CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA
1615 H STREET, N.W.
WASHINGTON, D.C. 20062

RANDEL K. JOHNSON
SENIOR VICE PRESIDENT
LABOR, IMMIGRATION, &
EMPLOYEE BENEFITS

AMY M. NICE
EXECUTIVE DIRECTOR
IMMIGRATION POLICY

March 31, 2011

U.S. Department of State
Office of the Undersecretary for Management
Bureau of Administration
Office of Global Information Services
Office of Directives Management
Room SA-22
Washington, DC 20522-2201

Re: Department of State regulatory review under E.O. 13563
76 Fed. Reg. 13931 (Mar. 15, 2011)

Dear Sirs:

We are writing in response to your Department's request for comment concerning the regulatory review being undertaken pursuant to President Obama's January 18, 2011 Executive Order 13563, "Improving Regulation and Regulatory Review." The Chamber is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region. Employers appreciate the opportunity to participate in the State Department's efforts to reassess its retrospective review of existing regulatory and reporting requirements.

On behalf of our member companies, the Chamber has two important visa services issues to bring to the Department's attention in its policy review. Both visa issues have significant public diplomacy and foreign affairs implications, and should have controlling regulations at 20 CFR Part 41; however, neither issue is currently regulated.

Visa Revalidation, 20 CFR Part 41. We believe that the time has come for the Department to reinstate the practice of revalidating employer-sponsored visas at the Department's Visa Office, with controlling regulations to be promulgated at 20 CFR Part 41. A convincing operational and security case has not been made for the continued suspension of domestic visa reissuance for certain low-risk visa categories.

Previously, visa issuance for E, H, L and O visa classifications, among others, could be completed in the U.S. where the worker had been issued a visa in the same category abroad at one of the Department's posts, and the visa had not expired more than a year earlier. These visa categories are regularly used by employers to sponsor non-citizen

workers for U.S. entities. Under current practices, it is very common for workers to be stranded abroad for periods of weeks while they secure a reissued visa to return to their U.S. employment, and it is not unusual for some individuals to wait literally months for the required clearances. Such delays put unnecessary strains on the sponsoring U.S. employer, where the visa holder is providing employment services.

While the Chamber does not question the need for the underlying procedures necessary to ensure the *bona fides* of the visa applicant and provide operational integrity to visa issuance, all such security clearances and other procedures could be done from the Visa Office in Washington, DC for those applicants remaining in the US and qualified for revalidation. Security issues need not be an obstacle. The Department could complete biometric checks as well as rules-based security screening. If there was a "hit" on a watch list or other indicator of suspicion, the matter could be reviewed by Immigration and Customs Enforcement, or another appropriate agency, before the Department either concluded that the visa revalidation was not clearly approvable and the individual should be directed to apply overseas at one of the Department's consular post or that the visa request would be denied.

In the last year that visa revalidation was permitted, 2004, approximately 95,000 visas were issued by the Department's Visa Office in Washington, DC through visa revalidation. Since that time, the Department has dramatically changed and improved its use of technology and real-time systems to collect, review and transmit visa related data, including the completion of security clearances. There is no current indication that there are risks so great that warrant depriving 95,000 employees of U.S. enterprises a highly efficient process.

Visa Review and Redress for Nonimmigrant, 20 CFR Part 41. Unlike almost any other administrative process by executive agencies in the United States, consular officers are not subject to any formal review process in visa decision-making. In many cases, problems in visa processing are compounded by the applicants' inability to obtain explanations for decisions and the lack of clear channels for pursuing redress, other than filing a new visa application. This lack of accountability has serious consequences in how the United States is perceived abroad, and in the Department's ability to timely and cost effectively rectify errors. Without statutory change of any type, and without diluting the discretionary nature of visa issuance decisions, the Department could promulgate regulations establishing an internal agency review process for visa decisions, and a means to correct areas.

Presently, supervisory review is mandated for only a small fraction of nonimmigrant visa application cases. Such review should be expanded, and the Department should monitor and compile results of supervisory reviews, by consular officer, visa category, post, country, and globally.

Most importantly, nonimmigrant visa denials are most often based solely on a 214(b) refusal, meaning that the consular officer concluded the applicant did not generally meet his burden to prove he was complying with the terms of a nonimmigrant classification and, therefore, could not document his intent to return home. Removing 221(g) refusals from the count – since 89% of these "soft" refusals (for lack of initial proper documents) are overcome – the Department's data shows that about 93% of nonimmigrant visa denials are grounded in 214(b). In effect, 214(b) operates as a catch-all category that allows a consular officer to deny a nonimmigrant visa without ever having to identify the deficiency in the applicant's case.

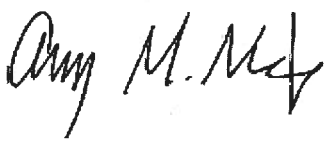
Specifically, for FY10, there were 1,246,839 nonimmigrant visa applicants who submitted the necessary documents but were denied nonimmigrant visas and of these 1,159,519 were rejected under the authority of 214(b). In total there were 1,863,994 nonimmigrant visa applications denied in FY10, but of these, 694,620 were initially denied under 221(g) for having insufficient documents, of which 89% later provided the necessary documents and were issued visas. Removing the 221(g) ineligibilities that were overcome leaves 1,246,839 denied nonimmigrant visa applicants of which 93% were denied under 214(b).

We believe that the Department can and should study ways in which it could establish administrative review of consular visa decisions and strike a better balance between security, efficiency, and fairness.

In addition, the Department should establish, and publish, a process to permit correction by mail of technical errors on issued visas, rather than in-person appearance. Presently, there is no written procedure for the public to follow in order to obtain such correction absent making a new appointment (which often requires a fee) and travel to the consular post (which requires the visa applicant to travel a long distance).

Thank you for your consideration of these comments. Please do not hesitate to contact us if the Chamber may be of further assistance in this matter.

Sincerely,



Randel K. Johnson
Senior Vice President
Labor, Immigration and
Employee Benefits

Amy M. Nice
Executive Director
Immigration Policy