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US MISSION IN INDIA EXPANDS INTERVIEW WAIVER PROGRAM: DOES THIS BODE WELL FOR H-1B AND L VISA APPLICANTS?

Posted on November 26, 2012 by Cyrus Mehta

By Cyrus D. Mehta

The U.S. Mission in India has announced expansion of the Interview Waiver Program (IWP), launched in March 2012, which allows qualified individuals to apply for additional classes of visas without being interviewed in person by a U.S. consular officer. The U.S. embassy in New Delhi expects this expansion to affect thousands of visa applicants in India.

Under the current IWP, Indian visa applicants who are renewing visas that are still valid or expired within the past 48 months may submit their applications for consideration for streamlined processing, including waiver of a personal interview, within the following visa categories:

- Business/Tourism (B-1 and/or B-2)
- Dependent (J-2, H-4, L-2)
- Transit (C) and/or Crew Member (D) - including C-1/D
- Children applying before their seventh birthday traveling on any visa class
- Applicants applying on or after their 80th birthday traveling on any visa class

Under the expanded IWP, the following Indian applicants may also be considered for streamlined processing:

- Children applying before their 14th birthday traveling on any visa class
- Students returning to attend the same school and same program
- Temporary workers on H-1B visas
- Temporary workers on individual L-1A or individual L-1B visas

The renewal application must be within the same classification as the previous visa. If the previous visa is annotated with "clearance received," however, that

applicant is not eligible for a waiver of a personal interview.

Not all applications will be accepted for streamlined processing. As always, consular officers may interview any visa applicant in any category. Applicants who are renewing their visas may still need an appointment for biometrics (fingerprint and photograph) collection. All applicants must submit all required fees and the DS-160 application form.

It remains to be seen whether the expanded IWP will improve the processing of H-1B and L visa applications. For over two years, US Consulates in India have routinely held up the processing of H and L visa renewal applications. Many of these applications are re-adjudicated even after the H-1B or L visa petition has been approved by the USCIS, and that too after the petitioner overcame objections by responding in detail to a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID). The visa applicant is often requested to provide further proof of the bona fides of the job opportunity or the petitioning company. This is done mainly for visa applicants who are employees of IT consulting companies. Even if the visa applicant is able to overcome any suspicions about the employer or the bona fides of the job opportunity at the US consulate, it could take several months before the visa is re-issued and this delay could cause extreme hardship to the applicant, including the loss of the job. As a result, many beneficiaries of H-1B and L petitions have not traveled outside the US, even for a vacation, out of an abundance of caution. First time H-1B and L visa applicants may still be subjected to a vigorous re-adjudication of their petitions, but it is hoped that the expansion of the IWP to H-1B and L applicants will eliminate further delays caused due to re-adjudications. If every H-1B or L renewal applicant is subjected to the same vigorous scrutiny as before then it would defeat the objective of the expansion of the IWP.

Still, applicants for renewals of their H-1B and L visas should not take for granted that they will be accepted for streamlined processing under the expanded IWP, especially if there have been changes to the terms of the employment. For example, if the H-1B petition was approved based on the beneficiary working at a client site in Philadelphia, and the client site has now been changed to San Francisco, the US Consulates in India do not take too kindly to this change after the approval of the petition. The US consul may want to see an amendment to the H-1B petition reflecting the new job site. Otherwise, there is a likelihood that the consul could recommend to the USCIS that the petition be revoked, leading to even further delays. Although petitioners may appropriately rely on USCIS guidance that an amended petition is not required if the job site changes, so long as a Labor Condition Application (LCA) is certified for the new site prior to the employee's move there, US consuls in India may not honor this guidance. It is therefore recommended that a petitioner continue to amend the H-1B petition if there is a change in the job site after the approval of the petition.

The U.S. embassy in New Delhi said that this is "one of many steps the Department of State is taking to meet increased visa demand in India." The embassy explained that in 2011, consular officers in India processed nearly 700,000 nonimmigrant visa applications, an increase of more than 11 percent over the previous year. Currently, applicants generally wait fewer than 10 days for visa interview appointments and spend less than one hour at U.S. consular facilities in India. In September 2012, the U.S. Diplomatic Mission to India implemented a new visa processing system throughout India that further standardizes procedures and simplifies fee payment and appointment scheduling through a new website at http://www.ustraveldocs.com/in. For more details

about procedures for submitting a renewal application, see http://www.ustraveldocs.com/in/in-niv-visarenew.asp