AILA’s Questions and the Visa Office’s Responses for the AILA-VO Liaison Meeting

March 17, 2005
Washington, D.C.

The Visa Office hosted the semi-annual liaison meeting with the American Immigration Lawyer’s Association (AILA) on March 17, 2005. Following are VO’s responses to questions prepared by AILA. VO responses appear in blue. The Department of State Liaison Committee’s comments to VO’s responses appear in italics.

General Updates and Data

1. Please provide us with:

1a. Your current organizational chart;

**Answer to 1a:**
Please see the organizational chart at page 18 of this document.

1b. Any Visa Policy Telegrams (the last one released is dated December 16, 2004, concerning completion of biometric deployment). We are especially interested in any discussion of INA Section 214(b) and its implications, and any guidance to posts on the extension of Mantis clearances;

**Answer to 1b:**
We will soon post the latest telegram on INA Section 214(b) on the Internet, and will review the last few months of cable traffic to identify other policy telegrams for posting.

_The Section 214(b) cable may be read at AILA Doc. No. 05032279, posted March 22, 2005._

1c. The summary of recent student visa improvements entitled “Student and Exchange Visitor Visa Improvements”;

**Answer to 1c:**
Please see the summary at page 19 of this document.

1d. A breakdown, by region and classification, of the number of NIV applications filed, granted and refused, for FY2004 as compared with FY2003;
**Answer to 1d:**
Please see figures at the page 23 of this document.

1e. Current processing times and any updates to SAO procedures, including Condors, NCIC (National Crime Information Center) and Visas Mantis;

**Answer to 1e:**
Most SAOs are cleared within 30 days and many of them well before that. There are no changes to Condor procedures, but Mantis clearance validity has been extended.

*Please see #4 below for more re Mantis validity extension.*

1f. The number of Security Advisory Opinions (SAOs) DOS receives each month/quarter/fiscal year. May we have separate figures for NCIC checks, Condors and Mantis? Also, for the sake of our membership, can you confirm that you cannot release the quarterly reports respecting Mantis policy/procedural issues as well as the percentage of SAOs that culminate in visa refusal?

**Answer to 1f:**
In FY04 we processed close to 200,000 SAOs including about 57,000 Condors and 18,000 Mantis. The Mantis Quarterly Reports are not releasable outside the USG. The number of Mantis case denied is very small.

1g. Current processing periods for the following: i) issuance of a DOS J-1 waiver number; ii) IGA waiver; iii) exceptional hardship; iv) persecution; v) advisory opinion re above;

**Answer to 1g:**
VO publishes the projected processing periods on its website.

1h. Updates on any new or impending changes to forms, such as the DS-156 (the EV AF version, for instance);

**Answer to 1h:**
There are no impending changes to forms or new forms contemplated. We are exploring future developments in electronic information collection but do not have firm plans at this point.
Security and Related Checks Generally

2. At our March 2004 meeting, we were told that the FBI’s systems were not interoperable with the DOS system and that both agencies were working on connectivity to the Open Source Information System (OSIS). The October 2004 minutes stated that connectivity with the FBI was established and that DOS continued to work towards a seamless electronic process for delivery of SAO requests to the FBI, aiming to have this process functional by December 31, 2004. What is the status of this and other database sharing efforts now? How, if at all, has it been affected by the FBI’s recent announcement that it is scrapping its $170 million computer upgrade?

Answer to 2:
The FBI is currently running namechecks on all SAOs electronically through the Consular Consolidated Database (CCD). We are at various stages with other SAO recipients in achieving connectivity to the CCD.

3. Processing times for SAOs have improved so substantially that we wonder if you would be willing to accept follow up for delayed SAOs after 30 days, rather than the recommended 60 days? In this regard, would you please remind us of the correct procedure to such inquiries, including phone and email address? What resources do you have in place to handle such inquiries? Finally, before issuing a visa, must you still await an affirmative response from all interested government agencies in all SAO matters? If not, we are particularly interested in whether there are SAO matters in which the FBI is not involved or in which you do not have to await an FBI response after a certain time.

Answer to 3:
We will accept follow up inquiries for delays after 45 days. The correct procedure is for lawyers to send their inquiries to LegalNet@state.gov. In addition, the VO public information line (202-663-1225) includes an option for general questions to be asked of a visa specialist, including whether an SAO is still pending. Such inquiries may also be faxed to (202) 663-1608.

VO itself is somewhat conflicted over the proper role of LegalNet, because the LegalNet email box is filled with inquiries respecting the status of SAOs, other status inquiries and general inquiries, to the point that VO cannot efficiently handle the sheer volume of inquiries. VO is looking at a queuing system whereby certain subject line choices can be used to direct email inquiries on a variety of topics to the appropriate staff for more prompt response, including SAO inquiries. For now, however, evidently VO envisions that attorneys will rely primarily on LegalNet both for status-related inquiries and for substantive issues, including requests for advisory opinions.
Visas Mantis SAOs
On February 11, 2005, DOS announced an extension of the validity of Visas Mantis clearances for the F-1, J-1, H-1B, L-1 and B visa categories of visas, such that if an applicant is returning to the same academic or research program or professional assignment, another Visas Mantis clearance may not be required, though consular officers have discretion to request a Mantis clearance during any visa adjudication.

4. How does this change affect applicants who received Mantis clearances, assuming they are returning to the same study/work program?

Answer to 4:
If their Mantis clearance was received within the past 12 months their clearance validity could be extended, if warranted, to the appropriate limit.

This question prompted extensive discussion. First, VO stated that all I-129-based classifications are encompassed within the new Visas Mantis clearance policy (thus including all H, L, O, and P classifications, as well as Q-1, E, R-1 and Free Trade nonimmigrants such as H-1B1 and TN). Second, while VO acknowledged the need to give further instructions to posts, in most situations it would probably be best from a practical standpoint for a visa applicant to start a new validity clock on the Mantis check at the time of the next visa application following the policy change, instead of extending the prior Mantis check. If a visa applicant received a Mantis clearance within 12 months of the current visa application and wants to use the prior Mantis clearance rather than await a new one, the applicant probably will need to bring that to the attention of the post at the time of filing the visa application. The new Mantis validity period for H-1Bs and other I-129-based visa applicants is up to 2 years. The new Mantis validity period for F-1s and J-1s is up to 4 years. The Mantis validity for B applicants is the time period of the proposed B activity in the US. In each situation, the continued Mantis validity is conditioned on remaining in the same assignment, activity and/or course of study in the US with the same US sponsor. If these factors change then a new Mantis clearance will be required for visa issuance. As with other visa issuance decisions, posts retain discretion; thus, under the new policy, posts may require a new Mantis clearance or request shorter Mantis validity if the facts warrant.

5. In the past, Mantis clearances were valid for one year, except for those of Chinese and Russians, who were limited to single-entry, three-month visas. How does the new Mantis policy affect nationals of those countries subject to visas of limited entry or duration under the reciprocity schedule?
Answer to 5:  
The new policy affects Mantis clearance validity periods only. It does not change the current visa validity period, which remains at a maximum 12 months depending on reciprocity, with only one-entry, three months for Chinese and Russian applicants.

*Under the new policy, it is possible for an individual to apply for and receive visas throughout the validity period of the Mantis clearance. A Russian applicant, for example, holding H-1B status, may apply for several one-entry, three month validity H-1B visas during the two year validity of the Mantis clearance without having to wait for a new clearance at the time of each visa application.*

6. Are Chinese Mantis clearances still the most problematic due to name similarity?

Answer to 6:  
No.

7. The February 18, 2005 GAO Report, “Border Security: Streamlined Visas Mantis Program Has Lowered Burden on Foreign Science Students and Scholars, but Further Refinements Needed,” confirms the many positive steps DOS has taken to reduce SAO processing times, but it appears that many agencies are still not fully connected to DOS’ electronic tracking system. As a result, many consular officers must still send Mantis SAOs electronically and via cable. Can VO comment on the progress made to connect all agencies electronically?

Answer to 7:  
Please see the answer to question 2, above. As soon as connectivity is achieved with SAO recipients, we will no longer require consular officers to submit SAOs by cable. They will submit them only electronically.

*This will not only result in faster results but will also enhance accuracy and documentation and avoid “lost” SAO requests.*

Visas Condor

8. Is the National Visa Center (NVC) still handling Condor checks?

Answer to 8:  
No.

9. Do posts have discretion whether to initiate or waive a Condor for applicants from all countries?
Answer to 9:
Condors are not required for A, G, NATO, K, or V visa applicants unless they are from a State Sponsor of Terrorism (Cuba, Iran, Libya, North Korea, Sudan, Syria).

Only the Chief of Mission has discretion to waive a Condor where the Department’s guidance establishes a Condor requirement (no such waiver discretion where applicant is from a State Sponsor of Terrorism). Even where Department’s internal (non-public) guidance would suggest that a Condor is not a requirement, a Consular Officer can always initiate a Condor regardless of nationality of the applicant.

Clearing NCIC/CLASS Hits
10. To clear an NCIC or other “hit,” posts in Guadalajara, Monterrey, Ciudad Juarez and Mexico City have the ability to process fingerprints electronically through what the FBI optimistically calls IAFIS (Integrated Automated Fingerprint Identification System). At the October 2003 meeting, DOS stated that it intended to expand this capability to other posts, but there was no schedule to do so at the time. Is there such a schedule now? Have any other posts switched to this process or will they in the near future?

Answer to 10:
We intend to provide all visa processing posts with the capability of taking fingerprints electronically for processing of NCIC hits. Worldwide deployment will begin in the summer.

Scheduled to be deployed in the summer of 2005, VO hopes electronic fingerprinting will reduce processing time at the FBI by 1 month, particularly in Latin America, the source of a disproportionate number of name check hits. Processing of NCIC hits is completed at the West Virginia facility. Posts will soon begin to collect facial recognition biometrics on applicants currently exempt from interviews, and this data will be reviewed by analysts at the Department’s Kentucky Consular Center, usually within 24 hours. While the facial recognition biometric collection will initially be for applicants under 16, over 79 and those seeking diplomatic visas, it will later expand to high fraud posts, State Sponsors of Terrorism, and then, eventually, facial recognition biometric collection and analysis will be added for the entire worldwide applicant pool.

Loss/Renunciation of Citizenship
11. Could you answer the following questions concerning citizenship?
11a. With respect to the time between an American citizen taking an oath at an embassy or post affirmatively renouncing U.S. citizenship and when DOS effectively finalizes the renunciation, though the oath is taken on a specific date and post has cautioned the individual no longer represent himself/herself as an American citizen, several European posts have told such individuals they can maintain their U.S. passports while others require their surrender at the time of the oath. What is the correct policy in this regard before DOS issues the Certificate of Loss of Nationality (CLN)?

**Answer to 11a.**

Our instruction to posts is that when a person submits an Oath of Renunciation he/she should surrender his/her U.S. passport. Post is asked to hold the passport until it receives an approved Certificate of Loss of Nationality (CLN). The passport is then cancelled and returned to the person. If for any reason the CLN is not approved the U.S. passport would of course be returned to the person. A person's unwillingness to surrender his/her passport when renouncing might be indicative that the person is not prepared to relinquish U.S. citizenship. This procedure is the subject of an ALDAC and is being incorporated in the new Foreign Affairs Manual on loss of U.S. citizenship

*See FAM Volume 7.*

11b. Must an applicant for renunciation of U.S. citizenship have two physical interviews at embassy or post before a consular officer? Some posts indicate that one interview will suffice, particularly if the individual renouncing is represented by counsel, on the theory that such representation ensures full understanding and absence of duress when the renunciation oath is administered. Yet, there will be situations in which the individual is inadequately documented and unrepresented. Is there a firm policy on point, or is this a matter left to post discretion?

**Answer to 11b.**

Posts have some discretion in this regard. Generally consular officers are instructed to urge persons who are contemplating renunciation of U.S. citizenship to take some time to reflect upon their actions and come back at a later date. This is less of a concern, though probably still advisable, when a person has had the benefit of legal counsel and has already undertaken some reflection prior to contacting the consular officer.
NIV-Related Questions

B-1 in Lieu of H-1B
12. Despite a comprehensive cable on the subject some years ago, post policy respecting how to qualify for a B-1 visa in this case varies widely. Would VO consider reissuing the cable? In particular, must applicants have the requisite degree, or may they qualify on the basis of a combination of education and experience or, indeed, simply progressive experience?

Answer to 12:
In a 1998 ALDAC instruction on B-1 in lieu of H-1, which essentially reiterates 9 FAM guidance, VO instructed posts that when there were significant questions relating to an applicant’s qualifications for H-1b status, post can require a petition filing. Consular officers are not normally familiar with DHS rules on educational equivalency, and it is therefore difficult for them to properly determine the legitimacy of such claims. DHS regulations allow for petitions to be filed by agents in the U.S. in the case of foreign employers, so the fact that there is a foreign employer does not preclude a petition filing. This is the language from the cable:

“VO also recognizes that the INS, not post, is charged with the responsibility for making H-1 adjudications. Therefore, if there are significant questions as to the alien’s entitlement to H-1 status (for example, where the alien claims work experience in lieu of education, or where the degree does not relate to the area of specialization) post may legitimately require the alien to pursue a petition, even if that means a significant delay in processing until H-1 numbers are available.”

E-1/E-2 Registration and Visa Issuance
E registration and re-registration policies vary greatly amongst posts. Processing times can stretch to weeks, or months, putting E personnel in fear of becoming stranded for indefinite periods during the re-registration process. Many posts lack a formal procedure to advise companies when re-registration is due, and there seems to be no clear policy respecting issuances prior to the filing or approval of re-registrations. London recently renewed some E visas only for the balance of time left in the existing E-2 registration, even with 6 or even 12 months remaining.

13. In keeping with the DOS policy of responding to legitimate business needs, what policies or guidance does VO provide to posts on formal procedures on such matters as notifying E registrants of registration completion, notifying E registrants of the need to re-register, how far in advance to do so, what issuance policies should be both before the re-registration application and during its pendency, and for how long registration and re-registration should be granted?
**Answer to 13:**
The Department allows posts to manage E visa registration processes as appropriate given local resources and the structure of local business. Some consular sections choose to implement a system that allows the consular section to retain the corporate information for subsequent applicants and thereby expedite future E visa applications. These offices allow for some companies to re-submit or update Parts I and II of the DS-156E periodically, if the officer or consular section is familiar with the company. Subsequent applicants then have only to submit their individual information for the visa application.

It is important to remember that the consular officer has the discretion to require an applicant to submit an entire E visa application whenever they apply. As the instructions to the DS-156E state, that form and the regular NIV application (DS-156) make up the E visa application. Because consular officers have the ability to request further documentation reasonably related to any visa application, it is not unreasonable for applicants to expect that further documents detailing the information in the DS-156E may be required. VO recommends maintaining good contact with sections processing E visa applications in order to be able to provide information whenever necessary for clients.

*VO suggests that if AILA can identify specific posts and specific issues or policies at issue then VO can follow up and provide further feedback. We encourage you to contact the DOS Liaison Committee with any relevant information.*

**H-4/L-2 Eligibility**
14. Posts appear to have no predictable policy respecting the continued eligibility of a spouse/dependent for H-4 or L-2 status where the principal is maintaining H-1B or L-1 status but has re-entered on an Advance Parole document. The May 16, 2000 INS Cronin memo does not resolve the question. What is the policy? If you cannot answer clearly, why not? If this is a matter we must pursue with DHS, can you tell us with whom to pursue it? (We ask knowing the last question may be the most difficult to answer…)

**Answer to 14:**
An H-4 or L-2 is only available if the principal applicant is in the U.S. on H or L status. If the principal applicant has been paroled into the U.S., she or he is not in the U.S. on H or L status, and dependents would not be eligible for derivative H or L visas. Because DHS rules no longer require principal applicants awaiting adjustment to enter the U.S. on parole status, there does not appear to be any reason why the principal H or L should not be traveling on a visa rather than obtaining parole. See the information...
we provided to AILA when this issue arose in the March 4, 2004 meeting, including 8 CFR 245.2(a)(4)(ii)(C) and 9 FAM 41.11 N6.

**VO takes the position that DHS would have to provide VO with further guidance on this issue before posts could issue H-4 or L-2 visas to spouses/dependents where the principal is in the U.S. as an adjustment applicant in parole status. We do not know whether VO has taken the initiative in seeking this guidance.**

**Blanket L Issues**

15. After June 8, 2005, the length of continuous employment abroad for blanket L employees will increase to 1 year. Until then, employers may file for blanket L employees with only 6 months continuous employment. In posts such as Chennai, where appointments are backlogged for 125 days, how will applications under the pre-June 8 standard be managed? Will applicants with blanket L appointments at such backlogged posts be required to submit the extra $500 “anti-fraud” fee if they made the appointment before March 8, 2005?

**Answer to 15:**
All applicants who apply under blanket L petition after March 8, 2005 will be subject to the $500 fee even if they requested the appointment prior to March 8.

**Overcoming Determinations of Inadmissibility by DHS**

In recent instances, Legalnet has declined to provide an advisory opinion regarding decisions rendered by Consular Officers, asserting that responsibility for the decision now resides with DHS. For example, Manila stated that a J-1 overstay admitted in D/S was subject to the 212(a)(9) bar to admissibility, though this decision as a matter of law contravenes DOS Cable of 12/17/97 and 9 FAM § 40.92, as well as a legacy INS memo of 9/13/97. Legalnet responded: “The Department of State does not have jurisdiction to overturn a finding of ineligibility made by the Department of Homeland Security. You may contest the finding of ineligibility with DHS.”

16. Without specific reference to the J classification, in what circumstances, if any, may post, with or without an advisory opinion, issue a visa despite a determination of ineligibility by DHS? What recourse is there, if any, where the DHS finding constitutes a clear error of law? Are there any circumstances in which post itself, or with VO’s assistance, will press the issue directly with DHS, or is reversing that DHS determination invariably the burden of the individual applicant?

**Answer to 16:**
When AILA raised this issue at the March 2004 meeting, we provided the following answer:
“Section 140(c) of Public Law 103-236 (Foreign Relations Authorization Act, FY-94 and 95, as amended) requires a check of the Department’s visa lookout system before a visa can be issued. DHS findings of ineligibility pass automatically into the Department’s CLASS lookout database. We have instructed consular officers to give the same consideration to a permanent ineligibility finding by a DHS officer as they must give to those made by a consular officer. An immigration officer at a port of entry makes a lookout entry on the basis of findings made while the alien was subject to DHS jurisdiction.

“Moreover, there is no purpose in issuing a visa without a waiver when there is a DHS ineligibility determination, since the applicant will become subject to removal at entry. DHS has indicated that it may be possible to correct erroneous ineligibility determinations by filing for a correction of record pursuant to the provisions of 8 CFR 103.28. As provided in 9 FAM 40.6 N3.3 if, after the consular officer has refused an application based on a definitive DHS lookout entry, DHS determines that the finding was erroneous and deletes its entry, then the consular officer may process the case to conclusion.”

See 9 FAM 40.6 N3.1 and 9 FAM 40.6 N3.2.

**J-1 (and related)**

17. If an Exchange Visitor enters in a specific Program designation, then desires to change to another Program category prior to using up his/her maximum duration of program status, under what circumstances will the J-1 alien be required to depart and for how long prior to gaining eligibility to reenter in a new J-1 Program? Are there different provisions depending on the desired Program transfer? Under what circumstances can the Responsible Officer issue a new DS-2019 form to a J-1 alien seeking to change programs?

**Answer to 17:**
This is an exchange program issue regarding which we must refer you to the Bureau of Education and Cultural Affairs (ECA).

*We do not have an answer from ECA to this question.*

18. On a related issue, there have been instances at least in the 18-month trainee program in which a J-1 sponsor will not authorize a J-1 trainee to again enroll in its training program even if the J-1 alien has not consumed his/her entire period of authorized Program status. Is this decision being made by the individual program sponsors or pursuant to DOS policy? If the latter, what is the policy?
**Answer to 18:**
This is also an exchange program issue regarding which we must refer you to the Bureau of Education and Cultural Affairs (ECA).

*We do not have an answer from ECA to this question.*

19. What are the existing policies and guidelines governing whether the Waiver Review Division refers a hardship and/or persecution waiver out for a country or medical report? Is the Division authorized to make its own determinations of country conditions respecting countries for which waivers are recurrently received and processed?

**Answer to 19:**
VO’s Waiver Review Division (L/W) processes exceptional hardship and persecution cases in accordance with the regulations and statute that govern these issues. Once DHS has made a determination of exceptional hardship to an American citizen or LPR spouse or child, or of persecution for the exchange visitor, and forwarded its finding via Form I-613 to L/W, L/W conducts a review on a case-by-case basis and makes a decision based on program, policy, and foreign-relations considerations (i.e., the type of exchange program, amount and source of funding, as well as the impact of these requested waiver on U.S. relations with the sending country). We then weigh these facts against the information presented in the waiver package received from DHS.

Our current regulations require that L/W consult with the Bureau of Democracy, Human Rights, and Labor, before making a recommendation on persecution cases. Depending on the facts of the case, L/W will also consult with other divisions and/or agencies, such as the State Department country desks and others. If we receive input that leads us to believe DHS did not have all the relevant information when it made its initial decision, we send the waiver package back to DHS with the additional information for reconsideration. However, we do not re-adjudicate DHS’s finding of hardship or persecution.

20. What guidelines has DOS communicated to the states in their administration of the five waiver/year flexibility program appearing at INA § 214(l)(1)(D)(2)(ii) (Conrad Flex 5 Program)? Does DOS intend to engage in formal rulemaking or will it leave it to the states’ discretion in light of their own needs to administer this provision?
**Answer to 20:**
We sent out guidance in January 2005 to all Conrad state representatives and also met with them in early March 2005, to explain our position that the decision to utilize the five slots for physicians who may practice in non-designated areas was a state decision. L/W has implemented new procedures that will assist us in keeping numerical track of both designated area and non-designated area requests. Also, our regulations will be amended to reflect the changes in the law, i.e. that federal IGA requests for physicians may be for both primary and specialty care physicians.

21. Further to the flexibility provisions, will the Waiver Review Division substantively re-adjudicate waiver recommendations issued by the states? For example, is there any requirement that physician beneficiaries treat any certain proportion of patients residing in designated medically underserved areas? Public aid patients? Or for the requesting facility or medical practice to maintain any type of clinical programs or policies toward the indigent and medically underserved? Or are all of these decisions a matter within the discretion of the states to use the Conrad Flex 5 provisions to their maximum benefit given the specific needs of the individual states?

**Answer to 21:**
L/W does not re-adjudicate waiver requests from other government agencies, whether it is a Conrad request or other type of waiver request. We rely upon the designated Conrad state official to make the appropriate determination that the waiver request is in public interest.

22. Given that university medical centers serve as major safety net providers to the indigent and medically underserved, we expect that such institutions/facilities will be major beneficiaries of waivers under the Conrad Flex 5 Program. Will WRD (Waiver Review Division) require any certain percentage of clinical vs. teaching or research commitment? Will the states have the authority to recommend waivers to physician-scientists holding faculty appointments regardless of their level of clinical service or will these decisions become the focus of WRD review and disapproval?

**Answer to 22:**
L/W reviews Conrad waiver requests from states to make sure that all the requirements of the law and the regulations are followed. That includes the statutory requirement that the exchange visitor practice medicine, as dictated in INA 214(l). Also, the DHS Conrad regulation, which forms the basis for our regulations, requires under eligibility criteria, 8 CFR 212.7(c)(9), that the J-1 physicians “have entered into a bona fide, full-time employment contract for 3 years to practice medicine at a health care facility…”
Institutions of Higher Education enter into binding employment relationships through the issuance of offer letters to prospective employees that contain all the terms and duties that would exist in an employment contract. The offer letter is signed by the appropriate hiring authority in the University with the power to make an offer of employment and contains the relevant terms and conditions of employment. In same cases, the prospective employee manifests his/her acceptance of the employment offer by signing the bottom of the offer letter; in other cases, the prospective employee accepts the offer by becoming an employee.

Per the Restatement of Contracts (Restatement (2nd) of Contracts §§ 1) this arrangement constitutes an enforceable contract. All three elements of a contract—offer, acceptance and consideration—are present. Contract law establishes that one can accept an offer by promising a future action (i.e., promise to accept employment) or by performance (i.e., go to work). Restatement (2nd) of Contracts §§ 22, 45, 50.

23. In this light, what justification does WRD have for continuing its present policy of refusing to recognize offer letters by higher education institutions, offers accepted by the offeree, as fulfilling the requirements for a three year contract in fulfillment of INA § 214(l) obligations?

**Answer to 23:**
L/W reviews Conrad waiver requests to make sure that all the requirements of the law and the regulations have been met before we make a recommendation. The INA 212(e) waivers fall within DHS jurisdiction; our role is limited to making a recommendation on a waiver request. As such, our regulation is based on DHS waiver regulations. As stated in response to question 22, DHS requires an employment contract. We have contacted DHS to verify what information and evidence they seek in this regard. We have passed on your questions and concerns. Once we have received a response from USCIS, we will inform you.

*VO expressed a willingness to review samples of offer letters that are considered valid employment contracts under the governing state law in question, after which VO would go to DHS to attempt resolution. The Committee asks AILA members to provide examples of contracts that contain the required language and are otherwise acceptable to the institution in question, as most such institutions have their own forms for this purpose.*

**Priority Dates and Retrogression**
24. Can you prognosticate a bit on the future progress/retrogression of the various family- and employment-based immigrant categories?
**Answer to 24:**

**Family:** Demand for numbers by USCIS remains high as they continue their efforts to reduce pending adjustment of status cases. However such demand has not reached a level that would prohibit continued cut-off date movement in most categories. Should the District Offices begin to significantly increase their rate of case processing, movement of the Family-sponsored preference cut-off dates could slow or stop.

**Employment:** USCIS offices continue to process significant numbers of Employment cases for applicants with priority dates well before the established cut-off dates. While Third preference cut-off date movement for the three oversubscribed countries is difficult to predict, it is likely that those cut-off dates will continue to advance up to a few months per month for the foreseeable future.

We are unable to comment on whether the Employment Third preference “Other Worker” cut-off date will advance during the remainder of FY-2005. This is due to uncertainty over the extent of USCIS demand in this category.

Current indications are that the FY-2005 annual limit will be reached for the Employment categories, and that the “pool” of numbers created by the American Competitiveness Act of 2001 will be exhausted by the end of this fiscal year.

*Employment-based Second Preference should remain current for the remainder of FY-2005, but China and India might have EB-2 problems at some point after mid-way FY-2006. The July 2005 Visa Bulletin states that both Employment Third preference categories have reached their annual limit, and that further allocations will commence October 1, 2005, though it is not possible to predict potential cut-off dates for FY2006 at this time. Similarly, the July Visa Bulletin notes that all but Mexican 2A applications have been retrogressed until October 1, 2005, as the annual numerical limits have been reached.*

25. Please confirm the continued viability of 8 CFR § 203(b)(3) and 9 FAM § 42.53 N3.6, which basically state that if an alien is the beneficiary of multiple petitions under INA § 203(b)(1), (2) or (3), s/he is entitled to the earliest priority date. We are aware of confusion in Chennai on this point and, of course, with the retrogression of the EB-3 numbers for India, the issue acquires great importance.

**Answer to 25:**

We will answer this question separately.

*We do not yet have an answer to this question.*
26. USCIS often approves I-130 petitions before the concomitant I-129F petition, resulting in confusion. Is there a reliable process in place whereby USCIS and posts notify NVC of I-130 approvals for those for whom I-129F processing is under way? Some may wish to proceed with the I-129F, while others may wish to proceed directly with the I-130. There is a risk of duplication of effort and waste in cases, for instance, in which a beneficiary already in the U.S. following an approved immigrant visa receives interview notices for the I-129F.

**Answer to 26:**
No, unfortunately, there is no such reliable process in place. NVC has been in contact with USCIS to discuss this question, but no progress has been made to date. We don’t believe that the USCIS data systems are currently capable of automatically identifying and matching I-130 and I-129F petitions in this situation, so it’s difficult to see how such a process could be established at this time. We rely on the individual petitioners and beneficiaries to inform our immigrant visa sections that both petitions have been filed and to let us know how they wish to proceed. Otherwise, we will proceed to process the petition in hand.

**I-824 and Following to Join**
27. I-824 application approved based on principal’s successful adjustment of status. Service center advises that relevant consulate has been notified. What is the process from this point until the IV interview at post? Time and again, post simply denies receipt of the notice, while USCIS insists it fulfilled its end of the bargain. Spouses and kids are caught in limbo. Is there any formal verification process, or means for post affirmatively to ask USCIS to provide what it needs to proceed? Is this something KCC might be able to undertake?

**Answer to 27:**
Presumably, anything USCIS has initiated, it can regenerate. If they made an adjudication, there is an electronic record of it in their Central Index System. Sometimes USCIS isn’t sure how to contact posts directly or has at times misdirected notification. We can take this up with USCIS at one of our liaison meetings to see what can be done to establish verification procedures with the various service centers.

28. If a single I-824 is filed for the principal and derivative beneficiaries (children), is DOS able to generate the IV numbers for all concerned?

**Answer to 28:**
Yes, as it would with any petition it received.
29. For a child born abroad after an immigrant petition is filed for the mother, what is the procedure for obtaining a visa number for that child once a visa number becomes available to the mother?

**Answer to 29:**
If the mother is the beneficiary of an Immediate Relative petition, a new petition would need to be filed. If the mother is the beneficiary of a preference petition, once post is aware of the child’s existence, post would need to contact CA/VO/F/I and request an immigrant number.

**Kentucky Consular Center (KCC)**
30. What progress has KCC made in enabling posts to access petition data directly through the Consular Consolidated Database (CCD)? What steps are posts supposed to have taken to take advantage of the scanned I-797s through KCC, so as to wean themselves from the paper I-797? Most posts remain quite reluctant to issue without an original I-797, thus petitioners continue to have to incur the time and expense of shipping those notices overseas and, possibly, in filing I-824s for duplicate notices as well. Indeed, we continue to see cases in which the petitioner, properly, has provided the visa applicant with the lower portion of the I-797B, yet post insists on having in its hands the original upper portion of the form ostensibly reserved for the petitioner. Can you hazard a time frame for post reliance on the electronic data versus the paper I-797?

**Answer to 30:**
VO continues to work closely with DHS to be able to electronically share petition data and reduce the routine data management workload for KCC. We aim to make the I-797 electronically available to our posts and to integrate the processing of the petition in the NIV system with an electronic petition record as soon as technically possible. In the interim, KCC is providing quality assurance and is scanning and emailing approved petitions to posts.

*VO’s goal is full interconnectivity between KCC and all NIV issuing posts by 2007. Until then, practices will vary post to post respecting whether an original I-797 is required, whether a certified copy of the underlying filing is required, etc. Many posts, however, continue to require the original approval notice, because the current procedure for obtaining comparable data from KCC is cumbersome. VO will check to see if Service Centers still fax KCC in cases of emergency.*

31. Is there now a procedure in place for tracking petitions returned to a Service Center by posts in cases of visa denial? It still seems that any petition returned by post with a recommendation for revocation disappears into a universe Stephen Hawking has
yet to examine. Is KCC tracking such cases? If so, will it use the information to prompt the service center to respond?

Answer to 31:
Yes. Revocation requests are tracked from the moment they are received at KCC from posts. Once KCC receives a response to the revocation from USCIS, the response is immediately emailed to post. KCC is working with USCIS to develop an appropriate and predictable response time.

Waivers
32. INA § 212(a)(9)(C) states in part that an alien who has aggregated 1 year of unlawful presence, who then departs and re-enters as an EWI (Entry Without Inspection), is barred for 10 years, with no waiver available. The same applies to aliens who were removed and then return as EWIs. Yet, under 212 § (9)(B)(iii) there is an exception for minors, such that no time spent in the U.S. under age 18 counts as unlawful presence. What is the relationship of (B)(iii) to (C)? Does the (B)(iii) exception apply to minors who have cumulated a year or more of unlawful presence, then re-enter as EWIs? If not, how do you define “unlawful presence” in these cases? What is the authority for your answer?

Answer to 32:
Unlawful presence is defined in 212(a)(9)(B)(ii) as being present after the period of stay authorized by the Attorney General. Therefore, State defers to DHS on defining unlawful presence. We are conferring with DHS on this issue.

No part of the definition of unlawful presence applies to minors and thus minors should not be denied on that basis. VO is considering whether this answer is sufficiently responsive.

33. We realize that aspects of this question are best addressed to DHS, and we would be happy to do so if you would but tell us whom to ask. In the meantime, we previously raised the issue of the halt in INA § 212(d)(3) waivers requested by Canadian posts, evidently due to a jurisdictional dispute between CBP and CIS that did not appear to take into consideration its impact on actual human beings. Can you tell us what progress, if any, has been made on this front? Similarly, Vancouver recently reaffirmed that its I-601s are on “hold status” for want again of a DHS office to handle them. Are other Canadian posts in a similar plight? What, if anything, can we do to help ease the pain of the victims?

Answer to 33:
CBP is developing a new mechanism for NIV waivers in which processing will be centralized domestically. As soon as the details are ironed out we will notify posts. Waivers for IV cases will remain the responsibility of USCIS overseas.

34. At our October 2003 meeting, we inquired about the possibility of developing a uniform policy worldwide for posts when adjudicating waivers because of the wide variance in procedures. Some consulates will accept an I-601 waiver to cover one of the several waivers available under INA § 212(a)(9), as there is a check-off box for “212(a)(9).” However, other consulates will only accept the pre-IIRIRA form I-212 (previously used under the former INA § 212(a)(6)(A) and (B) to waive some forms of inadmissibility under INA § 212(a)(9). Some posts accept both I-212s and I-601s, some I-601s but not I-212s, others I-212s only when accompanied by an I-601. At the time, VO indicated that it would discuss this issue with DHS to see if a uniform policy could be established worldwide. Please provide an update on whether any progress has been made (see Q.59 10/03).

**Answer to 34:**

Use of these forms is dictated by the DHS requirements, which can vary depending on the office having jurisdiction over the case.

CBP is in the process of establishing a single location for waivers on NIV applications. Upon the completion of this initiative there will be more centralized guidance on the processing of NIV waivers. USCIS will continue to process the IV waivers overseas. Whether or not a consular section requests one or both forms depends on the instructions given by the USCIS office processing the waivers.

**VWP**

35. The differences between Amtrak and the VWP program appear to be narrowing. Are you able to comment beyond your answer to our October 13, 2004 liaison question (Q.7) on the status of the interagency review of 25 of the 27 VWP member countries? As best you can tell, will any of the VWP countries meet the October 26, 2005 biometric deadline? If so, which ones? What you intend to do about that deadline? Will this nonsense be delayed? (puns intended) It’s just that it would be so…sensible…to let world know now so folks can start applying for their visas before summer madness.

**Answer to 35:**

DHS is continues to coordinate an interagency review of 25 of the 27 VWP member countries (all except Italy and Portugal, which had been previously reviewed). It remains premature to comment on the review process at this time. We are discussing
with Congress the status of the VWP countries’ passport programs and the October 2005 biometric passport deadline.

On July 15, 2005, DHS announced that it will require VWP countries to produce passports with digital photos by October 26, 2005. On that date, VWP countries must also present an acceptable plan to begin issuing integrated circuit chips, or e-passports, within one year.
Answer to 1a:

Visa Office

Deputy Assistant Secretary for Visa Services
Janice Jacobs

Managing Director
Stephen A. Edson

National Visa Center (NVC)
Portsmouth, NH
David Tyler, Director

Kentucky Consular Center (KCC)
Williamsburg, KY
John Coe, Director

Border and International Programs (BIP)
Paul Fitzgerald, Director

Office of Legislation, Regulations, and Advisory Assistance (CA/VO/L/R)
Stephen Fischel, Director

Legislation and Regulations (CA/VO/L/R)
James Pritchett, Chief

Advisory Opinions (CA/VO/L/A)
Jeffrey Gorsky, Chief

Coordination Division (CA/VO/L/C)
Paul Doherty, Chief

Waiver Division (CA/VO/L/W)
Jinny Chun, Chief

Office of Field Support and Liaison (CA/VO/F)
Edward Ramotowski, Director

Office of Public and Diplomatic Liaison (CA/VO/P)
Julie Funuta-Toy, Director

Post Liaison (CA/VO/F/P)
Karen Christensen, Chief

Public Inquiries (CA/VO/P/I)
June O'Connell, Chief

Immigrant Visa Control and Reporting (CA/VO/F/I)
Charles Oppenheim, Chief

Diplomatic Liaison (CA/VO/P/D)
Vacant, Chief

Information Management and Liaison (CA/VO/I)
Martha Sardinas, Chief
Answer to 1c:

Student Visa Improvements

The Department of State is dedicated to balancing the needs of national security and legitimate travel. This balance is reflected in our policy of maintaining “Secure Borders and Open Doors.”

The State Department, working closely with our colleagues in the Department of Homeland Security and other U.S. government agencies, recognizes that one of the foundations of the U.S. academic and scientific communities is vibrant international participation. We are keenly aware that America’s outstanding academic and research institutions are as valuable to U.S. national security as the overt protection of our borders.

The last three years have been a time of unprecedented change in visa practices. Changes in visa processing that we and other agencies have implemented after September 11, 2001 have come under criticism as discouraging foreign students and exchange visitors from choosing the United States to study or conduct research.

We know that there were many delays in the processing of student visa applications, particularly in the spring and summer of 2002. We had made significant changes in the visa process without increasing staffing or augmenting the technology, and consequently we had trouble handling the workload.

We believe that there are a number of other factors that have influenced foreign travel to the U.S. beyond U.S. visa policies. The market for international students, especially in technical and scientific fields, has become more competitive globally. Other nations that are our direct competitors, including the UK and Australia, have become more aggressive in their recruitment and marketing efforts. Budget concerns at American universities now affect the level of support that institutions can provide to international
students, and more of the burden is being placed on individual students. And yes, some parts of the world clearly view the U.S. as less welcoming than in the past.

**Department Initiatives over the Past Three Years to Improve Visa Processing**

We do not want visa policy to be perceived as a barrier to study in the U.S. by prospective international students. The Department of State has made an investment in systems, staffing and effort to increase the transparency, efficiency and predictability of the nonimmigrant visa process. We have successes to report.

In recent months, the Department of State has made significant progress in processing student visa applications in a timely manner. Now, 97 percent of the visa applications we receive are processed in one or two days.

Only about two percent of all applications need further review in the form of a security advisory opinion. In the past (2002-2003), many of these cases – especially those called VISAS MANTIS clearances that are subject to further review for technology transfer reasons – were taking weeks, if not months, to resolve. We helped solve this by creating a separate team dedicated to MANTIS clearances and by streamlining the interagency clearance process.

A year ago, the average processing time was about 75 days for a MANTIS case. There are only 81 cases out of more than 18,000 that are currently pending for longer than 30 days. We are actively working to resolve these few remaining cases as quickly as we can.

Today, the average processing time for a MANTIS is less than 14 days.

Recently, we also increased the MANTIS clearance validity for applicants, as long as they do not change programs or employment. For students, the validity period is now four years, and for temporary workers, exchange visitors, and intra-company transferees, it’s two years. The new extended validity periods do not apply to applicants from State Sponsors of Terrorism.
We have greatly increased the level of data sharing among the Department of State and other federal agencies to enhance border security. We joined in the creation of the Terrorist Screening Center to provide a systematic approach to maintaining terrorist watch-lists on individuals who may pose a threat to the United States. We have made visa information available to Customs and Border Protection officers at ports of entry. This actually facilitates entry, since it resolves immediately any questions the inspector might have about fraud.

We now have a consolidated database for visa information for which we are finding more and more uses. We have also invested $1 million in automating the system for transmitting and receiving interagency security clearances. New software is in place at every post that has converted this system from a paper-based one to a completely electronic one. Requests and responses are transmitted electronically, cutting days off of the processing time. All posts now have this capability and it should further streamline the processing of visa applications that require special clearances.

One of the reasons we changed our interview requirements was the Congressional mandate that we collect biometrics from all visa applicants by October 26, 2004. In this case, the “biometric” is an electronic scan of the applicant’s two index fingers, coupled with a digitized photograph of the applicant, that helps confirm identity and absolutely matches the bearer of a visa (or identity document) with that document. This technology has been installed at each and every overseas visa processing facility, well in advance of the Congressional deadline. We made the changes in August 2003 so that our visa processing posts overseas could get used to the flow and so that the transition would be a smooth one. The new process is simple and has not resulted in any real delay to the visa application process.

Visa applicants now have more – and more accurate – information available to plan their travel since we began posting current and continuously updated visa appointment wait times and processing times on our Internet website at: www.travel.state.gov.

We also overhauled our Internet website to make it more user-friendly and to provide additional resource material. Having more information about the process helps visa applicants be better prepared when they come for an interview.

Additionally, two years ago we instructed all of our overseas posts to give priority to students and exchange visitors. Our overseas posts have implemented this requirement in a number of ways and have been very successful in getting student applicants appointments within days.
We have beefed up the resources dedicated to processing visas, even in spite of a significant drop over the last two years in the number of visa applications we have received. We have created more than 350 new consular positions since September 2001 and enhanced their training in interviewing techniques and counterterrorism.

The Results of Department Efforts

In short, we have turned a corner. Our efforts have translated into encouraging results. There are recent positive indicators of a resurgence in international travel to the U.S. The U.S. Department of Commerce released its most recent statistics on February 7, announcing that 2.8 million international visitors traveled to the United States in November 2004, an increase of nearly 3 percent over November 2003. Arrivals for January-November 2004 totaled 35 million, an increase of 11 percent over the same period the previous year. The Department of Commerce notes that the United States has experienced growth in visitation for 14 successive months.

Outdated public perceptions regarding changes to visa processing could not be more different from the reality. The Department of State is doing its part to support the resurgence of international students, exchange visitors and scientists applying for – and receiving – their visas in a timely manner.

updated 2/22/05
**Answer to 1d:**

Nonimmigrant Visas Issued by Category

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<th>Visa Category</th>
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