

Doing Business in the U.S.A. Today

The following is an edited transcription of a free-flowing discussion between government and business experts on issues of international business travel. Video of the discussion can be viewed at <http://usinfo.state.gov/journals/itps/0905/ijpe/rntbl.htm>.

Both the U.S. government and the U.S. business community understand and support the need for face-to-face interactions between American businesses and their international clients, partners, and foreign employees.

However, as in many other countries, security concerns compel the United States to carefully screen those seeking to enter its borders.

Although the initial security changes in our international travel procedures did not always go as smoothly as wished, they have greatly improved in the four years since 9/11.

Achieving a balance between effective security and a commitment to openness does require longer screening times at various steps in the international travel process, but the U.S. government continues to work with business leaders to overcome the remaining challenges we face.

These issues are addressed in the following August 2005 panel discussion among the following U.S. business and government experts: Douglas Baker, Assistant Secretary of Commerce for Services; Elizabeth Dickson, Advisor for Global Immigration Services, Ingersoll-Rand¹; Janice Jacobs, Deputy Assistant Secretary of State for Visa Services; Randel Johnson, Vice President of the U.S. Chamber of Commerce²; Michael Neifach, Department of Homeland Security (DHS) Director of Immigration Policy; and Alexander Feldman (moderator), State Department Coordinator of International Information Programs, who poses questions to the participants.

Working Together to Facilitate Travel

Question (Moderator): One of the key issues is how, in fact, is the U.S. government working with the United States business community?



Roundtable participants are, from left: Janice Jacobs, Douglas Baker, Michael Neifach, Elizabeth Dickson, Randel Johnson, and moderator Alexander Feldman.

Jacobs: We often describe the work that we do on visas after 9/11 as being a balance between our secure borders and open doors. And this is something that our consular officers overseas try to do every single day as they adjudicate visas, not just for business travelers, but for other visitors—legitimate visitors coming to the United States.

We have established a number of facilitation

programs. What we did last July was to go out with a telegram to remind the posts [consulates] about how important business travel is to the United States—the important economic reasons. We know that...our travel and tourism industry generates about \$93 billion per year here in the United States.

We went out and asked the posts what they were doing to facilitate business travel, and then they all came back, describing various programs where they are working either with the local American Chamber of Commerce or how they have a way for larger companies to register with the embassy or consulate so that the employees of different firms can come in [and] get expedited appointments. Some posts offer separate lines for business travelers.

We went through all of the different programs that our posts have and then we sent out a cable [a world wide message] in October describing best practices for facilitating business travel, and we asked all of our posts to come up with some type of procedure that will allow travelers who need an urgent appointment, for example, to get in earlier.

The other thing that we have tried to do for all visa applicants is to make more information available on the requirements. And so we have upgraded the website at <http://www.travel.state.gov>. If you go there, you can get information about what to expect at your visa interview [and] the documents that you should bring in.

We also now have asked all of our posts to put on that website the appointment waiting times [http://travel.state.gov/visa/temp/wait/tempvisitors_wait.php], so

that if you know that you're going to travel, you can go very quickly to the post where you plan to apply and see how long it will take.

The other thing that we've tried to tell the posts is that they've got to have procedures available for people who need to travel on an urgent basis, whether it's for medical reasons [or] if there is a big business deal and you have to get in before your assigned appointment. They have to have a way to do that. [http://travel.state.gov/visa/temp/types/types_2664.html]

Question: Doug, what's the Commerce Department doing with this? You're sort of the middleman between the government and, certainly, the business community.

Baker: We recognized shortly after 9/11 that as the visa policy and security issues started to rise to greater levels in Washington, that it really presented a great concern for the economic security of our nation's business—the generator of, you know, private sector jobs that employ so many...Americans: 88 million employed in services, 15 million employed in the manufacturing sector.

And so we reached out to the State Department. We reached out to the legacy immigration agencies [and] made sure that they understood the urgent need for the visa policies and the visa process to continue to run smoothly. [Note: "Legacy immigration agencies" refers to the Immigration and Naturalization Service (INS) and other border control agencies which were merged into the Department of Homeland Security, created after the terrorist attacks of September 11, 2001.]

We've worked very closely with the Chamber, both in Washington as well as the AmChams located in capitals around the world, making sure that they understood that if they weren't getting their issues and concerns addressed, arising from visa delays, that they needed to contact us. We, in turn, would work on the interagency process to not only smooth out the various bumps in the road, but also, one of the key issues that we have strived for is to bring more transparency to the visa issuance process.

Question: Randy, what does the Chamber see in this relationship?

Johnson: We were very critical of the State Department and DHS and we used phrases like, "We didn't think anybody was listening to us in terms of the business community's concerns." And we all understood [the need for increased security] in terms of the post-9/11 environment, but we had to make the point—and we did in a lot of loud ways—that economic security is important in this country and that, in fact, economic security is recognized as one of the mission statements...in the creation of DHS, which we supported.

We just recently heard from our counterparts in Bogotá, Colombia, and they were ecstatic over how well things were now moving along. On the other hand, we hear from other ones who are still experiencing problems.

I do think some, you know, one issue is—our give and take [between the U.S. government and business] is somewhat on an ad hoc basis. But I think one idea would be to formalize a system here...in Washington in terms of perhaps an advisory committee between the private and public sectors, so that there is a little more of a formal arrangement...

Things are getting better. But, I think, in the business community there's still a sense of, sort of, who do we talk to, how do we get changes done, instead of this amorphous process of complain, write letters, and hope it's got some traction.

Question: Elizabeth, tell us a little bit about some of the problems that your company is facing and some of the challenges that we need to be aware of.

Dickson: Okay. Well, first of all, I have been partaking in a lot of the meetings between the Department of State, [as a representative of] a large corporation, and with a number of other big, Fortune 500 companies. And we have appreciated the receptiveness of the Department of Homeland Security as well as the Department of State to meet with us periodically and understand some of the stresses that we are going through.

I do think the website is great. We have a link to the Department of State website [<http://www.travel.state.gov>], which is a very good website—as long as the information on there is timely. We do see, sometimes, disparity with our actual experiences in the wait times—but still it's a good ballpark figure.

One of the things that we have worked on successfully with the consulates, when there is a real delay: if we can truly establish that there is a critical business need for the travel, we have had some success in getting visa appointments moved up.

I have seen some flexibility on the consulates' part and a willingness to reserve some appointments for urgent business travel as long as you can clearly establish the need.

Question: I think that we've gotten a sense that there are a number of things going well, and much better, and there's...still some challenges that we face as we continue to work with the business community and improve the system.

U.S. Visa/Entry Issues

Question: So our second segment is really talking

about what are the actual challenges faced by foreign or international business executives when they try to come to the United States.

And, Elizabeth, I think, in our last segment you were starting to talk about some of those, and I'd like to revisit them.

Dickson: I think one of the most difficult issues is the inconsistency in processing. You can send five people in with identical paperwork, identical things, you know, and some people seem to breeze through [while others experience problems]. And the other thing that we have had a lot of problems with is errors in the visa issuance... Many years ago, when the candidate would go first thing in the morning, apply for a visa, come back in the afternoon and pick up their passport, if there was an error for some reason, they would see it right then and it could be corrected right then.

The visa reciprocity, to me, is a real issue. A big success in China was renegotiating to a 12-month, multiple entry visa and that facilitated not only people coming into the United States from China, but the American business traveler who went back. And I'd like to see all the reciprocity agreements renegotiated—

Jacobs: Sure.

Dickson:—and extended, because it would certainly free up your consular offices—

Jacobs: Absolutely.

Dickson:—as well as facilitate business travel internationally.

Jacobs: And we're always willing to engage with another government on extending reciprocity, provided that they will give the same treatment to American citizens going there in the same category. That's sort of the whole issue there: that the country has to offer Americans equal treatment.

Question: Randy, are you seeing similar issues...?

Johnson: Yeah, I think it's the lack of... [information about] exactly what is the criteria an officer is using [to determine who gets a visa]. And sometimes, what we hear is, applicants just can't figure out why it was denied, and the explanation they got didn't really explain it to them.

Sometimes I think this may fall into... perhaps, travelers are not perceived necessarily as a customer of the State Department, but more as someone to—well, they have to be carefully examined—but there's a certain relationship in which some travelers perceive they're not being treated very well by some officers. And whether that's a small problem or a big problem, the perception spreads and so, you know, sometimes, we think maybe there would be a role for some kind of a check.

Jacobs: We know that our consular officers out there on the line really are representing not just the embassy but, sometimes, the entire country or the U.S. government itself. So we tell our officers over and over again that no matter what the answer is to a visa request, it has to be a dignified experience for the applicant who comes in. They have to be treated well, with dignity. They need to understand if the answer is no, why the visa is denied.

Our consular officers are required to give the reason in writing. I think what happens, sometimes, is that, you know, the applicant is understandably nervous, [and] perhaps not understanding why the answer is no. A lot of times it's because the person has been unable to establish sufficient ties to the home country and, therefore, under the law, the consular officer is required to deny the visa because the person appears to be an intending immigrant.

Question: But the issue of consistency?

Jacobs: Every case is decided on its own individual merits and so you might have two applicants [traveling] to the same event, but the circumstances for each applicant might be different and so consular officers would arrive at different decisions.

We give them all the training and tools that they need, but in the end it comes down to their judgment as to whether the person has established eligibility. I think that, for the most part, consular officers make the right decisions, but they're also human and they sometimes make mistakes.

Question: What's the DHS role in all of this?

Neifach: Under the law, we, frankly, have the primary role on setting visa policy. Now, the State Department issues the visas, they handle the consular [duties at] the posts abroad—the admissibility determination—but when that person gets to the United States, [that] is something that our inspectors handle, at each of the ports-of-entry.

We face many of the same problems and many of the same issues that Janice just went through: nervous applicants, interviews that have to happen fairly quickly, all those things.

Customer service is something that we have stressed is critical to making the United States a welcoming country, and we don't tolerate our inspectors not treating everybody with dignity.

I'm not going to say that everything is perfect—and I think this is something where we can team closer with the business community on—sort of the customer relations aspects. And it's something that we're open to considering.

We have an office of the private sector, which is a

critical input for the business community on issues that are affecting them, and getting those to me. They bring a lot of good issues to our attention and work through those things and serve as a conduit with the business community.

Baker: One of the things that we hear repeatedly from U.S. business is that, when a visa applicant is declined, there does not seem to be any real discernible pattern that the consular officers are following... One gets passed... [while] one gets denied; and [the two applications] seem to be fairly, fairly similar.

What we have discovered is that, certainly, from the larger company perspective, they tend to have their outlets for recourse or redress—whether it's calling their legal counsel to get involved or whether it's working through AmCham's process for expediting the interviews. So what we have found is that there's no real recourse for the small and medium-size companies that aren't members of either AmCham, the American Chamber here, or affiliated in any other AmChams in the foreign capitals.

And so we talked to the State Department and got them to agree to a pilot program to open a visa facilitation office here in Washington, which provides an outlet for the small and medium-size business to call, so they can discern what the real issue is [on a visa denial].

Jacobs: We did start with a pilot program just for China—U.S. firms doing business in China—because there's so much interest in that country right now. And we have just recently, last month, decided to expand that to be a global program.

And what that means is that any U.S. firm here, small or large, who would like information about how to get a visa or if there's a particular case of concern, they can contact this new center that we have set up in our visa office. You can e-mail that center at: businessvisa@state.gov.

Question: It sounds like the challenges that we face are in delays and in transparency and in understanding what is necessary for the visa applicant.

And that's what we're going to get to in our third segment, which is how do we make sure that this process is as fluid as possible and what can be done both to help the consular officers and DHS review the application.

Obtaining a Business Visa

Question: Our next section is dealing with the practical elements of getting a visa to the United States

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—Michael Neifach

and what information business travelers should know about, [and] what they need to provide to our consular officers in our embassies.

Jacobs: Well, as I mentioned earlier, we do have a lot of information on our website about the requirements for a visa. Basically, what the consular officers...

Question: Our website—tell them our website address.

Jacobs: It's <http://www.travel.state.gov>. And what the consular officer is really looking for is as much information [as possible] about the applicant and his or her situation in the home country, as well as information about the proposed trip to the United States.

And so, when people come in, they should be able to show ties. They need to bring evidence of their ties to their home country.

Question: What does “ties” mean?

Jacobs: That means, you know, proof that you have a job, that you have a family there, that you're in school, that you have a reason to go back to your home country after your short visit to the United States.

Question: And what kinds of things would be considered proof?

Jacobs: Well, we sometimes ask to see a letter from your employer, salary statements... if you have property, maybe a deed to the property... things of that sort. There's no sort of required list of documents, but anything that you can bring in to show that you're well established in your home country is useful to the consular officer.

And then, as far as the trip to the United States goes, the letters that explain who the person is, why they are needed here in the United States, what exactly they'll be doing—all of that is very, very helpful.

Provided that there is no question about the ties to the country and the purpose of the visit to the United States, it's relatively easy to qualify for the visa.

Neifach: At DHS, when we do the inspection at the point of entry, we generally look at the same things. If the story is consistent, if the individual shows why they're coming here and that they're going to go back... We have to do that review again at the border.

Where the visa is for a longer period of time and [on re-entry to the United States] there's been a change in circumstances, etc., it's important that the applicant again be ready to show updated information on what's currently going on.

Question: Well, so they should actually bring these documents with them when they travel?

Neifach: It cannot hurt. I mean, our inspectors have to make a decision at the port and, especially where there's been a long period of time from when the visa was initially issued, it's important to have the information necessary to just support your case.

Dickson: In situations like that, we sometimes do a port-of-entry letter if we feel it will be helpful. One of the other things we've done, particularly with our J-1 program: in the instruction letter, I have a detailed list—not only of what they need to take to the consulate, but also, what documents they should keep on their person.

And, Janice, one of these things, when we were talking about strong ties, and I mentioned my company... We actually developed a questionnaire for our letters that addresses that [the need to show ties to the home country], so that we could help explain that [requirement], particularly when there's a language issue. Many of the companies in China, for example: part of an employee's compensation package might be housing that's provided by the company. So then they don't have that [home ownership] to show, but I think you can demonstrate in a letter that their "tie" is their long-term employment and the fact that their remaining family lives in company-provided housing. So we try to address that.

Jacobs: I think what Ingersoll-Rand is doing is terrific. The more you can tell us about the company and what the applicant will be doing, and what the purpose [of the trip] is: if it's to view equipment... if there is a visit to several cities, what the itinerary is... All of that type of information is extremely helpful. The applicant should also be able to explain the trip as well and be able to, you know, talk about what he or she will be doing.

Let me just add really quickly, going back to what happens at the port-of-entry, we, in fact, share the information on the visas that are issued electronically so the inspectors at the ports-of-entry can very quickly confirm that the visa was issued by us and that it's a legitimate document. I think that, in the end, really helps to facilitate travel.

Johnson: Mike, I just want to reassure the viewers, that it's very rare that someone would have a visa approved by the consulate, travel all the way to the United States, and then be denied at the port-of-entry and have to go home.

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Neifach: There would have to be something completely new for that to happen.

Jacobs: Perhaps new information developed after the visa was issued, something like that. But, yes, it's very rare.

Question:...I think a lot of people have heard about fingerprints or putting their fingers in machines. First of all, does everybody have to do this?

Jacobs: Congress passed a law back in May 2002 that basically requires the State Department to include biometric identifiers with the visas that we issue.

Question: And that's a vague, big term, "biometric identifiers."

Jacobs: Identifiers—basically, well, it can be many different things. We decided to use a two-fingerprint program because we were already using something like that in Mexico. We had until October 26, 2004, to deploy that [system] worldwide, so to get it out to our 200-plus posts, we used pretty much the same system that we had in Mexico.

It really isn't fingerprinting. It's a little box, finger scanning. It adds about maybe 30 seconds on to the visa interview process—fairly quick and...

Question: But it's not just aimed at Muslims or at the Middle East...?

Neifach: Not at all.

Jacobs: Not at all, it's a worldwide requirement. The purpose is basically to confirm the identity of the traveler, but also to make sure that no visa has been issued to that individual in another name. In other words, to make sure we don't have impostors.

Neifach: When the person gets to port, our [customs and border protection officers] are going to do the same thing. It [US-VISIT] is going to go back and confirm that this is the same person who got that visa.

So it does not slow down the process at all. It helps us to facilitate: you confirm that this person is who they say they are and that they have legitimate business and they can be on their way.

Jacobs: As long as they can show that they're well established in their home country and can articulate why it is they're going to be coming to the U.S. in the future, they shouldn't have any problem.

Neifach: On US-VISIT, there was a lot of trepidation with regard to how it would be implemented, particularly

at the land borders. So far, it's been well implemented without any major delays at the borders, and Chambers [of Commerce], such as Laredo [a Texas border city with Mexico], who have had great concern about it, are pleased about the way it's being implemented.

Question: Okay. Why don't we get to that in our next section because that's exactly what we're going to talk about: what do you do if you don't get a visa and what can you do to appeal and to find out more information about why you were denied?

When You Need Assistance

Question: Welcome back to our last segment. I wanted to spend a little time, as we wrap up today, talking about what the U.S. business community can do proactively to help facilitate visas for their clients and their customers and their employees coming to the United States.

And I also wanted to...touch on what happens if something goes wrong, what happens if this visa is denied, what happens if you need to do something very quickly, that's unexpected.

Doug, tell us a little about the foreign commercial officers. What do they do and where can they be helpful in this whole process?

Baker: Well, Alex, through the Foreign Commercial Service, we have offices in 85 countries, and they are in most of the embassies and consulates.

And previously, prior to 9/11, they did have the ability to serve as a sponsor for a particular visa applicant. With the changes in the laws, post 9/11, that has been eliminated. Hopefully, you know, as we make additional improvements to the visa process, that's one of the things that we can get re-established.

Short of that, certainly, what I would encourage all business visa applicants to do is to apply as early as they possibly can.

It's great for the businesses to pull together as much information as they can.

And they certainly need to remember that if the visa has been denied or if they're not able to get in as early as they can, to go ahead and call the Commerce Department, either in Washington or through the commercial service presence [at the U.S. Embassy in their county].

Question: And do you know a website where people

"I would encourage all business visa applicants to ... apply as early as they possibly can." -Douglas Baker

can find out where the commercial service is located?

Baker: Yes, through the main Commerce website, which is <http://www.doc.gov>, and follow the link to the Foreign Commercial Service.

Jacobs: It really is up to the interviewing consular officer to make that decision about whether the person was eligible or not. And as I said, the more information that the officer has at hand, the easier it is to make that decision.

We have talked a little bit about what happens when people are denied [a visa]. In fact, all of the denials that are done...by...what we call the line officers, the people out there actually adjudicating the visas, those denials are reviewed by our senior supervisor at post. If that supervisor disagrees, then the applicant will be called in [for another interview].

Applicants always are able to reapply for a visa. There's nothing to keep them from reapplying. However, we always advise that unless there was a key piece of information that was missing or unless your circumstances have really changed, then it may not be a good idea to reapply sort of from one day to the next. But if you feel that the officer didn't understand your case or the situation, by all means, then the applicant should feel free to reapply.

We also, back here [in the United States], we're not monitoring all of the cases by the posts, but we also pay attention to refusal rates. And if, for example, between two officers at the same post, there's a big discrepancy between refusal rates, then we may ask about that. And also the supervisor, of course, at the post would do that.

Question: Is there a way to find out why you were denied?

Jacobs: Oh, absolutely. When you're denied, you get a piece of paper that explains which section of the law, whether it's 214(b) or another—it's right in front of you.

Question: And what is 214(b)?

Jacobs: 214(b) is the most common reason that visas are denied. It means that the consular officer thought that you were an intending immigrant. You were unable to establish the ties to your home country.

Question: So for that, if you could provide additional paperwork that showed, you know, some compelling reason why you would come back, then that might be a reason to reapply.

But even if they get in for an interview, isn't there some kind of processing time? ...That seems to be the perception.

Jacobs: Well, once—97 percent of the people who come in, once they have their interview, if they're found eligible, they get their visa either that same day or within 48 hours after the interview.

There is a very small percentage of cases that have to be referred back to Washington for further [security] vetting. Those were the cases, really, back in 2002, 2003, that were causing significant delays and that's where we have really made very significant improvement. We've gone from 79 days down to 14 [to complete secondary clearances]. So I think we have made significant progress there.

Neifach: DHS and State have been working very closely on further improvements that can be made. How can we rapidly check those folks that we need to [and], not have to check those people when there is already another check happening.

Johnson: Janice, can I ask you, on the reapplication, now that—you have to reapply, resubmit an entire application—

Jacobs: Right.

Johnson: Pay the fee again.

Jacobs: Right.

Johnson: I just paid a hundred dollars to the Russian Embassy for mine—it's a significant amount for a lot of people.

Is there, though, an internal process by which someone could say, "Look, this guy's not treating me right. I want someone else to look at my file," and sort of reapply and fairly quickly have a second pair of eyes? Is that possible or not?

Jacobs: Many posts have that—a procedure whereby, if you have been denied, say, a certain number of times on [the visa] line, say, twice, and you reapply again—the third time, the head of the section would look at the case. It really varies from post to post, depending on the volume and the size of the [consular] section.

Question: You talked about a State Department website.

Jacobs: Right.

Question: But you've also said that there are differences from country to country. How will they—how does one find out about [those differences]? Where's the best place to go to?

Jacobs: If you go to our website [<http://www.travel.state.gov>], you can link into all of our embassies and consulates that process visas. And we've asked all of the posts to put on their individual websites the special procedures that they have in place for people getting in on an urgent basis.

Question: And there are, through the Foreign Commercial Service or otherwise...there are arrangements for business applicants, specifically business applicants?

Jacobs: There are. We have many, many different kinds of programs. We have programs where people can—who are registered with AmCham—can get expedited appointments. At some of our posts, we have someone designated in the consular section who is the business representative. The companies can call that person to set up appointments. Every post handles it a little bit differently.

I think there is a misperception, after 9/11, that, in fact, we are denying more visas under Section 214(b), which is the one that talks about being an intending immigrant. The fact is that our worldwide refusal rate is a little bit lower today than it was before 9/11.

We are finding that the fact that we're sharing more information with other agencies, that we're able to confirm for students, for example, that they have been accepted at a school...all of these things are resulting in a higher rate of visa issuance after 9/11....

The criteria has not changed for a visa. What has really changed is that we have taken steps to know more about applicants. We're interviewing more applicants and looking more closely at documents and things like that, but the criteria for qualifying have not changed.

Moderator: I think that's a great place to stop. I want to thank all of you for being here today and for talking about these critical issues. I think the bottom line is that America's doors are open and that we welcome foreign visitors, whether they're coming for business, to study, or for tourism.

And I hope that we will quickly correct some of the challenges that we've heard about today and I think that, you know, we've heard that some of the myths out there are not actually true and are, in fact, myths and that there are things that the business community and the applicants can do to help smooth the whole process.

So thank you again for coming and we look forward to seeing you in the U.S.A. Thanks. ■

1 Ingersoll-Rand is a diversified industrial manufacturer with more than 40,000 employees and over 80 manufacturing facilities worldwide.

2 The U.S. Chamber of Commerce (AmCham) is the world's largest not-for-profit business federation, representing 3 million companies, with 102 overseas chapters, which represent U.S. corporations and small businesses in various countries.