AILA DOS Liaison Committee Liaison Meeting with the Department of State
October 10, 2024

Introduction

AILA thanks DOS for its continued engagement. We believe these discussions on issues of mutual concern are valuable opportunities to provide insight and clarity for our members and the public concerning current immigration policies and procedures while also providing helpful feedback to DOS. AILA is eager to review DOS's responses to the questions included below.

General Operations

1. AILA applauds DOS's efforts to reduce visa wait times; however, some countries' wait times are still lengthy. Can DOS provide any updates on DOS's plans to reduce backlogs in these countries, such as in Mexico and Canada?

   Response: The investments we've made in our people, our facilities, and our technology are transforming wait times. Our wait times have dropped by nearly 60 percent since coming out of the pandemic. The current global median wait time for a first-time B1/B2 visa appointment is 60 days, a major improvement for our applicants and a result of our concerted efforts around the world. Last year we set the ambitious goal to bring wait times in 90 percent of the world to under 90 days. Currently, almost three quarters of our missions that process B1/B2s are there, and we continue to bring to rest down to that goal. For example, in Brazil, the average wait time for a first-time B1/B2 appointment is one month. As of this month, there are only six countries where the first-time B1/B2 wait time is over one year: Canada, Colombia, Ghana, India, Peru, and Turkey. These are some of our largest markets, but we are driving wait times down there too. Mission Mexico is not on that list today after successfully cutting wait times by 60 percent since May 1. And overall, in the top 20 inbound visitor countries, the average wait time now is around six months.

2. Can DOS provide any updates on the digital visa pilot program, including plans to expand it to other posts and visa categories?

   Response: Consular Affairs is continuing its efforts on the digital visa authorization (DVA) program. We're currently focused on software updates to make the program more user-friendly for applicants, and we plan to conduct another pilot at a non-preclearance post soon. Expansion of the program will depend on implementation of the requirement for all airlines flying to the United States to join CBP's Document Validation (DocVal) program. We understand that CBP is now working on finalizing the rule that will mandate this enrollment.

DOS Customer Service Statement

3. AILA appreciates the DOS Customer Service Statement posted on the travel.state.gov website. Can this statement also be incorporated into the FAM? Can the statement be

posted in all interviewing consular posts so applicants and consular officers can easily see it?

Response: CA is the public face of the DOS and is committed to customer service. Our Customer Service statement on travel.state.gov is part of our efforts. Additionally, in February 2024, CA provided our consular posts with a template and funds for a consular service standards poster production in local languages. Customers can find this poster in waiting rooms worldwide. In July 2024 CA updated 7 FAH-1 H-821-825 "What Public Service Means" to reflect public service expectations.

Technology

4. AILA appreciates DOS's engagement on issues relating to agency tools and technology. Below AILA has included some initial questions, which we hope will serve as one part in a larger conversation with the agency concerning identified issues and recommendations. Please provide updates on the following.

    a. Will DOS (Consular Systems and Technology (CST) or Global Support Strategy (GSS)) consider creating an email inbox for GSS/CST/Contractor Liaison (like LegalNet), which attorneys can use to highlight systems issues, reoccurring outages, client blockages, etc.?

    Response: We have discussed this question since it has been raised previously and are not currently considering creating a dedicated email box or point of contact for attorneys to highlight systems issues on individual cases. Our technology teams are in a better position to address systems issues that reach a critical mass (*i.e.*, affect more than individual case anomalies) because we have the resources and visibility to identify them when they occur. Attorneys that experience specific issues on a case should continue to reach out to the post or office-specific email addresses (GSS, NVC, KCC, etc.) so that they can be addressed.

    b. Will DOS consider establishing a Beta Team (to include members of the public, attorneys, etc.) to beta test contractor changes to outward-facing consular systems to ensure blockages and other kinks are resolved before releasing worldwide? Consular posts are selected for soft launches before changes roll out to other posts. Before that rollout, could this Beta Team test the changes and report any user issues to CST/GSS?

    Response: The Department already does solicit feedback from the public and attorneys during and after beta testing of outward-facing consular system changes. For example, attorney and public feedback on the domestic visa renewal pilot, some of which will be incorporated into the program when it resumes, has been invaluable.

    c. What is the required response time on the DOS Navigator Feedback Tool? To what team or office are the submissions through this tool routed?

Response: To date, the Navigator Technical Feedback Tool has received two responses. Of those, only one was technical in nature. The Visa Office responded to the inquirer within 24 hours of the report of the malfunction to let them know that the issue had been resolved and that the local consular section would respond to the policy question. The Visa Office encourages AILA members to use the technical feedback tool to report any malfunctions. We strive to respond to all reports of technical malfunction within 72 hours. Inquiries received via this Tool that deal with policy questions or other issues will not receive a reply.

d. Is there an escalation procedure if there is no response within the required timeframe? If not, would DOS be open to creating one.

Response: Should the Navigator Technical Feedback Tool begin to receive a higher volume of reports, the Visa Office will consider creating escalation procedures.

e. Would DOS be open to providing a point of contact (POC) authorized to engage and facilitate engagement on identified issues and agreed-upon fixes as well as a point of contact (POC) authorized and able to implement the agreed-upon tech fixes? Such a collaboration could enhance the system's performance and reliability at low cost.

Response: Please see our response to (a) above.

AILA Overseas Chapter Consular Post Engagements

5. AILA's overseas chapters would like to conduct consular engagements on local procedures with consular posts in their geographic region. These engagements have benefited both AILA and DOS, allowing posts to disseminate messages or information and enabling AILA attorneys to better prepare their clients to adhere to local procedures and practices. Direct communication with posts to coordinate such engagements has become more difficult with the introduction of Navigators and other communication triage measures. What are DOS's recommendations for contacting consular posts to arrange local engagements?

   Response: We prefer that the initial engagement come through the Visa Office. AILA overseas chapters should contact businessvisa@state.gov with their request and the Visa Office will assist the chapter in coordinating with post.

U.S. Citizen Services

6. On May 13, 2024, DOS codified the final rule amending 22 CFR §50.40(f) specifically authorizing third party (including attorneys) attendance at in-person Certificate of Loss of Nationality (CLN) appointments. (89 FR 41310). The FAM has yet to incorporate the regulation and at 7 FAM 1262.3(f) actually contradicts the regulation by stating third parties "should not participate in any interview." In addition, members report recent experience with Frankfurt where applicants have been interrogated about attorney representation in relation to CLN applications and one attorney received an email from

post stating: "Renunciation is a serious matter and therefore can only be processed by the applicant...There is no need for your office to assist them." Can you please amend the FAM to be in accord with the regulation and instruct consular staff to apply the regulation correctly?

Response: The Department revised 8 FAM to reflect the new regulation at 22 CFR §50.40(f) and is in the process of revising 7 FAM. In addition, CA has issued guidance to the field and worked with many posts on any implementation questions they raised. We are reaching out to Mission Germany regarding their implementation of the regulation separately. Please let us know if you continue to experience issues with specific missions.

Stateside Visa Renewals

7. AILA appreciates the DOS's efforts to increase efficiency in visa processing by piloting. a stateside renewal visa program from January – April 2024 for H-1B applications from Mission Canada and Mission India. What steps is DOS taking to make permanent and expand the pilot to other nonimmigrant categories or Missions?

   Response: VO is analyzing the lessons learned and participant feedback from this successful pilot and is actively pursuing a broader, long-term program to provide domestic visa renewals for not only H-1B specialty occupation workers, but also to include their dependents and additional categories, including treaty investors.

E Visas

8. AILA members continue to report inconsistent E-visa adjudications and delays among various posts. During our June 2022 liaison meeting, DOS has indicated that KCC may offer assistance to posts that request it in an effort to reduce delays. Nevertheless, members report extensive delays at some posts, including Barbados, France, Italy, Colombia and the Netherlands. Is KCC assistance still available for posts? If so, has DOS made posts aware of this potential resource?

   Response: We began a pilot in 2023 aimed at centralizing E1/E2 visa prescreening at the KCC to enhance the efficiency, consistency, and overall quality of the visa adjudication process. The current decentralized approach places a disproportionate administrative burden on low-volume posts, leading to inconsistencies and inefficiencies that can hinder the Department's mission to promote foreign investment and economic growth in the United States. Although, the pilot is aimed at a few posts we do hope to expand it to more posts that have a low- to mid-sized E visa volume.

9. At the January 2022 liaison meeting, DOS confirmed they are looking at numerous options to improve E visa adjudications, including remote processing to help certain posts (such as Ankara). DOS also confirmed that it is working to create an institutional knowledge base to support these situations. Can DOS provide an update on its efforts to implement processes or procedures to improve adjudications?

Response: In addition to continuous updating/recertification of 9 FAM and the E Visa Portal, which is the centralized location of all E Visa resources, we also conducted a Global E Visa workshop in May at Embassy Tokyo. This location was chosen as Mission Japan has the largest E Visa mission, processing more than 20,000 E visa cases annually. Participants from U.S. embassies and consulates around the world joined subject matter experts from across CA to share experiences, innovations, and best practices. Some of these innovations are being further developed by KCC.

10. Regarding securing E visa interviews, DOS has also suggested that E visa applicants can file at any post that will accept them. Some posts use an E visa company registration system. Can an executive or essential employee of a company with E visa registration at one post apply for an E visa as a TCN at another post based on the company registration from the first post?

    Response: There is no worldwide company repository that houses the information on all companies that seek an E visa. Each post currently maintains its own local data regarding E visa enterprises that were previously found to meet the qualifications under INA 101(a)(15). If an enterprise employee (i.e. executive/supervisor/essential employee) applies for a visa outside their consular district, then the post where the visa interview will take place needs to conduct its own evaluation of the enterprise and the applicant.

214(b) Guidance

11. 9 FAM 302.1-2(B)(2) is titled "How do I apply INA 214(b)" and provides a summary of the Presumption of Status clause of INA§214(b). Unfortunately, the summary is inaccurate. The statute states that anyone who is not a U.S. citizen is presumed to be an immigrant, while the FAM adds the phrase "and ineligible for an NIV." This presumption of ineligibility is inconsistent with the statute and creates an additional burden for applicants, resulting in denials of applications that should otherwise be approved.

    Response: The statutory presumption in section 214(b) is that an applicant for a nonimmigrant visa other than an H1B or L is an intending immigrant, which an applicant can rebut by establishing that they are "entitled to a nonimmigrant status." If an applicant is unable to rebut the presumption of immigrant intent, they will be ineligible for the visa.

    Will DOS amend the FAM to remove the reference to a presumption of ineligibility and instead use the statutory language?

    Response: Thank you for bringing this to our attention. The Department continuously reviews and updates internal guidance in the Foreign Affairs Manual to ensure it is clear and consistent with the law. We will flag this issue for review and make the necessary amendments.

12. AILA understands that consular refusals under INA§214(b) may be, as noted in 9 FAM 302.1-2(B)(6), about "more than just ties." The FAM explains that refusals under INA§214(b) can be based on a consular officer's determination that an applicant did not "meet the standards required by the visa classification for which they are applying," or in

conjunction with a finding of inadmissibility under INA§212(a). DOS affirmed during the March 2024 liaison meeting that while 214(b) refusals based on a finding of fact are not reviewable by LegalNet, refusals that are based on a misapplication of law are reviewable. AILA appreciates DOS's clarification and appreciates that 9 FAM 403.10-3(A)(3) provides officers with samples of 214(b) refusal letters for both "lack of ties" and "for reasons other than lack of ties." Unfortunately, use of distinct refusal notices for reasons other than lack of ties has been inconsistent among consular posts. Can DOS remind officers to distinguish between 214(b) refusal letters based on lack of ties and reasons other than lack of ties?

Response: Consular officers refuse applicants orally and in writing for any nonimmigrant refusal. When refusing an applicant 214(b), consular officers explain the law and refuse the applicant in clear terms. The Department will remind posts as needed to provide applicants the refusal letter most appropriate for their circumstances.

13. Where petition-based applications are refused under 214(b), it would be helpful for applicants and their attorneys to know if a petition has been returned to USCIS for revocation. 9 FAM 601.13 instructs consular officers on consular returns; however, much of that section is unavailable to the public. Can DOS provide additional information concerning consular returns to avoid superfluous communications?

    Response: In petition-based nonimmigrant applications that are refused 214(b), the petitions are not always returned. When a consular officer does return a nonimmigrant petition, it is routed through the Kentucky Consular Center to USCIS, however, there is no mechanism for the Department to notify the petitioner if the petition is being returned. We recommend reaching out to USCIS in these situations in cases where the applicant is not refused 214(b) and there is reason to believe the petition has been returned.

Recent Update to 9 FAM 305.4 and 212(d)(3) Issues

14. AILA appreciates the recent update to 9 FAM 305.4 recognizing a U.S. public interest in both granting and expediting waivers of inadmissibility to individuals who have graduated or earned credentials from a U.S. institution and are seeking a nonimmigrant visa to commence or continue employment in the U.S. AILA also recognizes that this language implements the Administration's efforts to provide additional relief to DACA recipients and DACA-class individuals; however, we also note that the general language of the provisions could equally apply to any NIV applicant who requires a waiver under INA 212(d)(3) and meets the stated criteria (e.g. a graduate of a U.S. university who is seeking an E-2 visa but requires a (d)(3) waiver for a controlled substance violation). Please address the following:

    a. Does DOS envision application of the provision beyond U.S. college educated individuals who are seeking H-1B visas?

        Response: Consular officers have always been permitted to recommend nonimmigrant waivers for any individual with an ineligibility who overcomes the

presumption of immigrant intent under INA 214(b) or who is applying for a visa classification where dual intent is permitted. Many DACA recipients and Dreamers have ineligibilities related to their presence in the United States and have known no other home. In cases where dual intent is not permitted, consular officers must be convinced an applicant overcomes the presumption of immigrant intent.

b. Have consular officers received further guidance or training on implementing this expanded waiver eligibility and/or expediting criteria? If so, can DOS share this information with the public to better prepare applicants for their waiver applications?

Response: We are working closely with the field to ensure that consular officers request the relevant supporting documentation to process applications as quickly as possible. Applicants are routinely advised that they should be prepared to present any documentation that supports their request for the visa and the associated waiver. This could include, but is not limited to: an approved I-797 for H1B; approved I-797 for DACA approval; transcript or certificate from U.S. institution of higher learning; or an employment letter from U.S. employer.

c. What specific language will be included on the visa stamp to note that a D3 waiver has been granted?

Response: All applicants granted a waiver of their ineligibility receive standardized annotations on their visas. We do not anticipate deviating from this standardized format.

d. How is DOS monitoring the implementation of this new guidance? Is the agency collecting data on how many applicants have been requested, granted, or refused a 212(d)(3) waiver applying this new guidance and at which posts?

Response: For years, consular officers have issued visas based on waivers of inadmissibility grounds, including those whose waiver requests are expedited. We are monitoring applicants who receive waivers as a result of the revised guidance, but so far the volume has been low.

e. What is the proposed timeframe for an expedited 212(d)(3) waiver under this added provision? Does this timeframe vary depending on the visa category and/or the post?

Response: We are coordinating with our colleagues in CBP's Admissibility Review Office (ARO) to determine the turnaround time for expedite requests. We expect to be able to turn these around in a matter of weeks.

f. Are consular officers requesting the expedited processing of these 212(d)(3) waivers? If so, are consular officers seeing those expedite requests granted and actioned upon by ARO?

Response: Yes.

DOS Policy with Respect To Advance Parole Travel Documents and *Matter of Yarabelly and Arrabally*

15. Members report instances where DACA recipients who have received Advance Parole have been determined to be inadmissible under the three- and/or 10-year bars. This is contrary to the Board of Immigration Appeals decision in Matter of Yarrabelly and Arrabelly, which states:

> An alien who leaves the United States temporarily pursuant to a grant of advance parole does not thereby make a "departure . . . from the United States" within the meaning of section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II) (2006)" does not activate the bar under INA 212(a)(9)(B)

For example, an H-1B visa applicant who obtained DACA at the age of 21, after having accrued unlawful presence after age 18, would not trigger the unlawful presence inadmissibility bar under INA 212(a)(9)(B) if USCIS had approved and issued their Advance Parole Travel Document prior to their departure from the U.S. This individual would be eligible for an H-1B visa without the need for a 212(d)(3) waiver for unlawful presence.

Can DOS confirm that consular officers are instructed to apply the Yarrabelly/Arrabelly holding and that, as such, any visa applicant who is traveling pursuant to the approval of Advance Parole would not require a waiver under INA§212(d)(3) for a violation of 212(a)(9)(B)? This would be consistent with USCIS's recent update which states:

> Furthermore, under Matter of Arrabally and Yerrabelly, 25 I&N Dec 771 (BIA 2012), a noncitizen who accrued more than 180 days of unlawful presence during a single stay and left is not inadmissible under INA 212(a)(9)(B)(i)(II) when they again seek admission, if they left the United States after first obtaining an advance parole document. While the Board of Immigration Appeals, in Matter of Arrabally and Yerrabelly, stated that its decision was limited to INA 212(a)(9)(B)(i)(II), the board's reasoning in Matter of Arrabally applies equally to INA 212(a)(9)(B)(i)(I). For this reason, we apply the decision to both INA 212(a)(9)(B)(i)(I) and (II).

Response: In *Matter of Arrabally and Yerrabelly,* 25 I&N Dec. 771(BIA 2012), the Board of Immigration Appeals held "that an alien who has left and returned to the United States under a grant of advance parole has not made a 'departure . . . from the United States' within the meaning of section 212(a)(9)(B)(i)(II) of the Act." The holding and discussion throughout *Arrabally* makes clear that advance parole allows a noncitizen who needs to leave and return to the United States to do so with the expectation that the noncitizen "will be presenting himself for inspection without a valid visa in the future" so that "he will, upon return, continue to pursue the adjustment of status application he filed before departing." *Arrabally* in no way holds that advance parole can be used as a way to leave the United States and to obtain a visa (as opposed to pursuing an adjustment of status)

without application of the congressionally mandated visa ineligibility for accrual of unlawful presence in excess of 180 days.

212(d)(3) and Visa Cancellations

16. 9 FAM 403.9-2(C) precludes visa applicants from possessing more than one concurrently valid visa of the same type. Members report that some consular officers cancel existing visas at the time of *interview* rather than at the time of *issuance*. This is problematic for applicants renewing visas that require a waiver of inadmissibility under 212(d)(3). Given the lengthy CBP-ARO adjudication times for most (d)(3) waivers (currently averaging 8 months), visa applicants are encouraged to apply to renew their visas in advance to minimize disruption to their eligibility to enter the U.S., however, if the currently valid visa is canceled, it becomes impossible for an employment-based visa holder to return to the U.S. to continue their employment (upon which a U.S. company relies). Can DOS confirm that the existing visa should be canceled at the time of issuance rather than at the time of interview? Can DOS update 9 FAM 403.9-2(C) to clarify this for consular officers?

    Response: Whether an existing visa is cancelled as part of a new application will vary depending on the details of the individual case and the processing procedures at a specific embassy or consulate. Applicants who wish to return to the United States to resume employment should flag they wish to retain their current valid visa at the time of their application.

U and T Visa Applicants

17. Earlier this year, in response to concerns raised by AILA, DOS and USCIS described efforts to address problems relating to U and T visa applications (See Joint Letter, Appendix 1). DOS indicated it was working with overseas consular posts to reduce barriers in scheduling biometrics appointments and consular interviews for U and T applicants. Some posts (e.g., Quito and Guayaquil) have established dedicated email addresses for U visa biometrics appointments. AILA is very appreciative of these efforts.

    Despite these efforts, AILA members continue to report difficulties securing suitable biometrics appointments in certain countries. See below for summaries of reported issues:

    - In Mexico and India, biometrics appointments are only available in one location despite multiple consular posts in the country. This can fundamentally affect access for U & T derivatives who often reside in rural locations and have very few resources.
    - In Manila, legal representatives report delays of several months to get biometrics scheduled despite limited timeframes within which biometrics must be completed (e.g., in one case, post provided only a few days' notice of the biometric appointment, and the applicant was unable to make the appointment).
    - In Benin, post provided only 24 hours' notice of a biometrics appointment when the request was made two months prior.
    - In Colombia, counsel was advised that the NIV section employee did not know how to schedule a biometrics appointment.

- Legal representatives in the Dominican Republic, Togo, and Quito have reported receiving biometrics requests for evidence from USCIS multiple times due to nonreceipt or insufficient biometrics capture despite having completed them at post.
- Also, in Togo, consular staff asked the attorney of record how to send electronically captured prints to USCIS.
- In Ciudad Juarez, a U visa applicant was told to contact CBP about having their prints taken in connection with their application.

Can DOS describe its efforts to address these ongoing issues with securing biometrics appointments at certain posts, including any updated information or resources?

Response: The procedure for collecting biometrics varies depending on the stage of the application or petition and whether there is a USCIS presence at post. In addition, each post maintains its own scheduling mechanisms for these appointments. VO works closely with the field to ensure the process for securing a biometrics appointment is published on post websites. However, if an applicant encounters difficulty scheduling an appointment, he or she may reach out to us via LegalNet for assistance.

18. AILA members have also continued to report problems at certain posts when seeking to secure consular interviews for U and T visa applicants. For example:

- In Hyderabad, practitioners have reported delays of several months due to a lack of availability.
- In Manilla, applicants are instructed to request an interview online, but no "T visa" option is available.

Can DOS describe its efforts to ensure interview availability?

Response: VO consistently communicates to consular sections the importance of timely processing of T and U visas. In Manila and Hyderabad as in most other posts, the consular section contacts the applicant directly to schedule an appointment upon receipt of the conditional parole document from USCIS.

If an applicant has questions about his/her case, they may contact Embassy Manila at https://ph.usembassy.gov/visas/nonimmigrant-visa-inquiry-form/ or Consulate Hyderabad at HYDCEA@state.gov.

212(a)(6)(C) and "Timely Retraction"

19. An inadmissibility finding under 212(a)(6)(C)(i) or (ii) (misrepresentation) can have a devastating effect on visa eligibility. A determination of ineligibility under 212(a)(6)(C)(i) means that the individual must obtain a waiver, and a determination under 212(a)(6)(c)(ii) is not waivable at all. For an immigrant visa, the only waiver available for 6(c)(i) requires showing extreme hardship to a U.S. spouse or parent, which is a higher bar than ineligibility for conviction of a CIMT, for comparison. One escape from 212(a)(6)(C) inadmissibility

is a "timely retraction" by the visa applicant. The language of the FAM has evolved concerning whether a consular officer has a duty to warn the applicant of potential 212(a)(6)(C) inadmissibility. (See Comparative Study, Appendix 2). Before 2009, the FAM said, "aliens *shall* be warned." From 2009-2017, it said, "aliens *must* be warned". Since October 17, 2017, 9 FAM 302.9-4(B)(3)f.(1) has used the term "should."

Considering the change in language, can a timely retraction still be made by an applicant previously determined to be inadmissible under 212(a)(6)(C) by a consular officer if it can be shown that the previous interview was conducted under an earlier iteration of the FAM that mandated consular warning, but the warning was not given (i.e. when the original interview from which the 212(a)(6)(C) finding was made failed to include the warning that was required prior to October 2017)?

Response: Visa applications are made under oath, and while the FAM has called on consular officers in various ways to warn applicants of potential ineligibility, there has never been a legal duty to warn applicants of the consequences of their own misrepresentations or misconduct. A retraction that is timely and voluntary can serve to remove a misrepresentation from the adjudicating officer's consideration as grounds for a refusal under 212(a)(6)(C)(i) or (ii). But even if an applicant is not warned of the consequences of misrepresentations, a retraction that occurs at a later proceeding is not timely and a retraction that occurs only after the applicant has been exposed as having made the misrepresentation is neither timely nor voluntary.

In terms of how the language regarding this instruction has evolved, it is important to note that the Department's office responsible for the FAM issued direction years ago that instructed drafters of FAM notes to avoid using the verb "shall" since its various definitions tend to confuse rather than clarify the drafter's intent.

20. When a 212(a)(6)(C) finding was made under a previous version of the FAM, what is the best way to seek a review of that finding based on a failure to provide the warning (for example, if the previous application was made through an unscrupulous agent)? This may be similar to the reviews of 6(c)(i) ineligibilities for Morrison and Donnelly visa recipients at Embassy Dublin, wherein recipients of these immigrant visas had been given 6(c)(i) ineligibilities under criteria at the time.

Response: If an applicant believes a legal error has been made in the adjudication of their visa, they may contact LegalNet@state.gov. As noted above, however, consular officers have never had a legal duty to warn visa applicants of the consequences of their misrepresentations. At the time of the visa adjudication, an applicant has submitted a written application under penalty of perjury and has sworn a verbal oath before the interviewing officer. If the applicant then violates those oaths by making material misrepresentations, a refusal pursuant to 212(a)(6)(C) will be legally valid regardless of whether the consular officer gave an additional verbal warning.

Mexican Surname on Immigrant Spouse Visas

21. AILA has received a report of several instances of immigrant spouse visas being issued using the maiden name rather than the married name despite having the spouse's surname on the passport and indicating the married name on the DS-260 and I-130. The Mexican passports list the maiden name as a surname and the married name as "Spouse's surname." 9 FAM 504.10-2(C)(1) says the name on the visa should match the name on the passport and notes that guidance on Spanish names is found at 9 FAM 303.2-14. This provision is unavailable to the public. Can DOS confirm that immigrant spouse visas issued to Mexicans whose spouse's surname appears in their passport should indicate the spouse's surname?

    Response: Consulate General Ciudad Juarez confirmed that Mexican passports do not have a specific space for a spouse's last name. Some applicants use 'de' to add the spousal last name. For example: ANGELA BARRAGAN **DE** MARTINEZ. Ciudad Juarez reports that they always match the information printed on the visa foil to the information that appears in the passport.

Homeless Cases

22. Pursuant to 9 FAM 504.4-8(E), DOS designates certain consular posts to substitute for the home country post for nationalities DOS deemed to be "homeless." 9 FAM 504.4-8(E)(1) defines homeless cases as:

    > Generally, a homeless visa applicant is one who is a national of a country in which the United States has no consular representation or in which the political or security situation is tenuous or uncertain enough that the limited consular staff is not authorized to process IV applications.

    Immigrant visa services have been suspended in Haiti since April 15, 2024. Can DOS confirm why Haitians have not been designated as a homeless nationality?

    Response: The Department considers a number of factors when determining whether to designate applicants as coming from a post with limited or suspended visa operations. For Haitian applicants, the most difficult factor is their ability to travel to a third country for visa processing. However, the Department has directed all consular sections around the world to accept transfer requests of any Haitian applicant who the consular section believe can appear for their interview. The Department is also continuing to monitor the security situation in Haiti, with the hope of increasing immigrant visa processing as soon as the situation on the ground allows for more appointments.

23. AILA appreciates the recent amendment to 9 FAM 504.4-8(E)(2) clarifying the requirement that (with some exceptions) consular posts not specifically designated for receiving a particular homeless nationality must accept IV applications from homeless nationals lawfully present in the country for the requisite period of time to process the application and that requests for such an accommodation can be prospective based on

showing that the applicant will be physically present by the time of application. Can DOS expand the accommodations described in 9 FAM 504.4-8(E)(2) to nationals from countries with disrupted consular services?

Response: If applicants have disrupted consular services, like in Haiti, the Department directs consular sections around the world to accept transfer requests for applicants who are physically present in a third country, or who the consular section believes can appear for their interview.

Follow to Join

24. Members often experience difficulties in initiating the follow-to-join (FTJ) process. USCIS instructs immigrants who have received IVs overseas (as opposed to those who have adjusted status) to contact NVC via the NVC Inquiry email address. In response to a Public Inquiry Form inquiry, NVC states that members should contact post (i.e., NVC does not handle FTJ cases). When members contact post (repeatedly over a period of months/years), there is no response. 9 FAM 502.1-1(C)(2) suggests that posts should identify potential FTJ cases and maintain records of the principal applicant to facilitate FTJ adjudications and prevent fraud. NVC has indicated that it cannot initiate FTJ without an I-824, which is not required and, in any case, can take a year or more to be processed by USCIS. Can DOS clarify the most effective means of initiating and processing FTJ cases and provide guidance on travel.state.gov and consular post websites?

    Response: If AILA has examples of posts not responding to requests to initiate follow-to-join processing, we ask that you please share them so we can resolve this issue. We will continue to message to posts the importance of keeping the case files of any known FTJ applicants and we are reviewing our procedures for processing FTJ cases where the petitioner has changed status in the United States.

Direct Consular Filing for consolidated IV processing posts

25. In June 2024, DOS mentioned that, following the consolidation of IV interviews at Frankfurt, direct consular filings (DCF) would remain available at the original posts; however, recently, AILA members have reported that Amsterdam is not accepting them. Should members direct DCFs to Frankfurt if the local post states they will not accept them?

    Response: Posts that have been consolidated are able to accept local files of the I-130 petition for emergent or humanitarian cases or in cases of national interest. Such cases should be quite rare and limited to true emergency circumstances.

EB-5

26. Since the EB-5 Reform and Integrity Act of 2022 ("RIA") was enacted, thousands of immigrant investors have invested billions of dollars, creating thousands of jobs in rural and high-unemployment areas. Yet, to date, DOS has not issued a single reserved EB-5 visa pursuant to the set-aside categories established at 8 U.S.C. 1153(b)(5)(B). The EB-5 Immigrant Investor Program currently expires in September 2027. At this rate, most of the visas that drew these billions in investment will have been "carried over" pursuant to 8 U.S.C. 1153(b)(5)(B)(i)(II) or reallocated or transferred to EB-1 or family categories. Please confirm:

    a. What is DOS' plan to ensure congressional intent is met, and the reserved visa numbers are used?

        Response: There have been four reserved visas issued overseas in FY 2024. State is processing the reserved visa cases in the normal manner that all other cases are processed.

    b. In the event the Regional Center program is not extended, will DOS continue to allocate visa numbers to Regional Center immigrant visa applicants pursuant to 1153(b)(5)(S)?

        Response: The Department will continue to process the cases according to guidelines established by 1153(b)(5)(S).

    c. Can DOS propose a mechanism for releasing data on the number of set-aside and general pool visas used on a quarterly basis?

        Response: Monthly IV issuance data is released and posted on travel.state.gov. Any issuances in the set-aside categories will appear in these reports.

27. Despite prior USCIS review and approval, consular officers are re-adjudicating visa applicant's compliance with 8 CFR 204.6(j)(5) related to their engagement with the project. Applicants have been told they "cannot buy a green card" and "must be managing" during visa interviews. Considering this clear error of law, will DOS consider providing appropriate training to ensure against future instances like this?

    Response: Consular officers undergo comprehensive training in the adjudication of all visa categories, and we are committed to our service pledge to treat every applicant with dignity and respect.

Reciprocity Schedule

28. AILA has received reports that the Embassy in Santiago is issuing H-1B1 visas upon renewal valid for 1 year only, instead of the reciprocity limit of 18 months, and has advised clients that the 1 year is for renewals. While it is true that H-1B1 entrants under the Free Trade Agreement with Chile are given 1-year periods of stay in the U.S., the visas should be valid for 18 months per the Reciprocity Schedule.

    Response: The U.S. Embassy in Santiago was made aware of the issue and now issues the full 18-month validity H-1B1 visas to qualified applicants per the State Department's Reciprocity Schedule.

29. The Reciprocity Schedule for Kenya states that the Registrar of Marriages provides marriage certificates for all marriages and, as such, requires such certificates as proof for all marriages in Kenya. According to the Registrar, however, Muslim marriage registration is not done by the Registrar of Marriages, but by the Kahdi Court and they direct individuals who celebrated a Muslim marriage to obtain proof of registration accordingly from the Kahdi Court. Can DOS confirm that the Khadi Court registration of Muslim marriages in Kenya is acceptable proof of marriage and update the Reciprocity table accordingly?

    Response: Kenya's reciprocity schedule will be updated to reflect that Islamic marriage certificates are produced by either the Registrar of Marriages or the Kenyan Judiciary. Islamic marriage/divorce certificates from the Kadhi court are acceptable proof of marriages/divorces in Kenya.

30. South Korea does not issue birth certificates for foreign nationals born on Korean soil. Can DOS please update the reciprocity schedule to reflect this reality and add the Certificate of Foreign Resident Registration, a home country consular-issued birth certificate, or Korean Hospital Birth Certificate as acceptable alternate evidence?

    Response: We are currently working with Embassy Seoul to confirm that these documents are acceptable alternate evidence and will update the reciprocity schedule appropriately once confirmed.

Waiver Review Division

31. When an individual files a DS-3035 online, they must print the form and submit it on paper with the $120 filing fee check to the U.S. Treasury Department lockbox in Earth City, MO. Once the Treasury Department processes the check, they mail the packet to the WRD for further substantive processing. Members cannot track the Treasury Department's handling of each case, and the posted WRD processing times do not begin until the WRD receives the case from the Treasury Department. This means that any delays at the Treasury Department can lead to significant slowdowns in waiver processing. Would WRD and/or the Treasury Department consider allowing payment of fees by credit card so that the DS-

3035 application packet could be shipped directly to WRD's offices rather than having to stop in Missouri first?

Response: WRD shares this concern and considers this to be a high priority. We are working to transition to a pay.gov platform, which would make fee payments much faster and more efficient. We've encountered technology challenges but continue to work towards this goal.

32. WRD advises that all Conrad 30 and interested government agency (IGA) waiver programs have been instructed to submit waiver recommendations to WRD via email for Fiscal Year 2025. Can WRD please provide an update on how that new process is working and whether there are plans to include secure links for upload rather than submission via PDF attachments?

    Response: This process has greatly improved efficiency and decreased the time it takes for applicants to see their case status in the J Waiver Online system. Unfortunately, we do not currently have the capacity to provide a secure link or intake system for PDF attachments so will continue to rely on email submissions until we can develop an improved system for receiving waiver applications and supporting documents.

33. WRD previously advised that it was behind in answering email inquiries and provided helpful guidance on best practices for email communication with the agency. Members continue to report extremely slow email response times (over 6-8 weeks) despite following these best practices. Can WRD provide an update on its email handling and processing and provide any updated guidance for members on emailing the agency?

    Response: The response times for email inquiries to the 212eWaiver@state.gov inbox has decreased significantly in the past several months. We are currently responding to emails within 3-4 weeks of receipt with a goal to reduce our average response times even further.

Visa Bulletin

34. AILA acknowledges DOS and USCIS for using almost all available employment-based immigrant visa numbers (save for EB-5 reserved numbers) for FY2024 and publicly communicating the exhaustion of certain employment-based categories in August and September. In FY2024, cutoff dates advanced slowly, if at all, for the first quarter while DOS and USCIS monitored demand. For FY2025, does DOS anticipate a similar, cautious approach to advancing cutoff dates as was used in FY2024? Does DOS anticipate any significant increases or decreases to the availability of immigration visas in FY2025 versus FY2024?

    Response: Yes, State anticipates taking a similar cautious approach as in FY 2024. State and USCIS issued/adjusted more family-sponsored preference visas in FY 2024 so applicants should anticipate a lower employment-based limit in FY 2025.