

**Consular Corner**  
**July 2011**  
by: Liam Schwartz\*

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**Same-sex Partners: An Anniversary and an Update**

This month marks the ten-year anniversary of the groundbreaking telegram (01 SecState 118790) in which Secretary Powell announced a FAM revision formally recognizing that B-2 classification may be appropriate for cohabitating same-sex partners of long-term nonimmigrants in the United States.

The cable points to a then-existing FAM note authorizing the issuance of B-2 visas to the elderly parents who are dependents of long-term nonimmigrants. The same logic behind this note, says the cable, “applies to cohabitating partners – both opposite and same sex partners.”

These B-2 visas allow foreign nationals to accompany their partners who in the United States in classifications such as F-1, J-1, H-1B, and L-1; but there is no route to the Employment Authorization Documents that J-2 and L-2 spouses can request, and some B-2 partners have complained that CBP officers admit them for stays of only six months, despite the special annotation on their visas.

Not much changed in the visa context for same-sex partners until June 2009, when Secretary Clinton announced that the State Department would extend a wide range of benefits – including the issuance of diplomatic passports – to the same-sex partners of American diplomats.

As previously reported in the *Consular Corner*, this move was followed a month later by a regulatory change permitting the issuance of derivative A, G, and NATO visas to domestic partners of principal applicants in these categories. When this provision was implemented in the FAM in December 2009, the term “domestic partner” was defined as applying to same-sex couples only.

In February 2011, the State Department announced a new program under which DOS will act as the J-1 sponsor of the foreign same-sex partners of Foreign Service Officers who are returning to the United States for a domestic assignment. This arrangement allows the foreign-national partners to live and work in America for up to five years.

Of course, all of these workarounds would be irrelevant if it weren't for the Defense of Marriage Act (DOMA), a 1996 law that restricts federal interpretation of the terms “marriage” and “spouse” to opposite-sex relationships. Multiple lawsuits have challenged DOMA since its enactment; within the past year, some judges have begun to rule the law unconstitutional. Appeals of these cases are still working their way through the court system, but another milestone was

reached in February of this year, when Attorney General Holder announced that the Obama Administration would no longer defend DOMA in court.

While DOMA remains on the books, Executive Branch of the government will continue to enforce it; as such USCIS is still denying I-130 petitions filed on the basis of same-sex marriages. Nevertheless, it appears that Immigration and Customs Enforcement (ICE) has decided to include same-sex marriage as one of the factors to be weighed when triaging deportation cases that do not warrant immediate attention: The same week that ICE issued its June 17 memo on prosecutorial discretion, an immigration judge – with ICE’s consent – terminated removal proceedings against a Venezuelan man who has been living without legal status in the United States with his American husband.

Meanwhile in Congress, the Respect for Marriage Act (H.R. 1116 / S. 598) – recently endorsed by President Obama – is a bill that would repeal DOMA outright. And the Uniting American Families Act (UAFA, H.R. 1537 / S. 821), if passed, would allow American citizens and Legal Permanent Residents to sponsor their “permanent partners” for immigration. The text of UAFA has also been incorporated into the Reuniting Families Act (H.R. 1796), a more sweeping immigration-reform bill.

(Brian Bolton contributed significantly to this item).

### **From “The Answer Should Be Obvious” Department**

In her Independence Day message earlier this month, Beatrice Camp, the U.S. Consul General in Shanghai, provided an impressive litany of local events that exemplify the strength of the U.S.-China relationship. Of all the notable events listed by CG Camp, which one did she point to as “perhaps the best proof” of our relationship with China?

1. The visit to Shanghai by President Obama
2. Two visits to the city by Secretary of State Clinton
3. Three visits to the city by Commerce Secretary (and incoming U.S. Ambassador to China) Locke.
4. The opening of an office of the U.S. Food and Drug Administration
5. An enhanced presence of U.S. companies and universities in the city.
6. The issuance of well over half a million visas by the consular section.

<http://shanghai.usembassy-china.org.cn/063011independenceday.html>

## **You be the Judge**

Vernon and his wife, Vena, were attempting to reconcile after a separation. They agreed to look at a new apartment where they might try to live together again, but ended up quarrelling. During the heat of the quarrel Vernon drew a knife and plunged it into Vera's chest and stomach, killing her.

Subsequently, Vernon, who had originally immigrated to the U.S. as a legal permanent resident, filed an application for naturalization. One of the key elements to a successful naturalization application is for the prospective American citizen to demonstrate that he or she is of "good moral character."

USCIS found that Vernon lacks the requisite good moral character and the case is now on appeal. You be the Judge: Does Vernon's brutal killing of his wife lead you to conclude that he lacks the good moral character required of prospective citizens of our country?

But wait – before you render your decision, consider a few additional facts:

- Vernon immigrated to the U.S. at age 14. At age 18, he dropped out of high school and joined the Marines at the start of the war in Vietnam.
- During his tour of duty in Vietnam, Vernon served in an antitank assault unit and experienced some of the worst horrors of war almost daily. (Some of these horrors are described in the court's decision – see link below.) As a result of the pressures he endured in thirteen months of combat, Vernon developed Post Traumatic Stress Disorder (PTSD) as well as drug and alcohol addictions.
- Vernon was awarded numerous medals and commendations for his service. Nonetheless, after he returned from the war, Vernon received little support in dealing with the challenges of readjustment.
- When Vernon went to meet Vena on that fatal day, he was under the influence of alcohol and drugs, and still suffering from PTSD.

OK, maybe Vernon is not an entirely unsympathetic character, but still – he did brutally stab his wife to death. Is this modicum of sympathy really sufficient for you to rule in his favor and permit him to become an American citizen?

But wait – before you render your final decision, please consider just a few more additional facts:

- Immediately after stabbing his wife, Vernon walked to a police station, reported his crime and was arrested. He was later convicted of first-degree manslaughter and served 13 years in prison.

- While in prison, Vernon overcame his drinking and drug problems. He obtained treatment for his PTSD. He educated himself, completing his high school degree, an Associates degree (with honors) and a Bachelor's Degree in Sociology (with honors). He worked as a teacher's assistant, teaching algebra and English to other inmates. He also served as a peer counselor, counseling fellow inmates on drug abuse and negative behavior.
- After leaving prison, Vernon began working at a substance and alcohol abuse counselor at the Martin Luther King, Jr. Health Center in the Bronx. He helped hundreds of individuals address their addictions, depression, and mental illnesses by drawing upon his own experiences. He helped take drug addicts off the street.
- He returned to live with his ailing mother, who had become immobile because of a tumor. He took care of her until the day she died, accompanying her to her doctors' appointments and doing the cooking, cleaning and shopping.
- He went to church every Sunday and became a regular volunteer in church activities. He brought food to homeless veterans. He also played in a local chess club and tendered to a neighborhood flower garden.

Twenty-one years after he killed his wife, will you rule that Vernon has turned around his life to the point that he now possesses the good moral character required for prospective American citizens?

For the actual ruling in this case, please see below.

### **OIG Inspection Report of Embassy Santo Domingo**

The State Department's Office of Inspector General (OIG) has released the report of its inspection of the United States Embassy in Santo Domingo, Dominican Republic. The consular highlights of this report follow below.

#### *Consular Services (General)*

Consul General Mary Sue Conaway heads one of the busiest visa-issuing missions in the world. Although operating in a high-fraud environment, consular services are, for the most part, well run.

The consular section in Santo Domingo is housed in an overcrowded facility half a mile west of the chancery. All customer interaction takes place on the ground floor, through a Dickensian warren of windows. The work areas behind the multitude of interview windows are cramped and crowded. Serious shortcomings in the embassy's fire and safety program jeopardize the wellbeing of employees.

In addition to dealing with the effects of difficult work circumstances on employees, the consular section can improve the situation by viewing its clients differently. Some officers stated matter-of-factly that their customers had to wait 9 hours for service. Embassy Santo Domingo has an opportunity to positively influence the 180,000 Dominican citizens who visit the consular section annually for services. By considering the public ramifications of all their actions, consular employees can improve the experience of their customers and help win the hearts and minds of the Dominican people.

### *Nepotism*

There is a perception of nepotism within Embassy Santo Domingo. In the consular section, 15 percent of LE staff members are related. In addition, there are three EFMs working in the same office, but in different units, as their spouses.

### *Immigrant Visas*

The IV Unit is the largest element of Embassy Santo Domingo's consular section and processes the second-largest number of U.S. IV cases in the world. Officers at 13 immigrant visa windows handle approximately 300 applicants a day. The unit handled 69,000 cases in FY 2010, markedly above the average of 43,000 cases of the preceding 5 years.

Unreliable civil documentation; fraudulent relationships; and grounds of inadmissibility based on crimes involving moral turpitude, narcotics trafficking, previous visa overstays, and public charge provisions of immigration law complicate IV processing.

### *Nonimmigrant Visas*

Embassy Santo Domingo has a high NIV workload: 500 nonimmigrant visa (NIV) applicants are processed each day at 12 windows. The unit handled 113,000 cases in FY 2010, with a refusal rate of just under 30 percent.

The pervasive documentary fraud, misrepresentation, and sophisticated visa touts who coach visa applicants on concealing their ineligibilities make the work challenging.

The full OIG report can be accessed here:  
<http://oig.state.gov/documents/organization/168266.pdf>.

## **You be the Judge (The Ruling)**

In considering this matter, the United States District Court for the Southern District of New York emphasized that “good moral character” is incapable of exact definition. “Whatever ‘good moral character’ means, we do not require perfection in our new citizens.”

As proof that no man is beyond redemption, the Court said, Vernon turned his life around completely while in prison and after his release. He addressed and overcame his drinking and drug problems. He obtained treatment for his PTSD. He educated himself, earning three degrees while in prison, completing training courses, and learning how to be a counselor while he was receiving counseling himself. In prison and after his release, he worked with countless inmates and other individuals, helping them address their addictions and other problems, drawing on the very effective tool of his own experiences. He completed his seven years of parole without incident. He obtained gainful employment and worked steadily in the same job for eight years. He took care of his elderly mother. He went to church every Sunday and helped as a volunteer. He took food to homeless veterans in the park.

Yes, the Court said, Lawson committed an unspeakable act when he killed his wife. But he has paid for his actions.

Quoting Helen Keller, the Court continued:

“Character cannot be developed in ease and quiet. Only through experience of trial and suffering can the soul be strengthened, vision cleared, ambition inspired, and success achieved.”

Vernon, the Court concluded, has redeemed himself. Through the way he dealt with his “experience of trial and suffering,” Vernon has shown that he is of good moral character and he deserves to become an American citizen.

<http://www.courthousenews.com/2011/07/12/VetCitizen.pdf>

### **Changes to the Foreign Affairs Manual (FAM) – Monthly Report**

#### **Inadmissibility for Aliens Engaging in Organized Crime (9 FAM 40.31 N5.3)**

Under the Immigration and Nationality Act (INA), visa applicants who the Consul reasonably believes are coming to the United States to engage in unlawful activity are inadmissible to the country and ineligible to receive visas.

In part, application of this inadmissibility has traditionally been based on a determination that certain groups operate as permanent organized criminal societies and that active membership in them could reasonably be considered to involve a permanent association with criminal activities. As a result, any U.S. travel by a visa applicant who is actively associated with one of these organized crime groups could result in a violation of American law. The criminal groups

historically included in this prohibition include (*inter alia*) the Mafia and the organized crime families of the Former Soviet Union.

From time to time, the FAM Notes relating to this inadmissibility are updated with the names of additional entities found to constitute organized crime groups. This month, the Department has named the Yakuza and certain organized biker gangs (the Hells Angels, Outlaws, Bandidos, and Mongols) as organized crime groups.

The Department's instructions to consular officers who receive a visa request from an active member of one of these groups are as follows: "You must suspend processing the visa application, deny it under INA 221(g), and submit a request for an advisory opinion."

### **Consular Corner Quiz**

1. Of the 171 chiefs of mission at U.S. embassies and consular posts, how many are women?
2. If a selectee in the Diversity Visa lottery dies before visa issuance, may his eligible family members still receive DV visas for that entry?
3. Charles, a J-1 Fulbright Scholar at University A, is subject to the two-year home-country physical presence requirement per Section 212(e) of the INA. At the end of the J-1 program Charles returns to his home in Wales; but two months later he receives an offer to perform academic research in J-1 status at University B. Does the two-year home country restriction mean that Charles must wait at least 22 months before taking up the J-1 research project at University B?
4. Can an applicant for naturalization be found to lack the good moral character required to become an American citizen if he or she had an extramarital affair?
5. As a general rule, who has final responsibility over visa guidance to consular officers concerning eligibility for classification for nonimmigrant and immigrant visas?
  - (a) The President of the United States
  - (b) The Secretary of Homeland Security
  - (c) The Secretary of State
6. On average, how many international travelers are admitted into the United States each day?
7. What types of visas will Embassy Nassau be giving top priority in August, having set aside more than 1,000 appointments for these classifications?
  - (a) C-1/D
  - (b) B-1/B-2

- (c) L-1 and H-1B
- (d) F-1 and M-1

8. On June 2, Consular Affairs (CA) issued a Travel Alert for the entire “East Asia and West and Central Pacific region.” This Alert is set to expire on December 1. What’s the genesis of this extraordinarily broad caution to Americans?

9. According to a vocal Facebook group, how many 2012 Diversity Visa lottery entrants were originally informed that they had been selected, but then found out that their entries were not chosen in the second drawing?

10. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 requires consular officers to provide applicants for certain employment-based NIVs with information concerning their rights and protections in the United States. Who was William Wilberforce?

- (a) A former Senator from Oregon
- (b) A nineteenth-century British abolitionist
- (c) The last U.S. Ambassador to East Germany
- (d) A recent director of DOS’ Office to Monitor and Combat Trafficking in Persons

**Top Ten Visa Wait Times at U.S. Consular Posts, July 2011\***

Visa wait times at some U.S. consular posts in the Middle East and North Africa have significantly risen since the onset of the “Arab Spring.” Cairo’s wait times are up 37 days since January; wait times at Damascus have skyrocketed by 51 days over the same period. On the other hand, Tunis wait times, just a single day in January, are still a low 14 days this month. (PS: As we go to press, all visa services at the U.S. Embassy in Damascus have been suspended until further notice.)

#	Country	Consular Post	Visa Wait Time	Increase/decrease from Last Month	Top 10 Position Last Month
1	Cuba	Havana (U.S. Interests Section)	999 days	Unchanged	1
2	Venezuela	Caracas	183 days	+ 5 days	2
3	Brazil	Rio de Janeiro	125 days	-4 days	4
4	Nigeria	Lagos	120 days	+ 15 days	7

5	Brazil	Brasilia	116 days	+ 3 days	6
6	Ghana	Accra	100 days	+ 30 days	8
7	Brazil	Recife	70 days	+ 15 days	New Listing
8	Brazil	Sao Paulo	68 days	- 49 days	5
9	Colombia	Bogota	61 days	+ 25 days	New Listing
10	Nigeria	Abuja	60 days	+15 days	New Listing
10	Egypt	Cairo	60 days	+ 11 days	New Listing
10	Syria	Damascus	60 days	+18 days	New Listing

\*\* Updated to July 8, 2011, 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:**

<b>The Americas (excluding Cuba)</b>	Venezuela/Caracas	(183 days)
<b>Africa</b>	Nigeria/Lagos	(120 days)
<b>Middle East and North Africa</b>	Cairo/Damascus (tie)	(60 days)
<b>East Asia and Pacific</b>	China/Beijing	(54 days)
<b>Europe and Eurasia</b>	Spain/Madrid	(49 days)
<b>Central and South Asia</b>	Tajikistan/Dushanbe	(34 days)

### **Answers to Consular Corner Quiz**

1) 50 (29%). <http://www.state.gov/r/pa/ei/biog/c7647.htm>

2) The death of an individual selected in the lottery results in automatic revocation of the DV case. Any eligible spouse and/or children are no longer entitled to the DV visa for that entry.

<http://travel.state.gov/pdf/1318-DV2012Instructions-ENGL.pdf>

3) No – he'll be able to apply for a new J-1 visa with University B notwithstanding the 212(e) restriction. 9 FAM 41.63 N1 INA 212(E)  
<http://www.state.gov/documents/organization/87385.pdf>

4) Yes. 8 C.F.R. 316.10 (b)(3). <http://law.justia.com/cfr/title08/8-1.0.1.3.68.0.1.7.html>

5) (b), per section 428 of the Homeland Security Act of 2002.  
[http://www.dhs.gov/xlibrary/assets/hr\\_5005\\_enr.pdf](http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf)

6) CBP admits nearly 1 million international travelers into the United States at land, air and sea ports on a typical day.  
<http://www.cbp.gov/xp/cgov/travel/>

7) (d). <http://nassau.usembassy.gov/visasummer.html>

8) Pacific typhoon season.  
[http://travel.state.gov/travel/cis\\_pa\\_tw/pa/pa\\_5473.html](http://travel.state.gov/travel/cis_pa_tw/pa/pa_5473.html)

9) 22,000. <http://www.facebook.com/dv2012?sk=wall>

10) (b).

### **Quote of the Corner**

“My bias is toward people who sweat at work because I really think that’s the backbone of our country. With limited resources, I’d rather devote our efforts to keeping out a drug kingpin than trying to find someone who works a couple of months at Cousin Hector’s body shop.”

Minister-Counselor for Consular Affairs (Mexico City) Edward McKeon.  
<http://www.nytimes.com/interactive/2011/07/06/world/americas/immigration.html>

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