

# Consular Update NAFSA REGION III 2009

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# What Will I Learn from This Session?

- ▣ Some general considerations in advising those seeking a new or renewed visa abroad.
- ▣ Classes of individuals who may be at risk for processing delay or visa denial.
- ▣ What to do when problems arise.
- ▣ Special processing rules for third country nationals who wish to apply for a nonimmigrant visa in Mexico or Canada.

# 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 (“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/frvi/reciprocity/reciprocity\\_3272.html](http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3272.html)).
- It may contain notations, eg, “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 US.

# 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:
  - 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. INA 212(a)(2)
  - Terrorist activity. INA 212(a)(3)
  - 3/10 year bars (prior “unlawful presence.”) INA 212(a)(9)
  - Intending immigrant. INA 212(a) (5), (7)
  - Prior misrepresentation. INA 212(a) (6)(C)
  - Prior removal or deportation. INA 212(a)(9)
  - Certain medical conditions, eg, TB. INA 212(a)(1)
  - Most grounds are listed, generally, at Sec. 212(a) of INA.

# 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 US courts.
- ▣ CBP, at time of inspection and admission to US.
  - Second bite at the apple: “Inner ring” of defense. CBP’s determination is “de novo”, which means the consular decision is examined completely afresh.

# At Risk for Delay or Denial? Maybe.

- ▣ Look for these issues in NIV processing:
  - Prior immigration violations/unlawful entry to US
  - 222(g) – overstay/visa cancellation/no third country NIV's
  - 3/10 year bars – prior unlawful presence
  - Prior visa denial or visa cancellation
  - 214(b) – explicit or imputed
  - COS in US
  - Pending COS/EOS
  - On OPT
  - Fraud profile
  - Odd travel patterns
  - Short travel time: don't have time for visa processing
  - SEVIS termination, even if “innocent”
  - Prior criminal history of any kind
  - Persons likely to be subject to security checks: common name, TAL issues, persons from certain areas of the world, with certain travel patterns.

# Advent of DS 160

- ▣ Many posts are piloting this new form, completed online, which combines DS 156, 157, and 158.
- ▣ Other than Canadian and Mexican posts, to be discussed, Melbourne, Perth, Sydney, Hong Kong, Dublin, Tripoli, Hamilton, Bermuda, Podgorica, Montenegro are currently employing.

# Reporting F,M,J Visa Issues

- ▣ Can contact the Department of State to report/check on visa issues by contacting:
  - Public Inquiries Line (202)-663-1225; or
  - Student/Exchange Visitor Visa Center. Can email at [fmjvisas@state.gov](mailto:fmjvisas@state.gov)
  - Does this help? Not often.

# Student/EV Visa Center

- ▣ Please include the following information when submitting a request by email.

- Date of Inquiry:  
Nature of Inquiry (e.g. Delays, Communication Problems, Post Procedure Response to Inquiry, Advisory Opinion):

## **Post Information**

Consular Office Involved:

Have you contacted the consulate directly?

When:

How (e.g. Phone, Mail, Fax, E-Mail):

Name of person you contacted (if known):

Attach correspondence, if any:

## **Foreign National's Information**

Full Name(s) (as it appears on passport):

Nationality:

Place of Birth:

Date of Birth:

Current Visa Status in U.S., if any:

Type of Visa (e.g. F, M, or J Nonimmigrant Category):

NIV Appointment Number:

## **DSO/RO Contact Information**

Name:

Institution:

Phone:

E-mail:

# **Annual DOS F,M,J Cable 2/09**

- Errors on I-20's.
- Lesser known schools.
- F, M medical insurance/financial ability.
- Enhanced CCD/SEVIS functionality.
- J Summer/Work Travel.
- Prioritizing F, M, J visa applicants.



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

- Visa renewals — students should be encouraged to visit the home country to maintain ties; therefore visa renewals should be given liberally.
- Don't readjudicate student's qualifications for course of study.
- Community colleges, language programs: all schools should be viewed equally with respect to visa issuance.
- Memo's guidance has been incorporated into Foreign Affairs Manual Notes, 9 FAM 41.61 N. 5. This incorporation indicates its importance to DOS.
- This is an extremely important memo, which has clarified the most pressing issues in student visa issuance.

# Security Checks

- **Visas Condor**
  - Information disclosed on Form DS-157
  - Country of Birth, Citizenship, or Residence and people born in “T-” (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 15 categories found on the Critical Fields List (CFL) of DOS’ Technology Alert List (TAL).
  - “Dual-use” applications of seemingly benign technologies.

# Security Checks

## ▣ **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 US criminal convictions or arrests for even relatively minor issues

# Security Checks

- ▣ DUIs - DOS issued guidance in November 2007 ([http://travel.state.gov/visa/laws/telegrams/telegrams\\_3267.html?css=print](http://travel.state.gov/visa/laws/telegrams/telegrams_3267.html?css=print)) requiring consular officers to refer nonimmigrant visa applicants with prior drunk driving issues to panel physicians for medical examination in the following circumstances:
  - (1) if an applicant has a **single drunk driving arrest or conviction within the last three (3) calendar years**, or
  - (2) **two (2) or more drunk driving arrests or drunk driving convictions in any time period**.
- ▣ Consular officers *must* now also refer applicants to panel physicians **if there is any other evidence to suggest an alcohol problem** – possibly even an arrest for public intoxication

# How Do I Follow Up?

- ▣ Where there is an overdue Security Advisory Opinion (SAO):
  - If pending for over 90 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.
- ▣ Remember, there is generally no effective way to expedite a security check, absent an interested govt agency request or overriding humanitarian or medical reason. Congressional intervention usually not helpful.

# Resource—Mantis Delays

- ▣ NAFSA has created resources to help advisors understand the Mantis security check and respond to student/scholar questions:
- ▣ [http://www.nafsa.org/knowledge\\_community\\_network.sec/international\\_student\\_3/international\\_scholar/practice\\_resources\\_17/visas\\_mantis\\_security](http://www.nafsa.org/knowledge_community_network.sec/international_student_3/international_scholar/practice_resources_17/visas_mantis_security)
- ▣ Mantis checks are now valid: F's 48 months; H's and J's: 24 months. Validity does NOT guarantee no new check. Scholar should take to interview resume, examples of publications.

# Choosing the Country for NIV

- ▣ Normally, the country of nationality or habitual residence (“home” country) may be best because consuls there have intimate knowledge of country conditions, documents, and so on.
- ▣ TCN’s may also qualify to process in a third country (not the US 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; H1B 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 very long standing policies of routinely accepting TCN NIV applicants.
- Posts in each country have differing policies, so be sure to advise the applicant to visit the post's webpage at [www.usembassy.state.gov](http://www.usembassy.state.gov) before making any travel plans.
- Mexico and Canada are foreign countries, and the TCN may need a visa to cross the border.
- Attorneys are no longer permitted to appear with applicants inside the consulate at any Mexican or Canadian post.

# Canada Policies

- ▣ All Canadian posts will accept TCN applicants: Halifax, Montréal, Québec, Toronto, Ottawa, Winnipeg, Calgary, and Vancouver.
- ▣ Appointments: 900 443 3131 if in US.  
[www.NVARS.com](http://www.NVARS.com)
- ▣ Students/EV's are given priority when making appointments.

# 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>

# Canada Policies

- Canadian posts will NOT accept:
  - Out of status, overstays, entry without inspection or by fraud
  - B1/B2 applicants
  - B1/B2 or VWP initial entrants to US applying in different category
- Will accept “list of 26” and “T 4” applicants
  - NSEERS registrants must be in compliance with Departure Registration requirements
- Montréal & Vancouver part of DS 160 pilot (see below).

# Mexico Policies

- ▣ All 10 posts in Mexico, that is, Tijuana, Nogales, Guadalajara, Monterrey, Hermosillo, Cd. Juárez, Nuevo Laredo, Mexico City, Mérida, and Matamoros, accept TCN's as of last fall.
- ▣ Appointments:  
<http://www.usvisa-mexico.com> or call 900 476 1212 from the US.
- ▣ Special blocks of time are set aside for students/EV's, especially at busy times of year, eg, holidays.

# Mexico Policies

- Mexican posts WILL NOT accept:
  - Out of status, overstay, entry without inspection or by fraud.
  - TCN applicants applying for visa in new category.
  - TCN applicants for B1/B2 visas.
  - T-5 applicants (citizens of Syria, Cuba, Sudan, Iran) and N. Korea.
  - “List of 26” Applicants – including those subject to National Security Entry/Exit Registration System (NSEERS).
  - Extraordinary situation? Call or email post first.
- Mexican posts WILL accept:
  - TCN applicants in any other category where the original visa was obtained in Mexico or in the “home” country, and the applicant is applying for renewal in the original category.
- BEWARE of renewals where original visa obtained in third country: no go in Mexico. Example: French citizen got first J visa in Japan, not resident of Japan.

# Getting Into Mexico

- ▣ Most persons MUST have a Mexican visa. Three day permits no longer exist.
- ▣ Citizens of 46 countries do NOT need a visa to enter Mexico.
- ▣ Apply far in advance.
- ▣ Long delays.
- ▣ In person interview required: may have to travel to Mexican consulate.
- ▣ More information: [visas@sre.gob.mx](mailto:visas@sre.gob.mx).



# Mexico—Special Issues

- Drug or alcohol abuse: If an applicant has arrests, convictions or admits drug/alcohol abuse, must be referred to “panel physician” for evaluation for addiction/abuse. Only panel physicians in Mexico are in Cd. Juarez. Getting an appointment may be problematic.
- Interpreters (may be friend or relative but not atty) are encouraged for those who speak neither English nor Spanish. Beware, however, if visa category requires English ability.

# Mexico—Special Issues

- All Mexican posts will soon be piloting the new all electronic Form DS 160. This combines the old DS 156, 157, 158, and allows for “e signature.” Right now: Nvo. Laredo, Monterrey, Matamoros, Nogales, Hermosillo, CDJ.
- This is completed online at <https://ceac.state.gov/genniv/>
- Allows post to begin processing before interview, eg, check for PIMS information, etc.
- ▣ At the posts in Ciudad Juarez, Nuevo Laredo and Monterrey, applicants must also make a separate appointment at an off-site “Applicant Service Center” (ASC) to submit biometrics prior to the visa interview.

# Travel Concerns: Mexico

- Attack at Monterrey.
- Mexico Travel Alert 4/20/09: applicants advised not to bring cash to Cd. Juarez, muggings outside consulate, warned about rise in crime in border areas.
- Mexico Travel Alert 4/27/09: Americans should avoid nonessential travel to Mexico at this time due to H1N1 flu outbreak.
- 4/30/09 Consular and USC services limited at CDJ and Mexico City until 5/15 because of H1N1 flu.

# Limitation on AEVV

- ▣ Automatic visa revalidation, 22 CFR 112(d), permits most foreign nationals to go to contiguous territory (F, J, and M = Mexico, Canada, Caribbean islands except Cuba) (all others just Mexico and Canada) for 30 days or less and return without a valid visa.
- ▣ However, if the foreign national applies for a visa abroad, may not return to the US until visa is issued.

QUESTIONS?

¿Preguntas?

Domande?

Fragen?

Questiós?

Vragen?

Perguntas?