

ADVANCED ISSUES ON U VISA CONSULAR PROCESS

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GOALS

- Snap shot of consular process and selected topics
- Processing U visa applicants overseas
 - Fingerprints
 - Visa interview
 - Travelers
- Top challenges and strategies

**DID YOU REALLY
“CLEAN IT UP?”**

Foreseeing issues before
you even start

THE I-192

- It allows inadmissible non-immigrant applicants to apply for advance permission to enter the United States temporarily

THE BASICS

- Grounds of *inadmissibility* in immigration law apply to anyone requesting admission into the country
 - Admission- no literal meaning
- If any of these grounds apply, the applicant (including derivatives abroad) must file an I-192 waiver.
 - Until the alien turns 18, no unlawful presence is counted
- Applications filed with the I-192 have a better chance of faster adjudication than those filed without the I-192.

THE BASICS

- For a non-citizen who is otherwise not permitted to enter the United States to apply for permission to temporarily enter the United States
- **Size 2 Pages + Instructions**
- **Edition Date 3/9/2012**
- **Where to File USCIS Local Office with jurisdiction over the port of entry where the alien will enter the United States. For U visas Vermont Service Center**
- **Filing Fee \$585- may be waived**

Cont.

- Grounds of inadmissibility can be found in the Immigration and Nationality Act (INA) section 212(a).
- The statutory and regulatory basis and relevant provisions for the I-192 form can be found in
 - INA section 212(d)(3)(A)(ii)
 - Title 8 Code of Federal Regulations (CFR), part 212.4(b);
 - INA section 212(d)(14),
 - and 8 CFR 212.16 and 17, and 8 CFR 214.11
 - and 214.14

ADDRESSING UNDISCLOSED ISSUES

- File request to amend previous I-192
- Explain why it was not address in prior I-192
 - Careful with credibility issues
 - Present evidence to grant favorable decision when possible
- Follow up
- If after-acquired inadmissibility issue, may address as matter of discretion in adjustment phase.

BIOMETRICS

- No fee
- No U if 14 yrs or older without your bios
- Electronic or ink depending on counter service
- Card sent to VSC for FBI and checks
- If close to missing appointment, reschedule
- If appointment missed, case will be terminated due to abandonment
 - May be able to reopen

WHAT IS A “VISA”

- A citizen of a foreign country who seeks to enter the United States (U.S.) generally must first obtain a U.S. visa, which is placed in the traveler’s passport, a travel document issued by the traveler’s country of citizenship.

SNAPSHOT OF CONSULAR PROCESS

- Your I-918 or I-918A has been approved by the VSC what happens to your case now when your client is abroad?
- From VSC to KCC to the Consulate to CBP:
 - Kentucky Consular Center
 - U.S. Department of State's Kentucky Consular Center (KCC) is responsible for creating an electronic record of approved nonimmigrant visa petitions to allow tracking of nonimmigrant visa petitioner and petition information, which is accessed by consulates abroad in the adjudication of visa applications.
 - The consulate must verify the approved petition through the KCC's system, known as "PIMS."

THE MOTIONS OF CONSULAR PROCESS



STEPS



1

CONSULATE
NOTIFIED BY
KCC

3

CHECK PIMS

4

PAY
APPOINTMENT

5

GO TO
APPOINTMENT
INTERVIEW

2

YOU SEND
DS-160 AND
PACKAGE



APPLICANTS OVERSEAS

- Instances in which U non-immigrant may require processing in a consular section overseas:
 - Principal abroad
 - Principal U visa approved now travels overseas
 - Derivative abroad I-918A approved now applying for U non-immigrant visa
 - Derivative approved now traveling overseas
 - Biometric collection (fingerprinting)

CONT.

- *Electronic Petition Information Management Service (PIMS) record created by the Kentucky Consular Center (KCC) to verify petition approval.*
- *Posts are able to access the details of approved nonimmigrant visa (NIV) petitions through the Consular Consolidated Database (CCD), through the PIMS Report.*
- *Form I--797, Notice of Action, may be used as sufficient proof to schedule an appointment, but posts should not rely on this form solely for the purpose of U visa issuance.*
- *Only PIMS shall provide the evidence forming the basis for U visa issuance. c. A valid Form I--797 must include the date of the Notice, the name of the petitioner, the name of the beneficiary, the petition/receipt number, the expiration date of the petition, and the name, address, and telephone number of the approving DHS office.*

INSTRUCTIONS TO THE POST BY FAM

- *The paper Form I--797 is an unsigned computer-generated form. Both confirmation of the information contained in the Form I--797 and initiation of adjudication process may be accomplished through PIMS.*
- *In the event PIMS does not yet contain the record, send an e--mail to PIMS@state.gov. KCC's Fraud Prevention Unit (FPU) will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within two working days.*
 - *You may not authorize a petition--based NIV without verification of petition approval through PIMS.*

CHALLENGES AT THE CONSULATE

- Consular computer systems are not set up adequately for victims to schedule correctly consular appointments.
- Some consulates refuse to accept certain forms even when DOS/CIS HQ has designated that they must be used for victims, e.g., the DS-156 versus the DS-160.
- There is widespread confusion and inconsistency over the rules about derivatives, waivers, and other legal issues.
- Fingerprinting abroad is a consistent problem.
- Passport waivers may be approved by USCIS yet not accepted by DOS.
- Attorneys and accredited representatives of record and with properly filed entrance of appearance are not receiving notifications sent to family members abroad.
- Victims and family members become ineligible for permanent residence because of consular delays.

FINDING DOCUMENTS OVERSEAS

- Foreign Affairs Manual Volume 9 App C
- www.travel.state.gov/visa/reciprocity/index.htm
 - Where documents found, what documents available
 - Ex: Ethiopia - many docs only available if resident of Ethiopia; divorce difficult to obtain, lengthy, must arbitrate

WHERE TO FIND INFO ON CONSULATES AND EMBASSIES

- <http://www.usembassy.gov/>
- Find a U.S. embassy and instructions, contact information under the U.S Department of State
- <http://travel.state.gov/visa/embassy>

PRACTICAL ISSUES

- Completed the DS-160
- Print and keep the DS-160 barcode page
- Visit the U.S. Embassy or Consulate website where you will apply for additional country-specific instructions. Schedule an interview appointment; and
- Pay the visa application processing fee.

EVIDENCE FORMING BASE FOR U VISA ISSUANCE

- Post use PIMS created by KCC to verify approval
- Form I-797 Notice of Action may be sufficient proof to schedule appointment
- Instructions:
 - *In the event PIMS does not yet contain the record, send an e-mail to PIMS@state.gov. KCC's Fraud Prevention Unit (FPU) will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within two working days.*

CONSULAR PACKAGE

- Cover letter presenting briefly the case and including your contact information
- Receipt Applicant's Form DS-160
- Copies of:
 1. Applicant's I-797 Notice of Action: Approval of *Form I-918 or I-918A*
 2. Applicant's new I-797 Notice of Action: Approval of *Form I-192* (Inadmissibility Waiver) [if waiving new inadmissibility factor]
 3. Birth/Marriage Certificate, Proving Relationship to Principal Applicant if derivative-applicant will need to provide RENAP at interview
 4. Passport
 5. Email exchanges from our office to (the country)@state.gov to arrange interview at NIV unit [If applicable]
 6. Foreign Affairs Manual (FAM) guidance to Consular Officials on U visas

AFTER THE PACKAGE IS WITH THE CONSULATE

- Scheduling the “u visa” appointment:
 - Check the specific instructions for your consulate!
 - In general, will need to buy a PIN (\$140.00(?))
 - At the door:
 - Present the interview appointment
 - organized ORIGINALS RENAPS
 - valid passport for over 6 months

DURING THE INTERVIEW

- Applicant will be shown a video
- Will be taken closer to the interview window
- Will be called to the window and fingerprinted electronically (all fingers)
- Vice-consul will review all bio-data and documentation requirements
- Vice-consul will interview client and ask specifically inadmissibility questions
- If U visa approved, then U visa stamp will be placed on passport and mailed approximately a week later
- Applicant is now ready to enter the USA!

TRAVELING IS NOT RECOMMENDED

- Increased law enforcement and intelligence agency coordination (data sharing)
- Intense security clearances which increases potential delays
- Interviews are mandatory including minors
- Several biometric requirements before visa is approved and before the interview
- EASY TO GET STUCK ABROAD!

CONT.

- Consulates are not well-educated about how to process U visas so you may have to wait weeks to get back in while we get CIS to explain it to them;
- Triggering new bars
 - If you are going to travel, make sure you have previously prepared a package with a request for the bars to re-entry. Contact the VSC once you have left the country to ensure the waiver is approved and that you are going to be able to re-enter without problems.
- Need for a new waiver
- Paying additional fees
- Losing U visa for lack of continuous presence

WHEN APPROVED U WANTS TO TRAVEL...

- Determine if there is an Inadmissibility Issue triggered upon this last/recent departure from the U.S.
- If so, *as soon as your client is leaving the country*, mail Form I-192 application to VSC.
- Contact VSC and flag the case for the hotline by providing a
- When you get the notice of receipt, follow up by requesting to expedite the approval of the I-192 and notification to KCC
- Follow up with KCC and make sure case has been forwarded to the consular post BEFORE scheduling an interview
- Provide copy of filing package and approval to client for the subsequent consular interview

EXTENSION OF STATUS

- When?
 - U nonimmigrant's approved period of stay on Form I-94 is less than 4 years,
 - If U nonimmigrant's status has expired due to aging-out;
 - Request an extension of U nonimmigrant status for an aggregate period not to exceed 4 years.
 - December 12, 2012 Guidance states that if a derivative was granted less than 4 year visa, they may apply for the full period via I-539 extension of status.
- all U nonimmigrants, including derivatives, must accrue at least three years in U nonimmigrant status before they may apply to adjust status to that of a lawful permanent resident under section 245(m) of the INA
- December 12, 2012 Policy Memoranda:
- 8 CFR 214.14(g)(2)-derivative U nonimmigrant/extension of status using Form I-539

WHAT TO FILE

- Form I-539, justification for extension
- filing fee (or request for a fee waiver)
- supporting documents directly with the VSC regardless of geographical jurisdiction.
 - evidence of U status for both principal and derivative, showing all dates in that status;
 - evidence of adjustment of status of the principal (if applicable);
 - evidence of relationship with U visa principal;
 - applicant's statement of need and reason (s) for extension.

ADDITIONAL CHALLENGES TO CONSIDER

1. Finding your client
2. Dealing with first timers
3. What to do with close to age out and age out derivatives
4. Proving relationship to principal overseas
5. Obtaining passports in general and for minors
6. Preparing for children traveling alone
7. Preparing for the 90 days limit to enter
8. Problems with CBP at the port of entry

SO YOUR CLIENT MADE IT!

- Will need EAD, SS#, Drivers license, work, etc
- EAD
 - I-765
 - Pictures
 - Approval notice
 - I-912
 - Record of entry into USA- I-94 stamped “admitted”
 - 3-5 months approval

System Improvement & Needs

- USCIS U liaison with DOS
- Designating a DOS-based victim case liaison with the consulates
- Resources
 - Asistahelp.org
 - Consular processing Google Doc: jessicafarbuvisa@gmail.com
 - Nationalimmigrationproject.org
 - Vawaexperts/vawaupdates

Thank You!



More information is available at www.asistahelp.org

Or, contact us at questions@asistahelp.org