

**Consular Corner**  
**February 2012**  
by: Liam Schwartz\*

-----

**Paul Revere's Midnight Walk**

*"Listen my children and you shall hear  
Of the midnight ride of Paul Revere"\**

Earlier this month, four American diplomats walked 100 kilometers through the villages of south Bangalore to raise money for people living in poverty across India. Along the way they were cheered on by school children, saluted to by Boy Scouts and greeted by farmers waving in support. The four - Consul General Peter Haas and Consular Officers Evan Morrissey, Roland Minez and Dan Gedacht - completed the walk in slightly more than 31 hours and succeeded in raising well over \$50,000.

The four diplomats from Consulate General Mumbai christened their journey "Paul Revere's Midnight Walk." As CG Hass explained:

"Paul Revere's spirit of activism inspired the team as we walked. We were tired, we were sore, and we wanted to rest, but we also believed we were doing this for more than just ourselves."

The comparison to Paul Revere's midnight ride is entirely fitting. As Malcolm Gladwell writes in *The Tipping Point (How Little Things Can Make a Big Difference)*:

"Paul Revere's ride is perhaps the most famous historical example of a word-of-mouth epidemic. A piece of extraordinary news travelled a long distance in a very short time, mobilizing an entire region to arms. Not all word-of-mouth epidemics are this sensational, of course. But it is safe to say that word of mouth is – even in this age of mass communications and multimillion-dollar advertising campaigns – still the most important form of human communication."

The efforts of Haas and his team of sneaker diplomats may seem like just a ripple in the pond of American public diplomacy efforts in India, but who knows – maybe their midnight walk was just the thing which will "tip" the American message and make it go viral in India.

*"In the hour of darkness and peril and need,  
The people will waken and listen to hear  
The hurrying hoof-beats of that steed,  
And the midnight message of Paul Revere."\**

(For a photo of Team Haas, click here:

<http://www.flickr.com/photos/amcentermbai/6868806043/in/set-72157629153423707>

\*Henry Wadsworth Longfellow, "Paul Revere's Ride"

<http://poetry.eserver.org/paul-revere.html>

### **Embassy Caracas, Venezuela**

The State Department's Office of Inspector General (OIG) has just released the February 2012 Inspection Report of Embassy Caracas, Venezuela. The OIG report includes an up-close look at the embassy's consular operations, shedding light on why visa wait times in Caracas are just about the longest in the world.

According to the OIG, the Caracas consular section has suffered from "a lengthy period of ineffective leadership." Additionally, there has been a lack of attention to customer service, and working conditions are described as cramped and factory-like. The man chosen to turn this situation around is Dale Rumbarger, who took up his position as Consul General last year.

The situation facing Consul General Rumbarger includes the following:

#### **Nonimmigrant Visas (NIVs)**

With some 250,000 applicants, Embassy Caracas is one of the top nonimmigrant visa processing posts in the world. Moreover, NIV demand has grown by 77% in the past 5 years. In the face of this surge in visa demand, Caracas has a "crushing" backlog of visa appointments (264 days at the start of February 2012).

The consular section's visa chief is "diligent but overextended." Visa officers work hard, interviewing applicants from 8:00 am until late afternoon and completing case work after the formal close of business (this, even though office space is so cramped that several officers do not even have desks of their own).

#### **American Citizen Services (ACS)**

The OIG has only superlatives to describe the Caracas ACS Unit: "An experienced, professional staff provides excellent service to the public." There were 36,500 registered Americans in the Caracas consular district in 2010. The embassy processed 2,000 passport applications and 111 birth reports.

As of late last year, 15 Americans were incarcerated in 8 prisons around Venezuela. The OIG indicates that Venezuelan authorities often have little control over their own prisons; indeed, U.S. consular officers report that they have had to establish direct contact with armed prisoners during their visits to some prisons. While Embassy Caracas has asked the Venezuelan government to ensure

adequate protection for imprisoned American citizens, consular officers are sometimes concerned about their own personal safety during consular prison visits.

### The English Language Capability of Locally Employed Staff

The OIG reports that the level of English possessed by the embassy's locally employed (LE) staff is "extraordinarily low." Per the OIG, without even the limited knowledge of English required to understand and carry out simple verbal instructions and prepare forms or reports, LE staff cannot provide adequate services to the embassy community.

We at Consular Corner wish Consul General Rumbarger and his staff every success in their mission. For the CG's formal words of welcome to the people of Venezuela, click here: <http://caracas.usembassy.gov/visas>. For the full OIG Inspection Report, click here: <http://oig.state.gov/documents/organization/184484.pdf>

### **Reducing Caracas Visa Wait Times**

The estimated time in which applicants need to wait to obtain a nonimmigrant visa interview appointment in Caracas remains the second highest in the world (a whopping 264 days as at February 4, 2012).

One OIG recommendation for reducing the crushing backlog in visa appointments is this: identify Foreign Service Officers with recent consular experience who work at other offices in the Embassy and enlist them to adjudicate visas a few hours a week. In this way, human resources already in Caracas would be used to help shrink the backlog.

Looking at the possible causes of Caracas' exceptionally long wait times, we're not confident that the OIG recommendation will make more than a dent in the backlog.

One possible cause for the high visa wait times may be the sheer number of visa adjudications: more than a quarter-million applicants seek visas in Caracas each year. This could be a contributing factor, but consular posts adjudicating a similar number of visa applications have far smaller wait times. See, for example, Sao Paulo (wait times of 70 days); Mexico City (wait times of 3 days); and Beijing (wait times of 2 days).

Another possible cause may be the ongoing IT systems problems in the visa section that have caused frequent screen freezes and slow responses. These interruptions, according to the OIG, reduce the number of interviews per day per officer. But even before the IT problems began surfacing in June 2011 with the

installation of a new server, Caracas wait times were extremely high (177 days in May 2011).

Perhaps the extra screening of applications added by the Visa Security Unit (VSU) is to blame? The OIG report indicates that two Immigration and Customs Enforcement (ICE) officers in the Embassy's VSU review all visa adjudications daily. But one hundred percent of visa applicants receive additional screening at all the other VSU-staffed consular posts, and these posts maintain low visa wait times. See, for instance, Dubai (wait times of 24 days); Manila (wait times of 3 days); and Islamabad (wait times of 2 days).

If it's not the sheer number of applicants, and it's not the IT problems, and it's not the VSU, then why do applicants in Caracas wait longer than applicants anywhere else in the world other than Havana? Could it be that visa wait times are maintained artificially high as part of US diplomacy towards Cuba (999 days) and its best friend Venezuela (264 days)?

Wait time diplomacy, if it exists, is an idea whose time has passed. Just last month, President Obama launched an initiative to significantly increase legitimate travel and tourism to the United States (more on this initiative below, in the FAM Updates section). The President's visa plan is based on the belief that increased tourism to American means that more foreigners learn more about our culture and society; it is also based on the fact that increased tourism is good for our economy. Indeed, the OIG report reflects the spirit of the President's initiative by noting: "Venezuelan visitors spend \$2.5 billion in the United States each year, mostly in Florida. By not meeting demand, potential tourism export earnings and U.S. jobs are being lost."

Perhaps, taking a tip from Mumbai, Foreign Service Officers at Embassy Caracas should be enlisted to embark on a Paul Revere Midnight Walk of their own. This might not have any immediate impact on the visa backlog, but surely will do more to promote the American message in Venezuela than irritatingly long appointment wait times.

### **Sporadic Surges in Visa Wait Times: A Look at Algiers**

At our consular posts in Havana and Caracas, lengthy visa wait times are chronic. But why do we see wait times shoot up sporadically at other posts, often without any advance warning? Last month, for example, one day wait times in Halifax soared to 42 days, returning this month to just 24 hours. The answer generally lies with a post-specific issue temporarily restricting the ability to process visa applications on a timely basis.

Take the case of Embassy Algiers. Algiers has traditionally reported low wait times (14 days this time last year); so why, towards the end of 2011 did Algiers wait times suddenly burgeon?

The answer is provided by the OIG, in its recent Inspection Report of Embassy Algiers:

"Because of a 7-month staffing gap in an officer position, the embassy was forced to drastically reduce the number of visa appointment slots. As a result, the wait time for nonimmigrant visa appointments increased to more than 60 days. The acting consular section chief also limited the number of appointment slots that would be available after his departure so as not to overburden the incoming first-tour officer."

In other words, the sudden rise in visa wait times in Algiers was generated by temporary staffing gaps and managerial decisions to momentarily limit the number of appointments in order to achieve some other beneficial goal. Surges in wait times at other posts will likewise result from local factors and, as with Algiers and Halifax, will be short-lived.

### **Innovation in Algiers**

Speaking of Algiers, we'd be remiss not to mention a program developed by the Immigrant Visa Unit which was singled out by the OIG as an "Innovative Practice." Because many immigrant visa recipients have never traveled outside of Algeria, the IV Unit offers "Welcome to the United States" orientation days, covering details such as what to expect at the airport, resources available in the U.S. and American cultural norms. Congrats to the Algiers IV Unit - this is proactive customer service at its very best!

For the OIG report on Embassy Algiers, click here:  
<http://oig.state.gov/documents/organization/183780.pdf>

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

#### **Interview Waiver Pilot Program 9 FAM 41.102 N9**

On January 19, 2012 President Obama announced an initiative to improve and speed up the visa process for certain categories of travelers. One of the cornerstones of this initiative is the Department of State's Nonimmigrant Visa Interview Waiver Pilot Program, under which certain foreign visitors who were interviewed in conjunction with a prior visa application may be able to renew their visas without undergoing another interview. The fine print of this Pilot Program was published as an addition to the FAM provisions relating to Interview and Fingerprint Requirements.

The following "Q&A" provides a summary of the information on the Nonimmigrant Interview Pilot Program provided by these additions at 9 FAM 41.102 N9:

**Q:** What are the provisions of the new Pilot Program?

**A:** Under the new Pilot Program, consular officers are permitted to waive nonimmigrant visa (NIV) interviews for certain visa applicants who are renewing their visas more than 12 months but less than 48 months of the expiration of the previous visa, and within the same classification as the previous visa. See 9 FAM 41.102 N9(a).

**Q:** How does this differ from the current interview requirements of the NIV application process?

**A:** Generally, all NIV applicants must currently make a personal appearance and be interviewed by a consular officer. Interview waivers are currently available only if applicants meet one of the following criteria (list not inclusive):

1. The applicant is younger than 14 years of age and older than 79 years of age.
2. The applicant is applying for a diplomatic visa (generally "A" or "G.")
3. The applicant is applying for a visa in the same classification as their prior nonimmigrant visa, not more than 12 months after the previous visa expired, at the post of their normal residence.

**Q:** Does the Pilot Program apply to all nonimmigrant visa classes?

**A:** The Pilot Program includes the B and F/M/J categories. In addition, consular posts may open the program locally to other nonimmigrant visa categories of their choice. Mission China, for instance, has advised that interview waivers will also be available at U.S. consular posts in China for renewal applicants in the C1, D and O visa categories.

**Q:** Does the Pilot Program apply only to certain nationalities?

**A:** The above aspects of the Pilot Program apply to NIV applicants worldwide.

**Q:** What provisions of the Pilot Program apply only to Brazilians?

**A:** According to 9 FAM 41.102 N9(b), Consular Officers will be permitted to waive the interview and fingerprint collection requirement for applicants holding Brazilian passports worldwide who are younger than 16, or who are 66 years of age or older, if these applicants: (1) are applying for the first time or renewing their previous visa and (2) are citizens or residents of the country in which they are applying for a visa.

**Q:** Does the Pilot Program automatically entitle applicants to a waiver?

**A:** No. Consular Officers will still interview any and all waiver-eligible applicants who they believe should be interviewed. (9 FAM 41.102 N9.2)

Moreover as per the provisions of 9 FAM 41.102 N5 ("Cases in Which Personal Appearance May Not Be Waived") no waiver of the in-person interview requirement may be approved for any applicant who:

1. Was previously refused a visa
2. Is listed in the Consular Lookout and Support System ("CLASS")
3. Otherwise requires a Security Advisory Opinion
4. May have failed to comply with U.S. immigration laws in the past
5. Is a national of a country designated as a state sponsor of terrorism.

In this context, the provisions of 9 FAM 41.102 N5(c) will still guide Consular Officers:

"You must request a personal interview and any needed additional information when there is any doubt regarding an applicant's qualifications for a nonimmigrant visa (NIV) prior to the issuance of a visa. Keep in mind that you always have the option to require an interview of any applicant if you doubt the alien's credibility or veracity. You must also be vigilant to ensure that personal appearance waiver procedures are not used to commit fraud."

One more qualifier: Consular posts are instructed to randomly interview a minimum of 1% of the average number of interview waiver cases it processes a week. Thus, if a post processes 1,000 interview waiver cases each week, then ten interview-waiver-eligible applicants should be randomly selected to appear for an interview. 9 FAM 41.102 N9.5

**Q:** What are consular posts advised with regard to processing Pilot Program cases?

**A:** Posts are advised to adhere to the guidance provides in 9 FAM 41.102 N6.1, including the following:

- "Posts should be certain that their procedures address how to deal with applicants who apply for an interview waiver and are found to be unqualified, especially if post accepts passports and other documents for these applications by mail or courier. While most applicants will legitimately believe they qualify, there will be those who attempt to bypass long wait times for interviews. Such applicants should be informed of post procedures for making an appointment."

- "Please note that applicants who qualify for the interview waiver but are found not qualified for visa issuance must still be refused in person. Therefore, if you determine that an applicant for whom the interview is waived is ineligible for a visa, you must request that applicant to appear in person to be informed of the decision on the case."

**Q:** When did the Pilot Program commence?

**A:** The program commenced on January 19, 2012.

**Q:** What is the duration of the Pilot Program?

**A:** The Pilot Program will be conducted over a two year period, concluding on January 19, 2014.

<http://www.state.gov/documents/organization/87422.pdf>

### **Visas for Locally Employed (LE) Staff (9 FAM 41.107 N4.3)**

Visas for LE staff have been added to the list of the exemptions from nonimmigrant visa (NIV) issuance fees:

"When post is issuing a nonimmigrant visa (NIV) to a locally employed staff member (LE Staff) solely for official travel, the Machine-Readable Visa (MRV) and reciprocity fees (if any) may be waived provided that the LE Staff applicant is issued a limited-validity visa. The visa validity should be limited to encompass only the official travel required. For most official travel this will typically be a three-month, single-entry visa, but validity can be extended if the training is longer or there will be several trips in a relatively short amount of time (such as an LE Staff who must travel several times in a six-month period for conferences or training)."

LE Staff seeking a full-validity visa will still be charged all MRV and reciprocity fees.

<http://www.state.gov/documents/organization/87489.pdf>

### **Fiancé(e) of Nonimmigrant Alien in United States (9 FAM 41.31 N14.1-2)**

B-2 status has traditionally been considered appropriate for applicants seeking to visit the United States for the purpose of marrying a nonimmigrant alien in valid nonimmigrant F, H, J, L M, O, P, or Q status.

Indeed, this traditional rule is still recited in the first sentence of 9 FAM 41.31 N14.1-2.

A newly-added third sentence to this same FAM provision casts doubt on the continuing viability of this tradition by advising consular officers that B status is inappropriate if, after the wedding, the applicant will seek to change to a nonimmigrant status that does not carry a residence abroad requirement (or, of course, to adjust to LPR status):

"B status is not appropriate if the fiancé(e) intends to remain in the United States after admission and adjust status to immigrant status, or intends to abandon the residence abroad after marrying and change to a non-immigrant status that does not require such a residence (adjust status means to apply for immigrant status while changing status means to apply for a different non-immigrant status)."

The only visa categories subject to residence abroad requirements are the following: B, F, H (except H-1), J, M, O-2, P, and Q.

Accordingly, the new third sentence of N14.1-2 means that the fiancé(e) of a nonimmigrant in valid H-1B, L-1 or O-1 status could have a tough time proving eligibility for B-2 visas for purposes of traveling to the United States to be married.

<http://www.state.gov/documents/organization/87206.pdf>

**Cohabiting Partners, Extended Family Members, and Other Household Members not Eligible for Derivative Status 9 FAM (41.31 N14.4)**

In a move related to the above-described change of tradition for the fiancé(e) of certain long-term nonimmigrants, the Lords of the FAM have added a qualification to the ability of certain prospective H-4, L-2 and F-2 family members to obtain B-2 visas:

"B-2 classification may also be accorded to a spouse or child who qualifies for derivative status (other than derivative A or G status) but for whom it may be inconvenient or impossible to apply for the proper H-4, L-2, F-2, or other derivative visa, *provided that the derivative individual intends to maintain a residence outside the United States...*"

Parenthetically, the term "residence" is defined by the Immigration and Nationality Act (INA) as "the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." INA 101(a)(33)

<http://www.state.gov/documents/organization/87206.pdf>

**Consular Corner Quiz**

- 1) With operations at our Embassy in Syria now suspended, who is America's "protecting power" in Damascus?
  
- 2) More than 12,600,000 U.S. passports were issued in FY 2011. Which US state accounted for the largest number of passport issuances?
  
- 3) Under what circumstances may a Legal Permanent Resident file an I-130 petition for his or her child who is over the age of 21?
  
- 4) Which one of the following countries does not have an U.S. Embassy?
  - (a) Brunei
  - (b) Burma
  - (c) Palau
  - (d) Taiwan
  - (e) Timor-Leste
  
- 5) Name one of two occasions in which consular officers may not, under any circumstances, revoke a visa.
  
- 6) Volume 9 of the Foreign Affairs Manual deals with Visas; what is the Volume that deals with Consular Affairs?
  
- 7) Any period of time that an alien spends unlawfully in the United States while under what age will not count towards the accrual of unlawful presence for purposes of the bar against reentry?
  
- 8) What is the name given to an opinion regarding a point of law from the Office of Visa Services in the Department of State?
  
- 9) Can the 15 year old biological daughter of an L-2 dependant spouse (but not of the principal L-1 applicant) qualify for L-2 derivative status?
  
- 10) Where did the United States open its first Consulate in Canada?

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

#	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	264 days	+ 17 days	2
3	Nigeria	Abuja	78 days	-102 days	3
4	Brazil	Sao Paulo	70 days	- 8 days	4
5	Nigeria	Lagos	66 days	- 9 days	5 (tie)
6	Brazil	Recife	54 days	-21 days	5 (tie)
7	Brazil	Rio de Janeiro	36 days	+ 21 days	New Listing
8	Mexico	Guadalajara	31 days	- 2 days	New Listing
9	Algeria	Algiers	30 days	-15 days	7
10 (tie)	Ecuador	Guayaquil	29 days	+ 27 days	New Listing
10 (tie)	UAE	Abu Dhabi	29 days	+ 7 days	New Listing

\*\* Updated to February 4, 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

<b>The Americas (excluding Cuba)</b>	Venezuela/Caracas	(264 days)
<b>Africa</b>	Nigeria/Abuja	(78 days)
<b>Middle East and North Africa</b>	Algeria/Algiers	(30 days)
<b>East Asia and Pacific</b>	Thailand/Chiang Mai	(21 days)
<b>Europe and Eurasia</b>	Russia/St. Petersburg	(20 days)

**Answers to Consular Corner Quiz**

1. Poland

<http://www.state.gov/r/pa/prs/dpb/2012/02/183489.htm#EGYPT>

2. California, with 1,600,000 passports issued

[http://travel.state.gov/passport/ppi/stats/stats\\_890.html](http://travel.state.gov/passport/ppi/stats/stats_890.html)

3. When the child is unmarried

4. Taiwan.

<http://www.ait.org.tw/en/>

5. (a) The visa holder is believed to be physically in the United States; and (b) The visa holder is believed to have commenced an uninterrupted journey to the United States.

9 FAM 41.122 N3

6. Volume 7

7. Under the age of 18

9 FAM 40.92 N4.1

8. Advisory Opinion

9. Yes, absolutely. 9 FAM 40.1 N2.2

10. Halifax, Nova Scotia in 1833

<http://canada.usembassy.gov/about-us/embassy-information/history-of-the-us-mission-in-canada.html>

**Quote of the Corner**

"While a visa denial is dramatic, it is not necessarily the end of the world."

Dale Rumbarger (now U.S. Consul General in Caracas) and others, in a 2006 paper delivered to NAFSA: Association of International Educators.

[http://www.franklin.edu/franklin/files/international/overcoming\\_a\\_visa\\_denial.pdf](http://www.franklin.edu/franklin/files/international/overcoming_a_visa_denial.pdf)

\***Liam Schwartz** is a principal in Liam Schwartz & Associates, a corporate immigration and consular law firm. He can be reached on [Facebook](#), and at [Liam@lsa-law.com](mailto:Liam@lsa-law.com)

All rights reserved to the author.