

NAVIGATING TO GUAM

By Richard W. Hamlin

Today, Guam remains most separated from its foreign neighbors not by ocean but by the ever growing body of U.S. immigration law. While we have enjoyed some exceptions (such as the now emasculated Guam visa waiver program), foreign nationals entering Guam are subject to the same legal requirements as those seeking entrance at a mainland port. Nevertheless, basic strategy can mitigate the barriers to trade and visit posed by our complicated immigration laws.

Immigration strategy requires familiarity with not just one set of legislation (the “Immigration and Nationality Act”), but the navigation of policy, regulation and practice of several very different government agencies. For example, both the Department of State and U.S. Citizenship and Immigration Services possess concurrent jurisdiction to grant visas, but each is restricted by geography. The State Department only issues visas through U.S. embassies and consulates abroad, while USCIS grants immigration benefits (such as a green card) only to those already within U.S. borders.

It is unquestionable that USCIS is the “friendlier” and preferred agency for applicants. There is no appeal for applicants denied visas at an embassy, and no guarantee that an attorney will be permitted to join

Nonetheless, some visa categories permit the applicants to counter official indifference with a practice I refer to as “embassy shopping” or “agency shopping.” If officials at the U.S. Embassy in Tokyo do not consider small Guam watersports businesses to be “substantial” enough to merit an E-2 treaty investor visa, applicants may find a more understanding audience at the Sydney consulate.

Nationals of visa waiver program countries do not need a visa to enter Guam, so long as they originally intend only a temporary vacation. Once here, they may then decide to marry a U.S. citizen and adjust their status through USCIS — acquiring a green card without ever leaving Guam or dealing with an embassy or K-1 fiancé visa.

If officials at the U.S. Embassy in Tokyo do not consider small Guam watersports businesses to be “substantial” enough to merit an E-2 treaty investor visa, applicants have found a more understanding audience at the Sydney consulate.

for the interview. The State Department is tasked with representing the United States abroad and, depending upon country, it must field daily a deluge of unqualified applicants seeking a better life in America. This may result in embassy officers adopting a more cynical approach, profiling applicants based upon physical appearance, social standing and other cultural and economic factors which vary from post to post.

While the Department of State post selection is not available for certain visas (including H-2B), an understanding of the disposition of specific State Department posts remains important for securing a visa abroad. For example, several large and sophisticated Vietnamese marriage-fraud rings were recently dismantled by mainland law enforcement. Consequently, applicants at the U.S. Embassy in Saigon for nuptial



visas must be prepared for an unusually high level of scrutiny as to the bona fide nature of their relationship. Similarly, a B-2 tourist visa applicant cannot expect a “show money letter” (contrived evidence of assets) openly peddled in Quiapo, Manila to persuade a jaded U.S. Embassy official in the Philippines that the requisite home-country ties are met.

While immigration laws and regulations are clearly published, one must also plan for the unspoken practical reality of bureaucracy and politics. As such, individuals and employers often find themselves marooned when traversing the uncharted waters of the visa process. A good immigration attorney can map out a route to Guam for your employees, investors and family.

— Richard W. Hamlin practices immigration and business law in Guam and Florida. He may be contacted at (671) 989 7677 or rwhamlin@guamimmigration.com.