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From: SECSTATE WASHDC
Action: ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE *ROUTINE*
E.O.: 13526
TAGS: CASC, CMGT, CPAS, KLI
Captions: SENSITIVE
Subject: Participation of Attorneys and Conduct of Third Party Attendees at Passport and CRBA Appointment Interviews Overseas

1. **(SBU) SUMMARY:** This is an action request (see paragraph 8). CA approved a new policy for attorney attendance at overseas U.S. passport and Consular Report of Birth Abroad (CRBA) appointment interviews. Attorneys are now permitted to attend appointment interviews at overseas posts, subject to certain parameters that apply to any third party attendee at an appointment interview. Consular sections should immediately post the policy in paragraph 7 on their websites and direct any questions to Ask-OCS-L@state.gov. FAM guidance to follow.
END SUMMARY.

2. (SBU) Because of the informal and relatively routine nature of passport and CRBA appointment interviews, and because applicants at posts overseas rarely seek to bring attorneys to these appointment interviews, the Department has not previously promulgated general guidance regarding the presence of attorneys at a U.S. passport or CRBA appointment interview overseas. Questions concerning third party attendee participation in passport and CRBA appointment interviews overseas have in the past been addressed by U.S. embassies and consulates on a case-by-case basis, based on their discretion and with support as needed from the Department. This approach allowed each post to tailor procedures to local conditions, ensure their resources were used effectively, and manage caseloads in an orderly fashion.

3. (SBU) CA has become increasingly aware, however, of the utility of Department-wide guidance on the participation of attorneys at passport and CRBA appointment interviews conducted at U.S. embassies and consulates overseas, and engaged relevant stakeholders to develop formal policy guidance. As a result, CA, L/CA, and DS drafted a policy on attorney attendance at passport and CRBA appointment interviews, set forth in Paragraph 7 below. This policy applies to all posts, effective immediately.

4. (SBU) There is no legal prohibition on the Department allowing attorneys to attend passport and CRBA appointment interviews where appropriate. Accordingly, the new policy specifically permits attorney attendance at such appointment interviews, at the initiative of a

client applicant and where it is feasible to do so, subject to certain parameters designed to ensure an orderly interview process and maintain the integrity of the adjudication of the application(s). As a general matter, as long as an attorney does not interfere with the ability of a consular officer to communicate directly with an applicant to obtain all information needed to adjudicate the application, and as long as the attorney otherwise does not obstruct the administration and enforcement of the immigration and nationality laws, he or she may accompany a client to the passport or CRBA appointment interview. This policy does not apply to attorney or third party representation at visa application interviews, which remain subject to 9 FAM 603.2-9(a)(4).

5. (SBU) Consular officers should carefully document the presence and identity of any attorney or other third party attendee accompanying the applicant in consular notes of the appointment interview. Additionally, consular officers must obtain a signed Privacy Act Waiver (e.g., DS-5505) from the applicant before beginning the appointment interview and discussing information in or from the application or other Department records in the presence of any third party attendees. Consular officers should also document any disagreements or non-compliance with the new policy and/or disruptive behavior on the part of any attendee accompanying an applicant to a passport and/or CRBA appointment interview, including any action consular personnel take in response. Disruptive behavior may include yelling at, attempting to intimidate, or otherwise abusing a consular officer or staff, and/or engaging in any conduct that threatens U.S. national security or the physical security of the embassy or consulate or personnel under Chief of Mission (COM) security responsibility. Refer the case to Ask-OCS-L@state.gov if and when an interview is terminated on the grounds of a disruption, or whenever there is indication of an intention to file a lawsuit.

6. (SBU) Note: The security of staff under COM security responsibility, visitors to U.S. missions, sensitive information, and COM facilities and property remains a high priority. The procedures noted in this cable must not circumvent or hinder COM security policies at post. Consular officers must coordinate with Regional Security Officers (RSOs) and ensure attorney attendance at passport and CRBA appointment interviews fully complies with post's security policies. Nothing in this cable should be construed to permit attendance at passport and CRBA appointment interviews should the accompanying attendee fail to comply with post's security policies or RSO instructions.

7. (U) THIRD PARTY ATTENDANCE AT PASSPORT AND CRBA APPOINTMENT INTERVIEWS

Generally, immediate family members may accompany passport or CRBA applicants to their appointment interviews at a U.S. embassy or consulate, and all minor children must be accompanied by a parent or guardian. Passport or CRBA applicants also have the option of being accompanied by an attorney at their appointment interview. Attendance by any third party, including an attorney, accompanying an applicant is subject to the following parameters designed to ensure an orderly appointment interview process and to maintain the integrity of the adjudication of the application(s):

- o Given space limitations in the consular section, not more than one attendee at a time will be allowed to accompany an applicant (or the applicant's parent or

- guardian if the applicant is a minor).
- Attendance by an attorney does not excuse the applicant and/or the minor applicant's parent or guardian from attending the appointment interview in person.
- The manner in which a passport or CRBA appointment interview is conducted, and the scope and nature of the inquiry, shall at all times be at the discretion of the consular officer, following applicable Departmental guidance.
- It is expected that attorneys will provide their clients with relevant legal advice prior to, rather than at, the appointment interview, and will advise their clients prior to the appointment interview that the client will participate in the appointment interview with minimal assistance.
- Attorneys may not engage in any form of legal argumentation during the appointment interview and before the consular officer.
- Attendees other than a parent or guardian accompanying a minor child may not answer a consular officer's question on behalf or in lieu of an applicant, nor may they summarize, correct, or attempt to clarify an applicant's response, or interrupt or interfere with an applicant's responses to a consular officer's questions.
- To the extent that an applicant does not understand a question, s/he should seek clarification from the consular officer directly.
- The consular officer has sole discretion to determine the appropriate language(s) for communication with the applicant, based on the facility of both officer and applicant and the manner and form that best facilitate communication between the consular officer and the applicant. Attendees may not demand that communications take place in a particular language solely for the benefit of the attendee. Nor may attendees object to or insist on the participation of an interpreter in the appointment interview, to the qualifications of any interpreter, or to the manner or substance of any translation.
- No attendee may coach or instruct applicants as to how to answer a consular officer's question.
- Attendees may not object to a consular officer's question on any ground (including that the attendee regards the question to be inappropriate, irrelevant, or adversarial), or instruct the applicant not to answer a consular officer's question. Attendees may not interfere in any manner with the consular officer's ability to conduct all inquiries and fact-finding necessary to exercise his or her responsibilities to adjudicate the application.
- During a passport or CRBA appointment interview, attendees may not discuss or inquire about other applications.
- Attendees may take written notes, but may not otherwise record the appointment interviews.
- Attendees may not engage in any other conduct that materially disrupts the appointment interview. For example, they may not yell at or otherwise attempt to intimidate or abuse a consular officer or staff, and they may not engage in any conduct that threatens U.S. national security or the security of the embassy or its personnel. Attendees must follow all security policies of the Department of State

and the U.S. embassy or consulate where the appointment interview takes place.

Attendees may not engage in any conduct that violates this policy and/or otherwise materially disrupts the appointment interview. Failure to observe these parameters will result in a warning to the attendee and, if ignored, the attendee may be asked to leave the appointment interview and/or the premises, as appropriate. It would then be the applicant's choice whether to continue the appointment interview without the attendee present, subject to the consular officer's discretion to terminate the appointment interview. The safety and privacy of all applicants awaiting consular services, as well as of consular and embassy personnel, is of paramount consideration.

8. (U) ACTION: All consular sections must post **only the guidance set forth in paragraph 7** on their embassy or consulate website, and may make it available to the public in other convenient forms.

9. (SBU) Amendments to the FAM reflecting this new policy are in the process of being drafted and will be circulated when ready. In the meantime, posts should direct any questions about the policy or its implementation to Ask-OCS-L@state.gov.

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