

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

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**Two Years After the Earthquake**

The Department of State's Office of Inspector General (OIG) recently released an Inspection Report of the United States Embassy in Port-au-Prince. The OIG inspected the embassy two years after the earthquake which devastated Haiti, killing or injuring more than 500,000 people. Coincidentally, this report was published on the eve of celebrations marking 150 years of diplomatic relations between the United States and Haiti.

The central theme of the report: Embassy Port-au-Prince still has much to do towards restoring normal activities and procedures. While the inspection team expresses great appreciation for the embassy's contributions to reconstructing Haiti, it also reports that the embassy has still not fully emerged from its post-earthquake crisis-mode. The lack of business as usual for such an extended period has had some troubling consequences to internal controls, resulting in mismanagement which has prejudiced the provision of consular and other services.

**The Port-au-Prince Consular Section**

For most of the past two years, the consular section has been led by Consul General Colombia Barrosse, who during her Foreign Service career has been one of America's most talented and spirited representatives to the world of art, music and dance. Ms. Barrosse has directed a staff of 4 consular managers, 12 entry level officers, 2 American family members and 40 locally employed staff members. This staff, per the inspection team, is "knowledgeable, professional and well trained."

The consular section is facing a large turnover this summer. Consul General Barrosse is rotating out, and the Deputy Consul General, and 8 of the 12 entry level officers, are also departing Port-au-Prince.

**The Port-au-Prince Nonimmigrant Visa (NIV) Unit**

The Port-au-Prince NIV Unit had a workload of about 55,000 applications in FY 2011.

Over 30,000 of these applications were refused.

<http://www.travel.state.gov/pdf/FY11AnnualReport-Table%20XVII.pdf>

With close to 6 out of every 10 applicants refused visas, Haiti has one of the world's highest Adjusted Refusal Rates for B visas.

<http://www.travel.state.gov/pdf/FY11.pdf>

The reason for this high rate of visa refusals seems obvious: Most applicants from Haiti, the least-developed country in the Western Hemisphere and one of the poorest in the world, cannot overcome the statutory presumption that they are immigrants. For example, the report describes relatives of Haitians who are in the U.S. in Temporary Protected Status as a specific group of high-refusal tourist visa applicants.

But the report also points to other, less obvious reasons for visa refusals. One example: while the State Department inspectors insist that knowledge of Haitian Creole is "essential" for visa interviews, they also note that some of the interviewing officers have not received any training in this language. It isn't unreasonable to conclude that the inability to communicate in the essential language of the visa interview may result in inconsistent – and occasionally incorrect – adjudications.

### **Document Fraud**

Unreliable civil records and unreported deaths following the earthquake make documentary and imposter fraud "a daily challenge" for consular officers. According to the report, the high level of fraud has necessarily compelled the Consular Section's Fraud Prevention Unit (FPU) to focus on casework, to the neglect of validation studies and trend reporting. Regrettably, as we'll see below, mismanagement elsewhere in the embassy has stuck a spoke in the FPU's wheels, preventing it – and indeed the consular section as a whole – from operating with greater efficiency and effectiveness.

### **Port-au-Prince Consular Management Controls**

The management controls put in place by an American embassy or consular post ensure that its activities and operations are carried out in accordance with U.S. laws and regulations. Properly performed, these controls reduce the likelihood of mismanagement and assist in the detection, correction and prevention of fraud.

The OIG inspection team concluded that management controls at Embassy Port-au-Prince "need improvement."

This conclusion was made with a good deal of understanding: Post-earthquake demands on the embassy to show quick progress have acted "to the detriment of internal controls. The hectic pace led to communication breakdowns, which also served to weaken controls. Now there is a need to gradually transform the

embassy back to normalcy and, as that happens, to strengthen internal management controls."

Part of the detriment has been to consular internal controls. In particular, the OIG apparently found lapses in visa adjudication reviews, inasmuch as the inspection team had to "counsel" consular managers on the need to perform these reviews promptly. As described in the June 2012 *Consular Corner*, prompt visa adjudication reviews are among a consular manager's most critical national security-related duties, ensuring that visas are not being issued to applicants who are not eligible for them.

### **Public Access to the Consular Section**

The OIG inspection report describes a situation in which visa applicants and other consular visitors encounter nasty, hazardous conditions:

"Hundreds of people stand for several hours unprotected from the elements with insufficient seating and limited access to toilets and water....The heavily trafficked area in front of the consular entrance floods during the rainy season, creating dangerous and unsightly conditions. The drainage is inadequate to deal with heavy downpours; in addition, the slope directs the water toward the consular entrance. A makeshift solution involves placing wooden pallets over the muddy side walk areas, creating a safety hazard."

The report continues:

"An insufficient number of poorly placed signs and a few stanchions inadequately organize pedestrian flow. The arrows on the single multidirectional sign point in the wrong directions. Guards direct people effectively, but the signs are confusing and incomplete."

Adding insult to injury, elderly and disabled applicants are not afforded sufficient seating options.

### **Port-au-Prince Facilities Management**

Why is public access to the consular section in such a dreadful state of affairs?

The OIG inspection team:

"The facilities management unit appears overwhelmed by its routine maintenance and project workload."

In the consular context, this has meant that "projects involving the consular section have languished; office space reconfiguration to accommodate two officers and a consular entrance project to eliminate flooding and the need for pallet walkways during the rainy season."

The result is the spoke in the FPU's wheels which we mentioned earlier. An Assistant Regional Security Officer-Investigations (ARSO-I) arrived in December 2011. ARSO-I's are agents of the Diplomatic Security Service and they assist consular anti-fraud units investigate visa and passport fraud. This is the first time Port-au-Prince has had someone in this position; indeed, the OIG called the new ARSO-I position "a positive augmentation to the consular section's ability to prevent and detect fraud."

The OIG found that despite 18 months advance notice of the ARSO-I's arrival, the embassy's facilities management unit has not yet configured appropriate office space within the consular section. Without any assigned private office space, the ARSO-I is compelled "to work a flexible schedule in order to make sensitive investigative telephone calls without being overheard."

Perhaps most frustrating, this is one staffing problem which can't be simply chalked up to [midlevel staffing gaps](#) in the Foreign Service. It looks like facilities management has brought the problem upon itself:

"In recognition of the unit's increased workload, the ICASS (International Cooperative Administrative Support Services) council approved, in FY 2011, an additional 18 positions for facilities management. As of the inspection, however, only 10 positions had been filled. The major delay has been the supervisor's slow preparation of position descriptions."

How would you discipline this kind of mismanagement? The OIG, for its part, chose its words carefully:

"The facilities manager needs to work toward identifying and being accountable for specific objectives, tasks, standards, and milestones."

Good luck with that.

Other than wishing the incumbent and incoming consular staff much success, there's no better way to conclude this item than with the text of a special note included at the outset of the OIG report:

"The inspection team would like to express its deep appreciation to the Haitian and American employees of Embassy Port-au-Prince whose daily efforts contribute to the reconstruction of Haiti. We wish to express gratitude in particular to the loyal Haitian employees who lost family members and friends and who endure continued suffering from injuries and dislocation, all the while retaining hope for Haiti's future."

Amen.

**"Our First Thought Was How We Could Help"**

The OIG understandably treats Embassy Port-au-Prince with kid gloves. Members of the embassy community lost their lives in the earthquake, and nearly 60% of embassy housing was lost. As the inspectors note, the tragedy has left "an indelible imprint" on the embassy.

In order to recall the courage and patriotism of those who assisted in the immediate aftermath of the tragedy, we offer a summary of our interview of two years ago with Foreign Service Office Shaila Manyam. Shortly after the earthquake hit, Ms. Manyam rushed to Haiti from Embassy Tel-Aviv, where she was serving as Consul/Economic Officer. Prior to Israel, she had been served as Embassy Press Attache and Spokesman in Haiti.

Here is Ms. Manyam, on February 10, 2010:

*On the hours of thought and excitement leading to the decision to volunteer for temporary duty in Port-au-Prince.*

"It was in fact, literally hours. As soon as we heard what happened, our first thought was how we could help. My first job in the Foreign Service was at the Embassy in Port-au-Prince and during my time there, I became very attached to the country and its people. I had the opportunity to work on rebuilding efforts and I speak the languages (French and Creole). To me, there was no way I couldn't go there. I wouldn't have felt right not going."

*On the living conditions like for Foreign Service Officers at Embassy Port-au-Prince:*

"A large percentage of staff assigned to Port au Prince was affected directly by the earthquake. Many officers lost their homes and everything they own, so while they're not in the exact same situation as many of the Haitian people, they certainly are experiencing something similar. Right now, most are sleeping in their work spaces, friends' guest rooms or floors, or in tents pitched on the Embassy lawn – also because so many USG personnel are on the ground to help and we also need places to stay. But we are luckier than most in that we do have access to running potable water, electricity and food."

*On the reopening of visa services:*

"The Embassy reopened IV services on February 3<sup>rd</sup> – about two weeks post-earthquake.... With limited resources and so many people to help, we are focusing on immigrant visas and American Citizens Services. At this time, we are not open for NIV processing but hope to resume full services as soon as possible.

I don't think anyone can have gone through this and not expect that one of the biggest natural disasters in modern times would affect people. That said, the officers and local staff here are some of the most professional and resilient consular experts in the world, working under normally dire circumstances."

*On working amidst such great human suffering:*

"I'm personally taking a lot of comfort in seeing so many of us "Haiti alums" return and in seeing the local staff. Nothing has made me happier than being able to run up the stairs of the Embassy and hug my former public diplomacy team, the drivers and so many of the amazing Haitians who keep this Embassy going. Knowing that you're not alone in feeling the way you do has been key, as have small signs of moves back to normalcy – like seeing the ladies who used to sell me fruit on the street two years ago back in business."

*On the prospects for post-earthquake Haiti:*

"Even with catastrophic building collapses and the loss of many officials, there is still a functioning Government which is working with hundreds of partners to cope with the sheer magnitude of what has happened. It's a day-by-day struggle to deal with the aftermath and start the process of rebuilding, but I continue to have enormous hope for Haiti and its people."

<http://www.ilw.com/articles/2010,0224-schwartz.shtm>

### **Embassy Manila's Not-So-Strange Request**

Immigrant Visa Applicant:

"I was petitioned by my mother many years ago and finally had my immigrant visa interview yesterday. However, the consular officer asked me to submit a picture of my elderly mother holding a newspaper in front of a U.S. post office. I must admit, this strikes me as a very strange request, especially considering that my mother is 89 years old and does not easily get out the house. Did I misinterpret the consular officer's request?"

Embassy Manila:

"You did not misinterpret the consular officer's request. The reason the officer requested the photo of your mother is twofold: first, to establish that your mother is still living; and second, to establish that she is domiciled in the United States.

Remember, the underlying concept of family-based immigrant visas to the United States is to *reunite* family members who have been living apart on account of immigrating to the United States. That is why, in most cases, the death of a petitioner renders that petitioner's immigrant petition for his/her family members invalid. See our previous post on the [death of a petitioner](#) for more information.

Reunification is also the underlying concept behind domicile. If your mother, despite being an American citizen, has been residing in the Philippines for the last 20 years with only infrequent travel to the United States, she is no longer domiciled in the United States and the beneficiaries of her immigrant petition are

no longer eligible for immigrant visas because you are already “reunited” with the petitioner here in the Philippines.

If your mother has retired here in the Philippines but plans to return *permanently* to the U.S. with you and your family upon your being issued immigrant visas, you will need to submit detailed travel and residence plans to the consular officer. More information can be found [on our website](#).

Does the photo of your mother make more sense now? The picture of her with the newspaper establishes that she is alive and well on a proven date, and the post office backdrop shows exactly where she is in the United States! It may indeed seem a bit strange, and we do understand it isn't always easy for the elderly to pose for these pictures, but we sometimes need these photographs to ensure that you and other visa applicants qualify for immigrant visas under all facets of U.S. immigration law."

<http://blogs.usembassy.gov/philippines/?p=1014>

### **Combating Crime with Visa Waivers**

One of the principal requirements for a country's admission to the Visa Waiver Program (VWP) is its consent to enhanced law enforcement and security-related data sharing with the United States.

An example of this data sharing, and of its use in combating serious crime, is found in the Digest of United States Practice in International Law 2011, published earlier this month:

"Visa Waiver Program Agreements on Preventing and Combating Serious Crime

During 2011, the United States signed bilateral agreements with Belgium, Croatia, Ireland, and Sweden on preventing and combating serious crime. The agreements provide a mechanism for the parties' law enforcement authorities to exchange personal data, including biometric (fingerprint) information, for use in detecting, investigating, and prosecuting terrorists and other criminals....As of the end of 2011, the United States continued to negotiate such data-sharing agreements with other members of the Visa Waiver Program, consistent with a federal statute requiring completion of such agreements with all members of the program."

<http://www.state.gov/documents/organization/194113.pdf>

The data shared with the United States can include (for example) fingerprints, DNA profiles, and information on passports, national identify documents and court convictions.

<http://www.state.gov/documents/organization/169476.pdf>

## **The First American Consul in China: Lots of Appreciation but No Salary**

From the Consulate General Guangzhou website:

In 1784, the American merchant ship Empress of China reached what was then known as the port of Canton (now Guangzhou) transporting ginseng to trade for Chinese black tea. The ship also carried on it Major Samuel Shaw, a 29-year old former Revolutionary War artillery officer, who served as the business agent for this first American trade effort to the "Middle Kingdom."

Shaw wrote to Secretary of Foreign Affairs John Jay, recommending that the young United States appoint a consul and vice consul to Canton. "Such officers," he noted, "would have a degree of weight and respect which private adventurers cannot readily acquire, and which would enable them to render essential services to their countrymen."

Major Shaw was appointed the first American consul to China, although he would serve "with neither salary nor perquisites but with the confidence and esteem of the United States."

<http://guangzhou.usembassy-china.org.cn/news.html>

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

#### **Criminal Grounds of Inadmissibility: Controlled Substance Traffickers (9 FAM 40.23 Exhibit I)**

Foreign nationals who are, or have been illicit traffickers in any controlled substance or in any chemical listed in the Schedules of Controlled Substances ([21 C.F.R. PART 1308](#)) are inadmissible to the United States. Exhibit I to 9 FAM 40.23, which reproduces the Schedules of Controlled Substances, has been updated to reflect changes to these schedules of opiates, stimulants, depressants, narcotics, anabolic steroids and hallucinogenic substances. In case you were wondering, marijuana is still included in Schedule I of these Controlled Substances.

<http://www.state.gov/documents/organization/86951.pdf>

#### **Miscellaneous Grounds of Inadmissibility: Former Citizens (9 FAM 40.105 N1)**

According to State's Office of Inspector General, renunciation of American citizenship is a "major new growth area." (See, for example, the OIG Inspection Report of Consulate General Hong Kong:

<http://oig.state.gov/documents/organization/148247.pdf>).

Perhaps for this reason, State has attempted to make "[plain language changes](#)" to its guidance relating to the inadmissibility of former citizens.

We say "attempted to make" because the changes actually make the language of the guidance less understandable. Here's what we mean:

Prior to the change, Note 1 to 9 FAM 40.105 read as follows:

"INA 212(a)(10)(E) applies only to renunciations of U.S. citizenship that took place on or after September 30, 1996."

After the change, Note 1 reads as follows:

"INA 212(a)(10)(E) applies to any alien who is a former citizen of the United States and who is determined by the Attorney General to have officially renounced United State Citizenship for the purpose of avoiding taxation by the United States that took place on or after September 30, 1996 is inadmissible."

For the lack of a noun, busy consular officers are left guessing what event must have taken place on or after September 30, 1996.

We much prefer the previous version of this Note (see above). Not only do you get your noun, but "citizenship" is spelled with a lower case "c." Best of all, the name of our country is spelled correctly.

Changes have also been made to Note 3 of 9 FAM 40.105, relating to the availability of waivers for nonimmigrant visa applicants found inadmissible under this provision. Previously, this guidance was rather short-and-sweet:

"There is no waiver available for immigrants found inadmissible under INA 212(a)(10)(E). You should recommend nonimmigrants for an INA 212(d)(3)(A) waiver."

This guidance has now been expanded and made a tad more restrictive:

"There is no waiver available for immigrants found inadmissible under INA 212(a)(10)(E). For those individuals seeking to visit the United States temporarily, however, this ground of inadmissibility can be waived. You should recommend non-immigrants for an INA 212(d)(3)(A) waiver. Waiver is discretionary and applications are evaluated on a case-by-case basis."

9 FAM 40.105 N3

<http://www.state.gov/documents/organization/87132.pdf>

**American Citizens Services and Consular One (7 FAM 016)**

The Department has issued a new section to 7 FAM relating to how American Citizenship Services units should report consular protection and passport and citizenship cases.

The new section, 7 FAM 706, includes a discussion of Consular One, the new framework system announced to the field in March of this year. Consular One will eventually consolidate all current systems relating to citizenship and passport services. According to the new section, a critical feature of Consular One is its person-centric case work model:

"No longer will information be held in many systems, in separate case files, in emails, or elsewhere. You will be able to access a U.S. citizen's record literally from cradle to grave or, with a naturalized citizen, from visa application to passport issuance and, following conferral of citizenship, to the same extent as other U.S. citizens' records. Our goal is to put the right information at the fingertips of the right people when they need it most, whether in a routine passport application, an Information Memorandum to the Secretary, or during a crisis.

This system is intended to provide for a better, more well-informed consular team that enjoys improved system support. We aim to give action officers the information and documents they need for a swift response to requests for briefings by senior officials, for assistance in a crisis, or for routine consular services."

How sophisticated is the Consular One system? Very, according to the requirements for the position of Program Manager - Consular One DoS:

- US citizenship in order to obtain DoD clearance OR an active secret clearance.
- Bachelors of Science Computer Science or related degree. Masters degree preferred.
- Program Management Professional required(PMP)
- Fifteen to twenty years (15-20) experience and the ability to work independently to manage a large-scaled software engineering and integration projects.
- Experience in implementing ERP solutions (MicroSoft Dynamics Preferred).
- Successful track record in achieving project completions, on time and within budget, with high degree of customer satisfaction.

[http://www.jobwrench.com/display\\_job/49689/Program\\_Manager\\_-\\_Consular\\_One\\_DoS.html?searchId=1327931714.69&page=1](http://www.jobwrench.com/display_job/49689/Program_Manager_-_Consular_One_DoS.html?searchId=1327931714.69&page=1)

New section 7 FAM 706 concludes with a table providing a summary and cross references to certain critical case reporting requirements on subjects ranging from arrests of U.S. citizens to child abductions.

<http://www.state.gov/documents/organization/86556.pdf>

### **Consular Corner Quiz**

1) Popular belief holds that a U.S. embassy or consulate is U.S. soil. Is this belief correct?

2) Which country had the largest increase in overseas Foreign Service staffing in Fiscal Year 2011?

- (a) Afghanistan
- (b) Brazil
- (c) China
- (d) India
- (e) Pakistan

3) In calculating unlawful presence, should the date that the Form I-94 expires be counted?

4) A consular officer returns a petition to USCIS. Thereafter, USCIS reaffirms the validity of the petition and sends it back to the consulate. The consular officer irreconcilably disagrees with the reaffirmation, but has no additional factual evidence to support the belief that the visa applicant is not entitled to status.

What should the consular officer do?

- (a) Process the case to conclusion.
- (b) Send the case to the Bureau of Consular Affairs for review and discussion with USCIS.
- (c) Return the petition back again to USCIS.

5) What is the mission of the Bureau of Consular Affairs' "fly-away" teams?

- (a) Accompany the Secretary of State on foreign travel
- (b) Crisis response
- (c) Temporary visa adjudication support

6) True or false: A successful immigrant visa applicant must enter the United States before his or her visa expires, and before the related medical examination results expire.

7) May an American citizen be considered a "foreign service national" for purposes of employment at a U.S. consular post?

8) What country became the world's newest nation this month last year?

9) What was the name of the special registration program for nonimmigrants from 25 designated countries which was suspended last year?

10) Which country was the winner of the State Department's inaugural July 4<sup>th</sup> apple pie-making contest?

(Hint: The contestants were Afghanistan, Azerbaijan, Belgium, Cypress, Germany, Hungary, Italy, Libya, Lithuania, Macedonia, Slovenia, Turkey, Ukraine, Denmark and the United Kingdom.)

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

44: The number of days Caracas dropped from its wait times in the past two months, and the number of days Abuja added in this same period. Calgary wait times are more than 5 times their monthly average. Guadalajara, at 62 days on July 5<sup>th</sup>, fell to just one day in the span of two weeks, thanks to a visa surge: <http://guadalajara.usconsulate.gov/news-events/consulate-news/visas-time.html>

<b>#</b>	<b>Country</b>	<b>Consular Post</b>	<b>Visa Wait Time</b>	<b>Change in Wait Times from Last Month</b>	<b>Average Monthly Wait Time During Past 12 Months</b>
1	Cuba	Havana (U.S. Interests Section)	999 days	Unchanged	999 days
2	Venezuela	Caracas	220 days	- 24 days	227 days
3	Nigeria	Abuja	184 days	+28 days	132 days
4	Nigeria	Lagos	93 days	- 12 days	96 days

5	Mexico	Guadalajara	62 days	+ 15 days	46 days
6	Yemen	Sanaa	59 days	- 3 days	39 days
7	Canada	Vancouver	57 days	+ 22 days	31 days
8 (tie)	Canada	Calgary	56 days	+ 53 days	11 days
8 (tie)	Madagascar	Antananarivo	56 days	+ 13 days	10 days
9	DR Congo	Kinshasa	45 days	+ 17 days	11 days
10 (tie)	Colombia	Bogota	44 days	- 6 days	31 days
10 (tie)	Italy	Milan	44 days	+ 14 days	22 days

\*\* Updated to July 5, 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	(220 days)
<b>Africa</b>	Nigeria/Abuja	(184 days)
<b>Middle East and North Africa</b>	Yemen/Sanaa	(59 days)
<b>Europe and Eurasia</b>	Italy/Milan	(44 days)
<b>East Asia and Pacific</b>	Cambodia/Phnom Penh	(42 days)
<b>Central and South Asia</b>	Kyrgyz Republic /Bishkek	(29 days)

### **Answers to Consular Corner Quiz**

1. No. 7 FAM 013
2. (a). <http://gao.gov/assets/600/591595.pdf>
3. No. 9 FAM 40.92 N1
4. (b). FAM 42.43 N4.1

5. (b) <http://www.state.gov/documents/organization/141243.pdf>
6. True. [http://travel.state.gov/visa/immigrants/info/info\\_3744.html#changes](http://travel.state.gov/visa/immigrants/info/info_3744.html#changes)
7. Yes. Foreign Service Nationals are foreign nationals and other locally resident citizens (including US citizens) who are legally eligible to work in that country. <http://careers.state.gov/local-employment>
8. South Sudan
9. The National Security Entry-Exit Registration System (“NSEERS”).
10. Belgium  
[http://www.washingtonpost.com/blogs/all-we-can-eat/post/the-state-dept-apple-pie-and-july-4th/2012/07/04/gJQAImgNW\\_blog.html](http://www.washingtonpost.com/blogs/all-we-can-eat/post/the-state-dept-apple-pie-and-july-4th/2012/07/04/gJQAImgNW_blog.html)

### **Quote of the Corner**

"I am aware that this mission is filled with people who wake up every day clear-eyed about the task ahead, but asking, "What can I do today to make a difference," and you have. You have made a difference....I am very, very proud to be your colleague."

Secretary of State Clinton speaking with the staff of U.S. Embassy Kabul.  
<http://www.state.gov/secretary/rm/2012/07/194671.htm>

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