



Consular Corner
February 2011
by: Liam Schwartz*

“Consular Officers Will Be There”

We have the honor of offering the following account by Stephen Pattison of the compelling nature of consular service. During his lengthy Foreign Service career, Steve served in U.S. consular sections in a wide variety of countries, including Beirut, Lebanon; Colombo, Sri Lanka; Bangkok, Thailand; Bucharest, Romania; and Brussels, Belgium. In his last posting, Steve served as Minister Counselor for Consular Affairs at Embassy Berlin, making him the senior U.S. consular official in Germany. In Washington D.C., Steve held positions with the Department of State that included working in the Bureau of Near Eastern Affairs and as the country officer for Jamaica and the Bahamas within the Bureau of Western Hemisphere Affairs, as well as serving as head of the Coordination Division in the Visa Office within the Bureau of Consular Affairs. Now back in Washington, D.C., Steve is one of the nation’s leading immigration attorneys and a member of AILA’s Rome District Chapter executive committee.

“At a time when government officials are frequently the subject of attacks by those who believe that government service is not only inherently less important than work in the private sector, but that government employees are overpaid, inefficient, and underperforming, it’s important to have a little perspective, particularly where consular officers are concerned. I was forcefully reminded of this when I read the article in the [December 2010 Consular Corner](#), “Overpaid?”. During my time in the Foreign Service I became inured to the regular reports that would issue from the media characterizing my diplomatic colleagues and myself as being mere “cookie pushers,” social gadflies, and dilettantes, more interested in the next cocktail party than in productivity and certainly not as virtuous as investment bankers or other creators of wealth. These stories retain currency even though the simple truth is that the work that Foreign Service officers do is frequently dangerous, almost always unglamorous, regularly heart-rending and unpalatable.

Anyone who has the temerity to conclude that these officers are overpaid doesn’t know what these individuals do and has no idea how difficult it is.

“Overpaid”’s author reminded me of some of my own experiences a consular officer over 28 years. While serving in Lebanon during the civil war I narrowly escaped being killed when a bomb went off during a dress rehearsal of a theatrical production in which I was performing, and a few weeks later I was injured by a stray machine gun round entered my apartment one night. As consular chief in Bucharest I received death threats and had to have a guard placed on my home. And as Consul in Colombo I had to arrange the disinterment from holy ground of an American citizen monk so that his body could be returned

to the U.S. for burial – a process that took weeks and which required three separate examinations of the remains at a remote upcountry location.

The story that most resonated in my memory was the description of the aftermath of a plane crash with American casualties in a neighboring country. A couple of points about this story need to be stressed up front: Firstly, consular officers overseas are on duty 24 hours a day, year-round. If the Ambassador or the State Department calls on you, you go. It's part of the deal and no one gives it a second thought, because after all it's the Foreign Service. Secondly, although many of us think first of the consular officer's role in visa processing, the most important work that consuls perform overseas is looking after the interests of American citizens. This includes everything from replacing lost passports to visiting American prisoners in foreign jails. At its most essential and stressful level, it also includes dealing with the death of American citizens abroad – whether death comes quietly from illness in a hospital, in a tragic suicide, or following a gruesome, nightmarish plane crash.

I got the call on Thanksgiving Day when I was the American Services officer in Bangkok. A small jet had crash-landed in a storm on Ko Samui, a resort island several hundred miles south of the capital. There were Americans on board. Someone had to go – and that was me. I left my family behind at the dinner table and joined one of my local employees at the airport for the flight to Ko Samui. When we landed at the airport I saw the remains of the plane, which had hit the ground vertically in a driving rainstorm. There were no survivors – just wreckage, pieces of luggage, and bodies and parts of bodies everywhere. Hundreds of people were poring over the wreckage. The stench was unbearable and made worse by the driving rain. Local officials, who were vainly attempting to assert control, escorted me to a tent where they had gathered what identifying documents they could, and for the next couple of hours I attempted first to locate the U.S. passports of the American passengers and then to identify, if possible, their remains. The remains of the non-Thai passengers had been segregated to make it easier for consular officials to identify them, but even with this assistance it was just not possible to match remains with passports. No one ever told me that my job could be like this, but once you're there, certain parts of your mind just shut down and you do what you have to do.

After hours of this I accompanied the Thai military convoy taking the bodies back to an airport on the mainland, where we made further attempts to identify them, and then I was asked to accompany the remains on a military plane back to Bangkok. I made it halfway up the ramp of the plane before the stench became too much and I was forced back on to the tarmac. Fortunately there was a civilian airport across the runway where I sprinted and caught the next passenger plane back to Bangkok.

Once back in Bangkok I then had to locate and inventory the possessions of the American passengers, some of whom had left their luggage behind with their hotels. This was heartbreaking. One young couple had purchased and wrapped

Christmas presents to take home to their loved ones. Every article of clothing, every personal item had to be accounted for. Then I had to prepare their death certificates, notify their loved ones, and make certain that everything was done in accordance with U.S. law. And then, once this was done, I had to resume my normal life and continue to assist a steady stream of Americans visiting Thailand, day in, day out, after hours, on the weekends – as if nothing extraordinary had happened to me on Thanksgiving day.

I had to do variations of this sad work over and over again during my Foreign Service career. So did all of my colleagues. It was our job, our responsibility – and our privilege – to serve our fellow citizens, who expect and deserve that their government will assist them and their loved ones with dignity and compassion. Death comes to us all, and when it happens to Americans overseas, consular officers will be there – at the scene of a plane crash, in squalid hotel rooms, at remote temple grounds.

So the next time I read complaints, whether from members of Congress or from the private sector, of how overpaid government employees are, I will take a deep breath, remind myself that those who say such things are simply ignorant or misinformed, and think of my former colleagues, who, even now, somewhere in the world, are quietly and professionally putting the lie to such statements.”

Following Courageously in Bangkok and Luxembourg

This month’s column offers a peek into two U.S. consular sections whose success in providing quality services comes in the face of a breakdown in managerial support. These glimpses are based on inspection reports by the Office of the Inspector General (OIG), which themselves are a snapshot of conditions at a given period of time.

Embassy Bangkok, Thailand

In a recent OIG report, the consular section of Embassy Bangkok was complimented for its “solid performance” in providing service to a large and diverse American citizen clientele and a moderate-sized visa applicant pool. The consular section’s success was attributed to a strong cadre of American entry level officers (ELOs) and locally employed (LE) Thai staff.

The cadre of newbie American officers and veteran Thai staff apparently succeeded despite a glaring absence of professional supervision and career nurturing. According to the OIG inspectors, Embassy Bangkok’s consular leadership lacked many of the traits of effective consular management. Referencing Chapter 7 of the Foreign Affairs Handbook, the inspectors described those traits as follows:

Conducting regular and focused staff meetings

The Visa Chief does not meet regularly with the entry level visa officers or locally employed staff, either individually or as a group. Indeed, the Visa Chief rarely talks with officers in the section or asks how their work is going. None of the entry level officers received formal counseling sessions. (For what it's worth, the OIG did indicate that the Visa Chief was available in his office for questions at any time.)

Establishing formal training plans

The Consul General and Visa Chief do not demonstrate interviewing techniques or observe and critique performance for newly arrived American entry level officers. Albeit talented and hardworking, the ELOs are on their first consular tours and are not always able to identify and implement operational efficiencies without systematic guidance from experienced supervisors.

Working the NIV line

The Consul General and the Visa Chief are not regular participants in line work and need to be more aware of the pressures and inefficiencies of this work.

Ensuring strong management controls

The Visa Chief has failed to fulfill many of the required supervisory duties associated with his position. The unit chief's performance was so "hands-off" that he had not even conducted the statutory review of nonimmigrant visa (NIV) adjudications for several months prior to the inspection team's arrival. How egregious was this? The FAM requires supervisors in the NIV adjudication chain of command to regularly review established percentages of visa issuances and refusals in the electronic NIV review system. Specific provisions at 9 FAM 41.113 PN17.1 and 9 FAM 41.121 PN1.2 emphasize the requirement for adjudication reviews by the Visa Chief for inexperienced officers. Sadly, the Visa Chief failed to conduct any adjudication reviews between June 2009 and April 1, 2010.

<http://oig.state.gov/documents/organization/152595.pdf>

Embassy Luxembourg

The OIG inspection report on Embassy Luxembourg depicts a mission with a dysfunctional front office – but with a consular section that has distinguished itself.

The [OIG report](#) is best summed up by its opening remarks:

The Ambassador's "confrontational" management style is perceived by embassy employees as "aggressive, hostile, and intimidating." The result is "an extremely difficult, unhappy, and uncertain work environment." Poor management has aggravated communication within and outside the front office and has led to serious inefficiencies. The absence of a sense of direction has contributed to bringing major elements of Embassy Luxembourg to "a state of dysfunction."

Fortunately, the consular section is not one of these “dysfunctional” elements. The OIG found that consular operations are “very well run” and successfully provide a panoply of services, particularly to the large local American business community. In contrast to many other sections of Embassy Luxembourg, consular presented “no management control issues.”

Kudos to Carla Nadeau, whom the report lists as the Consular Chief.

One of the State Department’s Consular Leadership Tenets is “Follow courageously.” In Thailand and Luxembourg it seems that they’re following this tenet word for word: “We take ownership of our work and hold ourselves accountable for improving performance and making our organization stronger. We dissent respectfully and help the boss become more effective in the interest of the team and the mission.”

http://www.facebook.com/caleads?v=info#!/note.php?note_id=432709398750

Praise for Public Affairs

The inspection report on Embassy Bangkok contained a well-deserved shout-out for the Public Affairs section. The OIG praised the embassy’s public diplomacy staff for having done “an outstanding job” over a broad range of strategically targeted mission activities. Indeed, the section was so successful in meeting in mission that a whopping 85% of the Thai public was found to be supportive of U.S. interests.

Changes to the Foreign Affairs Manual (FAM) – Monthly Report

H-2A and H-2B Nonimmigrants (9 FAM 41.53 N4.3 and N4.4)

Changes were made to the pertinent FAM provisions reflecting the new countries that are now eligible to participate in the H-2A and H-2B programs. (Good news for the Irish!)

<http://www.state.gov/documents/organization/87226.pdf>

H-1B Nonimmigrants (9 FAM 41.53 N12.1)

An updated FAM provision offers clarification regarding the availability of extensions of H-1B status beyond the normal 6-year maximum period. According to this guidance:

“Under the American Competitiveness Act in the 21st Century (“AC21”) the Department of Homeland Security (DHS) may approve an H-1B petition in 1 or 3-year increments for an unlimited number of times beyond the 6-or 10-year maximum if the alien has an employment-based immigration petition, or an adjustment of status application pending, or if it has been

filed more than 365 days since the labor certification application or the petition was filed.”

Corner Comment: The above FAM Note should be read as stating “...if the alien has an **approved** employment-based immigration petition, or an adjustment of status application pending...” In this regard, see the following USCIS policy memorandum:

http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2008/ac21_30may08.pdf

Refusal Worksheet 9 FAM 41.121 Exhibit I (Form OF-194)

Consular officers are required, in any nonimmigrant visa (NIV) case involving a refusal under any provision of the law, to provide the applicant and his or her attorney of record with a completed “Refusal Worksheet.” (See in this regard 9 FAM 41.121 N2.3-2.) The Refusal Worksheet (Form OF-194) was recently updated by the Department to emphasize that a 221(g) temporary, or “soft,” refusal is still a refusal nonetheless.

Pursuant to this update, individuals refused under Section 221(g) are now informed as following:

“Please be advised that, for U.S. visa law purposes including ESTA...this decision constitutes a denial of a visa.”

<http://www.state.gov/documents/organization/155644.pdf>

The newly updated refusal letter places Visa Waiver Program (VWP) travelers on notice that they should answer “Yes” to the question “Have you ever been denied a U.S. visa...?” when completing ESTA registration, even if the refusal was under § 221(g). Parenthetically, an applicant who has been denied a U.S. visa is subject to denial of his or her ESTA registration request, with the subsequent need to apply for visa at a U.S. consular post.

Section 221(g) of the INA provides for a temporary refusal when an otherwise qualified visa applicant is found to be lacking a specific document, or when a consular officer determines that additional security clearance is required. Consular officers beneficially use § 221(g) as a way of affording applicants every opportunity to supplement their applications in order to address concerns – such as possible fraud – that arise at the visa interview. Once the deficiency is satisfied, or the concern resolved, § 221(g) refusal is “overcome” and the visa may be issued.

In practice, the following are examples of events that commonly trigger a § 221(g) refusal:

1. The applicant is asked to provide additional supporting documents, such as proof of local employment;

2. The applicant is employed in a field listed on the Technology Alert List (TAL) and the consular officer requests a Visas Mantis Security Advisory Opinion (“SAO”). (This is one of the most common scenarios in which applicants in India, China and elsewhere are told their applications require “administrative processing.”)
3. The consular officer requests an Advisory Opinion from the Visa Office on the applicability of one of the statutory grounds of inadmissibility.
4. There are no empty visa pages in the applicant’s passport, or the application photograph does not meet quality standards.
5. The applicant’s petition approval is not yet listed in PIMS.

According to the Department of State, 221(g) is subject to overuse – so much so that there is a concern about its potential abuse by consular officers. DOS asks consular managers to initiate internal reviews to focus on “the potential overuse of 221(g) refusals” (See 9 FAM 41.121 N2.3-7). Indeed, DOS urges consular officers to strive to either approve or deny a visa application at the window, and that “using 221(g) to avoid decisions...invites abuse” (See 9 FAM 41.121 N2.5). 9 FAM 41.105 N1 (c) counsels consular officers to “use refusals under INA 221(g) for additional documentation sparingly.”

According to a Visa Office report, a whopping 694,620 nonimmigrant visa applications were refused under § 221(g) in fiscal year 2010. Of this number, 617,155 (nearly 89%!) of these quasi-refusals were overcome and the visas issued.

Termination of Relationship 9 FAM 42.42 N2

The Department has provided new guidance to consular officers on the automatic petition conversion that occurs upon the death of a petitioning USC spouse. This new guidance is set forth in the following re-drafted Note:

9 FAM 42.42 N2.2 (“Death of Petitioner with Petition Pending”)

“USCIS regulations allow for the automatic conversion of a Petition for Alien Relative, Form I-130, to a Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360, upon the petitioner’s death in the case of an immediate relative spouse (now widow[er]) of a U.S. citizen. No further action is required on the part of USCIS to automatically convert the petition, nor does any revocation and restatement need to be performed.”
<http://www.state.gov/documents/organization/87848.pdf>

Transportation Worker Identification Credential (TWIC) Letter (9 FAM 41.113 Exhibit I)

Under the Transportation Worker Identification Credential (TWIC) program, the Transportation Security Administration (TSA) may issue TWICs to foreign nationals for unescorted access to secure areas of maritime facilities and vessels. The Department of State has now provided the text of a standard TWIC request letter from foreign employers in support of a B-1 visa application by an individual intending to perform services in secure port areas. This standard text for this letter is found in new Exhibit I to 9 FAM 41.113.

<http://www.state.gov/documents/organization/155855.pdf>

Are You Smarter Than A Consular Officer?

- 1.** Name 3 of the 5 types of immigrant visa petitions.
- 2.** Which of the following J-1 program participants are subject to the limitations of INA § 212(e)?
 - (a) A person whose participation in the J-1 program was indirectly financed by a U.S. Government agency.
 - (b) A person whose participation in the J-1 program was wholly financed by the government of the country of his nationality.
 - (c) A person whose participation in the J-1 program was wholly financed by the government of the country of her last residence.
 - (d) All of the above.
 - (e) None of the above.
- 3.** What new country, whose capital will be Juba, is expected to declare its independence on July 9, 2011?
- 4.** Name two of the four visa categories in which applicants must still use Form DS-156.
- 5.** Joseph, an applicant for an immigrant visa based on an approved I-140 petition, indicates at his consular interview that he plans to reside with his family in Atlanta, GA. Julia, the Immigrant Visa Consul, notes that the underlying labor certification shows Joseph's intended place of employment as Boston, MA. When asked, Joseph explains that he will be working for the same employer, but that the place of employment has recently changed.

What should Julia do?

 - (a) Proceed with processing the immigrant visa application to completion
 - (b) Return the petition to DHS for reconsideration
 - (c) Return the approved labor certification to DOL for reconsideration
- 6.** Volume 9 of the Foreign Affairs Manual deals with Visas; what is the Volume that deals with Consular Affairs?

7. Match the governing country with dependent area for purposes of the annual immigration limitations under Section 202(a) of the INA.

Country	Dependent Area
(1) Australia	(a) Bermuda
(2) France	(b) Christmas Island
(3) Netherlands	(c) Cook Islands
(4) New Zealand	(d) Curacao
(5) United Kingdom	(e) New Caledonia

8. The State Department's CMAT program provides in-depth functional expertise and managerial advisory support to individual consular sections; what is the full name of this program?

9. Before applying the "30/60 Day Rule" to find a visa applicant ineligible based on misrepresentation regarding a previous violation of nonimmigrant status, whose advice must a consular officer seek?

10. Ebenezer Don Carlos Bassett, the first African-American diplomat, served as Minister Resident (equivalent to Ambassador) to Haiti from 1869 to 1877. What was his follow-on job in the United States?

Top Ten Visa Wait Times at U.S. Consular Posts, February 2011*

In "Ebb and Flow," the English poet Edward Taylor offered the following praise: "Yet when the bellows of Thy spirit blow, Away mine ashes, then Thy fire doth glow." Although not usually associated with poetic idealism, nonimmigrant visa wait times certainly have an ebb and flow of their own: Rio de Janeiro wait times down 23 days in January, up 23 days in February; Sao Paulo down 9 days in January, up 9 days in February; Shanghai down 7 days in January, up 6 days in February.

#	Country	Consular Post	Visa Wait Time	Increase/decrease from Last Month	Top 10 Position Last Month
1	Cuba	Havana (US Interests Section)	999 days	Unchanged	1
2	Venezuela	Caracas	175 days	+21 days	2
3	Brazil	Sao Paulo	101 days	+9 days	3

4	Brazil	Brasilia	72 days	+ 4 days	4
5	Brazil	Rio de Janeiro	66 days	+ 23 days	9
6	Nigeria	Lagos	60 days	- 4 days	5
7	Brazil	Recife	58 days	+ 1 day	7
8	China	Shanghai	48 days	+ 6 days	10 (tie)
9	Nigeria	Abuja	45 days	Unchanged	8
10	Canada	Montreal	43 days	- 19 days	6

** Updated to February 10, 2011, 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	(175days)
Africa	Nigeria/Lagos	(60 days)
East Asia and Pacific	China/Shanghai	(48 days)
Europe and Eurasia	Finland/Helsinki	(30 days)
Central and South Asia	India/Kolkata	(16 days)
Middle East and North Africa	Saudi Arabia/Jeddah	(15 days)

Answers to “Are You Smarter Than A Consular Officer?”

1. A: **Form I-130** (Petition for Alien Relative); **Form I-600** (Petition to Classify Orphan as an Immediate Relative); **Form I-800** (Petition to Classify Convention Adoptee as an Immediate Relative); **Form I-140** (Immigrant Petition for Alien Worker); and **Form I-360** (Petition for Amerasian, Widow[er], or Special Immigrant)
2. (d)
3. The Republic of South Sudan

4. K, S, T, and U visa applicants must currently use the DS-156, plus (when applicable) the -157 and -158. 9 FAM 41.103 N1

5. (b) 9 FAM 42.42 N4.1

6. Volume 7

7.

Country	Dependent Area
(1) Australia	(b) Christmas Island
(2) France	(e) New Caledonia
(3) Netherlands	(d) Curacao
(4) New Zealand	(c) Cook Islands
(5) United Kingdom	(a) Bermuda

9 FAM 42.12 Exhibit II

<http://www.state.gov/documents/organization/87529.pdf>

8. Consular Management Assistance Team

9. The State Department's Visa Office (CA/VO/L) via a request for an Advisory Opinion. 9 FAM 40.63 N.4.8.

10. Haitian Consul General in New York, with a brief stint as Haiti's Chargé d'Affaires in Washington, DC.

Quote of the Corner

"It is not possible to yet speak of moving on from past issues. The past is still present."

OIG Inspection Report of Embassy Luxembourg

<http://oig.state.gov/documents/organization/156129.pdf>

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