

MARKETPLACE

JOURNAL

IMMIGRATION CORNER



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(PART 1 OF 2)

MANY people applying for visitor, student, or certain other non-immigrant visas are saddened when their visa application is refused. At their interview, they are handed a sheet of paper, advising them that their visa was refused under Section 214(b).

Some of these visa applicants have a very urgent need to go to the US, such as a sickly or dying relative, attend a funeral, etc., and cannot understand why the consul would refuse a visa under such heart-wrenching circumstances. They become even more frustrated when

Visa refusals under Section 214(b)

an acquaintance is issued a visitor's visa in order to go to Disneyland, or because that acquaintance told the consul that they want to go shopping on Rodeo Drive. How is it possible that one person can be issued a visitor visa to go shopping, but another person is refused the visitor's visa in order to attend a close relative's funeral? In this article, I will discuss various aspects of a Section 214(b) refusal.

What is Section 214(b)?

Section 214(b) is part of the Immigration and Nationality Act (INA), which states in relevant part that: "every alien (other than certain non-immigrant applicants) shall be presumed

to be an immigrant until he establishes 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, that he is entitled to a non-immigrant status..."

In other words, every person applying for a non-immigrant visa is presumed to be intending to immigrate to the US, unless they can prove otherwise. It is similar to guilty until you prove you're "innocent" of intending to immigrate to the US. Accordingly, per guidance cables from the Department of State (DOS) "all visa applicants are presumed to be immigrants (and hence not eligible for non-immigrant visas) unless and until they satisfy the con-

sular officer that they qualify for one of the non-immigrant visa categories..." such as visitor, student, etc.

What are some of the non-immigrant visa categories that are subject to Section 214(b)?

Some of the non-immigrant visa categories that are subject to Section 214(b) (requiring that they prove or demonstrate non-immigrant intent) are visitors (B), investors (E), students (F), entourage of entertainers (O-2), to name a few. However H-1 (workers in specialty occupations) L (intra company transferees), are not subject to Section 214(b). They can even be under petition for an immigrant visa, and it will not affect their eligibility for an H or L non-immigrant visa.

Why was my visitor's visa refused?

One of the most important requirements of eligibility for a visitor's visa is demonstrating non-immigrant intent. Thus, "failure to possess the intent not to abandon a foreign residence results in denial of a B visa." In other words, under Section 214(b), the reason you want to go to the US is not as important as demonstrating, to the satisfaction of the consul, that you will return to the Philippines. You must demonstrate sufficient roots, ties, and connections to the Philippines, that you would want to return, vs. getting to the US, going TNT, and engaging in unauthorized work. That is why some people are issued a visa in order to go to Disneyland (because they may live in Forbes Park, have lots of property and money, several yayas, etc. such that they have a very good life in the Philippines, and have a reason to return), but a person wanting to attend a funeral may be unemployed, living off remittances from their family

in the US, may be young and single and/or the last child left behind in the Philippines because they had aged out, etc. In that situation, the visa applicant may have a strong incentive to go TNT, as there is not really that much waiting for them if they return to the Philippines vs. opportunities awaiting them in the US.

In a future article, I will discuss more about visa refusals under Section 214(b).

Michael J. Gurfinkel is licensed, and an active member of the State Bar of California and New York. All immigration services are provided by, or under the supervision of, an active member of the State Bar of California. Each case is different. The information contained herein (including testimonials, "Success Stories", endorsements and re-enactments) is of a general nature, and is not intended to apply to any particular case, and does not constitute a prediction, warranty, guarantee or legal advice regarding the outcome of your legal matter. No attorney-client relationship is, or shall be, established with any reader.

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A LEADER'S WAY

by JOHN C. MAXWELL
Inquirer.net

Principle-centered planning

IF YOU'VE ever gone white-water rafting, then you know the importance of planning. Whenever the raft approaches rapids, the guide has to plan the best route to navigate safely through them. If the guide fails to plan, then the raft can easily smash into a rock or capsizes.

Four types of planning

Passive planning happens when leadership allows the raft to travel downstream at the mercy of the current rather than steering, rowing, and turning. This kind of non-planning eventually leaves you unprepared to face whitewater rapids. Worse yet, in the absence of a plan, the current may take the raft over the edge of a dreaded waterfall.

Panic planning happens only after the raft is in trouble. At this point, all of the organization's resources are scrambled in a reactionary pattern in an attempt to solve the problem. With panic planning, you may or may not come out alive and well, but you are guaranteed some bumps and bruises.

Scientific planning is viable, but can be laborious, mechanical, and often ends up abandoned in the process. Imagine if a raft guide constantly tried to measure the depth of the water, the distance between rocks, the wind speed and the water current.

Although the information might be helpful, oftentimes the water would be moving too swiftly to take the measurements. In a like manner, leaders often have to respond to change in an instant. There's no time to collect scientific data on all of the variables before deciding which course of action is best.

Principle-centered planning is the key to effectiveness. It is the artistic or leadership approach. Principle-centered planning recognizes that life in general (and people in particular) can't be graphed on a chart, but sees that planning still remains essential.

Why people don't plan

You don't have to be in leadership very long to learn that planning pays off. Even so, many people don't plan. Here are four reasons why people neglect planning.

1) They don't possess planning skills or knowledge.

Some people don't have an innate ability to project themselves into the future. They've never been taught to prioritize their day or to prepare for

tomorrow. 2) They're caught in the tyranny of the urgent, and they believe that they don't have time.

Some people allow themselves to be pulled into the vortex of minutiae. As a consequence, they end up buried under a sea of details, and they can't pull their heads above water long enough to plan.

3) They don't like the perceived hassle of planning.

Instead of planning one event at a time, they become overwhelmed by the mountain of things to plan.

Why planning is essential

4) Many people don't plan because the outcome varies greatly.

"After all," they say, "When I do make a plan, it normally doesn't end up happening, so why bother?"

We all have desires and dreams, yet we'll never accomplish our dreams in life just by wanting them bad enough. Planning bridges the gap between our desires and dreams by calling us to action.

As noted by William Danforth, "No plan is worth the paper it is printed on unless it starts you doing something." A concrete plan supplies us with tangible steps to take in the direction of our dreams.

Principle-centered planning

Principle-centered planning allows us to be flexible without losing focus.

Principle-centered planning allows us to be creative without losing concentration.

Planning is the structure. Principle-centered planning is the flesh.

Planning is the roadmap. Principle-centered planning is the movement.

Planning is the idea. Principle-centered planning is the action.

Planning is the paper. Principle-centered planning is the power.

Summary

It's been said, "By failing to plan, you plan to fail." I wholeheartedly agree. People who ignore planning handicap themselves and stifle their effectiveness.

The good news about planning is that it's a relatively simple discipline. Anyone can do it. No PhD is required to make a solid plan - only a window of uninterrupted time for focused thought. ■

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BUSINESS

Quote of the Week

Sometimes it is better to lose and do the right thing than to win and do the wrong thing.
- Tony Blair, UK Prime Minister