

Consular Corner
April 2011
by: Liam Schwartz*



Interview with Cornelius D. Scully (“Mr. Visa Office”)

Imagine you’re a consular officer who, after another long day on the line, wonders where to start looking for new ideas that might improve the visa process for applicants and officers alike.

One of the best starting points would be Cornelius (“Dick”) Scully. Mr. Scully helped lead the Visa Office in the Bureau of Consular Affairs (“CA”) for three decades. Dick retired as Director for Legislation, Regulations and Advisory Assistance in 1997.

Dick Scully’s leadership role in the implementation of U.S. visa policy by CA was so pronounced that William Morgan concluded a 1992 interview for the Foreign Affairs Oral History Collection as follows:

“Whenever you do retire, Dick, you can retire with the satisfaction of knowing that everyone in the field looks at you as Mr. Visa Office.”

In the following interview with *Consular Corner*, Mr. Scully speaks on a wide range of subjects, from the historical background of the INA’s enactment in 1952 to the discretionary nature of visa work in 2011; from the reasons why the visa function was initially assigned to the Department of State, to why transfer of this function to the Department of Homeland Security might not be a bad idea; from the legacy of CA legends such as Barbara Watson to the tragic loss of another CA luminary, Stephen Fischel. Mr. Scully winds up the interview with words of encouragement and advice to members of the next A-100 class.

Dick Scully is, indeed, an exceptional “barometer” for measuring the current state of the visa application process and for guiding us towards the future.

Consular Corner: Dick, in a 1992 Oral History interview you commented that “one of the fundamental problems with visa work is that most things are gray.” Why did you paint the visa function in this hue, and do you think the color of visa work has become any more vibrant over the past twenty years?

Dick Scully: I did not mean to say that I considered visa work “gray” in the sense of being drab or uninteresting. Actually, I found it always interesting, and frequently fascinating and stimulating. In using the word “gray,” I was distinguishing it from ‘black and white.’ Everyone has to make decisions, personal and professional. Some involve clear-cut “black or white” choices; others are judgment calls.

Judgment calls are usually more stressful. But, it is often possible to “sleep on” a pending judgment call. Also, subsequent events will often show the person whether he or she judged correctly. Finally, it is rare that anyone faces large numbers of judgment calls on a daily basis. But, consider a consular officer processing visa applications on a daily basis. The officer is usually a junior officer, sometimes a first-tour officer. He or she faces large numbers of judgment calls every work day (especially on the NIV line). The option of sleeping on a judgment call does not exist – today’s applications have to be decided today. Only rarely, if ever, do subsequent events provide the officer any feedback on his or her decision-making. The stresses of today’s decision-making are followed by those of tomorrow’s, and the day after, etc. The effect of this on consular officers is what I meant by my comment to Bill Morgan.

CC: In that same interview, you referred to the bedrock of our legal immigration system – the 1952 Immigration and Naturalization Act – as “a nefarious McCarthyite document.” Why?

DS: That was said ironically, but I was expressing a political view that I had absorbed from my parents who were strong liberal Democrats, devoted supporters of FDR, as were most of their close friends and associates.

The early post-World War II period was one of intense political polarization in the US – perhaps as intense as today. There was widespread fear of international Communism and many thought that Soviet spies and agents had infiltrated our government and other institutions. Foreigners and foreign influences were viewed with almost paranoid suspicion.

The Immigration and Nationality Act of 1952 became caught up in the temper of those times. It perpetuated the national-origins quota system, which had been established in 1924, and it codified, systematized, and substantially expanded the exclusionary provisions against Communists – not only party members, but also those who believed in or sympathized with Communism, etc. Support for, or opposition to, enactment of the Act became caught up in the larger political issues of the time.

That was all I “knew” about the Act when I joined the State department in early 1962. As I pursued my career, however, I learned that things were not what they had seemed. The black letter of the law was one thing; its interpretation an application was altogether another. The effect of many of the harsh, sweeping provisions could be, and was, mitigated by a flexible interpretation. The discriminatory national-origins quota system was written so specifically that virtually nothing could be done to mitigate its effects, but the sweeping communist exclusion could be, and was, interpreted and applied in a realistic fair-minded manner.

CC: What do you say to those who would transfer the visa function from the Department of State to the Department of Homeland Security?

DS: Let me begin by saying that I think this has already effectively happened. I say this because of section 428 of the Homeland Security Act of 2002. Section 428(b) reads –

“(b) IN GENERAL - Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C.1104(a)) or any other provision of law, and except as provided in subsection (c) of this section, the Secretary [of Homeland Security] –

- (1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act and all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training provided by the Secretary of State), which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and
- (2) shall have the authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).”

Section 104(a) of the Immigration and Nationality Act, referred to in the first sentence of section 428(b) above, sets forth the authority and responsibility of the Secretary of State under the Act. Thus, section 428(b) effectively overrides the Secretary of State’s authority under the Act and vests it in the Secretary of Homeland Security. Subsection 428(c), also referred to in the first sentence of section 428(b), preserves the Secretary of State’s authority only in a specified list of narrowly-defined instances.

As I read this language, the Secretary of Homeland Security was thereby effectively put in charge of the administration of the Act insofar as it relates to the issuance or refusal of visas. As of now, of course, the day-to-day operation of the visa system remains in the hands of State Department employees, both Foreign Service and Civil Service. As I understand it, however, that is the result of a Memorandum of Understanding which was laboriously worked out between State and DHS in the months following enactment of the Homeland Security Act. So, for the moment, State continues to administer the system, but according to the dictates of Homeland Security.

That said, a question remains whether transfer of the visa function to Homeland Security is a good idea. For years, I was convinced that removing the operation of the visa system from State was a bad idea. Over time, however, I have become less certain of that.

I have spent much time reading about the history of the system and it is clear to me that the State Department has always had a very ambivalent attitude toward the visa function. State came late to the system for admission of aliens. The first restrictions on immigration were imposed in 1875, but the visa requirement was only imposed generally in 1917, almost half a century later. And in 1917 the visa requirement was imposed only as a temporary wartime measure – its purpose was to deny entry to enemy aliens (nationals of the Central Powers).

The United States failed to ratify the Treaty of Versailles in 1919 and so the state of war – and the visa requirement – continued until 1921. By that time, large-scale immigration to the US had resumed, and the Congress was considering what to do about it. Part of the consideration was whether to make the visa requirement permanent, in order to control immigration. The State Department reluctantly accepted that it was necessary to do so and, thus, consular officers became permanently involved in our immigration system. It is clear from State Department testimony at the time that the Department felt that this was a diversion from the proper tasks of consular officers – trade promotion and protection of American citizens abroad.

That attitude has persisted ever since, even though the Department has always opposed having employees of other agencies administer the visa system. It seems to me, however, that there is no intrinsic merit in having Foreign Service officers administer the visa system. I can envision the possibility that CIS employees could be assigned to that function and perform it as well or badly as Foreign Service Officers have done.

I do think that there would be very significant difficulties in making the transition to such a new system. Foreign Service Officers are far from perfect. Like any other group of professionals, they range in quality from the best to the worst. They are, however, generally attracted by service abroad and are trained to deal with people of widely varying cultures and backgrounds. This is not generally the case with other USG employees, including those of CIS. The process of recruiting and training a substantial group of CIS employees for this purpose would take time and the transition period would likely be protracted and produce many unfortunate situations. It is, nonetheless, not unthinkable to me that such a new system could be made to work effectively over time.

CC: Who at the Bureau of Consular Affairs most influenced you during your career?

DS: There were quite a number of people, both Civil Servants and Foreign Service Officers, who influenced me, but one above all stands out in my memory – George Owen. He was a Foreign Service Officer who was assigned to the Visa Office when I came back to it in early 1968 after my assignment at Montreal. Shortly after I returned, he became Director of the Visa Office. He is a very little-known man. He's forgotten by most people, and I think he was greatly misunderstood when he was alive. He was a strange man, shy, even withdrawn, but in his way he was a great man. He was a lawyer, but he wasn't merely a lawyer; he was a scholar of the law. He was a widely read and learned man, and he was deeply, profoundly committed to the notion that the visa function was a matter of law, that it was involved with rules of law, that there were legal limits to what you could properly do, and that we were bound, even though the courts won't review the decisions of a consular officer, to abide by the rule of law. I worked closely with him and got to know him very well, especially from 1970 until he retired in 1972. It was from him that I got my perspective on the proper role of those engaged in administering our immigration laws and their attitude toward it.

CC: It's now been nearly three years since the sudden passing of our dear friend, Stephen Fischel. How did you come to meet Steve, and are there any particular "Fischie" anecdotes you can share with us?

DS: Steve's untimely death was not only a personal tragedy for all of us who knew and loved him; it was also, to my mind, a larger tragedy in that it removed from the immigration debate a figure widely known and respected for his immense knowledge, good sense, and fair-mindedness. Steve could have contributed greatly to the eventual development of a new and better immigration system for our country.

I can't say there are specific stories about Steve which stand out in my mind. I first got to know Steve when he came to the Advisory Opinions Division of VO from the Passport Office around 1973. He was one of what we in VO referred to as refugees from the Passport Office. (The reasons for that reference are a story which is much too long to tell here.)

By 1979, when I became Director of the Office of Legislation, Regulations and Advisory Assistance, Steve had risen to be the deputy in Advisory Opinions under its chief, Cecil Brathwaite. Steve and Cecil had formed a very close bond and Cecil obviously saw Steve as his replacement when he retired. I had gotten to know Steve well enough that I saw in him a possible replacement for me when I retired. I was thus greatly pleased when Steve applied for the job of Chief of the Regulations Division when the officer who had replaced me there retired in the early 1980s. Cecil, on the other hand, was both dismayed and outraged. He saw it as almost a betrayal by Steve. Steve was torn by this and felt he had to do something to make things right with Cecil. So, he recruited Ed Odom, then working in Overseas Citizen Services, to apply for his job as Cecil's deputy.

Fortunately, Cecil and Ed hit it off and Cecil became reconciled to Steve's move to Regs and Legs.

Once I had the chance to work with Steve directly in his new job in Regs and Legs, it became obvious to me that Steve was the one to replace me when I retired so I relied on him more and more, assigning him such things as responsibility for our participation in NAFTA. Looking back on it, I probably dumped more on him than I should have, but by the time I retired Steve was fully qualified to succeed me and it was a great satisfaction to me that I was able to leave the Office in such capable hands.

CC: During your lengthy tenure in the most senior legal position in the Visa Office, what were some of the most important lessons that you taught immigration attorneys?

DS: I think that, taking it all in all, I learned more from immigration attorneys than I ever taught them. One thing I did observe over the years was that many (although by no means all) immigration attorneys did not really understand the visa processing system and the operation of the system of numerical limitations on immigration. They did understand INS and Labor Department processes and procedures, but not the State Department processes and procedures. I think I was useful to them in explaining these things to them, individually and collectively.

CC: What words of advice and encouragement can you offer to members of the next A-100 class as they head to their first postings overseas?

DS: My advice to them would be to remember always that they are public servants and to see their role in administering the immigration law as the functional equivalent of that of the administrative law judge, in that they should approach every application without preconceived notions of the outcome, giving every applicant a fair hearing and adjudicating each application dispassionately. I would add that this advice is a "counsel of perfection" to which they should aspire, even if, as human beings, they cannot always attain it.

My words of encouragement would be that, despite the stressful, seemingly mundane nature of consular work, it can provide a rewarding career and important satisfaction, both personal and professional.

CC: What counsel do you have for these same new officers on how best to establish a constructive working relationship with immigration attorneys?

DS: I would try to persuade them to understand that attorneys have a legitimate role in the visa process and that they should not view the fact that an applicant has hired an immigration attorney as an indication that there is something wrong

with the application. I would specifically point out to them two things which motivate most applicants to hire an attorney.

First, the law is both very complex and very arcane (much more so today that it was in 1962 when I started) and applicants find its requirements and procedures confusing, in spite of efforts by the State Department and CIS to explain things in ways that the general public can understand. The immigration attorney can always be useful – and is often indispensable – in helping an applicant complete the necessary forms correctly and assemble the documents required to substantiate a claimed relationship or professional or occupational qualification. Also, the immigration attorney can analyze an applicant's background and recognize potential problems or benefits that the applicant, as a layman, did not even know existed, or might exist.

Second, many applicants live in societies where government employees are greatly feared and they are, thus, most apprehensive about approaching a government office to seek anything, no matter how well qualified they may be to receive what they are seeking. The applicant who finds the requirements and procedures confusing needs an experienced attorney to guide him or her through the thickets. The applicant who is fearful of approaching a government employee is greatly comforted by the professional advice and assistance of an attorney. All consular officers, especially those new to the business, need to understand that both are entirely legitimate reasons for hiring an attorney and that the great majority of immigration attorneys fulfill their role capably and honorably.

CC: What is the continuing relevance of people like former Assistant Secretaries of State for Consular Affairs Abba Schwartz and Barbara Watson to those serving in the Visa Office today?

DS: At this point, that is not altogether clear to me. During my years with the State Department I worked for seven different Administrators/Assistant Secretaries (the title changed in 1978), of whom four were political appointees and three career Foreign Service Officers. Of the four political appointees, only Mr. Schwartz and Miss Watson brought to the position a recognized standing in the political world with political connections. As a result, they were the only two who had an influence on immigration policy in the broad sense. In addition, Miss Watson was able to give the consular function standing within the Department of State. By the time I retired in 1997 I had become convinced that only by having a person of that standing at the head of the Bureau of Consular Affairs could either the consular function have standing within the State Department or the State Department have influence on immigration policy.

Events since 9/11 have, I think, fundamentally changed the situation. As I have mentioned, I see the system as effectively under the control of DHS. I, thus, have to wonder whether an Assistant Secretary for Consular Affairs will ever have the

influence Mr. Schwartz and Miss Watson had in their time, even if he or she should bring to the job the same standing that they did.

CC: In your current career as “Mr. Visa (Ret.),” what makes you think, as you turn back the sheets at night, “This has been a wonderful day”?

DS: I am now getting on – I am 75 – but I still do consulting work for immigration attorneys and I enjoy that. It keeps my mind active and keeps me in touch with the system. My wife and I live on Capitol Hill in Washington and we enjoy our neighborhood, which is like a small town in the middle of a large metropolitan area. A good day for me is a couple of interesting cases with successful outcomes, seeing some friends, and enjoying our neighborhood.

Consular Corner Note: To access the 1992 Oral History interview with Dick Scully, click here: [http://memory.loc.gov/cgi-bin/query/S?ammem/mfdipbib:@field\(AUTHOR+@od1\(Scully,+Cornelius+D+,+III\)\)](http://memory.loc.gov/cgi-bin/query/S?ammem/mfdipbib:@field(AUTHOR+@od1(Scully,+Cornelius+D+,+III)))

“I Hate My Job (Sort Of)”

Imagine you’re an immigration lawyer who, after another long day counseling visa applicants, wonders how he or she would adjudicate visa applications if given the chance.

Immigration Lawyer DeMark Schulze transformed this daydream into reality when, after joining the Foreign Service, he was assigned to the visa line at the U.S. Embassy in Brazzaville, Republic of Congo.

DeMark’s recent account of what it feels like to go from immigration lawyer to visa adjudicator follows below (reprinted with permission). Parenthetically, the picture referred to by DeMark can be seen here: <http://blahblahblawg.files.wordpress.com/2011/03/outside-of-window-shot.jpg>

“Where I’m at: Brazzaville...where else?!”

What I’m doing: returning to my office after doing consular work this morning

Why I’m posting: picture (finally!) and telling about when this job is hard

First off, I’m finally adding at least one picture of my own from Brazzaville. This is a picture out my window from my office. As you can see, very lush, very nice. Birds of all shapes and sizes, insects, lizards, and people all appear in my window from time to time. I don’t feel like I take enough

time to look through it and appreciate the day because I'm constantly running off to get some work done or have a meeting.

And so, speaking of being in my nice office and running around doing other work, it's necessary that from time to time I work in the consular section as we await a consular officer. Three of us are filling in for the time being, but since I'm the new guy and the other two have really done the lion's share of the work for the last two months of consular officer absence, I'll be doing most of the non-immigrant visa work next month.

Which sucks. Because while I'm actually a consular-coned officer, I find doing that work, thus far, to be very, very hard for me to swallow. I'll explain. Many of you know that I was formerly an immigration attorney. And so when my colleagues say, "Follow your gut" when adjudicating visa cases, that for me is 180 degrees backwards. My gut tells me to find ways to help people win their cases. In this work, that's not my job. It could even be said to be the opposite of my job. Thus, it's difficult to like something that's the opposite of something I loved. Ugh....

Worse still, my French has actually gotten *worse* since arriving in a French-speaking culture because much of my daily work is done in English. So it's harder to do consular work and find subtle, diplomatic ways of saying, "Why are you lying?" or "Are you really just going to smuggle drugs/immigrate/create a positive travel history so you can later immigrate?" in an increasingly unfamiliar language. Double ugh.... (ugh ugh)

That said, it's not horrible. First off, the large majority of my time is spent on economic and political work, which I'm loving. Secondly, there's this great view from a great office. And I love my colleagues. And finally – perhaps sadly – it's gotten easier to reject people. We don't have to reject that many people, but when we do, I've been better able to stomach applying the law fairly and equally. I've always done that, but it's still hard to tell someone they can't try to make their life better just because of a law. And so whereas the mother who came in with her cute infant this morning trying to go to a conference in the U.S. (she'd try to go to the U.S. for other reasons before) with no ostensible reason to come back, told me that she wrote "3 children, unmarried" on her tax form when she only has 1 and is married in order to avoid taxes (her words), it was easier to reject her.

But not by much."

Corner Comment: DeMark Schulze personifies the exceptional qualities brought to the Foreign Service by so many of its officers. DeMark is a poet and legal writer whose work as an immigration lawyer was primarily as a Program Coordinator for the National Immigrant Justice Center, which provides immigration legal services to low-income immigrants, refugees, and asylum seekers. A native of

Cincinnati, DeMark studied biology and anthropology at the University of Notre Dame and law at DePaul University College of Law.

You be the Judge

Imagine you're a deputy sheriff in Douglas County, Oregon, on another long day of patrolling Interstate 5. You receive a call from the owner of a gas station in Canyonville – there are folks hanging around his station making him nervous. You rush to the gas station and approach the vehicle. What appear to be a man and his son are pouring water onto the engine of their car in an attempt to cool it. They are Hispanic-looking. You ask them where they had travelled from (“California”) and where they were headed (“Hood River”). You ask if they are legally in the United States. “No,” they respond with surprising candor.

You tell them that they can not leave the gas station, go back to your police car and call an immigration officer. Once the officer arrives, the individuals admit to unlawful presence in the U.S. and are placed in removal proceedings.

(a) Was your detention of these individuals lawful?

(b) If so, may the admission as to unlawful presence made by the individuals to the immigration officer be excluded as evidence in their removal proceedings?

Answers to these questions appear after the next item.

The Negative Affects on Bilateral Relations of a Cumbersome Visa Application Process

Imagine you're a consular official working another long day towards promoting American policies in East Asia and the Pacific. You're concerned about the negative impact that a particularly cumbersome visa process is having on America's bilateral relationship with Timor-Leste, one of the world's newest nations. Where can one look for new ideas that might improve the application process for your officers at Embassy Dili and their visa-applicant public?

One great source would be the just-published report by the Office of the Inspector General (OIG) of its inspection of Embassy Dili.

According to the OIG, the overwhelming majority of Timorese who obtain nonimmigrant visas (NIVs) every year are either Timorese Government officials or people being sponsored by the U.S. government. U.S. Embassy Dili does not, however, process visas, and thus applicants are compelled to seek NIVs at the U.S. Embassy in Jakarta, Indonesia.

How burdensome is it for Timorese applicants to travel to Jakarta to apply for visas? The OIG: “Since no airlines fly between Dili and Jakarta, travelers have to transit through Bali or Singapore and stay overnight in Jakarta before applying. They then have to spend another night in Jakarta while awaiting their visa. Thus, and application for an NIV in Jakarta involves paying for a minimum of two nights’ lodging, plus round-trip airfare.”

How has this cumbersome process affected U.S. officials in Dili? Again, the OIG: “On occasion, American and LE staff members have had to travel to Jakarta to deliver additional documentation requested by Embassy Jakarta to prevent the Timorese in U.S. Government-sponsored activities from missing deadlines for training programs or conferences. In other cases, applicants who were being sponsored through public affairs programs have lost their opportunities because of delays in visa processing. Embassy officials spend considerable time dealing with the fallout from such missed opportunities, as well as advising applicants, making arrangements of official sponsored applicants, tracking cases, and resolving unforeseen problems.”

Are there any solutions? Yes, possibly – for one, consider instituting visa processing in Dili. As per the OIG, the time currently expended by Embassy Dili officials on Jakarta-based visa processing “could be used more productively if they did the NIV work themselves, and they could much more easily resolve any issues that may arise, such as the need for more documents....The only additional personnel the embassy would need would be a full-time consular LE staff member...The embassy has a good case to make to the Department for providing NIV services in Dili. Up to the time of the inspection, the embassy had not yet submitted a formal request. The time has come to do so.”

The full OIG Inspection Report of Embassy Dili can be accessed here:
<http://oig.state.gov/documents/organization/160570.pdf>

You be the Judge – Answers

(a) In *Martinez-Medina v. Holder* (9th Cir. March 11, 2011), the United States Court of Appeals for the Ninth Circuit held as follows:

“An alien’s unauthorized presence in the United States is not a crime.”

According to the court, while there are some Supreme Court dicta to the contrary, there is no federal criminal statute making unlawful presence in the U.S. a federal crime. A foreign national who is illegally present in the U.S. commits only a civil violation.

Given the above, a foreign national’s admission of illegal presence does not, in and of itself, provide probable cause of the commission of a crime that would justify the individual’s detention by a law enforcement officer.

(b) Under the “exclusionary rule,” evidence obtained in violation of a criminal defendant’s Fourth Amendment right to be free of unreasonable seizures may not be introduced to prove the defendant’s guilt.

In the civil context – which includes removal proceedings – the exclusionary rule does not apply unless the Fourth Amendment violation is “egregious.”

Was the deputy sheriff’s detention of the individuals at the Canyonville gas station an egregious violation of their Fourth Amendment rights?

No, said the Ninth Circuit. A reasonable police officer would not have known that unlawful presence is not a criminal offense. While the law of the circuit is that unlawful presence is merely a civil violation, a reasonable state officer could have been confused by a conflicting statement by the U.S. Supreme Court in *INS v. Lopez-Mendoza*, 468 U.S. 1032 that “entering or remaining unlawfully is itself a crime.” Given the lack of legal clarity, there was no “egregious” violation of the defendants’ Fourth Amendment rights, and their admission to the immigration officer regarding their lack of legal status could not be suppressed at their removal proceedings.

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

General Licensure Requirement for H Nonimmigrants ([9 FAM 41.53 N4.1](#))

The Department has completely revised its previous guidance to consular officers on the general licensure requirement for H-1B professionals. Formerly, the Department instructed posts as follows:

“If the position to be occupied in the United States requires a state or local license for an individual to qualify for the position, an alien seeking H classification to fill that position must have that license before a petition can be approved on his or her behalf to confer H nonimmigrant status.”

The newly revised guidance stands this former provision on its head; consular officers are now advised as follows:

“The requirements for classification as an H-1B nonimmigrant professional may or may not include a license because States have different rules in this area. If a State permits aliens to enter the United States as a visitor to take a licensing exam, then USCIS will generally require a license before they will approve the H-1B petition. However, some States do not permit aliens to take licensing exams until they enter the United States in H-1B status and obtain a social security number. Therefore, a visa should not be denied based solely on the fact that the applicant does not already hold a license to practice in the United States.”

The loud cheering you just heard was from the many visa hopefuls at Embassy Manila (and elsewhere), for whom this FAM update will help facilitate obtaining visas in order to take the National Physical Therapy Examination in the U.S.

International Organizations ([9 FAM 41.24](#))

If you've ever wondered which international organizations the United States has joined, this updated list is for you.

Medical Examination of Immigrant Visa Applicants ([9 FAM 42.66 N4.3](#))

The FAM has always encouraged consular posts to conduct periodic "quality control" of their designated panel physicians. In an update to the pertinent FAM provision, the Department has now deleted the text underlined below from its general guidance for following-up with panel physicians:

"You should maintain periodic contact with the panel physicians, and should, if possible, make occasional, unannounced visits. You should occasionally ask immigrant visa (IV) applicants to describe the scope of the medical examination they received, the procedures used to establish identity, and the arrangements for pick-up of the medical reports. CA/VO/F/P has a list of suggested questions if posts are interested. You should discuss any lax or improper procedures with the panel physician."

Deletion of the text suggests either that the CA list of suggested follow-up questions is no longer available or that posts just weren't sufficiently interested.

Are You Smarter Than A Consular Officer?

1. Approximately what percentage of all H-1B issuances are processed by the U.S. consular posts in India?

- (a) 10%
- (b) 25%
- (c) 50%
- (d) 75%
- (e) 90%

2. A-1 and A-2 visa applicants are subject to which of the following grounds of ineligibility?

- (a) Criminal grounds
- (b) Foreign policy-related grounds

- (c) Health-related grounds
- (d) Immigration-related grounds
- (e) Public charge grounds

3. Sakit arrived in the U.S. as an F-1 student and then changed status to H-1B after accepting employment following graduation. With four months left on the initial H-1B approval, Sakit's employer obtains a three year H-1B extension; immediately thereafter, Sakit travels abroad for a family visit and will thus need to apply for an H-1B visa in order to return to his U.S. employment. Which of the following is true?

- (a) Sakit's H-1B visa must necessarily be limited to the remaining four month validity period of the initial petition;
- (b) Sakit's H-1B visa may be issued for the remainder of the initial approved I-129 petition plus the additional three years of the approved extension period.

4. An American who loses a passport in Greenland would normally go to which U.S. consular post for a replacement?

5. Andy, a U.S. citizen, wants to adjust to U.S. legal permanent resident status in order to renounce citizenship, in protest of a particular political issue. Can he?

6. What is the largest geographic bureau of the Department of State?

7. Is eligibility for an SB-1 ("Returning Resident") visa dependent on the applicant's showing that the protracted stay abroad was caused by reasons unforeseen by him at the time of departure from the United States?

8. May an individual pursuing an immigrant visa application abroad have his required medical examinations conducted in the United States?

9. Joy, a naturalized U.S. citizen who has moved back to the Philippines, gives birth to Robbie in Manila. In order to meet the physical presence requirements for transmission of U.S. citizenship to her foreign-born son, may Joy include time she spent in the U.S. illegally before being naturalized?

10. American citizen residents of which country make up a greater share of the total population than in any other country in the world (besides the United States)?

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

Imagine you're one of the people charged with handling the negative effects on our bilateral relationship with Brazil that result from lengthy visa appointment times at our four visa-issuing posts there. Wait times in Sao Paulo, one of the largest U.S. visa operations worldwide, are close to 100 days; wait times in Rio are even higher. At the posts, systems have already been streamlined and resources re-examined countless of times. Will anything facilitate a reduction on wait times other than a significant infusion of qualified adjudicating officers?

#	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	Rio de Janeiro	113 days	+41 days	5
4	Brazil	Sao Paulo	99 days	+ 6 days	3
5	Argentina	Buenos Aires	93 days	+15 days	4
6	Nigeria	Lagos	81 days	+ 21 days	7
7	China	Shanghai	76 days	+ 45 days	New Listing
8	Canada	Montreal	64 days	+ 21 days	8
9	Brazil	Brasilia	59 days	+ 17 days	9
10	China	Beijing	56 days	+ 54 days	New Listing

** Updated to April 3, 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	(81 days)
East Asia and Pacific	China/Shanghai	(76 days)
Middle East and North Africa	Saudi Arabia/Jeddah	(44 days)
Europe and Eurasia	Turkey/Istanbul	(21 days)
Central and South Asia	Pakistan/Karachi	(21 days)

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

1. (c)
2. (b)
3. (b). [9 FAM 41.53 N8.4](#)
4. Copenhagen
5. No: A citizen cannot apply for, and USCIS cannot entertain, an application for adjustment of status from citizen to LPR. USCIS Adjudicator's Field Manual 23.2(c)(2)(A)
6. The Bureau of European and Eurasian Affairs
7. No. The applicant must show that the protracted stay was caused by reasons beyond the applicant's control and for which he or she was not responsible. [9 FAM 42.22](#)
8. No. Medical examinations must be conducted by a panel physician who has been designated by the visa-issuing post. [9 FAM 42.66 N1\(b\)](#)
9. Yes. [7 FAM 1133.3-3\(a\)\(2\)](#)
10. Israel.

Quote of the Corner

“One of the fundamental problems with visa work is that most things are gray, and that requires a great deal of intestinal fortitude to day after day after day make decisions that you can’t quantifiably guarantee are right.”

--Dick Scully, April 16, 1992, in an Oral History interview with William Morgan

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