

November 2012 Update on the U.S. Consulate General in Ciudad Juarez *by Michael H. Davis, Anastasia Tonello, Annaluisa Padilla, and T. Douglas Stump*

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This Practice Advisory summarizes some of the key issues discussed during AILA's August 21, 2012 liaison meeting at the U.S. Consulate General in Ciudad Juarez, Mexico (CDJ). It should be read in conjunction with the attached official agendas from the Department of State and USCIS (as well as other recent AILA practice advisories on immigrant and nonimmigrant waivers and other issues).

AILA was represented at the meeting by members of the Executive Committee and various liaison committee chairs, who were given an extensive tour of the consulate and surrounding area led by Immigrant Visa Chief Catherine Holt. The tour was followed by an in-depth discussion of key issues by Ms. Holt, Visa Chief Karen Ogle, Nonimmigrant Visa Chief Darrien Haney, other consulate personnel, National Visa Center Director Kimberly Kelly, and USCIS Mexico City Field Office Director John (Jack) McCarthy. The meeting was also attended by both of the panel physicians serving the consulate and other medical personnel, including the two psychologists employed by the respective clinics, as a significant portion of the meeting was devoted to concerns raised by AILA about the high perceived rate of erroneous medical findings of inadmissibility for substance use/abuse and for criminal-based inadmissibility for gang-related activity as a result of tattoos.

PROCEDURAL ISSUES FOR IMMIGRANT VISA APPLICANTS

The U.S. Consulate in CDJ is the world's single busiest visa processing post, particularly since it is the centralized post for all Mexican immigrant visa cases, as well as a key nonimmigrant visa post. Since AILA members are routinely required to advise clients on a wide variety of procedural and substantive visa processing issues at the post, it is essential that attorneys and clients have the latest information on all relevant issues.

The Department of State moved into its new, current compound in (DATE?). The new consulate is considerably farther from the border than the old post. In addition to the consular building(s), which are located within a highly secure compound, the Application Support Center, official waiting area, and medical clinics are located on the same block, immediately adjacent to the consular compound, to essentially provide a convenient "one-stop shop" for the entire visa application process.

Application Support Center

All visa applicants – immigrant and nonimmigrant – are required to have their biometrics taken in advance of their visa interview. While nonimmigrant visa applicants are automatically scheduled for biometrics, immigrant visa applicants are required to separately schedule their appointments.

Admission to the ASC is strictly by appointment only. Applicants are required to wait outside until their appointment time is posted. IV applicants who have not yet scheduled their biometrics appointment are not able to obtain a biometrics appointment for the same day (and, accordingly, may not be interviewed at the consulate). In such cases, it is generally possible to obtain a biometrics appointment for the following day and the consulate will try to accommodate rescheduling of the visa interview to the next business day, particularly since the consulate currently reports that it has capacity to handle a significant volume of additional cases based on its current staffing and workload.

Clients should be advised that the area immediately around the ASC is riddled with "notarios" (with T-shirts and other signage advertising their services) and businesses advertising guaranteed waiver approvals in their windows. Clients should be advised to avoid such persons and businesses and that any misrepresentations made on their behalf may result in permanent inadmissibility to the United States.

What to Expect on the Day of the Visa Interview

Immediately next to the ASC is an indoor waiting facility that is staffed by volunteer personnel (who are typically students at or graduates of Mexican schools performing their national service) acting as greeters and escorts to the consulate. The facility is funded by the Mexican government and includes lockers for applicants to hold personal items not permitted in the consulate. All IV applicants are required to first check-in at this facility to confirm their appointment for that day and for a brief review of their documentation before proceeding to the consulate for their interview. Further, IV applicants and their family members are encouraged to wait in this facility when not inside the consular compound, as the other main waiting area outside the compound with seating is another outside area (located between the consulate and the

medical clinics) that is dubbed “no man’s land” and features even more notario offices and representatives of the various notarios walking around and openly scouting for clients.

The consulate is physically located next to this area and once you get past the guards (who appeared to be very courteous and nonthreatening), there are two outside information windows open for applicants to ask questions regarding their cases. There is a queuing system that allows applicants to ask about cases already filed (typically involving 221(g) notices or questions about interview dates, biometrics scheduling, etc.).

The consulate has two open-air waiting areas for IV and NIV applicants (with misting systems for hot days and overhead heaters for cold days), as well as large indoor waiting areas (to which applicants are filtered-in as their appointment time comes closer). There are approximately 100 windows for interviews. The consulate is a massive operation that works on “economies of scale” (a theme heard many times during the visit). The consulate also has very clean restrooms, and food/beverages can be purchased and consumed in the outdoor waiting area.

Medical Examination Issues

All immigrant visa applicants are required to appear for their medical examination at least one day prior to the IV interview date. There are two separate clinics, located next to one another, immediately adjacent to the Consulate, each fenced off to keep out notarios and other “scammers.” Both are walk-in only (no appointment necessary), charge similar fees, and are generally able to process all required medical examinations in one day because they are large facilities that have their own in-house laboratories and radiology units. If an applicant tests positive for a problematic medical condition, it is not possible for him/her to schedule an appointment at the other clinic in efforts to yield a more favourable medical evaluation. Medical evaluation results in Mexico are generally valid for 6 months. If follow-up treatment is required over an extended period (e.g., tuberculosis), it is all covered by the fee paid for the basic medical examination. However, clients must pay an additional fee for each vaccination required (Note – applicants may bring past vaccination records as proof they have received the required inoculations, however, they are rarely accepted by the panel physicians in CDJ, who stated their concern about counterfeit vaccination records).

During the in-depth, post-tour meeting with the consular officials, panel physicians, and in-house psychologists, there was extensive discussion concerning the perceived high and potentially erroneous rate of medical inadmissibility findings for drug and alcohol abuse. As a matter of background, members have frequently reported over the past several years the perception that clients are being improperly found to be inadmissible pursuant to INA §212(a)(1)(A)(iii) for admitting to minor experimentation with controlled substances (primarily marijuana) and that the medical and psychological examinations are frequently coercive.

The consular officials, panel physicians, and their staff denied that admission to occasional marijuana or related drug use/abuse (even recent, within the past year) will automatically trigger a finding of a Class A medical condition that renders the applicant inadmissible on medical grounds. The medical staff stressed that pursuant to the amended June 2010 Technical Instructions from the Center for Disease Control (CDC), based on changes to the DSM definition

of the terms substance abuse (which also reduced the required period of remission to only one year), admission to mere experimentation or casual drug/alcohol use does not compel a finding of inadmissibility (whereas under the prior Technical Instructions, such a finding was almost always mandatory if the abuse took place during the three-year period prior to examination).

They stated that if there is an indication that the applicant has any chemical use/abuse history, s/he will be referred to the psychologist, who will typically ask additional questions to determine the impact the chemical use/abuse has had on the person's home life, work, school, etc. in order to assess whether there exists a maladaptive pattern of substance use that has resulted in clinically significant problems. The consular officials and panel physicians also stressed that a visa applicant's medical records, including any reports and evaluations concerning the above issues, are the exclusive property of the clinic and Department of State and that all applicants are required to sign a waiver that prevents them or their legal counsel from obtaining a copy of any medical report. They stated that applicants who have been arrested for DUI or a drug offense, or who have any type of documented substance abuse history, should bring any available documentation of counselling, treatment, etc. as evidence that their condition is in remission and there has been no further substance abuse within the past year.

Warning: Members should be advised that despite the above comments by the panel physicians, psychologists, and consular staff, what frequently occurs in practice may be significantly different and more severe. Both prior and subsequent to the August 2012 meeting, members and their clients continue to report frequent findings of medical inadmissibility at the post based on admission to one-time marijuana use during the year preceding the medical examination (as well as potentially coercive questioning by the panel psychologists that often yields distorted and/or inaccurate responses). As such, it is imperative that AILA members, in preparing their clients for their visa interviews, explain the types of questions that are likely to be asked during the medical examination and the potential consequences that may ensue from admission to drug or alcohol use/abuse, however casual.

It should also be noted that AILA understands that all visa applicants at CDJ are blood-screened for controlled substances during the medical examination. This policy differs considerably from that in effect in most other countries, where blood screening is only performed if there is an applicant-specific concern about possible drug abuse based on issues arising during the medical examination. Given these specific concerns, the AILA members who attended the meeting have also expressed some level of concern about what appears to be a close family relationship (spousal or parent-child) between the panel physicians and their clinical psychologists, which potentially impedes their impartiality in evaluating these important medical issues.

Tattoos & Gang Affiliation

As a close corollary to the controlled substance issue, AILA expressed concern over the high perceived rate of cases that are either refused pursuant to INA §212(a)(3)(A)(ii), or significantly delayed pursuant to INA §221(g) pending lengthy administrative review, as a result of suspected gang affiliation based solely on the applicant's tattoo(s) (Note – 9 FAM 40.31 N5.3 requires Visa Office concurrence on any refusal under the statute and AILA has concerns that a high number of cases, including some involving “innocent” tattoos, are automatically referred VO, where they

may take many months or even years to clear). The panel physicians specifically confirmed that as part of their written medical evaluation, they are required to report to the consular officer any tattoos or other abnormalities detected on the applicant's body.

Ms. Holt specifically advised that the mere existence of a tattoo will never result, in and of itself, in a finding of inadmissibility and stressed that the actual number of cases refused annually for gang activity is extremely small. She and the other consular staff advised that the consular officers review the totality of the applicant's circumstances, including whether s/he appears on any law enforcement database relating to gang activity, as well as any previous personal, criminal, and immigration history (as well as whether the tattoo in question is an identifiable indication of possible gang affiliation).

Warning: Both prior and subsequent to the August meeting, members and their clients have reported a high rate of cases at CDJ and posts in Central America where adjudication is, at minimum, delayed by many months (or even years) while the consulate engages in administrative review that appears to be triggered by seemingly innocent tattoos. Accordingly, it is essential that members specifically ask clients if they have any tattoos (including their significance) and whether they have ever engaged in any gang activity (or have had any tangential gang affiliation that may have resulted in them being placed in a law enforcement database relating to gang activity). It is also important clients be prepared for questions from the panel physician or consular officer relating to potential gang (or any other illegal) activity and that clients be prepared to present documentation from law enforcement (where applicable) or any other credible evidence confirming that they have had no known gang activity (or if they did in the past, that such activities ended as long ago as possible).

As a final matter, please note that this Practice Advisory does not attempt to summarize all of the relevant processing issues at CDJ - including, but not limited to, false claims to U.S. citizenship by minors and adults, 212(a)(9)(C) inadmissibility, and waiver issues and members are encouraged to refer to other practice advisories, AILA Infonet, and other reliable sources for updates on these and other issues.