

AILA Consular Processing Online Course

MODULE 1: CONSULAR PROCESSING AND THE ROLE OF CONSULAR OFFICERS

Consular officers in over 160 U.S. embassies and consulates around the world serve two key functions:

- 1. to provide essential services to U.S. citizens abroad; and*
- 2. to provide visa services to millions of travelers seeking to visit or immigrate to the United States.*

The precise role of consular officers in performing these functions is complex, however, and can be both confusing and opaque even to seasoned practitioners. In this module, our expert faculty will provide a comprehensive examination of consular processing. They will discuss how the U.S. Department of State (DOS) and its embassies and consulates function, shed light on the services consular officers provide and the basis of the authority they wield, and place the function of consular officers in relation to other components of the U.S. government both in Washington and within the embassy itself.

Faculty:

Stephen R. Pattison (DL), Online Course Committee Vice Chair/Department of State (DOS) Liaison Committee Member, Portsmouth, NH

Bushra A. Malik, AILA Board of Governors/Global Migration Section (GMS) Steering Committee Member, Bloomfield Hills, MI

Margaret Hobbins, Bethesda, MD

Module Outline:

- **Video:** Welcome to the Consular Processing Online Course
- **Reading:** How to Take This Course
- **Video:** Unpacking the U.S. Department of State
 - In This Module
 - The U.S. Government Abroad: What Does DOS Really Do in Our Embassies and Consulates, and How Does This Impact Your Clients?
 - Consuls As Foreign Service Officers: How Are They Selected and Trained? What Functions Do They Perform? What Is the “Consular Cone”?
 - How Does an Embassy Differ from a Consulate?
 - Who Else Is in That Building: Other U.S. Agencies and Their Overseas Functions
 - “Main State”: How DOS Supports Visa Operations and Consular Officers
- **Video:** What Is Consular Processing?
 - DOS’s Role in Providing Immigration Services Outside the United States
 - Administrative, Not Judicial: The Scope and Sources of Consular Authority, Including Consular Non-Reviewability
 - The Foreign Affairs Manual (FAM): What Is It, and How Do Consuls Use It?

** = Invited, not confirmed.*

All speaker affiliations reflect the 2020-2021 AILA committee year, when the course was recorded.

- Consular Processing Versus Changing Status in the United States: Is It Advisable? When Is It Unavoidable?
- **Document:** When There Is a Choice: Checklist for Evaluating Consular Processing Versus Adjustment or Change of Status
- **Video:** The Consul's Inbox: A Day in the Life of a Consular Officer
 - How Consular Sections Are Organized and Staffed
 - Unit Chiefs and Non-Visa Services: Differences Between Small and Large Consular Sections
 - Who Can Adjudicate Visas: Consular Officers, Consular Associates, Temporary Duty (TDY) Personnel, Consular Commissions, and Non-Foreign Service Officer (FSO) Adjudicators
 - Chains of Command: Who Reviews Visa Decisions, Advisory Opinions, and the Role of LegalNet
 - Referral Systems: Consular Relationships with Other Embassy Sections, the Visa Office, Other DOS Offices, and Other Government Agencies
 - All Consular Sections Are Not Alike: How Size, Workloads, and Constituent Posts Determine Which Visa Services Are Available
 - Staffing Gaps, Drawdowns, Closures: When and How Consular Services Are Impacted
- **Video:** Who Gets Served: Access to Consular Processing Services
 - What Is a "Consular District" and How Does It Impact Who Can Apply for Visa Services?
 - "Who's the Boss?": Consul Generals, Minister Counselors for Consular Affairs (MCCA), and Consular Section Chiefs
 - Third-Country Nationals: Can My Client Get an Interview in Nassau?
 - "Can I Come In?": Limits on Family Members, Attorneys, and Others Accompanying Applicants to Consular Sections or Interviews
- **Video:** Interacting with Consular Officers: Dos and Don'ts
 - Identifying and Using Preferred Channels: Website Information and Services
 - Is It Ever Appropriate and Possible to Try to Talk to a Real Person in a Consular Section?
 - Respect Roles and Lines of Authority: Consuls Are Not Judges and the Embassy Is Not a Court of Law
 - To Brief or Not to Brief: Crafting Effective Written Submissions to Consular Officers
 - Know When to Fold: Don't Be "That Attorney"
 - Asking for Pre-Adjudication of Cases Is Toxic: How to Avoid It
- **Exercise:** Drafting Emails to the Consular Section
- **Video:** Ethical Pitfalls to Avoid with Consular Officers
 - Asking for Favors
 - Socializing
 - Tell the Truth About Your Client's Case—Never Conceal

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- Humility: Admit Errors, Provide Clarity, and Demonstrate Respect
- Don't Misrepresent to Clients What You Can Accomplish by Engaging with Consular Personnel
- Don't Enlist Other Embassy or Government Contacts to Assist Your Client with a Visa Matter
- **Reading:** A. Friedman *et al.*, "How to Unstick Your Stuck Consular Processing Case," *2016 AILA Spring CLE Conference Handbook* 76 (AILA 2016-17 Ed.).
- **Hypotheticals**
- **Resources List**
 - *A Curated List of Additional Publications, Recordings, and Resources*

MODULE 2: STANDALONE NONIMMIGRANT VISAS AND WHAT IT TAKES TO GET ONE

This module will cover nonimmigrant visas where there is not an underlying approved petition, with the exception of E-1, E-2 (treaty-based visa categories), and E-3 visas (these will be addressed in another module). Visas that do not require a preapproved petition from U.S. Citizenship and Immigration Services (USCIS) are considered standalone visas and will not be covered. Specifically, our expert faculty will discuss the multiple uses of B (annotated Bs), I, J, F, M, and Blanket L visas. You will learn about how and when these visa types are best used, and what their adjudication criteria are (as set out in the FAM). Booking visa interview appointments, making biometric appointments, paying visa fees, and what an applicant needs to bring to the different appointments also will be addressed.

Faculty:

Poorvi Rohit Chothani (DL), Online Course Committee Member, Mumbai, India

Ganesh Kalyanaraman, AILA Board of Governors, Sacramento, CA

Becki L. Young, AILA Client Resources Committee Chair, Silver Spring, MD

Module Outline:

- **Reading:** Jan M. Pederson, "The Fundamentals of Lawyering at Consular Posts," *Fundamentals of Immigration Law* (AILA 2020-2021 Ed.).
- **Video:** Overview of Module 2 and Introduction of Nonimmigrant Visa Types
 - In This Module
 - Brief Overview of Visas to Be Covered in This Module
 - B-1 Visa
 - B-2 Visa
 - B-1/B-2 Visa
 - I Visas
 - J-1 Visa
 - F-1 Visa

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- M-1 Visa
 - Blanket L-1 Visas
 - Nonimmigrant Intent and Dual Intent
- **Reading:** Joy Gairson *et al.*, “Gloves-Off Administrative Processing,” *AILA Immigration Practice Pointers* (2019–20 Ed.).
- **Video:** Authority to Grant Visas, Appointment Booking, and Forms
 - Consular Authority and Services Derive from DOS and the FAM
 - The FAM Is Published by DOS and Can Be Accessed on the Department's Website
 - It Contains the Functional Statements, Organizational Responsibilities, and Authorities of Each of the Major DOS Components
 - Jurisdiction
 - Third-Country Nationals
 - Centralization of Applications—*e.g.*, All Family Cases in India are Done in Mumbai, All Blanket Ls are Done in Chennai
 - Adjudication
 - Three Likely Outcomes After a Visa Interview
 - Separate Module Will Cover Details About Denials and Administrative Processing
 - Approval and Post-Approval Process
 - Difference Between Visa, Period of Admission, and Status
 - Denial
 - Administrative Processing and INA §221(g)
 - Reciprocity of Visa Validity
 - Two Different Booking Systems
 - Dropbox Applications
 - Expedited Appointments
 - Correcting Errors: Check for Post-Specific Preferences
 - Visa Fees
 - Personal Appearance
 - Practical Tips
 - Overview of Forms
 - Form DS-160: Available at <https://ceac.state.gov/ceac/>
 - Form DS-2019 Certificate of Eligibility: Allows Application for the J-1 Visa as an Intern or Trainee in the United States. It Is Issued by CICD, a DOS-Designated Sponsor Organization
 - Form I-20 Certificate of Eligibility for Nonimmigrant Student Status: Needed by All F and M Students Studying in The United States
 - Social Media-Related Questions
 - Signatures/Submission of Forms
- **Document:** Sample DS-160
- **Document:** Flow Chart and Instructions on How to Set Up Visa Appointments in General

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- **Video:** B Visas: Detailed Instructions on Criteria, Basic Eligibility Test, and More
 - B-1 Visa
 - B-2 Visa
 - B-1/B-2 Visa
 - Annotated B-1s: Meeting the Two-Pronged Test for Each and More
 - B-1 in Lieu of J-1
 - B-1 in Lieu of H-1B
 - B-1 in lieu of H-3
- **Video:** F, J, and M Nonimmigrant Standalone Visas
 - Detailed Instructions on Criteria, Eligibility Test and More
 - F-1 Visa
 - J-1 Visa
 - M-1 Visa
- **Video:** I and L Nonimmigrant Standalone Visas
 - Detailed Instructions on Criteria, Eligibility Test and More
 - I Visas
 - Blanket L-1
 - Forms I-129 and Its Sections Relevant to Blanket Ls
- **Video:** Ethical Issues: Role of the Attorney
 - Preparing as an Attorney vs. Preparing a Visa Applicant
 - Guiding vs. Coaching for a Visa Interview
 - Dos and Don'ts for a Legal Representative
- **Mock Video:** Visa Interview Scenario: Consular Officer, Attorney, and Visa Applicant
- **Exercise:** Preparing Questions for a Practice Interview with a Client
- **Hypotheticals**
- **Resources List**
 - *A Curated List of Additional Publications, Recordings, and Resources*

[MODULE 3: TREATY TRADER/INVESTOR: CHANGING TRENDS IN CONSULAR PROCESSING](#)

This module reviews the basic procedures for applying for E-1, E-2 and E-3 visas at U.S. consular posts abroad. The focus will be on establishing a balance between the statutory requirements and procedural requirements, which vary from post to post.

Faculty:

Teri A. Simmons (DL), Atlanta, GA

*Cindy Azoulay, AILA Board of Governors/Online Course Committee Member,
Ramat Gan, Israel*

Michelle Suzanne Canero, Miami, FL

Henry J. Chang, Toronto, Canada

** = Invited, not confirmed.*

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Module Outline:

- **Video:** Overview of Module 3: Treaty Trader/Investor: Changing Trends in Consular Processing
 - In This Module
 - Introduction to E-1, E-2 and E-3 Visas
 - Understanding the E Visa Application Process at Consular Posts: Is Corporate Registration Available?
 - The Effect of Filing With USCIS
 - Regulatory Requirements for Treaty Traders and Treaty Investors
 - Understanding the FAM: Tips for Usage and Keeping Track of the Changes
 - It's All on the Internet: Knowing Your Consular Post
- **Video:** Where E-1 And E-2 Visa Requirements Are the Same
 - Existence of a Treaty
 - Determining Nationality: Petitioning Company and Employee
 - Approval of the Company Petitioning the E Visa
 - Submission of E Visa Applicants After Company Approval
 - Issue of Dual Nationality
 - Intent to Depart and Dual Intent
- **Reading:** AILA's Business Immigration Response Team, "Practice Pointer: Consular Red Flags in E and L Visa Adjudications" (Oct. 24, 2018), AILA Doc. No. 18102433
- **Video:** E-1 Treaty Trader Requirements: Fear of the Unknown
 - Existing Trade: What This Means and How to Prove It
 - International Trade in Goods or Services
 - Principally Between the United States and the Treaty Country
 - How Do We Know If the Trade Is Substantial?
 - What Evidence Shows the Trade Is "Ongoing"
- **Document:** E-1 Visa Checklist and E-1 Support Letters
- **Video:** E-2 Treaty Investor Requirements
 - Proving Funds Are at Risk
 - When Does a Loan Qualify as an Investment?
 - Is the Investment "Irrevocably Committed"?
 - Identifying the Active vs. Passive Investment
 - When to Use an Escrow Agreement
 - Indices of Real and Operating
 - How Much Is Enough: Defining the "Substantial" Investment
 - More Than Marginal
- **Exercise:** Completion of Pages 1 and 2 of Form DS-156E
- **Video:** E-1 and E-2 Employees: Do All Applicants Qualify?
 - E-1/E-2 Essential Skills Employees
 - Essential Skills Are Different Than Specialized Knowledge
 - Short Term vs. Long Term Needs
 - E-1/E-2 Executive or Supervisory Employees
 - Difference Between the E-2 Investor and Employee
 - Investor's Ability to Develop and Direct the Business
- **Reading:** Cindy Azoulay, Desi Lance, Jared Leung and Ian E. Scott, "Practice Advisory: Consular Nuances in Processing E-1 and E-2 Visa

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Applications in the Era of BAHA,” *Immigration Practice Pointers* (AILA 2020-21 Ed.)

- **Video:** E-3 Australian Specialty Occupation Workers
 - Eligibility Criteria
 - E-3 vs. H-1B
 - Qualifying as Specialty Occupation Employment
 - The Labor Condition Application Process
 - Where to Apply
 - Changes of Employer
- **Video:** Tips of the Trade
 - Initial Intake: Determining If Your Client Qualifies
 - Petition Format: The Post Controls
 - Completion of Form DS-160: It’s in the Record
 - Preparation for the Visa Interview (Conducting a Mock Interview)
 - Requests for Information and Documentation Pre-Interview
 - Third-Country Processing: Is It Ever Acceptable?
- **Hypotheticals**
- **Video:** Ethical Considerations in E Visa Preparation
 - Who Do You Represent: The Company and/or the Employee?
 - Use of the Letter of Engagement in Maintaining Client Expectations
 - Situations Where Personal Business Interests Can Affect Professional Judgment
 - Admitting When You Just Do Not Know, Maintenance of the Duty of Competence
 - The Importance of The Business Plan to E-2 Adjudications: Is It Ethical for Immigration Lawyers to Prepare Business Plans?
- **Resources List**
 - *A Curated List of Additional Publications, Recordings, and Resources*

MODULE 4: PETITION-BASED NONIMMIGRANT VISAS

In this module you will learn what is unique about petition-based consular processing. E, H, L, O, P, and R petitions will be covered. Our expert faculty will provide tips on best practices, and discuss the process and governing rules concerning reconsideration and possible revocation of a petition while attending a consular interview.

Faculty:

Nita Nicole Upadhye (DL), London, U.K.

Nikki Dryden, AILA DOS Liaison Committee Member, Sydney, Australia

Module Outline:

- **Video:** Now That You Are Approved, What Happens?
 - In This Module
 - Practical Tips: Do You Need to Leave the United States to Get a Visa?

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- What Is the Role of a Consular Processing Attorney?
 - Jurisdiction: Where Should You Apply?
 - Forms: Putting Together the Application
 - Consulates Always Trump Petitions on E Visas
- **Video:** The Interview: It May Be a Snap for Your Client, But What Really Happens Before You Get to This Step?
 - What Occurs Behind the Scenes at the Consulate?
 - Petition Information Management System (PIMS)
 - Fraud
 - Old DS-160s
- **Reading:** AILA-DOS Liaison Committee, “Practice Pointer: Resolving Issues with Cases Pending at Consular Posts,” (Nov. 29, 2017), AILA Doc. No. 16070801
- **Video:** Reconsideration, Adjudication When Things Go South, and Revocation
 - What Circumstances Allow Them to Reconsider an Application?
 - What Is the Process?
 - What Can You Do If the Consulate Intends to Reconsider an Application?
 - What Is USCIS and the Consulate’s Role in This?
- **Exercise:** Things to Watch for in Petition-Based Visa Applications
- **Document:** Top Seven Things to Be Aware of In Petition-Based Visa Applications
- **Reading:** “Practice Pointer: Advising Your Clients Regarding Social Media Information Collected on Forms DS-160 and DS-260,” (May 29, 2020), AILA Doc. No. 20052933
- **Video:** Ethical Issues for Petition-Based Nonimmigrant Visas
 - Representing Client and Employee
 - Fraud at the Employee Level: Where Are Your Loyalties?
 - Client Non-Disclosure to Attorney
- **Hypotheticals**
- **Resources List**
 - *A Curated List of Additional Publications, Recordings, and Resources*

MODULE 5: IMMIGRANT VISAS

In this module, you will learn the steps for immigrant visa processing once USCIS has approved the petition and the case is transferred to DOS. Our expert faculty will walk you through processing at the National Visa Center, the visa interview and issuance at the U.S. consulate, and entry into the United States. They will cover family (including K visas), employment, and “other” types of immigrant visas, and advise on best practices when consular processing.

Faculty:

Lynn Marie Lee (DL), Online Course Committee Member, Springfield, VA

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Ramon E. Curiel, AILA Board of Governors/CBP Liaison Committee Vice Chair, San Antonio, TX

Matthew T. Galati, AILA Board of Governors/EB-5 Investor Committee Member, Elkins Park, PA

Jeremy A. Weber, AILA Bylaws Committee Chair/ USCIS HQ (Benefits Policy) Liaison Committee Member, Sydney, Australia

Module Outline:

- **Video:** Overview of Module 5: Immigrant Visas
 - In This Module
 - Making a Plan of Action: Consular Processing vs. Adjustment of Status
 - Employment-Based Petition-Based Cases
 - Family-Based Cases
 - Fiancée vs. Marriage
 - Determining Appropriateness of Exceptional Circumstances
 - Other Types: Follow to Join (FTJ), Diversity Visa (DV), EB-5, Special Immigrant Visa (SIV), and More
- **Video:** Breaking Down the Visa Bulletin
 - Meaning of Priority Dates and Relevance of Current vs. Unavailable
 - Child Status Protection Act (CSPA): When Does the Clock Stop and Start?
 - Determining Which Chart to Use:
 - Final Action vs. Dates for Filing
 - Family-Based Categories
 - Employment-Based Categories
 - What Is Retrogression?
- **Video:** Processing Through the National Visa Center (NVC)
 - Securing a Case Number and Paying Fees
 - Preparing the DS-260
 - How to Submit Documentation to the NVC
 - Interview Scheduling and Preparing for the Interview
 - How to Best Communicate with the NVC
- **Video:** Tips and Tricks: Form Preparation and Documentation Submission
 - DS-260 Form Preparation
 - DS-260 Documentation
 - I-864 Form Preparation
 - I-864 Documentation
 - DS-5540 Form Preparation
 - DS-5540 Documentation
- **Video:** The Mystifying Panel Physician Appointment
 - Panel Physician vs. Civil Surgeon
 - When to Schedule the Appointment
 - Preparing the Applicant
 - Vaccination Requirements
 - Impact of Drug or Alcohol Use or Abuse
 - Do Tattoos Really Matter?

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- **Video:** Immigrant Visa Process
 - Preparing for the Visa Interview
 - Taking Appropriate Documentation to the Interview
 - Attending the Interview
 - Passport and Visa Return
 - Conditional Resident (CR) vs. Immediate Relative (IR): Was the Visa Issued Correctly?
 - Payment of Electronic Immigration System (ELIS) Fee
 - Entry to the U.S. and Green Card Issuance
- **Mock Video:** Preparation for the Interview
 - Example of Preparatory Call Between the Attorney and Client for an Immigrant Visa Interview
- **Video:** Filing I-130 Locally at the Consulate
 - Benefits or Drawbacks of Filing Abroad
 - Who Can File Abroad, General Requirements
 - Countries Where USCIS Exists Abroad
 - Description of Application Process
- **Reading:** USCIS HQ (Benefits Policy) Committee, “Practice Pointer: Recent Updates to I-130 Filing Procedures” (May 12, 2020), AILA Doc. No. 20051237
- **Video:** Ethical Considerations for Immigrant Visa Consular Processing
 - DS-260: Answering Questions & Submitting the Form
 - Attorney Representation at Consulates and How to Best Represent Your Client
 - Attorney Communication with the National Visa Center (NVC) or the Consulate
 - Setting Client Expectations
 - Who Is My Client? Assessing Dual Representation in Family- and Employment-Based Cases
- **Document:** Document Checklist for NVC and Immigrant Visa Interview
- **Exercise:** Preparing for Potential Pitfalls at the Visa Interview
- **Resources List**
 - *A Curated List of Additional Publications, Recordings, and Resources*

MODULE 6: WAIVERS

In this module you will learn how to identify potential causes of inadmissibility and determine whether a waiver is available for each. You will learn the essential elements of a waiver application, the process for requesting waivers, the relevant agencies involved in waiver adjudication, and the impact of waivers on consular processing.

Faculty:

Steven D. Heller (DL), Online Course Committee Member, AILA DOS Liaison Committee Member, Lewes, U.K.

Mahsa Khanbabai, AILA DOS Liaison Committee Member, Easton, MA

Ofelia L. Calderon, Fairfax, VA

Leigh Ganchan, Houston, TX

** = Invited, not confirmed.*

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Module Outline:

- **Video:** Overview of Module 6: Waivers
 - In This Module
 - Client Interview Tips on Eliciting Information Relating to Potential Inadmissibilities (Arlo Guthrie’s “Alice’s Restaurant”)
 - Obtaining Records of Recent Entry Refusal
 - FOIA Requests in the Context of Waivers at the Consulate
- **Video:** Identifying Inadmissibilities
 - Health-Related Inadmissibilities: INA §212(a)(1)
 - Criminal-Related Inadmissibilities: INA §212(a)(2)
 - Immigration Violations, Illegal Entry, and Misrepresentation and Fraud: INA §212(a)(6)
 - Prior Removal, Unlawful Presence, and Immigration Status Violations: INA §212(a)(9)
 - Travel Bans by Proclamation per INA §212(f)
- **Video:** Criminal-Related Inadmissibilities
 - Controlled Substances
 - What Is a Controlled Substance (Controlled Substances Act)?
 - What Is a Controlled Substance-Related Offense?
 - Crimes Involving Moral Turpitude (CIMTs)
 - What Is a CIMT?
 - Exception: Sentencing Clause
 - What Is an Admission or Conviction?
 - “I Didn’t Do It”: Clients in Denial
 - Minors
- **Reading:** Stanley P. Walker, “Waivers for Unlawful Presence,” *Navigating the Fundamentals of Immigration Law* (AILA 2020–21 Ed.)
- **Video:** Nonimmigrant Waivers: INA §212(d)(3)
 - Process
 - Can §214(b) Refusal Be Waived?
 - *Hranka* Factors
 - FAM Factors
 - Form of Application (Or Lack Thereof)
 - Using the DS-160
 - Local Forms (*e.g.*, VCU-1)
 - Attorney Letter
 - Supporting Documents
 - Who Decides and What Happens Next?
 - DOS Decides Whether to Recommend a Waiver: What If They Say No?
 - Admissibility Review Office (ARO) of U.S. Customs and Border Protection (CBP)
 - Consular Officer Uploads Documents to Support the Recommendation for Waiver to ARO
 - Length of Time for Decision
 - Status Checks

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- What Happens When the Waiver Is Approved? Effect on the Visa
- **Document:** DS-160 Fill-Ins and Sample Interview Letter
- **Video:** Immigrant Waivers and Permission to Reapply for Admission
 - What Can't Be Waived (Contrast with NIV Waivers)
 - I-601 vs I-212, and Can You Submit Them Together If Both Are Required
 - Where to File
 - Process: Can't File Until After Visa Denied (Unless Eligible to File I-601A)
 - Does One Actually Have to Consular Process?—*e.g.*, Misrepresentation Alone Does Not Require Consular Processing If an Immediate Relative or in Some Other Valid Immigration Status
 - Examples of What Qualifies as What—*e.g.*, Using Someone's Passport to Enter the United States Is Misrepresentation, But Is Also Considered as the Person Being Inspected, etc.
 - Difference Between I-601A and I-601
- **Exercise:** Is It Buoyant? Review Multiple Brief Fact Patterns to Identify the Inadmissibility and Whether It Is Waivable for Nonimmigrants and/or Immigrants
- **Video:** Travel Bans by Proclamation: Exemptions and Waivers
 - Application to Immigrants and Nonimmigrants
 - What Does a Travel Ban Look Like?
 - The Particular Case of the “Muslim Ban” (Presidential Proclamation 9645)
 - Country-Specific Terms
 - Exemptions
 - Waiver
 - Undue Hardship
 - National Interest
 - National Security/Public Safety
- **Video:** Ethics and Wellness in Waiver Cases
 - Dual Representation: Business Visa Applicants Who Require Waivers
 - What If Petitioner (Company or Family Member) Is Unaware of the Need for the Waiver? What Information Are You Obligated to Disclose or Not Disclose?
 - Candor Toward the Tribunal (Client Admissions)
 - Setting Client Expectations; Review Full Past Immigration History of Applicant
 - Confidentiality: Disclosure to Third Party in Assembling Supporting Documents
 - Personal Conflicts
 - Addressing Potential Moral & Value Conflicts:
 - Racist/Pedophile/Rapist
 - Perpetrator of Domestic Violence or Hate Crime
 - Fraudster Who Targeted a Protected Group

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- **Mock Video:** Client Interview Techniques: Eliciting Inadmissibility Information
- **Hypotheticals**
- **Resources List**
 - *A Curated List of Additional Publications, Recordings, and Resources*

MODULE 7: WHEN THINGS GO WRONG IN CONSULAR PROCESSING

This module will cover visa refusals, consular reviewability, and “appeals” when things go wrong for your client at the consulate. It includes discussions of relevant definitions in denials at the consulate, prudential visa revocations, practical tips and ethical considerations for dealing with a refusal at a post, and an overview for challenging DOS decisions in court.

Faculty:

Jeffrey Howard Gorsky (DL), Arlington, VA

David Strashnoy, Los Angeles, CA

Module Outline:

- **Video:** Overview of §214(b), Recap of Earlier Modules and Definitions
 - Immigrant Intent
 - Presumption Not Overcome in a Denial and Analysis of the Possible Reasons
 - In the Context of a B Visa (Including Spouses of U.S. Citizens/B-1 in Lieu)
 - In the Context of a J-1 or F-1 Visa
 - Petition Revocation (Reference to Module 4: Petition-Based Nonimmigrant Visas)
 - Incorrect Use in Inadmissibility Cases
 - Visa Eligibility
 - Include E Visa Denials and Its Incorrect Use in the Context of L-1 Blankets: §221(g) (Reference Next Video)
 - Discuss the Recent Issue of BAHA in the Context of Increase of Refusals, Especially in the Specialist Categories
- **Video:** Overview of §221(g); Recap on Earlier Modules and Definition. In-Depth Discussion on Particular Areas:
 - PIMS
 - Security Advisory Opinions
 - ‘Not Clearly Approvable’ L-1 Blanket Denials
 - Other Grounds for Administrative Processing
- **Reading:** AILA DOS Liaison Committee, “DOS Practice Pointer: Administrative Processing” (May 31, 2019), AILA Doc. No. 12091850
- **Video:** Prudential Visa Revocation
 - Review of 9 FAM 403.11-5(B)
 - Triggering Events

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- Client Strategy: Discuss International Travel, Timing, and CDC Guidance on Remission
- **Exercise:** You Receive a Notice of Prudential Revocation from Post: Draft an Email of Advice to the Client.
- **Video:** Practical Tips for How to Deal with a Refusal at Post
 - Overcoming a Refusal at the Same Consulate: Supervisory Review
 - Art of Consular Communication
 - Dealing with Consular Revocations: Withdrawing and Refiling? Where to Send Your Client After a Reapproval
 - Feasibility of Sending Clients to Other Consulates Using Same Approval Notice
 - Applying for Alternate Categories Post-Refusal: Thinking Strategically
 - When and How to Use LegalNet (Including Request for Advisory Opinion)
 - Congressional and Corporate Business Liaison Channels
- **Document:** Email to LegalNet Requesting an Advisory Opinion
- **Reading:** AILA DOS Liaison Committee, “Practice Pointer: LegalNet Scope of Review of Nonimmigrant Visa Refusals” (Jan. 9, 2019), AILA Doc. No. 19011001
- **Video:** Litigation
 - Brief Overview of Challenging DOS Decisions in Court
 - *Kerry v. Din*
 - Locus Standi
 - Possible Remedies
- **Hypotheticals**
- **Resources List**
 - *A Curated List of Additional Publications, Recordings, and Resources*

MODULE 8: NON-VISA SERVICES AT CONSULATES

In this module you will learn about the various non-visa consular services available to U.S. citizens, their family members, and permanent residents, including those related to the acquisition and loss of U.S. nationality, requests for travel documents, and services for U.S. citizens living abroad.

Faculty:

Rebecca Kay Rangel, Chicago, IL

Katie C. L. Fitchett, London, U.K.

Module Outline:

- **Video:** Applying for a Passport: Renewals, Emergencies, and Citizens Born Abroad
 - In This Module
 - Typical Process and Requirements for:
 - Renewing a Passport at a Consulate
 - Replacing a Lost or Stolen Passport

** = Invited, not confirmed.*

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- Applying for a First Passport
 - Passport for a Minor
 - Emergency Passports
 - Citizenship Transmission Requirements and the Consular Report of Birth Abroad (CRBA) for Those Under 18
 - Types of Evidence to Prove Transmission
 - Options If Transmission Requirements Are Not Met
- **Exercise:** Identifying Whether an Individual Has Acquired U.S. Citizenship at Birth
- **Reading:** Kehrela Hodkinson, “Renunciation of U.S. Citizenship: Why Would a Client ‘Give It All Up?’” 1 *AILA Law Journal*, 71 (April 2019).
- **Video:** Giving Up U.S. Citizenship: Renunciation and Relinquishment
 - Renunciation vs. Relinquishment
 - What Are Some of The Common Reasons to Seek Either Option?
 - What Are the Requirements and What Is the Typical Consular Process?
 - What Are the Consequences?—*e.g.*, Apply for the Visa Waiver Program (VWP), Potential Inadmissibility Issues, Tax Consequences?
- **Document:** Checklist of Key Considerations When Advising a Client Regarding a Potential Renunciation of U.S. Nationality Application
- **Video:** Permanent Residents Outside the United States
 - Travel Document Requests: Transportation Boarding Foil If Green Card or Reentry Permit Lost (I-131a); Option to Pick Up Reentry Permits from the Consulate (I-131)
 - Returning Resident Visas—Still Need to Go Through Immigrant Visa Process
 - Maintenance and Abandonment of LPR Status
 - Briefly Touch on I-407 Process—No Longer at Consulate
 - Best Practices on Whether and When to Apply for Any of These
- **Video:** Assisting U.S. Citizens Living Abroad
 - Federal Benefits Unit (*e.g.*, Social Security Administration, Medicare, Veterans Affairs)
 - Notarial Services
 - Arrest of U.S. Citizens Abroad
 - Emergency Financial Assistance
 - Smart Traveler Enrollment Program (STEP)
- **Video:** Ethical Considerations: What Is the Attorney’s Role?
 - Renunciation: Minors Under Duress from Parents and Potential Tax Evasion
 - Parent Does Not Meet Residency Requirements for Transmission of Citizenship
 - LPR Absent from the United States for Extended Period with Intent to Remain Abroad
- **Hypotheticals**
- **Resources List**
 - *A Curated List of Additional Publications, Recordings, and Resources*

* = Invited, not confirmed.

All speaker affiliations reflect the 2020-2021 AILA committee year, when the course was recorded.

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