Dude, Where’s My Visa? – Practical tips for handling complex nonimmigrant visa issues at U.S. consulates

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Current Trends at the U.S. Consulates

• Hot topics
• Working with Consular Officers
• Follow up after the interview
• Best practices and Working with Legal Net
• Congressional Representative Inquiries
L-1 Issues

• Specialized Knowledge factors for L-1B
• Managerial/Executive factors for L-1A status
• Blanket v. individual petition approvals
• Common problems
H-1B Issues

• Preparing for the H-1B visa interview
• Where to apply
• Misrepresentations
• Post interview issues
• H1B1 / E-3 issues
E-1 / E-2 Issues

• Post specific
• Key hurdles
• INA §214(b)
• No direct path to green card
B-1 Issues

• Acceptable B-1 activities
• INA §214(b)
• B-1 in lieu of H-1B
F-1 Issues

- INA §214(b) – Ties to home country
- Purpose for studying abroad, i.e. “career path”
- Financial support
Denials / Ineligibility

Waiver Overview:

- Most common NIV waivers:
  - For criminal grounds (CIMTs)
  - For misrepresentation
  - For unlawful presence

- All inadmissibility grounds may be overcome except security/espionage
Denials / Ineligibility

• The Waiver Application is filed with the Post
• Con Off recommendation → ARO → Post → issued for 1 year
• No Con Off recommendation → request Advisory Opinion
• Different process for Canadians
Denials / Ineligibility

Requesting Congressional Assistance:

• Advisable to seek Congressional Office assistance when there is a “breakdown in communication” or something is “outside processing times”
• Asking for general information is not helpful.
• Example of when to seek assistance: “Please contact the Post to find out if the requested documentation was received and what is the expected time that an answer will be provided.”
Practical Consulate Tips

• The DOS website has the following resources:
  – Check the wait time to obtain a NIV visa appointment at any POST around the world: [http://travel.state.gov/visa/temp/wait/wait_4638.html](http://travel.state.gov/visa/temp/wait/wait_4638.html)
  – Check for Post closings: [http://travel.state.gov/travel/tips/tips_6037.html](http://travel.state.gov/travel/tips/tips_6037.html)

• Review the 10/30/2013 AILA Department of State Liaison Committee Practice Pointer: Protocol for Contacting Consular Posts, AILA Doc. No. 13103047
Practical Consulate Tips

• Advise your client to bring complete proof of ALL prior visa statuses in the U.S.
  – For example, if your client was previously on F-1 or J-2 and was issued and used a EAD (work permit) the Consular Officer may request proof of the prior right to work in the U.S.

• Advise your client to read and understand all of the information contained in the filing made on his/her behalf.
  – Many Consular Officers note that Applicants are not familiar with the information contained in the filing.
Practical Consulate Tips

• It is impossible to predict if the issuance of a visa to your client will be delayed due to “security clearance processing.”

• Delays in visa issuance are more likely to occur if:
  – A delay in a USCIS adjudication because of background checks and security clearances
  – A delay in port of entry inspections, including secondary inspection, is a sign that your client (or someone with the same name) is flagged in one of the government databases.
  – Applicant was born in or traveled to a country designated as a state sponsor of terrorism
  – Applicant is a citizen or national of one of the approx. 26 Muslim-dominated countries.
  – Applicant had access to technology on the Technology Alert List. (Consular Officer can send a request for clearance)
  – Prior security clearance delays
  – Applicant has a common name
Practical Consulate Tips

• A multitude of immigration issues should be explored with your client to avoid delays and ultimate denial.

• The following items could trigger a significant delay or denial:
  – Prior immigration violations must be disclosed on the DS-160. This may raise issues in the Consul’s mind that your client will once again violate his/her visa
  – COS in the U.S., especially if COS requested shortly after arrival
  – Client departs U.S. while COS or EOS application is pending
  – Client was in the U.S. on F-1/OPT for extended period of time and returns home to apply for a visa with little time left in his/her status
  – Client falls into a “fraud profile”
  – INA §222(g)
  – 3/10 year bars
  – Previous visa denials
  – Overcoming INA §214(b)