



Consular Corner

June 2010

by: Liam Schwartz*

Earlier and Slimmer

This month's column appears earlier than usual, and is a bit slimmer than the norm, as Consular Corner prepares for our most exciting event yet: A roundtable discussion on "Innovation in the Visa Process," co-sponsored by the Council on Foreign Relations, as part of the Council's Series on Border, Visa, and Immigration Policies. Our Roundtable will bring together a diverse group of individuals from DOS, Congress, industry, academia and law, and will be held at the Council's office in Washington, DC, in a couple of weeks. Wish us luck!

Love and Marriage

A recent *New York Times* [article](#) linked to a [USCIS Fraud Referral Sheet](#), a sort of a field officer's guide to general and case-specific fraud indicators.

In the I-130 family-based context, listed fraud indicators include features that can be found in a great many marriages in America: "unusual cultural differences," "low employment/financial status of petitioner," and "divorce/new marriage dates close."

Another listed fraud indicator is "short time between entry and marriage," which is of course something parents and priests have longed warned against.

In a follow-up [article](#), the Times listed sample marriage interview questions meant to ferret out fraud. Among the examples:

- ⇒ If you are standing at and facing your kitchen sink, where is the microwave oven?
- ⇒ Is your microwave stationary or does it have a revolving plate?
- ⇒ Do you have any tattoos? Where? What do they look like? What about your spouse?
- ⇒ If you are lying in bed, which side does your spouse sleep on?
- ⇒ How is your bedroom closet split up?
- ⇒ Where do you keep your clean underwear?
- ⇒ Do you and your spouse use birth control? What kind?
- ⇒ What was the last movie you went out to see together?

Although the *Times* readership generally comprises people who do well on tests, many readers who have written into the paper claim to have failed this one, and miserably. Some representative responses:

"My wife and I got eight answers wrong! We're both American citizens who've been married 10 years. If one of us were an immigrant, he/she'd probably be on a boat right now."

"My husband and I have been happily married for 38 years but I'm sure he couldn't answer many of these questions. I'm going to start packing his bags."

"I think that we met in December,
On second thought maybe September,
But now it appears
After Sixty great years,
The truth is I just don't remember."

US Posts in China: New Liberalized Appointment System

Visa wait times at the U.S. Embassy in China are soaring. At the start of June, wait times were reported at 98 days – an increase of 66 days from the previous month. Beijing wait times have continued to rise throughout June and now stand at an even 100 days.

In response to this situation, Embassy Beijing and the other U.S. consular posts in China have introduced [a new, liberalized policy](#) which eliminates the previous geographical restrictions on visa appointments: Nonimmigrant visa applicants may now schedule interviews at any of the U.S. consular posts throughout China, regardless of place of residence. In a related move, Embassy Beijing has begun experimenting with [Saturday interviews](#).

Congratulations to the consular managers in Beijing for pulling out all the stops in an effort to meet the demands of your visa applicant public!

Havana: 999 and Rising

The consular managers at the U.S. Interests Section in Havana have surely taken notice of the proactive steps their counterparts in Beijing have taken, but there's not much chance they'll be permitted to follow suit.

When in January of this year Havana wait times first broke the 900 -day mark, we wrote: "A wait time this long is not so much a reality, but a symbol which indicates that challenges dating back to the Kennedy presidency still remain unresolved." Ironically, Havana's current posted wait times of 999 days are only 24 hours less than the duration of the entire Kennedy administration.

Beijing, at 900 days less than Havana, is taking urgent action to lower its wait times. But whereas Beijing's wait times rise largely as a function of visa demand, Havana's wait times are part and parcel of U.S. foreign policy towards Cuba. As

you would imagine, this type of diplomacy includes reciprocity on continuing visa-related obstacles that the Cuban government has created for officials traveling to the U.S. Interests Section in Havana.

The Consular Corner World Cup Probability Model

The Consular Corner is honored to present a visa-based model for predicting the results of the 2010 World Cup. This model is based on the [Department of State's Adjusted Refusal Rates \(B Visas Only\) by Nationality for Fiscal Year 2009](#). The Consular Corner model is offered as a consular alternative to the [World Cup rankings assessed by FIFA](#) (the international governing body of association football).

The underlying algorithm of this model is as follows: $\text{Adjusted Refusal Rates} = (\text{Refusals} - \text{Overcomes}) \div (\text{Issuances} + \text{Refusals} - \text{Overcomes})$. Where FIFA calculates the number of goals scored by a given country's team, we calculate the number of visas issued to that country's nationals; where FIFA considers the number of off-sides, we consider the number of visa refusals; where FIFA counts the number of penalty kicks, we count the number of overcomes of visa denials.

Consular Corner's visa-based model gives rise to a number of surprising predictions: Brazil, ranked #1 by FIFA reaches only tenth place on our index. Host country South Africa, ranked only 83rd by FIFA, is #5 with Consular Corner. The only nation with identical FIFA and Consular Corner rankings is Ivory Coast (#27).

USA is ranked #1 by Consular Corner (and only #14 by FIFA) but then again, we are incredibly biased.

Without further ado, we present the results of FIFA vs. Consular Corner. Let the games begin!

Country	Adjusted Refusal Rate	Consular Corner Rating	FIFA Ranking
USA		1	14
Greece	2.0%	2	13
Switzerland	2.8%	3	24
Argentina	3.3%	4	7
South Africa	3.8%	5	83
North Korea	4.0%	6	105
Uruguay	5.4%	7	16
South Korea	5.5%	8	47
Chile	5.9%	9	18
Brazil	7.0%	10	1
Spain	7.7%	11	2

Slovenia	7.8%	12	25
Slovakia	8.3%	13	34
Paraguay	9.8%	14	31
Mexico	10.9%	15	17
Serbia	11.1%	16 (tie)	15
Italy	11.1%	16 (tie)	5
France	12.0%	17	9
Denmark	13.6%	18	36
Germany	16.0%	19(tie)	6
Japan	16.0%	19 (tie)	45
New Zealand	16.1%	20	78
Portugal	17.4%	21	3
Netherlands	18.0%	22	4
Australia	19.8%	23	20
Algeria	20.5%	24	30
England	27.8% (GBNI)	25	8
Honduras	29.2%	26	38
Ivory Coast	36.5%	27	27
Nigeria	37.3%	28	21
Cameroon	48.3%	29	19
Ghana	54.3%	30	32

Changes to 9 FAM – Monthly Report

No new updates to 9 FAM (Visas) of the Foreign Affairs Manual (FAM) have been published by the State Department since the end of April. Accordingly, we turn our attention to Volume 7 of the FAM, and the Department's newly announced policy guidelines on gender change in passports and Consular Reports of Birth Abroad.

Gender Change (7 FAM Exhibit M)

The Department of State has published new policy and procedures in cases in which an applicant requests a gender on his or her passport application that is different from the one reflected on some or all of the submitted citizenship and/or identity evidence (including a prior passport).

According to the new policy, applicants in such cases must provide a medical certification from an attending medical physician regarding the change in gender. An "attending medical physician" may be an internist, endocrinologist, gynecologist, urologist or psychiatrist. The new FAM provisions clarify that if the applicant is being treated by a physician in a foreign country, his or her passport application will be subject to delay: Since foreign physicians are not generally assigned a Drug Enforcement Administration (DEA) registration number, the

passport application will be suspended for further verification of the foreign physician's bona fides.

The new policy clarifies that sex-reassignment surgery is no longer a prerequisite for passport issuance in a different gender. That said, if the evidence shows that the applicant is still in the process of transition to the new gender, his or her new passport will be limited to a two-year validity period (and in the case of an emergency passport application, a validity period of three months only).

Applicants may also apply to amend a Certificate Report of Birth Abroad to reflect the change in gender. This application would be supported by the same documentary evidence as that required in the passport context

The new 7 FAM 1330 Appendix M provides guidance to consular officers on how to hold conversations with passport applicants seeking to document gender transition, including the following explicit instructions:

- "1. As with all passport applicants, you must be sensitive and respectful at all times.
2. Refer to the applicant by the pronoun appropriate to his/her new gender.
3. Ask only appropriate questions regarding information necessary to determine citizenship and identity of the applicant."

In publishing this new policy guidance, the federal government has placed itself ahead of a number of individual states in accommodating the needs of citizens during or after gender transition. Could the next step be catching up with the growing number of states that have recognized same-sex marriage by repealing the Defense of Marriage Act?

Are You Smarter Than A Junior Consular Officer?

- 1) The maximum validity period for E-3 visas is:
 - (a) 12 months
 - (b) 24 months
 - (c) 60 months
- 2) Which country had the largest number of applicants selected for the DV-2011 diversity lottery?
 - (a) Brazil
 - (b) Ghana
 - (c) Ukraine
- 3) If a consular officer sits down to lunch and says, "Wow, I've been doing CRBA's since 7:30 am," where has the officer been working today?

- (a) The American Citizens Service Unit
- (b) The Anti-Fraud Unit
- (c) The Immigration Visa Unit

4) Who was the Department of State's assistant secretary for consular affairs who became the only U.S. government official requested to resign as a consequence of the September 11, 1001 attacks?

5) According to Immigration and Customs Enforcement (ICE) statistics, how many visas has the Department of States revoked since September 11, 2001, based on information suggesting possible terrorist activities or links?

- (a) 25
- (b) 250
- (c) 1,250
- (d) 12,500
- (e) 125,000

6) Name at least one of the principal reasons why a foreign national might file form I-824.

7) The nationals of how many countries are eligible to obtain H-2A and H-2B visas in 2010?

8) Approximately what percentage of nonimmigrant and immigrant visas was refused in FY2009?

- (a) 10%
- (b) 25%
- (c) 33%
- (d) 50%
- (e) 75%

9) What is the maximum period of time during which an F-1 visa holder can study at a public elementary school in the United States?

10) Appointed U.S. Consul to Algiers in 1792, this officer is known as the Father of the American Navy. Who was this officer? Hint: When, during a battle in which his ship suffered such extensive damage that the opposing English captain called out "Do you surrender?" our officer retorted: "I have not yet begun to fight!" Additional hint: This officer is not the current Consul General in Capetown (see "Quote of the Corner," below).

Top Ten Visa Wait Times at U.S. Consular Posts, June 2010*

Havana June 2009: 776 days. Havana January 2010: 904 days. Havana June 2010: 999 days. Isn't anyone fearful of a Y2k-mutant bug (let's call it "H1k" for

Havana 1,000) causing a catastrophic meltdown of the underlying wait times software as Havana transitions to 4 digits?

#	Country	Consular Post	Visa Wait Time	Increase/decrease from Last Month	Top 10 Position Last Month
1	Cuba	Havana (US Interests Section)	999 days	+ 40 days	1
2	Venezuela	Caracas	154 days	+ 14 days	2
3	China	Beijing	98 days	+ 66 days	New Listing
4	Mongolia	Ulaanbaatar	65	+ 18 days	7
5	Egypt	Cairo	56 days	+ 19 days	New Listing
6	Nigeria	Lagos	55 days	Unchanged	5
7	Saudi Arabia	Dhahran	49 days	Unchanged	6
8	Mexico	Guadalajara	48 days	+ 24 days	New Listing
9	Saudi Arabia	Riyadh	47 days	+ 6 days	10
10 (tie)	Burma	Rangoon	45 days	Unchanged	8
10 (tie)	Russia	Moscow	45 days	+ 3 days	9 (tie)

** Updated to June 3, 2010 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:

The Americas (excluding Cuba)	Venezuela/Caracas	(154 days)
East Asia and Pacific	China/ Beijing	(98 days)

Middle East and North Africa	Egypt/Cairo	(56 days)
Africa	Nigeria/Lagos	(55 days)
Europe and Eurasia	Russia/Moscow	(45 days)
Central and South Asia	India/Kolkata	(24 days)

Answers to "Are You Smarter Than A Junior Consular Officer?"

- 1) (b). 9 FAM 41.51 N16.9
- 2) (b)
- 3) (a) "CRBA" = "Consular Report of Birth Abroad"
- 4) Mary Ryan
- 5) (c)
- 6) To receive a replacement I-797 Notice of Action; to request USCIS to send an approved IV petition to the National Visa Center; to ask USCIS to inform a consular post that the foreign national has adjusted to LPR status, allowing his/her dependents to obtain following-to-join IVs
- 7) 39 (http://www.justice.gov/eoir/vll/fedreg/2010_2011/fr19jan2a.pdf)
- 8) (b)
- 9) Zero days.
- 10) Captain John Paul Jones

Quote of the Corner

"Let me say this straight: Our men are preparing to crush your little boys."

Consul General Dr. Alberta Gale Mayberry (Capetown) in a warning to the English side prior to the World Cup match between Team USA and Team England. (The game ended in a 1-1 draw.)
<http://football.fanhouse.co.uk/2010/06/11/fighting-talk-from-the-united-states-before-their-bid-to-shock-e/>

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