

AILA DOS Liaison Committee Meeting with the Department of State October 5, 2023

Introduction

The Department of State's Office of the Assistant Legal Adviser for Consular Affairs (L/CA), in coordination with the Visa Office in the Bureau of Consular Affairs, appreciates the opportunity to discuss issues of concern to the American Immigration Lawyers Association (AILA). We believe these discussions, and publication of Department responses to issues raised by AILA on Travel.State.Gov, are valuable opportunities to provide insight and clarity concerning the Department's current immigration policies and procedures. Following are Department responses to issues raised by AILA for consideration at the October 5, 2023, meeting.

NONIMMIGRANT VISA (NIV) PROCESSING

Visa annotations

1. Members report issues with nonimmigrant visas annotated with incorrect and/or outdated petitioner information, including company name and FEIN, which match neither the underlying approved I-129 Petition nor the Form I-797 Notice of Approval. For example, the U.S. Embassy in Oslo recently issued blanket L visas annotated with the wrong petitioning company name. (The name was that of a company that the petitioner's group acquired several years ago; it did not appear in the company's underlying blanket petition nor in the L visa applications submitted to post.) When asked about this issue at our March 2023 meeting with KCC, KCC explained: *KCC creates PIMS records based on information sent by USCIS. KCC does not have the authority to correct errors or mistakes to petitions sent by USCIS. Further, KCC cannot use outside sources to validate information provided by USCIS.* KCC indicated that where there is a discrepancy in the petitioner's name or FEIN annotation on the visa foil, the attorney or applicant should resolve the issue directly with USCIS.
 - a. Where counsel has confirmed that the petitioner information with USCIS is correct, but the visa annotation as it relates to company information (name/FEIN) is incorrect, can DOS please explain what the correct procedure is to have the petitioner name/FEIN corrected on the visa foil issued by post?
 - b. Can DOS explain the annotation process, in general, as well as confirm the source of the petitioner information that is pulled and generated on the visa foil, so AILA members can advise clients to update and prepare accordingly?

Response: To expand on the March 2023 response, KCC creates PIMS records in reliance on information provided by USCIS, as verified through our commercial database access (LexisNexis, CLEAR, etc.). The underlying approved blanket L petition is generally housed in PIMS under the qualifying parent company, and all subsidiaries are listed on USCIS Form I-797. While the petition is associated with the qualifying parent company in PIMS, applicants may

request that the visa be annotated with the name of the employing subsidiary or other entity appearing on the Form I-129S. Where an applicant suspects an inaccurate entry in PIMS more broadly, they may request the consular section contact KCC for a possible adjustment.

Visa Appointment / Technical Issues

2. AILA members have reported problems in receiving auto-generated communications from GDIT. For example, it is our understanding that upon approval of a (d)(3) waiver from ARO, the GDIT registered email address will receive an email instructing the applicant to submit the passport for further visa processing; however, there have been instances in which the applicant/attorney is not notified of clearance for visa issuance. This information only becomes known when the applicant/attorney contacts post for a status update. Given the standard guidance that waivers can take 6-8 months, if a waiver is processed more expeditiously, several weeks or months could pass without the applicant being aware visa processing can resume. Is it possible for posts to issue a follow-up notification to the applicant if the applicant has not responded to the initial notice within 30 days (similar to the way in which NVC will notify an applicant who has not responded to the case creation notice)?

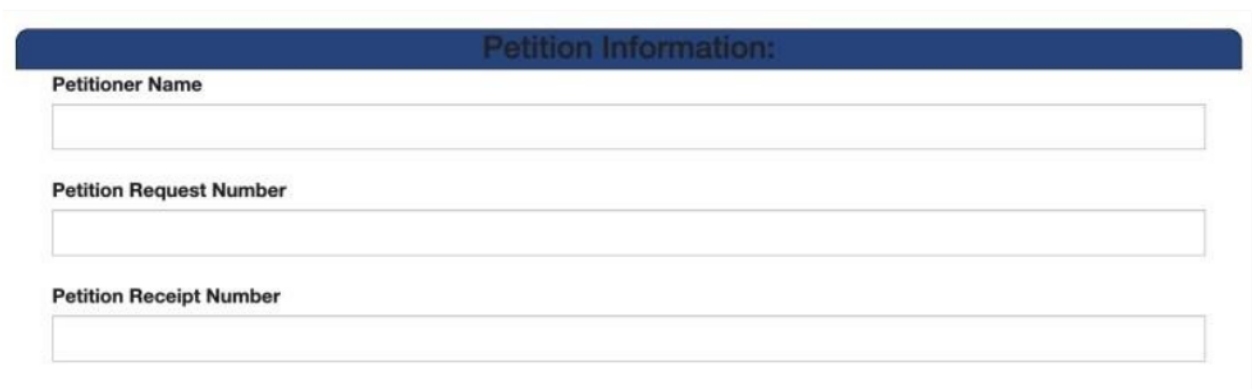
Response: Embassies and consulates overseas notify applicants when they should send their passports to post, including occasions when ARO has recently approved a waiver. However, such processes are post-specific and do not involve our vendors' systems. (Some posts use the [CEAC Visa Status Check](#) system, which is operated by the government directly.) If AILA can cite a specific post that has ceased requesting passports in this situation, we will be happy to convey your concerns to them.

3. Members have noted that several posts' NIV booking systems, such as the U.S. Embassy in Bolivia, ask whether the "[a]pplicant] has a residence permit from [country] and will bring the residence permit to his/her appointment" and note that "identifying as having a residency permit incorrectly will result in cancellation of your appointment." This is confusing for citizens not currently residing in the country where they will apply for the visa (i.e., dual nationals, applicants who reside in the United States pursuant to a previously issued visa, etc.) AILA has received reports that some citizens who are applying in their "home" countries have answered "no" because they do not have (nor do they need) a residence permit for their home country, which results in being given a non-resident appointment with a much longer wait time. To avoid this adverse impact and to minimize confusion, can DOS encourage posts to amend their booking sites to include clarifying language that includes citizens? Suggested text: "Does the applicant have a passport, or if not a citizen, a residence permit, from [country] and will bring the residence permit to his/her appointment"

Response: We concur with AILA’s recommendation, and Embassy La Paz will work with our contract partners to implement the clarification. If AILA is aware of other locations where this issue occurs, we will gladly pass similar comments to those posts as well.

Mission India

4. Mission India's new appointment booking system asks for a "Petition Request Number" in addition to a "Petition Receipt Number." AILA members are unaware of what should be entered in the “Petition Request Number” field so as a temporary solution, they have instructed applicants to re-enter the petition receipt number. Can DOS please clarify what information is required for this field?



The image shows a screenshot of a web form titled "Petition Information:" in a blue header. Below the header are three input fields, each with a label to its left: "Petitioner Name", "Petition Request Number", and "Petition Receipt Number". Each label is followed by a white rectangular input box with a thin border.

Response: We appreciate you bringing this to our attention and will remove the superfluous form field. In the meantime, please continue with your current guidance to your members. We are closely monitoring customer reports of technical issues with the website for scheduling nonimmigrant visa appointments at the U.S. Embassy and Consulates in India. We are working to ensure the technical issues are resolved as quickly as possible so that U.S. visa applicants in India can reliably access the website to schedule visa interview appointments as soon as possible.

5. Mission India's new appointment booking system asks for a "Petition Start Date" and "Petition Expiration Date." In addition to dates, the field also requires time to be entered in hours and minutes. AILA members are unaware of what should be entered in this field, and an interview cannot be scheduled without entering this information so as a temporary measure, have been entering random times. Can DOS please clarify where applicants should find the petition start and end times to be entered in this field?

Petition Start Date

M/D/YYYY h:mm A



Petition Expiration Date

M/D/YYYY h:mm A



Response: We appreciate you bringing this to our attention and will correct these form fields. In the meantime, please continue with your current guidance to your members. We are closely monitoring customer reports of technical issues with the website for scheduling nonimmigrant visa appointments at the U.S. Embassy and Consulates in India. We are working to ensure the technical issues are resolved as quickly as possible so that U.S. visa applicants in India can reliably access the website to schedule visa interview appointments as soon as possible.

6. AILA members report that they have logged into Mission India’s new booking system using the credentials set up on the old system that were meant to have been migrated over existing fees and appointments, only to find no record of payment of an MRV fee and no interview date. Several members and their clients have had to pay the MRV fee for a second time and book a new appointment. Is there any recourse when this happens, such as a way to request a refund of the second MRV fee when evidence it was paid can be provided and/or a way to reinstate the original appointment date?

Response: We are sorry to hear your membership is having problems with the appointment system migration. The above error has been corrected, and affected applicants are being contacted. When an individual encounters a fee payment issue, they should contact support-india@usvisascheduling.com for resolution. Should the problem persist, the individual is also welcome to reach out to Embassy New Delhi or the appropriate consulate using the Navigator function found on our [website](#). Unfortunately, as [our scheduling website](#) notes “Visa fees are not refundable. If you have encountered an error with your payment or you believe your payment was not successful, DO NOT PAY THE FEE A SECOND TIME AS IT WILL NOT BE REFUNDED. Please email our support center at support-india@usvisascheduling.com with your concern and we will investigate.”

7. AILA has received reports that applicants in Mission India cannot log into accounts they set up under the old system as their usernames and passwords do not work in the new system. These applicants have contacted the Help Center and given a reset code to enter into the new system; however, there is no place to enter the reset code. When the applicants tried to contact the help center or the post to make them aware of this issue, they did not receive a reply. As mentioned above, if they start the process

anew, they must repay a new MRV fee and schedule a new interview date, further delaying their wait times. Is there any remedy for this technical issue?

Response: We moved to a new login page, <https://www.usvisascheduling.com/>, beginning July 29, 2023. Applicants may use their existing email addresses to sign up and recreate their profile/account in the new system. Login credentials from the old system are not valid in the new system. Applicants who had already created a profile and paid the visa fee but have not scheduled an appointment should sign up and recreate their profile/account in the new system and proceed with appointment scheduling. Applicants do not need to pay a new visa fee if they have a valid payment receipt. If an applicant created their profile and paid their fee before July 15, 2023, but has not associated their payment to their profile, they may log in to their profile and claim their receipt by entering the payment receipt number into the new system. As our scheduling website notes “Visa fees are not refundable. If you have encountered an error with your payment or you believe your payment was not successful, DO NOT PAY THE FEE A SECOND TIME AS IT WILL NOT BE REFUNDED. Please email our support center at support-india@usvisascheduling.com with your concern and we will investigate.”

8. Due to the transition to the new booking system for Mission India, members are reporting that applicants were not notified that their visas were issued and passports ready for collection. With the implementation of the new system, how should applicants expect to receive, or where should they check for, notification that their visas have been issued and passports are ready for collection?

Response: We are sorry to hear your membership is having problems tracking their passports. We have corrected transition-related errors in our notification system. As was the case prior to the transition, applicants will receive notice by email and SMS from our support center when their passports are ready for collection. Applicants may also follow the guidance on our [website](#) for how to track their passports at any time.

Mission Mexico – TN visas

9. Members have reported a noticeable uptick in TN visa refusals in the Scientific Technician/Technologists (STT) job category in Mission Mexico, particularly out of posts in Guadalajara and Mexico City. The most common reason for refusal provided to the applicant has been the STT position is not a TN occupation and as such, the applicant is not eligible for a TN visa. Upon review of the member examples provided to the committee, it appears there are inconsistent adjudicatory practices in Mission Mexico, as they relate to the Scientific Technician/Technologist TN category, even where it appears that the applicants otherwise meet the TN eligibility requirements for the occupation. In the examples reported, most of the refusals have been for first-time TN applicants for the STT occupation, but members have also reported refusals for TN visa renewal applicants applying for the same job and classification, and no

other material changes in facts or employment. These TN visa applications are being refused under 214(b), so there is no opportunity for review of the legal issues presented by LegalNet. In light of this uptick in refusals, can DOS share any insights and whether there are new adjudication standards or trends at these posts in Mexico for this particular category of TN visas?

Response: Mission Mexico evaluates all TN applications on the merits of the case. The applicant must meet the specific requirements, education, and/or experience related to their profession listed under the USMCA. Mission Mexico is undertaking efforts to harmonize adjudication standards across the three TN-visa processing posts to provide a consistent experience for applicants regardless of where they apply. Mexico is noting a trend in applications from individuals who are seeking to perform work in positions that do not qualify as USMCA-professional employment. Many of these positions may qualify under a different, petition-based visa category, though. In these cases, adjudicating officers are refusing under section 214(b) for the lack of qualifying work.

International Entrepreneur Rule (IER) Parolees

10. In March 2023, USCIS issued updated policy guidance in Chapter 4 of its [Policy Manual](#) to address international entrepreneur parole under the International Entrepreneur Rule (IER), which allows DHS to use its parole authority to grant a period of authorized stay for eligible international entrepreneurs, on a case-by-case basis. The rule established an application process through Form I-941 that requires, among meeting other eligibility requirements, the applicant to show their qualifying investment and business would provide "significant public benefit" as an element of eligibility. In its Policy Manual and published [guidance](#), USCIS provides the following for international entrepreneur parole applicants with I-941 approvals who are applying from outside of the U.S.:

For those other than Canadian nationals traveling directly from Canada, if the applicant is currently outside the United States when USCIS approves the application, the applicant must visit a U.S. embassy or consulate to obtain travel documentation before appearing at a U.S. port of entry for a final parole determination. The applicant would be subject to U.S. Department of State (DOS) rules pertaining to the process for obtaining travel documentation.

- a. What is the parole authority under the FAM for international entrepreneurs seeking parole under the IER? Does the parole authority for international entrepreneur applicants stem from parole authorization provided in [9 FAM 202.3-3\(B\)\(2\)\(b\)\(1\)](#), which covers requests from DOS to USCIS for "significant public benefit" reasons, also known as "significant public benefit parole" (SPBP) or "public interest parole"?
- b. Are consular posts currently processing requests for travel documentation (e.g., transportation boarding foil) for applicants with an approved I-941

application seeking to travel to the US under the international entrepreneur program?

i. If yes, what is the procedure at post for applicants to request and obtain a boarding foil to present at the U.S. port of entry for a final parole determination?

c. Does DOS plan on issuing specific guidance in the FAM on parole requests for eligible international entrepreneurs to align with USCIS guidance published in its Policy Manual?

Response: The parole authority derives from INA 212(d)(5), and is exercised by the Department of Homeland Security. On August 11, 2023 the FAM was updated to reflect procedures for issuing boarding foils for IEP beneficiaries. As part of that process, post will receive a Parole Authorization Memo and schedule the applicant for their biometrics. If there is no new derogatory information, post will issue the IEP their boarding foil to facilitate timely travel to the United States. No further FAM updates are anticipated at this time.

11. In its [Policy Manual](#), USCIS provides further that if an applicant is residing outside the U.S. and seeking initial parole under the IEP program, the applicant must submit biometrics. It states that USCIS will “*send the applicant a notice explaining where to submit biometrics after USCIS coordinates with DOS or the International USCIS field office closest to the applicant.*” [9 FAM 602.2-2\(A\)\(2\)](#) discusses fingerprint collection by DOS on behalf of DHS. Will DOS follow guidance for biometrics processing of international entrepreneurs under existing FAM guidance noted in [9 FAM 602.2-2\(A\)\(2\)](#), or will DOS be issuing FAM guidance on biometric processing specific to applicants requesting a boarding foil under the IER?

Response: The Department is following existing FAM guidance for this population to ensure that the IEP applicants receive their Biometrics. No new guidance is intended to be published, as the parole of IEP beneficiaries is considered a Significant Public Benefit to the United States. In the event that the IEP applicant is overseas, the applicant will appear at Post to have their Biometrics collected.

Changes in Reciprocity Schedule - Visa Fees

12. The travel.state.gov website includes a page titled “[Reciprocity: What's New page](#)”, which announces changes to document requirements and visa-issuing posts but appears to be silent on indicating changes to reciprocity fees. For example, in June 2023, DOS changed the reciprocity fees for several visa categories for Australia; however, in the June 20, 2023 update for Australia on the TSG page, the only update indicated was a change in “Visa Issuing Posts”; it was silent on any changes to fees. For the benefit of the public and our members, is it possible for DOS to also publish any changes in fees to TSG’s ‘Reciprocity: What's New’ page?

a. Similarly, USTravelDocs and GDIT also provide information and updates via "Important Notices" postings on their home page. Similarly, these pages have been silent on visa fee changes. Is it also possible to include announcement on fee changes to the visa scheduling services websites for both USTravelDocs and GDIT, where "Important Notices" are posted?

Response: Changes to the visa validity or reciprocity fees of an individual country are noted on the [Reciprocity: What's New page](#) found on travel.state.gov. The June 2023 reciprocity fee changes for Australia were part of a larger reciprocity fee adjustment due to the MRV fee increase announced on the [U.S. Visa News](#) page on travel.state.gov. More than 1,200 reciprocity fees were adjusted at that time to compensate for the increase in the MRV fee. The most up to date visa validity periods and reciprocity fees for individual countries can be found by searching under the respective country on [Visa-Reciprocity-and-Civil-Documents-by-Country](#) page.

Administrative Processing

13. AILA appreciates DOS's review of escalated examples of cases in administrative processing time for greater than one year that were not incorporated into the National Vetting Center process. As discussed in our [spring 2023 meeting](#), in the autumn of 2022, nonimmigrant visa vetting was incorporated into the National Vetting Center. DOS confirmed that as a result of this change, vetting of nonimmigrant visa application is more efficient and, in many cases, may now be conducted without the need for additional administrative processing. In light of its success in enhanced efficiency for NIV processing, would DOS consider integrating the vetting of immigrant visa (IV) cases into the National Vetting Center as well?

Response: The Department expects the National Vetting Center to begin assisting with national security vetting of immigrant visas (IV) before the end of FY2024, but the timing is beyond the Department's control. We anticipate that administrative processing for IV cases will see similar improvements as have been witnessed in NIV processing.

We also wish to respond to the introductory statement to this question, which states, "AILA appreciates DOS's review of escalated examples of cases in administrative processing time for greater than one year that were not incorporated into the National Vetting Center process." While the Department continually seeks ways to streamline visa adjudication without compromising national security, the required interagency review of cases that raise potential security issues may take more time under any circumstances, based on standard procedures. Applicants or their representatives should bring to the attention of the consular section where the application was made any cases that raise specific concerns related to national security, other national interests, or extraordinary humanitarian circumstances.

14. Applicants can check the status of their visa application at the CEAC website, which is immensely helpful, however, the system indicates only two outcomes: “issued” or “refused”. For added transparency and to reduce applicant inquiries to the consular post, would DOS consider updating the status language on CEAC to add a third outcome for when a case is undergoing administrative processing? For example, instead of the language currently used for all refused cases, AILA recommends, “Refused: Undergoing Administrative Processing.” This would reduce member inquiries to post and provide clearer messaging to visa applicants.

Response: We appreciate your raising this concern, but in the past, stating that cases were “undergoing administrative processing” created confusion for some applicants, who didn’t realize their visa had been refused (pursuant to INA 221(g) or another ground). We believe the current message, which refers applicants to instructions received from the consular officer, in addition to any information on the CEAC website, is a clear and appropriate approach.

Waiver Review Division

15. The Waiver Review Division currently reports that its processing times for J-1 Hardship Waivers are between 36 and 52 weeks. WRD previously advised that it would not consider inquiries on pending hardship waivers until after they have been pending for 52 weeks, and indeed, many cases are taking longer than 52 weeks to be adjudicated. Members have reported processing times of well over 70 weeks. How does WRD calculate its posted processing times? Are there plans to adjust the posted hardship waiver processing times beyond 52 weeks?

Response: The Waiver Review Division has recalibrated resources devoted to processing of Exceptional Hardship waivers. Additionally, we are in the process of hiring new staff which we plan to have process Exceptional Hardship waivers once onboarded. Combined, these efforts are expected to reduce estimated processing times. We continue to assess processing times.

IMMIGRANT VISA (IV) PROCESSING

General

16. Per 9 FAM 504.4.-8(E), 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.” Countries whose nationals are designated as homeless applicants are listed in a chart in 9 FAM 504.4. While the FAM *defines* a homeless visa applicant, it does not address how DOS reaches such a designation and what the underlying factors are for such a determination. For the benefit of the members and the public, can DOS share what process it undertakes for

designating a visa applicant as “homeless,” including how such an analysis is initiated and ultimately decided?

Response: That FAM provision accurately describes the factors considered, in addition to consideration of the availability of a suitable alternative post. Assessing the suitability of a potential receiving post includes considerations such as post processing capacity; foreign policy concerns related to the host country of the receiving post under consideration; the legal and political framework of the host country; and any applicable host country travel restrictions or visa requirements. The Department continually monitors these and other factors for possible updates to our designations. The Bureau of Consular Affairs conducts this analysis in consultation with relevant bureaus and offices in the Department.

Where the Department is unable to identify a suitable alternate processing post in reliance on these factors, impacted nationals may nonetheless apply wherever they are either resident or physically present and able to remain for the required processing time, consistent with 22 CFR 42.61(a). Alternately, posts where applicants are neither resident nor present may accept a case at its discretion, or at the direction of the Visa Office. The Department encourages posts, in exercising that discretion, to accept cases clearly involving hardship, including for “applicants from countries with no visa-issuing post.” 9 FAM 504.4-8(D), paragraph c(5).

17. On June 1, 2023, DOS published a new fee [rule](#) "Exemption from fees for Afghan immediate relatives and family preference immigrant visa applicants." This rule exempts Afghan applicants from paying the IV application processing and domestic Affidavit of Support review fees, effective June 1, 2023, until December 31, 2024. Members report that the only option available in CEAC is "PAY NOW," and follow-up inquiries with the NVC about the implementation of the fee exemption led to the following response "The change has not affected the National Visa Center. You will still need to pay the required fees for this case to continue." Members have paid the IV fees to avoid delaying the IV process. Can DOS clarify its policy regarding payment of the IV filing fee? What process can DOS implement to refund the fees that have already been paid by applicants?

Response: We hope to have the fee exemption for Afghan immediate relatives and family preference immigrant visa applicants go live in the near future. There have been no changes to the Department's policy on the IV filing fee exemption, but technical and operational difficulties have unfortunately prevented us from implementing the exemption to date. We are in the process of resolving these difficulties and establishing a process to refund fees that have already been paid. We plan to post an announcement on travel.state.gov when the exemption and refund processes are up and running.

18. AILA understands that once an IV case has been transferred to post, the IV applicant's CEAC account is locked, and no additional documents may be uploaded. Members report that the IV units at some posts, including Riyadh and Kingston, instruct applicants who have been refused under 221(g) to subsequently upload any missing documents to CEAC, which is locked, and are advised to direct any follow-up questions or issues to NVC. When an applicant or the attorney contacts the NVC, they are advised to contact post. Members report that the post in Kingston has eventually been able to "un-lock" the CEAC files so that the applicant can upload the documents, but there does not seem to be any straightforward process or understanding of who can do this and when it can be done. What is the proper process to unlock an account when an IV applicant is instructed to upload additional documents to CEAC, but the account is locked? How can an applicant or their attorney make this request following an interview?

Response: Case parties should be able to continue to upload documents after the case has been transferred to post. They will not be able to delete or replace previously accepted documents, but can upload any missing documents or additional documents so long as the fee was paid at NVC. If the party's case is at post, the party has paid the fees at NVC, and the party is attempting to upload documents (but not replace accepted documents) but is receiving an error, then they should send a screenshot of the error to post to ask post to seek a technical fix.

Haiti

19. Due to tenuous security conditions in Haiti, the US Embassy in Port Au Prince announced suspension of NIV and IV services in Haiti. Members have submitted concerns regarding Haitian IV applications, particularly, sensitive and humanitarian IV cases such as beneficiaries of the Haitian Family Reunification Parole (HFRP) Program, derivative/following to join family members of I-730 asylees, children that are aging out, immediate relatives of U.S. citizens, and others. Please confirm the following:

- a. Since consular staff is not authorized to process IV applications, what arrangements are being made, if at all, for Haitian IV applicants?
- b. Is DOS considering designating Haitian nationals as "homeless" under 9 FAM 504.4.-8(E) so Haitian IV applicants may continue to process their IV applications?
- c. If yes to the above, understanding the complexities that DOS must balance in its bilateral missions with each country, requiring approval by the receiving post and country in such a third country, AILA requests that VO consider designating posts in nearby countries which allow visa-free travel for Haitians, such as [Dominican Republic or Barbados](https://globalconnect.uz/visa-free-countries-for-haitian-passport). <https://globalconnect.uz/visa-free-countries-for-haitian-passport>.

Response: On July 27, 2023, the U.S. Embassy in Port-au-Prince went on Ordered Departure status, requiring the family of U.S. government employees and non-emergency U.S. government employees to leave Haiti. The reduction in staff impacts our ability to provide routine consular services, and nonimmigrant and immigrant visa services are suspended until further notice. Consular staff remaining in Haiti provide certain emergency IV services as conditions allow, including adoption processing, IR-2s with health emergencies, and some children aging out. DHS's modernized HFRP process is online and does not require a visit to the Consular Section. Current circumstances do not permit the consular section to issue either the transportation documents for the pending HFRP cases under the older I-131 process or I-730 beneficiaries. We are monitoring the situation in Haiti closely and evaluating options. We do consider ease of access among other factors when we designate a third country for IV processing. Unofficial web sites conflict on visa-free travel options. The official web sites of the [Dominican Republic](#) and [Barbados](#) unfortunately indicate that Haitians require visas, with limited exceptions. On September 15, the Dominican Republic closed its borders with Haiti.

Inadmissibility Issues

20. On August 10, 2023, the US District Court for the Western District of Arkansas, issued a memorandum opinion and order in the case of *Arias v. Garland, CASE NO: 5:22-CV-05248 (W.D. Ark. 2023)*. The Court held that the consular officer's decision to deny an immigrant visa application of the spouse of a U.S. citizen, based on the officer's finding that there was reason to believe that he was a member of a known criminal organization and therefore inadmissible under INA § 212(a)(3)(B), failed to provide the U.S. citizen petitioner and her beneficiary spouse with a 'facially legitimate and bona fide' reason for the denial. INA § 212(a)(3)(B) states "*Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in... any other unlawful specified activity... is inadmissible.*" In *Arias*, the Court found that because the U.S. citizen's constitution rights were implicated, the ground of inadmissibility (INA §212(a)(3)(B)) that the consular officer relied on regarding its assessment of the applicant's membership in a criminal organization was "insufficient" to satisfy the requirement of a facial connection to the statutory ground of inadmissibility, especially considering the U.S. citizen's Constitutional interests at stake. Given the Court's holding in cases like *Arias*, as well as *Munoz v. U.S. Dep't of State*, 50 F.4th 906 (9th Cir. 2022), where a U.S. citizen's constitutional rights are implicated in connection with a particular visa application, what updated guidance, if any, is DOS providing to consular officers on the above-referenced inadmissibility ground?

Response: The Department believes the Ninth Circuit erred in its ruling in *Munoz v. U.S. Dep't of State*. Accordingly, on September 29th, 2023, the U.S. government filed a petition for a writ of certiorari with the U.S. Supreme Court relative to the Ninth Circuit decision in *Munoz*.

Visa Issuance Statistics

21. The State Department's posting of the monthly IV and NIV data reflecting number use by post/FSC/preference categories is excellent. Would DOS also consider posting the IV data in a YTD format for each category included above?

Response: Thank you for the suggestion. The Visa Office will take this recommendation under consideration as it continues to explore ways to make more data available to the public.

EB-5

22. In [our spring 2023 liaison meeting](#), in response to Agenda Question 22, DOS stated that, per the RIA, reserved visas that remain at the end of a fiscal year are made available for use in the same reserved categories in the next fiscal year, and subsequently, any remaining visas from the reserved carryover pool of visas are carried over to the unreserved category in the following fiscal year. As DOS will be implementing these RIA provisions for the first time, AILA is eager to know how DOS will allocate any carry-over visa numbers to maximize number use in each of the three reserved set-aside preferences. Specifically, in FY2024, will DOS first use up reserved visas carried over from FY2023, and only once such numbers are exhausted, use the numbers made available under the normal FY2024 annual reserved limit?

Response: Yes, the reserved visas that were unused at the end of FY2022 were rolled over for use in the same set-aside categories in FY2023. However, they remain unused so they will roll over to the unreserved category in FY2024. State plans to use these carried-over reserved visas first before using the regularly allocated visas in the unreserved pool. Similarly, the set-aside visas from FY2023 will be added to the same set-aside categories for FY2024 and will be used before the regularly allocated set-aside visa numbers.

23. Per 8 U.S.C. 1153(b)(5)(B)(i)(II)(bb), which does not provide any time restriction to use such visa numbers, will any visa numbers carried over from the reserved categories in FY2023 to the same reserved categories in FY2024 and subsequently to the unreserved category in FY2025 continue to be made available for use in the unreserved category in FY2026 and beyond?

Response: No, any of the set-aside numbers from FY 2023 that remained unused in the unreserved category would not be available for use after FY2026. However, operationally, State would endeavor to use all carry-over numbers before any regularly allotted visa numbers in the EB-5 category to ensure that no carry-over numbers go unused as described above.

DV Lottery

24. AILA has received reports from members that the CEAC "Check My Visa Application Status" tool found at <https://ceac.state.gov/ceac/> has not worked for Diversity Visa (DV) selectees since about August 14, 2023. When DV selectees enter their case numbers, they see "Invalid Immigrant Visa Case Number" instead of their status. AILA has been informed that this results from a technical issue with CEAC not recognizing DV case numbers. When does DOS expect this technical issue to be resolved? Would it be possible for DOS to issue a public notification or update to reduce confusion among DV selectees?

Response: Thank you for bringing this to our attention at the time of the outage. CEAC Status Check for DV and other cases stopped working for about ten days due to an errant systems update. The functionality was restored on August 25 and the system is currently working as expected.

25. AILA has also received reports that the CEAC "Check My Visa Application Status" tool does not work for DV case numbers for the first three months of a fiscal year. For example, some DV-2023 selectees were eligible to be issued visas from October to December 2022, but the tool did not recognize their case numbers until January 1, 2023. Are there plans to update this tool to ensure it works for the entire fiscal year?

Response: Thank you for raising this to our attention. We are looking into this issue with the technical teams and invite AILA to share specific examples if this continues to occur. Note that for DVs the Status Check can only provide status after the case has been loaded into the immigrant visa software at the consular post. For this specific issue, the team will review again in October 2023, when the cases selected for the 2024 DV program year are transmitted to posts.

Humanitarian

26. AILA understands that on July 31, 2023, the National Visa Center (NVC) began issuing invitations under the new Family Reunification Parole (FRP) processes. In this regard, members raised the following questions:

- a. What is the role of the National Visa Center in the FRP processes?
- b. What factors does DOS consider when determining to issue an invitation? For example, is DOS prioritizing certain priority dates, classifications, or individuals that may not have admissibility issues?
- c. AILA has received reports of invitations received by individuals who have already received an immigrant visa. In these situations, what is the best way to alert DOS?

Response: USCIS provided the National Visa Center with the list of cases eligible to receive Family Reunification Parole invitations. The NVC sent the FRP invitations on USCIS's behalf to all individuals listed. USCIS will inform NVC of the cases they need back for FRP processing.

Applicants who have already received an immigrant visa should inform NVC via the Public Inquiry Form (<https://nvc.state.gov/inquiry>) and provide a copy of their LPR card.

27. AILA is grateful for the administration's efforts to expand resettlement in the US with [The Welcome Corps](#) program matching support groups comprised of US citizens and/or green card holders who want to volunteer to help refugees financially once they arrive in the US. Currently, the Welcome Corps program matches US sponsors with refugees. Are there plans to expand the program to meet sponsor groups' specific requests to be matched with specific refugees?

Response: Yes. The Bureau of Population, Refugees, and Migration (PRM) is currently rolling-out the ability for private sponsor groups to indicate certain skills and competencies that could be factored into the matching and placement process. This includes the ability for sponsors to indicate language, nationality, and case composition (family size and ages) requirements for the refugees with whom they're being matched. Later in 2023, private sponsor groups will also be able to identify specific refugee individuals or refugee families who they wish to refer to the U.S. Refugee Admissions Program and sponsor upon arrival. This is referred to as "naming."

28. President Biden's February 4, 2021, Executive Order, in which he indicated the likely creation of a private sponsorship program, resulted in Higher Education's advocacy for a new P-4 classification of the US Refugee Admissions Program (USRAP) to allow refugees to access university study in the US through private sponsorship in the US. As the [Report by the 2021 Presidents' Alliance on Higher Education and Immigration](#) aptly summed up: *"As forced displacement reaches historic levels, opportunities for refugees to reach safety have contracted. Among the displaced are hundreds of thousands of students dreaming about continuing their education. Less than 1% of refugees are resettled, and while 39% of students are able to access higher education worldwide, only 5% of refugee students access higher education."* Is there any update that can be shared on the creation of the P-4 program?

Response: The U.S. Department of State launched the Welcome Corps in January 2023, which allows groups of private American citizens and Lawful Permanent Residents to sponsor refugees who are processed through the U.S. Refugee Admissions Program (USRAP). Within the Welcome Corps are two specialized pathway programs, one of which is called the Welcome Corps on Campus (WCC) which was launched in July 2023. The WCC allows private sponsor groups at U.S. colleges and universities to directly sponsor refugee students and support them while they pursue associate or bachelor's degrees. Refugees identified for the program are processed overseas through the USRAP and enter the United States with refugee status. Prior to arrival, a refugee is matched with a participating higher education institution with an offer of admissions, tuition waiver and, to the extent possible, some or all of the refugee student's living expenses for the required 12-month sponsorship period. Refugee students are also matched with an on-campus private sponsor group, comprised of at least five individuals, who

will provide academic, integration, and supplemental financial support not covered by the college or university for the duration of the 12-month sponsorship period. In the initial pilot, refugees who are already in the USRAP pipeline overseas are being matched with institutions of higher education and private sponsor groups. In the future, private sponsor groups working with their college or university administration will be able to “name” specific refugees and refer them to the USRAP through the Welcome Corps on Campus initiative. More information is available at WelcomeCorps.org/Campus.

U.S. CITIZEN (USC) SERVICES

Consular Report of Birth Abroad (CRBA)

29. The online CRBA form (eCRBA) is available for applicants at certain consular posts, and at some posts, use of the online eCRBA form is required. Members have reported issues related to the online eCRBA process. For example, the eligibility questions include two questions that are problematic. Answering "no" to either produces an error stating "Based on the information provided, your child isn't eligible for a CRBA" and prevents the applicant from continuing with the application, which is particularly burdensome when the applicant is eligible and the only CRBA application the consular post accepts is the online form eCRBA. The two problematic eligibility questions are as follows:

a. The eCRBA asks whether the applicant is able to pay the fee electronically via credit/debit card or ACH transfer. If the applicant answers “no,” they are unable to continue the eCRBA application. Therefore, an applicant who is unable to pay electronically is unable to file the eCRBA application, and as such, if at a post that only accepts the online form, cannot submit the eCRBA application. Ability to pay with credit card does not make one ineligible for a CRBA, but this question could potentially impact an individual's belief in relation to their US citizenship eligibility and prevent them from obtaining appropriate documentation (CRBA) and fulfilling tax obligations.

i. Can DOS amend the language in the error screen to state, "Based on the information provided, your child isn't eligible to submit a CRBA application online. You must file the paper form DS-2029. Please contact the consular post for in-person submission."

ii. Please also confirm that posts will accept both the online and paper-based versions of form DS-2029 and further ensure posts are adequately stating the availability of both options on their individual websites?

b. The second eCRBA eligibility question at issue asks, "Are you the biological parent of the child applying for the CRBA?" Counsel and other authorized

parties are permitted to submit the DS-2029 on the child's behalf. As such, can the online question be amended to include language regarding counsel and other authorized parties permitted to apply to align with the Form DS-2029 language most closely, which states "...the child's parent(s), legal guardian, person acting in loco parentis or the child may apply on the child's behalf." For example, can the language to be amended to state the following: "Are you the biological parent, legal guardian, attorney, or person acting in loco parentis applying for the CRBA on the child's behalf?"

Response: Thank you for these thoughtful suggestions. They will be considered for possible incorporation. Currently the eCRBA team is collaborating with the posts and getting their feedback on new enhancements to improve the customer experience.

Renunciation Fee

30. On January 6, 2023, following a lawsuit filed by the L'Association Des Americains Accidentels (*L'Association Des Americains Accidentels v. United States Dep't of State*, Civil Action 20-cv-03573 (TSC) (D.D.C. Feb. 10, 2023) challenging the constitutionality and appropriateness of the renunciation fee, DOS filed with the court a "Notice of Intent to Pursue Rulemaking to Reduce Fee Amount". In the notice, DOS indicated that it intended to reduce the current fee for renunciation applications from \$2,350 to \$450. The court ultimately denied plaintiffs' claims. Can you provide an update as to whether DOS still plans to reduce the renunciation processing fee?

Response: The notice for public rulemaking to reduce the fee for Administrative Processing of Request for Certificate of Loss of Nationality of the United States (CLN), from \$2,350 to \$450 was published in the Federal Register on Monday, October 2.

END