

9 FAM APPENDIX K, 100 VISA REFERRAL MANAGEMENT, MONITORING AND ABUSE

(CT:VISA-1492; 09-02-2010)
(Office of Origin: CA/VO/L/R)

9 FAM APPENDIX K, 101 SENIOR MANAGEMENT CONTROL

(CT:VISA-1492; 09-02-2010)

- a. A well run and judicious visa referral system is an important tool for advancing *U.S.* interests abroad. If properly managed, the referral system can conserve scarce consular resources and time by providing additional information regarding selected applicants' eligibility under the law. Because of the importance of the visa referral system, it is essential that chiefs of mission (COM), deputy chiefs of mission (DCM), and principal officers (PO) assume responsibility for the proper use and monitoring of the visa referral system.
- b. The consular section chief is responsible for maintaining the integrity of the visa referral system and verifying that it complies with 9 FAM Appendix K instructions and consular section procedures. It is equally important that all mission personnel prevent attempts to levy inappropriate influence, or even the appearance of such influence, on individual visa adjudications. Chiefs of mission, principal officers, and senior mission officers from all agencies are responsible for ensuring that all staff *comply* with this appendix and the Worldwide Visa Referral Policy.

9 FAM APPENDIX K, 102 WORLDWIDE VISA REFERRAL POLICY

(CT:VISA-1492; 09-02-2010)

- a. 9 FAM Appendix K, Exhibit I contains the Worldwide Visa Referral Policy and the Worldwide Nonimmigrant (NIV) Referral Policy Compliance Agreement. This referral policy **replaced all previous post-specific policies** and is the only policy for providing this special assistance in accordance with 9 FAM Appendix K. **Individual referral policies are not authorized**; however, all posts should have procedures tailored to the individual and special circumstances of each mission. These

procedures are not meant to circumvent the referral process, but rather assist in the communication and transfer of referrals between mission sections and the consular section (see 9 FAM Appendix K, 200 for procedural details).

- b.* The chief of the consular section must provide a copy of the Worldwide Visa Referral Policy to mission staff and conduct a referral briefing to each officer who is authorized to utilize the mission referral system, before that officer submits and/or approves any visa referrals. **If an officer has not attended a referral briefing and signed the Worldwide NIV Referral Policy Compliance Agreement, he or she may not authorize or approve a referral, regardless of his or her position.**

9 FAM APPENDIX K, 103 STANDARD REFERRAL FORMS

(CT:VISA-1264; 08-04-2009)

Referrals must be submitted using the current version of the referral forms available on the Department's e-Forms site. Form DS-4034, Class A Nonimmigrant Visa Referral, is designed for Class A Referrals; Form DS-4035, Class B Nonimmigrant Visa Referral, is designed for Class B Referrals; Form DS-4093 is designed for Chief of Mission Waiver of Certain Processing Requirements; and Form DS-5500, Referral Rejection/Refusal, is for feedback to the referring officer when either the referral itself must be rejected or the applicant must be refused. Locally generated referral forms are **not** permitted.

9 FAM APPENDIX K, 104 VISA REFERRAL RECORDS

(CT:VISA-1492; 09-02-2010)

- a.* **Visa Referral Records:** *Section chiefs should insure that data entry personnel understand the importance of properly entering referral cases as referral cases, of selecting the proper referral category (A or B), and of clearly identifying scanned documents by selecting the appropriate description during scanning.* All visa referral documentation, including visa referral forms, must be scanned into each individual visa case and are maintained in the consular consolidated database (CCD). *There are no exceptions.* Posts must scan Form DS-4034, Class A Nonimmigrant Visa Referral, or Form DS-4035, Class B Nonimmigrant Visa Referral, and other documentation relevant to the case (see 9 FAM Appendix F, 100 for further details on records retention and scanning). These electronic records are retained indefinitely and are subject to review.

- b. Copies of signed Worldwide NIV Referral Policy Compliance Agreements should be maintained as part of the referrals subject file (see 9 FAM Appendix F, 300 for details on visa subject files).

9 FAM APPENDIX K, 105 MONITORING OF REFERRAL SYSTEM AND ANNUAL CERTIFICATION OF REFERRAL CONTROLS

(CT:VISA-1492; 09-02-2010)

- a. The consular section must follow standard operating procedures to ensure that referrals are properly identified in the NIV system and that supporting documentation is properly scanned into the system (see 9 FAM Appendix K, 202). The referrals function in the NIV system is used to track visa referrals submitted by individual referrers. Referral information in NIV is comprised of two sets of information – the referrer’s information and the beneficiary applicant’s information. These two sets of information are associated with one another using the referral information window. How and when these sets of information are entered into NIV determines whether the process is initiated in the applicant information window or the referral information window. The referrer’s name should be the same in the NIV system as it is in the Department’s Global Address Listing (GAL). The referring agency or office must be specific and consistent; the use of Department of State generically is insufficient. Chapter 16 of the NIV User Manual contains further information on how to properly reflect referrals in the NIV system. Also, see 9 FAM Appendix K, 202 for adjudication steps.
- b. Officers must follow correct procedures in NIV so that the referral program can be monitored and that officers’ referral patterns can be tracked from post-to-post. Regular review of the reports generated through the NIV system on referring offices, agencies, and individuals can provide useful information and help prevent fraud and malfeasance. Merely scanning the referral form and attaching it to the case **is not** sufficient review and monitoring.
- c. Consular sections must monitor all incoming referrals by using the NIV software to keep track of referral statistics, trends, and possible abuses. The notes in the system should reflect the name of the referring officer, the date of the referral, and any follow-up on the case.
- d. The chief of the consular section is required to review the referral program at least once annually through a validation study or other method to determine whether there are individual instances or patterns of abuse of the system. Consular chiefs who believe there are problems with the operation of the referral system at their posts are invited to

consult with Post Liaison (CA/VO/F/P) for advice on how to structure the program's operations.

- e. Referral cases are monitored in Washington, DC by the Visa Office and the Consular Integrity Division (CID) in the office of Fraud Prevention Programs (CA/FPP). These reviews are designed to detect potential abuses of the referral system and to refer such instances to post management, Office of Employee Relations (DG/HR/ER), and Diplomatic Security (DS) for investigation and disciplinary action, as appropriate.
- f. Proper use of the referral system is an appropriate topic for discussions at country team meetings and sessions between consular section chiefs and COM, DCM, or POs.

9 FAM APPENDIX K, 106 ABUSE OF THE REFERRAL SYSTEM

(CT:VISA-1264; 08-04-2009)

- a. All referring and approving officers will be held accountable for understanding and applying this Worldwide Visa Referral Policy in every referral case. Abuse of the referral system may result in a warning, suspension, or loss of referral privileges, depending upon the seriousness of the abuse. The COM, in consultation with the consular section chief, CA/VO/F/P, and CA/FPP/CID, may suspend or revoke the authority to make or approve referrals from any particular referring/approving officer or from an entire section or group of mission personnel based on abuse of the system.
- b. All potential abuses of the referral system must be referred to CA/VO/F/P for policy guidance and to CA/FPP/CID for investigation and coordination with DS and the Bureau of Human Resources (HR) for appropriate criminal or disciplinary action. Federal courts look seriously at referral abuse, and have prosecuted individuals for complicity in false immigration schemes based on signed referral forms. Intentional false statements made in furtherance of visa referrals can be prosecuted under 18 U.S.C. 1001.
- c. The chief of the consular section is required to inform the COM, DCM, regional security officer (RSO), CA/VO/F/P, and CA/FPP/CID in writing of any instances in which a particular referring officer or office/agency refers significant numbers of unqualified applicants. The chief of mission should be prepared to review the case and impose such penalties as he or she and the chief of the consular section believe appropriate. Posts are encouraged to consult with CA/VO/F/P and CA/FPP/CID for assistance in managing post's response to instances of abuse.

- d. Remember that all mission personnel are held to the Ethical Standards of Conduct for Employees of the Executive Branch. 5 CFR 2635.101(b)(14) requires that U.S. Government employees "avoid any actions creating the appearance that they are violating the law or the ethical standards." Attempts to relay information regarding a visa case outside of the referral process are categorically inappropriate. The only appropriate venue for expressing a preference that a case be issued or accorded procedural advantages is the referral system.
- e. As part of the annual management controls certification, the consular section chief must certify the method by which the referral system has been reviewed (e.g., validation study or other means), and whether the validation studies or other methods of monitoring the referral program have uncovered any problems or instances of abuse, as stipulated in 9 FAM Appendix K, 203. Monitoring the referral process and conducting annual validation studies are integral steps to ensure the integrity of the Worldwide Visa Referral Policy.
- f. Communication regarding a visa referral may be made only to the consul general or the visa chief in the absence of the consul general. Any attempt to influence a consular officer or Foreign Service National employee regarding a visa case may be considered an abuse of the system.

9 FAM APPENDIX K, 107 REFERRAL PROGRAM OMBUDSMEN

(CT:VISA-1264; 08-04-2009)

For those rare instances in which an officer may perceive undue pressure but feel unable to discuss it at post, Consular Affairs (CA) has established a referral program ombudsman who will discuss any concerns relating to a potential abuse of the referral system or a perception of pressure being exerted outside the referral system. The Assistant Secretary of the Bureau of Consular Affairs is the ombudsman for consular officers on consular issues and for any questions of possible undue influence on post referral programs. The managing director of the Visa Office (CA/VO) will serve as the first point of contact for the officers in the field and will bring cases of concern to the immediate attention of the Assistant Secretary. Officers may contact the managing director by phone or e-mail if they have concerns that undue pressure is being exerted within or outside the referral system.