

State Department Exchange Programs

Interview Waiver: Powerful Tool for Consulates & Visa Backlog

The State Department's international exchange programs have long enhanced mutual understanding across diverse cultures, national security, and supported the U.S. economy.

Regrettably, visa processing around the globe is experiencing such a massive backlog (2.6 million applications¹), that without immediate adoption of pre-existing visa processing tools, like the Interview Waiver, delays could spill into 2022² and beyond, putting at risk the public-private partnerships already strained with a second consecutive year of plummeting program size.

State can fully implement the Interview Waiver for J-1 cultural exchange programs, beginning with the seasonal programs like the Camp Counselor and Summer Work Travel categories for which program start dates are imminent (i.e. May, June, July arrivals). To succeed, Consular Affairs needs to ensure that even posts with limited or no 'routine operations' identify and utilize the Interview Waiver not just as a public diplomacy imperative but also to make an immediate impact on the visa backlog, thereby aiding consular staff, visa applicants, U.S. employers, and all other stakeholders.

Existing Support for Immediate and Broad Adoption of Interview Waiver

The Immigration and Nationality Act allows for broader use of the waiver than is being contemplated at present. Section 8 U.S.C. 1202(h) of the INA provides exemptions for in person interviews with consular officer:

“(C) by the Secretary of State if the Secretary determines that such waiver is-
(i) in the national interest of the United States; or
(ii) necessary as a result of unusual or emergent circumstances.”³

Similarly, the Code of Federal Regulations, at Section 41.102(d), extends the authority of the Secretary to that of the Deputy Assistant Secretary for Visa Services to waive personal appearance of an individual applicant or a class of applicants “in unusual or emergent circumstances.”⁴

¹ “Huge Trump-era and pandemic immigrant visa backlog poses challenge for Biden”, CNN, Bob Ortega, April 12, 2021, <https://www.cnn.com/2021/04/12/politics/biden-challenge-immigration-visa-backlog-invs/index.html>

² “Based on the current low number of visas being issued each month, the pandemic backlog is unlikely to be cleared by 2022, even if posts are able to resume routine visa services soon.”, Law360, “Tips For Navigating The Visa Processing Backlog”, Dominique Pando Bucci, May 10, 2021
<https://www.law360.com/employment/articles/1381117/tips-for-navigating-the-visa-processing-backlog>

³ INA 222(h) (8 U.S.C. 1202(h)); https://fam.state.gov/fam/09FAM/09FAM040305.html#M403_5_4_A_1, consulted on May 18, 2021

⁴ 22 CFR 41.102(d); [https://ecfr.federalregister.gov/current/title-22/chapter-I/subchapter-E/part-41/subpart-J/section-41.102#p-41.102\(d\)](https://ecfr.federalregister.gov/current/title-22/chapter-I/subchapter-E/part-41/subpart-J/section-41.102#p-41.102(d)), consulted on May 17, 2021

Jeffrey Gorsky, former Chief of the Legal Advisory Opinion section of the State Department's Visa Office, in a recent Forbes interview, affirmed that greater maneuverability exists:

“The authority to waive interviews could be used more extensively. The law provides the Secretary of State latitude to waive interviews when he finds it is in “the national interest of the United States” or “necessary as a result of unusual or emergent circumstances.””⁵

Indeed, the Foreign Affairs Manual explains that the in-person interview can be waived for “unusual” or “emergency circumstances”:

“b. (U) Waiver by Deputy Assistant Secretary for Visa Services: The Deputy Assistant Secretary for Visa Services may waive the interview requirement in individual cases after determining that such a waiver is necessary as a result of unusual or emergent circumstances. If you believe waiver of the interview is necessary due to unusual or emergent circumstances, contact your VO/F post liaison.”⁶

The broad authority already written into the Code of Federal Regulations permits for the use of the Interview Waiver now to protect posts and stakeholders from the domino effect of continuous delays. Some posts seem already to be waiving interviews and not requiring that SEVIS IDs match those of a past visa. State should evaluate how they exercised their discretion in what is certainly an emergency situation.⁷

⁵ “The State Department Can Act To Reduce Visa Delays”, Forbes, Stuart Anderson, April 19, 2021, <https://www.forbes.com/sites/stuartanderson/2021/04/19/the-state-department-can-act-to-reduce-visa-delays>

⁶ Foreign Affairs Manual (9 FAM 403.5-4(A)(1) (U) Interview Waiver Categories), (CT:VISA-1266; 04-16-2021), b. (U) Waiver by Deputy Assistant Secretary for Visa Services, last consulted on May 17, 2021, https://fam.state.gov/fam/09FAM/09FAM040305.html#M403_5_4_A_1

⁷The Foreign Affairs Manual requires the use of “the same Student and Exchange Visitor Information System (SEVIS) number from the previously issued visa.” J-1 visa applicants who are repeat candidates meet this condition because the sponsor’s SEVIS number remains the same. Moreover, this limitation is not found in the Immigration and Nationality Act itself and can be changed to meet the current pandemic crisis. See Foreign Affairs Manual (9 FAM 403.5-4(A)(1) (U) Interview Waiver Categories), (CT:VISA-1266; 04-16-2021), a. (U) Waiver by Consular Officers, (3) (U) Renewals in the same category:, (3) (U) Renewals in the same category, (ii), last consulted on May 17, 2021, https://fam.state.gov/fam/09FAM/09FAM040305.html#M403_5_4_A_1