

MYTHS ABOUT CONSULAR PROCESS FOR U.S. VISAS –
WHAT IS YOUR B&G SPOT?
PART I

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There are a lot of myths and misconceptions that people have relating to the U.S. visas this is especially the case for India who apply for visas and receive random denials on bases of 221(g) & 214(b). The following are a few of the myths that relate to various types of visa processing.

- 1. I can go on the Consular website to apply for the visitor's visa, pay the visa fees after appearing for the interview at the Consulate (in India) and get a 10 year multiple entry visas.*

FACT: Not so easy. Do not assume that the Consul issues visas to every applicant or that since you are a well-established businessman or someone who is financially well off, that you will automatically obtain a visa without any problems. B-1/B-2 Visitor's Visas for pleasure or business, and many other types of visas, such as F-1 Student Visas, J-1 Exchange Visitor Visas, and certain other categories of visas, are subject to Section 214(b) of the Immigration and Nationality Act (INA), which provides that every applicant for such visa is presumed to have immigrant intent and therefore must prove that he/she has no intention of abandoning his/her permanent residence in his/her home country. Therefore, the applicant has to satisfy the American Consul, that he/she has strong family, economic, and social ties in his/her home country, which will compel him to return to his/her home country and not remain in the U.S. beyond the authorized stay granted by United States Citizenship and Immigration Services (USCIS) or violate his/her nonimmigrant status. The burden is upon the applicant to overcome this statutory presumption and failure to do so, may result in denial of the visa. The American Consul can also deny the visa based upon section 221(g) which is temporary denial requiring the applicant to submit additional information or document to overcome the presumption of immigrant intent or meet the eligibility requirements. In some cases, denial u/s 221(g) is to keep the application pending until Administrative Processing requiring verification or investigation of certain facts to complete the processing. In some instances the application is kept pending until security clearances are completed by the concerned authorities in the U.S.

- 2. I am applying for the Visitor's Visa at the American Consulate (in India). I am working in a company for many years, own a substantial property, and financially well off. I will take all these documents and the visa will be granted to me without any question.*

FACT: Do not assume that you will be issued the visa based upon the documents you plan to submit. We are given to understand that most of the consular posts (in India) do

not look at the documents that the applicant brings with him/her to the consulate in all the cases. Most decisions to grant or deny the nonimmigrant visa are based upon the interview rather than the documents. It is advisable to take all relevant documents evidencing that you are a type of person who will not remain in the U.S. longer than required and comply with all the conditions of the visa. However, present the documents only if requested by the Consul. Consular officers are overwhelmed with processing hundreds of such visa applications everyday and, in most cases, devote three to four minutes only for the interview. For example, we are given to understand that the Consulate Offices are entertaining approximately 1,400 visa applications per day in Mumbai. You should be fully prepared to answer appropriate questions truthfully and promptly within the two to three minutes you have at the window. We are given to understand that what is critical for the visa applicants is to be able to “Articulate” what it is that you are going to be doing in the U.S.

- 3. I applied for the U.S. Visitor’s Visa at the American Consulate and it was denied by the Consular Officer under Section 214(b) of the INA. However, the Officer advised me that I can reapply again. I believe that if I take some more documents to prove that I am well settled (in India) and will come back (to India) within four to six weeks after visiting my friends and relatives, the Consul will then issue the visa.*

FACT: Do not assume that when you re-apply for the visa with more documents, you will have no problem obtaining the visa. Please remember that after the first denial, any subsequent applications result in denials in most cases, unless the applicant can show that there is change in the circumstances which warrant reconsideration and issuance of the visa. The first question that the Consul may ask is, “We made the decision during the first interview that you are not eligible for the visa. So, what is new to overcome the reasons for your previous denial and to issue the visa?” If you believe that you really are a bona fide nonimmigrant visa applicant and that you were denied the visa the first time, due to some misunderstanding or failure on your part to explain the purpose of your visit or your background which will compel you to return to your home country, you should articulate this information promptly, to convince the Consul that you are eligible to obtain the visa.

- 4. My B-1/B-2 visa has been denied more than four times under Section 214(b) of the INA. I have provided all relevant documents and responded to all questions properly, but the Consular Official does not want to look at any documents and does not seem to give me enough time to explain my situation. I have requested my brother who is a U.S. Citizen to contact a U.S. Senator or Congressman to intervene and ask the Consul to issue the visa. I am sure then that the visa will be issued.*

FACT: Under the law, the Consular officials have absolute discretion to grant or deny any nonimmigrant visa subject to Section 214(b) and/or 221(g) or other applicable provisions cannot be compelled by any authority in the U.S. to issue the visa. In most instances, the Consular Officials will politely respond to congressional inquiries. In

general, the congressional liaison receives a form letter from the Consular Officer that states that based upon the interview of the applicant, the Consular officer made the determination to deny the visa since the applicant was unable to demonstrate that he or she was eligible for the visa. However, the applicant may re-apply again. There are some cases where the Consular Official, upon review of the facts, may find that the visa should be issued.

- 5. My F-1 Student Visa has been denied by the American Consul on three different occasions. I intend to pursue my studies in an Ivy League School in the U.S. My family is financially well and they have agreed to prove new sufficient funds for my study. Upon completion of my studies, I will definitely return (to India). I am very upset and I want to appeal to the concerned authorities in the U.S. or to a Court of Law to compel the Consul to issue the visa.*

FACT: The Consular Official has absolute discretion to issue or deny the visa under Section 214(b) or 221(g) of the INA. The Department of State (DOS) in the U.S. would generally not intervene in visa applications process, when visas are denied based upon the “facts”. However, if there is a misapplication or misinterpretation of the “law”, the DOS may provide legal guidance to the Consular Official. For example, if a Consular Official denies an H-1B visa under Section 214(b) for the reason that it appears that the applicant has immigrant intent, the DOS should will intervene and advise the Consul that H-1B visas is a dual intent visa and that the applicant cannot be denied under Section 214(b). A general rule, A Court of Law in the U.S. will not accept any legal action challenging Consular determination since the Court does not have jurisdiction over the Consular Officials in abroad.

- 6. I have been denied a Visitor Visa twice and also an F-1 Student Visa, the third time. I think if I apply for H-1B visa or get married to a U.S. citizen and apply for an immigrant visa, I would encounter problems due to the previous denials.*

FACT: This is an incorrect assumption. Previous denials of nonimmigrant visas which were subject to Section 214(b) cannot be the basis of a denial of an H-1B visa or other dual intent nonimmigrant visa, unless the Consular Official finds that you are ineligible for H-1B visa or that the marriage to a U.S. citizen is not bona fide, or the Consular Official finds that the applicant is ineligible or the petition is invalid under appropriate provisions of the law. However, if there was any fraud or material misrepresentation made by the applicant in previous visa application and the visa maybe denied under section 212(a)(6)(c) resulting in permanent bar to get any type of visa.

To be continued...