsement. Blanket L workers applying for admission at ports of entry are being asked by CBP why their Form I-129S has no ink stamp.
- i. Is an ink stamp required for a valid endorsement of Form I-129S?

Consular officers are encouraged, but not required, to use an ink stamp to endorse the I-129S. We require officers to note their post, their name, and provide a signature or initials.

- ii. Has State discussed this issue with CBP to confirm whether or not a properly endorsed Form I-129S requires an ink stamp issued by a consulate? If so, what was the outcome of the discussion? If not, would DOS be willing to do so?

We have worked closely with CBP on our I-129S endorsement requirements and guidelines. VO will contact CBP about this issue. However, please keep in mind that CBP has sole authority over admissions requirements.

5. Five Year Visas for Petition-based Nonimmigrant Categories other than L. It is our understanding that L visas are issued with a validity period up to the reciprocity limit rather than the petition expiration date as a result of the introduction of a clause in an international trade agreement with South Korea providing for that benefit. Decoupling L visa validity from the underlying petition was then given universal application under the most favored nation clause of other trade agreements and codified at 77 Fed. Reg. 8199 (Feb. 14, 2012). Over the last several months, AILA has received reports from members of other petition-based nonimmigrant work visas, such as H-1B and R, being issued for up to the five-year reciprocity limit.

- a. Please confirm whether the L visa regulations that decouple visa validity from the underlying petition validity was intended to apply to all petition-based nonimmigrant work visas, or only to L visas.

The regulation only applies to L visas. The validity of all other petition-based visas must be limited to the length of the petition or by the prescribed validity on the reciprocity schedule, whichever is less.

- b. If the change refers only to L visas, what is the legal basis for issuing H-1B or R visas with a five year validity?

The change only refers to L visas. As noted above, the validity of all other petition-based visas must be limited to the length of the petition or by the prescribed validity on the reciprocity schedule, whichever is less.

- c. Would an H-1B or R visa issued to an individual with five-year validity also need to be corrected, or can it be used for up to three years commensurate with the underlying petition?

The applicant and/or legal representative should contact the consular section in the event that an H-1B or R visas is incorrectly issued with five-year validity and request that a new visa foil be issued.

6. **CSPA and the Immigrant Visa Filing Date Chart.** There appears to be some confusion about the significance of the Filing Date charts for purposes of locking in the age of a child under the Child Status Protection Act (CSPA). Please confirm that the “Final Action Date,” when an immigrant visa number is actually available, is the relevant date from which an applicant must have “sought to acquire” permanent resident status within one year. Please also confirm that the filing of an application under the “Dates for Filing” chart will serve to freeze the applicant’s age and confer CSPA benefits.

Under current guidance, an applicant has to seek to acquire within one year of the “Final Action Date” to benefit from CSPA’s age-out protection. The National Visa Center (NVC) uses the “Dates For Filing” to determine when an applicant can begin to file an IV. If an applicant files a DS-260 after being contacted by NVC, this will satisfy CSPA’s “sought to acquire” requirement.” When a principal or derivative applicant successfully seeks to acquire, his or her CSPA age will be calculated using his or her actual age on the date the priority date is current under the “Final Action Date,” minus the number of days when the petition was pending with USCIS.

7. **Application of §214(b) in Cases with a §212(a) Ineligibility.** We understand from previous discussions with VO that it is common practice to make a §214(b) determination before reviewing any potential ineligibility under §212(a). However, AILA has seen an increase in cases refused under §214(b), where there is no reasonable basis for a §214(b) determination, but there is an acknowledged §212(a) ineligibility but the applicant would be eligible for a waiver. Moreover, AILA has been advised that in several cases where a §212(a) determination was made and a waiver was not recommended, officers will refuse the case under §214(b) following a request for an advisory opinion. What guidelines are consular officers given with regard to §214(b) determinations in cases where a §212(a) ineligibility also exists? What instructions are consular officers provided when an applicant (or his/her attorney) requests an advisory opinion in a case where the officer has not recommended a waiver?

By stating that there are applicants for whom “there is no reasonable basis for a §214(b) determination,” the question reverses the burden of proof required by the INA. Section 214(b) creates a presumption that the applicant is unqualified for the nonimmigrant visa sought until the applicant establishes to the satisfaction of the consular officer that he or she is “entitled to a nonimmigrant status under 101(a)(15).” Per §291 of the INA, the burden of proof is always upon the alien. If an applicant is evasive or otherwise engages in behavior that causes the consular officer to doubt his or her credibility, then it becomes harder for the consular officer to be satisfied that the applicant has demonstrated his or her eligibility for the visa sought.

Guidelines provided to consular officers regarding §214(b) determinations in cases involving a §212(a) grounds of ineligibility can be found at 9 FAM 302.1-2. Section 302.1-2 instructs officers that they may refuse most nonimmigrant visas under either §214(b) or §212(a), or both, if applicable. These notes also instruct officers that the “applicant's failure to convince you that he or she meets any one of the specific requirements of the applicable NIV category will result in an INA 214(b) denial.” 9 FAM 302.1-2(B)(4)(a). The FAM guidance also instructs consular officers that a §214(b) refusal may be “overcome if the applicant demonstrates to your satisfaction that he or she lawfully meets and will abide by all the requirements of the particular NIV classification.” 9 FAM 302.1-2(B)(4)(c). The FAM section further provides:

[T]he applicant must make a credible showing to you that all activities in which the applicant is expected to engage while in the United States are consistent with the claimed nonimmigrant status. Proper visa adjudication requires you to assess the credibility of the applicant and of the evidence he or she submits in support of the application. INA 291 places the burden of proof at all times on the applicant. If you are not satisfied that the applicant meets the standards required by the particular visa classification for which he or she is applying, you must refuse the applicant under INA 214(b). This is the case regardless of the applicant's financial situation or ties abroad and regardless of whether there is sufficient evidence to refuse the applicant under another section of the law (for example, INA 212(a)....)

9 FAM 302.1-2(B)(6)(b) and (c).

Section 305.4-3 of 9 FAM instructs consular officers regarding when they may recommend a waiver as well as when they determine that a waiver under §212(d)(3)(A) is not warranted, but an applicant or the applicant’s attorney requests an advisory opinion. This FAM provision instructs officers that they may “not refuse an alien's request to submit the waiver request to the Department.” 9 FAM 305.4-3(E)(2)(b). Another portion of that section instructs officers that they must refer to the Department any case “in which the alien or the alien’s representative... requests that a waiver be considered...” 9 FAM 305.4-3(E)(2)(d)(2). Finally, these FAM notes instruct officers that they cannot recommend an applicant who is ineligible under §214(b) for a waiver under INA §212(d)(3)(A). 9 FAM 305.4-3(B)(1).

- 8. Information Sharing between State and USCIS.** AILA members report receiving USCIS denials of petitions for nonimmigrant workers based on information submitted on previous DS-160 nonimmigrant visa applications. Please provide additional information as to what information is shared between USCIS and State and how such information is shared.

The Department shares visa record information with USCIS, consistent with INA section 222(f), for the administration or enforcement of U.S. immigration law.

9. Derivative Citizenship

- a. Proof of Citizenship.** It is our understanding that children born abroad to U.S. citizens may be considered citizens from birth, regardless of whether their birth was reported to State before the age of 18.

Children born abroad to a U.S. citizen may be considered to be a U.S. citizen at birth as long as the relevant statutory requirements are met, regardless of whether the child received citizen documentation before the age of 18.

- i. If no report was made, what alternative documentation may such children present to prove U.S. citizenship, given that the transmitting parent would have to meet certain requirements such as previous residence in the U.S.?

The documentation that the Department of State would ask for depends on which statute is being relied on to transmit U.S. citizenship. Since citizenship transmission statutes have different requirements, the person seeking citizenship documentation should bring documents relevant to determining the circumstances of his or her birth. For example, a child is a U.S. citizen at birth if he or she is born outside the United States to two U.S. citizen parents and at least one parent had a residence in the United States prior to the birth of the child. So, the person applying for citizenship documentation under this statute would have to provide documentation of U.S. citizenship for both parents and evidence that one parent had a residence in the United States before the child was born.

- ii. If citizenship is proven, from what date is the child deemed to be a U.S. citizen – the date of birth or the date of confirmation of citizenship?

If a person meets the requirements of the applicable citizenship transmission (birth abroad) statutes, the child acquired U.S. citizenship at birth. If the child meets the requirements of expedited naturalization statutes, the child is a U.S. citizen as of the date of naturalization.

- iii. What documentation is required for a child disprove U.S. citizenship if a consular report was never made and the child does not wish to be a U.S. citizen? To what office should such documentation be presented?

If a person does not meet the requirements of any citizenship transmission statute, was not born in the United States, or was born in the United States but not subject to the jurisdiction of the United States at birth, then the person is not a U.S. citizen. If the person is requesting documentation from the Department that he or she is not a U.S. citizen, the individual should make an appointment at a U.S. Embassy or Consulate. The Department of State would consider all relevant documentation.

b. Birth on Military Bases. A recent amendment of the FAM affects the ability of fathers in the military to legitimize/transmit U.S. citizenship to children born out of wedlock abroad. Previously, 7 FAM 1133.4-2(c)(2)(b) provided, in the section “Birth Out of Wedlock to American Father”:

The Immigration and Nationality Act defines ‘residence’ as the place of general abode of a person; his principal, actual dwelling place in fact, without regard to intent. Under this definition, a military base where a person is stationed, even for a short period of time such as a training assignment at an appropriate place, can be considered a residence and the laws of the state or country where the base is located can be considered for legitimation purposes.

The entire second sentence has been deleted and now seems to suggest that a military base is no longer considered to be a place of residence. Why was this portion of the FAM amended?

The deletion of the second sentence is not intended to suggest that a military base can no longer be considered to be a place of residence. Rather, a military base, like any other place, is to be analysed on a case by case basis, in accordance with the 7 FAM 1133.5 criteria, to determine if it satisfies the statutory definition of residence contained in the Immigration and Nationality Act section 101(a)(33). The second sentence was deleted because its reference to a residence being a “training assignment” for a “short period of time” could cause confusion when interpreting and applying the governing statute, which references a “**principal**, actual dwelling place” (emphasis added), and 7 FAM 1133.5 quoted below.

- i. In light of the amendment, please confirm how residence for legitimation purposes is to be determined by consular officers adjudicating claims to citizenship by the children of U.S. military fathers born on military bases, either inside or outside of the country? Are consular officers required to consider the legitimation laws of the father’s last known non-military residence in determining whether a child has been legitimated?

On November 14, 1986, Congress enacted “new” INA section 309. New 309 (a)(4) requires that the transmitting U.S. citizen father of a child born abroad out of wedlock establish a legal relationship with the child before the person turns 18 years of age. Unlike “old” 309 (a), which is silent as to which law applies to determine whether legitimation occurred, that of the father’s place of residence or domicile or that of the child’s, new INA 309 (a)(4)(A) specifies that the law of the person’s (child’s) residence or domicile must be used. Thus, the universe of cases in which the U.S. citizen father’s place of residence or domicile is relevant is limited to persons with citizenship claims under “old” 309 (a). Therefore, the father’s last known military residence may only be relevant in a limited number of cases under “old” 309 (a).

10. Validity of TN Visa with New Employer. Please confirm that, as is true in the H-1B context, a TN visa is not employer-specific. For example, if a Mexican citizen is issued a TN visa based on a job offer with Employer A but subsequently obtains an approved TN petition for employment with Employer B, the TN visa remains valid until it either expires or is affirmatively revoked. Stated differently, please confirm that a TN visa issued based on presentation of documentation demonstrating an offer of qualifying employment with Employer A, remains valid for use by the nonimmigrant in possession of a valid Form I-797, Notice of Action approving TN classification with a different employer.

A TN visa is not employer specific. If the TN worker changes employers the visa remains valid until it expires or is revoked. When a worker changes employers, however, they should

keep the I-797 approval notice for their records, and in case it is requested by a Department of Homeland Security official.

- 11. Mexican TN Annotation.** At the [DOS/AILA Liaison Meeting on October 18, 2011](#), VO indicated that it had “advised all U.S. visa-issuing posts in Mexico to annotate TN visas to show the proposed period of work for the visa applicant in the United States.” See **Appendix B** for an excerpt of the meeting minutes. Certain U.S. consulates in Mexico City appear to have abandoned that policy. In email exchanges in August 2016, AILA was informed by Mexico City that Mission Mexico no longer follows that practice, whereas Ciudad Juarez reported that it continues to annotate TN visas with the intended period of employment. As found by State in 2011 after consultation with CBP, “this procedural change...[assists] CBP inspectors in determining the periods of admission for citizens of Mexico applying for TN status at the port of entry.” Please confirm that VO will instruct posts to continue to annotate TN visas in this manner.

We continue to work with posts and other agencies to standardize annotations for TN visas. Once we have finalized this annotation, we will publish a FAM update so that it will remain standard.

- 12. TN – Cedula Professional.** The [U.S. Embassy and Consulates in Mexico website](#) states that neither a “carta de pasante” nor a Mexican “diploma” is considered to be a degree for TN purposes. Rather, only a Mexican “titulo” is considered a degree for NAFTA purposes. AILA has received reports from members that posts in Mexico have been denying TN visa applications for applicants with a “titulo” that do not have the “cedula profesional” (professional license). Please confirm that that only a “titulo” and not a “cedula” is required for a TN.

Acceptable evidence of a bachelor’s degree equivalent in Mexico (licenciatura) can be either a “titulo” or a “cedula profesional.” The “titulo” must have a stamp from the Mexican Secretary of Education (SEP) to be valid.

13. Mission India

- a. **Update on Visa Appointments.** We note that visa appointment wait times in India are between 100 and 130 days at present, and we understand that this is due to country-specific staffing issues. Please provide an update on staffing and other steps that have been taken to reduce the backlog.

In the last five years the demand for visas to travel to the United States has increased 80 percent across India. In FY 2015, we processed over one million visa applications in India, issuing more than 113,000 H-1B visas and 80,000 visas to student and exchange visitors, more than at any time in history. Accommodating visa demand on such a large scale requires adequate staffing. We are encouraged by recent developments in our discussions with the Government of India about obtaining approval for additional consular positions to meet the needs of our growing, vibrant relationship. We will continue to work with the Indian government to resolve this situation.

b. Interview Waiver. The expanded interview waiver program (IWP) announced by Mission India in 2012 included “Temporary workers on H-1B visas (same classification with the same petitioner, and visa is still valid or expired within the last 12 months).” [The webpage that contains that policy](#) is still active on the Mission India website. However, the IWP has since been modified to include a broader group of applicants. The [current instructions on the ustraveldocs.com website](#) say that the IWP applies to “H or L (individual) or R visas, [if the] prior visa [is] in the same class [and] is still valid or expired within the last 12 months.” In order to avoid confusion, could VO instruct Mission India to remove or archive references to the 2012 announcement on IWP from the websites of the various consular posts throughout India?

We will provide this feedback to Mission India.

14. F-1 Preference Opt-Out. What is the procedure for opting out of an F-1 upgrade when the parent naturalizes and the beneficiary wants to remain in F-2B under Section 6 of the CSPA? Should the attorney/applicant file a request with USCIS (local or overseas) or the NVC?

If notified of a petitioner’s naturalization, NVC will change the category from F-2B to F-1 and send a letter to the beneficiary informing of their new visa category and the procedures for pursuing an opt-out, if desired.

Beneficiaries seeking to opt-out of automatic conversion from the F-2B category to F-1 should file a request with the USCIS District Office having jurisdiction over the beneficiary’s place of residence.

Beneficiaries should also inform NVC of the submitted opt-out request with USCIS. NVC will then revert the case to the original F-2B category and continue processing the application

The District Office should notify the appropriate visa issuing office if the request has been approved. 9 FAM 502.1-1(D)(5).

15. Revocations and Status. Following the changes in visa revocation policy for DUIs in November 2015, please confirm State’s position on when the revocation becomes effective. Based on statements made by VO in liaison discussions, our understanding is that the revocation becomes effective when the person departs the U.S.; upon departure, the visa may no longer be used to seek admission to the U.S. From previous discussions on this issue, we understand that it is VO’s position that revocation does not affect status in the U.S.

For individuals in the United States, revocations based on DUI arrests are effective immediately upon the alien’s departure from the United States.

However, we have received reports that USCIS has begun to deny immigration benefits, such as extensions of status or OPT for students whose visas have been prudentially revoked following a DUI arrest. This seems to be based on INA §237(a)(1)(B), which provides that aliens whose visas are revoked under §221(i) while in the U.S. are deportable. Is VO reporting these revocations to USCIS or ICE for potential enforcement action?

VO reports all revocations to ICE on a monthly basis and any terrorism-related revocations in real time. The reporting is informational and does not request or recommend enforcement action.

- 16. E-3 Cases.** The Department of Labor requires submission of a new labor condition application (LCA) when the beneficiary's work location changes and the new location is outside of the initial Metropolitan Statistical Area (MSA). Should a copy of the new LCA be filed with the issuing Post?

Consular sections only need a copy of a new LCA in conjunction with a visa application. Therefore, aliens with valid E-3 visas or in E-3 status who had to obtain a new LCA should retain a copy and present it with any subsequent E-3 visa applications.

- 17. F-1 Students in Public School.** If an F-1 student who attends public school and has not reimbursed the school becomes eligible for another nonimmigrant visa, is there a process for overcoming this ground of ineligibility (assuming no other inadmissibility issue is involved)? Can this be rectified by reimbursing the school(s) attended prior to the new nonimmigrant application visa? Would a letter from the school coupled with proof of payment, such as a cancelled check, be sufficient evidence to demonstrate that the issue has been rectified?

INA section 214(m) prohibits the issuance of F-1 visas to an applicant seeking to attend public school unless the student's attendance at a public secondary school does not exceed an aggregate period of 12 months, and the student has reimbursed the school district the full, unsubsidized, per capita cost of providing the education for the period of the alien's attendance. Secondary school is deemed to be grades 9-12. A public school system issuing a Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status-For Academic and Language Students, for attendance at a secondary school must indicate on the Form I-20 that such payment has been made and the amount of such payment. School districts may not waive or otherwise ignore this requirement. If the Form I-20 does not include the requisite information, the student must have a notarized statement stating the payment has been made and the amount from the designated school official (DSO) who signed the Form I-20 (9 FAM 402.5-5(K)(3)). If the Form I-20 does not reflect such payment and the applicant does not present a notarized statement from the DSO that payment has been made, the adjudicating consular officer must refuse the F-1 visa application under INA section 221(g), until the applicant provides the necessary documentation demonstrating such payment has been made.

If an applicant is refused an F-1 visa under INA section 221(g) for not paying the full, unsubsidized, per capita cost of education at a public secondary school, he or she may apply for another visa classification for another purpose of travel. The applicant would need to pay the cost of education if still pursuing the F-1 visa application in order to overcome INA section 221(g).

The five-year ineligibility for being a student visa abuser under INA section 212(a)(6)(G) only applies to an F-1 student who violates a term or condition under section 214(m). This ineligibility ground applies to an F-1 visa holder who entered the United States to study at a private institution and then transfers to a public secondary school in violation of section 214(m)(1). By its terms, section 212(a)(6)(G) renders the alien excludable "until the alien

has been outside the United States for a continuous period of 5 years after the date of the violation. Per 22 CFR section 40.67 “(a)n alien ineligible under the provisions of INA 212(a)(6)(G) shall not be issued a visa unless the alien has complied with the time limitation set forth therein.”

18. Domestic Abuse Arrests: Referred to Panel Physicians. It has come to our attention that the U.S. Consulate in Shanghai has been issuing letters requiring visa applicants who have been arrested for a domestic abuse related offense to attend a medical examination with a panel physician. See attached **Appendix C**. A FAM update from 2010 mentions referrals to panel physicians for “those with a history of alcohol-related arrests or convictions (e.g., driving under the influence – DUI, domestic violence)” and references an outdated FAM note (9 FAM 40.011). However, 9 FAM 40.011 has since been replaced by new FAM 302.2 which does not refer to domestic violence. Please confirm whether new guidance on the treatment of individuals with domestic abuse-related arrests has been provided to consulates. If so, is VO able to provide a copy to AILA? If not, what is the basis for the issuance of these letters by Shanghai?

VO does not have a policy requiring individuals with a history of domestic abuse to receive a medical examination. However, per 22 CFR 41.108, consular officers may require a nonimmigrant visa applicant to take a medical examination if “the consular officer has reason to believe that a medical examination might disclose that the alien is medically ineligible to receive a visa.” The Centers for Disease Control and Prevention’s (CDC) Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-related Disorders for Panel Physicians state that:

The panel physician is to identify any harmful behavior that is associated with an applicant’s physical or mental disorder. Only harmful behavior that is associated with a physical or mental disorder is relevant for the classification of U.S. medical eligibility; neither harmful behavior nor the physical or mental disorder by itself makes an applicant medically inadmissible. People can have multiple harmful behaviors that are not associated with a physical or mental disorder. Repetitive antisocial activities and harmful acts may warrant evaluation for personality disorders according to DSM criteria, and eventually provide a basis for the conclusion of inadmissibility. Because of the complexity of this issue, the panel physician might feel that a more specialized psychiatric examination is indicated.

In all cases where evidence of harmful behavior is present, including a history of domestic abuse, consular officers have the discretion to refer applicants to the panel physician if the officer believes their history of harmful behavior may be associated with a physical or mental disorder, and therefore could result in a medical ineligibility under INA 212(a)(1)(a)(iii). The Visa Office clarified this guidance to the U.S. Consulate in Shanghai, and post had agreed to update their procedures and the language in the panel physician referral letters to reflect current FAM guidance.

19. Rescheduling IV Interviews. What is the procedure for immigrant visa applicants to request postponement and rescheduling of a consular interview where all NVC processing is complete but the parties need additional time to file an I-601A provisional waiver application under the new regulations that went into effect on August 29, 2016?

Typically the NVC is alerted to an I-601A provisional waiver application and will hold the case at the NVC until they receive notification of a decision on the provisional waiver. Once NVC receives notification of either approval or denial of the waiver, they forward the case to the assigned post. If a case has already been sent to post, and the applicant decides to apply for the I-601A provisional waiver, they should contact the post where their interview will take place to request that the interview be rescheduled and to ensure that the case does not enter into termination due to a no-show for the appointment and no contact from the applicant. Each post has either an online contact form, or email address on their website that the applicant or their representative can use to alert the consular section of the application for the I-601A provisional waiver and to reschedule the interview.

20. Mission Cuba

- a. **Representing Minors/Disabled Applicants.** [According to its website](#), the U.S. Embassy Havana does not permit attorneys to accompany visa applicants to their interviews or to participate in the interviews. Family members are permitted to accompany the applicant but only where the applicant is a minor or is disabled. An AILA member reports that a 4-year old applicant was taken into the post for an interview on his own while his lawyer was made to wait outside. Can VO please instruct posts to permit attorneys to accompany minors and disabled applicants if a family member is unavailable?

[Access policies for consular sections are developed and managed by each respective U.S. Embassy or Consulate. Embassy Havana expects minor children to be accompanied into consular sections by family members.](#)

- b. **Documentation Review.** Members have reported that locally engaged staff in Havana greet nonimmigrant visa applicants while they are waiting outside the building for their interview and instruct them that no documentation other than the DS-160 confirmation sheet, proof of MRV fee payment, and an I-797 (if applicable) may be brought into the building. While we understand that a visa interview is not necessarily an exercise in documentation, we would appreciate if VO could look into whether there is a blanket ban on supporting documents in Havana. We would also appreciate it if the post could be reminded that interviewing officers make a determination whether evidence will be reviewed and that applicants should be permitted to enter the building with any evidence they may deem necessary.

[Embassy Havana allows visa applicants to bring whatever documentation they wish into the consular section, which applicants routinely choose to do. The Embassy's greeters routinely collect the DS-160 confirmation page and proof of payment from applicants as part of the intake process. These documents are then returned to the applicant prior to his or her interview. At the time of the interview, the applicant possesses the DS-160 confirmation sheet, proof of payment, and any other documentation that they wish to share with the adjudicating officer.](#)

- 21. HIV and Public Charge Issues.** Despite the end of the HIV ban in 2009, the FAM still singles out HIV positive status and treats it differently than any other serious Class B medical condition. *See* 9 FAM 302.2-5(B)(2) Visa Applicants Infected with Human

Immunodeficiency Virus (HIV) at **Appendix D**. While we acknowledge that it is appropriate for consular officers to examine public charge issues for all immigrant visa applicants, no other applicants, even those with serious health concerns, are subject to an effective presumption that “[i]t may be difficult for HIV-infected applicants to meet this requirement.”

The public charge issue is dealt with sufficiently 9 FAM 302.8-2(B)(2), which provides officers with guidelines for making a public charge determination based on the totality of the circumstances, including the health of the applicant. 9 FAM 302.2-5(B)(2) targets HIV positive applicants in a discriminatory manner, and should be removed. If this section cannot be removed, please explain why a separate section discussing HIV positive applicants is necessary.

The public charge provisions in the FAM no longer reference HIV, as reflected in the relevant section below:

9 FAM 302.2-3(G) – (U) Basis of Medical Report in Determining Ineligibility Under Public Charge - INA 212(a)(4)

(CT:VISA-177; 09-15-2016)

- a. **(U)** In addition to the examination for specific inadmissible conditions, the examining physician must also look for other physical and mental abnormalities that suggest the alien is likely to become a public charge.
- b. **(U)** When identifying a “Class “B”” medical condition that may render the alien inadmissible under [INA 212\(a\)\(4\)](#), the examining physician is required to reveal not only the full extent of the condition, but the extent of the approximate treatment needed to care for such condition. Based on the results of the examination, you must determine whether the disease or disability would be likely to render the alien unable to care for him or herself or attend school or work, or require extensive medical care or institutionalization. Thus, certain conditions (e.g., developmental disability) are no longer explicitly listed as inadmissible conditions. Instead, the examining physician’s diagnosis and opinion regarding treatment and disability would be factors for you to consider in your “totality of the circumstances” analysis of admissibility under [INA 212\(a\)\(4\)](#). (See [9 FAM 302.8\(B\)\(3\)](#).)
- c. **(U)** When the alien's own resources are not sufficient or are not available for use outside the country of residence and sponsorship affidavits are accepted, the affidavits must include explicit information regarding the arrangements made or the facilities available to the alien for support in the United States during the proposed period of medical treatment and assurance that a bond will be available if required by DHS.
- d. **(U)** Whenever an NIV applicant is seeking admission for medical treatment, complete information is required regarding the nature of the disease, effect, or disability for which treatment is being sought. (If action under [INA 212\(d\)\(3\)\(A\)](#) will be required, see [9 FAM 302.2-3\(G\)](#) and [9 FAM 305.4](#).)

22. B-1 Missionary. Is someone who is ordinarily paid for work abroad from a U.S. source precluded from utilizing the B-1 classification? For example, a missionary is employed

abroad by a U.S.-based church and is on the U.S. church's payroll. The church needs the missionary to come to the U.S. periodically (e.g., every three years) in order to visit churches, share his/her experiences, and to receive additional training.

A missionary employed by a U.S.-based church would not be eligible for a B visa per the guidance at 9 FAM 402.2-5(C)(1)(a)(3). That note provides that a consular officer may issue a B-1 visa to member of a religious domination "entering the United States temporarily for the sole purpose of performing mission work on behalf of a denomination...provided the minister will receive no salary or remuneration from U.S. sources other than an allowance or other reimbursement for expenses incidental to the temporary stay."

23. Legacy Yemeni Cases. While most cases that were pending in Yemen have now been transferred to alternative posts, AILA continues to receive reports of cases sent to posts in countries such as Algeria and Djibouti where the applicant cannot travel without a visa and cannot obtain a visa for purposes of attending the visa interview. Members have tried to contact NVC (via IVYemen@state.gov), where appropriate, and to contact the post where the applicant is resident; however, transfer request have been unsuccessful. What can applicants do in these cases?

Given the high demand for visa appointments worldwide and the large volume of transfer requests many consular sections overseas receive on Yemeni cases, some posts do not have the resources to accommodate all transfer requests. Many posts also decline Yemeni case transfer requests because they do not have an Arabic speaking staff to conduct visa interviews. If the request is based on an urgent medical or humanitarian need, applicants and petitioners are welcome to provide additional information to post for reconsideration. NVC will continue to work on cases whose transfer requests are denied, and they will be scheduled for an interview in Djibouti.

24. E-2 in Bolivia. We understand that effective June 10, 2012 the bilateral investment treaty between the United States and Bolivia was terminated but that the provisions of the treaty will continue to apply for 10 years to all covered investments existing at the time of termination. The [list of treaty visa countries](#) continues to list Bolivia as a party to an E-2 treaty. Could VO please either remove Bolivia from the E-2 treaty list or add a footnote explaining that it only pertains to those investments in existence at the time of termination?

Thank you for this question. The latest 9 FAM update includes the following footnote in 9 FAM 402.9-10:

Bolivian nationals with qualifying investments in place in the United States by June 10, 2012 continue to be entitled to E-2 classification until June 10, 2022. The only nationals of Bolivia (other than those qualifying for derivative status based on a familial relationship to an E-2 principal alien) who may qualify for E-2 visas at this time are those applicants who are coming to the United States to engage in E-2 activity in furtherance of covered investments established or acquired prior to June 10, 2012.

Appendix A

**To: David S. Newman, Director of Legal Affairs, Visa Office, Bureau of Consular Affairs,
U.S. Department of State**
From: The American Immigration Lawyers Association
Date: March 8, 2016
Re: FAM Provisions Governing L Classification

Introduction

At the conclusion of our discussion on the blanket L Form I-129S endorsement policy on October 8, 2015, the Visa Office (VO) generously offered to receive and review additional comments about the blanket L process from AILA. We greatly appreciate the time VO has devoted to this issue and for providing this opportunity. In the interest of defining a clear, consistent set of rules for the administration of the immigration process, a goal shared by both AILA and VO, we offer the following observations.

Following the reorganization of the Foreign Affairs Manual (FAM) and its re-publication on November 18, 2015, provisions governing L visas appear to be largely intact and unchanged. However, we respectfully suggest that some of these FAM provisions are outdated or contain information which has the potential to cause confusion among both consular officers and the public. We offer the following descriptions of a variety of technical issues appearing in the FAM, and make suggestions for revising the text to enhance its clarity.

9 FAM 402.12-7(A) Individual Petitions

In discussing the process for extending an individual L petition, 9 FAM 402.12-7(A)(c) indicates that an individual petition may be extended indefinitely. However, the period of validity of an individual petition extension is limited to two years.^[1] Separately, while 9 FAM 402.12-7(A)(c) correctly repeats 8 CFR §214.2(l)(14), indicating that “[s]upporting documentation is not required” for the extension of an individual petition, in practice, USCIS always requires petitioners to produce such documentation.

We respectfully suggest amending 9 FAM 402.12-7(A)(c) to read:

To extend the validity of an individual L petition, the petitioner must file Form I-129, Petition for a Nonimmigrant Worker, with the jurisdictional DHS Regional Service Center.

Supporting documentation for petition extensions is generally required by DHS and specific rules govern the documentary requirements for petition extensions involving new offices, in which case the petitioner must demonstrate that it is doing business, as described in [9 FAM 402.12-10](#) below, in order to extend the validity of the individual petition. A petition extension may be filed only if the validity of the original petition has not expired.

9 FAM 402.12-7(C) Individual Petitions for Canadian Citizens

Canadian citizens do not require a visa to be admitted to the United States in L status. DHS regulations authorize the presentation of an L petition by a citizen of Canada concurrently with an application for admission in L status.^[2] 9 FAM 402.12-7(C), which describes this DHS policy, appears to be overbroad and out of date.

Currently, 9 FAM 402.12-7(C) states, in part, a “Canadian citizen may present Form I-129 ... to an immigration officer at a Class A port of entry (POE), a U.S. airport handling international

traffic, or a U.S. pre-clearance or pre-flight station at the time of applying for admission.” However, 8 CFR §214.2(l)(17) limits the locations at which L petitions may be presented to “a Class A port of entry *located on the United States-Canada border* or at a United States pre-clearance or pre-flight station *in Canada*.” The current FAM language suggests that an individual L petition may be presented at any Class A port of entry or pre-clearance or pre-flight station. CBP maintains pre-clearance or pre-flight stations at international airports in several countries (see <http://www.cbp.gov/border-security/ports-entry/operations/preclearance>) and has announced plans to expand these offices to additional countries in the future. Accordingly, the unqualified reference to both Class A POEs and preclearance stations appears to be overbroad. Furthermore, neither DHS regulations nor current CBP policy support the statement that an L petition may be presented by a citizen of Canada at a U.S. airport handling international traffic.^[3]

We respectfully suggest amending 9 FAM 402.12-7(C)(a) to read:

*A U.S. or foreign employer seeking to classify a citizen of Canada as an intracompany transferee may file an individual petition in duplicate on Form I-129, Petition for a Nonimmigrant Worker, in conjunction with the Canadian citizen’s application for admission. A Canadian citizen may present Form I-129, along with supporting documentation, to an immigration officer at a Class A port of entry (POE) **located on the United States-Canada border or at a United States pre-clearance or pre-flight station in Canada**. The petitioning employer need not appear, but the Form I-129 must bear the authorized signature of the petitioner.*

Similarly, we suggest amending 9 FAM 402.12-8(E) to read:

*Citizens of Canada seeking L status under a blanket petition must present the original and two copies of Form I-129-S along with three copies of the Form I-797, to an immigration officer at a Class A port of entry (POE) **located on the United States-Canada border or at a United States pre-clearance or pre-flight station in Canada**. The availability of this procedure does not preclude the advance filing of an individual L petition or a Form I-129S with the DHS Service Center where the blanket petition was approved.*

9 FAM 402.12-8(A) Blanket Petitions

[Discussion Omitted]

9 FAM 402.12-8(F)(c)(2) Determining Validity Dates of I-129S

The INA places limits on the amount of time that a worker can utilize the L-1 visa category.^[4] L-1A workers are limited to seven years and L-1B workers are limited to five years.^[5] However, only the number days that a worker was actually present in the U.S. should be counted toward the five or seven year period.^[6] The current version of the FAM, revised on December 17, 2014, properly instructs consular officers to limit the validity of a Form I-129S, if necessary, to avoid exceeding the maximum period of L-1 eligibility and refers consular officers to 9 FAM 402.12-16(C) for guidance in calculating the amount of time that remains available to the worker. The FAM may be enhanced, however, by the addition of information and resources that may assist a consular officer in calculating the remaining time, including absences from the U.S. during the previously approved period of L-1 classification.

We respectfully suggest amending 9 FAM 402.12-8(F)(c)(2) to read:

*For renewal blanket L applicants, you must not only consider what the petitioner is requesting, but also determine the applicant’s remaining time under the maximum period of stay as outlined in 9 FAM 402.12-16(C). **Only those days the alien is lawfully admitted and physically present***

in the United States in L status should be counted when calculating the remaining available time in L status. In order to assist U.S. Customs and Border Protection (CBP) with ensuring Blanket L visa applicants are not admitted beyond their maximum period of stay, the consular officer must limit the approval dates of the I-129S when maximum period of stay will be reached prior to the dates requested by the petitioner. For example, if a blanket L-1A Executive **has already been present in the United States for a total of six years in L status**, you should limit the approval of the I-129S to one year to minimize the possibility he or she would be admitted in excess of the seven year maximum period of stay, even if the employer is asking for a longer period.

An individual seeking a new Form I-129S and blanket L visa for a period of time that exceeds five years, for L-1B applications, or seven years, for L-1A applications, bears the burden of proving he or she remains eligible for L classification for the entire period of blanket L classification requested on Part 4 question c of Form I-129S. Examples of documentary evidence that may be presented to demonstrate days absent from the United States include, but are not limited to:

- 1. An applicant's admission record printed from the CBP.gov/I94 website;***
- 2. Copies of Forms I-94 demonstrating an applicant's admission dates;***
- 3. Copies of admission stamps to the U.S. or a foreign country in the applicant's passport(s);***
- 4. Airline boarding passes for international travel out of the U.S.;***
- 5. Contemporaneously kept records such as human resource logs, calendaring software, etc.***

[1] See 8 CFR 214.2(l)(7)(i)(A); 8 CFR 214.2(l)(12); and 8 CFR 214.2(l)(14).

[2] 8 CFR §214.2(l)(17).

[3] Compare 8 CFR §214.2(l)(17)(i) with 8 CFR §214.6(d)(2).

[4] INA §214(c)(2)(D).

[5] *Id.* See also 8 CFR 214.2(l)(12)(i).

[6] 9 FAM 402.12-16(C); USCIS Adjudicator's Field Manual 32.6.

Appendix B

AILA Department of State Liaison Meeting Mexico City, Mexico April 27, 2012

Annotation of Visas

16. Applicants have found that TN Visas issued at Mexico City are not always annotated to provide that person may be admitted for 3 years, even though the visa is valid for only 1 year. Is there any suggested process for ensuring that TN Visas issued at Consulate are so annotated?

The MCCA has agreed that this makes sense and will instruct Mexico posts to begin annotating TN visas with the 3-year admission information as requested.

[AILA InfoNet Doc. No. 12050245. \(Posted 05/02/12\)](#)

AILA Department of State Liaison Meeting October 18, 2011

26. CBP agrees that citizens of Mexico may be admitted to the U.S. in TN *status* for up to three years even though the TN *visa* is limited to one year under the reciprocity schedule. Training issues persist, however, and CBP officers at the border or other port of entry frequently admit applicants for admission presenting a TN visa for only one year or through the date of visa expiration. The AILA/CBP liaison committee has asked CBP to post on its website a written statement provided by the committee that confirms its understanding that a nonimmigrant alien presenting a valid TN visa may be admitted up to three years. Pursuant to this position, the period of admission that CBP will authorize for a TN applicant for admission will be governed by the period of temporary employment requested in the letter or statement supporting the application of the TN visa or application for admission. To facilitate the admission of citizens of Mexico bearing TN visas, AILA believes that it would be beneficial guidance to CBP officers if DOS would annotate the TN visa stamp indicating the period of employment requested in the visa application supporting letter up to three years. Please confirm that VO will instruct posts to annotate TN visas in this manner.

Q25. The Department and CBP have discussed the concerns raised by AILA and have agreed to implement the proposed procedural changes. We have advised all U.S. visa-issuing posts in Mexico to annotate TN visas to show the proposed period of work for the visa applicant in the United States. We are hopeful this procedural change will assist CBP inspectors in determining the periods of admission for citizens of Mexico applying for TN status at the port of entry.

[AILA InfoNet Doc. No. 11102420. \(Posted 10/24/11\)](#)

Appendix C

U.S. Consulate General Shanghai

Consular Section
1038 West Nanjing Road,
Westgate Mall, 8th floor
Shanghai, China 200041
<http://shanghai.usembassy-china.org.cn/>

Date:

Dear Panel Physician:

Non-Immigrant Visa applicant [REDACTED] recently interviewed at the U.S. Consulate General in Shanghai. This applicant has a record of domestic abuse.

U.S. regulations now require that, if a visa applicant has been arrested for domestic abuse, that the visa applicant must be seen by an approved physician before the visa case can proceed.

Please evaluate this applicant's physical and mental health by completing the attached medical forms. You do not need to complete the vaccination portion of the medical examination. In addition to completing the medical forms, please answer each of the following questions:

1. Can this applicant be diagnosed with a mental disorder?
2. Is there current or past harmful behavior (threat to property, safety, or welfare of the applicant or others) associated with this applicant's disorder?
3. Is the harmful behavior likely to recur in the future?

Please write any additional comments about this applicant's physical and/or mental health in the space below:

Please send your findings directly to the main U.S. Consulate building in Shanghai (U.S. Consulate General, 1469 Middle Huai Hai Road, Shanghai, 200031) in a sealed envelope, along with a short letter on your official letterhead to the attention of the Consular Section. If you have any questions, please contact the Consular Section directly.

Sincerely,

Consular Officer

Appendix D

9 FAM 302.2-5(B)(2) Visa Applicants Infected with Human Immunodeficiency Virus (HIV)

c. Public Charge:

1) Under INA 212(a)(4) an immigrant visa (IV) applicant must demonstrate that he or she has a means of support in the United States and that he or she, therefore, will not need to seek public financial assistance. It may be difficult for HIV-infected applicants to meet this requirement of the law because the cost of treating the illness can be very high and because the applicant may not be able to work or obtain medical insurance. You must be satisfied that the applicant has access to funds sufficient for his or her support. You need to consider the family's income and other assets, including medical insurance coverage for any and all HIV-related expenses, availability of public health services and hospitalization for which no provision for collecting fees from patients are made, and any other relevant factors in making this determination. See also the policy guidance on public charge inadmissibility that the former Immigration and Naturalization Service (now DHS) published in the Federal Register on May 26, 1999, at 64 FR 28589 (1999).

(2) There is no waiver possible for this inadmissibility; however, if the applicant is able to demonstrate that he or she has acquired additional insurance or funds which would be sufficient to overcome the inadmissibility, you may determine that the inadmissibility no longer applies.

(3) On November 2, 2009, CDC issued the HIV Final Rule removing HIV infection from the definition of communicable disease of public health significance effective January 4, 2010. Although HIV infection is no longer a ground of inadmissibility under section 212(a)(1)(A)(i) of the INA, the requirement that an HIV-infected applicant must demonstrate that he or she overcomes inadmissibility under section 212(a)(4) of the INA remains.

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