

## **AILA/DOS Liaison Meeting Agenda Spring 2017**

### **March 6, 2017 Executive Order 13780**

1. Section 3(c) of [Executive Order 13780](#) states that consular officers may issue visas on a case-by-base to a foreign national for whom entry is otherwise suspended if he or she can demonstrate that denial of entry would “cause undue hardship and that his or her entry would not pose a threat to national security and would be in the national interest.” The E.O. lists several scenarios where a case-by-case waiver could be appropriate. What is the process for applying for a visa and waiver under this provision of the E.O.?

The Department is currently prohibited from implementing section two of Executive Order 13780; hence the waiver process described in section three is not currently applicable. Should section two of the E.O. be implemented as currently drafted, consular officers would be authorized to issue visas to nationals of countries identified in the E.O. on a case-by-case basis, when the officer determines: that the applicant is otherwise eligible for the visa under the INA; that issuance is in the national interest; the applicant poses no national security threat to the United States; and denial of the visa would cause undue hardship. An individual who would wish to apply for a waiver would apply for a visa and disclose during the visa interview any information that might qualify the individual for a waiver. A consular officer would review each case to determine if the applicant is eligible for the visa under the INA and affected by the E.O. and, if so, whether the case qualifies for a waiver. The waiver decision would then be made by the consular officer abroad at the time of adjudication, after any required administrative processing.

2. Section 4 of Executive Order 13780 provides that visa applications for Iraqi nationals “should be subjected to thorough review” including, if appropriate, consultation with the Department of Defense. Are these additional screening procedures now in place and if so, to what extent have they changed the visa application process and general processing times?

We are working with our interagency partners to implement Section 4 of Executive Order 13780.

3. Section 9 of Executive Order 13780 directs the Secretary of State to “immediately suspend the Visa Interview Waiver Program” for most nonimmigrant visa applicants. This Section also directs State to expand the Consular Fellows Program “to ensure that nonimmigrant visa interview wait times are not unduly affected.”
  - a. Which posts will be/are most affected by the suspension of the Visa Interview Waiver Program?

We do not have statistics available to share on posts most affected by the suspension of the IWP. Posts must now require an in-person interview for the following categories of individuals that had previously been covered by the IWP:

- Any applicant whose visa expired more than 12 months prior to the date of application;
- Any first-time Brazilian applicant aged 14 or 15 or between 66 and 79;
- Any first-time Argentine applicant aged 14 or 15 or between 66 and 79.

Although interviews in both the current and discontinued categories are/were waiveable, the consular officer has always had discretion to require interviews notwithstanding the E.O. for a variety of reasons.

- b. How quickly can Consular Fellows be trained and installed at affected posts?

The Consular Fellows Program, formerly known as the Consular Limited Non-Career Appointment Program, was created in 2011 to address persistent staffing gaps at the entry-level. The Department recruits for this program on an ongoing basis. As Consular Fellow candidates successfully move through the assessment and clearance process, the Department trains and deploys them as expeditiously as possible and will continue to do so as staffing needs warrant.

- c. In order to manage the rising demand for nonimmigrant visas, is State considering introducing domestic visa revalidation for any visa categories?

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

4. Section 12(d) of Executive Order 13780 states that “[a]ny individual whose visa was marked revoked or marked cancelled as a result of Executive Order 13769 shall be entitled to a travel document confirming that the individual is permitted to travel to the United States and seek entry.” What is the process for seeking a travel document under this provision?

We have coordinated closely with CBP to identify any individuals this applies to and issued travel letters to them as appropriate. If individuals who fall under this category have not been contacted, and they still have a valid purpose of travel to the United States, we ask that they contact the U.S. Embassy or Consulate where they reside so that we can coordinate with DHS.

### **Uniform Screening and Vetting Standards**

5. Section 5 of Executive Order 13780 directs the Secretary of State, the Attorney General, the Secretary of Homeland Security and the Director of National Intelligence to implement uniform screening and vetting standards in the admissions process and adjudications process for visas and other immigration benefits. On [March 6, 2017](#), [President Trump also released a memorandum](#) directing the Secretaries of State and

Homeland Security, in consultation with the Attorney General, to implement protocols and procedures “as soon as practicable” to enhance screening and vetting for visas and other immigration benefits. What is the status of the development and implementation of these additional procedures?

The interagency is currently discussing potential enhanced screening and vetting protocols for visa and other immigration benefits and this process has yet to conclude.

## **Mission India**

6. We understand from our recent meetings with Chennai and New Delhi that due to normal rotation and the current hiring freeze, there will be a significant reduction in the number of officers at these posts starting in the summer of 2017. As a result, visa wait times are expected to increase significantly, though some of the backlog may be relieved by Consular Fellows and temporary staff. We have previously discussed the possibility of a new consular post in India. Is this under consideration at this time and if so, are there any updates to share?

Wait times in India and worldwide typically increase during the summer months, primarily driven by higher seasonal demand. Officer rotation is usually only a minor factor. The Department will continue its practice of targeted use of temporary staff in support of visa operations. At this time there are no plans to establish a new visa processing post in India.

7. The Mission India U.S. Travel Docs website features this question: “I have a valid H-1B visa which contains my previous petitioner’s details. I have changed my employer with valid I-797 and am back in India for a short trip. Can I travel back to the U.S. on the same visa or do I need to apply for a new visa? Can a person on a dependent visa work in the U.S.?”

The site at <http://www.ustraveldocs.com/in/in-gen-faq.asp#qlistwork13> provides the following answer: “In general, if you have a new petition with a different employer, you need to apply for a new visa. In certain situations (such as corporate restructuring), it may be possible to travel back with your current I-797 and visa. Further information can be found through the U.S. Customs and Border Protection.”

This answer is inconsistent with the American Competitiveness in the Twenty-First Century Act (AC21), which provides that a visa holder can use a valid H-1B visa issued for previous employment with company A and an I-797 issued for a new position at company B to seek admission to the United States. Can the language on the ustraveldocs website be amended to reflect the correct procedure under AC21?

Thank you for bringing this to our attention. 9 FAM 402.10-11(C) provides that an H-1B visa holder does not need to seek a new visa when there has been a change in their employer. Mission India has corrected the information on their website to reflect this.

## **E Visa Issues**

8. **E-2 for Israel.** We understand that the E-2 Treaty Investor visa for Israeli nationals is now moving forward. When might we see an E-2 process for Israeli investors rolled out?

Public Law 112-130 authorized E-2 visa classification for nationals of Israel if that government provides similar status to nationals of the United States. Israel is in the process of making certain regulatory changes that we expect will provide a basis for the Department of State to make a determination that Israel meets the similarity of status requirement. We anticipate that E-2 visas will be available for nationals of Israel by the fourth quarter of calendar year 2017.

9. **E-1 and Software.** The requirement under 9 FAM 402.9-5(B)(c) that only international trade qualifies as trade for E-1 purposes creates problems for software companies that are increasingly engaging in software-based transactions around the world. These transactions frequently involve more than the sale of software products in the United States and include the provision of software support services by the overseas company as well as the provision of software support to another company in the U.S. that pays monthly fees for the services of the overseas company. This creates complications for consular officers when determining whether the trade is “international” or “domestic” and can result in inconsistent adjudications. Moreover, a requirement that only software purchases from the U.S. can be counted as trade, which some of our members have encountered, appears to be at odds with the objective at the heart of the E-1 program, which is to increase international trade. Would State be willing to update the E-1 criteria in the FAM to clarify the type of software-related transactions that can qualify as trade for E-1 purposes and identify the type of software transactions that can be considered “international” as opposed to “domestic?”

We are not aware of a policy that only software purchases from the United States can be counted as trade, nor do we see a reason why trade in software or software support services should be subject to special rules that would not apply to trade in other goods or services. We encourage members to submit to LegalNet for our consideration specific E-1 visa denials they believe involve software purchases and services tied to bilateral trade between the United States and the treaty country. With these examples, VO will review the extensive guidance in 9 FAM 402.9-5(B) to determine if the requirements established by 8 C.F.R. 214.2(e)(9) and 22 C.F.R. 41.51(a)(7) can be further clarified.

10. **U.K. Residence for E Visa Applicants.** The U.S.-U.K. Treaty of Commerce and Navigation 1815 requires residence in the U.K., in addition to U.K. nationality to qualify for an E visa. The Embassy in London has always considered the applicant to be resident in the U.K., if he or she regularly resided in the U.K. prior to residing in the U.S. in a nonimmigrant status. However, this has recently changed. The Embassy has pointed to an Advisory Opinion (AO) from January 5, 2017, which provides:

*Individuals who most recently resided in the U.S. in an NIV status are not automatically presumed to be residents of the country in which they lived immediately prior to relocating to the U.S., and an alien in NIV status in the U.S., may for E-2 purposes, be considered permanently resident in another country even while temporarily residing in the U.S. If post finds that the applicant has*

*lived outside the UK for several years and does not customarily reside in the household of the applicant's parents or claim some other residence in the UK, the applicant would not qualify as an "inhabitant" for E-2 visa purposes. While there is no set time period for how long an individual must have a domicile and permanently and actually reside in the UK, post should consider the total amount of time the applicant has resided in the UK, including the time period before the applicant moved to another country and the U.S., as well as the recent time the applicant has been in the UK. Post may also consider any other relevant factors (i.e. whether the applicant continued to claim the UK as his/her residence even though actually and temporarily residing for some time outside of the UK, for example for tax purposes).*

We would appreciate a copy of this AO and clarification of State's position on this issue. If there has been a change in the interpretation of "residence," what led to this change? What type of evidence might be presented to demonstrate U.K. residence?

Advisory Opinions provided in the course of visa adjudication constitute a visa record that is confidential under INA section 222(f). Therefore, the Department cannot provide a copy of this AO as requested.

Per 9 FAM 402.9-10, the term resident as used in the Convention, means "one who resides actually and permanently in a given place, and has his domicile there." Whether an applicant is a resident is a factual determination that must be determined by the consular officer on a case-by-case basis. There is no legal basis for a presumption regarding an alien's residence. As defined in INA 101(a)(33), "residence means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." There has been no change in the guidance or the Visa Office interpretation of relevant authorities. An applicant may present any evidence he or she believes would be helpful in meeting the burden of proof.

- 11. E-2 Visa Modernization.** Some of the criteria for E-2 visas do not reflect modern business practices and the way in which people now invest in businesses. For example, many companies are funded by "angel" investors from an anonymous pool of investors whose money comes from a single fund. It is not possible to provide passport copies for each of these investors. In addition, entrepreneurs who want to start a technology company are not always required to invest large sums of money, nor do they require a traditional office. Instead, an investment of several thousands of dollars in computer equipment and a co-working space may be sufficient to start what will become a billion dollar enterprise. Are there any plans to review and update the E-2 criteria reflect modern business practices?

While we are open to ways in which we can update guidance to reflect modern business investing practices, the E-2 treaty investor classification requires at its core a business/investment model that matches statutory and regulatory requirements. For example, a business that is funded by anonymous "angel investors" will still need to establish the nationality of the business as that of the treaty country in accordance with 22 CFR 41.51(b)(2)(ii) and 9 FAM 402.9-4(B). Likewise, an entrepreneur with an idea and a laptop will need to satisfy the requirement that he or she has made an irrevocable investment that is at risk as described at 9 FAM 402.9-6(B). We further note that the

substantiality requirements described at 9 FAM 402.9-6(D) and marginality guidance at 9 FAM 402.9-6(E) are flexible in that they require that the investment be proportional and an amount sufficient to ensure success, without denoting a minimum required dollar amount, and do not prescribe a particular manner to demonstrate capacity to generate income that makes an economic contribution beyond the investor and family. We encourage AILA members to bring to our attention specific examples of currently pending or recently denied cases where evolving business practices that you believe meet the core E-2 criteria were a factor in delay or denial of the application.

12. **Issues with Pending E Visa Applications.** AILA has also received reports that once an E-2 enterprise registration has been submitted, the individual applicant whose DS-160 was submitted with the corporate application is immediately being refused under INA §221(g). In fact, certain posts, like Amsterdam, even advise applicants of this in their receipt notices. As this is a visa refusal, it must be disclosed by the applicant in future visa and ESTA applications, which can cause issues in traveling to the U.S. Has there been a change in policy, or has it always been the case that submission of an E visa application elicits a 221(g) refusal, albeit temporarily, until the application is processed? If pending applications are refused under 221(g), can the CCD be annotated to note that a corporate E visa application is pending, as refusal, even under 221(g) may lead to unintended consequences when applicants apply for admission to the United States?

The Visa Office is aware of this issue, and we are looking into options to address it.

13. **Reapplication After 214(b) Refusal.** INA §291 places the burden of proof upon the applicant to establish eligibility to receive a visa. However, the applicant is entitled to have full consideration given to any evidence presented to overcome a presumption or finding of ineligibility. Some applicants fail to meet this burden of proof at the initial interview, but are able to overcome the burden at a subsequent interview where they can articulate a change in circumstances or provide information/evidence that was not presented initially. The Embassy in London has instituted a rule where applicants who were refused must wait at least six months before they can schedule a new interview for a visa in the same category. The online booking system asks the date of the previous refusal and will not allow an applicant to reschedule until six months have passed. This prevents applicants from presenting changed circumstances that may establish eligibility. In addition, individuals who have sought to reapply at third country posts have recently been told that if they were refused by London they must wait 6 months. Is this a new policy across posts? If so, when was it implemented, and what led to the change?

Per 9 FAM 403.10-4(A) posts can reduce the burden of reapplications by using an appointment system to prioritize applicants who have not been previously refused: e.g., by limiting the number of interview slots available for previously-refused applicants or by scheduling them during lower-volume travel times. This policy is implemented at certain posts where there are a significant number of reapplications. It allows these posts to prioritize the demand for first time applicants and helps keep wait times down. Embassy London applied this scheduling structure in March 2016. There is no six month wait requirement. Currently a re-interview case can schedule an appointment date in May in London.

14. **Approval Notice/Petition Requirements for NIV Applications.** The websites of some U.S. consulates require individuals applying for H-1B or L-1 visas to bring to the interview a complete copy of the petition and supporting documents presented to USCIS in support of the underlying petition. We understand that consular officers have discretionary authority to request any information needed to verify eligibility for a visa. It is also our understanding, however, that, pursuant to 9 FAM 402.12-5(B)(a) and 9 FAM 402.10-9(B), consular officers should no longer routinely require that an approved Form I-129, Petition for a Nonimmigrant Worker, or a Form I-797, Notice of Action, be presented by an applicant seeking an H-1B or L-1 visa. As such, information on consulate websites instructing applicants to bring a complete copy of the petition and supporting documents is causing confusion about the actual documentation required at the interview. Due to evidentiary requirements imposed by DHS, supporting documents frequently constitute a substantial and unwieldy volume of documents. Would VO be willing to encourage consulates to harmonize nonimmigrant visa application instructions across websites with those found in the FAM in order to minimize this confusion?

Yes, VO will work to harmonize documentary requirements for petition-based NIV categories across all consular sections. As a follow-up, please provide any names of posts you are aware of that are currently instructing applicants to provide paper I-129s and supporting documents at the time of interview.

15. **National Visa Center Requests for Form DS-260 after Form DS-260 has been filed.** AILA has received multiple examples over the last four months where the NVC has sent a notice indicating that documents will not be reviewed until the Form DS-260 has been filed. In each case the DS-260 was filed at least a month prior to the notice being sent. See **Appendix A** for examples. What can members do to correct this situation, as forwarding evidence that the DS-260 has been submitted has not in many cases, had any effect?

Thank you for drawing our attention to this issue. The National Visa Center is currently working with our systems team to resolve this issue as well as identify these cases and ensure they move forward in the process. We have also instructed our customer service team to search, locate, and update our records for any case impacted by this issue. We request AILA continue to forward case information to NVC if this issue persists. AILA members can also send case information to [NVCAttorney@state.gov](mailto:NVCAttorney@state.gov).

16. **Annotated B Visas.** It appears that 9 FAM 402.2-5(F) has been changed and instructs posts to annotate B-1 in lieu of H visas. We are grateful for this as the annotation minimizes confusion at ports of entry. We also note that 9 FAM 402.2-5(C)(7) has been changed to note that aliens seeking E-2 or EB-5 investments are not ineligible for visas on that basis if they otherwise qualify. As with the B-1 in lieu of H, there can be confusion at the port of entry when a B-1 prospective investor indicates that they are coming to the U.S. to open a business, etc. when they are doing market research and engaging in the necessary activities to put the investment funds at risk in the United States. Would it be possible to amend the FAM to include an instruction to annotate such visas as “B-1 prospective E-2 (or EB-5) investor”?

VO recently participated in the first meeting of the new interagency working group on B visa issues, convened to increase coordination and consistency of adjudications across the government. CBP is included in this forum, and we hope that this will reduce confusion at the port of entry. However, in order to be eligible for a B-1 visa or admissible as a B-1 traveler, the applicant's purpose of travel must be consistent with B laws, regulations, and guidance. These rules do not change for travelers who are prospective investors or professionals in a specialty occupation; these applicants must also demonstrate, to the satisfaction of the consular officer and again at the point of entry, that the purpose of travel is consistent with applicable B-1 sections of the INA and regulations.

**17. IV Cases with Provisional Waivers.** Under the original provisional waiver rule published in 2013, an individual with a final order of removal, deportation, or exclusion was ineligible for a provisional waiver. On July 29, 2016, DHS published a final rule expanding the availability of the provisional unlawful presence waiver and making a number of additional changes to the process. Under the 2016 rule, individuals with final order are allowed to apply for a provisional waiver if they 1) filed a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, and 2) such application has been conditionally approved. However, individuals who fail to attend their removal hearings without reasonable cause are also inadmissible for five years under INA §212(a)(6)(B). While an approved Form I-212 waives inadmissibility under INA §212(a)(9)(A) and §212(a)(9)(C), it does not appear to waive inadmissibility under §212(a)(6)(B).

- a. Please confirm that in cases involving individuals with *in absentia* removal orders that departed the U.S. less than five years prior to consular interview, DOS officers perform a threshold analysis of whether the applicant had reasonable cause to miss their hearing and if reasonable cause is found, no inadmissibility determination is rendered.

As you know, INA 212(a)(6)(B) states that “any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.” Consular Officers are aware that an alien who establishes that there was a “reasonable cause” for failing to attend his or her removal proceeding is not inadmissible under INA 212(a)(6)(B). The guidance is found at 9 FAM 302.9-3(B)(2) which states in part “reasonable cause is defined as something that is not within the reasonable control of the alien.”

- b. Please confirm that absent any other grounds of inadmissibility, an approved Form I-601A would not be revoked if an applicant for admission has an approved Form I-212 and was ordered removed *in absentia* but is not found to be inadmissible under INA §212(a)(6)(B) because he or she had reasonable cause to miss removal proceedings.

Consular Officers in visa adjudications do not have the legal authority to revoke waivers granted by USCIS. We refer to USCIS guidance regarding grounds for automatic revocation of an I-601A.



18. **IV Interview Letters.** Following the December 28, 2016, announcement that “wet ink” signatures are no longer required on submitted Forms I-864, I-864A, I-864W, and I-864EZ, NVC confirmed that some interviews scheduled at the end of December were issued appointment letters with the old information indicating that original signatures are required. NVC further confirmed that, in these cases, original “wet ink” signatures are not required. NVC noted that they were in the process of updating appointment letters to reflect the new requirement. Have all appointment letters been updated at this time?

Yes, we can confirm that all appointment letters reflect the change in the requirement.

19. **Update on the Electronic CRBA.** Please provide an update on the roll-out of the electronic Consular Report of Birth Abroad service for scheduling appointments and uploading documents. Once this system is in place, will expedited appointments be available for applicants who submitted their information electronically?

The electronic Consular Report of Birth Abroad (eCRBA) module of the Bureau’s ConsularOne initiative is on track for piloting and release in the 4<sup>th</sup> Quarter of CY 2017. This initial version of eCRBA will allow customers to apply online for CRBAs, pay all necessary fees and set an appointment at the appropriate overseas post for the required interview. The initial rollout will include a 14-day lag between submission and appointment availability to allow ample time for payment to clear and for the post to pre-screen the application for completeness and errors. We anticipate allowing posts to set their own appointment availability in the future, down to three business days, which is the time needed to fully process payments using checking accounts. Applicants who desire an appointment sooner than that will need to contact post; however, it is important to note that posts may adjudicate a child’s citizenship in the course of an emergency passport application, so there is technically no need for expedited or emergency CRBA appointments.

## 20. **Facial Recognition**

Does State currently use facial recognition technology when screening visa applicants? If not, are there plans to use it in the future? If so, when?

Consular officers use facial recognition technology to screen visa applicants against a watchlist of photos, as well as the entire gallery of visa applicant photos contained in the Department’s Consular Consolidated Database (CCD).

21. **Electronic Photo Uploads.** Are there any posts that do not currently accept electronic photo upload through the DS-160 and instead require a hard copy photo at the interview? If yes, please provide a list of these posts and whether/when we can expect this to change in the future.

The following 16 posts do not accept electronic photo upload through the DS-160 and require a hard copy photo at the interview:

Apia, Samoa

Asmara, Eritrea  
Brazzaville, Congo  
Cotonou, Benin  
Kampala, Uganda  
Libreville, Gabon  
Lilongwe, Malawi  
Lome, Togo  
Lusaka, Zambia  
Maseru, Lesotho  
Mbabane, Swaziland  
Montevideo, Uruguay (Will begin electronic upload on April 1, 2017)  
N'Djamena, Chad  
Port Moresby, Papua New Guinea  
San Salvador, El Salvador  
Windhoek, Namibia

This list excludes posts in Argentina, Brazil, Colombia, the Dominican Republic, India, and Mexico, where photos are uploaded at remote data collection facilities. It also excludes the Department and USUN where electronic DS-1648 applicants are processed.

With the exception of Montevideo, which is expected to begin accepting online photographs April 1, 2017, there is currently no timetable for posts to switch from manual to electronic photo uploads. The decision to move to electronic upload is made locally by post, taking into account local conditions in the host country.

22. **E-3 Interviews in Sydney.** It appears that E-3 visa interviews in Sydney are now taking place only one day a week with a 10 day processing time. What is the reason for this change?

U.S. Consulate General Sydney put a number of measures into place to maximize the consular section's resources and to enhance workload efficiencies. Immigrant visa interviews, including interviews for the EB-3 employment-based immigrant visas, are scheduled once a week. The small numbers of E1/E2 Treaty Trader and Investor visa interviews are also generally consolidated to one day a week. Visa interviews for nonimmigrant E-3 Australian skilled professionals have not been consolidated to one day, and still take place alongside all other NIV interviews.

23. **Modernized Immigrant Visa Pilot Program.** On October 6, 2016, State indicated that the pilot program for the improved Consular Electronic Application Center (CEAC) portal was expected to launch at six posts in April 2017 for immigrant visa processing.

- a. Is the CEAC pilot still on target for April 2017?

The last systems updates for the full modernized immigrant visa (MIV) pilot are scheduled for the end of April, with the pilot to start in May.

- b. Is the pilot still intended to be limited to I-130s and I-129F petitions?

The pilot only includes the I-130 and I-129F petitions, but they represent nearly 90% of overseas workload.

- c. When will the eight additional posts currently using the electronic document filing option join the pilot program?

If the first pilot runs smoothly, we anticipate adding the eight additional posts in early fall 2017.

- d. What is the estimated current timeline for worldwide deployment of the program?

Once both pilots are deemed a success, we anticipate starting to add additional posts beginning in early 2018. The worldwide rollout will be phased and take place over a number of months, to ensure system stability and the ability to address any issues that may arise. We hope worldwide rollout will be complete by the end of 2018.

24. **CSPA Fee Bill Payments.** At the meeting with the NVC in November 2016, NVC explained that it was in the process of developing a policy to address fee payments by persons who may benefit from the Child Status Protection Act (CSPA). Affected visa applicants are those who are waiting for a visa to become available and may reach age 21 before being able to complete the immigration process but who wish to pay the filing fee in order to avoid losing time once visas become available. Such applicants fully understand that they may “age out” before a visa becomes available but, nevertheless, may wish to accept the risk of loss of the filing fee in order to maximize the possibility of an efficient immigrant visa application process. Please provide an update on the status of this issue.

The National Visa Center is still developing an internal process to address this issue broadly across all visa categories. In the meantime, if an applicant wishes to proceed with his or her visa application even though the case’s priority date has not reached the “Final Action Dates” chart (Chart A) on the Visa Bulletin or if NVC’s preliminary assessment of eligibility for CSPA benefits was negative, the applicant can request in writing that NVC issue a fee bill and/or proceed with the case. This can be done by attorneys using the [NVCattorney@state.gov](mailto:NVCattorney@state.gov) mailbox or by applicants using NVC’s online inquiry form at [nvc.state.gov/ask](http://nvc.state.gov/ask).

25. **LegalNet Backlog.** AILA members have observed delays in LegalNet responses that are significantly longer than normal, with some cases pending for six months or more. What has led to the slowdown in response time and are there plans to address it such as hiring more staff? What is an appropriate timeline for attorneys to follow up on cases pending with LegalNet?

LegalNet over the past few years has experienced an increase in the volume of inquiries. Despite this increase in inquiries our response timeframe for complex legal inquiries has

remained fairly static; we provide a substantive response to the majority of inquiries within three months. The total number of open inquiries pending final response has remained relatively constant at between 125 and 140 inquiries over the past six months. Most inquiries require coordination and discussion with post, which can add to wait times. We strive to resolve all inquiries as quickly as possible. We are actively reviewing two dozen remaining complex legal inquiries that were received before October 2016 and we are committed to bringing these older cases to closure as soon as possible.

Wait times have recently improved for the initial review of in-scope LegalNet inquiries. In the autumn of 2016, LegalNet took approximately 30 days to provide an initial response and between 240 and 260 inquiries were pending review at any given time. Today, we are currently averaging two weeks for a response to in-scope inquiries and there are 125 inquiries pending initial review. If AILA becomes aware of a specific case pending six months or more please bring it to the attention of LegalNet.

Attorneys may follow-up with LegalNet thirty days after the initial inquiry or LegalNet's most recent communication on the case.

Please be aware that many inquiries received by LegalNet do not include a legal argument but rather request a review of factual determinations made by the consular officer, involve cases refused under INA section 221(g) for administrative processing, or pose questions best addressed to NVC or other agencies. In the past, we have provided some responses to these out-of-scope inquiries on a case-by-case basis. In an effort to make best use of scarce resources and to improve our response time for in-scope inquiries, we are strictly adhering to the parameters of LegalNet, as set forth in the FAM, and are no longer providing a response (other than the auto response) to out-of-scope inquiries. The use of staff time to review and triage out-of-scope questions still impacts our ability to dedicate time to review and respond to in-scope requests. Encouraging your members to only submit in-scope inquiries with streamlined prose and substantive legal arguments will positively impact our ability to address and respond more promptly to appropriate questions.

We have recently updated the LegalNet auto response. The language of the updated auto response more clearly describes the scope of LegalNet, and provides points of contact for those out-of-scope inquiries.

In autumn of 2016, VO dedicated more resources to LegalNet in terms of dedicated legal and administrative support. We do not foresee devoting additional personnel to LegalNet at this time.

26. **Consular Revocations.** Do consular officers consult with USCIS officers who may be stationed on site at a consular post in a co-located USCIS office on petitions that the post is considering returning to USCIS for revocation?

We work closely with our colleagues at USCIS, both in the U.S. and at posts abroad. Consular officers are permitted to consult with co-located USCIS officers as relevant.

27. **J Waiver Issue.** At the October 2011 AILA meeting with the Visa Office, the Waiver Review Division (WRD) stated that it forwards the following to USCIS upon issuing a J-1 waiver recommendation:

*For no objection statements, interested government agency and state department of health applications, the WRD sends the waiver recommendation letter, DS-3035 and G-28 information to USCIS. For the exceptional hardship and persecution cases, we also send the I-612 and I-613 forms to USCIS.*

In the context of a recent AILA inquiry in which a member reported not having received the waiver recommendation or I-612 receipt, the WRD stated, “(w)e do not send G-28 forms to VSC.” Can the WRD please clarify which documents and/or information it sends to VSC when issuing a J-1 waiver recommendation and in what manner these documents/information are transmitted (e.g., electronic transmission of information only; scanning documents, etc.)?

The Waiver Review Division confirms that it sends the DS-3035, G-28 and the recommendation letter information to the Vermont Service Center (VSC) when it issues a J-1 waiver recommendation. The information is transmitted electronically only to the VSC.

28. **Reciprocity.** The “[Reciprocity: What's New](#)” webpage does not appear to have been updated to show changes that have been made to the Country Reciprocity Tables since November 15, 2016.

Thank you for bringing this to our attention. The “[Reciprocity: What's New](#)” page has now been updated with the latest reciprocity changes received from November 15, 2016.

a. Will the page continue to be updated in the future? If so, what is the expected timeline?

Yes, this page will continue to be updated. New reciprocity changes will be reflected the same day or the following business day depending on work load and the time the VO Web Unit receives the request.

b. Have any updates been announced to posts by cable that has not been listed on this page?

No. All reciprocity updates announced to post by cable and forwarded to the VO Web Unit have now been listed on this page.

## **Blanket L Issues**

29. **Required Number of Endorsed Forms I-129S.** AILA has received reports from members that various consular posts have indicated that they have received new blanket L processing guidance instructing posts to require applicants to present only two Forms I-129S and requiring posts to provide blanket L visa applicants with only one endorsed

Form I-129S. If this is accurate, it appears to be in conflict with 8 CFR §214.2(l)(5)(ii)(E) that requires returning the original and one copy of Form I-129S to the applicant as well as 9 FAM 402.12-8(D) that was updated on October 18, 2016. Please confirm whether new guidance was issued relating to the number of Forms I-129S required to support a blanket L application and the number of endorsed forms to be issued to applicants upon approval.

We are aware of this issue and that the FAM guidance currently refers to an original and two copies. We have been reviewing the ongoing practicality of the policy set out in the FAM, we hope to provide an update about this in the near future.

30. **Use of Previously Approved Forms I-129S.** At the liaison meeting on April 15, 2015 State confirmed that “when an L visa has been issued with a validity of less than the validity of the petition..., consular officers may reissue the visa any number of times within the validity period of the petition...” This is memorialized at 9 FAM 402.12-17(C). At the liaison meeting on October 6, 2016, State confirmed that an endorsed Form I-129S has the equivalent effect of a Form I-797, Notice of Action confirming approval of an individual L-1 petition. DHS published a new Form I-129S with a June 2, 2016 edition date and effective August 29, 2016. Only the new form is accepted to support new blanket L visa applications. AILA members report that the U.S. consulate in Mexico City refused to reissue a blanket L visa based on an unexpired, endorsed, previous edition of Form I-129S. Please confirm that unexpired, endorsed, previous editions of Form I-129S have the equivalent effect of a Form I-797 and may be presented to apply for a new blanket L visa.

Thank you for bringing this situation to our attention. That is correct. Posts must accept unexpired, endorsed versions of the I-129S for cases, regardless of the edition of the form, as evidence of entitlement to the visa classification for blanket L visa renewals. VO will work with our posts to ensure that they are aware of this.

31. **Three Year Period of I-129S Endorsement.** At the liaison meeting on April 7, 2016, VO indicated that 9 FAM 402.12-8(F) authorizes endorsement of Forms I-129S for a maximum period of three years from the date of endorsement. At the meeting on October 6, 2016, AILA pointed out that blanket L applicants normally apply for a visa well in advance of the date they are schedule to begin employment in the U.S. and, by limiting endorsement of Form I-129S to three years from the date of endorsement, those who plan ahead are penalized by receiving a truncated period of employment authorization. Paradoxically, this places blanket L visa applicants in a worse position than nonimmigrant workers applying for an L visa based on an individual L petition. State confirmed that an endorsed Form I-129S has the equivalent effect of a Form I-797, Notice of Action confirming approval of an individual L-1 petition. Since an individual L petition may be approved up to six months in advance of the intended employment date, there appears to be no reason to restrict the endorsement of Form I-129S based solely on the date the application is adjudicated. AILA encouraged VO to adopt a policy authorizing endorsement of Forms I-129S for the “Dates of intended employment” as written in Part 2, question 2 of the form or for a period of three years beginning on the indicated employment commencement date, whichever is less. VO indicated it would

take this suggestion under consideration. Has VO considered this option and if so, are there plans to revise its Form I-129S endorsement policy as recommended?

Thank you for following up on this. We recognize the seeming penalization of applicants who apply early who potentially receive shorter validity on this I-129S. However, we are not likely to pursue these procedural changes at this time.

### 32. **Further Evidence After Denial of Immigrant Visa Applications**

- a. Under 22 CFR §42.81(e), an immigrant visa application which has been refused may be reconsidered if, within one year, the applicant presents additional evidence which tends to overcome the basis for the refusal. However, the immigrant visa refusal sheets and State's standard refusal letter for immigrant visa applicants do not inform denied visa applicants of this regulatory requirement. By contrast, denial letters generated by U.S. Citizenship Immigration Services (USCIS) generally advise the applicant or petitioner of the right to file an appeal or motion to reopen/reconsider, and include instructions for doing so. AILA respectfully requests that State provide clear instructions to denied applicants on the standard refusal letter for submitting additional evidence and requesting reconsideration of the visa application.

Refusal letters are created at post and VO does not require posts to use a specific template. We will take into consideration your suggestion and ask that posts add information regarding 22 CFR 42.81(e) and instructions for presenting additional evidence based on posts' local procedures. We note that the topic of overcoming prior refusals in an IV application is addressed at 9 FAM 504.11-4 and specifically references 22 CFR 41.81(e). We will review that note to make sure the substance of the regulation is clearly communicated.

- b. During the April 2015 liaison discussion, AILA asked VO to consider providing clear instructions to refused IV applicants on the procedures for submitting additional evidence and requesting reconsideration of an immigrant visa application. VO replied that it would consider the request and would work with posts and GSS contractors to ensure they are clearly communicating the ways in which refused IV applicants can submit additional evidence to their case. It appears that this information is not reaching refused IV applicants at all posts. Has the Department given any additional thought to how this might be done?

In September 2016, CA sent out guidance to posts worldwide noting that following a refusal if the applicant disputes the finding they should be given an opportunity to present additional evidence at a follow up interview. This guidance contained elements which prevent us from sharing it with the public.

33. **K-1 Returns to USCIS.** AILA members report experiencing prompt returns (within 24 hours) to USCIS of K petitions that did not appear to be clearly approvable following the completion of the visa interview. Congress has mandated in K-related legislation (e.g. Pub. L. 107-228, Sec. 233; Pub. L. 106-113, Sec. 237) that State's policy be to adjudicate I-130 and K-1 visa applications within 30 days, which serves the important objective of uniting fiancées as quickly as possible. Even though quick turnarounds are useful in

certain cases, the fact that approved K petitions are valid for only four months means that a consular return for additional USCIS review effectively renders the petition void. K interviewees may be able to address State's concerns and/or present additional evidence before a petition is returned if given a reasonable time to do so, thereby saving months of time, expense, and heartache for the beneficiary and petitioner. Would VO consider instructing posts to keep refused K petitions for a reasonable period of time and instruct the applicant that they may present additional evidence to overcome the concerns within that time period prior to the petition being returned to USCIS?

Thank you for your suggestion. Under current practice, if there is additional evidence that is needed by a consular officer to make a determination it will be requested from the applicant before a decision is made to issue or refuse a visa application. When the consular officer finds new facts unknown to USCIS that are material to the petition eligibility, we are required to return the petition to USCIS so they can review and adjudicate the petition eligibility with the petitioner. We do not think this is an efficient or effective procedure for the Department to implement a separate process outside the existing one.

34. **Distinguishing Prudential and Provisional Revocation of Visas.** Based on our discussions in April 2016, we understand that for prudential revocations based on a DUI arrest, the visa revocation does not actually take effect until the individual departs the United States. This would theoretically protect the individual from exposure to deportation grounds under INA §237(a)(1)(B) (nonimmigrant present in the United States with a visa that has been revoked). By contrast, 22 CFR 122(b) governing "provisional" revocations indicates that a provisional revocation has the same force and effect as a revocation under INA §221(i). Therefore, individuals in the United States with provisionally revoked visas could be exposed to DHS enforcement efforts. What is the functional/practical difference as well as the legal difference between a "provisional" revocation and a "prudential" revocation?

There is no legal difference between prudential and provisional revocations. As a practical matter, a provisional revocation, such as takes place in the EVUS context, could be reversed without the alien having to reapply for a visa, whereas a prudential revocation generally requires the alien to apply for a new visa and appear before a consular officer to reestablish eligibility. The vast majority of prudential revocations take effect after departure, for individuals in the United States at the time of revocation. We generally intend provisional revocations to be implemented in the same fashion. We will consider whether clarification is needed.

35. **EVUS.** Newly created 22 CFR §41.122(b)(3) establishes a procedure to automatically provisionally revoke nonimmigrant visas of covered aliens who fail to maintain compliance with the Electronic Visa Update System (EVUS) created by 8 CFR §215.21. No time period is provided in the regulations for individuals to enroll in EVUS before revocation takes place.
- a. Are nonimmigrant visas issued to such persons automatically provisionally revoked upon issuance and then automatically reinstated upon initial enrollment?



Those covered aliens who received visas **before** the November 29, 2016 enrollment deadline must have initially enrolled in EVUS by December 14, 2016 (8 CFR § 215.24(c)(1)(i)).

Those covered aliens receiving visas **on or after** the November 29, 2016, deadline “must initially enroll in EVUS ***upon receipt of such visa.***” (8 CFR § 215.24(c)(1)(ii) emphasis added).

Failing to initially comply or failing to maintain compliance with all EVUS enrollment requirements as described in 8 CFR §215.24 will result in automatic provisional revocation of a covered alien’s visa in accordance with 22 CFR §41.122(b)(3), resulting in that visa no longer being valid for travel to the United States, “without further notice to the visa holder.”

Once the covered alien complies with all EVUS requirements as described in 8 CFR §215.24, either by initially enrolling in EVUS or re-enrolling with EVUS if their notification of compliance has expired or has been rescinded, then the provisional visa revocation will automatically be reversed, “as confirmed by receipt of a notification of compliance.”

- b. If so, are individuals whose visa are automatically provisionally revoked upon issuance and then automatically reinstated upon initial enrollment required to indicate that they had a visa revoked on any subsequent visa application?

No. The applicant would not necessarily be aware that her visa had been provisionally revoked.

- c. Absent any other adverse factors, would failure to disclose on a visa application a previous provisionally revoked visa that was automatically reinstated be considered a material misrepresentation?

Consular officers determine visa ineligibilities based on a totality of the circumstances of the individual case. We note though that INA 212(a)(6)(C)(i) requires both willfulness and a misrepresentation, which requires an affirmative act, not merely a failure to disclose.

- d. Will posts annotate designated nonimmigrant visas issued to covered aliens to alert the visa holder of the obligation to maintain enrollment in EVUS as a condition for being able to use the visa?

Yes. All full validity B visas issued in a People’s Republic of China passport are annotated as follows:

EVUS enrollment required  
Enroll at [www.EVUS.gov](http://www.EVUS.gov)

- 36. **TN Visa Annotation.** In response to a question presented at the October 6, 2016 liaison meeting about current TN visa annotation practices at U.S. consulates in Mexico, the Visa Office indicated that it continues to work to standardize annotations for such visas

and that to maintain the established standards, the FAM would be updated. In previous discussions, State recognized that an annotation showing the proposed period of work for the visa applicant in the United States assists CBP inspectors in determining the permissible periods of admission in TN status for citizens of Mexico. *See Appendix B* AILA members continue to report variations in TN visa annotation practices at consulates in Mexico. TN visas that are not annotated with the approved period of employment can cause delays at ports of entry or result in admission that is limited to the expiration date of the visa rather than permissible period of employment.

- a. Has VO developed a final policy on the annotation of TN visas, and if so would VO share a copy of that policy?

VO has developed, in coordination with our largest TN processing posts, a standard annotation for these visas. We have confirmed with Mission Mexico that posts have been instructed to use and are using this standard annotation. In these cases, our posts will annotate the visa to reflect the employer and the specific NAFTA profession. While in the past we would include the specific dates of employment, we no longer believe this practice to be beneficial. Final admission decisions are made by U.S. Customs and Border Protection agents at the port of entry. CBP holds the authority to grant admission for any defined timeframe regardless of what may or may not be included in a visa annotation.

- b. What is the estimated date for updating the FAM to reflect the current TN annotation policy?

We are finalizing updates to the FAM and hope to have them published this spring. However we have already confirmed that Mission Mexico, which adjudicates the majority of TN visa applications, is implementing this guidance.

**37. Visa Payment Options at Posts.** During the fall 2013 liaison meeting, AILA asked about the use of third party vendors for visa appointment scheduling and fee collection, and was told that the two GSS vendors at the time were CSC and Stanley. *See Fall 2013 DOS Liaison Agenda, Question 21(b).* Although not touched upon in the written questions and answers on this topic, we discussed our concerns about the lack of uniformity in vendor processes and the inconvenience caused when the vendor does not accept credit card payments.

- a. Are CSC and Stanley still the GSS vendors used by the State Department? If not, who are the current vendors?

CSRA (formerly known as CSC) and CGI (formerly known as Stanley) are the Department of State's prime vendors on the Global Support Strategy contract; those vendors subcontract as needed to deliver visa support services.

- b. Can VO provide an update as to whether the vendor contracts now allow acceptance of multiple payment sources, including credit cards?

The Department authorizes the GSS vendors to offer different fee payment options in each country depending on the security, availability, and reliability of the fee collection mechanism in that locale; the cost to the U.S. government for the service;

and, a country-specific evaluation of risks such as excessive refunds, credit card chargebacks, and fraud. Taking into account these considerations, the GSS vendors offer a range of options including over-the-counter payment at banks, credit card, debit card, electronic funds transfer, online payment, and even, in rare cases, mobile payment by SMS. Given the variety of conditions where we offer visa services around the world, it would not be appropriate for the Department to institute a blanket requirement for credit card or any other specific payment mechanism worldwide. The most current information on payment options in each country is available on the relevant visa appointment web site.

- c. If updates have not yet been made, what is the timeframe for renegotiating these contracts?

See above

- d. Is VO planning to include a requirement in the new contracts to require vendors to accept multiple payment sources, including credit cards?

See above

## Appendix A

## Appendix B

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

#### Annotation of Visas

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

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

**AILA InfoNet Doc. No. 12050245. (Posted 05/02/12)**

### **AILA Department of State Liaison Meeting October 18, 2011**

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

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