



Consular Corner
October 2010
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"Innovation in the Visa Process"

This month's column is a bit shorter than usual, as we gear up for the second session in our discussions entitled "Innovation in the Visa Process." These talks are sponsored by the Council on Foreign Relations Roundtable Series on Border, Visa, and Immigration Policies and the Consular Corner.

"Innovation in the Visa Process" includes a broad discussion of issues in the U.S. visa system. This month's session will include several international embassy officials who will discuss the visa processes in their respective countries. Updates will be provided when available!

OIG Reviews Mission China

The State Department's Office of Inspector General (OIG) has released its September 2010 Report of Inspection for Embassy Beijing and its constituent consular posts. Mission China includes our country's largest consular operations outside of Mexico. In light of the OIG's important findings and recommendations relating to consular productivity and customer service at a time of increased demand and decreased resources, we devote much of this month's column to this report.

Note: Like all OIG Inspection Reports, the report on Mission China represents a snapshot of conditions at a given period of time (in this case, May-June 2010). It's reasonable to assume that the mission is already on its way to curing many of the shortcomings noted in the report.

Mission China's Consular Services

Mission China has grown dramatically in parallel to China's "stunning rise to world prominence." No single factor has driven the growth of the mission more than the demand for consular services. Indeed, consular services now represent the largest single function performed by the Department of State in China.

There is an "exploding" demand for nonimmigrant visa (NIV) services that is "swamping" the mission's consular sections. In 2009, Mission China processed 550,000 NIV applications; during the first five months of 2010, NIV volume was 30% higher than during the same period in 2009. Student visa applications represented the single greatest source of growth.

According to the OIG, managing this accelerated growth is a "fundamental challenge." Examples of this challenge include the following:

1) With the surge in demand for visa services, NIV appointment times have soared. For example, at the time of the report, wait times were nearly four months in Beijing and Shanghai. If not addressed, these wait times could become a "serious bilateral irritant."

2) Of the approximately 100 Entry Level Officers (ELOs) in China, fewer than 10% are consular coned. To make matters worse, consular resources are routinely drawn for non-consular activities. At Embassy Beijing, for example, consular staff whose primary duty should be to deal with the growing demand for consular services are instead regularly tapped for other mission activities such as high-level visits.

Among the specific recommendations OIG inspectors made for increasing productivity:

Visa validity: The measure with the highest impact to increase productivity in the medium term would be to extend visa validities by negotiating a new reciprocity agreement with China. The visas currently issued to tourists, students and businesspeople are valid for only one year. If Chinese nationals could receive longer-term visas, the overall number of applications would drop, reducing the burden on NIV units throughout the country.

Security Advisory Opinions (SAOs): The Bureau of Consular Affairs (CA) should enhance the DS-160 (the electronic NIV application form) by collecting required data to automatically complete routine security advisory opinions. The current online application form does not collect all the data necessary to process routine security advisory opinions, meaning that consular staff must request the data from the applicant manually and add it to the case. The process is further encumbered by the fact that when the applicant electronically submits the additional info following an SAO request (CV, itinerary, list of publications, e.g.), these scanned files cannot be inserted into the electronic case file.

Off-site Data and Biometric Centers: CA should approve off-site data and biometric collection in China, which would free up interview windows and allow consular staff to perform higher-value tasks.

Specific Consular Posts

Embassy Beijing

Embassy Beijing's consular section is lead by an "outstanding manager." The section comprises 32 officers and 47 LE staff; its NIV unit processed 260,000 visa applications in FY 2009.

Regrettably, significant deficiencies in the Embassy's public areas limit the mission's ability to take advantage of valuable opportunities for promoting public diplomacy in the consular section. Chinese nationals who travel to the U.S. are important to American economic success and the future of the U.S.-China bilateral relationship. The public face that the U.S. presents in Beijing, however, includes a queuing system that does not function, a second-floor waiting room that is accessible only via one narrow staircase, and insufficient public lavatories.

Consulate General Chengdu

CG Chengdu's consular section is dealing admirably with difficult conditions; morale is excellent, largely due to the efforts of an "unusually effective" consular chief. The consulate has experienced a crush of visa applicants: NIV adjudications rose from 2,877 in May 2007 to 6,165 in May 2010 (an increase of 114% in just 3 years).

Consulate General Guangzhou

CG Guangzhou is a massive operation with 100 employees. The consular section employs 30 officers and 60 local staff. A new facility, set to open in 2013, will have 112 interview windows.

According to the OIG report, this large consular section requires "energetic leadership and management, which it is lacking."

The OIG notes that "the most salient characteristic of consular work in Guangzhou is fraud." There is a long history in the area of sophisticated fraud schemes that attempt to circumvent legal immigration rules. Despite this, the fraud unit in Guangzhou "is not doing its job." Per the OIG report, some consumers of the fraud unit's products perceive the unit's efforts as lacking added value. The Guangzhou section chief has not actively engaged with the situation.

In addition to a heavy flow of NIV applications, Guangzhou handles all the immigrant visa (IV) and adoption cases in China. IV applications have decreased from 57,707 in FY 2005 to 38,318 in FY 2009 – 34% in 4 years. The IV operations are well run, thanks to the efforts of an "exceptionally capable" IV chief.

One specific concern for IV productivity involves the shipment of hard-copy case files from the National Visa Center (NVC). Shipment times are generally two months, although some shipments have been delayed in Chinese customs by an average of four months. The OIG recommends to CA that it expand the pilot project of scanning IV cases and transferring them electronically.

As with Beijing, deficiencies in the public areas limit the ability for promoting public diplomacy in the consular section. In Guangzhou, hundreds of applicants stand out in the elements every day – often huddling under umbrellas – as they are checked for entry into the building. All IV applicants are asked to arrive same

time, creating for many of them an aggravating wait of several hours before they are interviewed.

Consulate General Shanghai

Consulate General Shanghai is "ground zero" for visa demand in China. May 2010 set a new record of over 20,000 applications, up 34% from May 2009.

A cramped workspace (with only 12 NIV windows) limits the options for meeting the challenges of this visa crush; but, nonetheless, the consular section is well managed. An active and able consul general and a competent deputy provide "excellent direction" to consular officers and staff.

Consulate General Shenyang

Workload has grown dramatically: Visa application volume rose 32% in the second quarter of FY 2010 compared to the same quarter in FY 2009. Regrettably, consular space is wholly inadequate. Another complicating factor for providing services is the presence of the Chinese People's Armed Police: PAP guards insist on having a list of all consular visitors at least 24 hours in advance – including visa applicants and Americans seeking citizen services. This burdensome requirement restricts access to the consulate.

Wuhan

All routine ACS and visa services handled from Beijing. Only 1,533 people from the Wuhan consular district applied for visas in 2009. The only officer stationed at post is the Consul General, who received high marks for Chinese language skills and consular experience.

Special Congrats to Public Diplomacy!

The OIG recognizes Mission China's public diplomacy efforts as a "Best Practice." The public affairs environment in China is one of the most challenging in the world – the result of vigorous Chinese government efforts to limit U.S. public diplomacy and outreach. Media control by Chinese authorities is absolute. Control measures block media placement in the traditional press.

Mission China's public affairs sections have developed and use new media programs – blogs, web chats, and Twitter – to enable them to reach out directly and effectively to the almost 400 million Internet users in China. Through its development and use of new media tools and its cultivation of Chinese online contacts, public affairs sections have been able to significantly increase dissemination and placement of information, despite great obstacles.

Congratulations to all those involved in this important public diplomacy mission!

The OIG Report of Inspection of Mission China may be accessed here:
<http://oig.state.gov/documents/organization/149567.pdf>

Helsinki Green

Embassy Helsinki will be limiting the availability of consular services in October and November of this year due to the ongoing rehabilitation of the Embassy buildings. The planned structural changes to the Embassy buildings incorporate significant "green" elements to improve energy efficiency and reduce the Embassy's carbon footprint.

The following [statement](#) made on Earth Day 2010 provides a sense of the emphasis that Ambassador Bruce Oreck places on "green" initiatives:

"Here at US Embassy Helsinki, we are also making a difference. We have just added two Chevrolet flexi-fuel vehicles to the Embassy fleet. We have also installed more motion-sensor lights in Embassy corridors.

In June 2010, Ambassador and Mrs. Oreck will host a bee colony in their backyard to promote the importance of local beekeeping. Expert beekeeper Corwin Bell is visiting Finland this month to connect with the local Finnish beekeeping community, and share information on new, advanced bee hive equipment that is effective and easy to use for first-time beekeepers.

Ambassador and Mrs. Oreck also have plans to create an Embassy vegetable garden at their residence this summer, to support the use of organically-grown, sustainable produce.

Perhaps our most ambitious green project is the rehabilitation the 109-year old Chancery Annex. Ambassador Oreck is working hard to incorporate green elements into the renovation plans. Use of advanced insulation and state-of-the-art lighting are just a few of the elements that will improve the building's energy-efficiency and reduce the Embassy's carbon footprint.

So whether from north-to-south, coast-to-coast, or even beyond in our overseas Embassies, Americans are actively working to make the world a little greener."

Parenthetically, during this period of limited consular services at Embassy Helsinki, regular nonimmigrant and immigrant visa interviews will be held on only one or two days a week. Visa applicants are urged to schedule appointments as far in advance as possible.

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

Substantive updates to 9 FAM (Visas) of the Foreign Affairs Manual (FAM) this month include instructions on how to report lost or stolen visas, a clarification on the circumstances under which polygamy is a bar to visa issuance, an expanded list of applicants who can qualify for an exemption of the visa application fee, and a broadened definition of the inadmissibility arising from a false claim to U.S. citizenship. A summary of these updates and other recent changes to 9 FAM is offered below.

Polygamy

The Notes to 9 FAM 40.101 differentiate polygamy – a “historical custom or religious practice” – from bigamy, which is a criminal act. As a crime involving moral turpitude, a conviction for the latter can render a foreign national ineligible for a nonimmigrant or immigrant visa. The FAM now makes it clear that simultaneous marriage to two individuals can be the basis for a finding of immigrant visa ineligibility under INA 212(a)(10)(A) if this deed is intentionally committed within the cultural construct of polygamy.

Stated differently, a consular officer’s mere *knowledge* that an IV applicant is married to two or more people cannot result in an INA 212(a)(2)(A)(i)(I) finding, but the applicant can be refused under INA 212(a)(10)(A) if the multiple marriages were entered into “based on historical custom or religious practice.” If the multiple marriages resulted in a criminal conviction, however, the applicant may also (or alternatively) be found ineligible under INA 212(a)(2)(A)(i)(I).

<http://www.state.gov/documents/organization/87124.pdf>

False Claims to Citizenship

Under INA 212(a)(6)(C)(II), a foreign national who has falsely claimed to be a U.S. citizen “for any purpose or benefit under ... any ... Federal or State law” is inadmissible to the United States. The Notes to 9 FAM 40.63 now include language clarifying that such claims are not limited to statements made to consular officers or immigration inspectors, but could also apply to foreign nationals who fraudulently assert themselves to be U.S. citizens on I-9 employment eligibility forms. The Department asks officers who encounter such a fact pattern to seek an Advisory Opinion from the Visa Office before making an INA 212(a)(6)(C)(II) finding.

<http://www.state.gov/documents/organization/87011.pdf>

Lost and Stolen Visas

A new section of the FAM now instructs posts how to report visas that have been lost or stolen. According to the instructions at 9 FAM 41.113 PN17.3, a consular employee who becomes aware that a visa has gone astray should search for the bearer in the Consolidated Consular Database (CCD), indentify the specific NIV or IV that has gone missing, and click on the “Lost/Stolen” link. “The Lost or Stolen Visa Report will automatically take the information from the original CCD

case, eliminating the need for further data entry.” Henceforth, a “LOST/STOLEN” banner will appear above that visa record in the CCD, as a means of preventing any fraudulent use of the document. If the foreign national obtains a new visa and subsequently finds the “lost” one, he/she should use the new visa when traveling.

<http://www.state.gov/documents/organization/87503.pdf>

Application Fee Exemptions

Until recently, 9 FAM 41.113 PN5.2 stated that only applicants for government-affiliated visas – such as As, Gs, or J-1 programs funded by the Department of State or USAID – were exempt from paying the Machine-Readable Visa application-processing fee. New additions to the list range from the fair (“Replacement Machine-Readable Visa when the original visa was not properly affixed or needs to be reissued through no fault of the applicant”) to the humane (“A parent, sibling, spouse, or child of a U.S. Government employee killed in the line of duty who is traveling to attend the employee’s funeral and/or burial; or a parent, sibling, spouse, son, or daughter of a U.S. Government employee critically injured in the line of duty for visitation during emergency treatment and convalescence”). Parenthetically, 9 FAM 41.107 N4.2 provides consular officers with a mechanism for requesting waivers of visa application and issuance fees on behalf of visa applicants who are traveling to the United States for the purpose of performing charitable activities.

<http://www.state.gov/documents/organization/87503.pdf>

Are You Smarter Than A Consular Officer?

- 1) Name 4 of the 6 cities in China in which the United States maintains consular posts.
- 2) What was the nationality of the first person to enter this year’s Diversity Visa lottery?
- 3) What is the difference between CAT I and CAT II visa refusals?
- 4) True or false: INA 222(g), which renders void the visas of nonimmigrants who remain beyond the period of authorized stay, does not apply to individuals who were admitted under the Visa Waiver Program.
- 5) Which U.S. consular post normally adjudicates visa applications from residents of Macau?
 - (a) Beijing
 - (b) Hong Kong
 - (c) Lisbon

6) May a consular officer issue derivative visas to multiple spouses of a principal nonimmigrant who practices polygamy?

7) True or False: If a petitioner divorces his immigrant spouse, then his obligations flowing from the I-864 Affidavit of Support are cancelled.

8) What federal legislation was the catalyst for the Oct. 18 opening of the Department of State's newest Passport Agency in Buffalo?

9) What is the maximum period of time that a foreign national is permitted to stay in United States in C-1 transit status?

10) Which United States President vetoed the Immigration and Nationality Act, only to have Congress override the veto?

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

Wait times in Rio de Janeiro have surged 62 days in just two months; Recife's wait times are even more "impressive," up 78 days in this same period. On the other end of the scale, Guadalajara's wait times have plummeted 64 days since September. The highest wait time in Central & South Asia belongs to Kolkata, where applicants need to wait a mere 9 days to obtain a visa appointment.

| # | Country | Consular Post | Visa Wait Time | Increase/decrease from Last Month | Top 10 Position Last Month |
|----------|----------------|-------------------------------|-----------------------|--|-----------------------------------|
| 1 | Cuba | Havana (US Interests Section) | 999 days | Unchanged | 1 |
| 2 | Venezuela | Caracas | 170 days | Unchanged | 2 |
| 3 | Brazil | Rio de Janeiro | 119 days | + 32 days | 6 |
| 4 | Brazil | Sao Paulo | 98 days | + 7 days | 4 |
| 5 | Brazil | Recife | 90 days | + 32 days | 8 |
| 6 | Brazil | Brasilia | 84 days | - 6 days | 5 |

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|----------|----------|-------------|---------|-----------|-------------|
| 7 | Nigeria | Lagos | 65 days | - 5 days | 7 |
| 8 | Nigeria | Abuja | 45 days | Unchanged | New Listing |
| 9 (tie) | China | Shanghai | 42 days | - 7 days | New Listing |
| 9 (tie) | Canada | Montreal | 42 days | Unchanged | New Listing |
| 10 (tie) | Colombia | Bogota | 40 days | - 12 days | 10 |
| 10 (tie) | Canada | Vancouver | 40 days | + 18 days | New Listing |
| 10 (tie) | Mongolia | Ulaanbaatar | 40 days | Unchanged | New Listing |

** Updated to October 5, 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 | (170 days) |
| Africa | Nigeria/Lagos | (65 days) |
| East Asia and Pacific | China/Shanghai | (42 days) |
| Middle East and North Africa | Israel/Jerusalem | (34 days) |
| Europe and Eurasia | Montenegro/Podgorica | (30 days) |
| Central and South Asia | India/Kolkata | (9 days) |

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

1) Beijing, Chengdu, Guangzhou, Shanghai, Shenyang and Wuhan

2) Australia.

http://blogs.state.gov/index.php/site/entry/diversity_visa_lottery_applications

3) CAT I refusals are for the permanent ineligibilities. CAT II refusals are essentially those that can be overcome: 221(g) and public charge are two examples.

4) True. FAM 40.68 N2

5) (b)

6) No, just one derivative visa per principal nonimmigrant. That said, B-2 visas may be issued to additional spouses at the officer's discretion. 9 FAM 40.101 N4
<http://www.state.gov/documents/organization/87124.pdf>

7) False. <http://www.uscis.gov/files/form/i-864.pdf>

8) The American Recovery and Reinvestment Act of 2009.
http://blogs.state.gov/index.php/site/entry/passport_agency_buffalo

9) 29 days. <http://www.state.gov/documents/organization/87500.pdf>

10) President Harry S. Truman

Quote of the Corner

"Hardlines are a consular section's most valuable asset."

State Department's Office of Inspector General, Report of Inspection for Embassy Beijing and Constituent Posts (September 2010)

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