

**AILA/Department of State Liaison Meeting**  
**April 7, 2016**  
**AGENDA**

**Communicating with Posts**

1. At our liaison meetings in [April 2015](#) and [October 2015](#), we discussed the difficulties AILA members have when contacting various consular posts, particularly when communicating via the “ustraveldocs” email addresses provided on post websites. The solution discussed was for each post to establish a public facing email address or contact form on their website. While we have seen some posts adopt this system, many posts still do not have a direct contact mechanism. Would you please update us on the progress of implementing this solution?

In August 2015, the Department issued formal guidance to posts specifying they establish a public facing e-mail address for case-specific inquiries and questions that require inherently governmental analysis for response. CA has reiterated and explained this requirement in a recent webinar, and will continue to follow up as posts work on implementing it. All inquiries relating to the application process, including appointment scheduling, fee payment, and/or document delivery should still be addressed to the GSS vendors.

2. Please comment on the impact, if any, the NVC Call Center has had on the volume of questions sent directly to consular posts.

We do not have comprehensive data on overseas calls to measure the impact. That said, NVC has made great strides over the past year to meet call demand. A combination of efforts, including upgrading the telephone infrastructure and concerted hiring and training efforts, has increased call capacity from around 4,500 calls per day at the beginning of 2015 to 10,000 calls per day today, which appears to be the true daily call demand.

3. AILA has received reports of consular posts not communicating with attorneys, despite submission of a G-28 or client letter authorizing the post to do so. What recourse is there when a post sends post-interview requests directly to an applicant when the attorney has asked that all communications be forwarded directly to counsel? This is also a concern when a post makes such requests orally without written instructions. *See Addendum A.*

9 FAM 601.7-3(c) provides that posts may correspond directly with the applicant’s representative of record, even in cases where the applicant is physically present in the United States, unless the applicant requests otherwise. However, the fact that there is a representative of record does not preclude the post from corresponding with the applicant, provided the post sends a copy of the communication simultaneously to the applicant’s representative. If your client has received correspondence from post you may follow up with post to request a copy. If your client may have received requests during an in person interview, you may follow up with post to determine what was requested. We will reach out to the posts identified in Addendum A to ensure that they understand the FAM guidance.

**Right to an Attorney at Renunciation Interviews**

4. Under 7 FAM 1262.3(f), attorneys are not permitted to attend or participate in renunciation interviews with a client. This has been the case since the 2015 FAM revisions, whether or not the Embassy or Consulate has a policy allowing attorneys to attend interviews in-person. However, we note that 7 FAM 1263(b) previously provided that “[t]he renunciant may be accompanied by his or her attorney as a witness, but posts should not be telling renunciants to get an attorney to act as a witness.” Please provide the reason for the FAM change to exclude attorneys at posts where counsel may otherwise be present?

Citizenship is a status that is personal only to the citizen. (See 7 FAM 1211.b - “Expatriation, like marriage and voting, is a personal elective right that cannot be exercised by another.”) Therefore, the change to 7 FAM 1263(b) was prompted by the need to ensure that the renunciant is voluntarily and intentionally relinquishing his/her status as a citizen of the United States without being pressured or unduly influenced by any third parties such as parents or an attorney. Embassies and consulates should not be advising individuals to bring in legal counsel to the renunciation interview or actual oath administration.

## **Revocation Policy**

Over the past several months, AILA has received numerous questions and reports from members regarding the revocation of nonimmigrant visas, and, in particular, notices of revocation received by individuals who are present in the U.S. This issue was discussed at length during our meeting on April 15, 2015.<sup>1</sup> Given the marked increase in the number of such notices received, it appears that there is either a new policy or a new manner of implementing existing policy relating to such revocations. We would like to take this opportunity to provide DOS with feedback regarding its nonimmigrant visa revocation policy and seek clarification on a number of implementation questions.

### ***Visa Revocations for Individuals in the U.S.***

Most questions regarding State’s visa revocation policy arise from notices received by individuals who are present in the U.S. in nonimmigrant status. At present, there is no published provision regarding nonimmigrant visa revocation in the eFAM. The most recent publically available FAM provision on revocation appears, in part, at 9 FAM 41.122 N1 through N3. Note 3 states, “[u]nder no circumstances should ... the visa of an alien believed to be physically in the United States” be revoked.

In response to a query regarding one such revocation, an AILA member received an email communication from the consular post referencing a new FAM provision, 9 FAM 403.11-3(B) (U), updated in December 2015. The communication included the text of the FAM provision as follows:

*a. (U) A consular officer does not have the authority to revoke a visa based on a suspected ineligibility, or based on derogatory information that is insufficient to support an ineligibility finding, other than a revocation based on driving under the influence (DUI). A consular revocation must be based on an actual finding that the alien is ineligible for the visa.*

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<sup>1</sup> AILA DOS Liaison Q&As (4/15/15), AILA Doc. No. 15042004, available at [www.aila.org/infonet/aila-dos-liaison-qas-04-15-15](http://www.aila.org/infonet/aila-dos-liaison-qas-04-15-15).

*b. (U) Under no circumstances should a consular officer abroad revoke a visa when the alien is in the United States, or after the alien has commenced an uninterrupted journey to the United States, other than a revocation based on driving under the influence (DUI). Outside of the DUI exception, revocations of aliens in, or en route to, the United States may only be done by the Departments Visa Office of Screening, Analysis and Coordination (CA/VO/SAC).*

With the exception of driving under the influence, this provision requires a determination of ineligibility for the visa prior to revoking it based on derogatory information and precludes a consular officer from revoking a visa when an alien is present in the U.S. Though we recognize that the policies expressed in the FAM do not create substantive or procedural rights, the apparent departure from 9 FAM 41.122 N3 raises many questions.

5. When does VO plan to release to the public its current policy on nonimmigrant visa revocation?

On March 14th, 2016 all unclassified 9 FAM content was made public, except for redacted portions that contain sensitive but unclassified language. The publicly available subchapters can be found at:

<https://fam.state.gov/Fam/FAM.aspx?ID=09FAM>.

6. Please describe the policy considerations that led to this change, and in particular to the decision to revoke nonimmigrant visas upon arrest for a DUI-related offense.

The Visa Office implemented the requirement for consular officers to prudentially revoke nonimmigrant visas for DUI arrests subsequent to visa issuance because driving under the influence is indicative of a possible INA 212(a)(1)(A)(iii) ineligibility for a possible physical or mental disorder with associated harmful behavior. Consular officers have been required to refer any nonimmigrant visa applicant with one alcohol related arrest in the last five years or two or more in the last 10 years to the panel physician for a medical examination prior to visa issuance to rule out a medical ineligibility. Previously, however, there was no consequence for DUI arrests subsequent to visa issuances until the time of the next visa application which could be up to ten years. The Department takes seriously drunk driving/driving under the influence, driving while intoxicated, and similar arrests (“DUI” arrests). It is both a public safety issue and evidence of a possible visa ineligibility. DUI arrests are sufficient cause for a referral to a panel physician. Because such an arrest is indicative of a possible visa ineligibility, as of November 5, 2015, the Visa Office instructed consular officers to prudentially revoke the visas of visa-holders with a DUI arrest that has occurred within the past five years, unless that arrest has already been addressed within the context of a visa application.

7. According to the new FAM provision, a consular officer may not revoke the visa of an individual who is in the United States (unless a DUI offense is involved), but the Visa Office of Screening, Analysis and Coordination (CA/VO/SAC) may revoke such a visa. In response to a call for case examples, AILA received a number of reports where it appears that a nonimmigrant visa was revoked following arrest for a non-DUI-related offense.

- a. Please confirm that any non-DUI-related revocation of a nonimmigrant visa for a person who is physically present in the United States would have been conducted by CA/VO/SAC and not by a consular officer.

With the exception of DUI cases, all revocations of non-immigrant visas for persons physically present in the United States should be processed by CA/VO/SAC.

- b. Please describe the process for revocation when CA/VO/SAC is involved, including whether a determination of visa ineligibility is made prior to revocation.

CA/VO/SAC receives prudential revocation requests from interagency partners or overseas posts. The requests are reviewed by a CA/VO/SAC analyst, who makes a preliminary determination as to whether the visa should be prudentially revoked and which potential ineligibilities the visa holder may face, so the corresponding quasi-hits can be entered into CLASS. The recommendation generally is reviewed by the revocations attorney advisor and the final decision whether or not to revoke is made by an authorized Department official.

The Department's prudential revocations do not involve eligibility determinations or factual or legal findings; they simply reflect that, after visa issuance, information has surfaced that has called into question the subject's continued eligibility for a visa.

8. Other than driving under the influence, under what circumstances may a nonimmigrant visa be revoked following an arrest and without a final disposition? *See Addendum B.*

CA/VO/SAC receives information on arrests and convictions through the interfacing between State's and other U.S. government agencies' electronic databases, some of which may not include final dispositions of criminal charges after an arrest. The Department may prudentially revoke based on suspected ineligibility, which does not require a conviction or admission of commission of a criminal act. A consular officer would then address potential criminal ineligibilities at the time of reapplication.

9. How many revocation notices have been issued to non-immigrants present in the U.S. based on a DUI or other arrest, but not conviction, in the past 6 months? In the past year?

The Visa Office does not maintain records of the number of arrest-based revocation notifications issued to non-immigrants.

#### ***Notices of Revocation Issued by Consulates***

Absent instructions to the contrary, consular officers are required to notify aliens whose visas are revoked.<sup>2</sup> The language of the revocation notices that are currently being sent by

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<sup>2</sup> 22 CFR 41.122(c).

consulates varies greatly. Some notices suggest that an individual is required to depart the U.S. immediately while others explain that the visa is no longer valid for future travel to the U.S. Bearing in mind that the recipient of these letters are individuals whose first language may not be English, ambiguous wording is causing undue alarm. *See Addendum C.*

10. Is State willing to create a uniform template letter for use by all consulates that clearly explains:

- a. That the visa is revoked due to derogatory information received by the Department;
- b. That the visa is not valid for future travel to the U.S.;
- c. That revocation of the visa does not require immediate departure from the U.S., if currently present;
- d. That the visa should be presented to the consulate for physical cancellation upon returning abroad, if present in the U.S.;
- e. That revocation does not preclude reapplying for a new visa.

The Visa Office already uses a uniform template revocation notice that clearly explains each of the above points to the issuing post, which is then responsible for notifying the visa holder. We are aware of a small number of cases in which posts have conveyed incorrect information to visa holders, and believe we have corrected the problem with the individual posts. Additionally, the Visa Office is currently drafting follow-up cable guidance to the DUI revocation FAM changes, and that guidance will emphasize these points. We do not think a uniform template letter is necessary at this time, but are willing to revisit the issue if it expands beyond these isolated incidents.

11. Would State be willing to accept a draft uniform template letter from AILA to assist in this process?

Please refer to the answer above.

### **B-1 in Lieu of H-1**

12. Members report discrepancies in the way B-1 in lieu of H-1 visas are adjudicated from post to post. In particular, there appears to be confusion regarding the length of time for which these visas may be issued. Some posts will only issue these visas for a maximum of 6 months while others will issue them for one year. Please confirm that the criteria for this visa classification remain those enumerated at 9 FAM 402.2-5(F) and that the cables (063795 from June 2012 and 00101466 from October 2012) clarifying issues of payment and employment remain valid. Please also clarify the maximum validity for which a visa in this classification may be issued.

Yes, we can confirm the FAM guidance and 12 STATE 101466 remain valid. As set out in the cable, B visas issued under Note 11 are not intended for long-term placement and should generally be issued for activity in the U.S. that is less than six months in duration.

### **Visa Issuance Following I-601 Approval**

13. Members report delays with immigrant visa issuance after the approval of an I-601 waiver. One member reports that the U.S. Embassy in Bangkok takes an average of 5 months to issue the visa after an I-601 has been approved. In one case, Bangkok asked the member to provide a copy of the I-601 before it would issue the immigrant visa.

- a. What is the process and expected time frame for immigrant visa issuance after an I-601 approval?

Consular sections aim to handle these cases alongside other competing priorities (adjudicating DV cases and preference category cases prior to the end of the fiscal year). With that in mind, attorneys should feel free to contact consular sections directly if they believe there has been an undue delay in case processing.

- b. Are these cases, which have already gone through interview, handled on a separate “track” from the regular IV queue?

The scheduling of cases with associated I-601 approvals varies between consular sections. At some consular sections these cases are separately scheduled from initial IV applications.

- c. Do consular officers review the underlying I-601 waiver application? If so, why?

Typically an officer will continue to adjudicate an IV application on the basis of the spreadsheet of I-601 waiver decisions received through encrypted email from USCIS Nebraska Service Center. However, if an officer identifies derogatory information that may not have been known at the time USCIS Nebraska Service Center adjudicated the I-601 application, it may be necessary to review the underlying I-601 application. As an example, USCIS waives an INA 212(a)(2)(A)(i)(I) ineligibility associated with an IV application; however, a consular officer notes that the applicant was convicted of a “crime of moral turpitude” after the I-601 was approved. An officer may need to review the underlying I-601 application to determine what incidents were included in the original INA 212(a)(2)(A)(i)(I). Occasionally, additional ineligibilities surface, either in the adjudication of the I-601 waiver or during a subsequent interview that must be addressed as well.

#### **Interpretation of 9 FAM 301.9-7; Alien Smuggling**

14. There seems to be inconsistencies in the application of the FAM provisions for alien smuggling at posts in immigrant visa cases where there is an I-601A. Findings of smuggling have been found when the only factual determination is that the IV applicant entered without inspection with another sibling or had family members enter the U.S. after the applicant sent money back home. Can you please confirm that posts should be applying the standards at 9 FAM 302.9-7 and that there has been no other guidance on this issue insofar as I-601A cases are concerned? *See Addendum D.*

Yes, we can confirm that our guidance to consular officers regarding ineligibility under INA 212(a)(6)(E) is found at 9 FAM 302.9-7. There is no different guidance regarding application of ineligibility grounds when a visa applicant has a provisionally approved I-601A for ineligibility under INA 212(a)(9)(B). 9 FAM 302.9-14(D)(b)(5) specifies that an I-601A is automatically revoked if a consular officer determines that the applicant is ineligible to receive an IV under any section of law other than INA 212(a)(9)(B).



## E-FAM

15. Please comment on the status of the updates to the new e-FAM. It seems that there are sections from the old FAM that do not appear in the new electronic version. How long can we continue to cite to the old version of the FAM? *See Addendum E.*

On March 14th, 2016 all unclassified 9 FAM content was made public, except for redacted portions that contain sensitive but unclassified language. These subchapters can be found at: <https://fam.state.gov/Fam/FAM.aspx?ID=09FAM>. Please let us know if you believe important content from the old FAM is missing from e-FAM.

On November 18, 2015 the 9 FAM-e went live and became the authoritative source for 9 FAM content. As of that date, the legacy 9 FAM citation system was no longer valid. Please refer to the crosswalk located on the public site for the new 9 FAM citations.

### *Addendum E Questions:*

- (1) First Cousin Marriages: The crosswalk lists this as 40.001 N 01.05 (old 9 FAM) and 102.03-01 (9 FAM-e). However, there is no 102.03-01 in the 9 FAM-e. The 9 FAM-e content is located in subchapter 9 FAM 102.3 at 9 FAM 102.3-1 Definitions, section f, Marriage Between Relatives, Uncle-Niece and First-Cousin Marriages: The information is available in the redacted version on the public site.
- (2) The Interview Waiver section found formerly under 9 FAM 41.102 N3, N3.1, N3.3., particularly N3.3. The content is now available on the public site at 9 FAM 403.5-4(A)(3) in the redacted version.
- (3) Additionally, the references at 9 FAM 402.9-6 are incorrect in the enumerated section - for example, this section now seems to deal with "(4) Enterprise is real and operating commercial enterprise (see 9 FAM 402.9-6E)" when the correct reference is 9 FAM 402.9-6(C). 9 FAM 402.9-6(E) Enterprise Must Be More Than Marginal – previous legacy location 9 FAM 41.51 N11 is correct on the crosswalk. 9 FAM 402.9-6(C) Commercial Enterprise Must Be Real and Active – previous legacy location is 9 FAM 41.51 N9 and is correct on the crosswalk. This information is available in the redacted version on the public site.
- (4) The section which used to spell out the criteria for a 212(d)(3) waiver is now unavailable. In the new FAM it is section 9 FAM 305.4. The old section which under the old FAM had been available were 9 FAM 40.301 Notes 1-4. It makes one wonder if they are trying to change the long standing Hranka factors which were incorporated in 9 FAM 40.301 N4 without telling anyone. Here are the missing FAM sections: 9 FAM 40.301 N1, 9 FAM 40.301 N2, 9 FAM 40.301 N3, 9 FAM 40.301 N4. The crosswalk shows these notes in 9 FAM 305.4-2 when they are actually in 9 FAM 305.4-3. There are some anomalies in the 9 FAM Crosswalk that we are in the process of correcting but this information is available in the redacted version on the public site.
- (5) 9 FAM 40.21(a) N2.3 Common Crimes Involving Moral Turpitude. This section seems to be missing in its entirety from the FAM-e. It is in 9 FAM 302.3-2(B)(2) Defining Moral Turpitude, Note C – available in the redacted version.

(6) 9 FAM 403.11-3(B) (U) When Consular Officers May Not Revoke Visa. This section is now marked as "unavailable" in the FAM-e. It is available in the redacted version.

### **FAM Note on TN/TD Maximum Initial Periods of Admission and Extension of Stay**

16. 9 FAM 403.9-4(E) “Maximum Initial Periods of Admission and Extension of Stay” erroneously lists the maximum initial period of admission for TN and TD nonimmigrants as one year. However, in 2008, USCIS published a final rule increasing the maximum period of admission for TN and TD nonimmigrants from one year to three years, and allowing otherwise eligible TN/TD nonimmigrants to be granted an extension of stay in increments up to three years instead of the prior maximum of one year.<sup>3</sup> This FAM provision also refers to USCIS filing fees that are now incorrect. Does VO plan to update/correct the information contained in 9 FAM 403.9-4(E) to reflect the new periods of admission and extension and the correct filing fees?

We will update the FAM accordingly to reflect the maximum period of admission as three years.

### **CSPA: Sought to Acquire**

17. 9 FAM 502.1-1(D)(7) states:

*If an Application Final Action Date retrogresses ... within one year of visa availability and the visa applicant has not yet sought to acquire LPR status, then once a visa number becomes available again the one year period starts over.*

This could be read to mean that the child cannot meet the “sought to acquire” requirement after the priority date retrogresses. However, at the 2015 IIUSA conference, VO indicated that if a retrogression or setting of a cut-off date occurs within the 12 month window, the applicant can still satisfy the “sought to acquire” requirement until the 12 month period expires, by submitting the visa fee, DS-230, or DS-260. We would appreciate clarification of the policy articulated in the FAM provision and ask VO to consider revising it to resolve any ambiguities.

In March, the Department published edits to 9 FAM 402.1.1(D)(7) that make clear that if visa availability retrogresses, an applicant will still be able to seek to acquire within the original 12 month period from when the visa first came available. The text of the FAM revision is as follows: “If a visa availability date retrogresses before the visa had been available for one full year, any actions taken within one year of the visa becoming available and that satisfy the “sought to acquire” requirement (see 9 FAM 502.1-1(D)(6)) will be sufficient to lock in the applicant’s CSPA age as of the first day the visa became available during this time period.

EXAMPLE: If a visa became available on June 1, 2015, the visa availability date retrogressed on July 1, 2015 and the applicant sought to acquire a visa on August 1, 2015 by paying IV fees, the applicant's CSPA age would be locked in as of June 1, 2015 based

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<sup>3</sup> 73 Fed. Reg. 61332, 10/16/08.



on seeking to acquire within one year of visa availability. The next time the visa becomes available, the consular officer would calculate the CSPA age as of June 1, 2015.”

18. Will VO consider changing the FAM note at 9 FAM 502.1-1(D)(6) to indicate that payment of the visa fee would meet the “sought to acquire” requirement as VO indicated in previous comments?

In March, the Department published edits to make clear that payment of the visa fee would meet the sought to acquire requirement. The text of the FAM revision is as follows: “However, a beneficiary can satisfy the “sought to acquire” requirement by paying IV fees, filing a Form I-864, Affidavit of Support (only if the applicant is listed on the Affidavit of Support), or paying the Form I-864 filing fee to NVC (only if the applicant is listed on the Affidavit of Support). For questions about individual, fact-specific circumstances that may meet the “sought to acquire” requirement, submit an advisory opinion request to CA/VO/L/A.”

19. 9 FAM 502.1-1(D)(9)(b)(11) lists “The date the alien submitted the DS-230 Part I (Still used?), Form DS-260 or the date the principal filed the Form I-824” as information needed for a consular officer to submit an advisory opinion on a CSPA case. Please clarify what is meant by “(Still used?).” Does that notation in any way prevent satisfying the “sought to acquire” requirement through the submission of Form DS-230 to NVC within one year of a visa becoming available when the applicant is processing electronically?

The Department revised 9 FAM 502.1-1(D)(9)(b)(11) so it now reads “The date the alien submitted the Form [DS-260](#) or the date the principal filed the Form [I-824](#).” The DS-230 is no longer accepted as the immigrant visa application. Currently, all applicants must submit the electronic DS-260 as part of their applications (9 FAM 504.1-2). Because the DS-230 is no longer accepted, it cannot be considered a step towards seeking to acquire an immigrant visa. Therefore, its submission will not suffice as a step for locking in an applicant’s CSPA age.

20. **Variations in Endorsement Practices.** AILA members continue to report a wide range of practices in the endorsement of Forms I-129S by consular officers. For example, reported dates in the action block for “Validity dates” on Form I-129S include: 3 years from the date of issuance, 5 years from the date of issuance, the Part 4(c) ending date, and no dates.

- a. Is a Form I-129S endorsed for a period of 5 years considered valid through the entire period of endorsement?

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)).

- b. If a Form I-129S is incorrectly endorsed by a consular officer is there a standard procedure to request a corrected form or does each consulate have authority to implement its own procedure?

There is no standard procedural guidance in 9 FAM on correcting errors in Form I-

129S endorsements. However, the visa applicant and/or legal representative should contact the consular section 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.

- c. Is VO willing to send a cable to posts reminding them of the current, correct endorsement policy?

We continue to emphasize the importance of accurately endorsing the Form I-129S to consular officers in cable guidance and training.

**21. Variations in Annotation Practices.** AILA members continue to report a wide range of practices in the annotation of blanket L visas by consular officers. For example, reported annotations continue to include the petition expiration date (PED) of the underlying blanket L petition, a PED that corresponds with the Form I-129S endorsement expiration date, and a Form I-129S expiration date.

- a. If a blanket L visa is issued with a PED date, is there a standard procedure available to request issuance of a corrected visa or does each consulate have authority to implement its own procedure?

As in any case involving an error on a visa, the visa applicant and/or legal representative should contact the visa processing post to notify them of the error and to request a correction of the visa foil. Whenever possible, such errors should be reported to the consular section for correction before the beneficiary's travel to the United States. If that is not possible, the applicant must submit the visa foil for correction within one year.

- b. Is VO willing to send a cable to posts reminding them of the current, correct blanket L visa annotation policy?

We continue to remind consular officers of blanket L annotation policies in training and cable guidance.

**22. Blanket L Visa Validity after Extending Status with USCIS.** Under current regulations, L visas that are based on an individual petition and those that are based on a blanket L petition may be issued with a validity period up to five years. Pursuant to 9 FAM 402.12-8(F)(a)(1) a blanket L visa should be annotated to indicate, *inter alia*, "BLANKET L-1; MUST PRESENT I-129S AT POE" whereas, pursuant to 9 FAM 402.12-8(D) an individual L visa should be annotated, "MUST PRESENT I-797 AT POE."

- a. Is there a legal distinction between an L visa based on a blanket petition and an L visa based on an individual petition?

A blanket L visa is issued pursuant to 22 CFR §41.54(a)(3), whereas an individual L visa is issued pursuant to 22 CFR §41.54(a)(2). Holders of both types of L visas are entitled to L classification under INA § 101(a)(15)(L).

- b. If a petitioner files a petition to extend the status of a blanket L worker inside the U.S., the current practice of USCIS is to issue a Form I-797, Notice of Action when the petition is approved. Is a blanket L visa that is valid for a period of five years with an annotation indicating BLANKET L-1; MUST PRESENT I-129S AT POE still considered valid if the worker is subsequently the beneficiary of an approved individual L petition in possession of a Form I-797 rather than an endorsed Form I-129S?

See answer for c.

- c. If not, must the worker obtain a new L visa to apply for admission to the U.S. based on the individual petition, even though the original blanket L visa may remain unexpired for two more years?

Thank you for raising this question, we recommend you raise this with DHS/CBP. In our discussions with CBP, we believe that an L visa is viewed in addition to an valid L petition (whether individual or blanket) when determining admissibility.

- d. If an original blanket L visa remains valid for use with a Form I-797 based on an approved individual L petition extension, the visa should have an annotation indicating: BLANKET L-1; MUST PRESENT I-129S AT POE. The worker, however, would not be in possession of and endorsed I-129S. Has VO discussed this issue with Customs and Border Protection and, if so, what was the outcome of the discussion? If VO has not discussed this CBP, is VO willing to provide appropriate public guidance in the form of a memo, announcement, or FAM provision?

The Visa Office has not been notified of cases in which individuals in these circumstances have been found inadmissible at the port of entry. We have discussed this issue with CBP. Annotations are information for CBP, not instructions for visa holders.

- e. If there is sufficient room on the visa foil, would VO consider revising 9 FAM 402.12-8(F)(a)(1) to instruct consular officers to annotate a blanket L visas as follows: "BLANKET L-1; MUST PRESENT I-129S or I-797 AT POE?"

Thank you for the suggestion, we will take in under consideration.

23. **Blanket L-2 Dependent Visa Issues.** Many blanket L workers are eligible to receive a five-year blanket L visa under the applicable reciprocity schedule. 9 FAM 402.12-8(F)(c), however, limits the endorsement of Forms I-129S for a period up to three years. At our October 9, 2014 meeting, VO confirmed that, upon expiration of a Form I-129S endorsement, a blanket L worker can obtain a new one by filing a new visa application even if the original L-1 visa remains valid for another two years. In the event that a principal nonimmigrant obtains a new blanket L visa and Form I-129S with a new endorsement, are dependents also required to obtain new L-2 visas or can they rely on their original, unexpired L-2 visas?

The template for blanket L derivative annotations that appears at 9 FAM 402.1208(F)(A)(2) instructs consular officers to indicate, in part, the following:

BLANKET L-2; P.A.: JOHN DOE

P#-<PETITION RECEIPT NUMBER> I-129S EXP: <EXP DATE>

If the dependents do not obtain new L-2 visas at the same time that the principal obtains a new visa and Form I-129S, the I-129S expiration annotations on the L-2 visas will not match the principal's new endorsed form.

- a. Do the L-2 visas of such dependents remain valid even though the annotation indicates an expired I-129S date?

We refer you to DHS/CBP to determine whether an applicant would be admitted to the United States under these circumstances. We have discussed this with CBP and are not aware of any concerns from them regarding these annotations.

- b. Has DOS discussed the validity of such L-2 visas with CBP? If not, is DOS willing to hold such discussions in order to develop a mutual understanding of which document expiration date(s) govern eligibility to apply for admission to the U.S. in blanket L dependent status?

We refer you to DHS/CBP to determine whether an applicant would be admitted to the United States under these circumstances. We have discussed this with CBP and are not aware of any concerns from them regarding these annotations.

24. **Visa Annotation Policy.** Will DOS consider removing the I-129S expiration annotation on blanket L visas and simply leave the annotation required by 9 FAM 402.12-8(F)(a)(1): "BLANKET L-1; MUST PRESENT I-129S AT POE" or "BLANKET L-1; MUST PRESENT I-129S or I-797 AT POE" **Addendum "F", noting varying annotations on visa foil.**

Not at this time. We have consulted with CBP on our annotations policy, and have determined that including the I-129S expiration date on blanket L visas is helpful to both CBP officers and visa holders. As noted, however, we will continue to emphasize to consular officers the importance of accurately endorsing the Form I-129S and visa annotation.

25. **Fraud Fee for L-1 Visas** Members report that applicants for individual L-1 visas have been forced to pay the \$500 Fraud Detection and Prevention Fee when this fee is only applicable to L-1 blanket visa applicants. Would VO instruct posts that this fee should be charged only to L-1 blanket visa applicants? What is the process for obtaining a refund when this fee is accepted in error?

We will emphasize this in future training, however, existing FAM and cable guidance is clear that this fee should be collected only for blanket L-1 visa applicants. If an applicant has been charged a fee improperly, the visa applicant should contact post to request a refund.

## **Reciprocity Schedules**

26. AILA is concerned that the current Reciprocity Schedules for [Syria](#) and [Yemen](#) do not reflect the ongoing civil strife in those countries. For example, the "General Documents" section of the Syria Reciprocity Schedule states: "As of July 2011, Syrian citizens can

register new civil events (birth, marriage, divorce, and death) and obtain civil documents from any Civil Affairs office in Syria without going back to the original secretariat of their civil records. This new service became possible after the completion of the Electronic Gate project, which made Syria one Civil Secretariat.” Regrettably, the civil war that is ravaging the country has for some time made it impossible to obtain documents from most Civil Affairs offices in Syria. Please provide an update as to which vital documents and records from Syria and Yemen are now considered unavailable. Would State consider posting real-time guidance about Syrian and Yemeni documents and records on the “[What’s New](#)” page on the Reciprocity by Country section of the website?

The Department will reach out to our visa issuing posts for nationals of Syria and Yemen, to determine the status of document availability and will work with them to draft language for the reciprocity pages on [travel.state.gov](http://travel.state.gov) accordingly. We will include the new guidance in the General Document information on Yemen’s and Syria’s reciprocity country pages and will note the update on the “What’s New” page.

27. Information about document availability on Country Reciprocity Schedules is not always promptly updated as envisioned by the provisions of [9 FAM 403.8](#). Out-of-date information regarding document availability results in inefficiencies in the visa application process. For example, the Reciprocity Schedule for [Honduras](#) identifies the Issuing Authority for Police Certificates as Dirección Nacional de Investigación Criminal (DNIC). Following procedural change, we understand that the proper Issuing Authority for Police Certificates is now the Dirección Policial de Investigaciones (DPI). Is there a mechanism for reporting changes relating to document availability to help facilitate Reciprocity Schedule updates?

The Department makes every effort to keep the reciprocity schedules as up-to-date as possible with regard to document availability, including emailing posts or sending worldwide cables with instructions to review and update the pages several times a year. We are also regularly in touch with the National Visa Center regarding discrepancies they see when processing IV packages. We will reach out to our post in Tegucigalpa and inquire about updating the police certificate information. In addition, AILA members may report changes relating to document availability to the relevant post.

### **I-130 Transfers from USCIS**

28. Occasionally, I-130 petitions are misrouted or lost after USCIS approval, and it is difficult for attorneys and/or petitioners to track down the file to ensure that it is transferred to the NVC as requested. Please confirm the current protocol for locating an immigrant petition after it has been approved by USCIS and apparently sent to NVC but NVC has not acknowledged receipt of the file from USCIS.

Currently, if a petition takes longer than 60 days to arrive at the NVC from USCIS, we ask that the case party send their I-797 approval notice to [NVCAttorney@state.gov](mailto:NVCAttorney@state.gov). Our research team will reach out to USCIS to both notify them that we did not receive the petition within the standard 60-day timeframe and to work with them to determine the current location.

In addition, please confirm the following:

- a. Is USCIS or the NVC responsible for tracking down the file?
- b. If the NVC is responsible for tracking down the file, what tracking information is required for the NVC to find the file (e.g., USCIS receipt number, name, DOB and COB of the beneficiary, etc.?) and how should the issue be raised with NVC (e.g., through [NVCattorney@state.gov](mailto:NVCattorney@state.gov))?

If it has been longer than 60 days since USCIS approved the petition and it is still not at the NVC, you should send a copy of the I-797 Approval Notice to [NVCattorney@state.gov](mailto:NVCattorney@state.gov). Be sure to include your G-28 if you are not the Attorney of Record and include standard case information such as USCIS Receipt Number, Petitioner's name, and Applicant's name and date of birth with the request.

## NVC Deficiency Notices

29. AILA members report receiving notices from the NVC stating that there are deficiencies in the case (usually related to the affidavit of support). However, when attorneys call the NVC to discuss the letter, they are told that the case has no deficiencies and that the NVC system shows a date confirming completion of the case. Adding to the confusion, the completion date in the NVC system is earlier than the date of the deficiency letters. When this happens and there is seemingly no defect to cure, how can we ensure that the case is transferred to post and that post will not require any additional information based on the previous letter?

The Affidavit of Support (AOS) “assessment” letter is a document that the NVC introduced in 2015 to assist applicants, sponsors, and posts by making them aware of certain possible non-critical AOS errors and omissions. The applicant, petitioner, sponsor, or agent of choice may then use this information to decide whether or not they wish to provide extra documentation or a new Affidavit of Support to the adjudicating officer at the time of interview. If a case has been issued an AOS assessment letter and is otherwise documentarily complete, NVC will also issue a notification that the case is documentarily complete and it is then queued for an appointment. Once the appointment is set, NVC will send a further notification with the appointment details. The case is then immediately sent to post.

The issuance of an AOS assessment letter, however, does not preclude the issuance of a checklist letter if the case is still missing some type of documentation, fee payment, some other item that prevents the case from being documentarily complete. In these circumstances, it is possible that an applicant would receive both an AOS *assessment letter*, indicating that NVC will forward the submitted AOS to post upon full completion of the application package, and a *checklist letter* requesting the additional item. Once a case is documentarily complete and a notice is sent to that effect, NVC will neither request nor expect further document submissions related to the case.

Given that system generated letters and notifications, such as AOS assessment letters, notices that a case is documentarily complete, and appointment notifications, are collated and generated in separate work batches, these notifications may be sent at slightly different times. Thus, it is possible that an assessment letter will be sent on a date later than the notification that a case has been documentarily qualified.



## Establishing Domicile

30. Instructions from post regarding proof of a petitioner's intent to be domiciled in the U.S. can be vague. Some simple changes to the consular checklist could clarify the necessary domicile documents and eliminate uncertainty in the immigrant visa process. For example, the checklist from the U.S. Consulate in Montreal includes the following item: "p. Copies of documents proving petitioner's U.S. domicile," but it does not clarify what documents would be acceptable to show intent to domicile. We suggest that the checklist include a reference documents that could be provided, perhaps modelled after the adjustment of status section of the DOS website, <http://nvc.state.gov/aos>, which states:

### "How can a petitioner establish a domicile?"

When a sponsor has clearly not maintained a domicile in the United States, he/she must re-establish a U.S. domicile to be a sponsor. The aspiring sponsor may take steps, including the examples given below, to show that the United States is his/her principal place of residence

- Find employment in the United States
- Secure a residence in the United States
- Register children in U.S. schools
- Relinquish residence abroad
- Other evidence of a U.S. residence

If the sponsor establishes U.S. domicile, it is not necessary for the sponsor to go to the United States before the sponsored family members. However, the sponsor must return to the United States to live before the sponsored immigrant may enter the United States. The sponsored immigrant must enter the United States with or after the sponsor."

AILA has received reports of immigrant visas being delayed due to a lack of clarity on what is required to show intent to domicile in the U.S.<sup>4</sup> Would DOS consider reaching

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<sup>4</sup> For example: **Case 1:** Mrs. D went for her IV interview at the Consulate (**MTL2014734006**). Mrs. D is married to a U.S. citizen, who is employed by a well-known U.S. company. Mr. D. temporarily worked for the same company in Toronto for two years, but was transferred back to the U.S. permanently in September 2014. At the IV interview the Consular Officer asked Mrs. D for proof of her husband's U.S. domicile. They had submitted the husband's W-2 for 2014, current paystubs, and a letter confirming employment in the U.S. There was no requirement to provide a lease on the checklist provided by the NVC/Consulate. Based on the lack of a lease, Mrs. D's IV was refused and she was issued a 221(g) Refusal Worksheet and asked to provide the lease. She was informed that her case may be delayed up to 6-8 weeks. She provided the lease and her IV was issued after a significant delay. **Case 2:** Mrs. K went for her IV interview at the Consulate (**MTL 2014713015**). Mrs. K is married to a U.S. citizen, who is employed by a well-known U.S. company. Mr. K was transferred back to the U.S. in September 2014 from Canada. At the IV interview, on May 11, 2015, the Consular Officer asked Mrs. K for proof of Mr. K's domicile in the U.S. Mrs. K gave the Consular Officer copies of their mortgage statements showing that they had purchased a home in the U.S. in October 2014, and she also provided an employer letter and paystubs from the U.S. company indicating that Mr. K was now working at their Seattle, Washington, location. The Consular Officer rejected the mortgage statements and employer letter, stating that individuals often buy homes in the U.S. but that they may not actually be living in them. The Officer requested proof that Mr. K was actually residing in the U.S. home and issued a 221(g) visa denial. The proof was provided after the interview, but it took weeks to obtain the IV.

out to the posts, particularly those in Canada, and requesting that the consular checklist be amended as suggested above?

Thank you for bringing this to our attention, we will follow up with posts.

### **Annotating I Visas**

31. Please clarify whether a valid I-visa holder who changes employers must apply for a new I-visa (i.e., so the visa is annotated with the name of the new foreign employer), or whether they may use their existing and currently-valid I-visa, together with a copy of the contract with the new foreign media employer, when applying for admission to the U.S.

[9 FAM 402.11](#) does not address this issue, and there appears to be inconsistency among posts as to the requirements; Auckland requires a new visa application, while the U.S. Embassy in Canberra posts the following on [its website](#): “Often journalists and media workers who obtained an I-visa due to their work with one employer will later change employers, but still need to travel to the U.S. to engage in similar work. As long as their new employer is a foreign-based media outlet, the journalist will not be receiving income from a U.S. source, and their product (i.e. broadcast, article, documentary, etc.) is not primarily for distribution within the U.S., their visa remains valid until its original expiration date. However, it is important that they carry a letter or contract from their current employer for presentation to the Immigration Officer at the U.S. Port of Entry should it be requested.”

Mission New Zealand (Embassy Wellington and Consulate Auckland) has advised that, unlike Mission Australia, it does not provide any independent I visa information on its web site; rather, the website provides a direct link to the I visa section on the Department of State’s website, [travel.state.gov](#). The Visa Office has reached out to Mission New Zealand, and has confirmed with consular staff the appropriate practice concerning journalists/media representatives changing employers.

32. Related to the above scenario, is it possible for an I-visa holder to obtain a visa annotated with more than one foreign-based media employer?

While there is no specific guidance in the FAM concerning annotations for I-visas as such, there are occasions when it may be appropriate and/or useful to do so, as determined by the consular officer at the time of interview. Concerning the scenario of an I-visa applicant who has more than one foreign-based media employer, such an annotation would be possible, or, with an expectation of frequent change of employer, it might be more appropriate to annotate the applicant as a freelance media representative.

### **Resolution of Technical Outages**

33. Is there a contingency plan in place in the event that an outage in the DS-260 happens again as it did in 2015, such as allowing the submission of paper applications?

Yes. During last year’s systems issues, the Visa Office developed plans to work around the unavailability of the online DS-260, including the use of the paper DS-230 in exigent circumstances. Ultimately last year’s crisis was resolved with minimal use of the paper form, and in most instances in which a paper form was initially accepted, the applicants

were later asked to complete the DS-260. However, we are optimistic that the extensive upgrades that we have since made to the stability and security of the CCD and related components, including CEAC, greatly reduce the risk of a DS-260 outage on the scale of what we had in 2015.

34. In July 2014 and June 2015, outages of the Consular Consolidated Database (CCD) significantly impaired the ability of posts worldwide to process NIV applications at the height of the tourist season. A GAO report published in September 2015 ([\*State Has Reduced Applicant Interview Wait Times, but Sustainability of Gains Is Uncertain\*](#)) indicates that State is developing a new IT platform, "ConsularOne," in order to overcome the limits of its current consular IT systems, including the CCD. We also understand from our liaison meeting in October 2015 (Question 13C) that part of the modernization was migration of the CCD to a modernized Oracle Exadata platform.

- a. What is the status of the development of the ConsularOne system and the Exadata platform?

We completed the migration of the entire CCD to the Oracle Exadata platform in November 2015.

Development is fully underway for the first two ConsularOne projects. The Online Passport Renewal service includes the development of front-end capabilities allowing customers to complete and pay for a passport renewal application online, and back-end capabilities for internal users to ingest and adjudicate the application. This capability is scheduled to be deployed domestically in calendar year 2017 to help Consular Affairs address the anticipated impending surge of passport renewals. The electronic Consular Report of Birth Abroad (CRBA) service will build on these capabilities and expand them to offer ability for both customers and internal users to schedule and manage CRBA appointments and to upload and manage documents needed for the application process. This capability will be available in calendar year 2018. Subsequent modules will be rolled out later, including functionalities to support the non-immigrant visa process.

- b. Are the ConsularOne and Exadata systems and/or other systems in place to help ensure that there will not be a repeat of the outages and failures during the upcoming tourist season?

Exadata is in place. Unlike the complicated legacy network of servers and storage platforms, our Exadata implementation consolidates the CCD databases onto a converged hardware and software operating environment. This reduces the administrative overhead that impeded our ability to maintain and upgrade the system in the past. The platform combines significantly increased processing and storage capacity, relative to the legacy CCD operating platform, and features additional hardware redundancy to improve CCD's ability to withstand unforeseen hardware failures. The upgraded system has been performing quite well, and has been far more stable and responsive than the legacy CCD operating environment. The migration efforts also updated our standby infrastructure, duplicating the production system with a dedicated, identical CCD standby environment.

As noted above in the response to 34(a), the first components of ConsularOne relate to online passport renewals and an electronic Consular Report of Birth Abroad (CRBA) service. Subsequent modules will include functionalities to support the non-immigrant visa process.

35. Please also provide an update with regard to the next phase in the CCD modernization project, which involves an internal redesign of the database to enhance efficiency and reliability. Has this phase begun? Can you share with AILA any details regarding the proposed redesign, including a timeline for its completion? Is State contemplating any other steps or initiatives with regard to modernizing the CCD?

Moving forward, we continue to make improvements to the CCD's software and operating efficiency. This includes a focused effort to re-architect and optimize the multiple separate databases that comprise the CCD as well as replacing outmoded integration software. These efforts also include addressing software defects and workarounds that have, over time, impacted the operating efficiency of the Department's consular operations. These adjustments will provide us with a more efficient and maintainable operational platform.

#### **Updates on Visa Modernization Proposal Implementation**

36. The Visa Modernization Proposal strives to improve Consular posts' ability to accept electronic payments. In response to question 13(B) from the [October 2015](#) liaison meeting, State indicated that there are plans to implement a new Enterprise Payment System (EPS) that meets the Treasury's processing requirements and that will facilitate online passport renewal for U.S. citizens. State also reported that this backend effort is a prerequisite to any future improvements for visa service collection. As we approach the ten year anniversary of the Western Hemisphere Initiative which required all U.S. citizens to carry passports when traveling to Mexico and Canada, State must be expecting a huge influx of passport renewal applications.

Moving forward, we continue to make improvements to the CCD's software and operating efficiency. This includes a focused effort to re-architect and optimize the multiple separate databases that comprise the CCD as well as replacing outmoded integration software. These efforts also include addressing software defects and workarounds that have, over time, impacted the operating efficiency of the Department's consular operations. These adjustments will provide us with a more efficient and maintainable operational platform.

- a. Is this one of the reasons that implementing EPS will start with passport applications?

Yes.

- b. What is the status of EPS's implementation?

The initial round of development has been completed and tested. Additional enhancements are currently underway and EPS will be implemented by the end of 2016.

Has this prerequisite activity been completed?

If prerequisite activity here refers to EPS, then the response is no.

If not, what is the target completion date, and what are the next steps in your plan to improve payments for consular visa services?

EPS is the plan to improve payments for consular immigrant visa services and will be implemented by the end of 2016. The consular immigrant visa payment services will transition to EPS at the time of its implementation. Currently there is no discussion to extend EPS to consular non-immigrant visa services due to the complexity of overseas credit card transactions.

- c. AILA is aware that State has held public meetings regarding the expected surge in passport applications. Can you please tell us more about your plans to handle the influx in passport renewal volume?

Since 2007, the Department has improved significantly its physical capacity to meet the expected increased passport demand. We added 11 new passport facilities, increasing the number nationwide to 29. These additions serve key population centers and border-crossing areas. The Department also now has four “mega-adjudication centers” capable and prepared to adjudicate high volumes of applications. In this same time frame, the Department increased its passport staff by more than 34 percent and continues to increase its adjudication staff by another 20 percent beyond current levels.

The Department continues to proactively reach out to U.S. citizens to encourage them to apply for passports well in advance of travel. We expect this to help disperse seasonal application spikes. Additionally, we recently increased the number of contractors at our national call center and expanded its hours to better accommodate anticipated increases in call volume. We are also working to expand capacity and create redundancy in our application intake.

All of these improvements support our tiered, trigger system designed to prevent, identify, and address backlogs through a variety of methods. These include increased overtime, dedicated passport application adjudication task forces, and transferring work to less-burdened passport agencies.

Our continued goals are to manage our workload proactively, to retain as little work on hand as possible, and to ensure applicants receive their travel documents in a timely manner.

37. The Visa Modernization Proposal strives to enhance services to vulnerable populations in two ways: (1) by providing consistency across agencies with regard to immigrant visa cases raising humanitarian concerns, and (2) by improving and standardizing interview practices for applicants with physical and mental disabilities. (See question 13D from the October liaison meeting.). In [October 2015](#), DOS reported that it was in preliminary discussions with USCIS regarding interagency consistency in IV cases raising humanitarian concerns. At that time, it was too early to report any progress. Is there anything that you can report to AILA at this time about how State and USCIS plan to work together to achieve this goal?

USCIS and NVC now operate under an agreement whereby State inherits the status of a case expedited by DHS and processes the petition accordingly without asking the petitioner to restate their case. Since adopting this policy, NVC has already processed two cases from USCIS with an inherited expedite status.

38. With regard to improving and standardizing interview practices for applicants with physical and mental disabilities, State reported that a decision was expected to be made in November as to whether to issue a global policy or continue with individual post requirements. Has a decision been made? If so, can you please share what was decided, including any details on when the policy is expected to be finalized, or if it has been issued, what steps will be taken to ensure access for these vulnerable populations.

The Department of State remains committed to improving our services for all applicants, including those with physical and/or mental disabilities. We continue to work with overseas posts to ensure that all possible accommodations are made for applicants with physical and/or mental disabilities, and consular managers routinely review post policies to ensure that applicants have access to the services they are seeking.

39. ***MIV pilot update.*** State provided details regarding the modernized immigrant visa (MIV) pilot program at our October 2015 liaison meeting.

- a. In response to question 13F from our [October 2015 liaison agenda](#), State reported that the new public-facing CEAC portals would be available after the full end-to-end pilot begins in spring 2016. Please advise as to whether the full pilot is still scheduled to begin in the spring, and if so, please provide additional details.

CA has revised the full end-to-end pilot start to Summer 2016, with a go-live target in August 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, adding sponsor information, and uploading scanned documents directly to their case.

The pilot CEAC portal is expected to launch in August, 2016. The pilot will allow applicants 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

If pilot testing is successful, we will expand the pilot to more posts.

- b. State reported receiving excellent feedback on the MIV pilot experience and provided us with a sample of an actual user's comments. What other feedback has State received with regard to the pilot thus far?



Feedback from customers participating in the limited pilot remains positive, with significantly faster NVC processing time and no time lost to physical file shipment. While the MIV program introduces several important technological improvements to immigrant visa processing, our changes to NVC's service model are equally important and significantly enhanced the customer experience. NVC established dedicated teams trained to support the MIV pilot posts and customers. These teams pro-actively reach out to customers and possess expertise on local documents to help ensure files reach post as prepared as possible. NVC is the process of hiring additional staff and training new teams which will replicate this highly successful model for all countries and applicants, regardless of whether they are MIV-based or not.

In February 2016, NVC began sending surveys to parties that participated in the MIV pilot. Responses to our initial survey have been largely positive, with over 86 percent of respondents reporting that scanning and emailing documents to the NVC was easy and straightforward. When asked to rate their interaction with NVC, 82 percent report either satisfactory or excellent service.

- c. State indicated that one measure of the MIV's success is whether the 221(g) rate has decreased, as that would demonstrate that more applications were complete at the time of interview. At that time, data was only available from May to July 2015, but there was a 34% decrease in 221(g) rates during this period. Now that more data is available, are you still seeing similar results? We would be interested in receiving any other statistics or benchmarks that would be willing to share regarding the MIV program.

As previously noted, the new teams at NVC have made significant strides in neutralizing problems before files arrive at post, which is reflected in a steady drop in the 221g rate for MIV cases. In May 2015, the NVC document collection related 221g rate for IV cases at our pilot posts was approximately 38 percent. As of February 2016, the average rate across all six pilot posts has now fallen to roughly 11 percent.

NVC continues to see a significant reduction in 221(g) rates for MIV cases during the pilot period. From May 2015 through February 2016, 221(g) rates for documentary reasons fell by around 25 percent.

## **N-600 Processing**

- 40. Has State issued new guidance or instructions to officers to process N-600s at post for children who will automatically acquire U.S. citizenship upon admission to the U.S. under INA §320? Members report that immigrant visa officers in Vietnam and Ethiopia recently adjudicated N-600s cases at post rather than issuing immigrant visas to the children, and that the children were thereafter admitted to the U.S. as citizens. We have not been able to identify any change in policy in 9 FAM that would permit this. Were these incidents isolated, or has this authority now been delegated by USCIS to State? If so, please confirm and specify the criteria when IV units may adjudicate N-600 petitions for qualifying beneficiaries.

There has been no new guidance or instructions issued to consular officers to process N-600s or N-600Ks. The guidance found at 9 FAM 502.3-4(C)(9) remains current. As the FAM guidance states, the B-2 NIV classification may be appropriate in some cases where

children must travel to the U.S. in order to obtain naturalization under INA 322 and 8 CFR 322. However, the Department of State does not issue or adjudicate N-600s or N-600Ks; those fall under the purview of the Department of Homeland Security.

We have contacted Hanoi (the adoption processing post for Vietnam) and Addis Ababa and neither can find an example of an N-600 processed at post. If you have questions regarding a specific case(s) please send us the case number and we can look into it further.

### **E-3 and TN Annotation Issues**

41. During the October 2015 liaison meeting, we discussed documentation to demonstrate approval of applications for multiple, part-time employment-based applications presented by E-3 and TN nonimmigrants. State explained that there is insufficient space on the visa foil to annotate the name of more than one employer. State further explained that the consular officer's case notes confirm the employment relationships that were approved, and applicants would be verbally advised of this information. We noted that U.S. employers require proof of the employment eligibility of a nonimmigrant worker in order to comply with their obligations under INA §274A(b). Employers do not have access to consular officers' case notes and a verbal statement from the employee is not sufficient under the regulations. In these cases, we suggested that State issue a letter of approval similar to that which is provided by the U.S. consulate in London for E visa treaty enterprises.

- a. Has State given further thought to issuing letters of approval for multiple, part-time employment of E-3 and TN nonimmigrants?
- b. Has State identified an alternative method for indicating the employment relationships that have been approved when requests for multiple, part-time employment relationships are concurrently presented for an E-3 or TN application?

E-3 and TN issuing posts reported that E-3 and TN visa applicants who submit LCAs for multiple concurrent employers are rare. Posts further reported that when processing the applications of the applicants who did submit multiple (usually two) LCAs, consular staff had been able to add the annotations for both employers onto the visa foil. In some cases this necessitated the use of abbreviations, but the information for both employers was indicated.

No post recalls any cases where an applicant submitted more than two LCAs at the same time.

9 FAM 402.17-10(c)(3) already states that more than one employer can be included on a single TN visa, and that each employer should be annotated on this visa. Similar language will be added to 9 FAM 402.9-8 Requirements for E-3 Visas. In addition we propose to add FAM guidance advising consular staff to contact VO/F in cases where it is not possible to fit all the required employer information onto the visa foil. VO/F, on a case by case basis, may suggest and authorize the issuance of a letter for an E-3 or TN employer.

### **Requesting Advisory Opinions from the CDC**

42. What is the procedure to request that a consular post consider seeking an advisory opinion or re-examination from the CDC? In particular, how should this inquiry or request be made if the post does not have a direct email address?

The general guidance to consular officers is to defer to the medical expertise of the panel physicians. However, if consular officers have concerns that a panel physician is not adhering to CDC's technical instructions, consular officers may either email CDC directly or contact the panel physician subject matter expert in the Visa Office. If consular officers have questions about this or medical examinations generally, they should request assistance from the Visa Office.

43. How often do consular offices exercise this option?

The Visa Office does not track the frequency of these requests but would qualify the use of this option as occasional.

44. How can an applicant obtain a copy of his or her medical examination from State where the panel physician will not release a copy to the applicant, and the exam was delivered directly to the post?

Medical examination worksheets are visa records and as such are confidential under INA section 222(f) and may not be released. Per 9 FAM 302.2-3(F)(11), panel physician are required to provide a copy of the DS-3025 vaccination record directly to applicants.

45. Panel physicians are medical experts. That said, panel physicians sometimes identify non-medical issues (i.e. tattoos, in connection with possible membership in an organized crime group). When reported to consular officers, these judgments can lead to a finding of inadmissibility under INA 212(a)(3)(A)(ii). What basic and ongoing training is provided by State and/or other agencies to panel physicians regarding the significance of body art?

Individual posts work with and train their panel physicians on reporting tattoos based on local circumstances. Consular sections may work with other offices at post or in consultation with CA to develop materials but there is no uniform training provided to panel physicians by the Department.

### **Projected Future Visa Demand**

46. Under the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, travellers in the certain categories are no longer eligible to travel or be admitted to the United States under the Visa Waiver Program (VWP). Even before this new legislation, State had projected the number of NIV applicants will rise to 18 million by FY2019.
- a. Given that increases in NIV demand have historically impacted State's ability to efficiently process visas, how will the increase in visa applications arising from the new changes to the VWP impact State's ability to meet the expected demand for NIVs?

After implementation of the Act began in January, State's NIV workload in VWP countries has seen a slight increase of less than 10 percent. State has processed this additional workload with existing resources while maintaining very short interview wait times at most VWP posts.

- b. In general, is State forecasting significant increases in visa wait times as we approach FY2019? In this regard, will there be another "surge" in the number of consular officers, and/or limited non-career appointments (LNAs)?

The Bureau of Consular Affairs is committed to meeting the President's Executive Order on Visa Wait Times. The Department uses forecasting models combined with an annual review of consular staffing levels to ensure that consular sections are staffed appropriately to manage any changes in workload demand. The annual Global Repositioning Exercise examines the staffing level of every consular section worldwide to balance resources to meet our changing workload demands. The Department adds, removes and reclassifies position grades through this exercise, which takes into consideration not only volume, but also the complexity of work at individual posts. The Department hires Foreign Service Generalists as well as qualified candidates on limited non-career appointment (LNAs) to fill consular adjudicator positions.

- c. Is State considering further expanding the interview waiver program (IWP)?

Yes, in consultation with interagency partners, we will consider expanding IWP as we identify additional, secure applicant populations. On March 24, 2016, the President announced that the Department of State and Department of Homeland Security have agreed to add first time Argentinian nonimmigrant visa applicants in a visa class other than E, H, L, P, or R who are younger than 16 years of age or 66 years of age and older, effective May 24, 2016.

By adjudicating travelers who qualify for IWP without an interview, consular officers can spend more time and resources evaluating and interviewing applicants about whom we have less information. Since the passage of section 222(h), technological advancements and enhanced information-sharing have significantly strengthened the visa adjudication process.

Expanding the IWP to include other known travelers will facilitate greater numbers of legitimate travelers to the United States, while supporting both national security and the economic well-being of our country.

- d. At the October 2015 liaison meeting, VO noted it was considering adding in the TCN wait times to the visa wait times web page. What is the status of these efforts?

This suggestion is still under consideration. Thank you.

- e. The GAO Report, [\*State Has Reduced Applicant Interview Wait Times, but Sustainability of Gains Is Uncertain\*](#), indicates that State has developed plans to open two new consulates in Brazil and to add visa services to the existing U.S. consulate in Wuhan, China to help absorb increases in NIV demand. Please provide an update on the progress of these plans.

The two consulates in Brazil, Porto Alegre and Belo Horizonte, are scheduled to open on October 2016 and September 2017 respectively. Wuhan is scheduled to open on November 2017.

- f. The GAO report also indicates that State has created an IWP adjudication section in the United States to better leverage NIV processing resources, particularly in China. How does State assess the contributions of the state-side IWP adjudication section thus far? Is State considering leveraging this section to reintroduce the domestic visa revalidation program for petition-based or other visa cases?

The Remote Processing Unit (RPU), which adjudicates certain IWP-eligible cases for overseas posts, has been remarkably successful. It is composed of staff with extensive overseas consular experience that adjudicates IWP cases following the same statutes, regulations, and policies as IWP adjudicators located at post. By leveraging this U.S. based team, overseas staff can focus on applicants we know less about or who otherwise require an interview. Should the RPU determine that an IWP applicant requires an interview, the case is returned to the post where the applicant applied and the applicant is instructed to schedule an appointment through post's usual procedures for IWP applicants needing interview. 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.

### **Cuban Family Reunification Parole Program Processing**

47. Now that the Cuban Family Reunification Parole Program interview appointments are being processed through the NVC, it appears that interviews have not yet been scheduled.

- a. Has the NVC scheduled any interviews for applicants who applied for CFRP before February 17, 2015? If so, how long is the wait for an interview for those applicants?

Yes, the NVC scheduled interviews for those applicants who applied for CFRP before February 17, 2015. These applicants will have received interview letters with an interview date.

- b. For those who did not apply before February 17, 2015, has the NVC started sending out invitations to apply for an I-131 with USCIS? If so, how long is it taking to send out the instruction packets after the NVC receives the approved petition from USCIS? How long is it taking to schedule these cases for interviews?

No, we have not invited anyone to apply under the new CFRP process that involves informing the petitioner to file the Form I-131.

### **New DS-160 Question**

48. A new question was recently introduced to Form DS-160 under Personal Information: "Are you a permanent resident of a country/region other than your country/region of origin (nationality) indicated above?" While responses to this question may assist consular officers in assessing an applicant's eligibility, we believe the term "permanent resident" is bound to cause confusion for some applicants. Can you please provide

guidance on how the term “permanent resident” should be interpreted for purposes of responding to this question?

In context of the DS-160 permanent resident means any individual who has been legally granted by a country/region permission to live and work without time limitation in that country/region. The Visa Office will develop and post on [travel.state.gov](http://travel.state.gov) a FAQ for visa applicants that includes this information and other help topics currently on the DS-160 that applicants can access before starting the application.

## **Electronic FOIA**

49. Does DOS have plans to upgrade its FOIA system to an online system, similar to CBP and USCIS?

At this time the Department does not have any plans to change its FOIA system to allow for online filing of visa-related FOIA requests; however, a working group has been considering ways to upgrade our FOIA technology and we will introduce this idea.

Currently, requests for personal information, including visa records, cannot be submitted electronically and must be submitted by mail. In order to protect the privacy of all relevant parties, requests for personal information must include either a notarized statement or a statement signed under penalty of perjury stating that the requestor is the individual s/he claims to be. Requests from a third party must also be accompanied by a notarized statement from the subject of the record stating that s/he gives permission for the third party to have access to the record.

CA would like to remind AILA members that under U.S. law, found at 8 U.S.C. § 1202(f), visa records are confidential and most cannot be disclosed even to the visa applicant. Consequently, if you submit a FOIA request for your client's visa records, the only documents that we are permitted to release to you are documents submitted by, or on behalf of, your client or documents previously sent to your client in the adjudication process:

- (1) your client's visa application, with any notations redacted;
- (2) any other documents your client submitted with the application, with any notations redacted; and
- (3) correspondence sent to your client during the visa adjudication process.

## **J-1 Waivers**

50. On occasion, J-1 Exchange Visitors may require an extension of time to complete their J-1 program after they have already applied for a J-1 waiver with State. For example, a J-1 physician who holds a DS-2019 valid through June 30, 2016 applies for a clinical J-1 waiver in October 2015. By February 2016, the waiver has been recommended by State and is pending at USCIS when the J-1 physician is in a debilitating automobile accident that prevents him from participating in his J-1 graduate medical education program for 6 weeks. Consequently, he needs a 6 week extension of his J-1 program in order to complete his studies.



In cases where the J-1 has applied for a waiver and the waiver is still pending when the J-1 requests an extension to complete their J program, the extension request is recommended for approval as the waiver has not yet been granted.

Similar situations arise for J-1 Exchange Visitors who give birth during the time of their J-1 program and are therefore unable to complete their training without a program extension. Would WRD please confirm that ECFMG is permitted to issue a DS-2019 program extension in these instances?

The Educational Commission for Foreign Medical Graduates (ECFMG) sends us cases for consideration. After careful review, some cases are recommended for approval, but some cases could have other circumstances in which a denial is recommended.

We note that J-1 physicians are frequently issued additional DS-2019s for the purpose of studying for board examinations even after they have applied for a J-1 waiver. Here, the principle is the same. The DS-2019 would be issued for the purpose of finishing the J-1 program that was the subject of the waiver application. Without such a program extension, such J-1 physicians are in a difficult bind as they are precluded from applying for a second waiver for the same program, yet would be ineligible to complete the required training for a clinical J-1 waiver they have already been granted without the program extension.

ECFMG sends a request to State for review of an alien physician's participation in a program of graduate medical education or training. As part of the review process, ECA verifies the J-1's waiver status with CA. All requests are reviewed on a case-by case basis and could be denied depending on the totality of circumstances. In cases where the J-1 has applied for a waiver and it is pending at the time of application review, the request is usually recommended for approval as a waiver has not been granted. There are some cases that may have other circumstances, such as emergency family issues, death in the family, birth, hospitalization. ECFMG may request a "sponsorship authorization" in these cases to allow the physician to complete his/her training requirements. The physician's participation in a graduate medical education program or training is limited to the time typically required to complete such a program, which is seven years unless the physician has demonstrated to the satisfaction of the Secretary of State that the country to which he will return at the end of additional specialty education or training has an exceptional need for someone with such education or training.

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