

**The “Visas Mantis” Security Advisory Opinion:
A Guide for Science and Technology Professionals**

By: Gary Chodorow
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Introduction

A “Visas Mantis” security advisory opinion (SAO) is a background check by the U.S. State Department that investigates whether a visa applicant intends to violate U.S. laws prohibiting export of sensitive goods, technology, or information.¹

During the visa application interview, a consular officer decides whether or not an SAO is needed, considering factors such as the applicant’s stated purpose of travel, current job and employer, previous jobs and employers, education, and training.

Currently, SAOs are taking 10 to 14 weeks after the interview date.² Therefore, companies should encourage employees potentially subject to SAOs to apply for visas as early as possible.

Applicants pass the SAO check in about 98% of the cases. Still, there is a stigma to being checked. Chinese nationals who have been checked will receive only limited validity visas. For example, an applicant who has been checked will receive a B-1 visitor for business visa valid for

¹ 9 Foreign Affairs Manual (FAM) § 40.31 N5.1-4 (Sept. 22, 2008).

² This lengthy delay has been criticized due to its negative impact on legitimate business and academia. See e.g. National Research Council, Committee on Science, Security, and Prosperity, *Beyond “Fortress America”: National Security Controls on Science and Technology in a Globalized World* 9 (National Academies Press 2009) (recommending that the President issue an executive order requiring adjudication of nonimmigrant visa applications for science and technology professionals within 30 days).

just one entry over three months.³ In contrast, if the same applicant had not been checked, he would typically receive a multiple-entry visa valid for 12 months.⁴

This *Guide* is designed to help visa applicants and their employers understand the SAO process, especially (a) how it may be possible to persuade the Consulate that no SAO is required; (b) what documents and information to prepare for an applicant likely to be subject to an SAO; and (c) how to provide to the Consulate information about future planned trips during the SAO validity period so that visa applications during that period may be subject to merely “postcheck” SAOs—which won’t delay visa issuance—rather than new SAOs.

The Ground of Inadmissibility⁵ for Export Law Violators

An individual will be refused a visa by a consular officer and refused admission by a Department of Homeland Security (DHS) inspector at a port of entry if there is reason to believe the individual is coming to the U.S. to violate U.S. laws prohibiting export of goods, technology, or information.⁶ These laws include:

- Export Administration Regulations (EAR): This is a Department of Commerce list of controlled technologies that are often referred to as “dual use” because they have both commercial and military applications. The EAR is implemented and enforced by the Department of Commerce’s Bureau of Industry and Security (BIS).⁷
- International Traffic in Arms Regulations (ITAR): This list, maintained by the State Department, covers the export of “defense articles and defense services.”⁸
- Economic sanctions: The U.S. has imposed economic sanctions on state sponsors of terrorism, which currently include Cuba, Iran, Libya, Sudan, Syria, and North Korea. These sanctions ban prohibit of most goods, services, or funds between these states and the U.S.⁹
- Miscellaneous¹⁰: Other export control-related laws cover: drugs, chemicals, and precursors¹¹; controlled substances¹²; drugs and biologics¹³; investigational drugs¹⁴; fish

³ 9 FAM § 502.5 (Aug. 16, 2006). Appendix G to the FAM, including 9 FAM § 501 to § 506, is a “sensitive but unclassified” State Department document. It has been removed from the copy of the Foreign Affairs Manual on the State Department’s website. The author is uncertain whether relevant revisions have been made since the 2006 version was leaked to the public.)

⁴ U.S. State Department, *China Reciprocity Schedule*,

http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3537.html (last visited Mar. 9, 2009).

⁵ Under U.S. law, the grounds of inadmissibility are listed prohibitions on visa issuance and admission to the U.S., such as the prohibitions for terrorists, persons convicted of certain crimes, and persons previously deported from the U.S. INA § 212(a).

⁶ INA § 212(a)(3)(A). The goals of the law are to stem proliferation of weapons of mass destruction and missile delivery systems; to restrain the development of destabilizing conventional military capabilities in certain regions of the world; to prevent the transfer of arms and sensitive dual-use technology to terrorists; and to maintain U.S. advantages in certain militarily critical technologies. 9 FAM 40.31 Exhibit 1.

⁷ 15 C.F.R. §§ 730-774.

⁸ 22 C.F.R. §§ 120-130.

⁹ 9 FAM 40.31 N51.-2 (Sept. 22, 2008).

¹⁰ See generally 15 C.F.R. part 3, Supplement No. 3.

¹¹ 21 C.F.R. §§1311-1313

¹² *Id.*

¹³ 21 U.S.C. 301 *et seq.*

and wildlife controls and endangered species¹⁵; foreign assets and transaction controls¹⁶; medical devices¹⁷; natural gas and electric power¹⁸; nuclear materials, equipment, and services¹⁹; ocean freight forwarders²⁰; patent filing data sent abroad²¹; and U.S. flagged or U.S. manufactured vessels over 1,000 gross tons.²²

A nonimmigrant may violate export control laws not just by physically removing the technology from the country. Under the “deemed export rule,” an export takes place whenever it is released to a nonimmigrant within the United States, including by discussing it or allowing the nonimmigrant to inspect it (such as reading technical specifications).²³

There are important exceptions to the export control laws. For example, publicly available technology and software—with the exception of certain software related to encryption²⁴—that is published²⁵, arises from fundamental research²⁶, or is educational,²⁷ is not subject to the Department of Commerce’s Export Administration Regulations.

What to Expect During the Interview

Before the interview, the officer normally reviews the visa application forms and any invitation letter. The typical nonimmigrant visa appointment does not exceed two to three minutes. The officer may ask additional questions and request additional supporting documents during the interview. Typically, during the interview the officer may seek

as much information as possible about the applicant's background, proposed activities, and travel plans.... For example: what branch of physics does the applicant study, Quantum or Nuclear? What is his current position and where does he work? What is the address and phone number of the company(ies) he intends to visit? Who is his point of contact? Who is funding the travel or education? Will he be returning to work in a country which sponsors terrorism or is under sanctions? How does the applicant plan to use the goods or knowledge acquired? Will he be “exporting” this new knowledge to a hostile nation?²⁸

During the interview, the officer should analyze what technologies the applicant may seek to access in the United States, considering not only the stated purpose for travel but also the applicant’s current job and employer²⁹, past jobs and employers, education, training, and other

¹⁴ 21 C.F.R. § 312.1106.

¹⁵ 50 C.F.R. §§ 17.21, 17.22, 17.31, 17.32.

¹⁶ 31 C.F.R. parts 500 through 590.

¹⁷ 21 U.S.C. § 301 et seq.

¹⁸ 10 C.F.R. § 205.300 through 205.379 and part 590.

¹⁹ 10 C.F.R. parts 110 and 810

²⁰ 46 C.F.R. part 510.

²¹ 37 C.F.R. part 5.

²² 46 C.F.R. part 211.

²³ 15 C.F.R. §§ 734.2(b)(2)(ii), (b)(3).

²⁴ 15 C.F.R. § 734.3(b)(3).

²⁵ 15 C.F.R. § 734.7. This includes publication at an open conference or trade show that all technically qualified members of the public are eligible to attend and take notes.

²⁶ 15 C.F.R. § 734.8.

²⁷ 15 C.F.R. § 734.9.

²⁸ 9 FAM § 40.31 N5.1-4 (Sep. 22, 2008).

²⁹ See *DOS Replies to AILA Liaison Questions: AILA-DOS Liaison Meeting Nov. 5, 2008* at 4, AILA Infonet

factors.³⁰ The officer then should determine whether any of those technologies are sensitive by consulting the “Technology Alert List” (TAL). The current version of the TAL is a “sensitive” document that has not been released to the public³¹, but the 2002 version included wide areas of conventional munitions; nuclear technology; rocket systems; rocket system and unmanned air vehicle subsystems; chemical, biotechnology, and biomedical engineering; advanced computer/microelectronic technology; materials technology; information security; laser and directed energy systems technology; sensors and sensor technology; marine technology; robotics; and urban planning.³² A consular officer is “not expected to be versed in all the fields on the [TAL] list,”³³ so mistakes are possible about whether a particular technology is covered by export control laws.³⁴

SAOs are only mandatory for nationals or employees of the state sponsors of terrorism listed above that seek to engage in activities listed on the TAL.³⁵ For others, an SAO is unnecessary if the ground of inadmissibility “clearly does not apply.”³⁶ The State Department instructs officers to perform an SAO whenever an officer has any “doubt.”³⁷ Notably, the State Department apparently has not provided guidance on when an SAO is **not** needed. In the absence of such guidance, officers personal notions about when an SAO should not be required understandably differ.³⁸

Doc. # 09022660 (“The entity by which the applicant is employed is one among several factors that can trigger an SAO.”)

³⁰ 9 FAM 40.31 N5.1-5(d) (Sept. 22, 2008) (“There may be times when you [the officer] suspect, for whatever reason, that an applicant may be [inadmissible] despite the absence of the applicant’s profession or area of study on the TAL.”)

³¹ 9 FAM 40.31 Exhibit I (Aug. 24, 2005).

³² DOS Cable #147566, “Using the Technology Alert Checklist: Update” ¶ 1 (Aug. 1, 2002), available at <http://www.fwhonglaw.com/eng/areas/imm/basics/TAL.doc>.

³³ 9 FAM § 40.31 N5.1-3 (Jan. 14, 2008).

³⁴ National Research Council, Committee on Science, Security, and Prosperity, *Beyond “Fortress America”: National Security Controls on Science and Technology in a Globalized World* 41 (National Academies Press 2009) (“Consular officers charged with evaluating visa applications often lack the necessary technical or scientific expertise to determine efficiently whether an applicant is a legitimate scientific researcher or posts a security risk.”).

³⁵ 9 FAM § 40.31 N5.1-5 (Sept. 22, 2008). Previously, Visas Mantis checks had been required in all cases where the field of the visit was listed on the Technology Alert List. DOS Cable 109933, *Summary of Special Processing Requirements* ¶ 16 (June 23, 2001).

³⁶ 9 FAM § 40.31 N5.1-5 (Sept. 22, 2008).

³⁷ The State Department has described this standard in various ways. For example, an SAO is required whenever it is “possible” that the applicant may be inadmissible. 9 FAM § 40.31 N3 (Sept. 22, 2008), N5.1-4(2) (Sept. 22, 2008). Or, “when in doubt, send in a Visas Mantis SAO.” 9 FAM § 502.2 (Aug. 16, 2006). See *DOS Replies to AILA Liaison Questions: AILA-DOS Liaison Meeting Nov. 5, 2008* at 4, AILA Infonet Doc. # 09022660 (“[T]he rule of thumb is, “When in doubt, submit an SAO.”). Or, an SAO is “strongly recommended” for PRC applicants “with a background or purpose of trip that is listed in the TAL.” U.S. State Department, *China Reciprocity Schedule*, http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3537.html (last visited Mar. 9, 2009). The FAM also “strongly recommends” that SAOs be conducted for residents or nationals or employed by a “country of proliferation concern.” 9 FAM 502.2 (Aug. 16, 2006). The list of “countries of proliferations concern” is included in the secret TAL. 9 FAM 40.31 N5.1-2. The U.S. Code defines a “country of proliferation concern” to be a country designated by the Director of Central Intelligence for purposes of the Initiatives for Proliferation Prevention program. 50 U.S.C. 2562(a)(3)(B) (2005). It’s unclear to the author whether that list includes China. However, the U.S. government has referred to China in the past as a country of proliferation concern. See, e.g., Carl E. Behrens, *CRS Issue Brief for Congress: Nuclear Nonproliferation Issues* 7 (Jan. 20, 2006) (“China has long been a proliferation concern.”).

³⁸ See “Statement and Recommendations on Visa Problems Harming America’s Scientific, Economic, and Security Interests” (May 25, 2004) (Joint statement by the American Association for the Advancement of

If the officer decides that an SAO is needed, the applicant should be informed orally and in writing. The written notice may be entitled “221(g) Administrative Processing.”³⁹ The officer will forward a request for an SAO to the State Department in Washington, DC.

What Documentation Should Be Submitted to the Consulate?

In practice, the minimum supporting documentation typically required by the Consulate for the SAO is a detailed resume⁴⁰, a detailed itinerary (for B1/B2 applicants)⁴¹, and an invitation letter from a U.S. host describing the purpose of the trip.⁴²

There are at least two reasons to submit more than the minimum information to the Consulate. First, more documentation may make it “clear”⁴³ that the applicant doesn’t intend to violate export control laws, in which case an SAO won’t be required. Such documentation should focus on proving that (a) the technology related to the trip is not included on government export control lists; (b) although the technology is included on a government export control list, it is not subject to export control because, for example, it is publicly available; or (c) an export license has been secured that covers release to the visa applicant.

The second reason that it may be helpful to provide more than a minimum amount of information to the Consulate is that the time it takes to complete the SAO “is directly related to the completeness of the information” provided by the applicant.⁴⁴ Incomplete information could delay the SAO for more detailed investigation or for submission by the applicant of further documents.

According to the State Department, additional information which may be helpful to provide to the Consulate includes⁴⁵:

1. Descriptions of the applicant’s general research or business interests.⁴⁶
2. A description of the proposed business, training, research or work in the U.S.⁴⁷, focusing on any military uses for the related technology.
3. Point of contact for each organization, institute, and company the applicant wishes to

Science, Association of American Universities, and other organizations, opining that different consulates and officers apply different standards for when SAOs should be carried out.)

³⁹ If the purpose of the trip would be moot by the time of SAO completion, the officer may simply refuse the visa.

⁴⁰ 9 FAM § 502.4(e)(1) (Aug. 16, 2006). The resume should include: the address, telephone number, and supervisor’s name at the applicant’s current and past jobs (*id.* at § 502.4(d)(2), (3)); a complete list of publications (*id.* at § 504.2(e)(2)); and a list of references in the applicant’s country of birth or residence (*id.* at § 502.4(e)(4)).

⁴¹ 9 FAM § 502.4(e)(8) (Aug. 16, 2006).

⁴² 9 FAM § 502.4(e)(5) (Aug. 16, 2006).

⁴³ 9 FAM § 40.31 N5.1-5 (Sept. 22, 2008).

⁴⁴ 9 FAM § 40.31 N5.1-4(3) (Sept. 22, 2008).

⁴⁵ *See generally* Testimony of Stephen A. “Tony” Edson, Deputy Ass’t Sec’y of State for Visa Service, before the House Committee on Science and Technology’s Subcommittee on Research and Science Education, Feb. 7, 2008, available at http://travel.state.gov/law/legal/testimony/testimony_3950.html; U.S. Dep’t of State, Cable #147566, *Using the Technology Alert List (Update)* ¶ 8 (Aug. 1, 2002).

⁴⁶ 9 FAM § 502.4(d)(1) (Aug. 16, 2006).

⁴⁷ *Id.* at § 502.4(e)(4). A written project description can be especially helpful. *See* U.S. Dep’t of State, Cable #147566, *Using the Technology Alert List (Update)* ¶ 8 (Aug. 1, 2002).

visit in the U.S.⁴⁸

4. Funding source for the applicant's travel, research, or education.⁴⁹
5. Export license number (or, if pending, an export license application number) covering the activity in the U.S. (if relevant and available).⁵⁰
6. How and where the applicant plans to use the goods or knowledge acquired in the U.S.,⁵¹ including a description of the end-user, the end-use, and the activities that the end user is involved with.
7. Letters of recommendation from a U.S. source or from abroad.⁵²
8. Background information about the applicant's foreign employer⁵³ and U.S. sponsor, such as annual reports and printouts of the entities' websites.⁵⁴

In the author's experience, it also may be helpful to provide to the Consulate a letter from the U.S. sponsor's export control specialist confirming that the technology that the visa applicant will have access to in the U.S. is not included on government export control lists (or is on a list but is not subject to export control because, for example, it is publicly available; or an export license has been secured that covers release of the technology to the applicant). It may also be helpful to summarize the U.S. sponsor's policies and procedures in place to ensure that the applicant does not access any unauthorized export controlled technologies.

If a company's employees are often subject to SAOs at a particular Consulate, in the author's experience it may be valuable to set up a meeting between the company (especially its U.S. executives) and the Consulate (the nonimmigrant visa chief and/or the SAO staff) to familiarize the Consulate with the company, its products and services, which of those products and services are export controlled, and the steps that the company takes to ensure its employees comply with U.S. export control laws. Such a meeting may help make it "clear"⁵⁵ that the company's employees will comply with export control laws and therefore don't require SAOs.

Finally, applicants should not make misrepresentations to the Consulate in hope of avoiding an SAO. An applicant who has made a misrepresentation of a relevant fact to the Consulate in connection with a visa application may become permanently inadmissible to the U.S.⁵⁶ There are also civil and criminal penalties for any applicant, employer, or other party that makes such misrepresentations.⁵⁷

⁴⁸ 9 FAM § 502.4(d)(4) (Aug. 16, 2006).

⁴⁹ *Id.* at § 502.4(d)(6).

⁵⁰ *Id.* at § 502.4(d)(7).

⁵¹ *Id.* at § 502.4(d)(11).

⁵² A National Research Council report recommends that the President issue an executive order to "allow" a U.S. scientist to provide a declaration vouching for a visa applicant. National Research Council, Committee on Science, Security, and Prosperity, *Beyond "Fortress America": National Security Controls on Science and Technology in a Globalized World* 9 (National Academies Press 2009). In fact, the State Department already encourages the submission of such declarations. 9 FAM § 502.4(e)(6) (Aug. 16, 2006). However, in practice, consular officers rarely waive SAOs based on such declarations. The key for any executive order would be to clarify the authority of consular officers to waive the SAO if persuaded as to the credibility of the declaration and other available evidence.

⁵³ *DOS Replies to AILA Liaison Questions: AILA-DOS Liaison Meeting Nov. 5, 2008* at 4, AILA Infonet Doc. # 09022660.

⁵⁴ U.S. Dep't of State, Cable #147566, *Using the Technology Alert List (Update)* ¶ 8 (Aug. 1, 2002).

⁵⁵ 9 FAM § 40.31 N5.1-5 (Sept. 22, 2008).

⁵⁶ INA § 212(a)(6)(C).

⁵⁷ E.g., INA § 274C (civil penalties for document fraud); 18 U.S.C. § 1546 (general visa fraud criminal statute).

What Will Happen After the Interview?

After a consular officer decides that an SAO is necessary, that officer or another consular employee drafts an SAO request, which contains information from the applicant's forms, documents, and interview. That request case may be reviewed and approved by a supervisor. It is then transmitted to the State Department's Visa Office in Washington, DC. Any supporting documents should be summarized in the SAO request and scanned.⁵⁸

The Visa Office distributes the SAO request to the State Department's Bureau of Nonproliferation and other government for review. These other agencies contacted, depending on the technology involved, may include the FBI, CIA, Department of Commerce Bureau of Industry and Security (BIS) Export Enforcement,⁵⁹ Drug Enforcement Agency, Office of Foreign Asset Control, Interpol, and others. The Visa Office then summarizes those agencies' responses and prepares an SAO stating that the Visa Office does or does not have an objection to issuing the visa, or that more information is needed.⁶⁰

The SAO is returned to the Consulate, where a consular officer makes a decision to issue the visa, refuse the visa, or temporarily refuse the visa to investigate further or to request additional information from the applicant.⁶¹ A visa issued after an SAO will contain an annotation showing the date of the SAO clearance and the purpose of the trip, such as "Clearance received 05-JUN-2008. Visit to Ajax Inc. in Dallas, TX."⁶²

Can an SAO Be Waived or Expedited?

Once the officer determines that an SAO is necessary, the Consulate will not waive the SAO or take any other action on the visa application pending the SAO outcome, regardless of the urgency or importance of travel.⁶³

The State Department's Visa Office does have the "limited" ability to expedite "a small number" of SAOs.⁶⁴ A request for expedited processing should be made to the Consulate. If the Consulate agrees to assist, the Consulate must explain to the Visa Office the urgency of the case. "Urgent cases usually involve medical emergencies, humanitarian concerns or significant U.S. Government interest in the traveler's early arrival in the United States."⁶⁵

What if the SAO Has Taken Longer Than Normal?

Given the current waiting times for SAO processing, the State Department asks applicants to refrain from making inquiries about pending SAOs until 90 days have passed from the date of

⁵⁸ 9 FAM § 502.4(f) (Aug. 16, 2006).

⁵⁹ U.S. Dep't of Commerce, Bureau of Industry and Security, *Export Enforcement*, <http://www.bis.doc.gov/ComplianceAndEnforcement/EnforcementHome.htm#Visa> (last visited Mar. 10, 2009).

⁶⁰ U.S. Government Accountability Office, *Border Security: Streamlined Visas Mantis Program Has Lowered Burden on Foreign Science Students and Scholars, But Further Refinements Needed* 6-7 (GAO-05-198 Feb. 2005).

⁶¹ *Id.*

⁶² 9 FAM § 502.4(h) (Aug. 16, 2006).

⁶³ 9 FAM § 40.31 N3 (Sept. 22, 2008); *Id.* at § 501.3 (Jun. 7, 2006); *Id.* at § 501.5 (Jun. 7, 2006).

⁶⁴ 9 FAM § 501.8 (June 7, 2006).

⁶⁵ *Id.*

the interview or submission of supplemental documents, whichever is later.⁶⁶ After that, inquiries may be made to the Consulate or to the Visa Office in Washington, DC: tel.: 202-663-1225, fax: 202-663-3899, email: usvisa@state.gov.

Validity Periods for SAO Clearances and Visas

Visas issued to nationals of China subject to a Visas Mantis SAO are valid for the following maximum periods⁶⁷:

- B1/B2, A, or G visa: Single entry, 3 months.
- H: Two entries, 3 months.
- J: Multiple entry, 6 months.
- L: Multiple entry, 6 months.
- I: Single entry, 3 months.
- P: Single entry, 3 months.
- F, M visa: Multiple entry, 6 months.

A Mantis clearance may be valid for longer than the visa:

- B1/B2: 1 year.
- F-1: Length of the approved academic program up to 4 years.
- H-1B, J-1, L-1: Duration of the approved activity for up to two years.⁶⁸

Postchecks

If an applicant needs to apply for a new visa within the validity period of the SAO clearance, a new SAO is not required, so long as: (1) the original visa was issued within 90 days of the clearance; and (2) “the current purpose of travel is the *same* as that for which the original clearance was received.”⁶⁹ For this purpose, “same” means that the applicant has the same employer or school, U.S. destination city, purpose, and visa classification as the prior trip.⁷⁰ In such cases, the applicant will be subject to a “postcheck,” which is an SAO check that takes place after the visa is issued.⁷¹ The advantage of a postcheck over an SAO is that a postcheck doesn’t delay visa issuance.

Using the Visa Reissuance Program

⁶⁶ U.S. Dep’t of State, *Visa Wait Times*, http://travel.state.gov/visa/temp/wait/tempvisitors_wait.php (last visited Mar. 10, 2009).

⁶⁷ The validity period will be as shown in the Foreign Affairs Manual (9 FAM § 502.5 (Aug. 16, 2006) (visa validity periods for applicants subject to SAOs)) or the State Department’s *China Reciprocity Schedule*, (http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3537.html (last visited Mar. 9, 2009)), whichever is shorter.

⁶⁸ U.S. Dep’t of State, Office of the Spokesman, *Media Note: Extension of Validity for Science Related Interagency Visa Clearances*, Feb. 11, 2005; U.S. Dep’t of State, Cable # 285912, *Standard Operating Procedures No. 45: Revision to Visas Mantis Clearance Procedure* (Oct. 2003).

⁶⁹ 9 FAM § 502.7 (June 7, 2006). Additional requirements to obtain a new visa based on the response to the original SAO are that: (1) no biographic information has changed; (2) there are no new CLASS hits; and (3) there is not new information available relevant to the SAO. 9 FAM § 501.7 (June 7, 2006).

⁷⁰ Email from AmCham-China to Business Visa Program Members, July 25, 2008; U.S. Dep’t of State, Cable # 285912, *Standard Operating Procedures No. 45: Revision to Visas Mantis Clearance Procedure* (Oct. 2003) (“The applicant is returning to a program or activity and will perform the same duties/functions at the same facility or organization that was the basis for the original Mantis authorization.”). Examples of trips with the “same” purpose include meeting with the same company on the same project, or going to the same conference or expo as the prior trip.

⁷¹ 9 FAM § 502.7 (June 7, 2006).

Applicants renewing visas in China may use the visa reissuance program through participating CITIC Bank branches⁷² (or through an AmCham corporate visa program, if eligible⁷³) if they meet the following requirements:

- The previous visa is currently valid, or expired within the last 12 months;
- The applicant is applying for the same type of visa;
- The applicant resides in the consular district; and
- An applicant renewing an F, J, H, or L visa is returning to the same institution, school or workplace as indicated on the previous application.⁷⁴

However, the following applicants should not use the visa reissuance program since an interview is required by law: cases where there is any indication of visa ineligibility or noncompliance with U.S. immigration law; if the applicant has been refused a visa (unless the refusal was subsequently overcome); applicants listed in the State Department's Consular Lookout and Support System (CLASS)⁷⁵; cases where an SAO (but not a postcheck⁷⁶) is required.⁷⁷

In summary, the visa reissuance program is an option for a person who will qualify for a postcheck, but an applicant likely to require a new SAO should strongly consider not using the visa reissuance program because if an SAO is required the application will be delayed while an interview is scheduled.

Keeping Valid B-1 Visas for Key Employees

Companies should consider tracking the validity of key employees' B-1 (visitor for business) visas to ensure these employees keep valid visas and are able to travel to the U.S. on short notice. This would involve:

1. Make a list of key employees who may need to travel to the U.S. on short notice.
2. Mark on a calendar the expiration dates of the key employees' current visas. Note whether the visas were subject to an SAO or a postcheck. A visa subject to an SAO will include an annotation such as "Clearance received 05-MAR-2008. Visit to Ajax Inc. in Dallas, TX." The visa will have been issued shortly after the clearance date. In contrast, a visa subject to a postcheck will include an annotation showing the clearance farther in the past.⁷⁸
3. Encourage these employees to report to the company as early as possible any upcoming travel plans. It's OK if the travel dates have not been finalized, so long as the employee can specify the purpose of travel and the destination cities.

⁷² For a list of branches where applications for the visa re-issuance program can be dropped off, see <http://www.ecitic.com/bank/personal/chuguo/51.htm> (in Chinese) (last visited Mar. 10, 2008).

⁷³ AmCham-China, *Applicants Who Do Not Require an Interview* (Jan. 21, 2009), <http://www.amchamchina.org/article/3732>.

⁷⁴ U.S. Embassy Beijing, *Visa Renewal / CITIC Bank Drop-Off Service*, http://beijing.usembassy-china.org.cn/niv_renewal.html (last visited Mar. 10, 2009).

⁷⁵ CLASS is used by the State Department to perform name checks on visa applicants to identify individuals who may be ineligible for visa issuance or require other special action.

⁷⁶ 9 FAM § 41.102 N5 (June 19, 2008); Email from AmCham China to Business Visa Program Members, July 25, 2008.

⁷⁷ 22 C.F.R. §§ 41.102(b)(5), (d)(2); U.S. Dep't of State, Cable # 285912, *Standard Operating Procedures No. 45: Revision to Visas Mantis Clearance Procedure* (Oct. 2003).

⁷⁸ 9 FAM § 502.4(i) (Aug. 16, 2006).

4. Apply to renew key employees' visas as early as possible. Try to apply early enough that there is time for an SAO and for the new visa to be issued before the current visa expires.
 - a. If the application **can** be made early enough that there is sufficient time for a new SAO to be completed, consider applying through the regular channel (as opposed to the visa reissuance program) and listing in the application all possible trips in the upcoming year.⁷⁹ This way, if an SAO is needed, the SAO should cover all those possible trips.
 - b. If the application **cannot** be made early enough that there is sufficient time for a new SAO, consider submitting the application through the visa reissuance program if possible, covering in the application just the immediate trip, and submitting relevant evidence to try to persuade the Consulate that no SAO should be required for the immediate trip. In particular, if the applicant holds a prior visa that was subject to an SAO, check to see if it is possible to qualify for a postcheck by limiting the new trip to be within the scope of the purposes described in that prior visa application.

For more information on this topic, contact the author, Gary Chodorow, at gary@fwhonglaw.com or +86.10.6506.1170.

Gary Chodorow is the chief representative for the Beijing office of Frederick W. Hong Law Offices. Since 1993 his practice has focused on U.S. immigration and nationality law. He is a frequent author and speaker on related issues, and a member of the American Immigration Lawyers Association.

This article provides an overview of the legal subject but should not be relied on as legal advice. For legal advice, consult with our firm about how the law applies to the particular facts of your case.

⁷⁹ Email from AmCham-China to Business Visa Program Members, July 25, 2008.