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LIAISON MEETING

MINUTES OF CONSUL GENERAL

MOSCOW, RUSSIA

September 29, 2000 - 3:00 p.m.

PRESENT:

Hon. Laura A. Clerici - Consul General
June Kunsman - Deputy Consul General
Marjorie Ames - Chief, Immigrant Visa Unit
Bradford Johnson - Chief, Non-Immigrant Visa Unit
Melissa Arkley - Chief, Fraud Prevention Unit

Daniel Retter, Esq. - AILA Representative

The meeting commenced at 3:00 p.m.

The following is the second liaison meeting between the Consulate and the private bar, and there were certain ground rules agreed to between the participants. These included no discussions of any individual cases, and all minutes of the meeting to be reviewed and approved by the Consul General before being circulated to the AILA membership and the Department of State.

AGENDA ITEMS

1. Dependent aliens following to join parents who have been accorded NIV status in the United States.

Members have expressed a great deal of concern about the fact that, even after submitting a complete set of documents reflecting the "change of status" approval by INS accorded to the primary beneficiary (parent/spouse), that nevertheless, the extreme delay in adjudicating a "following to join" spouse or child (e.g. H-4, L-2) amounts to the separation of the nuclear family unit.

The unspoken feeling amongst the membership is that the Consular officers have a "mind set," that every "change of status" application by a Russian B-1/B-2/F-1, amounts to "preconceived intent" and even "fraud" especially if the parent's/spouse visa application in Moscow disclosed a "two week trip." The instinctive response from the AILA membership is that if INS has determined that there was no "preconceived intent," the Consular officer should not be re-adjudicating that particular issue. Of course, any proof to rebut "preconceived intent" offered to INS when legally necessary, (e.g. a C/S application filed within

90 days of entry) should be submitted with the entire visa application, but that issue should be determined to be res adjudicata.
Of course, questions of legitimacy of documents on the Russian side as well as the continued viability of the American side are certainly items that the applicant must prove, but the seemingly inordinate delay is proving to be a tremendous hardship, and has become a high priority amongst the membership.

Can you suggest how we can speed up this process so that after all of the requested documents are submitted, there will be some sort of maximum period in which this case will be approved or refused?

Response: The Consul General stated that there is absolutely no change of status pre-conceived intent issue. Since INS has decided that there was no pre-conceived intent, whether on the initial application or after an RFE, the Consulate will not review this matter, and no question should be asked by any of the consular officers regarding the initial application statements by the H-1 or L-1 CIS alien currently in the United States, of the H-4 or L-2 dependant applicant. Furthermore, the consul will not question the qualifications of the H-1 or L-1 beneficiary as they relate to the I-129 application, except for fraud in Russian documents (diploma, existence of Russian side of the business, etc).

The Consul will however vigorously pursue information regarding the viability of the American company, and its ability to pay the beneficiary, as well as requiring extensive documentation to verify the continued existence of the company, which will include payroll records, tax returns, (IRS transcripts are a must) as well as other indications of viability.

In the event it is a start-up company, then a tax return will not be expected or if it is of a minimal term or gross sales, this too will be accepted. However, it is urged that the applicant demonstrate through copies of bank deposits or other financial evidence, that the company is in fact capable of paying the prime beneficiary.

Concerning delays, the Consul General stated that there was a "deep staff gap" during the summer months and that there were indeed delays. This now has been cured and the delay between application to interview is a matter of one to two weeks maximum.

2. Correspondence, e-mail, phone, etc.

The members have commented that they continuously send e-mails and hardly ever receive a response. The same applies for faxes. They also advise that they hardly ever find a live officer who can respond to a particular matter, other than the public liaison unit, which will not discuss the particulars of a file.

Can you advise how attorneys may effectively communicate with your staff and receive a timely response, so that they can communicate with their clients?

Response: The Consul General stated that the most efficient way for an attorney to communicate concerning a case is by e-mail. A list of the e-mail addresses is attached hereto. An e-mail will be responded to generally no later than 5 business days after being received. Mr. Johnson advised that he receives an average of 60 e-mails a day, which he reviews personally and confirms that he will respond to these e-mails within the time, prescribed by the Consul General.

3. Does the Consul General wish to publicize the individual sections/personnel extension numbers, or rather remain with the general 728-5000 number, and allow the operator to direct all calls?

Response: Because the majority of cases must be pulled from the files by the Public Liaison Unit, the best contact for officers in the Section are the PLU's public e-mail and telephone numbers.

4. It now takes approximately four to six weeks to obtain an appointment for a simple B-1/B-2/F-1 visa, and a month or six weeks beyond that to meet an officer for the "final" adjudication of an H or L visa. Any suggestions as to how this time frame can be accelerated?

Response: This question refers to the problems we've had running up to the summer months. Due to the filling of almost all Consular spaces, the adjudication period now takes one to two weeks.

5. What, if any complaints do the Consular officers have with attorneys who represent clients at the windows, or from abroad?

Response: See end of Minutes.

6. Under what circumstances will the Consular officer accept jurisdiction over a third country national (TCN)?

Response: If a Consular officer is satisfied that the person has in fact moved to Moscow, then even if the applicant does not have a propisca (official Moscow government living permit), if they can establish that they have ties in Russia, such as business, family, school, etc., the visa application will be considered. The residence should be at least for a period of six months.

7. How long after a non-immigrant visa application has been

refused at a different CIS office, may an applicant file an application in Moscow, if they have moved to Moscow, whether temporarily or permanently?

Response: There is no time period as long as the person can prove that they are resident in the Moscow area. See above number 6.

8. Is there a new policy regarding minor children (ages 1-18) who are now required to by physically present for an H-4, L-2 or B-2 interview?

Response: Minor children are normally not required to be present unless there is a question of baby smuggling. This is up to the individual discretion of the consular officer.

9. Is there now a new policy that H-4's and L-2's require "invitations" from their spouse/parents?

Response: No. If a Consular officer asks for an invitation this is in error. The Consul General has already brought this to the attention of the Russian staff and non-immigrant visa officers.

10. Is there now a new policy that H-4's and L-2's have INS approvals before the consul will issue the visa?

Response: No. If the applicant is out of the United States no INS approval is required, but there must be evidence of a valid petition available at the time of application.

11. Is there now a policy that after INS reconfirms a petition's approval even after a consular recommendation for revocation, that the consul will re-send the petition to INS for one more revocation attempt?

Response: Normally speaking, once INS reconfirms a petition, although the consular officer previously recommended that it be revoked, the consul will accept the reconfirmation. However, if the consular officer is convinced that there is fraud, they will send it back even a second time. The vast majority of all petitions that are sent back to the INS for recommendation of revocations are in fact revoked by INS.

12. If the petitioning H-1 company is a "start-up" and therefore has no IRS track record, what documents can be supplied in lieu of IRS tax returns and transcripts?

Response: See above where it was stated that bank statements and other proof of financial wherewithal may be substituted for tax returns.

13. In many cases, H-1 and H-4 issuances are delayed for months because after a 221g interview, a subsequent appointment is scheduled for weeks or months after the initial interview request, and then another 221g starts this whole procedure and delay over again. Is there some way that this process can be brought to finality in a shorter period of time, since the congressional concept behind H visas is that there is a shortage of American workers for these professional and high tech demand positions?

Response: Although a 221g indication in the passport is typically used to indicate that some documents are missing, in the case of H and L issuances, a 221g refusal may indicate that the consular officer finds the documentation submitted insufficient and may be considering a revocation. Therefore, when the client brings in the documents for the initial 221g response, the attorney should realize that a concerted effort must be made to overcome the doubt in the consular officer's mind that the visa is issuable.

Stupidity

Please note however, that a different consular officer may be looking at your response to the 221g, and that consular officer will once again review the whole file. Mr. Johnson explained that the consular officer who issues the visa signs off on the visa, and it is he who is responsible for the issuance of the visa. Therefore, the consular officer will not typically rely just on the 221g documents submitted, but will review the whole file over again, and if he/she has another question, it will be 221g'd again.

Ms. Arkley pointed out that there is a tremendous amount of fraud that is found amongst these applicants, consequently, these applications are scrutinized carefully.

14. Are the front line officers being told that the presence of an attorney does not indicate that the applicant is apriori ineligible for a visa? There has been a noticeable increase in an attitude by junior front line officers to treat attorneys disparagingly, even before the interview commences.

Response: No.

15. Is there a new policy that G-28's (Notice of Appearance of an attorney) are now mandatory, before an attorney can accompany an applicant to the window for an interview, even if the applicant is standing right there with the attorney? (Please

note that the G-28 is an INS, not State Department, form.)

Response: G-28's are required by the visa office in order to discuss details of a case with third parties. However, if the client is readily available, it is not necessarily mandatory, but certainly it is advisable to have same located in the file for further reference.

16. Are there any new policy or procedural changes expected in the near future? Can there be a procedure whereby the Consulate notifies AILA of any contemplated procedural changes, so we can circulate the policy change (e.g., check-off form, etc.).

Response: See end of Minutes.

17. Can there be a formal procedure whereby an appointment may be made by an attorney to speak to a supervisor about a specific case?

Response: Appointments can be scheduled by e-mail or by fax.

18. Can there be an implemented formal "escalation" procedure whereby an attorney can reach a supervisor about a specific case or delay, etc.?

Response: Not applicable.

IV

1. Does a front line consular officer have the sole authority to re-examine and re-adjudicate an EB-1 or EB-2 (INS) approval, without submitting same to the supervisory officer or the Chief of the IV unit?

Response: No. Ms. Ames advised that every recommendation of revocation must be approved by the immigrant visa chief.

2. Referring to the above, if an officer suspects that INS should not have approved an EB-1 or EB-2 case, may a procedure be implemented whereby the applicant/beneficiary/petitioner/attorney can be notified officially of an "intent to return the application to INS," rather than just return it by flat, so that the applicant/beneficiary/petitioner/attorney has an opportunity to rebut in advance?

Response: The officers noted that applicants are normally given several

opportunities to provide adequate information to the consular officer. There is usually a significant period between the last refusal, at which time the applicant would be informed of the intention to return the petition for revocation, and the actual submission to INS. The attorneys should have adequate time to make their rebuttal - or at least request the case be retained for the week or two necessary to develop the needed information.

3. Can there be a format procedure implemented for a senior officer to review a DV signature?

Response: A denial of a DV signature for dissimilarity is made by a senior officer or the immigrant visa chief and therefore there is no reason for a second review.

4. Can there be a formal procedure whereby an appointment may be made by an attorney to speak to a supervisor about a specific case?

Response: See above number 17.

5. Can there be implemented a formal "escalation" procedure whereby an attorney can reach a supervisor about a specific case or delay, etc.?

Response: Not applicable.

Consular Comments

The Consul General then advised that although she recognized that historically attorneys have been permitted to represent clients in Moscow, this is an anomaly in her experience and that of the consular managers. This practice will no longer be permitted, effective October 1, 2000. There were two reasons given for this change.

One was that the consular officers had found that many attorneys (and other representatives of the visa applicant) cause delays in the visa processing system, as well as forcefully engaging the line officer in long and often intemperate discussions. The Consul General referenced to her remarks at the last meeting regarding discussions with the line officers, and the importance of disengaging and contacting the appropriate visa unit chief for an appointment when there were disagreements. The difficulties persist and the consular officers feel it is no longer tolerable.

The second reason offered was that the consulate will be undergoing substantial construction during the next two years and there was a space issue as well.

After vigorous discussion at the meeting, the Consul General advised that the

logistics of an attorney obtaining contemporaneous appointments to discuss a case with an officer are important.

The AILA representative asked whether a proposal could be submitted to ameliorate this change. The Consul General advised that she would accept all suggestions and proposals regarding this new policy.

The meeting adjourned at 4:30 P.M.

Respectfully submitted

Daniel Rather, for AILA

Reviewed and approved

Laura Clerici, Consul General