



Medical-Legal Partnership for Children in Hawai'i

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Legal Memo

To: Honorable Henry Shrew, Consul General at the Federated States of Micronesia
Consulate Office in Honolulu, Hawai'i; Honorable Isabela Silk, Consul General at the
Republic of the Marshall Islands Consulate Office in Honolulu, Hawai'i
From: Catherine Chen, Esq., Immigration Attorney at Medical-Legal Partnership Hawai'i
Date: February 11, 2022
Re: Form I-94

The I-94 is an Arrival/Departure Record issued by the U.S. Department of Homeland Security (DHS) Customs and Border Protection (CBP) to non-citizens who are admitted to the United States.¹ The government has moved the I-94 Arrival/Departure Record electronically, as of April 26, 2013,² and CBP no longer issues paper versions at air and sea ports of entry.³

Citizens of the Federated States of Micronesia (FSM) and Republic of the Marshall Islands (RMI) can enter, live, and work in the United States with their passport and their I-94, under the Compact of Free Association (COFA) Act of 1985 (Public Law 99-239).⁴ The I-94 is a critical immigration document for citizens of FSM and RMI, and it does not have an expiration date. If employers do not accept these valid documents from FSM and RMI citizen employees, employers may be in violation of anti-discrimination provisions.⁵

Because it is actually an Arrival/Departure Record, there has been some confusion about the Form I-94's appearance. This memo seeks to clarify that confusion.

¹ "The Department of Homeland Security (DHS) issues Form I-94, Arrival/Departure Record, to aliens who are: Admitted to the U.S.; Adjusting status while in the U.S.; or Extending their stay." *Form I-94, Arrival/Departure Record, Information for Completing USCIS Forms*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/forms/all-forms/form-i-94-arrivaldeparture-record-information-for-completing-uscis-forms> (last visited Oct. 27, 2021).

² *Form I-94 Automation Webinar: Frequently Asked Questions*, U.S. DEPT. OF HOMELAND SECURITY (Apr. 30, 2013), <https://studyinthestates.dhs.gov/2013/04/form-i-94-automation-webinar-frequently-asked-questions>.

³ *I-94 Automation Fact Sheet*, U.S. CUSTOMS AND BORDER PROTECTION <https://www.cbp.gov/document/fact-sheets/i-94-fact-sheet> (last visited Oct. 27, 2021).

⁴ *Status of Citizens of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES <https://www.uscis.gov/sites/default/files/document/fact-sheets/FactSheetVerifyFASCitizens.pdf> (last visited Oct. 27, 2021) ("FSM/RMI Fact Sheet," attached as Appendix B).

⁵ *Citizens of the Federated States of Micronesia (FSM), the Republic of the Marshall Islands (RMI), and the Republic of Palau Have the Right to Work Without Facing Discrimination: What Employers Should Know*, U.S. DEPT. OF JUSTICE, <https://www.justice.gov/crt/page/file/924571/download> (last visited Oct. 27, 2021).

First, the notations on I-94s for citizens admitted under COFA may be different over time. According to USCIS, “The exact notation may vary and is subject to change, but at the present time it typically states ‘CFA/FSM’ for an FSM citizen and ‘CFA/MIS’ for an RMI citizen.”⁶

Second, the physical form of the I-94 has variation as well.

1. For individuals who entered before the shift to electronic I-94s on April 26, 2013, the I-94 is a piece of paper with handwritten information. A general example is below:

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

Departure Record

Admission Number
442415050 21

10 JUL 15 2009 3393

12. Family Name
SUMITRA

13. First (Given) Name
MAIRN

20. Birth Date (MM/DD/YY)
11/30/57

21. Country of Citizenship
PHILIPPINES

See Other Side

CBP Form I-94 (0508)
STAPLE HERE

2. For individuals who entered after the shift to electronic I-94s on April 26, 2013, individuals may print the I-94 from the CBP website, at <https://i94.cbp.dhs.gov/I94/-/recent-search>. However, this is only available on the website for ten years after the date of admission. Note that CBP recently changed the availability from five to ten years. A general example is below:

U.S. Customs and Border Protection
Securing America's Borders

Get I-94 Number I-94 FAQ

Admission (I-94) Number Retrieval

Admission (I-94) Record Number: 69000888062

Admit Until Date (MM/DD/YYYY): 10/10/2012

Details provided on Admission(I-94) form:

Family Name: LI

First (Given) Name: LYDIA

Birth Date (MM/DD/YYYY): 01/01/1990

Passport Number: P123123213

Passport Country of Issuance: Mexico

Date of Entry (MM/DD/YYYY): 04/11/2012


Class of Admission: B1

Individuals can visit www.cbp.gov/I94 to retrieve a copy of their electronic Form I-94.

⁶ FSM/RMI Fact Sheet, *supra* note 3, at 3.

3. After ten years, when the CBP website no longer includes a copy of the I-94, USCIS instructs individuals to request the I-94 through the Freedom of Information Act (FOIA),⁷ at <https://foiaonline.gov/foiaonline/action/public/request>. The FOIA results look like a database entry and are accompanied with a letter by CBP. A general example is below:

Admission Code	Admission Number	AFT - Document Type	Arrival Port	Arrival Date	Citizenship - Country Name	Date of Birth	Departure Date	Flight Number	First Name	Last Name	Passport Number	Student Indicator
		I-94	HONOLULU, HI, POE									
		I-94	HONOLULU, HI, POE									

 U.S. Customs and Border Protection
1300 Pennsylvania Avenue NW
Washington, DC 20229

Dear [REDACTED]:

This is a final response to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP) for entry-exit and/or I-94 records.

CBP is granting your request under the FOIA, Title 5 U.S.C. § 552. After carefully reviewing the responsive documents, CBP has determined that they are approved for release in their entirety, no deletions or exemptions have been applied.

If you have a FOIAonline account, you MUST log into your account to retrieve your responsive records. After logging in, click on "View My FOIA Requests". Requests that have new, unread correspondence have a mail icon next to the tracking number.

This completes the CBP response to your request.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact CBP's FOIA Public Liaison, Charlyse Hoskins, by sending an email via your FOIAonline account, mailing a letter to 90 K St. NE MS 1181, Washington DC, 20229 or by calling 202-325-0150. The FOIA Public Liaison is able to assist in advising on the requirements for submitting a request, assist with narrowing the scope of a request, assist in reducing delays by advising the requester on the type of records to request, suggesting agency offices that may have responsive records and receive questions or concerns about the agency's FOIA process. Please note file number CBP-2020-040139 on any future correspondence to CBP related to this request.

4. For individuals who are issued the I-94 document by USCIS through Form I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document (\$445 with no fee waiver), the document comes as a piece of paper that is often detachable. A general example is below:

PLEASE TEAR OFF FORM I-94 PRINTED BELOW, AND STAPLE TO ORIGINAL I-94 IF AVAILABLE

Detach This Half for Personal Records

Receipt # MAC-11-027-
I-94# 992 21
NAME GUPTA, BHAVNA
CLASS H4
VALID FROM 03/26/2011 UNTIL 09/30/2013
PETITIONER: BHAVNA
PUNSVILLE CA 94089

92 21
Receipt Number MAC-11-027-
Immigration and Naturalization Service
I-94
Departure Record Petitioner:
14. Family Name
15. First Surname Name
16. Date of Birth
17. Country of Birth
180

Form I-797A (Rev. 10/31/05) N

⁷ "I-94 records that are older than five years can be requested via a Freedom of Information Act (FOIA) request with CBP, rather than on the website." *Information for SAVE Users: How to Verify Citizens of Palau, the Federated States of Micronesia and the Republic of the Marshall Islands*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Sep. 2020), at 1 n.3, https://save.uscis.gov/web/media/resourcesContents/CFA_MIS.pdf (attached as Appendix A). Note that this fact sheet was written before the recent change from a five-year to ten-year limit for I-94s to remain on the CBP website.

Appendix A



Information for SAVE Users: How to Verify Citizens of Palau, the Federated States of Micronesia and the Republic of the Marshall Islands



U.S. Citizenship
and Immigration
Services

FACT SHEET

Information for SAVE Users: How to Verify Citizens of Palau, the Federated States of Micronesia and the Republic of the Marshall Islands

Background

The Compacts of Free Association (COFA) are agreements that established free association between the United States and the Federated States of Micronesia (FSM), the Republic of the Marshall Islands (RMI), and the Republic of Palau (PAL) (collectively referred to as the Freely Associated States, or FAS). FAS citizens are not citizens or nationals of the United States. However, FAS citizens admitted to the United States under the Compacts may reside, work and study in the United States **for an unlimited length of time**.¹

Travel documentation and Admission to the United States

FAS citizens arriving at a U.S. port of entry may apply for admission as nonimmigrants. To be admitted to the United States, FAS citizens must possess a valid, unexpired passport from their country of citizenship. Under the Compacts, a **visa is not required**. Upon admission to the United States, FAS citizens receive an admission stamp in their passport from U.S. Customs and Border Protection (CBP). The exact stamp notation will vary, but it typically states “CFA/PAL” (Compact of Free Association/Palau), “CFA/FSM” (Compact of Free Association/Federated States of Micronesia), or “CFA/MIS” (Compact of Free Association/Republic of Marshall Islands). Some older versions may be marked “CFA/RMI” for an RMI citizen. The admission period will indicate D/S (duration of status).²

Prior to April 30, 2013, CBP may have issued Form I-94 Arrival/Departure Record to FAS citizens following admission into the United States, which would also bear the admission stamp and notations listed above. However, since April 30, 2013, FAS citizens are issued an electronic I-94, which can be accessed and printed by visiting <https://i94.cbp.dhs.gov/I94/#/home>.³

¹This Fact Sheet is limited to verification of FAS citizens admitted to the United States as nonimmigrants under the Compacts, which is most, but not all, FAS citizens in the United States. In some cases, FAS citizens may have a different status under U.S. immigration law, such as lawful permanent resident. Those cases should be handled under normal SAVE procedures relating to verification of that status.

²Duration of status indicates that the individual is authorized to remain in the United States as long as he or she maintains a valid status.

³I-94 records that are older than five years can be requested via a Freedom of Information Act (FOIA) request with CBP, rather than on the website. In addition, if your I-94 cannot be obtained from the CBP website, it may be obtained by filing Form I-102 with USCIS.

The printouts replace the paper form and can be used to verify immigration status through SAVE. SAVE can verify immigration status using an FAS citizen’s foreign passport and Form I-94 or I-766 Employment Authorization Document (EAD).

SAVE Verification Process for FAS Citizens

To verify the status of FAS citizens, SAVE user agencies should enter the applicant’s biographic and immigration identifier information, into SAVE as indicated below.

Instructions for Verifying FAS Citizens

Applicant presents an Unexpired Foreign Passport which was presented to enter the United States	Input the following information: passport number, first and last name, date of birth and passport country of issuance.
Applicant presents an Unexpired Foreign Passport which was issued while the applicant was inside the United States and has not been presented to enter the United States	Ask the individual for the original Form I-94 and input the required information as explained below.
Applicant presents a Form I-94 (either paper version issued by CBP or computer printout)	Input the following information: I-94 number, first and last name and date of birth.
Applicant presents a Form I-94 in their Unexpired Foreign Passport	Input the following information: I-94 number and/or passport number, first and last name, date of birth and passport country of issuance.

For more information about citizens of Palau, FSM, or RMI, please visit the Fact Sheets under “Resources” in the SAVE system. SAVE user agencies seeking additional information about verifying the status of FAS citizens may contact SAVE at SAVE.Help@uscis.dhs.gov or 1-877-469-2563. For information concerning the REAL ID Act, please visit the [DHS REAL ID webpage](#).

Appendix B



Status of Citizens of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands



U.S. Citizenship and Immigration Services

FACT SHEET

Background

The Compact of Free Association (COFA) Act of 1985 (Public Law 99-239) approved a joint resolution between the United States, the Republic of the Marshall Islands (RMI), and the Federated States of Micronesia (FSM), which terminated U.S. trusteeship over the former Trust Territory of the Pacific Islands (TTPI). The resolution also established the FSM and the RMI as independent nations and established a special relationship between the United States and these nations. The COFA between the United States and the RMI took effect on Oct. 21, 1986, and the COFA between the United States and the FSM took effect on Nov. 3, 1986.

The COFA Amendments Act of 2003 (Public Law 108-188) amended the Compacts in a number of significant ways, including changing the immigration provisions. The Compacts, as amended, became effective for the RMI on May 1, 2004, and for the FSM on June 30, 2004.

Note: The United States also established a Compact of Free Association with the Republic of Palau effective on October 1, 1994. As the Compact with Palau has not been amended, this Fact Sheet applies only to the RMI and the FSM, and should not be used for any informational purpose regarding citizens of Palau. For information on Palau, see the U.S. Citizenship and Immigration Services (USCIS) Fact Sheet entitled “Status of Citizens of the Republic of Palau”.

Citizenship Status

Citizens of the RMI or FSM are not citizens or nationals of the United States.

Travel of Citizens of FSM OR RMI to the United States

Citizens of the FSM and RMI by birth and those citizens of the former TTPI who acquired FSM or RMI citizenship in 1986 are entitled under the Compacts to travel and apply for admission to the United States as nonimmigrants without visas.

However, admission is not guaranteed. Most grounds of inadmissibility under U.S. immigration laws, such as criminal convictions, are applicable.

If determined admissible under the Compacts, an FSM or RMI citizen may live, study, and work in the United States. The United States has the right to set terms and conditions on the nonimmigrant stay of FSM and RMI citizens. Currently, they are granted an unlimited length of stay.

Types of Citizens Who May Exercise Compact Privileges

In addition to citizens born in the FSM or RMI (birth citizen) and former TTPI citizens, the following citizens of the FSM or RMI may exercise privileges under the Compacts:

If determined admissible under the Compacts, an FSM or RMI citizen may live, study, and work in the United States. The United States has the right to set terms and conditions on the nonimmigrant stay of FSM and RMI citizens. Currently, they are granted an unlimited length of stay.

Types of Citizens Who May Exercise Compact Privileges

In addition to citizens born in the FSM or RMI (birth citizen) and former TTPI citizens, the following citizens of the FSM or RMI may exercise privileges under the Compacts:

- An immediate relative (spouse or unmarried son or daughter under 21 years of age) of a birth citizen or former TTPI citizen provided that the immediate relative:
 - Is a naturalized FSM or RMI citizen,
 - Has been an actual resident of the FSM or RMI (as applicable) for at least five years after naturalization and has a certificate of actual residence, and
 - In the case of a spouse, has been married to the birth citizen or former TTPI citizen for at least five years and did not enter into the marriage primarily to obtain immigration benefits under the Compacts;

or

- A naturalized citizen of the FSM or RMI whose name is included on a list provided by the FSM or RMI governments that names people who have been residents for five years as of April 30, 2003, and who continues to be an actual resident with a certificate of actual residence.

Any person who obtained an FSM or RMI passport under any investment, passport sale, or similar program is not entitled to any immigration privileges under the Compacts.

For employment eligibility and other purposes, once admitted into the United States, it does not matter whether the person is a birth citizen, a former TTPI citizen, or has another basis of eligibility under the Compacts.

Special Provision for Certain Family Members of RMI or FSM Citizens Serving in the Armed Forces or Active Reserves

An immediate relative (spouse or unmarried son or daughter under 21 years of age) of one of the types of FSM and RMI citizens listed above is admissible to the United States, provided the FSM or RMI citizen is serving on active duty in any branch of the U.S. armed forces, or in the active reserves.

Note that this provision may apply to qualifying family members even if they are not citizens of the RMI or FSM. References in this Fact Sheet to FSM or RMI citizens admitted under the Compacts include these individuals.

Adoptions – Bar on Admission

Any FSM or MIS citizen who is coming to the United States based on an adoption outside the United States, or for the purpose of adoption in the United States, is ineligible for visa-free admission as a nonimmigrant under the Compacts.

This bar on visa-free admission as a nonimmigrant applies to FSM or MIS citizens who are seeking to come to the United States for the purpose of placing a child for adoption in the United States. This restriction applies whether or not the child has already been born when the FSM or MIS citizen seeks visa-free admission as a nonimmigrant.

U.S. residents wishing to adopt an FSM or MIS citizen, or FSM or MIS citizens thinking of coming to the United States for any adoption-related purpose, should seek more information on the requirements of U.S. immigration law from a U.S. Embassy and U.S. Citizenship and Immigration Services (USCIS).

Anyone seeking to adopt a child abroad can find more information about the intercountry adoption process for particular countries at the U.S. [Department of State's Intercountry Adoption](#) webpage.

Travel Documentation

To gain admission to the United States under the Compacts, a citizen of the FSM or the RMI must possess a valid, unexpired FSM or RMI passport. Those applying for admission under the Compacts do not need a U.S. visa or any other travel documentation.

Individuals seeking admission under the Compacts (particularly those who are not birth citizens or former TTPI citizens) should bring copies of a marriage certificate, certificate of residency, a spouse's military orders, or other documents to demonstrate eligibility at the port of entry.

Documentation of Admission to the United States

After arriving at a U.S. port of entry, FSM and RMI citizens will receive admission stamps in their passports upon admission by U.S. Customs and Border Protection (CBP) to the United States under the Compacts. The admission stamp will reflect that the admission relates to the Compacts.

The exact notation may vary and is subject to change, but at the present time it typically states "CFA/FSM" for an FSM citizen and "CFA/MIS" for an RMI citizen. Some older versions may be marked "CFA/RMI" for an RMI citizen.

CBP also issues Form I-94, Arrival/Departure Record, to nonimmigrants, such as FSM and RMI citizens, upon their admission to the United States. Form I-94 is created electronically upon arrival to an air or sea port of entry. FSM and RMI travelers can obtain a paper version of their Form I-94 by logging on to [CBP's I-94 website](#) using identifying information and then printing the form. Both initial and replacement Forms I-94 may be obtained through CBP's website.

CBP will still issue paper versions of Form I-94 at air and sea ports of entry to those travelers who request paper versions when they arrive in the United States. These paper Forms I-94 will contain an admission stamp, but will not have an "admit until" date.

However, Forms I-94 printed from the CBP website will show an “admitted until” date of D/S (duration of status).¹

The 11 alphanumeric admission/departure characters on Form I-94 takes the place of the alien registration number (A-number) for those admitted under the Compacts who are not otherwise assigned an A- number. A person admitted under the Compacts should provide this Form I-94 number in place of an A-number in response to any official requests.

Either a printed Form I-94 or the admission stamp in the FSM or RMI passport is evidence of alien registration. All foreign visitors to the United States over the age of 18 (including FSM and RMI citizens) are required under penalty of law to have this evidence in their personal possession at all times.

Terms and Conditions of Admission

Persons admitted under the Compacts must abide by any terms and conditions of admission prescribed by the Department of Homeland Security, and must obey the laws of the United States and of the state and locality in which they reside or are present.

People who, following admission to the United States under the Compacts, cannot show that they have sufficient means of support in the United States may be deportable. Other grounds of deportability, such as conviction for an aggravated felony, also apply to persons admitted under the Compacts.

Admission Under the INA and Lawful Permanent Residence

FSM and RMI citizens admitted to the United States under the Compacts may reside, work, and study in the United States. They do not have the status of lawful permanent residents (also known as Green Card holders) under the Immigration and Nationality Act (INA).

FSM and RMI citizens admitted to the United States under the Compacts may become lawful permanent residents, however, if they are otherwise eligible under immigration laws, either through the immigrant visa process or by adjustment of status within the United States. People generally must be granted lawful permanent resident status in the United States before they can apply for naturalization as a U.S. citizen.

In certain circumstances, FSM and RMI citizens or residents who are not eligible for admission without a visa as nonimmigrants under the Compacts may be able to apply for a nonimmigrant or immigrant visa under the immigration laws generally applicable to all foreign nationals. A U.S. Embassy or U.S. Consulate can provide visa information. Visa information is also available from the U.S. [Department of State's U.S. Visas](#) webpage.

¹ D/S indicates that the individual is authorized to remain in the United States as long they maintain a valid status.

Employment Authorization – Documentation

FSM and RMI citizens admitted under the Compacts may freely seek employment in the United States. However, like other employees working in the United States, must complete for their employers at the time of hire an attestation regarding their employment authorization and present document(s) showing identity and employment authorization for completing Form I-9, Employment Eligibility Verification. To satisfy the document presentation requirement, employees may choose a document or combination of documents listed on Form I-9, in the section “Lists of Acceptable Documents.”

While FSM and RMI citizens may have been issued a number of documents that are in the section “Lists of Acceptable Documents,” one option is specific to FSM and RMI citizens: the combination of FSM or RMI passport and Form I-94 reflecting the FSM or RMI citizens’ admission under the Compacts. This document combination is a “List A” document that shows both identity and employment authorization and satisfies the document presentation requirement for Form I-9. An RMI or FSM passport with a passport stamp is not acceptable for Form I-9 purposes; the Form I-94 must be printed and presented with the passport.

Another document listed in the section “Lists of Acceptable Documents” available to citizens of the RMI and FSM upon request from USCIS is Form I-766, Employment Authorization Document (EAD). While under the Compacts, citizens of the RMI and the FSM do not need to apply for, possess, or renew an EAD, USCIS encourages them to apply for one by completing [Form I-765, Application for Employment Authorization](#).

USCIS will issue an EAD with a category code of A08 to them free of charge. Applicants properly filing EAD renewal applications under category A08 may receive automatic extensions of an expiring or expired EAD for up to 180 days. The extension begins on the date the EAD expires and continues for up to 180 days unless the renewal application is denied.

In addition to serving as evidence of both identity and employment authorization, the EAD is very useful in applying for a driver’s license or other situations where secure U.S. government-issued evidence of identity or immigration status may be requested.

All other requirements and procedures relating to [Form I-9](#) and the employer sanctions laws apply to RMI and FSM citizens in the same manner as to other employees in the United States.

Social Security Card

A person admitted under the Compacts may obtain a Social Security number (SSN) and Social Security card from the Social Security Administration. An FSM or RMI citizen who has been admitted under the Compacts is issued a Social Security card without the statement, “Valid for Work Only with DHS Authorization.” For Form I-9 purposes, this is a “List C” document that an FSM or RMI citizen can show his or her employer as evidence of employment authorization, but not identity.

The Social Security card must be obtained in the United States from the Social Security Administration. It cannot be issued by the U.S. Embassy in the FSM or RMI.

Study

FSM and RMI citizens admitted under the Compacts may study at any school in the United States. A school enrolling an FSM or RMI citizen admitted under the Compacts should not register the student with the Student and Exchange Visitor Program (SEVP), and the student does not need to present a Form I-20 or Form DS-2019.

Rights of Persons Seeking to Come to the United States Under a Labor Recruitment Arrangement

The Compacts and related agreements provide FSM or RMI citizens who seek to come to the United States under a labor recruitment arrangement with certain rights, including a full disclosure of the terms and conditions of the arrangement. These individuals should contact their respective embassy or other appropriate FSM or RMI government office for information about their rights to full disclosure before entering into any such agreement and departing for the United States.

Military Service

Under section 341 of the Compacts, FSM and RMI citizens entitled to admission to the United States under the Compacts are eligible to volunteer for service in the U.S. armed forces.

Visa Requirements for FSM And RMI Diplomats

FSM and RMI citizens coming to the United States to assume diplomatic duties or to work at an international organization must obtain the appropriate nonimmigrant visa in “A” or “G” classification in order for their official status to be recognized by the United States. The Department of State also strongly encourages other FSM and RMI citizens to have a visa if they are coming to the United States to engage in official activities on behalf of their government.

U.S. Consular Assistance Abroad

Under section 126 of the Compacts, the United States extends consular assistance to citizens of the FSM and RMI in foreign countries on the same basis as for U.S. citizens, subject to the consent of the foreign country.

U.S. Consular officers also help FSM and RMI citizens extend and renew their FSM and RMI passports. These services are available when the FSM or RMI has no diplomatic or consular representation in a foreign country.