

## Consular Corner

**June 2011**

by: Liam Schwartz\*

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### **DOS Launches New DS-160 Form**

The Department of State (DOS) has launched the anticipated new version of the Form DS-160 Nonimmigrant Visa Application.

The principal changes in the new version are as follows:

**Applicant Signature**: DOS clarifies, in no uncertain terms, that the applicant – and no one else – must electronically sign and submit the DS-160 form. As part of a newly formatted opening page, the DS-160 advises applicants to

“be aware that under U.S. law you must electronically sign and submit your own application unless you qualify for an exception. This means that you (the applicant) **must check** the ‘**Sign Application**’ button, even if someone else helped you fill the application out.”

To emphasize the point, the DOS even adds the following language to the above warning:

“If someone else clicks the button instead of you, your application may not be accepted.”

This same warning is repeated several times throughout the DS-160 and the associated Confirmation page.

### **Travel Information**

On the “Travel Information” page, applicants first need to select the general purpose of their travel. The list of general purposes of travel comprises the initial letter of all the NIV classifications. Once the general purpose of travel is chosen, the next dynamic dropdown menu asks applicants to select their specific classification. For the B visa classification, for example, the list includes Business/Conference (B1); Tourism/Medical Treatment (B2); Business/Personal (B1/B2).

### **“Purposes” of Your Trip**

The previous version of DS-160 asked for “the purpose” of the applicant’s trip to the United States. The question has now been redrafted in recognition of the fact that applicants often have a primary purpose but also one or more additional

motivations for traveling to America. The question now asks for “the List of Purposes of Trip to the U.S.” (in the plural).

### Five Years vs. Five Trips

The new form asks applicants to provide information “on your last five U.S. visits.” In many cases, this will constitute a significant change from the previous draft: “Previous U.S. Visits in the last 5 years.”

### Telecodes

The new version includes a new question: “Telecode Name Used.”

According to the Department:

“Telecodes (also known as ‘standard telegraphic codes,’ ‘Chinese telegraph codes,’ and ‘Chinese commercial codes’) are an older system used to represent characters, in which the most commonly used characters were assigned a unique four-digit number. ...Telecodes are not widely used anymore except in certain places such as Hong Kong and Macau, where they still appear on identity cards.” 9 FAM Appendix F, 505.1 (last publicly available version of August 2009)

### Return of the Immigrant Petition Question

The new version returns the following question to Form DS-160:

“Has anyone ever filed an immigrant petition on your behalf with the United States Citizenship and Immigration Services?” Applicants who answer in the affirmative are asked to provide an explanation.

### Inadmissibility Questions

DOS offers clarification relating to an existing question and substantially adds to the number of questions seeking information from applicants regarding possible grounds of inadmissibility.

The initial question under “Security and Background Information” has been expanded to clarify for applicants what is meant by a “communicable disease of public health significance.”

Six new additional have been inserted into what was already a rather long laundry list of inadmissibility-related questions:

1. Have you ever committed or conspired to commit a human trafficking offense in the United States or outside the United States?

2. Have you ever knowingly aided, abetted, assisted or colluded with an individual who has committed or conspired to commit a severe human trafficking offense in the United States or outside the United States?
3. Are you the spouse, son, or daughter of an individual who has committed or conspired to commit a human trafficking offense in the United States or outside the United States and have you within the last five years, knowingly benefited from the trafficking activities?
4. Have you ever engaged in the recruitment or the use of child soldiers?
5. Have you ever been directly involved in the establishment or enforcement of population controls forcing a woman to undergo an abortion against her free choice or a man or a woman to undergo sterilization against his or her free will?
6. Have you ever been directly involved in the coercive transplantation of human organs or bodily tissue?

### Confirmation Page

The newly formatted Confirmation page (confirming the submission of the DS-160 Form) includes a new line in the initial summary “Purpose of Travel.” This addition will presumably help the consulate’s facilitators to know which documents to look for from the applicant.

In advance of the world-wide rollout of Consular Affairs’ new Global Support Strategy (GSS) Program, applicants are directed to bring the Confirmation to “the Application Service Center.”

[http://travel.state.gov/law/legal/testimony/testimony\\_5432.html](http://travel.state.gov/law/legal/testimony/testimony_5432.html)

### **The Margins of the Upper Limits**

“SassAndSweet” is a consular officer completing her second tour. In her own words, she loves visa work – but as she heads back to Washington in advance of her next posting, she wonders when an officer knows that he or she has reached the upper limit of inner strength for visa adjudications.

“I was walking to work today self-pep-talking my way there – more specifically, I believe I was chanting ‘31, 31, 31’ over and over.

Interestingly enough – and all weather commentary aside – I have loved the city of Vancouver, I work with some great people, and I’ve enjoyed being here. I actually do NOT know how many days it is until I leave Post. Somewhere roughly between 60 and 70 days.

31 is the number of days I have left (*once you discount Admin Days, Pack Out Days, Weekend Days, Holidays, Vacation Days*) of doing Visa interviews.

I have reached my upper limits.

And I \*love\* Visa work. I find it fascinating. I enjoy the contact with different people from different walks of life. One of my co-workers self-refers to himself as a 'rules-based life form.' I get that. I like doing a job where I can 'interpret the law.'

But enough is enough. You know you're on your home stretch when....

1.) Every time you ask someone why they are travelling to the US and to explain their plans – and they answer: “to travel” – you begin to imagine having a red button next to your desk which, when pushed, opens up a shoot below the applicant leading to a shark pond.

2.) Every time you ask someone about their previous refusal they answer: 'not enough documents' – you begin to imagine a red button next to your desk which, when pushed, opens up a shoot below the applicant leading to a shark pond.

3.) Every time you ask someone to describe the work they do they answer: 'business' – you begin to imagine... well, you get the idea.

4.) Every time the 'interpreter' refuses to interpret because they think the question is dumb – you begin to imagine .....

5.) Every time someone says 'that [crime] shouldn't count, I'm only going to Vegas...'

6.) Every time someone says ...

Ok, I'll stop now – I think I've reached the burnout point and it's time for a break. Plus, I'm committed to following and obeying the law – I suppose 'dropping people into shark pits' is probably outside the bounds of the law.

I will absolutely miss Visas. Probably. Maybe. Someday. (Oh, I will - they are in my blood....) – but not for a while.

[http://sassandsweet.blogspot.com/2011\\_04\\_01\\_archive.html](http://sassandsweet.blogspot.com/2011_04_01_archive.html)

### **Transparency and the FAM: An Update**

In the March 2009 edition of Consular Corner we applauded the Department of State for its “significant injection of transparency into an important aspect of the visa application process.” The reason for this praise: An upward spike in the

number of updates to Volume 9 of the Foreign Affairs Manual (“FAM”) listed on the Department’s public Internet site.

As we noted then:

The visa application process is underpinned by the FAM, which is the Department of State’s central resource for visa regulations, policies and guidance. How can citizens whose lives are touched by the visa application process gather information about the daily changes to the FAM that may be critical to their interests? By accessing the record of these changes (“change transmittals”) published by the Department of State on its Internet site.

Halfway through 2011, it seems clear that the trend towards greater transparency in the visa application process has suffered a dramatic reversal. This reversal is not only in the *quantity* of 9 FAM updates provided to the public, but also in their *quality*.

Here’s what we mean:

In 2010 the Department listed 214 changes to 9 FAM on its “Change Transmittals” internet page. Of those 214 changes, 26 were characterized as “classified” and thus withheld from public view. In other words, the public was provided access to 88% of the listed updates to 9 FAM and denied access to 12% of them.

Through June this year, the Department has published a list of only 58 changes to 9 FAM. In other words, halfway through 2011 we’ve been provided with only 27% of the number of updates to 9 FAM published last year. That’s the *quantity* part.

The *quality* part is that of those 58 FAM updates, a whopping 18 have been characterized as “classified.” Thus, the public has been provided access to only 69% of the listed updates to 9 FAM and denied access to 31% of them.

Public access to the Appendices to 9 FAM has also become more restricted. Appendix D, for example, is now characterized as “Unavailable.” Even chapter 500 of 9 FAM Appendix F, meant to assist consular officers to process names from a variety of cultures by, *inter alia*, defining terms such as “telecode” (see the DS-160 item, above) is no longer mentioned in the Department’s list of Appendix F sections: <http://www.state.gov/m/a/dir/regs/fam/09fam/index.htm>.

The Department has said that “updating the FAM is like painting an aircraft carrier; one can never say the job is done....We literally make changes every day.” Perhaps someone can notify the bridge that the lights are dimming in parts of the aircraft carrier that should be most illuminated.

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

### **Immigrant Intent ([9 FAM 41.11 N1-2](#))**

The Department has made a number of beneficial changes to the titles of pertinent FAM Notes on immigrant intent, lending improved focus to the substantive guidance within. Among the changes are the following:

1. “Intent to Adjust Status” has replaced the more opaque “Alien with Intent to Enter the United States to Seek Immigration Nationality Act (INA) 245 Adjustment of Status” at 9 FAM 41.11 N1.3.
2. “Immigrant Intent and INA 214(b)” has replaced the somewhat vague “Application of 214(b)” at 9 FAM 41.11 N1.5.
3. “Residence Abroad and Immigrant Intent” replaces “Immigrant Intent” so as to better reflect the nature of the specific provisions that follow in 9 FAM 41.11 N2.

### **DHS Arrival Departure Information System (ADIS) ([9 FAM Appendix H, 100](#))**

In a new addition to 9 FAM Appendix H, the Department provides consular officers with detailed information on the Arrival Departure Information System (ADIS) maintained by the Department of Homeland Security (DHS). Some of the more interesting “factoids” relating to ADIS include the following:

1. ADIS first began recording U.S. arrivals and departures in October 2002.
2. The arrival and departure records are based primarily on the manifests of airline flights and passenger vessels.
3. Arrivals at land borders will not always appear in the ADIS system.
4. An automated query is sent to ADIS for every visa applicant, using the applicant’s passport number, country of passport issuance, and date of birth.
5. ADIS results provide a reverse chronological listing of exists and entries, as well as providing “CBP observations” – such as whether a person has been sent to secondary inspection.
6. Consular officers are not required to review ADIS results; indeed, ADIS data are meant solely as a tool for reviewing U.S. travel records in cases in which this information may be helpful in reaching a decision.

Oh yeah, and there's this: The new guidance informs consular officers that due to glitches in this DHS system, ADIS checks may not always return results, even if a person has a U.S. travel record. 9 FAM Appendix H, 109.6.

### **Are You Smarter Than A Consular Officer?**

1. May a consular officers issue a Blanket L visa with a validity period that extends beyond the validity period of the underlying blanket petition?
  
2. A Canadian citizen spouse who is accompanying a Canadian citizen in L-1 status will be admitted as an L-2 nonimmigrant without requiring a visa; may a non-Canadian citizen spouse also be admitted as an L-2 nonimmigrant without a visa?
  
3. What are the two visa categories for which – at least theoretically – applicants may post a maintenance of status and departure bond?
  
4. May Australians who have not earned a formal academic degree qualify for an E-3 visa in a “specialty occupation” on the basis of education and experience that are equivalent to the required U.S. degree?
  
5. Is it appropriate for a consular officer, in the discharge of his or her duties, to assist an immigrant visa applicant to fill out Form I-601, Application for Waiver of Grounds of Inadmissibility?
  
6. If an applicant for a nonimmigrant visa (NIV) wishes to enter the U.S. in order to remain there permanently, is it appropriate for the consular officer to suggest that he or she apply for an NIV and, after admission to the U.S., seek adjustment of status?
  
7. The F-3 “Border Commuter Student visa” allows Mexicans and Canadians to attend educational programs in the United States while continuing to reside in their home countries; are the dependents of F-3's entitled to F-2 visas?
  
8. According to 9 FAM, F-1 students who leave the United States for a break in their studies may automatically lose their F-1 status after how many months abroad?

9. Is it appropriate for a consular officer to issue L-2 visas to the spouse and children of an L-1 temporary worker if the worker changed her nonimmigrant status in the U.S. to the L-1 category and has herself never actually been issued an L-1 visa?

10. When was the United States Foreign Service created?

- (a) 1776
- (b) 1863
- (c) 1924
- (d) 1952
- (e) 1964

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

Summertime, and the visa wait times are anything but easy. Despite it all, the exceptional consular managers in Mexico City oversee operations that processed upwards of 2,000 visa applications each working day in June with a mere 18-day wait time.

#	Country	Consular Post	Visa Wait Time	Increase/decrease from Last Month	Top 10 Position Last Month
1	Cuba	Havana (U.S. Interests Section)	999 days	Unchanged	1
2	Venezuela	Caracas	178 days	+ 1 day	2
3	Brazil	Rio de Janeiro	129 days	+ 23 days	4
4	Argentina	Buenos Aires	128 days	+ 3 days	3
5	Brazil	Sao Paulo	117 days	+ 18 days	6
6	Brazil	Brasilia	113 days	+ 54 days	8
7	Nigeria	Lagos	105 days	Unchanged	5

8	Ghana	Accra	70 days	- 20 days	7
9	China	Shanghai	65 days	+ 27 days	New listing
10 (tie)	Ireland	Dublin	56 days	Unchanged	10
10 (tie)	China	Beijing	56 days	+ 7 days	New listing
10 (tie)	Canada	Montreal	56 days	+ 41 days	New listing

\*\* Updated to June 5, 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:**

<b>The Americas (excluding Cuba)</b>	Venezuela/Caracas	(178 days)
<b>Africa</b>	Nigeria/Lagos	(105 days)
<b>East Asia and Pacific</b>	China/Shanghai	(65 days)
<b>Europe and Eurasia</b>	Ireland/Dublin	(56 days)
<b>Middle East and North Africa</b>	Egypt/Cairo	(49 days)
<b>Central and South Asia</b>	Tajikistan/Dushanbe	(35 days)

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

1. Yes. A Blanket L visa may be issued with a maximum validity of three years, reciprocity permitting, even though the initial validity period of the blanket petition may expire before the end of the three-year period. 9 FAM 41.54 N20.1  
<http://www.state.gov/documents/organization/87229.pdf>

2. No. 9 FAM 41.54 N21.1  
<http://www.state.gov/documents/organization/87229.pdf>

3. B and F. 9 FAM 41.11 N8.1  
<http://www.state.gov/documents/organization/87168.pdf>

4. Yes. 9 FAM 41.51 N16.2-1  
<http://www.state.gov/documents/organization/87220.pdf>

5. Yes. 9 FAM 40.21(a) PN2.2

<http://www.state.gov/documents/organization/86943.pdf>

6. No. 9 FAM 41.11 N1.3

<http://www.state.gov/documents/organization/87168.pdf>

7. No. “Commuters, by definition, do not reside in the United States. As such, family members have no basis to reside in the United States.” [9 FAM 41.61 N14.7](#)

8. Five months. [9 FAM 41.61 N17.4](#)

9. Yes. 9 FAM 41.11 N6

<http://www.state.gov/documents/organization/87168.pdf>

10. (c): The U.S. Foreign Service was created in 1924 by the [Rogers Act](#).

### **Quote of the Corner**

“Let us strive for a foreign service which will be flexible and democratic; which will attract and retain the best men we have; which will offer reasonable pay, reasonable prospects for promotion, and reasonable provision against want when old age comes to a faithful servant.” Representative John Jacob Rogers of Massachusetts, in introducing the Foreign Service Act of 1924 which created the Foreign Service (“the Rogers Act”).

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