

IMMIGRATION BRIEFINGS[®]

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Practical Analysis of Immigration and Nationality Issues

GUIDING YOUR CLIENTS THROUGH THE FOG: ADMINISTRATIVE PROCESSING AND THE VISA APPLICATION PROCESS

*by Anna Marie Gallagher**

The United States government welcomes millions of nonimmigrant visitors and grants thousands of immigrant visas yearly to eligible individuals at U.S. consulates around the world. For most, the visa application process is fairly straightforward and culminates in an interview before a U.S. consular officer at which time the visa is either issued or denied. However, for a large number of individuals, the decision-making process can languish for months, even years, during which their applications undergo additional review. This review is referred to in a number of ways, the most common being administrative processing. However, it is also often termed the special clearance, security advisory opinion, and security check process.

The purpose of additional review is to confirm that the individual may not be inadmissible under certain grounds as discussed below and to ensure that he or she poses no security or related risk to the United States. There is little transparency in this process; attorneys, applicants, family members, and potential employers remain in the dark for lengthy periods of time while awaiting a final decision on the visa application. Attorneys repeatedly inquire, often in vain, about the

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status of their clients' cases, and many within the Department of State itself are equally as frustrated given their inability to provide information to the applicant and to resolve these cases in a timely fashion.

This *Briefing* provides background information on visa policy and procedures. It describes the variety of security checks that visa applicants may undergo prior to a final decision on their application. It explains what a security advisory opinion (SAO) is and discusses tips and suggestions for moving cases forward. It provides an overview of what information on administrative processing is made available by the Department of State to the public on 181 U.S. consular websites. Before discussing the substantive issues, the author would like to share the stories of a few of the many individuals who have been waiting months, some years, for a decision on their visa applications.

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LONG-TERM ADMINISTRATIVE PROCESS CASE EXAMPLES

During the initial research for this *Briefing*, the author sent out an inquiry to members of the American Immigration Lawyers Association (AILA) seeking stories of noncitizens facing lengthy delays in obtaining final decisions on their visa applications due to administrative processing. AILA colleagues from around the country responded immediately with stories, many representing Middle Eastern clients, and all expressing a level of ongoing frustration at the lack of transparency in the process. Here are a few of the many examples that the author received, which provide a sense of the variety of persons who are caught up in this process.¹

- A rising information technology company in the United States filed an H-1B petition for a potential employee from Pakistan. The petition was approved within one month, and the company eagerly awaited the arrival of their new employee. The individual attended his interview and has been waiting for over a year and a half with no decision on his visa application or explanation for the delayed process.
- The husband of a U.S. citizen applied for his immigrant visa in Mexico after his wife's Form I-130, Petition for Alien Relative, was approved. The individual has no criminal record other than a small number of traffic citations that he received when he had lived in the United States. He has a number of tattoos—two in honor of deceased family members and the others with names of his children. He was the primary breadwinner for his family in the United States and has been waiting over one year for his visa application to be adjudicated. The gentleman has a common last name and an individual with his same name has a lengthy record in the United States. The gentleman's attorney believes that this may be the basis for the long delay.
- The husband of a naturalized citizen filed an I-130 on behalf of her Pakistani husband over seven years ago. After the petition was approved,

the couple completed all required applications to obtain the gentleman's immigrant visa, including undergoing the medical examination and providing the police certificate. The individual has complied with repeated requests for updated documents over the years. His attorney believes that the delays are related to his brother-in-law, who was arrested by U.S. military authorities several years ago for alleged involvement in terrorist activities. The petitioner's family has undergone extensive questioning and investigation by the Federal Bureau of Investigation (FBI) relating to their brother's alleged activities. All family members had been granted asylee status many years prior to the brother's arrest, including the detained brother himself. All became permanent residents, and almost all have obtained their U.S. citizenship. None of the family members have been denied any immigration benefit, and their cases have been thoroughly vetted by the U.S. immigration authorities. Despite the thorough investigation of all family members, the petitioner's husband remains in Pakistan awaiting the adjudication of his application seven years after the petition was filed.

- The elderly father of a respected journalist has applied for and been granted a number of nonimmigrant visitor visas over the years. However, he has had to apply for and been granted waivers because of his involvement in the 1960s with a political group loosely affiliated with a guerilla faction in a Latin American country. The gentleman's son is a naturalized U.S. citizen living in this country with his U.S.-citizen wife and children. His father, the visa applicant, is a prominent and well-respected academic who has been commended by the U.S. authorities for his work relating to election observing in his country. Over the years, he has been granted increasingly time-limited visas, and his waiver applications have been pending for longer and longer periods of time. His most recent application for a nonimmigrant visitor visa was made over a year ago. The U.S. consulate refuses to make any recommendation on the waiver or deny the visa. In-

stead, they report that the case continues to be undergoing administrative processing.

- A U.S.-naturalized-citizen mother filed an I-130 for her adult daughter, which included her son-in-law and two grandchildren, all from a Middle Eastern country. The daughter and granddaughter were issued immigrant visas; the son-in-law's visa issuance was delayed for one year while the consulate investigated charges against him for a minor offense. The visa application for the 12-year-old grandson continues to languish one year after filing due to administrative processing with no explanation given for the delay.
- A gentleman from a Caribbean nation changed his first (a common Muslim name) and last name to a more Western first and last name and has been using that name for over 10 years. His family changed their surnames as well. He has no criminal record and no history of any violations of U.S. immigration law. However, his application for an employment-based nonimmigrant visa has been pending for over eight months due to administrative processing.
- A U.S. naturalized citizen petitioned for her son who is living in an African country. DNA testing was requested and satisfactorily completed almost one year ago, and the applicant was asked to come in and pick up his passport. He was then advised that an additional check needed to be completed and that his case was undergoing administrative processing. He has been provided no additional information despite repeated inquiries.
- An 80-year-old woman from a Latin American country had been granted a number of nonimmigrant visitor visas over the years and used them to come to the United States several times to visit family members. However, upon her last entry several years ago, she was stopped at the port of entry and denied admission as an intending immigrant, and her visa was cancelled. She returned home and began the process of applying for a nonimmigrant visitor visa. After submis-

sion, counsel inquired as to the status of the application. A consular officer advised counsel that the application was pending additional review due to the consulate's suspicion that the woman had been involved in a paramilitary group in the 1940s. Despite this informal representation, the visa was denied under INA § 214(b) [8 U.S.C.A. § 1184(b)], and no mention was made of suspected terrorism-related grounds. The individual applied once again, and the case was placed in administrative processing for a year and a half before being denied again under INA § 214(b).

- A decorated, retired army general from a Latin American country had been posted to an inter-governmental institution in the United States for a number of years. He applied for and was granted an A visa, which he used to carry out his diplomatic duties while in the United States and to travel back and forth to his home country. After the conclusion of his work at the organization, he returned home and was issued a multiple-entry B-1/B-2 visa by the U.S. consulate over 15 years ago. Upon its expiration, he applied for a new visa. His case was placed in administrative processing because of security concerns. Many years prior to his application for the A visa, the gentleman and other military colleagues refused to cooperate with a coup in their country, and they were jailed. The general was imprisoned for almost two years, during which time his health suffered greatly. Upon release and after the end of the then-president's term, he was assigned by the new administration to his post in Washington, D.C. Despite the fact that initial visas were granted, his subsequent application for a visitor visa underwent months of administrative processing before finally being denied. His U.S.-citizen daughter filed a Form I-130, which was quickly approved. His application for an immigrant visa underwent many months of administrative processing before finally being granted. It was also discovered that the basis for the additional review was his political imprisonment, which the embassy had recognized as such prior to the denial of his nonimmigrant visa.

These are only a small number of the thousands of cases that are undergoing administrative processing worldwide. Despite repeated inquiries to the Department of State to determine when a decision will be issued (including from congressional staff), attorneys and family members of visa applicants are provided little, if any, information. Those who seek congressional assistance and intervention report that it is often futile. Many U.S. consulates state that they cannot give any time period for visa processing. At least one consulate suggested that processing could take years. Common among all cases is the lack of transparency and the rising frustration of attorneys, their clients, and their clients' families. Applicants and their family members have created list serves in a number of countries to share information, advice, and tips on administrative processing.²

There are no easily accessible public statistics on the number of SAOs requested by U.S. consulates each year. The little information that can be found is generally included in testimony provided by Department of State personnel to Congress. For example, David T. Donahue, Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, reported in October 2009 that the Department processes approximately 260,000 SAOs a year.³ In September 2006, Deputy Assistant of State for Visa Services Tony Edson noted that 98% of visa applications are processed within two to three days of interview. However, roughly 2.5% will be subject to additional screening, often because of a similarity between the name of an applicant with that of an individual on the government's watch list.⁴ Barbara Baden, Department of State LegalNet Visa Office, reports that the Department of State does not maintain statistics on the many individual processes that comprise administrative processing.

AGENCIES RESPONSIBLE FOR VISA PROCESSING

The Department of State's Consular Affairs (DOS/CA) division is responsible for issuing visas.⁵ However, the Department of Homeland Security (DHS) also plays a key role in administering law and policy relating to noncitizens seeking admission as immigrants and nonimmigrants. U.S. Citizenship and Im-

migration Services (USCIS) approves both immigrant and nonimmigrant visa petitions. U.S. Immigration Customs and Enforcement (ICE) within the DHS is responsible for operating the Visa Security Program in a number of U.S. embassies abroad, and U.S. Customs and Border Protection (CBP) within the DHS inspects and makes the final decision to admit or refuse admission to those seeking entry to the United States. In addition, as discussed below, where a “hit” occurs during a background check, the Department of State will consult with a number of U.S. government agencies before reaching a final decision on a visa application. Thus, there are a number of players involved in the visa processing depending on the type of application made and the circumstances of the particular applicant.

After the attacks on the United States on September 11, 2001, the United States Congress passed the Enhanced Border Security and Visa Entry Reform Act of 2002 to improve the visa adjudication process abroad as well as to reinforce inspections at the ports of entry.⁶ This Act increased access by consular officers to electronic information for screening of visa applicants. It also demanded the creation of an interoperable electronic data system to share relevant information on admissibility and removability and mandated implementation of an integrated entry-exit database. The Homeland Security Act of 2002 authorized the DHS to assign staff to consulates abroad to advise, review, and conduct investigations.⁷

Although ICE focuses principally on domestic immigration enforcement, its personnel also play an active role in investigating cases abroad that raise security concerns. The ICE Office of International Affairs has personnel in 70 offices in 47 countries working in collaboration with foreign agency counterparts and federal agency partners on issues relating to transnational crime, money laundering, contraband, weapons smuggling, forced child labor, human rights, human smuggling and trafficking and many other issues.⁸

The ICE Office of International Affairs operates the Visa Security Program (VSP), authorized by § 428 of the Homeland Security Act at certain high-risk consular posts and has offices in over 20 countries around the world.⁹ ICE special agents are assigned to consular

posts overseas to carry out visa security activities in order to complement the State Department visa screening process. These efforts provide consular officers with law-enforcement resources not generally available to them.¹⁰ As of March 2012, ICE VSP units were located in 19 high-risk posts in 15 countries, including Manila, Philippines; Abu Dhabi and Dubai, United Arab Emirates; Islamabad, Pakistan; Cairo, Egypt; Caracas, Venezuela; Hong Kong, China; and Casablanca, Morocco.¹¹

BACKGROUND ON VISA PROCESSING AND NUMBERS

Noncitizens coming to the United States who intend to permanently reside here must satisfy a number of criteria established in the Immigration and Nationality Act, including not being subject to the grounds of inadmissibility under INA § 212 [8 U.S.C.A. § 1182]. The following categories of individuals qualify for immigrant visas:¹²

- spouses or minor children of U.S. citizens
- parents, adult children, or siblings of adult U.S. citizens
- spouses or minor children of lawful permanent residents
- employees sponsored by U.S. employers who have received approval from the Department of Labor
- persons of extraordinary or exceptional ability in specified areas
- diversity lottery visa winners
- certain special immigrants

Individuals seeking to come to the United States temporarily rather than permanently are known as nonimmigrants. They are admitted to the United States for a temporary period of time and for a specific reason. There are 24 major nonimmigrant visa categories as defined in the Immigration and Nationality Act.¹³ Nonimmigrant visa categories include the following: diplomats and their staff, business visitors, tourists,

crew members, investors, students, employees of international institutions, certain skilled and nonskilled workers, journalists, nonimmigrants participating in exchange programs, intracompany transferees, athletes and performers, and religious workers.¹⁴

Most visitors enter the United States through the Visa Waiver Program (VWP). Under INA § 217 [8 U.S.C.A. § 1187], the Attorney General can waive the visa documentary requirement for visitors from certain countries with a history of compliance with U.S. immigration laws. However, such individuals must apply for authorization to come to the United States by completing the Electronic System for Travel Authorization (ESTA) and pay the required fee before coming to the United States. Currently, there are 35 countries whose nationals are eligible to seek entry to the United States under the VWP. During fiscal year 2012, almost 482,300 immigrant visas were issued to those seeking to live permanently in the United States and almost nine million noncitizens entered the United States as nonimmigrants for temporary periods of time.¹⁵

In deciding whether to issue a visa, consular officers will use three basic tools: the visa application, the personal interview, and a review of interagency databases. All noncitizens seeking a visa to come to the United States temporarily or permanently must undergo an admissibility review conducted by Department of State consular officers. In addition to an approved visa petition for certain immigrant and nonimmigrant visas, the applicant must submit his or her photographs, fingerprints, full name (including all names used), age, gender, and date and place of birth. Depending on the visa category, certain other documents are required, including medical examinations. Reviews are carried out to ensure that the applicant is not subject to the grounds of inadmissibility established under INA § 212(a) [8 U.S.C.A. § 1182(a)], which include the following: (1) health-related grounds, (2) criminal convictions and activities, (3) security and terrorism issues, (4) public charge, (5) seeking work without proper labor certification, (6) illegal entrants and immigration violators, (7) ineligible for citizenship, and (8) noncitizens previously removed.

As discussed in detail below, the Department of

State will review a number of databases to determine if someone is inadmissible for any of the grounds mentioned or if their application requires additional review as part of administrative processing. With few exceptions, all applicants for visas must attend an in-person interview.¹⁶ Waivers may be granted only to children under the age of 14, persons 79 years or older, diplomats and representatives of international organizations, persons renewing a visa obtained within the previous 12 months, and persons for whom a waiver is warranted for national security or unusual circumstances.¹⁷

RELEVANT DATABASES REVIEWED BY CONSULAR OFFICERS DURING THE VISA ADJUDICATION PROCESS

As noted, consular officers are required to review a number of different databases to determine if there exists information which may impact the visa adjudication process. A “hit” occurs when there is a match in one of the databases reviewed by the consular officer for a particular visa applicant. A hit can be based on a name on a terrorist watch list, a potential security risk, a prior visa denial or overstay, or criminal arrests, activities, or convictions. A hit can result, for example, even if an applicant has a similar name to that of a suspected terrorist or criminal. Consular officers review a number of databases during the visa adjudication process, including the following:

- **Automated Biometrics Identification System (IDENT):** Before a visa is issued, the applicant’s fingerprints are screened against the DHS IDENT database. This list contains available fingerprints of terrorists, wanted individuals, immigration law violators, and more than 100 million persons who have applied for visas, immigration benefits, and admission to the United States under the VWP. Over 10,000 matches of applicants on the IDENT list are returned to consular posts each month and generally result in a visa refusal.¹⁸
- **Integrated Automated Fingerprint Identification System (IAFIS):** This FBI database contains over 50 million criminal history records. In 2011, over 66,000 IAFIS arrest records were returned to consular posts.¹⁹

- **Consular Consolidated Database (CCD):** Consular officers use what is known as the Consular Consolidated Database as part of the screening process for visa adjudications. The records of all visa applicants are maintained in this database. In addition to information relating to the outcome of prior visa applications and comments by consular officers, the system links with other databases to highlight other issues which may be relevant to the decision on an application.²⁰
- **Consular Lookout and Support System (CLASS):** This is the principle lookout database used by the Department of State to conduct name checks and visa eligibility for all applicants. CLASS contains 27 million records of persons found ineligible for visas or against whom potentially negative information exists. Almost 70% of CLASS records originate with other agencies, including information from the FBI, the DHS, and the Drug Enforcement Agency (DEA) and intelligence from other agencies.²¹ A CLASS check is performed for all applicants, and a visa cannot be issued without confirmation by the consular officer that it has been completed. A “hit” during a CLASS check indicates that information exists which may be relevant to the adjudication of the visa application.²²
- **Technology Alert List (TAL):** The TAL was created in 2000 to provide guidance to consular officers in reviewing visa applications to prevent the export of goods, technology, or sensitive information through activities, such as graduate studies, teaching, research, and participation in exchange programs, as prohibited under U.S. law.²³ This list is disseminated to consular posts at the beginning of each fiscal year and contains the list of sensitive technologies and guidance to consular officers on how to process SAOs through the Visa Mantis program.²⁴ There are a large number of research fields covered by the guidance, including chemical and biotechnology engineering, materials technology, information security, advance computer technology, and other fields. Because of security concerns, the

actual TAL is classified. Foreign student advisors at U.S. universities and colleges report a sharp increase in the number of visa applications being reviewed for TAL-related reasons and delayed as a result.²⁵ Although TAL may be applied to applicants from any country, students and scholars from the Department of State state sponsors of terrorism list (Cuba, Iran, North Korea, Sudan, and Syria) and the five nonproliferation export control countries (China, India, Israel, Pakistan, and Russia) are the groups most impacted by TAL-related issues and delays.

Where an individual is not clearly inadmissible but review of the various databases results in a “hit,” the case will be referred for an SAO or what is often referred to as administrative processing.

WHAT IS ADMINISTRATIVE PROCESSING?

Where an individual has not been found inadmissible by a consular officer but his or her case has resulted in a hit on a database, the consular post may ask the Department of State in Washington, D.C., for an SAO to initiate the process of requesting clearances from various government agencies and databases, including the FBI, the Central Intelligence Agency, the DEA, the Department of Commerce, the Department of Treasury’s Office of Foreign Asset Control, Interpol, national criminal and law-enforcement databases, the Department of State Bureau of International Security and Nonproliferation (ISN), and other relevant agencies or offices.²⁶ The ISN is concerned with technology transfer and other issues and, thus, provides information to the Department of State relating to TAL hits.

One of the highest security priorities of the United States is to prevent the spread of chemical, nuclear, and biological weapons. Under INA § 212(a)(3)(A)(i)(II) [8 U.S.C.A. § 1182(a)(3)(A)(i)(II)], noncitizens seeking to enter the United States to engage in any activity to violate laws relating to the export of goods, technology, or sensitive information are inadmissible. If a consular officer has reason to believe that a visa applicant

intends to do so, the consular officer must request an SAO. The Visa Mantis program is the vehicle through which SAOs are requested by the Department of State from the relevant agencies within the United States, especially the ISN within the Department of State, in such cases.

Prior to the attacks on the United States on September 11, 2001, there were two types of security checks conducted by consular personnel. Name check requests were sent to headquarters, and, where no response was received, the visa would be issued within a particular time period. The second type of check—the SAO—was a more complex process than that of the name check; a visa could not be issued until an affirmative response was received from the Department of State.²⁷

Because of ongoing delays and difficulties with the SAO process, the Department of State created the SAO Improvement Project in 2004. The electronic system for SAO requests was improved and made cable-less; as a result, all requests are made through the Consular Consolidated Database (CCD).²⁸

UNDER WHAT CIRCUMSTANCES IS AN SAO REQUESTED?

As mentioned above, consular officers will request an SAO in cases where an applicant is not immediately inadmissible but the name check results in a hit or the circumstances of the individual's case raise security or related concerns.

Applicants who were born or who have resided in state sponsors of terrorism or certain other countries that raise security concerns for the U.S. government undergo the SAO process known as Visas Condor.²⁹ The criteria of the Visas Condor process are classified, but consular officers will request SAOs under this program for applicants from state sponsors of terrorism and most male applicants ages 16 to 45 from other countries. Sources indicate that the following countries are subject to Visas Condor checks: Afghanistan, Algeria, Bahrain, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.³⁰

SAOs are also requested as part of the Visa Mantis check process. Persons from state sponsors of terrorism as well as other countries of concern and interest to the U.S. government who seek admission to the United States to work, study, or exchange information in critical fields as listed in the TAL discussed above will be subject to Visa Mantis SAO. Security clearances which have been granted after a Visa Mantis check are valid for up to four years for students and two years for working scientists.³¹

An SAO must be requested where the following grounds of inadmissibility are suspected:

- **INA § 212(a)(3)(A) [8 U.S.C.A. § 1182(a)(3)(A)] (general prejudicial activities; espionage, sabotage, or prohibited export of sensitive technology or sensitive information):** There are no immigrant or nonimmigrant waivers available for this ground of inadmissibility, but it only applies to current circumstances. An SAO is mandatory before a decision is taken on the visa application.³²
- **INA § 212(a)(3)(B) [8 U.S.C.A. § 1182(a)(3)(B)] (terrorist activities):** There is a waiver available for nonimmigrants only. An SAO is mandatory before a decision is taken on the visa application.³³
- **INA § 212(a)(3)(C) [8 U.S.C.A. § 1182(a)(3)(C)] (entry would have potentially serious adverse foreign policy consequences):** No waiver is available for this ground of inadmissibility; however, it only applies to current circumstances. An SAO is mandatory before a decision is taken on the visa application.³⁴
- **INA § 212(a)(3)(D) [8 U.S.C.A. § 1182(a)(3)(D)] (membership or affiliation with communist or other totalitarian party, domestic or foreign):** This ground of inadmissibility applies only to individuals seeking immigrant visas. There is a waiver available and exceptions available for past membership or involuntary membership. An SAO is mandatory before a decision is taken on the visa application.³⁵

- **INA § 212(a)(3)(E) [8 U.S.C.A. § 1182(a)(3)(E)] (participation in Nazi persecutions or genocide and commission of acts of torture or extrajudicial killings):** A waiver is available for nonimmigrant visa applicants. An SAO is mandatory before a decision is taken on the visa application.³⁶
- **INA § 212(a)(3)(F) [8 U.S.C.A. § 1182(a)(3)(F)] (associations for terrorist organizations):** There is a waiver available for nonimmigrant visa applicants. An SAO is mandatory before a decision is taken on the visa application.³⁷
- **INA § 212(a)(3)(G) [8 U.S.C.A. § 1182(a)(3)(G)] (recruitment or use of child soldiers):** There is a waiver available for nonimmigrant visa applicants. An SAO is mandatory before a decision is taken on the visa application.³⁸

An applicant for a visa can be subject to administrative processing each time that he or she applies.

INFORMATION PROVIDED BY THE DEPARTMENT OF STATE ON ADMINISTRATIVE PROCESSING

As part of the research for this *Briefing*, the author contacted the Department of State's Bureau of Consular Affairs with specific questions regarding administrative processing. The press office within Consular Affairs provided the author the following general information regarding administrative processing:

The Department of State is committed to facilitating legitimate travel and providing prompt and courteous service. At the same time, we must ensure that applicants are both qualified for the visa and do not pose a security risk to the United States. Applicants sometimes require additional screening to determine whether they are eligible for the visa. The term "administrative processing" refers to various additional checks that must be done before their visas can be issued.

Administrative processing does not mean that the U.S. government has identified the applicant as a security risk. Many factors can trigger these checks. For security reasons, the consular officer will not be able to

provide specific information regarding what additional checks are to be performed. In some cases, the consular officer may need to request additional information from the visa applicant.

Most administrative processing is resolved within 60 days of the visa interview, but the timing can vary based on the individual circumstances of each case. The Department of State is continuously working to improve processing.

Procedures vary by embassy and consulate, but usually the consular section will contact the applicant once the administrative processing is complete. If 60 days have passed since your interview and you still have not received your visa, you can contact the consular section to inquire about your case. Many embassies and consulates allow applicants to check the status of their case online. You can also check the status of your case by calling 202-663-1225. Please provide all the relevant information you can, including your name, date of birth, nationality, passport number, and when and where you applied for your visa.³⁹

The Department of State also provides general information on its website page entitled "Administrative Processing Information," which confirms that certain applications will require further administrative processing, which is generally resolved within 60 days of the interview.⁴⁰ The page notes that processing time is based on the individual circumstances of each case and advises all visa applicants to wait at least 60 days from the date of the interview or submission of supplemental documents, whichever is later as noted by the Bureau of Consular Affairs in its email communication with the author.⁴¹ According to the Bureau of Consular Affairs Visa Office, the average processing time for SAOs is four to six weeks. Seventy percent of the cases are cleared within 30 days.⁴²

In preparing for this *Briefing*, the author performed a comprehensive review of 181 U.S. consular websites to determine what specific information is available to nonimmigrant and immigrant visa applicants when their cases are placed in administrative processing.⁴³ Consistent with the secretive nature of the process itself, there is very little helpful information on what actually occurs during administrative processing and what applicants should expect.

As of July 2013, 50 consular websites contained no

information on administrative processing.⁴⁴ Where the issue was addressed, there was no specific information on how the process itself works, which agencies are consulted, and how a final decision is reached to grant or deny the visa. The information on the consular websites is general in nature, advising only that some cases may undergo administrative processing. However, the specific reasons for administrative processing are not discussed on any consular website. Appendix I contains statistics on visa ineligibility by grounds for refusal in fiscal year 2012.

Information on processing times for administrative processing as per consular website information varies from several weeks to several months. Below is a summary of the average processing times for administrative processing on the U.S. consular websites reviewed by the author:

- **Several weeks:** The following U.S. consulates reported administrative processing times of several weeks on average: the Democratic Republic of the Congo, Cote d'Ivoire, Senegal, El Salvador, Uruguay, Australia, and Germany.
- **Several weeks to several months:** The following U.S. consulates reported administrative processing times of several weeks to several months on average: Zambia, Canada (Montreal), Cuba Interests Section, Cambodia, Hong Kong and Macau, New Zealand, Thailand, Austria, Denmark, Egypt, Iraq, Jordan, Kuwait, Libya, Morocco, Qatar, Saudi Arabia, Tunisia, the United Arab Emirates, Afghanistan, and Tajikistan.
- **Thirty days:** The following U.S. consulates reported administrative processing times of 30 days on average: Ethiopia, Madagascar, Ecuador, Paraguay, China, Mongolia, Russia, and Lithuania.
- **Thirty to 60 days:** The following U.S. consulates reported administrative processing times of 30 to 60 days on average: Nigeria, Sudan, Bahamas, Canada (Toronto and Montreal), Brunei, Burma, Indonesia, Japan, Vietnam, France, Mon-

tenegro, Netherlands, United Kingdom, and Iran (virtual).

- **Sixty to 90 days:** The following U.S. consulates reported administrative processing times of 60 to 90 days on average: Colombia, Haiti, Mexico, Albania, and Pakistan.

Most of the consulates do note that processing times will vary depending on the individual circumstances in a case. The U.S. Consulate in Liberia openly states that it is impossible to predict how long the process will take. While the majority of cases which undergo administrative processing are resolved within a short period of time, there remain a large number which remain pending for months and years.

Regarding inquiries on the status of a case, the State Department's website provides conflicting information regarding the amount of time that an applicant should wait to inquire after his or her case has been placed in administrative processing. The Administrative Processing Web page, for example, provides as follows:

Important Notice: Before making inquiries about status of administrative processing, applicants or their representatives will need to wait at least 60 days from the date of interview or submission of supplemental documents, whichever is later.⁴⁵

However, the Department provides different information on its U.S. Visa Policy Web page:

Before making inquiries about status of administrative processing, applicants or their representatives will need to wait at least 90 days from the date of interview or submission of supplemental documents, whichever is later.⁴⁶

The majority of the consular websites do not provide information on how much time should pass before an inquiry is made on the status of administrative processing. Those that do mirror the Department of State website; some state 60 days while others advise that an applicant must wait 90 days.

TIPS FOR MOVING YOUR CASE FORWARD

In most cases, the fact that a consular officer has

placed an individual's case under administrative processing means that the individual is statutorily eligible for a visa. Otherwise, the officer would have denied the visa. However, the delays can be frustrating, especially when the case languishes for months, sometimes years, and the individual has no idea of the reasons for continued review. Before your client applies for the visa, determine if there exists any possibility that his or her case will require administrative processing. Do the facts in the case raise the possibility that an SAO is mandatory? Is your client potentially subject to security and related grounds under INA § 212(a)(3)? Has he or she experienced problems with prior visa applications? Have any family members been accused of or involved in terrorism-related activities?

If your client is not issued the visa within the normal processing times, determine whether his or her case has been placed in administrative processing. Obtain confirmation from the U.S. consulate. Wait for 60 days after the interview or submission of additional documentation—whichever date is later—before reaching out to the consulate and making an inquiry. If the consulate is nonresponsive and the case remains pending, file an inquiry with the Department of State LegalNet office. Consider seeking congressional assistance to obtain a final decision on the application. After exhausting all avenues, consider contacting the AILA Department of State Liaison Committee to seek its assistance.

Counsel may also want to consider contacting the press to publicize the case. However, caution is advised. When a decision is made to speak with the press, counsel should make sure to investigate all facts in the case. Where there are adverse factors, counsel should determine if they can be minimized so as not to prejudice the case.

CONCLUSION

The United States government can and should carefully review all visa applications to confirm eligibility and determine whether a particular applicant poses a threat to national security. Where there is such a suspicion, continued review and processing is justified.

In many cases, however, where a case remains under review for lengthy periods of time—a year or more—a more effective and fair process must be created to quickly move the cases forward.

Long-pending cases seem to have slipped into a black hole. The State Department and its consular officers repeat only that administrative processing is ongoing without providing any details as to why. Applicants and their family members suffer separation and growing anxiety the longer that they wait. Counsel's role is limited, and they feel almost equally as frustrated in their attempts to assist their clients. Many consular officers and State Department officials are apologetic and clearly do not want to maintain a caseload which languishes within their consulates.

Given the lack of transparency in the SAO process, there is a real sense that no one is the primary gatekeeper. There is no agency or individual in charge of stating that the buck stops here; instead, it feels like files are passed from one agency to another with no one responsible individual or agency with a mandate to timely and fairly issue a decision on the application.

In order to alleviate the concerns of eligible applicants for immigrant and nonimmigrant visas and their U.S.-citizen and lawful permanent resident family members and U.S.-based employers and to effectively carry out necessary administrative processing, the Department of State should consider the following:

- The Department of State should provide clear and public information on who may be subject to administrative processing and why. This information should be made available on the consulate websites and through written materials at the consulates.
- Where a case is placed in administrative processing, where possible, consular officers should provide the reasons for the delays in order to give the applicant an opportunity to provide specific information to counter any concerns.
- The Department of State should provide public access to statistics relating to the number of

SAOs requested by nationality, gender, and age. These statistics should indicate the length of time that the processing takes and whether the visa application was ultimately granted.

- The Department of State should assign personnel at the Department of State headquarters in Washington, D.C., to be responsible for tracking SAOs which have been pending 60 days or longer in order to move the process forward quickly and efficiently. A tickler system should be created to alert the assigned gatekeeper(s) within the Department of State when administrative processing goes beyond 60 days. The case should be internally monitored on a regular basis, and the relevant reviewing agencies should be contacted and urged to finalize their process so that the matter can be completed and a visa issued.

ADMINISTRATIVE PROCESSING CHECKLIST

- I. **Is my client potentially subject to administrative processing?** Review the following to determine if your client may be subject to administrative processing after applying for his or her nonimmigrant or immigrant visa.
 - **Country of nationality:** Client resided in or is national of Afghanistan, Algeria, Bahrain, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, or Yemen.
 - **Client name:** Is your client's name similar to names of individuals who may be suspected of terrorism-related activities?
 - **Criminal record:** Has your client ever been arrested, cited, charged and/or convicted for any offense anywhere in the world?
 - **Potential grounds of inadmissibility:** Carefully review the grounds of inadmissibility, INA § 212 [8 U.S.C.A. § 1182], which mandate an SAO. Based on your client's circumstances, is he or she potentially subject to the following grounds of inadmissibility? If he or she is potentially subject to any of these grounds, do any exceptions or waivers apply to eliminate the ground of inadmissibility?
 - *General prejudicial activities; espionage, sabotage, or prohibited export of*

sensitive technology or sensitive information: What is your client's profession? What university degree(s) does he or she possess? Where did he or she study? Who were his or her professors? Why is he or she coming to the United States? Is he or she coming to the United States to study, research, work in the fields listed under the Technology Alert List (TAL).

- *Terrorist activities/terrorist associations:* Has your client or his or her family been accused of/involvement in terrorist activities or associations? Have they provided support to any potential terrorist organizations? Have family members been arrested, interrogated, or jailed for potential terrorist activities?
- *Entry would have potentially serious adverse foreign policy consequences:* Would your client's entry to the United States have potential adverse foreign policy consequences for the United States? Has your client been involved in violations of human rights? Has your client been affiliated with political parties or groups opposed to the United States?
- *Membership or affiliation with communist or other totalitarian party, domestic or foreign:* Is or has your client been a member of or affiliated with a communist or totalitarian party? This does not apply where membership is or was involuntary, was solely while under the age of 16, by operation of law, for the purpose of obtaining employment, food, or essentials of living, or membership or affiliation terminated two or five years (in the case of membership or affiliation with the party controlling a government that is a totalitarian dictatorship) before an application for a visa.
- *Participation in Nazi persecutions or genocide and commission of acts of torture or extrajudicial killings:* If your client is from a country with a history of violence and human rights violations, carefully question whether he or she was in the military, involved in any local militia or guerilla groups, a member of government in positions of authority, etc. to determine if he or she was involved in any potential activities

which would constitute inadmissibility. Did he or she work in a prison or detention facilities? What were his or her duties?

- *Recruitment or use of child soldiers:* Does your client come from a country where child soldiers are used by military forces, governmental or opposition? Was he or she involved in any recruitment activities?

II. What should I do if my client is placed in administrative processing?

- **Confirm with the consulate that the client has been placed in administrative processing.**
- **Carefully question your client to determine what occurred during the interview, including determining what questions were asked, on what issues the consular office focused, responses to any/all questions made by your client, etc.**
- **Gather intelligence from colleagues:** Contact colleagues who may have had experience with administrative processing at the particular consulate. Ask them about their cases and for any tips for moving the case forward.
- **Review the consular website to determine if there are any particular instructions to following when making status inquiries.**
- **Contact the consulate 60 days after the interview or submission of any additional documents, whichever date is later.**
- **If processing goes beyond 60 days and there is no substantive response to inquiries, consider the following:**
 - **Determine if you can provide documentation or other information to the U.S. consulate which will resolve the issue:**
 - **If the basis for administrative processing involves local issues, determine if a local official can provide/respond to consular concerns.**
 - **If the basis for administrative processing is based on criminal issues, provide all necessary documentation to resolve the issue.**
 - **If the basis for administrative processing involves issues related to the Technology Alert List (TAL), contact the relevant U.S.-based university or re-**

search organization to ask that it provide information which may resolve a concern or to obtain its support in making inquiries to the Department of State in the U.S. or the U.S. consulate.

- **Contact the Consul General directly to inquire as to the status of the case.**
- **Contact relevant congressional representatives and speak with them to determine how/if they can assist.**
- **Submit an inquiry to LegalNet.**
- **Carefully consider whether it would be beneficial to contact the press.**
- **Contact the AILA Department of State Liaison Committee for possible liaison assistance. Note that all other avenues must be exhausted before contacting the AILA liaison. For more on the liaison committees, visit the AILA website at <http://www.aila.org>.**

ENDNOTES:

¹Note that identifying information has been changed to protect confidentiality.

²See New Islamabad AP Tracker at <http://www.visajourney.com/forums/topic/343005-new-islamabad-ap-tracker/>; Britishexpats.com at <http://britishexpats.com/forum/showthread.php?t=742609>; Immigration.com forums at <http://forums.immigration.com/showthread.php?295986-Administrative-Processing-Countries-LIST-HERE!>; Visa Journey Saudi Arabia Portal Page at <http://www.visajourney.com/forums/topic/393237-ap-now-5-month-no-updates-yet/>.

³Department of State, Statement of David T. Donahue, Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State, Before the Subcommittee on Human Rights and Law of the Senate Committee the Judiciary, "Hearing on Denying Safe Have in the United States to Human Rights Violators" (Oct. 6, 2009), p. 9, available at <http://www.gpo.gov/fdsys/pkg/CHRG-111shrg71853/html/CHRG-111shrg71853.htm>.

⁴September 6, 2006, State Department Press Releases & Documents (page unavailable online), 2006 WLNR 15455258, State Department Documents (Sept. 6, 2006).

⁵INA § 104(a) [8 U.S.C.A. § 1104(a)]; INA § 221 [8 U.S.C.A. § 1201].

⁶Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. No. 107-173, 116 Stat. 543 (May 14, 2002).

⁷Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (Nov. 25, 2002).

⁸Statement of John Cohen, Deputy Counterterrorism Coordinator, DHS, and Peter T. Edge, Homeland Security Investigations, ICE, DHS, regarding a hearing on “From the 9/11 Hijackers to Amine El Khalifi: Terrorists and the Visa Overstay Problem,” before the House of Representatives Committee on Homeland Security, Subcommittee on Border and Maritime Security (Mar. 6, 2012), available at <http://www.ice.gov/doclib/news/library/speeches/120306edge.pdf>.

⁹Congressional Research Service Report for Congress, Visa Security Policy: Roles of the Departments of State and Homeland Security, by Ruth Ellen Wasem (June 30, 2011), available at <http://www.fas.org/sgp/crs/homsec/R41093.pdf>; see also ICE international offices at <http://www.ice.gov/contact/oia/>.

¹⁰Congressional Resource Service Report for Congress, Visa Security Policy: Roles of the Departments of State and Homeland Security, by Ruth Ellen Wasem (June 30, 2011), available at <http://www.fas.org/sgp/crs/homsec/R41093.pdf>.

¹¹Statement of John Cohen, Deputy Counterterrorism Coordinator, DHS, and Peter T. Edge, Homeland Security Investigations, ICE, DHS, regarding a hearing on “From the 9/11 Hijackers to Amine El Khalifi: Terrorists and the Visa Overstay Problem,” before the House of Representatives Committee on Homeland Security, Subcommittee on Border and Maritime Security (Mar. 6, 2012), available at <http://www.ice.gov/doclib/news/library/speeches/120306edge.pdf>.

¹²INA § 203 [8 U.S.C.A. § 1153].

¹³INA § 101(a)(15) [8 U.S.C.A. § 1101(a)(15)].

¹⁴INA § 101(a)(15) [8 U.S.C.A. § 1101(a)(15)].

¹⁵See Appendix I.

¹⁶22 C.F.R. § 42.62.

¹⁷22 C.F.R. § 42.62.

¹⁸Department of State, written statement of Edward J. Ramotowski, Deputy Assistant Secretary for Visa Services, DOS, before the United States House of Representatives Committee on Homeland Security, Subcommittee on Border and Maritime Security, “Hearing on Eleven Years Later: Preventing Terrorists From Coming to America” (Sept. 11, 2012), available at <http://homeland.house.gov/sites/homeland.house.gov>

v/files/Testimony%20Ramotowski_0.pdf.

¹⁹Id.

²⁰Id.

²¹Id.

²²See 9 FAM Appendix D 200.

²³INA § 212(a)(3)(A) [8 U.S.C.A. § 1182(a)(3)(A)]. See also State Department Updates Guidance on Technology Alert Checks, available on AILA InfoNet, Doc. No. 03030449 (posted Mar. 4, 2003).

²⁴See testimony of J. L. Jacobs, Deputy Assistant Secretary of State for Visa Services, The Conflict between Science and Security in Visa Policy: Status and Next Steps, before the House of Representatives Science Committee (Feb. 25, 2004), available at http://www.travel.state.gov/visa/laws/testimony/testimony_1447.html. The Visas Mantis is a namecheck procedure designed for all U.S. government-sponsored programs.

²⁵See Carnegie Mellon Office of International Education at <http://www.studentaffairs.cmu.edu/oie/fo/rscho/travel/techAlert.html>.

²⁶A sample SAO is reproduced in Appendix II.

²⁷A sample letter notifying a visa applicant explaining this restriction is reproduced in Appendix III.

²⁸See testimony of J. L. Jacobs, Deputy Assistant Secretary of State for Visa Services, The Conflict between Science and Security in Visa Policy: Status and Next Steps, before the House of Representatives Science Committee (Feb. 25, 2004), available at http://www.travel.state.gov/visa/laws/testimony/testimony_1447.html.

²⁹Stephen Yale-Loehr, Papademetriou and Betsy Cooper, Security Borders, Open Doors: Visa Procedures in the Post-September 11 Era, p. 109 (Migration Policy Institute 2005), available at http://www.migrationpolicy.org/pubs/visa_report.pdf.

³⁰Yale-Loehr, Papademetriou, and Cooper, Secure Borders, Open Doors: Visa Procedures in the Post-September 11 Era, p. 110 (Migration Policy Institute 2005), available at http://www.migrationpolicy.org/pubs/visa_report.pdf.

³¹See U.S. Department of State Office of the Spokesman, Extension of the Validity for Science Related Interagency Visa Clearances, press release, February 11, 2005, available at <http://2001-2009.state.gov/r/pa/prs/ps/2005/42212.htm> (last visited September 18, 2013).

³²9 FAM 40.31 N3.

³³⁹ FAM 40.32 N1.1.

³⁴⁹ FAM 40.33 N4.

³⁵⁹ FAM 40.34 N4.4.

³⁶⁹ FAM 40.35(a) N4.

³⁷⁹ FAM 40.36 N4.

³⁸⁹ FAM 40.6 Exhibit I, p. 10.

³⁹Email correspondence between the author and John W. Whiteley, dated July 2, 2013, on file with author. Note that the phone number 202-663-1225 has been changed. The recorded message advises that callers should contact 202-485-7600 for more information on their case.

⁴⁰Department of State, Administrative Processing Information, available at http://www.travel.state.gov/visa/a_zindex/a_zindex_4353.html (last visited September 18, 2013).

⁴¹Id.

⁴²AILA DOS Liaison Q&As (3/28/2012), Q 20, AILA InfoNet, Doc. No. 12053145.

⁴³The results of this review are contained in a pdf, which the author can provide to individuals. Contact

the author at agallagher@maggio-kattar.com for a copy of this document. Include the following in the subject line of the email: Request for Overview of AP on US Consulate websites.

⁴⁴Burkina Faso, Burundi, Cameroon, Cape Verde, Republic of the Congo, Guinea Bissau, Kenya, Lesotho, Niger, Rwanda, Somalia, South Sudan, The Gambia, Togo, Uganda, Belize, Bermuda, Costa Rica, Dominican Republic, Guatemala, Netherlands Antilles, Trinidad and Tobago, Venezuela, Fiji, Korea, Republic of the Marshall Islands, Papua New Guinea, Republic of Palau, Samoa, Singapore, Timor-Leste, Taiwan, Belgium, Bosnia and Herzegovina, Croatia, Czech Republic, Estonia, Iceland, Italy, Kosovo, Luxembourg, Portugal, The Vatican, Kyrgyz Republic, Sri Lanka and Turkmenistan.

⁴⁵Department of State, Administrative Processing Information, available at http://travel.state.gov/visa/a_zindex/a_zindex_4353.html (last visited on September 18, 2013).

⁴⁶Department of State, U.S. Visa Policy, available at http://travel.state.gov/visa/questions/policy/policy_4433.html (last visited on September 18, 2013).

Appendix I

FY 2012 data is preliminary and subject to change. Any changes would not be statistically significant.

Table I
Immigrant and Nonimmigrant Visas Issued at Foreign Service Posts
Fiscal Years 2008 - 2012

	2008	2009	2010	2011	2012
Immigrant Categories					
Immediate Relatives	238,848	227,517	215,947	216,856	235,616
Special Immigrants ¹	2,559	4,325	3,043	1,861	5,219
Vietnam Amerasian Immigrants	77	48	23	35	75
Family Sponsored Preference	169,896	176,273	200,567	192,891	189,128
Employment-Based Preference	13,472	13,846	12,701	15,099	19,137
Armed Forces Special Immigrants	1	0	0	0	0
Diversity Immigrants	45,246	46,761	49,771	49,507	33,125
Schedule A Workers ²	-	-	-	-	-
Total	470,098	468,770	482,052	476,249	482,300
Nonimmigrant Categories					
Visas Issued	6,603,076	5,804,182	6,422,751	7,507,939	8,927,090
(B1/B2/Border Crossing Cards) ³	[750,483]	[707,255]	[971,886]	[1,143,100]	[1,493,267]
Total	6,603,076	5,804,182	6,422,751	7,507,939	8,927,090

Note: The totals on this table do not include replaced immigrant visas.

¹ Special Immigrant totals include returning residents, Iraqi and Afghan translators, and certain Iraqis or Afghans employed by or on behalf of the U.S. Government.

² Section 502, Title V, Division B of Pub. L. 109-13 enacted May 22, 2005 (the REAL ID Act of 2005) amended Sec. 106(d) of Pub. L. 106-313 to provide for the recapture of 50,000 Employment Preference numbers that were unused in Fiscal Years 2001-2004. The recaptured numbers were to be used for workers with petitions approved under the Department of Labor's Schedule A labor certification regulations. Issuances ceased in Fiscal Year 2007.

³ Combination B1/B2 visitor visa/Border Crossing Cards are issued to Mexican nationals. B1/B2/Border Crossing Card issuances are included in the "Visas Issued" line.

FY 2012 data is preliminary and subject to change. Any changes would not be statistically significant.

Table XX
Immigrant and Nonimmigrant Visa Ineligibilities
(by Grounds for Refusal Under the Immigration and Nationality Act)
Fiscal Year 2012

Grounds for Refusal Under the Immigration and Nationality Act		Immigrant		Nonimmigrant	
		Ineligibility Finding ¹	Ineligibility Overcome ²	Ineligibility Finding ¹	Ineligibility Overcome ²
212(a)(1)(A)(i)	Communicable Disease	421	507	14	3
212(a)(1)(A)(ii)	Immigrant lacking required vaccinations	1,566	1,519	-	-
212(a)(1)(A)(iii)	Physical or mental disorder	186	73	417	55
212(a)(1)(A)(iv)	Drug Abuser or Addict	1,523	0	112	13
212(a)(2)(A)(i)(I)	Crime Involving Moral Turpitude	1,331	328	6,647	2,580
212(a)(2)(A)(i)(II)	Controlled Substance Violators	557	78	4,155	1,619
212(a)(2)(B)	Multiple Criminal Convictions	85	5	376	107
212(a)(2)(C)(i)	Illicit Trafficker in Any Controlled Substance	432	0	2,833	585
212(a)(2)(C)(ii)	Spouse, Son, or Daughter Who Benefited from Illicit Activities of Trafficker	23	1	658	42
212(a)(2)(D)(i)	Prostitution (within 10 years)	20	17	35	3
212(a)(2)(D)(ii)	Procuring (within 10 years)	4	2	35	8
212(a)(2)(D)(iii)	Unlawful Commercialized Vice	0	0	5	1
212(a)(2)(E)	Asserted immunity to avoid prosecution	0	0	1	0
212(a)(2)(G)	Foreign government officials who have engaged in violations of religious freedom	0	0	0	0
212(a)(2)(H)	Significant traffickers in persons	1	0	4	0
212(a)(2)(I)	Money Laundering	1	0	20	7
212(a)(3)(A)(i)	Espionage, sabotage, technology transfer, etc.	11	0	249	8
212(a)(3)(A)(ii)	Other Unlawful Activity	223	0	73	7
212(a)(3)(A)(iii)	Act to Overthrow U.S. Government	0	0	0	0
212(a)(3)(B)	Terrorist Activities	76	0	814	470
212(a)(3)(C)	Foreign Policy	0	0	0	0
212(a)(3)(D)	Immigrant Membership in Totalitarian Party	19	8	-	-
212(a)(3)(E)(i)	Participants in Nazi Persecutions	0	0	0	0
212(a)(3)(E)(ii)	Participants in Genocide	0	0	0	0
212(a)(3)(E)(iii)	Commission of Acts of Torture or Extrajudicial Killings	0	0	6	2
212(a)(3)(F)	Association with Terrorist Organizations	0	0	0	0
212(a)(3)(G)	Recruitment of Use of Child Soldiers	0	0	5	2
212(a)(4)	Public Charge	4,901	5,218	261	19
212(a)(5)(A)	Labor Certification (immigrants only)	11,386	1,386	-	-
212(a)(5)(B)	Unqualified Physician (immigrants only)	0	0	-	-
212(a)(5)(C)	Uncertified foreign health-care workers	2	0	0	0
212(a)(6)(B)	Failure to attend removal proceedings	172	0	10	2
212(a)(6)(C)(i)	Misrepresentation	7,436	1,737	12,754	3,390
212(a)(6)(C)(ii)	Falsely claiming citizenship	687	0	1,592	386
212(a)(6)(E)	Smugglers	3,634	1,424	3,052	856
212(a)(6)(F)	Subject of civil penalty (under INA 274C)	0	0	0	0
212(a)(6)(G)	Student visa abusers	1	0	10	4
212(a)(7)(B)	Documentation requirement for nonimmigrants	-	-	63	46
212(a)(8)(A)	Immigrant permanently ineligible for citizenship	0	0	-	-
212(a)(8)(B)	Draft evader	1	0	13	8
212(a)(9)(A)(i)	Ordered removed upon arrival	903	326	668	66

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Table XX
Immigrant and Nonimmigrant Visa Ineligibilities
(by Grounds for Refusal Under the Immigration and Nationality Act)
Fiscal Year 2012

Grounds for Refusal Under the Immigration and Nationality Act		Immigrant		Nonimmigrant	
		Ineligibility Finding ¹	Ineligibility Overcome ²	Ineligibility Finding ¹	Ineligibility Overcome ²
212(a)(9)(A)(i)	Ordered removed upon arrival - multiple removals	103	16	39	9
212(a)(9)(A)(i)	Ordered removed upon arrival - convicted aggravated felony	20	0	17	5
212(a)(9)(A)(ii)	Ordered removed or departed while removal order outstanding	1,631	700	594	107
212(a)(9)(A)(ii)	Ordered removed or departed while removal order outstanding - multiple removals	188	35	95	18
212(a)(9)(A)(ii)	Ordered removed or departed while removal order outstanding - convicted aggravated felony	96	5	71	13
212(a)(9)(B)(i)(I)	Unlawfully present 181-364 days (within 3 years)	440	285	778	99
212(a)(9)(B)(i)(II)	Unlawfully present 365 or more days (within 10 years)	27,524	21,673	13,954	969
212(a)(9)(C)	Unlawfully present after previous immigration violations	2,964	0	2,653	304
212(a)(10)(A)	Practicing polygamist (immigrants only)	44	6	-	-
212(a)(10)(C)(i)	International child abductor	0	0	5	1
212(a)(10)(C)(ii)	Aliens supporting abductors and relatives of abductors	0	0	0	0
212(a)(10)(D)	Unlawful voter	1	0	0	0
212(a)(10)(E)	Former U.S. citizen who renounced citizenship to avoid taxation	0	0	0	0
212(e)	Certain former exchange visitors	26	9	10	5
212(f)	Presidential proclamation	2	0	70	5
214(b)	Failure to establish entitlement to nonimmigrant status	-	-	1,308,983	16,563
221(g)	Application does not comply with provisions of INA or regulations issued pursuant thereto	303,166	197,489	806,773	724,217
222(g)(2)	Alien in illegal status, required to apply for new nonimmigrant visa in country of alien's nationality	-	-	106	7
Sec. 103 Pub. Law 105-227	Disclosure/trafficking of confidential U.S. business information	0	0	0	0
Sec. 401 Pub. Law 104-114	Helms-Burton refusal	0	0	0	0
Sec. 402 Pub. Law 104-114	Conversion of confiscated U.S. property for gain	0	0	1	0
Sec. 306 Pub. Law 107-173	Inadmissible alien from a country that is a state sponsor of terrorism	0	0	155	7
Total Grounds of Ineligibility:		371,807	232,847	2,169,186	752,618
Number of Applications:¹		311,835	215,321	2,132,149	749,257

The figures at the end of this table show totals of **applications** refused and refusals overcome. The total of applications refused does not necessarily reflect the number of persons refused during the year. One applicant can apply and be found ineligible more than one time in a fiscal year.

¹ The total grounds of ineligibility may exceed the number of applications refused because one applicant may be found ineligible under more

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Table XX
Immigrant and Nonimmigrant Visa Ineligibilities
(by Grounds for Refusal Under the Immigration and Nationality Act)
Fiscal Year 2012

Grounds for Refusal Under the Immigration and Nationality Act	Immigrant		Nonimmigrant	
	Ineligibility Finding¹	Ineligibility Overcome²	Ineligibility Finding¹	Ineligibility Overcome²

than one section of the Immigration and Nationality Act.

² The total of ineligibilities overcome may not necessarily represent the same visa applicants found ineligible and recorded in the total of ineligibility findings. A visa may be refused in one fiscal year and the refusal overcome in a subsequent fiscal year. Each action will be separately recorded as part of the appropriate statistical report for the year in which it occurred. A refusal can be overcome by evidence that the ineligibility does not apply, by approval of a waiver, or by other relief as provided by law.

Appendix II

[REDACTED]
[REDACTED]

[REDACTED] 4

[REDACTED]

[REDACTED] NOV 03

FM AMEMBASSY MINSK

TO [REDACTED] SECSTATE WASHDC 3386

INFO RUEPINS/HQ BICE INTEL WASHINGTON DC//DIR INTL AFF//

RHEFDIA/DIA WASHINGTON DC

RHEFDIA/DIA WASHINGTON DC//DHO-2

S E C R E T MINSK [REDACTED]

SIPDIS

FOR CA/VO/L/C [REDACTED]

SIPDIS

E.O. [REDACTED]: DECL: [REDACTED]

TAGS: [REDACTED]

SUBJECT: Security Advisory Opinion ([REDACTED])

Classified by Ambassador [REDACTED] for Reasons 1.4 (B,D)

Ref: IIR [REDACTED] / [REDACTED] INTELLIGENCE SERVICE

MONITORS A [REDACTED] CITIZEN DUE TO SUSPICIOUS BEHAVIOR AT
SCIENTIFIC SYMPOSIUMS (U). [REDACTED] JUL 04

¶1. (S) Summary: Post requests guidance regarding the visa application of [REDACTED]. Mr. [REDACTED] is applying for a visa in order to attend NATO working group conferences and to visit family. The previous Defense Attache and the previous Consular Officer at Embassy Minsk had serious intelligence/counterintelligence concerns regarding Mr. [REDACTED]. Please advise whether objections exist to the issuance of a visa. If so, please specify whether such objections focus only on Mr. [REDACTED] business travel or also travel to visit his family. Please also specify visa validation and annotation. Thank you.
End Summary.

¶2. (U) [REDACTED] is a former Belarusian Army officer who is now a senior researcher at the [REDACTED] [REDACTED], part of the National Academy of Science. He applied on November [REDACTED], for a multiple entry, one-year, B1/B2 visa in order to attend the NATO NMSG working group [REDACTED] the Interservice/Industry Training, Simulation and Education Conference, and to visit his [REDACTED] who lives in America.

Present Application Situation

¶3. (S) [REDACTED] applied on November [REDACTED] for a multiple entry B1/B2 visa to attend conferences and visit

his son. The DATT at the time had intelligence/counterintelligence concerns and discussed the matter with the ConOff. The DATT cited [REDACTED] possible involvement in the arrest and imprisonment of Dr. [REDACTED], a [REDACTED] national and instructor at the George C. Marshall Center for European Security Studies. [REDACTED] was detained on [REDACTED] by the Russian Federal Security Service at the request of the Belarusians and was imprisoned in Belarus on espionage charges. On [REDACTED] a Belarusian military court found [REDACTED] guilty of "collecting state secrets for a foreign nation and gathering other information to the prejudice of the Belarusian interests at the order of a foreign intelligence service." [REDACTED] was sentenced to seven years imprisonment, but was pardoned by President [REDACTED] in September [REDACTED]. As the [REDACTED] [REDACTED] at the Belarusian Military Academy in the mid 1990's, [REDACTED] was instrumental in assisting USDAO Minsk with establishing a home-stay program for visiting U.S. military officers assigned to the Marshall Center. [REDACTED] eventually went to the Marshall Center in [REDACTED] and visited numerous times afterwards as a guest speaker with [REDACTED], a long-time friend, acting as his host and facilitator. The DATT also cited Mr. [REDACTED] current work within the Belarusian Academy of Sciences, an institution that the DATT suspected of involvement in weapons development and technology proliferation. In one conversation between the two, [REDACTED] stated that his job was to integrate technology with NATO technology, which the DATT interpreted as exploiting western technology. The ConOff also had concerns about technology transfer and held [REDACTED] application under 221(g) pending further information.

¶4. (S) On May [REDACTED] Mr. [REDACTED] approached the Consular Section inquiring about his visa. The ConOff continued the 221(g) status. Although Mr. [REDACTED] personally knew the DATT from the Marshall Center, he avoided him and never requested his assistance with his visa. When DATT and ConOff departed post this summer, they briefed the new ConOff and DATT, who sought information from DIA.

¶5. (S) On November [REDACTED], [REDACTED] returned to the Consular Section again, wanting to travel to the NATO NMSG working group [REDACTED] and the [REDACTED] [REDACTED] from November [REDACTED] to [REDACTED]. The present DATT provided reftel as explanation of the intelligence/counterintelligence concerns of the previous DATT.

¶6. (U) ConOff interviewed [REDACTED] on November [REDACTED] to gain an update for this advisory opinion. [REDACTED] again requested a multiple entry B1/B2 visa and provided a number of documents. These documents include the cover page of the minutes of the [REDACTED] of the [REDACTED] [REDACTED] as well as the [REDACTED] [REDACTED]. [Note:

The MSG covered modeling and simulation for Civil Emergency Planning in the context of Defense Against Terrorism.] All documents have been scanned into his November NIV application file. He included the following travel timeline:

10/25/05 - 10/26/05: Business: NATO Modeling and Simulation
[REDACTED] . [REDACTED] W [REDACTED] [REDACTED]
[REDACTED] .

After 10/26/05: Private: to his son in the U.S. [REDACTED]
[REDACTED]

[REDACTED] (dates TBD): Business: NATO Modeling and Simulation
Group meeting [REDACTED]

Applicant Background

¶7. (U) Full name: [REDACTED]
Alternative spelling: [REDACTED]

DOB: [REDACTED]

POB: [REDACTED], Belarus

Wife's Name: [REDACTED]
[REDACTED]

Relatives in the U.S.:

Son -- [REDACTED]

phone: [REDACTED] 602 [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]

Brother-in-Law -- [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]

Contact phone: [REDACTED] 246 [REDACTED] [REDACTED] [REDACTED] 5-
3 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Previous Travel to the U.S.:

OCT- [REDACTED]: A2

10-SEP-2002: B1, single entry, six month validity

To: [REDACTED] Special Convocation, [REDACTED]

Occupation at the time: Inspector, [REDACTED] [REDACTED]
[REDACTED] [REDACTED]

06-NOV- [REDACTED]: B1/B2, single entry, six month validity

To: Conference

Occupation: Senior Researcher, [REDACTED] [REDACTED]
[REDACTED] [REDACTED] National Academy of Science

Appendix III

ADMINISTRATIVE PROCESSING



Embassy of the United States of America
5 Upper Grosvenor Street, London W1A 2JB

DATE:

BATCH No:

Dear Visa Applicant:

This office regrets to inform you that your visa application has been refused under Section 221(g) of the Immigration and Nationality Act, pending additional administrative processing. Section 221(g) prohibits the issuance of a visa to anyone whose application does not comply with the provisions of the Immigration and Nationality Act or related regulations. Additional administrative processing **cannot be waived and we cannot issue a visa until the processing is complete.** This review may take approximately 90 days to complete. In some cases, however, average processing time is six months or longer. For U.S. immigration law purposes, including ESTA (see <https://esta.cbp.dhs.gov>), this decision constitutes a denial of a visa.

You must check the Embassy website for updates regarding your application. Go online at <http://london.usembassy.gov>, click on "Visas" at the top of the page, "Nonimmigrant Visas" on the left-hand navigation bar and then "Administrative Processing" to find the latest update regarding your application under your Batch Number. If you see "Email Sent," this means the Embassy has contacted you for additional information. If you have not received this email, follow the instructions on the webpage for contacting the Embassy.

IMPORTANT NOTICE: Once you are notified that we are ready to proceed with your application, you should submit your passport by the Embassy approved courier company, DX Secure. On receipt of your passport in the Embassy, processing will take between 5 – 7 workdays. Once processing is complete, your passport will be handed to DX Secure. A further one to two days should be allowed for delivery.

Once DX Secure are in possession of your passport, you can track its' progress by visiting www.thedx.co.uk/tracking. You will need your invoice number and postcode quoted on the invoice. If your passport has not been handed to the courier company you will receive a message saying "Sorry this combination of tracking number and postcode do not correspond with our records. Please check and try again".

Please Note: If you submit your passport to the Embassy before receiving notification to do so, your passport will be returned to you to await completion of the additional administrative processing.

We strongly advise you **not to purchase any tickets** for travel to the United States or make irrevocable travel plans **until after you have been issued a visa** and your passport has been returned to you.

NIV 221g - Administrative Processing
December 2010

<http://london.usembassy.gov>



CONSULATE GENERAL OF THE UNITED STATES OF AMERICA

<http://chennai.usconsulate.gov>

Your visa application is pending administrative processing.

Case Number : _____

This office is unable to act on your visa application at this time, as additional information is required for further processing. **Further action in your case has been suspended** under Section 221(g) of the United States Immigration and Nationality Act pending the receipt and review of the information and documents requested below.

Please provide the following information to continue your application. **Detailed and complete answers** will enable your case to be processed quickly. Incomplete or vague answers may result in further delays.

Send the information requested below via e-mail to: **ChennaiSAO@state.gov**

Send attached documents in the **Text Only (*.txt)** format. (Except Invitation letter - see below)

Title the e-mail subject line: "Passport #-- Full Name" (example: A1234567 -- Reddy, Raghu).

- Name of applicant, passport number, and date and place of birth.
- Names of all **accompanying travelers**. If you are traveling to the U.S. as a member of a team, please list the names and passport numbers of all team members.
- **Trip Itinerary** and contact information for the place you will stay.
- Description of your current or most recent **research/professional projects** in detail, and description of practical applications of your most recent research or study. Assume that you are describing your work to a technical expert, scientist, or professional in your field.
- Description of your planned subjects of research, study, or project **in the U.S.**, and the practical applications of your planned research or study.
- Scanned letter of **invitation** from your U.S. sponsor in PDF format. The letter should include details about your visit and technical activities.
- Your organization's **goals and objectives as related to** your visit to the U.S.
- **Plans** after completion of study/work (i.e., where will you live/study/work?).
- Description of your professional and academic **background**. Please attach a complete CV/resume and a complete list of publications and professional/research references.
- Details of previous **U.S. visa(s)**, including date of issuance, expiry, and classification.
- Dates and countries for all previous **travel abroad**.
- Sponsoring institutions (U.S. and/or Indian) funding your travel, research, or education.
- **Advisor or contact person** in the U.S., and his/her address, phone number, and e-mail address.
- **Export License number**, if applicable (or, if pending, the Export License Application number).

We cannot process applications that are not in the format stipulated above.

BE ADVISED: The applicant is responsible for monitoring his case via the website. You can use the case number given above to check the status of your case on the Chennai Consulate website at: <http://chennai.usconsulate.gov>. In most cases, additional processing takes approximately 4-8 weeks after the receipt of your e-mail response. If more than 10 weeks have elapsed, you may send an e-mail to ChennaiSAO@state.gov with your case number and "(10 weeks elapsed)" included in the subject line.

IF YOU FAIL TO TAKE THE ACTION REQUESTED WITHIN ONE YEAR OF THE DATE OF 221(g) INELIGIBILITY, YOUR APPLICATION WILL EXPIRE.

Updated 01-Apr-2011