

Update from Ciudad Juarez

By Charles Wheeler

Laura Dogu, Deputy Consul General, and Mark Bosse, Communications Unit Supervisor, U.S. Consulate General in Ciudad Juarez, as well as Warren Janssen, Field Office Director of the USCIS office located at the consulate, each spoke at CLINIC's annual family immigration law training in El Paso on February 5, 2008. The following is a summary of the updated information provided by the State Department and USCIS.

New Consular Offices. The consulate completed its move into a bigger and more modern facility in November 2008. The waiting room is much larger and contains 87 windows where immigrant visa (IV) and non-immigrant visa (NIV) applicants can speak to consular officials and pass documents back and forth. The new facility will make it much easier for the consulate to process visas, conduct interviews, and accommodate the increased demand for visas, as well as for U.S. citizens' services. All of the various consular and USCIS offices are now housed together in this new compound, which is located a little bit farther into Cd. Juarez (seven miles from the Port of Entry). The consulate is still undergoing a "breaking-in" period with the new facility, so expect some minor changes or even conflicting information regarding local procedures for a little while longer.

Ms. Dogu is working toward a one-hour, door-to-door customer service goal. This means that the applicant would ideally be admitted to the consulate and interviewed within one hour.

Caseload. The consulate continues to be the largest and busiest IV post in the world. In fact, it processes about the same number of immigrant visas as the next three busiest consulates combined. For the last fiscal year the consulate processed approximately 150,000 IV applications, which is a substantial increase over the prior year's total. That translates to between 600 and 1,000 IV applicants/day. By increasing staff and concentrating efforts during a six-month period, the consulate was able to eliminate a 45,000 IV backlog by March 2008. The consulate is now "current," meaning that the National Visa Center (NVC) is able to schedule visa interviews as soon as that office has completed its case processing. For this fiscal year the consulate anticipates processing between 130,000 and 140,000 IV applications.

Procedures. Appointment interviews are now spread throughout the day, rather than scheduled in two chunks. The consulate discourages applicants from coming to their IV interview before the allotted time on the interview notice. There is no benefit to arriving early since applicants will be admitted only at the designated hour. The consulate waiting room can accommodate all of the applicants assigned to that time slot. Please do not bring any other family members to the consulate interview, since they will not be allowed past the gate. If they accompany your client to Cd. Juarez, please tell them to wait at their hotel or perhaps shop in the mall across the street. Only the IV applicant is permitted to attend the interview, unless other family members are specifically identified and requested by the consulate. Minor children applying for immigrant visas should be accompanied by a parent. Attorneys and representatives are never allowed to attend the interview.

The consulate recommends that the family check into their hotel and store their personal belongings before doing anything else. There have been incidents where vehicles have been broken into and luggage has been stolen.

In November 2008 the consulate began working with DHL, the private carrier service company, for delivery of the immigrant visa to the applicant after their issuance. In the near future, all immigrant visas issued by the consulate will be delivered by DHL. After the interview, the client should return to his or her hotel, call DHL, and determine if their visa is ready for pick-up or delivery. If there is an error on the visa, applicants can either send it back to the consulate through DHL or bring it to the Information window at the consulate.

There are two medical clinics that perform the necessary examinations; one is located across the street from the new consulate while the other is still located across the street from the old consulate, although it will be moving to the new neighborhood soon. As a result of guidelines from the Center for Disease Control regarding screening for tuberculosis, applicants aged between 2 and 14 must receive a PPD skin test as part of the medical exam. The panel physicians need 72 hours to read the reaction to the skin test. Therefore, applicants with children in this age range must have the medical exam conducted at least four days prior to the scheduled IV interview to allow time to obtain the results.

Beware of touts and other people working on the streets near the consulate who are offering interview preparation services. In some cases they masquerade as State Department employees; in others they offer form completion, such as affidavits of support or waiver applications. Discourage your clients from dealing with these individuals, since they are often committing fraud.

Please remember that the Western Hemisphere Travel Initiative, which will require U.S. citizens to have a passport to travel to the United States from Mexico, goes into effect on June 1, 2009. Apply for passports before traveling to Mexico. U.S. citizen family members who will be traveling to Cd. Juarez with the IV applicant should go to the State Department website travel.state.gov and register prior to leaving. That will facilitate further contact by the consulate should an emergency develop or someone in the United States needs to contact them.

Adopted Children and Stepchildren. Children who are being adopted in Mexico must receive a final, irrevocable adoption decree. The consulate will not accept the revocable decrees that are issued by some Mexican states. The consulate may request in certain cases that the natural parent attend the stepchild's IV interview. Even though the USCIS has approved the I-130 petition and found the marriage establishing the stepparent-stepchild relationship to be valid, the consulate still has the right to interview the natural parent to confirm the relationship. This would occur, for example, when the child provides conflicting information about the natural parent and stepparent's relationship. The consulate recognizes that this has caused a hardship in some cases where the natural parent is residing in the United States, is out of status, and is reluctant to return to Mexico. The consulate prefers to try to resolve such cases locally rather than returning the I-130 to the USCIS for further investigation.

Grounds of Inadmissibility. There are no waivers for false claims of citizenship made on or after September 30, 1996, although there is one narrow exception. INA § 212(a)(6)(C)(ii) does not have an intent requirement and does apply to minors. Nevertheless, children under age 18 will not necessarily be found to have triggered the ground of inadmissibility in INA § 212(a)(6)(C)(ii). That finding will be based on the age of the child and the specific circumstances. Most of these cases are now being sent to the Visa Office in Washington, DC for an advisory opinion.

Although children under age 18 cannot accrue unlawful presence for purposes of triggering the three- or ten-year bars under INA § 212(a)(9)(B) when they leave the United States, they can accrue unlawful presence for purposes of the "permanent" bar under INA § 212(a)(9)(C)(i)(I). That bar applies to aliens who accrue more than one year in the United States, leave the country, and then return or attempt to return illegally. Those persons must remain outside the United States for ten years before being eligible to file a Form I-212, "Permission to Reapply for Admission." The exception to accruing unlawful presence that applies to children under 18 for the three- and ten-year bars does not apply to that separate bar. It means, for example, that a child who was brought into the United States illegally at an early age, resided here after April 1, 1997 for more than a year, was taken back to Mexico, and then at a later date returned or attempted to return illegally, has tripped this "permanent" bar.

There is an exception to affidavit of support requirement where the intending immigrant has already acquired at least 40 qualifying quarters of Social Security coverage. Even if the petitioner/sponsor has submitted a Form I-864W in these cases, and the NVC has reviewed that documentation and forwarded it to the consulate, the consulate has in some cases requested a joint sponsor. Due to public charge concerns, the consulate has looked behind the documentary submission of Social Security coverage and questioned the worker's earnings record or ability to support the intending immigrants. The consulate encourages applicants in those cases simply to comply with its request for a joint sponsor rather than challenge their decision. [Editor's note: while the public charge ground of inadmissibility in INA § 212(a)(4) still applies in those cases, the income of the I-130 petitioner should be irrelevant in cases where the affidavit of support requirements have been waived pursuant to 8 CFR § 213a.2(a)(2)(ii)(C). There is apparently no authority for requiring that the petitioner pass an income test after INA § 212(a)(4)(C)(ii) has been satisfied through the accumulation of 40 qualifying quarters. However, as Ms. Dogu points out, it is often more expedient to obtain the joint sponsor agreement rather than challenge the consulate's decision. In trying to secure this joint sponsor, it may help to inform the potential sponsor that the I-864 contract will terminate the moment the intending immigrant obtains LPR status due to the 40-quarters exception. In other words, the affidavit of support will never go into effect.]

Fiancé(e)s applying for a K-1 visa or spouses of U.S. citizens applying for a K-3 visa must file a Form I-601 waiver form if they are found inadmissible for fraud, unlawful presence, or a crime-related ground. Although the nonimmigrant waiver standard under INA § 212(d)(3) is more relaxed and generous than that for IV applicants, these applicants are treated as if they were applying for an immigrant visa and must demonstrate extreme hardship to a qualifying relative. If the case involves a K-1 fiancé(e), before beginning that waiver process the consular officer

should first satisfy himself or herself that the petitioner was or is aware of the ineligibility and still wishes to pursue the marriage. If not, the petition should be returned to DHS and no waiver process commenced. In their cases, the consulate requests a signed letter from the petitioner.

Clients who have been granted voluntary departure (in lieu of deportation) by an immigration judge will be provided documentation to that effect by Immigration and Customs Enforcement (ICE) officials. Voluntary departees in Cd. Juarez should check in with ICE officers at the consulate to verify that they departed within the required period of time. In other locations around the world they may deal with the consular section.

Processing of Derivatives. Where the principal beneficiary in a preference case has adjusted status in the United States and the derivative beneficiaries in Mexico will need to consular process, the principal beneficiary has been instructed to file a Form I-824 with the USCIS that approved the adjustment. That form will be approved, sent to the NVC, and then forwarded to the consulate, which will commence IV processing. The consulate used to allow the LPR parent in that situation to send proof of having adjusted directly to the consulate and bypass the I-824 and NVC. They have ended that procedure; all derivatives in those cases must now go through the I-824 process. In cases where the principal beneficiary consular processed in Cd. Juarez and derivatives are following-to-join, the applicant should contact the Call Center to determine the location of and information in the file. In cases such as that, it is unnecessary to file an I-824. In those cases the consulate should be able to schedule them locally for an interview.

On derivative cases where a child is not included in the visa forms sent from the NVC, due either to agency error, a failure to include the child's name on the I-130, or because the child is after-acquired, contact the NVC and have that office re-send the fee bill and forms. If the derivative and the principal for some reason have separate files, notify the NVC and/or consulate and it will cross-reference and merge the files so that the family members can attend the same interview.

NVC Forms. The NVC sends the Choice of Agent form to the IV applicant and/or I-130 petitioner. This form must be signed by the IV applicant himself or herself and designate the person who will receive further communication from the NVC. Similarly, according to the consulate, only the IV applicant, not the agent, can sign the IV application, Form DS-230 Part 1, which is downloaded and submitted later.

K-3 versus IV. The consulate has also eliminated the backlog of K-3 applications filed by U.S. citizens on behalf of spouses residing in Mexico. If the consulate has started processing for the nonimmigrant visa and it receives the IV file from the NVC (approved alien relative petition and accompanying forms), it will cease all processing for the K-3 visa and proceed only with the IV application. The prior policy was to allow the applicant to choose between receiving the K-3 or the immigrant visa.

Communicating with the Consulate. Applicants, practitioners, and congressional representatives may communicate with the consulate in one of two manners. They should use the Call Center for all matters regarding scheduling/re-scheduling/expediting of the visa interview or regarding the interview process and visa eligibility requirements. That number is 1-900-476-1212. If calling from Mexico, dial 01-900-849-4949. For questions regarding an ongoing case

where the applicant has already been interviewed, use the new electronic inquiry form. This can be found on the consulate's website at <http://ciudadjuarez.usconsulate.gov/feedback-form.html>. The form asks for the inquirer's name, e-mail address, phone number, and an affirmation that the inquirer has been retained to represent the IV applicant, including the inquirer's state bar number (if applicable). Include the IV applicant's case number and select from a list of options (e.g., requesting information on a visa denial; requesting the status or providing information on a pending case). Then type in the specific inquiry. A special Communications Unit with three full-time staff has been assigned to answer these inquiries, and they have a goal of responding within five business days.

Update from USCIS. Mr. Janssen's office is now located inside the consulate, but is still under the jurisdiction of the DHS/USCIS. Approximately 15 to 20 percent of the IV applications require a waiver for inadmissibility; most of these denials are based on the unlawful presence ground of inadmissibility. Mr. Janssen's main responsibility is adjudicating waiver applications. In the last fiscal year, the USCIS adjudicated approximately 24,000 waiver applications, and for next year it anticipates processing a similar number.

Mr. Janssen has a permanent staff of four officers and eight support staff, bringing it to a total of twelve employees. He also has three additional officers working in his office on temporary detail who are helping to work down the backlog. He anticipates maintaining that permanent and temporary staffing throughout this fiscal year.

Immigrant visa applicants who are found inadmissible for a waivable ground are now given written notice at the time of the consular interview informing them of the procedure for submitting their waiver packet through a separate Call Center appointment system. Immigrant visa applicants who know before they attend the interview that they will be found inadmissible used to be able to phone the Call Center before leaving and schedule this separate appointment. Recently appointments were being scheduled for up to two months after the immigrant visa appointment.

That procedure has changed as of February 10, 2009. The new procedure does not allow the immigrant visa applicant to schedule the waiver appointment until after the consulate denies the visa. In other words, consular officials in Cd. Juarez will first determine that the alien is inadmissible and eligible for a waiver, and then note that in the computerized case file. The following day, the alien can phone the Call Center and schedule the waiver appointment. Under the new system, it is expected that waiver appointments will be scheduled between one to two weeks after the denial of the immigrant visa. Aliens who already scheduled their waiver appointments under the prior system will be allowed to keep them. All questions regarding the new waiver appointment process should be directed to the Call Center. That number is 900-476-1212. If calling from Mexico, dial 01-900-849-4949.

At the time of their waiver appointment, applicants will return to the consulate, pay the waiver fee, and submit the waiver application, together with supporting documentation. The consulate receives the application and hands the file over to the USCIS adjudicating officer in an adjoining room. The USCIS officials do not interview the applicant but instead base their decision on the application and supporting documentation. If Mr. Janssen's office believes it is a "clean" case

(no FBI criminal hits, no separate A file to examine) that is readily approveable, it will grant the waiver that same day and return the file to the consulate. The consular official in turn will approve the immigrant visa either that day or the following.

Four of the USCIS officers are currently assigned to adjudicate waiver applications sent through this “same day” (formerly the “pilot”) program. They each review approximately 30-35 applications per day, resulting in a daily total of 120-140 applications. Given their schedule, each officer spends approximately 10-15 minutes reviewing the waiver application and supporting documentation before making a decision to either approve or refer. The approval rate for applications processed through this program is between 50 to 60 percent.

The 40 to 50 percent of the applicants who are not found to have a clearly approveable waiver are not denied but are rather referred to the pre-existing adjudication process. In the opinion of the USCIS, most of these applicants did not submit sufficient evidence to merit a favorable decision. Others may have criminal or prior deportation issues that did not surface at the consular interview. Rather than being formally denied, their application is added to the current backlog of 9,000 pending cases and will be reviewed later. His office is currently adjudicating referred waivers submitted in December 2007, meaning that the waiting time for a decision with those files is now over one year. Waiver applicants who are referred to the backlog are encouraged to supplement their file with additional proof of hardship. Although the referral letter indicates that they have 30 days to submit more supporting documentation, they can actually submit it at any time up to the date of adjudication. These files may have been transferred to another USCIS office in Tijuana, Monterrey, or Mexico City for adjudication. Therefore, it is advisable to submit the supporting documentation before that transfer takes place. Also, the USCIS has plans to open an office in Los Angeles sometime this fiscal year that will work exclusively on adjudicating waivers referred to the backlog. When that takes place, the USCIS hopes to vastly reduce or eliminate the backlog. Therefore, applicants should strive to submit their additional documentation within 30 days.

Applicants who are denied may file an appeal with the Administrative Appeals Office (AAO). Those appeals are filed on Form I-290B within 33 days with his office, along with a filing fee of \$585, and forwarded to the AAO. The applicant must indicate on the form whether he/she wishes either to: (1) file an appeal, in which case Janssen’s office will review the file and reconsider the decision before forwarding it to the AAO; or (2) request a reopening or reconsideration of the decision. In the latter case, Mr. Janssen’s office will review the case and either overturn and grant the waiver or sustain the original denial. In those latter cases, the file is not forwarded to the AAO.

Alternatively, an IV applicant who has been denied a waiver may choose to submit a new waiver application. In those cases, the applicant would phone the Call Center and schedule a new IV interview with the consulate. If they are once again found inadmissible, they can start the waiver process over again. Be aware that clients who were found inadmissible for more than one year of unlawful presence under 212(a)(9)(B), and who returned illegally to the United States, will have triggered the 212(a)(9)(C) inadmissibility ground and thus be ineligible to file a waiver for ten years. Please communicate with the USCIS via their special e-mail address: cdj.uscis@dhs.gov. An officer in the Mexico City will respond to the question. The turn around

for a response is between one to two weeks. Additional supporting documentation for a pending waiver application should be mailed to USCIS, P.O. Box 9896, El Paso, TX 79995. Do not use the new State Department inquiry system for any communications with the USCIS.