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ISS Regulatory Practice Committee Discusses Visa Processing: Behind the Consular Curtain

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Presenters



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Today's Agenda

- Background of consular officers
- Anatomy of a visa interview
- 214(b) – What does it really mean?
- Administrative processing
- Tips for preparing applicants
- Hot topics for student and scholar visas
- When to recommend referral to attorney
- Questions



Background of Consular Officers



Foreign Service Requirements

- Foreign Service Officer Test (written exam)
- Personal narrative
- Oral assessment
- Medical and security clearances
- Consular Adjudicator program (language-designated for Spanish, Chinese, Portuguese)
 - 27-month to 5-year limited appointment

Diplomats as Consular Officers

Foreign Service career tracks:

- Political
 - Economic
 - Public diplomacy
 - Management
 - Consular
- All must serve in consular career track at least one of first four years.



Consular Training

- Most Consular Officers aren't legal professionals
- Receive basic consular training (5-7 weeks) with language training if necessary
- On-the-job training essential
- Validation studies
- Decentralized post management creates significant variance from post to post

Diplomat



What my friends think I do



What my mom thinks I do



What other governments think I do



What society thinks I do



What I think I do



What I do

Anatomy of a Visa Interview



- Facilitate legitimate travel.
- Be courteous. Face of America for most applicants.

2-minute interview:

- Review application
 - Interview applicant
 - Security checks
 - Case notes
 - Document review is optional
-
- **MULTITASKING AND EFFICIENCY!**
 - Consular non-reviewability.

Workload

- High-volume missions: Mexico, China, Brazil, India
- 120-140 visas processed per day, per officer



Fact or Fiction?



- Consuls are lied to frequently. Which applicant is lying?
- General questions to start
- Follow-up with specific, probing questions
- Non-verbal cues
- Fraud prevention resources
- Any applicant caught lying will probably be refused, even if immaterial.



214(b) – What does it really mean?



INA 214(b)

- INA Section 214(b) requires the visa applicant to establish to the satisfaction of the consular officer that he or she is entitled to nonimmigrant status under INA 101(a)(15), which describes all available NIV classes.
- All applicants are presumed to be intending immigrants, with some exceptions. It is the applicant's burden to overcome the presumption.



214(b) Cont'd

Applicants must show that they:

1. Have a **residence** in a foreign country, which they do not intend to abandon, typically demonstrated through “strong ties”
2. Intend to enter the United States for a period of specifically **limited duration**
3. Seek admission for the sole purpose of engaging in **legitimate activities** relating to visa category

214(b) – Factors to Consider

- Does the story make sense to conclude this is a bona fide student or scholar? Look to totality of circumstances.
- Ties to home country
 - Employment; business and financial connections
 - Close family ties and social/cultural associations in home country versus United States
 - Successful past travel
 - Age and education history
- What are the home country economic conditions?
- How difficult was admission into educational institution?
- Ability to pay for education
- Language ability, if required

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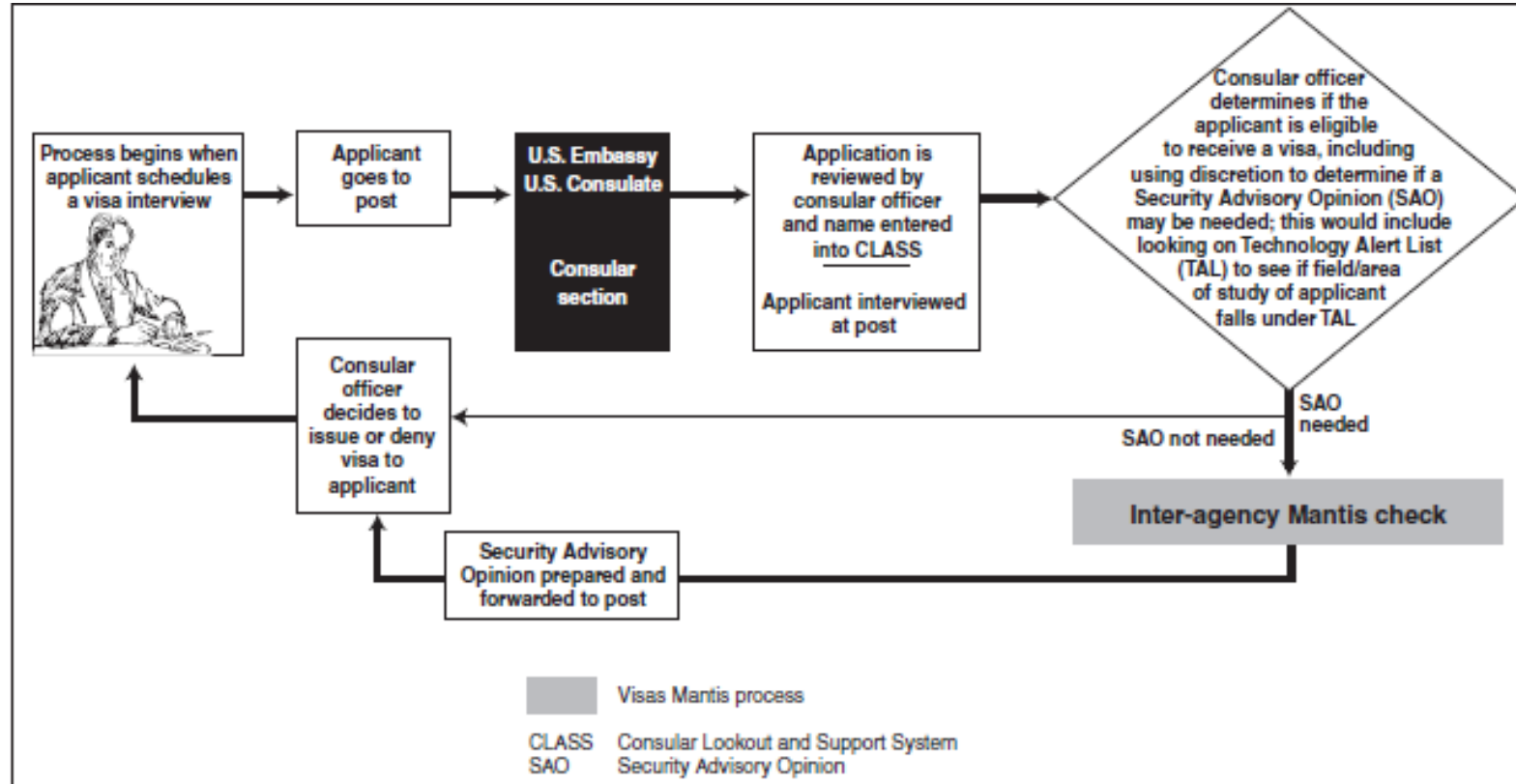
What Really Happens During Administrative Processing?

Administrative Processing 221(g)

- Fraud investigation
- SAO – Security Advisory Opinion
 - Visas Mantis: detailed CV, itinerary, list of publications
- Travel ban and “extreme vetting”
- AO – Advisory Opinion
- Additional documents
- Consider mandamus lawsuit



Security Advisory Opinions



Source: GAO analysis of State Department documents and visa operations.



Tips for Preparing Applicants



Tips for Preparing Applicants

- Applicant should know all details of travel purpose and qualifications without hesitation. If petition-based visa, applicant interview can't be inconsistent with petition.
- Well-organized documents. Possible cover letter if complicated situation. Prepare required SAO documents ahead of time.
- Pre-screen applicant for unusual situations or potential ineligibilities:
 - Prior arrests in United States.
 - Unusual travel history.
 - Unusual educational history.
 - Unusually strong ties in the United States.
- **DON'T LIE!!!!!!!**
 - Could result in refusal even if immaterial, and possibly permanent travel ban if deemed material.



Hot Topics for Student and Scholar Visas



Hot Topic – F Visa FAM Update and Visa Renewals



- On August 8, 2017, 9 FAM 402.5-5(E)(1) was updated making the residence abroad requirement for student visas stricter.
- Removed language that had encouraged consular officers to consider the "inherent difference" between a young F-1 visa applicant and a short-term B visa applicant.
- Effect on applicants on OPT and/or pending/approved H1-B petition?
High risk!

Hot Topic – Visa Revocations

- Visas can be revoked for any reason that may trigger inadmissibility, including an arrest for any reason
- DUIs:
 - Immediate non-immigrant visa revocation where the Department learns of arrest or conviction within the last five years for alcohol- or drug-related DUI
 - When applying for a new visa, applicant subject to mandatory medical exam to determine whether drug or alcohol use constitutes a substance-related disorder, rendering them inadmissible to the U.S.

Hot Topic – 90 Day Rule

- New misrepresentation guidance based on 9/1/17 FAM Update (9 FAM 302.9-4(B)(3)).
- No conduct inconsistent with status (unlawful employment, unauthorized study, marrying) within 90 days of entry
- Presumption is rebuttable
- Not retroactive to past visa adjudications; effective as of September 1, 2017 per FAM.
- USCIS has not implemented the rule yet.

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When to Recommend Referral to Attorney?

When to Recommend Referral to Attorney?



- Visa denials
- Recent arrest and/or visa revocation
- Prolonged administrative processing
- Non-immigrant visa waiver needed
- Other unusual circumstances

Interested in More on This Topic?

- U.S. Visa and Entry Process for Students and Scholars Workshop, NAFSA Annual Conference (May 29, 2018)
- U.S. Department of State: Current Visa Issues, NAFSA Annual Conference (June 1, 2018)
- NAFSA Government Connections Webinar: ISS RP Discusses Extreme Vetting and Visa Revocations (June 20, 2018)

Questions?





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