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and the Broadcasting Board of Governors
Office of Inspector General

Report of Inspection

Nonimmigrant Visa Adjudication: the Visa Referral Process

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EXECUTIVE SUMMARY

In response to a request from Congress, the Office of Inspector General (OIG) reviewed the Department of State's (Department's) visa issuance policies and procedures to determine whether they were vulnerable to undue or inappropriate pressures to issue visas to unqualified applicants. In particular, OIG focused on use of the visa referral system. The visa referral system is a method of providing information about presumably legitimate visa applicants through appropriate responsible channels and is designed to facilitate adjudications of visa applicants while advancing U.S. interests. Referrals can provide valuable information about the applicant and the importance to the United States of a visa issuance - information otherwise unavailable to the adjudicating office--and thereby improve adjudication and security.

The terrorist attacks of September 11, 2001, revealed weaknesses in the security of the visa process. One area of concern was the potential for undue pressure being placed on consular officers to issue visas to applicants about whom they have concerns. OIG found that the Department has taken significant steps since the attacks of September 11, 2001, to strengthen safeguards in visa issuance procedures generally and the referral system specifically. The visa referral system is required at every visa issuing diplomatic or consular post and is part of the visa process which allows members of the mission to recommend certain applicants for visa issuance, sometimes waiving elements of the adjudication process and creating at least the impression of special, favorable treatment that furthers the interests of the United States. Many, if not most, of these cases are individuals going to the United States on U.S. government sponsored programs.

The referral system can be abused and must be carefully administered and monitored. Pressure on visa adjudicating officers is often subtle and may occur inappropriately outside the formal referral process. The Bureau of Consular Affairs (CA) has taken steps to address this concern. In particular, OIG found that recent changes to the referral system have made it more codified, more transparent, and more accountable than before, with ambassadors and deputy chiefs of mission (DCMs) clearly responsible for a mission's effective referral system and its integrity. Further work, however, is required. Consular officers, particularly those just begin-

ning their careers, need training on dealing with requests, whether appropriate or inappropriate, from those more senior in rank. CA should also designate a person in the Department to whom adjudicating officers may address their concerns.

While it appears most missions are adhering to the regulations and procedures, the apparent exceptions indicate a need for closer Departmental supervision. CA needs to be better informed of the actual referral system procedures in place at each of the visa issuing posts.

PURPOSE

Congressman John N. Hostettler, Chairman, and Congresswoman Sheila Jackson-Lee, Ranking Member, of the Subcommittee on Immigration, Border Security, and Claims wrote to Acting Inspector General Cameron Hume on October 6, 2004, requesting a review of certain aspects of nonimmigrant visa (NIV) processing at embassies and consulates. The questions concerned the viability of regulations governing the NIV referral programs currently in place at posts, possible pressures on more junior staff to issue visas, and the possibility of adverse effect on future assignments and career prospects if an adjudicating officer does not issue a visa referred by a more senior official. This report analyzes the degree to which the Department over the past two years has strengthened the NIV process by addressing the potential problems laid out in the October 6 letter.

SCOPE AND METHODOLOGY

This review took place in Washington and in the field between November 2004 and February 2005. Charles Anderson (Consular Evaluations Unit Chief); Ronald Harms (Project manager); inspector Robert Mustain; and senior inspectors Bernard Alter, Larry Colbert, Norbert Krieg, and Maria Phillip conducted this review.

Two questionnaires were sent to all visa adjudicating posts. The first was addressed to consular officers adjudicating Class A referral cases and the second to all NIV interviewing officers. OIG received 131 responses to the first questionnaire and 350 responses to the second. CA answered a third questionnaire. OIG conducted on-site interviews with consular officers at eight posts as part of previously scheduled inspections and also interviewed officers in Jakarta and Manila. In addition, OIG conducted personal interviews at the Department and in other agencies as follows:

Department of State

Bureau of Consular Affairs

Executive Office

Visa Office

Bureau of Human Resources

Foreign Service Institute

Department of Homeland Security

General Accountability Office

BACKGROUND

Consular officers at 211 U.S. embassies and consulates around the world have the exclusive responsibility and authority to adjudicate NIVs. By law neither an ambassador nor a DCM can direct a consular officer to issue a particular visa. Even the Secretary of State has no authority to override a consular officer's decision, pursuant to the Immigration and Nationality Act, 8 USC 1104. Recognizing the importance of the visa process both as a bilateral diplomatic issue and as a legitimate diplomatic tool for achieving U.S. aims, and considering the importance of providing as much information as possible to consular officers, the Department has long understood the need for a policy and system to allow all elements of the mission to benefit from the visa system and to protect consular officers from inappropriate pressure. After September 11, 2001, this system has been significantly strengthened.

Although a consular officer cannot be ordered to issue a NIV, the executive office of the mission can influence individual cases and overall visa policy. Other sections of the mission often appeal directly to the consular section or, failing this, to the executive office for the issuance of certain visas. For example, the commercial section may appeal for favorable consideration for travelers seeking to visit the United States as part of a trade mission. Prominent local figures often appeal directly to the ambassador or DCM for reconsideration of the visa refusal of a relative or friend. General NIV policy can also be influenced when the ambassador believes refusal rates are too high. A high NIV refusal rate in some countries can quickly generate adverse political fallout both from members of Congress reacting to constituent concerns and also from the host government. Feeling those pressures, an ambassador may legitimately address general visa policy and may attempt to influence that policy by asking the consular section to review standards for visa issuance.

NIVs are highly valued in most countries of the world. In many countries, a high percentage of applications by first time applicants are denied. Even in countries where the vast majority of NIVs are approved, a long wait for an appointment or other inconvenient aspects of the NIV process can create a demand for red-tape cutting assistance from embassy officers on behalf of contacts or acquaintances. As a result, any mission officer, Foreign Service national employee, or their family members can be approached by someone requesting assistance in getting an NIV.

For the most part, these requests are deflected and the individual visa seeker told to apply through normal channels. However, if the NIV aspirant is an important contact of the embassy employee or someone whose travel to the United States is in the interest of the United States, there are good reasons to try to accommodate them.

The process of providing a consular officer with additional information concerning a traveler and of facilitating the application of an individual whose travel to the United States is deemed to be in the interest of our country is called “a visa referral.” For many years now each overseas mission has been required to have a written policy that governs the operation of the mission’s visa referral system. This was true prior to September 11, 2001, but the rules have been clarified and tightened since the attacks as part of the broader effort to revise visa policies and practices. NIV referral systems are designed to serve several purposes. First, they facilitate the issuance of visas to those foreign nationals whose travel is deemed to be clearly in the U.S. government’s interest. Second, they serve as a means of gaining access to local officials and others who are important to the mission. Third, they create a buffer between the embassy employee seeking the visa for a contact and the NIV interviewing officers. Were embassy employees allowed to solicit NIV issuances directly from the NIV officers, not only would there be an opportunity to put unwarranted pressure on the NIV officer, but also the work of the NIV unit would be disrupted. Fourth, they create a formal record, and, therefore, accountability of attempts to facilitate issuances.

The formal, written policy and procedures for visa referral systems are described in Appendix K of Volume 9 of the Foreign Affairs Manual. Appendix K states “a formal visa referral system must be established by all posts for use in referral systems.” Appendix K also lays out key elements that must be included in a visa referral system. There are two types of referrals: Class A and Class B. Both are only appropriate if they further U.S. national or mission interests. However, a Class B referral results only in procedural courtesies such as an expedited appointment for a visa interview. A Class A referral applicant in most cases is excused from an interview and usually receives a visa unless there is negative information from the name check or other sources. The applicant in a Class A referral must be personally known to the referring officer. Class A referral beneficiaries can also be excused from the Visas Condor security advisory opinion requirement (02 STATE 016413) and exempted from the Department of Homeland Security’s National Security Entry Exit Registration System (NSEERS), if authorized by the chief of mission. They must still undergo a Consular Lookout and Support System (CLASS) name check, like all other applicants.

In response to OIG's survey, 99 percent (129 of 131) of those officers authorized to adjudicate visa referral cases, generally the consular section chiefs, said their post follows Appendix K guidance. In order to ensure continued adherence to the guidance, the Department requires each consular section chief to submit annually a certification that they are following required management procedures. This specifically includes certification that Appendix K visa referral procedures are followed.

Many referrals are for individuals going to the United States to participate in a U.S. government sponsored program, such as the International Visitor program, law enforcement/military training or exchange visitor programs, such as the Fulbright Scholar program. In fact some posts reported that 80-90 percent of their referral cases fit these categories. For example, the American Institute in Taiwan calculated that 80 percent of referrals are U.S. government sponsored, partly because of the high volume of military sales activity. Several embassies in the former Soviet Union, such as Baku and Bishkek, reported that 100 percent of their referral applicants were going to the United States on official U.S. government programs.

Even with an NIV referral system in place, NIV interviewing officers could be subject to attempts to influence their NIV decisions on individual cases or their overall ratio of issuances over refusals. They could be approached outside the embassy; their colleagues could discuss cases informally; and senior officers could make comments on the effect of an NIV officer's high refusal rate on bilateral relations with the host country. Without openly requesting an issuance in a particular case, a senior officer can leave the impression that an NIV officer would be viewed more favorably if a certain visa were issued. Officers just starting their Foreign Service careers might be the most vulnerable to these subtle influences. All of the above areas of concern require vigilance on the part of the embassy front office, the consular section chief, the Department, and OIG. This review has attempted to determine if these problems are occurring and, if so, to what extent.

Aspects of these issues had previously been examined in the Government Accounting Office's report *Border Security--Visa Process Should be Strengthened as an Antiterrorism Tool* (GAO-03-132NI of October 2002) and the Department's OIG report *Review of the Nonimmigrant Visa Issuance--Policy and Procedures* (Memorandum Report ISP-I-03-26 of December 2002).

FINDINGS AND RECOMMENDATIONS

RECENT CHANGES TIGHTEN SYSTEM

Since the September 11, 2001, terrorism attacks in the United States, CA has made several changes to the mandated aspects of visa referral systems. Five telegrams have been sent to the field explaining the changes and policies. These instructions have helped clarify referral system policy and make it consistent worldwide. In May 2004 Appendix K was amended to reflect these changes.

New Regulations Governing Referral Procedures

Of particular note, the Department addressed the problem of improper influence on visa officers by issuing a policy on NIV referrals that puts responsibility for Class A referrals with the agency head or section chief (03 STATE 223774).

The most significant changes have been:

- Only the chief of the consular section (or acting chief) can adjudicate Class A referrals. In many posts, the chief of the consular section is a mid-level or higher officer;
- The subject of a Class A referral must be personally known to the referring officer. This improves the quality of referrals. It also underlines the accountability of the referring officer;
- Only U.S. officials under chief of mission authority can refer visa cases. Therefore all referring officers are subject to any necessary penalty for violation of the referral system;
- The Visas Condor and NSEERS requirements may not be waived on the basis of a Class A referral except with specific chief of mission or chargé d'affaires written approval. Because these are security requirements, responsibility for a waiver request may not be delegated;

- A new Class A referral form requires the referring and approving officers to attest in writing that to the best of their knowledge, the referred applicant does not constitute a threat to the safety or national security of the United States. This draws the referring officer's attention to the importance of security issues in any referral and assures the adjudicating officer that this has been considered;
- With the exception of most diplomatic and international organization (A and G) visa applicants, all Class A visa referral first-time applicants subject to any security advisory opinion must personally appear for an interview before a consular officer. In essence, this means that this category of applicants does not receive significant benefits from Class A visa referral treatment;
- The personal interview requirement for nationals of countries that are listed as state sponsors of terrorism may never be waived. Again this means that they receive little actual benefit from a Class A referral;
- All referral case documents, including photo, must be processed and scanned in the NIV system using the referral function. This allows for the application of a follow-up mechanism at post and in Washington;
- Referring officers should not submit Class A referrals for applicants previously refused a visa within the last two years;
- Referral adjudications must be reviewed by the adjudicator's supervisory officer;
- Waiver of the interview requirement is not necessarily the same as waiver of personal appearance and fingerprinting, because consular officers are required to take fingerprints of almost all applicants;
- A log of all referral cases must be kept in the NIV system with the application and accompanying documents including the referral form scanned into the consolidated consular database.

To address the potential for pressure on visa line officers, CA stated that post personnel should avoid any appearance (or reality) of using informal communication to pressure consular officers to issue a case. Inquiries about referral cases should be made only to the section chief.

With the introduction of biometrics to the NIV, one of the principal perquisites of a Class A referral - not having to personally appear in the consular section - was eliminated for all but A and G visa applicants. As of October 2004, all NIV

issuing posts must take fingerprints of every applicant over age 14 and below age 80. A Class A referral applicant may still, in most instances, be exempted from a personal interview even though presence in the consular section is required for fingerprinting. Several posts reported a significant reduction in Class A referrals once fingerprinting began.

CONSULAR SECTION MONITORING OF REFERRAL SYSTEMS

The consular section chief should be aware of how effectively a referral system is working. Are mission officials bringing up cases directly with the interviewing officers? Are inappropriate applicants coming through the system? Are referral forms not filled out properly? One consul general at a high volume post told OIG that he had totally abolished an informal referral process that had existed earlier at post and used country team meetings and individual meetings with agency heads to remind everyone that, “your name as the referring officer in an NIV case will stay with the record forever, along with mine.”

To help the section chief detect fraud and malfeasance in the referral system, the NIV system software generates reports on referrals. Appendix K states that consular section chiefs should review these reports regularly and must monitor all incoming referrals by using the NIV software to keep track of referral statistics, trends, and possible abuses. Consular chiefs are also advised to verify referrals and signatures periodically. A consular section chief methodically following these steps would have knowledge of how many and what types of referrals are coming from each officer and section of the mission.

The NIV software cannot track the visa recipient to inform the consular section chief whether or not the person returned after visiting the United States. However, in the future, implementation of exit controls under the Department of Homeland Security’s U.S.-visit system might make this possible. For now, in order to verify the return of an applicant, a consular section must conduct what is called a validation study. While the method of conducting a validation study varies from post to post and CA provides guidance on how to conduct the study, it often means contacting the visa recipients to see if they have returned. CA recommends a regular review of referrals.

Responses to OIG’s survey of referral adjudicating officers showed that 58 of the 129 responding said they had a formal mechanism at post that they used for following up on referral cases. Thirty-three said that they did not follow up on

cases, and 31 said it was not applicable because they had only one or two referrals, if any, per year. One small post noted that a study was not necessary since it had confirmation that all of its referral cases had returned.

OIG believes that every consular section should know if they have a problem of referred applicants not returning home or otherwise violating the terms of their visa. This information can validate the effectiveness of the referral program or identify problems. Sections doing a small number of referrals should not find it difficult to monitor cases with a simple ‘tickler system.’ Such a system prompts consular managers to check to see that a person has returned from the United States consistent with the plans indicated at the time of application. Some visa categories call for extended stays that make both tickler systems and validations studies ineffective over a short time span. Sections with a large number of referrals, and consequently a larger potential for abuse, should conduct full validation studies regularly. Without such periodic reviews it is impossible to evaluate the effectiveness of the referral policy and confirm that the right applicants are being facilitated.

Recommendation 1: The Bureau of Consular Affairs should require all consular sections annually to conduct at least one validation study or other method to confirm the compliance of referred applicants with the conditions of their visas and report the results back to the bureau. (Action: CA)

If the consular section chief does find problems with the referral system, support from the front office to remedy the problem is essential.

FRONT OFFICE OVERSIGHT

Based on the results of the survey, observations in the field, and discussions in Washington, OIG concluded that most ambassadors and DCMs appear to understand the importance of their personal oversight of the referral system and that there are serious repercussions, including removal from post, in the most egregious cases of abuse. While Department oversight of referral systems is important, entrusting chiefs of mission with local supervision and responsibility is still appropriate and necessary, just as the Department entrusts chiefs of mission with the lives of all employees and dependents in their missions, the management of top

secret information, and the conduct of key bilateral relations with the host country. In the OIG survey, 126 out of 131 officers adjudicating referrals said their current front office supported their visa referral decisions.

Instruction and Guidance for Chiefs of Mission

A number of steps have been taken to emphasize the importance of the chief of mission's role in administering the referral process. As stated in 9 FAM, Appendix K, 201 "it is essential that chiefs of mission and principal officers assume responsibility for the implementation and supervision of visa referral systems at posts." When briefing chiefs of mission and DCMs at annual seminars, Assistant Secretary for CA Ambassador Maura Harty reminds them: "Nowhere is your dealing with the visa section more significant than your role as promulgator of the post's visa referral policy. " She advises them to "ensure that you personally adhere to approved practices and that everyone else in the mission knows you do so and that you expect them to as well." She gives the same message to first time ambassadors during their orientation course. The Deputy Assistant Secretary for Visa Services uses similar talking points during her presentations to officers taking the Deputy Chief of Mission course at the George P. Shultz National Foreign Affairs Training Center.

Periodically CA sends telegrams directed to chiefs of mission on referral system responsibilities. In one such telegram (04 State 034271), CA spelled out in great detail this responsibility. It pointed out that referrals are a valuable foreign policy tool as long as specific guidelines are adhered to, and it stated that the chief of mission's role in setting the tone for the referral system is critical. A pair of telegrams from CA (04 State 034271 and 04 State 034743) on front office consular oversight responsibilities specifically targeted smaller posts. The two telegrams included extensive sections on referral systems and ethics.

Mission Actions to Emphasize the Chief of Mission Responsibility

Some posts, under front office direction, now reissue the mission's referral policy annually and include formal sessions for all mission officers which one post calls "visa referral school." This makes certain that newly arrived officers are aware of the program and reminds all officers that the chief of mission takes an active role in overseeing the system. At several posts the consular section chief

issues a written report to country team members detailing referral numbers and noting problem cases. Some front offices vet each referral and request feedback on each case.

OIG notes that Appendix K requires posts to provide a detailed briefing on the referral system to newly arrived officers. Not all missions are equally rigorous either in emphasizing the chief of mission role or in educating the ever-changing cast of mission members to their responsibilities. Past practice often made a visa referral relatively easy and led to a certain sense of entitlement on the part of some applicants and certain mission elements. Every mission official who is permitted to make referrals could benefit from a periodic reminder of the rules of the referral system and of the interest taken by the chief of mission in referrals.

Recommendation 2: The Bureau of Consular Affairs should require the chief of mission or principal officer at every nonimmigrant visa processing post to reissue the visa referral policy annually and certify that it has been done. (Action: CA)

As amended, Appendix K now requires the consular section chief to inform the chief of mission (or DCM) and the regional security officer in writing of any instances of significant numbers of unqualified applicants by a particular referring officer. Any abuse of the system can result in loss of referral privileges, and intentional false statements can lead to prosecution. In response to OIG's survey, 16 officers out of the 131 responding that adjudicate referred visa cases said privileges had been removed from a mission officer at their current post, and 114 said such abuse had not occurred at their current post or they were unaware if it had occurred in the past.

As noted earlier, almost all of the referral adjudicating officers who responded to our survey said they receive strong support for the referral system from their front office. Some cited problems at previous posts. Only 13 said the chief of mission was not providing oversight of the post's referral system. One officer stated, "The front office is very focused on ensuring only good applicants get referred." Out of 128 respondents, 114 did not believe refusing a visa referral case could affect their next promotion or assignment.

Clearly most missions' front offices are overseeing the referral system as intended by the Department, sometimes after a little persuasion. For example, an officer at a post that was having problems said, "Our recent OIG inspection was

helpful in making the front office realize the impact of their interventions with us and the appearance of undue influence. Despite our education of the front office, they have been incredulous that their good causes may pose us problems under the law.” One of the areas of emphasis for OIG inspection teams is border security readiness, which includes oversight of the referral program.

The survey, however, did reveal some disillusionment with the available recourses in those instances when the front office was itself exerting undue influence. One officer at a post in the Near East said, “In general the consular section feels pressure to act simply as a rubber stamp to visa referrals by chiefs of section and above.” Another stated, “The front office is the only section that has ever tried to influence decisions in referral cases. If I were to refuse the case, then I would be hurt in the employee evaluation report (EER) process as my rater is the DCM and the Ambassador is the reviewing officer.”

In one case the front office appeared to be avoiding the responsibility attached to a referral in a post where security concerns would be high. An officer in the Near East said, “No one here has yet been willing to submit a Class A referral in my 18 months, yet some cases receive undue attention by the front office - informal referrals followed up by excessive curiosity.”

DEPARTMENT OF STATE OVERSIGHT

Rather than weaken a system that is working well in the vast majority of missions, the Department needs to make certain that those isolated cases of front office indifference or abuse are handled appropriately. The Department also needs to make certain the NIV officers have clearly defined recourse to follow when they encounter serious pressure to issue an inappropriate visa and the front office will not help.

The Department’s principal control over how referrals are handled overseas is through regulation outlining requirements, i.e. Appendix K. While spelling out some mandatory elements of a referral system, Appendix K also states that the written policy at a mission “should be tailored to the individual and special circumstances of each mission...” This tailoring of the policy to a mission’s situation could lead to policies circumventing the Department’s intent. However at present the Department does not review each mission’s written policy. CA informed OIG that consular officers often contact the bureau to get guidance when drafting referral policies for the post. CA said that on occasion post management has asked

the consular officer to draft a policy more expansive than CA's guidance. CA then works with the officer to explain to post management why such deviations would weaken the system. OIG is concerned that there may be other posts whose referral policies deviate from CA guidance of which CA is unaware.

Recommendation 3: The Bureau of Consular Affairs should require every mission to submit a copy of its referral system to the bureau at the time of its annual reissuance and request clearance for any changes. (Action: CA)

The problem of unwarranted influence on visa decisions at a post can come to the Department's attention either directly from a consular officer or through CA's use of new technology. CA's ability to monitor each post's referrals is now possible through the consolidated consular database system. This system makes every visa application available online. Posts are now required to scan into the system all referral forms and associated visa application forms. A hard copy of these documents is retained for seven years.

In the Office of Fraud Prevention Programs, the Vulnerability Assessment Unit (VAU) uses the consolidated consular database to search for anomalies in visa issuances, including referrals. This is particularly useful for monitoring referrals at isolated posts. CA told OIG that monitoring referral patterns is one of the VAU's most important responsibilities. Through the consolidated consular database VAU can monitor patterns by post or by referrer. VAU can determine whether referral guidelines are being followed.

Regional consular officers and consular management assessment teams (CMATs) visits are other opportunities for the Department to ensure that posts are complying with regulations. OIG inspections serve this purpose as well. VAU provides each CMAT with an in-depth review of a post's referral profile before the team visits that post. Once at post the CMAT thoroughly reviews both the post's written referral policy and how the policy works in practice. As of January 2005, CMATs have visited 61 posts. CA plans to send CMATS to a minimum of 30 posts in 2005.

OIG reviews referral policies and procedures as part of the regular inspection process. As noted above, inspections can serve to remind all elements of a mission of the importance of following referral procedures.

Periodic reminders to chiefs of mission of their responsibility for overseeing visa referrals is one way the Department promotes sound referral policies. Drawing attention to the rare criminal case is also effective. In 2002 CA took the conviction of a former Drug Enforcement Administration agent for visa referral abuses as an occasion to underscore the need for all chiefs of mission to meet with their consuls general to review post visa referral procedures. CA pointed out that the visa referral form can be used in a court of law and therefore must be filled out honestly and accurately. To underscore the importance of this message it should come from the Deputy Secretary or Under Secretary for Management who has oversight over CA.

Recommendation 4: The Bureau of Consular Affairs should send a telegram to all ambassadors and deputy chiefs of mission reminding them of the importance of visa referral systems, the need for active front office oversight of the system, and the consequences of the use of undue influence. (Action: CA)

RECOURSE FOR NONIMMIGRANT VISA OFFICERS

CA periodically reminds consular managers to be alert to any potential misuse of the referral system or any attempts to influence improperly any visa decision. CA expects entry-level officers to report any concerns through their own chain of command. If necessary they (or any consular officer) can report such concerns to the visa office that in turn informs the CA front office and investigates the matter. Officers can also contact the OIG hotline to report these concerns. CA told OIG that officers have alerted CA/VO when they have felt pressure from superiors to issue visas. They said that it is not very common, but they take any such concerns seriously. In extreme cases they have sent a CMAT to investigate. When an official in CA learns that a chief of mission is not enforcing the referral system at post, the case is promptly brought to the attention of the CA front office for action with the chief of mission. Officers may also grieve if there is reason to believe harm has been done as a result of attempts to pressure them. However, the Director of the Grievance Staff reported no grievances have been filed alleging that careers had suffered as the result of visa adjudications.

Abuse can take the form of an attempt to influence unduly a visa interviewing officer, such as an entry-level officer, outside the referral system. The OIG survey found that a relatively small number of NIV interviewing officers said they be-

lieved they had been subject to undue influence to issue a visa by a consular supervisor, an officer from another section or agency, or the mission's front office. A similar number believed that they had been or could be disadvantaged in securing tenure, promotion, or onward assignment for having denied a visa referred by a more senior mission official. Such perceptions, real or imagined, effect adjudications.

The first recourse for officers experiencing undue influence would be to report to a supervisor, who would take the matter to the DCM or ambassador, if warranted. A conscientious chief of mission should take appropriate action to reprimand or discipline the offender.

Senior officers at a post can have a direct effect on the careers of lower level officers, particularly those they supervise. As rating or reviewing officer for an EER, a senior officer can have an impact on whether or not an employee gets tenure or a promotion. Senior officers can also help or hurt an employee's chances of getting a desired assignment. NIV interviewing officers should not fear that a decision to refuse a visa applicant of interest to a senior officer would damage their careers. This could lead to improper issuances and destruction of the integrity of the visa process. Referral systems are designed and mandated precisely to eliminate improper influence. However, to some degree, they depend on the willingness of the interviewing officer to challenge a senior officer. This was one reason why CA has recently modified procedures so that only the consular section chief may now adjudicate referral cases. However, responses to the OIG survey indicate that some consular sections are still allowing lower level officers to adjudicate referrals.

The OIG survey discovered that 10 percent of interviewing officers believed they had experienced undue influence on a visa decision by their consular supervisor, another agency or section, or the embassy front office. This does not mean visas were improperly issued. In fact in some cases it could reflect appropriate management that the interviewing officer resented or with which he disagreed. More seriously, we found that there were 34 cases in which an interviewing officer believed that refusal to issue a visa of interest to a senior officer had or could be detrimental to promotion, tenure, or assignment. Several of these cases were from posts in the Middle East. Again there may be a mixture of perception and reality. It is completely appropriate for supervisory consular officers to inquire into a line officer's adjudication of a visa case, particularly when the adjudicating officer is inexperienced and still being trained "on the job" and learning local conditions.

Consular managers are responsible for coaching staff in proper visa adjudication and for assessing the section's performance in light of available data. In addition, while 'informal referrals' are unacceptable, mission officials on occasion may have information about an applicant that is helpful to the interviewing officer. It may be appropriate for CA to revise the B referral form to include a section in which the referring officer could provide additional, pertinent information either before or after adjudication. There is a thin line between offering information and recommending a visa. Some interviewing officers may not recognize a distinction between the two and consider it a case of undue influence. Therefore, we must not assume that every perception of undue influence is accurate. However, given the nature of the problems that can arise when there is improper influence by a senior officer on a more junior officer, even a few actual cases would be too many.

While almost all the surveyed officers who were adjudicating referrals indicated they received front office support, ten percent of them, as well as ten percent of all interviewing officers surveyed, believed refusing a visa of interest to a senior officer could harm their careers. Some felt there was no recourse for them, and others expressed strong cynicism at the recourses available to them. One officer said, "I can call for support from CA, but suspect there would be a big price to pay at post." Some did express confidence in existing recourses: "If the principal officer or Ambassador were to exert undue pressure, I could and would seek support from CA, including the Assistant Secretary, if necessary."

Some officers responding to the OIG survey did not believe there was effective recourse in such cases. One officer stated that the choice is "to issue the visa or fall on my sword." Consular section chiefs adjudicating Class A referral cases and other NIV interviewing officers should have no doubt that if they are complying with the law and regulations in adjudicating a visa, their decisions will be supported by their supervisor, the embassy front office, and CA. They must know that there are effective recourses when they believe undue influence is exerted on them to issue a visa.

OIG believes that a designated senior official in CA could be identified to serve as an "ombudsman" when the rare case arises in which an officer feels that the system has failed to offer support in a visa case, and the officer believes there has been improper pressure or that his or her career might be threatened. As noted, CA already takes action when allegations come to the attention of Washington officials. A more formal designation would ensure that officers know there is someplace to turn.

Recommendation 5: The Bureau of Consular Affairs should designate a senior level official to serve as an ombudsman for nonimmigrant visa officers. The ombudsman would be available to discuss possible undue influence or abuse of the referral system and bring cases to the attention of the appropriate Department officials. (Action: CA)

TRAINING

During the Foreign Service Institute's consular training course for officers going to their first consular assignments, the students learn about visa referrals as well as attempts to influence visa decisions. In classes monitored by OIG, the instructor told the students that they would feel pressure from other embassy officers on occasion to issue a visa. The instructor explained that they can refuse even a Class A referral and, in fact, should do so if they feel uncertain about the merits of the application and gave examples from personal experience. The students were told that because their names are in the system as issuing officers, they must adjudicate every visa on its merits. The instructor said bluntly, "if you don't feel comfortable, don't issue." They were instructed that if there are problems with other officers, they should take the matter up with the DCM or ambassador. However, in one class monitored by OIG, no mention was made of how to handle the matter if the DCM or ambassador is the person exerting pressure to issue a visa.

The instruction in the current basic consular course is accurate but a relatively small part of a very large curriculum. Confronted with the overwhelming amount of information, law, regulations, techniques, and procedures presented in a short timeframe, it is easy for the new officer to lose track of this material. Few new officers have a frame of reference to understand how the dynamics of life at post will impact on the visa process. The basic course continually struggles to integrate the vast differences in approach officers can encounter at overseas posts.

CA and the Foreign Service Institute have organized two conferences overseas in the past year, specifically for consular officers at small posts. One goal of these conferences has been to discuss the consular section's relationship with the front office. At the most recent such conference, the "Small Post Consular Leadership and Development Conference" held in Nicosia in November 2004, participants discussed strategies for dealing with visa pressure. The officers, generally entry-level officers serving at small posts, heard a clear and consistent message that posts must have a referral policy and adhere to it. They also were reassured that CA

would support officers in the field if the policies were not followed or inappropriate pressure was applied. The conferences were extremely useful, particularly for officers who operate without consular supervision.

Recommendation 6: The Foreign Service Institute's consular training courses should include more extensive material on referrals systems and possible undue influence by senior officers. Course work should provide more guidance on how to deal with pressure from the ambassador, deputy chief of mission, and other sections and discuss available recourses, including help from the Bureau of Consular Affairs, the Office of Inspector General's Hotline, the Grievance Staff, and the Visa Ombudsman. (Action: FSI)

SECURITY ISSUES

A CLASS check and biometric screening are conducted for every visa applicant, including referred applicants for whom Condor clearance was waived. Any anomalies must then be resolved before a visa is issued. Only the chief of mission can request a Condor clearance and NSEERS waiver. The request must be in writing and include the certification that the applicant does not present a security threat to the United States. As with other visa applications, these cases are scanned into the consolidated consular database and available for review in the Department. From October 1, 2002, through October 31, 2004, there were only about 28 Condor/NSEERS waivers per month out of over 400,000 visas issued per month worldwide. Condor waivers were originally allowed in recognition of the fact that some applicants of interest to the United States may need to travel sooner than a Condor clearance could be obtained. No checks done in Condor cases have revealed a potential terrorist. Also, OIG is not aware of any cases in which a referred visa applicant who received a visa was later found to have been a threat to U.S. security. Nationals of countries designated as state sponsors of terrorism are not eligible for Class A referral interview waivers and similarly not eligible for waiver of CONDOR and NSEERS checks.

CA informed OIG that they were not aware of any pressure from any source to issue wrongly a visa to a potential terrorist or criminal. Sometimes a special waiver will be processed through the Department of Homeland Security for an ineligible applicant when that person's travel is in the interest of the United States, such as for court testimony or peace talks.

STAFFING NONIMMIGRANT VISA SECTIONS

Entry-level officers are required as a matter of policy to serve at least one year in a consular position during the initial pretenure period of their careers for two principal reasons:

1. This is where the entry-level work is. Were this work limited to consular cone officers, there would be no upward mobility/promotion opportunities for the bulk of those assigned the work;
2. It is very important for those officers who reach supervisory and senior positions in embassies and consulates to have done consular work in order to appreciate its complexity and critical importance to border security. Senior officers must also understand that protection of U.S. citizens abroad is the highest priority - something else that one learns doing consular work. According to a senior human resources official, one major reason that new DCMs fail is for a lack of appreciation for and interest in consular operations in their missions.

The Department's Bureau of Human Resources (DGHR) sees all ratings on entry-level officers. HR career development officers are in regular contact with the junior officers assigned to them. OIG learned that the Bureau of Human Resources has never heard of an entry-level officer's tenure or onward assignment prospects being adversely affected by actions taken by a more senior officer of the same cone; for example, an economic counselor doing something to harm the career of an entry-level economic officer working in a consular section.

The grievance staff reported to OIG that no entry-level officer had filed a grievance claiming a career was harmed by refusal to issue a visa requested by a senior officer. HR noted that there were instances of entry-level officers facing pressures from front offices but also said that what officers might see as pressure from front offices and certainly from section chiefs could be quite appropriate efforts to exercise supervision, though pressures from front offices remain a concern at certain posts. To some degree HR also relies on OIG to ferret out such problems and report them to the Department.

Working with CA, HR has made significant progress in reducing the number of first tour officers assigned to single officer consular sections by assigning second tour officers whenever possible. The two bureaus are converting many of these single officer positions to mid-level positions but are constrained by the shortage of mid-level officers as a result of reduced hiring in the recent past.

HR is no longer allowing junior officer rotational positions at single officer consular sections. This change should reduce the potential influence on an entry-level officer by another section chief and allow interviewing officers to accumulate more consular expertise.

OIG is not convinced that entry-level officers of some cones are more susceptible to outside influence in visa adjudications than consular cone officers. The consular chief prepares the EERs for all officers assigned to the consular section, whether consular coned or other speciality and makes recommendations for tenure and promotion. In the Department the tenure and promotion boards are not allowed to consider opinions outside the EER. Although as the EER reviewing officer, a DCM could comment negatively regarding a visa dispute, the rated officer, i.e. the original adjudicating officer, has the last word and can present his side of the matter. Further, in our survey, the interviewing officers who believed they had experienced undue influence from a senior officer were evenly distributed among the five cones (consular, management, political, economic, and public diplomacy).

CONCLUSION

Following the terrorist attacks of September 11, 2001, the entire issue of alien admission to the United States has been under review by Congress, the executive branch, and the public. Visa issuance law, regulations, policy, and procedures have been reviewed and revised to make national security paramount in the minds of everyone concerned. Of particular concern has been protecting adjudicating officers from inappropriate pressure to issue visas to applicants who might seek to harm the United States. The visa referral policy is a small, but important, element of broader visa policy, and actions taken to improve it should be considered a success. The referral policy in the vast majority of cases is recognized and used as a tool to promote the national interest. Changes to referral policy in the last three years have made it more standardized, more accountable, and a matter of record. The growing awareness of its importance has led to a better understanding of its vulnerabilities. Although not perfect, it serves the Department and country well.

FORMAL RECOMMENDATIONS

Recommendation 1: The Bureau of Consular Affairs should require all consular sections annually to conduct at least one validation study or other method to confirm the compliance of referred applicants with the conditions of their visas and report the results back to the bureau. (Action: CA)

Recommendation 2: The Bureau of Consular Affairs should require the chief of mission or principal officer at every nonimmigrant visa processing post to reissue the visa referral policy annually and certify that it has been done. (Action: CA)

Recommendation 3: The Bureau of Consular Affairs should require every mission to submit a copy of its referral system to the bureau at the time of its annual reissuance and request clearance for any changes. (Action: CA)

Recommendation 4: The Bureau of Consular Affairs should send a telegram to all ambassadors and deputy chiefs of mission reminding them of the importance of visa referral systems, the need for active front office oversight of the system, and the consequences of the use of undue influence. (Action: CA)

Recommendation 5: The Bureau of Consular Affairs should designate a senior level official to serve as an ombudsman for nonimmigrant visa officers. The ombudsman would be available to discuss possible undue influence or abuse of the referral system and bring cases to the attention of the appropriate Department officials. (Action: CA)

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ABBREVIATIONS

CA	Bureau of Consular Affairs
CLASS	Consular lookout and support system
CMAT	Consular management assessment team
DCM	Deputy chief of mission
Department	Department of State
DGHR	Bureau of Human Resources
NIV	Nonimmigrant visa
NSEERS	Department of Homeland Security's National Security Entry Exit Registration System
OIG	Office of Inspector General
VAU	Vulnerability Assessment Unit