

## **Meeting Minutes of the State Department (DOS) and American Immigration Lawyers Association (AILA) in March 2007**

### **Excerpt Regarding E-2 Investor Visa**

AILA QUESTION: Please provide us with an update on E visa processing in London. Despite making changes to procedures, AILA members continue to report that processing routinely takes over 6 months.

DOS ANSWER: London received a large number of applications involving new businesses during May, June, July and August of 2006. London is currently at the tail end of processing that influx of cases and expects that the wait time to decrease substantially over the next two to three months.

The disparity between posts in processing time is due in significant measure to the difference in the types of cases handled by the various posts and by workload demands. In general, larger investment cases are processed everywhere without significant delay. Processing of small investment cases, especially those involving new companies is more time consuming than dealing with major investments from known companies. Roughly 90 % of London's E cases are for small, family-owned businesses with modest levels of investments. These cases are difficult for several reasons. A common difficulty in adjudicating such cases is identifying the source of funding; in many of these cases, the applicants are passively involved in the investment and are unable to demonstrate how they will develop and direct the investment. New requirements for submission of company data in a specific format provide a consistent structure for investment or trading information that will allow post to focus quickly on fundamental issues.

AILA QUESTION: Even at posts that function much more effectively than London in handling E visas, there is still often confusion about how much to document for a company's subsequent E visa applications (for other employees) after previously being recognized as a Treaty Trader or Treaty Investor, or for an E visa renewal for the same employee. Some posts avoid this problem by issuing a letter to the employer indicating the company's status as a Treaty Trader or Treaty Investor and directing the company to include a copy of the letter with future applications for E visas. It would be helpful if all posts would use this approach. Even if the new uniform policy requested in #1 above cannot be accomplished in the short term, please ask DOS to add as much detail as possible on the consular websites about E visa procedures (some posts are better than others in providing E visa information) and, specifically, to address how much documentation should be sent on the second application after a company has already been granted Treaty Trader or Treaty Investor status.

DOS ANSWER: Evaluation of a company for Treaty Trader or Treaty investor status is not a separate adjudication but is the first step in the adjudication of an E-1 or E-2 application. Posts with a high volume of repeat applications from employees of the same company have developed systems for rolling over company information from one application to another in order to save time. Such arrangements may not be practical or

necessary at others, depending on the nature of the cases. We will remind posts to put as much detail as possible on their websites for both E and other procedures to ensure that the process functions smoothly for all involved.

**AILA QUESTION:** Please report on the state of progress of any DOS attempt to develop uniform E visa processing requirements and procedures. Please also address whether any remedies exist for applicants waiting over 10 months for E visa processing.

**DOS ANSWER:** When there are questions about processing or requirements, Posts contact our office for guidance. The standards for E visas have not changed.

The fluctuations in demand for E visa appointments cause variations in applicant waiting time. We encourage posts to allocate sufficient resources to bring those wait times down. The disparity between posts is caused both by demand and by the different types of cases handled at post, as well as the greater bulk of visa work load. Each post must balance the entire work load. There will be some variation and the demand changes over time. As mentioned earlier, those posts that deal with processing small investment cases, especially those involving new companies, are often required to spend more time processing each case. We expect that wait times for processing will improve in the coming months. As always, specific case questions can be sent via LegalNet.

**AILA QUESTION:** Due to the difficulties in determining foreign ownership of large publicly traded multinational corporations seeking an E visa, such as at a consular interview, it is getting more difficult to decide whether to rely upon the guidance contained in Note 3.2 to 9 FAM 41.51, which provides that nationality is generally presumed to be that of the country in which its stock is initially traded on a public stock exchange, or to provide other documentation evidencing the nationality requirement, such as the corporation's annual report or shareholder records. Many publicly-traded multinational organizations principally trade on a single exchange or in a single country, and most have several hundred million shares outstanding at any time. Due to the large number of outstanding shares, it is difficult if not impossible to determine the percentage of foreign ownership with any certainty. Although one can rely on Note 3.2, and provide shareholder classification in annual reports, these types of documents are by their very nature arbitrary, dated, or simply not reflective of the current ownership. At some point, it becomes impossible to establish the nationality of all stockholders, especially when stock is electronically traded 24 hours a day.

Often, these are well known publicly-traded multinationals actively managing billions of dollars of investments in the U.S. These are not complex cases requiring individual Department assistance, such as the issuance of individual advisory opinions, but should be processed based upon the existing guidance contained in the FAM for large publicly traded multinational corporations with millions of outstanding shares. For example, instead of asking for voluminous shareholder records, perhaps officers can be instructed to accept statements from company officers summarizing ownership.

Would VO consider updating its guidance or including some guidance on this issue as

part of its ongoing E visa training?

DOS ANSWER: Because of the wide-range of E companies and varying facts, it is not practical to address all potential circumstances in a FAM note and we are not considering updating our guidance at this time. 9 FAM 41.51 N3.2 requires the applicant to provide the best evidence available to the satisfaction of the consular officer. Depending upon the structure of the company and circumstances of the case, the best evidence may vary. Rather than require specific documentation, we prefer to allow the consular officer to evaluate the evidence and determine if it satisfies the nationality requirement. As indicated in 9 FAM 41.51 N3.2, CA/VO/L/A does provide guidance in unusually