

“DO’s” and “DONT’s” for Attorneys Representing Visa Applicants

Obtaining Information

- To find out basic information about a post's visa operations and any special application procedures, take advantage of U.S. sources of information first, such as the Department of State or post web-site, the Department's public inquiries line, or AILA handbooks or guides.
- Be sensitive to overseas posts' limited resources, and use post's public telephone information services for routine questions and information.
- Don't skip the public information telephone system or refuse to talk to local FSN staff and insist on talking to a consular officer simply to obtain general information which is available through automated or other easily available sources.
- Read any printed information which consulates provide, and follow the guidelines to ensure that clients receive the most efficient service.
- When inquiring about a specific pending case, observe post procedures for such inquiries and respect any special rules concerning hours for or preferred means of inquiry.
- On routine matters, such as scheduling an appointment, use faxes or the mail, and allow a few days for a response before contacting post again.
- Recognize that consular officers cannot preadjudicate a case if the applicant has not applied yet, so written inquiries should generally be limited to questions about pending/decided cases. If an attorney has general questions prior to adjudication, it is best to call the public inquiries number or refer to available information sheets.
- If you have questions about a pending case or visa refusal, don't telephone cold and expect the consular officer to recall your client's case. Instead, contact the post in writing first before calling. Explain in a brief and succinct letter/fax the nature of the inquiry and include any relevant documents. If necessary, you can then follow up with a phone call.

Preparing the Application

- Know the hours that the visa unit is open to the public, as well as the workings of any appointment system which may be in place.

- Don't call to notify the post of a planned visa application just "to pave the way" for the application, if the application is a routine one that requires no special advance notice. The case will receive the necessary handling when and if the applicant applies.
- Learn as much as you can about the facts of the case and the relevant history of the applicant and any employing company. The more an attorney knows about a client, the greater the potential for the attorney to assist his/her client in a concrete way. This is particularly true of more complicated applications, such as work visas.
- Help the client prepare for the interview, and fully brief him/her on the visa interview process so that the interview can be as effective as possible for both the client and the interviewing officer.
- Advise the client on the eligibility requirements for the visa he/she intends to apply for, and alert the client to the possibility of a visa refusal and the grounds on which a visa may be denied.
- Ensure that applicants read and understand their application form before coming to the interview. This is particularly critical if the applicant does not have a good command of the language used in the form.
- Make sure the client fills out the visa application form accurately, answers all questions completely, and (in the case of the OF-156) signs the form before submission. Please carefully print or type all answers.
- Review the application with the applicant for completeness and accuracy.
- Stress to the applicant the importance of answering all questions truthfully, both on the application form and during the interview, and warn the applicant of the possibility of permanent exclusion if he/she makes any material false statements.
- If applicable, inform the client of the importance of telling the truth about any previous arrest or conviction or past problems with U.S. immigration or consular officials, and make sure the applicant is prepared to present relevant court or immigration records at the time of interview.
- Make sure the applicant is prepared to explain and, if necessary, document previous stays in the U.S.
- Send supporting documents directly to the client, not to the post. Most posts do not have the resources or space to file or quickly retrieve large numbers of attorney faxes. The best way to ensure that the document you wish to submit in support of the application is immediately available at the time of the interview is to have the applicant hand carry it to the interview.

- Particularly in immigrant visa cases, make sure the applicant knows which documents to bring to the interview, and ensure that the applicant has originals, not just certified translations, of the basic civil documents. Where police certificates are available, make sure the client obtains them and brings them to the interview.
- Contact the post first (particularly in time-sensitive cases), if you plan to submit nonimmigrant visa applications for a large group of aliens, such as sports teams, performance groups, delegations, groups of workers, etc. This allows the post to advise the attorney ahead of time on application procedures and the types of materials the applicants will need to bring with them. Advance notice helps ensure that both the post and the applicants are prepared for the group application and thereby facilitates prompt and efficient processing.
- In group-visa application cases, assist the applicants to arrange their supporting documentation in an orderly fashion. This facilitates more efficient review of the cases and helps speed up the interview process. While the order of the documents generally does not matter, it is very helpful if they are arranged similarly in each case.
- Recognize that a neat and well-organized document package in itself does not lead to visa issuance. Applicants are all individuals and, while documents for one may have assisted in showing eligibility, the same documents may not be enough for another alien with differing circumstances.

Special Considerations in Complex Cases, Such as E Visa Applications:

- Take the time to make sure that the E visa application is complete. Follow the instructions in the post's handout, which specifies what is required for E visa adjudication.
- Provide a concise letter outlining the applicant's qualifications and addressing the major requirements (substantiality, marginality, etc.) for an investor visa or document substantial trade for a trader visa.
- Provide concise and updated documentation to demonstrate the applicant's qualifications, including information as to the source of investment funds.
- Present documents in an organized fashion, with an index and tabs, where appropriate.
- Comply with requests for specific documents. This is a time-saver and will allow the post to adjudicate the case more quickly.

- Don't submit large volumes of information in E visa cases, unless requested by the consular officer.
- Allow the consular officer a reasonable period to review the submission before requesting an appointment.
- Give the consular officer the opportunity to question statements made in the application and to explore the issue of the applicant's intent to depart the U.S. after E status expires, which is a legitimate area of inquiry.
- For H or L visa applicants, present the original I-797 petition approval notice, have available the documents submitted to the INS, and present proof of current job, if applicable.
- Avoid scheduling the alien's planned departure too soon after the interview, as it may be necessary to submit additional documents or provide clarifying information before a final decision can be made in the case.

Making the Application:

- Have the applicant apply at the appropriate post, i.e., where the applicant resides or last resided abroad, or at a post designated to process or comfortable with processing "homeless" applications.
- Respect whatever rules the consulate has established for attorney presence at interviews.
- Prepare the client so that he can present his case without you if the consulate does not allow the attorney to be present or to participate in the interview.
- Don't conceal or fail to address relevant derogatory facts about the applicant, such as past criminal or immigration problems or previous visa refusals or overstays, as this will only hurt the case and your client's interests in the long run.
- If you are present at the interview, let the consular officer direct the proceedings and do the questioning, and let your client answer the questions. Don't seek to restyle the consular officer's questions or answer for the client.
- If you are present and the client is refused, accept that it may be necessary to submit any countervailing arguments or requests for review in writing, given the time and crowd pressures in many nonimmigrant visa units. Don't argue the case at length at the window.

- When presenting arguments in support of the application, cite the specific section of the FAM or other relevant law or regulations that support your client's position, and be sure to include specific facts about your client's case that show that the cited law/regulation applies.
- Don't settle for a bad decision if you have a good case and you believe an error was made. Reapply or seek review within the consulate and, if unsuccessful and the issue is a legal one, seek an advisory opinion from the Visa Office.
- If the reviewing consular officer upholds the refusal and you remain convinced that an error has been committed, you may seek an advisory opinion from the Visa Office, if the issue is a legal one. Don't request review by the Visa Office if the issue is factual, as the consular officer's factual findings are binding on VO.
- When asking for review of a case, present your case succinctly, addressing all relevant facts and citing legal authority for your arguments. Don't overwhelm the consular officer with large volumes of unnecessary documents, either in the application process or when seeking review.
- If your client has been refused and you have already exhausted all opportunities for review and been unable to overcome the refusal, do not seek repeated further reviews unless you have new arguments to raise or new information to provide. Accept that some cases cannot be won, and save your efforts (and built-up goodwill) for cases that merit it.
- Whatever the outcome, maintain a courteous and professional tone throughout. A confrontational manner or abusive tone is usually counterproductive, and does not serve your client's interests.

Miscellaneous Tips:

- Recognize the time pressures that most consulates are under, and don't call with unnecessary frequency or drop by without an appointment in the hope of being able to meet with a consular officer.
- Inform the post if you have ceased representing an applicant or have taken over a case from another attorney.
- Don't rely on FOIA requests to obtain information on the reasons for a visa refusal or other visa-related information, as this procedure is not an effective means to obtain such information. Visa records are confidential under Section 222(f) of the Immigration and Nationality Act and, through that provision, are generally exempt from release under FOIA. The only visa records that can be obtained under a FOIA request are documents either submitted by or sent to the applicant. Thus, the

applicant will not learn anything new about the case from any documents that might be obtained through a FOIA request. If you do not believe you have received sufficient information about the grounds of refusal or other issues, you should write to the post or the Visa Office.