

# Alcohol Factors into Increased Visa Denials

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When Michigan resident Shayna Smith married her husband, Phil, in June last year, she never dreamed it would be her own government standing in the way of her happily ever after. Phil Smith, a British-born businessman, has been barred from entering the U.S. because, the Smiths say, of bureaucratic overreaction to a nine-year-old drunk-driving conviction.

While public attention is focused on illegal immigration, the Smiths' dilemma highlights an additional problem, immigration attorneys say: tougher rules put in place in recent years, coupled with heavy workloads and lack of training at consular offices. Meanwhile, more than a year after the Smiths' wedding in a seaside village in Wales, Phil Smith is struggling to keep his U.S. business afloat.

"I'm devastated," Shayna Smith says. "I found the absolute man of my dreams and now I can't even be with him and we've been over a year apart. I've always loved my country and felt very strongly about it but now I'm embarrassed, disappointed, let down, and ashamed. We're both hardworking people, and we've done everything by the book."

Phil Smith is one of a growing number of people turned down for visas on the basis of a "serious mental or physical disorder that could cause harm to himself or others." Over the past five years, the number of people declined a visa because of a "physical or mental disorder" has increased sharply, according to the annual Report of the Visa Office from the State Dept. In fiscal 2003, consular officials declined 62 applications for immigrant visas and 21 applications for nonimmigrant visas for this reason. In fiscal year 2008, embassies refused 479 applications for immigrant visas and 329 for nonimmigrant visas on the same grounds. During the same period, the total number of immigrant visas issued has seen only a modest rise. It is also becoming harder to get refusals overturned -- in 2003, 37% of declined immigrant visas were later approved, while in 2008 only 19% were.

Phil Smith runs a trade-show signage business in Britain, and he had launched a similar company in the U.S. in 2004 before he started seeing his wife. He did so legally under a business visa and poured \$100,000 of his own savings into the startup, with the intention of running it from Britain with occasional visits to the U.S. After his marriage, he applied for an immigration visa. He was sent for a medical evaluation -- Smith says he thought it was a routine exam -- and was asked about his alcohol consumption. Smith says he answered truthfully because he thought he had nothing to hide.

A few days later he was told that the visa had been refused on the basis that he drank 40 units -- the equivalent of 20 pints of beer -- a week. He maintains this was his monthly rather than weekly intake, but despite months of trying -- including submitting a psychiatric evaluation obtained at his own expense and physical tests that he says confirm he doesn't have a drinking problem -- he has been unable to correct the error. Meanwhile, his business visa has been canceled as well.

### **State Dept. Drunk-Driving Guidelines**

Part of the reason for the rise in rejections in cases like Phil Smith's may be the fact that the government has formalized its position on drunk driving. In 2007, the State Dept. issued new guidance to consular officials abroad, which says applicants must be referred to a panel physician for assessment if they have a drunk-driving conviction within the past three years, or two or more convictions or arrests for drunk driving in any time period. A State Dept. spokesperson declined to comment on specific visa cases or the training of consular officials, but said that the revised guidance on drunk-driving convictions was sent out "to address an issue that threatened public health and safety in the United States."

In addition to the Smiths, BusinessWeek has spoken to two other couples in similar situations who were referred to a panel physician for a single old drunk-driving conviction, despite the 2007 guidelines. Both say they were assessed by a general practitioner who misconstrued their answers. The couples asked not to be named since both are currently going through the waiver process by admitting to alcohol problems they do not believe exist.

Houman Afshar, an immigration attorney at Gibney, Anthony & Flaherty in New York, says consular officials have a great deal of discretion but heavy caseloads and lack of training mean they often make flawed decisions.

"I haven't seen this exact situation before but it doesn't surprise me one bit," Afshar says. "Consular discretion at embassies abroad can make it so difficult for people to obtain visas. It absolutely can lead to a lack of transparency and fairness, especially when you have training issues thrown in there."

Afshar also said that the troubled economy is prompting a harsher look at visa applicants. "In times of hardship like in this economy, people scrutinize immigration, but it's been proven time and time again that immigrants contribute to this economy and our country," he says.

The Smiths now have to decide whether to apply for a waiver from the decision on grounds of "extreme hardship," or abandon the business and uproot Shayna from her life in Michigan. Moving to Britain would mean leaving behind her career in radio, elderly relatives, and her 18-year-old daughter about to start college. The alternative is for Phil to admit alcohol abuse and agree to undergo counseling in the U.S. Even if

he did so, there is no guarantee he would be given the visa, and he is reluctant to blacken his name.

"If I thought I would get into the U.S. it might be a price worth paying," he says.  
"But why should I have my name tarnished when it could be used against me in the future?"