

NAFSA REGIONS III & VII

Consular Affairs Update

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What Will I Learn from This Session?

- ▣ General considerations in advising those seeking a new or renewed non-immigrant visa abroad.
- ▣ Nonimmigrant Visa Processing for third country nationals (TCNs) in Mexico or Canada.
- ▣ An overview of security clearances

Rules of the Road

- ▣ In order to properly advise foreign nationals (FN's) proceeding abroad for nonimmigrant visa (NIV) issuance, it is helpful to have some basic working knowledge of the concepts involved.

What is a Nonimmigrant Visa (NIV)?

- A visa is a “permit” which allows the FN to board a conveyance and present him or herself for inspection at a Port of Entry (POE). It does not guarantee admission to the US.
- It is a colored, digital, machine readable, decal/foil (“stamp”) affixed to the FN’s passport.
- It is valid for one, several, or multiple (“M”) entries.
- It is valid for a particular period of time (does NOT govern period of admission to US).
- Validities generally depend on reciprocity (see http://travel.state.gov/visa/fees/fees_3272.html).
- It may contain notations, e.g., “Visiting sister for two weeks,” “name not found in CLASS”, “212(d)(3) waiver granted”, “prospective student”.
- Regulations governing NIV’s: 22 CFR 41.

What is a Visa?

- ▣ In order to get an NIV, a FN must demonstrate several things:
 - General nonimmigrant intent, that is the general intent to comply by the conditions of the nonimmigrant class which he/she is seeking.
 - Specific qualifications for the class sought, which often includes the presentation of certain documents.
 - Admissibility to the U.S.

Getting the NIV

- ▣ General nonimmigrant intent: relates to FN's plans and goals in the US, ties to home country, prior compliance with immigration laws while in the US, ties/prior lengthy stays in the US, acculturation if came to the US as a teen/child.
- ▣ Specific evidence to qualify for NIV category: includes both specific documents needed to qualify, as well as plans/goals in US.

Getting the NIV

- ▣ If applicant lacking documents or either general or specific intent as mentioned, can be denied visa under two grounds of the INA:
 - 221(g) – generally, documents are lacking, or just not enough information in general to make a decision.
 - 214(b) – applicant failed to prove eligibility for category sought, either general nonimmigrant intent or eligibility for the specific category.

What is “Admissibility”?

- Congress, over the last two hundred years, has continually added to the list of FN’s who are “inadmissible” to the US.
- If a person is “inadmissible” he or she has qualities or characteristics, or has engaged in conduct, which our government considers undesirable.
- So, if a FN is found “admissible” he or she has none of these characteristics, or has had them waived.

What Is Admissibility?

- Common grounds of inadmissibility are:
 - Criminal conviction or activity (felony). INA 212(a)(2)
 - Terrorist activity. INA 212(a)(3)
 - 3/10 year bars (prior “unlawful presence.”) INA 212(a)(9)
 - Prior misrepresentation. INA 212(a) (6)(C)
 - Prior removal or deportation. INA 212(a)(9)
 - Certain medical conditions, e.g., TB. INA 212(a)(1)
 - Most grounds are listed, generally, at Sec. 212(a) of INA.
- Refused Applicants Should be Given a Refusal Sheet from Consular Officer

What is Admissibility?

- ▣ How is inadmissibility overcome?
 - FN ceases to have the undesirable quality: e.g. drug abuse, tuberculosis.
 - Passage of time, e.g. 3/10 year bars.
 - Nonimmigrant waiver of inadmissibility for any ground except security risks under INA Sec. 212(d)(3). Known as “212(d)(3) waiver”. Recommended by DOS (except for visa exempt Canadians), granted by USCBP/ARO.

Who Determines Admissibility?

- ▣ The consul, at time of visa issuance.
 - First bite at the apple: “Outer ring” of defense to inadmissible persons. Consuls have very broad discretion to grant or deny visas. Decisions are generally unreviewable in U.S. courts.
- ▣ CBP, at time of inspection and admission to U.S.
 - Second bite at the apple: “Inner ring” of defense. CBP’s determination is “de novo”, which means the admissibility decision is examined completely afresh.

Administrative Processing

- ▣ Students should apply for a visa as far in advance as possible for several reasons.
- ▣ On occasion, students or professionals require additional administrative processing based on their background, area of study or other factors.
- ▣ Processing times vary, but can be as long as one to two months (and sometimes much longer).

The Visa Interview Process

- ▣ Security Screening
- ▣ Initial Intake
- ▣ Biometrics
- ▣ Visa Interview
- ▣ Next Steps – passport return, administrative processing, or denial.

The Role of the Consular Officer

- ▣ DS-160 Review
- ▣ Visa Interview – Questions and Document Review
 - Emphasis placed on documents varies by consular post
 - Based on local country conditions (some countries have high incidence of fraudulent documents)
- ▣ Admissibility Review
- ▣ Administrative Processing

Choosing the Country for NIV

- ▣ The country of nationality or habitual residence (“home” country) is obvious choice as consular officers there have intimate knowledge of country conditions, documents, etc.
- ▣ TCN’s may also qualify to process in a third country (not the U.S. nor their “home country”), in several instances.

Choosing the Country

- ▣ If a FN has a legitimate purpose for being in a third country (study, employment reasons, medical treatment, etc.), the consul there MAY accept the case on a discretionary basis.
- ▣ Example: J-1 citizen of France attending conference in Japan; F-1 citizen of Bahamas studying in Spain; H-1B citizen of Cameroon doing research in China.

Choosing the Country

- In all these cases, consul will take into account:
 - Is there a “residence abroad” requirement (J, F)?
 - Could there be 214(b) or fraud issues (applicant from developing country or high fraud post)?
 - Will it impose hardship on the applicant to return to home country (is it near post where applying; does applicant have plans to go there soon?)
 - Does the applicant’s reason for applying there make sense?
 - Is this a renewal or first time visa in this category?

Mexico and Canada

- Mexico and Canada have long standing policies of accepting TCN NIV applicants.
- Posts in each country have differing policies
- Mexico and Canada are foreign countries, and the TCN may need a visa to cross the border.

TCN's – Who Can Apply in Mexico?

- ▣ All 10 Mexican posts accept TCN's.
- ▣ Who can apply in Mexico?
 - 1) TCN who resides in Mexico on an FM2 or FM3 (study, work, research)
 - 2) TCN who seeks to renew their U.S. visa in the same letter category (other than B-1/B-2 and H-2)
 - 3) TCN moving between student categories (F-1 to J-1 or vice versa)
 - 4) TCN who is visiting Mexico and who has lost or had their passport with valid U.S. visa stolen

Mexico—Who Can't Apply

- ▣ Mexico will not accept persons who in the US: violated status, overstayed, entered by fraud.
- ▣ B 1/B2 seeking to change to any category.
- ▣ Visa Waiver seeking to change to any category.

Mexico -- Application Procedure: Interview Waiver Program

- ▣ **Drop-Box Program Fingerprint Exemption**
 - Mexican B1/B2 applicants under 7 and over 79
 - Can mail application packet to Embassy
- ▣ **Drop-Box Fingerprint Reuse Program**
 - Mexican renewal applicants: F, H1B, I, J, L, M, O, R
 - Submitted 10-print fingerprint scan at same post
 - Can mail application packet to Embassy
- ▣ **Fingerprint Reissuance Program**
 - Mexican renewal applicants: BBBCV, F, H1B, I, J, L, M, O, R
 - Submit biometric data and application Applicant Service Center, no interview required

Mexico – Scheduling An Appointment

Step 1: Complete a DS-160 at Online (<https://ceac.state.gov/genniv/>)

Step 2: Pay Fee & Schedule an Appointment:

- ▣ Call telephone number 703-439-2313 (From the U.S.) or through Skype to USVISAMEXICO.
- ▣ Make an appointment via the internet http://usvisa-info.com/en-MX/selfservice/ss_country_welcome
- ▣ Call telephone numbers in Mexico (Phone Numbers on-line at the above website)

Step 2(a): Request an emergency appointment

- ▣ www.usembassy-mexico.gov/emxvisit_emergencies.html
- ▣ What situations are approved? Medical, Business, death or illness

Step 3: Receive response

- ▣ If approved, you will receive an email with the next steps

Global Support Services

- ▣ In Mexico, applicants must make a separate appointment at an off-site “Applicant Service Center” (ASC) to submit biometrics prior to the visa interview.
- ▣ CSC granted contract to manage end-to-end services
 - One applicant fee covers all expenses
 - Appointment system, biometrics capture, interview, and passport/visa delivery (if approved)

Getting Into Mexico

- ▣ A foreign visitor traveling to Mexico as a tourist, on business, or in transit to another country will not require a Mexican visa, regardless of their country of citizenship, as long as they have a valid passport and a valid U.S. visa.
- ▣ Expired U.S. Visa – if applying to renew a U.S. visa, MUST have a Mexican visa.
- ▣ Apply far in advance.
- ▣ Long delays.
- ▣ In-person interview required
- ▣ U.S. Security Clearance – valid U.S. visas are cancelled – what happens to applicant's status in Mexico?
- ▣ Does a Consular Officer have to Cancel a valid visa at the time of a visa interview?
 - Does it matter if the valid visa is in another visa category? (ex. Applying for H-1B visa but also have a valid B-1/B-2 visa)
 - Visa “Suspension”

Travel Concerns: Mexico

Most recent travel warning for Mexico:

http://travel.state.gov/travel/cis_pa_tw/tw/tw_5440.html

Mexico – Country Specific Information:

http://travel.state.gov/travel/cis_pa_tw/cis/cis_970.html

TCNs – Who Can Apply in Canada?

- ▣ All Canadian posts will accept TCN applicants.
- Canada will NOT accept:
 - ▣ Out of status, overstays, entry without inspection or by fraud
 - ▣ B1/B2 applicants
 - ▣ B1/B2 or VWP initial entrants to U.S. applying in different category

Canada – Scheduling An Appointment

- ▣ Online at http://www.usvisa-info.com/en-CA/selfservice/ss_country_welcome
- ▣ Call 1-877-341-2441
 - Must complete DS-160 and pay fee prior to scheduling an appointment
- ▣ Expedites – Schedule appointment and email or fax post
 - (see http://www.usvisa-info.com/en-CA/selfservice/us_expedited_appointments)
- ▣ Pay MRV online, by phone or at Scotiabank
- ▣ Passport/Visa Return via DHL/Loomis Express – 2-3 days after visa interview

Getting into Canada

- ▣ Whereas 35 nationalities do not need a visa to enter the US, in Canada the number is 53. See: <http://www.cic.gc.ca/english/visit/visas.asp>
- ▣ List of visa offices outside Canada:
<http://www.cic.gc.ca/EnGLish/information/offices/missions.asp>
- ▣ Make sure to have the appointment confirmation notice, U.S. immigration documents, evidence of funds to cover stay in Canada

Updates Regarding Physical, Mental or Substance Related Disorders

- ▣ If an applicant has arrests, convictions or admits drug/alcohol abuse, must be referred to “panel physician” for evaluation for addiction/abuse.
- ▣ CDC recently updated its Technical Instructions
- ▣ DOS made significant changes to the FAM – See 9 FAM 40.11
- ▣ Changes to Alcohol Abuse Evaluation
- ▣ Remission = period of at least 12 months during which no substance abuse or associated harmful behavior occurred.
- ▣ If the last refusal was more than one year ago, then the applicant must reapply for a visa and complete a new medical examination.
 - If the applicant is found Class “B”, they can be issued a visa.

Medical Exams for DUIs

- ▣ See 9 FAM 41.108 N1.3
- ▣ **Mexico:** Panel Physician services available in Ciudad Juarez and Mexico City
- ▣ **Canada:** Panel Physician services available in Montreal, Toronto, and Vancouver
- ▣ Usually required for DUI arrests (1 in last 5 years, 2 in any time period) and substance abuse
- ▣ Requires appointment & referral by consular officer

DS-160

- ▣ On-line application form required by all U.S. consular posts (incorporates DS-156, 157, & 158).
- ▣ Available at <https://ceac.state.gov/genniv/>
- ▣ Allows the post to begin the visa process prior to the visa interview.
 - Can a Security Clearance be run in advance?
- ▣ Most common problems:
 - Application not completed fully
 - ▣ Applicant can be asked to return on a separate day if answers are left blank or incomplete
 - Application not completed accurately
 - ▣ The application is interactive
 - ▣ An incorrect answer generates the wrong form

Recommended Documents for an F-1/J-1 Visa Application

- ▣ Passport (with at least 3 blank pages for visa issuance & valid for at least 6 months)
- ▣ Original SEVIS Form I-20 or DS-2019 (signed for travel)
- ▣ I-797 Approval Notice (if applied for COS)
- ▣ Visa Application Fee (MRV)
- ▣ Mexico: Banamex – Need fee, Appointment Notice and PP
- ▣ SEVIS Fee Receipt - paid online www.fmjfee.com
- ▣ Passport Photo
- ▣ DS-160
- ▣ School Enrollment Documents; Transcripts; Letter of Good Standing
- ▣ Evidence of ties to Country of Origin
- ▣ Evidence of Finances (bank statements; tuition receipts)

Original Documents

- ▣ Lost a Passport? Obtain a police report for the lost passport and bring ORIGINAL documents.
- ▣ Arrested? Convicted of a Crime? Bring ORIGINAL documents from the arrest/conviction to the interview. Colored stamp or raised seal a must!
- ▣ If married and/or a dependent is applying - bring ORIGINAL birth and marriage certificates.
- ▣ Any prior educational degrees? Bring ORIGINALS.

INA §212(d)(3) Waivers

- ▣ For applicants who overcome 214(b) and have a separate inadmissibility
- ▣ Step 1: Applicant requests a discretionary waiver from consular officer
- ▣ Step 2: Consular Officer determines next step, weighing key factors – how recent? how serious? Remorse/recidivism?
 - If waiver is not recommended, can request Consular Officer to seek advisory opinion from the Visa Office, Washington DC
 - If waiver is appropriate, Post requests INA Section 212(d)(3) waiver from CBP/ARO
- ▣ Process typically takes several months

What are Security Advisory Opinions (SAOs)?

- **Attorney's Opinion (not DOS) as Criteria are Classified:**
- **Visas Condor – Still in existence after NSEERS terminated as of April 2011?**
 - Criteria is classified but may be possibly based on information disclosed on Form DS-160 and Country of Birth, Citizenship, or Residence and people born in “T-4” (Sudan, Syria, Cuba, Iran) or “List of 26” countries.
- **Visas Mantis**
 - “Sensitive Technology” clearance: based on whether the applicant is involved in any of the categories found on the Critical Fields List (CFL) of DOS’ Technology Alert List (TAL).
 - “Dual-use” applications of seemingly benign technologies.
 - **Extension of Mantis Validity:** Mantis checks are now valid for two years for H, L, and O visas; four years for F’s and J’s. Change of field, e.g., engineering to nuclear physics, can result in new Mantis check.
 - Validity does NOT guarantee no new check.

Security Clearances

- ▣ Donkey
 - Name “hit” based on non-criminal issue.
Often slow, like its namesake!
- ▣ NCIC Check: National Crime Information Center “hit”
 - Contains information on terrorists and foreign warrants
 - Includes U.S. criminal convictions or arrests for even relatively minor issues

Security Clearances

- ▣ There is no way of knowing definitely in advance whether or not an applicant will be subject to a clearance, but the following are possible indicators that a clearance may arise:
 - ▣ Prior delays for visa issuance at a consular post
 - ▣ Prior delays with CIS with petition adjudication
 - ▣ Prior POE problems
 - ▣ Unusual travel patterns
 - ▣ Criminal issues (including DUI)
 - ▣ Common name (Muhammad Khan; Muhammad Ali; Maria Ruiz)

SAO Information

- ▣ For most required SAO's, required information is provided in the DS-160 online application. The interviewing officer will ask the applicant to provide additional information as needed.
- ▣ If an applicant is subject to additional processing, some posts will cancel all valid U.S. visas until the processing is complete.
- ▣ Certain candidates will also need to provide:
 - Complete resume (and, if accompanying the applicant, the spouse's resume)
 - Complete list of publications of the applicant (and, if accompanying the applicant, the spouse's publications)
 - List of references in the applicant's country of birth or residence
 - Detailed description of the research or work the applicant will do, or is doing, in the U.S.
 - Letter of invitation from the U.S. sponsor
 - Letters of recommendation from a U.S. sponsor or from abroad
 - Letters of support from the financial sponsor
 - Detailed itinerary for B1/B2 applicants

Overdue SAO's

- ▣ If SAO pending for over 60 days, call the Visa Office Public Inquiries line at (202) 663-1225
 - SAO Inquiry for Universities for J-1/F-1 Cases: (202) 663-1851 or fmjvisas@state.gov
- ▣ DOS can expedite a security clearance if there is a dire medical emergency, a significant U.S. government interest, or a humanitarian concern.
 - It is advisable to submit an expedite request letter from the petitioner or sponsor, detailing the emergent reasons for the applicant's entry to the United States, to the Consular Officer at the post where the visa application was submitted.
- ▣ Congressional intervention usually not helpful.

214(b): The student's biggest hurdle...

- ▣ Every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for admission, that he is entitled to a nonimmigrant status.
- ▣ Applies to Fs, Js, Ms, but not H-1Bs (dual intent)
- ▣ The residence abroad requirement for a student not exclusively connected to “ties.”
 - The focus is on the student applicant's immediate intent.
 - 9 FAM 41.61 N4.2
- ▣ Visa renewals – students should be encouraged to visit the home country to maintain ties; therefore visa renewals should be “facilitated.” See 9 FAM 41.61 N4.5

214(b) continued . . .

- ▣ Consuls shouldn't re-adjudicate student's qualifications for course of study.
- ▣ Community colleges, language programs: all schools should be viewed equally with respect to visa issuance.
- ▣ See 9 FAM 41.61 N. 5.

INA Section 221(g)

- ▣ Delays under INA Section 221(g) usually occur because:
 1. Applicant must provide additional information, e.g.:
 - Form I-20, DS-2019
 - Financial information
 2. SAO or further review (“administrative processing”) needed

What to Do if Visa is Denied?

- Debrief Applicant ASAP
- Review Denial Letter from the Post
- Ask for Q & A from Applicant, Officer's Name/Window Number, and what documents were reviewed
- 221(g) vs. 214(b)
- Request for Reconsideration by Consular Chief (egregious denial)
- Consular Non-Reviewability
- Limited Information/Documents Available via FOIA
 - What visa information is available to the school?
- Request an Advisory Opinion for Issues of Law (not fact)
- Border Post Denials – Can the applicant re-enter the U.S. with a valid visa, on a Visa Waiver, or with a D-4 Waiver?

Automatic Revalidation

- ▣ The Department of State changed the automatic visa revalidation provision, found at 22 CFR Section 41.112(d)
- ▣ “Auto Reval” is no longer available to:
 - Persons who apply for a new visa at a border post and are denied, delayed, or subject to “administrative processing” / security clearances;
 - Nationals of countries that are state sponsors of terrorism (“Terrible Four/T-4”), regardless of whether such nationals apply for a new visa while outside the United States or not, i.e. Syria, Iran, Sudan, Cuba;
 - Still Applicable for trips to Canada or Mexico (and adjacent islands for F’s & J’s) of 30 days or less with original I-94 and prior expired visa (not T-4 and no visa application).
 - Prepare a letter for applicant planning to utilize Auto Reval
 - May still need visa to enter Mexico or Canada

New Developments in Border Security

- ▣ Inter-agency Data Sharing
 - What CBP records does DOS have access to?
 - What DOS Records does CBP have access to?
 - ▣ DS-160
 - ▣ Consular Notes in CCD
 - ▣ Consular Collected biometric data
 - ▣ Machine Readable Visa (MRV) Information
 - CBP able to review Consul's Admissibility Findings
 - Assists in Quicker POE processing

New Developments

- ▣ CBP Port of Entry Issues:
 - Acceptance of Public Benefits – Medical
 - Prior Arrests/Convictions
 - DUIs
 - Drug Use
 - Travel During OPT – Must have a job in the U.S. in field related to degree along with valid F-1 visa, endorsed I-20 and EAD
 - Are CBP Officers familiar with Automatic Revalidation?
- ▣ Canadians Without I-94s Accruing Unlawful Presence?
- ▣ Export Control Issues
 - ▣ Do Consular Officer's Re-examine Export Control Issues during the visa interview?

Role of the Attorney

- ▣ Prepare visa application form
- ▣ Prepare legal arguments/Brief
- ▣ Guide applicant through the visa process
- ▣ Prepare for the visa interview
- ▣ Representation/presence at consular interview (depending on post)
- ▣ Advise on latest policies/procedures
- ▣ Help with overcoming denials
- ▣ Following up on overdue security clearances/administrative processing

QUESTIONS?