



Consular Corner

March 2011

by: Liam Schwartz*

Courage in Christchurch

Although the world's current worries are focused on the aftermath of the earthquake in Japan, we'd like to share a consular officer's personal experience with another recent natural disaster.

Dana Deree, a Foreign Service Officer serving in New Zealand, was caught up in February's devastating earthquake in Christchurch. Instinctively, Dana rushed to where he knew he'd find American citizens in need of assistance, taking the lead on crisis management and staying in place until all were safe. Dana and his colleagues who joined together so successfully to assist Americans and New Zealanders in Christchurch are a true credit to our nation.

Over the following pages, we are honored to present Dana's narrative of the earthquake and the ensuing emergency-response efforts. Written as events were still unfolding, his account attests to the call to courage and action that is all part of a day's work for U.S. consular officers.

"I am the Consular Chief at U.S. Consulate General Auckland. I came to Christchurch to serve as control officer for a bipartisan delegation of nine U.S. Representatives, the largest ever to visit New Zealand. They were here in part to participate in the U.S./New Zealand Partnership Forum. The Congressmen were wheels-up from Christchurch at 11:00 am, so I went back to my hotel. I had a couple of speeches scheduled for later in the day and was going to work on a cable about the congressmen's meeting with the Minister of Trade. The next day I was going to register American children and provide passport services for about 80 people so they wouldn't have to fly up to Auckland. I decided to go for a run first.

After my run, I went to my hotel room on the 8th floor of a building in the central business district and got into the tub. Just after I rinsed my hair, the building started shaking violently. The lights went out and I was thrown back and forth in the bathtub as water sloshed all around. I prayed aloud over and over and thought of my wife and kids. When it stopped, I stumbled out in the dark, found my glasses and clothes and made my way out of the hotel. On my way down I saw huge fissures in the walls. Outside the streets were filled with rubble and nearby buildings were collapsed. I tried to call home, to the consulate general, to the State Department Operations Center, to friends, hoping and hoping I could get somebody to report what happened and say that I was OK. The calls failed for about 30 minutes.

Meanwhile, I walked through streets teeming with evacuees as mud and water

burst forth from the ground everywhere from a process called liquefaction. I headed for the stadium where the forum was still going on, knowing that's where I would find Americans. It was about five kilometers away. I immediately saw civil defense, police, and everyday New Zealanders spring to action and take care of one another. There was no disorder. There were hugs and encouragement. I ran into an old Afghan man I had stopped to chat with just that morning using my broken Dari. We hugged and agreed that God would take care of us.

My home number was finally ringing. The voice mail picked up so I started to leave a message. Then I heard my wife's sweet voice. It was such a relief to be able to tell her I was OK. Then I was able to get State Ops and report the earthquake.

At the stadium, I first came across 20 Kiwi and American "future leaders," U.S. and New Zealand diplomats and staff, and the many distinguished delegates from the United States who were attending the forum. The list included Evan Bayh, Paula Dobrianski, Richard Armitage, Al From, and others.

I received an email from the Embassy designating me the U.S. point person in Christchurch, just as a colleague managed to get a tour bus to come to the stadium. My first decision was that we would pack as many people -- U.S. and Kiwi -- as possible onto the bus and get to the U.S. Antarctic program HQ as a safe haven. Among the New Zealanders were ministers of government and other high-ranking officials. The Royal New Zealand Air Force provided two cargo planes to fly out those immediate evacuees that night.

We then began to organize our Embassy team in coordination with Wellington and Washington. It was amazing to see my colleagues go into action right away -- some of whom had loved ones visiting Christchurch and spent the first anxious hours not knowing if they had survived, and all of whom had suffered through the quake themselves. While I did want to see off the VIPs who gathered with us to begin with, I knew they were in good hands, and was desperate to immediately reach out to other Americans who were on their own. We worked into the wee hours of the night. Our colleagues at the Embassy in Wellington and Consulate General in Auckland were doing the same.

A first step was to set up our crisis portal, which is a database that tracks the names of Americans we know to be well and those who are reported missing. We also issued a warden message and later a travel advisory to tell Americans in New Zealand everything we could about what happened and what their recourses were.

By the grace of God, one of the distinguished visitors to the forum was Tim Manning, Deputy Director of the Federal Emergency Management Agency. He's just my age but has years of disaster management experience ranging from being a fireman to running the Arizona Emergency Management Agency. He offered to join our team and I snapped him up. Among many valuable services he helped us organize and plan our approach from the beginning.

We broke into teams that liaised with the Kiwi emergency operations center and Red Cross, visited shelters, prepared public information, reported out what was going on and other tasks. Everybody performed like rock stars even as 20 to 30 major aftershocks rattled us and made getting any sleep difficult.

Our teams in Wellington and Auckland were equally fantastic as they helped document scores of Americans who had to abandon passports and belongings in their hotels, and worked with family members who were concerned about unaccounted-for loved ones.

It is now the end of the second full day after the earthquake. Hundreds are still missing and feared dead, including people of many nationalities.

I am thankful that the CODEL led to my being here. It meant that along with my amazing colleagues, it was possible to help Americans immediately. I'm also witness to the heroic and kind people of New Zealand and how they faced up to the worse disaster ever to strike their small, beautiful nation.

God of Nations at Thy feet,
In the bonds of love we meet,
Hear our voices, we entreat,
God defend our free land.
Guard Pacific's triple star
From the shafts of strife and war,
Make her praises heard afar,
God defend New Zealand."

Interview with Madam le Consul on INA 214(b)

In March 2005, the State Department's Office of the Inspector General (OIG) published a landmark inspection report entitled "Nonimmigrant Visa Adjudication: Standards for Refusing Applicants." The goal of the report was to review the nonimmigrant visa adjudication process in order to gauge how INA 214(b) is used to determine issuance or refusal. The OIG's report can be accessed here: <http://oig.state.gov/documents/organization/126337.pdf>

To help take the pulse of adjudications six years after this report, we turned to Cyberspace's leading authority on the visa application process, Madam le Consul.

Consular Corner: Six years ago, the OIG considered the elimination of personal appearance waivers as one of the major post-9/11 changes to visa adjudications. With the benefit of hindsight, has the mandate for across-the-board nonimmigrant visa interviews resulted in a more effective visa application process?

Madam le Consul: The elimination of personal appearance waivers was a huge change, for sure. Has it resulted in a more effective application process? Possibly, in that individuals who might fit a favorable pattern can, when interviewed, prove themselves less well-qualified in person than on paper.

Consular Corner: INA 214(b) establishes the premise that individuals applying for visas as non-immigrants are in fact intending immigrants. Did the drafters of the INA get it right? Is this provision primarily an example of American arrogance, or does it in fact serve to make our country a more secure place?

MLC: 214(b) does not address security; it addresses immigration. That being the case, it does indeed serve a useful purpose: it allows the answer to an inexperienced consul's 'I'm not sure' to be 'No.' Arrogance? Every country in the world has the right to allow anyone it chooses to enter, and to turn away anyone it chooses. That's a major part of sovereignty, to which every nation is entitled.

Consular Corner: According to the OIG, "Careful interpretation and precise understanding of the law makes our work better." Moreover, consular officers must "learn how to balance complex regulatory and statutory variables" in implementing INA 214(b). What (if any) added value do immigration attorneys offer to consular officers in contributing to the success of this balancing act?

MLC: In general, as Indians say about eating with forks, talking to an immigration attorney rather than the applicant is like making love through an interpreter. Attorneys can, though, help honest applicants prepare petitions, waiver applications, and the like so that they are clearer and more coherent, and therefore use less time and imagination to review.

Consular Corner: A primary purpose behind the elimination of the personal appearance waiver was to use mandatory visa interviews as a means for identifying applicants who would do us harm. As part of this process, consular officers were instructed to review all the evidence of a case (documentary and oral) in making an assessment of the applicant's credibility. Don't those consular officers who claim that they don't need to review *any* documents in adjudicating visa cases diminish the value of this exercise?

MLC: Well, all consular officers have to review documents sometimes: those that are essential to and required by the type of visa the applicant is requesting. Those alone are often sufficient to provide more than enough amusement to the attentive consular officer. On the other hand, the officer who will request or will seriously consider documents like job letters, bank statements, apartment leases and the like, is using papers as a crutch to avoid learning about the person standing before him. Depending on papers rather than the person is what diminishes the value of that 'exercise.'

Consular Corner: As we approach the tenth anniversary of the events of 9/11, what do you think would be the greatest improvement we could make to the visa application process in order to improve the quality of consular decision-making?

MLC: Referring to 9/11 is a bit misleading in this context. Most consular decision-making is directed toward immigrant intent and the likelihood that applicants qualify for the visa category they are requesting, not toward terrorist intent. The greatest improvement (IMNSHO) would be more consistent training and supervision of new consular officers by their more-experienced supervisors and by consular management.

Bright-line Documentary Requirements

One of the questions raised in the OIG report is whether requiring applicants to bring specific documents as proof of their eligibility for a given visa category is helpful to the adjudication process. The conclusion reached: "Use of the personal interview as the central determinant in adjudicating visa cases is hindered by a requirement that specific documentary evidence be provided as proof of visa eligibility." Per the OIG, establishing "bright line" evidentiary requirements actually limits the flow of information to the adjudicating officer and prevents him or her from looking at the case as a whole.

Corner Comment: This same point has been compellingly made by Madam le Consul (MLC) in addressing the tendency of some consular officers to say "I need a (job letter, property deed, bank statement) to be sure that the visa applicant is what he claims to be." MLC's comments in the interview above are reinforced by the following post from her blog:

"There is nothing about a piece of paper, however fancy, that will tell an officer anything about a visa applicant's intentions. Documents are crutches; flipping through them to look for a reason to issue or refuse is a futile task.... A bank book, a job letter, a lease, a car title: none of it means anything. If the customer intends to stay in the US, he will willingly leave all those things behind - even if they really exist and he really owns them - without a glance. And besides, an officer's job is to interview applicants, not shuffle papers.

Documents that are required before a visa can be issued are forms like I-797s, DS-2019s and I-20s. Anything that is not required is irrelevant and should not be asked for; if offered, it should not be accepted. Why? Because it is irrelevant, it is distracting, it invites dishonesty, it substitutes for actual knowledge....If refused applicants, in their later complaints, eventually get around to the worldwide whine '...and the officer didn't even look at my documents!' the proper response is, 'the officer interviewed **you**'."

<http://theconsulsfiles.blogspot.com/>

Point taken: Bright-line documentary requirements are crutches which serve only to restrict the flow of meaningful information to the consular officer. So, are there any consular posts today that actually **do** establish mandatory documentary requirements as proof of visa applicants' eligibility for any given visa category? Yes -- the U.S. consular posts in India, for example, which require H-1B or L-1 visa applicants to provide an exhausting litany of documents:

"Documents to be brought to the interview:

Apart from your passport, photo, original VFS appointment letter, CEAC confirmation page and petition, we suggest you bring the following documents with you to your interview:

From Your Petitioner:

- A copy of the petition with all supporting documents as filed with USCIS.
- A copy of the employment contract or letter of agreement signed by you and the petitioner.
- Petitioner's Income Tax Return for the last two tax years and financial statements.
- Petitioner's employees of the job site listed. The list should show all employees' names, their specific job titles, start and end dates, and their individual salaries and immigration status.
- State Unemployment Wage Reports, showing all wages paid to each employee in the state, for the past three quarters. (This should be the actual forms filed to the State authorities listing each employee and wages paid during the quarter.)
- A letter from the client company sponsoring the project and a copy of the contract between the U.S.-based petitioner and the client company, stating the timing, terms and agreement for your project.
- Copy of the contract between the U.S. employment agency (petitioner) and the job site (the location where you will actually work).
- A letter (on letterhead) from the personnel department at the U.S. job site stating that there is a vacancy for you.
- A detailed and specific description of the internal development project to which you will be assigned. Include a complete technical description of the project, employer, timeline, current status, number of employees assigned, worksite location, and marketing analysis for the final product.

From You (or Your Working Family Member):

- Your license to practice your profession in the U.S.
- Original or certified copies of your complete academic credentials.
- Evidence of previous work experience in the petitioned field.
- All previous passports, even if not used for travel.
- Evidence of extension of legal status in the U.S.

- If you were previously employed in the United States, your U.S. federal income tax returns and W-2 forms for those tax years.
- If you were previously employed in the United States, copies of all pay slips and monthly bank statements for the time you were employed.
- Original marriage certificate and wedding photos.

http://hyderabad.usconsulate.gov/advance_doc_submission2.html

Given the persuasive arguments set forth by the OIG and MLC, this bright-line list of specific documentary evidence has got to be discouraging for consular officers and visa applicants alike.

CA's Q&A

The OIG report ends by paying special tribute to 214(b) guidance issued by the Consular Affairs Bureau's Visa Office in 2004. This guidance, entitled "INA 214(b), Basis of Refusal Not Equivalent to Inadmissibility or Immigrant Intent," was issued in the telegram State 274068. State 274068 is essentially a "Q&A" on the application of 214(b) and is probably the most significant guidance ever produced by Consular Affairs on this subject. The cable is reprinted in its entirety in the OIG report and is available on DOS' website at http://travel.state.gov/visa/laws/telegrams/telegrams_2173.html

Where Are They Now?

State 274068 references a number of individuals who, in 2004, held key positions within Consular Affairs. These individuals would have played an important part in the process of producing this landmark guidance on NIV adjudications. Always curious, *Consular Corner* had a look to see where these individuals are today, and this is what we found:

Name	Then	Now
Maura Harty	Assistant Secretary of State for Consular Affairs	President and CEO of the Mid-Atlantic Chapter of the Make a Wish Foundation
Janice Jacobs	Deputy Assistant Secretary of State for Visa Services	Assistant Secretary of State for Consular Affairs
Stephen A. ("Tony") Edson	Managing Director, Visa Office	Principal, SAEdson, LLC
Edward Ramotowski	Director of Field Support and Liaison	Managing Director, Visa Office
Julie Furuta-Toy	Director, Office of Public & Diplomatic Liaison	Deputy Chief of Mission, U.S. Embassy, Accra,

		Ghana
Andrew T. Simkin	Special Assistant to Assistant Secretary Maura Harty	Consul General, U.S. Consulate General, Chennai, India
Stephen K. Fischel (Principal author of State 274068)	Director of the Office of Legislation, Regulations, and Advisory Assistance	Passed way in June 2008. A man of extraordinary warmth and compassion; we miss him deeply!

Ciudad Juarez Then and Now

The new U.S. Consulate General building in Ciudad Juarez was opened five years ago this month. Then-Ambassador Antonio Garza made the following remarks at the inaugural ceremony on March 7, 2006:

"Since my appointment as U.S. Ambassador to Mexico I have visited Ciudad Juarez three times—but as a Texan who grew up on the border and a former elected official from Texas, I have visited this area countless times. Each time I visit, I am astonished at how fast this city is growing, evolving, and accommodating the ever-changing border environment. I feel very at home in the El Paso/Ciudad Juarez area, and I think that Ciudad Juarez is a shining example of how Mexico has adapted to and welcomed the dynamic changes that are taking place in the global economy."

<http://tijuana.usconsulate.gov/tijuana/pr060307.html>

Five short years later, Ciudad Juarez is known as "the Murder Capital of the Americas." The Consulate General is described as "a fortress surrounded by a moat of men in uniform carrying machine guns and stun-grenades. Just outside the Golden Zone an almost unimaginably brutal civil war rages."

<http://spot.us/pitches/557-juarez-visas-from-hell/updates/796-cries-from-the-golden-zone-how-immigration-policy-puts-us-citizens-at-risk-in-mexico-s-narco-wars>

Having nothing intelligent to add to the discourse on how far Ciudad Juarez has fallen from being Mexico's "shining example," we're left with sincere appreciation to Consul General Dean Haas and his staff for their amazing service, together with hope that further options will be made available to those Mexicans currently compelled to process their immigrant visas applications in CDJ.

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

CBP Inspectors' Notes ([9 FAM 40.6 N3.5](#))

DOS guidance to consular officers has long recognized the existence of unsubstantiated DHS "hits." For example, 9 FAM 40.6 N3.5 advises that U.S. Customs and Border Protection (CBP) inspectors will sometimes make notes on Form I-275 ("Application for Withdrawal of Application/Consular Notification") that consist of conclusory statements with no supporting evidence or description of the underlying facts.

The FAM cites the following as a "typical example" of this kind of unsubstantiated note: "Subject is inadmissible under INA 212(a)(6)(C)(i)."

Standing DOS advice to consular officers regarding these unsubstantiated notes is the following:

"Such notes, unless they are supported by the corresponding definitive CLASS entry...reflect the immigration officer's opinion and have no binding effect on you....[E]valuate the information on the Form I-275 and adjudicate the applicant's admissibility for a visa independently."

9 FAM 40.6 N3.5 has now been updated to advise that unsubstantiated CBP notes are not limited to Form I-275, but may also appear in the FBI's Integrated Automated Fingerprint Identification System (IAFIS) and in the DHS Automated Biometric Identification System (IDENT). In any case, the guidance is the same: If you're stuck with derogatory information about an applicant without supporting facts, the way to deal with the situation is by interviewing the applicant, evaluating all the facts and making an independent decision on the visa application.

Exceptions to MRV Processing Fee ([9 FAM 41.113 PN5.2](#))

The Department has added the following categories to the list of visas that are exempt from the Machine Readable Visa (MRV) application-processing fee:

- A Replacement MRV issued to correct errors made by consular staff in the visa data, up to one year from the visa's original date of issuance and only for the remaining validity of the original visa. (After one year, the applicant must apply for a new visa and pay the appropriate MRV fee).
- Applicants exempted by international agreement, as determined by the Department.
- Applicants traveling to provide charitable services, as determined by the Department.

Poverty Income Guidelines 2011 ([9 FAM 40.41 Exhibit I](#))

The Poverty Guidelines are published annually by the Department of Health and Human Services (HHS) and are used to determine whether a Form I-864

Affidavit of Support meets the minimum Federal poverty guidelines threshold. The 2011 Poverty Guidelines will be applied to Affidavits of Support submitted on or after March 1, 2011. Applicants who cannot meet the applicable minimum poverty guideline threshold are ineligible for visa issuance under INA 212(a)(4)(C).

Are You Smarter Than A Consular Officer?

- 1.** What criminal offense most frequently delays visa issuance to foreign baseball players?
- 2.** What nonimmigrant visa classification is most appropriate for a foreign consular officer coming to work at his or her country's embassy in Washington, DC?
 - a) A-1
 - b) A-2
 - c) C-3
 - d) G-1
 - e) G-4
- 3.** What are the only two contexts in which a consular officer should make a formal finding of inadmissibility?
- 4.** What is the name of the statistical analyses conducted by consular posts to track the use of locally issued NIVs?
- 5.** Charlie and Marie, who are legally married, reside with Carrie, Marie's 14-year-old daughter from a previous marriage. If Charlie applies for an L-1 nonimmigrant visa, must he formally adopt Carrie in order for her to qualify for L-2 derivative status?
- 6.** Is a former American citizen who is found to have renounced U.S. citizenship for the purpose of avoiding U.S. taxation admissible to the U.S.?
- 7.** Consular Officer Chris is presented with an E-1 visa application that turns on the concept of "substantial trade." Chris isn't entirely confident about how to apply the regulations correctly, and he so submits an Advisory Opinion request to the Visa Office. Prior to receiving the Visa Office's response, Chris speaks with Jess, a friend who serves as the Treaty Visa Officer at a busy E visa post. Jess provides Chris with a full and complete clarification on his questions about "substantiality." May Chris now process the visa application to completion?
- 8.** Can L-1 qualifying employment include a situation in which an employee's services are divided among affiliated entities, with each entity using the employee's services on a part-time basis?

9. What is the significance of INA Section 291 to most nonimmigrant visa applicants?

10. What does a couple need to do in order for their proxy marriage to be valid for immigration purposes?

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

Caracas, where appointment wait times are up 36 days since the start of the year, inches ever closer to the 200-day mark. (The good news is that at this time last year Caracas was posting 300-day wait times.)

#	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	190 days	+15 days	2
3	Brazil	Sao Paulo	93 days	- 8 days	3
4	Argentina	Buenos Aires	78 days	+ 55 days	New Listing
5	Brazil	Rio de Janeiro	72 days	+ 6 days	9
6	Brazil	Recife	62 days	+ 4 days	7
7	Nigeria	Lagos	60 days	Unchanged	5
8	Canada	Montreal	43 days	Unchanged	10
9	Brazil	Brasilia	42 days	- 30 days	4
10	Israel	Tel-Aviv	32 days	+ 24 days	New Listing

** Updated to March 8, 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	(190 days)
Africa	Nigeria/Lagos	(60 days)
Middle East and North Africa	Israel/Tel-Aviv	(32 days)
East Asia and Pacific	China/Shanghai	(31 days)
Europe and Eurasia	Finland/Helsinki	(30 days)
Central and South Asia	Pakistan/Karachi	(21 days)

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

1. Drunken driving.
http://www.nytimes.com/2011/02/24/sports/baseball/24visas.html?_r=1
2. (a)
3. A visa application or revocation of an existing visa. 9 FAM 40.6N1
4. Validation studies
5. No, provided that the marriage between Charlie and Marie took place before Carrie's 18th birthday. 9 FAM 40.1 N2.2
6. No. INA 212(a)(10)(E), applying to individuals who renounce United States citizenship on or after September 30, 1996.
7. No – Once an advisory opinion has been submitted, a visa may not be issued until the Department's opinion has been officially rendered and communicated to the post. 9 FAM 40.6N2.2
8. Yes, if the aggregate time meets or exceeds the hours of a full-time position. 9 FAM 41.54 N10.1
9. It places upon the applicant the burden of proof for demonstrating entitlement to a visa.
10. Consummate the marriage subsequent to the performance of the ceremony. 9 FAM 40.1 N1.3-1.

Quote of the Corner

"The consular officer's independent judgment – based on a firm understanding of the statutory and regulatory requirements, knowledge of local conditions, and an informed evaluation of the credibility of the applicant – remains the key element in the visa adjudication process."

Office of the Inspector General Inspection Report: "Nonimmigrant Visa Adjudication: Standards for Refusing Applicants."

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