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Memorandum to: Ambassador Janice L. Jacobs, Assistant Secretary for Consular Affairs
cc: President Barack H. Obama
Secretary of State Hillary R. Clinton

Crystal Williams, Esq., Deputy Director, American Immigration
Lawyers Association

Memorandum from: John F. Roth
Attorney, Roth Immigration Law Firm, Nanuet, NY USA

Issue: **Guangzhou U.S. Consulate Non-Compliance with State
Department Rules for Processing Marriage-Based Visa
Applications**

Introduction

The U.S. Consulate in Guangzhou is a high fraud post. Shockingly, the fraud in recent years comes not primarily from the applicants, but rather from the Consulate itself. The Consulate routinely re-adjudicates K-1 and K-3 visa petitions, employing review standards that are not consistent with Department of State policies, and then it engages in a never-ending pattern of deceit to ensure that no interested party may learn the reasons for the Consulate's action, or may challenge its decisions.

A. The Guangzhou U.S. Consulate Returns K Visa Cases to the CIS in Far Greater Numbers than is Appropriate under the Foreign Affairs Manual

In July 2008 my firm started to notice a large spike in the number of Guangzhou K visa cases resulting in 221(g) requests for revocation. The trend has continued to the current day. I have compiled the following statistics to point to my firm's experience in 2008:

Table 1 - 2008 Roth Immigration Law Firm K Visa Cases

Country	Total Cases	221(g) Revocation Requests	Percentage
Philippines	59	1	1.69%
China	40	5	12.50%
Russia	37	0	0.00%

Ukraine	24	1	4.17%
Brazil	8	0	0.00%
Colombia	8	0	0.00%
United Kingdom	7	0	0.00%
Dominican Republic	6	0	0.00%
Thailand	5	0	0.00%
Mexico	5	0	0.00%
Vietnam	4	0	0.00%
Other	55	0	0.00%
TOTAL	258	7	2.71%

Anecdotal evidence suggests that the refusal rate is far higher than the 12.5% we cite above.¹ I strongly suspect that if DHS were to conduct a survey of K visa cases returned to the NVC or Visa Office in 2008 the numbers would show an extraordinarily high number of returned K visa cases originating from the Guangzhou U.S. Consulate. This trend flies in the face of State Department instructions to posts to be “judicious”² about returning petitions, and to use revocation “sparingly”.³

Currently, cases returned to the CIS with a recommendation for review or revocation are taking fully two years to reach a CIS adjudicator, with no chance before then to learn the reasons for the refusal, or to challenge the Consulate’s refusal decision in any way. This effectively makes the consular officer judge, jury, and executioner of the visa, based only on a five to ten minute interview.⁴

Significantly, the refused couple’s relationship endures in almost all cases. All of my clients with refused K-1 cases in Guangzhou went to China after their K-1 cases were refused, married their fiancées, and have subsequently filed I-130 and K-3 petitions for their wives. This fact pattern not only calls into serious question the judgment of the consulate staff regarding the *bona fides* of the relationship, it also points to the heavy and unnecessary emotional and financial burden that the Consulate is placing on refused petitioners and beneficiaries, a matter that seems not to trouble the Consulate at all.

¹ See “Candle for Love” web forum at <http://candleforlove.com> to read experiences of U.S. citizen petitioners with the Guangzhou U.S. Consulate; See “001” web forum at <http://usa.bbs.net> to read experiences of Chinese K visa beneficiaries with the Guangzhou U.S. Consulate. See, also, Case History #4, pp. 8, 9.

² Cable R 130616Z JUL 01. This cable reads like a manifesto in opposition to everything that Guangzhou is doing lately. I reproduce it in full below as Appendix A.

³ Id.

⁴ If interviewing consul’s original decision is being subsequently reviewed by supervisory officers in Guangzhou, we see no evidence of it; we have never seen or heard of the Consulate changing its original decision about returning a case to CIS for revocation. Indeed, the Consulate routinely refuses to hold a refused case visa case at post even for a day to allow petitioners or their representatives to plead their case before the case is shipped to the CIS.

B. The Guangzhou U.S. Consulate is Applying Inappropriate Review Standards for Returning K Visa Cases to the CIS for Review/Revocation

The Foreign Affairs Manual (“FAM” hereafter) makes clear that CIS approval is “*prima facie* evidence of a bona fide relationship between the petitioner and the beneficiary.”⁵ FAM states that the Consulate’s role in visa processing is “to review, not readjudicate” the petition⁶ and that consular officers “should not assume that a petition should be revoked simply because they would have reached a different decision if adjudicating the petition.”⁷ In cases not involving fraud or petitioner-initiated revocation, the Consulate’s burden is to show “changed circumstances” or “clear error” to justify return of a case to the CIS.⁸ The FAM places a high evidentiary burden on posts which seek to controvert CIS approvals:

“In general, knowledge and reason to believe must be based upon evidence that USCIS did not have available at the time of adjudication and that such evidence, if available, would have resulted in the petition being denied. This evidence often arises as a result of or during the interview of the beneficiary. Reason to believe must be more than mere conjecture or speculation—there must exist the probability, supported by evidence, that the alien is not entitled to status.”⁹

The State Department has instructed posts time and time again to use revocation requests only in cases involving “solid, factual evidence of fraud or misrepresentation, evidence that is likely to stand up in a court of law,” and that in cases that are merely suspicious or questionable, the post should use a 221(g) request for additional evidence to resolve doubtful cases. State Department Cable R 130616Z JUL 01 to all posts states the matter clearly:

“Posts should be generous in allowing applicants every opportunity to supplement their applications following a 221(g) refusal. Many consular sections polled by VO reported that they usually use 221(g) rather than petition return to INS as the most effective way of handling cases in which fraud is suspected and where further information-gathering is likely to be able to resolve the doubts one way or the other.....VO supports this use of 221(g) [request for additional evidence] with IV petitions, as returning a petition based on suspicion alone is not appropriate, and providing the

⁵ 9 FAM 42.43 N1(a).

⁶ Cable R 251642Z FEB 04 (reproduced below in full as Appendix B); Cable R 130616Z JUL 01.

⁷ Cable R 251642Z FEB 04, ¶ 7.

⁸ See, *inter alia*, 9 FAM 41.53, Note 2, 41.54 Note 3.2-2, 41.55 Note 8, 41.56 Note 10, 41.57 Note 6, and 42.43 Note 2.

⁹ 9 FAM 42.43 Note 2.1; See also, *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) (“Observations of the consular officer that are conclusory, speculative, equivocal, or irrelevant to the bona fides of the claimed relationship between the petitioner and the beneficiary do not provide ‘good and sufficient cause’ for the issuance of a notice of intention to revoke approval of a visa petition and cannot serve as the basis for revocation, notwithstanding the petitioner’s failure to timely respond to the notice of intention to revoke.”)

applicant an opportunity to address post's doubts is a fairer way of dealing with suspect cases. We encourage posts to use 221(g), except in those IV cases in which fraud, misrepresentation, or ineligibility for status can be clearly established. 221(g) allows petitioners and beneficiaries to supplement the initial application and in many cases overcome the refusal."

Despite the disfavor shown by the Department of State for consulate-initiated revocation requests, and the high evidentiary standards imposed by the State Department on consulates seeking to use this remedy, the Guangzhou U.S. Consulate appears to be freely readjudicating petitions based on its own internal rules. The Consulate does not tell the public or affected parties what these rules are, thus insulating itself from accountability.

My firm made repeated attempts by electronic mail, telephone and fax in 2008 to obtain guidance from the Consulate about its review standards. After all such efforts failed to produce a single piece of useful information, I started in late summer 2008 to conduct exit interviews with all of my firm's refused K-1 and K-3 beneficiaries (and others from outside our firm who called us as well) to see if I could infer the Consulate's review standards in 221(g) cases. After speaking with over 20 beneficiaries, I could reasonably infer that the following rules had been adopted (among, perhaps, others):

1. "No English, No Visa"

Many beneficiaries seem to be refused a visa based solely on the fact that the beneficiary did not display sufficient English skills during the interview. What's more, there is a sort of "rope-a-dope" tactic at play here as the consular officers always speak in Mandarin and they never insist that the beneficiary speak English. This can lead to a misleading interview experience as many beneficiaries who can speak English are so nervous during the interview that they elect to speak only in their native tongue. The nervousness of the beneficiaries is enhanced by the Consulate's lack of transparency, and is amplified on the day of the interview by a Consular building which has become a bee hive of panic-stricken fiancées and spouses preyed upon by cynical Chinese "visa consultants" whipping the beneficiaries into a state of fear while promising that they "know the right answers [for the interview]."¹⁰ Once my firm started encouraging our K-1 beneficiaries to ignore the visa consultants and to speak as much English as possible during the interview no matter what the consular officer said or did, our refusal rate was reduced by fully one-half. So, the consuls appear to be drawing an inference of lack of *bona fides* when in fact all they are seeing is nervousness brought on by the Consulate's own inscrutable policies and tolerance of visa consultants in the consular building.

¹⁰ See my extensive discussion of this situation in my 9/28/08 fax letter to Consul General Goldberg at Appendix A below.

Of course, there is no English language requirement to qualify for a visa under U.S. immigration law. Therefore, the Consulate must justify its revocation recommendations in such cases by arguing that a couple without a common language could not possibly have an authentic romantic relationship. This approach doesn't acknowledge the variety in human courtship practices, and in individual people themselves, and it also ignores the extent to which friends, family, and modern technology, in the form of online and hand-held translators, can bridge the gap between persons lacking fluency in a common language.

We have no quarrel, by the way, with the view that lack of a common language may be *a factor* in questioning the *bona fides* of a relationship, but it seems wholly inadequate under State Department guidelines as a sole basis for a revocation request.

2. “One visit, no visa”

The Consulate also seems to have a “one visit, no visa” policy regarding K-1 couples.¹¹ This approach fails to give due consideration to the fact that China is literally on the other side of the world compared to the U.S., and that petitioners face a very substantial sacrifice in time and expense every time they travel to China. The Consulate seems also to ignore the extent to which technology has changed the way people communicate in recent years. Our firm’s clients virtually all use Skype™ on a daily basis to have lengthy video and audio chats with their fiancées. Following my clients’ suggestions, I used Skype™ while in Guangzhou to talk with my wife and 4 year old son, and although not exactly like being there, it is breathtakingly close.

3. “Marriage on first visit, no visa”

We have not seen this type of case in our practice, although it is widely reported in web forums relating to K visa petitions before the U.S. Consulate in Guangzhou. Attached as Case History 1 is one petitioner’s particularly compelling story. As with the other case histories reproduced below, the couple in this Case History 1 had every imaginable *bona fide*, but simply ran afoul of one of the Consulate’s rules, which led to an abrupt termination of the consular interview, and the refusal of the visa.¹²

Note also that in an I-130 case, the couple can not “get married and file a K-3” since they are already married. This leaves them completely at the mercy of the CIS’ extraordinarily long review cycle for refused marriage-based petitions.

¹¹ See, e.g., Case History #4, p. 49.

¹² See, e.g., Case History #2, p. 3; Case History #4, pp. 8, 9.

Traditionally, U.S. consulates have been very deferential to K-3 and I-130 petitions,¹³ even when the prior K-1 visa petition was returned to the CIS. Once the couple marries, the entire “intent to marry” issue, central to K-1 cases, disappears from the analysis, so there remains scant grounds for challenging the petition. The FAM recognizes this fact by strictly proscribing consular discretion in such cases. FAM instructs that, in the absence of a petitioner-initiated revocation request, or evidence that money changed hands, the “minimum evidentiary standard” for a revocation request is:

“Extensive factual evidence developed by the consular officer that would convince a reasonable person that the marriage was a sham marriage entered into to evade immigration laws.”¹⁴

In cases where the petitioner married the beneficiary on the first visit, the CIS typically knew that the couple had married on the petitioner’s first trip to meet the future spouse, and it approved the petition anyway, so there is no “changed circumstance” which the Consulate can seize upon to justify its result.

4. “Very large age difference, no visa”

I described the following case in my 9/30/08 fax letter to Consul General Goldberg (attached as Appendix C):

“One case recently was sent back to the USCIS with a recommendation for revocation despite the fact that the USC petitioner is a Mandarin fluent U.S. businessman who has lived with his Chinese girlfriend for many months in China as he travels back and forth between the U.S. and China on his firm’s joint venture projects. There is a 26 year age difference, but this was disclosed of course to the USCIS at the petition phase. Notwithstanding the age issue, every other imaginable positive *bona fide* was present in the case. Now the couple is married and awaiting another long slog through the U.S. immigration bureaucracy. The petitioner’s personal and business plans have been thrown into great disarray, and the anguish for both petitioner and beneficiary has been severe.”

Attached as Case History 2 is the petitioner’s own detailed statement.

As noted above, the respective ages of the couple is known by the CIS at the time of approval, so it’s difficult to see what the “changed circumstances” or

¹³ In my career I’ve only seen two K-3 cases sent back to the CIS for revocation. Both were Guangzhou cases (although neither of these couples married on their first visit). One occurred in 2007, the other in 2008. Curiously, the couple refused a K-3 visa in 2007 was approved for an I-130 Relative visa several months later, even though the Consulate was supposed to apply the exact same review standards.

¹⁴ 9 FAM 42.43 N2.2 (3).

“clear error” are in cases sent back to the CIS based only, or even partly, based on a large age difference between the couple.

5. “Three or more marriages by petitioner, no visa”

Here again we see refused cases that can not be explained except by the immediately referenced “rule” above. In Case History 3 below the couple has been waiting fully three years to be allowed to start their life together in the U.S. This was and is a perfectly genuine couple but their K-1 case was sent back to the USCIS for revocation in 2006. When all our efforts to determine the reason for the refusal were rebuffed by the Consulate and UCSIS, the couple married in China. The K-3 case resulted initially in a request for additional evidence (attached as Appendix D below) wherein the Consulate sought information on each of the petitioner’s and beneficiary’s prior three marriages.¹⁵ The petitioner and beneficiary submitted voluminous replies, providing all the documents the Consulate had requested, and more still.¹⁶ Nonetheless, the Consulate sent the case back to the CIS with a request for revocation.

Case History 4 below is another story of a very credible couple who nonetheless were refused a visa based, at least in part, on the petitioner having been married three times previously.

Of course, the CIS know about all the prior marriages when it approved these petitions.

C. The Guangzhou U.S. Consulate Consistently Refuses to Explain Its Decisions, In Contrast to Other Overseas Posts

Cable R 251642Z FEB 04, par. 6 instructs posts as follows:

“C. consular officers must provide to the applicant in writing as full an explanation as possible of the legal and factual basis for the visa denial and petition return.”

In contrast to other revocation cases we have seen, the Guangzhou cases were unexplained by the post and were inexplicable to us despite our many years of experience with K visas (over 8000 K visa cases over the last 13 years). The two non-Guangzhou 221(g) refusals we saw in 2008 were not particularly surprising to

¹⁵ The Consulate had also been concerned about this beneficiary’s short prior marriage to a Chinese national that never resulted in the couple living together. The beneficiary explained during the interview, and later in her written reply to the 221(g) request for additional evidence (See Case History #3, page 5 below), that the marital relationship had simply collapsed very soon after the marriage began and that thereafter the couple was just waiting for a divorce; so there was no need, of course, to move in together.

¹⁶ See petitioner’s description of documents submitted at Case History #3, page 2 below.

us. In both cases the beneficiary was given ample opportunity to make their case after the initial interview.

In the Philippines case the client and beneficiary disregarded our advice to obtain an annulment to terminate the beneficiary's marriage but instead secured a faster though questionable presumptive death decree to terminate the prior marriage. The case was not sent back to the CIS initially. Instead, the beneficiary was given a very specific request for evidence to help the Consulate determine whether the beneficiary had reasonable grounds for believing that her ex-husband was deceased (see Appendix E below). The beneficiary was also given three meetings with the head of the anti-fraud unit in the Manila U.S. Embassy to present further evidence and to argue her case. The beneficiary was finally told that she had not convinced the chief that presumptive death was an appropriate method of terminating her marriage, and therefore the case would be sent back to the CIS for review and possible revocation.

In the Ukraine case, the beneficiary had been to the U.S. the previous year on a K-1 visa and married the inviting U.S. petitioner, but the marriage was annulled based on an (uncontested) allegation of fraud on the part of the beneficiary fiancée. My client had become acquainted with this same beneficiary after she returned to Ukraine, and he was seeking to bring her to the U.S. on her second K-1 visa. The Kyiv Embassy 221(g) notice (Appendix F below) requested that the beneficiary produce her adjustment of status documents and employment documents from her prior K-1 visit, but the beneficiary could not obtain the requested documentation, and therefore the case was returned to the USCIS for investigation and possible revocation. There was also a strong suggestion during the interview that the beneficiary's ex-husband had written a "poison pen" letter when he withdrew his adjustment application arguing that the beneficiary should not be allowed to return to the U.S.

Thus, in both the Ukraine and Philippines cases we understood the reasons for the Consulate's actions and judged them to be reasonable, although we respectfully disagreed. In contrast, we remain puzzled as to the reasons for most of the Guangzhou refusals. Furthermore, in every revocation case we have seen originating in Guangzhou the discussion of the case was completely shut off after the consulate decided on revocation, so we don't even know what the consulate's thinking was, or whether it was reasonable or not.

I made numerous inquiries of the Guangzhou Consulate in 2008 to attempt to learn the reasons some cases in my office were sent back to the CIS for revocation. In each instance the Consulate refused to provide any meaningful explanation. I then travelled to Guangzhou in September 2008 to attempt to speak with supervisory consular officers at the Consulate regarding visa refusals. I was denied a meeting. I spent my final weekend writing a lengthy letter to Consul General Robert Goldberg (the "General Goldberg" salutation is a reference to an anecdote he tells on his video clip on the Consulate's web site). I challenged four practices of the Consulate:

1. Request for revocation decisions by the Consulate that do not seem to accord with State Department policy regarding consular K-1, K-3, and I-130 visa processing,
2. The lack of transparency in Consular decision-making,
3. Refusal to meet with me to provide guidance regarding the Consulate's review standards for K visas, and
4. Tolerance and even *de facto* encouragement of Chinese visa consultants hawking their wares in the very same building where immigrant visa interviews are conducted.

See Appendix C to read the letter in full.

The next day, I received the following reply:

In response to your recent inquiry regarding several immigrant visa applications processed at our consulate and access to our consulate by immigration attorneys, I am writing to clarify our procedures.

As you are aware, according to U.S. immigration law and State Department and Department of Homeland Security (DHS) procedures, the immigrant visa application process follows a series of established steps. In all immigrant (and K non-immigrant) visa cases, information on case status may be obtained by contacting our website. Information will be provided to the petitioner, beneficiary, or attorney of record (as indicated by signed G28 on file). The appropriate channels for providing additional information are through the website; by mail; or in some limited cases at a second interview specifically requested by the consular officer. Please be assured that our office takes all visa adjudications extremely seriously. In cases involving complex questions of law, our office regularly communicates with the Department of State for guidance.

U.S. Consulate Guangzhou, as a courtesy to U.S. citizen petitioners who have questions regarding the immigrant visa process, has a "petitioner hour" on Monday afternoons in which procedural questions can be answered. The purpose of this session, as indicated on our website, is to provide general information and address frequently-asked questions. Also as indicated on our website, additional materials for cases that have already been interviewed will not be accepted at these sessions. This session is not an appropriate venue for adjudication decisions to be revisited.

U.S. Consulate Guangzhou and the Department of State value the contributions of immigration lawyers such as you, who are our partners in ensuring the efficient and orderly processing of thousands of immigrant visa beneficiaries in China and hundreds of thousands worldwide each year. Our office strictly follows State Department guidance to ensure the same level of access is offered to all immigration attorneys, with no special privileges or channels for any specific attorney. I note your disappointment at not being able to secure a private meeting with a supervisory officer to review your clients' cases. However, as you note, in Guangzhou there is intense pressure on immigrant visa applicants from immigration attorneys and consultants – some of whom operate in the same commercial facility (over which the USG has no control) as the consular section. Our procedures for access are therefore especially strict: the preferred mechanism for inquiries to our office is through the e-form available on our website. We do not meet individually with immigration attorneys to discuss pending immigrant visa cases.

I hope this information is of assistance.

The reply is perfectly emblematic of the Consulate's attitude to the public: there is the form of an answer, but without any content therein whatsoever. I have sent countless email inquiries to the Consulate through its web site and yet I have never once received any information identifying the specific reasons for a 221(g) refusal. The Unit Chief (who, fittingly, does not even identify herself by name¹⁷) cites the "petitioner hour" (provided as a "courtesy" to U.S. citizen petitioners) as a means to obtain information, but even she concedes that only general information is provided there. She also notes that the petitioner hour is "not an appropriate venue for adjudication decisions to be revisited." In fact, there appears to be no venue that the Consulate regards as appropriate for adjudication decisions to be revisited. The universal experience among petitioners, beneficiaries, Congresspersons, and immigration attorneys is that the Consulate is a black hole where information goes in but none comes out.¹⁸

It's also interesting to see the Chief's attitude toward attorney access. Basically she is saying: we'll give you the same access we give everyone else – none; therefore we are fair and even-handed and good.

Most importantly, the Unit Chief completely ignores my citation of a State Department policy cable, and does not comment at all on the specific cases I address in my letter. She simply ignores these issues.

In order to obtain any little scrap of information from the Consulate, and to deprive its officers of the opportunity to answer only questions that suited them, I narrowed my subsequent inquiries to just one case and just one issue, as follows:

To: Guangzhou, IVform
Subject: [REDACTED] GUZ2008 [REDACTED]
In my 9/28/08 fax letter to Consul General Goldberg, I cited State Department Cable R 251642Z FEB 04 as follows:

" C. consular officers must provide to the applicant in Writing as full an explanation as possible of the legal and factual basis for the visa denial and petition return."

I had asked for just such information about the above referenced case in my fax letter to the Consul General. The IV Unit Chief replied to my letter, but she did not address the Cable R 251642Z FEB 04 issue in her reply to me. Nor has anyone ever provided the applicant, the U.S.

¹⁷ The letter was a Word document with no name at the bottom; the IV Unit forwarded it to me identifying it as a "follow-up response from our Immigrant Visa Unit Chief on your particular concerns".

¹⁸ See, e.g., 001.com.cn, Candleforlove.com. The American Immigration Lawyers Association Message Center discussion forum (not open to the public) also shows a consistent pattern of attorneys complaining about Guangzhou's failure to provide reasons for its refusal decisions.

petitioner, me, or anyone else anything but pro forma reasons for denial and petition return, much less "as full an explanation as possible." There is no new explanatory information in the Consulate's previous email to me on this score. We are just as in the dark now as we ever were. This leads me to a very specific question:

Does the Consulate take the position that the Feb 04 cable cited above does not apply to family visa cases processed by the U.S. Consulate in Guangzhou?

If it does apply, we wish to know when you will be providing such information.

On 12/15/08 I received the following reply:

Dear John F. Roth, Esq.,

Thank you for your inquiry.

We apologize for the late response. We will send out a letter to the beneficiary's mailing address when her case is sent out from this office to USCIS for review and possible revocation. The letter will explain why the case is denied.

Sincerely,

Immigrant Visa Unit
U.S. Consulate General Guangzhou
1 Shamian South Street
Guangzhou, Guangdong 510133

The beneficiary soon thereafter received a form letter (reproduced below in full as Appendix G) stating the reason for sending the case back to the CIS as follows:

"The Consulate has determined, based on your testimony, documents, and any other evidence, that you do not have a bona fide relationship with your petitioner."

This is an oft-repeated "explanation" which obviously contains no new information.¹⁹

With no apparent sense or irony, the Consulate perfectly fulfilled my description in my 9/28/08 fax letter to Consul General Goldberg of certain consulates which relate to the public by:

"....engaging in all manner of insincere 'advice', tricks and dodges to move the often naïve supplicant from one place to another within the Consular structure until they get to the inevitable dead end."

¹⁹ See also, Case History #1, pp. 66, 73; Case History #1, p. 73; Case History #4, p. 47.

This pattern of scripted and non-informative responses is visible again and again in the Guangzhou IV Unit's answers to questions from U.S. citizens²⁰, their attorneys²¹, and their Congressional representatives.²²

The Guangzhou U.S. Consulate has quite plainly institutionalized lying to the outside world. As you can see from the appended case histories, every refused beneficiary and petitioner face the same Kafkaesque journey:

1. The applicant is advised at the end of the interview that the Consulate "cannot issue the visa".
2. When the applicant asks "why not", the Consul instructs him/her to go to Window 30 to get the answer.²³ The applicant dutifully obliges.
3. The Consular officer at Window 30 provides no new information but hands the applicant the Consulate's FAQ booklet, stating that "you will find the answers in there". The applicant then steps aside but once he or she reads the booklet (s)he see that it only contains general information about visa issuance and no specific information on his/her case.
4. If the petitioner or his attorney are present in Guangzhou and either attempts to meet with a consular officer to discuss the case, all such efforts are rebuffed and information/guidance is refused.²⁴
5. The Consulate refuses to accept any new documents or additional evidence after the interview is concluded.²⁵
6. All email responses from the Consulate contain general information only and no information whatsoever about the factual grounds for any refusal.²⁶
7. Congresspersons get the exact same treatment, and merely become conduits for the Consulate's *pro forma* replies.²⁷
8. The State Department answers email complaints about Guangzhou revocations by stating that revocation matters outside their jurisdiction and all inquiries in future should be directed to the USCIS.²⁸
9. The USCIS replies to email complaints about Guangzhou revocations by stating that revocation matters are a matter for the Department of State.²⁹

²⁰ See, e.g., Case History #4, pp. 22-32; Case History #1, pp. 22, 40, 44, 53, 55.

²¹ See Appendix C - John Roth's 9/28/08 Fax Letter from Guangzhou Hotel to Consul General Goldberg and attached appendices; See also Case History #4, pp. 39-54 for another immigration attorney's experience with attempting to elicit information from the Guangzhou U.S. Consulate..

²² See, e.g., Case History #4, pp. 8, 9, 13, 16, 21; Case History #1, pp. 53, 55, 121, 13853.

²³ See, e.g., Case History #2, p. 4; Case History #4, p. 10.

²⁴ See, e.g., Case History #2, pp. 6, 7; Appendix C - John Roth's 9/28/08 Fax Letter from Guangzhou Hotel to Consul General Goldberg and attached appendices.

²⁵ See, e.g., Case History #1, p. 21; Case History #4, pp. 8, 9, 23, 26.

²⁶ See, e.g., Case History #4, pp. 17, 18.

²⁷ See FN21, *infra*

²⁸ See, e.g., Case History #1, p. 82; Case History #3, p. 20; Case History #4, p. 14, 15, 16, 19, 20.

²⁹ See, e.g., Case History #1, p. 128.

10. When the Guangzhou U.S. Consulate is asked whether the Consulate is bound by State Department cables requiring posts to provide the specific, factual reasons for visa refusals, the attorney/petitioner/beneficiary are told that the beneficiary will soon receive a letter in the mail explaining the reasons.
11. The letter has no new information.

This deeply cynical pattern of deceit is, standing alone and quite apart from its consequences on the lives of U.S. Citizens, nothing less than a disgrace to the United States of America.

D. The Consulate Can Not Defend its Policies or Actions

The Consulate has a culture of secrecy that is self-reinforcing. Its officers are secretive even about their reasons for being secretive. Therefore, outsiders have great difficulty in even deciding where to challenge them. Furthermore, the Consulate has made its decision-making process so opaque that it is effectively unaccountable to the public or to its representatives.

Nonetheless, some of the Consulate's rationales may be inferred from the IV Unit Chief's letter to me.

1. The Consulate is Simply Too Busy to Provide Detailed Explanations for its Actions

According to the State Department's own statistics, the U.S. consular posts in Manila and Ho Chi Minh City have roughly the same caseload as does the Guangzhou U.S. Consulate.

Table 2 - IVs in Fiscal Year 2008³⁰

Post	Immigrant Visas Issued	K Visas Issued
Guangzhou, China	29,437	2,851
Manila, Philippines	29,257	6,763
Ho Chi Minh City, Vietnam	22,111	1,918

As noted earlier in this memorandum, my firm handled more K visa cases for Manila (59) than for Guangzhou (40) in 2008, and yet we had just one revocation case arising from the Manila Consulate whereas we experienced

³⁰ Report of the Visa Office 2008 at http://www.travel.state.gov/visa/frvi/statistics/statistics_4391.html.

five from the Guangzhou U.S. Consulate. Furthermore, and also noted above, the Manila decision was relatively transparent – and struck us as reasonable. We had a similar experience with the Kyiv U.S. Consulate.

We were contacted in late 2008 by a U.S. Citizen petitioner (who had not been our client) who sent us his fiancée's 221(g) revocation notice containing the following explanation for the Embassy's decision:

- "Petitioner has only visited Beneficiary once and has not returned since December 2007.
- In contrast to Vietnamese social and cultural norms which mandate a lengthy and careful period of pre-nuptial arrangements, Petitioner and Beneficiary became engaged within two weeks of meeting.
- Beneficiary is unaware of basic facts of Petitioner's occupational background (current or previous occupations, employer /income source and/or other basic facts). For example, Beneficiary was unaware of the Petitioner's occupation.
- Beneficiary is unaware of basic facts of Petitioner's educational background (i.e. level of education, principle course of study for educated schooling, where schooling took place, etc.). For example, although the Petitioner refers to a discussion between him and the Beneficiary about coming to Vietnam after the Petitioner finishes college in a notarized chronology of the relationship, in the interview the Beneficiary did not know where the Petitioner is going to college."

The contrast to Guangzhou's "explanations" couldn't be starker.

The full document is reproduced below as Appendix H.

2. Providing Explanations Will Allow Visa Consultants and Perpetuators of Fraud to "Game" the System

We can understand that some of the Consulate's case evaluation protocols need be kept secret, but the fact that *some* information might be employed by persons intent on fraud does not *ipso facto* lead to a conclusion that *all* the Consulate's protocols and standards must be kept secret.³¹ The Consulate

³¹ DOS Cable R 251642Z FEB 04, ¶ 12 acknowledges that some matters may be kept secret, but at the same time it very narrowly proscribes the justifications that can be invoked to withhold reasons for a visa refusal:

"12. There are legitimate reasons why in some cases a conoff should not release all information relating to a visa refusal; such reasons could include classification of the information, confidentiality concerns, the need to protect an informant, or the "third agency rule" (information from another agency should only be released with that agency's

could, for example, issue guidelines to affected parties indicating that they will be more skeptical of cases where the 1) couple spent less than two weeks together in person, or 2) the couple lacks a common language, or 3) the age difference between the petitioner and beneficiary is greater than 25 years. Such guidelines, rather than leading to abuses, might have the salutary effect of encouraging couples to visit each other more often before attempting a K-1 visa and might encourage the beneficiaries to work harder at improving their English skills. In a large age difference case, the couple may elect to skip the K-1 and go directly to a marriage based visa. In all cases the couple would be spared the intense frustration of not knowing why the case was refused and not even being given a chance to respond to the Consulate's concerns about the case.

The IV Unit Chief states in her letter to me:

“...in Guangzhou there is intense pressure on immigrant visa applicants from immigration attorneys and consultants – some of whom operate in the same commercial facility (over which the USG has no control) as the consular section.”

There's an element of bootstrapping in the Consulate's reference to visa consultants in the consular building as a rationale for not revealing the reasons for its decisions. The Consulate's opacity creates and perpetuates a fertile environment for local visa consultants' to operate, which adds to the pressure on the system. When I was in the Consular building there was little evidence that the Consulate was taking this problem seriously. Currently the Consulate has a blandly worded statement buried deep within its FAQ booklet stating “no special relationship” exists with any visa consultants or lawyer. The language also appears on a small sign just near the entrance to the Consular section (although you would have to be standing right next to it to read it). What if the Consulate passed out flyers in the lobby (or better still, right after the interview) warning beneficiaries that the consultants have neither the competence nor the standing to represent anyone before the U.S. Consulate or before any other branch of the U.S. government? Wouldn't this help diminish the problem? In summary, the Consulate portrays itself as bravely fighting in the bunker, while ignoring that the siege was partly of its own making.³²

permission). However, absent such considerations, conoffs should provide the applicant with the full factual basis for a visa refusal, as well as a reasonable opportunity to overcome the finding.”

³² See my discussion of the IV Unit's tolerance of Chinese visa consultants in the very same building where interviews are conducted in my 9/28/08 fax letter to Consul General Goldberg, attached hereto as Appendix C.

It's also striking to see the Unit Chief state in her letter that the United States Government has "no control" over the commercial facility where all U.S. immigrant visa applications in China are processed. Is it possible that the Chinese government can not or will not prevent such activity if the U.S. government requested it? What diplomatic efforts have been made to secure the Chinese government's cooperation in resolving this problem, and what does it say about our Consulate's diplomatic skills if such efforts have failed so thoroughly?

3. The Consulate Must Guard Against Sham Visa Applications

The web site of the U.S. Consulate in Guangzhou includes the following warning:

"Scam Warning

The Embassy has received some reports of fraud committed against U.S. citizens by Internet correspondents from China professing romantic interest. In many of these cases, the Chinese national has hired a company to communicate with the American citizen for him/her, meaning that s/he has not actually written any of the e-mails that were sent to the American. Likewise, the American citizen may unwittingly carry on telephone conversations with a paid consultant posing as the romantic interest. The business models of many of these companies are reliant on the American citizen ultimately paying extremely high "consulting" fees—often the Chinese national will tell the American that s/he needs tuition for English study, but actually uses this money to pay the relationship consultant. In some cases, when the American visits China to meet his/her Internet friend in person, a visa consultant accompanies the Chinese friend and presents the American with a demand for payment of thousands of dollars in fees. At times, when the American citizen has refused to pay, s/he has been threatened with physical violence or unlawful detention. The Embassy has also received reports of Internet relationship scams seeking money, rather than visas. For instance, the Chinese person will claim they or a close family member has been kidnapped or had a large sum of money stolen and asks the American to wire them money.³³

We are also mindful of the reported case of a Le Guo Wu, a Philadelphia, Pennsylvania resident, who admitted in February 2008 to recruiting dozens of people in Minnesota and other states to enter fraudulent marriages with Chinese nationals. Wu had offered Americans between \$13,000 and \$25,000 to marry Chinese citizens so they could enter the United States and obtain residency papers.³⁴

If the Consulate seeks to rely on this or similar cases to justify its broad reliance on revocation, then it is plainly using a very blunt tool against a very discrete problem. Pay-for-visa marriage cases rely of necessity on a low-income petitioner in the U.S. who can be bribed to go through the trouble and

³³ http://guangzhou.usembassy-china.org.cn/scam_warning081014.html.

³⁴ Dan Browning, "Man Admits Arranging Fraudulent Marriages," Minneapolis Star Tribune, February 20, 2008, <http://www.startribune.com/local/stpaul/15819317.html>.

legal risk of participating in a sham K-1 or marriage arrangement. I have reviewed the submitted forms I-134 and tax returns for all of my five Guangzhou revocation cases and the numbers are as follows:

Case#	Income of Petitioner
GUZ-2007 [REDACTED]	\$97,437.00
GUZ-2008 [REDACTED]	\$52,360.00
GUZ-2008 [REDACTED]	\$65,684.00
GUZ-2008 [REDACTED]	\$138,061.00
GUZ-2008 [REDACTED]	\$89,089.00

It's unlikely of course that any of these five petitioners have any awareness whatsoever of pay-for-visa marriage scams. The Consulate's anti-fraud campaign is clearly overbroad as it has been applied to them, as well as to hundreds and perhaps thousands of others.

The mismatch between the stories of the regular American citizens engaged in international relationships and the visa opportunist and visa consultants described in the Consulate's warning not only points to a deeply flawed Consular approach to the fraud problem, but it also begs the question of whether officers in the Guangzhou U.S. Consulate are really just using isolated incidences of actual fraud as a pretext to discourage personal behavior or personal relationships of which they do not personally approve.

I've heard consular officers make the argument that by refusing substantial numbers of K applicants they are protecting U.S. citizens from unscrupulous overseas women who are more interested in immigration than they are in love or romance, and who will abandon the U.S. citizen petitioner once they have safely arrived in the U.S. I recall there was a problem with some men falling for such women in the mid and late 1990s, but this situation has been dramatically changed through technology. Both U.S. citizens and foreign nationals engaged in international romances now commonly use self-help and mutual support web sites³⁵ that alert the uninitiated to "scam artist" or "visa opportunist" profiles and tactics. There's scarcely a matchmaking site now that doesn't contain warnings and valuable information about how to avoid disingenuous foreign visa seekers.³⁶ We have noticed in our practice a dramatic reduction in recent years in the number of problem marriage reports from my former K visa clients. If the Consulate cites this rationale for its high incidence of revocation requests, it is fighting the last war.

³⁵ See, e.g., <http://www.stop-scammers.com/>; the Guangzhou U.S. Consulate itself has a warning about dating scams at http://guangzhou.usembassy-china.org.cn/scam_warning081014.html; finally, the State Department has a very useful guidebook for avoiding international dating scams on its website at http://travel.state.gov/pdf/international_financial_scams_brochure.pdf.

³⁶ See, e.g., <http://www.womenrussia.com/blacklist.htm>,
http://www.loveme.com/information/scam_info.html

It scarcely need be said that the Consulate should be particularly circumspect in evaluating an emotional relationship, and one in which persons can vary greatly in what they regard as acceptable courtship practices.

In addition, these people are, after all, adults.

Conclusion

We all understand that immigration “is a privilege, not a right” but this should not mean that persons seeking this privilege have no rights to due process, fairness, or compassion.

I do not believe that the existence of a minority of fraudulent applications, or the busy schedules of consular officers, are sufficient justifications for brutalizing current and future U.S. citizens.

This is not a new problem. In his July 10, 2001 remarks at Ellis Island President George W. Bush stipulated to the fact that U.S. consular posts are often unwelcoming to future immigrants:

“Immigration is not a problem to be solved. It is the sign of a confident and successful nation. And people who seek to make America their home should be met in that spirit by representatives of our government. New arrivals should be greeted not with suspicion and resentment but with openness and courtesy....As many immigrants can testify, that standard has not always been observed.”

Of course, the attacks of 9/11 occurred three short months thereafter and the effort to improve this situation was apparently scuttled due to the increased attention required for anti-terrorism efforts.

I encourage the State Department to pick up the torch again. Our ideals have been on the floor long enough.

Recommendations

- Re-train Guangzhou consular staff to use 221(g) requests for review or revocation only as a last resort, per current State Department cables; and, in questionable or suspicious cases, to use a 221(g) request for additional information rather than a revocation request.
- Instruct the Guangzhou U.S. Consulate in future to provide the specific, factual reasons for 221(g) decisions, per FAM rules and DOS cables.

- In light of the Guangzhou Consulate's prior abuse of its discretion regarding revocations, request that the CIS adjudicate all pending China revocation cases on an expedited basis (less than 60 days); and if CIS refuses, request that CIS send all such cases back to the Guangzhou Consulate for review to determine whether the cases were properly refused in the first instance. The Guangzhou Consulate should re-readjudicate these cases, but applying the proper standards this time, and either override the prior decision and approve the visa, or state the specific reasons for the denial and allow the petitioner and beneficiary to submit a reply, with a reasoned and respectful reply to follow.