

Pitfalls in Getting U.S. Visa in Canada or Mexico

By Reuben S. Seguritan

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Nonimmigrant visa applications are usually filed at the country of residence. In some cases, however, filing at another consulate post, like Canada and Mexico is allowed. Third country nationals (TCN) have done this to save time and transportation costs. But there are problems, especially for Filipinos.

Recently, because of increased volume of visa filing in Canada and Mexico, the State Department has set up a centralized system. The TCN may apply for a nonimmigrant visa, regardless of visa category or place of residence or employment. He will have to pay for a call to a 900 number to schedule an appointment at any of the nearby posts. An information sheet will then be sent to confirm the appointment. This same sheet gives advise as to particular types of applicants who may encounter difficulties when they apply for their visas. At the appointment date, the applicant has to pay the \$20.00 machine readable visa fee whether or not the application is approved.

TCNs who have used the "900 lines" to schedule appointments for nonimmigrant visa at consular posts near the border have encountered problems like being put on hold and being charged huge amounts without getting an appointment. Some long term technical solutions are being worked out to settle this problem. Meanwhile, stop gap measures are being implemented such as (1) designating one appointment per family instead of one appointment per person, and (2) programming the opening times for scheduling appointments in such a way that each consular post will start receiving appointment calls according to time zone. This will give TCN callers the opportunity to make telephone calls at a reasonable time and still obtain an appointment.

A visa may be denied if there are for example, grounds for exclusion. If the eligibility of the applicant cannot be determined, the application will be refused and the applicant will be referred to his home district. Some standards used in ascertaining the issuance of a visa or the referral to the applicant's home district are the following: (1) fraud profiles, (2) out-of-status applicants, and (3) visa waiver pilot program cases.

If an application falls under an identified fraud profile, the consular officer has discretion to decide whether to issue or deny a visa or refer the case back to the applicant's place of residence. As regards applicants who have been out-of-status, the probability is high that their cases will be referred to their home districts where an evaluation of the nonimmigrant intent can be better made. The consular officer will presume immigrant intent if an applicant has been out-of-status for a long time before applying for the visa although there is no prescribed length of time that would warrant an automatic denial of a visa.

In one case, a Filipino who went to Canada to pick up his visa was held up for two months because of questions that he had misrepresented his nonimmigrant intent. He eventually went home to Manila to get his visa.

Those applicants who entered under the visa waiver pilot program are nationals of low refusal rate countries and they may not change nonimmigrant status in the U.S. Consequently, they apply for the NIVs in Canada or Mexico. They may also mail their applications to the consular posts at their home districts.

Consular posts abroad handle applications of stateside third country nationals by mail, specifically where a personal interview is not necessary. In these cases, the application, passport and a paid return envelope have to be submitted by express mail. If there is a need for a personal interview however, the passport is returned to the applicant.

Applicants who are nationals of high refusal rate countries and those who overstay are most likely to be refused visas at consular posts in third countries. What may happen is that the case is held in abeyance while the consulate sends a "visa alpha cable" to the U.S. consulate nearest to the alien's permanent residence to gather more information. There are cases when the consulate will deny the issuance of a visa for the failure of the applicant to give ample evidence to prove that he qualifies for a nonimmigrant visa.

Some countries with a high refusal rate are the following: Dominican Republic, India, Hong Kong, Taiwan, and the Philippines. Applicants from these countries who decide to apply for nonimmigrant visas in a third country should be ready with a thorough documentation of nonimmigrant intent.

There are some consulates, especially those located in low refusal rate countries, which allow the applicant to mail the application for B-1 or B-2 visas or to be delivered by a company representative. In these cases, where the intention not to immigrate is obvious and the business purpose is undoubtedly legitimate, the passport with the visa stamp will just be mailed back to the applicant or the same may be picked up. If however, there is a need for personal interview, such as when there are doubts as to the nonimmigrant intent or the legitimacy of the business activity of the applicant, the applicant will be notified to come to the consulate at an appointed date and time. Generally, this mail-in procedure is applicable to citizens of the country where the consulate is located. Practically speaking, only employees of sizable well-known firms are allowed to apply without a personal interview.