

## Memorandum

**TO:** Employees Seeking Nonimmigrant Visas  
**FROM:** Seyfarth Shaw Business Immigration Group  
**DATE:** January 6, 2010  
**RE:** General Information on Obtaining a Nonimmigrant Visa Stamp

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### I. Purpose

This Memorandum provides general information about obtaining a visa stamp at a United States consular post outside of the United States. This Memorandum also explains several processing alternatives which may be available to you. *Please read this Memorandum carefully before directing any questions to Seyfarth Shaw. Note that the memorandum is not a legal opinion of Seyfarth Shaw or a guarantee or prediction of any future legal or factual outcome.*

### II. General Need for Visa Stamp

You may have received an original Notice of Approval (Form I-797), a copy of the nonimmigrant visa petition that was filed for you, and an e-mail from Seyfarth Shaw to your employer discussing the approval of your nonimmigrant visa petition. **Please note, however, that if you plan to travel internationally to any country other than Canada or Mexico – or if you plan to travel to Canada or Mexico for more than 30 days - you must have a valid visa stamp in your passport in order to return to the U.S.** For example, if you are a citizen of India who has just changed status from F-1 student status to H-1B employee status, you may go to Mexico or Canada for 30 or fewer days and return with your old F-1 visa stamp and your new approval notice. However, if you plan to visit any other country, you cannot return to the United States until you first obtain an H-1B nonimmigrant visa stamp.

Note that Canadian nationals generally do not need a visa stamp in order to return to the United States after international travel.

### III. Traveling on an Existing Valid Nonimmigrant Visa

Applying for a visa through the U.S. embassies and consulates abroad has become more complicated and time-consuming as a direct result of the government's increased security

measures. These new procedures can lead to extended delays that could prevent you from re-entering the United States for weeks or months at a time. For this reason, we encourage you to consider traveling on an existing valid nonimmigrant visa stamp.

If you already have an unexpired employment-based nonimmigrant visa stamp in your passport (such as an H-1B, L-1, or O-1), and if it matches your current immigration status, it may not be necessary for you to obtain a visa stamp in order to return to the United States. For example, if you are in H-1B status, and already have an H-1B visa stamp in your passport that will remain unexpired on the day of your proposed return to the United States, then you do not require a new visa stamp. Instead, you may re-enter the United States with the existing visa stamp (even if it reflects the name of your former employer) and your original approval notice indicating your current employer.

#### **IV. Applying for the Nonimmigrant Visa at a U.S. Consular Post**

If the above alternative is not available to you and if you are required to travel internationally, then you will need to apply for the nonimmigrant visa stamp at a U.S. consular post while you are outside the United States.

##### **A. General Information About Timing**

With limited exceptions, getting a visa stamp now requires a personal interview, and many consular posts have significant (weeks or months) interview appointment lead times. It is usually difficult or impossible to accelerate the scheduling of an appointment. At many consular posts there may be an additional period of up to several weeks between the interview appointment date and the date the consular post returns the passport containing the new visa.

To minimize potential delay and disruption of travel, if you are or will be required to obtain a visa stamp in order to enter the United States, you need to contact the U.S. Embassy or Consulate where you intend to process in order to book an interview appointment and to determine approximately how long it will take the consular post to issue the visa stamp and return your passport to you. Go to [http://travel.state.gov/visa/temp/wait/tempvisitors\\_wait.php](http://travel.state.gov/visa/temp/wait/tempvisitors_wait.php) to access the web site for the U.S. consular post where you will process.

Further, if you are a citizen of one of the countries affected by post-9/11 legislation -- or if your occupational field involves an area which could be considered by the government as a potential threat to U.S. security -- then you may encounter additional delays in visa processing. Please be aware that even if your country of citizenship is not included in the post-9/11 legislation or if your line of work is in no way detrimental to U.S. security, a consular officer may, at his or her discretion, require you to undergo additional security screening. You can read more about the post-9/11 legislation (including the "NSEERS" or National Security Entry Exit Registration System) by visiting [www.immstar.com](http://www.immstar.com) and clicking on *NIV Memoranda* to access the document entitled "Nationalities Affected by Post 9/11 Legislation." You can obtain more information about occupations that may be considered to involve risks to U.S. security by visiting [www.immstar.com](http://www.immstar.com) and clicking on *NIV Memoranda* to access the document entitled "Technology Alert List."

You should be aware that in November 2007, the Department of State implemented a Petition Information Management System (“PIMS”) that requires that all U.S. consular posts obtain electronic verification from the Kentucky Consular Center of all H, L, O, P and Q visa petition approvals before issuing visa stamps. Under normal circumstances, it should take the consular post no more than two days to obtain this electronic verification, so you should be prepared for visa processing to take an additional two days. If your visa issuance is delayed for more than 48 hours after your visa interview due to PIMS verification, please contact Seyfarth Shaw.

**Note that you should notify Seyfarth Shaw as soon as possible if you have ever been arrested, convicted of a crime, pled guilty to a criminal charge, or have any other criminal history, including severe traffic violations (such as driving under the influence/drunken driving), as such incidents may significantly impact your visa processing procedure.**

#### **B. Where Should You Apply for the Visa?**

The absolute best place for you to apply for a nonimmigrant visa is at a U.S. consular post in your home country or the post closest to your foreign residence. Applying in your home country or in your country of foreign residence generally results in a quicker application process and eliminates some possible obstacles to visa issuance.

#### **C. Are You Required to Process in Your Home Country?**

**There is no better place for you to apply for a visa than in your home country.** This is because: (1) as a citizen or resident of that country, you have the greatest right to present yourself at a consular post located there; and (2) the consular staff in your home country will be the most familiar with the evidence you will provide, including educational background, financial support, and any other important political, social, or cultural factors that are relevant to your case.

#### **D. What About Applying for the Visa in Canada or Mexico?**

If you apply for a visa stamp in a country other than your home country, you are considered by the U.S. authorities to be a “TCN.” A TCN is a “Third Country National.” It means that you are neither a national of the U.S. nor of the country in which you are now trying to obtain a visa. For example, a Greek citizen who applies to the U.S. consulate in Toronto, Canada is a “TCN” because he or she is neither a U.S. citizen nor a Canadian citizen.

You might wish to consider the possibility of TCN processing in Canada or Mexico, but note that there is no guarantee that a TCN applicant will receive a visa. The consular officer may deny your case and ask you to apply instead in your home country. In such a case, it is likely to be noted in your passport as a “Denial Without Prejudice,” i.e. there was nothing wrong with the merits of your case but the location of the application was unsuitable. Note further that **if you have been denied a visa in Canada or Mexico, you are not allowed to re-enter the U.S. until you return to your home country and get a new visa stamp.**

You can obtain more detailed information about the TCN visa application process by visiting [www.immstar.com](http://www.immstar.com) and clicking on *NIV Memoranda* to access the document entitled “TCN Processing.”

**V. What Documents Do You Need to Present to Get the Visa?**

**A. Documents Needed for Your Application**

You will need to present the following documents:

1. A passport valid for at least six (6) months into the future.

Each applicant will receive an individual visa, and each Machine Readable Visa (“MRV”) covers a full page. Therefore, passports must contain at least one blank, unmarked visa page to accommodate a U.S. visa.

2. The original Form I-797 (Notice of Approval) issued by the USCIS.

The form will indicate your current employer and the approval period for the work assignment.

3. A copy of the entire visa petition.

We sent you a complete copy of the visa petition at the time of filing. It contains all the forms and exhibits that we submitted to the USCIS. Please bring this entire petition - do not separate the pages.

4. A copy of a company brochure or a recent Annual Report.

You can obtain this from your Human Resources office.

5. Form DS-156 or Form DS-160

You must complete a Form DS-156 (Non-Immigrant Visa Application Form) or Form DS-160, depending on at which consular post you will apply. Both forms must be completed on-line and then printed. Thus, you should access [http://travel.state.gov/visa/frvi/forms/forms\\_1342.html](http://travel.state.gov/visa/frvi/forms/forms_1342.html) to complete and submit the Form DS-156 or DS-160, which will print with a barcode on the last page.

6. Form DS-157.

There are two categories of people who must complete the DS-157. They are:

- (i) All **male** visa applicants, regardless of nationality, **between the ages of 16 and 45**; and,

- (ii) All male and female applicants, regardless of age, with passports or travel documents from China (PRC), Cuba, Iran, Iraq, Libya, Russia, Somalia, Sudan or Vietnam

Further, the DS-157 may be required for all visa applicants, depending on the consular post where you are processing. The new DS-157 is a challenge to complete. For this reason, you should allow extra time to make sure that you are completing it thoroughly and correctly. In addition to asking you to state your official nationality, the form asks you to list any affiliations to ethnic or cultural groups, all the names and name spellings you ever used, all the countries you have visited in the last 10 years, your history of military service, and all post-elementary schools you have attended. You can download this form from the State Department website, or you can ask our office to send you a copy. For further information on completing the Forms DS-156/157, please visit [www.immstar.com](http://www.immstar.com) and click on *NIV Memoranda* to access the document entitled “Completing Forms DS-156/157.”

Please note: the DS-157 is NOT required for applicants who complete Form DS-160 in lieu of the DS-156.

#### 7. Photograph

One passport-size photograph for each applicant, with the applicant facing the camera. The background must be white or light, and the photograph dimensions should be 50mm by 50mm.

#### 8. Machine Readable Visa Fee

There is a mandatory \$131.00 *non-refundable* fee for each Machine Readable Visa. In some cases, you may have the option of paying with local currency. Please check with your specific consular post for further information.

#### 9. “Reciprocity Fee.”

In addition, citizens of certain countries must also pay a “Reciprocity Fee.” Reciprocity fees vary from country to country. To find out if you must pay a reciprocity fee and to determine the exact amount, go to the reciprocity tables located at the Department of State web site at [http://travel.state.gov/visa/frvi/reciprocity/reciprocity\\_3272.html](http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3272.html).

#### 10. Employment letter.

This letter should identify your name, job title, and annual salary. It should confirm that you continue to work with your present employer. This letter must be on company letterhead and signed by a Manager or Human Resources professional.

**B. Documents Needed for the Visa Application of a Family Member**

If you are recently married and wish to obtain a dependent visa for your spouse, or for any unmarried children under the age of 21, please make sure that you read carefully the section on where to apply. In addition, please note that **first-time applications by spouses of newly-wed H-1Bs or L-1s should only be made at a consular post in the home country.**

**The documents listed above in items 1-10 must be presented for family members as well as for the principal applicant. In addition to the documents listed above, you must provide the following:**

1. Birth Certificate.

For each child, you must provide an original birth certificate confirming that you are the child's parent.

2. Marriage Certificate.

An original marriage certificate that lists the full names of each spouse along with the place and date of the marriage. If it is not in English, it must be translated into English.

3. Wedding Photograph

To guard against fraud, many consular officers will wish to see a photograph of the wedding. Please be prepared to present one if necessary.

4. Bank Statement

Dependents of H-1B visa holders are not permitted to work. Thus, the H-4 spouse should also be prepared to present evidence of savings. It is advisable to have prepared a bank statement or bank letter (either from the home country or the U.S.) noting amounts that the couple has in a checking or savings account. This may be a joint or individual account.

5. I-797 Approval Notice

If your spouse or child has resided in the U.S. and filed for a change or extension of status using Form I-539, they may wish to carry with them their original Form I-797 Notice of Approval and present it for the U.S. consular officer's inspection if requested.