

Basics of Applying for a Visa at a U.S. Consulate and Admission at U.S. Port of Entry



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Two Levels of Scrutiny That Every Visa Applicant Must Overcome

1st - At time of *visa interview* before the U.S. Consul, Department of State.

2nd - At time of *applying for admission* to the United States at port of entry before a Customs and Border Protection (CBP) Inspector, Department of Homeland Security.



First Level of Scrutiny

U.S. Consul, Department of State



Important Things Every F-1, J-1 or M-1 Visa Applicant Must Know

- Consult consular post's website for appointment instructions:
 - www.travel.state.gov/travel/tips/embassies/embassies_1214.html
- A consular officer may issue an F/M visa no earlier than 120 days prior to the program start date noted on Form I-20.
 - The Department of State has instructed consular posts to accept visa applications earlier from prospective students who anticipate delays such as security clearance delays.
 - There is no restriction on how early a J-1 visa may be issued.



Documentation Applicant Must Bring to Visa Interview (1/2)

- Machine readable, valid passport
- Original SEVIS I-20 AB, I-20 MN, DS-2019
- Acceptance letter from U.S. school
- Academic record, diploma and transcript
- Original marriage and birth certificates of accompanying dependent(s)
- Any other documentation that would assist consular officer to conclude applicant will return to home country after completion of studies or activity in U.S.
- Visa application fee receipt in the amount of \$131.00



Documentation Applicant Must Bring to Visa Interview (2/2)

- One recent passport-style photo of each applicant
- Ties to home country to overcome §214(b) of INA, the presumption of immigrant intent:
 - Financial documents of either applicant or parent
 - Executed I-134 Affidavit of Support corroborated with copies of parents' or applicant's bank account statements (savings and checking) for past six months
 - Copies of applicant's or parents' tax returns for past three years
 - Employment verification letter of parent setting forth job title and yearly income



“New” DS-160 Visa Application Form

- Incorporates the “old” DS-156, DS-157, DS-158
- DS-160 is completed online
- DS-160 has not been implemented worldwide

PRACTICE POINTER: Each question on application is relevant and must be answered truthfully.



What if Visa is not Issued Due to “Administrative Processing”

- Results in applicant having to wait for further review
- Typically, this “hold” results from pending security clearances, past immigration history or a “criminal hit” on the database
 - If a “hit” results, applicant will be fingerprinted and must present certified copy of judgment and sentence
 - A single DWI/DUI arrest/conviction within past three years will result in referral of the applicant to a panel physician for further medical evaluation (9 FAM 41.108, N.1.3)



Issuance of Visa by U.S. Consul

- Allows individual to board aircraft and make application for admission at a U.S. port of entry
- An F-1 can be admitted 30 days prior to the start of school and not before
- Upon admission, an F-1 student must enroll within 30 days of arrival

PRACTICE POINTER: Issuance of a visa does not guarantee admission at port of entry.



Can a Third Country National (TCN) Still Apply for F-1 Visa at a U.S. Consulate in Mexico or Canada?

- Maybe – it depends on numerous factors, i.e., how did TCN last enter the United States? Was last admission as a visitor?

PRACTICE POINTER: Applying for F-1 visa as a TCN in Mexico/Canada is risky. If visa is denied, as a general rule, individual may not return to the United States even though he/she has a valid I-94 and properly endorsed I-20AB. Under new rule, effective April 1, 2002, applicant must return to home country and apply for F-1 visa there. 22 CFR 41.112(d).



Second Level of Scrutiny

Customs and Border Protection
(CBP) Inspector, Department of
Homeland Security



Customs and Border Protection Inspections

- Primary Inspection is required of all applicants for admission. The purpose is to determine bona fides of applicant for admission per specific visa category and whether applicant is admissible to the United States.
- Secondary Inspection is a more intense interrogation by CBP at port of entry if applicant's admissibility is questioned at primary inspection. Applicant is segregated from general public and interrogation is conducted in the "little room".



Inadmissible Groups to the U.S.

- Criminals – anything beyond a traffic ticket may be significant
- National Security Threat or Risk
- Previous deportation or past immigration history, i.e., overstay
- Visa or document fraud
- Public charge



US-VISIT

(United States Visitor and Immigrant
Status Indicator Technology)

- Biometric information, including fingerprints and photograph of applicant taken at port of entry at time of applying for admission
- If admitted, applicant's I-94 card is stamped



National Security Entry Exit Registration System (NSEERS)

- Any applicant for admission may be subject to NSEERS.
- If applicant is subject to NSEERS, he/she must comply with reporting and exit procedures. Otherwise, the applicant will risk sanctions, including denial of admission on future applications.



Withdrawal of Application

- Withdrawal of an application for admission is an administrative courtesy extended to applicant for admission in lieu of removal
- Applicant is not admitted and visa is cancelled by CBP and annotated “cancelled without prejudice”
- Applicant must return home on next available flight at his own expense



Expedited Removal

- Results in deportation/ removal of individual at port of entry
- Typically, based on document fraud or serious criminal issues
- Visa is cancelled and annotated by CBP “cancelled with prejudice”
- Information is entered into National Automated Immigration Lookout System II (NAIIS II) database
- Once removed, individual cannot apply for admission to the United States within five years of removal unless I-212 is approved and non-immigrant visa is once again issued



Interactive Discussion of Hypothetical Between Panel and Audience



FACT PATTERN

Ms. Florence Omuyi is a single, 24-year-old Ghanaian who recently graduated with a Bachelor's Degree from Central University in Accra, Ghana. Ms. Omuyi is from an affluent family, her father is a Cabinet Minister and has had numerous visitor's visas to the U.S. without any problems. On her last visit to the U.S. as a B-2 on July 4, 2008, she was granted a 6-month period of stay. While visiting friends in New York City, and after a night of partying in the trendy Soho District of NYC, she was arrested by NYPD and charged with DWI as she drove her rental car back to the Waldorf-Astoria in mid-town. She refused the breathalyzer and spent one night in jail. She retained criminal counsel and ultimately the DWI charge was dismissed. She returned to her native Ghana after a 90-day visit to the U.S. It is now August of 2009 and Ms. Omuyi has been admitted to YOUR University in ANY STATE, USA to attend the MBA program and has been duly issued a SEVIS I-20 AB from the school.



Q 1: Besides the SEVIS I-20, what other documents must she bring to the F-1 visa interview?

Q 2: During the interview, the U.S. Consul informs Ms. Omuyi that she does not appear on the SEVIS System. Unfortunately, due to system maintenance, her I-20 information was purged from the system. This is a big surprise to her and she contacts your office for assistance. What will you do?

Q 3: Because of the delay in visa issuance, Ms. Omuyi arrives in the U.S. on October 20, 2009. She is placed in secondary inspection and, after waiting five excruciating hours at JFK International, she is questioned regarding her DWI and is finally admitted as F-1 D/S. She is now in your office and would like to register at the earliest date possible. What will you do?



Q 4: It is now Halloween Eve 2009 and, due to the “visa ordeal”, Ms. Omuyi is experiencing high-anxiety and decides to calm her nerves by a night out on the town. This time she is arrested and charged with public intoxication after leaving a party. She now comes to the International Student Office and seeks your advice on what to do. Will you “snitch” on her?

Q 5: Her father becomes aware of Ms. Omuyi’s previous infractions. He is furious and demands that she return to Ghana at once. He threatens that he will not pay her schooling and any other expenses while in the U.S. Because of this family crisis, Ms. Omuyi is now medically depressed and has sought medical intervention. She reports to your office in tears explaining her situation and her inability to pay the \$25,000 tuition at your school. She explains that she has approximately \$15,000 in personal savings and can only afford to attend a “junior college” in Long Island. It is now January 3, 2010 and late registration at your school is until January 23, 2010. Ms. Omuyi is confident that she can obtain SEVIS I-20 from junior college for Spring 2010. What is your advice?



Q 6: Ms. Omuyi's father, after much thought, reconsiders and decides to pay part of her tuition and she late-registers at your school. However, she would like to apply ASAP for CPT due to her father's unwillingness to pay full tuition and other expenses. In the event that Ms. Omuyi is granted CPT, and wishes to travel home so that she can sort things out with her father, what should she do?

Q 7: Ms. Omuyi graduates with her MBA and is recommended for one year OPT. She is issued an EAD document that expires on May 31, 2011. She has been sponsored by a major U.S. corporation for H-1B, effective October 1, 2011. She wants to travel abroad in June 2011 to visit her brother who is at boarding school in Derby, England. As her "trusted foreign student advisor", she comes to your office requesting a new I-20 in order to travel. She has heard something about an additional 60-days after expiration of EAD. What is your advice?



Q&A Period

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