



# Practice Pointer

## Administrative Processing

*by the AILA Department of State Liaison Committee*

Sooner or later, AILA members with clients applying for visas at United States consular posts will encounter a situation in which the client's visa application will be held for administrative processing. The reason for administrative processing is usually not clear, and the timetable for completion is not known in advance. The AILA DOS Liaison Committee offers this practice pointer to lend some basic understanding regarding what is inherently a non-transparent process.

### Definition of "Administrative Processing"

The Foreign Affairs Manual (FAM) provides the following brief definition of "administrative processing":

*The phrase 'necessary administrative processing' should be used to refer to clearance procedures or the submission of a case to the Department.<sup>1</sup>*

The FAM also counsels consular officers not to reveal to visa applicants the specific reason for administrative processing in a given case:

*Posts should not inform interested persons, including attorneys, that a case has been referred to the Department for a name-check or an advisory opinion...<sup>2</sup>*

Perhaps the best explanation of the nature of administrative processing is provided by two former members of the Senior Foreign Service, Stephen R. Pattison and Andrew T. Simkin, in "Consular Processing in India," published in *The Consular Practice Handbook*.<sup>3</sup> Pattison and Simkin identify a number of circumstances in which individual visa applications will be sent for administrative processing:

**Further Consultation:** A consular officer can advise an applicant that further "administrative processing" is required in his or her case if the consul believes that there are circumstances that require further internal consultation within the mission or with DOS. In such cases, it is not the existence of a lookout hit that triggers the decision, but other circumstances that either have arisen during the interview or are based on information in the record that makes it impossible to render the decision at the completion of the interview.

This type of case normally requires an advisory opinion from the Office of Legal Affairs in the Bureau of Consular Affairs Visa Office.

**Database "Hit":** All visa applicants have their biographic and biometric data checked against various databases and the results are provided to the consular officer for consideration during visa adjudication. If these checks indicate a possible match (or "hit") to a person about whom the U.S. government holds adverse watchlist information, consular officers must

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<sup>1</sup> See 9 FAM 601.7-4, Content of Written Correspondence, available at <https://fam.state.gov/FAM/09FAM/09FAM060107.html>.

<sup>2</sup> *Id.*

<sup>3</sup> Pattison, Stephen R. and Andrew T. Simkin, "Consular Processing in India," *The Consular Practice Handbook*, 2012 Ed., AILA, June 2012. <http://agora.aila.org/Product/Detail/37>.

“clear” the hit by seeking confirmation that the person applying for the visa is not the same person on the watchlist before issuing the visa.”

**Technology Alert List:** Administrative processing can be the outcome of certain visa applications...where the applicant’s intended commercial or academic activity triggers concerns about the possible illegal transfer of technology as defined in the Technology Alert List (TAL)...When a consul encounters an applicant who intends to pursue activities in one of the areas included on the TAL, the consul must submit an inquiry on the matter to DOS for a determination of whether the risk is significant enough to require visa denial.

These last two types of administrative processing scenarios, or requests for security advisory opinions (SAOs), are also referred to as visa Donkey for name hits, visa Mantis for cases involving sensitive or dual-use technology, and visa Condor for nationals of state sponsors of terrorism.<sup>4</sup>

### Administrative Processing Timetables

*What is the timetable for administrative processing?*

The [DOS Administrative Processing webpage](#) informs us that “most administrative processing is resolved within 60 days of the visa interview.”<sup>5</sup> In other words, clients whose visa applications are subjected to administrative processing can be advised that their case will likely be resolved within two months of the visa interview.

*Can an applicant be subject to administrative processing each time he or she applies for a visa?*

Yes. There are instances – particularly those involving security clearances – in which Consular Officers are bound by law or interagency agreement to send a case for administrative processing every time an individual applies for a visa.

*When can I follow-up on an administrative processing case?*

The [DOS Administrative Processing webpage](#) states:

**Important Notice:** Before making inquiries about [the] status of administrative processing, applicants or their representatives will need to wait at least 60 days from the date of interview or submission of supplemental documents, whichever is later.<sup>6</sup>

*Who should I contact to follow-up on an administrative processing case?*

1. After waiting 60 days from the date of interview, [contact the consular post](#) where your

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<sup>4</sup> With the elimination of the NSEERS program by DHS in April 2011, it is possible that the Condor clearance was also abolished. However, applicants that fit the above criteria may still encounter some form of a security clearance. For a comprehensive discussion of security advisory opinions, see Loke-Walsh, Tien-Li and Bernard P. Wolfsdorf, “The State of Consular Processing: More Than 10 Years after September 11, 2011,” *The Consular Practice Handbook*, 2012 Ed., AILA, June 2012.

<sup>5</sup> *Administrative Processing Information*, <http://www.travel.state.gov/content/visas/en/general/administrative-processing-information.html>.

<sup>6</sup> *Id.*

client was interviewed.<sup>7</sup>

2. If no timely response is received from the consular post after 30 days, follow up with the post for a status inquiry.
3. If after your follow up, the case remains pending with no substantive response, AILA recommends that you continue to follow up on the status of the case directly with the post at least once a month.
4. For long-pending administrative processing cases, consider seeking congressional assistance if it is an option for your client.

**Please Note:** AILA does not currently have an arrangement with DOS to bring individual cases to their attention. Therefore, AILA recommends that members work through the public inquiry channels or request Congressional assistance to resolve specific issues with consular posts. However, if you wish to report a trend or bring a particularly egregious issue to the DOS Liaison Committee's attention, you may submit it via the ["Report a Trend" form on the committee's webpage](#).

### **The Good News About Administrative Processing**

It should be noted that cases will generally not be sent for administrative processing unless they are otherwise approvable. Indeed, Pattison and Simkin note that, in most cases, administrative processing “signifies that the applicant has satisfied the statutory requirements for the visa.... It also usually means that there is no pre-existing ground of inadmissibility against the applicant.” Pattison and Simkin also provide a fitting conclusion for this practice pointer: “Clients should be assured that while administrative processing delays are disruptive and worrisome, the number of visa applicants who are denied visas following administrative processing is very small. This may go some way toward minimizing their frustration – and your own – over your inability to determine the basis for the administrative processing request in the first place.”

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<sup>7</sup> Website of U.S. Embassies, Consulates, and Diplomatic Missions, <http://www.usembassy.gov/>