

# Travel and Visa Applications: The Basics and the Latest

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## • Travel and Visas: The Basics

### – Visa Applicant must, generally:

- Be eligible for classification sought
- Overcome the presumption of “immigrant intent”
- Be admissible to the U.S., generally
- Not be barred from returning to U.S. for Unlawful Presence
- Have a machine-readable passport valid for at least 6 months into the future
- Apply for the visa in a timely fashion
- Follow the application procedures, which vary by post

## • Travel and Visas, ctd.

### – Overview: Visa Denials, ctd.

#### 1. Ineligibility (INA 221(g))

- Must convince the CO of eligibility for category
  - Denial if it appears that the applicant is ineligible
  - This is why “bona fides” are examined
    - I-20/DS-2019, admission letter, financial docs, etc.
    - CO occasionally goes way too far, analyzing GRE or TOEFL scores, questioning need to study ESL in U.S. when good programs at home, etc.
    - Plan that fits category—earn degree, not find good p-t job in the U.S.—and is temporary
- Officer must explain necessary steps and documents

## • Travel and Visas, ctd.

### – OVERVIEW: Grounds for Denial of Visa

#### 2. Presumption of “Immigrant Intent” (INA 214(b))

- “Every alien [except Fs and Is] . . . shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, that he is entitled to a nonimmigrant status . . .”
- Applies to Fs, Js, Ms, but **not** Hs (dual intent)
- Interpreted to include
  - Failure to establish ties to the home country
  - Failure to establish residence abroad to which alien intends to return
  - Failure to establish that the visit will be temporary
- Courts and DOS cables have distinguished between desire and intent
- DOS officers seem increasingly able/willing to distinguish near-term plans from long-term goals

## • Travel and Visas, ctd.

### – Overview: Visa Denials, ctd.

#### 3. General grounds of inadmissibility include (INA 212(a)):

- Communicable disease, dangerous physical/mental disorders
  - DUI arrest leads to referral to panel physician
- Conviction/admission of certain crimes (CMT)
- Controlled substance violation, trafficking (even suspicion)
- Nazi, totalitarian, polygamist, terrorist activity/support
- Likely to become a public charge
- Coming to U.S. to work without authorization
- Fraud, misrepresentation re visa, admission, benefit
- False claim of U.S. citizenship
- Not in possession of valid, unexpired passport/docs.
- Previously ordered removed
- Previous unlawful presence in U.S. of more than 180 days
- Etc., etc. (there are more)
- Considered valid grounds for denial of visa application (why grant visa if admission will be denied?). Some waivers available.

## • Travel and Visas, ctd.

### – Overview: Visa Denials, ctd.

#### • Visa/No Visa?

- Denial must be based on “legal grounds,” but COs have wide discretion
- Denial basically nonreviewable, except supervisory review or visa office complaint
  - » If question of law, can request advisory opinion
- Denial may also create “black mark” on applicant’s record
  - » Record of refusal in CLASS
  - » Must be disclosed on future visa application forms
- Local rules govern necessary wait before one may re-apply, up to two years
- Remember, there are waivers available for some grounds
- Visa entitles holder to appear at border and apply for entry to U.S., but still subject to inspection and denial of admission if cannot establish eligibility for entry in visa classification

## • Travel and Visas, ctd.

### – OVERVIEW: Eligibility for Admission

#### • Inspection at Port of Entry

- Must again establish admissibility, eligibility for category
  - » Need most documents used for visa application
  - » Plans, intent, etc. often questioned
  - » Biometrics collected and records checked via US-VISIT
- If questions/issues about admissibility/eligibility arise, usually sent to “secondary inspection” for more thorough review by more experienced officers
- If unable to establish admissibility/eligibility
  - » Detained
  - » Removed via expedited removal
  - » Placed in removal proceedings before immigration judge
  - » Paroled into U.S. for “urgent humanitarian reasons,” etc.
  - » Paroled into U.S. for deferred inspection (I-515/I-515A)
  - » Allowed to withdraw application for admission, depart U.S.
- If admitted, I-94 and other documents (DS-2019, I-20) stamped with expiration date of status or D/S

## • Travel and Visas, ctd.

### – A closer look at problem areas and issues

#### • Ineligibility for classification sought

- Good documents and explanation necessary
  - » Machine-readable passport, valid 6 months into future (see INA 217(a)(3), INA 212(a)(7)(B)(i)(I), 22 CFR 41.2(j)), and passport validity extension agreements at 9 FAM 41.104 N2.1)
  - » I-20/DS-2019, admission letter, invitation letter (scholars), documentation of funding, proof of proper background high school, B.S., M.A., etc.), etc.
  - » Good explanation of how the degree or activity will benefit you back home (from landlocked country studying icebergs??)
- Mismatch of visa and activity (FT ESL study with B visa)
- Other “alligators,” such as H visa applicant subject to 212(e)
- See specific criteria for each at 22 CFR 41.11, et. al.

## • Travel and Visas, ctd.

### – A closer look at problem areas and issues

#### • Failure to overcome presumption of “immigrant intent”

- Documents specific to each applicant’s situation (see consulate web site for a start)
- Show “ties,” including family, property, job, status, job opportunities, etc.
- Going to the U.S. for degree, research, etc., not for “work opportunities,” to be closer to family, or cultural factors (“more freedom”)
- Sound career plan suggesting a future in home country
- Best *not* to have indicated an intent to immigrate, started an immigrant process, etc.

## • Travel and Visas, ctd.

### – Problem areas and issues, ctd.

#### • Previous expression of immigrant intent

- No problem for Hs (dual intent)
- Increased efforts by DOS and CBP to encourage officers to distinguish between near-term plans and long-term intent
- LPR petition, DV lottery application, labor certification, marriage to U.S. citizen, asylum application, etc.?
  - » DS-156 asks “has anyone ever filed an Immigrant Visa Petition on your behalf” and about USC/LPR relatives
  - » CO may also ask about other things in interview
  - » Not always a bar to NIV, but usually is
  - » Except for Hs, students and scholars who have started LPR process need legal advice and/or advance parole

## • Travel and Visas, ctd.

### – Problem areas and issues, ctd.

#### • Violations of status

- May raise questions about intentions/“bona fides” but applicants often able to sufficiently explain, grovel, etc.
- Re-entry to re-establish status can be treacherous but students and scholars often successful
  - » Not eligible for “automatic revalidation,” so if re-entering from Canada/Mexico to re-establish status, need valid visa and **must get new I-94** (may need entry visa for Canada or Mexico)
- Traveler needs to anticipate questions and have very coherent (and true) answers and extensive documentation

#### • Applying as “Third Country National”

- Policies vary among consulates (new policy for Mexico)
- CO has discretion to approve or to send applicant home where “ties” might be better assessed, but remember
- “Automatic Revalidation” after trip to Canada and Mexico eliminated for those who applied for a visa, so stakes higher
- Anyone who has ever “overstayed” must apply in home country (not applicable to most students/scholars admitted for “D/S”)

## • Travel and Visas, ctd.

### – Problem areas and issues, ctd.

#### • Automatic extension of visa validity (“automatic revalidation”), 22 CFR 41.112(d) and 8 CFR 214.1(b)(1)

- Even if never had visa for current status (COS in U.S.)
- Ineligible if applied for a visa while on trip (o.k. if got new visa)
- Ineligible if “national” of “state sponsor of terrorism,” currently Syria, Iran, Cuba, North Korea, and Sudan.
- Students on OPT
  - All travel while on OPT somewhat risky
  - 8 CFR 214.2(f)(13)(ii) “F-1 student who has an unexpired EAD issued for post-completion practical training and who is otherwise admissible may return to the U.S. to **resume** employment after a . . . temporary absence. The EAD must be used in combination with an I-20 ID endorsed for reentry by the DSO within the last six months.
  - Need letter from employer, employment in field of study, valid immigration documents
  - Don’t travel during automatic cap-gap extension or during 180-day work authorization period while waiting for STEM EAD

- Travel and Visas, ctd.
  - Problem areas and issues, ctd.
    - Invalidation of F and M visas
      - See DOS cables
        - » "Validity of Student Visas Subsequent to a Break in Studies" ([http://travel.state.gov/visa/laws/telegrams/telegrams\\_2780.html](http://travel.state.gov/visa/laws/telegrams/telegrams_2780.html))
        - » "Student (F&M) Visa Update" ([http://travel.state.gov/visa/laws/telegrams/telegrams\\_4237.html](http://travel.state.gov/visa/laws/telegrams/telegrams_4237.html))
      - When student remains outside U.S. for five months or more or has not started classes within 5 months of "transfer out" date
      - When student is denied reinstatement (see also 22 CFR 41.122)
    - Two-year home residence requirements for Js (INA 212(e))
      - Prohibits only H, L and immigrant visas
      - Those subject to requirement still eligible for all other visas
    - When to Apply
      - Up to 120 days before I-20/DS-2019 start date for Fs and Ms, but Hs and Js not restricted
      - See wait times at [http://www.travel.state.gov/visas/tempvisitors\\_wait.php](http://www.travel.state.gov/visas/tempvisitors_wait.php)

- Travel and Visas, ctd.
  - Problem areas and issues, ctd.
    - Undocumented students
      - **Generally, CANNOT TRAVEL, DO NOT QUALIFY FOR F, J, etc. VISA OR STATUS**
        - » Most (over 18) have accrued at least a year of unlawful presence so subject to 10-year bar on returning to U.S.
        - » If unlawfully present, left, and returned without inspection, may face "permanent bar"
        - » Some face other issues of inadmissibility for claiming to be a USC, fraud/misrepresentation, previously ordered removed, assisted others to enter illegally, etc.
      - Possible waiver for immigrant visa if extreme hardship to USC or LPR spouse, parent, or child (discretionary and very difficult)
      - Possible waiver for nonimmigrant visa (also discretionary and very difficult)
        - How would you establish nonimmigrant intent for F or J visa?

- Travel and Visas, ctd.
  - Dealing with Visa Denials
    - *No avenue for official review*
    - What the applicant can do
      - Ask for explanation, written
      - Request reconsideration
      - Request supervisory review and submit additional evidence
      - Enlist home country officials to help??
      - Make new application, perhaps at another consulate
      - Ask CO to request advisory opinion if legal issue
      - Make complaint to Visa Office in D.C.
    - What the Advisor can do
      - Clarify facts at issue (admission, admission criteria, financial requirements, etc.) for Consular Officer
      - Confirm issuance and validity of documents
      - Explain urgency, necessity involved (e.g., J-1 professor)
      - Call in the "big guns," like congressional reps., etc.
      - Students and scholars overestimate our ability to influence

- Travel and Visas, ctd.
  - POE problems
    - Students/scholars often don't realize that "it's not over" when they get visa
    - Establishing admissibility and eligibility, again
      - Be able to explain plans that fit visa category, and be generally admissible (Not "I'll be a student" if coming for cultural visit with ESL component)
    - Document problems
      - Lack of proper documentation (I-20 is in my suitcase!)
    - Previous violations of status, overstay, unlawful presence
      - These are sometimes apparent to officer
    - Denial of entry/admission
      - Can't do much but beg for deferred inspection, withdrawal of application for admission or refusal, rather than undergo removal
      - Usually can't speak with counsel or anyone (unless asylum claim)
      - May have long-term serious consequences, making person inadmissible in the future (see grounds of inadmissibility)

- Travel and Visas, ctd.
  - Help students/scholars prepare for travel and visa application
    - Send pre-arrival materials
      - See [10 Points to Remember When Applying for a Nonimmigrant Visa](#) on NAISA web site (under resources, student advising network)
      - Document checklist
      - Keep it as short and simple as possible, for high impact
    - Encourage them to visit consulate web site
    - Encourage them to check processing times, apply early
    - Inform current students (orientation, printed materials, web site, advising session, etc.)
  - Inform students/scholars about establishing nonimmigrant intent
    - Specific to each applicant, but general guidance, such as need to explain "ties" and list of exemplary documents may help
    - Encourage them to consider explanation of plans in advance (not to be surprised), but not memorize a narrative

- **Travel and Visas: The Latest**
- DOS moves toward completely electronic visa application
  - DOS final rule (73 Fed. Reg. 23067(April 29, 2008)) allows completely electronic visa application procedure and replaces current forms with Form DS-160 to be completed, signed, submitted electronically
  - Currently DS-156 is filled out on DOS web site, applicant prints it for appointment, bar code contains some data, but DOS retains no data
  - DS-160 will be submitted electronically and data collected in CCD
    - It's a "smart form," so data entered determine questions to follow
    - Includes data fields from DS-156, DS-156E; DS-156K, DS-156V, DS-157 and DS-158
    - DS-160 is being piloted at Nuevo Laredo and Monterrey, Mexico
    - No time frame from DOS for full implementation at all consulates
    - Access form at <https://ceac.state.gov/eemiv/>
  - DOS is experimenting with off-site biometrics collection in privately contracted facilities similar to USCIS Application Support Centers
  - Initially Monterrey, Montreal, Nuevo Laredo, and Vancouver, recently Hong Kong, soon others

## Recent Developments, ctd.

### Expanded Third Country National Visa Processing in Mexico

- **All Posts in Mexico Now Process TCNs**
  - TCNs residing in U.S. may apply in Mexico by making appointment at any of the ten posts in Mexico online at <http://www.usvisa-mexico.com> or by phone at 1-900-476-1212
- **Who Can Apply in Mexico**
  - Applicants seeking to **renew** their visa in any category, except B1/B2, **if the initial visa was issued in the applicant's home country or at a post in Mexico**
- **Who Cannot Apply in Mexico**
  - Those granted change of status in the U.S. seeking a new visa for the new category
  - Applicants who entered U.S. in one category and seek to re-enter U.S. in different category
  - Applications for B1/B2 visas, including renewals, are not accepted from TCNs
  - Applicants who have been out of status in the U.S. or overstayed
  - Applicants who entered the U.S. under the Visa Waiver Program
  - Applicants obtained their current visa in a country other than that of their legal residence
- Notice states: "If you were informed when you obtained the original visa in your home country that you are subject to National Security Entry Exit Registrations (NSEERs) or are a national of North Korea, Cuba, Syria, Sudan or Iran, you are not eligible to renew your visa in Mexico."
- See <http://www.usvisa-mexico.com/mex/contenido.do?seeContenido=5855>

## Recent Developments, ctd.

DOS has created Student/Exchange Visitor Visa Center

- **Schools may e-mail [fmvisas@state.gov](mailto:fmvisas@state.gov) to inquire about status of F, M, J visa applications**
- **Applicant should use the Public Inquiries number 202-663-1225**
- **Include date of inquiry, nature of inquiry (e.g. delay, communication problem), and**

Post Information	Foreign National's Information
Consular Office Involved:	Full Name (as on passport):
Have you contacted the consulate directly?	Nationality:
When:	Place of Birth:
How (e.g. Phone, mail, fax, e-mail):	Date of Birth:
Name of person you contacted (if known):	Current Status in U.S. if any:
Attach correspondence, if any:	Type of Visa:
	NIV Appointment number:

#### DSO/RO Contact Information

Name:  
Institution:  
Phone:  
E-mail:

See [http://www.nafsa.org/registry\\_information/see/state\\_department\\_student\\_exchange](http://www.nafsa.org/registry_information/see/state_department_student_exchange)

## Recent Developments, ctd.

### USCIS—DOS Petition Information System (PIMS)

- Background
  - PIMS is a Consolidated Consular Database (CCD) report to provide posts with official, inter-agency, notification of H, L, O, P, Q petition approvals
  - Results of checks re fraud, criminal background, and immigration history and status (including SEVIS), may also be included
  - *INTENDED* to end consular posts' reliance on paper USCIS approval notices supplied by visa applicants and enhances fraud detection
  - Post must confirm petition approval in PIMS before issuing visa based on it
  - USCIS sends duplicate petition to DOS Kentucky Consular Center (KCC), entered in PIMS
- Getting petition into PIMS
  - Petitioner submits a *duplicate original petition*, with attachments/exhibits under separate cover sheet (CSC requests "goldenrod") stating "Duplicate original - Please forward approval to KCC for entry in PIMS" in big, bold type
  - Not possible to send a petition directly to KCC or verify PIMS record

## Recent Developments, ctd.

### USCIS—DOS Petition Information System (PIMS), ctd.

- What happens when no PIMS record for a visa applicant
  - If no record officer e-mails KCC which will research USCIS CLAIMS3 system and confirm approval and make details available through the CCD
    - DOS has instructed posts to check PIMS for H, L, O, P, and Q visas *before* interview
  - DOS says KCC confirmation takes two working days, but may take longer
  - PIMS cable: "the PIMS Petition Report contains a record of all petitions recorded by KCC as having approved petitions since 2004"
    - But apparently only initial (not COS, EOS, amendment) petitions recorded
- Advising visa applicants
  - *STILL* need original approval notice at consulate, as required in the past
    - See [http://travel.state.gov/cons/templ/vpms/vpms\\_1271.htm#pims](http://travel.state.gov/cons/templ/vpms/vpms_1271.htm#pims)
  - Need original approval notice at POE
  - Advise of possible delays in visa approval and/or issuance
    - Especially if COS, EOS or amended petition approved prior to late March 2008
    - Especially if petitioner did not file a duplicate original with USCIS

## Recent Developments, ctd.

### Visa Waiver Program

- Czech Republic, Estonia, Hungary, Latvia, Lithuania, Republic of Korea, and Slovak Republic added to Visa Waiver Program (VWP), expanding the list of participating countries from 27 to 34.
- Must Have Machine-readable Passport to Use VWP
- Effective January 12, 2009, All VWP Travelers Must Use ESTA
  - Online system collects biographical and travel information from VWP travelers and "pre-approves" travel to U.S.
    - Electronic record accessible by CBP at POE (not a document carried by traveler)
  - If denied ESTA authorization may apply for a visitor visa

INA amended to remove HIV as ground of inadmissibility

- Until HHS amends 42CFR34.2(b) to remove HIV, though, it remains a ground of inadmissibility and HIV-positive person needs waiver of inadmissibility

DOS now requires "ten print" fingerprint scans for all nonimmigrant visa applicants

## Wrap-Up

- Questions?
- For more information
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  - E-mail
    - Steve Springer -- [steve@David-Ware.com](mailto:steve@David-Ware.com)
  - See [www.David-Ware.com](http://www.David-Ware.com)