

Overcoming a Visa Denial

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While a visa denial is dramatic, it is not necessarily the end of the world. It is possible for students or scholars to overcome a visa denial. However, before advising a student or scholar or taking any action, it is important to understand why the visa was denied.

Reasons for Visa Denials

The most common reason for a denial of a nonimmigrant visa (NIV) is 214(b). “every alien... and other than a non-immigrant described in any provision ...shall be presumed to be an immigrant until he establishes [otherwise] to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission...”

This means that an applicant applying for an F1 or J1 visa must convince the consular officer that he intends, at that time of application, to leave the US after completion of the program. This does not mean that, if the student’s situation or plans change, the student has committed visa fraud. The U.S. Department of State recognizes that students’ plans do change. (September 2005 Visa Policy Telegram concerning [Students and Immigrant Intent](#)) However, if the student’s initial intent is to immigrate to US, he is ineligible for an NIV.

Another reason that a visa may be delayed is a finding based on Section 221(g). In this case, the interviewing officer has found that the information provided at the interview is insufficient and will support neither issuance nor denial—the application is held open for up to a year, or even more if the delay is occasioned by a U.S. government delay, as opposed to delay or noncompliance by the applicant. This situation may be fairly simple to resolve by providing additional documentation. Overcoming a finding based on 221(g) requires another visit – sometimes with, sometimes without appointment, depending on the U.S. mission – but, happily, no new application fee.

Other reasons for visa denials include health-related issues such as Tuberculosis, HIV/AIDS, etc, criminal background, security risk, previous illegal entrance to the United States. or immigration status violators previously removed from the United States., and unlawful voters. [Classes of Aliens Ineligible to Receive Visas](#) provides more specific information..

Security Clearances

A visa may be denied or delayed based on required security clearances. Security clearances are required when a visa applicant’s personal background or course of study is considered a potential threat to U.S. national security. There are many types of clearances (e.g. Visa Mantis, Condor), and each depends on different factors. The important point to emphasize to students and scholars is that these clearances are obligatory and not subject to the officer’s discretion. U.S. immigration regulations require that a consular officer gather certain information from a student visa applicant, sometimes beyond what was originally submitted in the visa application. Applicants identified as needing security clearances are evaluated by U.S. State Department

headquarters in Washington, D.C., which receives information from the referring post and reviews it with other government agencies before issuing an approval or denial. On average, it now takes approximately six weeks for a student visa applicant who has been identified for security clearance to receive a decision. This period of time, though lengthy, is an improvement over the several-months-long wait that was routine for some time after September 11, 2001. The overwhelming majority of applications referred for security clearances are recommended for visa approval.

When an applicant is informed that he (or she, but most often he) must await additional processing (meaning the security clearance), he should make clear exactly where and when he can be contacted in case more questions arise either from the U.S. post or from Washington, D.C. Phone numbers and e-mail addresses should be provided both by a student and anyone of interest to the application, such as the school adviser. This information is practically the only thing that a student or scholar can do to ensure the speediest processing possible. Requests to expedite the security clearance process are rarely granted and then only when a case is deemed in the national interest (e.g., for a head of a foreign state to come to the UN General Assembly). If, however, the visa applicant or the school thinks there is a compelling reason to inquire why an application has been held up longer than six weeks, then an elected U.S. representative might be contacted as explained in further detail below.

Finally, a visa applicant who finds himself subject to a security clearance should be encouraged to make travel plans that do not compel his entry into the United States during his wait. In other words, if he knows he will have to wait up to six weeks outside the United States, then he should make lodging and flight arrangements to accommodate that period of time. Even better, one who advises international students or scholars should inform their prospective visa applicants even before they formally apply that a security clearance may be required at their interview.

For more information about security clearances, see the [2006 NAFSA Adviser's Manual](#), p. 955-967.

Applying for a Second Time

As an adviser, when a visa is denied, you may be able to speak directly with the student or scholar, but frequently you will be communicating with a third party. It is important to get as much information as you can directly from the applicant. You need to know where the visa interview took place (in some countries visas are issued in more than one city) and the date the interview took place. You need to look at the reason for denial by asking

- How did you explain your overall plan for your education?
- What questions did the consular officer ask?
- What information was provided to answer the officer's questions?
- What was the reason was given for the denial?

After every visa denial the applicant is given a form on which the officer has identified the reason for the denial. It is useful to have the student fax you a copy of this form if you are trying to help the student decide what to do next.

If a student or scholar wants to make a second attempt to obtain a visa you should help them focus on overcoming issues that may have been a problem at the first interview. For 214(b)

denials, consular officers often look for information that is materially different from what was posed in the refused application. Many consular officers will say that if there is no material change in a student visa application, then there is no point in reapplying. Material changes include, but are not limited to, new financial information, a new family situation, or a new proposed area of study. You might also recommend that the student or scholar answer the following questions before reapplying for the visa. These questions are currently posted on the [U.S. Embassy in Beijing Web site](#) concerning visa denials,.

- Did I explain my situation accurately?
- Did the consular officer overlook something?
- Is there additional information you can present to establish your intent to leave the U.S.? These might include:
 - What is the job market back home?
 - Is your boyfriend or girlfriend back home?
 - Do you have a bank account back home?
 - Do you have family back home?
 - Do you have a residence abroad that you will not abandon? In other words, do you have a home in your home country?
- Advise the student to show new documentation when reapplying for a visa.
- Advise the student to answer the questions honestly, and answer the questions the consul officer actually asks.

Frequently visa applicants or their friends will suggest a number of additional options to overcome a visa denial. These include:

School Contacting the Embassy on Behalf of the Applicant

In most cases, there is relatively little a school can do to overcome a visa denial. However, in some cases the student may report that the visa was denied for reasons that are questionable (i.e. student is told that a community college or ESL program is not acceptable, but an I-20 from a four year school would be accepted). In this situation the DSO may contact the Consular Section by fax or e-mail. Contact information for U.S. Embassies is available on the [U.S. State Department's Web site](#).

You need to provide the applicant's name, type of visa application and date of interview. It is wise to inform the officer that you are aware of the general regulations governing visa denials, but you are requesting clarification regarding the denial of this specific visa application. If you have a specific concern, then you might diplomatically mention it in your fax or e-mail. Consular offices are not required to respond to such inquires, and, depending on the work load they face, it may be a matter of days or weeks before you get a response.

Contacting the U.S. Department of State

The Consular Section in the U.S. Department of State in Washington, DC does not have information about specific cases and cannot overturn a visa denial. However, if you have not received a response from the Embassy or you have seen a pattern of questionable denials, then you may contact the U.S. State Department in Washington, DC. They will contact the post in question and inquire regarding your student or scholar's situation. A visa denial will rarely be overturned by this inquiry, but it may result in more positive results for future applicants. They

may direct that a visa refusal be overturned on a point of law that has been misapplied, but questions of an individual's judgment are best referred to the officer's supervisor.

Contacting a U.S. Ambassador

Occasionally a student or scholar may have a friend or colleague who will suggest that the school might contact the U.S. ambassador in that the country where a student visa application has been filed. An ambassador may inquire regarding the reason for a visa denial, but they do not have the authority to overturn a decision or mandate that the decision be overturned. Consular officers possess sole adjudicatory authority at the visa interview, so ambassadors are most reluctant to question their decisions, much less overturn them.

Contacting a U.S. Senator or Congressman

It is not uncommon for a U.S. citizen to suggest that a U.S. senator or U.S. congressman be contacted on behalf of the visa applicant. **This should be done as a last resort.** Members of Congress have the authority to request information about a visa denial, and the post must respond within 48 hours. Due to the fact that consular officers are generally overworked, Congressional inquiries add to the officer's workload and generally do not make the officer more inclined toward granting a visa. However, if you believe that a terrible disservice was done when a visa application was denied, then an elected U.S. representative such as a senator or congressman might be able to provide some assistance. It is very important to inform the applicant that the final decision rests with the post and a senator or congressman cannot insist that a visa be issued. In fact, too much pressure may work against the applicant.