

UNCLAS SECTION 01 OF 03 STATE 021138

E.O. 12958: N/A

TAGS: CVIS

SUBJECT: WORKING CONSTRUCTIVELY WITH IMMIGRATION ATTORNEYS

1. SUMMARY: THE RELATIONSHIP BETWEEN CONSULAR OFFICERS AND IMMIGRATION ATTORNEYS CAN BE PRODUCTIVE. CONSULAR OFFICERS CAN OFTEN LEARN A GREAT DEAL FROM A CONSCIENTIOUS ATTORNEY, AND VICE VERSA. THIS CABLE, WHILE NOT ADDRESSING ALL ISSUES AFFECTING THE ATTORNEY/CONOFF RELATIONSHIP, ATTEMPTS TO OUTLINE SOME BASIC GROUND RULES FOR DEALING WITH ATTORNEYS, AND EXAMINES WAYS IN WHICH CONSULAR OFFICERS CAN BENEFIT FROM ATTORNEYS' EXPERIENCE AND SERVICES ON BEHALF OF THEIR CLIENTS. END SUMMARY

2. DEFINING "ATTORNEY" OR "REPRESENTATIVE"

AN ATTORNEY OR REPRESENTATIVE'S ROLE IS CLEAR. THE ATTORNEY/REPRESENTATIVE STANDS IN PLACE OF HIS/HER CLIENT AND ADVOCATES THE CLIENT'S POSITION UNDER THE LAW. THE FAM (9 FAM, SECTION 40.4) AUTHORIZES POSTS TO CORRESPOND WITH AN ATTORNEY OF RECORD OR A DESIGNATED REPRESENTATIVE ON MATTERS PERTAINING TO HIS/HER CLIENT'S VISA APPLICATION. SUCH CORRESPONDENCE IS PREDICATED ON EVIDENCE THAT A VALID ATTORNEY OR REPRESENTATIVE/CLIENT RELATIONSHIP EXISTS.

- SUCH EVIDENCE MAY INCLUDE:

- A COPY OF FORM G-28, NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE;

- A PRINTED LETTERHEAD SHOWING MEMBERSHIP IN THE LEGAL PROFESSION, AND STATING THAT THE ATTORNEY HAS BEEN RETAINED OR EMPLOYED TO REPRESENT THE APPLICANT; OR

- A LETTER FROM THE APPLICANT IDENTIFYING THE ATTORNEY OR REPRESENTATIVE WITH WHOM THE APPLICANT ESTABLISHED SUCH RELATIONSHIP (9 FAM 40.4, N. 12).

3. AS STATED IN 9 FAM 40.4, CONSULAR OFFICERS SHOULD TREAT A LOCAL ATTORNEY OR U.S. ATTORNEY PRACTICING ABROAD (AND WHO IS A MEMBER OF A STATE BAR ASSOCIATION) ON AN EQUAL BASIS AS AN ATTORNEY PRACTICING IN THE UNITED STATES, PROVIDED THE REQUIRED ATTORNEY/CLIENT RELATIONSHIP EXISTS. CONSULAR OFFICERS SHOULD EXERCISE CAUTION IN DEALING WITH PERSONS CLAIMING TO BE ATTORNEYS WHO CANNOT ESTABLISH THAT THEY ARE A MEMBER OF THE LOCAL OR A U.S. BAR ASSOCIATION.

USE OF ATTORNEY IS THE CLIENT'S CHOICE

4. CONSULAR OFFICERS SHOULD NOT PASS JUDGMENT ON APPLICANTS OR PETITIONERS WHO CHOOSE TO EMPLOY THE SERVICES OF AN ATTORNEY. SOME PEOPLE ARE MORE COMFORTABLE WORKING THROUGH AN ATTORNEY NO MATTER HOW STRAIGHTFORWARD OR SIMPLE THE VISA CASE MAY APPEAR TO THE CONSULAR OFFICER. IN SOME CULTURES, IT IS CUSTOMARY TO HAVE LAWYERS PREPARE ANY LEGAL OR QUASI-LEGAL PAPERS OR PERFORM ANY LAW-RELATED TASK. IN ADDITION, THE INA AND ITS UNDERLYING BUREAUCRACY IS OFTEN COMPARED TO THE INTERNAL REVENUE CODE AS BEING ONE OF THE TWO MOST COMPLICATED STATUTES IN THE U.S. CODE. THE EMPLOYMENT OF A LAWYER DOES NOT CONSTITUTE A RED FLAG OR SIGNAL THE EXISTENCE OF A PROBLEM IN THE CASE. THE DECISION WHETHER TO USE AN ATTORNEY IN FILING A PETITION, PROCESSING A VISA, OR PREPARING AN I-864 IS THE PETITIONER'S OR APPLICANT'S PREROGATIVE. A VISA APPLICANT WHO HAS ALREADY ENGAGED THE SERVICES OF AN ATTORNEY SHOULD NOT BE TOLD THIS WAS UNNECESSARY. ON THE OTHER HAND, AN APPLICANT WHO SPECIFICALLY ASKS WHETHER SHE SHOULD RETAIN AN ATTORNEY SHOULD BE TOLD THAT SUCH A DECISION IS UP TO THE APPLICANT, BUT THAT ATTORNEY REPRESENTATION IS NOT REQUIRED TO APPLY FOR A VISA (SEE 9 FAM 40.4, N 12.4). UNDER NO CIRCUMSTANCES, SHOULD A CONSULAR OFFICER INQUIRE ABOUT THE FEE BEING CHARGED FOR LEGAL SERVICES IN A SPECIFIC CASE.

IDENTIFYING PROBLEMS

5. THE LAWYER MUST OBTAIN ALL NECESSARY BACKGROUND INFORMATION IN ORDER TO BEST REPRESENT THE CLIENT/APPLICANT. IT IS AS COMMON FOR VISA APPLICANTS TO MISREPRESENT FACTS TO CONSULAR OFFICERS AS IT IS FOR CLIENTS TO MISREPRESENT FACTS OR WITHHOLD INFORMATION FROM THEIR OWN ATTORNEYS. IF ADVERSE INFORMATION IS DISCOVERED IN A CASE, IT MAY BE THAT THE LAWYER WAS ALSO UNAWARE OF THE PROBLEM.

DOTTING I'S AND CROSSING T'S: CASE PREPARATION

6. ONE VERY IMPORTANT SERVICE THAT ATTORNEYS PROVIDE TO THEIR CLIENTS IS MAKING SURE THAT FORMS ARE CORRECTLY COMPLETED AND NECESSARY SUPPORTING DOCUMENTATION PRESENTED AT THE TIME OF THE INTERVIEW. POSTS THAT ARE GRAPPLING WITH THE PAPERWORK REQUIREMENTS OF THE I-864 WILL APPRECIATE THIS SERVICE, BUT IT APPLIES EQUALLY TO OTHER DOCUMENTATION. POSTS CAN BENEFIT FROM THIS SERVICE BY PROVIDING THE ATTORNEY OF RECORD, VIA THE PACKET IV NOTICE, WITH CLEAR INSTRUCTIONS ON THE ORDER IN WHICH DOCUMENTS SHOULD BE PRESENTED, SAVING TIME AT THE INTERVIEW WINDOW. INFORMING THE ATTORNEY OF THE DOCUMENTARY REQUIREMENTS NECESSARY TO OVERCOMING A 221(G) REFUSAL ALSO HELPS ENSURE THAT THE CORRECT DOCUMENTS ARE PRESENTED AT THE REAPPLICATION.

ATTORNEY AT THE INTERVIEW IS POST'S CHOICE

7. CA'S POLICY ON PRESENCE OF LAWYERS IN THE CONSULAR SECTION IS THAT THE HEAD OF THE CONSULAR SECTION DECIDES WHETHER LAWYERS MAY BE PRESENT AT INTERVIEWS. IF ATTORNEYS ARE PERMITTED, THEN POST MUST ESTABLISH CLEAR GUIDELINES DEFINING ANY RESTRICTIONS ON THE LAWYER'S PARTICIPATION IN THE INTERVIEW. UNLESS AN ATTORNEY VIOLATES THE ESTABLISHED GUIDELINES (IN WHICH CASE POST SHOULD NOTIFY DEPARTMENT PER 9 FAM 40.4, N13), ALL ATTORNEYS MUST BE ALLOWED THE SAME DEGREE OF ACCESS. IF THE CONSULAR SECTION POLICY GENERALLY BARS ATTORNEYS FROM VISA INTERVIEWS, INDIVIDUAL OFFICERS MAY NEVERTHELESS INVITE AN ATTORNEY OR OTHER REPRESENTATIVE TO A SPECIFIC INTERVIEW TO ACT AS INTERPRETER OR TO RESPOND TO QUESTIONS THAT THE APPLICANT IS UNABLE TO ADDRESS, EG. IN COMPLICATED "E" VISA CASES WHERE THE PRESENCE OF THE ATTORNEY WOULD CLEARLY ASSIST THE CONSULAR OFFICER TO UNDERSTAND THE CASE.

8. THE CONSULAR OFFICER CONTROLS THE INTERVIEW AND SHOULD CLEARLY BUT COURTEOUSLY COMMUNICATE THE ATTORNEY'S ROLE AT THE COMMENCEMENT OF THE INTERVIEW. FOR INSTANCE, THE ATTORNEY MAY BE ASKED TO PARTICIPATE UPON QUESTIONING BY OR AT THE DIRECTION OF THE CONSULAR OFFICER. IF AN ATTORNEY CONSISTENTLY INTERFERES WITH AN INTERVIEW, EXHIBITS UNPROFESSIONAL BEHAVIOR TOWARD CONSULAR STAFF MEMBERS, OR SEEKS TO IMPROPERLY INFLUENCE A VISA ADJUDICATION, POSTS SHOULD ATTEMPT TO DISCUSS THE PROBLEM WITH THE ATTORNEY AND RESOLVE THE PROBLEM. SHOULD THE ATTORNEY'S BEHAVIOR PERSIST, POST SHOULD NOTIFY THE DEPARTMENT (CAVO AND CA/FPF) AND OBTAIN THE DEPARTMENT'S CONCURRENCE TO NOTIFY THE ATTORNEY IN WRITING THAT HIS/HER PRESENCE AT INTERVIEWS WILL NO LONGER BE PERMITTED, SPECIFYING THE REASONS FOR THIS DECISION. (SEE 9 FAM 40.4 N13). POSTS MAY ALSO NOTIFY THE VO SPECIAL ASSISTANT, WHO SERVES AS VO'S LIAISON WITH PROFESSIONAL ORGANIZATIONS SUCH AS THE AMERICAN IMMIGRATION LAWYERS' ASSOCIATION (AILA), OF ATTORNEYS WHOSE BEHAVIOR IS INAPPROPRIATE OR UNETHICAL.

IMPARTIALITY IN HANDLING ATTORNEY-REPRESENTED CASES

9. MANY ATTORNEYS SEEK EXPEDITIOUS PROCESSING OF THEIR CLIENT'S CASE, ONE REASON APPLICANTS HIRE ATTORNEYS IN THE FIRST PLACE. POSTS SHOULD NOT GIVE PREFERENTIAL TREATMENT OR SCHEDULING TO CASES JUST BECAUSE THEY HAVE ATTORNEY REPRESENTATION. ALL APPLICANTS DESERVE THE SAME FAIR TREATMENT AND LEVEL OF SERVICE, WHETHER OR NOT THEY HAVE SOUGHT LEGAL REPRESENTATION.

10. THIS IMPARTIALITY EXTENDS BEYOND THE WAITING ROOM. CONOFFS SHOULD NOT DISCUSS CASES WITH THE APPLICANT'S ATTORNEY OUTSIDE OF THE WORKPLACE. TELLING AN ATTORNEY THAT YOU WILL DISCUSS HIS/HER CLIENT'S CASE DURING WORKING HOURS, AND NOT AT A SOCIAL GATHERING--AND BY NO MEANS OVER LUNCH AT THE ATTORNEY'S EXPENSE--AVOIDS THE APPEARANCE OF

PREFERENTIAL TREATMENT. A CONOFF WHO HAS A SOCIAL AS WELL AS A PROFESSIONAL RELATIONSHIP WITH AN ATTORNEY SHOULD EXERCISE JUDGMENT TO AVOID ANY MISPERCEPTION IN SUBSEQUENT VISA ADJUDICATIONS. AS A LAST RESORT, IF THE CONOFF BELIEVES HIS/HER OUTSIDE RELATIONSHIP WITH THE ATTORNEY HAS AFFECTED HIS/HER ABILITY TO ADJUDICATE FAIRLY AN APPLICANT'S CASE, THE CONOFF SHOULD RECUSE HIM/HERSELF FROM CASES WHICH THAT ATTORNEY REPRESENTS.

CHANNELS OF COMMUNICATION

11. ATTORNEYS ARE PAID TO REPRESENT THEIR CLIENTS TO THE BEST OF THEIR ABILITY, AND WILL BE PERSISTENT IN PURSUING THEIR CASES. REFUSING TO ACCEPT TELEPHONE CALLS FROM ATTORNEYS OR IGNORING THEIR LETTERS WILL NOT MAKE THEM GO AWAY. AFTER ATTORNEYS FAIL REPEATEDLY TO GET THROUGH TO A CONSULAR SECTION THEY TURN TO THE VISA OFFICE, AND THEN WE PESTER YOU FOR THE ANSWERS. POSTS THAT ESTABLISH CLEAR AND CONSISTENT PROCEDURES FOR RESPONDING TO ATTORNEY INQUIRIES SAVE TIME AND RESOURCES IN THE LONG RUN. POSTS MAY FIND IT EXPEDIENT TO USE FORM LETTERS TO RESPOND TO ROUTINE INQUIRIES FROM ATTORNEYS. AS WITH CONGRESSIONAL CORRESPONDENCE, THE FULLER THE EXPLANATION OF A REFUSAL OR A 221(G) DECISION, THE MORE YOU WILL HELP YOURSELF. EXPLAINING ALL OF YOUR CONCERNS ABOUT A CASE THE FIRST TIME WILL SAVE YOU FROM THE FOLLOW-UP INQUIRIES THAT ERODE SO MUCH OF YOUR TIME. FINALLY, IF YOU PREFER CERTAIN FORMS OF COMMUNICATION OVER OTHERS, IE. FAXES AND E-MAILS RATHER THAN PHONE CALLS, TELL THE INDIVIDUAL ATTORNEYS AND TELL VO. WE WILL PUBLICIZE THE INFORMATION THROUGH AILA FOR YOU.

LEARN FROM THE LEGAL EXPERTS - SHARING KNOWLEDGE

12. THE BEST IMMIGRATION ATTORNEYS KNOW THE LAW VERY WELL. THEY KNOW THE REGULATIONS. IF AN ATTORNEY INSISTS THAT SOMETHING CAN BE DONE FOR HIS/HER CLIENT BASED ON HIS OR HER INTERPRETATION OF THE LAW, ASK FOR A CITATION. LET THE ATTORNEY WORK FOR YOU ON BEHALF OF THE CLIENTS. THE APPROPRIATE METHOD FOR VERIFYING SUCH INPUT IS BY COMMUNICATING WITH THE ADVISORY OPINIONS DIVISION OF THE VISA OFFICE (CAVO/L/A). AS A COURTESY, LET THE ATTORNEY KNOW THAT YOU HAVE REQUESTED THE DEPARTMENT'S GUIDANCE. CONVERSELY, IF YOU CAN SHOW THE ATTORNEY WHERE HE OR SHE HAS ERRED IN THE INTERPRETATION, HE OR SHE WILL LEARN FROM YOU.

13. POSTS ARE ENCOURAGED TO SHARE WITH THE DEPARTMENT THOSE PRACTICES OR POLICIES THAT HAVE PROVEN USEFUL IN ESTABLISHING A CONSTRUCTIVE WORKING RELATIONSHIP WITH ATTORNEYS. ANY SUGGESTIONS OR COMMENTS SHOULD BE SENT TO THE CAVO SPECIAL ASSISTANT (CURRENTLY HOLCOMBE THOMAS) BY CABLE, FAX (202/663-1247) OR E-MAIL. MINIMIZE CONSIDERED.

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