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**U.S. VISA Application
Consular Administrative Processing:
What It Means & How to Prepare**

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Introduction

- ❖ Consular Visa Processing by scholars, students, and researchers often trigger Administrative Processing.
- ❖ This presentation will discuss what Administrative Processing is, and ways to best position visa applications in order to avoid, or limit the time required to clear the visa applicants.

Presentation Outline

- ❖ **Consular Visa Processing**
 - ❖ What is involved in the typical visa process.
- ❖ **Administrative Processing**
 - ❖ What is it and why.
- ❖ **How to Prepare**
 - ❖ Documents to include with your visa application; focus of the consular officer's questions; what to do once "in process."

Appendix - Technology Alert List (TAL)

CONSULAR VISA PROCESSING

- ❖ All applicants for a visa at a U.S. consular post must complete the electronic DS-160 form (including passport photo), pay a Machine Readable Visa fee; and schedule an interview appointment.*
- ❖ At the interview, fingerprints are taken, and the applicant's prints and passport photograph are uploaded into the Department of Homeland Security (DHS) Bio Visa Program.
- ❖ U.S. Customs and Border Protection (CBP) can utilize the prints and photos to confirm identity at the port of entry.

*Some exceptions to a personal interview are available if you are applying for same visa category, from same institution, at the same consulate where prior visa was issued within specific time frames. Each consulate establishes its own "interview waiver" criteria.

CONSULAR VISA PROCESSING

- ❖ F-1 students also must provide Form I-20 from the school, and confirmation of payment of the I-901 Student and Exchange Visitor Information System (SEVIS) fee.
- ❖ J-1 visa applicants must provide Form DS-2019 from the Program Sponsor, and the I-901 SEVIS fee payment confirmation.
- ❖ H-1B applicants provide the original I-797, Notice of Action, approving the H-1B petition, as well as a copy of the H-1B petition and supporting documentation
- ❖ Consulates often have specific procedures, so it is important to review the particular consulate's visa process prior to making an appointment.
- ❖ At the conclusion of the interview, most applicants are notified if the visa is approved and provided information on when the visa will be available.

CONSULAR VISA PROCESSING

- ❖ Some visa applicants are notified at their interview that their visa application requires “additional processing.”
- ❖ Generally, the applicant is given a notice indicating the visa is denied under Section 221(g) of the INA and what action the applicant needs to take to continue the processing of the visa.
- ❖ This type of visa denial is termed “Administrative Processing.”

ADMINISTRATIVE PROCESSING

- ❖ Administrative Processing is the phrase used by a consular officer when it is believed that additional clearance or consultation with the U.S. Department of State (DOS) is required before a visa can be issued.

- ❖ Administrative Processing can generally be broken down by three (3) types of situations:
 - (1) Further Consultation;

 - (2) Database “hits”; or

 - (3) Technology Alert Lists.

ADMINISTRATIVE PROCESSING

Further Consultation Administrative Processing occurs when the officer believes there are circumstances that require further consultation within the consulate, or with the DOS. In this situation, something has occurred during the course of the interview, or based on something in the applicant's visa records, that makes it impossible to render a decision at the conclusion of the interview. These situations usually require an advisory opinion from the Office of Legal Affairs in the Bureau of Consular Affairs Visa Office.

ADMINISTRATIVE PROCESSING

Database “hits” Administrative Processing occurs when an applicant’s biographic or biometric data result in a possible match or “hit” to a person on a watch list found in one of the many databases used by the DOS to identify individuals who should not be issued visas. The consular officer must confirm the person is not the same person on the watch list before issuing the visa. The primary tool used by consular officers is the Consular Lookout and Support System (CLASS). All visa applicants must be screened through CLASS before a visa can be issued. CLASS is tied into several U.S. agency databases, such as the FBI’s National Crime Information Center (NCIC).

ADMINISTRATIVE PROCESSING

Database “hits” Administrative Processing (continued)

- ❖ The most common type of “hit” is known as a Visa Donkey hit - for name hits where the applicant’s name is the same as someone with ties (work experience, residency, birth, affiliations) to one of the countries listed as state sponsors of terrorism (Cuba, Iran, Sudan, Syria).
- ❖ Another common security related name match is termed a Visa Condor hit. This occurs where the applicant’s name is the same as someone on a counter terrorism list that involves nationals of specific countries.
- ❖ Though never confirmed by the DOS, the list is believed to include: Afghanistan, Algeria, Bahrain, Bangladesh, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen. Nationals or citizens of Cuba and North Korea are subjected to heightened scrutiny as well.

ADMINISTRATIVE PROCESSING

Technology Alert Lists related Administrative Processing occurs when an applicant's intended commercial or academic activity triggers concerns about the possible illegal transfer of technology as defined in the Technology Alert List (TAL). The TAL was created over concerns that an illegal transfer of controlled technology (or activities) may impact or become detrimental to U.S. national security. The main goal of the TAL is to stop the potential growth and development of Weapons of Mass Destruction (WMD) from terrorist states. There is also additional focus on nationals from countries considered to possess nuclear capabilities (i.e. Pakistan, Russia, China and Israel). When a consular officer identifies a case involving dual-use or sensitive technology on the TAL, this is commonly referred to as a Visa Mantis hit.

- ❖ Visa Mantis cases result in the officer submitting an inquiry to the DOS in Washington for a determination of whether the risk is significant enough to require a visa denial.
- ❖ The Visa Mantis clearance has had a significant impact to the research community and biotech and healthcare fields because of the delays created in the visa issuance process.

ADMINISTRATIVE PROCESSING

Though the TAL is now deemed “classified” and not available to the public, the last published list from 2002 covered technologies such as Biochemistry, Microbiology, Pharmacology, Immunology, Virology, Bacteriology, Genetic engineering, Mycology, Pathogenecity, to name a few.

In the Appendix at the end of the material, we provide Section F of the TAL list from the last published version in 2002.

ADMINISTRATIVE PROCESSING

Why Administrative Processing?

After the terror attacks in 2001, the U.S. determined that a greater level of screening for visa applicants needed to be conducted, as well as more interagency cooperation and sharing of data. Over time, this has resulted in the types of checks and clearances referenced above, with the goal of limiting the admission of individuals deemed to be in some manner a threat or risk to the U.S.

- ❖ Administrative Processing does allow for the visa applicant who has been denied for TAL to overcome the DOS' concerns with additional/supporting documentation.

HOW TO AVOID OR LIMIT ADMINISTRATIVE PROCESSING

- ❖ When international faculty, scholars, and students apply for a visa, the consular officer must make a decision about whether the research, studies, teaching, training/employment, commercial activity fits within one of the “sensitive/critical fields” listed in the TAL.
- ❖ Be prepared before applying for the visa with as much information as possible regarding your academic, research, or employment endeavors in addition to the standard visa requirements.

HOW TO AVOID OR LIMIT ADMINISTRATIVE PROCESSING

- ❖ You will have only a few minutes - at most - to explain your research/studies to the consular officer, so be prepared with a brief, succinct, clear explanation that stresses the nature and the applicability of your studies/research/work.
- ❖ The Consular Officer's questions (if any) will focus on: the technology; the goals of your research/studies; and the applicability.
- ❖ Your explanation, along with your other documents are the best opportunity in avoiding the need for additional processing.

HOW TO AVOID OR LIMIT ADMINISTRATIVE PROCESSING

Most consulates provide additional information regarding processing of F-1, J-1, and H-1B visa applicants – though each consulate may have different suggestions.

The U.S. Consulate in China suggests that F-1 and J-1 applicants bring to the interview a Research/Study Plan with detailed information about your studies or research, including the name and email address of your advising professor/and or the head of your department. The Research/Study plan should include:

- ❖ An explanation of your area of study/research;
- ❖ Advisor or Potential Advisor (research not academic) information;
- ❖ An explanation of whether just coursework or research project –if research name of the project and basic description; and
- ❖ Research Funding – where is it coming from; and the Practical Application of the research.

HOW TO AVOID OR LIMIT ADMINISTRATIVE PROCESSING

The U.S. consulate in China further indicates you should bring:

- ❖ A Resume/CV providing details about past academic and professional experience, including a list of all publications to which you have contributed;
- ❖ Official transcript from your home country and coursework from all U.S. institutions; and
- ❖ Your Advisor's biography, CV, or web page print out, if already assigned.

HOW TO AVOID OR LIMIT ADMINISTRATIVE PROCESSING

The U.S. Consulate in India suggests the following for J-1 and F-1 visa applicants:

- ❖ An invitation letter from sponsoring organization – should include supervisor/advisor's name and contact details;
- ❖ A complete description of any equipment you plan to utilize, purchase or examine – including the use of the equipment;
- ❖ Itinerary – A list of all locations you will visit in the U.S. including contact names, organization's addresses and telephone numbers; and
- ❖ Resume/CV providing details about past academic and professional experience, including a list of all publications to which you have contributed.

HOW TO AVOID OR LIMIT ADMINISTRATIVE PROCESSING

In addition to whatever specific requirements listed on the consulate's website, we suggest preparing and bringing the following:

- ❖ A letter from the academic advisor/department indicating the degree program/research project and explanation of how the coursework/research is not TAL related.;
- ❖ Sources and amounts of any US government money (or funding from US corporations assisting the US government) used to support the research;
- ❖ A description of any export-controlled technology/information that will be shared with the applicant; and
- ❖ Copy of departmental description of the degree program, specifics of programs of study (students) or research (scholars); if student (all transcripts), detailed CV/resume, list of publications and presentations (include a few samples); letters of recommendation (current or previous institutions); if a student with an assistantship, obtain description from research advisor or department.

ONCE PLACED IN ADMINISTRATIVE PROCESSING

Once an application has been placed in the administrative process, there is little that can be done.

The DOS has repeatedly indicated to universities, businesses and the legal community that these checks are part of national security and are required by Congress before a visa can be issued. The DOS indicates that most applications placed in administrative processing are approved – and most within 60 days.

- ❖ Ensure you come prepared to the interview.
- ❖ Ensure the consulate has your contact information.
- ❖ Monitor case status at: ceac.state.gov
- ❖ Respond to any additional requests as soon as possible.
- ❖ If outside of 60 days attorney may be able to request assistance through State Department (to get an indication of basis of issue), if outside of 90 days, attorney may be able to lodge request through State Department.

ADMINISTRATIVE PROCESSING SUMMARY

In summary, Administrative Processing might be triggered for many reasons:

- ❖ The visa applicant's name (or part of the name) may be in one of the watch list databases;
- ❖ The visa applicant's citizenship or residency in a country designated state sponsor of terrorism;
- ❖ Concerns about technology transfers for countries possessing nuclear capabilities; and
- ❖ Concerns over access or engaging in TAL related technologies.

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Jeffrey W. Pitts has been practicing immigration law for more than 15 years and was previously a Partner with Fragomen, Del Rey, Bernsen & Loewy. Mr. Pitts has represented many leading academic and research institutions, international pharmaceutical and medical device companies, and technology companies. He has expertise in advising researchers, scholars and students, and was previously the Alternate Responsible Officer (ARO) for a Fortune 50 Pharmaceutical company's J-1 Program. Jeffrey has been active in many immigration related bar organizations, including the American Immigration Lawyers Association (AILA), and the Association of the Bar of the City of New York where he served on the Committee on Immigration. He regularly speaks and presents on immigration topics for corporations and academic institutions. Jeffrey is admitted to the United States Supreme Court, and the bars of New York and New Jersey.

APPENDIX

From the U.S. Department of State, August 2002

This cable updates the Technology Alert List (TAL) which was transmitted in November 2000, with particular attention to certain revisions as a result of the September 11 terrorist attacks. The cable also provides additional guidance for its use in cases that may fall under the purview of INA section 212 (a)(3)(a), which renders inadmissible aliens who there is reason to believe are seeking to enter the U.S. to violate U.S. laws prohibiting the export of goods, technology or sensitive information from the U.S.

APPENDIX

The revised TAL (Technology Alert List) consists of two parts: a "Critical Fields List" (CFL) of major fields of technology transfer concern, including those subject to export controls for nonproliferation reasons (Tab A); and the Department's List of designated State Sponsors of Terrorism (Tab B). While restrictions on the export of controlled goods and technologies apply to nationals of all countries, applicants from countries on the List of State Sponsors of Terrorism seeking to engage in activities involving one of the critical fields warrant special scrutiny.

APPENDIX

TAB A - CRITICAL FIELDS LIST

F. CHEMICAL, BIOTECHNOLOGY AND BIOMEDICAL ENGINEERING:

The technology used to produce chemical and biological weapons is inherently dual-use. The same technologies that could be applied to develop and produce chemical and biological weapons are used widely by civilian research laboratories and industry; these technologies are relatively common in many countries.

Advanced biotechnology has the potential to support biological weapons research.

APPENDIX

In the **biological area**, look for interest in technologies associated with:

- ❖ Aerobiology (study of microorganisms found in the air or in aerosol form)
- ❖ Biochemistry
- ❖ Pharmacology
- ❖ Immunology
- ❖ Virology
- ❖ Bacteriology
- ❖ Mycology
- ❖ Microbiology
- ❖ Growth and culturing of microorganisms
- ❖ Pathology (study of diseases)
- ❖ Toxicology

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- ❖ Study of toxins
- ❖ Virulence factors
- ❖ Genetic engineering, recombinant DNA technology
- ❖ Identification of nucleic acid sequences associated with pathogenicity
- ❖ Freeze-drying (lyophilization)
- ❖ Fermentation technology
- ❖ Cross-filtration equipment
- ❖ High "DOP-rated filters" (e.g., HEPA filters, ULPA filters)
- ❖ Microencapsulation
- ❖ Aerosol sprayers and technology, aerosol and aerosolization technology
- ❖ Spray or drum drying technology

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- ❖ Milling equipment or technology intended for the production of micron-sized particles
- ❖ Technology for eliminating electrostatic charges of small particles
- ❖ Flight training
- ❖ Crop-dusting, aerosol dissemination
- ❖ Unmanned aerial vehicle (UAV) technology
- ❖ Fuses, detonators, and other munitions technology
- ❖ Submunitions technology
- ❖ Computer modeling of dissemination or contagion
- ❖ Chemical absorption (nuclear-biological-chemical (NBC) protection)

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In the **chemical area**, look for interest in technologies associated with:

- ❖ Organo-phosphate chemistry
- ❖ Neurochemistry
- ❖ Chemical engineering
- ❖ Chemical separation technology
- ❖ Pesticide production technology
- ❖ Pharmaceutical production technology
- ❖ Chemical separation technology
- ❖ Toxicology
- ❖ Pharmacology
- ❖ Neurology

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- ❖ Immunology
- ❖ Detection of toxic chemical aerosols
- ❖ Chemical absorption (Nuclear-Biological-Chemical (NBC) protection)
- ❖ Production of glass-lined steel reactors/vessels, pipes, flanges, and other equipment
- ❖ Aerosol sprayers and technology
- ❖ Flight training
- ❖ Crop-dusting, aerosol dissemination
- ❖ Unmanned Aerial Vehicle (UAV) technology
- ❖ Fuses, detonators, and other munitions technology

QUESTIONS?



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