

## 7 FAM 940 TRAVEL OF WITNESSES AND GOVERNMENT OFFICIALS

*(CT:CON-154; 01-22-2007)*  
*(Office OF Origin: CA/OCS/PRI)*

## 7 FAM 941 TRAVEL ABROAD OF U.S., STATE, AND LOCAL GOVERNMENT OFFICIALS

*(CT:CON-154; 01-22-2007)*

- a. **Chief of Mission Authority:** U.S. chiefs of mission (COM) under the Foreign Service Act of 1980 (Public Law 96-465) as amended (22 U.S.C. 3927) are responsible "for the direction, coordination, and supervision of all U.S. government officers and employees" in their countries of assignment. This responsibility extends to each element of the Executive Branch abroad, except personnel under the command of an area military commander. 2 FAM 116.6-1 provides that all U.S. Government employees (other than personnel under the command of an U.S. area military commander) must obtain country clearance from the COM before entering or transiting their country of accreditation. 2 FAM 116 provides that the regional bureaus of the Department are responsible for obtaining such clearance. Non-judicial assistance related travel of U.S. Department of Justice and U.S. Attorney's Office officials requires only this post clearance through the regional bureau.
- b. **Host Country Clearance:** Travel of U.S. Federal, State, and local government officials traveling abroad on judicially-related official business (such as interviewing witnesses, taking depositions, or conducting investigations or inspections) requires not only post country clearance as described in 2 FAM 116, but also host country clearance. This usually means a diplomatic note must be sent to the Ministry of Foreign Affairs explaining the purpose of the travel and requesting permission for the U.S. official to conduct the judicial assistance related activity. See the Bureau of Consular Affairs Host Country Clearance feature on our judicial assistance Internet page. This requirement is also included in the U.S. Attorneys Manual 3-8.730.
- c. Consequently, U.S. government agencies should inform the *Bureau of Consular Affairs (CA/OCS/PRI)* prior to travel. The Office of the Inspector General of the Department of State is excluded from this provision.

- d. Most host governments regard the conduct of such business by foreign authorities as a violation of sovereignty unless cleared in advance through diplomatic channels. Travel without prior clearance can result in the arrest, detention, expulsion, or deportation of the official and can negatively affect U.S. policy interests and future attempts to gain host country assistance.
- e. U.S. government officials traveling abroad to conduct official business may do so only as authorized by the U.S. chief of mission who under law and Presidential directive has full responsibility for the direction, coordination, and supervision of U.S. government officers and employees in the country to which he or she is accredited. Officials of the Department's Office of the Inspector General are also excepted from this provision. While local police permission or other low level approval from foreign officials may be useful, such clearance does not constitute official permission from the foreign government which must be obtained through the chief of mission. For restrictions on visits of foreign government officials to the United States, (see section 7 FAM 965).
- f. *CA/OCS/PRI* has requested that all Federal agencies and State secretaries of state and attorneys general provide the following information for travel requests to the Department in a standard format for rapid relay to consular officers for clearance.
  - (1) Names of persons traveling abroad for purposes of investigation, with titles, district, and office and home telephone numbers, email;
  - (2) Name of case;
  - (3) Nature of case (briefly);
  - (4) Whether the case involves the foreseeable prosecution of a foreign national;
  - (5) Purpose of investigation (for example: interviewing witnesses, taking depositions, or conducting other investigation);
  - (6) Whether Interpol or another police agency has cleared the visit, and whether local police are prepared to cooperate (explain in detail);
  - (7) Whether foreign embassy consular or diplomatic officials have been consulted about the travel and, if so, which officials and their reactions;
  - (8) Whether individuals traveling abroad hold official government passports;
  - (9) Sensitivity of the case;
  - (10) Names and nationalities of persons to be interviewed or deposed;
  - (11) Itinerary;

- (12) Whether assistance of American embassy, consulate, or other personnel is required and, if so, the nature of assistance (for example, consular officer to administer oath, provide office space);
  - (13) Whether assistance of stenographer, court reporter, or interpreter is desired (if so, the state or federal agency proposing the travel must provide an appropriation number and fund code or otherwise assure funding); and
  - (14) Whether there are other details that would help the Department communicate with parent agencies of the visiting officials to ensure that difficulties do not arise.
- g. A consular officer should be aware of the time constraints under which such law enforcement or other officials are often operating (which sometimes make seeking prior approval difficult) and of the importance of the time and manner in which clearances are obtained from the host country. The manner in which clearance is obtained (diplomatic note, letter, telephone, or some other means) is left to the post's discretion, and host country requirements. When consular officers learn of the presence of U.S. Federal, State or local officials through means other than Department channels, they should report the information set forth above to *CA/OCS/PRI*.

## **7 FAM 942 TRAVEL ABROAD OF U.S. WITNESSES**

*(CT:CON-126; 01-25-2006)*

- a. When a U.S. citizen is desired as a witness in a criminal case in a foreign country, the Department (CA/OCS) often provides liaison between the foreign government and the witness. This liaison generally involves arranging for the U.S. citizen to testify. When the U.S. citizen was a victim of a crime in a foreign country and is needed as a witness for the prosecution, the foreign country is generally responsible for the travel and hotel expenses. Protection of the witness may also be necessary. The consular officer usually is contacted directly by the foreign authority or the witness for assistance.
- b. If the required witness is a U.S. government official, the consular officer should be aware that:
  - (1) Coordination between the consular officer and the foreign government, and between the Department (CA/OCS) and the U.S. government agency, is crucial to successful arrangements for the witness's travel; and
  - (2) The parent agency is usually wary of releasing its personnel to

appear before a foreign tribunal; therefore, ample lead-time is essential for agency consideration and approval.

- c. If the witness was a victim of crime, see 7 FAM 1900 and consult CA/OCS/ACS and CA/OCS/PRI Victim Assistance Specialists.

## **7 FAM 943 TRAVEL OF U.S. GOVERNMENT OFFICIALS ABROAD TO INTERVIEW U.S. CITIZENS**

*(CT:CON-126; 01-25-2006)*

Where a U.S. government official (for example, an Assistant U.S. Attorney), travels abroad to interview a U.S. citizen prisoner in connection with a U.S. law enforcement investigation (see 7 FAM 400), the consular officer, who normally provides consular services to the prisoner, must not appear to participate in the interview. Such participation could diminish the officer's ability to provide consular protection by creating an adversarial relationship with the prisoner. If post assistance is required of an officer during or in connection with the interview, a second consular officer, or other embassy/consulate officer where only one consular officer is available, should provide that assistance.

## **7 FAM 944 TRAVEL OF WITNESSES FROM ABROAD TO UNITED STATES**

*(CT:CON-126; 01-25-2006)*

- a. The Department of Justice sometimes requests consular officers to contact willing witnesses and assist in making arrangements for their travel to the United States to testify at judicial proceedings. Most requests are sent by telegram or FAX and include funding information if required. Assistance could include furnishing the witness with roundtrip airline tickets or a cash advance.
- b. The cash advance is estimated to cover all pertinent travel expenses and is paid to the witness prior to travel. If the request comes from an entity outside the Federal Government, tickets must be prepaid or monies received at the post or in the Department (CA/OCS) before a Government Transportation Request (GTR) is issued.
- c. In many cases involving the travel of a witness to the United States, the post is directly notified by the District Office of the United States Attorney concerned. District Offices use a government credit card. No cash advance is paid to the witness. All incidental travel expenses, foreign and

U.S. are paid out of pocket by the witness and repaid after testimony is completed. The Office of the United States Attorney and U.S. Marshal concerned are responsible for instructing a witness on how to submit a voucher for reimbursement of travel expenses.

- d. Some witnesses may be unwilling to pay their travel expenses and await later reimbursement. If a witness declines travel under such circumstances, the post must so advise the District Office of the United States Attorney by telegram or FAX and await instructions before proceeding.
- e. **U.S. Visas for Witnesses:** In arranging any witness travel, the consular officer must be sensitive to the visa eligibility of the witness and to the question of the possible necessity for a visa waiver. The Department of Homeland Security (DHS) assists in processing waivers under the Attorney General’s discretionary authority. (See 9 FAM 41.121 and 9 FAM 40.8 Waivers).
- f. **Role of the Department of Justice:** The Department of Justice (DOJ), Justice Management Division, Simplified Acquisitions Service Staff, processes requests from DOJ attorneys for witnesses located in foreign countries who require prepaid transportation and/or small cash advances. CA/OCS’s point of contact at the Justice Management Division, Simplified Acquisitions Service can be reached at 202-307-1954; fax: 202-307-1931. That office will send telegrams directly to U.S. embassies and consulates notifying posts of the U.S. Government’s need for the travel of the witness, providing points of contact in the U.S. Attorney and U.S. Marshal’s Offices and fiscal data against which the travel may be charged.

- U.S. Marshals Service Witness Security Program
- U.S. Attorneys Manual 3-19.100
- U.S. Attorneys Manual 3-8.232

## **7 FAM 945 THROUGH 949 UNASSIGNED**