



# CLIENT ALERT

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## IMMIGRATION

### CONSULAR ELECTRONIC APPLICATION FORMS ADD SOCIAL MEDIA HISTORY QUESTIONS – HEADS UP VISA APPLICANTS!

by Kathleen Campbell Walker

Applicants for immigrant and nonimmigrant visas must use the Department of State's [Consular Electronic Application Center](#) (CEAC) to complete on-line forms for nonimmigrant (DS-160) or immigrant (DS-260) visas. This week, applicants have started experiencing a new question on the form related to their social media presence. A screen shot of the question is inserted below.

[Articles](#) about this phenomenon circulated last March based on an announcement by the Trump administration that would affect approximately 14 million nonimmigrant visa applicants and 710,000 immigrant visa applicants. The Federal Register notices regarding these changes were published as to the DS-160 in March of 2018 ([83 Fed. Reg. 13807](#)) and the DS-260 in May of 2018 ([83 Fed. Reg. 13806](#)). The proposal covered [20 social media platforms](#). Most were based in the United States such as: Facebook, Flickr, Google+, Instagram, LinkedIn, Myspace, Pinterest, Reddit, Tumblr, Twitter, Vine, and YouTube. The Chinese sites noted were: Douban, Qzone (QQ), Sina Weibo, Tencent Weibo, and Youku. The Russian social network listed was: Vkontakte (VK). In addition, Twoo was included, which was created in Belgium. Finally, Ask.FM, a question-and-answer platform based in Latvia was also included. These platforms are all listed in the new form revisions.

It is important to consider this change in light of a recent study published by the [Brennan Center for Justice on May 22, 2019](#), entitled, "Social Media Monitoring: How the Department of Homeland Security Uses Digital Data in the Name of National Security." This study outlines how even the Department of Homeland Security concluded that its five social media monitoring programs piloted in 2016 were largely ineffective in identifying threats to national security. In addition, the algorithms applied by agency in social media monitoring were found to be susceptible to bias. On May 29, 2018, the [American Immigration Lawyers Association](#) joined privacy, civil rights, civil liberties and immigrants' rights organizations in a joint comment opposing the Department of State's social media collection proposed regulations concerning visa applicants citing First Amendment and privacy concerns among others. These references outline the numerous valid concerns related the use of social media monitoring and its lack of value from a national security perspective to date.

#### What will these changes cause?

Visa applicants and their sponsors, as applicable, should prepare for the additional time it will take to complete the relevant on-line visa applications as well as a potential increase in administrative processing delays as the date provided is mined. Visa refusals could be expected to increase as well.

#### What if an applicant's answers are incorrect?

It is important to remember that the DS-160 and DS-260 forms are submitted by the applicant under penalty of perjury as to the content. The Department of State's [Foreign Affairs Manual](#) (FAM) provides in 9 FAM 302.9-4 that a visa may be denied if the applicant makes a willful misrepresentation in an application to obtain a visa. The failure to volunteer information or silence does not, however, "in itself" constitute a misrepresentation. 9 FAM 302.9-4(B)(3)(b).

#### So what if an applicant refuses to answer?

You can see below that the form question really does not provide an option to refuse to answer. If the applicant chooses the option of, "none," as his or her reply when it is not a truthful answer, the response could expose in certain circumstances the applicant to denial based on a permanent inadmissibility ground without prior approval of a waiver, if available.

#### What to do?

Remember that the question relates to a five-year history. Visa applicants may still be wise to reduce their social media participation in light of this change to protect their privacy. It is important to consider what the Department of State means by its question as to "use" of a social media platform to "collaborate, share information, and interact with others."

For example, if I watch a YouTube video, am I really collaborating or interacting with others? What if I, however, do have an established YouTube account? As these new forms are rolled out by the Department of State, it will be important for applicants, who are uncertain of how

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to answer the question, to consider advising the consular officer of any doubts as to how to respond to the question at their interview to avoid misunderstandings that could lead to serious consequences. Employers should also consider providing advisories regarding this development as well to their foreign employees to reduce potential errors.

The image shows a screenshot of a web form titled "Social Media". The form asks, "Do you have a social media presence?" and provides instructions for users to list platforms and usernames used in the last five years. A dropdown menu is open, showing a list of social media platforms including ASK FM, DOUBAN, FACEBOOK, FLICKR, GOOGLE+, INSTAGRAM, LINKEDIN, MYSPACE, PINTEREST, QZONE (QQ), REDDIT, SINA WEIBO, TENCENT WEIBO, TUMBLR, TWITTER, TWOO, VINE, VKONTAKTE (VK), YOUKU, YOUTUBE, and NONE. To the right of the form, there is a "Help: Social Media" section with detailed instructions on how to fill out the form, including a "Next: Passport >" button.

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