

A Conversation With Your Client: Preparing Them for Their Family- Based Immigrant Visa Process

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Consular Processing Roles: USCIS, NVC, and US Consul

- DHS U.S. Citizenship and Immigration Service (USCIS)
 - Function of USCIS
 - Family Based Petitions
 - Employment Based Petitions



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National Visa Center (NVC)

- Function of the NVC
- What does the NVC Collect:
 1. Visa Fees
 2. Immigrant Visa Forms
 3. Affidavit of Support Documentation
 4. Documents to Support Eligibility for Visa



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NVC (cont'd)

- When does the NVC processing begin?
- Processing for the immigrant visa at the U.S. Consulate
 1. Who schedules the interview
 2. How long does it take before an interview scheduled for a current visa number
 3. What to do when an interview is not scheduled
 4. How to reschedule the interview



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U.S. Department of State (DOS)

- Function of the U.S. Embassy/Consulate
- Requirements for the consular immigrant visa interview
 1. Medical Exam
 2. Supporting Documents
 - What to bring
 - Order of documents
 - Originals or copies
 - Waivers



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DOS (cont'd)

- Options when the visa is refused
 1. Is there an appeal process?
 2. Motion to Reconsider
 3. Opinion from Legal Net



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Completing and Signing DS-260

- What is the Application for Immigrant Visa, DS-260?
- Form DS-260 vs DS-230
- How to Complete the DS-260
- Can the DS-260 be "saved"?
- Who can sign the DS-260?



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Preparing for Visa Interview

- Role of the attorney
- No guarantees of visa
- Attorney cover letter
- Local post procedures



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Preparing for Interview (cont'd)

- Client Preparation
 1. Legal Issues
 2. When to travel
 3. Minor Applicants
- Family Relationships
- Employment Eligibility
 1. Employer Support Letter
 2. Verification of Prior Experience
 3. Documenting Prior Legal Status



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Preparing for Interview (cont'd)

- Grounds of Inadmissibility
 1. Criminal Record
 2. Entries and Departures
 3. Prior Immigration History
 4. Fraud and Misrepresentation
 5. DWI or DUI Traffic History
 6. Smuggling



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Strategies for Consular Interview

- Presenting legal memos
- Affidavits
- Applicants appearance
- Applicant's knowledge of facts and legal issues of case
- Applicant's demeanor



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Strategies for Consular Interview (cont'd)

- Administrative processing
- Communication with U.S. Embassy/Consulate
- Communications with DOS, post decision



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Screening for Bars to Admission

- Applicant's Criminal History:
 1. Admission vs Convictions
 2. Expunged Record vs Vacated Order
- Entries and Departures:
 1. Unlawful Presence vs Failure to Maintain Status
 2. Voluntary Return vs Expedited Removal at Border
- EOIR Proceedings: Voluntary Departure vs. Order of Removal



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Screening for Bars (cont'd)

- Fraud and Misrepresentation
 1. Fraud on entry
 2. Misrepresentation of intent at time of entry
 3. False claim to U.S. citizenship status
- Health Bars
 1. Admissions to civil surgeon (drug and alcohol)
 2. Class A vs. Class B Medical Condition



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Limited Remedies

- Is there an appeal?
- Advisory opinion
- Motions To reconsider
- New visa appointment
- Waivers of inadmissibility



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Waiver Process

- Eligibility Requirements for Waivers
 1. Forms I-212 and I-601
 2. Qualifying relative
 3. Hardship
- When and Where Waiver is Filed
 1. Current process
 2. Possible "stateside" process for UP bars
 3. Centralized filings
 4. Processing times



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Questions & Answers



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Preparing Clients for the Immigrant Visa Processing and Interview

by Silvia Graves

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A. Consular Post Information

1. Review the consular procedures of the U.S. embassy or consulate before starting the immigrant consular process to obtain updated information about your process.
2. Check AILA's *Visa Processing Guide* and *Consular Posts Handbook*.
3. Each post has its own policies and procedures. It is important to know and understand these guidelines, policies and procedures prior to starting the process.
4. The National Visa Center (NVC) collects visa fees, documentation and in select consulates and embassies, schedules the visa appointments. There is information on immigrant visa processing at the U.S. State Department webpage available at www.travel.state.gov
5. Review information sent by the NVC to determine time, location and date of the visa interview.
6. Once the NVC schedules an appointment or the Department of State refuses the immigrant visa application, you may contact the consular post, but always follow the policies and procedures of the post such as a fax or email in advance of a telephone call.
7. There are emails to inquire about the status of a waiver filed at a U.S. consulate, U.S. Citizenship and Immigration Services (USCIS) Office. In Ciudad Juarez, for example, you must contact the USCIS office in Ciudad Juarez by email at: cdj.uscis@dhs.gov.

B. Evaluate Eligibility to Obtain Immigrant Visa and Waiver Abroad

1. There must be an approved petition on behalf of your client.
2. Visas in the pertinent classification must be available at the time of the consular interview.
3. Your client must be admissible to the United States and not be subject to one of the grounds for denial of admission to the United States.
4. Your client must be eligible to obtain an immigrant visa, at the time of his immigrant visa interview. [*Pazcoguin v. Radcliffe*, 292 F3d.1209 (9th Cir. 2002)]
5. If your client is not statutorily eligible for an immigrant visa, do not encourage him to travel outside the United States to attend a consular visa interview. You may reschedule the appointment, while you research the eligibility of your client to obtain an immigrant visa. The consular officer will not issue an immigrant visa to an applicant who is not eligible or is inadmissible, and your client could end up stranded outside of the United States indefinitely.
6. Review with your client any gaps in lawful status. If he has overstayed beyond his authorized stay in the United States for more than six months but less than a year, or more than one year, before he departs the United States to attend the immigrant visa interview, he is not admissible to the United States. [INA §212(a)(9)(B)]
7. Make sure your client has not been previously deported or is not in unlawful status for more than six months (or more than one year) in the United States, or that he has not departed the United States and later returned without inspection. [INA §212(a)(9)(C)]
8. Discuss past misrepresentations of material facts in procuring a visa or admission into the United States with your client, including false claims to be a citizen of the United States on or after September 30, 1996. Press your client to refresh his memory. [INA § Section 212(a)(6)(C)]
9. Discuss any past criminal record. Make sure the client is eligible for the visa in light of his criminal record. Have recent certified copies of any criminal or traffic record. [INA §212(a)(2)]
10. Ask your client if he has ever been in Court and if he has ever been contacted by the police. Your client needs to disclose to you any contact with authorities prior to making arrangements for the consular interview. Clients have a tendency to believe that a dismissed case is an “erased record.” Once the case is closed, your client may regard the disclosure as inapplicable.

11. Find out if an Immigration Judge or Immigration Officer has ever issued an order of removal from the United States. Did he depart and return to the United States without inspection? [INA §212(a)(9)(C)]
12. How old is your client? Is he subject to or exempt from the 3 or the 10-year bar? If he turns 18 years of age and he is in the United States, he will not qualify for the minor exception. [INA §212 (a)(9)(B)(iii)(I)]
13. If he has been in the United States illegally, how many times has he left the United States and returned illegally? [INA §212 (a)(9)(C)]
14. Is there a security or related grounds issue that needs to be addressed? [INA §212(a)(3)]
15. Is there a potential public charge ground? Has your client received cash welfare, or been institutionalized at government's expense? [INA §212(a)(4)]
16. If the client is not admissible to the United States, does he qualify for a waiver?
17. Does the client have the qualifying relationship for the waiver? If he is subject to INA §212(a)(9)(B) does he have a U.S. citizen (USC) or lawful permanent resident (LPR) spouse or parent? A USC son or daughter is not a qualifying relationship.
18. If there is a qualifying relationship, can you prove extreme hardship? Keep in mind that separation or economic reasons alone are not sufficient to prove extreme hardship. [*Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968); *Matter of O-J-O*, Int. Dec. 3280 (BIA 1996); *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999); *Hassan v. INS*, 927 F.2d 465, 467 (9th Cir. 1991).]
19. Has there been a conviction for a DWI in the last three years? A drunk-driving conviction is not a statutory ground for visa ineligibility. However, the Department of State requires that when there is a single DWI arrest or conviction within the last two to three calendar years (or two or more DWI arrests at anytime) that the consular officer, refer the case to a designated panel physician. The consular officer may also conduct a consular investigation to determine if your client is inadmissible to the United States under INA §212(a)(1)(iii).
20. Has your client ever used drugs? Designated panel physicians conducting medical exams for immigrant visas inquire closely about these issues with applicants.

21. Your client must have original documents to present at the consular interview and certified copies of criminal records.

C. Prepare the Immigrant Visa Application and Supporting Documentation

1. Review carefully all information provided by the client to prepare for the immigrant visa application: the underlying immigrant petitions and/or labor certifications, work experience, departures from the United States, legal and illegal status, resumes, birth certificates and representations on the consular forms.
2. There is a copy of Instructions at most U.S. embassy and consulate web pages that includes information on how to proceed once the Consulate has received all the documents from the NVC and information that an applicant needs to read before attending the interview.
3. Meet with your client prior to submitting any forms to the NVC to ensure that the information is accurate and that he is familiar with all forms and supporting documentation. Remind him that his responses must be truthful and accurate.
4. Review each question carefully and make your client aware of the penalties and consequences of fraud.
5. When preparing the consular package you must submit **original** documents with a photocopy attached to the original. The consular officer has the right to request original documents. Additionally, birth and marriage certificates in Spanish are acceptable without English translations at the U.S. Consulate in Ciudad Juarez.
6. Basic documents that must be available in original are as follows:
 - a. Passports
 - b. Birth Certificates
 - c. Marriage Certificates
 - d. Divorce Certificates
 - e. Registration of Informal Marriages
 - f. Certificates of Naturalization
 - g. Passports
 - h. Proof of Cohabitation, such as:
 - Rent receipts, leases or mortgages held
 - Property deeds
 - Utility bills
 - Joint Bank Accounts
 - Joint Credit Accounts

- Life and Medical Insurance Policies
- Auto registrations
- Drivers Licenses of both spouses
- Birth Certificates of all children born of the marriage
- Photographs of the wedding, engagement and holidays with family members
- Correspondence addressed to the applicant by the petitioner or family members
- Joint income tax records
- i. Income Tax Returns
- j. Verifications of Employment
- k. Bank Statements
- l. Check Stubs
- m. If immigrant petition based on a labor certification, copies of labor certification application, and immigrant petition approval notices
- n. Verifications of Work Experience
- o. Company Letters verifying job offer
- p. USCIS approval notices and visas
- q. School Transcripts
- r. Forms I-20

7. Be organized. Prepare the consular application with a Table of Contents and tabs, to facilitate location of the documents for the consular officer.

8. The NVC forwards electronically all collected information to the consular post prior to the consular interview. Nonetheless, it is a good idea to send your client with a copy of all the supporting documents that were submitted to the NVC, to allow him to review the documents submitted and to prepare for the consular interview. Review if the U.S. Embassy or Consulate your client will attend requires the documentation in a specific order. For example, in order to expedite the processing of the application, the Consulate in Ciudad Juarez prefers that you arrange your documentation in original with a photocopy of each document in the following order:

- a. Biographic Data Questionnaire (DS 230-1 and II) or Electronic Visa Application DS 260
- b. Original and photocopy of petitioner's and applicant's long form birth certificates (not abstract)
- c. Applicant's marriage certificate
- d. Divorce decrees of petitioner and applicant
- e. Affidavit of Support (Form I-864) with supporting documents
- f. Approved petition
- g. Prior visas and USCIS approval notices

This packet must be accompanied by a Mexican Passport, medical examination and two color photographs, passport size, 2 in. X 2 in., in color, frontal view.

9. Original documents will be returned after the consular interview.
10. Make sure that all company letters and verifications of past work experience are original and consistent with the information on the labor certifications and immigrant petitions.
11. If there is a criminal issue, prepare a Memorandum of Law, stating the facts, the statutes, regulations and the case law in support of your position that your client is admissible to the United States.
12. If you wish to change the immigrant visa interview, follow the guidelines of the particular post to change or postpone the consular interview.
13. While immigrant visa fees are paid to the NVC, filing fees for waivers are paid at the Embassy or Consulate where the USCIS process the waivers.
14. The waiver fee may be paid in cash, credit/debit card, U.S. Postal/U.S. bank money order or by cashier check payable to U.S. Treasury. The Consulate discourages payments in cash and recommends the other alternative payment options.
15. The process to present the waiver at a consular post abroad varies in different consular posts. Please review updated procedures at the particular post where your client will appear. There are some posts where the waiver is presented at the time of the consular interview and the consular officer then forwards the waiver and supporting documents to a USCIS office processing the waivers. Other posts require that, after the immigrant visa interview, the applicant (or attorney of record) make an appointment to bring the waiver and pay the fees. The waiver is then forwarded to the designated USCIS office, which is sometimes located in a different country. The Consulate in Ciudad Juarez, Mexico, for example, requires that an immigrant visa interview take place first. Then, when the applicant is found inadmissible, a day or two after the consular interview, the applicant or attorney can schedule the waiver appointment for the applicant through an Infopass appointment, following the instructions on the Consulate's webpage.
16. Most consulates and embassies do not allow attorney representation at the time of the consular interview. However, while the attorney cannot attend the consular interview, Immigrant Visa Sections are responsive to inquiries by legal counsel, within the guidelines stated on their webpage instructions.
17. Appointments for waivers vary from country to country. In some, it may take six to eight weeks to get an appointment to present the waiver. The

applicant must remain in that foreign country during the time between the immigrant visa interview appointment and the waiver appointment. Furthermore, the applicant must stay abroad until the waiver is approved and the immigrant visa is issued, in order to avoid problems with inadmissibility. [INA § 212(a)(9)(C)]

D. PREPARE YOUR CLIENT FOR THE CONSULAR INTERVIEW

1. Emphasize to your client to be truthful to the consular officer at all times, without exception.
2. If there is a ground that makes your client inadmissible, review the circumstances of the event with him and make him explain to you the facts as he would to a consular officer. Discuss any criminal record in detail, including traffic tickets.
3. Discuss with your client the specific procedures at the consulate where the interview will take place. For example, the Consulate in Ciudad Juarez does not allow family members to attend the consular interview unless the applicant is a minor or that family member is also scheduled for a consular appointment. In addition, in most consular posts, the applicant is not allowed to bring cellular phones, electronics, food, matches, cosmetics, cameras or electronic games to the consular interview. There is a list of specific documents that are not allowed into the consulate at the webpage of most U.S. Embassies and Consulates that process immigrant visas.
4. Your client should know and understand his consular application and supporting documentation. He should read every document that he is presenting to the Consulate and be completely familiar with all information and document included in his consular package.
5. Interview both your client and his petitioner. Both should be familiar with the consular documentation and information presented to the post. Further, the petitioner should be prepared and within reach at the time of the consular interview, in case the consular officer wishes to speak to him/her by telephone.
6. Advise your client to travel at least four business days prior to the interview, to attend his medical appointment and have time to receive the medical results before his consular appointment date.

7. Inform your client that the specific visa issuing post designates the panel physician(s) authorized to conduct the medical examinations. The NVC will provide a list of the authorized panel physicians. If there is a mental health or mental retardation situation for an applicant, a detailed medical record of the applicant may be submitted to the authorized physician in order to explain the previous medical condition of the applicant.
8. Your client must present the following at the time of the medical appointment:
 - i. Visa Appointment Letter
 - ii. Passport
 - iii. U.S. \$ 165.00 fee to cover medical examinations for adults
 - iv. U.S. \$ 135.00 fee to cover medical examinations for children under 15 years of age
 - v. No additional fees should be charged for medical examinations
 - vi. A 10% tax must be added to the cost of the exam
 - vii. It is not necessary to bring a photo to the medical exam. It will be provided by the medical clinic without charge.
9. Discourage your client from consulting with “visa fixers” after he arrives at the U.S. Embassy or U.S. Consulate abroad. There are people working across consulates, who represent themselves as experts and guarantee approval of immigrant visas and waivers. Make your client aware that some of these people may approach them while in line at the U.S. consular post.
10. Remind your client to be respectful and professional with the consular officer, even if he believes that the consul is wrong or unfair. Your client should not interrupt the consul, but should conduct himself professionally at all times, regardless of the final determination by the Consul.
11. There should be no surprises to your client, to the consular officer, or to you at the time of the consular interview. Prepare your client in advance. He should know his answers. Review the application with the client for accuracy and legal issues. Discuss any potential problem issues and know prior to the consular interview, what your client would answer.
12. Emphasize the importance of dressing professionally for the consular interview.
13. In case that a waiver is required, your client must know that the consular office will first find him inadmissible to the United States. The client will then be told to make an appointment for the waiver. As the attorney of

record, you can make these appointments on behalf of the client via Infopass after the consular visa interview has taken place.

E. POST CONSULAR INTERVIEW

1. If the consul finds your client to be inadmissible to the United States and/or ineligible, the consul will deny the immigrant visa application. The consular officer will explain the reasons for the visa refusal in writing and the guidelines to file a waiver and to make a waiver appointment. If you do not agree with the consular decision, follow the guidelines of the particular post, to contact the Immigrant Visa (IV) Section to discuss the decision with the Chief of this Section.
2. There is no appeal to the decision of a U.S. Consul. You may request the Consul who conducted the interview, or the Chief of the IV Section, to reconsider the visa refusal based on facts substantiated by your file or additional information or documentation. Sometimes it is possible to offer additional evidence to overcome a deficiency or to supplement a requirement.
3. If there is a legal issue that you cannot resolve with the IV Chief, consider contacting Legalnet. However, follow the guidelines to communicate with the IV Chief and try to resolve the issue with the Consulate prior to involving Legalnet. If the IV Chief disagrees with your position on a legal question, and you believe that the law supports your position, request an advisory opinion from the U.S. Department of State, via legalnet@state.gov
4. If it is not on the webpage of the consular post, you may Contact the IV Section of the specific consular post to ascertain the procedure to reopen the immigrant visa process, to submit a new waiver. This occurs when the client retains your services after the original waiver was denied. You might request the IV Chief to reopen the case to allow your client another opportunity to present another waiver to the USCIS, without having to file another petition.
5. It is important to remind your client to remain in his home country while you work on clarifying a legal issue, processing a waiver, or applying for an advisory opinion with the Visa Office.

6. Remember that there are AILA mentors in consular issues who you may contact to discuss your case and receive good information.
7. Be patient with the process and do not give up ... ever.