Consular Practice for Family Practitioners: Maneuvering Through the NVC and DOS

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INTRODUCTION

There are two paths available to immigrate relatives to the United States. Adjustment of status is generally pursued when the beneficiary of a family-based immigrant petition is located in the United States. This process involves the filing of the Form I-485, Application to Register Permanent Residence or Adjust Status, with the U.S. Citizenship and Immigration Services (USCIS). In contrast, individuals who reside outside the United States or certain applicants who need to leave the United States, must immigrate through a process referred to as consular processing. Consular processing (aka immigrant visa processing) is achieved through the coordinated efforts of three different government agencies: USCIS, the National Visa Center (NVC) located in Portsmouth, New Hampshire, and a U.S. consular post overseas. Please note that the NVC and all US consular posts fall under the jurisdiction of the U.S. Department of State (DOS). Below, we discuss the specific steps that are involved in consular processing.

FAMILY-BASED CONSULAR PROCESSING

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Step One: Online Filing of the Form I-130 with USCIS

To start consular processing, a US citizen or lawful permanent resident relative must file a Form I-130, Petition for Alien Relative, with USCIS. It is recommended that applicants take advantage of online filing, which will lead to a smoother transition when it comes to moving the case to the NVC, but paper filing is also permitted. It is important to note that paper filing may result in a two-month delay with receipting, and a later delay with movement of the file to the National Visa Center.

To consular process, and as a default, a petitioner should indicate the embassy or consulate where the beneficiary will interview for their immigrant visa on their Form I-130. Practitioners should ensure that the consular post that they choose processes immigrant visas (IVs). Not all consular posts process IVs.

Due to the various relationships that are allowed when filing an I-130, petitioners and beneficiary pairs are divided into non-preference/immediate relative categories, and preference categories. Marriage to US citizen, for example, is placed in the immediate relative category. It is important to emphasize that the processing time for the I-130 petitions varies based on the category to which it is assigned. Due to the high volume of I-130 petitions, we recommend checking the processing times directly via the USCIS website. At the time of writing this document, the processing time was 15.5 months for 80% of USCIS stand-alone I-130 petitions.

Step Two: I-130 Transmitted to National Visa Center

Once the petition is approved by the USCIS, it is sent electronically to the NVC in Portsmouth, New Hampshire. The NVC serves as a processing center to collect fees and documents and hold immigrant visa cases until immigrant visa numbers become available. Once the file is complete and immigrant visa numbers are available, the NVC transfers the case to an appropriate US consular post overseas for an interview.

Step Three: Fee Payment, Assignment of IV Case Number, and Portal Opening

The attorney and client will both receive an email/letter notification regarding the transfer of the case from the USCIS to the NVC. This letter will contain the following: 1. an immigration number, in the form of an embassy location code, the year and the case number continuation; and 2. an invoice ID number. It is important to keep these two numbers saved somewhere with easy access as they will need to be entered when looking at the Consular Electronic Application Center (CEAC) website, the website the NVC utilizes to process immigrant visa applications.

Official review of the case will begin only after fees, forms, and financial documents have been paid and provided. These fees include the Immigrant Visa Application (DS-260) Processing Fee and the Affidavit of Support Fee. After payment, these fees can take 10 calendar days to process, after which the NVC portal will open for submitting the DS-260, related civil documents and the Form I-864, Affidavit of Support, and related evidence.

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Step Four: DS-260 Online Visa Application and Civil Document Upload

After the fees are processed and documents received, the applicant must complete the Form DS-260, Application for Immigrant Visa and Alien Registration. Here is where we suggest various meetings with clients to get the information as accurate as possible. The application is very detailed, and it is important to submit accurate information because the application does not allow for revisions after it has been signed and submitted. Some attorneys find it easier to have the applicant login themselves to complete the form as a draft. Thereafter, the attorney can perform a final review of the client's draft prior to submission.

After the DS-260 is submitted, questions in the application will generate requests for civil documents from the NVC. For example, a divorce mentioned in the DS-260 will trigger a request for a divorce certificate, if it is relevant to the filing. A criminal record will trigger a request for a court disposition. Six months or more spent in a foreign country will trigger a request for a police certificate from that country.

Clear, color scans of the required civil documents should be uploaded to the NVC portal. Incorrect or incomplete submissions may result in delays, as additional or corrected documents may be requested by the NVC. A recent challenge in this step involves technical issues with the system, such as instability or difficulty handling large amounts of data. Civil documents, if not written in English or in the official language of the country where applying, must be accompanied by certified translations. Examples of civil documents include:

- Valid unexpired passport
- Birth certificates
- Adoption records
- Foreign police certificates
- Prison or court disposition records (if applicable)
- Military records (if applicable)
- Marriage and divorce certificates
- Civil documents of the petitioner

Use the DOS's Reciprocity Table to research acceptable civil documents for various countries of origin.[1]

Tips for Uploading Documents

The platform for the NVC portal has become a bit full. Hopefully, it will be expanded or improved. In the meantime, upload the smallest, reduced .pdf file that you can for civil documents, using Acrobat Adobe Pro, or a similar program. If you have trouble with a particular scan upload, rescan it in its entirety. The program seems to read scans. If the system is not satisfied with a particular scan, it is best to just re-scan the document to get a slightly different image to upload.

[1] https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.html

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Step Five: Affidavit of Support and Supporting Financial Documents Upload

Petitioners must submit the Affidavit of Support and indicate their financial responsibility for the applicant(s). The sponsor must be domiciled in the U.S., which can be challenging to prove if the petitioner resides abroad. A sponsor must be able to show an intention to move back to the US if living abroad. Evidence of this can include having a job offer and searching for housing in the United States, and US ties like a bank account.

The Affidavit of Support and related financial documents prove the sponsor's ability to support the applicant. Please check USCIS' website for more information about the Poverty Guidelines, used by the NVC. The financial documents include Internal Revenue Service tax transcripts for the past three years and income evidence, such as Forms 1099 or W-2. Tax transcripts are summaries of the Form 1040, the U.S. income tax return. Tax transcripts can be downloaded from an account created on the Internal Revenue Service website. Be sure to include all W-2s and 1099s even if you feel that you have already submitted enough proof of income to ensure that the submission documents more than the amount required per the I-864P and the household size.

In general, the NVC officers who review the Form I-864 and the supporting documents are not analyzing the documents for compliance with the law. They just review a checklist to ensure that the submission checks all the boxes. A complete analysis of the affidavit of support is performed by a consular officer at the immigrant visa interview. Also, the NVC does not look at anything except W-2 income or other proof of income like a 1099 for a retirement account which produces income when a withdrawal or disbursement is made. As a result, where the sponsor has non-W-2 income, it is important to include an explanation regarding the income source. To confirm, the NVC does not include assets in their assessments. If an asset assessment is required, the NVC will leave that for a consular officer to perform at the immigrant visa interview.

> **Practice Tip:** If the sponsor cannot document sufficient W-2 or 1099 income, the immigrant visa applicant may want to submit a Form I-864 prepared by a joint sponsor to avoid delays in processing the affidavit of support. Otherwise, the applicant will receive a notification from the NVC stating that the sponsor's income is not sufficient and to upload additional documents.

Step Six: NVC Approval as Documentarily Qualified (Complete or "DQ'd")

Once all documents are uploaded, the immigrant visa applicant hits submit. NVC reviews the materials and decides whether the applicant's file is documentarily complete or documentarily qualified. When the filing is documentarily complete, the NVC notifies the applicant. The NVC can then coordinate with the relevant consulate or embassy to schedule an interview. Please see below for a more detailed explanation for this step.

[NOTE: See discussion below regarding how to coordinate when an I-601A is needed.]

Step Seven: Medical Exam and Interview

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The next steps of the process involve preparing for and attending the visa interview. In the case of an immigrant visa application with the U.S. embassy in London, for example, the embassy mails an invitation to the applicant with an interview appointment date and a request to register themselves with an appointment account online. This account can be used to reschedule an interview after an appointment date has passed. The letter from the U.S. embassy has a lot of information on other preparation and interview details. For example, the applicant is directed to complete a medical examination performed by an Embassy approved physician in London prior to their visa interview. Recently, the U.S. embassy in London has been requesting that applicants have a pre-interview at the U.S. embassy in the afternoon, the day of their doctor's appointment to review the list of documents. The immigrant visa interview will be scheduled after this meeting.

The interview process can differ among consular posts. Therefore, for more detailed and accurate guidance on how to navigate the interview stage of an immigrant visa application, review the website of the specific consular post where the applicant is scheduled. At minimum, a printed copy of the DS-260 confirmation page should be brought to the visa interview, along with original copies of the civil documents.

HOW LONG DOES IT TAKE TO GET A CONSULAR APPOINTMENT ONCE THE NVC HAS REVIEWED ("DOCUMENTARILY QUALIFIED") A CASE?

Once the NVC has reviewed all the required documents and confirmed that everything appears to be in order, it will label the case "documentarily qualified" ("DQ'ed"). Once a case is DQ'ed, the NVC arranges with the consular post for an interview. Managing client expectations about timing from DQ to appointment can be hard to do. The NVC does not publish such processing times. Recently the NVC did inform AILA that it was working on a way to better share information related to IV interview availability. However, the NVC does not anticipate showing actual wait times.[2]

AILA member, Jennifer Chang, created a spreadsheet which tracks immigrant visa processing times. The document is accessible to all AILA attorneys and now serves as a wonderful resource to immigration practitioners.[3] Members are asked to add data to make this living document as accurate and useful as possible. In addition, there is a new resource from the International Refugee Assistance Project ("IRAP"), using data obtained through FOIA litigation on immigrant visa interview wait times, including the number of days each consular office is expected to need to clear their IV interview backlog as of December 2024. IRAP's blog New Data Shows Immigrant Visa Interview Backlogs at U.S. Consular Offices Around the World | International Refugee Assistance Project also links to all the State Department's NVC Interview Scheduling Backlog Reports for 2023 and 2024. Each report has a table of "Top 20 backlogs" that lists estimated time to clear the backlog for different consular offices (not just the top 20, despite the title). This can be helpful information for immigrant visa applicants and especially for applicants who can potentially process in different offices (recognizing that these are just estimates and that many policies could impact applicants going forward).

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[2] See AILA's DOS Liaison Committee notes (Dec. 6, 2024), AILA Doc. No. 24102304.

[3] The spreadsheet can be found here: https://docs.google.com/spreadsheets/d/1S6Rqk8tEP3XK1NaIS9sRaghvv9UBBPoymABfFD44tKc/edit?gid=1329441259#gid=1329441259/.

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AILA members have shared that congressional offices can sometimes get additional helpful information. For example, a recent response from the post at Ciudad Juarez to a Chicago area congressperson stated, "As of APR-2025, the NVC is scheduling IV interview appointments for the U.S. Embassy or Consulate in Ciudad Juarez, Mexico for applicants that were documentarily complete on or before MAY-2024." Finally, per the 2025 AILA DOS Liaison Committee Chair, Steven D. Heller, the DOS was set to roll out information similar to how the US consulate in Montreal (ca.usembassy.gov/immigrant-visa-process) does, however, the current Administration stopped that.

> "As of March 3, 2025, most Immediate Relative and fiancé(e) visa cases being scheduled for interview in Montreal were documentarily complete at the National Visa Center in November 2024; most Family Preference cases with visa numbers available that are being scheduled for interview were documentarily qualified in January 2025; and most Employment cases scheduled for interview were documentarily complete in March 2024."

HOW CAN ONE ASK FOR AN EXPEDITED APPOINTMENT?

If the case is still at the NVC, one can ask for expedited processing if a visa is available and the "case involves a life-or-death medical emergency." See travel.state.gov FAQs. Expedite request should be submitted through the NVC via its Public Inquiry Form "PIF": https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/ask-nvc.html (with follow-up via NVCExpedite@state.gov if needed). The NVC does not decide whether to expedite. Instead, the NVC forwards the expedite request to the designated consular post for a decision and then communicates the answer back to the requestor. Please note that sometimes consulates and embassies expedite unilaterally without a request. We saw many of these at the end of the pandemic when CDJ was apparently trying to catch up on backlogs, especially immediate relatives. They added the following language that made it look like the attorney or applicant asked for the expedite.

> *"*CDJ##########* Expedite Notification 29-FEB-2024*
>
> *The U.S. Embassy or Consulate in Ciudad Juarez, Mexico approved your request to process your immigrant visa case expeditiously. We are forwarding your case file to the embassy or consulate for their action."*

The U.S. Embassy in Beirut likewise expedited family-based immigrant applications in fall 2024 without request during dangerous military offensives in Lebanon.

There can be some push and pull aspect to this, so an attorney must write to the designated consular post at the same time as asking for the NVC expedite. This can be reassuring if a response is received like, "We will expedite, if NVC asks us." The attorney can also mention the embassy's amenability to the NVC. Once a case has already moved from the NVC to the post, expedite requests are made directly to the post.

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During a meeting with the U.S. embassy in Paris in March 2025, AILA RDC EMEA Chapter learned that the consular post had cleaned up their backlog for family-based immigrant interviews. The consular officers said, when a post has no backlog, one can expect:

(1) The post to be amenable to expedite requests with "any legitimate reason," not just humanitarian cases. Any legitimate reason is something beyond "I just can't wait."
(2) The NVC will set appointments only two months from DQ. That is NVC's minimum time for coordinating an interview with a consular post.

CHILD STATUS PROTECTION ACT (CSPA)

If a visa applicant is a child that is about to turn 21 years of age ("aging out") or will age out within the next year, it is important to flag this issue to the NVC. Immigration law defines a "child" as an unmarried person under the age of 21[4]. Under prior law, permanent residency had to be issued before the child turned 21 years of age. However, delays in the processing of immigrant petitions and visa applications often led to aging-out problems. The CSPA,[5] enacted in 2002, amended immigration laws by changing how a beneficiary is determined to be a "child".

CSPA permits an applicant for certain immigration benefits to retain classification as a child even if the applicant has reached the age of 21.[6] In other words, CPSA freezes the age of the child so that the child can continue to immigrate as long as certain conditions are met based on the applicable category. It applies to IV applications expressly specified in the statute, including immediate relatives, principal and derivative applicants in family and employment-based visa classifications, derivative applicants in diversity visa cases, and derivative applicants in asylee and refugee cases.

For immediate relatives (IR), Violence Against Women Act (VAWA)[7] self-petitioners (IB), derivatives of widow(er)s (IW2), and asylee and refugee follow-to-join cases (V92/V93), if the applicant was under the age of 21 on the date of the petition filing, the applicant's age is frozen as of the date of the petition filing. There is no requirement for IR, IB, IW, or V92/V93 cases to seek to acquire LPR status within one year of visa availability.

For preference cases, including family preference under the VAWA (B22, B23, B25), employment-based preference, including SIVs, and Diversity Visa (DV), the applicant's CSPA age is calculated on the date that the visa became available (see 9 FAM 502.1-1(D)(4) paragraph a). If the CSPA age is under 21 and the applicant seeks to acquire LPR status within one year of visa availability (see 9 FAM 502.1-1(D)(7)), the applicant is a child under the CSPA as long as the child is unmarried.

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[4] INA §101(b)(1).
[5] Child Status Protection Act (CSPA), Pub. L. No. 107-208, 116 Stat. 927 (2002).
[6] CSPA applies to applicants whose IV petitions were approved after enactment (August 6, 2002) and to applicants with petitions approved before enactment who had not yet applied for permanent residence (either an IV application or an application for adjustment of status). See INA §203(h).
[7] Violence Against Women Act of 1994 (VAWA 1994), Pub. L. No. 103-322, §§40701–03, 108 Stat. 1796, 1953–55.

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The chart below, which can be found at 9 FAM 502.1-1(D)(3), outlines the applicability of the CSPA to various categories:

For family and employment preference beneficiaries: their CSPA age is the result of subtracting the number of days that the immigrant visa petition was pending with USCIS (from date of receipt to date of approval, including any period of administrative review) from the actual age of the applicant on the date that the visa became available.

Immigrant Category	**CSPA Age Determination**	**Does Sought to Acquire Requirement Apply?**
Immediate Relatives (including VAWA IB2)	Age frozen on Form I-130/I-360 filing date (see 9 FAM 502.1-1(D)(4) paragraph a(1)).	No
Derivatives of Widow(er)s (IW2)	Age frozen on Form I-360 filing date or date Form I-130 converted to Form I-360 (see 9 FAM 502.1-1(D)(4) paragraph 1).	No
Family-Sponsored Preference Principals and Derivatives (including VAWA B22, B23, and B25)	Calculated. True age on date of visa availability minus days petition pending (see 9 FAM 502.1-1(D)(4) paragraph a(2)). For petitions filed as family preference, examine petition conversions carefully (see 9 FAM 502.1-1(D)(6)).	Yes
Employment-Based Preference Derivatives (including SIV)	Calculated. True age on date of visa availability minus days petition pending (priority date may be different from petition filing date in employment-based cases) (see 9 FAM 502.1-1(D)(4)).	Yes
Diversity Immigrant Visa Derivatives (DV3)	Calculated. True age on date of visa availability minus days between the lottery entry start date and the notification date of entrants having been selected from the applicant's true age (see 9 FAM 502.1-1(D)(4) paragraph a(4)).	Yes
Follow-to-join Asylees (V92)	Frozen on the date the principal asylee parent's Form I-589 is filed. See 9 FAM 203.5-4(A) paragraph e(4).	No
Follow-to-join Refugees (V93)	Frozen on the date the principal refugee parent's Form I-590 is filed (the date of the parent's interview with USCIS). See 9 FAM 203.6-8 paragraph d(1).	No

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CSPA Age Calculation for Preference Categories (excluding cases originally F2A where petitioner naturalized)	
Step 1	Approval date – Filing date/Days petition pending
Step 2	Age on date visa available – Day petition pending/ CSPA age

9 FAM 502.1-1(D)(5).

If an applicant is eligible for CSPA, it should be noted in the documents filed with the NVC so that the case can be prioritized, if required. It is important to attach all evidence of CSPA eligibility and provide the necessary calculation that the NVC will require to facilitate the NVC's understanding and review of the eligibility requirements under CSPA.

In family and employment-based preference and DV cases, INA 203(h) requires that an applicant seek to acquire LPR status within one year, not that the applicant acquire such status within one year[8]. An applicant may satisfy the seek to acquire requirement by any of the following[9]:

- Filing the Form DS-260 (affected child, not parent)
- Filing a Form I-824, Application for Action on an Approved Application or Petition on the applicant's behalf
- Filing an Application to Adjust Status (Form I-485) by the applicant
- Filing a Form I-864, Affidavit of Support
- Payment of the Form I-864 fee to NVC only if the applicant is listed on the Affidavit of Support filed with the NVC at any time.
- Payment of the DS-260 fee (including rejected fee payments)
- Any other actions that the consular officer believes may satisfy the seek to acquire requirement

Applicants who fail to fulfill the sought to acquire requirement within 1 year of visa availability may still be able to benefit from CSPA if they can establish that their failure to meet the requirement was the result of "extraordinary circumstances."[10]

CONSULAR PROCESSING FOR IMMIGRANT VISA APPLICANTS WHO NEED TO *FIRST* FILE FOR A PROVISIONAL WAIVER OF UNLAWFUL PRESENCE (I-601A)

For applicants who seek a provisional unlawful presence waiver (I-601A) from USCIS, there are special timing concerns. First, in order to file for an I-601A, the applicant must have paid the required IV fee(s) on CEAC and have the receipt for the same. However, the applicant does not need to complete any other part of the NVC processing to proceed with the I-601A filing. The question is when does one start the rest of the CEAC process (steps 4 and 5 mentioned above).

Attorneys should present the options available to clients. Some clients will prefer to wait for a decision on their I-601A waiver before investing more time and legal fees into the additional step. If a waiver application is denied, will the applicant proceed to the consulate? Probably not. However, a high percentage of well-prepared I-601As are approved. As such, some clients will

[8] 9 FAM 502.1-1(D)(8) Sought to Acquire LPR Status Provision.
[9] *Id.*
[10] 9 FAM 502.1-1(D)(8).

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want to do all that they can and therefore decide to proceed with the additional CEAC steps while the I-601A is pending even though the I-601A can take years to be adjudicated.

The disadvantage to moving forward with steps 4 and 5 on CEAC while the I-601A remains pending (other than possible denial of the I-601A) is that some of the documents uploaded to CEAC will expire and need to be updated in the future (i.e., foreign police certificates are generally valid for two years from issuance). Due to these various scenarios, it is extremely important to manage client expectations about timing, and even the possibility of this program going away with the new Administration that is hostile to immigrants. This can be a long and frustrating process, but it is still one of the only viable processes for certain clients.

The NVC is not supposed to DQ a case where the I-601A remains unadjudicated. The NVC, of course, is not perfect. In the last several years, the NVC has prematurely placed numerous applicants in the queue for interview without realizing that I-601As are unadjudicated. Applicants who need I-601As certainly do not want to leave for an interview abroad unless they first have an approved I-601A. AILA has advocated for the NVC not to prematurely DQ a case, and the NVC claims to have stopped this. However, being placed in the queue can be a blessing in disguise, especially for backlogged consulates. For example, if the average wait time for an immigrant visa appointment at Ciudad Juarez, Mexico is more than one year (see preceding information about processing times), then that wait can concurrently pass during the time the I-601A remains pending. If your client is scheduled for an immigrant visa appointment before the I-601A is adjudicated, then the attorney can ask for a new immigrant visa appointment after the scheduled appointment passes. With many posts, especially Ciudad Juarez, the reschedule queue is far shorter than the original wait. Moreover, one can prolong the visa appointment as much as needed so long as more than 1 year does not pass without communication to the consulate.

> **Practice Tip**: CDJ does not have correct link on website so be careful and check for correct links correct: https://forms.office.com/pages/responsepage.aspx?id=dFDPZv5a0UimkaErISH0Swa7UTqs5q1OtLpFdZgB5VxUNlk1MVpYTUpMNEcwMVdaMFoySzgxS0k4MC4u
>
> **Not correct**: https://mx.usembassy.gov/contact/ (Legal Inquiry Form link)

WHAT HAPPENS WHEN THINGS GO BAD AT THE CONSULATE?

Unfortunately, many problems can occur at the time of the consular interview. This can be extremely frustrating for both the client and the attorney, especially when clients and attorneys and clients and their families are now countries apart. Below, we will provide some tips to help avoid and navigate some of these issues.

Properly preparing your client for the immigrant visa interview is imperative. Revisiting all possible issues throughout the case from intake through preparing your client for this pivotal interview is the key to a successful outcome. It is vital to continuously question clients about their immigration and arrest history. Advise clients about how illegal drug use (including the fact that marijuana is still illegal under federal law) can be used to deny an immigrant visa. Explain how

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tattoos are examined for suspicion of gang membership in some countries, and how the posts can scrutinize all grounds of immigrant visa ineligibility. Clients' memories sometimes get more vivid once they finally reach the point of preparing for the interview at the post. This is especially true for those who have approved I-601As who are leaving the US (and all the constitutional protections while in the United States) to go to the consular post, leaving loved ones and livelihoods behind in the United States. Remind clients to tell you the truth so you can prepare them properly.

When a post finds any ineligibility ground other than what the I-601A approval waives, the I-601A is revoked. There have been numerous revocations of I-601As, including when a post finds possible health ineligibility (i.e., admission of marijuana use at the panel physician's exam) or a smuggling ineligibility ground (i.e., parent having entered with the child illegally in the past). Additionally, when a post finds any fraud, misrepresentation, or the permanent bar due to unlawful presence, the I-601A will be revoked, leaving the client in a precarious situation. Sometimes the client is eligible to apply for a new waiver(s) but will be forced to wait lengthy periods of time outside the United States for the waiver application(s) to be adjudicated. Other clients will simply not be eligible to continue, for example, if they have a controlled substance offense involving something other than possession of less than 30 g of marijuana. As such, it is key to understand and revisit all possible ineligibility findings that the consular officer could make at interview at all stages of representing your clients. Some clients are simply not good candidates to leave the United States to go to a post even if they have an approved I-601A. Preparing ahead of time is key. Counsel your clients about making admissions to the panel physician and consular officers. Arm your clients with written explanations of what the issues are and why the client is eligible (i.e., where there is a criminal charge, prepare a short cover letter with the certified copy of disposition explaining what happened legally and why it does not amount to a crime involving moral turpitude ineligibility). Better yet, anticipate the issue at the interview and include the written explanation in the DS-260. (*See* Stage 4 above.) Since attorneys cannot represent clients at consulates for these interviews, clients must be prepared to advocate for themselves orally and understand which documents they have for the consulate. It is common for the U.S. citizen or lawful permanent resident petitioner or other loved ones to be handling the paperwork for the actual applicant so now is the time to make sure the applicant knows that they will need to be cognizant of all possible scenarios since their petitioner and their attorney will not be present with them at the consulate.

If the post revokes your client's I-601A and refuses the visa, it is critical to figure out what went wrong. Ask your client what was discussed with the consular officers and the panel physician. Of course, the posts make mistakes. And health ineligibility may be cured after a year of remission or random drug testing at the medical clinic. Advocacy with the consular post can be critical. These situations are time sensitive. There is nothing more sobering than a client being refused a visa at the post who thought they would be back in the United States with their families after just a few weeks abroad. When it appears that the post misunderstood the facts or misapplied the facts to the law, advocacy after the fact is key. Advocate with the post first and then if needed with LegalNet, the lawyers for the consular offices – located in Washington, DC in the DOS Visa Office legalnet@state.gov.[11]

A recent case highlights this point. The client was refused his visa and found ineligible under multiple provisions. While the consulate did not tell the client orally nor in writing, the I-601A

[11] See 9 FAM 103.4-1.

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approval was revoked. The attorney communicated with the client to understand what was discussed at the consulate. Then she wrote the post to explain that it erred and cited the record obtained through multiple FOIAs[12] to prove the facts. A concise but thorough legal argument with cites to the law was sent. Where you cannot attach documents when communicating with the post (i.e., Ciudad Juarez), tell the post that you have proof to provide and want the opportunity to provide it. In this case, the consular officer erroneously assumed the client had self-deported when he had actually left under pre-hearing voluntary departure. The FOIA results patched together from various agencies were provided to convince the post that their ineligibility finding was in error. Posts are not quick to review such communications and are certainly not quick to fix nor admit mistakes. This led to understandable anxiety from the client and his family to get a response to the attorney's legal arguments. The attorney suggested they reach out to their congressional representative or one of their senators to try to get a potentially faster response. After much back and forth including the attorney having to provide the post with the FOIA results (that the post should have had available to it from various government agencies), the I-601A was eventually reinstated and the visa issued. This took several grueling months for the clients and attorney alike.

ANTICIPATING ISSUES: THE UNITED KINGDOM'S DRUG POSSESSION CAUTION

One issue that crops up for applicants from the United Kingdom is the drug possession caution, which can lead to a permanent ineligibility for obtaining an immigrant visa. A caution is a disposition procedure that occurs in a police station, after an arrest. The arrested person signs a document agreeing that they committed a crime, and then they are released. The caution remains a part of the person's record on the UK Police National Computer and appears on a police certificate for some period of time. It is then "stepped down." A "stepped down" caution is hinted at on a UK police certificate that reads "No ***Live*** Trace," rather than "No Trace." The caution will be visible on a subject access request record (SAR).

A UK caution issued later than July 10, 2008 is as good as a conviction for visa adjudication purposes.[13] Due to the devasting effects of a drug possession caution for immigrant visa eligibility, attorneys should try to spot the issue early in any representation. Guide the applicant to an experienced UK criminal law solicitor and investigate deleting the caution based on procedural grounds. Often this is an option with a caution, especially if it is old and the applicant has had a clean record since that time.

An ineligibility for the caution may still be found despite the deletion at the immigrant visa interview at the embassy, **but the practitioner may appeal to the consular post's legal office, called LegalNet, with a letter from a UK criminal law solicitor as supporting evidence**. The solicitor's letter should confirm that that the caution was deleted on procedural grounds among other grounds that are possible. Often the police do not specify the grounds of deletion. They just delete it based on the solicitor's request. The solicitor should request the deletion based on multiple grounds including procedural and public interest.

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[12] Freedom of Information Act (FOIA), 5 USC §552, as amended by Pub. L. No. 104-231, 110 Stat. 3048.

[13] *See* Practice Pointer: Dealing with U.K. Cautions at the U.S. embassy by the AILA DOS Liaison Committee (Dec. 16, 2014), AILA Doc. No. 14021952.

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