



# When In Rome...

## Chapter Newsletter

## Q4 - 2011

### Chair's Welcome

*Liam Schwartz, Chair, Rome District Chapter*

Thanks to all of you who made the Washington Consular Event – an inside look at the DOS Bureau of Consular Affairs - so special! The idea for holding a US-based educational event arose from the fact that there are now more Stateside than international RDC members. A summary of the events follows on page 4.

While Washington was good, the RDC Spring Conference in Bucharest this April promises to be our best event ever! The conference agenda is nearly complete, and initial program information will be sent out in the near future. In the meantime, be sure to save the date: Thursday and Friday, April 19-20, JW Marriott Bucharest Grand Hotel, Bucharest, Romania. Thanks to Cory Caouette and his talented committee members for putting this event together!

### London Conference Review

*Daniel Parisi, Chair, RDC Fall Conference 2011*

On September 20th and 21st we had our annual RDC Fall Conference in London. The conference began with a tour of the London Consulate, which was followed by a Q&A session with the senior consular staff. During this session, the participants were given an overview of the changes in processing at the consulate and introduced to the new slate of officers as well as having their questions answered by the officers.

The exclusive meeting at the consulate was followed by a conference dinner at the Royal Institution of Great Britain. The evening started with welcome drinks and canapés, which were generously sponsored by RDC member David Morris' EB-5 Program (EB-5 State Center - <http://vimeo.com/26093035>). This was followed by a sumptuous three-course meal amid the original scientific volumes in the Royal Institution's renowned library.

The conference continued with the CLE sessions, which were held in the historic Honourable Society of the Inner Temple - one of the four Inns of Court, which was established by the Knights Templar in the 12th century. The CLE sessions included presentations on: issues with I visas, the future of B-1 in lieu of H-1B visas, NIV annotations, IV processing and following to join applications, loss of LPR status and expatriation (including an overview of tax issues), EB-1s post Kazarian and select global jurisdictions. We were very pleased that each of these panels featured a speaker from the relevant consular section along side our RDC members. The morning program was opened with a panel on USICS hot topics that featured the USCIS London Field Office Director and the USCIS Liaison to the UK Border Agency who presented a comprehensive discussion of USCIS Transformation, direct filing of I-130s and adjudication of I-601 waiver applications.

### Upcoming Important Dates

Rome District Chapter Spring Conference  
April 19th and 20th 2012 in Bucharest, Romania

AILA National Conference  
June 13th to the 16th in Nashville, Tennessee

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If you wish to contribute to the next edition of "When in Rome..." please contact Daniel Parisi ([dparisi@lawtgl.com](mailto:dparisi@lawtgl.com))

## LPR's Response to an "8854 Letter" from the IRS

*Clayton Cartwright\*, Member, Rome District Chapter*

In addition to applying to a former citizen, the U.S. exit tax applies to a lawful permanent resident (LPR) who was classified as a long-term resident (LTR) on the date he actually loses LPR status or is deemed to have lost LPR status. An LTR is deemed to have lost LPR status, under the exit tax, when he (1) claims to be a U.S. tax nonresident, on Internal Revenue Service (IRS) Form 1040NR, "U.S. Nonresident Alien Income Tax Return," pursuant to a U.S. tax treaty with a foreign country, (2) does not waive the benefits of the treaty applicable to residents of said foreign country, and (3) notifies the IRS of the commencement of his classification as a U.S. tax nonresident under the treaty on IRS Form 8833, "Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)," and IRS Form 8854, "Initial and Annual Expatriation Information Statement."

An LTR is an individual who has been an LPR in at least 8 tax years of the 15 tax years ending with the tax year that includes the date LPR status is actually lost or deemed to be lost. For purposes of the LTR determination, a year does not count as an "LPR year" if the individual claims that he is U.S. tax nonresident pursuant to an income tax treaty between the U.S. and the other country, by filing Form 1040NR along with the treaty claim of U.S. tax nonresidency on an attached IRS Form 8854. Absent the Form 8854, this means of not counting an LPR year for the LTR determination is nearly identical to the test for an LTR's deemed loss of LPR status under the exit tax, creating the confusion explained below.

Since 2009, Schedule OI - Other Information on Form 1040NR asks the taxpayer if he ever was a U.S. citizen or an LPR and, if so, advises him to review the expatriation rules that may apply to him. I recently was made aware of a situation where an LPR (a) had LPR status for 10 years, (b) filed U.S. income tax returns for all years in which he was an LPR, (c) was not an LTR due to filing Forms 1040NR, with Forms 8833, for the last few tax years through 2010, and (d) disclosed on Schedule OI that he currently had LPR status. However, this same LPR, after filing his 2010 Form 1040NR, received a letter from IRS stating that he may be required to file Form 8854 (termed herein as an "8854 Letter"), implying that he may be subject to the U.S. exit tax. The 8854 Letter required a response from the LPR.

While it is difficult to make a general inference from a single situation, it does appear that the IRS, in enforcing the requirement to file Form 8854 for an LTR who has been deemed to have lost LPR status under the exit tax, is casting a wide net for all LPRs who file Form 1040NR. Specifically, the 8854 Letter does not distinguish between (i) the LTR who, by filing Form 1040NR, has a deemed loss of LPR status and therefore is subject to the exit tax and (ii) the LPR who is not an LTR (perhaps by filing Forms 1040NR) and therefore who is not subject to the exit tax. As a result, any LPR receiving the 8854 Letter should engage in the following two actions, to the extent that such actions have yet to be performed:

- 1. LTR Analysis.** It is a common mistake for an LPR and even some practitioners to define an LTR as an individual who has LPR status *for* 8 of the past 15 tax years, when the actual definition only requires *in* 8 of the past 15 tax years. If an LPR mistakenly believes that he is not an LTR and files Form 1040NR, not only will he be deemed to be subject to the exit tax but the associated Form 8854 would have been due for the year *prior* to the year for which he filed said Form 1040NR (creating the potential for a past due exit tax liability). Thus it is vital that an LPR who receives an 8854 Letter engage a qualified tax professional (a) to verify whether he is an LTR, (b) to respond to the 8854 Letter, and (c) to the extent that he is an LTR, engage in corrective action vis-à-vis the exit tax.
- 2. Abandonment Analysis.** Because an LPR who files Form 1040NR is presumed to have abandoned his LPR status, immigration counsel should be engaged immediately to advise on (a) abandonment and (b) the immigration aspects of the tax professional's analysis of, and response to, the 8854 Letter.

*\*Clayton is the Managing Member of The Cartwright Law Firm, LLC, in Columbus, Georgia.*

## DHS Liaison Committee Update

*Maria Çelebi, DHS Committee Chair*

The DHS Liaison Committee covers RDC's liaison work with CIS and CBP overseas. Our primary goals include conducting liaison meetings with overseas DHS offices, becoming engaged in CBP issues and coordinating with the AILA National CBP and International Operations Committees, as well as assisting in DHS issues globally (like re-entry permits and fingerprinting).

In the second and third quarter of 2011, the committee has been working on the following: a telephonic liaison meeting with London CIS, a possible in-person liaison meeting in Amman in conjunction with CLC committee, and liaison reports for other CIS locations that may have staff present at the Bucharest Spring conference. The committee released a liaison report for Guangzhou CIS to the RDC listserv and it is also posted on the AILA website. The committee has also assisted the International Operations Committee in keeping members abreast of the changes in overseas filing of I-601 and I-130. The committee is also working on a liaison meeting with CBP pre-clearance Port Director this month. Other CBP activities include articles for the "When in Rome..." report and RDC Practice Pointers.

If you have a particular issue with a USCIS overseas office or CBP issues that you would like to bring to the attention of our committee, please contact Maria L. Çelebi at [maria.celebi@bener.av.tr](mailto:maria.celebi@bener.av.tr).

## **Betwixt and Between: How Increasing Scrutiny on US immigration is Limiting the Options of Foreign Employers**

*Lauren Lantz, RDC Member, London*

Companies looking to send employees to the US for short-term temporary work are increasingly finding themselves stuck between a rock and a hard place. We all recognize the most common sticking points – our clients may not have an established US presence, for example, and thus do not qualify for an L or an H. However, they may still maintain important US clients and have a need to send employees to render services on their behalf, and entry under the VWP or a B-1 visa may just be too risky. Traditionally, the B-1 in lieu of H-1B category has been on the table for such circumstances and has provided employer flexibility to render services in the US without running foul of US visa laws or incurring unnecessary expenses to establish a US company solely for the sake of sending over a few employees to fulfil contractual obligations.

However, in recent months this hybrid option has fallen under fire from protectionist interests in the US, resulting in a back-to-the-drawing-board situation for many foreign employers. Indeed, after domestic pressure applied to the Department of State, most Consulates are refusing to annotate the visa anymore, instead relying on internal case notes. This was confirmed by Michael Vesey, NIV Chief at the Embassy in London, during the spring AILA Rome District Chapter conference. We all agree that this provides less of a safeguard than an annotated visa with the category made explicit and would only be apparent if the CBP officer takes it upon him or her self to delve deeper into the traveller's immigration record, which can of course lead to severe delays in entry. Adjudication at port adds even more uncertainty to an already discretionary visa.

Historically, as any experienced immigration lawyer can attest, the B-1 in lieu of H-1B visa has provided a myriad of benefits while maintaining good-faith immigration principles. Indeed, the genesis of the category lies in discerning DOS officials who realized the difficulty in pinpointing travel activities within a work/business dichotomy, situated in the context of a world economy which has gradually shifted from manufacturing to service activities. From a compliance perspective, the category provides an extra layer of protection for companies who might otherwise have unwittingly sent over employees under the VWP or a business visa because a petition-based visa was unavailable or inappropriate. Lawyers and employers would much prefer the due diligence be conducted upfront, at an Embassy abroad, before the employee ever steps foot in the US.

Annotation is sadly no longer an option through consular posts, and the category continues to be misunderstood as a 'shortcut' to work authorization and as a threat to US jobs. We already had inconsistency in the way these visas were handled through CBP; a lack of annotation will surely make this worse. While these concerns are issued from the perspective of protecting US jobs in an uncertain economic climate, they largely miss the point. The intention and practical use is not to job shop. Rather, the great benefit of the B-1 in lieu of H-1B category is that it lends foreign employers the flexibility to render international services in a modern, globalized economy. Unfortunately, immigration has not kept up-to-date with business needs and commercial reality. Its sole existence in the FAM rather than law has engendered confusion and suspicion and led to false conclusions about foreign intent. The visa type should be entered into in the INA, so as to facilitate international business travel and promote consistent application and acceptance across Embassies worldwide and ports of entry domestically.

The category has largely been used to fulfil contractual obligations of employers set in the context of short-term projects of temporary duration where no US job and often no US entity exist, and which essentially benefit the foreign employer. Ultimately, the B-1 in lieu of H-1B facilitates trade and commerce between foreign nations and the US and offers the opportunity for mutual growth. Ironically, such protectionist sentiments by Senator Grassley and others who view it as a backdoor to US immigration run the risk of throwing the benefits it brings to the US economy right out the window.

## **Blanket L-1 Visa Processing in India**

*Poorvi Chothani, RDC Member, Mumbai*

From December 1, 2011, the U.S. Consulate General in Chennai will be the only consulate in India that will accept and process L-1 visas under blanket approvals. This deviates from the earlier procedure where such cases were processed at specific U.S. consulates in India depending on the residence of the applicant. This procedural change is expected to increase efficiency and help streamline the blanket L visa application process.

Spouses and children of L-1 non-immigrants, who wish to apply for L-2 dependent visas, may apply for their visas at other posts as applicable based on their jurisdiction and residency. Similarly, visa applicants who have approved individual L-1 petitions must apply at the post that has jurisdiction over them.

These changes appear to be a result of issues over the past two years with regard to the use of L-1 blanket petitions.

## **AILA Global Migration Action Group Launches Newsletter**

*Daniel Parisi, Co-Editor, AILA GMAG*

AILA's recently formed Global Migration Action Group (an interest group for those who practice or want to learn more about global (non-us) immigration) has recently formed a communications committee that will be publishing the group's newsletter. If you would like to join the GMAG listserv please do so through your "MyAILA" preference pages. If you are interested in contributing to the inaugural edition of the newsletter, please email Daniel Parisi ([dparisi@lawtgl.com](mailto:dparisi@lawtgl.com)) or Jet Stigter ([jstigter@balglobal.com](mailto:jstigter@balglobal.com)). In related news, the RDC's Global Migration Committee is working with the GMAC to prepare the Global Migration Forum preceding the AILA Conference in June 2012.

## **First RDC Event in the US - Meeting with DOS in Washington**

*Jan H. Brown and Lindsay A. Curcio, RDC Members*

On October 19, 2011, the AILA Rome District Chapter sponsored a meeting with current and retired senior U.S. Department of State employees. Liam Schwartz, Chair of the Rome District Chapter, Stephen Pattison, Vice Chair of the Rome District Chapter and Anastasia Tonello, founding member and former Chapter Chair, moderated the event. The AILA Washington, D.C. Chapter co-sponsored the event. It was the first Rome District Chapter event in the U.S. The meeting was held at the AILA Headquarters in Washington, D.C.

Brian Hunt, Esq. Deputy Chief, Legal Advisory Opinions at the U.S. Department of State's Visa Office, and Rachael A. Peterson, Esq., a Staff Attorney at the Visa Office, spoke. Mr. Hunt and Ms. Peterson discussed the issuance of Advisory Opinions by the Visa Office, including how their office responds to requests initiated by consular staff and private attorneys.

Stephen A. "Tony" Edson, retired two years ago after a twenty-eight year career with the U.S. Department of State. Mr. Edson was a Foreign Service Officer in the U.S. and abroad. Subsequently, he served as the Senior Advisor, Bureau of Consular Affairs; Deputy Assistant Secretary, Visa Services; and Managing Director, Visa Services Directorate. Mr. Edson spoke about the foreign service and consular issues from both an historic and recent perspective. Mr. Edson currently engages in consulting. He discussed a project with DOS about maintaining one central contact point for all visa appointment scheduling and delivery issues for applicants.

Andrew Simkin, most recently served as the Consul General at the U.S. Consulate General in Chennai, India. Mr. Simkin was the Director of Consular Training at the Department of State's Foreign Service Institute. He directed the Office of Consular Fraud Prevention. Mr. Simkin, who is retiring from the DOS this year, spoke about the training of foreign service officers and visa processing at U.S. Consulates in India, including issues with employment-based nonimmigrant visas.

This meeting was an extremely useful opportunity to interact with State Department personnel and to better understand how they think and operate. The meeting was so successful that the Rome District Chapter will be considering future meetings in the U.S. at AILA's Headquarters.

## **Consular Liaison Committee Update**

*Magdale Labbe Henke, Committee Chair*

We are excited about a number of projects planned for the coming year so that our Committee can serve as a great resource to RDC and AILA national members regarding consular processing issues. Paramount is the goal to actively forge new connections with consular posts to identify issues and trends that may need to be addressed on a local and potentially national level, as well as establish a line of communication to facilitate problem solving of any issues that we encounter.

Goals for the year include:

1. Creating a more widespread consular liaison presence including in Asia, Africa and Canada. Post liaison reports are planned for Cairo, Egypt; posts in China; Amman, Jordan; posts in Australia; and Dublin, Ireland, among others;
2. Broadcasting "practice pointer" type podcasts on key consular processing topics and writing practice advisories as information emerges about any changes or evolution in practice at consulates;
3. Planning mini-tours of select posts to give members an opportunity to interact personally with consular officials

If you become aware of any trends at certain posts or other significant information that can benefit the membership, please contact the RDC Consular Liaison Committee by emailing me at [mlh@consular-consulting.com](mailto:mlh@consular-consulting.com) so that we can make sure to distribute the information as a practice advisory. Also, if you have comments or suggestions on how we can be an even better resource, please let us know. We look forward to hearing from you.

## **IRS Offshore Enforcement Update**

*Jo Anne C. Adlerstein\*, RDC Member*

Increasingly, the IRS is enforcing filing requirements for taxpayers with foreign assets. Foreign national clients who are required to file U.S. resident tax returns (Form 1040) rather than U.S. non-resident tax returns (Form 1040-NR) need to be reminded of these IRS enforcement efforts. If they have bank or other financial accounts (*e.g.*, mutual funds, retirement accounts) outside of the U.S. with a combined balance over \$10,000 in 2011, they will need to file an FBAR by June 30, 2012. FBAR is the acronym for Report of Foreign Bank and Financial Account, Form TD F 90-22.1.

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A new FBAR form was released on November 1, 2011 and previous editions are not to be used. FBARs can now be filed online. The FBAR and online filing instructions are available on the website of the Financial Crimes Enforcement Network: [www.fincen.gov](http://www.fincen.gov).

Another new form is scheduled to debut in the 2011 IRS line-up. Form 8938 "Schedule of Specified Foreign Financial Assets" will be required as part of the Form 1040 filing by taxpayers who own offshore assets valued in excess of \$50,000. Form 8938 is required to be filed in addition to the FBAR and is designed to identify assets other than financial accounts – such as real property and stock shares.

In late October 2011, the Treasury Inspector General for Tax Administration released its report on the 2009 Offshore Voluntary Disclosure Initiative [sic]. See <http://www.treasury.gov/tigta/auditreports/2011reports/201130118fr.pdf> While the report seems a day late and a dollar short, it is interesting reading following the 2011 Offshore Voluntary Disclosure Initiative (2011 OVDI). It is no surprise that IRS has a special tracking system that captures data on offshore accounts of taxpayers. It is called the E-Trak Offshore Voluntary Disclosure Program system. What is surprising is that IRS has not yet input all the information made available to it as part of the 2009 Offshore Voluntary Disclosure Program. E-Trak has the potential to correlate disclosures of offshore bank accounts, offshore financial advisors, and attorneys and accountants involved in the disclosure of offshore accounts. Since online filing of FBARs was not available to taxpayers participating in the 2011 OVDI, IRS has a significant amount of data entry ahead.

The online filing of 2011 FBARs in 2012 will jump start the E-Trak system. The ability to identify foreign bank branches housing multi-million dollar offshore accounts will no doubt facilitate criminal investigations. Recent indictments have been brought involving accounts at UBS, Wegelin and Bank Julius Baer in Switzerland and HSBC India. As a former Assistant U.S. Attorney (DNJ) in charge of criminal tax prosecutions, I am certain that account holders who are investigated will be asked to cooperate with the government against bankers who facilitated their tax evasion. It is also clear that bankers who are investigated will divulge the names of other customers whom they assisted in evading taxes.

The bottom line for immigration attorneys is that they must alert their foreign clients of IRS offshore account, asset and income reporting requirements *before* their clients are required to file income tax returns as U.S. residents. This heads-up will enable clients to evaluate whether they wish to close or transfer financial accounts or transfer assets *before* disclosure is required and/or before tax liability is triggered. Clients should be advised to consult with U.S. tax professionals (attorneys and certified public accountants) who are not affiliated with the foreign financial institutions holding their funds, and have experience with the Internal Revenue Code provisions that impact reporting and tax liabilities in cross-border situations.

*\*Jo Anne Adlerstein is Counsel to Cohen Tauber Spievack & Wagner PC in New York, principal of Adlerstein Consulting Ltd in Israel, and a Certified Anti-Money Laundering Specialist (ACAMS). She thanks Shirley Tang, Senior Counsel at CTSW and former INS Assistant District Counsel for keeping this article focused on what AILA members need to know.*

## **American Immigration Council Ambassador's Update**

*Kehrela Hodkinson, AIC Ambassador*

This year, I have volunteered to serve a second year as our Chapter's Ambassador to the American Immigration Council (AIC). As you probably know, the AIC (formerly AILF) is a sister organization to AILA. It was founded by AILA members 25 years ago, and occupies part of AILA's offices in Washington. Most of the Trustees of the AIC are AILA members and members of AILA's Executive Board serve on the AIC's Board of Directors. In short, since its founding, the AIC (AILF) and AILA have worked hand-in-hand to educate the public on immigration issues, to promote fair-mindedness on immigration and to protect the rights of immigrants in the courts.

As AIC Ambassador, I serve as a conduit between the AIC and the Rome District Chapter. I am tasked with informing the Chapter about the AIC and its program areas - the Immigration Policy Center, the International Exchange Center, the Community Education Center and the Legal Action Center. I hope to raise your awareness of the AIC and its program areas so that you can use these programs to help serve your clients, build your law practices and be an advocate for positive change in the immigration debate.

I hope that you will take a few moments to look over the program areas, [www.ImmigrationPolicy.org](http://www.ImmigrationPolicy.org), [www.legalactioncenter.org/](http://www.legalactioncenter.org/), [www.communityeducationcenter.org/](http://www.communityeducationcenter.org/) and [www.internationalexchangecenter.org/](http://www.internationalexchangecenter.org/) where you can learn more about the AIC. You will undoubtedly find useful information, briefs, advisories, reports and resources which will help you to be better informed and to better serve your clients.

I look forward to continuing to serve as AIC Ambassador for our Chapter. If you would like to know more about the AIC, or if you would like me to introduce you to any members of the AIC's staff or to its programs, please contact me ([khodkinson@usvisalg.com](mailto:khodkinson@usvisalg.com)).

<http://www.americanimmigrationcouncil.org/>



## I-864 Affidavits of Support and the Domicile Requirement

*Susan McFadden\*, RDC Member*

Most family-based immigrant cases, and a few employment-based ones as well, require the sponsor to provide an Affidavit of Support—generally either an I-864 or an I-864EZ. See INA § 212(a)(4)(C) and (D).

The purpose of the I-864 goes beyond simply reassuring the consular officer that the alien applicant is not likely to become a public charge, thereby avoiding inadmissibility under INA § 212(a)(4). The I-864 is also a legally enforceable contract whereby the sponsor and any joint sponsor agree that during the enforceability period of the contract they will:

- Provide support to maintain the alien at 125% of the Federal poverty level;
- Reimburse the provider of any means-tested public benefit received by the alien; and
- Submit to the jurisdiction of federal or state courts for actions for reimbursement.

Formal requisites of the Affidavit of Support are set out in INA § 213A. The USCIS regulations are in 8 CFR Part 213a; the Department of State's regulations can be found at 22 CFR 40.41 and 9 FAM 40.41.

One difficulty that often arises with I-864s filed in the consular processing context is that in order to be a sponsor, the person must be (1) at least 18 years old; (2) a US citizen, national or LPR; and (3) domiciled in the United States, or a territory or possession. INA § 213A(f)(1). The definition of 'domicile' is 'residence' (as defined in INA §101(a)(33)) plus intent: 'The place where a sponsor has his or her principal residence...with the intention to maintain that residence for the foreseeable future.' 8 CFR § 213a.1.

This domicile requirement seems on its face to preclude USCIs and LPRs living abroad from filing Affidavits of Support, at least unless their employment satisfies the requirements of INA § 319(b)(1). However, there are two escape hatches.

First, a person living temporarily abroad may file an Affidavit of Support if he or she can show, by a preponderance of the evidence, that he or she still has a domicile in the United States. 8 CFR § 213a.2(c)(1)(ii)(A). This 'clarification,' as it was called by the USCIS in the comments to the Final Rule, is not incorporated into the definition of 'domicile,' but was added to the Final Rule in a new section 'to avoid confusion.' 71 Federal Register 35732, 35734 (June 21, 2006).

In the case of would-be sponsors who maintain residences both in the US and abroad consular officers are required to first determine which one is the 'principal abode.' If the US residence is the principal abode the consular officer then must evaluate the question of domicile. This puts the burden on the would-be sponsor to prove that he or she

- Departed the US for a limited, not indefinite, period of time;
- Intended at the time of departure to maintain a US domicile; and
- Can present 'convincing evidence of continued ties to the United States.'

9 FAM 40.41 N6.1-1(b). The requirement of 'convincing evidence' seems to contradict the USCIS rule that a preponderance of the evidence is all that is needed.

The other escape hatch goes beyond the text of the statute, which clearly requires a US domicile, in that it creates 'a single exception, under which a sponsor who is not domiciled in the United States (i.e., cannot show his or her residence abroad has been only temporary) may submit a Form I-864.' Federal Register, id. The exception: '[T]he sponsor satisfies the Department of State officer...by a preponderance of the evidence, that the sponsor will establish a domicile in the United States on or before the date of the principal intending immigrant's admission.' 8 CFR § 213a.2(c)(1)(ii)(B). 'Thus, the sponsor must arrive in the United States before, or at the same time as, the intending immigrant, and the sponsor must intend to establish his or her domicile in the United States.' Federal Register, id.

9 FAM 40.41 N6.1-2(b) lists the following examples of activities showing that the sponsor is establishing a US domicile and intends to establish residence before or concurrently with the IV applicant:

- Opening a US bank account;
- Transferring funds to the US;
- Making investments in the US;
- Seeking employment in the US;
- Registering children in US schools;
- Applying for a Social Security Number [cf. INA §213A(i)(1), which requires that the sponsor's Social Security Number be provided on the I-864]; and
- Voting in a US election.

Whether the I-864 is filed with the National Visa Center or, in that reduced number of countries where I-130 direct filing is still allowed, is reviewed in the first instance by the consular officer at the post, would-be sponsors who live abroad must be prepared to submit evidence of their residence and domicile beyond the mere listing of addresses on page 2 of the I-864. Especially in cases under the 8 CFR § 213a.2(c)(1)(ii)(B) exception, it would be prudent to append to the I-864 a statement from the sponsor, accompanied by documentary proof of the actions taken to establish domicile.

\* *Susan McFadden is a Partner at Gudeon & McFadden in London.*

## New Members Division Update

Amanda Shipley, Committee Member

***We are very happy to welcome 3 new members to the Rome District Chapter who joined in the last several months!***

**RDC MENTORS NEEDED!** Due to the popularity of the RDC mentor program, we would like to update and expand our mentor directory at this time. The **Mentor Program** assists new members of the RDC (and those new to practicing abroad) with issues specifically related to practicing U.S. immigration law abroad. Mentors are needed on a post-specific and a topic-specific basis. We are seeking mentors for the following topics:

- NIV / 212(d)(3) Waivers
- I- 601 Waivers
- Advisory Opinions (DOS and CBP)
- Expedited Removal
- E-visa processing
- USCIS and Attorney Representation from abroad
- Immediate Relative Petitions filed abroad
- Humanitarian Parole and refugee dependent processing
- Diversity Lottery consular processing issues
- Military-related immigration issues

We are also seeking members at posts throughout Europe, Africa and Asia to serve as mentors either for your particular post or a post where you have extensive experience.

Mentors should be AILA RDC members and practicing at least five years or have one year experience with a post. If you are interested in serving as a mentor or have a suggestion for a topic where mentoring would be welcomed, please contact Amanda Shipley at [ashipley@lawtgi.com](mailto:ashipley@lawtgi.com).

**AILA NMD Holiday Drinks in London - 7 th December 2011** The NMD organised holiday drinks at The Enterprise ([www.the-enterprise.co.uk/](http://www.the-enterprise.co.uk/)) on 7 December 2011 . We welcomed several RDC members from London and RDC member Marco Mazzeschi and his wife Lucy who were in London from Italy. Several members dined together later that evening and everyone enjoyed the festive atmosphere!

### Consular Q&A

Liam Schwartz\*, Chair, Rome District Chapter

#### Computer Illiterate Applicants and the DS-160

#### **Question:**

I filled out DS 160 applications for my elderly cousins who live in Armenia. The need for their visit is for medical treatment: One cousin who is the patient needs medical examination and treatment in the US. The other cousin is the caregiver companion.

Neither cousin has a computer or any computer skills. They never wanted to own one or learn how to use a computer. The form requires the applicants to "click" themselves to sign the form.

I filled out the applications truthfully based on information known to me but there is no way for them to complete this complicated form on their own, let alone on the internet. I know there are "cyber cafes" in Armenia but I don't know how well it will be done over there or whether the owner of the "cyber café" will show them how to click on the "Submit Button" or whether she/he knows how to deal with the DS 160.

My question is whether I can submit the applications on my cousins' behalf and have them sign a hard copy at the American consulate that it is true and correct. The form would not even allow me to make a print out. I would appreciate if you can help me on this matter.

#### **Answer:**

Your cousins don't appear to qualify for an exemption to the personal click requirement of 9 FAM 41.103:

#### **41.103 Filing an application.**

(a) Filing an application —

- (1) *Filing of application required.* Every alien seeking a nonimmigrant visa must make an electronic

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application on Form DS-160 or, as directed by a consular officer, an application on Form DS-156. The Form DS-160 must be signed electronically by clicking the box designated "Sign Application" in the certification section of the application.

(2) Filing of an electronic application (Form DS-160) or Form DS-156 by alien under 16 or physically incapable. The application for an alien under 16 years of age or one physically incapable of completing an application may be completed and executed by the alien's parent or guardian, or if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, the alien.

<http://www.state.gov/documents/organization/87424.pdf>

Indeed, the State Department seems to have contemplated the case of computer-illiterate applicants in advance, and determined that they still need to click the mouse themselves:

"If an applicant is illiterate or unable to complete the application, the applicant must be assisted by a third party. The third party must be identified on the "Sign and Submit" page of the application. While the third party can assist the applicant in completing the application, he or she must instruct the applicant on how to endorse the application on his or her own behalf by clicking the "Sign Application" button."

[http://travel.state.gov/visa/forms/forms\\_4401.html](http://travel.state.gov/visa/forms/forms_4401.html)

Unfortunately, I don't see any option other than for your cousins to go to a cyber café and to have you or someone else instruct them on how to click on the "submit application" link to complete the application.

#### PIMS and Form I-824

##### **Question:**

Information that is available in PIMS is available to all consular posts, correct? Not just the one to whom a consular notification was sent by USCIS? So, if an H-1B petition requested consular notification to Post A, but the beneficiary later winds up needing to apply at Post B, she can do that (assuming Post B is otherwise willing/able to entertain her application) b/c Post B will be able to confirm approval through PIMS as easily as would Post A. There is no need to file an I-824 to ensure that Post B is also sent a cable notifying it of the petition approval, right?

##### **Answer:**

Yes" to all the questions. With the advent of the PIMS, USCIS no longer "notifies" consulates of the approval of I-129 petitions. So the fact that Post A was listed on the I-129 (or appears on the I-797) does not limit the foreign national to applying there. If he/she applies at Post B (or anywhere else, for that matter), consular staff will be able to verify the petition details using PIMS. No I-824 is required. For more information, see 07 State 155679 ([http://travel.state.gov/visa/laws/telegrams/telegrams\\_4201.html](http://travel.state.gov/visa/laws/telegrams/telegrams_4201.html)).

#### From a Neurotic Parent Who Asks Way Too Many Questions and Really Needs to Get a Hobby

##### **Question:**

I have another question. My son went to have his photo taken for the visa application today. There was a glare from his glasses and he was instructed to remove them. Will he have a problem at the interview at the U.S. Embassy because of the photo, when he arrives at the interview with glasses? (He doesn't have contact lenses.)

##### **Answer:**

No problem. The Department of State instructs its consular officers as follows: "On occasion, you will encounter visa applicants whose appearance varies slightly from that of the photographs they submit with their NIV applications. You may use the photograph if it otherwise appears to be of the applicant."

*\*Liam Schwartz is the Principal in Liam Schwartz & Associates in Tel Aviv, Israel*

The AILA Rome District Chapter wishes all our members and their families

# Happy Holidays!