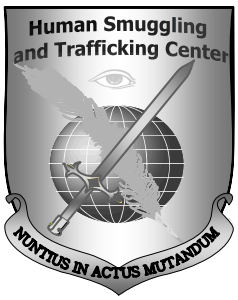
A PRIMER ON VISAS AND VISA FRAUD



Human Smuggling and Trafficking Center

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A Primer on Visas and Visa Fraud

INTRODUCTION

This primer is designed to give intelligence analysts, law enforcement officials and border security officials a basic understanding of the Non–Immigrant and Immigrant visa process and how visas can be fraudulently obtained. It is intended to serve as an introduction to visa fraud and help those charged with the responsibility of securing US borders recognize visa fraud.

This is a joint product of the Human Smuggling and Trafficking Center and the U.S. Department of Homeland Security's Office of Intelligence and Analysis and was coordinated with the Department of State's Office of Consular Fraud Prevention Programs.

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I. VISA AND IMMIGRATION OVERVIEW

What is a visa?

Entry visa to China

A visa (short for the Latin *carta visa*, literally "a document that has been seen") is a document issued by a country giving a foreign national permission to travel to and formally request entrance to that country. Visas are usually stamped or placed inside of a passport, but are sometimes issued as separate pieces of paper. Modern U.S. visas are in the form of a foil upon which is printed the traveler's photo, biographic and passport information, and information about visa category and any limitations. The foil is pasted on a page of the traveler's foreign passport.

United States visas are issued by consular officers at American embassies and consulates abroad. Consular officers issue a visa after reviewing the foreign national's visa application and determining that the traveler is eligible to apply for entry into the United States at an official port of entry during a given period of time and for a specific purpose. Consular and visa matters are the responsibility of the U.S. Department of State.

What is a Consular Officer?

Consular officers are Foreign Service Officers employed by the U.S. Department of State after a long and rigorous series of written and oral examinations. All Foreign Service Officers are U.S. citizens and they must obtain a Top Secret security clearance before being hired. After being hired they are appointed by the President as Consular Officers of the United States of America, with the advice and consent of the Senate, and receive four to twelve months of training before being sent abroad to do visa or consular work.

A U.S. visa allows a foreign citizen to travel to and appear at a U.S. port of entry – which might be an airport, a seaport, or a land border crossing – in order to *request permission to enter the United States.* It does not by itself confer the right to enter the United States. Obtaining a visa is only the first step for a foreign citizen to legally enter the U.S. It is the responsibility of the U.S. Customs and Border Protection (CBP) officer at the port of entry to determine identity, citizenship, and admissibility of foreign travelers. If determined inadmissible, it is the responsibility of CBP to determine appropriate action and disposition. CBP has the final word on whether or not a traveler meets the requirements to be lawfully admitted into the U.S.; the CBP officer at the port of entry also determines how long they may stay, based on the visa category, passport validity, and associated laws and regulations.

U.S. non-immigrant visa

The validity of the visa – the time period on the face of the visa itself – only refers to the time frame during which travelers may apply for admission at a port of entry, not length of time the traveler may stay in the United States. A visa valid for five years and multiple entries means that the traveler may apply for entry at a port of entry and request admission into the United States an unlimited number of times during the five-year period. A traveler might apply for admission to the United States twenty times during the validity period of a five-year, multiple-entry tourist or business visitor visa and be granted a six month maximum period of stay each time by the CBP officer at the port of entry.

What is an Immigrant?

There are two categories of visas – non-immigrant (NIV) and immigrant (IV). An **immigrant** is someone who lives permanently in the United States or intends to do so. A n**on-immigrant** is an alien who comes to the United States for a specific purpose and for a limited period of time, such as a businessperson, tourist, student, or temporary worker.

Legal immigrants enter the U.S. by presenting their immigrant visa (or green card, if they are already legal permanent residents of the U.S.) to the CBP officer at the port of entry. A nonimmigrant alien may be deemed inadmissible to the United States if his intent indicates he will remain in the United States for a longer amount of time than his visa category permits or who intends to enter the United States for a purpose other than that specified in the terms of his visa, or otherwise violate the terms of his admission, such as seeking unauthorized employment. For example, CBP would deny entry to the holder of a tourist visa when there is evidence that the person intends to work in the U.S. or intends to stay in the U.S. for more than a temporary visit. CBP will also deny entry to a person with a nonimmigrant visa when it is determined that the person intends to permanently reside in the U.S.

There are three main avenues that allow immigrants to apply for permanent residency within the U.S. One is based on a **family relationship** to a U.S. citizen or permanent resident; another is **employment based**, requiring an employer inside the U.S. to file an immigrant visa petition on their behalf. In addition, the Congressionally-mandated **Diversity Immigrant Visa Program** makes available up to 50,000 immigrant visas available annually to foreign citizens from countries with low rates of immigration to the United States whose names are drawn from random selection among all entries and who must demonstrate that they meet strict eligibility requirements.

The Immigration and Nationality Act establishes strict limitations on the number of immigrant visas that can be issued in a given year. These limits also apply to foreign citizens who apply to DHS to change status from *non-immigrant* to *resident (green card holder)*. Only a few categories of immigrants, such as the foreign spouse and children of a United States citizen, can obtain an immigrant visa or change status without fitting into the quotas. Thus, prospective immigrants who follow the rules often wait for years before they can obtain a visa and move to the United States.

U.S. Immigrant Visa

The Immigration and Nationality Act also establishes quotas on several categories of non-immigrant visas, such as some of the temporary worker visas, while other non-immigrant categories, such as tourists and businesspersons, are unlimited. Some intending immigrants and temporary workers exploit this by fraudulently claiming to be temporary visitors for tourism or business in order to enter the U.S. illegally, often years ahead of those persons who adhere to the legal requirements.

What is the Visa Waiver Program?

Is it true that some foreigners do not need a visa to enter the United States? What is a visa waiver?

It is true, although there are many conditions that apply. The Visa Waiver Program (VWP) started as a pilot program in 1986 and has been altered since then to include or exclude various countries. Nationals of countries participating in the Visa Waiver Program can travel to a port of entry without a visa under strictly defined circumstances. Even though they do not require a visa, they still must be inspected by a CBP officer who will determine whether they are eligible to enter the United States.

Which countries participate in the Visa Waiver Program (VWP)?

As of October 2007, there are 27 participants in the visa waiver program:
Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Lichtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

How does a country qualify to participate in the Visa Waiver Program?

Visa waiver program countries are designated by the Secretary of Homeland Security, in consultation with the Secretary of State, based on conditions established by Congress:

- The country provides reciprocal visa-free travel for U.S. citizens (90 days for tourism or business purposes);
- The country issues secure machine-readable passports that satisfy internationally accepted standards;
- The country has a program to incorporate biometric identifiers into their passports;
- The country reports the theft of blank passports to the U.S. Government on a timely basis;
- There is a very low refusal rate for applications for nonimmigrant visas by nationals of the country; and
- The number of nationals of the country traveling as nonimmigrant visitors who are denied admission to the U.S., withdraw their application for admission, or violate the terms of admission must be less than two percent of the total number of nonimmigrant nationals traveling to the U.S.

In addition to these specific criteria for participation in the Visa Waiver Program, the law also requires that the Departments of Homeland Security and State evaluate the effect that a country's designation as a VWP participant would have on the law enforcement and security interests of the United States, including enforcement of immigration laws and the existence and effectiveness of extradition agreements and procedures. In order for a country to be designated as a VWP participant, a determination must be made that such interests would not be compromised by the designation of the country.

Specific factors to be considered in such a review are not established in the legislation. However, in the past the following types of issues have been considered:

- Security of a country's passport application, production and delivery processes;
- Security of passports and other documents used to demonstrate identity and citizenship, and incidence of fraud or misuse involving such documents;
- Nationality and citizenship laws, and application of such laws;
- Existence of security and law enforcement threats in the country (terrorist activities, organized crime, money laundering, human and drug trafficking, etc.), and efforts to address such threats;
- Immigration controls and alien smuggling activities in the country, and efforts to address such threats;
- Stability of the government politically and economically;
- Degree of cooperation with the U.S. and other international partners on law enforcement issues, including extradition.

Whom may a foreign diplomat bring into the United States?

Foreign diplomats or staff members working at an embassy, consulate, or international organization (such as the United Nations or Organization of American States) in the United States may bring to the United States members of their immediate family who will be living with them in the United States. Under certain circumstances they may also bring household employees such as maids, nannies, or gardeners. The diplomat or staff member, his or her family, and household employees all must qualify under U.S. law for non-immigrant visas.

Foreign diplomats or staff members have no special right to bring friends or relatives other than immediate family into the United States.

Press articles have drawn attention to a few incidents in which foreign diplomats or staff members who brought in nannies, cooks, or maids to the United States, were alleged to have hired them out as if they were indentured servants, abused them physically, or denied them their pay or tickets home. Such actions are illegal. Perpetrators have been tried under U.S. law, either because they had no diplomatic immunity, or because their home country withdrew their diplomatic immunity so they could be prosecuted.

Visas and Economic Security

Why are so many visas issued? Aren't many people from less developed countries just trying to get to the United States to work illegally or collect welfare?

U.S. embassies world-wide, on average, refuse one in four visa applicants. Refusal rates are not determined by quota; they are the aggregate result of decisions based on the law and the facts of individual cases.

Before a foreign traveler can receive a U.S. visa, U.S. law requires that they demonstrate to a Consular Officer that they are traveling to the United States for a purpose that is permissible under U.S. law, that they have sufficient financial resources such that they can fund their stay in the U.S. without resorting to unauthorized employment or becoming a public charge. Most visa applicants are also required to demonstrate that they have a residence abroad which they do not intend abandon.

Embassies may appear to disproportionately refuse applicants from less developed regions of the world, or from poor sectors of the population, but it can be much more difficult for applicants who are unemployed or marginally employed to show that they intend to return to their country after visiting the United States. Embassies also refuse well-to-do travelers who have vague plans or no real time frame in mind for returning to their home country, and all travelers, wealthy or not, who have a disqualifying criminal record or some other ineligibility. Embassies conduct validation studies of visa issuance to see how many travelers returned home, and use the information to improve their visa interviewing and decision making.

While security must always be our primary concern, we must not forget that welcoming visitors to the United States is central to our well-being and national security. Foreign visitors account for nearly $105 billion in spending and other economic activity in the United States annually. One in every eight civilian jobs in the United States is linked directly or indirectly to the travel and tourism industry. For example, the 582,000 international students who studied at American colleges and universities during the 2006-'07 academic year contributed nearly $14.5 billion to the United States economy.

More Information

More information about the various visa categories and requirements is available on the Department of State and U.S. Citizenship and Immigration Services websites:

- http://travel.state.gov/visa
- http://www.uscis.gov/

The full text of the laws and regulations are also available on-line:

- The Immigration and Nationality Act (INA)
  http://www.uscis.gov (click on "Laws and Regulations")
- United States Code – Title 8 – Aliens and Nationality
  http://www.access.gpo.gov/uscode/title8/title8.html
- Code of Federal Regulations – Title 8 – Aliens and Nationality
  http://www.gpoaccess.gov/cfr/index.html
- Code of Federal Regulations – Title 22, Volume 1, Chapter I, Parts 40-42 – Visas
  http://www.gpoaccess.gov/cfr/index.html
- Foreign Affairs Manual – Volume 9 - Visas
  http://www.state.gov/m/a/dir/regs/fam/c22167.htm

II. VISA ADJUDICATION PROCESS

What happens when a foreign traveler applies for a nonimmigrant visa (NIV)?

U.S. law requires that almost every applicant for a U.S. visa make a personal appearance for an interview with a Consular Officer. If there are no national security concerns, Consular Officers may waive the personal appearance requirement for limited categories of applicants, including children less than 14 years of age; persons over 79 years of age; officials of foreign governments and international organizations; and, under certain circumstances, travelers renewing recently expired visas.

A typical visa interview lasts just a few minutes and often involves applicants trying to persuade the consular officer that they have firm plans to return to their home country after a visit to the United States, that they do not intend to cause harm to the U.S. or its interests, and that they are otherwise qualified for a visa. The interview is face-to-face although the consular officer is behind a blast resistant window.

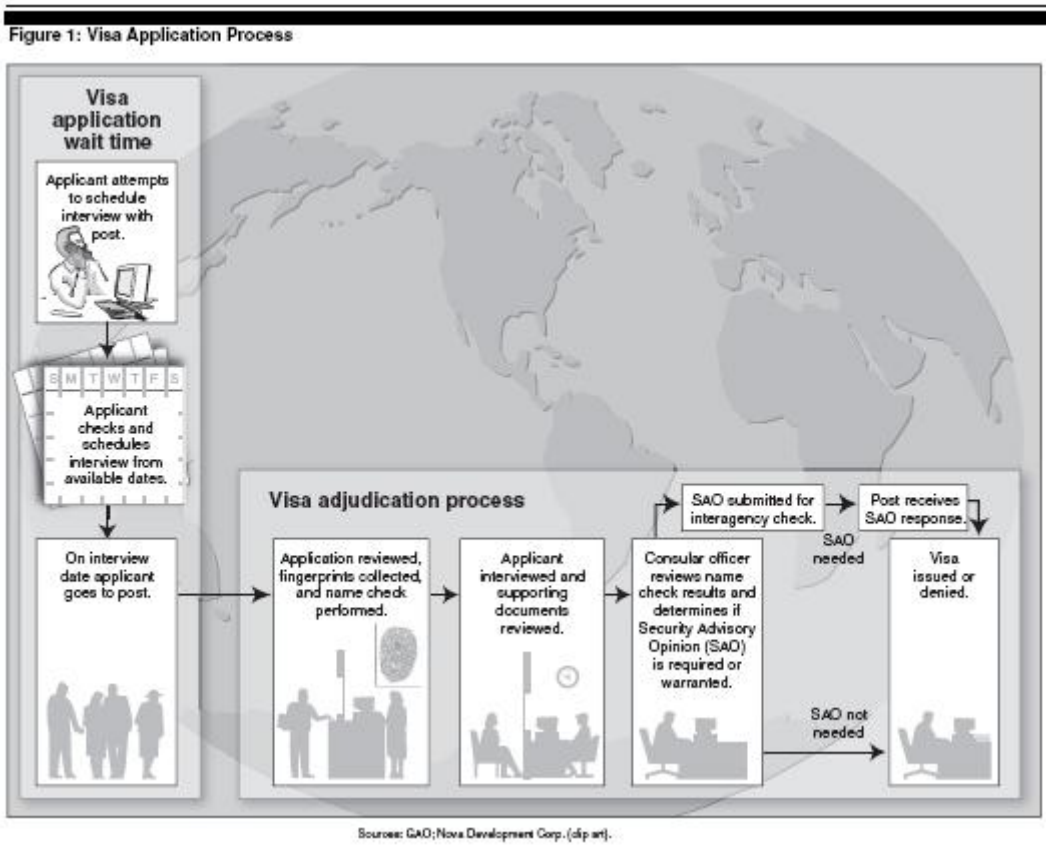
Before the interview: Foreigners wishing to visit the United States are usually required to: 1) submit a passport and a passport-sized photo; 2) pay the nonrefundable application fee and obtain a receipt; 3) obtain an appointment date and time; 4) gather any required documents (e.g., evidence of admission to a U.S. school); and 5) fill out the visa application form. The visa application form is available online in many, but not all, languages.

Getting to the interview window: After the visa applicant arrives at the embassy or consulate on the appointed day, local consular staffers check the application, passport, photograph and any other documents submitted by the alien. In addition, consular staffers also check that all required data has been correctly entered into the computer system, and initiate a computerized check against a database of foreign nationals who have been denied or are ineligible to receive visas, or for whom other derogatory information is known. Consular employees collect digital finger-prints that are also checked against databases for derogatory information. The passport information is also checked against databases to determine if the passport has been reported lost or stolen. By the time the visa applicant appears in front of the consular officer for his visa interview, the consular officer will have the applicant's name check results and other data on a nearby computer screen. Consular officers, also called consuls and vice-consuls, conduct the interview, usually in the language of the foreign country.

Visa denials and ineligibilities: The most common reason for a consular officer to refuse a visa to a non-immigrant visa applicant is Section 214(b) of the Immigration and Nationality Act. This section of the law requires applicants to convince the consular officer that the purpose of their trip is permissible under U.S. visa regulations and that they are true non-immigrants with the intention to return home after a temporary visit to the United States. Other reasons for denying a visa application include staying longer than permitted during a previous visit to the United States, providing false information to visa or immigration officers, assisting other persons to violate U.S. immigration laws, convictions for certain criminal offenses, or having a communicable disease of public health significance. Except in very rare circumstances defined

in regulations, consular officers always provide verbal and written notice and explanation identifying the section of U.S. law under which their application was refused.

Getting the visa to the applicant: Depending on the procedures in effect at the embassy or consulate, travelers who succeed in qualifying for a visa may be asked to come back the next day to pick up their passport with the U.S. visa attached inside, or they may pay a courier company, contracted by the embassy, for home or office delivery of the passport.



What do consular officers do in the nonimmigrant visa (NIV) interview?

Consular Officers are trained to conduct visa interviews in a five-step process:

1. **Prepare** – Quickly examine the application and documents; review the namecheck information and/or staff notes about the applicant.
2. **Meet the Applicant** – Closely observe the applicant approach, smile, make eye contact, greet the applicant by name, make a courteous entrance into questions using the local language if applicable.
3. **Ask Questions** – Confirm the information already on the application form; move from the known to the unknown, from the general to the specific; ask simple, open-ended questions; listen to the answers; pursue lines of questioning that can show the legitimacy or the weaknesses of a case; clarify whatever does not make sense; when appropriate

apply "The Power of Silence": if an applicant says something that sounds weak, say nothing and the applicant will often feel compelled to try to "fix" it.

4. **Decide** - Look at the whole application: Considering the applicant's situation, resources, purpose and preparations, does the trip make sense?
5. **Announce the decision** - If the answer is "No," Explain the decision briefly and courteously. If the answer is yes, say so courteously and clearly.

A Sample Non-Immigrant Visa Interview

Vice-consul: "Mr. John Smith, please?"
Visa Applicant: "I'm John Smith."
Vice-consul: "Good morning, Mr. Smith."
Visa Applicant: "Good morning."
Vice-consul: "Tell me please, what is the purpose of your trip to the US?"
Visa Applicant: "My company wants to sell products there. I have meetings."
Vice-consul: "That's interesting. And who will you meet with?"
Visa Applicant: "I don't know their names."
Vice-consul: "Please tell me what you do know about them."
Visa Applicant: "My boss arranged everything. The letters are there, with you."
Vice-consul: "Yes, I see the letters. But I'd like you to tell me, please."
Visa Applicant: "Um –I don't know."
Vice-consul: "What don't you know?"
Visa Applicant: "I –um –I don't know them. The Americans."
Vice-consul: "And the name of the company they work for?"
Visa Applicant: "No."
Vice-consul: "Your meeting schedule?"
Visa Applicant: "It's all in the letter."
Vice-consul: "That's true. But since you plan to leave tomorrow, I need to know that you know, too."
Visa Applicant: "I –I don't know."
Vice-consul: "What city will you go to?"
Visa Applicant: "New York." (the DS-156 visa applicant indicates Miami and New Orleans)
Vice-consul: "I'm sorry, Mr. Smith, but you don't qualify for a non-immigrant visa. Here is an explanation of our law in your language."
Visa Applicant: "But I have to go to America."
Vice-consul: "I understand and I am very sorry, Mr. Smith."

Which visa applicants are fingerprinted?

A U.S. citizen employee will collect 10-digit fingerprints of almost all most visa applicants. There are a few exceptions. Fingerscans are not collected for travelers under the age of 14 or over the age of 79. In addition, foreign officials and their immediate family members traveling

on official business are not required to be fingerscanned or interviewed. A few other exemptions from the fingerscan or interview requirements are defined by law.

What does the stamp "APPLICATION RECEIVED" mean?

CBP officers and others may encounter foreign passports which have been stamped "Application Received," usually with another stamp indicating the date and the name of a U.S. Embassy or consulate. The "Application Received" stamp usually appears on the back page of a passport. It means that the person applied for a visa on that day and the application was refused. Some kinds of refusals may be overcome, resulting in a visa inserted into the pages of the passport, dated after the date of the "Application Received" stamp.

Prospective travelers with an "Application Received" stamp will sometimes try to fraudulently disguise its receipt by covering it up, using chemicals to (try to) eradicate it or even by tearing out the last page of their passports. The Department of State discontinued the use of the "Application Received" stamp in 2007 because information about visa issuances and refusals is now available electronically to CBP officers in the secondary environment.

What happens in an immigrant visa (IV) interview?

Immigrant visa applicants may get a longer interview than non-immigrant visa applicants because the intended immigrant needs to respond to more in-depth questions. They are also questioned about documentation submitted, including medical exams, vaccinations, police records, birth certificates, marriage certificates, diplomas and work records concerning relationships to the person, either relative or employer who has filed a petition on their behalf. The crucial questions for the consular officer include whether the relationship between the petitioner and the beneficiary/applicant is real and whether the immigrant will be able to financially support her or himself in the initial phase of moving to the United States. If not, the consular officer will want to be assured that there is a U.S. based sponsor who can be relied upon to help the immigrant.

Applicants for refugee status or asylum

What is the difference between a refugee and an applicant for asylum?

A refugee is usually a person who is living overseas outside the country of their residence and citizenship and who is unable or unwilling to avail him or herself of the protection of his own country because of past persecution or a well founded fear of persecution on account of race, religion, nationality, or membership in a particular social group or political opinion.

Such a person may apply for **refugee status** with the United Nations High Commissioner for Refugees (UNHCR) or occasionally through a United States embassy or consulate. In addition, the President after appropriate consultation under section 207(e) of the Immigration and Nationality Act may specify that a specific individual be granted refugee status.

Unlike a refugee, an applicant for asylum is usually already in the United States and has a due process right to the asylum process which is a combination of administrative, quasi-judicial and judicial processes. An asylum applicant has to establish a well-founded fear of future persecution or, in the absence of this well-founded fear, "severe" past persecution.

How does a foreign national get refugee or asylum status at a U.S. Embassy overseas?

Usually they don't. If the person seeking asylum is not a citizen of the same foreign country where the embassy is located, the first reaction will be to send the person to the nearest office of the United Nations High Commissioner for Refugees.

III. VISA FRAUD

What is visa fraud?

Visa fraud is the fraudulent obtaining, use, or manufacture of a visa. It can include

- the use of a genuine visa by an imposter;
- obtaining, or attempting to obtain, a visa by providing false information or documents to a consular officer;
- the alteration of a genuine visa to change the information on it;
- the forgery or manufacture of an imitation of a legitimate visa;
- obtaining, or attempting to obtain, a visa by corrupting a government official.

What is an Imposter?

An imposter assumes an identity not his or her own for a deceptive purpose. Aliens commonly assume the identities of living or deceased U.S. citizens to obtain genuine U.S. passports or to use U.S. passports that have been stolen, purchased, or borrowed from an American citizen. Aliens assume the identities of foreign nationals who already have a U.S. visa in a passport that has been stolen, purchased, or borrowed from its rightful owner. Other aliens may assume the identity of a foreign national whom they believe may be more likely to qualify for a U.S. visa and/or to hide information that would lead to a refusal if the alien were to apply for a visa in his or her true identity.

Criminal organizations buy unaltered lost and stolen travel documents and match them with alien clients seeking entry into the United States. They match travel documents with photos that broadly resemble the aliens they intend to transport. The alien then assumes the identity of the legitimate bearers for the time it takes to cross an international border, and may continue using that identity in the United States.

False Documents

Each year thousands of travelers bearing fraudulent travel documents are detained at U.S. borders and returned to their home countries. Many of these travelers have paid criminals the equivalent of thousands of dollars for their false documents only to lose their considerable investments to greedy smugglers. Obtaining or attempting to obtain a U.S. visa or entry into the United States by presenting fraudulent information or documents can make someone permanently ineligible to enter the United States. Sometimes qualified visa applicants think they can better their chances of obtaining visas by presenting a few "enhanced" documents. Nothing could be further from the truth. Even otherwise qualified applicants would jeopardize their chances of receiving a visa by presenting false documents. Consular sections at American embassies and consulates and CBP offices at ports of entry have staff trained to recognize false documents. Presentation of false documents can carry criminal penalties in an applicant’s country of residence and/or the United States.

Malfeasance

The U.S. Government does not tolerate corruption. Those rare government employees who have been caught taking bribes, abusing their position and authority to commit visa fraud, knowingly making false claims about an applicant's qualifications or purposefully issuing visas or passports to unqualified recipients have been prosecuted.

In 2002, Thomas Carroll, who had served as a consular officer at the United States Embassy in Guyana, was sentenced to 262 months imprisonment after he pled guilty to one count of conspiracy to commit visa fraud, one count of producing illegal identification documents, one count of bribery, and a forfeiture allegation for the proceeds of the first two counts.

Who investigates cases of suspected visa fraud?

The Department of State's Diplomatic Security Service investigates passport and visa fraud cases. Law enforcement officials can call 1-571-345-2924 to report possible visa fraud violations. The Department of Homeland Security's Bureau of Immigration and Customs Enforcement investigates visa fraud when it is tied to alien smuggling or other immigration related crimes.

What are the federal statutes for visa fraud?

Visa fraud and related statutes of U.S. federal law include:

18 USC 1546	Fraud and Misuse of Visas, Permits, and Other Documents
18 USC 1001	False Statements or Entries Generally
18 USC 1028	Fraud in Connection with Identification Documents
18 USC 201	Bribery of Public Officials
18 USC 371	Conspiracy to Commit Offense or to Defraud the United States

The elements of the crime generally involve the sale, provision, or transfer of otherwise legitimate visas, misrepresentation of reasons for traveling, and / or forgery or alteration of a visa.

What are the punishments for committing visa fraud?

Visa fraud, when the visa applicant (or someone helping him) intentionally conceals something that he knows makes him ineligible for a visa, is punishable under U.S. law (18 USC 1546) with the following penalties:

- Ten years for a first offense, if not tied to drug trafficking or terrorism;
- Fifteen years for fraud with other criminal links;
- Twenty years for fraud related to drug trafficking;
- Twenty-five years for fraud related to terrorism.

Just as federal tax violations have often been used to prosecute organized crime figures, including Al Capone, visa fraud is often used to charge leaders of major criminal organizations,

or to keep them incarcerated pending further investigation of more serious charges, such as terrorism or human trafficking.

Individuals who have committed U.S. visa fraud, but are not within the jurisdiction of the United States, still face legal consequences. They are generally under a lifetime visa ban, as set forth in INA Section 212(a)(6) and other provisions of the law.

Are there a lot of visa fraud cases?

DS special agents investigate more than 5,000 passport and visa fraud violations globally each year. Many of these cases are connected to other serious crimes, such as drug trafficking, international organized crime, terrorism, alien smuggling, and murder. While these cases do not regularly receive the headlines afforded to the high profile cases of other law enforcement agencies, their resolution helps secure U.S. borders and protect the national security of the United States.

What is visa shopping?

"Visa shopper" is the term used to describe a foreign national who applies for a U.S. visa at a U.S. Embassy or Consulate where he thinks it will be easier to qualify for a visa, rather than the embassy or consulate responsible for the area where he lives. Such applicants may be trying their luck, or they may be attempting fraud that they believe is less likely to be detected at an embassy or consulate that is unfamiliar with their home country conditions and fraud patterns.

Sometimes visa shopping takes applicants far away from their home country, as well as from their own region. A Korean citizen living in France, for example, should apply for the visa near where he or she lives, i.e. in France. Korean tourists or business travelers in France, however, would not ordinarily apply for U.S. visas there except under emergency circumstances. If they did, they might fit the definition of visa shoppers.

Case Study - Tale of a Visa Shopper

An Iranian national was applying for a U.S. tourist visa in Reykjavik., Iceland. He claimed to be in Iceland for a family reunion, he was the only Iran-based family member there. His U.S.-based relatives had appealed to their U.S. Congressman for help, and the consular officer was under pressure. The consular officer had to interview the traveler again, and be open to indications of deceptive behavior.

The applicant, an energetic young man about 23 years old, had a stack of impressive-looking documents to show that he was a licensed architect and the manager of a family-owned construction company in Tehran, with lucrative contracts, and thus would not be tempted at all to remain illegally in the U.S. All the documents were translated painstakingly into English by an official translator. The consular officer didn't speak Farsi, but the applicant spoke fluent English. The consular officer started out talking with him casually about the problems of running a big company in Iran, what with U.S. trade sanctions and all. The traveler said it

wasn't so bad, as he got most of his supplies locally and most of his equipment from Europe or Japan.

"What about Caterpillar?" said the consular officer, who had just read an article in BUSINESS WEEK magazine extolling the virtues of this U.S. company. The article had gone on to say that Caterpillar had no real equivalent or competitor world-wide, so the consular officer was suspicious of how the applicant managed to build bridges and roads without Caterpillar equipment.. The applicant did not recognize the word Caterpillar.

It seemed strange that the owner and manager of an active, prosperous construction company, even one in relatively isolated Iran, wouldn't have heard of Caterpillar. The, the vice consul refused the visa again, also under Section 214(b).

The following day the vice consul's contact in Icelandic Immigration phoned with some news. The Iranian had requested asylum in Iceland. He was not working at all in his home country, as he had told them, although the family firm existed – but only on paper. He was on the run from his own government, as a draft-dodger. Iceland refused him asylum, and deported him within a week.

How does a consular officer detect deception in the NIV interview?

Although many visa fraud schemes around the world have similar characteristics, there are variations depending on the country's culture, development and social structure. A consular officer uses in-depth knowledge of the foreign country, its culture and its people to look for inconsistencies or oddities in the applicant's words or body language that may signify a fraudulent visa application. Beginning with neutral, polite conversation, the vice consul asks questions about the areas of interest. People from different countries and different social origins may present different warning signs of a likely overstay or other ineligibility.

Case Study – Intent to Deceive

The 30-year-old applicant's religion requires her to dress modestly and wear a veil. She is married, with three children, to the owner of a well-known furniture store in the capital. She has never worked outside the home. She presents a new passport and says she needs a tourist visa to travel alone to Miami for shopping, where she will stay in a hotel. She has never traveled outside her country before. She speaks only her native language. She says she doesn't know anyone in the United States. The consular officer is suspicious because in that country such a visa applicant would be highly unlikely even to go to the supermarket by herself, much less a shopping trip, unaccompanied, to a foreign country where she knew no one and did not speak the language.

On the very same day, six other well-dressed and cultured matrons similar to this applicant also appeared in the embassy and were interviewed by other consular officers. All told the same story, i.e. they were traveling alone, on nearly the same date, to Miami for shopping. Refusing the applicants under Section 214(b) of the INA, the consular officers alerted the embassy's Fraud Prevention Unit.

What is a visa revocation?

How is a visa revocation different from canceling the visa?

The fact that a visa has been cancelled does not necessarily indicate anything negative about the traveler**.** A visa may be cancelled because there has been a clerical or similar error. Example: The person was approved for a student visa, but the visa foil in the passport says "B-2," which means *tourist*. Embassy staff may also cancel a visa if the traveler gets a new visa in a new passport, but has a valid visa of the same kind, not yet expired, in the old passport. Non-immigrant visas of aliens deemed inadmissible at a port of entry may also be cancelled.

The fact that a visa has been revoked may or may not indicate something negative about the traveler. A consular officer will revoke a visa when he or she determines that

- the alien is ineligible to receive a visa or enter the United States for health, criminal, security, or other serious reasons;
- the alien no longer qualifies for the particular visa;
- the alien has been issued an immigrant visa (IV); or
- the visa has been physically removed from the passport in which it was issued.

What happens when a U.S. visa is revoked?

A consular officer can only revoke a visa on the basis of such a determination if the traveler is outside the United States, or if his or her whereabouts are unknown. When a consular officer revokes a visa, the embassy or consulate informs the Department of State and the Department of Homeland Security through designated channels. The consular officer also is responsible for informing all local transportation companies about the visa revocation to prevent the traveler from embarking on a flight to the United States. CBP Officers working at U.S. ports of entry are also informed electronically of the visa revocation through the following databases; Consular Consolidated Database (CCD), Consular Lookout Automated System (CLASS) and through the Treasury Enforcement Communication System (TECS) in case the traveler arrives seeking admission into the United States.

The Secretary of State can also revoke a nonimmigrant visa, regardless of whether the alien is in the United States, and an immigrant visa if the alien has not entered the United States in immigrant status. Such revocation is generally on prudential grounds such that the alien would have to appear before a consular officer to establish eligibility for a visa before being permitted to apply for entry to the United States.

IV. BORDER INSPECTION PROCESS

What happens at the Port of Entry (airport, seaport, land border)?

Once travelers present their passport and other required documents at the port of entry, CBP officers determine who to admit and how long each traveler may stay.

CBP officers first encounter travelers at primary inspection where they ask travelers questions to determine, among other things, their identity and nationality. The officers also review passports, visas, and other documents, compare the fingerprint records and namecheck databases for recent derogatory information, ask questions about the travelers' general qualifications for the visas they have, review the Form I-94 Arrival and Departure Record (or, for Visa Waiver travelers, I-94W). Based on this information, CBP officers determine if the traveler is eligible to enter the United States. If additional time is needed to review a traveler's eligibility, CBP can refer a traveler to secondary inspection for a more extensive review. Travelers referred to secondary inspection are not considered to be admitted to the United States.

Once the inspector stamps and dates the I-94 forms and the admission stamp in the travelers' passports and the traveler passes through the inspection process, the travelers are admitted to the United States.

What happens in secondary inspection?

In secondary inspection, travelers are asked more detailed questions about their travel and are asked to produce additional identification and other documentation in order to determine their actual identity and purpose of visit. The traveler and their belongings may also be searched and the traveler may be subjected to a full set of fingerprints. Other federal agencies may interview the traveler to determine compliance with a wide variety of federal laws and regulations. The traveler may also be held in secondary for a reasonable amount of time for government personnel from federal agencies to arrive at the port of entry for an interview. Any traveler, even someone presenting a U.S passport, may be sent into secondary if the CBP officer has any reservations about admitting a traveler into the United States or the possibility of the traveler smuggling contraband.

Can CBP officers revoke a visa?

Regulations at 22 CFR § 41.122(h) authorize immigration officers to revoke a valid visa by physically canceling it in the following instances:

- The alien obtains an immigrant visa or an adjustment of status to that of permanent resident;
- The alien is ordered excluded from the United States pursuant to INA 235(c) or 236 ;

- The alien is notified pursuant to INA 235(b) by an immigration officer at a port of entry that the alien appears to be inadmissible to the United States and the alien requests and is granted permission to withdraw the application for admission;
- A final order of deportation or a final order granting voluntary departure with an alternate order of deportation is entered against the alien pursuant to DHS regulations;
- The alien has been permitted by DHS to depart voluntarily from the United States pursuant to DHS regulations;
- A waiver of ineligibility pursuant to INA 212(d)(3)(A) on the basis of which the visa was issued to the alien is revoked by DHS;
- The visa is presented in connection with an application for admission to the United States by a person other than the alien to whom it was issued;
- The visa has been physically removed from the passport in which it was issued; or
- The visa has been issued in a combined Mexican or Canadian B–1/B–2 visa and border crossing identification card and the officer makes the determination specified in § 41.32(c) with respect to the alien's Mexican citizenship and/or residence or the determination specified in § 41.33(b) with respect to the alien's status as a permanent resident of Canada.

The CBP has delegated authority to cancel a visa if the traveler is on U.S. soil. The Department of State can also revoke the visa of someone who is inside the United States.

V. Human Smuggling and Trafficking in Persons

Human Smuggling

Human smuggling is the facilitation, transportation, attempted transportation, or illegal entry of a person across an international border, in violation of the laws of one or more countries, either clandestinely or through deception, such as the use of fraudulent documents. Often human smuggling is for the smuggler's financial or material benefit, although financial gain or material benefit are not necessarily elements of the crime. Sometimes, for example, people engage in smuggling to reunite their families. Human smuggling is generally with the consent of the person being smuggled, who often pays large amounts of money for the service, and who, once he or she arrives in the destination country, will be left to his or her own devices.

The vast majority of people who receive assistance in entering the United States illegally are smuggled, rather than trafficked.

It is also possible that a person being smuggled may at any time become a trafficking victim.

The Immigration and Nationality Act, Section 274(a)(1), (2) provides for criminal penalties under Title 8, United States Code, Section 1324, for acts or attempts to bring unauthorized aliens to or into the United States, transport them within the United States, harbor unlawful aliens, encourage entry of illegal aliens, or conspire to commit these violations, knowingly or in reckless disregard of illegal status.

Trafficking in Persons

On October 28, 2000, Congress passed the *Victims of Trafficking and Violence Protection Act of 2000*. This is a comprehensive statute that addresses the recurring and significant problem of trafficking in persons for the purpose of committing commercial sex acts, or to submit them to involuntary servitude, peonage, debt bondage, or slavery. It also is designed to increase the protection available to victims of trafficking and other types of violent crimes. It is an attempt to address these issues on a national and international level, and affects many government and non-government agencies and organizations.

Unlike smuggling, which is often a criminal commercial transaction between two willing parties who go their separate ways once their transaction is complete, trafficking specifically targets the trafficked person as an object of criminal exploitation. The purpose from the beginning of the trafficking enterprise is to profit from the exploitation of the victim. It follows that fraud, force, and coercion all play a major role in trafficking.

It may be difficult to tell the difference between a smuggling case and a trafficking case in the initial phase. Trafficking often includes an element of smuggling, specifically, the illegal crossing of a border. In some cases the trafficking victim believes he or she is being smuggled, because of the traffickers' use of fraud and deception. Women may have agreed to work in the sex industry of a neighboring country, believing that they would have decent conditions and

wages. They did not realize that traffickers would take most or all of their income, keep them in bondage, and submit them to physical force or sexual violence. Other victims may have believed that they would get jobs as nannies or models, and realize only later that the supposed smugglers – really traffickers – had deceived them, and that they would be forced to work in the sex industry.

Conversely, persons being smuggled willingly enter into contracts with the smugglers to work off a smuggling debt. They work long hours and live in squalid conditions, but when the debt is paid, they are free to leave. Thus it is often necessary to look at a person's final circumstances to determine if the person is willingly complicit in a smuggling endeavor, or the victim of a trafficker.

According to the *Trafficking Victims' Protection Act of 2000,* severe forms of trafficking in persons always include the recruiting, harboring, transportation, provision, or obtaining of a person for one of the following purposes:

1. Labor or service, through the use of *fraud, force, or coercion,* AND resulting in involuntary servitude, peonage, debt bondage, or slavery, OR

2. Commercial sex acts, through the use of *fraud, force, or coercion,* OR

3. If the person is under 18 years of age, any commercial sex act, whether or not fraud, force or coercion is involved.

Human trafficking does not necessarily involve crossing an international border. It does not even require transporting the victim from one location to another. Victims of severe forms of trafficking are not necessarily illegal aliens. They may in fact be U.S. citizens, legal residents, or visitors. Victims are not necessarily women or children. They also be adult males.

While trafficking victims often toil in sweatshops, agriculture, housecleaning, or the commercial sex trade, they may be anywhere in the U.S. doing many other kinds of work to profit their traffickers. Victims may not even recognize that they have been victimized, or may be forced into protecting their exploiters; therefore, statements by the victim requesting help or accusing the traffickers are also not a necessary component.

The *Trafficking Victims' Protection Act of 2000* also provides tools to combat trafficking in persons both world-wide and domestically. The Act recognizes the need to protect the victims while gaining their cooperation by providing a safe haven. Section 107(c)(3) reads:

> Authority to Permit Continued Presence in the United States – Federal law enforcement officials may permit an alien individual's continued presence in the United States if, after an assessment, it is determined that such an individual is a victim of a severe form of trafficking and a potential witness to such trafficking, in order to effectuate prosecution of those responsible, and such officials in investigating and prosecuting traffickers shall protect the safety of trafficking victims, including taking measures to protect trafficked persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates.

A Rough Guide* – What is Smuggling and what is Trafficking?	
Trafficking	**Smuggling**
Involves fraud, force or coercion (actual, perceived, or implied) unless the victim is under 18 years of age and involved in the commercial sex trade.	The person being smuggled is generally cooperating.
Forced labor and/or exploitation.	No actual or implied coercion.
Persons trafficked are victims.	Persons smuggled are violating the law. They are not victims.
Victims are enslaved, subjected to limited movement or isolation, or had documents confiscated.	Persons are free to leave, change jobs, etc.
Needs not involve moving the victim from one place to another.	Facilitates the illegal entry of persons from one country into another.
No requirement to cross an international border.	Smuggling always crosses an international border.
Victim must be involved in commercial sex acts, or labor/services, i.e. must be "working."	Persons must only be in the country or attempting entry illegally.
*This chart does not provide a precise legal distinction of the difference between smuggling and trafficking incidents. Fact scenarios are often complex; in such cases expert legal advice is necessary.	

Smuggling or Trafficking? **Example 1**

Friends of Sonia's parents invited her to come to the United States to work for them as a housekeeper for about $100 a week. Her new employers gave her some fraudulent documents and left with her for the United States. She knew that this was illegal, but she needed the money and was willing to take the risk.

Was Sonia smuggled or trafficked?

Sonia was smuggled into the United States. She left willingly with full knowledge that she was entering the United States illegally.

Upon arriving in the United States, Sonia's employers kept her in isolation. She had to sleep in the basement. Her employers told her not to speak to anyone or she would be turned over to the Immigration Service. Sonia got no pay for her work at all. She felt she had no one to turn to for help.

Was Sonia smuggled or trafficked? At this point, Sonia was restricted from leaving the house, threatened with deportation if she tried to talk to anyone, and forced into involuntary servitude. Sonia is a victim of trafficking.

Smuggling or Trafficking? **Example 2**

A recruiting agency in India was looking for welders to work at a company in the United States for ten dollars an hour. The agency charged each prospective worker a non-refundable $2,500 application fee. En route to the United States, the workers were given contracts to sign. The contracts obligated the workers to work for the next six months for three dollars an hour. They were told to sign the contracts or be sent home. The workers felt that they could not back out because they had invested all their savings and were already on their way to the United States. Once they arrived, they were confined to the factory grounds, and the owner of the factory kept their passports.

Were the workers smuggled or trafficked? The workers were victims of severe forms of trafficking in persons.

The workers were transported for the purpose of labor through the use of fraud and coercion, which resulted in the workers being subjected to involuntary servitude. Confiscation of their passports by the employer also caused the workers to believe that they were forced to stay with the company.

Smuggling or Trafficking? **Example 3**

Local law enforcement officials in Georgia executed a search warrant at a brothel and arrested three 17-year-old girls for prostitution. The Department of Family Services notified Immigration and Customs Enforcement (ICE) concerning the illegal immigration status of the three juveniles. ICE agents interviewed the three juveniles and learned that they were smuggled into the United States.

Were the girls smuggled or trafficked? They were trafficked into the United States. All three girls were juveniles and were performing commercial sex acts. Since the girls were under 18 years of age, they would be considered victims of severe forms of trafficking in persons, whether or not they had consented to participate, or even paid to be brought to the United States.

APPENDIX A - Definition of Terms

ADIT Stamp – A stamp that is added to the passport or I-94 as temporary proof of residence.

Admission Stamp – An ink stamp that is stamped onto the visa by a CBP officer which indicates date and port of entry admitted. In addition to the admission stamp on the Form I-94, the CBP officer will indicate the class of admission and period of admission.

Alien – Any person who is not a citizen or a national of the United States.

Asylum – Protection from persecution given by a nation to a refugee.

CCD – Consular Consolidated Database

CLASS – Consular Lookout Automated Support System.

Expedited Removal Order – CBP officers have the authority to order certain aliens removed from the US under expedited removal proceedings without further hearings or review by an immigration judge. The authority covers aliens who are inadmissible because (1) they have no entry documents (2) have used counterfeit, altered, or otherwise fraudulent or improper documents; or (3) they have misrepresented a material fact. It would also cover aliens who arrive in, attempt to enter, or have entered the US without having been admitted or paroled by an immigration officer at a port of entry.

Green Card (aka I-551) – Is a card that is actually pink in color -given to persons who are Legal Permanent Residents.

IBIS – Interagency Border Inspection System – keeps track of information on suspect individuals, businesses, vehicles, aircraft, and vessels. IBIS terminals can also be used to query NCIC records on wanted persons, stolen vehicles, vessels or firearms, license information, criminal histories, and previous Federal inspections.

Immigrants – Aliens coming to the US to reside permanently.

Non-Immigrant – Alien seeking to enter the US for a temporary period or any person who is not a citizen or permanent resident of the US.

No- Fly List – A TSA list of people barred from boarding commercial air carriers that fly to, from or into the US, its territories, or outlying possessions.

Refugee – A person who has been determined by a competent authority to be fleeing persecution or has a well founded fear of persecution in their own country because of race, religion, nationality, membership in a particular social group or political opinion.

Selectee – A person identified as needing additional screening in order to travel on US commercial air carriers.

TECS – Treasury Enforcement Communications System

Terrorism – Any activity that involves an act that is dangerous to human life or potentially destructive of critical infrastructure or key resources; and is or would be a violation of criminal laws of the United States, or of any state or other subdivision of the US and appears to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination or kidnapping.

TIDE – Terrorist Identity Datamart Environment – is an all-source intelligence database administered by the National Counter Terrorism Center. TIDE has highly classified information about known or suspected terrorists.

Visa Waiver Program – Allows citizens of certain select countries, traveling temporarily to the US as a visitor for pleasure or business, to enter the US for 90 days without undergoing consular screening.

Voluntary Departure – The departure of an alien from the US without an order of an order of removal. The departure may or may not have been preceded by a hearing before an immigration judge. An alien is allowed to voluntarily depart concedes removability but is not barred from seeking admission at port of entry in the future. Failure to depart within the time granted results in a fine and a 10 year bar against the alien applying for several forms of relief from removal.

Watch List – The lookout list composed of names of individuals contained in IBIS, TIDE, CLASS, TSA No- Fly and Selectee lists.

Appendix B - Reading a U.S. Visa

Issuing Post Name: The name of the city in which the U.S. Embassy or Consulate that issued the visa is located.

Control Number: A unique identifier used to track the visa in the Consolidated Consular Database (CCD).

Surname: The traveler's surname or family name. If the traveler has only one name, that name will be listed in the surname field. If the traveler has no surname, his or her whole name may be listed in the surname field.

Given Name: The traveler's given or first name. If the traveler has no given name, or if his or her only name or whole name is listed in the surname field, the code "FNU" for "First Name Unknown" may appear in the this field.

Visa Type: "R" = Regular; "O" = Official; "D" = Diplomatic
Visa type is distinct from visa classification and is primarily a courtesy designation. Diplomatic and official visas are designed to facilitate entry into the United States, but do not carry any privileges or immunities beyond those implicit in the visa classification itself. Visa application and issuance fees are waived for traveler's who receive diplomatic visas. In addition at the consular officer's discretion, a personal appearance may be waived for a diplomatic visa applicant.

Diplomatic visas generally are issued in diplomatic passports and are only issued to high officials and their immediate family (heads of state, members of a reigning royal family; cabinet and sub-cabinet ministers; presiding officers of national legislatures; justices of the highest national court; ambassadors, diplomats, consular officers; flag-rank military officers; military attachés; officers of foreign-government delegations, etc.)

Official visas are issued to other foreign government officials traveling on official business who do not qualify for a diplomatic visa, members and members-elect of national legislatures, justices of the lesser national and the highest state courts of a foreign country; and other foreign government officials traveling on official business. Official visas may also be issued to persons who would receive a diplomatic visa but who do not have a diplomatic passport.

Visa Class: Non-immigrant visas are classified according to the primary purpose of travel. See a list of nonimmigrant visa classifications in Appendix B.

Passport Number: The alien's passport number.

Sex: The alien's gender: "M" = male; "F" = female.

Birth Date: The alien's date of birth.

Nationality: The alien's nationality. For stateless aliens traveling on a travel document issued by another country, nationality may be listed as "stateless."

Entries: The number of times the visa may be used to apply for admission to the United States. "M" = multiple.

Issue Date: The date the Consular Officer issued the visa.

Expiration Date: The date the visa expires. This is the last date the visa may be used to apply for admission to the United States.

Annotation: In some cases the consular officer will use the annotation field to convey additional information about a visa applicant and the circumstances under which a visa was issued, explain the circumstances or assumptions on which the visa decision was based, or clarify key factors which were considered at the time of adjudication. The information contained in a visa annotation should help facilitate an immigration inspector's decision on whether or not to admit the visa holder to the United States, and, if to admit, for how long.

Appendix C - Nonimmigrant Visa Classifications

A1	Head of state or government, ambassador, career diplomat or consular officer, senior government official or immediate family.
A2	Other foreign government official or employee, or immediate family.
A3	Personal employee of A1 or A2, or immediate family.
B1	Temporary visitor for business.
B2	Temporary visitor for pleasure.
B1/B2	Temporary visitor for business or pleasure.
C1	Alien in transit.
C1/D	Combined transit and crewman visa.
C2	Aliens with citizenship of governments not recognized by the United States in transit to United Nations Headquarters District (New York City).
C3	Foreign government official, or immediate family in transit.
D	Crewmember (sea or air).
E1	Treaty trader, spouse or child.
E2	Treaty investor, spouse or child.
E3	Australian treaty aliens in specialty occupations
F1	Student (academic or language).
F2	Spouse or child of F1.
F3	Canadian or Mexican national commuter student.
G1	Resident personnel assigned to an international organization by a government recognized by the United States, or immediate family.
G2	Temporary personnel assigned to an international organization by a government recognized by the United States, or immediate family.
G3	Resident personnel of any rank assigned to an international organization by a member government *not* recognized by the United States, or immediate family.
G4	Personnel on the payroll or appointed to the staff of an international organization of which the United States is a member.
G5	Personal employee of G1 through G4, or immediate family.
H1B	Temporary worker in a specialty occupation.
H1B1	Chilean or Singaporean national worker in a specialty occupation
H1C	Foreign nurse.
H2A	Temporary agricultural worker.
H2B	Temporary non-agricultural worker.
H2R	Returning H2B worker
H3	Trainee.
H4	Spouse or child of alien classified H1B/B1/C, H2A/B, or H3.

I	Representative of foreign information media including foreign government tourism officials, spouse and child.
J1	Exchange visitor.
J2	Spouse or child of J1.
K1	Fiancé(e) of United States citizen.
K2	Child of fiancé(e) of U.S. citizen.
K3	Spouse of U.S. citizen.
K4	Child of a K3.
L1	Intracompany transferee (executive, managerial, and specialized knowledge personnel continuing employment with international corporation).
L2	Spouse or child of intracompany transferee.
M1	Vocational student or other non-academic student.
M2	Spouse or child of M1.
M3	Canadian or Mexican national commuter student (vocational or other nonacademic student).
N8	Parent of an alien special immigrant classified SK3 or SN3.
N9	Child of N-8 or of an alien special immigrant classified SK1, SK2, SK4, SN1, SN2 or SN4
NATO 1-6	NATO representatives, officials, and employees, or immediate family
NATO 7	Personal employee of NATO 1-6, or immediate family.
O1	Alien with extraordinary ability in sciences, arts, education, business or athletics.
O2	Alien accompanying or assisting O1.
O3	Spouse or child of O1 or O2.
P1	Internationally recognized athlete, performing artist or entertainer.
P2	Artist or entertainer in a reciprocal exchange program.
P3	Artist or entertainer in a culturally unique program.
P4	Spouse or child of P1, P2, or P3.
Q1	Participant in an international cultural exchange program.
Q2	Irish peace process program participant.
Q3	Spouse or child of Q2.
R1	Alien in a religious occupation.
R2	Spouse or child of R1.
S5	Criminal organization informants
S6	Terrorist organization informants
S7	Qualified family member of S5 or S6.

T1	Victim of trafficking in persons.
T2	Spouse of T1.
T3	Child of T1.
T4	Parent of T1.
T5	Unmarried sibling under age 18 of T1 under 21 years of age.
TN	NAFTA professional.
TD	Spouse or child of NAFTA professional.
U1	Victim of criminal activity.
U2	Spouse of U1.
U3	Child of U1.
U4	Parent of U1.
U5	Unmarried sibling under age 18 of U1 under 21 years of age.
V1	Spouse of a legal permanent resident alien.
V2	Child of a legal permanent resident alien.
V3	Child of a V1 or V2

APPENDIX D - GROUNDS OF VISA INELIGIBILITY

HEALTH RELATED GROUNDS: 212(a)(1)

Section of INA / 9 FAM / 22 CFR	Ground of Ineligibility	Determined by	Waiver Availability
212(a) (1) (A)(i) 40.11	Communicable disease of public health significance.	Medical finding based on Centers for Disease Control "Technical Instructions for Medical Examination of Aliens." Exam required for IVs and fiancé(e)s and Consul can require it of others. Medical findings may also lead to a determination of ineligibility as a likely public charge, 212(a)(4)	**IV**: 212(g)(1) at the discretion of the Attorney General in consultation with HHS to prevent the separation of families. **NIV**: 212(d)(3)(A).
212(a) (1)(A)(ii) 40.11	Failure to submit proof of vaccination (applies only to immigrants.	Medical finding by panel physician during the immigrant visa medical exam.	**IV**: 212(g)(2)(C) waiver granted by Attorney General if applicant has religious or moral objection to vaccination. **NIV**: N/A
212(a) (1)(A)(iii) 40.11	Physical or mental disorder and behavior which may pose or has posed a threat to property or safety and is likely to recur	Medical finding based on Centers for Disease Control "Technical Instructions for Medical Examination of Aliens." Exam required for IVs and fiancé(e)s and Consul can require it of others.	**IV**: 212(g)(3) waiver determined by the Attorney General in consultation with HHS. 212(c) for certain returning residents. **NIV**: 212(d)(3)(A) subject to conditions proposed by HHS.
212(a) (1)(A)(iv) 40.11	Drug Abuser or Addict: Non-Medical use (more than experimentation) of one of the Controlled-Substance-List drugs within the past three years; OR non-medical use of other psychoactive substances within the past 2 years	Medical finding based on Centers for Disease Control "Technical Instructions for Medical Examination of Aliens." Exam required for IVs and fiancé(e)s and Consul can require it of others.	**IV**: No waiver 212(c) for certain returning residents. **NIV**: 212(d)(3)(A)

CRIMINAL AND RELATED GROUNDS: 212(a)(2)

Section of INA / 9 FAM / 22 CFR	Ground of Ineligibility	Determined by	Waiver Availability
212 (a) (2)(A)(i)(I) 40.21(a)	Crime involving moral turpitude, other than a purely political offense	Conviction or admission, if the latter constitutes the essential elements of a crime in the jurisdiction where committed.	**IV**: 212(h) 212(c) for certain returning residents. **NIV**: 212(d)(3)(A)
212(a) (2)(A)(i)(II) 40.21(b)	Violation or conspiracy to violate any laws or regulations relating to a controlled substance	Conviction or admits to commission	**IV**: 212(h) 212(c) for certain returning residents. **NIV**: 212 (d)(3)(A)
212(a) (2)(B) 40.22	Multiple criminal convictions	Conviction of 2 or more offenses (other than purely political offenses) if aggregate sentences imposed confinement of 5 years or more.	**IV**: 212(h) 212(c) for certain returning residents. **NIV**: 212(d)(3)(A)
212 (a) (2)(C) 40.23	Controlled substance trafficking	"Reason to believe" which one might conclude based on a conviction, admission, record of arrests (even if not prosecuted), or several reliable and corroborative reports.	**IV**: No waiver 212(c) for certain returning residents. **NIV**: 212(d)(3)(A)
212(a) (2)(D) 40.24	Prostitution and vice	Conviction where this activity is illegal. Alien may also be ineligible even where not prohibited by law. Finding must be based upon continuity and regularity and for gain, even if convicted.	**IV**: 212(h) 212(c) for certain returning residents. **NIV**: 212(d)(3)(A)
212(a) (2)(E) 40.25	Aliens involved in criminal activity who have asserted diplomatic immunity	Committed serious criminal offense in the United States, exercised diplomatic immunity from justice for it and has not subsequently submitted fully to U.S. jurisdiction for that offense.	**IV**: 212(h) 212 (c) for certain returning residents. **NIV**: 212(d)(3)(A)
212(a)(2)(G) 40.26	Foreign Government officials who have engaged in particularly severe violations of religious freedom	Department of State advisory opinion	**IV**: No waiver **NIV**: 212(d)(3)(A)
212(a)(2)(H) 40.27	Significant traffickers in persons	Department of State advisory opinion	**IV**: No waiver **NIV**: 212(d)(3)(A)
212(a) (2)(I) 40.28	Money laundering	Department of State advisory opinion	**IV**: No waiver **NIV**: 212(d)(3)(A)

SECURITY GROUNDS: 212(a)(3)

Section of INA/ 9 FAM / 22 CFR	Ground of Ineligibility	Determined by	Waiver Availability
212(a) (3)(A) 40.31	Aliens seeking to engage in (i) espionage, sabotage or illegal export from the United States of goods, technology or sensitive information. (ii) any other unlawful activity (iii) activity in opposition to, or overthrow by force or violence of USG.	Department of State advisory opinion	**IV**: No waiver **NIV**: No waiver
212(a) (3)(B) 40.32	Engaging in or inciting terrorist activities	Department of State advisory opinion	**IV**: No waiver **NIV**: 212(d)(3)(A)
212(a) (3)(C) 40.33	Aliens whose entry would have potentially serious adverse foreign policy consequences.	Department of State advisory opinion	**IV**: No waiver **NIV**: No waiver
212(a) (3)(D) 40.34	For immigrants only, membership in or affiliation with Communist or other totalitarian party at present or in the recent past	Membership in the described organization with Department of State advisory opinion	**IV**: 212(a)(3)(D)(iv) **NIV**: Not applicable
212(a) (3)(E) 40.35	Participants in Nazi persecutions, or in genocide, torture, or extrajudicial killings	Department of State advisory opinion	**IV**: No waiver **NIV**: No waiver
212(a)(3)F) 40.36	Association with Terrorist Organizations and intent while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety or security of the U.S.	Jointly determined by Secretary of State and Attorney General.	**IV**: No waiver **NIV**: No waiver

PUBLIC CHARGE: 212(A)(4)

Section of INA / 9 FAM / 22 CFR	Ground of Ineligibility	Determined by	Waiver Availability
212(a) (4) 40.41	Aliens likely to become a public charge	Consular or Immigration Officer	**IV**: No waiver, but may be overcome. **NIV**: No waiver, but may be overcome.

LABOR CERTIFICATION AND OTHER QUALIFICATIONS FOR CERTAIN IMMIGRANTS: 212(a)(5)

Section of INA/ 9 FAM / 22 CFR	Ground of Ineligibility	Determined by	Waiver Availability
212(a) (5)(A) 40.51	Principle alien in E2 & E3 immigrant visa categories if Department of Labor has not issued ETA-750. Diversity visa applicants who do not meet requirements of DV program. Other immigrant applicants, if petition is revoked by DHS.	Consular or Immigration Officer	**IV**: No waiver **NIV**: Not applicable.
212(a) (5)(B) 40.52	Immigrant alien in E2 or E3 immigrant visa category who is an "unqualified physician."	Consular or Immigration Officer	**IV**: No waiver **NIV**: Not applicable.
212(a) (5)(C) 40.53	Immigrant health care worker in category other than E2 or E3 and not a physician, without a certificate of credentials or 212(r) statement	Consular or Immigration Officer	**IV: No waiver, but may be overcome.** **NIV: Not applicable.**

ILLEGAL ENTRANTS, IMMIGRATION VIOLATORS AND MISREPRESENTATION: 212(a)(6)

Section of INA/ 9 FAM / 22 CFR	Ground of Ineligibility	Determined by	Waiver Availability
212(a) (6)(A) 40.61	Aliens present without admission or parole	Aliens who are or were present in the United States without being admitted or paroled by an Immigration Officer.	**IV**: No waiver **NIV**: No waiver
212(a) (6)(B) 40.62	Failure to attend a removal hearing	Any alien who fails or failed to attend a deportation or removal proceeding remains ineligible for 5 years after his/her subsequent removal or departure from the United States.	**IV**: No waiver **NIV**: No waiver
212(a) (6)(C)(i) 40.63	Fraud or misrepresentation in obtaining U.S. visa or entry into the U.S.	Alien who sought or obtained U.S. visa, entry to the U.S., or other benefit under the INA by fraud or willful misrepresentation of a material fact made to a consular or immigration officer.	**IV**: 212(i) 212(c) for certain returning residents. **NIV**: 212(d)(3)(A)
212(a) (6)(C)(ii) 40.63	False claim of citizenship	False representations of citizenship to obtain any benefit under the INA or any state or federal law.	**IV**: No waiver **NIV**: 212(d)(3)(A)
212(a) (6)(D) 40.64	Stowaway	Immigration Officer	Not applicable to visa issuance.
212(a) (6)(E) 40.65	Alien smuggling	Aliens have assisted others to seek or obtain a U.S. visa or entry to the U.S. in violation of law, including by fraud or willful misrepresentation of a material fact.	**IV**: 212(d)(11) 212(c) for certain returning residents. **NIV**: 212(d)(3)(A)
212(a) (6)(F) 40.66	Subject of civil penalty for violation of Section 274C	Final order for civil offense of knowingly creating, accepting or using counterfeit or altered documents, or using another person's documents, in order to violate INA. May also result in ineligibility under 212(a)(6)(C) or (E) and other grounds of ineligibility.	**IV**: 212(d)(12) **NIV**: 212(d)(3)(a)
212(a) (6)(G) 40.67	Student Visa Abuser	Alien who obtains F-1 status on or after November 30, 1996 and uses it to: -- attend a public elementary school; -- attend publicly funded adult education, or -- attend a public high school for more than one year without reimbursing the school for the full unsubsidized per capita cost of education.	**IV**: No waiver **NIV**: 212(d)(3)(A)

DOCUMENTATION REQUIREMENTS: 212(a)(7)

Section of INA / 9 FAM / 22 CFR	Ground of Ineligibility	Determined by	Waiver Availability
212(a) (7)(A)(i) 40.71	Immigrant: (I) without entry document and valid passport (II) visa issued without compliance with Sec. 203	Determined at port of entry.	Not applicable to visa issuance.
212(a) (7)(B)(i) 40.72	Nonimmigrant: (I) without passport valid 6 months beyond intended stay (II) without NIV or border-crossing document	Determined at port of entry. Exceptions: Alien member of U.S. armed services (Section 284.) American Indian born in Canada (Section 289.) NATO armed forces (treaty.) IBWC members (treaty.)	**IV**: Not applicable. **NIV**: 212(d)(4) Guam Visa Waiver Program (VWP)

INELIGIBLE FOR CITIZENSHIP: 212(a)(8)

Section of INA / 9 FAM / 22 CFR	Ground of Ineligibility	Determined by	Waiver Availability
212(a) (8)(A) 40.81	Any immigrant permanently ineligible for citizenship: Section 314: any person convicted in the U.S. of desertion or draft evasion in time of war; Section 315: an alien who seeks and is granted exemption from U.S. military service or training because he is an alien	314: Convicted by the U.S. of desertion or draft evasion in time of war 315: records of Selective Service or military are conclusive.	**IV**: No waiver 212(c) for certain returning residents. **NIV**: Not applicable.
212(a) (8)(B) 40.82	Draft evaders: any person who departed from or remained outside U.S. in time of war or national emergency to avoid military training or service	Applies to immigrant or nonimmigrant applicants who did this between 8/9/39 and 24/9/78, whether or not they were immigrants or U.S. citizens at the time.	**IV**: No waiver 212(c) for certain returning residents. **NIV**: 212(d)(3)(A)

ALIENS PREVIOUSLY REMOVED AND UNLAWFULLY PRESENT: 212(a)(9)

Section of INA / 9 FAM / 22 CFR	Ground of Ineligibility	Determined by	Waiver Availability
212(a) (9)(A)(i) 40.91	Alien ordered removed at the port of entry	An alien removed at the port of entry, either summarily by an DHS official, or after admissions proceedings, is ineligible -- 5 years from the date of the first removal; -- 20 years after a second or subsequent removal; or -- forever, if the alien has been convicted of an aggravated felony.	**IV**: No waiver. But per 212(a)(9)(A)(iii) aliens may apply to DHS for permission to reapply for entry **NIV**: 212(d)(3)(A)
212(a) (9)(A)(ii) 40.91	Alien ordered removed other than at the port of entry	The alien is ineligible: -- 10 years from the date of departure for the first such removal; -- 20 years after second or subsequent removal; or -- forever, if the alien has been convicted of an aggravated felony.	**IV**: No waiver. But per 212(a)(9)(A)(iii) aliens may apply to DHS for permission to reapply for entry. **NIV**: 212(d)(3)(A)
212(a) (9)(B) 40.92	Aliens unlawfully present	Aliens unlawfully present in the U.S. between 180 days and one year are inadmissible for 3 years after departure from the United States. Aliens unlawfully present for more than one year are inadmissible for 10 years after departure.	**IV**: 212(a)(9)(B)(v) **NIV**: 212(d)(3)(A)
212(a) (9)(C), 40.93	Aliens unlawfully present after previous immigration violations	A permanent ineligibility for anyone who: -- enters or attempts to enter the U.S. surreptitiously after having been unlawfully present for an aggregate of more than one year; or -- has been ordered removed and who then enters or attempts to reenter surreptitiously.	**IV**: No waiver **NIV**: 212(d)(3)(A) DHS may admit an alien who applies for permission to reenter more than 10 years after his/her last departure from the U.S.

MISCELLANEOUS: 212(a)(10)

Section of INA / 9 FAM / 22 CFR	Ground of Ineligibility	Determined by	Waiver Availability
212(a) (10)(A) 40.101	Practicing polygamists	Any immigrant coming to the U.S. to practice polygamy.	**IV**: none 212(c) for certain returning residents. **NIV**: Not applicable.
212(a) (10)(B) 40.102	Guardian or attendant of a helpless excludable alien	Applies only at port of entry.	Not applicable to visa issuance.
212(a) (10)(C) 40.103	Alien who withholds an American child abroad in violation of a U.S. court's custody order; alien intentionally providing assistance or material support to abductor; relative of abductor.	Alien who withholds an American child abroad in violation of a U.S. court's custody order.	**IV**: No waiver **NIV**: 212(d)(3)(A)
212(a) (10)(D) 40.104	Unlawful voters	Any alien who has unlawfully voted in a U.S. federal, state, or local election.	**IV**: No waiver **NIV**: 212(d)(3)(A)
212(a) (10)(E)40.105	Former citizens who renounced citizenship to avoid taxation	Applies only to those who renounced citizenship on or after September 30, 1996	**IV**: No waiver **NIV**: 212(d)(3)(A)

OTHER MISCELLANEOUS NOT UNDER 212(a)

Section of INA / 9 FAM / 22 CFR	Ground of Ineligibility	Determined by	Waiver Availability
212(e) 40.202	Former exchange visitor applying to live or work in the U.S.	Alien was in the U.S. as an exchange visitor on program financed in the U.S. or a foreign government; OR alien received graduate medical education; OR alien is from, or last residence was in, a country designated as needing his skills; UNLESS alien returns to such country for at least 2 years.	**IV & NIV**: 212(e)
212(f) 04 State 45499	Foreign Policy: any alien or class of aliens whose entry into the U.S. the President finds would be detrimental to U.S. interests.	Department of State advisory opinion	**IV &NIV**: None
214(b) 40.203	Every alien shall be presumed to be an immigrant	Requires non-immigrant visa applicants to show entitlement to one of the NIV categories.	**IV**: Not applicable. **NIV**: Cannot be waived, but may be overcome.
221(g) 40.201	Application fails to comply with the INA	Generally, applicant lacks required document(s), or some processing is incomplete.	**IV & NIV**: Cannot be waived, but may be overcome.
222(g) 40.68 & 41.101	Overstay on nonimmigrant visa	Nonimmigrant alien overstayed period of DHS authorized stay.	**IV**: Not applicable. **NIV**: No waiver. Applicant must return to the country of his or her nationality to seek a new visa.

Appendix E - REFERENCES TO STANDARD VISA TEXTS

Consular Officers use standard texts when communicating with the Department of State during the processing of visa applications. The following terms may be seen in CCD notes of visa adjudications.

VISAS BEAR - Consular officer requests Department of State's security advisory opinion involving an application for an A, C-3 or G visa.

VISAS CLOK - Consular officer requests Department of State *to* enter, correct or delete a lookout in CLASS as indicated.

VISAS CONDOR - Consular officer requests Washington agency name-checks involving an application of aliens possessing certain nationalities.

VISAS DONKEY - Consular officer requests Department of State's security advisory opinion in a case involving an application for a visa for nonofficial travel, in accordance with classified and unclassified clearance instructions.

VISAS EAGLE - Consular officer requests Washington agency name-checks in a case involving an application for a visa for nonofficial travel, as required for certain nationals of the country concerned.

VISAS EEL - Consular officer seeks Department of State's security advisory opinion on a visa applicant whom it believes may fall within the purview of INA 212(a)(3)(A)(ii) as a member of an organized crime group; or an investigation of a U.S. based company following the visa application by an individual whom it suspects may be involved in illegal activity which would make him/her fall within the purview of INA 212(a)(3)(A)(ii) as a member of an organized crime group.

VISAS HORSE - The named diplomatic visa holder of certain nationalities who has been granted an A, C-3, or G visa is arriving at the indicated port of entry on the date and via the transportation noted.

VISAS MANTIS - Consular officer seeks Department of State's security advisory opinion on a visa application that may raise issues related to the illegal transfer of technology and/or proliferation of sensitive technologies.

VISAS PEGASUS - Consular officer seeks Department of State's advisory opinion for an applicant who is an official of the Commonwealth of Independent States (CIS), who is entered in CLASS as DPT-00 and who is coming for pre-ministerial, ministerial, pre-summit, summit or White House meetings.

VISAS SHARK - Embassy or Consulate is providing information on a possible NIS/BR organized crime group member who is not currently a visa applicant.

VISAS SQUIRREL - Consular officer is making a recommendation to a *DHS* office abroad for an INA 212(d)(3)(A) waiver.

VISAS VIPER - Embassy or Consulate is providing derogatory information relating to INA 212(a)(3)(B) activities about the named alien that may make it appropriate to enter him or her into CLASS.

Human Smuggling and Trafficking Center
Customer Satisfaction Survey

Product Title: A Primer on Visas and Visa Fraud

Product Date June 2008

Dear Customer,

Please take a moment and complete the following survey to assist in the evaluation of the quality and value of HSTC products.

1: Agree

2: Disagree

3: Neither Agree nor Disagree

Quality			
1	2	3	The product was timely and relevant to your mission, programs, priorities or initiatives.
1	2	3	The product was clear and logical in the presentation of information with supported judgments and conclusions.
1	2	3	The product is reliable, i.e., sources well documented and reputable.
Value			
1	2	3	The product contributed to satisfying intelligence gaps or predicting cases or intelligence operations, especially in previously unknown areas.
1	2	3	The product resulted in more informed decisions concerning investigative or intelligence initiatives and matters dealing with resource allocation.
1	2	3	The product identified new information associated with pending matters or offered insights into information that could change the working premise in a program or initiative.
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Return to:			**Reports Manager, Human Smuggling and Trafficking Center, 1800 G Street, NW, Suite 2210 Washington, DC 20270**