



Consular Corner
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by: Liam Schwartz*

Visa Interviews and Videoconferencing

In 2006, DOS Secretary Rice and DHS Secretary Chertoff issued their Joint Vision on Secure Borders and Open Doors in the Information Age.

One of the key aspirations of the Joint Vision was to enhance the efficiency of the visa application process through improved technology. In particular, the Joint Vision advocated for the pilot use of digital visa videoconferencing technology:

"In some countries, bottlenecks may arise from the need for applicants to go to the only, or one of the few, U.S. diplomatic posts in their country where they can be interviewed. Digital videoconferencing technology could help transform this model for visa processing. A pilot program in the United Kingdom and other countries will test the viability of such a new approach, while ensuring the security of the visa process."

<http://2001-2009.state.gov/r/pa/prs/ps/2006/59242.htm>

In the six years following the Joint Vision, legislative moves for authorizing the State Department to use visa videoconferencing technology have stalled in the Congress. The latest such move, H.R. 3039 (the "Welcoming Business Travelers and Tourists to America Act of 2011") is now being considered by the House Judiciary Committee. The bill would authorize State to conduct "a two-year pilot program for the processing of nonimmigrant visas using secure remote videoconferencing technology as a method for conducting visa interviews of applicants."

<http://www.govtrack.us/congress/bills/112/hr3039/text>

Is remote video-conferencing a viable means for conducting visa interviews?

The sponsors of H.R. 3039 certainly think so. According to the text of the "Welcoming Business Travelers and Tourists to America Act of 2011" the failure to achieve the Rice-Chertoff vision of introducing visa videoconferencing is one of the factors which has discouraged overseas business and tourists from traveling to the United States.

Others also think so. Jessica Zuckerman of the Heritage Foundation testified at the hearings on H.R. 3039 as follows:

"In many large countries, such as Brazil and India, citizens may have to travel for hours or even days at great personal expense—travel costs, hotels, and

lost salary—to a U.S. consulate to conduct their visa interview. These expenses and burdens only multiply if an individual is traveling with his spouse or family. The use of secure video-conferencing would not only allow individuals who live far from a U.S. consulate to meet the visa interview requirement with greater ease, but would also allow for the United States to more easily increase the volume of interviews conducted without the need to augment the number of personnel at any one consulate. Further, video-conferencing offers the potential to enhance and expand the Department of Homeland Security's Visa Security Program—which places homeland security officers at U.S. consulate offices to assist in reviewing and vetting potential high-risk visa applicants—where consular facilities do not have the space or resources to house Visa Security officers."

<http://judiciary.house.gov/hearings/Hearings%202012/Zuckerman%2005172012.pdf>

Stewart Verdery, who was the first Assistant Secretary for Policy and Planning at DHS and led policy development and implementation at the Border and Transportation Security Directorate, says that videoconferencing for visa interviews is "smarter security":

"Videoconferencing technology represents a breakthrough in security. Some have doubted that videoconferencing is as secure as a face-to-face interview. As technology continues to evolve, however, videoconferencing is a viable option that will not sacrifice U.S. security efforts. In fact, today's technology offers superb video quality with the ability to capture and record detailed images not discernible to the naked eye. Interviews by video can be recorded, which provides obvious benefits in security reviews and training for new employees. It may also be possible to involve more highly-trained investigators in the interview process with the expense of deploying government employees overseas. Additionally, the use of encryption technologies can capture documents, fingerprints and other biometric data during the interviews in order to maintain the highest level of security."

<http://securitydebrief.com/2010/10/05/videoconferencing-for-visa-interviews-is-smarter-security/>

So if Rice and Chertoff and Zuckerman and Verdery say visa interview videoconferencing is a good thing, why won't the "Welcoming Business Travelers and Tourists to America Act of 2011" fly through Congress?

Because other influential voices oppose the initiative. For example, Janice Kephart of the Center for Immigration Studies argues as follows:

"While secure, encrypted video conferencing could provide much support to visa interviewing in theory, it is likely unable to be secured nor a true replacement for an interview which is very different than a meeting...."

In the aftermath of 9/11, one of the things about which the 9/11 Commission did not have to bludgeon the State Department (State) was the absolute importance of visa interviews that enable Foreign Service officers to ask more direct questions determining an applicant's true intent in seeking a U.S. visa. Until January of this past year when President Obama announced his new visa interview waiver policy, State had been conducting interviews much more thoroughly, and hundreds of terrorists and other criminals were identified and prevented from entering the United States. *Visa processing was rightly viewed as a turnkey for immigration security.*"

The Department of State is equally opposed to the videoconferencing initiative. In a recent statement, Deputy Assistant Secretary David Donahue couldn't have been more concise:

"Fact: Video visa interviewing is not a viable option."

<http://aci-na.org/sites/default/files/donahuedavid-visaissues.pdf>

Information on the source of State's opposition to visa videoconferencing was provided in informal comments on H.R. 3039 which the Department sent to the House Judiciary Committee:

"(H.R. 3039) would mandate the Department to conduct a 2-year pilot program for the processing of nonimmigrant visas using remote videoconferencing technology. **The Department strongly objects to this because video technology will make visa interviews less secure and less effective. Video interview will also be less efficient and consume more consular resources, including officer interview time, than our current process, leading to an overall decline in the total number of visas processed.**

There are strong reservations in using this technology in countries with significant technical or other security threats, particularly in environments where telecommunications are compromised or controlled. In addition, facilities must be readily accessible for oversight and monitoring and would not be suitable in locations that could not be frequently visited and inspected."

In 2004, just two years prior to the Rice-Chertoff Joint Vision, then-Assistant Secretary Maura Harty said this:

"Interviewing visa applicants is a powerful tool that assists consular officers in making visa decisions. There is almost no substitute for a direct, face-to-face exchange between an applicant and a consular officer to help establish an applicant's credibility."

http://govinfo.library.unt.edu/911/hearings/hearing7/witness_harty.htm

Can this critical personal evaluation by consular officers of visa applicants be achieved just as effectively through videoconferencing as a direct, face-to-face exchange? Without a pilot program, no one will really know for sure.

What we do know is that State is not sitting on its hands, even as the debate on visa videoconferencing continues. Three months ago, DOS published a Request for Information ("RIF") aimed at businesses that offer Video Teleconferencing (VTC) solutions that can be used to support Embassies and Consulates overseas and afford customers "the power to communicate via VTC from anywhere in the world."

https://www.fbo.gov/index?s=opportunity&mode=form&id=8bbd9e22e445ea27e5bc4d59a5100984&tab=core&_cvview=0

Seeking Common Ground

Stewart Verdery says that videoconferencing for visa interviews is smarter security; but David Donahue says it's not a viable option, period. If you could put these two thoughtful policy makers in a room, could you reach common ground between their disparate positions on visa videoconferencing?

You could certainly try. Let's start with this: Both Donahue and Verdery would agree to the need for achieving what Verdery calls "the twin goals of reviewing visa applicants for security risks while maintaining the attractiveness of the United States as a premiere destination for business and leisure travel."

Both would also agree that even in the best case, visa videoconferencing would not be a panacea for all the inefficiencies that discourage overseas business and tourists from traveling to the United States.

It's also possible that both Donahue and Verdery would agree that expanding the Visa Waiver Program (VWP) may be the more compelling path for achieving the twin goals of ensuring security and facilitating travel. But to reach this particular consensus, you'd probably have to let Edward Alden of the Council on Foreign Relations into the room.

Here's what Alden had to say at the hearings on the "Welcoming Business Travelers and Tourists to America Act of 2011":

"H.R. 3039 is only one element of the changes needed to make sure that the United States has the most secure and efficient travel system in the world. Increasingly, improvements in screening technology and information-sharing are making it possible to enhance security even as processing speeds improve. The approach should be, wherever possible, to use those enhancement to focus consular resources on higher-risk travelers.

This is why expanding the Visa Waiver Program makes sense. As I wrote recently in *Foreign Affairs*, the new VWP system 'in many ways provides greater security against terrorist or criminal travelers than the regular visa system.' Applicant governments are required to share criminal and intelligence information, which greatly enhances the Department of Homeland Security's ability to identify and stop travelers who pose a threat. New VWP countries that join must implement better passenger and baggage screening; adopt secure, forgery-proof passports; and agree to timely reporting of stolen passports. Further, countries must allow regular U.S. government auditing of their travel-related security programs. And finally, they must enroll in the Electronic System for Travel Authorization (ESTA), which requires U.S. screening of all travelers against U.S. terrorist and criminal watch lists. James Carafano of the Heritage Foundation recently testified to this committee that the Visa Waiver program is 'arguably the nation's most important visa program.'"

<http://judiciary.house.gov/hearings/Hearings%202012/Alden%2005172012.pdf>

Our wishful-thinking bottom line: If you could get Rice and Chertoff to join Donahue, Verdery and Alden in that room, you might just get all five attendees to concur that expanding the Visa Waiver Program may be today's best tool for achieving the Joint Vision's goal of renewing America's welcome through improved technology.

You Can Deny a Visa if You Just Don't Like Someone, Correct?

At a recent Press Briefing, DOS Spokesperson Victoria Nuland took the opportunity to explain to Matthew Lee of the Associated Press the limitations on discretionary visa refusals by consular officers.

Question: Okay....can you, in general, talk about why a visa...would be denied?

Ms. Nuland: I don't have the full INA here in front of me, but there are all kinds of reasons that visas can be denied, as you know, can range from concern that the visa is being applied for not for the purpose stated, can be a matter of security concern about the individual, can be a matter of any other derogatory information that we may have with regard to their intent in the United States. There are all kinds of reasons why they might be able to – might be denied under the law.

Question: Really, at your discretion, at the Department's discretion, whether to grant the visa or not?

Ms. Nuland: The Department looks at each application individually, evaluates each one individually, as it applies – as they qualify under the law, and makes the determination as to whether they are eligible.

Question: But what I – I guess what I'm getting at is, if there isn't a derogatory information that is in the – as defined by what the law is, and you just don't happen to like someone for some particular reason, you can still deny that visa, correct?

Ms. Nuland: No.

Question: Are you required to tell someone why they have been denied?

Ms. Nuland: We do give them a citation under U.S. law as to why they're denied, yes.

Question: And – but you're saying, though, that you cannot deny – if someone doesn't – isn't disqualified under the law, there's no other reason you can deny the visa?

Ms. Nuland: There's no "we don't like you, therefore you're not getting a visa" stipulation.

Question: You can't do that?

Ms. Nuland: No.

<http://www.state.gov/r/pa/prs/dpb/2012/05/190333.htm>

The Case for "We Don't Like You, You're Not Getting a Visa"

But isn't there a case for refusing a visa to an applicant who you just don't like, for a reason you just can't articulate?

There is, says one Foreign Service Officer, who argues that providing officers with a "bad vibes" ground for visa refusal could have important security benefits:

"Consular officers use 214(b) as an important anti-terrorism tool, as it is the only generic refusal that lets them say no to someone who gives off bad vibes....

Those of us who have served on the visa line would love to have stronger tools to refuse suspect cases. 214(b) is a great tool for most non-immigrant visas, but the concept (a catch-all, non-appealable refusal) needs to be extended to other categories to allow us to refuse those who give us "bad vibes," even if they haven't yet broken any laws. Remember, the "20th hijacker" was refused entry by an immigration inspector who couldn't identify anything wrong with him, but just had a funny feeling. Like it or not, that's our best defense at catching someone who intends us harm but hasn't yet committed any crimes,

and our consular officers need to have more flexibility to turn those people down."

<http://dailydemarche.blogspot.com/2005/07/religious-visas-threat.html>

Should 214(b) be Used as an Anti-Terrorism Tool?

What does the State Department say about refusing visas under 214(b) when the consular officer can't identify anything tangibly wrong, but just has a funny feeling about the applicant?

According to a December 2004 policy telegram, there are much better tools for excluding terrorists than INA 214(b).

"The question arises whether INA 214(b) constitutes an anti-terrorism tool. As explained above, this section merely separates bona fide nonimmigrants from presumed immigrant applicants. While doing so, it should not be used as or equated with 212(a) grounds of inadmissibility, one of which directly relates to terrorism. Of course, it is accurate to note that during the NIV adjudication process, consular officers identify applicants who do not qualify for nonimmigrant status. In reviewing all the evidence, documentary and oral, the consular officer exercises sound judgment in assessing the applicant's credibility. Indications of possible deception arising from the applicant's demeanor and/or inconsistencies in the applicant's story may cause the consular officer not to be satisfied that the applicant will comply lawfully with all the requirements of the NIV category in question. The consular officer must focus on each of the requirements of the NIV category and be satisfied that the alien will comply lawfully with each requirement. Those applicants who do not satisfy the consular officer that they will meet these legal requirements are refused under INA 214(b). Persons so refused by a consular officer may unknown to the officer also in some cases be inadmissible under 212(a). But if this process raises any suspicion to the consular officer that the applicant might in any way be involved in suspected terrorist behavior or activity, the consular officer should hold the case in abeyance under Section 221(g) and submit a security advisory opinion (SAO) request providing all the facts in the case, even if it could readily be denied under 214(b). The consular officer should also share the information with the appropriate offices of interest at post and solicit their input should they have additional information or background material inadvertently not previously made available to the Consular Section. An SAO request serves to centralize information about potential terrorist activity and facilitate scrutiny of a potential suspect. Once the application has been referred for an SAO, no visa may be issued until the Department responds to the SAO request."

http://travel.state.gov/visa/laws/telegrams/telegrams_2173.html

Accordingly, while "bad vibes" and "I just don't like you" may have some merit for saying "no," the only basis for a visa refusal under INA 214(b) remains the applicant's failure to meet the specific requirements of the applicable nonimmigrant visa classification under INA 101(a)(15). Kudos to Ms. Nuland for expressing current policy so effectively!

Changes to the Foreign Affairs Manual (FAM) Monthly Report

Homeless Nationalities and Selected Processing Posts (9 FAM 42.61 Exhibit I)

Who is a "homeless" visa applicant? In general, an immigrant visa (IV) applicant who is a national of a country in which the United States has no consular representation or in which the political security situation is tenuous or uncertain enough that the limited consular staff cannot process IV applications. 9 FAM 42.61 N3.2-1.

The general rules for processing "homeless" visa applications are as follows:

1. Homeless applicants residing in a third country are processed at the same IV processing post as are nationals of that country. According to the Department:

"Posts **must** accept for processing any IV applicant who is physically present in their consular district provided the applicant has the permission of the host government to remain there legally for a period sufficient to complete processing of the application."

9 FAM 42.61 N3.2-3

2. Homeless applicants physically present in their own home country are processed at designated specific posts. A list of such homeless nationalities and of the consular posts selected for processing their IV applications is set forth at Exhibit I of 9 FAM 42.61.

This month, Syrians and South Sudanese have been added to the list of homeless nationalities. The selected processing post for Syrians is Amman, Jordan; for South Sudanese the selected post is Nairobi, Kenya.

<http://www.state.gov/documents/organization/87875.pdf>

Procedure for Issuing Blanket-L Visas (9 FAM 41.54 N13.6)

Three months ago, the Department modified the L visa regulations by removing the link between the validity period of L visas and the validity period of the USCIS-authorized employment. Instead, L visa validity is now linked to the period set forth in the Reciprocity Schedule for a given country. As is the case for

the United Kingdom, it is not uncommon to find that the validity period for L visas set forth in the Reciprocity Schedule is 60 months.

<http://www.gpo.gov/fdsys/pkg/FR-2012-02-14/html/2012-3455.htm>)

Simply put, in many situations a U.S. consular post will now issue an L visa for a five-year period, even though the validity of the underlying employment can be several years less.

Not surprisingly, this change has led to the critical need for L visa holders to travel with their I-797 Approval Notices (in the case of the beneficiary of an individual L petition) or their I-129-S Notices (in the case of the beneficiary of a Blanket L petition) to ensure that they are not admitted to the United States beyond the expiration date of the authorized employment.

This need is taken up by a new FAM change published this month. The FAM change relates specifically to the beneficiaries of Blanket L visas, and seeks to make certain that consular officers provide these individuals with the I-129-S Notice:

"The consular officer must be sure to properly endorse all three copies of the alien's Form I-129-S, Nonimmigrant Petition based on Blanket L Petition, scan one copy into the case in NIV, and return the original and other copy of the applicant....Proper endorsement includes noting the approval basis and adjudication date in the 'approved as' box; listing the validity dates from the adjudication date to three years from that date; and a post or officer stamp in addition to the adjudication officer's initials or signature in the 'action box.' At the time of the interview, you should advise the alien to hand-carry these forms with them to the U.S. Port of Entry (POE)."

<http://www.state.gov/documents/organization/87229.pdf>

Consular Corner Quiz

1) What normally determines where an individual should apply for a visa?

- (a) The country of the person's citizenship
- (b) The place of the person's residence
- (c) The country which issued the person's last visa

2) Which two countries have been removed from the Visa Waiver Program since 2001?

3) What are the educational and work experience requirements for joining the U.S. Foreign Service?

4) Approximately what percentage of the annual quota on E-3 visas (Australian Professionals) was used last year?

- (a) 25%
- (b) 50%
- (c) 75%
- (d) 100%

5) About how many children from foreign nations do U.S. families adopt each year?

- (a) 1,500
- (b) 10,000
- (c) 20,000
- (d) 50,000

6) According to Congressional findings, how much money on average does each visitor from overseas spend at hotels, restaurants and other United States businesses?

7) Per the Census Bureau, approximately what percentage of the population of the United States is foreign-born?

8) A consular officer generally contacts the Admissibility Review Office in order to:

- (a) Check whether a visa applicant is subject to a statutory inadmissibility.
- (b) Recommend the issuance of a nonimmigrant visa waiver
- (c) Verify whether a visa applicant may have overstayed during a previous visit to the United States.

9) Most of us know that Section 214(b) of the Immigration and Naturalization Act (INA) refers to the presumption that, with limited exceptions, all visa applicants are immigrants unless they satisfy the consular officer that they

qualify for one of the nonimmigrant visa categories defined in INA section 101(a)(15).

But what does 214(a) of the INA refer to?

(a) The authority of the Attorney General to set the duration and conditions of admission to the U.S. of nonimmigrants

(b) The classes of aliens ineligible to receive visas and ineligible to be admitted to the United States

(c) The definitions of the various classes of nonimmigrants.

10) According to the Department of State, which American consular post "carries on its shoulders the Palestinian half of U.S. involvement in Middle East peace efforts?"

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

This month we introduce a new column to the "Top Ten" chart: Average monthly wait times during the past 12 months. This new column will hopefully shed light on whether wait times have been growing or shrinking at a particular location.

#	Country	Consular Post	Visa Wait Time	Change in Wait Times from Last Month	Average Monthly Wait Time During Past 12 Months
1	Cuba	Havana (U.S. Interests Section)	999 days	Unchanged	999 days
2	Venezuela	Caracas	264 days	Unchanged	219 days
3	Nigeria	Abuja	140 days	+18 days	112 days
4	Nigeria	Lagos	93 days	+ 15 days	98 days
5	Yemen	Sanaa	67 days	+ 10 days	33 days

6	Saudia Arabia	Jeddah	47 days	+ 25 days	25 days
7	Colombia	Bogota	43 days	Unchanged	31 days
8	Pakistan	Karachi	38 days	+ 9 days	21 days
9	Kyrgyz Republic	Bishkek	37 days	+ 9 days	13 days
10	Mexico	Guadalajara	33 days	Unchanged	41 days

** Updated to May 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	(264 days)
Africa	Nigeria/Abuja	(140 days)
Middle East and North Africa	Yemen/Sanaa	(67 days)
Central and South Asia	Pakistan/Karachi	(38 days)
Europe and Eurasia	Russia/Moscow	(30 days)
East Asia and Pacific	Philippines/Manila	(23 days)

Answers to Consular Corner Quiz

1. The applicant's residence is the determining factor for the place of application under normal circumstances. 9 FAM 42.61 N1.1

<http://www.state.gov/documents/organization/87872.pdf>

2. Argentina and Uruguay.

3. There are no specific educational or work experience requirements for joining the U.S. Foreign Service.

<http://careers.state.gov/engage/forums/foreign-service-mentors/military-to-foreign-service>

4. (a)

<http://www.travel.state.gov/pdf/FY2011NIVWorkloadbyVisaCategory.pdf>

5. 20,000 children

http://adoption.state.gov/adoption_process/what.php

6. \$4000

<http://www.govtrack.us/congress/bills/112/hr3039/text>.

7. 13%

<http://articles.latimes.com/2012/may/11/local/la-me-foreign-born-20120511>

8. (b)

9. (a)

<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-3422.html>

10. U.S. Consulate General Jerusalem

<http://oig.state.gov/documents/organization/161737.pdf>

Quote of the Corner

"Sometimes, publicly criticizing a government over human rights abuses is not the best way to achieve the results you're seeking.... when you have human rights standards that are so foreign to other cultures....If you're someone, as I am, who believes strongly in the empowerment of women and talk about the rights of women everywhere I go – I've done this now internationally for 17 years. Honestly, a lot of – in a lot of places, it's just not understood. "Of course, we take good care of our women. We don't let them out of the house, so that they never get into trouble." "We don't let them drive cars, so that they can never be taken advantage of. So we are protecting the human rights of our women." You can imagine the conversations that I have."

Secretary of State Hillary Clinton

<http://www.state.gov/secretary/rm/2012/04/188342.htm>

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