

9 FAM APPENDIX K, EXHIBIT I WORLDWIDE NONIMMIGRANT VISA REFERRAL POLICY

(CT:VISA-1255; 07-23-2009)

Purpose of the Referral System

A well-run and judiciously-used visa referral system is an important tool for advancing U.S. interests abroad. It facilitates the issuance of visas to foreign nationals who are key contacts and whose travel is deemed to be clearly in the U.S. interest or promotes U.S. public diplomacy efforts. It is equally important that we prevent attempts to levy inappropriate influence, or even the appearance of such influence, on individual visa adjudications.

U.S. Government employees abroad are often approached by persons seeking assistance obtaining nonimmigrant visas (NIV). In most cases, it is best to avoid offering any assistance other than providing information that applicant's should apply directly to the consular section, because only consular officers may determine visa eligibility under the law. In many cases, visa referrals are neither necessary nor appropriate. Most contacts are pleased if you can provide accurate information on visa procedures. You may provide the telephone number for the visa information service, (post should insert number here if applicable) or direct them to the Embassy or Consulate Web site (post should insert Web site address here).

In some instances, however, a visa referral can further U.S. Government interests by advocating or expediting visa issuance for certain key contacts whose travel is deemed to be clearly in the U.S. interest, or advances mission priorities. The visa referral program is **not** a process for assisting an unqualified, or previously denied, applicant to obtain a visa. All visa applicants, including visa referral cases, must demonstrate their qualification for the class of visa they have requested. The adjudicating consular officer will take referral-based information into consideration when making a decision on whether or not to issue a visa. However, in no case shall the fact that a referral has been made alter the legal criteria for qualification for a visa as described in the 9 FAM or the Immigration and Nationality Act (INA).

The visa referral mechanism is the **only** appropriate method for mission staff to advocate on behalf of visa applicants, and is limited to strict, pre-determined criteria.

NOTE: This prohibition should not prevent other elements from the mission from sharing useful information of a general nature on cultural, military, or academic exchange programs that may be useful for consular officers adjudicating visas.

While mission personnel are welcomed and encouraged to contact the consular section chief to inquire about a visa referral or for help in determining when a referral may be appropriate, all mission officers must be aware that the Ethical Standards of Conduct for Employees of the Executive Branch require that all personnel avoid actions which would create the appearance of impropriety. References for applicants or communications seeking to influence consular processes made outside of the referral process, whether with an applicant or a member of the consular section, will be construed as an attempt to bypass the referral system and are categorically inappropriate. These include offering a personal business card to the applicant so that they think they will get special treatment, meeting/greeting /waiting with the applicant in the waiting room, assisting applicants in the preparation of applications (even outside of working hours), or any other informal communication measures. Mission personnel must ensure that they do not present themselves as an intermediary or expert, or create a perception that they can influence the process, as this creates the appearance of impropriety and must be avoided. For this reason, the exertion of influence in the visa process by any mission staff member is expressly forbidden, except in the narrowly defined situations meeting the criteria for a visa referral as delineated in this policy and 9 FAM Appendix K.

Referral systems are resource-intensive for consular sections and must be implemented consistently and responsibly by mission users. The following Worldwide Visa Referral Policy establishes the only procedures for providing this special assistance in accordance with 9 FAM Appendix K. All mission personnel are requested to read the attached policy carefully. Referring and approving officers are **required** to attend a briefing by the consular section chief and sign the Worldwide Nonimmigrant Visa Referral Policy Compliance Agreement **before** submitting or approving any referrals.

This worldwide policy replaces all post-specific referral policies.

Questions or requests for guidance regarding this policy should be addressed to the consular section chief or the person officially acting in that capacity.

Classes of Referrals

There are only two valid classes of visa referrals, Class A and Class B. Both types are appropriate **only** if they **further U.S. national interests**. Class A referrals **must** directly support U.S. national interests by furthering clear U.S. Government or mission objectives and priorities. Class B referrals advance U.S. national interests more broadly by promoting a positive view of

the United States, furthering public diplomacy, etc. These are the **only authorized methods for mission officers to refer an applicant or provide input about an applicant to the consular section.** For both categories of referrals, avoid making any commitments or in any way indicate that a referral guarantees issuance. Informal courtesy arrangements, sometimes called "Class C" or "informal" referrals, have existed over the years; any such legacy procedure or process is explicitly prohibited and must be discontinued immediately.

There are two referral forms, the DS-4034, Class A, Nonimmigrant Visa Referral and the DS-4035, Class B, Nonimmigrant Visa Referral. **Both forms are for internal communication** between sections of the Embassy and the consular section and therefore the referring officer **must not** give the referral form or a copy of this form to the applicant. When completing the form, referring officers **must** state explicitly the nature and degree of contact with the applicant, and the U.S. Government interest must be apparent from reading the form without any prior knowledge of post or local conditions. See below for specific procedural guidelines for submitting A and B referrals.

The visa chief or consular section chief should conduct regular outreach within the mission to explain visa services and post policy on visa adjudications so that referring officers can evaluate the appropriateness of their referrals and more easily understand the basis for any refusals that may occur. The visa chief should be particularly careful to keep the front office and relevant Embassy sections apprised of any refusals of referral cases (or any other visa cases) that might have bilateral implications. While a visa officer may have no choice but to refuse an application, the front office (FO) should hear about it from the consular section first and not be blind-sided by it in another forum.

All referring and approving officers must follow guidelines listed below to appropriately identify and handle referral cases.

Class A Criteria

- a. A Class A referral specifically indicates a request for both expedited handling and issuance, if at all possible. To qualify for a Class A referral, the following three conditions must be met; no condition can be waived.
 - (1) **Assisting the applicant must directly support U.S. national interests**, furthering U.S. Government or mission priorities. The referring officer **must** certify in the justification section of the DS-4034 that the referral of the applicant is in the U.S. national interest.
 - (2) The applicant **must** be personally and favorably known to the referring officer (except as provided below).

To qualify as personally and favorably known, the referring officer **must** know the person well enough to be able to attest in writing that to the best of his or her knowledge, the referred applicant does not constitute a threat to the safety or national security of the United States. Nationally known people who are not personally known to the referring officer, and/or contacts that the referring officer has never met, are **not** eligible for Class A referrals. **A single meeting with an applicant for the purpose of a referral is not sufficient to meet these Class A referral criteria.**

- (3) The applicant must not have been, at any time, previously refused a visa in the same classification (unless that refusal was subsequently overcome), and must not have been refused a visa in a different classification within the past two years (unless subsequently overcome). It is the responsibility of the referring officer to review this requirement with the applicant before submitting the Class A referral.
- b. Class A referrals may, in **very limited** instances, result in a waiver of personal appearance requirements, consistent with guidelines in 9 FAM 41.102 Notes, but not a waiver of biometric fingerprint collection requirements, except in certain limited cases (see 9 FAM Appendix L, 110). In addition, Class A referral cases may be exempted of U.S.-Visitor and Immigrant Status Indicator Technology (US-VISIT) and National Security Entry/Exit Registration Systems (NSEERS) registration requirements if the ambassador, chief of mission (COM), or principal officer (PO) makes such a request in writing on the DS-4093, Chief of Mission Waiver of Certain Processing Requirements, at the time the referral is submitted. A written justification for the exemption must be provided on the request form (DS-4093), and the COM or PO confirms that a consular lookout and support system (CLASS) check and security review of the application were done. Such exemptions are based on strict criteria and should be rare and must be processed with support justification (see Appendix K, Section 500).
- c. It is appropriate to submit Class A referrals for applicants who meet Class A criteria above and fall into at least one of the following:
 - (1) Categories that **directly** affect U.S. national interests, including high-level post contacts, and influential and prominent figures in the government, professional, business, scientific, and academic communities;
 - (2) Categories that **significantly** promote public diplomacy efforts of the mission, which would include other distinguished members of the government, professional, business, scientific, and academic communities who warrant special consideration;

- (3) Foreign Service Nationals (FSNs) and other Locally Employed Staff (LES) traveling to the United States for official U.S. Government purposes; or
 - (4) Spouses and minor children of the above (even if not personally known to the referring officer and even if not traveling with individuals described in paragraphs (1) and (2)).
- d. Examples of acceptable Class A referrals might include:
- (1) International visitor grantees and Fulbright scholars;
 - (2) A CEO of a large multinational corporation who is personally known to the referring officer;
 - (3) A LES traveling to the United States for training; or
 - (4) Government officials travelling on official business who do not qualify for diplomatic visas.

Class B Criteria

- a. To qualify for a Class B referral, assisting the applicant **must** directly support the U.S. national interest or promote U.S. interests or public diplomacy efforts of the mission. In other words, Class B referrals advance U.S. national interests or mission priorities more broadly by promoting a positive view of the United States, furthering public diplomacy, etc. Class B referrals serve as a means for referring officers to provide information on an individual, who may or may not be personally known to them, but about whom the referring officer has reasonable knowledge about and who appear to merit **procedural courtesies, like faster interview appointment scheduling**. The availability and character of any special procedures will depend upon conditions and workload at post.
- b. A Class B referral is a request for expedited appointment only, and unlike a Class A referral does not vouch for the presumed eligibility of the applicant. Class B referral applicants must establish their eligibility for a visa during the interview. Class B referrals may be submitted for previously refused applicants. However, it is important to note that the referral process should not be used as an appeal process. Frequent submission of referrals for unqualified applicants or repeated cases of questionable national interest is considered abuse of the referral system.
- c. While criteria for Class B referrals are considerably less stringent than Class A referrals, in order to assist sections with many requests for visa assistance that they may receive, referring and approving officers should use discretion with such referrals. This guidance is not intended to provide Class B referral courtesies to individuals with only distant

connections to the referring officer. Officers should not refer individuals solely on the basis of a recommendation from a third party, even a key contact, FSN, or LES. Referrals may not be submitted for standard domestic staff or nanny applicants, including those for mission personnel. Additionally, a personal friend whose travel is not in the national interest is not a Class B referral.

d. Class B referrals are appropriate when:

- (1) The applicant is not personally known to the referring officer but is otherwise qualified for a Class A referral;
- (2) Assisting a key contact with a visa request for him or herself or immediate family member(s) that would promote U.S. national interests, mission goals, or public diplomacy efforts;
- (3) Post FSNs or LES staff travelling for personal (vs. official) reasons;
- (4) Spouses, children, or members of household (MOH) as recognized by the mission and regional security officer (RSO) of a Foreign Service Officer or Specialist, or other U.S. Government employee overseas (MOH does not include standard domestic helpers or nannies and this is not intended to circumvent or create an alternative to immigrant visa (IV) or K visa issuance);
- (5) The applicants are spouses and minor children of the above but **not/not** extended family members (even if not traveling with individuals described in paragraphs (1) through (3)); or
- (6) The applicants are key post contacts (relationship with whom furthers U.S. national interest) when the referring officer does not recommend visa issuance.

e. Examples of acceptable Class B referrals might include:

- (1) A personally known contact who assists mission public diplomacy efforts but would not qualify as a Class A referral; such as the manager of the local U.S. General Services Administration (GSA) rate hotel;
- (2) A close colleague of a key contact, who may not be personally known to the referring officer but about whom the officer has some knowledge;
- (3) A host government employee of diplomatic importance not personally known to the referring officer;
- (4) An adult, unmarried dependent of a key contact who would her or himself be a Class A referral; or
- (5) A prominent individual who is not a contact, but is well-known, such as a nationally known figure.

- f. If a contact does not meet the Class B referral criteria, mission officers should be able to refer the applicant to the consular section's Web site for instructions on how to request an expedited appointment. The expedited appointment system must be transparent, and the information must be available to everyone. A well-functioning expedited appointment system will reduce requests for Class B referrals and reduce the burden on both referring officers and the consular section. Officers may produce cards that can be given out with the appropriate phone numbers and e-mail addresses.

Referral Submission Procedures

- a. The referring officer is responsible for obtaining all of the documents listed below from each referral applicant. The referring officer should staple all of the forms together in the order listed below and put the forms and passport in a sealed envelope addressed to the chief of the consular section and hand deliver the packet to the chief of the consular section or designated staff member. Applicants should never be instructed to bring any of these items directly to the consular section. The consular section chief will return any incomplete or improperly submitted visa referrals to the referring officer. Individual posts may have other specific procedural requirements for submitting referrals, such as when and where they can be dropped off. The consular section should have this information in writing and all referring officers must follow these procedures as well.
- b. The referring officer is responsible for instructing applicants that they will be interviewed by a consular officer and must, at that time, prove they are eligible for nonimmigrant visas (NIV). Applicants should bring to this interview any documents that demonstrate their qualifications for the visa. Documents demonstrating qualifications **should not/not** be included with the referral packet.
- c. Each referral application packet must include the following items:
 - (1) **Passport valid for at least six months** beyond the projected date of arrival in the United States (with some exceptions; see 9 FAM 41.104);
 - (2) **DS-4034 or DS-4035:** The referring officer must complete and sign the most recent version of Form DS-4034 (Class A Nonimmigrant Visa Referral) or Form DS-4035 (Class B Nonimmigrant Visa Referral) **for each applicant (there are no group referrals)**, including additional family members submitted as one visa referral. Both forms are available on eForms. The response in the nature of contact section of the referral form must include:

- (a) The degree to which the referring officer has **regular contact** with the applicant;
- (b) An explanation of how the applicant is **well and favorably** known to the referring officer; and
- (c) Explain how the referral is connected to the **U.S. national interest**. The U.S. Government interest must be apparent, without prior knowledge of post or local conditions, from reading the form. Both the referring and approving officers must sign the DS-4034 or DS-4035. If the referring and approving officers are the same person, the person should sign the referral form twice.

NOTE: Referral forms are for internal communication between sections of the Embassy and the consular section and therefore the referring officer **MUST NOT** give the referral form or a copy of this form to the applicant.

- (3) **DS-156 or DS-160:** The DS-156 or DS-160 must be filled out online using the electronic form. This electronic form is mandatory. The referring officer should review the DS-156 or DS-160 provided by the visa applicant to ensure that all of the questions are completed and that the applicant has signed and dated the DS-156 or DS-160.
- (4) **One photograph:** The referring officer should ensure that one photograph is provided, according to the requirements of the consular section.
- (5) **Machine Readable Visa (MRV) Receipt:** The referring officer should ensure that an MRV receipt showing that the nonrefundable MRV fee has been paid. The only exceptions to this requirement are J visa applicants on U.S. Government-funded programs or A and G visa applicants on official business, or bearers of diplomatic passports. The fee must be paid at (insert post fee collection bank, site, etc.). In addition, visa issuance fees apply for some nationalities, proof of payment of these fees must also be provided.
- (6) **DS-157:** All male applicants between 16 and 45 years of age must complete a DS-157. The referring officer should review the DS-157 to ensure that all of the questions are completed. The applicant should put a line through any questions that do not apply.
- (7) **DS-158:** All applicants applying for student (F and M) or exchange (J) visas must complete a DS-158. The referring officer should review the DS-158 to ensure that all of the questions are completed. The applicant should put a line through any questions that do not apply.

- (8) **DS-2019:** All applicants applying for an exchange (J) visa must provide an original and signed DS-2019.
 - (9) **I-20:** All applicants applying for a student (F or M) visa must provide an original and signed I-20.
 - (10) **Other required documents:** Some visa types required additional documents, such as petition approvals issued by the Department of Homeland Security. If you are unsure about what documents are required for your applicant's visa type, please consult the consular section.
 - (11) **DS-4093:** If necessary (for an Class A referral only), the COM or the PO may fill out Form DS-4093, Chief of Mission Waiver of Certain Processing Requirements, authorizing the referred applicant to be exempt from NSEERS and/or US-VISIT requirements.
- d. When the consular section chief or NIV Chief (for Class B referrals) receives a complete and properly submitted referral, he or she will review the referral and notify the referring officer of the next steps for the applicant. The referring officer is responsible for notifying the visa applicant of the date and time the applicant must appear at the U.S. Embassy for his or her interview and/or required biometric collection. Referral interviews are normally scheduled for the next available appointment or referral processing time. **Referring officers should never instruct visa applicants to appear for an interview before the consular section chief confirms the referral receipt and interview date and time.**
 - e. Referral applicants who do not appear at the U.S. Embassy at their scheduled interview times will be refused under INA section 221(g) and will be required to schedule an appointment during regular interview hours via post's established appointment system (information on the appointment system can be accessed through the mission's Web site).
 - f. Missions should establish a procedure to be followed by referring officers to communicate referral appointment times and information to the applicant. **The referral form itself cannot be used for this purpose.** 9 FAM Appendix K, Exhibit II provides a sample referral information letter.
 - g. Fingerprints are required for all visa applicants, except persons under age 14 and over age 79, applicants for A and G visas (government officials on official travel), and certain medical emergencies. Senior government officials, including ministers of parliament, and senior religious leaders are not exempt from fingerprinting requirements unless they fall within one of these exemptions (see 9 FAM Appendix L, 110). The biometric process is a clean, inkless digital scan of the fingers that takes less than a minute.

Referring Officers

Only specified individuals are eligible to make visa referrals under this policy. To submit a visa referral you **must**:

- (1) Be a **U.S. citizen direct hire encumbering an officer position under chief of mission (COM) authority**;
- (2) Have **attended a referral briefing** with the consular section; and
- (3) **Signed and dated the attached Worldwide NIV Referral Policy Compliance Agreement.**

U.S. Government personnel not under the authority of the chief of mission are not permitted to utilize the referral system. Officers at other posts within the same country, under the authority of the same COM, or who are at a U.S. mission overseas (NATO, OECD, etc.) in the geographic area in which the consular section is located may also utilize the referral system. U.S. officers at other posts or in Washington, DC are **not** authorized to submit referrals. Referrals should **never** be made based solely on requests from contacts, locally engaged staff, or other non-officer personnel (e.g., Peace Corps).

NOTE: In situations when an applicant has been issued a visa after a referral has been made, and the referring officer becomes aware that the applicant has, or potentially intends to violate the terms of that visa, the referring officer must immediately submit the information to the consular section chief in writing.

Approving Officers

The chief of section/agency head of the referring officer's section or agency **must approve each referral**. In the absence of a section/agency head or acting head, the DCM or ambassador **must** approve the referral. For consulates, where the consul general (CG) or PO is the referring officer, the COM or DCM of the overall mission **must** be the approving officer. There must be a separate referring and approving officer for each referral. **No one officer, except the ambassador, the DCM, or Charge d'Affairs, can serve as both the referring and approving officer.**

In signing the referral, the approving officer is certifying that he or she believes the case meets the criteria set forth in this Worldwide Referral Policy and 9 FAM Appendix K. For Class A referrals, the approving officer's signature also attests that to the best of his or her knowledge the applicant does not constitute a threat to the safety or national security of the United States. The approving officer does not necessarily have to know the applicant personally.

All officers given the authority to refer or approve visa referrals are held accountable for understanding and applying the Worldwide Visa Referral Policy in every case.

Adjudicating Officer

Because of the importance the Department and chief of mission (COM) place on this key consular function, senior consular officers at each post must be responsible for the adjudication of visa referral cases. **All Class A referrals must be adjudicated by the consular section chief** or someone acting officially in that capacity. **Class B referrals must be adjudicated by a tenured mid-level supervisory consular officer or the consular chief of section, or someone acting officially in one of those capacities.** It is never appropriate for any referral cases to be adjudicated by an entry-level officer, unless there are no tenured mid-level consular officers at post. The consular section chief must monitor the referral process and conduct validation studies at least annually to ensure the integrity of the Worldwide Visa Referral Policy. Adjudicating officers should periodically check directly with referring officers to verify referrals and signatures.

Referring and approving officers must be provided timely feedback for any case in which the referral is rejected or the referral applicant is refused. Form DS-5500, Referral Rejection/Refusal, is the appropriate mechanism for providing such feedback. Similarly, any derogatory information on the applicant after visa issuance should be brought to the referring officer's attention. The referring officer is required to immediately notify the consular section, RSO, and the referral approving officer when they become aware or have reason to suspect that any referral applicant has failed to comply with the terms of their visa, violated status in the United States, or misrepresented him or herself in any manner in relation to the visa process. Failure to do so is abuse of the referral system, and can result in loss of referral privileges and/or disciplinary action.

Communication regarding a visa referral may be made only to the consular section chief, or in the case of Class B referrals, the designated managerial consular supervisor. Any attempt to unduly influence a consular officer or Foreign Service National employee regarding a visa case is considered an abuse of the system.

Visa Referral Records

All visa referral documentation, including visa referral forms, is scanned and maintained in the consular consolidated database (CCD). For referral cases, posts must scan the Form DS-156, Nonimmigrant Visa Application, Form DS-4034, Class A Nonimmigrant Visa Referral, or Form DS-4035, Class B Nonimmigrant Visa Referral, and if applicable, the Form DS-157,

Supplemental Nonimmigrant Visa Application, and Form DS-158, Contact Information and Work History for Nonimmigrant and other documentation relevant to the case (see 9 FAM Appendix F, Section 100 for further details on records retention and scanning). The original visa referral form must be filed with the approved or refused visa application. These electronic records are retained indefinitely and are subject to review.

Abuse of the Visa Referral System

- a. Referring and approving personnel in all sections of the mission (including consular) will be held accountable for abuse of the referral system. Abuse of the referral system may result in a warning, suspension, or loss of referral privileges, depending upon the seriousness of the abuse. The chief of mission, in consultation with the consular section chief, Post Liaison (CA/VO/F/P), and Consular Integrity Division (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 are referred to CA/VO/F/P for policy guidance and to CA/FPP/CID for investigation and coordination with Diplomatic Security (DS) and 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. Individuals have been prosecuted 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 USC 1001.
- c. 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)). This section of the ethics standards requires that U.S. Government employees "avoid any actions creating the appearance that they are violating the law or the ethical standards." References 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.
- d. All referring and approving officers will be held accountable for understanding and applying this Worldwide Visa Referral Policy in every referral case. 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 visa referral program may not be used to assist an unqualified applicant to obtain a visa. All visa applicants, including visa referral cases, must

demonstrate their qualification for the class of visa they have requested. When adjudicating referrals, the responsible consular officer will take referral-based information and the associated U.S. Government interests into consideration; however, in no case shall the fact that a referral has been made alter the legal criteria for qualification for a visa as described in the various sections of 9 FAM or the Immigration and Nationality Act.

Worldwide Nonimmigrant Visa Referral Policy
Compliance Agreement

I certify that I have read the Worldwide Nonimmigrant Visa (NIV) Referral Policy, attended the required referral briefing, and will comply with all aspects of the Worldwide Visa Referral Policy. I acknowledge that failure to comply with this policy will be regarded as abuse of the referral system, and will result in loss of referral privileges and/or disciplinary action.

Signature

Printed Name

Date

Please return signed form to Consular Section Chief