

DETAILED TABLE OF CONTENTS
THE CONSULAR PRACTICE HANDBOOK, 5TH ED.

Summary Table of Contents.....v

Preface..... vii

The Fundamentals of Lawyering at Consular Posts.....1

 Scope of Article..... 1

 Sources of Authority 4

 Statutory References 4

 Regulatory References 4

 Instructions/Interpretive Materials..... 4

 Impact of Travel Ban 3.0 and Its Progeny on Consular Processing..... 5

 General Procedures and Considerations 7

 Visa Waiver Program (VWP) Travelers and the
 Electronic System for Travel Authorization (ESTA) 7

 Additional Restrictions on the Use of the Visa Waiver Program 8

 I-94s and Entry into the United States 9

 Automatic Extension of Visa Validity 9

 Representation at Consular Posts in the Nonimmigrant Visa Process 11

 NIV Application Procedure..... 14

 The Visa Application 14

 Interview and Waiver of Interview 16

 Practice Tips for a Successful Visa Application 17

 Overcoming Barriers to Success in NIV Processing 19

 Presumption of Immigrant Intent 19

 Security Clearances 20

 Practice Pointers for Obtaining Acceptance of Jurisdiction over
 an Out-of-District NIV Application Other Than at Border Posts 24

 “Out-of-District” NIV Applications in Canada and Mexico
 (22 CFR §41.112(d)) 25

 INA §222(g): Restrictions on Shopping for Justice in NIV Cases—
 Expanded Definition of Unlawful Presence in the United States 27

Waivers of Inadmissibility for Nonimmigrant Visas29

 Waiver Processing30

 Visa Revocation32

Immigrant Visas33

 Consular Processing vs. Adjustment of Status.....33

 Eligibility35

 Immigrant Visa Categories35

 Numerical Control and Priority Dates36

 Admissibility39

 Immigrant Visa Application Process.....40

 The Case Process40

 Supporting Documents.....43

 Medical Examination49

 Appointment Packet and Visa Interview.....52

 Visa Interview52

 Possible IV Issuance Obstacles.....53

 “Buy American and Hire American”53

 No I-824 or Stop at NVC Required in “Following-to-Join”
Immigrant Visa Cases53

 Jurisdiction over Immigrant Visa Applications.....53

 Home-Country Processing54

 Third-Country Processing of Immigrant Visas54

 List of Homeless Nationalities.....55

 Case Transfers between Posts57

 Processing I-130 Relative Petitions58

 General Practice Pointers for Family-Based Cases59

 Client Preparation60

 Visa Issuance.....61

 Consular Petition Returns to USCIS.....61

 Visa Refusal63

 Administrative Processing64

 Three- and Ten-Year Unlawful Presence Bars65

 Waivers of Inadmissibility65

Waiver of Inadmissibility for Criminal Convictions	66
Waiver of Inadmissibility for Fraud or Misrepresentation.....	67
Provisional Waivers for Unlawful Presence (I-601A)	67
Waiver Processing.....	68
Visa Revocation and Termination of Registration for an Immigrant Visa	69
Termination of IV Registration	70
Entry into the United States	70
Doctrine of Nonreviewability of Consular Decisions.....	70
Judicial Review	72
Administrative Review	75
New Strategies to Achieve Access to Counsel for Visa Applicants.....	76
Conclusion	76
The National Visa Center and the Kentucky Consular Center	77
Background.....	77
NVC	78
Case Number Assignment	78
Fee Bills	79
Document Processing.....	80
Visa Number Assignment	84
Nonimmigrant Visa Petitions Processed at NVC (K-1 and K-3).....	84
Security Advisory Opinion	84
Problem Resolution Unit.....	85
Packet Control.....	86
Contacting NVC	86
Affidavit of Support	87
Age-Out Cases	88
Tips for Attorneys Working with NVC.....	88
KCC	89
Diversity Visa Program.....	89
Petitions Returned by Posts	91
Conclusion	91
Appendix.....	92

DS-260 Immigrant Visa Applications and Fee Payment through CEAC105

 The CEAC System 105

 Paying the Fees 106

 Completing the DS-260 107

 Reviewing and Editing the DS-260 116

 Signing and Submitting the DS-260 116

 Printing Confirmation of Submission and a Copy of the DS-260 117

Instructions for Completing the DS-160 Nonimmigrant Visa Application...119

 Data Preservation 119

 Correcting Mistakes on Submitted DS-160 120

 Family Member’s Application 121

 Completing the Form 121

 Returning to an Application in CEAC 128

**Obtaining Documents from Foreign Countries
for Use in Consular Processing129**

 Introduction 129

 Civil Documents by Country 129

 Alternatives 130

 Requesting Documents 131

 Validity Period of Document 133

 Translation 133

B-1 Business Visitors135

 Authority 135

 Statutory Authority 135

 Visa Waiver Program 136

 B-1 Visa: Regulatory Authority, Agency Guidelines,
 and Policy Considerations 138

 Three Basic Requirements of the B-1 Category 140

 Unabandoned Foreign Residence 140

 Entry for a Temporary Period 141

 Permitted Business Activities 141

 Proving Eligibility for the B-1 Visa 142

 B-1 Status for Workers in the United States 143

 Other Business Activities Classifiable as B-1 144

Business Visitors under USMCA.....	145
The Executive Orders and Extreme Vetting.....	147
Form DS-5535	148
Visa Application Process.....	148
Admission, Extension, and Change of Status	150
Corporate Management of B-1 Visitors	152
Conclusion	153
Consular Processing Considerations and Nuances for E-1 and E-2 Visa Applications	155
Introduction and Overview	155
E-2 Visa Requirements.....	156
What Is an E-2 Visa?.....	156
The Investor and/or Company Must Have the Nationality of a Treaty Country	157
What Is the “Nationality” Requirement?	157
What Documents Should Be Provided to Satisfy the “Nationality” Requirement?	158
The Investor Must Develop and Direct the Company	158
What Is the “Develop and Direct” Requirement?	158
What Documents Should Be Provided to Satisfy the “Develop and Direct” Requirement?	159
The Investment Must Be Substantial	160
What Is the “Substantial Investment” Requirement?.....	160
Types of E-2 Visa Expenditures.....	161
The Investment Must Be at Risk and Irrevocably Committed	162
Considerations When Purchasing an E-2 Business.....	163
What Documents Should Be Provided to Satisfy the “Substantial Investment” Requirement?	164
The Investment Must Be from a Legitimate Source.....	165
What Is the “Source of Funds” Requirement?	165
What Documents Should Be Provided to Satisfy the “Source of Funds” Requirement?	165
The Company Cannot Be Marginal	166
What Is the “Marginality” Requirement?	166

What Documents Should Be Provided to Satisfy the “Marginality” Requirement?167

The Company Must Be Real, Active, and Operating.....168

 What Is the “Real and Operating” Requirement?168

 What Documents Should Be Provided to Satisfy the “Real and Operating” Requirement?.....169

The Investor Must Intend to Depart the United States169

 What Is the “Intent to Depart” Requirement?.....169

 What Documents Should Be Provided to Satisfy the “Intent to Depart” Requirement?170

E-1 VISA REQUIREMENTS170

 What Is an E-1 Visa?.....170

 The Trader and/or Company Must Have the Nationality of a Treaty Country170

 What Is the “Nationality” Requirement?170

 What Documents Should Be Provided to Satisfy the “Nationality” Requirement?.....171

 The Activities Must Constitute Trade172

 What Is the “Activities as Trade” Requirement?172

 What Documents Should Be Provided to Prove That the Activities Count as Trade?172

 The Trade Must Be Substantial.....173

 What Is the “Substantial Trade” Requirement?173

 What Documents Should Be Provided to Satisfy the “Substantial Trade” Requirement?.....174

 The Trade Must Be Principally between the United States and the Treaty Country.....175

 What Is the “Percentage of Trade” Requirement?175

 What Documents Should Be Provided to Satisfy the “Percentage of Trade” Requirement?.....175

 The Trader Must Intend to Depart the United States176

 What Is the “Intent to Depart” Requirement?.....176

 What Documents Should Be Provided to Satisfy the “Intent to Depart” Requirement?176

The Business Plan.....176

 Description of the Business and Executive Summary176

Market and Competitor Analysis	177
Marketing Plan.....	177
Personnel Plan.....	177
Financial Plan.....	177
E-1 and E-2 Employees	178
Executive/Supervisory Employees	178
Special Qualification/Essential Employees.....	178
E Visa Dependents	179
Spouses and Children of E Visa Holders	179
Parents and Extended Family of E Visa Holders	179
Procedural Considerations When Consular Processing.....	179
Recent Changes to the Foreign Affairs Manual (FAM).....	181
Dealing with Errors on DS-160 Applications	182
Administrative Processing	183
Considerations for the E Visa Interview	183
Common Reasons E Visas Are Denied.....	184
Reasons for E-1 Visa Denials.....	184
Reasons for E-2 Visa Denials.....	185
Effects of the Covid-19 Pandemic on Consular Processing of E Visas	185
E Visa Worldwide Issuance	186
How Posts Are Handling E Visa Adjudications after the Pandemic	186
How Other Posts Are Dealing with E Visa Issuance	187
Changes to E Visa Issuance	188
Recent Significant Changes to the Reciprocity Schedule	188
Interview Waivers	189
Impact of Defense Authorization Act for FY2023	190
Conclusion	190
Consular Processing for Individuals Seeking F, M, or J Visas.....	191
Introduction.....	191
Documents Required for Visa Issuance	191
In General.....	191
Form I-20 or DS-2019	193
Documents Required of Canadians and Foreign Nationals with Visas ...	193

Evidence of Financial Ability 193

Evidence of Nonimmigrant Intent 193

Form I-901 SEVIS Fee 194

When to Apply for a Visa..... 195

Admission into the United States..... 196

Conclusion 196

K Visa Processing 101197

 General Overview 197

 Bringing the Applicant’s Children 197

 Validity Period of the I-129F Approval 198

 K-1 And K-2s Are Treated as Immigrant Visas 199

 Get to Know the Consular Post 199

 Interview Process 200

 Potential Issues 200

 Credibility 200

 Previous Immigration History 201

 Immigration Marriage Broker Regulation Act (IMBRA)..... 202

 Adam Walsh Child Protection and Safety Act of 2006..... 203

 Other Factors..... 204

 Conclusion 204

Consular Processing of L-1 Petitions: An Update.....205

 Introduction..... 205

 L-1 Visa Wait Times..... 205

 L-1 Visa Statistics for FY 2022..... 205

 Measures Enacted to Reduce Visa Wait Times 206

 Interview Waiver 206

 Extension of Operating Hours 206

 Domestic Visa Renewal 207

 L-1 Issues Prior to Visa Application Submission..... 207

 Reciprocity 207

 Specialized Knowledge and Managerial Requirement..... 207

 L-1 Issues Post–Visa Issuance 208

 Conclusion 208

The Art of the One-Page Cover Letter.....	211
Introduction.....	211
Do You Need a Cover Letter?.....	214
The Tone of the Cover Letter.....	215
Components of the Cover Letter.....	216
First: The Ask.....	216
Second: The Law.....	217
Third: The Facts.....	217
Know Your Consulate.....	218
Advice from Around the World.....	218
Conclusion.....	224
Addressing Inadmissibility in Consular Processing Cases.....	225
Investigating the Consular Case.....	225
Combating Adverse Criminal and Misconduct Findings to Avoid Inadmissibility and Waiver Filings.....	226
Avoiding Consular Marriage Fraud Determinations and I-130 Revocation.....	229
The Role of the Civil Surgeon or Panel Physician in Establishing Inadmissibility on Account of Drugs, Alcohol, and Tattoos.....	231
Addressing 3-Year, 10-Year, and Permanent Bars.....	233
Conclusion.....	234
General Waiver for Nonimmigrants: Processes and Procedures.....	235
How to Apply.....	236
Processing Times.....	237
Consular Processing of the Waiver Request.....	238
Adjudication.....	240
Length of Validity of the §212(d)(3) Waiver and Effects on Extensions of Stays or Changes of Status.....	241
Conclusion.....	242
Third Country National Visa Processing for Nonimmigrant and Immigrant Applications.....	243
Nonimmigrant TCN Processing.....	243
TCN Processing in Mexico and Canada.....	244
Changing Posts for NIVs.....	246
Other Considerations.....	246

Immigrant TCN Processing 246

 Post Closures and Unavailability 246

 Elective Change of Venue 247

**Bringing the Family: Accompanying or Following-to-Join
Principal Visa Applicants 249**

 Immigrant Visa Derivatives 249

 Which Visa Categories Permit Derivative Beneficiaries? 249

 Acquired? 250

 Accompanying or Following to Join 250

 Accompanying 250

 How to Initiate an Immigrant Visa Application
 for an Accompanying Family Member 250

 Following to Join 251

 Child Status Protection Act 251

 How to Initiate a Follow-to-Join Immigrant Visa Application
 for a Family Member 252

 Immigrant Visa Exceptions 252

 Loss of Principal’s Status 252

 Babe in Arms—No Visa Required 252

 Nonimmigrant Visa Derivatives 253

 How to Initiate an Accompanying or Following-to-Join
 Derivative Nonimmigrant Visa Application 253

Expediting Consular Cases 255

 Expediting Nonimmigrant Visa (NIV) Applications 255

 Consular Autonomy 255

 The NIV Appointment System 256

 Request Strategy 257

 Expedite Requests and the Interview Waiver Program 258

 Expediting Immigrant Visa (IV) Applications 259

 Cases at the National Visa Center 259

 Cases at the Consulate 260

 How to Deal with Request Denials 260

 NIV Cases 260

 IV Cases 261

Congressional Inquiries	261
“Special Requests”	262
Preparing Your Clients for Their Nonimmigrant Visa Interview	263
The Initial Consultation	264
Welcome ... It’s a Pleasure to Meet You ...	
Have You Ever Been Arrested?.....	264
Inadmissibility.....	266
You Did WHAT? Say It Isn’t So!.....	266
Packaging Application Documents—Bigger Is Not Always Better	267
Preparing the Client for the Consular Interview	268
Good Morning ... Lovely Day ... Your Outfit Is Quite Becoming	268
Denial.....	271
Don’t Let the Door Hit You on the Way Out	271
Miscellaneous (In Case I Forget to Remind You Later)	272
Consular Posts and Embassies around the World	272
Communication with Consular Officers and Embassy Personnel	272
Form DS-160, Nonimmigrant Visa Electronic Application	272
Scheduling.....	273
Expedited Visa Processing and Visa Interview Waivers.....	274
Third-Country Visa Processing.....	274
Conclusion	275
Security Checks and Administrative Processing.....	277
What Is Administrative Processing?	277
Visa Vetting Programs.....	278
A Database “HIT”	278
Technology Alert List	278
Legal Advisory Opinions	278
Security Advisory Opinions (SAO)	279
Challenges with Visas Programs.....	281
Extreme Vetting and the DS-5535	282
Implications of the DS-5535 for Nonimmigrant Visas: F-1, J-1, H-1B...283	
National Vetting Enterprise.....	284
How Do You Avoid All of This?.....	285

Preloading286

What If a Case Is Already Stuck in Administrative Processing?287

 Why Is It Stuck?.....287

FOIA Considerations290

Managing Client Expectations and Assuaging Anxiety297

**The Impact of INTERPOL Notices on Pending U.S. Visa Petitions:
What Every Immigration Attorney Needs to Know
to Best Advocate for Their Clients299**

 Introduction.....299

 What Is INTERPOL?300

 What Is the CCF?.....302

 What Are Red Notices and Diffusions?302

 Notices and Diffusions Task Force (NDF)305

 How Consular Officers Treat Red Notices and What Attorneys Can Do
 to Prepare Their Clients for Interviews.....306

 Challenging a Persecutory Red Notice through the CCF/INTERPOL
 to Affect DOS Decisionmaking309

 The State Department Can Do More to Help Curb INTERPOL Abuse311

 Conclusion313

The Lawyer’s Role in Consular Visa Refusals315

 Consular Absolutism.....316

 Preparing Consular Visa Applications with Review In Mind316

 The Importance and Value of Lawyer Involvement
 in Consular Visa Cases.....317

 FAM Requirements: Recognize and Correspond with Lawyers.....317

 Notice of Representation317

 Correspondence with Lawyers318

 Concise Cover Letters and Complete Visa Applications318

 FAM Research and Citations319

 Thorough Client Preparation.....319

 Lawyer Participation in the Visa Interview: Post Discretion320

 Review at the Consular Post321

 Visa Refusals.....321

 INA §221(g) Refusals322

Quasi-Refusals	323
Reconsideration or Resubmission of Applications	324
Review Procedures at Consular Posts	324
Limited Review by a Consular Supervisor or Principal Consular Officer	324
Reviewing Officer’s Options	325
Lawyer Involvement in Post Review	326
Talk with Experts	326
Email, Phone, and Letter	327
Reinterview	327
Congressional Letters	327
Challenging Revocation of Petitions with USCIS	328
Record Disclosure	329
Advisory Opinions	330
Court Challenges	331
Other Ways to Question Consular Decisions	334
AILA Liaison Meetings	334
Other Channels	334
Legislative Proposals	335
The Right to Lawyer Representation at Visa Interviews	335
Administrative and Judicial Review of Visa Refusals	335
Conclusion	337
General Guidelines	337
Top 25 Reasons for an INA §214(b) Denial	339
Legal Background	340
Explanations for Denials	342
General Factors	342
Individual Circumstances and Profiling	343
Specific Denial Rationales	344
Practice Advice	354
First-Time Applicant	354
Dealing with a Denial	356
Conclusion	358

Postapproval Processing: Visa Approval Is Not the End of the Case.....361

- Introduction.....361
- Nonimmigrant Visas361
 - Internal Consular Processing361
 - Valid Passports362
 - Validity Period of Passport.....363
 - Multiple Valid Visas364
 - Client Legwork364
 - Validity Period of Visa365
 - Single- and Multiple-Entry Visas.....366
 - Annotations366
 - Attorney Responsibilities.....367
 - Keep in Mind369
 - Bonds369
 - Passport Restrictions on U.S. Travel.....369
 - DS-232369
- Immigrant Visas370
 - Internal Consular Processing370
 - Confirmation of Personal Details.....370
 - Immigrant Visa Application Materials371
 - Confirm Passport Validity372
 - Valid Passports372
 - Validity Period of Passport.....374
 - Cancel Other Visas.....374
 - Required Notices and Handouts.....374
 - Client Legwork375
 - Validity Period of Visa375
 - Annotations376
 - USCIS Fees, SSNs, and Selective Service.....377
 - Attorney Responsibilities377
 - Keep in Mind378
 - Children Born after IV Issuance378
 - Duplicate or Expired IVs378

Visa Errors	379
Simple Typographical Errors	379
Errors with Legal Implications	380
Other Considerations	381
Conclusion	382
Working with Consular Posts on Unique Applications: Returning Resident Visas, In-Country I-130 Filings, and Passport Applications	383
LPRs Returning after Extended Stay Abroad	383
In-Country I-130 Filings.....	386
Generally.....	386
Blanket Authorization for Petitions from Military Personnel and Certain U.S. Government Employees	389
Applying For A U.S. Passport Abroad	390
Generally.....	390
U.S. Passport Applications in Canada Are Special	391
Conclusion	392
U.S. Citizen Filings from Consular Posts.....	393
Introduction.....	393
Renewal of U.S. Passports When There Are Issues or Problems	394
Filing Consular Report of Birth Abroad	395
Loss of U.S. Nationality, Including Renunciation	397
Consular Notarial Services: When You Can Use This Service, And for What Documents	404
Consular Assistance with In-Country Issues.....	406
Emergency Assistance, and When It Is Most Useful	407
Conclusion	413
Subject-Matter Index.....	415