

PRESENTED AT

UT Law CLE

44th Annual Conference on Immigration and Nationality Law

October 22, 2020

Consular Processing Update

Unique Challenges to Visa Applications of 2020

Author Contact Information:

Kenneth Harder

Dunbar Harder, PLLC

Houston, Texas

kharder@dunbarharder.com

713-782-4646

Unique Challenges to Visa Applications of 2020

Introduction

Multiple, over-lapping travel restrictions create significant challenges for immigrants and nonimmigrants seeking to obtain a visa or enter the United States. These include the resumption of routine visa processing at U.S. consulates, health-related travel restrictions imposed on persons who are or have been present in certain counties or areas and the suspension of entry to the U.S. of certain immigrants and nonimmigrants. Each of these issues raise questions about the procedures in place now as well as plans for processes to be adopted as routine visa application appointments at posts resume. The following discussion topics address some of these questions and concerns.

1. Suspension and Reopening of Consular Visa Services

On March 20, 2020, the U.S. Department of State (DOS) suspended routine visa processing at all consular posts worldwide.¹ This measure was taken in response to the health-related risks associated with the COVID-19 pandemic that gripped the world beginning at that time. Adjudication of visa applications virtually ceased. Most consular posts, however, continued to accept visa applications in circumstances justified by a humanitarian emergency.

Applications for an emergency visa application appointment are made by following the instructions provided on the website of each individual consular post. In most cases, applicants must first schedule a visa appointment through the normal online channel. Once the appointment is scheduled, applicants have an option to request an expedited appointment directly through the visa scheduling online system. At some posts, sending an email request for an expedited appointment is required. To verify which procedure is used at a given post, consult the consulate's website.

Beginning on July 15, 2020, consular posts began to resume visa application processing on a limited basis as local conditions and resources allow. Initially, DOS concentrated on scheduling appointments for family-based immigrant visas categories not subject to Presidential Proclamation 10014 (see discussion below) and student, F-1 and M-1 nonimmigrant visas and certain J-1 visas.

DOS admonished prospective visa applicants that substantial backlogs that developed during the suspension of visa application services could result in a lengthy wait for an appointment. The availability of visa appointments varies greatly depending on the consular post and the visa category.

For example, when the U.S. Embassy in London resumed visa services, applications for treaty-based E visas were significantly backlogged. The consulate created a tiered system for allocating appointments and appears to be quite inflexible in varying from that structure to arrange an emergency appointment. Paradoxically, smaller consular posts tend to have appointments available apparently due to lower volume of visa applications leaving smaller backlogs.

Application appointments are not available for some visa categories at some posts for more than 11 months. The best approach to this extreme situation appears to book the appointment then either request an expedited appointment or monitor the post's calendar for earlier appointment dates that may become available to reschedule.

¹ <https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html>;

information about the suspension and resumption of routine visa application processes generally may be found in the U.S. Visa News section on the Department of State website located at travel.state.gov.

Expedited Appointments

In those situations where a visa application is required on an emergency basis, visa applicants should consult the website of the post where the application will be filed for information about how to request an emergency appointment. Favorable factors in support of an expedited appointment include activities intended to address health-related concerns associated with the COVID-19 pandemic whether through clinical treatment or research. Also given favorable consideration are humanitarian factors such as an ill close family member. Consular officers are authorized to grant emergency appointments. There is no need for a post to request review by the Visa Office.

Visa Interview Waiver

As a general rule, each person applying for a nonimmigrant visa who is age 14 through 79 is required to attend a visa interview.² A consular officer in an individual's usual country of residence may waive the visa interview when applying to renew a visa that expired no more than 12 months earlier provided that the individual has no immigration violations.³ The Secretary of State also is authorized to waive the visa interview requirement in unusual or emergent circumstances.⁴

To relieve the backlog of nonimmigrant visa appointments following the reopening of consulates, DOS announced on August 25, 2020 that the visa interview waiver program will be expanded to allow applicants whose nonimmigrant visa expired up to 24 months prior to the interview provided that the individual is otherwise eligible. This expanded program will be available through December 31, 2020.⁵

Expansion of the visa interview waiver process is intended to achieve two benefits. First, by waiving interviews and limiting the number of applicants appearing at a consular post, DOS hopes to reduce the risk of COVID-19 exposure to both applicants and consular staff. Second, processing of nonimmigrant visa applications can proceed thereby limiting the growing backlog of demand for visa appointments. Information about the availability of a waiver of the visa interview requirement should be available on the website of the U.S. embassy or consulate where the individual is applying for a visa.

Filing a Nonimmigrant Visa Application at a Consulate other than Place of Residence

A nonimmigrant visa application normally should be filed at the U.S. consulate having jurisdiction over the applicant's usual place of residence.⁶ There is, however, no statutory or regulatory requirement dictating where a nonimmigrant visa application must be filed. If an appointment is not available or if a request for an expedited appointment is denied, applicants may consider filing an application for a nonimmigrant visa at any consular post where they are physically present.⁷ Current DOS policy, however, goes beyond the regulatory language. While consular officers have discretionary authority to reject applications by persons who are physically present in but not residents of their consular district, the DOS "expects that such authority will seldom, if ever, be used."⁸

² INA 222(h)(1); 22 CFR 41.102(a).

³ INA 222(h)(1)(B); 22 CFR 41.102(b).

⁴ INA 222(h)(1)(C); 22 CFR 41.102(d).

⁵ <https://travel.state.gov/content/travel/en/News/visas-news/expansion-of-interview-waiver-eligibility.html>.

⁶ 22 CFR 41.101(a); Similarly, an immigrant visa application normally must be filed in the applicant's country of citizenship or last place of residence abroad unless accepted in a different location by DOS or a consular post as provided by 22 CFR 42.61(a). This discussion, however, is limited to the location for nonimmigrant visa applications.

⁷ 22 CFR 41.101(a)(1)(ii).

⁸ 9 FAM 403.2-4(B).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Consular Processing Update: Unique Challenges to Visa Applications of 2020

Also available as part of the eCourse

[2020 eConference on Immigration and Nationality Law](#)

First appeared as part of the conference materials for the
44th Annual Conference on Immigration and Nationality Law session
"Consular Processing Disruption in 2020 - Overview and Strategies"