



Legal Corner - To B or Not to B

By: Neelofer Syed, Esq.

In the recent past I have noticed an increased number of calls and emails from CityMasala readers and others inquiring about obtaining the temporary visit (B-2) visa for their relatives, friends and others wishing to come to visit the United States temporarily. Most of these people have already suffered denials of the B-1/B-2 visa from the U.S. Consulates.

While each query is specific in its nature, the general principles of the B-1/B-2 visa application remain the same. Similarly most of the time the reasons of denial are also very similar. In this article I will discuss the topic of B-1/B-2 visa in order to address the concerns of a large number of people.

The process of obtaining B-1/B-2 visa involves direct submission of the application at the U.S. consulate. A holder of B-1 or B-2 visa, once in the U.S may apply for the extension of stay upon showing a good cause, and may also apply to change his/her status in a different category. Similarly a foreign national in the U.S. in another visa status may also apply to change his status into B-1 or B-2 category.

I will first touch upon the B-2 visa and will leave the details of B-1 visa for the second part of this article. The B-2 visa is generally intended to temporarily admit visitors in the U.S for pleasure or to engage in recreational activities. Such visitors are not permitted to accept employment during the period of their stay in the U.S.

B-2 visa can be issued for the following activities:

- ✓ Tourism;
- ✓ Make social visits to relatives or friends;
- ✓ Medical reasons i.e. coming to the U.S. for diagnosis or treatment;
- ✓ Participation in social events like, conferences, conventions, convocations of fraternal, social or service organizations; and
- ✓ Accompanying one's partner "significant other", the term "significant other" also includes same sex partner.

In addition to the above there are also some other aliens that are classifiable as B-2 under special circumstances.

The B-2 visa can be one of the most difficult and complex visas to deal with because the issues and factors involved in the decision of the U.S. Consulate to issue the visa are almost entirely subjective. Not to mention that the decision of the Consular Officer is also not subject to any "review" or formal appeal, however, if the reasons of denial are known it will help the applicant to present better evidence in subsequent visa application.

B-2 is a non-immigrant visa which requires the applicant to have a pure non-immigrant intent. There are some key factors that must be present in a case for the Consular Officer to make a positive determination regarding the eligibility of the visa applicant. The Consular Officer must be satisfied that:

1. The applicant intends to leave the U.S. at the end of his/her temporary stay. A round trip ticket can be submitted by the applicant to establish this.
2. The applicant is legally and otherwise permitted to come back to his/her home country or another country at the end of his/her stay. What this means is that the applicant is not being sent on exile or will not be restricted legally or otherwise to come back to the country of his permanent residence. The Consulate will conduct the appropriate security checks.
3. Adequate financial arrangements have been made out to facilitate the applicant in his/her travel and activities while in the U.S. It is important to take bank statements and any other documents establishing financial ability to satisfy this requirement.
4. The applicant has a residence in his/her home country and other country of permanent residence which s/he has not and will not abandon. Documents pertaining to the ownership of home or lease/

rent deed can be submitted in this connection.

5. The applicant must have adequate funds to avoid unlawful employment to complete the purpose of his/her travel. Again bank statements as well as any financial statements from the host in U.S (if the applicant has any) can be submitted. Sometimes the submission of Form I-134 by the U.S host is also advised.
6. The applicant must have realistic and specific plans for the entire period of proposed visit. It is important to present a definite itinerary. If the applicant intends to travel within U.S the proposed dates as well as evidence of any air or hotel bookings (if applicable) can be included. In addition if the trip is for single purpose then a statement in that regard can be helpful.
7. The applicant has strong ties in his/her home country or other country of permanent residence like permanent employment; business or financial control; property ownership; family ties remaining at home etc. In this connection a current employment verification letter, pay stubs, evidence of having family (spouse/children/parents etc), and other documents concerning professional and cultural associations should be taken to the Consulate at the time of the interview.
8. For persons seeking medical treatment in U.S., a letter/diagnosis from the local doctor explaining the ailment and the need to get treatment in U.S. and a statement from a U.S. doctor or institution concerning the proposed medical treatment/appointment.

The Consular Office issuing the B-2 visa has unfettered discretion to determine the eligibility of the applicant. What make the process more difficult is the casual nature of the interview of the B-2 applicants by the Consular Officer. As a result of casual questioning the applicant may not get proper opportunity to satisfy the Consular Officer concerns regarding the purpose and temporary nature of the proposed visit hence resulting in the denial of the visa.

It is therefore advised that the applicants be proactive and not hesitate throwing in additional useful information (voluntarily) at the time of the interview. In addition the applicant must make sure that the information they are providing should facilitate the Officer arriving at a positive determination of the applicant's eligibility and not the other way round. As such, it is very important to exercise proper care in putting together the supporting documents/relevant evidence to be submitted to the Consular Officer at the time of the interview.

In the next part we will discuss the B-1 visa. In the end I am including an answer to one general question that I received from a reader. Please note the question and answers are printed ONLY if they DO NOT include unique circumstances. In addition we conceal the identity if any personal information is included.

Question from Reader:

Dear Ms. Syed:

I need help regarding two issues:

1- I came to US 3 n half years ago on H4 visa. My husband and I have our Green Cards. We got it 1 year ago and we have two children

(Continued on page 30)

Legal Corner - To B or Not to B

(Continued from page 24)

who are born here. My question is if before filing for our citizenship, like in another 4 years we (me and my husband) are no more together, would I not be able to file my citizenship because I am not with him anymore and I got my green card because of him.

2. I applied for my parents visit visa almost 8 months ago. When they went to Islamabad for their interview they got their approval and were expecting to get their passport in few weeks, but even after 8 months they have not received their visa, and whenever they go to ask, they are told your case is in process. Please help me and let me know what can I do from here or what they need to do in order to get their passports.

Thank you, (Name Concealed for Protection of Privacy)

Answer:

Dear Reader:

To answer your questions:

1. Even though you obtained your green card as the derivative beneficiary of your husband, you are entitled to keep it even though you are

separated/divorced. In other words, you should be able to file for your citizenship after 4 years and 9 months from the date of becoming a permanent resident.

2. Regarding your parents. I am assuming that you facilitated their process for their visitors B-2 visa because being a green card holder you can not file for their residency. So assuming that your parents have applied for the visitor's visa, the reason it is taking so long might be the clearance on security check.

U.S. consulate is required to run a security clearance on each applicant before issuing a visa. Since the U.S consulate is relying on third parties to get the security clearance, some cases take longer than others. My suggestion is that your parents keep following up and if possible, write a letter to the Consulate General regarding this delay.

I hope I was able to address your concerns. Feel free to contact me with any other questions that you may have.

Ms. Syed is a practicing attorney with Perez and Associates, specializing in immigration law. Please send your questions concerning immigration issues to legal@citymasala.com



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