



Consular Corner

May 2010

by: Liam Schwartz*

Happy Anniversary, Madam!

This month marks the one year anniversary of the first blog entry made by Madam le Consul in *The Consuls' Files*. With much love and appreciation, we reproduce that short initial May 2009 posting, below (reprinted with permission).

"The Other Side of the Window

The public aspect of consular work puts officers on the front lines of American diplomacy. Consular officers may be the first or even the only U.S. government employees that many foreigners and Americans abroad encounter regularly, highlighting the important public diplomacy role of the consular section.

"Consular officers should consider that they affect the tone and quality of the assistance we give to American citizens and foreigners," said Michele Thoren Bond, deputy assistant secretary for Overseas Citizens Services. "This experience conveys, in almost a visceral way, what America is all about. It's not just the treatment consular section clients receive but what they observe while waiting—how we talk to people, accommodate those with special needs or help someone needing special attention." - State Magazine, Issue 534, Page 30

For another view of the value of consular work, see this <http://xcalling-a-spade-a-spadex.blogspot.com/2009/05/consular-section-underutilized-goldmine.html> excellent observation..."

The Consuls' Files was a place where, in Madam's words, "U.S. consular officers can ask questions, answer questions, question answers, express frustrations, engage in debate, disagree, and tell their favorite consular stories, uncensored and anonymous." After a brief four-month lifespan, *The Consuls' Files* suddenly disappeared from our screens. [The Tigers](#) apparently paid her a visit and consular cyberspace has not been the same without her.

PS: To mark this anniversary in her own way, Madam has apparently returned to our screens: <http://theconsulsfiles.blogspot.com/>

What a wonderful anniversary celebration!

June 4, 2010 Start Date for New Consular Fees

An [Interim Final Rule](#) was published last week by the Department of State advising that the collection of increased consular fees will begin on June 4, 2010. No changes have been made to the fee schedule initially published last December. As a reminder, the new schedule includes the following increased visa application fees:

1. Most NIVs and adult BCCs: \$140
2. Petition-based NIVs (H,L,O,P,Q,R): \$150
3. K category: \$350
4. E category: \$390

The notice includes a couple of surprising admissions:

1. The new DS-160 has thus far not resulted in any significant time savings for consular staff.
2. The increased visa application fees may result in some countries raising visa fees charged to U.S. visa applicants.

Families traveling on temporary relocation will find a nasty surprise in the small print of the new schedule: The Department has made no distinction between the visa fees for principal applicants and those for derivative family members. In other words, an E-2 worker with an accompanying spouse and 3 kids will now be required to pay a whopping \$1,950 in MRV fees. Some may question whether this is really the best way to enhance and facilitate commercial interaction between the United States and the various treaty countries.

Updated Guidance on Student Visas

The Visa Office has issued its [annual updated guidance](#) on processing student and exchange visitor visa applications. Among the 2010 student visa highlights are the following:

Community Colleges

This year's guidance follows up on a prior reminder that attendance at a community college is not, in itself a reason for refusing a student visa application. The Department admonishes posts that it is still receiving complaints that some consular officers are "unreceptive" to applications from prospective community college students. Per the Department, this posture is at odds with the [policy set forth by Assistant Secretary Jacobs in July 2009](#).

Study Incidental to Visit vs. Principal Purpose of Admission

According to this year's guidance, some U.S. institutions are offering foreign students courses to be undertaken in B-2 status which "strain" the definition of

"study incidental to visit." The guidance remarks that consular posts "may need to make some findings as to what actually goes on" with regard to proposed programs which include courses offered together with social and other activities. If the courses are the principal purposes for the proposed visit to the U.S. and not incidental to other kinds of activities, then the applicant may need to qualify for F-1 or M-1 as opposed to B-2 status.

Suspicious School Activities

The Department congratulates consular officers who have uncovered patterns of abuse or suspicious activity from particular schools. According to the Department, tips regarding suspect schools submitted by consular posts have led to the decertification of several schools in the past year.

Dynamic Dhahran

Visa wait times at the U.S. Consulate General in Dhahran, Saudi Arabia are best described as dynamic. At the start of the year, Dhahran's visa wait time was 87 days; in subsequent months it increased to 139 days and plummeted to only 7 days. A report on Embassy Riyadh and constituent posts recently published by the Office of the Inspector General ("OIG") sheds some light on the inner workings of the consular section in Dhahran, some of which impact visa wait times. <http://oig.state.gov/documents/organization/141781.pdf>

The following are some of the points raised in the report:

Dhahran's consular district is in the Eastern Province, which includes most of Saudi Arabia's oil, gas, and petrochemicals industry, which generates the bulk of the kingdom's wealth. The U.S. consulate general is the province's only officially recognized diplomatic entity.

Consul General Joseph A. Kenny is "a Foreign Service officer with wide experience in the region. In his 13 months as consul general, he has proven to be a strong manager with a thorough knowledge of all aspects of the consulate general's operations. The staff is relatively small (22 U.S. direct-hire positions) and composed largely of entry-level officers. The consul general provides effective leadership and guidance."

At 111 days, Dhahran's NIV appointment backlog was considered "a serious public relations concern."

An energetic consular section chief in Dhahran leads a team of one full-time vice consul and a ten-percent part-time officer. The workspace is cramped. The U.S. Consulate General offices in Dhahran, scattered over a large compound, are small and extremely overcrowded. The Bureau of Overseas Buildings Operations (OBO)

has scheduled Dhahran for a new consulate compound (NCC), with construction scheduled to begin in 2011.

Dhahran hosts one full-time ICE visa security officer to support NIV operations. Relations between the consular sections and their visa security units in all three Saudi Arabian posts are positive. Turnaround on most cases is within 24 hours, so that consular processing is not unduly delayed.

A recent incident in Dhahran's consular section reminded the mission of the seriousness of pandemic influenza. A student visa applicant diagnosed with H1N1 was removed from the section by the Saudi Ministry of Health and hospitalized and all consular employees had their throats swabbed and received Tamiflu. Before reopening, the consular section was disinfected.

Changes to 9 FAM – Monthly Report

This month's published updates to 9 FAM (Visas) of the Foreign Affairs Manual include a new attempt to achieve clarity in the application of INA 214(b); clarification of the standard of inadmissibility for suspected money launderers; and confirmation that, yes, fraudulent documents may indeed be confiscated.

214(b) Denials (9 FAM 40.7)

The Department of State has introduced new changes to its guidance to consular officers on visa refusals under INA 214(b). This guidance was last overhauled less than a year ago. This guidance is set forth at the Notes to 9 FAM 40.7 (<http://www.state.gov/documents/organization/87154.pdf>)

In places, the new version of 9 FAM 40.7 attempts to condense sophisticated guidance into the size and format of a Facebook Wall posting. For example, the contents of N1.1 ("How Do I Apply INA 214(b)?") have been crunched from 18 lines to only 7. In other places, previous text and the order of sentences have simply been reshuffled.

The constant tinkering with the 214(b) refusal guidance evidences the importance placed by the Department in getting this guidance right; but the new version of 40.7 has the unlikely distinction of being longer than the old – without adding anything in terms of clarity. And beginning sentences with the word "and" (see N1.3) shows that the search for clarity of thought must go on. Our guess is that the next proposed changes to 9 FAM 40.7 are already in the pipeline.

Death of IV Petitioner (9 FAM 42.42 N2)

New guidance on the different fates accorded to immigrant petitions following the death of the petitioner, depending upon the geographic location of the beneficiary.

Where the beneficiary is in the United States at the time of the petitioner's death, the petition or application for adjustment of status must generally be adjudicated notwithstanding the death of the qualifying relative.

Where the beneficiary is overseas at the time of the petitioner's death, the petition will generally be automatically revoked and the beneficiary's priority date lost.

Fraudulent DHS Documents (9 FAM 42.22 N12)

In a clarification relating to the DOS – DHS working relationship, consular officers are advised that there is nothing preventing them from retaining a fraudulent DHS document which has been presented to them, if they are "certain" that the document is either a counterfeit or an altered original. That said, if the officer is "only doubtful" as to the veracity of the document, it should be returned to the bearer after it has been scanned and e-mailed to the Office of Fraud Prevention in the Consular Affairs Bureau.

Money Laundering Inadmissibility (9 FAM 40.28 N1)

The FAM guidance relating to the money laundering inadmissibility has been updated to bring it in line with amendments made to the INA last year. Per the updated guidance, the money laundering inadmissibility set forth in INA 212(a)(2)(I) applies if "there is reason to believe" that the foreign national has engaged, is engaging or seeks to enter the U.S. to engage in money laundering. The updated guidance emphasizes that this inadmissibility also applies to those who aid and abet money launderers.

It's interesting to note that this update utilizes the "reason to believe" standard. Consular officers use this same standard in various visa contexts, such as the adjudication of L-1 applications: "If you develop information during the visa interview (e.g., evidence which was not available to DHS) that gives you reason to believe that the beneficiary may not be entitled to status, you may request any additional evidence which bears a reasonable relationship to this issue." (9 FAM 41.54 N3.2) The essence of the "R2B" standard is that the consular officer must have more than a mere suspicion—there must exist a probability, supported by evidence. (9 FAM 40.23 N2)

MRV Placement (9 FAM 41.113 PN2.1)

The Department advises consular posts to place an approved Machine Readable Visa (MRV) as close as possible to the bottom left-hand side of the passport page in order to facilitate scanning by the CBP officer at the port of entry.

Returning Resident Visas (9 FAM 42.22 N1)

Clarification relating to the adjudication of applications for Returning Resident status:

1. The applicant should file the application (Form DS-117) in the consular district in which he or she currently resides.
2. A post generally may not refuse to process an application solely because it does not process immigrant visas.
3. The consular officer may approve an application for Returning Resident status only following a personal interview with the applicant. The officer's decision to approve or deny the application must be reviewed by a consular manager.

Transportation Letters for LPRs (9 FAM 42.22 N2)

The FAM previously provided that a foreign national in possession of a Green Card (Form I-551) which has expired after 10 years may board an aircraft to the U.S. if the expiration date of the Green Card would be the only reason for not boarding the individual. New guidance clarifies that a consular post must issue a transportation letter for that individual in order to avoid the imposition of fines against the carrier by CBP.

Transportation Worker Identification Credential (TWIC) (9 FAM 41.113 PN6.4)

The Transportation Security Administration (TSA) developed the Transportation Worker Identification Credential (TWIC) Program in response to the Maritime Transportation Security Act of 2002. Under this program, TSA will issue a TWIC to foreign nationals for unescorted access to secure areas of maritime facilities and vessels, but only after TSA conducts a security threat assessment on the applicant.

New FAM guidance instructs consular officers to provide an appropriate visa annotation allowing an individual to arrive in the U.S. and apply for a TWIC.

Are You Smarter Than A Junior Consular Officer?

1) What percentage of applications in the B1/B2 visa category worldwide were initially refused in FY-2009?

- (a) 40%
- (b) 50%
- (c) 60%
- (d) 70%
- (e) 80%

- 2) True or false: Each J-2 dependent must have his/her own Form DS-2019.
- 3) How many foreign citizens or nationals became naturalized U.S. citizens in FY 2009?
- (a) Less than 500,000
 - (b) More than 500,000 but less than 1,000,000
 - (c) More than 1,000,000
- 4) What color denotes the highest national threat level on the Homeland Security Advisory System?
- (a) Blue
 - (b) Green
 - (e) Orange
 - (d) Red
 - (e) Yellow
- 5) True or false: An F-1 student may begin Optional Practical Training ("OPT") without an approved Employment Authorization Document ("EAD").
- 6) If the Foreign Service Officer you're speaking with at a reception sheepishly admits to having "CNL'd in Russian" you'll know that she:
- (a) Was cancelled out from language class for poor grades.
 - (b) Can probably read Pushkin in the original.
- 7) True or false: If an individual with a palpable claim to U.S. citizenship is unwilling to make the effort to acquire the documents establishing that status, he may simply ask a consular officer to consider him an "alien" and issue him a nonimmigrant visa.
- 8) Which country generated the most immigrants under the EB-5 investor program last year?
- 9) True or false: If a Form I-130 is filed for a child of an American citizen when the child is under 21, the beneficiary will permanently qualify as a child as long as he/she does not marry.
- 10) Which Amendment to the United States Constitution provides (*inter alia*) that all persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States?

Top Ten Visa Wait Times at U.S. Consular Posts, May 2010*

Shanghai's wait times have increased by nearly 7 weeks in the past few months but will hopefully return to normal levels when consular officers return to their

normal routine at the end of Expo 2010. Embassy Caracas has shed nearly 23 weeks from its reported visa wait times. Best news of the year: Port au Prince is back in action!

#	Country	Consular Post	Visa Wait Time	Increase/decrease from Last Month	Top 10 Position Last Month
1	Cuba	Havana (US Interests Section)	959 days	No change	1
2	Venezuela	Caracas	140 days	- 160 days	2
3	China	Shanghai	72 days	+17 days	5
4	Haiti	Port au Prince	66 days	Previously closed	New Entry
5	Nigeria	Lagos	55 days	+10 days	6
6	Saudi Arabia	Dhahran	49 days	+42 days	New Listing
7	Mongolia	Ulaanbaatar	47 days	-13 days	4
8	Burma	Rangoon	45 days	+ 29 days	New Listing
9 (tie)	Russia	Moscow	42 days	+ 4 days	9 (tie)
9 (tie)	Canada	Montreal	42 days	No Change	7
9 (tie)	Canada	Toronto	42 days	+ 1 day	8
10	Saudi Arabia	Riyadh	41 days	+27 days	New Listing

** Updated to May 3, 2010 and based on published Department of State data. The "visa wait time" is the estimated time in which individuals need to wait to obtain a nonimmigrant visa interview appointment at a given consular post.

Top Wait Times by Region:

The Americas (excluding Cuba)	Venezuela/Caracas	(140 days)
East Asia and Pacific	China/ Shanghai	(72 days)
Africa	Nigeria/Lagos	(55 days)
Middle East and North Africa	Saudi Arabia/Dhahran	(49 days)
Europe and Eurasia	Russia/Moscow	(42 days)
Central and South Asia	India/Mumbai	(18 days)

Answers to "Are You Smarter Than A Junior Consular Officer?"

- 1) (a)
- 2) True
- 3) (b) (743,715)
- 4) (d)
- 5) False
- 6) (b)
- 7) True. FAM 40.2 N1
- 8) China
- 9) True. (STATE 163054)
- 10) The Fourteenth Amendment

Quote of the Corner

"Its not easy work. No moral obligations really are."

Kirk W. Johnson of the List Project to Resettle Iraqi Allies in urging establishment of a fast-track visa application process for resettling Iraqis who have assisted U.S. troops. President Obama has pledged to end the U.S. combat mission in Iraq by the end of August 2010.

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