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Speakers

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Consular Issues 2024

Overview

The consular role in immigrant and nonimmigrant visa decisions continues to evolve. In the first part of this paper, developments in the 2023 to 2024 time period are described.

While consular processing of nonimmigrant and immigrant visas, waivers of inadmissibility findings, returning residence documentation, and other visa-related matters may seem to occur in a way hidden from public view, with policies or results that may unexpectedly appear as if conjured by magic, in reality, such matters are handled by real people within the Department of State, as well as at Embassies and Consular Sections. This second part of this paper is written to help legal practitioners understand consular officers, and how to advocate for clients effectively before them.

I. TRENDS AND EVENTS IN CONSULAR PROCESSING

A. Developments in 2024

The White House issued a number of announcements about immigration policy, increasing enforcement in some areas and making it easier for applicants in other areas. These announcements directed agencies to take action in accordance with broad policy announcements, for example:

Speedier Waivers (when applicable) for Graduating College Students

1. On June 18, 2024, the Department of State announced¹ a Biden-Harris Administration initiative to more efficiently facilitate employment-based

¹ <https://travel.state.gov/content/travel/en/News/visas-news/easing-the-nonimmigrant-visa-process-for-u-s--college-graduates-.html>

nonimmigrant visas for those who have graduated from college in the United States and have a job offer in a field related to their degree. (See White House Fact Sheet: <https://www.whitehouse.gov/briefing-room/statements-releases/2024/06/18/fact-sheet-president-biden-announces-new-actions-to-keep-families-together/>.) This initiative is supposed to allow certain individuals to more quickly receive nonimmigrant work visas if they are deemed eligible. Following the White House announcement, the Department of State issued a visa news alert on June 18, 2024. The news alert has since been updated on July 15, 2024. (See: <https://travel.state.gov/content/travel/en/News/visas-news/easing-the-nonimmigrant-visa-process-for-u-s--college-graduates-.html>.)

- The Department said it sent clarification to consular officers on July 15, 2024 of existing guidance related to when they should consider recommending that DHS grant a waiver of ineligibility, where applicable. The guidance would encourage consular officers to consider recommending expedited review of waiver requests in conjunction with certain nonimmigrant visa applications overseas, consistent with existing Department regulations and guidance. This is supposed to result in certain individuals to potentially more quickly receive work visas if DHS approves a waiver of ineligibility.
- While leaving the United States to apply for a visa is not without risks, this policy update is supposed to clarify when consular officers should consider recommending waivers, so that individuals and employers can make informed decisions and help streamline the process so that those who qualify can get to work quickly.
- The Department of State updated 9 FAM 305.4² on July 17 and again on September 11, 2024. That FAM section includes in its subsection “c” a new paragraph 3, and now reads:

² See 9 FAM 305.4, found at <https://fam.state.gov/fam/09FAM/09FAM030504.html>

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