

Cable Text:

P 211636Z MAY 03  
FM SECSTATE WASHDC  
TO ALL DIPLOMATIC AND CONSULAR POSTS PRIORITY  
SPECIAL EMBASSY PROGRAM  
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UNCLAS STATE 136100

FROM U/S GREEN FOR CHIEFS OF MISSION; INFORM CONSULS

E.O. 12958: N/A

TAGS: AMGT, CVIS, CMGT

SUBJECT: BORDER SECURITY - WAIVER OF PERSONAL APPEARANCE  
FOR NONIMMIGRANT VISA APPLICANTS - REVISION TO THE  
REGULATIONS

REF: A. STATE 39275 B. 02 STATE 139545

1. Summary. As discussed in the visa processing roadmap cable sent by Assistant Secretary Harty (ref A), the visa interview is a crucial tool--in many cases the key tool--in determining visa eligibility. As part of the Department's continuing efforts to improve the security of the visa process--and thereby the security of our nation--we have revised substantially the Code of Federal Regulations and FAM guidelines on when personal appearance and interview can be waived for nonimmigrant visa applicants. This is the next step in preparing for the eventual fingerprinting of applicants that the Department will undertake to meet the legislated mandate to include a biometric identifier with issued visas.

2. Although many posts greatly increased the numbers of personal interviews required when requested to do so last summer, for some posts, the new regulations will result in a significant increase in the percentage of applicants interviewed. The Bureau of Consular Affairs will work closely with those posts to try to provide the resources necessary to cope with any additional workload, but expects and accepts that many posts will face processing backlogs for the indefinite future. End Summary.

3. 22 CFR part 41.102 and 9 FAM 41.102 have been revised so that the requirement for personal appearance for nonimmigrant visa applicants can in general be waived by a consular officer only for a person who the consular officer concludes presents no national security concerns requiring an interview and who:

- (1) Is a child 16 years of age or under;
- (2) Is a person 60 years of age or older;

(3) Is within a class of nonimmigrants classifiable under the visa symbols A-1, A-2, C-2, C-3, G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 and who is seeking a visa in such classification;

(4) Is an applicant for a diplomatic or official visa as described in sections 41.26 and 41.27, respectively;

(5) Is an applicant who within twelve months of the expiration of the applicant's previously issued visa is seeking re-issuance of a nonimmigrant visa in the same classification at the consular post of the alien's usual residence, and for whom the consular officer has no indication of visa ineligibility or noncompliance with U.S. immigration laws and regulations.

(6) Is an alien for whom a waiver of personal appearance is warranted in the national interest or because of unusual circumstances.

The regulation also permits the Department to direct an interview notwithstanding these waiver provisions. In this connection, posts are reminded of FAM 41.102, note 4, discussed in paragraph 5 below.

4. These revisions are part of the Department's continued commitment to protect the security of the United States by utilizing all the resources available to us. The goal of the visa interview is to elicit information to help determine individual applicants' eligibility for a visa. Interviews provide an opportunity for consular officers to learn details of proposed trips and discuss with applicants their background, experience, and the rationale and motivation for their proposed visits to the U.S. Information crucial in identifying those who seek to enter the U.S. for other-than-legal purposes, including those related to support for or commission of terrorist acts, can sometimes be first obtained in the interview process.

5. In some cases, previous visa applications and travel to the US have confirmed the bona fides of the applicants. In other cases, such as applicants for diplomatic and official visas, the applicants fit into groups unlikely to pose a security threat or otherwise to violate the terms of a visa (and more likely, if they are a risk, to be in the visa lookout system). Let me emphasize strongly, however, that consular officers are not required to waive interview in such cases. Consular officers always have the option to require an interview of any applicant if they have reason to doubt credibility or veracity. At some posts, especially those with relatively high levels of fraud, patterns of illegal migration to the U.S., or heightened security concerns, consular officers will routinely require personal appearance and interview of most or all applicants who fall within the exception categories listed in paragraph 2. Posts are also reminded of the provision of 9 FAM 41.102, note 4, which requires personal appearance in all

cases where applicants meet one of the following criteria:

- Do not reside in the consular district where they are making application;
- Were previously refused visas (unless the refusal was overcome);
- Are the subject of a CLASS hit, or require a security advisory opinion or other Department clearance; (exceptions can be made for A and G visas); and
- Are identified by post as belonging to a group or sector of its visa clientele representing a high fraud risk, high refusal rate, or a security threat.

6. In addition to the exception categories provided in paragraph 2, the Deputy Assistant Secretary for Visa Services may waive the personal appearance of additional applicants or classes of applicants if such waiver is warranted in the national interest or because of unusual circumstances. In requesting an exception for a class, posts should include an explanation of how exempting an additional class of applicants would be in the U.S. national interest without adversely impacting national security. Unusual circumstances could include a security situation at post that limits post's ability to see sufficient numbers of applicants in person or a situation such as natural disaster or political turmoil that limits applicants' ability to appear in person.

7. Posts that believe they can identify a particular class of applicants who would fit these criteria should send a cable, slugged for VO/F/P, requesting an exception. Any such request should make it clear that post is seeking a post-specific additional exception category based on a careful evaluation of national security interests and host-country conditions and circumstances. Such requests should address, both for the host-country population as a whole and for the specific category for which an exception is sought, factors such as integrity of host-country documents, analysis of patterns of passport and visa fraud, adjusted refusal rate, frequency of violations of nonimmigrant status, and an assessment of terrorism within the country. The DAS's authority to grant such exceptions will be exercised sparingly and only when absolutely necessary.

8. The sixth provision listed in paragraph 2 above allows consular officers to waive personal appearance in individual cases when warranted in the national interest (such as Class A referrals) or because of unusual circumstances (such as a medical condition that would prevent the applicant from appearing in person). In any case where personal appearance is waived for such reasons, the supervisory consular officer must annotate the NIV system using the remarks function to explain why this

decision was made. This provision should be used sparingly by posts and applied on a case-by-case basis; it should not be used to waive personal appearance for a class or broad group of applicants.

9. The Department realizes that the new regulation will necessitate substantial changes in how posts handle NIV applications. Some posts may find that personnel and/or facility resources are not adequate to handle the additional number of interviews. Workload management will become more important than ever and posts that do not already have appointment systems should immediately explore implementing them. The Department appreciates that many posts will face interview backlogs. As posts grapple with resource issues post management should inform the Department of the anticipated impact on post's processing, including potential for interview backlogs. Requests for any additional personnel should be directed to CA/EX and the executive office of the regional bureau. Facility related issues should be addressed to OBO, CA, and the regional bureau.

10. To reiterate, however, posts must implement the new interview guidelines using existing resources. Posts should not, repeat not, use overtime to deal with additional workload requirements but should develop appointment systems and public relations strategies to mitigate as much as possible the impact of these changes.

11. Posts should implement these new regulations as soon as possible, but no later than August 1, 2003. This should allow sufficient time to notify the public and to process non-interview cases already in the pipeline.

12. Post should be sure to review the revised FAM guidance which this cable is reporting.

13. This cable has been reviewed by the Department of Homeland Security, which has expressed its support for increasing interviews.

POWELL

**End Cable Text**