

## **NAFSA/Department of State Liaison Call**

**September 21, 2011**

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These notes were taken by NAFSA members and staff during a teleconference with a DOS official. They reflect general information provided by a government official in an informal setting. They are best used as general information concerning current agency processes and policies, and it is important to recognize that agency processes and policies are subject to change. NAFSA notes and liaison summaries do not constitute legal advice.

### **1. Visa denials in India**

Please see member submissions (addendum) regarding an increased number of visa denials for F-1 students from India. This is a new trend. We do see security clearances rather regularly in spring and summer. This is the first time in a number of years we are seeing outright denials in India. Can you share statistics on the denial rate for F-1 visas in India by post? Have there been changes in procedure or evidentiary requirements especially in light of the Tri-Valley incident? We have included anecdotal reports from members (attached) that outline the perceptions of the denials and the impact these denials are having on institutions. While we do not provide individual case-specific information, if that information would be useful, we can provide it to you.

Stakeholders have expressed concern over visa denials in India this year. DOS able to provide specific information concerning the reason for a specific denial, but we appreciate receiving reports of denials that seem improper and may look into them further and/or use such information as we conduct validation studies, assess patterns, refine training programs, and consider necessary clarifications in the FAM. In order for DOS to use reports of visa denials that seem improper, we need the applicant's name, birth date, and SEVIS #.

**\*\*NAFSA Note:** This information can be submitted via IssueNet.

### **2. Export controls and J-1 Visas**

Increasingly, members report that J visa applicants, particularly at posts in China and India,

are being asked for additional information and documentation that may be related to export control issues. Two reports are illustrative:

I've just been contacted by a Research Scholar who went home to India for a visit. To his surprise at his visa interview he was given a pink notice saying processing of his visa is suspended under Section 221g. The notice requires him to provide 14 pieces of information including a technical, scientific description of his past, current and future research work, and interestingly whether it requires an "export controls license." Once he provides the long list of information he is advised he may wait 4-12 weeks!

A potential Research Scholar for a U.S. hospital applying for a J visa in Beijing received the following by email:

For your visa application, please provide a letter from the U.S. hospital confirming offer of visiting scholar research and a letter from inviting collaborator that that:

1. Explains the goals of you/the applicant's research work.
2. Describes, if any, export-controlled technology and/or information that will be shared with, or be exposed to applicant.
3. States sources and amounts of any U.S. government money or funding from U.S. corporations assisting the U.S. government to be used to support the work.
4. States if applicant will participate in or have access to U.S. government projects, even on an extra-curricular basis.
5. States explicitly whether such project or research to be performed is open to non-U.S. citizen

**Note:** This is a question from our first conference call. We are still hearing advisors saying that visa applicants are receiving questionnaires with reference to export controls. Is there any updated information on this situation since our last call?

We recognize that this is an important question for many NAFSAns, as it was a common discussion topic at the Vancouver conference, too. As discussed at the conference, consular officers are not necessarily considering export control regulations and deemed exports as they raise such questions; they're seeking the information they need to complete the processing of the visa application. There are several posts—New Delhi is one of them, and Beijing is another—that have links allowing the applicant to self-select visa type and providing a list of suggested documents for those working in technical fields to gather in preparation for the visa interview. That hasn't changed in many years; it's the same kind of information. With the improvement of websites, it's become easier to make that information accessible prior to the visa interview. It doesn't have anything to do with question #6 on the I-129. In short, there's no new policy, just more information available to applicants ahead of time about the documents and information to prepare. DSOs and ROs can help ease the processes by encouraging potential visa applicants to review carefully the website of the consulate to which they will apply and gather the documents and information indicated. School officials can become familiar with the consular resources on the web and make their prospective students, Js and Hs aware of them.

### 3. Additional documentary requirements for H and L visa applicants at Hyderabad

Recently, the U.S. Consulate in Hyderabad, India added to the list of requirements for H and L visa applicants employer information (such as tax returns, state wage data and lists of all employees of the organization, their salaries and immigration status) beyond that required at other posts ([http://hyderabad.usconsulate.gov/advance\\_doc\\_submission2.html](http://hyderabad.usconsulate.gov/advance_doc_submission2.html)).

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This seems related to PIMS and the screening/audit of petitions conducted by Kentucky Consular Center. KCC was asking questions of petitioners, and some of the things listed here include but are not limited to: “whether petitioner in fact submitted the petition; when was the petitioner incorporated; where was the physical location of the petitioner; number of employees; number of share holders; location of attorney of record; and general information on the petitioner’s operation and business plan.” This speaks to the question being asked regarding Hs and Ls. More research would have to be done with Hyderabad to see whether this loops back to that conversation with the KCC.

**NAFSA Note:** It was brought to the attention of DOS that many H-1B visa applicants have been asked—at the visa interview—for items such as their prospective employer’s tax returns, state wage data, and lists of all employees of the organization, their salaries and immigration status. This is certainly information that an employer might access and provide DOS, but employees and potential employees would not have access to such information and are put in a very difficult position when they have to ask an employer for it. Employers are often surprised or confused by such requests or incredulous that DOS has actually made such a request.

DOS agreed to follow up on this issue. It was agreed that asking a visa applicant for an employer’s documents may be inappropriate.

### 4. “Pre-clearance” for SAOs

Members have reported that there have been even more delays based on security advisory opinions the start of this academic season preventing students and scholars from beginning programs on time or at all. In light of these delays, especially for those who are likely to be subject to an SAO, is there any talk about re-instituting a system of “pre-clearance” for visa applicants before leaving U.S.? For returning students and scholars, the ability to initiate or even complete administrative processing prior to the visa interview would facilitate travel significantly. Often students and scholars pass up opportunities to go home or attend conferences abroad because of the fear that they may get stuck abroad for an unknown period waiting for a SAO.

DOS does work closely with their clearing partners to process clearances as quickly as possible and is committed to making the clearance process as effective, efficient, and expedient as possible. DOS does prioritize student and EV applications and clearances, so they go to the head of the queue if they need additional Administrative Processing. Many

posts provide applicants with a means to check the progress. DOS suggested that school officials might contact SEVP in situations in which the clearance process is significantly delayed. (NAFSA Note: it would seem that the only SEVP aspect of a security check delay would concern those who miss school session start dates or deadlines). DOS is committed to processing applications expeditiously applicants to get their visas in time to meet their report dates and continues to improve its processes. At this time, it is not possible to pre-adjudicate a visa application. An applicant must submit a DS-160 application, pay the fee, have the interview, and provide biometrics before the consulate would initiate any necessary Administrative Processing because it is not possible to know in advance whether additional Administrative Processing will be required. DOS encourages consular officers to issue visas for the full validity, and they are working with countries like China to improve reciprocity arrangements.

## **5. Nonimmigrant visa application, backlogged immigrant petition**

How does the State Department view a student's application for a non-immigrant visa where the student is the beneficiary of an immigrant visa but has multi-year wait for a priority date?

An individual who is the beneficiary of an immigrant visa petition is not precluded from applying for a nonimmigrant in any visa classification. Of course, all nonimmigrant visa applicants must demonstrate to the adjudicating officer that even though they have a pending immigrant petition they do intend to abide by requirements of the nonimmigrant visa classification that they're seeking. So, yes, it is possible for such an individual to obtain a nonimmigrant visa and the decision will depend very much on specific facts presented. The applicant is required to disclose the existence of the immigrant petition, and if the applicant faces a long wait for eligibility for the immigrant visa, the applicant certainly may present facts (including an understanding of the criteria for the nonimmigrant classification and a willingness to abide by that classification) that would lead a consular officer to approve the nonimmigrant visa. In short, the applicant just has to overcome 214(b) [presumption of immigrant intent] in order to be eligible for the nonimmigrant visa, and eligibility in the distant future for an immigrant visa will not necessarily preclude that.

## **6. Multiple visas**

Our members have questions about multiple non-immigrant visas for different classifications.

- a. Can someone apply for two visa types at the same time? For example, it is June and a student currently in F-1 status with an H-1B approved for a November start date travels abroad and needs to get a new F-1 visa to reenter. While at the consulate she would also like to get an H-1B visa for returns from future travel abroad. Could/would the consulate give her both an F-1 visa and H-1B visa?

Of course, the potential applicant could remain in the U.S. for the transition to H-1B and might then have a more straightforward visa application process, especially since H-1Bs are allowed "dual intent" and need not overcome 214(b) [presumption of immigrant intent]. And as far as whether the consulate would issue both visas, it is possible.

NAFSA Note: such a travel situation would present significant complications and risks, so the applicant should be encouraged to seek legal advice.

- b. It was mentioned at the NAFSA Conference in Vancouver that DOS' current practice is to cancel previous visas when one obtains a new one. For example, if a student has a previously issued, but still valid, B-2 visa, applies for an F-1 visa, the B-2 visa would be cancelled by the consular officer. Is this current practice?

That was a post-specific comment which should not be extrapolated or generalized.

### **7. Impact of long-pending SAOs**

Members have had incidents where incoming F-1 students have had SAOs and their visas were not approved until after the program start date. This resulted in the students needing to defer their programs until either the upcoming semester or next academic year. Are there accommodations that the post can make so this same approved visa issued will be valid for a new start date (for the next semester or year) that would allow the student to avoid having to reapply?

The other thing that could help in cases like this is that students can apply for the visa up to 120 days prior to the start date. If schools can admit students sooner, then Administrative Processing can be initiated and completed sooner. That gives DOS a longer lead-time to help with that processing, but it would require students to be admitted sooner. In this case, the student could enter on the visa if it had been issued for a sufficient amount of time.

### **8. Interagency consistency and collaboration on naming conventions**

In prior liaison calls, we have discussed the value of consistent naming conventions among agencies. Is there interagency (i.e. DOS, DHS – CBP, ICE-SEVP, USCIS) collaboration on updating the naming convention guidelines for students and EVs that are due out soon? Is there any additional information on this coordination? For example, has there been any update to 9 FAM Appendix F, Section 500 (Guides on Proper Names and Name Citing)?

DOS wants the name to be listed as it appears in the passport in Roman letters without diacritic markings. SEVP is working on naming conventions as well. The agencies are having ongoing discussions about this topic in order to ensure that they have similar approaches.