



Consular Corner
January 2012
by: Liam Schwartz*

Interview with Andrew Simkin

We are thrilled to begin the new year with an interview with Andrew Simkin, who recently completed a three year assignment as Consul General at the U.S. Consulate General in Chennai, India.

As Consul General, Mr. Simkin was responsible for all aspects of his post's operations, including consular services. His three years in Chennai saw major visa-related changes at our Indian consular posts, including the creation of Consular Team India, a dramatic reduction in visa appointment wait times, a substantial enhancement of American Citizen Services, and continuing efforts to streamline the Security Advisory Opinion (SAO) process.

Prior to his service in India, Mr. Simkin served as Director of Consular Training at the State Department's Foreign Service Institute, and also headed the Office of Consular Fraud Prevention Programs in the Bureau of Consular Affairs. In the course of his 25 year career, Mr. Simkin's other foreign assignments took him from Mexico to Spain, Cuba and the Middle East.

Our interview with Mr. Simkin was conducted shortly after his retirement from government service and his return to his family home in Cayuga County, New York.

Liam Schwartz: Mr. Simkin, congratulations on your retirement after nearly 25 years in the Foreign Service. What was the impetus for your decision way back when to become a Foreign Service Officer – and what led you to understand that now was the time to hang up the boots?

Andrew Simkin: Thanks, Liam, for this opportunity to assist in your ongoing campaign to improve mutual understanding between consular personnel and immigration lawyers.

I have felt an interest in building bridges between different groups of people since early childhood, as a student in public schools in Seattle's racially diverse Central Area. I appreciated the richness of this diversity and was distressed by occasional racial tensions. Later I became fascinated by studying different cultures and history at Earlham College. I wanted to work in some form of dispute resolution, so I studied law (at the University of Dayton.) During law school, I took the Foreign Service exam, and was fortunate to be offered a job by the State Department, shortly after successfully completing the Ohio bar exam.

My grandfather had served in government for parts of his career, and he encouraged me, but advised me not to count on making a full career of government service. At several points during my 24-plus years in the Foreign Service, I thought that it might be time to go, but I kept on. It is a wonderful line of work - constant learning, surrounded by great people, with incredible opportunities to serve the public and make a difference. At the same time, though, the Foreign Service demands a lot, from employees and their families. As in any institution, one must sometimes subordinate one's own views and accept limits on one's independence, which is not always easy.

I made the decision in April last year (over the weekend following the near-shutdown of the government) to make Chennai my last post, and retire. Serving as Principal Officer in Chennai was a wonderful experience, and perhaps one that would have been hard to match, had I stayed on. I wanted to leave on a high note, and at an age when I might have an opportunity to launch a new career phase that might keep me contributing substantially for longer than the five to ten more years that I could reasonably anticipate would have been left for me under the Foreign Service up-or-out system. I also hope to have an opportunity for more study and reflection, after many years of intense problem-solving.

LS: In 2009, consular leaders in Mission India – yourself included - launched Consular Team India ("CTI"), a strategic collaboration among the five U.S. consular sections in India. Can you describe how this collaboration works in practice?

AS: Consular Team India, led by Minister-Counselor Jim Herman and the consular section chiefs at each post, has been phenomenally successful in enhancing communication and common practices across the five consular sections. There are constant interactions via meetings, video-conferences, telephone, e-mail, and shared documents among consular chiefs as well as unit chiefs, with substantial involvement from consular entry-level American officers and locally employed American and Indian staff. CTI has received strong support from the Embassy New Delhi Front Office, as well as from the Bureau of Consular Affairs. I would note that CTI is part of a larger trend toward closer integration among Mission India's five posts, with similar efforts to link up Principal Officers as well as Management, Security, Public Diplomacy, and Political/Economic sections.

LS: The Department of State's Office of Inspector General ("OIG") recently reported that consular section staff in Chennai enjoy noticeably high morale, despite the demands and pressures of working in one of the busiest U.S. visa-issuing posts in the world. What tips can you offer to consular managers for ensuring a healthy esprit de corps among busy consular officers performing demanding jobs?

AS: My consular chief in Chennai, Bryan Dalton, and his deputy, Don Mulligan,

are exceptionally considerate managers, who made sure to include their entire consular team in much decision-making. So, in spite of the pressures of the work, people felt they had a say, and an opportunity to make improvements. We had very strong mid-level managers. Not every post has this luxury, as there has been a chronic shortage of mid-level consular officers, especially at the FS-3 level. We also benefited from tremendous talent at the entry level and among our highly professional Indian staff. It was very rewarding to have the OIG recognize our post's many successes.

LS: The OIG report also observes that "one of the biggest challenges consular managers face in India is ensuring consistency in the standards of adjudication on H and L visas. The inconsistencies arise from the complexity of these visa categories and create public relations problems, as large companies note different decisions for employees in similar circumstances." What can consular managers in India actually say to corporate managers in America about the efforts being made to improve the consistency of H and L visa decisions?

AS: There is a huge and fast-growing demand for Indian talent in the U.S., and corporate managers understandably would like to remove unpredictability from the process for matching that demand. Consular officers, for their part, wrestle with applying non-quantitative standards (such as "specialized knowledge") in a context of rapidly evolving industry practices, often in highly technical fields. For lawyers, thinking about H and L adjudication and comparing other legal adjudication processes, I think it should not be too surprising that a system with several hundred adjudicators around the world, dealing with tens of thousands of applicants representing an infinite variety of human experience, would come up with a range of outcomes. I would also remind corporate managers that the sterling individual for whom a corporate manager has petitioned is not necessarily representative of all applicants.

Consular officers do see a lot of fraud, as well as various kinds of misuse of visas, and they can not always accept at face value everything that the applicant or petitioner says. Some employers push the envelope pretty far. Bearing those things in mind, I think that consular posts in India have done a remarkable job in fostering greater consistency in adjudication - and some of the changes recommended by the OIG will likely further strengthen that effort.

LS: The number of Americans traveling to India is on the rise, and the U.S. consulates in the country are there to provide them with vital services. Can you share with us some of the more out-of-the-ordinary requests you received from Americans in India for services which the consulate could – or could not – accommodate?

AS: Our fastest-growing area of consular workload in Chennai, over the past several years, has been American passports. Much of the volume comes from American children born in the U.S. to parents of Indian origin, who move back to India after some years working in the U.S. One of the greatest assets in the

relationship between India and the U.S. is the growing number of people who have deep understanding of both countries.

One of my favorite experiences offering special service to Americans in Chennai involved a group of students from Garfield High School in Seattle - my alma mater. They came to India on a two-week visit, during which they helped to establish computer labs at two rural schools in India. On their last evening in country, my wife and I hosted the whole group for pizza at our home. They were exhausted, but had enjoyed a great visit to India.

LS: President Obama, in his Disney World speech earlier this month, announced measures to improve and speed up the visa process. What role do you see for technology in achieving those goals?"

AS: Consular officers handle millions of applications each year, with numbers growing rapidly in many countries. In reading President Obama's remarks and Executive Order, it was very encouraging to see top-level recognition of the importance and impact of U.S. visa processes. Each case means a great deal to the applicant and his or her family, friends, or associates. In the aggregate, visas have a tremendous impact on our country. Making the right decision in each case is key. Technology has enhanced the quality of consular officers' decision making by making substantially more information available and enabling more advanced security and fraud-prevention practices. Up to now, however, advances in technology have had a net negative impact on officer productivity, because so many more computer-related steps are now required. When I started out, in 1987, we had no computers at the interview windows, and a single officer on a busy day could do hundreds of cases. My all-time best NIV total was 289, in Abu Dhabi, in 1989, and I did some IVs and American citizen cases that day, too. Now, an officer in Chennai is doing well to adjudicate 100 visas per day. The State Department may now be in a position to use technology not only to improve decision-making and record-keeping quality, but also to increase officer speed. There are a number of ways to move in that direction, and I know that there are some very smart and motivated people working on this. Success would contribute to higher service standards for all applicants.

LS: During your nearly 25 years in the Foreign Service what were some the "best practices" you witnessed at consular posts with regard to communicating with immigration attorneys on client cases?

AS: My first boss in the Foreign Service, Mike Hogan, knew visas inside and out, and when he was not supervising his six junior officers and 20-30 Indian staff, he spent a lot of his time on the phone, with files open on his desk, listening and talking to attorneys and congressional staff about specific cases. I still see that as the ideal, and when I served as a consular section chief, in Kuwait, I did the same thing. There is a trade-off, in that more time spent handling correspondence may mean less time available to handle applications. However, I see addressing case-specific queries as a key consular function, and I regret that many consular

sections have felt a need to give this function a low priority, faced with a crunch of conflicting pressures. I've always considered that inquirers, especially including attorneys, can serve as an important indicator to consular managers when something may be out of kilter either in a specific case or in some aspect of general procedure.

For attorneys, I would suggest trying to keep things concise. The consular officer or staff member often doesn't have time to go into the same depth in the case as the attorney may well have gone. So communications should be boiled down to the key issue(s). The consular section may then be able to be more responsive. One other tip - provide key identifiers, including the applicant's full name, date of birth, and passport number, right up front. This will make it easy, if the applicant already has a case record in the system, to retrieve that record. Finally, if a mistake has clearly been made, the attorney should be persistent, and if initial queries don't lead to a proper response, try to address higher-level people. This will not only serve the applicant, but help the consular section to do the right thing.

LS: You've been involved with high fraud consular environments for much of your career. What do immigration attorneys and their clients need to better understand about fraud in the visa application process?

AS: It can be difficult for us, as Americans, to comprehend the depth of desire that leads many people to undertake dangerous treks across the desert, or hide in an ocean bound shipping container for weeks, and spend their life savings, in the hope of getting access to opportunities in the U.S. (We would never think of taking such measures to get into another country from here). If you think of how much easier it would be, in theory, for the desperate individual to get a visa by fraud and enter in comfort on an airplane, then you begin to understand the extent of the pressures facing consular sections, to deter and detect visa and passport fraud.

Consular officers are diplomats, and have typically joined the Foreign Service in part out of a desire to help our country get along with foreigners. But U.S. interests, and U.S. law, always come first. Globally, consular officers turn down somewhere between 200 and 300 or every thousand NIV applicants, compared to (when last I checked) less than one in a thousand turned back at U.S. international airports. It is much better for the applicant (legitimate or otherwise) to be refused access to the United States at the time of visa application, instead of at the end of a long and expensive flight. So it is entirely sensible that consular officers are highly vigilant against fraud.

One other thing - advocates for applicants will sometimes over-stress that the applicant is no threat to U.S. security. It is good to keep in mind that the vast bulk of visa refusals are not due to security grounds of ineligibility, but rather rest on sections 101(a)(15), 214(b), and 291 of the Immigration and Nationality Act. Under these sections, the applicant has the burden of proof, and the consular

officer is required to resolve doubtful cases against the applicant.

LS: You and your wife Bess raised three children in the Foreign Service. Looking back, what "do's" and "don'ts" can you and Bess offer to Foreign Service couples who are just starting families of their own?

AS: Bess and I had six tours overseas with our children - Ciudad Juarez, Abu Dhabi, Madrid, Guadalajara, Havana, and Kuwait, for a total of 12 years. After Kuwait, we spent six years in Washington, with the kids all finishing high school there. When the youngest graduated and went off to college, we promptly went off to Chennai. We asked the kids to come and visit us in Chennai for the holiday break. This served as a test, in my mind, of whether they viewed their Foreign Service experience as a trauma or a boon. It turned out that all three were delighted to come to India, and within a day or so were out exploring the city, avidly taking in their surroundings. I've concluded that our lifestyle during their childhood was non-traumatic, at least in retrospect (although there were some sad farewells and many challenges at various points).

One thing that seemed helpful was that we always made sure to visit with grandparents, aunts, uncles, and cousins, in familiar places, during summers and between tours. So there were some constants amid the changes. We all grew, and are all doing well.

A Foreign Service lifestyle is not for everyone, and it is essential that the whole family be in accord. Issues of education, medical care, and spousal careers are crucial, and can be difficult. I would repeat the advice I received, before starting out, not to count on making the Foreign Service one's full career. By keeping open the option of departure, one can perhaps more readily accept that the inevitable compromises and hardships have been undertaken voluntarily, not begrudgingly.

LS: You and Bess face a transition from your hectic Foreign Service lives to the tranquility of the woods, lakes and villages of Cayuga County, New York. Are you guys really ready for this?

AS: I've dreamed of living here in the tranquil beauty of Cayuga County, where my great-great-great-grandfather, Edward Simkin, settled with his family on arrival as immigrants to this country. It is marvelous that I can sit here with my laptop in front of the fire and communicate with you and your readers. If I can find a way to do good and interesting work from here, I hope to stay. I'm still energetic, at 50, and am not done serving yet.

Do This Sparingly

What are some of the things that Consular Officers are advised to do only "sparingly?" Turns out you can count the number of instances on one hand:

1. Require the posting of a public charge bond sparingly. (FAM 40.41 N4.6-4)
2. Refer cases to USCIS for reconsideration sparingly, to avoid inconveniencing bona fide petitioners and beneficiaries and causing duplication of effort by USCIS. (9 FAM 41.53 N2.3)
3. Use refusals under INA 221(g) for additional documentation sparingly. (9 FAM 41.105 N1)
4. Exercise your authority to issue limited validity visas very sparingly. (9 FAM 41.112 N2.2)
5. Permit an immigrant visa applicant to submit evidence in lieu of a specifically required document sparingly, and only to prevent actual hardship to the applicant or a family member. (9 FAM 42.65 N6)

What are some of the things that **immigration lawyers** should do only sparingly? Send your suggestions to consularcorner.feedback@gmail.com

Foreign Service Officer Safety

Visitor to the DOS Careers Forum:

"As we consider pursuing the foreign service what can you tell us about officer safety?"

DOS Response:

"The State Department takes the issue of safety seriously..... But let's face it, it's a dangerous world....as an FSO you also want to balance safety with getting the job done. We're paid to get out there and understand the culture and the people. To do that, you have to get out. I think it is also a safety measure to get out in public because then the local population gets to see us as real people. And we can pick up on trends and see how our "stock" is in the real world. Bottom line, this isn't as dangerous as commercial fishing, but it's more dangerous than say, accounting. And it is a great career!"

<http://careers.state.gov/engage/forums/careers-state-gov/foreign-service-officer-safety>

Changes to the Foreign Affairs Manual (FAM) Monthly Report

CW Nonimmigrant Visas (9 FAM 41.34 Notes)

We're pleased to announce the birth of a new subchapter of Volume 9 of the FAM containing some interesting new concepts for temporary work visas.

This subchapter, dealing with work visa categories in the Commonwealth of the Northern Mariana Islands (CNMI), was created in response to the extension of U.S. immigration laws to CNMI, including some provisions unique to the islands.

The new FAM notes relate to two types of temporary work categories:

CW-1 Nonimmigrants. Based on an approved DHS petition, this visa category is for work in an occupation designated as needing alien workers to supplement the resident workforce – but only if the applicant is ineligible for any other employment-based nonimmigrant status under the Immigration and Nationality Act.

E-2 CNMI Investors. Three types of investors can qualify: Long-term Business Investor (investment of at least \$50,000), Foreign Investor (investment of at least \$100,000) and Retiree Investor.

The Retiree Investor classification is of particular interest as it may be the first time a U.S. nonimmigrant visa category has been created specifically for foreign retirees.

The criteria for Retiree Investor status include the following:

The foreign national must be over the age of 55 years; **and**

(a) Has invested a minimum of \$100,000 in an approved residence on the island of Saipan or \$75,000 on the islands of Tinian or Rota **or**

(b) Has invested a minimum of \$150,000 in an approved residence to live in the CNMI.

<http://www.state.gov/documents/organization/179937.pdf>

Wishing the CNMI much success with these island-unique visa categories! There are, of course, wealthy foreign retirees in Canada, the UK, China and elsewhere who would jump at the chance to stimulate the depressed U.S. housing market by investing in homes and obtaining a form of legal residency. Perhaps if the Retiree Investor visa program succeeds in the Northern Marianas it will give impetus to similar initiatives on the mainland, such as the pending Senate bill which would create a special "homeowner's visa" for foreign nationals investing at least \$500,000 in residential real estate in the United States.

<http://schumer.senate.gov/Newsroom/record.cfm?id=334576&&year=2011&>

Consular Corner Quiz

- 1) According to the U.S. Department of Commerce, international visitors from what country spent the most money in the United States in 2010?
- 2) True or false: An American consular officer may refuse a visa application in order to assist local authorities in preventing the departure of the applicant from their jurisdiction.
- 3) What is the evidentiary standard in most USCIS adjudications?
 - (a) Beyond a reasonable doubt
 - (b) Clear and convincing evidence
 - (c) Preponderance of the evidence
- 4) Statistically, which of the following work visa petitions has the highest USCIS approval rate?
 - (a) H-1B visa petitions
 - (b) L-1B visa petitions
 - (c) O-1 visa petitions
- 5) Which processed more applications/petitions last year - USCIS or U.S. consular posts?
- 6) There are two electronic sources available to consular officers for verifying the existence of an approved Form I-129, Petition for a Nonimmigrant Worker. One is the Petition Information Management Service (PIMS); what's the other?
- 7) True or false: A consular officer must deny an H-1B visa if an American state or local license is required for undertaking the H-1B position, and the visa applicant does not already have that license by the time of the visa interview.
- 8) Consular officers are advised that it is "most important" to promptly answer inquiries from Members of Congress. How "prompt" must these answers be?
- 9) What is the appropriate mechanism for Embassy employees to advocate on behalf of visa applicants with the consular section?

10) Which U.S. Consulate is the oldest continuously operating U.S. Consulate in the world? (Hint: It's located on an archipelago of nine islands in the center of the Atlantic Ocean.)

Top Ten Visa Wait Times at U.S. Consular Posts, January 2012*

As the State Department [strengthens its commitment](#) to decrease interview wait times in key markets such as Brazil and China, wait times surge at consular posts in other markets. Visa applicants in Abuja, Nigeria now face a daunting 180 day wait time. In contrast, wait times for visas at the Chinese embassy in Abuja are about 4 days. Just saying. <http://www.chinese-embassy.info/africa/visa-nga.htm>

#	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	217 days	Unchanged	2
3	Nigeria	Abuja	180 days	+19 days	3
4	Brazil	Sao Paulo	78 days	- 8 days	5
5 (tie)	Brazil	Recife	75 days	Unchanged	7
5 (tie)	Nigeria	Lagos	75 days	-19 days	4
6	Honduras	Tegucigalpa	59 days	+ 31 days	New Listing
7	Algeria	Algiers	45 days	Unchanged	10
8	Egypt	Cairo	44 days	Unchanged	New Listing
9	Canada	Halifax	43 days	+ 42 days	New Listing

10	Guatemala	Guatemala City	39 days	-20 days	9
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** Updated to January 3, 2012 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	(217 days)
Africa	Nigeria/Abuja	(180 days)
Middle East and North Africa	Algeria/Algiers	(45 days)
Europe and Eurasia	Russia/St. Petersburg	(30 days)
Central and South Asia	Pakistan/Karachi	(25 days)
East Asia and Pacific	Thailand/Chiang Mai	(21 days)

Answers to Consular Corner Quiz

- 1) Brazil. <http://riodejaneiro.usconsulate.gov/ev-01072012.html>
- 2) True. 9 FAM 40.21(a) N3.3
- 3) (c) http://www.oig.dhs.gov/assets/Mgmt/OIG_12-24_Jan11.pdf
- 4) O-1 visa petitions, with a nearly 92% approval rate. Approximate approval rates for H-1B and L-1B petitions are 78% and 76%, respectively.
- 5) U.S. consular posts processed 9.6 million visa applications; USCIS processed about 6 million applications or petitions.
- 6) The Person Centric Query Service (PCQS).
- 7) False. 9 FAM 41.53 N4.1
- 8) Within 3 business days. 9 FAM Appendix E, 701
<http://www.state.gov/documents/organization/87972.pdf>
- 9) The visa referral system. 9 FAM Appendix K, Exhibit I
<http://www.state.gov/documents/organization/88012.pdf>
- 10) U.S. Consulate Ponta Delgada, Azores.
<http://azores.usconsulate.gov/index.html>

Quote of the Corner

"I often am struck by how unusual people think it is that after I ran so hard against President Obama and he won he then asked me to serve with him. And people all over the world say, "Well, how did that happen? Why did he ask you? Why did you say yes?" And I said, "Well, because we both love our country."

Secretary of State Hilary Clinton, speaking at Embassy Monrovia, January 16, 2012 <http://www.state.gov/secretary/rm/2012/01/180808.htm>

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