



## Three-Part Telephone & E-mail Seminar: Whats New In Consular Processing: NIVs, IVs And Waivers

Speakers: Jan Pederson, Michael H. Davis, Stephen K. Fischel, Silvia Graves, Evan Green, Frances J. Hayden, Kehrela M. Hodkinson, Howard Hom, John B. Klow (CBP) and Gerald P. Seipp

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*Disclaimer: participation in this seminar does not create an attorney-client relationship with the speakers.*

### Seminar Outline

#### FIRST Phone Session on April 27, 2006: NIV Issues

Third Country National NIV Applications In Canada And Mexico

- Border Posts: overview of who can and cannot apply.
- Rationale for limitations on who cannot apply.
- Appointments always necessary.
- Necessary forms: DS-156, DS-157, and DS-158.
- At which posts can List of 26 and T-7 apply?
- Is there a case for a TCN not applying in Canada or Mexico, if eligible to do so?
- Border Post review of right to counsel at visa interviews.
- Circumstances under which an applicant not issued a visa at a border post can return to the United States.

Home Country Visa Applications

- Appointments almost always necessary. Check waiting times on DOS and consular post website for details.
- Research post policies, personnel and local red flags.
- CIS approved petitions (H, L, O, P) are not a promise of a visa.
- Prepare the client for the interview and ensure visa applications are completed accurately and completely.
- Documents applicant should bring to the interview.
- Waiver of personal appearance.
- What to do when there is a glitch at the visa interview:
  - Security clearances, NCIC Checks, and Hits in the Database: the applicant forgot about the arrest for pot or shoplifting 30 years ago.
  - Petition Issues: Job Inflation and Skills Tests - does the job exist and can the employer afford to pay the wage?

#### SECOND Phone Session on May 18, 2006: IV Issues

Considerations in Consular Processing.

- Unlawful presence and effect on application
- Risk that the applicant's visa and/or immigration history may result in delay or denial.
- Readjudication of labor certifications, visa petitions and qualifications of applicant.
- Considerations in consular policies in processing employment-based immigrant visas on the basis on an original notice of approval of the I-140 and consular acceptance of third country national immigrant visa cases, per DOS Cable 180792, "Processing I-140 Petitions for Applicants Residing in the U.S."
  - Which DOS posts accept? Refuse? Which are undecided?
  - Processing an IV on the basis of an original notice of approval can save years of waiting. What can attorneys do to increase consular receptivity to such processing, particularly where there are no fraud indicators (Cases with low/no fraud indicators.)

"Following-to-join" issues.

- Documents to file with the consular posts.
- When can principal alien's entitlement to LPR status be readjudicated at the IV interview of the "following-to-join" spouse or child?
- When may the IV issuance be properly delayed and for how long? (Issue arises in Manila when principal alien adjusted status as a nurse; Issue arises when principal alien adjusted status as an asylee or through legalization; Issue arises when consular officer questions whether principal alien in F2A (unmarried minor child) and F2B (unmarried, adult son or daughter) cases is maintaining his/her principal place of residence and domicile in the United States at the time of the interview.)

Considerations in family-based petition cases.

- When blood relationship questioned, may attorney insist on DNA test and through what mechanism? Often much time would be saved through DNA testing, particularly when the alternatives are returning an approved petition to CIS and/or awaiting the outcome of a local investigation.
- Strategies to resolve relationship questions locally in lieu of petition return to CIS.
- I-864 issues (E.g. Whether petitioner "resides" in the United States.)

Processing of an "Age-Out" Case.

Processing of a Child Status Protection Act (CSPA) Case.

"Portability of an approved alien labor certification and I-140" to immigrant visa processing.

#### THIRD Phone Session on June 1, 2006: Waiver Practice in Consular Processing

Nonimmigrant Visa Waivers of Inadmissibility.

- General Issues:
  - Who is eligible for a 212(d)(3) waiver?
  - Which grounds can be waived?
  - Which grounds cannot be waived?



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- The life of a waiver.
  - Procedures for requesting a 212(d)(3) waiver.
    - Request made to consular officer after refusal.
    - Consular officer can either recommend or refuse to recommend to overseas DHS office that a waiver be granted.
    - DHS has final authority to grant or deny waiver.
    - Appeal procedures if consular officers refuses to make favorable recommendation and winning strategies.
  - Processing Times and Procedures.
    - When the waiver request must or may be sent to the Visa Office by the consular officer.
- Criteria considered in waiver request/approvals.
- Matter of Hranka effect?
  - How big, how bad and how long ago was the prevarication?
  - How long ago was the conviction and how serious was the crime?
  - Evidence of reformation and remorse.
  - Purpose of trip. Does life-saving medical treatment trump a trip to Disneyland?
  - Consular officers are directed to apply a balancing test; weighing the equities against the negative factors. How this works in practice.

Immigrant Visa Waivers of Inadmissibility

- General Issues
  - Who is eligible for a waiver?
  - Which grounds can be waived?
  - Which grounds cannot be waived?
- Procedures for requesting a waiver.
  - Form I-601 filed with consular officer for most grounds.
  - Consular officer must forward I-601 to DHS office overseas for adjudication.
  - Fingerprints and G-325A often required.
  - Send client to IV interview fully documented with respect to both possible grounds of ineligibility and reasons why waiver should be granted.

Coming to America when a visa isn't issued.

- Humanitarian Parole
- Visa Waiver at port-of-entry
- 212(d)(4) waiver at land border port of entry

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#### About the Speakers

**Jan Pederson** is the founder of Pederson Immigration Law Group, P.C. in Washington, D.C. and has practiced law in the Washington, D.C. since 1980. Recognized by The Washington Post as one of "seven leading lawyers" in Washington, D.C., Ms. Pederson has been dedicated to the practice of immigration and nationality law for over twenty years. She has successfully represented thousands of clients and is masterful at resolving complex immigration issues. She is a frequent national lecturer on the topic of consular processing and has authored many papers on the topic. She served as president of the Washington, D.C. Chapter of the American Immigration Lawyers Association (AILA); and as an elected director of the national Board of Governors of AILA for eighteen years. She served as a chairperson of the Physicians Task Force of AILA and has also served as chairperson of the AILA Visa Office Liaison Committee and Refugee Committee. She was the recipient of the prestigious national award, The Edith Lowenstein Award, in 1997 for excellence in the advancement of the practice of immigration law. Ms. Pederson graduated with honors from the University of Washington with a Bachelor of Arts degree in Economics and from Howard University with a Juris Doctor degree.

**Michael H. Davis** practices immigration law in Minneapolis. He represents clients in complex immigrant and nonimmigrant cases at U.S. consulates worldwide, with a particular focus on Canada, Mexico, Latin America, and India. Mr. Davis is Associate Editor of AILA's Visa Processing Guide and serves on AILA's Department of State Liaison Committee.

**Stephen K. Fischel** was former Director of the Office of Legislation, Regulations and Advisory Assistance in the Visa Office of the U.S. Department of State. He is now with Fischel Mohar and Fanning as a partner. He has over 30 years of experience in international immigration policy making, has played a critical role in key legislation governing global movement of people and is an international expert and lecturer on matters relating to U.S. visa law. He is an active contributor to numerous immigration law and policy-related professional organizations. In his most recent position at the U.S. Department of State, he was responsible for security and non-security advisory opinions, supervised analysis and implementation of visa laws impacting U.S. consular affairs, worked closely with Congress in drafting immigration legislation, worked with the President's Domestic Policy Council on the President's Temporary Worker Program, and was the primary immigration law advisor to the Assistant Secretary of State for Consular Affairs. Other notable projects he oversaw include the Mexican Migration Talks, negotiation and implementation of NAFTA, and the negotiation of the Memorandum of Understanding between the U.S. Department of State and the Department of Homeland Security regarding the transfer of certain visa authority prescribed by the Homeland Security Act. Mr. Fischel earned his Juris Doctor degree from the University of Santa Clara School of Law and a Master of Laws in Taxation from the Georgetown University Law Center. Mr. Fischel works and resides in Washington D.C.

**Silvia Graves** graduated from The Catholic University of America in Washington, D.C. in 1986, with both a Juris Doctor and a Masters Degree in Psychology. She was a Chair of the American Immigration Lawyers Association (AILA), Texas Chapter (2001-2002). She has served as a Liaison between the American Immigration Lawyers Association and the Immigration Service in Houston, Texas, from 1995 to 1998. She was Program Co-Chair of AILA National Spring Conference in Washington, D.C. in 1998. She was a member of the AILA National Program Planning Committee for the 1999 and 2003 AILA Annual Conference in Seattle, Washington and New Orleans, LA. She was a Chair of the Naturalization Committee at the 1998 AILA National Annual Conference in Houston, Texas. She was the Program Chair for the AILA Texas Chapter 2000 Spring Conference in Santa Fe, N.M. She has served with the AILA Texas Chapter as a Secretary, Treasurer and Vice Chair. She has served as a Chair of the Awards Committee and Chair of the Nominating Committee for Officers of the AILA Texas Chapter (2003). She has been an active member of the Hispanic Chamber of Commerce and Consular Liaison for AILA Texas Chapter for the last three years. She has been practicing exclusively immigration for twenty years in Houston. She travels regularly to Mexico and Canada to represent third country nationals applying for nonimmigrant visas. She has been a speaker at a number of AILA, NAFSA and the Houston Bar conferences, on consular practice and other immigration issues.

**Evan Green** is with the law firm Green and Spiegall in Toronto, Canada. He was called to the Bar of the Province of Ontario in 1990 and is a member of the Law Society of Upper Canada. He is currently the immediate past Chapter Chair of the American Immigration Lawyers Association (AILA) Canada Chapter. He practices corporate immigration to Canada on a permanent and temporary basis and he works extensively with consular processing at the American consulate in Toronto. He also deals with NAFTA applications at ports of entry. He has spoken at numerous AILA annual and regional conferences and is currently a Chair of the AILA's Northern Border Task force.

**Frances J. Hayden** has been practicing law for more than 18 years. She is a graduate of the prestigious School of Law at the University of California at Los Angeles (UCLA) and a member of the American Immigration Lawyers Association (AILA), as well as the California Bar Association. Frances is fluent in Spanish and has her B.A. in Spanish Language and Literature from Western Washington University. For the past 15 years, she has focused on consular processing of non-immigrant visas at U.S. embassies and consulates worldwide, with a special emphasis on third-country national visa processing at border posts in Mexico and Canada. She and the attorneys associated with HaydenLaw travel with visa applicants to American consulates in Mexico and Canada several times each month. These trips keep Frances on top of all current visa regulations and ongoing policy changes. She is a recognized expert in her field. For 2 years, she served as a member of the American Immigration Lawyers Association (AILA) Liaison Committee with the U.S. State Department's Visa Office in Washington D.C. This important AILA committee is dedicated to maintaining open communication with the government to promote the fair interpretation of all U.S. immigration laws at U.S. consular offices worldwide. Frances also co-authors chapters on visa processing in Mexico City and Seoul, South Korea in "The Visa Processing Guide," a useful practical handbook for other immigration attorneys that is published each year. She has been a featured speaker and moderator at numerous AILA national conferences and other meetings on topics such as "Consular Processing Tips--What Works and What Doesn't."

**Kehrela M. Hodkinson** was admitted to the California State Bar in 1980, after graduating from Loyola Law School in Los Angeles. She established her first law office in Los Angeles, California in 1982, where her practice concentrated on nonimmigrant visas and employment and family-based immigration matters. After moving to San Francisco, California in 1987, she founded a second immigration law firm and continued to provide expertise relating to temporary and permanent visas for business personnel and family-based immigration. Since 1994, Ms. Hodkinson has exclusively practiced US immigration and nationality law in London. Ms. Hodkinson represents a broad range of corporate and individual clients in connection with nonimmigrant visa matters, immigrant visa petitions, extraordinary ability petitions and family-based immigrant petitions. In addition, she provides advice relating to maintaining permanent resident status and expatriation issues. Ms. Hodkinson is a founding member of the Academy of Business



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Immigration Lawyers (ABIL), a think tank dedicated to promoting best practices in immigration client service and law firm management and has been nominated by her peers to the International Who's Who of Business Immigration Lawyers. She is a member of the American Immigration Lawyers Association, the American Bar Association, and American Women Lawyers in London. Ms. Hodkinson is a frequent speaker at professional conferences regarding US visa processing in London and is often asked to testify before UK courts with respect to US immigration ramifications related to child custody matters and issues regarding treaty investor/treaty trader status.

**Howard Hom** is a Certified Specialist in Immigration and Nationality Law, California State Board of Legal Specialization. He has been an adjunct Professor of Law, Whittier Law School, Costa Mesa, California, since 1995. Attorney Hom graduated, cum laude, from Loyola Law School in 1976. Upon graduation he was hired to work for the Immigration and Naturalization Service under the Attorney-General's Honor Law Graduate Program. After five years, Attorney Hom entered private law practice where he has handled many complex immigration and citizenship cases. Attorney Hom is a member of the elite group of attorneys who have presented oral argument before the United States Supreme Court. See, *I.N.S. v. Yang*, 117 S. Ct. 350(1996). Attorney Hom's opinion and assistance are sought after by many of his colleagues. He is the "immigration attorneys' attorney."

**John B. Klow** is the Interim Director of the Admissibility Review Office at the Bureau of Customs and Border Protection (DHS)

**Gerald P. Seipp** was admitted to the New York bar in 1973. He has been practicing Immigration Law for over 20 years. He graduated from the University of Michigan Law School in 1972. He started his legal career as a VISTA lawyer assigned to a Legal Aid office in rural Western, New York, where his primary clientele were migrant farm workers. After 4 years of legal services work he joined the faculty of the State University of New York at Buffalo Law School. In 1982 he joined a Buffalo, New York law firm where he initially concentrated his practice on special education litigation and Social Security disability. He became a partner of the firm in 1989, and the firm was named "Serotte, Reich & Seipp". He began litigating Immigration cases in 1983, and his practice eventually became concentrated in all facets of Immigration Law. In addition to his private practice, he returned to the Buffalo Law School and served on the adjunct faculty, creating and teaching the Immigration Law course for 15 years, from 1988 until 2002. He has authored numerous articles and presented at several American Immigration Lawyers Association (AILA) annual and local conferences. He authored the January 2002 West Group Immigration Briefing on the topic of Aggravated felons and the August and September, 2003 Briefings on Waivers of Inadmissibility. Mr. Seipp is past Chair for the Upstate New York AILA Chapter. He is listed in Best Lawyers in America under Immigration Law. For many years, he has served for the AILA mentor program on the topic of waivers. In February of 2005, Mr. Seipp was admitted to the Florida bar.