

9 FAM 100

INTRODUCTION TO 9 FAM VISAS

9 FAM 101

OVERVIEW OF 9 FAM

9 FAM 101.1

INTRODUCTION TO 9 FAM

(CT:VISA-274; 01-03-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 101.1-1 PURPOSE OF 9 FAM

(CT:VISA-274; 01-03-2017)

The Foreign Affairs Manual (FAM) contains directives and guidance for Department of State *personnel* based on statutes, regulations, Executive Orders, Presidential directives, OMB circulars and other sources. 9 FAM deals exclusively with the adjudication of U.S. visas, both nonimmigrant and immigrant, providing consular officers with the guidance needed to make informed decisions based on U.S. immigration law and regulations.

9 FAM 101.1-2 9 FAM: RELATIONSHIP TO STATUTES AND REGULATIONS

(CT:VISA-156; 08-10-2016)

- a. The main statute governing immigration law is the Immigration and Nationality Act of 1952, as amended (INA). The current text of the INA is codified in Title 8 of the U.S. Code, Aliens and Nationality. In addition, some other titles of the U.S. Code contain provisions relating to immigration, including Title 20, Employee Benefits, Title 22, Foreign Relations, and Title 29, Labor.
- b. Title 22 of the Code of Federal Regulations, Foreign Relations, (CFR) is the administrative law that further interprets and defines, via a set of rules and regulations published by the Office of the Federal Register, the powers and responsibilities given to the Department by Congress. Chapter I, Subchapter E Visas governs the Department's visa operations. The 9 FAM provides additional guidance outlining specific policies and procedural information regarding the

issuance of visas. If you have questions about how to interpret the law, contact the Visa Office's Legal Affairs (CA/VO/L).

9 FAM 101.1-3 PLAIN LANGUAGE

(CT:VISA-156; 08-10-2016)

- a. The Plain Writing Act of 2010 (Public Law 111-274) calls for writing that is clear, concise, and well-organized. Plain language is marked by: active voice; short, succinct sentences; everyday words; second person voice; organized sections; logical flow; correct grammar and punctuation. For more information on plain language, see the Office of Directives Management's Plain Language page.
- b. **Use of "You" and "We" in 9 FAM:** "You" in 9 FAM refers to consular officers and "we" refers to the Department. When a U.S. Government employee other than a consular officer is involved, we will specify in the text.

9 FAM 101.2

TRAINING AND SUPPORT FOR 9 FAM USE

(CT:VISA-357; 04-26-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 101.2-1 RESOURCES FOR 9 FAM USE

(CT:VISA-155; 08-10-2016)

- a. 9 FAM is designed to be a comprehensive, useful tool for consular officers. It follows this overall structure: General visa information; non-visa travel or travel with other documents; grounds of ineligibility, namecheck and biometric procedures, systems, advisory opinions, and clearances; nonimmigrant and immigrant visa categories; and visa unit administration and management. References are given to the relevant statutes and regulations. Any section marked Sensitive but Unclassified (SBU) can only be found on the Intranet, not the Internet, and is not intended for the public. You can find additional guidance on the visa pages of the Consular Affairs' intranet site, CAWeb.
- b. As noted in [9 FAM 101.1](#), 9 FAM provides policy and procedural guidance regarding visa application, adjudication, and issuance. For questions of policy and procedure that you cannot find in the FAM, contact your liaison officer in the Office of Field Operations (CA/VO/F). For questions regarding interpretation of law, contact Legal Affairs (CA/VO/L). For security related questions, contact the Office of Screening, Analysis and Coordination (CA/VO/SAC). See [9 FAM 102.6](#), Introduction to the Visa Office, for more information.

9 FAM 101.2-2 OTHER 9 FAM SUPPORT

(CT:VISA-357; 04-26-2017)

Reserved.

9 FAM 102 VISAS OVERVIEW

9 FAM 102.1

INTRODUCTION TO VISAS (WHAT IS A VISA?)

(CT:VISA-314; 03-31-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 102.1-1 PURPOSE OF A VISA

(CT:VISA-1; 11-18-2015)

A citizen of a foreign country who seeks to enter the United States generally must first obtain a U.S. government-issued visa, which is placed in the traveler's passport, a travel document issued by the traveler's country of citizenship. Certain international travelers may be eligible to travel to the United States without a visa if they meet the requirements for visa-free travel (see [9 FAM 201.1](#)). Having a U.S. government-issued visa allows the visa holder to travel to a U.S. port of entry, airport, or land border crossing, and request permission of the Department of Homeland Security (DHS), Customs and Border Protection (CBP) inspector to enter the United States.

9 FAM 102.1-2 PROCESS TO OBTAIN A VISA

(CT:VISA-1; 11-18-2015)

The type of visa an applicant must obtain is defined by U.S. immigration law, and relates to the purpose of travel. There are two main categories of U.S. visas: nonimmigrant visas (NIVs), for temporary travel, and immigrant visas (IVs), for travel to live permanently in the United States. For nonimmigrant visa applicants, there are several steps to apply for a visa. The order of these steps and how to complete them may vary at the U.S. embassy or consulate, but most nonimmigrant visa applicants will need to complete an online Form DS-160, Nonimmigrant Visa Application, upload a photograph with the application, schedule an interview, provide biometrics, and be interviewed. In general, to be eligible to apply for an immigrant visa, a foreign citizen must be sponsored by a U.S. citizen relative, U.S. lawful permanent resident, or by a prospective employer, and be the beneficiary of an approved petition filed with U.S. Citizenship and Immigration Services (USCIS).

9 FAM 102.1-3 TRAVELING TO THE UNITED STATES

WITH A VISA

(CT:VISA-1; 11-18-2015)

While having a visa does not guarantee entry to the United States, it does indicate a consular officer has determined the U.S. visa holder is eligible to seek entry for that specific purpose. DHS/CBP inspectors are responsible for admission of travelers to the United States, for a specified status and period of time. DHS also has responsibility for immigration matters while the visa holder is present in the United States.

9 FAM 102.1-4 ENTRY INTO AREAS UNDER U.S. ADMINISTRATION

9 FAM 102.1-4(A) Statutory and Regulatory Authority

9 FAM 102.1-4(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(38) (8 U.S.C. 1101(a)(38)).

9 FAM 102.1-4(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 212.1; 22 CFR 40.3.

9 FAM 102.1-4(A)(3) Public Laws

(CT:VISA-1; 11-18-2015)

Consolidated Natural Resources Act of 2008, Title VII, Public Law No. 110-229.

9 FAM 102.1-4(A)(4) Other Sources

(CT:VISA-1; 11-18-2015)

A.C.S.A. 41.0502 (American Samoa Code Annotated).

9 FAM 102.1-4(B) American Samoa

(CT:VISA-1; 11-18-2015)

- a. According to administrative regulations of the Government of American Samoa (A.C.S.A. 41.0502 (American Samoa Code Annotated)), aliens may disembark in American Samoa for visits of less than 30 days provided they have:
- (1) A valid passport or other valid travel document issued by a competent authority authorizing return to the country of origin or to some other country;
 - (2) A round-trip ticket to travel to the alien's point of origin or to an onward

destination; and

- (3) Comply with any current requirements of the public health officer.
- b. Aliens desiring to remain for 30 days or longer must register and obtain advance permission to enter from the immigration authorities of American Samoa. Such applicants must also include in the documentation of their date and place of entry; activities in which they intend to engage; the length of time expected to remain in American Samoa; and, any police and criminal record. Approval to remain in the territory is granted in 30-day increments only.

9 FAM 102.1-4(C) Guam and the Commonwealth of the Northern Mariana Islands (CNMI)

(CT:VISA-1; 11-18-2015)

Since Guam is a part of the United States as defined in INA 101(a)(38), aliens proceeding to Guam must possess a valid visa, unless they qualify under the Guam-CNMI Visa Waiver program (8 CFR 212.1(q)), which also applies to aliens proceeding to the CNMI. Navy clearance is not required for entry into the area. However, cases should be submitted to the Department for action for aliens who desire, but are ineligible under INA 212(a)(3) to enter Guam and who request a waiver under INA 212(d)(3)(A) or are recommended by a United States consular officer for such waiver. The Department may advise the Department of Defense, if appropriate.

9 FAM 102.1-4(D) Commonwealth of Northern Mariana Islands (CNMI)

(CT:VISA-172; 09-12-2016)

Public Law 110-229 of May 2008 amended the INA to include the CNMI in the definition of the United States for immigration purposes. However, 48 U.S.C. 1806(a)(2) provides for a transition period ending on December 31, 2019 in order to provide time to implement this provision.

9 FAM 102.1-4(E) Wake Island and Midway Island

(CT:VISA-1; 11-18-2015)

- a. **Wake Island:** Wake Island is generally not open to visitors and is used by the U.S. Federal Government only; they manage the island.
- b. **Midway Island:** Midway Island is an unincorporated territory of the United States and is owned and is administered by the U.S. Fish & Wildlife Service (Executive Order 13022, signed in 1996). Visitors are common to the island now and there is a tourist presence there.

9 FAM 102.1-5 DEPARTURE FROM THE UNITED

STATES

(CT:VISA-314; 03-31-2017)

a. **Need to Ensure Departure from United States Recorded:**

- (1) As of October 2010, CBP automated the Form I-94W and as of May 2013, CBP automated Form I-94 in the air and sea environment. Paper I-94 and I-94W may be issued in the air and sea environment under special circumstances and are still used at land border ports of entry. If a traveler returns home with their Department of Homeland Security (DHS) Customs and Border Protection (CBP) Form I-94 (white) or Form I-94-W (green) in their passport, it is possible that their departure was not recorded properly.
- (2) If the traveler departed by a commercial air or sea carrier (airlines or cruise ships), their departure from the United States can be independently verified, and it is not necessary to take any further action, although holding on to the outbound (from the United States) boarding pass - if they still have it - can help facilitate their reentry to the United States.
- (3) If the traveler departed by land, private vessel, or private plane, they will need to take steps to correct the record. If the traveler does not validate a timely departure from the United States or cannot reasonably prove they departed within the time frame given when they entered the United States, the next time they apply for admission to the United States, DHS CBP may conclude they remained in the United States beyond their authorized stay. Their visa may be subject to cancellation or the traveler may be returned immediately to their foreign point of origin.
- (4) Under the Visa Waiver Program (VWP), visitors who remain beyond their permitted stay in the United States cannot reenter the United States in the future without obtaining a visa from a U.S. Consulate. If the traveler is a Visa Waiver Program visitor who traveled by land to either Canada or Mexico for an onward flight, it is particularly important for them to register their timely departure if their green I-94W was not taken when they exited the United States. If they fail to do so and arrive at a U.S. port-of-entry seeking admission under the Visa Waiver Program without a visa, CBP officers may order their immediate return to a foreign point of origin.
- (5) Note: Not all VWP travelers receive I-94W forms. VWP travelers crossing the land boarder usually receive the form but air travelers usually do not. If the traveler is a VWP visitor and left the United States by an air or sea carrier, their departure is independently verifiable and they do not need to contact CBP to verify their departure.

b. **Recording Departure from the United States After the Fact:**

- (1) If the traveler failed to turn in their I-94 Departure Record, they should send it, along with any documentation that proves they left the United States to:

Coleman Data Solutions
Box 7965

or

Coleman Data Solutions
3043 Sanitarium Road, Suite 2

Akron, OH 44306

Attn: NIDPS (i-94)

(U.S. Postal Service)

Akron, OH 44312

Attn: NIDPS (i-94)

(FedEx or UPS)

- (2) Travelers should not mail their departure Form I-94 or supporting information to any Consulate or Embassy, to any other DHS CBP office in the United States, or to any address other than the one above. Only at this location is CBP able to make the necessary corrections to its records to prevent inconvenience to the traveler in the future. The *Akron, Ohio* office does not answer correspondence, so the traveler should not ask for confirmation that their record has been updated.
- (3) To validate departure, DHS CBP will consider a variety of information, including, but not limited to:
 - (a) Original boarding passes the traveler used to depart another country, such as Canada, if they flew home from there.
 - (b) Photocopies of entry or departure stamps in the traveler's passport indicating entry to another country after they departed the United States (the traveler should copy all passport pages that are not completely blank, and include the biographical page containing the photograph.)
 - (c) Photocopies of other supporting evidence, such as:
 - (i) Dated pay slips or vouchers from an employer to indicate they worked in another country after they departed the United States;
 - (ii) Dated bank records showing transactions to indicate the traveler was in another country after they left the United States;
 - (iii) School records showing attendance at a school outside the United States to indicate the traveler was in another country after they left the United States; or
 - (iv) Dated credit card receipts, showing the traveler's name, with the credit card number deleted, for purchases made after they left the United States to indicate they were in another country after leaving the United States.
- (4) The traveler should include a statement in English to assist CBP in understanding the situation and correcting their records quickly. The statement will not be acceptable without supporting evidence as noted above. The traveler must mail legible copies or original materials where possible. If the traveler sends original materials, they should retain a copy of the materials. DHS CBP cannot return original materials after processing.

9 FAM 102.2

VISA-RELATED ROLES

(CT:VISA-157; 08-10-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 102.2-1 ROLE OF CONSULAR OFFICERS

(CT:VISA-157; 08-10-2016)

When reviewing a visa application and interviewing a visa applicant you must: consider the applicant's qualifications for the visa under the law based on the specific visa type; decide each case on its own merit; consider, if applicable to the visa type, the presumption of immigrant intent; review the case for fraud considerations, if applicable; and, ensure the applicant has no ineligibilities or, if there are ineligibilities, whether the applicant must have a waiver. The consular officer is responsible for conducting as complete a clearance as is necessary to establish the eligibility of an applicant to receive a visa.

9 FAM 102.2-2 ROLE OF DEPARTMENT OF STATE

(CT:VISA-157; 08-10-2016)

The Department of State oversees the visa process abroad through its consular officers who determine visa eligibility, and works closely with interagency partners, especially the Department of Homeland Security (*DHS*), in this process. The Department *of State* is often the first U.S. Government agency to have contact with foreign nationals wishing to visit the United States.

9 FAM 102.2-3 ROLE OF DEPARTMENT OF HOMELAND SECURITY

(CT:VISA-157; 08-10-2016)

DHS enforces and administers U.S. immigration laws. *Within DHS, U.S. Citizenship and Immigration Services (USCIS) provides immigration-related services and benefits such as petition approval, naturalization and work authorization. U.S. Immigration and Customs Enforcement (ICE) is responsible for enforcing immigration and customs laws. U.S. Customs and Border Protection (CBP) is primarily responsible for enforcement immigration and customs laws along the borders and at port-of-entry.*

9 FAM 102.2-4 ROLE OF OTHER KEY PARTIES

(CT:VISA-157; 08-10-2016)

You may also encounter multiple Federal agencies when dealing with visas including the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Department of Labor (DOL), as well as other agencies that share data and coordinate lookout and screening activities in relation to visa adjudication.

9 FAM 102.3

(U) DEFINITIONS

(CT:VISA-381; 06-15-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 102.3-1 (U) A DEFINITIONS

(CT:VISA-381; 06-15-2017)

(U) The following is an alphabetized list of unclassified (U) and sensitive but unclassified (SBU) definitions or cross-references related to various aspects of visa work. Note that definitions may vary according to context; be sure to use the appropriate definition.

a. **(U) Abandonment:**

- (1) **(U)** In the context of Convention adoption cases see [9 FAM 502.3-4\(B\)](#), Convention Adoptee Overview.
- (2) **(U)** In the context of orphan adoption cases see [9 FAM 502.3-3\(B\)\(4\)](#), Status of Natural Parents (Orphans).

b. **(U) Abroad:**

- (1) **(U)** In the context of "Eligibility for Special Immigrant Status as Member of U.S. Armed Forces Recruited Abroad" see [9 FAM 502.5-8\(B\)](#), Members of U.S. Armed Forces Recruited Abroad.
- (2) **(U)** In the context of evaluating U.S. Government service abroad for special immigrant SE-1 classification see [9 FAM 502.5-3\(B\)\(2\)](#), U.S. Government Service Abroad (U.S. Government Employee Special Immigrant).
- (3) **(U)** In the context of a second preference petitioner residing abroad see [9 FAM 502.2-3\(E\)](#), Second Preference Petitioner Residing Abroad (Family Preference Classifications).

c. **(U) Accompanying, Accompanied:** For accompanying derivatives and following-to-join derivatives see [9 FAM 502.1-1\(C\)\(2\)](#), Derivative Applicants/Beneficiaries.

d. **(U) Accrediting or Accredited Entity (AE):** In the context of Convention adoption cases see [9 FAM 502.3-4\(B\)](#), Convention Adoptee Overview.

e. **(U) Adoption Services Provider (ASP):** An "authorized ASP" is an Adoption Services Provider that is authorized to provide adoption services in connection with an adoption under the Hague Convention. See [9 FAM 502.3-4\(B\)](#), Convention Adoptee Overview for information on Adoption Service Providers.

f. **(U) Advisory Opinion (AO):** An AO is an opinion from the Department regarding the interpretation or application of law or regulation related to a specific case. See

[9 FAM 304.3](#), Advisory Opinions.

- g. **(U) Aggravated Felony:** An "aggravated felony" is one of the several types of offenses defined at INA section 101(a)(43). The term applies to federal and state offenses and violations of foreign law for which the imprisonment was completed within the previous 15 years. A conviction for an aggravated felony is not a ground of inadmissibility under section 212 of the INA, but a previously removed alien is permanently inadmissible for a visa under INA 212(a)(9)(A)(i) and INA 212(a)(9)(A)(ii) if convicted of an aggravated felony. See also [9 FAM 302.11-2\(B\)\(4\)](#), Permanent Bar.
- h. **(U) Application Final Action Dates:** "Application Final Action Dates" are established by the Department to indicate the availability and authorization for issuance of immigrant numbers. See [9 FAM 503.4-3](#), Numerical Control.
- i. **(U) Application for a Visa:** To file or make an application for a visa;
- (1) **(U)** In in context of an immigrant visa application see [9 FAM 504.2-3](#), Filing IV Petitions with USCIS or [9 FAM 504.2-4](#), Petitions Filed at Consular Offices Abroad.
 - (2) **(U)** In the context of a nonimmigrant visa application see [9 FAM 403.2-3](#), Definition of "Making a Visa Application."
- j. **(U) Armed Forces or Group:** In the context of cases involving child soldiers (see [9 FAM 302.7-8](#)), "armed force or group" refers to any army, militia, or other military organization, whether or not it is state-sponsored, excluding any group assembled solely for nonviolent political association, consistent with the definition in 18 U.S.C. section 2442(d)(2). See [9 FAM 302.7-8\(B\)\(2\)](#), Definitions.
- k. **(U) Article 5 Letter:** In the context of Convention adoption cases see [9 FAM 502.3-4\(D\)\(6\)](#), Article 5 Letter, Convention Adoptee - Step 5 of 9.
- l. **(U) Article 16 Report:** In the context of Convention adoption cases see [9 FAM 502.3-4\(D\)\(1\)](#), Summary of the Convention Adoption Process.
- m. **(U) Article 23 Certificate:** In the context of Convention adoption cases see [9 FAM 502.3-4\(D\)\(1\)](#), Summary of the Convention Adoption Process .
- n. **(U) Assurance:** An "assurance" is the agreement of a resettlement agency to sponsor a refugee. See [9 FAM 203.6-10](#), V93 Post-Interview Actions.
- o. **(U) Asylee:** An "asylee" is a person who has been granted asylum under INA 208, which requires the alien to meet the refugee definition of INA 101(a)(42)(A) and be physically present in the United States. See [9 FAM 203.2](#), What is a Refugee? What is an Asylee? for additional information on asylee cases.

9 FAM 102.3-2 (U) B DEFINITIONS

(CT:VISA-381; 06-15-2017)

(U) None.

9 FAM 102.3-3 (U) C DEFINITIONS

(CT:VISA-381; 06-15-2017)

- a. **(U) Capital:** In the context of employment fifth preference IV classifications, see [9 FAM 502.4-5\(B\)](#), Entitlement to Employment Fifth Preference Status.
- b. **(U) Central Authority:** In the context of Convention adoption cases see [9 FAM 502.3-4\(B\)](#), Convention Adoptee Overview.
- c. **(U) Central Overseas Processing Entity (COPE):** In the context of refugee cases, COPE is the Refugee Processing Center (RPC) version of the Worldwide Refugee Admissions Processing System (WRAPS) used at RPC to enter V-93 case information processed by consular posts or USCIS officers overseas. See [9 FAM 203.3-1](#), Department of State; [9 FAM 203.6](#), Processing V92/V93 Cases; and [203.7](#), Refugee Travel documents.
- d. **(U) Child:** For the definition of a child see [9 FAM 102.8-2](#), Parent-Child Relationships.
- e. **(U) Child Soldiers:** In the context of child soldiers, "child" is defined as a person under the age of 15. See [9 FAM 302.7-8](#), Participation in the Use or Recruitment of Child Soldiers - INA 212(a)(3)(G).
- f. **(U) CLASS:** The Consular Lookout and Support System. See [9 FAM 604.1-1](#), Visa Systems Overview.
- g. **Unavailable**
- h. **(U) Consular Officer:** "Consular Officer," as defined in INA 101(a)(9), includes commissioned consular officers and the Deputy Assistant Secretary for Visa Services, and such other officers as the Deputy Assistant Secretary may designate for the purpose of issuing nonimmigrant and immigrant visas, but does not include a consular agent, an attaché, or an assistant attaché. This guidance also refers to consular officers as "you," see [9 FAM 102.3-25](#), Y Definitions.
 - (1) **(U)** The term "other officers" includes civil service visa examiners employed by the Department of State for duty at visa-issuing offices abroad, upon certification by the chief of the consular section under whose direction such examiners are employed that the examiners are qualified by knowledge and experience to perform the functions of a consular officer in the issuance or refusal of visas. The designation of visa examiners must expire upon termination of the examiners' employment for such duty and may be terminated at any time for cause by the Deputy Assistant Secretary.
 - (2) **(U)** The assignment by the Department of any foreign service officer to a diplomatic or consular office abroad in a position administratively designated as requiring, solely, partially, or principally, the performance of consular functions, and the initiation of a request for a consular commission, constitutes designation of the officer as a "consular officer" within the meaning of INA 101(a)(9).
- i. **(U) Continuous Voyage:** See [9 FAM 504.10-2\(A\)](#), Immigrant Visa Validity,

Defining Continuous Voyage.

- j. **(U) Cut-Off Dates:** See Application Final Action Dates at [9 FAM 503.4-3](#), Numerical Control.
- k. **(U) Custody, Custody for Purposes of Emigration and Adoption:**
 - (1) **(U)** In the context of orphans, see [9 FAM 502.3-3\(B\)\(3\)](#), Adoption or Intent to Adopt (Orphans).
 - (2) **(U)** In the context of convention adoptees, see [9 FAM 502.3-4\(C\)\(3\)](#), Adoption or Custody for Purposes of Emigration and Adoption (Convention Adoptee).

9 FAM 102.3-4 (U) D DEFINITIONS

(CT:VISA-381; 06-15-2017)

- a. **(U) Dates for Filing Applications:** See [9 FAM 503.4-3\(A\)\(3\)](#), Dates for Filing Application.
- b. **(U) Department:** "Department" means the Department of State of the United States of America. This guidance also refers to the Department as "we," see [9 FAM 102.3-23](#), W Definitions.
- c. **(U) Dependent Area:** See [9 FAM 503.2-3\(B\)](#), Dependent Area, for information on dependent areas as they relate to immigrant visa numerical limitations and chargeability.
- d. **(U) Derivative:**
 - (1) **(U)** In the context of immigrant visas, an individual who is not the direct beneficiary of a filed petition, but who can accompany or follow-to-join the principal based on a marital or parent-child relationship, see [9 FAM 502.1-1\(C\)\(2\)](#), Derivative Applicants/Beneficiaries.
 - (2) **(U)** In the context of nonimmigrant visas, a family member whose primary purpose of travel to the United States is to accompany the principal, see [9 FAM 402.1-3](#), Choice of Classification.
- e. **(U) Documentarily Qualified:** This term is used only with respect to an alien's qualification to apply formally for an immigrant visa; it bears no connotation that the alien is eligible to receive a visa. See [9 FAM 504.4-5\(A\)\(1\)](#), Definition of Documentarily Qualified.

9 FAM 102.3-5 (U) E DEFINITIONS

(CT:VISA-381; 06-15-2017)

- (U) Expired Nonimmigrant Visa:** See [9 FAM 403.9-4\(A\) paragraph c](#), Visa Validity Versus Period of Admission, Expired Nonimmigrant Visa.

9 FAM 102.3-6 (U) F DEFINITIONS

(CT:VISA-381; 06-15-2017)

a. Unavailable

b. (U) Following to Join: The term "following to join," as used in INA 101(a)(27)(C) and INA 203(d), permits a derivative to obtain a nonimmigrant visa or immigrant visa and the priority date of the principal alien as long as the alien following to join has the required relationship with the principal alien.

(1) **(U)** In the context of immigrant visas, see [9 FAM 502.1-1\(C\)\(2\)](#), Derivative Applicants/Beneficiaries.

(2) **(U)** In the context of refugee or asylee status, see [9 FAM 203.5-4](#), Eligibility for Following-to-Join Refugee or Asylee (V92/V93) Status.

(3) **(U)** In the context of K visas, see [9 FAM 502.7-5\(B\) paragraph \(c\)](#), Overview of K Visa Classifications.

c. (U) Foreign State: For the purposes of immigrant visa chargeability, see [9 FAM 503.2-3\(A\)](#), Foreign State Defined.

d. (U) Full-Time Employment: See [9 FAM 302.1-5\(B\)\(11\)](#), Defining Full-time Employment.

9 FAM 102.3-7 (U) G DEFINITIONS

(CT:VISA-381; 06-15-2017)

a. (U) Genocide: In the context of a ground of inadmissibility for "genocide," see [9 FAM 302.7-5\(B\)\(2\)](#), Defining Genocide.

b. (U) Graduate of a Medical School, Foreign Medical Graduate: In the context of an ineligibility for unqualified physicians, see [9 FAM 302.1-6\(B\)\(1\)](#), Defining "Graduates of a Medical School".

9 FAM 102.3-8 (U) H DEFINITIONS

(CT:VISA-381; 06-15-2017)

a. (U) Hardship:

(1) **(U)** In the context of posts accepting immigrant visa cases, see [9 FAM 504.4-8\(D\)](#), Discretionary Cases for Hardship Reasons.

(2) **(U)** In the context of INA 212(e) waivers, see [9 FAM 302.13-2\(D\)\(2\)](#), Exceptional Hardship to U.S. Citizen or Permanent Resident Spouse or Child.

b. (U) Homeless: In the context of processing immigrant visa cases, see [9 FAM 504.4-8\(E\)\(1\)](#), Definition of Homeless Cases.

9 FAM 102.3-9 (U) I DEFINITIONS

(CT:VISA-381; 06-15-2017)

- a. **Unavailable**
- b. **Unavailable**
- c. **(U) Immediate Relative:** See [9 FAM 502.2-2](#), Immediate Relative Defined.
- d. **(U) Immigration and Nationality Act (INA):** Or "Act," means the Immigration and Nationality Act, as amended. See [9 FAM 101.1-2](#), Relationship to Statutes and Regulations.
- e. **(U) Immigrant Visa Applicant:** An "immigrant visa applicant" is a person who is applying for an immigrant visa classification (lawful permanent residence) at a consular post. See [9 FAM 502.1-3](#), IV Classification Symbols.
- f. **(U) Inactive Cases:** See [9 FAM 504.13-2\(A\)](#), When a Case is Considered "Inactive." When a case is considered "inactive," the applicant's registration could be terminated if certain conditions are not met.

9 FAM 102.3-10 (U) J DEFINITIONS

(CT:VISA-381; 06-15-2017)

(U) None.

9 FAM 102.3-11 (U) K DEFINITIONS

(CT:VISA-381; 06-15-2017)

(U) None.

9 FAM 102.3-12 (U) L DEFINITIONS

(CT:VISA-381; 06-15-2017)

(U) Lawfully Admitted:

- (1) **(U)** In the context of Lawful Permanent Resident (LPR) Status see [9 FAM 202.2-2](#) paragraph b(1)., Lawful Permanent Residents – Overview, Introduction.
- (2) **(U)** In the context of returning residents see [9 FAM 502.7-2\(B\)](#), Returning Resident Status.

9 FAM 102.3-13 (U) M DEFINITIONS

(CT:VISA-381; 06-15-2017)

- a. **(U) Marriage:** See [9 FAM 102.4-1](#) for information on marital relationships.
- b. **(U) Managerial Capacity:**
 - (1) **(U)** In the context of employment-based first preference immigrant visa

classification, see [9 FAM 502.4-2\(E\)](#), Certain Multinational Executives and Managers.

- (2) **(U)** In the context of L-1 nonimmigrant visa classification for Intracompany Transferees, see [9 FAM 402.12-14\(B\)](#), Managerial or Executive Capacity.

9 FAM 102.3-14 (U) N DEFINITIONS

(CT:VISA-381; 06-15-2017)

- a. Unavailable
- b. **(U) Native:** A "native" is a person born within the territory of a (foreign) state, regardless of the individual's current country of residence or nationality. See [9 FAM 502.6-2](#) for additional information on qualification for diversity immigrant visas for natives of certain foreign states, and [9 FAM 503.2](#) for information on chargeability in immigrant visa cases.
- c. **Unavailable**
- d. **(U) Nonimmigrant:** A "nonimmigrant" is a foreign born person (alien) who is coming to the United States temporarily for a particular purpose but does not remain permanently.

9 FAM 102.3-15 (U) O DEFINITIONS

(CT:VISA-381; 06-15-2017)

(U) None.

9 FAM 102.3-16 (U) P DEFINITIONS

(CT:VISA-381; 06-15-2017)

- a. **(U) Physical Presence:** See [9 FAM 403.2-4\(B\)\(1\)](#) Physical Presence. In the context of J visas, see also [9 FAM 302.13-2](#), Former Exchange Visitors - INA 212(e).
- b. **(U) Port of Entry (POE):** "POE" means a port or place designated by DHS at which an alien may apply to DHS for admission into the United States, be inspected, and have his or her eligibility for entry into the United States determined.
- c. **(U) Principal Alien:** "Principal alien" means an alien from whom another alien derives a privilege or status under the law or regulations.
- d. **(U) Principal Applicant:** A "principal applicant" is the primary individual on a case who submits an application or petition for an immigration benefit.
- (1) **(U)** In the context of immigrant visas, see [9 FAM 502.1-1\(C\)\(1\)](#), Principal Applicants/Beneficiaries.

- (2) **(U)** In the context of nonimmigrant visas, see [9 FAM 402.1-4](#), Derivative Classification of Spouse Accompanying the Principal Alien and [9 FAM 402.1-5\(A\)](#), Derivative Classification of Child Accompanying or Following to Join the Principal Alien.
- e. **(U) Principal Officer:** In the context of U.S. Government Employee Special Immigrant (SE-1) cases, see [9 FAM 502.5-3\(C\)\(3\)](#), Principal Officers Recommendation (U.S. Government Employee Special Immigrant).
- f. **(U) Priority Date:** The priority date of the petition is the date on which the completed, signed petition is properly filed. However, for certain employment visas the priority date is determined by other means.
- (1) **(U)** In the context of employment-based preference petitions, see [9 FAM 503.3-2\(C\)](#), Employment-Based Preference Petitions;
- (2) **(U)** In the context of family-sponsored preference petitions, see [9 FAM 503.3-2\(B\)](#), Family-Sponsored Preference Petitions;
- (3) **(U)** In the context of a derivative spouse or child, see [9 FAM 503.3-2\(D\)](#), Priority Date for Derivative Spouse/Child.
- g. **(U) Properly Filed:** A petition will be considered "properly filed" when the completed, signed petition, including all initial evidence and the correct fee, is filed with the Department of Homeland Security. See [9 FAM 504.2-2\(D\)\(1\)](#), Proper Filing and [9 FAM 503.1-2\(B\)](#), Priority Dates.
- h. **(U) Public Charge:** The term "public charge" means that an alien, after admission into the United States, is likely to become primarily dependent on the U.S. government for subsistence. See [9 FAM 302.8](#), Public Charge - INA 212(a)(4).

9 FAM 102.3-17 (U) Q DEFINITIONS

(CT:VISA-381; 06-15-2017)

(U) None.

9 FAM 102.3-18 (U) R DEFINITIONS

(CT:VISA-381; 06-15-2017)

- a. **(U) Recaptured Visas:** A "recaptured visa" is a visa that is known to have not been used. See [9 FAM 503.4-4\(C\)](#), Recaptured Visas.
- b. **(U) Refugee:** A "refugee" is defined in INA 101(a)(42) as a person who is outside his or her country of origin and is unwilling or unable to return because of persecution or a well-founded fear of persecution on one of five grounds: race, religion, nationality, membership in a particular social group, or political opinion. Persons who have ordered, incited, assisted, or otherwise participated in the persecution of others are excluded from the refugee definition. See [9 FAM 203](#) for additional information on refugees.

- c. **(U) Residence:** The term "residence" is defined in INA 101(a)(33) as the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. This does not mean that an alien must maintain an independent household in order to qualify as an alien who has a residence in a foreign country and has no intention of abandoning. If the alien customarily resides in the household of another, that household is the residence in fact.
- d. **(U) Returning Resident:**
- (1) **(U)** A Lawful Permanent Resident (LPR) who has remained outside the United States for more than one year may be eligible for returning resident immigrant visa status if certain conditions are met. See [9 FAM 502.7-2\(B\)](#), Returning Residents.
 - (2) **(U)** See "lawfully admitted for permanent resident" at INA 101(a)(20) for definition of "lawful permanent resident."
- e. **(U) Reciprocity Schedule:** The INA requires that visa validity periods, numbers of admissions, and visa fees be reciprocal, or based on each country's treatment of similar classes of U.S. visitors to its territory. The "reciprocity schedule" found on travel.state.gov provides the visa validity periods, numbers of admissions, and visa fees for each country and each visa class.

9 FAM 102.3-19 (U) S DEFINITIONS

(CT:VISA-381; 06-15-2017)

- a. **Unavailable**
- b. **(U) Skilled Worker:** In the context of E3/EW employment-based third preference immigrant visa classification, see [9 FAM 502.4-4\(B\)](#), Employment Third Preference IV Classifications.
- c. **Unavailable**
- d. **(U) Sponsor:**
- (1) **(U)** In the context of I-864 Affidavits of Support, see [9 FAM 302.8-2\(B\)\(4\)](#), Completion of Form [I-864](#), Affidavit of Support under Section 213A of the Act.
 - (2) **(U)** In the context of refugee cases, see [9 FAM 203.6-10](#), V93 Post-Interview Actions.
- e. **(U) Subsidiary:**
- (1) **(U)** In the context of immigrant visa employment-based fifth preference cases, see [9 FAM 502.4-2\(E\) paragraph b\(6\)](#), Certain Multinational Executives and Managers and [9 FAM 502.4-5\(B\)](#), Entitlement to Employment Fifth Preference Status.
 - (2) **(U)** In the context of nonimmigrant L visa classification, see [9 FAM 402.12-9\(A\)](#) paragraph b(4), Nature of Petitioning Business Entity.

9 FAM 102.3-20 (U) T DEFINITIONS

(CT:VISA-381; 06-15-2017)

(U) None.

9 FAM 102.3-21 (U) U DEFINITIONS

(CT:VISA-381; 06-15-2017)

(U) None.

9 FAM 102.3-22 (U) V DEFINITIONS

(CT:VISA-381; 06-15-2017)

- a. **(U) VISAS 92 (V-92):** "Visas 92" refers to a beneficiary of a Form [I-730](#), Refugee/Asylee Relative Petition, filed by a person granted asylum in the United States. V92 beneficiaries do not qualify for refugee benefits and do not count against the annual refugee admissions ceilings. See [9 FAM 203.6](#), Processing V92/V93 Cases, for additional information on Visas 92 cases.
- b. **(U) VISAS 93 (V-93):** "Visas 93" refers to a beneficiary of a Form [I-730](#) Refugee/Asylee Relative Petition, filed by a person admitted to the United States as a refugee. Beneficiaries qualify for PRM-funded support and count against annual refugee admissions ceilings. See [9 FAM 203.6](#), Processing V92/V93 Cases, for additional information on Visas 93 cases.
- c. **(U) Visa Validity:** The "validity" of a visa refers to the time in which an applicant may make application to an immigration officer at a port of entry for admittance into the United States. It has no bearing on the length of time for which the alien may be admitted. See [9 FAM 403.9-4\(A\)](#), Validity of Nonimmigrant Visas and [9 FAM 504.10-2\(A\)](#), Immigrant Visa Validity.

9 FAM 102.3-23 (U) W DEFINITIONS

(CT:VISA-381; 06-15-2017)

- a. **Unavailable**
- b. **(U) We:** "We" means the Department of State. See [9 FAM 101.1-3](#), Plain Language.
- c. **(U) Worldwide Refugee Admissions Processing System (WRAPS):** WRAPS is the Department of State database for all refugee applicants processed for resettlement consideration to the United States. See [9 FAM 203.3-1 paragraph \(1\)\(b\)](#), RPC - Refugee Processing Center.

9 FAM 102.3-24 (U) X DEFINITIONS

(CT:VISA-381; 06-15-2017)

(U) None.

9 FAM 102.3-25 (U) Y DEFINITIONS

(CT:VISA-381; 06-15-2017)

(U) You: "You" in 9 FAM refers to consular officers. See [9 FAM 101.1-3](#), Plain Language.

9 FAM 102.3-26 (U) Z DEFINITIONS

(CT:VISA-381; 06-15-2017)

(U) None.

9 FAM 102.4

(U) ABBREVIATIONS

(CT:VISA-46; 02-18-2016)
(Office of Origin: CA/VO/L/R)

(U) A Number	Alien Registration Number	(U) AC1	American Competitiveness in the 21st Century Act
(U) ACO	Accountable Consular Office	(U) ADIS	Arrival Departure Information System (DHS)
(U) ADIT	Alien Documentation, Identification and Telecommunication System (DHS)	(U) AEDPA	Anti-Terrorism & Effective Death Penalty Act
(U) AFS	Alien Flight School Program (DHS)	(U) AG	Attorney General
(U) AID	Agency for International Development	(U) AO	Advisory Opinion
(U) AOS	Affidavit of Support	(U) APIS	Advanced Passenger Information System (DHS)
(U) APP	American Presence Posts	(U) ARC	Alien Registration Card (also Permanent Resident Card)
(U) ARIS	Admissibility Review Information System (DHS)	(U) ARO	Admissibility Review Office (DHS)
(U) A/S	Adjustment of Status	(U) ASC	Application Support Center
(U) ASP	Adoption Service Provider	(U) ATS	Adoptions Tracking System
(U) AWA	Adam Walsh Child Protection Safety Act of 2006	(U) AVW	Aviation Worker Program (DHS)
(U) BCC	Border Crossing Card	(U) BDC	Berlin Document Center

(U) BIA	Board of Immigration Appeals	(U) BioVisa	Biometric Visa Program
(U) CA	Consular Affairs	(U) CA/VO/DO/I	Immigration Visa Control and Reporting Division
(U) CA/VO/F	Office of Field Operations	(U) CA/VO/I	Information Management and Liaison
(U) CA/VO/DO	Office of Domestic Operations	CA/VO/SAC	Office of Screening, Analysis and Coordination
CA/VO/L/A	Advisory Opinions Division	(U) CA/VO/L/R	Legislation and Regulations Division
(U) CA/VO/DO/W	Waiver Review Division	(U) CA/VO/DO/DL	Diplomatic Liaison Division
(U) CAT I	Category One Refusal	(U) CAT II	Category II Refusals
(U) CBP	Customs and Border Protection (DHS)	(U) CCD	Consular Consolidated Database
(U) CDC	Centers for Disease Control	(U) CEAC	Consular Electronic Application Center
(U) CGFNS	Commission on Graduates of Foreign Nursing Schools	(U) CIMT	Criminal of Moral Turpitude (also CMT)
(U) CLAIMS	Computer Linked Automated Information System (DHS)	(U) CMF	Criminal Master File (RAP Sheet)
(U) CMH	Consular Management Handbook	(U) CIA	Central Intelligence Agency
(U) CJIS	Criminal Justice Information Service Division (FBI)	(U) CLASS	Consular Lookout and Support System
(U) CLOK	CLASS entry correction/deletion request	(U) COB	Country of Birth
(U) COC	Country of Citizenship	(U) COM	Chief of Mission
(U) CNMI	Commonwealth of the Northern Mariana	(U) C/S	Change of Status

	Islands		
(U)	CSPA	Child Status Protection Act of 2002	(U) CST
(U)	DAS	Deputy Assistant Secretary	(U) DCM
(U)	DEA	Drug Enforcement Administration	(U) DGMQ
(U)	DHS	Department of Homeland Security	(U) DOB
(U)	DOC	Department of Commerce	(U) DOD
(U)	DOJ	Department of Justice	(U) DOL
(U)	DRL	Bureau of Democracy, Human Rights, and Labor	(U) DS
(U)	D/S	Duration of Status	(U) DSO
(U)	DV	Diversity Visas	(U) DVIS
(U)	ECA	Bureau of Educational and Cultural Affairs	(U) ECFMG
(U)	EFM	Eligible Family Member	(U) ESTA
(U)	EWI	Entry Without Inspection	(U) FAM
(U)	FBI	Federal Bureau of Investigation	(U) FF
(U)	FFOA	Federal First Offender Act	(U) FGM
(U)	FIN	Fingerprint Identification Number	(U) FMG
(U)	FOIA	Freedom of Information Act	(U) FPM
			Consular Shared Tables
			Deputy Chief of Mission
			Division of Global Migration and Quarantine (CCD)
			DOB – Date of Birth
			Department of Defense
			Department of Labor
			Bureau of Diplomatic Security
			Designated School Official
			Diversity Visa Processing System
			Educational Commission for Foreign Medical Graduates.
			Electronic System for Travel Authorization (DHS)
			Foreign Affairs Manual
			Foreign Fugitives File
			Female Genital Mutilation
			Foreign Medical Graduate
			Fraud Prevention Manager

(U) FPU	Fraud Prevention Unit	(U) FR	Facial Recognition
(U) FSN	Foreign Service National	(U) FSO	Foreign Service Officer
(U) GSS	Global Support Strategy	(U) GVHR	Gross Human Rights Violations
(U) GVWP	Guam Visa Waiver Program	(U) HHS	Department of Health and Human Services
(U) IA	Interagency	(U) IAA	Intercountry Adoption Act of 2000
(U) IAFIS	Integrated Automated Fingerprint Identification System	(U) IBIS	Interagency Border Inspection System (DHS)
(U) ICE	Immigration and Customs Enforcement (DHS)	(U) IHAC	Hague Adoption Certificate
(U) IHCC	Hague Custody Certificate	(U) IIRIRA	Illegal Immigration Reform & Immigrant Responsibility Act of 1996
(U) IJ	Immigration Judge	(U) IMMACT90	Immigration Act of 1990
(U) INA	Immigration and Nationality Act	(U) IDENT	Automated Biometric Identification
(U) INK	Independent Namecheck System	(U) INTERPOL	International Criminal Police Organization
(U) INVEST	International Vetting and Security Tracking (DRL)	(U) IOM	International Organization for Migration
(U) IRS	Internal Revenue Service	(U) ISN	Bureau of International Security and Nonproliferation
(U) IV	Immigrant Visa	(U) IVAMS	Immigrant Visa Allocation Management System
(U) IVIS	Immigrant Visa Processing System	(U) IVO	Immigrant Visa Overseas System
(U) KCC	Kentucky Consular Center	(U) KST	Known or Suspected Terrorist

(U) LCA	Labor Condition Application	(U) LEA	Law Enforcement Authority
(U) LEGATT	Legal Attaché	(U) LES	Law Enforcement Sensitive
(U) LE Staff	Locally Employed Staff	(U) LPR	Lawful Permanent Resident
(U) LV	Leahy Vetting	(U) MOA	Memorandum of Agreement
(U) MRV	Machine Readable Visa	(U) MRIV	Machine-Readable Immigrant Visa
(U) NACARA	Nicaraguan Adjustment and Central American Relief Act	(U) NADDIS	Narcotics and Dangerous Drug Information System (DEA)
(U) NAFTA	North American Free Trade Agreement	(U) NATO	North Atlantic Treaty Organization
(U) NBMEE	National Board of Medical Examiners Examination	(U) NCIC	National Crime Information Center
(U) NCIID	Interstate Identification Index	(U) NCTC	National Counterterrorism Center
(U) NID	National Identity Number	(U) NIV	Nonimmigrant Visa
(U) NVC	National Visa Center	(U) O*Net	Occupational Information Network
(U) OFAC	Office of Foreign Assets Control (Treasury)	(U) OPT	Optional Practical Training
(U) PAP	Prospective Adoptive Parents	(U) PATRIOT	Pre-Adjudication Threat Recognition Intelligence Operations Team
(U) PCQS	Person Centric Query Service (USCIS)	(U) PIMS	Petition Information Management System
(U) POC	Point of Contact	(U) POE	Port of Entry
(U) PLOTS	Passport Lookout Tracking System	(U) QA	Quality Assurance
(U) RCO	Regional Consular Officer	(U) RPC	Refugee Processing Center

(U) RSC	Resettlement Support Centers.	(U) RSO	Regional Security Officer
Unavailable	Unavailable	(U) SEVIS	Student and Exchange Visitor Information System (DHS)
(U) SEVP	Student and Exchange Visitor Program (DHS)	(U) SLTD	Stolen and Lost Travel Document Database (INTERPOL)
(U) SPBP	Significant Public Benefit Parole	(U) SSA	Social Security Administration
(U) SSI	Supplemental Security Income	(U) SSN	Social Security Numbers
(U) STEM	Science, Technology, Engineering, or Mathematics	(U) SWT	Summer Work Travel
(U) TAL	Technology Alert List	(U) TECRO	Taipei Economic and Cultural Representative Office
(U) TECS	Treasury Enforcement Communication System	(U) TIDE	Terrorist Identities Datamart Environment
(U) T/IPP	Training/Internship Placement Plan.	(U) TOEFL	Test of English as a Foreign Language
(U) TPLS	Ten Print Live Scan	(U) TRIP	Traveler Redress Inquiry Program (DHS)
(U) TSA	Transportation Security Administration	(U) TSC	Terrorist Screening Center
(U) TSDB	Terrorist Screening Database	(U) TWIC	Transportation Worker Identification Credential
(U) UNLP	United Nations Laissez-Passer	(U) USNCB	United States National Central Bureau (Interpol)
(U) USPHS	U.S. Public Health Service (CDC)	(U) USRAP	U.S. Refugee Admissions Program
(U) US-VISIT	United States Visitor and Immigrant status Indicator Technology	(U) VGTO	Violent Gang and Terrorist Organizations File

	Program (DHS)		
(U) VLA	Visa Lookout Accountability	(U) VO	Visa Office
(U) VWP	Visa Waiver Program	(U) WRAPS	Worldwide Refugee Admissions Processing System
(U) WP	Wanted Persons File		

9 FAM 102.5

POST CODES; NATIONALITY CODES; AND PORT-OF-ENTRY CODES

(CT:VISA-186; 09-28-2016)

(Office of origin: CA/VO/L/R)

9 FAM 102.5-1 VISA-ISSUING POST SYMBOLS

(CT:VISA-186; 09-28-2016)

Following is a list of the symbols for visa-issuing posts used on immigrant (IV) and nonimmigrant visa (NIV) reports. This list is intended only as a reference for post symbols; it does not indicate whether or not the post is currently open or providing visa services.

Post	Code	Post	Code
Abidjan	ABJ	Abu Dhabi	ABD
Abu Dhabi (Beirut Files)	BRF (used for IV only)	Abuja	ABU
Accra	ACC	Addis Ababa	ADD
Alexandria	ALX	Algiers	ALG
Almaty	ATA	Amman	AMM
Amsterdam	AMS	Ankara	ANK
Antananarivo	ANT	Antwerp	ATW
Apia	APA	Ashgabat	AKD
Asmara	ASM	Astana	AST
Asuncion	ASN	Athens	ATH
Auckland	ACK	Baghdad	BGH
Baku	BKU	Bamako	BAM
Bandar Seri Begawan	BSB	Bangkok	BNK
Bangui	BGI	Banjul	BAN
Barcelona	BRC	Barranquilla	BRR
Beijing	BEJ	Beirut	BRT
Belfast	BLF	Belgrade	BLG
Belmopan	BLZ	Berlin	BRL
Bern	BEN	Bishkek	BKK
Bissau	BIS	Bogota	BGT
Bonn	BNN	Bordeaux	BRD
Brasilia	BRA	Bratislava	BTS
Brazzaville	BRZ	Bridgetown	BGN
Brussels	BRS	Bucharest	BCH

Budapest	BDP	Buenos Aires	BNS
Bujumbura	BUJ	Cairo	CRO
Calgary	CLG	Canberra	CNB
Cape Town	CPT	Caracas	CRS
Casablanca	CSB	Cebu	CBU
Chengdu	CHE	Chennai (Madras)	MDR
Chiang Mai	CHN	Chisinau	CHS
Ciudad Juarez	CDJ	Colombo	CLM
Conakry	CRY	Copenhagen	CPN
Cotonou	COT	Curacao	CRC
Dakar	DKR	Damascus	DMS
Dar es Salaam	DRS	Dhahran	DHR
Dhaka	DHK	Dili	DIL
Djibouti	DJI	Doha	DOH
Douala	DOU	Dubai	DUB
Dublin	DBL	Durban	DRB
Dushanbe	DHB	Edinburgh	EDN
Erbil	ERB	Florence	FLR
Frankfurt am Main	FRN	Freetown	FTN
Fukuoka	FKK	Gaborone	GAB
Geneva	GVA	Genoa	GEN
Georgetown	GEO	Guadalajara	GDL
Guangzhou	GUZ	Guatemala	GTM
Guayaquil	GYQ	The Hague	HAG
Halifax	HLF	Hamburg	HMB
Hamilton	HML	Hanoi	HAN
Harare	HRE	Havana	HAV
Helsinki	HLS	Hermosillo	HER
Ho Chi Minh City	HCM	Hong Kong	HNK
Honiara	HON	Hyderabad	HYD
Islamabad	ISL	Istanbul	IST
Izmir	IZM	Jakarta	JAK
Jeddah	JDD	Jerusalem	JRS
Johannesburg	JHN	Juba	JBA
Kabul	KBL	Kaduna	KAD
Kampala	KMP	Karachi	KRC
Kathmandu	KDU	Kaohsiung	KAO
Khartoum	KHT	Kigali	KGL
Kingston	KNG	Kinshasa	KIN
Kolkata (Calcutta)	CLC	Kolonia	KOL
Koror	KOR	Krakow	KRK
Kuala Lumpur	KLL	Kuwait	KWT
Kyiv	KEV	La Paz	LPZ
Lagos	LGS	Lahore	LHR
Libreville	LIB	Lilongwe	LIL
Lima	LMA	Lisbon	LSB

Ljubljana	LJU	Lome	LOM
London	LND	Luanda	LUA
Lubumbashi	LBM	Lusaka	LUS
Luxembourg	LXM	Lyon	LYN
Madrid	MDD	Majuro	MAJ
Malabo	MBO	Managua	MNG
Manama	MNA	Manila	MNL
Maputo	MAP	Maracaibo	MRC
Marseille	MRL	Martinique	MRT
Maseru	MAS	Matamoros	MTM
Mazatlan	MAZ	Mbabane	MBA
Medan	MDN	Melbourne	MLB
Merida	MER	Mexico City	MEX
Milan	MLN	Minsk	MSK
Mogadishu	MGD	Monrovia	MRV
Monterrey	MTR	Montevideo	MTV
Montreal	MTL	Moroni	MOR
Moscow	MOS	Mumbai (Bombay)	BMB
Munich	MUN	Muscat	MST
Naha	NHA	Nairobi	NRB
Naples	NPL	Nassau	NSS
Nagoya	NGY	N'Djamena	NDJ
New Delhi	NWD	Niamey	NMY
Nicosia	NCS	Nogales	NGL
Nouakchott	NUK	Nuevo Laredo	NVL
Oporto	OPT	Oran	ORN
Osaka Kobe	KBO	Oslo	OSL
Ottawa	OTT	Ouagadougou	OUG
Palermo	PLR	Panama	PNM
Paramaribo	PRM	Paris	PRS
Perth	PRT	Peshawar	PSH
Phnom Penh	PHP	Podgorica	POD
Ponta Delgada	PTD	Port-au-Prince	PTP
Port Louis	PTL	Port Moresby	PTM
Port of Spain	PTS	Porto Alegre	PTA
Poznan	POZ	Prague	PRG
Praia	PIA	Pretoria	PRA
Pristina	PRI	Pusan	PSN
Quebec	QBC	Quito	QTO
Rabat	RBT	Rangoon	RNG
Recife	RCF	Rennes	RNN
Reykjavik	RKJ	Riga	RGA
Rio de Janeiro	RDJ	Riyadh	RID
Rome	RME	St. John's (Antigua and Barbuda)	SJS
St. Petersburg	SPT	Salvador da Bahia	SLV

Sanaa	SAA	San Jose	SNJ
San Salvador	SNS	Santiago	SNT
Santo Domingo	SDO	Sao Paulo	SPL
Sapporo	SPP	Sarajevo	SAR
Seoul	SEO	Shanghai	SHG
Shenyang	SNY	Singapore	SGP
Skopje	SKO	Sofia	SOF
Stockholm	STK	Strasbourg	STR
Stuttgart	STT	Surabaya	SRB
Suva	SUV	Sydney	SYD
AIT Taipei *	TAI	Tallinn	TAL
Tashkent	THT	Tbilisi	TBL
Tegucigalpa	TGG	Tel Aviv	TLV
Thessaloniki	TES	Tijuana	TJN
Tijuana (Consular Annex)	TJT	Tirana	TIA
Tokyo	TKY	Toronto	TRT
Toulouse	TOU	Tripoli	TRP
Tunis	TNS	Ulaanbaatar	ULN
U.S. Mission to the United Nations	USN	Valletta	VLL
Vancouver	VAC	Victoria	VTR
Vienna	VNN	Vientiane	VNT
Vilnius	VIL	Vladivostok	VLA
Warsaw	WRW	Wellington	WLL
Windhoek	WHK	Wuhan	WUH
Yaounde	YDE	Yekaterinberg	YEK
Yerevan	YRV	Zagreb	ZGB
Zurich	ZRH	Department (VO)	DPT

*The Taipei office of the American Institute in Taiwan, although an unofficial instrumentality, has been authorized to process visa applications for residents of Taiwan.

9 FAM 102.5-2 NATIONALITY CODES

(CT:VISA-186; 09-28-2016)

Only those nationality codes specified below are used by the Department when retrieving and compiling nonimmigrant visa (NIV) issuance reports from the Consular Consolidated Database (CCD). Note that dependent areas are not listed separately; issuances for such areas are incorporated in the figures under the symbol for the governing country.

Nationality	Code	Nationality	Code
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Afghanistan	AFGH	Albania	ALB
Algeria	ALGR	Andorra	ANDO
Angola	ANGL	Antigua and Barbuda	ANTI
Argentina	ARG	Armenia	ARM
Australia	ASTL	Austria	AUST
Azerbaijan	AZR	Bahamas, The	BAMA
Bahrain	BAHR	Bangladesh	BANG
Barbados	BRDO	Belarus	BYS
Belgium	BELG	Belize	BLZ
Benin	BENN	Bhutan	BHU
Bolivia	BOL	Bosnia and Herzegovina	BIH
Botswana	BOT	Brazil	BRZL
Brunei	BRNI	Bulgaria	BULG
Burkina Faso	BURK	Burma	BURM
Burundi	BRND	Cambodia	CBDA
Cameroon	CMRN	Canada	CAN
Cabo Verde	CAVI	Central African Republic	CAFR
Chad	CHAD	Chile	CHIL
China-mainland	CHIN	China-Taiwan	TWAN
Colombia	COL	Comoros	COMO
Congo, Republic of the (Congo Brazzaville)	CONB	Congo, Democratic Rep. of the (Congo Kinshasa)	COD
Costa Rica	CSTR	Cote d'Ivoire (Ivory Coast)	IVCO
Croatia	HRV	Cuba	CUBA
Cyprus	CYPR	Czech Republic	CZEC
Denmark	DEN	Djibouti	DJI
Dominica	DOMN	Dominican Republic	DOMR
Ecuador	ECUA	Egypt	EGYP
El Salvador	ELSL	Equatorial Guinea	EGN
Eritrea	ERI	Estonia	EST
Ethiopia	ETH	Fiji	FIJI
Finland	FIN	France	FRAN
Gabon	GABN	Gambia, The	GAM
Georgia	GEO	Germany	GER
Ghana	GHAN	Great Britain and Northern Ireland (United Kingdom)	GRBR
Greece	GRC	Grenada	GREN
Guatemala	GUAT	Guinea	GNEA
Guinea-Bissau	GUIB	Guyana	GUY
Haiti	HAT	Honduras	HOND

Hong Kong (HKSAR passport)	HNK	Hong Kong (British National (Overseas) passport)	HOKO
Hungary	HUNG	Iceland	ICLD
India	IND	Indonesia	IDSA
Iran	IRAN	Iraq	IRAQ
Ireland	IRE	Israel	ISRL
Italy	ITLY	Jamaica	JAM
Japan	JPN	Jordan	JORD
Kazakhstan	KAZ	Kenya	KENY
Kiribati	KIRI	Korea, North	PRK
Korea, South	KOR	Kosovo	KSV
Kuwait	KUWT	Kyrgyzstan	KGZ
Laos	LAOS	Latvia	LATV
Lebanon	LEBN	Lesotho	LES
Liberia	LIBR	Libya	LYBY
Liechtenstein	LCHT	Lithuania	LITH
Luxembourg	LXM	Macau S.A.R.	MAC
Macedonia	MKD	Madagascar	MADG
Malawi	MALW	Malaysia	MLAS
Maldives	MLDV	Mali	MALI
Malta	MLTA	Marshall Islands, Republic of the	RMI
Mauritania	MAUR	Mauritius	MRTS
Mexico	MEX	Micronesia, Federated States of	FSM
Moldova	MLD	Monaco	MON
Mongolia	MONG	Montenegro	MTG
Morocco	MORO	Mozambique	MOZ
Namibia	NAMB	Nauru	NAU
Nepal	NEP	Netherlands	NETH
New Zealand	NZLD	Nicaragua	NIC
Niger	NIR	Nigeria	NRA
Norway	NORW	Oman	OMAN
Pakistan	PKST	Palau	PALA
Palestinian Authority Travel Document	PAL	Panama	PAN
Papua New Guinea	PNG	Paraguay	PARA
Peru	PERU	Philippines	PHIL
Poland	POL	Portugal	PORT
Qatar	QTAR	Romania	ROM
Russia (Russian Federation)	RUS	Rwanda	RWND
St. Kitts and Nevis	STCN	St. Lucia	SLCA

St. Vincent and The Grenadines	STVN	Samoa	WSAM
San Marino	SMAR	Sao Tome and Principe	STPR
Saudi Arabia	SARB	Senegal	SENG
Serbia	SBA	Seychelles	SEYC
Sierra Leone	SLEO	Singapore	SING
Slovakia	SVK	Slovenia	SVN
Solomon Islands	SLMN	Somalia	SOMA
South Africa	SAFR	South Sudan	SSDN
Spain	SPN	Sri Lanka	SRL
Status Neutral Travel Document (issued by government of Georgia to residents of Abkhazia and South Ossetia)	SNTD	Sudan	SUDA
Suriname	SURM	Swaziland	SZLD
Sweden	SWDN	Switzerland	SWTZ
Syria	SYR	Tajikistan	TJK
Tanzania	TAZN	Thailand	THAI
Timor-Leste	TMOR	Togo	TOGO
Tonga	TONG	Trinidad and Tobago	TRIN
Tunisia	TNSA	Turkey	TRKY
Turkmenistan	TKM	Tuvalu	TUV
Uganda	UGAN	Ukraine	UKR
United Arab Emirates	UAE	Uruguay	URU
Uzbekistan	UZB	Vanuatu	VANU
Vatican City	VAT	Venezuela	VENZ
Vietnam	VTNM	Yemen	YEM
Zambia	ZAMB	Zimbabwe	ZIMB
United Nations Laissez Passer	UNLP	No Nationality/None	XXX

9 FAM 102.5-3 PORT-OF-ENTRY CODES USED BY THE DEPARTMENT OF HOMELAND SECURITY, UNITED STATES CUSTOMS AND BORDER PROTECTION

(CT:VISA-186; 09-28-2016)

The following three-letter codes are used by Customs and Border Protection (CBP) in its internal communications to represent ports-of-entry (POEs). The list is furnished to Foreign Service posts for their use in determining the meaning of codes contained in CBP documentation and correspondence. Posts should not use the codes in correspondence with offices of CBP, except in conjunction with the full name of the city to which the code applies.

CODE	LOCATION	CODE	LOCATION
ABE	Aberdeen, WA	ABG	Alburg, VT
ABQ	Albuquerque, NM	ABS	Alburg Springs, VT
ADT	Amistad Dam, TX	AGA	Agana, Guam
AGN	Algonac, MI	AGU	Mayaguez, PR
AKR	Akron, OH	ALB	Albany, NY
ALC	Alcan, AK	AMB	Ambrose, ND
ANA	Anacortes, WA	ANC	Anchorage, AK
AND	Andrade, CA	ANP	Antelope Wells, NM
ANT	Antler, ND	ARU	Aruba
AST	Astoria, OR	ATB	Ashtabula, OH
ATL	Atlanta, GA	AUS	Austin, TX
AXB	Alexandria Bay, NY	BAL	Baltimore, MD
BAU	Baudette, MN	BAY	Bayfield, WI
BBM	Brownsville, B&M Bridge	BCK	Bucksport, ME
BCY	Bay City, MI	BEA	Beaumont, TX
BEB	Beebe Plain, VT	BEE	Beecher Falls, VT
BEL	Bellingham, WA	BGC	Bridgeport, CT
BGM	Bangor, ME	BHM	Bar Harbor, ME Ferry Terminal
BIL	Billings, MT	BLA	Blaine, WA
BOC	Boca Grande, FL	BOO	Boothbay Harbor, ME
BOS	Boston, MA	BRG	Burlington, VT
BRO	Brownsville, TX	BRU	Brunswick, GA
BTM	Butte, MT	BTN	Baton Rouge, LA
BUF	Buffalo, NY	BWA	Boundary, WA
BWM	Bridgewater, ME	CAL	Calexico, CA

CAN	Cape Canaveral, FL	CAP	Cape Vincent, NY
CHA	Charlotte Amalie, St. Thomas, VI	CBH	Churubusco, IN
CHF	Chief Mountain, MT	CHI	Chicago, IL
CHL	Charleston, SC	CHM	Champlain, NY
CHR	Christiansted, St. Croix, VI	CHT	Chateaugay, NY
CIN	Cincinnati, OH	CLA	Clayton, NY
CLE	Cleveland, OH	CLG	Calgary, Alberta Canada
CLS	Calais, ME	CLT	Charlotte, NC
CNA	Canaan, VT	CNC	Cannon Corners, NY
CNJ	Camden, NJ	COB	Coburn Gore, ME
COL	Columbus, NM	COO	Coos Bay, OR
COR	Corpus Christi, TX	COW	HQ, Washington DC
CRA	Crane Lake, MN	CRB	Caribou, ME
CRU	Cruz Bay, St. John, VI	CSP	Casper, WY
CRY	Carbury, ND	CUT	Cut Bank, MT
DAL	Dallas, TX	DBL	Dublin, Ireland
DCA	Detroit, MI	DCB	Detroit, Ambassador Bridge
DCT	Detroit, Windsor Tunnel	DEN	Denver, CO
DER	Del Rio, TX	DET	Detroit, MI
DIB	Detroit, MI	DLB	Del Bonita, MT
DLR	Del Rio, TX	DMA	Detroit, MI
DNS	Dunseith, ND	DOU	Douglas, AZ
DUL	Duluth, MN	DVD	Dover, AFB DE
DVL	Danville, WA	EDA	Edmonton, AB Canada
EGP	Eagle Pass, TX	ELP	El Paso, TX
ELY	Ely, MN	ENS	Ensenada, PR
EPI	Eastport, ID	EPM	Eastport, ME

ERC	East Richford, VT	ERI	Erie, PA
EVE	Everett, WA	FAB	Fabens, TX
FAJ	Fajardo, PR	FAL	Falcon Dam, TX
FAR	Fargo, ND	FBA	Freeport, Bahamas
FDE	Eagle Pass, Fort Duncan Bridge	FER	Ferry, WA
FHK	Fort Hancock, TX	FPT	Freeport, TX
FRB	Fairbanks, AK	FRE	Fresno, CA
FRI	Friday Harbor, WA	FRK	Frederiksted, St. Croix, VI
FRN	Fernandina, FL	FRT	Fortuna, ND
FTC	Fort Covington, NY	FTF	Fort Fairfield, ME
FTH	Fort Hancock, NM	FTK	Fort Kent, ME
FTL	Fort Lauderdale, FL	FTP	Fort Pierce, FL
FTM	Fort Meyers, FL	FWA	Frontier, WA
GAL	Galveston, TX	GEO	Georgetown, SC
GGW	Glasgow, MT	GLO	Gloucester, MA
GLP	Gulfport, MS	GPM	Grand Portage, MN
GRB	Green Bay, WI	GRE	Great Falls, MT
GRF	Grand Forks, ND	GRO	Grosse Isle, MI
GRR	Greer, SC	GRT	Groton, CT
GTW	Brownsville, Gateway Bridge	GUL	Gulfport, MS
HAI	Haines, AK	HAM	Hamilton, Bermuda
HAR	Harrisburg, PA	HEL	Helena, MT
HHW	Honolulu, HI	HID	Hidalgo, TX
HIG	Highgate Springs, VT	HLG	Harlingen, TX
HML	Hamlin, ME	HMM	Hammond, IN
HNN	Hannah, ND	HNS	Hansboro, ND
HOB	Hoboken, NJ	HOM	Homer, AK
HOP	Hopewell, VA	HOU	Houston, TX
HSB	Harrisburg, PA	HTM	Houlton, ME
HUM	Humacao, PR	HVR	Wild Horse, MT

HYD	Hyder, AK	IND	Los Indios
INP	Indianapolis, IN	INT	International Falls, MN
ISB	Port Isabel, TX	ISL	Isle Royale, MI
IVP	Calexico, Truck Crossing	JAC	Jacksonville, FL
JER	Jersey City, NJ	JKM	Jackman, ME
JOB	Jobos, PR	JUN	Juneau, AK
KAL	Kalispell, MT	KAN	Kansas City, MO
KET	Ketchikan, AK	KEY	Key West, FL
KLM	Kalama, WA	KOA	Kona, HI
LAN	Lancaster, MN	LAR	Laredo, TX
			Juarez-Lincoln Bridge
LAU	Laurier, WA	LCB	Laredo, Columbia Bridge
			Lewiston, NY
LEB	Lebanon, ME	LEW	
LIM	Limestone, ME	LKC	Lake Charles, LA
LLB	Laredo Juarez-Lincoln Bridge 2, TX	LNB	Long Beach, CA
LOI	Los Indios	LON	Longview, WA
LOR	Lorain, OH	LOS	Los Angeles, CA
LOU	Louisville, KY	LSE	Los Ebanos, TX
LUB	Lubec, ME	LUK	Lukeville, AZ
LVG	Las Vegas, NV	LWT	Laredo, World Trade Bridge
LYN	Lynden, WA	MAD	Madawaska, ME
MAG	McGuire AFB, NJ	MAI	Maida, ND
MAP	Mariposa, AZ	MAS	Massena, NY
MAY	Mayaguez, PR	MCI	McAllen, TX
MEM	Memphis, TN	MET	Metaline Falls, WA
MGC	Morgan City, LA	MGM	Morgan, MT
MIA	Miami, FL	MIL	Milwaukee, WI
MND	Minot, ND (Int'l Airport)	MNW	Manitowoc, WI

MOB	Mobile, AL	MON	Montreal, Quebec Canada
MOO	Mooers, NY	MOR	Morses Line, VT
MRC	Marine City, MI	MRH	Morehead City, NC
MRR	Morristown, NY	MRY	Marysville, MI
MSP	Minneapolis/St. Paul (Int'l Airport)	NAC	Naco, AZ
NAS	Nassau, Bahamas	NEA	Neah Bay, WA
NEC	Neche, ND	NEW	Newark, NJ
NIA	Niagara Falls, NY	NIG	Nighthawk, WA
NIK	Nikiski, AK	NOG	Nogales, AZ
NOL	New Orleans, LA	NOM	Nome, AK
NOO	Noonan, ND	NOR	Norfolk, VA
NOY	Noyes, MN	NPV	Newport, VT
NRG	Northgate, ND	NRN	Norton, VT
NRT	North Troy, VT	NSV	Nashville, TN
NWH	New Haven, CT	NWL	New London, CT
NWN	Newport News, VA	NYC	New York, NY
OAK	Oakland, CA	OGD	Ogdensburg, NY
OKC	Oklahoma City, OK	OLY	Olympia, WA
OMA	Omaha, NE	OPH	Opheim, MT
ORL	Orlando, FL	ORO	Oroville, WA
OSW	Oswego, NY	OTM	Otay Mesa POE, CA
OTT	Ottawa, CT	PAN	Panama City, FL
PAR	Port Arthur, TX	PAS	Pascagoula, MS
PAX	Patuxent River, MD	PBB	Peace Bridge, NY
PCF	Port Canaveral, FL	PDN	Paso del Norte, El Paso, TX
PEM	Pembina, ND	PEN	Pensacola, FL

PER	Perth Amboy, NJ	PEV	Port Everglades, FL
PGR	Progreso, TX	PHI	Philadelphia, PA
PHO	Phoenix, AZ	PHR	Pharr, TX
PHU	Port Huron, MI	PHY	Pacific Highway POE, WA
PIB	Paradise, Island, Bahamas	PIE	Piegan, MT
PIN	Pine Creek, MN	PIT	Pittsburgh, PA
PIV	Pinnacle POE, VT	PKC	Poker Creek, AK
PNG	Port Angeles, WA	PNH	Pittsburg, NH
POE	Port of El Paso, TX	POM	Portland, ME
PON	Ponce, PR	POO	Portland, OR
POR	Portal, ND	PRC	Prince Rupert BC Canada
PRE	Presidio, TX	PRO	Providence, RI
PSJ	Port St. Joe, FL	PSM	Portsmouth, NH
PTL	Porthill, ID	PTO	Port Townsend, WA
PTR	Point Roberts, WA	PUT	Put-in-Bay, OH
RAN	Ranier, MN	RAY	Raymond, MT
RBB	Niagara Falls, Rainbow Bridge, NY	RBT	Roberts Landing, MI
RCM	Richmond, VA	RDU	Raleigh- Durham, NC
REN	Reno, NV	RIF	Richford, VT
RIO	Rio Grande City, TX	RIT	Rome, Italy
ROC	Rochester, NY	ROM	Roma, TX
ROO	Roosville, MT	ROS	Roseau, MN
ROU	Rouses Point, NY	SAC	Sacramento, CA
SAG	Saginaw, MI	SAJ	San Juan, PR
SAR	Sarles, ND	SAS	Sasabe, AZ
SAU	St. Augustine, FL	SAV	Savannah, GA

SBR	South Brewer, ME	SCL	St. Clair, MI
SCO	Scobey, MT	SDP	San Diego Intl. Airport, CA
SDY	Sandusky, OH	SEA	Seattle, WA
SET	Seattle- Tacoma, WA	SFR	San Francisco, CA
SHA	Shannon, Ireland	SHR	Sherwood, ND
SJO	St. John, ND	SKA	Skagway, AK
SLC	Salt Lake City, UT	SLO	San Luis Obispo, CA
SLU	San Luis, AZ	SNA	San Antonio, TX
SND	San Diego, CA	SNJ	San Jose, CA
SNN	Shannon, Ireland	SPA	St. Pamphile, ME
SPC	San Pedro, CA	SPM	St. Paul, MN
SPO	Spokane, WA	SRL	St. Aurelie, ME
SSB	Sanford, FL	SSM	Sault Ste. Marie, MI
STA	St. Albans, VT	STJ	St. John, USVI
STL	St. Louis, MO	STR	Santa Teresa, NM
SUM	Sumas, WA	SWE	Sweetgrass, MT
SYR	Syracuse, NY	SYS	San Ysidro, CA
TAC	Tacoma, WA	TAM	Tampa, FL
TEC	Tecate, CA	THO	Thousand Islands Bridge, NY
TOL	Toledo, OH	TOR	Toronto, Ontario Canada
TRL	Trail Creek, MT	TRO	Trout River, NY
TRV	Travis AFB, CA	TUC	Tucson, AZ
TUR	Turner, MT	VAN	Vancouver, WA
VCB	Vanceboro, ME	VCV	Vancouver, BC Canada
VIB	Veterans International Bridge	VIC	Victoria, BC
VNB	Van Buren, ME	WAL	Walhalla, ND
WAR	Warroad, MN	WAS	Washington, DC

WBE	West Berkshire, VT	WCM	Willow Creek, MT
WHI	Whitetail, MT	WHM	Wildhorse, MT
WHO	Westhope, ND	WHR	Whirlpool Bridge
WHT	Whitlash, MT	WIL	Wilmington, NC
WIN	Winnipeg, SK. Canada	WLL	Wilmington, DE
WRB	Whirlpool Bridge	WND	Williston, ND (Int'l Airport)
WPB	West Palm Beach, FL	WRA	Wrangell, AK
YAK	Yakima, WA	YOU	Youngstown, NY
YSL	Ysleta, TX	YUI	Yuma, AZ

9 FAM 102.6

(U) VISA OFFICE

(CT:VISA-158; 08-10-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 102.6-1 (U) INTRODUCTION TO VISA OFFICE

(CT:VISA-158; 08-10-2016)

Unavailable

- (1) (U) DEPUTY ASSISTANT SECRETARY FOR VISA SERVICES – CA/VO
- (2) (U) MANAGING DIRECTOR – CA/VO

Unavailable

- (3) (U) OFFICE OF DOMESTIC OPERATIONS - CA/VO/DO

Unavailable

- (a) (U) Diplomatic Liaison Division – CA/VO/DO/D:

Unavailable

- (b) (U) Immigration Visa Control and Reporting Division – CA/VO/DO/I:

Unavailable

- (c) (U) Kentucky Consular Center – CA/VO/DO/KCC:

Unavailable

- (d) (U) National Visa Center – CA/VO/DO/NVC:

Unavailable

- (e) Unavailable

- (f) (U) Waiver Review Division – CA/VO/DO/W:

Unavailable

- (4) (U) OFFICE OF FIELD OPERATIONS - CA/VO/F

- (a) (U) Education and Tourism Division - CA/VO/F/ET:

Unavailable

- (b) (U) Immigration and Employment Division - CA/VO/F/IE:

Unavailable

- (c) (U) Outreach and Inquiries Division - CA/VO/F/OI:

Unavailable

(5) (U) OFFICE OF INFORMATION MANAGEMENT AND LIAISON – CA/VO/I

Unavailable

(6) (U) Office of Legal Affairs - CA/VO/L

(a) (U) Advisory Opinions Division - CA/VO/L/A: Unavailable

(b) (U) Legislation and Regulations Division - CA/VO/L/R:

Unavailable

**(7) (U) OFFICE OF SCREENING, ANALYSIS, AND COORDINATION–
CA/VO/SAC**

· **(a) (U) Counter-Terrorism Division - CA/VO/SAC/CT:
Unavailable**

· **(b) (U) Screening Division - CA/VO/SAC/S:**

· **Unavailable**

**(c) (U) Revocation and Coordination Division -CA/VO/SAC/RC:
Unavailable**

9 FAM 102.7

(U) SELECT ALERT FACILITATION PROGRAM

*(CT:VISA-1; 11-18-2015)
(Office of origin: CA/VO/L/R)*

9 FAM 102.7-1 (U) SELECT ALERT FACILITATION PROGRAM

(CT:VISA-1; 11-18-2015)

- a. **(SBU) Select Alert Facilitation Program Summary:** The Select Alert Facilitation Program (SAFP) is intended to assist a limited number of travelers by facilitating the admissions process into the United States. The program allows eligible SAFP posts **only** (working through their consular section chiefs) to nominate travelers, who must be of particular interest to the U.S. Government, for advance Port of Entry (POE) notification. Participating SAFP posts (listed in [9 FAM 102.7-1](#) paragraph f) should send a notification to U. S. Customs and Border Protection (CBP) with details, as encompassed below, of the individual, or group of individuals traveling together, and information about the proposed visit to the United States. At its discretion, CBP may then take additional actions prior to the individual's arrival at the designated POE and inform the appropriate CBP officials at the POE about the results of their additional efforts in order to attempt to facilitate the admissions and inspections process for the traveler, who otherwise may encounter difficulties during CBP processing.
- b. **(SBU) Who is Eligible?**
- (1) **(SBU)** In order to be eligible for SAFP, a traveler must be of particular interest to the U.S. Government as justified by a SAFP post and be traveling to one of the designated ports of entry (see [9 FAM 102.7-1](#) paragraph f) below). Eligible travelers for SAFP may be, for example, high-profile individuals or simply those who have had difficulty at a POE in the past because of a similarity in names with other travelers or other similar issue that cannot be (or has not been) otherwise redressed through other means. SAFP is intended for travelers who may generate greater-than-normal attention (e.g., publicity) and have required (or post believes will require) additional inspection and admissibility screening by CBP officers.
 - (2) **(SBU)** The program is applicable without regard to visa class, but posts should be extremely selective in nominating travelers for SAFP.
 - (3) **(SBU)** The program is **not** a request to waive any registration requirements or any inspection and admissions procedures that CBP otherwise performs and does not exempt the traveler from required screening, particularly upon arrival at the Port of Entry when applying for admission into the United States. The

program applies only to international arrivals at the designated POEs and does not apply to onward domestic connections, later domestic flights, or departures from the United States. It is **not** intended to expedite or provide special processing for host-country nationals without regard to U.S. Government interests. U.S. Customs and Border Protection may at any time decline to assist with the facilitation of any individual as requested through SAFF. Participation should not be determined on the basis of being elderly, personal friends, families of mission staff, or frequent travelers who do not normally experience inspection or admissibility issues when traveling to the United States. The program does not establish or create any guarantees or rights to expedited inspections or admissibility determinations.

- c. **(SBU) SAFF Versus DHS Traveler Redress Inquiry Program:** The Department of Homeland Security Traveler Redress Inquiry Program (DHS TRIP) should remain the **primary mechanism** for travelers to inquire or seek resolution of any difficulties experienced during their travels into the United States, to include Watchlist issues; screening problems at Ports of Entry; or situations in which travelers believe they have been unfairly or incorrectly delayed, denied boarding, or identified for additional screening at Ports of Entry. More information about DHS Trip is available at www.dhs.gov or by electronic mail at trip@dhs.gov. If appropriate, travelers should be directed to DHS TRIP to seek redress.
- d. **(SBU) Select Alert Facilitation Program Procedures:**
- (1) **(SBU)** Eligible SAFF posts should establish an internal procedure at the highest management levels to nominate possible SAFF travelers, using consular section management as the communication link with CBP.
 - (2) **(SBU)** To nominate a traveler for this program, provide the following information by e-mail to CBP at dospoerequests@cbp.dhs.gov, and copy your CA/VO/F liaison officer, who will coordinate with the Visa Office CBP liaison officer as well. The subject line must indicate that the message is a Select Alert notification, and include the name and nationality of the traveler. For example, "Select Alert Nomination - Smith, David, Canada." The e-mail should include, but is not limited to, the following information:
 - (a) **(SBU)** Name (family name, given name)
 - (b) **(SBU)** Date of birth (mm/dd/yy format only)
 - (c) **(SBU)** Passport number
 - (d) **(SBU)** Citizenship
 - (e) **(SBU)** Gender
 - (f) **(SBU)** Visa data (category, validity, and (if possible) visa foil number - or include "VWP" if the individual is traveling under the Visa Waiver Program)
 - (g) **(SBU)** Travel itinerary including: date of travel; flight number; POE (see [9 FAM 102.7-1](#) paragraph f below for eligible POEs)
 - (h) **(SBU)** Justification for the facilitation request. Why do you believe special

facilitation is necessary? What problems has the traveler had (or is likely to have) when entering the United States? Is the traveler conducting business or participating in a U.S. Government-sponsored program?

(i) **(SBU)** Has traveler been referred to DHS TRIP?

(3) **(SBU)** If the Visa Office CBP liaison officer does not believe there is sufficient justification to facilitate travel, the officer is authorized to deny assistance.

e. **(SBU) Advance Notice Required:** The information detailed in [9 FAM 102.7-1](#) paragraph d **must**, repeat **must**, be sent at least **three working days prior to travel** (but not **more** than three weeks prior to travel). If the participating post cannot provide the required information within this timeframe, it cannot nominate the traveler. Upon timely receipt of the information detailed in [9 FAM 102.7-1](#) paragraph d and the determination that the individual is eligible for SAFF, the Visa Office CBP liaison officer will work within the CBP framework to facilitate the individual(s), as appropriate, and to alert the relevant personnel at the POE regarding the traveler or group of travelers.

f. **(SBU) Participating Ports of Entry and Posts:** The SAFF is effective for **only** the following posts and POEs.

(1) **(SBU) Participating Posts**

Abu Dhabi	Algiers	Amman	Amsterdam
Ankara	Asmara	Asuncion	Athens
Baghdad	Beirut	Belfast	Belmopan
Berlin	Bern	Bogota	Brasilia
Brussels	Buenos Aires	Cairo	Casablanca
Chennai	Curacao	Damascus	Dhahran
Dhaka	Doha	Dubai	Dublin
Frankfurt	Guatemala City	Guayaquil	Islamabad
Istanbul	Jakarta	Jeddah	Jerusalem
Johannesburg	Kabul	Kathmandu	Khartoum
Kingston	Kolkata	Kuala Lumpur	Kuwait
Lima	Lisbon	London	Madrid
Manama	Montevideo	Moscow	Mumbai
Muscat	New Delhi	Nicosia	Panama City
Paramaribo	Paris	Port of Spain	Port-au-Prince
Quito	Rabat	Rio de Janeiro	Riyadh
Rome	San Jose	San Salvador	Sanaa
Santiago	Santo Domingo	Sao Paulo	Tegucigalpa
Tel Aviv	Tripoli	Tunis	Vienna

(2) **(SBU) Participating Ports of Entry**

Atlanta	Boston – Logan Airport	Charlotte	Chicago – O’Hare
Dallas – Ft. Worth	Denver	Detroit Metropolitan	Fort Lauderdale

Honolulu	Houston	Los Angeles	Miami
New York – JFK	Newark Liberty	Orlando	Philadelphia
Phoenix	San Francisco	San Juan	Seattle
Washington, D.C. – Dulles			

g. **(SBU) Cautions, Quality Control, Questions:**

- (1) **(SBU)** The Bureau of Consular Affairs (CA) does **not** intend to publicize the program; no posts may publicize the program. This is an opportunity to discreetly facilitate travel by someone of interest to the U.S. Government.
- (2) **(SBU)** You must not use any channel other than the one described in this appendix to notify CBP of SAFFP travelers who will need assistance at the POE. **Please be selective when nominating travelers.**
- (3) **(SBU)** Consular section chiefs will serve as the quality control for visitors nominated for the program. CA has an interest in ensuring scrupulous, selective use of this facilitation so as not to over-burden CBP.
- (4) **(SBU)** In most cases, posts should not disclose information or details about SAFFP to the traveler. If necessary, posts may, however, advise SAFFP travelers that the State Department's Visa Office CBP liaison has been notified of their travel and will arrange to alert the appropriate POE. The nominated travelers should be reminded that there is no guarantee or right to expedited or abbreviated processing, nor are there any guarantees or rights created regarding the traveler's admissibility. All travelers will continue to be subject to the inspection and admissibility procedures and requirements and may be referred to secondary to address any issues, to include inadmissibility determinations. Travelers should be advised that redress may be sought through the DHS TRIP process.
- (5) **(SBU)** CBP may now access the Department of State's Consular Consolidated Database (CCD) to assist with inspectional duties. If the CCD is timely and clearly annotated in the comments section, and the Consular Lookout and Support System (CLASS) record agrees with the information provided by the post, the need to utilize SAFFP should be minimized.
- (6) **(SBU)** Posts should remember, and inform the traveler, if necessary, that this is **not** a port courtesies program. Any nominated traveler identified through SAFFP is not entitled to port courtesies, or expedited inspections or admissibility determinations at the Port of Entry. The nominated traveler is also not guaranteed admissibility to the United States. CBP maintains the right to decline to assist with the facilitation of any travelers nominated through SAFFP. If the post is arranging for such a program, do not send a duplicate request for SAFFP processing; the same CBP office handles both.
- (7) **(SBU)** If there are questions or concerns about the criteria used in this program, contact your CA/VO/F liaison officer.

9 FAM 102.8

FAMILY-BASED RELATIONSHIPS

(CT:VISA-367; 05-26-2017)
(Office of origin: CA/VO/L/R)

9 FAM 102.8-1 MARITAL RELATIONSHIP

9 FAM 102.8-1(A) What Qualifies as a Marriage?

(CT:VISA-367; 05-26-2017)

The term "marriage" is not specifically defined in the INA; however, the meaning of "marriage" can be inferred from INA 101(a)(35), which defines the term "spouse." Relationships entered into for purposes of evading immigration laws of the United States are not valid for visa adjudication purposes.

9 FAM 102.8-1(B) Validity of Marriage

(CT:VISA-367; 05-26-2017)

- a. **Law of Place of Celebration Controls:** The underlying principle in determining the validity of the marriage is that the law of the place of marriage celebration controls (except as otherwise noted below. If the marriage was properly and legally performed in the place of celebration and legally recognized, then the marriage is deemed to be valid for visa adjudication purposes. Any prior marriage, of either party, must be legally terminated.
- b. **Void for Public Policy:** Certain marriages that are legal in the place of celebration but are void under State law as contrary to public policy, are not valid for visa adjudication purposes.
 - (1) **Polygamous Marriages:** Polygamous marriages are not recognized as a matter of federal public policy. See Matter of H-, 9 I&N Dec. 640 (BIA 1962). Any prior marriage, of either party, must be legally terminated before the later marriage.
 - (2) **Marriage Between Relatives Underage Marriages:** Certain marriages between relatives and underage marriages may be void because of public policy concerns even if the place of celebration recognizes the marriage.
 - (a) A marriage void under state law, such as a relative or underage marriage, may nevertheless be recognized as valid by the state of intended immigration.
 - (b) The legal thresholds varies state by state. For example, first cousins may not marry in Michigan and such marriages in Michigan are considered void

from their inception (M.C.L.A. 551.3 (2010)). A 1973 ruling of the Michigan Supreme Court, however, found a marriage between first-degree cousins married in Hungary was nevertheless valid (*Toth v. Toth*, 50 Mich. App 150, 212 N.W.2d 812 (1973)). The same principal applies in marriages of minors.

- (c) In any case where you suspects that a marriage may not be valid for visa adjudication purposes because the parties are biological relations such as siblings, uncle-nice, or first cousin, or one or both of the parties were potentially underage at the time of marriage, you request an advisory opinion (AO) from the Advisory Opinions Division (CA/VO/L/A).

9 FAM 102.8-1(C) Process of Determining the Validity of Marriage

(CT:VISA-367; 05-26-2017)

- a. **Role of the Department of Homeland Security:** In some situations, Department of Homeland Security/United States Citizenship and Immigration Services (DHS/USCIS) will have determined the validity of a marriage in the petition approval context.
- (1) Under INA 204, the USCIS has the responsibility for determining whether an alien is entitled to immediate relative (IR) or preference status by reason of the alien's relationship to a U.S. citizen or permanent resident alien. If USCIS approves a petition with the knowledge that the parties concerned are related to each other such as uncle and niece or as first cousins, you should accept such determination and not attempt to reach an independent conclusion (see [9 FAM 504.2-8\(B\)\(2\)](#)).
 - (2) In cases where DHS/USCIS has approved a petition involving a marriage between relatives, and you question its validity, but do not believe it necessary to return the petition directly to DHS/USCIS pursuant to 22 CFR 42.43, you should refer any questions concerning the validity of the petition for an AO to CA/VO/L/A.
- b. **Role of the Consular Office:** In other cases, such as derivative nonimmigrant classifications (for example, F-2, A-2, H-4) and consular approval of a visa petition under [9 FAM 504.2](#), you are responsible for determining the validity of the marriage. Where you are faced with determining the validity of a marriage between relatives for consular approval of a petition, the case must be considered "not clearly approvable" and submitted to USCIS for approval. (See [9 FAM 504.2](#).)

9 FAM 102.8-1(D) Proxy Marriages

(CT:VISA-367; 05-26-2017)

A marriage where one or both parties was not present (proxy marriage) is not valid unless the marriage was consummated.

- (1) **Consummated:** For the purpose of issuing an immigrant visa to a “spouse,” a proxy marriage that has been subsequently consummated is deemed to have been valid as of the date of the proxy ceremony. Proxy marriages consummated prior to the proxy ceremony cannot be considered a valid marriage for visa adjudication purposes unless it has been consummated subsequently.
- (2) **Unconsummated:** A proxy marriage that has not been subsequently consummated does not create or confer the status of “spouse” pursuant to INA 101(a)(35). A party to an unconsummated proxy marriage may be processed as a nonimmigrant fiancé(e). A proxy marriage celebrated in a jurisdiction recognizing such marriage is generally considered to be valid; thus, an actual marriage in the United States is not necessary if such alien is admitted to the United States under INA provisions other than as a spouse. (See [9 FAM 502.7-5](#) for additional information on fiancé classifications.)

9 FAM 102.8-1(E) Same-Sex Marriages

(CT:VISA-367; 05-26-2017)

Same-sex marriage is valid for visa adjudication purposes, as long as the marriage is recognized in the “place of celebration,” whether entered into in the United States or a foreign country. The same-sex marriage is valid even if the applicant is applying in a country in which same-sex marriage is illegal.

9 FAM 102.8-1(F) Common Law Marriage

(CT:VISA-367; 05-26-2017)

In the absence of a marriage certificate, an official verification, or a legal brief verifying full marital rights, a common law marriage or cohabitation is considered to be a “valid marriage” for purposes of visa adjudication only if:

- (1) **(U)** Common law marriage is recognized in the place that it is claimed is was created as being fully equivalent in every respect to a traditional legal marriage; and
- (2) **(U)** It bestows all of the same legal rights and duties possessed by partners in a lawfully contracted marriage:
 - (a) **(U)** The relationship can only be terminated by divorce or death;
 - (b) **(U)** There is a potential right to alimony;
 - (c) **(U)** There is a right to intestate distribution of an estate; and
 - (d) **(U)** There is a right of custody, if there are children.

9 FAM 102.8-1(G) Civil Unions and Domestic Partnerships

(CT:VISA-367; 05-26-2017)

A civil union or domestic partnership only qualifies as a marriage for visa adjudication

purposes if the place of celebration recognizes the status as equal in all respects to a marriage. However, if partners in a civil union or domestic partnership satisfy the legal requirements such that their union is a common law marriage (see common law marriage in [9 FAM 102.8-1\(F\)](#) above), a marriage exists for visa adjudication purposes.

9 FAM 102.8-1(H) Transgender Marriages

(CT:VISA-367; 05-26-2017)

For visa adjudication purposes, a marriage involving transgender persons is valid if the place of celebration where the marriage took place recognizes the marriage as valid, subject to the exceptions described above (such as polygamy).

9 FAM 102.8-1(I) Legal Separations and Marriage Termination

(CT:VISA-367; 05-26-2017)

- a. An alien is deemed a "spouse" for visa adjudication purposes, even though the parties to the marriage have ceased cohabiting, as long as such marriage was not contracted solely to qualify for immigration benefits. If the parties are legally separated, i.e., by written agreement recognized by a court, or by court order, the alien no longer qualifies as a "spouse" for visa adjudication purposes even though the couple has not obtained a final divorce.
- b. If an individual's prior marriage has been terminated by a separation that is not recognized by the state in which they reside, they must first obtain a divorce from the prior spouse in order to qualify for an immigrant visa.

9 FAM 102.8-2 PARENT-CHILD RELATIONSHIPS

9 FAM 102.8-2(A) Who Qualifies as a Child?

(CT:VISA-367; 05-26-2017)

Consistent with INA 101(b)(1) the term "child" generally refers to an unmarried person under 21 years of age.

9 FAM 102.8-2(B) Categories of Child

(CT:VISA-367; 05-26-2017)

- a. **Categories of Child:** INA 101(b)(1) lists seven categories of the term "child":
 - (1) Child Born In Wedlock;
 - (2) Child Born Out of Wedlock;
 - (3) Legitimated Child;

- (4) Stepchild;
- (5) Adopted Child;
- (6) Orphan; and
- (7) Convention Adoptee.

b. Genetic Connection:

- (1) Previously, the term "child" as used at INA 101(b)(1) was interpreted to require a genetic connection between the child and the parent.
- (2) However, such an interpretation did not adequately account for advances in assisted reproductive technology (ART).
- (3) Consequently, birth mothers (also referred to as gestational mothers) who are also the legal parent of the child to be treated the same as genetic mothers for the purpose of qualifying for immigration benefits.
- (4) This policy is retroactive. If you encounter a case in which the child born abroad to a gestational and legal mother was previously denied an immigration benefit under prior interpretation, the child potentially would be eligible for an immigration benefit upon the submission of a new application accompanied by appropriate fees and sufficient evidence that he or she meets all relevant statutory and regulatory requirements. (See [9 FAM 502.2](#); [9 FAM 502.1-1\(C\)\(2\).](#))

9 FAM 102.8-2(C) Children Born in Wedlock

(CT:VISA-367; 05-26-2017)

- a. A child born to a married couple qualifies as the "child born in wedlock" of both individuals under INA 101(b)(1)(A). Therefore, children born out of wedlock who are deemed "legitimate" by virtue of host country law would not qualify for "child" status under INA 101(b)(1)(A), although they most probably would qualify for such status under INA 101(b)(1)(C) or INA 101(b)(1)(D), depending on the terms of the local law and the facts of the case.
- b. INA Section 101(b) treats a child as being born "in wedlock" under INA Section 101(b)(1)(A) when the genetic and/or gestational parents are legally married to each other at the time of the child's birth and both parents are the legal parents of the child at the time and place of birth. (See [9 FAM 502.2](#), [9 FAM 502.1-1\(C\)\(2\).](#))

9 FAM 102.8-2(D) Children Born Out of Wedlock

(CT:VISA-367; 05-26-2017)

a. Child Through the Mother Under INA 101(b)(1)(D):

- (1) A "child born out of wedlock" is the "child" of the natural mother under INA 101(b)(1)(D). The natural mother's name on the child's birth certificate may be taken as proof of such relationship.

- (2) The term "natural mother" in INA 101(b)(1)(D) includes a gestational mother who is the legal mother of a child at the time and place of birth, as well as genetic mother who is a legal mother of the child at the time and place of birth.

b. Child Through the Father Under INA 101(b)(1)(D):

- (1) A "child born out of wedlock" is a "child" of the natural father under INA 101(b)(1)(D), provided the father has or had a bona fide parent-child relationship with the child. While an ongoing father-child relationship is not required to establish a "bona fide parent or child" relationship, you must ascertain whether a genuine parent or child relationship, not merely a tie by blood, exists or has existed at some point prior to the offspring's 21st birthday and while the offspring is or was unmarried.
- (2) While each case must be determined based on the facts presented, you must be satisfied that the facts demonstrate the existence of a bona fide parent or child relationship before the child's 21st birthday. For instance, although not necessary, the moral or emotional behavior of the father or child toward each other, which reflects the existence of such a relationship, may constitute favorable evidence of the relationship, just as cohabitation may be another element of evidence of such relationship.
- (3) Proof of present or former familial relationship may include the:
 - (a) Father's acknowledgment within the community that the child is his own;
 - (b) Father's support for the child's needs; and
 - (c) Father's active concern for child support, instruction, and general welfare, and interest in the child.

9 FAM 102.8-2(E) Legitimated Child

(CT:VISA-367; 05-26-2017)

- a. In order for a child to qualify under INA 101(b)(1)(C), a "legitimated child" must meet the following criteria:
 - (1) The child must be legitimated under the law of the child's residence/domicile or under the law of the father's residence/domicile;
 - (2) The father must establish that he is the child's natural father;
 - (3) The legitimation takes place before the child reaches the age of 18 years; and
 - (4) The child is in the legal custody of the legitimating parent or parents at the time of such legitimation. (For adoption purposes, legal custody may be granted prior to the issuance of a decree.) (See [9 FAM 502.3-2\(B\)](#).)
- b. Please note that a gestational mother who is also the legal mother of the child is to be treated the same as a genetic mother. Thus, the out-of-wedlock child of gestational mother who is also the legal mother of the child, where such child has been legitimated by the father pursuant to the requirements above, would meet the

definition of a "child legitimated" in INA 101(b)(1)(C). See paragraph b of [9 FAM 102.8-2\(B\)](#) above.

9 FAM 102.8-2(F) Stepchild

(CT:VISA-367; 05-26-2017)

a. Creation of Step-Child Relationship:

- (1) The provisions of INA 101(b)(1)(B) provide for the creation of a step-relationship between the natural offspring (whether or not born out of wedlock) of a parent and that parent's spouse. Such step relationship is created as a result of the marriage of the offspring's natural parent, which includes birth (gestational) mothers, to a spouse and must be based on a marriage that is or was valid for all purposes, including immigration purposes. The offspring must be or have been under the age of 18 at the time the marriage takes place in order to acquire the benefits as a child under INA 101(b)(1)(B). No previous meeting of the offspring and the new parent is required. If the marriage between the natural parent and stepparent is still in effect (i.e., the marriage has not been terminated by divorce or by death of the natural parent), there is no requirement that an emotional relationship exist between the stepchild and stepparent.
- (2) INA 101(b)(1)(B) makes no distinction between children born in wedlock and those born out of wedlock in respect to stepparent/stepchild relationship. All that is required is that the child be under the age of 18 at the time the marriage creating the status of stepchild occurred. A stepparent/stepchild relationship can also be established for children who were born subsequent to the marriage between the natural parent and the stepparent. For example, a child who is born as a result of an out of wedlock relationship between a married man and another woman would qualify as the stepchild of the married man's wife, since the child was under 18 when the marriage between the natural parent and the stepparent occurred.

b. Stepparent/Stepchild Relationships After Termination of Marriage:

- (1) A stepchild who has met the requirements to qualify as a "child" of the stepparent under INA 101(b)(1)(B) may continue to be entitled to immigration benefits from such marriage, even though the relationship between the natural parent and the stepparent has been terminated by divorce or by the death of the natural parent, provided the marriage was a valid marriage and the family relationship continues to exist as a matter of fact between the stepparent and stepchild.
- (2) The fact that the stepparent petitioner is willing to provide the required Form I-864, Affidavit of Support Under Section 213A of the Act is not by itself sufficient evidence that the family relationship continues to exist between the stepparent and the stepchild. There must be evidence of some form of contact (e.g., letters, electronic mail, telephone calls, etc.), though it is not necessary that the stepparent and stepchild have met in person.

- c. **Stepparent/Stepchild Relationship and Immigrant Status:** A stepparent or stepchild may confer or derive immigrant status even when parties to a marriage creating the stepparent/stepchild relationship have legally separated provided the family relationship has continued to exist between the stepparent and stepchild.
- d. **Stepchild Determination in Orphan Cases:** Generally, to qualify as a stepchild under the INA, the marriage creating the stepchild status must have occurred before the stepchild's 18th birthday. USCIS, however, has adopted a narrow interpretation of "stepchild" under INA 101(b)(1)(B) solely for determining whether a child is an "orphan" as the child of a sole or surviving parent. Under this interpretation, a sole or surviving parent's new spouse must have a legal parent-child relationship with the child in order for the child no longer to be considered the child of a sole or surviving parent.
- (1) A sole or surviving parent who has married will still be considered, in determining whether a child is an orphan, the child's sole or surviving parent if the petitioner establishes that the sole or surviving parent's new spouse has no legal parent-child relationship to the child under the law of the foreign sending country.
 - (2) To establish a legal parent-child relationship:
 - (a) The stepparent must have adopted the child; or
 - (b) The stepparent must have obtained legal custody of the child; or
 - (c) Under the law of the foreign sending country, the marriage between the parent and stepparent must have created a parent-child relationship between the stepparent and the child.
 - (3) If you are unsure of the legal status of the relationship between a stepparent and a child, contact CA/VO/L/A.

9 FAM 102.8-2(G) Adopted Child

(CT:VISA-367; 05-26-2017)

- a. Under INA 101(b)(1)(E), an alien is defined as a child ("adopted child"), if the child:
- (1) Was legally adopted while under the age of 16 (or under the age of 18, if this is the sibling of a child adopted under 16 who meets the requirements of INA 101(b)(1)(E)); and
 - (2) Has been in the legal custody of, and resided with, the adopting parent(s) for at least two years, provided that no natural parent of any such adopted child must thereafter, by virtue of such parentage, be accorded any right, privilege or status.
- b. See [9 FAM 502.3-2\(B\)](#) for additional information on the immigrant visa IR-2 adopted child classification.

9 FAM 102.8-2(H) Orphan

(CT:VISA-367; 05-26-2017)

- a. **(U)** There are three key elements in the “orphan” definition:
- (1) **(U)** The child is under the age of 16 at the time a petition is filed on his or her behalf (or under the age of 18 if adopted or to be adopted together with a natural sibling under the age of 16) and is unmarried and under the age of 21 at the time of petition and visa adjudication;
 - (2) **(U)** The child has been or will be adopted by a married U.S. citizen and spouse, or by an unmarried U.S. citizen at least 25 years of age; and
 - (3) The child is an orphan because either:
 - (a) **(U)** The child has no parents because of the death or disappearance, abandonment or desertion by, or separation from or loss of both parents; or
 - (b) **(U)** The child’s sole or surviving parent is incapable of providing proper care and has, in writing, irrevocably released the child for emigration and adoption.
- b. **(U)** See [9 FAM 502.3-3\(B\)](#) for additional information on the orphan classification.

9 FAM 102.8-2(I) Convention Adoptee

(CT:VISA-367; 05-26-2017)

- a. There are five key elements to the “Convention adoptee” definition under INA 101(b)(1)(G). All of the following must be true for a child to be eligible for the Convention adoptee classification:
- (1) The child is under the age of 16 at the time a petition is filed on his or her behalf (taking into account special rules on filing dates for children aged 15-16), is unmarried, and is habitually resident in a country that has a treaty relationship with the United States under the Convention;
 - (2) The child has been adopted or will be adopted by a married U.S. citizen and spouse jointly, or by an unmarried U.S. citizen at least 25 years of age, habitually resident in the United States, whom USCIS has found suitable and eligible to adopt, with the intent of creating a legal parent-child relationship;
 - (U) The child’s birth parents (or parent if the child has a sole or surviving parent), or other legal custodian, individuals, or entities whose consent is necessary for adoption, freely gave their written irrevocable consent to the termination of their legal relationship with the child and to the child’s emigration and adoption;
 - (4) If the child has two living birth parents who were the last legal custodian who signed the irrevocable consent to adoption, they are determined to be incapable of providing proper care for the child;
 - (5) The child has been adopted or will be adopted in the United States or in the Convention country in accordance with the rules and procedures elaborated in

the Hague Convention and the Intercountry Adoption Act of 2000, including that accredited or approved adoption service providers were used where required, and there is no indication of improper inducement, fraud or misrepresentation, or prohibited contact associated with the case.

- b. See [9 FAM 502.3-4\(B\)](#) for additional information on the Convention adoptee classification.

9 FAM 102.8-2(J) Parent

(CT:VISA-367; 05-26-2017)

The term "parent," "father," or "mother" means a parent, father, or mother only where the relationship exists by reason of any of the circumstances listed in INA 101(b)(2), except for certain cases under INA 101(b)(1)(F), as noted in [9 FAM 502.3-3\(B\)\(5\)](#). Parent, father, and mother, as defined in INA 101(b)(2), are terms which are not changed in meaning if the child becomes 21 years of age or marries. In the context of Parent in Convention adoption cases see [9 FAM 502.3-4\(C\)\(4\)](#).

9 FAM 102.8-2(K) Son or Daughter

(CT:VISA-367; 05-26-2017)

- a. The INA defines "son" or "daughter" as someone who has at any time met the definition of child in INA 101(b)(1). It includes only a person who would have qualified as a "child" under INA 101(b)(1) if the person were under 21 and unmarried.
- (1) **Illegitimate Child of Mother:** An alien, who was born out of wedlock and is the son or daughter of a U.S. citizen or Lawful Permanent Resident (LPR) mother is a "son" or "daughter" within the meaning of INA 203(a)(1) if the conditions of INA 101(b)(1)(C) (legitimation while in the mother's custody before reaching the age of 18) were met.
 - (2) **Illegitimate Child of Father:** An alien who was born out of wedlock and is the son or daughter of a U.S. citizen or Lawful Permanent Resident (LPR) father is a "son" or "daughter" within the meaning of INA 203(a)(1) if the conditions of INA 101(b)(1)(C) (legitimation while in the father's custody before reaching the age of 18) or INA 101(b)(1)(D) (the father had a bona fide parent or child relationship prior to child's 21st birthday) were met.
 - (3) **Stepson or Stepdaughter:** A stepson or stepdaughter is a "son" or "daughter" provided that the stepchild had not reached the age of 18 at the time the relationship was established.
- b. See [9 FAM 502.2-3](#) for information on IV classification as the son or daughter of a U.S. citizen or Lawful Permanent Resident.

9 FAM 102.8-3 SIBLING RELATIONSHIPS

9 FAM 102.8-3(A) Who Qualifies as a Sibling?

(CT:VISA-367; 05-26-2017)

- a. Siblings who meet the definition under the INA 101(b)(1) of a child of at least one common parent, are "brothers" or "sisters" within the meaning of INA 203(a)(4) and are eligible for preference under that provision. Siblings by virtue of a relationship that does not meet the criteria in INA 101(b)(1), such as stepsiblings based on a marriage that occurred after one of the siblings reached 18 years, are not siblings for the purposes of INA 203(a)(4).
- b. See [9 FAM 502.2-3](#) for additional information on family preference IV classification for brothers and sisters of U.S. citizens.

9 FAM 102.8-3(B) Siblings with the Same Mother

(CT:VISA-367; 05-26-2017)

Brothers or sisters who have the same mother but different fathers, including those born out of wedlock and not legitimated, are "brothers" or "sisters" within the meaning of INA 203(a)(4) and are eligible for preference status under this provision.

9 FAM 102.8-3(C) Siblings with the Same Father

(CT:VISA-367; 05-26-2017)

Brothers or sisters of half-blood who have the same father but different mothers are eligible for preference under INA 203(a)(4) if both siblings qualified as a child under INA 101(b)(1).

9 FAM 102.8-3(D) Stepsiblings

(CT:VISA-367; 05-26-2017)

A stepbrother or stepsister is a "brother" or "sister" within the meaning of INA 203(a)(4) only if both parties were under the age of 18 when the relationship was established.

9 FAM 102.8-3(E) Adoptive Siblings

(CT:VISA-367; 05-26-2017)

An adoptive brother or sister of a U.S. citizen, who is at least 21 years of age, is eligible for preference status under INA 203(a)(4) if the adoptive sibling qualifies under INA 101(b)(1)(E).

9 FAM 103 VISA OFFICE POINTS OF CONTACT

9 FAM 103.1 PRIMARY POINTS OF CONTACT

*(CT:VISA-1; 11-18-2015)
(Office of Origin: CA/VO/L/R)*

9 FAM 103.1-1 VISA CONTACT INFORMATION

(CT:VISA-1; 11-18-2015)

For anyone seeking public information about U.S. visas, the recommended first source of information is the State Department consular services website. For case-specific inquiries, applicants or their representatives may contact the U.S. embassy or consulate processing the visa application. For U.S. embassy and consulate contact information, visit the U.S. Embassy website. Relevant contact information and procedures are contained on the embassy or consulate website.

9 FAM 103.2

GENERAL CORRESPONDENCE WITH THE VISA OFFICE

(CT:VISA-1; 11-18-2015)
(Office of Origin: CA/VO/L/R)

9 FAM 103.2-1 HOW AND WHEN TO CONTACT THE VISA OFFICE

(CT:VISA-1; 11-18-2015)

- a. While only the adjudicating consular section can make visa eligibility determinations, there are circumstances warranting Visa Office involvement. The following provisions identify contacts, define limitations, and discuss procedures and discuss procedures for inquiries by applicants or their representatives to the Visa Office.
- b. For general questions, the most current information can be found at the Contact Us page of the U.S. Visas website. Please refer to that website for contact information for all requests regarding status updates on pending cases. If a case has been pending for more than 60 days from the time the applicant had an interview or submitted supplemental documentation, whichever is later, this should be noted specifically when you contact our offices.
- c. In addition, the Visa Office has established certain limited-purpose communication channels, as detailed in [9 FAM 103.4](#).

9 FAM 103.3

VISA OFFICE POINTS OF CONTACT

(CT:VISA-187; 09-28-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 103.3-1 VISA OFFICE CONTACTS FOR DESIGNATED PURPOSES

(CT:VISA-187; 09-28-2016)

- a. In addition to the general purpose public inquiries unit *at the National Visa Center*, the Visa Office staffs the communication channels listed below for specific categories of questions. This contact list is online, with the most current updates at the Contact Us page of the U.S. *Visa* website *which can be found through Travel.State.Gov*.
- b. Before contacting the Visa Office regarding a visa inquiry, applicants and their representatives should carefully review the Department's online visa information and the website of the relevant Embassy Consular Section abroad.

9 FAM 103.3-2 IMPORTANT TELEPHONE NUMBERS AND EMAIL ADDRESSES

(CT:VISA-187; 09-28-2016)

- a. All inquiries relating to pending cases, either by phone or by email, should include the information below, if applicable:
 - Case number or Passport number;
 - Last name of applicant;
 - First name of applicant;
 - Date of birth;
 - Basis for requested benefit, and
 - A brief explanation of *the* inquiry.
- b. For inquiries by U.S. companies and organizations needing business (B-1) visitor visa information only, email: businessvisa@state.gov or call: (202) 485-7675.
- c. For inquiries about waivers of the foreign residence requirement for J exchange visitors, email 212waiver@state.gov. For inquiries about pending applications for Waiver of Foreign Residence Requirement, applicants may check the status of their J waiver case at J visa waiver online, or email 212waiver@state.gov.

d. To reach the National Visa Center:

(1) *Nonimmigrant Visa inquiries, call (603) 334-0888.*

(2) **Immigrants:**

(a) Immigrant Visa inquiries, including assistance regarding the DS-260 Online Immigrant Visa Application, call (603) 334-0700.

(b) *Immigrant visa applicants may also contact NVC using its online Public Inquiry Form.* Customer Service Representatives are available to assist Monday through Friday 7:00 a.m. to 12:00 a.m. Eastern.

e. To reach the Kentucky Consular Center (Diversity Visa inquiries), call 606-526-7500 (7:30 a.m. Eastern to 4:00 p.m. Eastern).

9 FAM 103.4

(U) VISA OFFICE CONTACT FOR LEGAL ISSUES - LEGALNET@STATE.GOV

(CT:VISA-304; 03-16-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 103.4-1 (U) IN GENERAL

(CT:VISA-60; 02-25-2016)

(U) There is no appeal process for visa refusals; however, applicants and their representatives of record may pose legal questions regarding pending or recently completed visa cases by email to LegalNet@State.gov. See [9 FAM 601.7-3](#) for information regarding correspondence with attorneys or other intermediaries.

9 FAM 103.4-2 (U) PURPOSE AND SCOPE OF LEGALNET

(CT:VISA-60; 02-25-2016)

- a. **(U)** The Visa Office has a dedicated email channel, LegalNet@State.gov, available only for case-specific questions on the interpretation or application of immigration law. LegalNet serves to ensure a streamlined legal review of inquiries involving legal issues, so inquirers receive an answer in an efficient manner. The LegalNet staff works with posts and other divisions in the Visa Office to prepare responses to appropriate inquiries that involve legal issues.
- b. **(U)** Posts can refer applicants and their representatives to LegalNet at any time, provided the inquiry falls within the scope of [9 FAM 103.4-2](#) paragraph c, below. An applicant or representative submitting an inquiry to LegalNet should make sure the inquiry falls within one of the categories listed in paragraph c, below, and ensure that the request includes all of the required information and documents listed in [9 FAM 103.4-3](#).
- c. **(U)** LegalNet will provide substantive responses only to the following categories of inquiries:
 - (1) **(U)** Legal questions about a specific case when the applicant or representative has attempted to contact post at least twice without receiving a final response, and where 30 days have passed since the second inquiry (unless action is required sooner to avert significant harm to the applicant);
 - (2) **(U)** Legal questions about a specific case in which the applicant or representative has received a final response from post, but believes it to be

- wrong as a matter of law;
- (3) **(U)** Legal questions about specific cases involving T visas, U visas, Diversity visas, or adoption visas; and
- (4) **(U)** Legal questions about specific cases involving the Child Status Protection Act (CSPA) or the Violence Against Women Act (VAWA).
- d. **(U)** For all other inquiries, LegalNet will respond with a message providing the public inquiries telephone number or other point of contact information, as appropriate.
- e. **(U)** LegalNet will not provide a substantive response to the categories of inquiries listed below. Instead, LegalNet may provide a standard form response, listing communication channels potentially available for such inquiries.
- (1) **(U)** Questions from anyone other than an applicant or representative of record;
 - (2) **(U)** Requests to review factual determinations made by a U.S. consular officer, including a refusal under INA 214(b) in a B1/B2 visa application;
 - (3) **(U)** Requests for case status updates;
 - (4) **(U)** Questions that are general, speculative, or hypothetical in nature;
 - (5) **(U)** Legal questions in cases where the consular officer has not yet reached a final determination of the applicant's eligibility for a visa, except as outlined in (c)(3 and 4) above;
 - (6) **(U)** Matters relating to visa cases that have already been returned to a USCIS Service Center;
 - (7) **(U)** Matters related to visa appointment scheduling;
 - (8) **(U)** Requests for a status update for an I-601 waiver;
 - (9) **(U)** Requests for details in visa cases refused under INA 212(a)(3)(B) or Section 306 of the Enhanced Border Security and Visa Reform Act of 2002 (EBSVRA);
 - (10) **(U)** Requests for explanations of visa revocations or cancellations;
 - (11) **(U)** Requests for the Visa Office to forward additional documentation to post;
 - (12) **(U)** Requests regarding a case that is still being processed at the National Visa Center, including those relating to an Affidavit of Support, immigrant visa fee, case status, or procedural information;
 - (13) **(U)** Requests for Advisory Opinions in pending or refused Visas 92 and Visas 93 cases; or
 - (14) **(U)** Requests to substitute priority dates or assign an old priority date to a new petition, except for inquiries about Western Hemisphere priority dates.

9 FAM 103.4-3 (U) REQUIREMENTS FOR LEGALNET

INQUIRIES

(CT:VISA-60; 02-25-2016)

- a. **(U)** All inquiries submitted to LegalNet must refer to only one case per email and must follow the guidelines below.
 - (1) **(U)** The subject line of the email must include:
 - (a) **(U)** The applicant's full name;
 - (b) **(U)** The post processing the case;
 - (c) **(U)** The National Visa Center case number for immigrant visa cases;
 - (d) **(U)** The applicant's passport number and/or the USCIS receipt number for nonimmigrant visa cases; and
 - (e) **(U)** The citation to the relevant statute or regulation at issue. For example, the subject line should read as follows: LAST NAME, First Name; POST; CDJ2015000000; INA 212(a)(6)(C)(i)
 - (2) **(U)** The body of the email must include:
 - (a) **(U)** The principal applicant's full name as it appears in the applicant's passport, the applicant's date of birth, and the applicant's place of birth;
 - (b) **(U)** The location of the pending or denied visa application, the applicant's visa classification, and any refusal code; and
 - (c) **(U)** A brief summary of the situation and legal contention.
 - (3) **(U)** The email attachments must include:
 - (a) **(U)** Copies of all previous correspondence with post; and
 - (b) **(U)** If the request is sent by the applicant's representative, a signed G-28 form and the requesting attorney or representative's contact information.
 - (c) **(U)** NOTE: We will not accept any emails with attachments over 1 megabyte (MB) in size
- b. **(U)** A submission to LegalNet that is missing any of the above required information or documents may be returned with a form response identifying the missing information.

9 FAM 103.4-4 (U) PROCESSING OF LEGALNET REQUESTS – RESPONSES TO INQUIRIES

(CT:VISA-60; 02-25-2016)

- a. **(U)** Within seven (7) business days of receiving a new inquiry that meets all requirements above, LegalNet will provide notice that the inquiry has been received and is being processed. The time frame for substantive responses depends on the complexity of the matter and availability of essential information.

- b. **(U)** Applicants or designated representatives may submit a follow-up email to LegalNet, along with copies of any earlier LegalNet correspondence, if no substantive response is received from LegalNet within thirty (30) days of the initial notice that the inquiry is being processed.

9 FAM 103.4-5 (U) PROCESSING OF LEGALNET REQUESTS – INTERNAL

(CT:VISA-304; 03-16-2017)

(U) The following non-binding, internal guidelines relate to allocation of responsibilities and aspirational timelines. These are documented to assist State Department personnel and promote internal consistency, transparency, and accountability. The guidelines may not be relied upon by the public and may not be referenced for any purpose other than State Department internal monitoring of case progress. LegalNet should not be requested or expected to disclose the status of cases under consideration. Depending on the complexity of the inquiry and workloads of relevant posts and offices, the guidelines below may not apply.

- (1) **(U)** LegalNet staff coordinates incoming inquiries, reviews cases in the appropriate database, primarily the Consular Consolidated Database (CCD), and contacts post to verify case status when necessary.
- (2) **(U)** LegalNet staff will forward subject-specific inquiries to the appropriate offices as follows:
 - (a) **(U)** Inquiries regarding INA 212(a) ineligibilities (other than security-related grounds) will be forwarded to the Advisory Opinions Division (CA/VO/L/A);
 - (b) **(U)** J-Waiver inquiries will be directed to the Waiver Review Division (CA/VO/DO) at 212ewaiver@state.gov;
 - (c) **Unavailable**
 - (d) **(U)** Child Status Protection Act and Follow-to-Join inquiries will be forwarded to the National Visa Center (NVC), CA/VO/L/A, and/or Post (as appropriate);
 - (e) **(U)** A, G, and NATO Visa inquiries will be forwarded to the Diplomatic Liaison Division (CA/VO/DO) or to CA/VO/L/A (as appropriate);
 - (f) **(U)** Petition-based legal inquiries will be forwarded to CA/VO/L/A and or Post (as appropriate).
- (3) **(U)** LegalNet staff will maintain and update an internal tracker on the shared (S) drive for all incoming legal inquiries and outgoing replies.
- (4) **(U)** LegalNet staff will draft and send final responses to requesters after collecting and consolidating input from relevant offices.
- (5) **(U)** Target Timelines:

- (a) **(U)** LegalNet will send an automated "Acknowledgement of Receipt" advising requesters that their inquiry has been received and is being processed.
- (b) **(U)** LegalNet staff should aim to forward inquiries to appropriate offices via Action Officers within five (5) working days of receiving the inquiry.
- (c) **(U)** Where no additional information is required, Action Officers in the appropriate office should aim to respond to LegalNet requests within five (5) working days.
- (d) **(U)** Where additional information is required, Action Officers should aim to make relevant requests within ten (10) days of receipt of the inquiry from LegalNet.
- (e) **(U)** Posts should aim to respond to requests for additional information for a LegalNet inquiry within ten (10) days of receipt of the request, if the information is in the post's possession. Action Officers should contact posts that have not responded to requests within eleven (11) days, and should continue to follow-up with posts bi-weekly.
- (f) **(U)** Action Officers should aim to send draft responses to LegalNet within five (5) working days after all required input and information is obtained.
- (g) **(U)** Action Officers should include LegalNet on all communications regarding a case and LegalNet should record all significant actions in the tracker, as appropriate.

9 FAM 200

(U) TRAVEL TO THE UNITED STATES WITH OTHER DOCUMENTS, NON-VISA TRAVELERS

9 FAM 201

(U) EXEMPTIONS AND WAIVERS OF VISA AND/OR PASSPORT REQUIREMENTS

9 FAM 201.1

(U) NONIMMIGRANT TRAVEL WITHOUT A VISA AND/OR PASSPORT

(CT:VISA-365; 05-25-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 201.1-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 201.1-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 212(a)(7)(A) (8 U.S.C. 1182(a)(7)(A)); INA 212(a)(7)(B) (8 U.S.C. 1182(a)(7)(B)); INA 212(d)(3)(B) (8 U.S.C. 1182(d)(3)(B)); INA 212(d)(4) (8 U.S.C. 1182(d)(4)); INA 212(d)(7) (8 U.S.C. 1182(d)(7)); INA 212(d)(8) (8 U.S.C. 1182(d)(8)); INA 212(l) (8 U.S.C. 1182(l)); INA 248 (8 U.S.C. 1258); INA 284 (8 U.S.C. 1354); INA 289 (8 U.S.C. 1359).

9 FAM 201.1-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.1 and 22 CFR 41.2.

9 FAM 201.1-2 (U) NIV TRAVEL WITHOUT A VISA AND/OR PASSPORT

9 FAM 201.1-2(A) (U) Overview

(CT:VISA-1; 11-18-2015)

- a. **(U) In General:** U.S. visa policy permits citizens of certain countries to travel to the U.S. without a visa, when they meet certain requirements, under U.S. laws. There are also circumstances in which a passport and/or visa may not be required, or the requirement waived.
- b. **(U) K Visa Alien Not Entitled to Nonimmigrant Visa Waiver:** An alien qualifying for a K visa as the fiancé(e) of a U.S. citizen is not entitled to a waiver of the NIV requirement regardless of circumstances.
- c. **(U) Transporting Undocumented Aliens to United States:** Posts must inform carriers inquiring about transporting an undocumented alien that they would be subject to a fine unless such alien is within one of the categories listed in 22 CFR 41.2 or 22 CFR 41.3.

9 FAM 201.1-2(B) (U) Transporting Undocumented Aliens Requiring Waivers to United States

(CT:VISA-365; 05-25-2017)

- a. **(U)** Consular officers must address requests for concurrence in waivers of passport and visa requirements to the Customs and Border Protection (CBP) officer in charge, in care of the appropriate post.
- b. **(U) Furnishing Information Concerning Waivers to Immigration Officers:**
 - (1) **(U)** Consular officers must furnish the following information to CBP officers when requesting concurrence in waivers of passport and visa requirements:
 - (a) **(U)** Alien's full name with all aliases;
 - (b) **(U)** Date and place of birth;
 - (c) **(U)** Nationality;
 - (d) **(U)** Date and port of expected arrival in the United States;
 - (e) **(U)** Nonimmigrant classification;
 - (f) **(U)** Documents to be waived;
 - (g) **(U)** A brief summary of the emergent circumstances surrounding the case which must include information indicating that all of the requirements of the subparagraph of 22 CFR 41.3 under which the waiver is recommended have been met; and
 - (h) **(U)** Name, address and telephone number of the person the alien intends to visit in the United States.

- (2) **(U)** In cases falling within 22 CFR 41.3(e), consular officers should also furnish the following information:
- (a) **(U)** Name, nationality and type of carrier, if any (for example, battleship, training vessel, or aircraft);
 - (b) **(U)** The purpose of entry;
 - (c) **(U)** Date and port of expected arrival in the United States, other ports of call in the United States, if any, and period of anticipated stay in each port; and
 - (d) **(U)** Number, rank, if any, and nationality of members of group.
- c. **(U) Issuing Documents to Waiver Beneficiaries:** In cases in which a waiver has been granted under 22 CFR 41.3, the consular officer must give the alien concerned, or the leader of a group, a signed letter stating that a waiver has been granted under the provisions of INA 212(d)(4)(A) and including the name, title and location of the CBP officer who joined in the waiver. In cases of waivers granted pursuant to 22 CFR 41.3(a), the letter must list all persons included in the waiver and show the date and place of birth and nationality of each alien and the function or position of each alien in the group. If the waiver covers more than one application for admission, the consular officer should provide a copy of the letter for each application. The consular officer should retain one copy of the letter in the consular files. If circumstances do not permit the issuance of a letter, the consular officer should make a memorandum for the consular files including the items listed in N3 above. The consular officer should request the immigration officer joining in a waiver under 22 CFR 41.3(d) to forward appropriate information to the immigration officer at the expected port of arrival in the United States.

9 FAM 201.1-3 (U) NATIONALITY- AND GEOGRAPHY-BASED EXEMPTIONS AND WAIVERS OF NONIMMIGRANT VISA AND PASSPORT REQUIREMENTS

9 FAM 201.1-3(A) (U) Related Statutory and Regulatory Authorities

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.2; 8 CFR 212.

9 FAM 201.1-3(B) (U) Canadian Citizens, Residents

(CT:VISA-1; 11-18-2015)

- a. **(U) Visa Requirement:** A visa is not required for Canadian citizens except for those who apply for admission in E, K, V, or S nonimmigrant classifications as

provided in paragraphs (k) and (m) of 22 CFR 41.2 and 8 CFR 212.1.

- (1) **(U) Canadian Citizens Seeking Admission as Treaty Traders or Treaty Investors:** During the United States-Canada Free Trade Agreement negotiations, it was recognized that the E visa classification is extremely technical and sometimes quite complex. All parties agreed that the visa process was the best way to accord this classification. 22 CFR 41.2(m) removes the visa exemption for Canadian citizens who seek to enter the United States as treaty traders/investors under INA 101(a)(15)(E). Such Canadian citizens must apply for an E visa at a U.S. embassy or consulate. (See [9 FAM 402.9.](#))
 - (2) **(U) Canadian Citizens Seeking Admission under the North American Free Trade Agreement:** Citizens of Canada seeking admission to the United States under provisions of the NAFTA are exempt from the visa requirement, unless seeking classification under INA 101(a)(15)(E). (See also [9 FAM 402.10-8\(E\).](#))
- b. **(U) Passport Requirement:** As provided by 22 CFR 41.2, a passport is required for Canadian citizens applying for admission to the United States, except when one of the following exceptions applies:
- (1) **(U) NEXUS Program:** A Canadian citizen who is traveling as a participant in the NEXUS program, and who is not otherwise required to present a passport and visa as provided in paragraphs (k) and (m) of 22 CFR 41.2 and 8 CFR 212.1, may present a valid NEXUS program card when using a NEXUS Air kiosk or when entering the United States from contiguous territory or adjacent islands at a land or sea port-of-entry. A Canadian citizen who enters the United States by pleasure vessel from Canada under the remote inspection system may present a NEXUS program card.
 - (2) **(U) FAST Program:** A Canadian citizen who is traveling as a participant in the FAST program, and who is not otherwise required to present a passport and visa as provided in paragraphs (k) and (m) of 22 CFR 41.2 and 8 CFR 212.1, may present a valid FAST card at a land or sea port-of-entry prior to entering the United States from contiguous territory or adjacent islands.
 - (3) **(U) SENTRI Program:** A Canadian citizen who is traveling as a participant in the SENTRI program, and who is not otherwise required to present a passport and visa as provided in paragraphs of 22 CFR 41.2 and 8 CFR 212.1, may present a valid SENTRI card at a land or sea port-of-entry prior to entering the United States from contiguous territory or adjacent islands.
 - (4) **(U) Canadian Indians:** If designated by the Secretary of Homeland Security, a Canadian citizen holder of an Indian and Northern Affairs Canada ("INAC") card issued by the Canadian Department of Indian Affairs and North Development, Director of Land and Trust Services (LTS) in conformance with security standards agreed upon by the Governments of Canada and the United States, and containing a machine readable zone, and who is arriving from Canada, may present the card prior to entering the United States at a land

port-of-entry.

- (5) **(U) Children:** A child who is a Canadian citizen who is seeking admission to the United States when arriving from contiguous territory at a sea or land port-of-entry, may present certain other documents if the arrival meets the requirements described below:
- (a) **(U) Children Under Age 16:** A Canadian citizen who is under the age of 16 is permitted to present an original or a copy of his or her birth certificate, a Canadian Citizenship Card, or a Canadian Naturalization Certificate when arriving in the United States from contiguous territory at land or sea ports- of-entry.
- (b) **(U) Groups of Children Under Age 19:** A Canadian citizen who is under age 19 and who is traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization may present an original or a copy of his or her birth certificate, a Canadian Citizenship Card, or a Canadian Naturalization Certificate when applying for admission to the United States from contiguous territory at all land and sea ports-of-entry, when the group, organization or team is under the supervision of an adult affiliated with the organization and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person who is age 19 or older. The following requirements will apply:
- (i) **(U) The group, organization, or team must provide to CBP upon crossing the border, on organizational letterhead:**
- The name of the group, organization or team, and the name of the supervising adult;
 - A trip itinerary, including the stated purpose of the trip, the location of the destination, and the length of stay;
 - A list of the children on the trip; and
 - For each child, the primary address, primary phone number, date of birth, place of birth, and the name of at least one parent or legal guardian.
- (ii) **(U)** The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by certifying in the writing submitted in paragraph (a) above that he or she has obtained for each child the consent of at least one parent or legal guardian.
- (iii) **(U)** The procedure described in this paragraph is limited to members of the group, organization, or team that are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in 22 CFR 41.2, 8 CFR 212 and 8 CFR 235.

- (6) **(U) Enhanced Driver's License Programs:** Upon the designation by the

Secretary of Homeland Security of an enhanced driver's license as an acceptable document to denote identity and citizenship for purposes of entering the United States, Canadian citizens may be permitted to present these documents in lieu of a passport when seeking admission to the United States according to the terms of the agreements entered between the Secretary of Homeland Security and the entity. The Secretary of Homeland Security will announce, by publication of a notice in the Federal Register, documents designated under this paragraph. A list of the documents designated under this paragraph will also be made available to the public.

c. **(U) Aliens Residing in Canada or Bermuda:**

- (1) **(U) Common Nationality Includes Commonwealth Countries and Ireland:** The waiver of passport and visa requirements provided by 22 CFR 41.2(b) for permanent residents of Canada or Bermuda who have a common nationality with Canadians or with British subjects in Bermuda, is considered to include citizens of all Commonwealth countries, as well as citizens of Ireland. (See [9 FAM 201.1-3\(F\)](#) paragraph (7)).
- (2) **(U) Stateless Alien Residents of Canada or Bermuda Not Entitled to Waiver:** Permanent residents of Canada or Bermuda who are nationals of one of the Commonwealth countries listed in [9 FAM 201.1-3\(F\)](#) paragraph (7) may be granted a waiver of visa and passport requirements. An alien resident of Canada or Bermuda who is the bearer of a certificate of identity or other stateless person's document issued by the government of one of these countries may not benefit from the waiver.

9 FAM 201.1-3(C) (U) American Indians Born in Canada

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.2(a) provides that a nonimmigrant visa is not required for an American Indian born in Canada having at least 50 percentum of blood of the American Indian race.

9 FAM 201.1-3(D) (U) Mexican Nationals

(CT:VISA-1; 11-18-2015)

(U) Pursuant to 22 CFR 41.2(g) the visa and/or passport requirements for Mexican nationals may be waived under the following circumstances:

- (1) **(U) Border Crossing Card:** A visa and a passport are not required of a Mexican national who is applying for admission from Mexico as a temporary visitor for business or pleasure at a land port-of-entry, or arriving by pleasure vessel or ferry, if the national is in possession of a Form DSP-150, B-1/B-2 Visa and Border Crossing Card, containing a machine-readable biometric identifier, issued by the Department of State.
- (2) **(U) Kickapoo Indian Tribe:** A visa and a passport are not required of a Mexican national who is applying for admission from contiguous territory or

adjacent islands at a land or sea port-of-entry, if the national is a member of the Texas Band of Kickapoo Indians or Kickapoo Tribe of Oklahoma who is in possession of a Form I-872 American Indian Card issued by U.S. Citizenship and Immigration Services (USCIS).

- (3) **(U) Airline Crew:** A visa is not required of a Mexican national employed as a crewmember on an aircraft belonging to a Mexican company authorized to engage in commercial transportation into the United States.
- (4) **(U) Military or Civilian Officials:** A visa is not required of a Mexican national bearing a Mexican diplomatic or official passport who is a military or civilian official of the Federal Government of Mexico entering the United States for a stay of up to 6 months for any purpose other than on assignment as a permanent employee to an office of the Mexican Federal Government in the United States. A visa is also not required of the official's spouse or any of the official's dependent family members under 19 years of age who hold diplomatic or official passports and are in the actual company of the official at the time of entry. This waiver does not apply to the spouse or any of the official's family members classifiable under INA 101(a)(15)(F) or INA 101(a)(15)(M).

9 FAM 201.1-3(E) (U) Natives and Residents of the Freely Associated States

(CT:VISA-1; 11-18-2015)

- a. **(U)** Pursuant to 22 CFR 41.2(h) a visa and a passport are not required of a native and resident of the Trust Territory of the Pacific Islands who has proceeded in direct and continuous transit from the Trust Territory to the United States.
- b. **(U)** A native and resident of the Freely Associated States (formerly the Trust Territory of the Pacific Islands), traveling to the United States, but not in direct and continuous transit, may be issued a nonimmigrant visa (NIV) without being charged the reciprocity fee. The visa may be valid for a period and number of applications for admission consistent with the traveler's needs. (See Reciprocity Schedule under country concerned for the number of applications and validity of visa.) The applicant, however, must pay the machine-readable visa (MRV) fee.

9 FAM 201.1-3(F) (U) Certain British, French, and Netherlands Nationals, Citizens, and Subjects

(CT:VISA-1; 11-18-2015)

(U) Pursuant to 22 CFR 41.2(b) - (e) the passport and/or visa requirement is not required in the following circumstances:

- (1) **(U) Citizens of the British Overseas Territory of Bermuda:** A visa is not required, except for Citizens of the British Overseas Territory of Bermuda who apply for admission in E, K, V, or S nonimmigrant visa classification as provided in paragraphs (k) and (m) of 22 CFR 41.2 and 8 CFR 212.1. A passport is

required for Citizens of the British Overseas Territory of Bermuda applying for admission to the United States. See also [9 FAM 201.1-3\(B\)](#) paragraph c regarding permanent and alien residents of Bermuda.

- (2) **(U) Bahamian Nationals and British Subjects Resident in the Bahamas:**
A passport is required. A visa is not required if, prior to the embarkation of such an alien for the United States on a vessel or aircraft, the examining U.S. immigration officer at Freeport or Nassau determines that the individual is clearly and beyond a doubt entitled to admission.
- (3) **(U) British Subjects Resident in the Cayman Islands or in the Turks and Caicos Islands:** A passport is required. A visa is not required if the alien arrives directly from the Cayman Islands or the Turks and Caicos Islands and presents a current certificate from the Clerk of Court of the Cayman Islands or the Turks and Caicos Islands indicating no criminal record.
- (4) **(U) British, French, and Netherlands Nationals and Nationals of Certain Adjacent Islands of the Caribbean which are Independent Countries:** A passport is required. A visa is not required of a British, French or Netherlands national, or of a national of Antigua, Barbados, Grenada, Jamaica, or Trinidad and Tobago, who has residence in British, French, or Netherlands territory located in the adjacent islands of the Caribbean area, or has residence in Antigua, Barbados, Grenada, Jamaica, or Trinidad and Tobago, if the alien:
 - (a) **(U)** Is proceeding to the United States as an agricultural worker; or
 - (b) **(U)** Is the beneficiary of a valid, unexpired, indefinite certification granted by the Department of Labor for employment in the Virgin Islands of the United States and is proceeding thereto for employment, or is the spouse or child of such an alien accompanying or following to join the alien.
- (5) **(U) Nationals and Residents of the British Virgin Islands:**
 - (a) **(U)** A national of the British Virgin Islands and resident therein requires a passport but not a visa if proceeding to the United States Virgin Islands.
 - (b) **(U)** A national of the British Virgin Islands and resident therein requires a passport but does not require a visa to apply for entry into the United States if such applicant:
 - (i) **(U)** Is proceeding by aircraft directly from St. Thomas, U.S. Virgin Islands;
 - (ii) **(U)** Is traveling to some other part of the United States solely for the purpose of business or pleasure as described in INA 101(a)(15)(B);
 - (iii) **(U)** Satisfies the examining U.S. Immigration officer at that port of entry that he or she is admissible in all respects other than the absence of a visa; and
 - (iv) **(U)** Presents a current Certificate of Good Conduct issued by the Royal Virgin Islands Police Department indicating that he or she has no criminal record.

- (6) **(U) Waiver for British Subjects Attached to Canadian and British Government Organizations in Canada:** British subjects and their families attached to Canadian or British Government organizations in Canada, including the military, though not "permanent residents," may be regarded as nationals of Canada and eligible for the waiver provided under 22 CFR 41.2(a).

(7) **(U) List of Commonwealth Countries and Ireland:**

Antigua and Barbuda	Australia	Bahamas
Bangladesh	Barbados	Belize
Botswana	Brunei	Cameroon
Canada	Cyprus	Dominica
Fiji	Gambia	Ghana
Grenada	Guyana	India
Ireland	Jamaica	Kenya
Kiribati	Lesotho	Malawi
Malaysia	Maldives	Malta
Mauritius	Mozambique	Namibia
Nauru	New Zealand	Nigeria
Pakistan	Papua New Guinea	Samoa
St. Kitts and Nevis	St. Lucia	St. Vincent and the Grenadines
Seychelles	Sierra Leone	Singapore
Solomon Islands	South Africa	Sri Lanka
Swaziland	Tanzania	Tonga
Trinidad and Tobago	Tuvalu	Uganda
United Kingdom (including colonies, territories, and dependencies)	Vanuatu	Zambia

9 FAM 201.1-4 (U) VISA WAIVER PROGRAM (VWP)

9 FAM 201.1-4(A) (U) Related Statutory and Regulatory Authorities

9 FAM 201.1-4(A)(1) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 101(a)(15)(B) (8 U.S.C. 1101(a)(15)(B)); INA 217 (8 U.S.C. 1187).

9 FAM 201.1-4(A)(2) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.2(l); 8 CFR 217.2(c)(1).

9 FAM 201.1-4(A)(3) (U) Public Laws

(CT:VISA-1; 11-18-2015)

(U) Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110 - 53, sec. 711.

9 FAM 201.1-4(B) (U) Overview

(CT:VISA-1; 11-18-2015)

- a. (U) **Introduction to VWP:** The Visa Waiver Program (VWP) provides for visa-free travel by nationals of designated countries coming to the United States for tourism or business (B visa purposes) for a period not to exceed 90 days, provided the traveler meets the requirements in [9 FAM 201.1-4\(C\)](#). The Secretary of Homeland Security, in consultation with the Secretary of State, is authorized to designate the countries eligible to participate in the VWP.
- b. (U) **Travelers Not to Be Discouraged from Seeking Visas:**
 - (1) (U) Although use of the VWP is encouraged, travelers availing themselves of the program should be made aware of the risks involved and the surrendering of certain rights. Consequently, they should not be discouraged from seeking normal visa services, although posts may wish to prioritize appointments for applicants who are required to have visas to travel.
 - (2) (U) When a traveler opts to apply for a visa in lieu of choosing to travel under the VWP, consular officers must apply the same U.S. immigration law standards to the case that they would to any other visa applicant, including INA 214(b).
 - (3) (U) It is important to remember that although a traveler may be a citizen or eligible national of a VWP country, this does not necessarily mean that he/she qualifies for VWP travel.

9 FAM 201.1-4(C) (U) VWP Traveler Eligibility Requirements

(CT:VISA-365; 05-25-2017)

- a. (U) **General VWP Eligibility Requirements:** An alien who is a national of a participating VWP country does not require a visa, provided the alien:
 - (1) (U) Is applying for admission as a nonimmigrant visitor, as described in INA 101(a)(15)(B);
 - (2) (U) Seeks to enter the United States for a period not to exceed 90 days;
 - (3) (U) Possesses a valid passport issued by a VWP designated country (see [9 FAM 201.1-4\(D\)](#));
 - (4) (U) Waives any right otherwise provided in the Immigration and Nationality Act

to administrative or judicial review or appeal of an immigration officer's determination of admissibility;

- (5) **(U)** Waives any right to contest, other than on the basis of an application for asylum, any action for removal;
- (6) **(U)** Can provide evidence of financial solvency; and
- (7) **(U)** Can provide evidence of a domicile abroad.

b. (U) Nature of VWP Travel:

- (1) **(U) Maintenance of Status:** An alien admitted to the United States under the VWP:
 - (a) **(U)** Is admitted as a visitor for business or pleasure for a period not to exceed 90 days;
 - (b) **(U)** May not engage in activities inconsistent with status as a visitor;
 - (c) **(U)** Is not eligible for an extension of temporary stay in the United States;
 - (d) **(U)** Is not eligible for adjustment of status to that of a lawful permanent resident alien (other than as an immediate relative as defined under INA 201(b) or under the provisions of INA 245(i); and
 - (e) **(U)** Is not eligible for change of nonimmigrant status.
- (2) **(U) Side Trips Permitted Within 90-day Limit:**
 - (a) **(U)** Travelers participating in the VWP who make their initial entry into the United States by air or sea must arrive aboard one of the participating carriers. After the initial admission into the United States, under the provisions of VWP, a foreign national may temporarily depart to, and return from, Canada, Mexico, or adjacent islands by car or other carriers as long as the total stay in the United States and the time accrued in contiguous territory and/or adjacent islands does not exceed 90 days.
 - (b) **(U)** In other words, a side trip to Canada, Mexico, or the adjacent islands does not "reset the clock" for VWP travelers, unless the traveler is resident in the country to which they travel. (For further information see Chapter 15.7(i) of DHS Inspectors Field Manual, Readmission After Departure to Contiguous Territory or Adjacent Islands.)
 - (c) **(U)** Return from Canada, Mexico, or adjacent islands by air or sea within the 90 days limit does not require transportation by a VWP signatory carrier.
- (3) **(U) Aliens Transiting the United States:**
 - (a) **(U)** A VWP traveler may transit the United States en route to a third country.
 - (b) **(U)** If a VWP traveler is transiting the United States to Canada, Mexico, or an adjacent island, the traveler must either be a resident of Canada, Mexico, or the adjacent island; or

- (c) **(U)** If a VWP traveler transits the United States to Canada, Mexico, or an adjacent island, and is not a resident of the destination country, any return trip through the United States must be within the original 90 days granted to the travel under the VWP.
 - (d) **(U)** If the return trip from Canada, Mexico, or the adjacent islands to the United States takes place more than 90 days after the traveler's initial VWP admission to the United States, the traveler must be able to show that his intent in returning to the United States is not to circumvent the immigration law.
- (4) **(U) Satisfactory Departure:** If an emergency prevents an alien admitted under the VWP from departing from the United States within his or her period of authorized stay, the USCIS district director having jurisdiction over the place of the alien's temporary stay may, in his or her discretion, grant a period of satisfactory departure not to exceed 30 days. If departure is accomplished during that period, the alien is to be regarded as having satisfactorily accomplished the visit without overstaying the allotted time. Applicants should apply for satisfactory departure at local USCIS office having jurisdiction over their location.
- c. **(U) VWP Nationality Requirements:**
- (1) **(U) Nationality is Determinative for VWP Purposes:** The traveler's nationality, not place of birth, determines entitlement to participate in the VWP. To travel under VWP, the traveler's passport must be issued by a designated program country.
 - (2) **(U) VWP and the United Kingdom:** For the purposes of VWP, "United Kingdom" refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (i.e., England, Scotland, Wales, Northern Ireland, the Channel Islands, and the Isle of Man). Accordingly, with respect to VWP travel, the term "United Kingdom" does not apply to British Nationals Abroad or to citizens of British Commonwealth countries.
 - (3) **(U) Applicant Applying Outside His or Her Country:** A national of a VWP participating country need not be residing in his or her country in order to make application for admission to the United States under the terms of the VWP.
- d. **(U) Passport Requirements for VWP Travel:**
- (1) **(U)** All VWP travelers, regardless of age or type of passport used, must present a machine-readable passport. In addition, depending on when VWP travelers' passports were issued, other passport requirements apply:
 - (a) **(U)** Nationals of the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, the Republic of Korea, and the Slovak Republic require passports with an integrated chip containing the information from the data page (e-Passport).
 - (b) **(U) Nationals of other VWP countries:**

- (i) **(U) Machine-readable passports issued or renewed/extended on or after 10/26/06:** Passports must have integrated chips with information from the data page.
 - (ii) **(U) Machine-readable passports issued or renewed/extended between 10/26/05 and 10/25/06:** Passports must have digital photographs printed on the data page or integrated chips with information from the data page.
 - (iii) **(U) Machine-readable passports issued or renewed/extended before 10/26/05:** No further requirements.
 - (2) **(U) All Visa Waiver Program (VWP) emergency or temporary passports must have an integrated chip containing the information from the data page (e-Passports) to be eligible for travel to the United States without a visa under the VWP.** This includes VWP applicants who present emergency or temporary passports to transit the United States. U.S. Customs and Border Protection may exercise discretion at the ports of entry for cases in which VWP applicants are traveling for medical or other emergency reasons. A VWP national arriving in the United States with a non-compliant passport, for other than emergency travel reasons, may be detained for further processing and/or denied admission.
 - (3) **(U) Using Official and Diplomatic Passport to Enter the United States under VWP:** Bearers of official and diplomatic passports may use the VWP, provided they are entering the United States as a nonimmigrant visitor ("B" visa purpose of travel), as described in INA 101(a)(15)(B). These travelers must meet all the requirement for using the VWP, including possessing a valid ESTA approval. If a traveler is coming for an A or G purpose, including a temporary assignment of less than 90 days, the traveler may not travel under the VWP and the appropriate visa must be placed in the passport.
- e. **(U) Transportation to the United States under VWP:**
- (1) **(U) VWP Travelers Arriving by Air or by Sea:** VWP participants arriving by air or sea must meet the requirements of [9 FAM 201.1-4\(C\)](#) paragraph a; and
 - (a) **(U) Possess a Round-Trip Ticket:** For purposes of the VWP, a round-trip ticket means any nontransferable ticket, valid for a period of not less than one year that takes the traveler out of the United States to an onward destination, including foreign contiguous territory or an adjacent island if he or she is resident there. If the traveler is not resident in contiguous territory or an adjacent island, the ticket must transport him or her to a foreign location outside contiguous territory or adjacent islands. The following also satisfy the requirement for a round-trip ticket:
 - (i) **(U) Electronic ticket record;**
 - (ii) **(U) Airline employee passes indicating return passage;**
 - (iii) **(U) Group vouchers for charter flights only;**
 - (iv) Individual vouchers; or

- (v) **(U)** Military travel orders (which include military dependents) for return to duty stations outside the United States on U.S. military flights.
 - (b) **(U) Possess a Valid Electronic System for Travel Authorization (ESTA) Approval:** See [9 FAM 201.1-4\(C\)](#) paragraph f more information on ESTA.
 - (c) **(U) Arrive in the United States via a Signatory Carrier:** Travelers using the Visa Waiver Program are required to travel to the United States on a "Signatory Carrier" who has an agreement with the Secretary of Homeland Security pursuant to INA 217(e). See [9 FAM 201.1-4\(E\)](#) for a list of carriers who have the required agreement in place.
 - (d) **(U) Port of Embarkation for the United States:** VWP travelers may embark for the United States from anywhere in the world, provided they arrive aboard a signatory carrier. VWP travelers returning to the United States from contiguous territory or adjacent islands within 90 days of leaving the United States are not required to be aboard a signatory carrier.
- (2) **(U) VWP Travelers Arriving at Land Border Ports of Entry:**
- (a) **(U)** Any alien arriving at a land border port of entry must meet the requirements in [9 FAM 201.1-4\(C\)](#) paragraph a and:
 - (i) **(U)** Complete the I-94-W form; and
 - (ii) **(U)** Pay \$6.00 processing fee.
 - (b) **(U)** A VWP traveler at the land border is not required to possess a valid ESTA approval.
- f. **(U) Electronic System for Travel Authorization (ESTA):**
- (1) **(U) Background on Electronic System for Travel Authorization (ESTA):**
 - (a) **(U)** Sec 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53) introduced new security enhancements to the VWP. One of the security enhancements required by the 9/11 Act is a fully automated, electronic system for screening passengers before they begin travel to the United States under the VWP. The Department of Homeland Security (DHS) has developed the Electronic System for Travel Authorization (ESTA) to determine, prior to an individual's boarding a carrier en route to the United States, whether that individual is eligible to travel to the United States under the VWP, and whether such travel poses any law enforcement or security risks. ESTA collects information that is the same as that previously collected on the Form I-94-W, Nonimmigrant Alien Arrival/Departure, that VWP passengers completed on board the carrier and presented to U.S. Customs and Border Protection (CBP) officers upon their arrival at U.S. ports of entry (POE).
 - (b) **(U)** ESTA applications are checked against appropriate law enforcement databases, including the terrorist watchlist, lost and stolen passport

database, and visa revocation/refusal database. To the extent possible, ESTA provides almost immediate determinations of eligibility for travel under the VWP. If an ESTA application is not approved, a message will inform the applicant that she/he is not authorized to travel under the VWP and refer the applicant to the Travel.State.gov website for information on how to apply for a visa at a U.S. Embassy/Consulate.

- (c) **(U)** An approved travel authorization via ESTA only authorizes a traveler to board a carrier for travel to the United States under the VWP. In the same way that a valid visa does not constitute a determination of admissibility, an approved travel authorization obtained via ESTA is not a guarantee of admissibility to the United States at a port of entry (POE). U.S. Customs and Border Protection (CBP) officers must make admissibility determinations at U.S. ports of entry or pre-clearance facilities.
- (d) **(U)** As of July 2010, most VWP travelers no longer complete the paper I-94W form. The paper form has been replaced by an electronic record stemming from the ESTA application and held by CBP in the Arrival and Departure Information System (ADIS). A stamp is placed in the passport indicating that the traveler has been admitted to the United States under the VWP, and the CBP officer notates the class of admission and the date to which the traveler has been granted admission (usually 89 days from the date of arrival); this is the only record the traveler receives.

(2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

(CA/VO/F) and the Consular Affairs Support Desk.

- (5) **(U) 221(g) Refusals and ESTA Applications:** VWP travelers who have been denied any category of visa under INA 221(g) for any reason should mark "yes" for question F on the ESTA application form, "Have you ever been denied a U.S. visa or entry into the U.S. or had a U.S. visa canceled?"
 - (6) **(U) Visa Annotation for ESTA Denials:** To facilitate processing at the port of entry (POE), please annotate any visa issued over an ESTA denial "ESTA RECORD REVIEWED." This will let inspectors know that the consular officer has seen the ESTA denial and addressed the underlying reason for that denial.
 - (7) **(U) Additional Information:** See U.S. Customs and Border Protection Web site for additional details and guidance on the ESTA program.
- g. **(U) Aliens Requiring Waiver of Ineligibility:** Persons for whom a waiver of ineligibility is required must apply for and receive a visa; they are not eligible to travel under the VWP. Persons covered by the blanket waiver of INA 212(a)(1) for mentally disabled individuals can participate in the VWP, if they are otherwise qualified and are accompanied by a responsible adult; the blanket waiver will be noted at the port of entry.

- h. **(U) Form I-94-W, Visa Waiver Nonimmigrant Arrival/Departure Document:**
- (1) **(U)** CBP has phased out the paper Form I-94-W for VWP travelers arriving in the United States by sea or air in most cases. The applicant's ESTA application now provides a basis for an electronic record of the applicant's entry and departure.
 - (2) **(U)** Record of the traveler's entry and the length of stay approved by the officer at the port of entry is documented for the traveler by a stamp and notation in the traveler's passport.
 - (3) **(U)** VWP travelers entering the United States by land will need to complete a paper Form I-94-W at the port of entry.

9 FAM 201.1-4(D) Country Eligibility to Participate in VWP

(CT:VISA-1; 11-18-2015)

a. **(U) List of Countries Whose Nationals Are Eligible to Travel under the VWP:**

Andorra	Australia	Austria
Belgium	Brunei	Chile
Czech Republic	Denmark	Estonia
Finland	France	Germany
Greece	Hungary	Iceland
Ireland	Italy	Japan
Latvia	Liechtenstein	Lithuania
Luxembourg	Malta	Monaco
Netherlands	New Zealand	Norway
Portugal	Republic of Korea	San Marino
Singapore	Slovak Republic	Slovenia
Spain	Sweden	Switzerland
Taiwan	United Kingdom	

b. **(U) Requirements for a Country to be Designated for the VWP:**

- (1) **(U)** The requirements for VWP country designation are set forth in INA 217, as amended, and in other statutes.
- (2) **(U)** The standard requirements include:
 - (a) **(U)** Having a nonimmigrant visa refusal rate below three percent for the previous fiscal year;
 - (b) **(U)** Offering reciprocal visa-free travel for U.S. citizens for business or tourist visits of up to 90 days;
 - (c) **(U)** Issuing International Civil Aviation Organization (ICAO) compliant e-passports;
 - (d) **(U)** Sharing lost and stolen passport information with the United States through INTERPOL or other means as designated by the Secretary of

Homeland Security;

- (e) **(U)** Sharing information regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States or its citizens; this requirement includes conclusion of various information sharing agreements and/or arrangements;
 - (f) **(U)** Cooperating on repatriation matters; and
 - (g) **(U)** Receiving a positive evaluation of the affect a country's designation would have on the security and law enforcement interests (including immigration enforcement interests) of the United States. The Director of National Intelligence must also conduct an independent intelligence assessment in conjunction with the candidate country's VWP evaluation.
- (3) **(U)** Designation as a VWP country can occur only after a candidate country meets all of the statutory and policy requirements of the program. However, meeting the statutory requirements for membership in the VWP does not guarantee a successful candidacy for VWP.
 - (4) **(U)** Each VWP member country's designation in the program must be reviewed at least every two years as required by INA 217(c)(5)(A). In order for its designation to be continued, the Secretary of Homeland Security must determine, in consultation with the Secretary of State, that the country continues to meet the requirement listed, with the exception of having a visa refusal rate of less than three percent for the previous fiscal year.
 - (5) **(U)** The Secretary of Homeland Security has the authority to waive the less than three percent nonimmigrant visa refusal rate requirement and consider for VWP designation countries that have visa refusal rates of not more than ten percent during the previous full fiscal year and that meet additional statutory and other program requirements, including the strengthening of document security standards and airport and aviation security. This authority was suspended on July 1, 2009 because a biometric air exit program was not implemented by June 30, 2009.
- c. **(U) Report for Country under Consideration for VWP:**
- (1) **(U)** On May 1 of each year, for any country that has been nominated by the Secretary of State for inclusion in the VWP, posts must report:
 - (a) **(U)** The total number of nationals of the country who applied for U.S. visas in that country during the previous calendar year;
 - (b) **(U)** The total number of applicants issued and refused visas;
 - (c) **(U)** A breakdown of the refusals by refusal category; and
 - (d) **(U)** The B1/B2 refusal rate under INA 214(b) refusals.
 - (2) **(U)** The chief of mission must certify the accuracy of the information provided.
- d. **(U) Refusals to National of Country under Consideration for VWP:** Consular officers must not knowingly refuse visas under a refusal category that is not

included in the calculation of the visa refusal rate for VWP in order to lower the refusal rate for VWP purposes.

9 FAM 201.1-4(E) (U) List of Signatory Visa Waiver Program (VWP) Carriers: INA 217(e) Signatory Transportation Lines

(CT:VISA-58; 02-24-2016)

(U) Signatory Visa Waiver Program Carriers list for CBP.

9 FAM 201.1-5 (U) GUAM VISA WAIVER PROGRAM (GVWP)

9 FAM 201.1-5(A) (U) Related Statutory and Regulatory Authorities

9 FAM 201.1-5(A)(1) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 212(I) (8 U.S.C. 1182(I)).

9 FAM 201.1-5(A)(2) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 8 CFR 212.1(e).

9 FAM 201.1-5(B) (U) Guam Visa Waiver Program Information

(CT:VISA-1; 11-18-2015)

- a. **(U)** The Guam Visa Waiver Program, as provided for in section 212(I) of the INA, was implemented on October 1, 1988. The program allows citizens of designated countries to make a temporary visit to Guam provided that they:
- (1) **(U)** Visit for business or pleasure for a period of not more than 15 days;
 - (2) **(U)** Travel aboard a participating airline (see list of participating airlines);
 - (3) **(U)** Have a round-trip, nonrefundable, and nontransferable ticket;
 - (4) **(U)** Have a completed and signed Form I-736, Guam Visa Waiver Information;
 - (5) **(U)** Waive any right otherwise provided in the Act to administrative or judicial review, or appeal of an immigration officer's determination of admissibility; and
 - (6) **(U)** Do not apply for an extension of stay, adjustment of status, change of

nonimmigrant status, or onward travel to another destination in the United States.

- b. **(U)** For Department of Homeland Security (DHS) regulations regarding the Guam Visa Waiver Program, see 8 CFR 212.1(e).
- c. **(U)** For a list of countries eligible to enter Guam without a visa, see 8 CFR 212.1(e)(3).
- d. **(U)** Since Guam is a part of the United States as defined in INA 101(a)(38) (8 U.S.C. 1101(a)(38)), aliens proceeding to Guam must possess a valid visa, unless they qualify under the Guam-CNMI Visa Waiver program (8 CFR 212.1), which also applies to aliens proceeding to the CNMI. Navy clearance is not required for entry into the area. However, cases should be submitted to the Department for action for aliens who desire, but are ineligible under INA 212(a)(3), to enter Guam and who request a waiver under INA 212(d)(3)(A) or are recommended by a United States consular officer for such waiver. The Department may advise the Department of Defense, if appropriate.

9 FAM 201.1-6 (U) OTHER NIV-RELATED PROVISIONS EXEMPTING OR WAIVING VISA AND/OR PASSPORT

9 FAM 201.1-6(A) (U) Related Statutory and Regulatory Authorities

9 FAM 201.1-6(A)(1) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 212(d)(4) (8 U.S.C. 1182(d)(4)); INA 233(c) (8 U.S.C. 1223(c)).

9 FAM 201.1-6(A)(2) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.1; 22 CFR 41.2; 22 CFR 41.25(e) and (d).

9 FAM 201.1-6(A)(3) (U) Treaties and Agreements

(CT:VISA-1; 11-18-2015)

(U) North Atlantic Treaty Regarding Status of Their Forces (TIAS 2846; 4U.S.T. 1792); Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty (TIAS 2978; 5 U.S.T. 875).

9 FAM 201.1-6(B) (U) U.S. Armed Forces and NATO

Armed Services

(CT:VISA-365; 05-25-2017)

(U) 22 CFR 41.1(a), (d), and (e) provide that the nonimmigrants the following categories are exempt from the passport and visa requirements of INA 212(a)(7)(B)(i):

- (1) **(U) Alien Members of the U.S. Armed Forces:** "An alien member of the U.S. Armed Forces in uniform or bearing proper military identification, who has not been lawfully admitted for permanent residence, coming to the United States under official orders or permit of such Armed Forces (Sec. 284, 86 Stat. 232; 8 U.S.C. 1354)." (See 22 CFR 41.1(a).)
- (2) **(U) Armed Services Personnel with NATO:**
 - (a) **(U) Armed Services of a NATO Member:** "Personnel belonging to the armed services of a government which is a Party to the North Atlantic Treaty and which has ratified the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, signed at London on June 19, 1951, and entering the United States under Article III of that Agreement pursuant to an individual or collective movement order issued by an appropriate agency of the sending state or of NATO (TIAS 2846; 4 U.S.T. 1792.)" (See 22 CFR 41.1(d).)
 - (b) **(U) Armed Services Personnel Attached to a NATO Headquarters in the United States:** "Personnel attached to a NATO Headquarters in the United States set up pursuant to the North Atlantic Treaty, belonging to the armed services of a government which is a Party to the Treaty and entering the United States in connection with their official duties under the provisions of the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty (TIAS 2978; 5 U.S.T. 875.)" (See 22 CFR 41.1(e).)
 - (c) **(U) Documentation Required of Armed Services Personnel of NATO Members:** Armed services personnel of NATO members entering pursuant to 22 CFR 41.1(d) and 22 CFR 41.1(e) must present on demand the following documents:
 - (i) **(U)** The personal identity card issued by the sending state showing names, date of birth, rank and serial number (if any), service, and photograph; and
 - (ii) **(U)** The individual or collective movement order, showing the movement ordered and the status of the individual or group as member(s) of a force.
 - (d) **(U) Dependents of Armed Services Personnel; Members of a Civilian Component and their Dependents:** The exemptions from passport and visa requirements provided in 22 CFR 41.1(d) and 22 CFR 41.1(e) for NATO armed services personnel do not extend to the dependents of such members or to the members of a civilian component

and their dependents. Such persons must apply for nonimmigrant visas and present valid passports. (See 22 CFR 41.25(e) and (d), respectively, for classification.)

- (e) **(U) Countries Signatory to NATO Agreements:** For a listing of the parties to the North Atlantic Treaty, the NATO Status-of-Forces Agreement, and the Protocol on the status of International Military Headquarters, see [9 FAM 402.3-8\(C\)](#).
- (f) **(U) Definitions:** For definitions contained in the protocol on the status of international military headquarters set up pursuant to the North Atlantic treaty, see [9 FAM 402.3-8\(F\)](#). For definitions contained in the NATO Status-of-Forces Agreement, see [9 FAM 402.3-8\(G\)](#).
- (g) **(U)** For more information on visa issuance to aliens entitled to exemption from visa requirements, see [9 FAM 201.1-6](#).

9 FAM 201.1-6(C) (U) NIV Transit Without a Visa and/or Passport

(CT:VISA-365; 05-25-2017)

- a. **(U) Conditions for Admission of Aliens under Direct-Transit Waiver:** INA 212(d)(4)(C) provides that either or both of the requirements of 212(a)(7)(B)(i) may be waived by the Attorney General and the Secretary of State acting jointly in the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in INA 233(c). Note, however, that the Transit Without Visa (TWOV) Program has been suspended until further notice.
- b. **(U) Signatory Transportation Lines:** See [9 FAM 201.1-4\(E\)](#) for a list of carriers which have contracts, including bonding agreements, with the Attorney General pursuant to INA 233(c) regarding aliens who are being transported in immediate and continuous transit through the United States.

9 FAM 201.1-6(D) (U) Entry from Guam, Puerto Rico or the U.S. Virgin Islands

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.1(c) provides that nonimmigrants in the following category are exempt from the passport and visa requirements of INA 212(a)(7)(B)(i): aliens departing from Guam, Puerto Rico, or the Virgin Islands of the United States, and seeking to enter the continental United States or any other place under the jurisdiction of the United States (Sec. 212, 66 Stat. 188; 8 U.S.C. 1182.).

9 FAM 201.1-6(E) (U) International Boundary and Water Commission Treaty

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.1(f) provides that nonimmigrants in the following category are exempt from the passport and visa requirements of INA 212(a)(7)(B)(i): Aliens entering pursuant to International Boundary and Water Commission Treaty: All personnel employed either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission, and entering the United States temporarily in connection with such employment (59 Stat. 1252; TS 994.).

9 FAM 201.1-6(F) (U) DHS/State Waivers, Parole

(CT:VISA-365; 05-25-2017)

a. (U) Waiver of Visa and/or Passport Requirement:

- (1) **(U)** 22 CFR 41.2(j) provides that "except as provided in paragraphs (a) through (i) and (k) through (m) of 22 CFR 41.2, all aliens are required to present a valid, unexpired visa and passport upon arrival in the United States. An alien may apply for a waiver of the visa and passport requirement if, either prior to the alien's embarkation abroad or upon arrival at a port of entry, the responsible district director of the Department of Homeland Security (DHS) in charge of the port of entry concludes that the alien is unable to present the required documents because of an unforeseen emergency. The DHS district director may grant a waiver of the visa or passport requirement pursuant to INA 212(d)(4)(A), without the prior concurrence of the Department of State, if the district director concludes that the alien's claim of emergency circumstances is legitimate and that approval of the waiver would be appropriate under all of the attendant facts and circumstances."
- (2) **(U)** See additional information on such waivers in [9 FAM 302.1-3\(D\)](#) and [9 FAM 302.1-4\(D\)](#).

b. (U) Parole Procedure under INA 212(d)(5):

- (1) **(U)** In addition to the categories of aliens listed in [9 FAM 201.2-3](#) who are not required to obtain immigrant visas (IV), INA 212(d)(5)(A) provides authority to the Secretary of Homeland Security (DHS) to parole an alien who is applying for admission on a case by case basis into the United States for urgent humanitarian reasons or for significant public benefit.
- (2) **(U)** Consular officers may answer questions about the relationship between the parole procedure and the regular visa procedure under the INA with a reference to INA 212(d)(5) that contains the statutory authority for the parole procedure. Consular officers should not give more information in answer to inquiries from the general public, nor should consular officers suggest parole to an alien or an interested party. In appropriate cases, consular officers may refer inquirers to the Department of Homeland Security (DHS). See [9 FAM 202.3](#) for additional guidance on parole issues.

9 FAM 201.2

IMMIGRANT TRAVEL WITHOUT A VISA AND/OR PASSPORT

(CT:VISA-364; 05-25-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 201.2-1 RELATED STATUTORY AND REGULATORY AUTHORITIES

9 FAM 201.2-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 210 (8 U.S.C.1160); INA 211 (8 U.S.C. 1181); INA 212(a)(7)(A) (8 U.S.C. 1182(a)(7)(A)); INA 222(b) (8 U.S.C. 1202(b)); INA 245A (8 U.S.C. 1225a).

9 FAM 201.2-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.1; 22 CFR 42.2; 22 CFR 40.71; 8 CFR 211.1(b).

9 FAM 201.2-2 IV TRAVEL WITHOUT A VISA AND/OR PASSPORT – OVERVIEW

(CT:VISA-1; 11-18-2015)

There are certain circumstances in which an immigrant may travel without a visa and/or passport, or in which these requirements may be waived.

9 FAM 201.2-3 IMMIGRANT TRAVEL WITHOUT A VISA

(CT:VISA-364; 05-25-2017)

The regulations of the Department of Homeland Security contained in 8 CFR 211.1(b) relating to waivers of documentary requirements for immigrants provide for admission of certain aliens without visas. An unexpired immigrant visa (IV), reentry permit, or other valid entry document is required of an immigrant under INA 212(a)(7) except as indicated below.

- (1) **LPRs:** A Lawful Permanent Resident (LPR) possessing a Form I-551,

Permanent Resident Card and returning to an unrelinquished domicile in the United States may not require a visa. See [9 FAM 202.2-7](#) LPR Travel Documents for information on LPR travel with a Form I-551, ADIT stamp, boarding foil, I-327 Reentry Permit, I-571 Refugee Travel Document, Returning Resident immigrant visa or transportation letter.

(2) **Travelers with Other Documents:**

- (a) **Special Agricultural Workers:** Certain agricultural workers who adjusted status under INA 210, and remain under such status, may present Form I-688, Temporary Resident Card, in lieu of an IV if returning to an unrelinquished residence within one year after temporary absence abroad.
- (b) **Temporary Residents Adjusted Under INA 245A:** Aliens granted temporary resident status under INA 245A, and remaining under such status, may present Form I-688, Temporary Resident Card, in lieu of an IV if returning to an unrelinquished residence within 30 days after absence abroad, provided that the aggregate of such absences does not exceed 90 days.

(3) **Certain Alien Children Not Required to Obtain Visas:**

- (a) The child born after the issuance of a visa to a parent, or a child under two years of age born of a Lawful Permanent Resident alien mother during a temporary visit abroad, is not required to have a visa if the child is:
- (i) Born subsequent to issuance of an IV to the accompanying parent within the validity of the parent's immigrant visa; or
 - (ii) Born during the lawful permanent resident mother's temporary visit abroad provided that:
 - Admission is within 2 years of birth; and
 - Either accompanying parent is applying for readmission upon first return after the birth of the child.
- (b) **Requiring Reentry Document of Child's Parent:** The provisions of [9 FAM 201.2-3](#) paragraph (3)(a) *above* apply only if the alien parent is in possession of a valid Form I-551, a valid reentry permit, refugee travel document (lawful permanent resident only), or an SB-1 visa. With respect to 22 CFR 42.1(d), it is irrelevant whether the visa issued to the accompanying parent is an initial visa or a replacement visa.
- (c) **Evidence of Parent-Child Relationship:** To facilitate the admission of children under the provisions of [9 FAM 201.2-3](#) paragraph (3)(a) *above* consular officers should instruct parents to have with them documentary evidence of the parent-child relationship.

- (4) **211(b) DHS Waiver at Port of Entry:** An immigrant returning to an unrelinquished residence in the United States who does not possess a valid immigrant visa (IV), Form I-551, a Permit to Reenter the United States, or a

Refugee Travel Document may be granted a waiver under INA 211(b), if the Department of Homeland Security (DHS) district director of the port of entry (POE) is satisfied that there is good cause for failure to present the document.

- (5) **Parole:** In addition to the categories of aliens listed in [9 FAM 201.2-3](#) who are not required to obtain immigrant visas (IV), INA 212(d)(5)(A) provides authority to the Secretary of Homeland Security (DHS) to parole an alien who is applying for admission on a case by case basis into the United States for urgent humanitarian reasons or for significant public benefit. See [9 FAM 202.3](#) for additional information on parole.

9 FAM 201.2-4 IMMIGRANT TRAVEL WITHOUT A PASSPORT

(CT:VISA-364; 05-25-2017)

The passport requirement of INA 222(b) may be waived for the following categories of immigrants:

- (1) **Lawful Permanent Residents:** A lawfully admitted permanent alien returning from a temporary visit abroad is only required to present a passport when applying in the alien's country of nationality and a passport is required by that country for departure.
- (2) **Certain Relatives of a U.S. Citizen or LPR:** The spouse, unmarried son or daughter or parent of a U.S. citizen or a Lawful Permanent Resident (LPR) is only required to present a passport when they are applying in the alien's country of nationality and a passport is required by that country for departure. See section [9 FAM 102.8-2\(K\)](#) for interpretations of the terms "son" and "daughter."
- (3) **Orphan Adopted Abroad and Orphan Adopted in United States:** For children classified as "immediate relatives" by reason of INA 101(b)(1)(F), a distinction is made between an orphan adopted abroad and an orphan to be adopted in the United States. If the orphan has been adopted abroad, the parent-child relationship legally exists when the visa application is made and the orphan will, therefore not need to present a passport. However, if the orphan is to be adopted in the United States after admission, such a relationship does not yet exist and the orphan is required to present a passport. See section [9 FAM 502.3-3\(B\)](#) for definition of "orphan."
- (4) **Stateless Person and Accompanying Spouse and Unmarried Son(s) or Daughter(s):**
 - (a) There are several ways an individual might end up stateless:
 - (i) The individual may have been born in a disputed territory, such as the Gaza Strip;
 - (ii) The individual may have renounced his or her original citizenship or lost such citizenship by operation of law and failed to acquire

citizenship of another country;

- (iii) The laws of the individual's country of birth may not have conferred citizenship on the basis of place of birth and the individual's parents may have been unable to transmit citizenship under the law of their country(ies) of origin; or
- (iv) The individual may have been born in a former colony or territory and failed to take necessary steps to retain/acquire the nationality of the former controlling state or to acquire the nationality of the new state.

- (b) An alien who is a refugee or an exile normally retains the nationality of the country he or she fled and would not be considered stateless.
- (c) In general, statelessness is a rare situation and an alien can usually be presumed to be a national of his or her country of birth, particularly if the alien's parents were also natives of that country. If the applicant claims statelessness, the burden is on the applicant to establish that he or she did not acquire the nationality of his or her country of birth under the laws of that country and do not have any other nationality. As citizenship is often acquired through parents, post may also examine the nationality of the applicant's parents in those cases where nationality is unclear. If post encounters difficulties in determining either which applicants are stateless, or the nationality of the applicants who are not stateless, post may also wish to consult with country authorities who may have records showing the nationality of its residents.

(5) National of a Communist-Controlled Country:

- (a) The passport requirement may be waived for aliens that are nationals of Communist or Communist-controlled countries who are unable to obtain a passport or for aliens who are nationals of Communist or Communist-controlled countries but are currently not living in their country of nationality who are unwilling to apply for a passport because of the alien's opposition to communism.
- (b) In the case of an alien who is applying in his or her home country, you must determine, prior to visa issuance, if the alien will be able to depart upon the issuance of a visa. If not, little positive benefit would be served by receipt of a visa, and the possibility exists that it could be harmful to the alien and/or to the relations between the United States and the host government to issue such visa without a passport. If the alien is able to obtain an exit permit or other travel documentation which will allow his legal departure from the country, there would then be no objection based on comity principles to the issuance of a visa.

(6) Alien Member of the U.S. Armed Forces: See [9 FAM 202.2-7\(A\)](#) *paragraph e*; and

(7) Beneficiary of Individual Waivers.

9 FAM 202 NON-VISA TRAVELERS

9 FAM 202.1 U.S. CITIZENS AND NATIONALS

(CT:VISA-313; 03-31-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 202.1-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 202.1-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(21) (8 U.S.C. 1101(a)(21)); INA 101(a)(22) (8 U.S.C. 1101(a)(22)); INA 215(b) (8 U.S.C. 1185(b)); INA 343(b) (8 U.S.C. 1454(b)); INA 343(d) (8 U.S.C. 1454(d)).

9 FAM 202.1-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 204.1(g)(2); 22 CFR 40.2(a).

9 FAM 202.1-2 VISA-RELATED ISSUES WITH U.S. CITIZENS

(CT:VISA-1; 11-18-2015)

a. Processing Visa Applications for Aliens Who May Have a Claim to U.S. Citizenship:

- (1) **Nonimmigrant Visa Applicants:** You may not issue a visa to an individual who has been determined to be a U.S. citizen. However, if a nonimmigrant visa applicant with a possible claim to U.S. citizenship is unable or unwilling to delay travel until he or she has been able to obtain documents to establish that status, as determined by the post's citizenship and passport officer, you may presume that the applicant is an "alien" pursuing a nonimmigrant visa application. If you find the presumed alien eligible to receive the visa then you may issue the visa.

- (2) **Immigrant Visa Applicants:** Under 22 CFR 40.2(a), a U.S. citizen is not eligible to receive an immigrant visa. If an immigrant visa applicant has a possible claim to U.S. citizenship, post's citizenship and passport officer must resolve the citizenship issue before you may take final action on the visa application. If the matter cannot be resolved that same day, the visa officer should deny the immigrant visa application under INA 221(g) pending resolution of the citizenship issue. Any doubts regarding the applicant's U.S. citizenship status must be resolved before the visa officer may take final action on the visa application.
- b. **Child Born in the United States to Aliens on Official Assignment:** A child born in the United States to alien parents who are in the United States on assignment for a foreign government is considered to be a U.S. citizen. However, a child born to alien parents who, at the time of the child's birth were "not subject to the jurisdiction of the United States", such as ambassadors, envoys, ministers and other persons as set forth in [7 FAM 1111](#) (d)(2) are not considered U.S. citizens. Any doubtful cases should be determined by post's citizenship and passport officer.
- c. **Applications for Visas for Certain Dual National Children:**
- (1) You should advise parents who apply for visas for dual national children that regulations prohibit the issuance of a visa or other documentation to a U.S. citizen or national for entry into the United States as an alien. The children of foreign government officials, however, may use their foreign passport for entry into the United States.
 - (2) After the U.S. citizenship of a child has been determined by a citizenship officer, the consular officer may, to avoid delay or difficulty, give a written statement to the parents for presentation to carriers or immigration officials. The statement should make clear that the bearer of the foreign passport is a dual national child of a foreign government official or employee who is traveling to the United States on official business and as such may enter the United States on the foreign passport as an exception to the provisions of INA 215(b) regarding valid passport requirement.
 - (3) A child under 12 years of age who is included in the passport of an alien parent in an official capacity may be admitted if evidence of U.S. citizenship is presented at the time of entry. A determination of the child's citizenship should be made by citizenship officer prior to departure from a foreign country and the parent should be instructed to have evidence of such citizenship available for inspection by the admitting Department of Homeland Security Officer.

9 FAM 202.1-3 PROOF OF U.S CITIZENSHIP

(CT:VISA-313; 03-31-2017)

- a. **Primary Evidence:** Primary evidence that a petitioner or person is a U.S. citizen may consist of the following:
- (1) A birth certificate issued by a civil authority which establishes birth in the

United States;

- (2) A Certificate of Naturalization or Certificate of Citizenship issued in the petitioner's name;
 - (3) An unexpired U.S. passport issued initially for a full ten-year period to a petitioner or person over the age of 18 as a citizen of the United States (and not merely a noncitizen national) – see also [9 FAM 202.1-3](#) paragraph d below;
 - (4) An unexpired U.S. passport issued initially for a full five-year period to a petitioner under the age of 18 as a citizen of the United States (and not merely a noncitizen national) – see also [9 FAM 202.1-3](#) paragraph d below;
 - (5) Department of State Form FS-240, Consular Report of Birth Abroad of a Citizen of the United States of America; or
 - (6) An unexpired passport card issued for full validity to the petitioner.
- b. **Secondary Evidence:** If primary evidence is unavailable, the petitioner or individual must present secondary evidence. This evidence must be evaluated for authenticity and credibility. Such evidence may include, but is not limited to, one or more of the following:
- (1) A baptismal certificate with the seal of the church, showing the date and place of birth in the United States and date of the baptism;
 - (2) Affidavits sworn to by persons who have personal knowledge and were present at the time naturalization took place;
 - (3) Early school records showing the date of admission to the school, the child's date and place of birth, and the name(s), date(s), and place(s) of birth of the parent(s); or
 - (4) Census records showing name, date and place of birth, or age.
- c. An approved Form I-600-A, Application for Advance Processing of Orphan Petition, for an adoptive or prospective adoptive parent attests to USCIS determination that citizenship and age requirements have been met.
- d. **U.S. Passport as Proof of Citizenship for U.S. Citizen Petitioners:** Petitions filed by U.S. citizens must be accompanied by primary evidence of the petitioner's U.S. citizenship.
- (1) U.S. citizen petitioner abroad may establish U.S. citizenship by presentation of an unexpired U.S. passport issued initially for the full period of validity to the petitioner as a citizen of the United States, not as a non-citizen national. If the petitioner intends to mail the application to a DHS office, or is not carrying the passport when seeking to file the petition at a consular office, citizenship may be established by a statement by the consular officer that the petitioner has presented such a passport on some occasion or that post records show the petitioner to be a U.S. citizen who is the bearer of such a passport.
 - (2) This statement may be written on or attached to the Form I-130, Petition for Alien Relative, Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, or Form I-600, Petition to Classify Orphan as an Immediate

Relative. If the petition is filed at a consular office and the consular officer is not fully satisfied that the petitioner is a U.S. citizen rather than a national, the petition should be considered "not clearly approvable". (See [9 FAM 504.2-4.](#))

- (3) A petitioner who is unable to obtain primary evidence of citizenship may submit other forms of evidence; however, such a petition should be regarded as "not clearly approvable" and forwarded to the USCIS office with jurisdiction. (See 8 CFR 204.1(g)(2) for further information concerning documentation that USCIS accepts when evidence of U.S. citizenship is unavailable.) In every case, the consular officer must be satisfied with the bona fides of the document and that the bearer has not lost U.S. citizenship since the date of issuance.
- e. **U.S. Citizen in Armed Forces:** If it is determined that it would cause unusual delay or hardship to obtain documentary proof of birth in the United States, a U. S. citizen petitioner who is a member of the U.S. Armed Forces and who is serving outside the United States may submit a statement from the appropriate authority of the Armed Forces. The statement should attest to the fact that the personnel records of the Armed Forces show that the petitioner was born in the United States on a certain date (see 8 CFR 204.1(g)(2)(V)).

9 FAM 202.1-4 REPLACEMENT CERTIFICATES OF CITIZENSHIP OR NATURALIZATION

(CT:VISA-153; 08-05-2016)

The Attorney General has authority under INA 343(b) and INA 343(d) to issue a Form N-550, Replacement Certificate of Naturalization, or Form N-645 Certification of Citizenship, in cases where the original certificate has been lost, mutilated, or destroyed, and to issue the replacement certificate under a new name when the name of any naturalized person has been changed.

- (1) **Applying for Replacement Certificate of Citizenship or Naturalization at Post:** DHS has authorized consular officers to assist applicants for a replacement certificate of naturalization or citizenship if the applicant is physically present in the consular district and submits Form N-565, Application for Replacement Naturalization/Citizenship Document, in person. The consular officer must forward the completed Form N-565 with the appropriate fee to the DHS Service Center having jurisdiction over the applicant's state of residence in the United States, or to the district director of the Washington, DC district for DHS action.
- (2) **Applying for Replacement Certificate of Citizenship or Naturalization in the United States:**
 - (a) An application for a replacement certificate of naturalization or citizenship is normally submitted in person at a DHS office in the United States where a DHS officer will conduct an interview.
 - (b) In cases in which the applicant will proceed abroad before the certificate

can be delivered, DHS will forward the certificate to the consular post designated by the applicant. The consular officer must forward the receipt for delivery of the certificate, signed by the applicant, to the DHS office of origin.

- (c) If the consular officer finds that the applicant has lost his or her U.S. citizenship, or is otherwise ineligible to receive the certificate, he or she must withhold the certificate from the applicant and return it to the originating DHS office.
- (3) **When Interview is Required:** When a DHS officer has not interviewed an applicant, the immigration officer will prepare and transmit the replacement certificate to the consular office designated by the applicant for delivery of the document. Along with the certificate, the DHS officer will send the application and photographs of the naturalization petition and of the certificate(s) being replaced, as an aid to the consular officer in conducting the interview. The interviewing consular officer must follow the guidelines listed below to determine the applicant's eligibility to receive the duplicate certificate.
- (a) **Identity:** The consular officer must be able to identify the applicant as the person who was naturalized and to whom the original certificate was issued. Comparing photographs and signatures and questioning the applicant regarding items in the petition for naturalization will aid in this respect.
 - (b) **Expatriation:** The applicant must be questioned to determine whether citizenship has been lost since the date the applicant became a U.S. citizen. Other persons may be questioned, and records examined, if the consular officer decides such additional action is necessary to resolve the issue.
 - (c) **Disposition of Original Certificate:** The consular officer must question the applicant regarding the circumstances of the claimed loss or destruction of the original certificate to ensure that the claim is not fraudulent. If DHS instructs the consular officer to obtain the original (mutilated or incorrect) certificate from the applicant, the consular officer must withhold delivery of the new certificate until the original has been surrendered.
- (4) **Certificate Delivery:** Only when all requirements discussed in [9 FAM 202.1-4](#) have been satisfied may the new certificate be delivered. The applicant must execute and sign the receipt at the bottom of Form N-565, Examiner's Report, page 2 of Form N-565. The consular officer must complete the Examiner's Report and return the application and attachments to the DHS office of origin. The consular officer should assume, and so indicate in the report, that DHS verified the applicant's naturalization at the time of application in the United States.
- (5) **Denial of Application:** The consular officer must deny the application if he or she finds any of the elements lacking. If the application is denied, the officer

must complete the Examiner's Report, with a supplemental report covering the reasons for the denial, and return the replacement certificate, Form N-645, the application, and attachments to the DHS office of origin.

9 FAM 202.2

(U) LAWFUL PERMANENT RESIDENTS (LPRS)

(CT:VISA-375; 06-07-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 202.2-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 202.2-1(A) (U) Immigration and Nationality Act

(CT:VISA-213; 10-12-2016)

(U) INA 101(a)(20) (8 U.S.C. 1101(a)(20)); INA 101(a)(27)(A) (8 U.S.C. 1101(a)(27)(A)); INA 212(a)(6)(A) (8 U.S.C. 1182(a)(6)(A)); INA 212(a)(7) (8 U.S.C. 1182(a)(7)); INA 222(b) (8 U.S.C. 1202(b)); INA 316 (8 U.S.C. 1427); INA 317 (8 U.S.C. 1428).

9 FAM 202.2-1(B) (U) Code of Federal Regulations

(CT:VISA-213; 10-12-2016)

(U) 22 CFR 42.1(b); 22 CFR 42.22; 8 CFR 101.3(a)(1); and 8 CFR 211.

9 FAM 202.2-2 (U) LAWFUL PERMANENT RESIDENTS – OVERVIEW, INTRODUCTION

(CT:VISA-213; 10-12-2016)

a. (U) Overview of Lawful Permanent Resident (LPR) Sections:

- (1) **(U)** [9 FAM 202.2](#) provides information on Lawful Permanent Residents (LPRs) that consular personnel are likely to need for their official functions. [9 FAM 202.2-4](#) outlines consular services provided to LPRs. [9 FAM 202.2-5](#) discusses processing boarding foils for LPRs, and [9 FAM 202.2-6](#) provides guidance verification of LPR status. [9 FAM 202.2-8](#) lists the bases for losing LPR status; and
- (2) **(U)** See [9 FAM 202.2-7](#) for information on LPR travel to the United States. See also [9 FAM 201.2](#) for information on travel documentation for temporary residents and other travelers without documentation.

b. (U) Basis for Lawful Permanent Resident (LPR) Status:

- (1) **(U)** The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the

United States as an immigrant in accordance with the immigration laws; and

- (2) **(U) Child Born in the United States to Diplomatic Parents:** A child born in the United States to parents in diplomatic status does not acquire U.S. nationality at birth, because the parents are not subject to the jurisdiction of the United States while in that status. (See case of *Nikoi v. Attorney General of United States*, 939 F.2d 1065, D.C. Circuit.) However, in accordance with DHS regulation 8 CFR 101.3(a)(1), such a child might be considered a Lawful Permanent Resident at birth. The child will normally be considered while under the age of 16 to have the same intent as the parents. Thus, if the parents take the child out of the United States and abandon their residence in the United States, the child will normally be considered to have lost permanent residence status.

c. **(U) Conditional Lawful Permanent Resident Status:**

- (1) **(U)** An alien granted conditional resident status under INA 216 is issued a Form I-551, Permanent Resident Card, similar to other permanent residents, except that the classification code on the front (photo) side of the card is "CR-", "CF-", "CX-", "C2-", or "C3-" for family based status, and "C5-" and "T5-" for employment based status, followed by a one digit number and the reverse side bears a legend stating:

THIS CARD EXPIRES _____

(U) The expiration date is 2 years from the date the alien obtains lawful permanent resident status. The card is valid until midnight of the date indicated; and

- (2) **(U) Automatic Loss of Conditional Lawful Permanent Resident (LPR) Status:** A conditional resident alien automatically loses LPR status on the second anniversary of his or her date of admission as a resident if the form to remove the conditions is not filed by that date (Form I-751, Petition to Remove the Conditions of Residence, for family based status and Form I-829, Petition by Entrepreneur to Remove Conditions on permanent Resident Status, for employment based status). However, the law allows DHS to accept a late petition if, and only if, the alien can establish that the failure to file on time was for reasons beyond his or her control. See [9 FAM 202.2-8](#) for more complete information on loss of LPR status.

9 FAM 202.2-3 HANDLING DHS DOCUMENTS

(CT:VISA-213; 10-12-2016)

- a. **(U)** Posts should keep in mind that consular officers do not have the authority to make determinations regarding retention or loss of lawful resident status and cannot require any alien to relinquish lawful resident documentation. On the other hand, there are no regulations that state that a fraudulent document cannot be retained if presented to a consular officer for verification or other action. See also [9 FAM 601.10](#) for general fraud provisions.

- b. **(U)** In cases where a post is in a position to verify the legitimacy of a particular DHS document, posts should follow these instructions:
- (1) **(U)** If post is certain that the document is fraudulent (i.e., a counterfeit or a genuine document, which has been altered to allow its use by an imposter), posts are authorized to retain the documents for inclusion in the case file or for specific disposition as required; and
 - (2) **(U)** If, on the other hand, a post is only doubtful as to the veracity of a document, then the post should return the questionable document to the bearer. If the alien is traveling, the post should notify the carrier (if known) that the document may be fraudulent. The carrier should be informed that if the document is, in fact, counterfeit or altered and the carrier has decided to risk transporting the alien, the carrier may be subject to DHS fines. In all cases, post should scan and e-mail a copy of the document to the Office of Fraud Prevention Programs (CA/FPP). See [9 FAM 601.10](#) for general fraud provisions.

9 FAM 202.2-4 CONSULAR SERVICES FOR LAWFUL PERMANENT RESIDENTS (LPRS)

9 FAM 202.2-4(A) Overview

(CT:VISA-213; 10-12-2016)

(U) LPRs may need a variety of consular services, ranging from a boarding foil for a lost, stolen, expired or destroyed/mutilated Form I-551 to the filing of a Returning Resident (SB-1) visa application.

9 FAM 202.2-4(B) LPR Preference Petition Filing

(CT:VISA-213; 10-12-2016)

(U) In general, only USCIS will accept an immigrant visa petition filed abroad at one of its overseas offices. Occasionally, in emergent circumstances, USCIS may authorize consular officers to accept the petition. See [9 FAM 504.2-4](#).

9 FAM 202.2-4(C) Abandonment of Status to Confer More Beneficial Status

(CT:VISA-213; 10-12-2016)

(U) There is no legal restriction preventing a LPR from obtaining another immigrant visa in a different preference status in order to confer derivative status on a spouse or child. There is also no requirement that the alien resident abandon his LPR status.

9 FAM 202.2-4(D) Requesting a Replacement or

Extension of DHS Documents

9 FAM 202.2-4(D)(1) I-551, Permanent Resident Cards

(CT:VISA-213; 10-12-2016)

(U) You may not accept an alien's application for replacement of the Form I-551, Permanent Resident Card, from aliens physically present in their consular district, since these applications now require biometrics. Instead, these aliens should be told to file Form I-90, Application to Replace Permanent Resident Card, directly with USCIS when they return to the United States. See also [9 FAM 202.2-5](#) on issuance of boarding foils in lost, stolen, expired or destroyed/mutilated Form I-551 cases.

9 FAM 202.2-4(D)(2) Reentry Permits

(CT:VISA-213; 10-12-2016)

a. **(U) Requests for Reentry Permits:**

- (1) **(U)** A reentry permit, Form I-327, Permit to Reenter the United States, is comparable to a passport and is issued by USCIS. It has a maximum validity of 2 years (unless restricted to a shorter period) and cannot be renewed. The permit is 3-1/2" x 6-3/4" in size with a beige cover and black letters. The inside covers and all pages are printed on light green safety paper with a darker green watermark representing a map of the continental United States on each page. Pages are numbered 1 through 20, and pages 5 through 14 are left blank for visas; and
- (2) **(U)** While an LPR must apply for a reentry permit in the United States, occasionally the LPR will travel overseas before receiving the reentry permit. He/she may request the reentry permit be sent to post. Post would then notify the LPR to pick up the reentry permit.

b. **(U) Unclaimed Expired Reentry Permits:** Unclaimed expired reentry permits are permits that are sent to posts, but have never been collected by the intended recipient. You should retain reentry permits that cannot be delivered or are not claimed until they are no longer valid, and then return them to the DHS issuing office. The unclaimed expired reentry permits provide DHS with information that is germane to any future dealing with the aliens, and should be part of the DHS records.

c. **(U) Lost/Stolen Reentry Permits:** Guidelines for processing boarding foils for those with Lost/Stolen Reentry Permits is included below. Please note that unlike boarding foils for those with lost/stolen Form I-551 (green cards), individuals with lost/stolen reentry permits can receive boarding foils for 2 years from the date the individual left the United States to the date the fee for Form I-131-A was paid. The USCIS Customer Profile Management Service (CPMS) in PCQS serves as the best report for confirming whether USCIS approved a Reentry Permit for a given individual. An approval date can be found in the "Transaction" field of the CPMS report. An officer would then request to see a passport showing pertinent entry

and exit stamps and and/or airline tickets that show when the applicant departed the United States. You can also run a check of entry/exit records through ADIS.

9 FAM 202.2-4(E) Returning Resident Visas

(CT:VISA-213; 10-12-2016)

(U) See [9 FAM 502.7-2](#) regarding application for and consular officer adjudication of special immigrant visas for returning Lawful Permanent Residents (SB-1).

9 FAM 202.2-5 PROCESSING BOARDING FOILS FOR LAWFUL PERMANENT RESIDENTS (LPRS)

9 FAM 202.2-5(A) In General

(CT:VISA-307; 03-17-2017)

- a. **(U)** This guidance establishes standard operating procedures for issuing a boarding foil to an LPR at overseas consular sections when the LPR wishes to return to the United States but is not in possession of valid proof of LPR status.
- b. **(U)** A boarding foil may be considered by the airline as evidence of the alien's status as an LPR. It serves only to give notice to the air carrier that the U.S. Government does not intend to issue a penalty under INA 273(b).
- c. **(U)** A boarding foil does not replace expectations for a traveler to present a valid passport or other valid travel document to CBP at the port of entry (POE).
- d. **(U)** CBP's Carrier Information Guide provides a boarding foil is not required if the LPR has:
 - (1) **(U)** An expired Permanent Resident Card with a 10-year expiration date);
 - (2) **(U)** An Permanent Resident Card (with a 2-year expiration date) and valid Form I-797, Notice of Action, indicating that status is extended; or
 - (3) **(U)** Orders from the U.S. Government (civilian or military) showing the time outside the U.S. was on official government business.

(U) These individuals should be encouraged to consult their air carrier prior to paying for Form I-131-A.
- e. **(U)** If posts find local carriers that do not accept an expired Form I-551 as a valid travel document to the United States, please encourage the carrier to work with CBP liaisons to clarify the requirements.

9 FAM 202.2-5(B) Consular Officer Role

(CT:VISA-375; 06-07-2017)

- a. **(U)** Pursuant to USCIS guidance, you may issue a secure boarding foil to an LPR whose Form I-551 or Reentry Permit is lost, stolen, expired (Reentry Permit must

have been valid at time of filing Form I-131-A), or destroyed/mutilated, if the alien presents a passport with an Alien Documentation and Identification System (ADIT) stamp or the consular officer is able to confirm the applicant's LPR status as explained below.

- b. **(U)** The LPR must appear in person to report the lost, stolen, expired (Reentry Permit must have been valid at time of filling Form I-131-A), or destroyed/mutilated Form I-551 or Reentry Permit and file Form I-131-A, Application for Travel Document (Carrier Documentation) to request a boarding foil.
- c. **(U)** The boarding foil will be valid for no more than 30 days and will allow the LPR to travel to the United States and present him or herself to a U.S. port-of-entry as a returning LPR. The document is not a guarantee of admission or form of entry to the United States, and U.S. CBP will carry out all required procedures upon the alien's arrival. *Individuals with lost/stolen Form I-551 can receive boarding foils for one year from the date the individual left the United States to the date the fee for Form I-131-A was paid.*

9 FAM 202.2-5(C) Procedures for Issuing Boarding Foils in Lost, Stolen, Expired, or Destroyed/Mutilated Reentry Permit Cases

(CT:VISA-307; 03-17-2017)

a. (U) In General:

- (1) **(U)** You must follow the procedures below in cases involving lost, stolen, expired, destroyed/mutilated Forms I-551 and in cases of lost, stolen, or destroyed/mutilated reentry permits; and
- (2) **(U)** This guidance applies to both IV- and NIV-only posts, except for those posts with a USCIS office offering public counter service physically located in the embassy or consulate ("co-located" posts) (see [9 FAM 202.2-5](#)).

b. **(U) Interview Scheduling:** The LPR schedules an interview appointment using local post procedures to report his/her lost, stolen, expired, or destroyed/mutilated Form I-551, or lost, stolen, or destroyed/mutilated reentry permit and files Form I-131-A, Application for Travel Document (Carrier Documentation), to request a boarding foil. Local procedures could include use of NIV appointment systems or GSS. Posts should determine how to best schedule these appointments.

c. **(U) Confirming fee payment:** Consular sections **do not** collect a fee on behalf of USCIS for this service. Instead, you must verify that the Form I-131-A fee has been paid. The USCIS payment site instructs applicants to provide the receipt/confirmation page from the USCIS online filing system or the receipt that was sent to the applicant by email (Please note the original fee payment cannot be accessed online again). If the applicant also no longer has the receipt email, fee payment can alternatively be confirmed through PCQS. You can review the applicant's information by either entering the name of the individual, the USCIS receipt number, or the A-number. Under the "Payment Status" field it should say

"Completed":

- (1) **(U)** USCIS will not provide applicants a refund of their Form I-131-A fee payment solely because the individual should have applied for an SB-1 instead of a boarding foil. Information concerning LPR boarding foil applications on embassy/consulate websites should clearly state that refunds will not be processed on this basis. Applicant questions about fee and refunds should be directed to USCIS offices; and
 - (2) **(U)** Post must not collect the actual filing fee. The applicant will still be required to submit Form I-90, Application to Replace Permanent Resident Card, and pay the required fee once he/she arrives in the United States.
- d. **(U) Forms:** On or before the day of the interview, the applicant must complete, print, and submit Form I-131-A, Application for a Travel Document (Carrier Documentation), and all required evidence.
- e. **(U) Case Creation in NIV:** Using the biographic data from the Form I-131-A, plus passport number and nationality, a case is created in the NIV system by manually data entering the information. Select "LPR" as the visa class in NIV. All biodata fields must be completed, as applicable. For the address fields, enter the applicant's U.S. residence address (not the mailing address) listed on the Form I-131-A. "Visa type" will default to "X." Consular staff must manually choose the "no fee" option.
- f. **(U) Intake:** The applicant appears in person for his or her interview bringing one photograph matching current visa photo standards (see [9 FAM 403.3-4\(A\)](#)). The photo is captured in NIV and fingerprints are collected for all LPRs age 14-79 (or 7-79 for Yemen and Mexico).
- g. **(U) Interview:** The interviewing officer must:
- (1) **(U) Verify Identity:** Request to see a valid passport, driver's license, or any other U.S. Government-issued photo I.D. Verify the applicant's identity by matching the facial image of the individual with the photograph in the passport and/or other identity documents, or in Customer Profile Management System (CPMS) via the USCIS Person Centric Query Service (PCQS) in the CCD (see [9 FAM 202.2-6](#), subparagraph c(1), for PCQS guidance);
 - (2) **(U) Verify LPR Status:** Check the Central Index System (CIS) via PCQS to ensure that the applicant is in fact an LPR. Confirm that the information matches the applicant who is requesting a boarding foil. If no record is found in CIS, or if the information found is not conclusive, check secondary systems including CLAIMS 3, which is also in PCQS. If necessary, request additional information from local or regional CBP, USCIS, or ICE office(s) to assist in determining LPR status and qualification for a boarding foil. See [9 FAM 202.2-6](#), subparagraph c(3), for additional information on secondary evidence of LPR status and [9 FAM 202.2-5\(D\)](#), on verifying status for conditional lawful permanent residents requesting boarding foils;
 - (3) **(U) Verify Time Outside the United States and No Abandonment of LPR**

Status: Determine that the applicant has not been absent from the United States for more than 1 continuous year. If the applicant had a valid Reentry Permit that was lost, stolen, or destroyed/mutilated, then the applicant can be issued a boarding foil for up to 2 years from the date the Reentry Permit was approved. Request to see a passport showing pertinent entry and exit stamps and and/or airline tickets that show when the applicant departed the United States. You must also run a check of entry/exit records through ADIS (see [9 FAM 202.2-6](#), subparagraph c(2)). If the individual has filed an application to abandon LPR status (Form I-407) you may not issue the applicant a boarding foil. The applicant may be eligible to apply for an SB-1 visa to return to the United States. If the applicant does apply for a SB-1 instead, a note should be added to the NIV boarding foil application case file, indicating that the individual will apply for an SB-1 visa;

- (4) **(U) Documenting Lost or Stolen Form I-551:** Generally, an applicant requesting a boarding foil to replace a Form I-551 that was lost or stolen should present a police report (if applicable and available) documenting when the Form I-551 was lost or stolen; and
- (5) **Unavailable**
- h. **(U) Case Notes and Scanning:** The interviewing officer must add case notes related to the interview, results of PCQS and ADIS searches to the record as well as scan any documentation collected. Please be sure to select "Miscellaneous" as the document type from the dropdown list.
- i. **(U) Issuance:** If post is able determine that the applicant is qualified, the post may issue the alien temporary proof of status in the form of a boarding foil.
 - (1) **(U)** The boarding foil may be valid for no more than 30 days, single entry, unless other emergent circumstances exist. The foil must be annotated as follows (**NOTE:** This annotation may be selected from the dropdown of standard annotations available in NIV, as long as the A# is filled in as well):

(U) "NOT A VISA. BEARER IS A LAWFUL PERMANENT RESIDENT OF THE UNITED STATES AND MAY BE BOARDED WITHOUT TRANSPORTATION CARRIER LIABILITY. A#";
 - (2) **(U)** Post should advise the alien that he or she is required to have his or her permanent resident card in his or her possession at all times and that he or she must file an application for a replacement card (Form I-90) with USCIS immediately upon return to the United States. Form I-90 filing instructions are available on USCIS' website; and
 - (3) **(U)** When placing an LPR boarding foil in the passport, make sure to Cancel Without Prejudice (CWOP) any prior U.S. visa foils that may be present in the alien's passport to avoid confusion at the port-of-entry concerning the alien's status. If there is no room on the passport/travel document, then the foil should be issued on a Form DS-232. No prior concurrence from DHS or CBP is required before issuing the foil on a Form DS-232.
- j. **(U) Refusal Based on Potential Derogatory Information:** If you are not convinced that the applicant is entitled to a boarding foil, do not issue it. However,

you cannot permanently refuse a case without first consulting with your USCIS liaison. Post should refuse the case using refusal code "GLPR" while awaiting a response from USCIS. GLPR is a Category II refusal code only to be used for the LPR visa class. The GLPR code should be used for cases of pending documents, awaiting a response from DHS or awaiting other information from the applicant. If USCIS concurs with a refusal, USCIS will provide the refusal letter (with USCIS insignia) and the consular officer must enter appropriate case notes and scan the USCIS refusal letter into the case file. Consular staff must NOT produce a separate refusal. Only the USCIS refusal letter is given to the applicant. The case should be refused using refusal code "RLPR" in NIV when a final decision is made to refuse issuance of a boarding foil to the applicant (the adjudicator is not convinced that the alien is entitled to a boarding foil.)

- k. **(U) Refusal Based on Unclear LPR Status:** If you are unable to reach a decision about an alien's LPR status, or believe the individual has been outside the United States for more than 1 year, through PCQS or secondary evidence provided by the alien, you must contact your regional USCIS office. Provide the background information on the case, including any derogatory information, and ask your regional USCIS office to run the appropriate checks and review the case to make a determination on LPR status. You must GLPR refuse the case while you await a response before providing the alien with USCIS's final decision on the case. If USCIS confirms status and eligibility for a foil, then follow above steps for issuing the boarding foil after overcoming the GLPR refusal code. If USCIS does not confirm status and eligibility for a foil, then the boarding foil should not be issued, and the applicant should be refused under RLPR and referred to USCIS:
- (1) **(U) Applicants Reapplying:** Posts may advise refused applicants that they can either reapply if they can provide stronger proof of their LPR status, or that they can contact the nearest USCIS office;
 - (2) **Unavailable**
 - (3) **(U) SB-1 Applicants:** If the boarding foil is not issued because the alien has been outside the United States for more than 1 year or 2 years if the applicant had a Re-entry Permit, and the alien appears to qualify for an SB-1 visa, then the applicant can be referred to the IV unit (see [9 FAM 502.7-2](#)) after refusing the case under "RLPR" in NIV.

9 FAM 202.2-5(D) Boarding Foils for Conditional Residents

(CT:VISA-213; 10-12-2016)

(U) Individuals granted conditional resident status must file a petition to remove the conditions of residence with USCIS or the 2-year grant of status expires. If the individual seeking a boarding foil is within the 2-year validity of the conditional residency status, you may issue the boarding foil. If the individual's conditional residency status has expired and he/she presents Form I-797, Receipt Notice, from USCIS demonstrating that a petition to remove conditions of residence has been filed,

you may issue a boarding foil. If the individual claims to have lost his or her Form I-797, Receipt Notice, you must confirm that the individual filed Form I-751 or Form I-829 in PCQS or with USCIS prior to issuing a boarding foil. If the applicant does not have a Receipt Notice and it is past the second anniversary of conditional residency status, you may **not** issue a boarding foil. See [9 FAM 202.2-2](#), paragraph c, for additional information on conditional resident status.

9 FAM 202.2-5(E) Procedures for USCIS Co-Located Posts

(CT:VISA-375; 06-07-2017)

(U) Any posts co-located with a USCIS office located in, or in the same city as, the embassy or consulate that offers public counter service as defined in [9 FAM 602.2-2\(A\)\(1\)](#), paragraph c, should **not** perform services for lost, stolen, expired, or destroyed/mutilated green card cases. USCIS is responsible for the full and complete processing of these cases and any applicants for this service must be referred to them.

9 FAM 202.2-6 VERIFICATION OF LAWFUL PERMANENT RESIDENT (LPR) STATUS

(CT:VISA-213; 10-12-2016)

a. **(U) Establishing Lawful Permanent Resident (LPR) Status:**

- (1) **(U) Form I-551:** A valid, unexpired Form I-551, Permanent Resident Card (also known as a "green card"), is the primary evidence of an alien's status as a Lawful Permanent Resident (LPR) of the United States;
- (2) **(U) ADIT stamp:** An Alien Documentation and Identification system (ADIT) stamp may establish LPR status. You should be aware, however, that you may encounter passports with counterfeit ADIT stamps. Any questions on the legitimacy of an ADIT stamp should be directed to DHS. See [9 FAM 202.2-7\(B\)](#) for more information on LPR travel with an ADIT stamp; and
- (3) **(U)** In the absence of a Form I-551 or valid ADIT stamp, it may be necessary to verify LPR status by other means; see paragraph b of this section for returning resident (SB-1) immigrant visa applicants, and paragraph c for individuals requesting boarding foils based on lost, stolen, or expired Form I-551 cards.

b. **(U) Verification of LPR Status (Returning Residents):** Before making a final determination on an SB-1 returning resident application, you must verify that the alien was granted LPR status. Check the Central Index System (CIS) via PCQS to ensure that the applicant was in fact granted LPR status. Confirm that the information matches the applicant who is applying for an SB-1 visa. If no record is found in CIS, or if the information found is not conclusive, check secondary systems including CLAIMS 3, which is also in PCQS. If necessary, request additional information from local or regional CBP, USCIS or ICE office(s) to assist in determining LPR status and qualification for an SB-1 visa. See [9 FAM 202.2-6](#),

subparagraph c(3), for additional information on secondary evidence of LPR status.

- c. **(U) Verification of LPR Status (Boarding Foils for Lost, Stolen or Expired I-551):**
- (1) **(U) Using PCQS to Verify Previous Issuance of a Permanent Resident Card:** In the absence of a valid ADIT stamp in the passport, you may issue a boarding foil without referral to your local or regional CBP, USCIS, or ICE office(s) for verification if appropriate checks are run in the USCIS Person Centric Query Service (PCQS) in the CCD:
 - (a) **(U)** You must verify the alien's LPR status using PCQS, which is available under the Other Agencies/Bureaus tab in the CCD. Using the PCQS, you must run a check through the Central Index System (CIS) and Customer Profile Management System (CPMS) to ensure that the subject is in fact an LPR of the United States;
 - (b) **(U)** Entry of the alien's name and date of birth (DOB), or preferably the A number, into PCQS should give you access to the alien's record in the CIS and CPMS, which will include a photograph of the alien (in the CPMS record) and information about of the alien's Form I-551; and
 - (c) **(U)** You must be able to confirm that the alien applying for the boarding foil had previously been issued a Form I-551 and had not lost LPR status. An indication of loss of LPR status would be a deportation record in CLASS or in CIS. If there are no deportation records in CLASS or CIS, nor any record that the applicant voluntarily relinquished LPR status, you must then determine how long the alien has been outside the United States by using ADIS and the guidance below;
 - (2) **(U) Using ADIS to Verify Date of Departure of Alien from the United States:** The DHS Arrival Departure Information System (ADIS) contains records of aliens' arrivals and departures to and from the United States by air. You must use ADIS to determine when the alien last departed the United States:
 - (a) **(U)** To check ADIS, use the Send ADIS Request report in the CCD under the Cross Applications tab, or you may use the "Alt+O" shortcut function from the NIV Print Authorization Window. If there is no record in ADIS of the alien's last departure from the United States, other evidence, such as airplane tickets, may be considered (**NOTE:** If the CCD ADIS report does not provide results, you should request that the Fraud Prevention Unit (FPU) conduct further research in post's standalone version of ADIS, which allows a more flexible search. End note); and
 - (b) **(U)** If the alien has been outside the United States for a year or more and did not obtain a Reentry Permit, then the alien is not eligible for a boarding foil, and must apply for a visa to return to the United States;
 - (3) **(U) Secondary Evidence:** If PCQS and ADIS do not confirm LPR status, but the applicant insists that he or she is an LPR and can present convincing

secondary evidence of LPR status, you can accept this evidence, but must refer the case to your local or regional CBP, USCIS, or ICE office(s) for additional consideration as to whether a boarding foil may be issued. The secondary evidence presented by the alien must demonstrate that he or she:

- (a) **(U)** Was an LPR at the time of departure from the United States;
 - (b) **(U)** Maintains a residence in the United States;
 - (c) **(U)** At the time of departure, intended to return to the United States; and
 - (d) **(U)** Has not been outside the United States for a year or more;
- (4) **(U) Referral to DHS:** If you are unable to determine an alien's LPR status through PCQS or secondary evidence provided by the alien, you must contact your local or regional CBP, USCIS, or ICE office(s). See [9 FAM 202.2-5](#) for additional information on procedures in such cases.

9 FAM 202.2-7 LAWFUL PERMANENT RESIDENT (LPR) TRAVEL DOCUMENTS

(CT:VISA-307; 03-17-2017)

- a. **(U)** The regulations of the Department of Homeland Security contained in 8 CFR 211.1(b) relating to waivers of documentary requirements for immigrants provide for admission of certain aliens without visas. An unexpired immigrant visa (IV), Reentry Permit, or other valid entry document is required of an immigrant under INA 212(a)(7) except as indicated below.
- b. **(U)** To satisfy INA 212(a)(7) documentary requirements, a Lawful Permanent Resident (LPR) of the United States is generally required to present a valid, unexpired Form I-551, Permanent Resident Card (also known as a "green card"), when seeking admission into the United States. See [9 FAM 202.2-7\(A\)](#) for additional details on LPR travel with a Form I-551.
- c. **(U)** LPRs may also travel with a valid ADIT stamp (see [9 FAM 202.2-7\(B\)](#)), a boarding foil (see [9 FAM 202.2-7\(C\)](#)), a Reentry Permit, a Refugee Travel Document or a Returning Resident visa (SB-1) (see [9 FAM 202.2-7\(E\)](#)). LPRs may also request admission based on a DHS waiver of documentary requirements (see [9 FAM 202.2-7\(F\)](#)).

9 FAM 202.2-7(A) LPR Travel with a Permanent Resident Card (Form I-551)

(CT:VISA-213; 10-12-2016)

- a. **(U) Form I-551, "Green Card":** Form I-551 is the primary evidence of an alien's status as an LPR of the United States. Under normal circumstances, an LPR of the United States is required to present a valid, unexpired Form I-551, Permanent Resident Card (also known as a "green card"), when seeking admission into the United States. The bearer may use this card, in conjunction with his or her national

passport, and any other necessary documentation, to board a U.S.-bound flight and apply for admission into the United States. If an LPR's Form I-551 is lost, stolen, or expires while the alien is temporarily outside of the United States, a transportation company may refuse to board the alien (see [9 FAM 202.2-4](#) and [9 FAM 202.2-7\(C\)](#) on issuance of boarding foils in such circumstances).

- b. **(U) LPR Returning to United States:** A lawful permanent resident returning to an unrelinquished domicile in the United States may not require a visa if the alien:
- (1) **(U)** Possesses a valid Form I-551, Permanent Resident Card, and is returning to an unrelinquished residence in the United States after a temporary absence abroad not exceeding 1 year; or
 - (2) **(U)** Possesses an expired Form I-551 (valid for 10 years) if the expiration date is the only reason for not boarding the alien. If an alien is in possession of an expired Form I-551 with a 2-year expiration date (a conditional permanent resident), see [9 FAM 202.2-7\(A\)](#), subparagraph c(2)).
- c. **(U) Conditional LPRs:** A Lawful Permanent Resident with conditional status (see [9 FAM 202.2-2](#), paragraph c) returning to an unrelinquished domicile in the United States may not require a visa if the alien:
- (1) **(U)** Possesses an unexpired Form I-551, provided the alien is returning prior to the second anniversary of the date on which he or she obtained conditional residence under INA 216 or within 6 months of the date of filing a joint petition to remove conditional status obtained under INA 216, and is in possession of a receipt for such filing; or
 - (2) **(U)** Is seeking admission or readmission after a temporary absence of less than one year, possesses an expired Form I-551, accompanied by a computer-generated filing receipt issued by DHS USCIS within the previous 6 months indicating that the applicant has applied for removal of conditional status (Form I-751, Petition to Remove the Conditions on Residence, or Form I-829, Petition by Entrepreneur to Remove Conditions) or has been granted a waiver. An alien in possession of an expired permanent resident card with a two-year expiration date must continue to have evidence that the Form I-551 expiration date has been extended.
- d. **(U) Crewmembers:** A visa is not required of a resident alien crewmember who is in possession of a valid Form I-551 and is:
- (1) **(U)** Regularly serving aboard an aircraft or vessel of U.S. registry; and
 - (2) **(U)** Returning after a temporary absence abroad of any length in connection with duties as a crewmember.
- e. **(U) Civilian or Military Employee of the U.S. Government:**
- (1) **(U)** An LPR employee of the U.S. Government, civilian or military, who is outside the United States pursuant to official orders may present a valid or expired Form I-551 when applying for admission into the United States even after being absent from the United States for one year or more (8 CFR 211.1(a)(6)). In addition, the LPR spouse or child of such an employee who

resided abroad while the employee was on overseas duty and who is proceeding, accompanying, or following to join within four months of the employee returning to the United States, does not have to present a valid Form I-551. The official orders must mention that the LPR spouse or child is authorized to reside and accompany the employee abroad for the specific period of time under consideration. Occasionally a transportation company will not accept the official orders to board the LPR and will request a boarding foil from the consular section. You should make every effort to accommodate this request (see [9 FAM 202.2-5](#) for additional information on boarding foils);

- (2) **(U) Use of Form I-551, Permanent Resident Card, by Alien Armed Forces Members Discharged Abroad:** An alien member of the U.S. Armed Forces (see subparagraph e(4) of this section for a definition of this term) previously lawfully admitted for permanent residence and serving abroad is considered to be constructively present in the United States. Such an alien discharged abroad may apply for readmission using the Form I-551, provided the stay abroad does not exceed 1 year from the date of discharge;
- (3) **(U) Spouse and Children of U.S. Armed Forces Members or U.S. Government Civilian Employees Stationed Abroad:**
- (a) **(U)** The permanent resident spouse or child of a civilian or military employee of the U.S. Government outside the United States pursuant to official orders, who has resided with such employee abroad, does not require a visa if:
- (i) **(U)** The spouse or child possesses a valid or expired Form I-551;
 - (ii) **(U)** Has gone abroad accompanying or following-to join such a spouse, or married the U.S. Armed Forces member or U.S. Government employee while abroad, even if the alien has been abroad more than 1 year, provided the alien would have been eligible to receive a visa as a returning resident alien at the time the marriage occurred;
 - (iii) **(U)** Resided abroad while the employee or service person was on duty abroad; and
 - (iv) **(U)** Is preceding, accompanying, or following to join the employee or service person (principal alien) to the United States; and
- (b) **(U)** In interpreting the provisions of 8 CFR 211.1(b)(1) waiving the visa requirement for the spouses and children of Armed Forces members or U.S. Government civilian employees serving abroad, the Department of Homeland Security (DHS) has held that:
- (i) **(U)** The spouse or child need not physically accompany the Armed Forces member or civilian employee in order to benefit from the visa waiver if the alien is preceding or following-to-join the member or employee;
 - (ii) **(U)** An alien who does not physically accompany the Armed Forces

member or employee to the United States must possess evidence that he or she is the spouse or child of a member or employee who was stationed abroad on official orders and that the spouse or parent was previously lawfully admitted for permanent residence; and

- (iii) **(U)** To benefit from the waiver, it is not material whether the member or employee was discharged abroad, or whether the spouse or child is residing in a country different from that in which the principal alien is stationed, provided all other criteria for the waiver are met; and

(4) **(U) Interpreting Term "Member of U.S. Armed Forces"**: The term "member of the U.S. Armed Forces" as used in 22 CFR 42.1(b) embraces military personnel only. It does not include civilians employed by or attached to the Armed Forces or working for firms under contract to the Armed Forces.

f. **(U) American University of Beirut Employees**: A lawful permanent resident (LPR) returning to an unrelinquished domicile in the United States may not require a visa if the alien possesses Form I-551, valid or expired, and is an employee of the American University of Beirut who is returning to a permanent residence in the United States after temporary employment with the University (beneficiaries of Private Law 98-53). A lawful permanent resident alien employed by the AUB may present a Form I-551, Permanent Resident Card, in lieu of an immigrant visa (IV), provided the alien:

- (1) **(U)** Presents evidence of LPR status;
- (2) **(U)** Presents proof of AUB employment;
- (3) **(U)** Was employed by the AUB immediately prior to traveling to the United States;
- (4) **(U)** Seeks admission either to remain temporarily in the United States and then resume employment with the AUB; or
- (5) **(U)** Intends to resume permanent residence in the United States.

g. **(U) Lawful Permanent Resident (LPR) Alien Commuters Residing and Employed in Contiguous Territory (Canada or Mexico)**:

- (1) **(U)** An alien who has been lawfully admitted for permanent residence may commence or continue to reside in foreign contiguous territory. The alien must present a valid Form I-551, Permanent Resident Card, in lieu of an immigrant visa (IV) and passport. Such alien may commute as a special immigrant, as defined in INA 101(a)(27)(A), to the alien's place of employment in the United States to engage in daily or seasonal work which, on the whole, is regular and stable (see DHS regulations at 8 CFR 211.5); and
- (2) **(U)** An alien lawfully admitted for permanent residence may continue to reside in foreign contiguous territory and commute as a special immigrant defined under INA 101(a)(27)(A) to his or her place of employment in the United States. An alien commuter who has been out of regular employment in the United States for a continuous period of 6 months will be deemed to have lost

residence status, notwithstanding temporary entries in the interim for other than employment purposes. However, an exception applies when employment in the United States was interrupted for reasons beyond the alien's control other than lack of a job opportunity or the commuter can demonstrate that he or she has worked 90 days in the United States in the aggregate during the 12-month period preceding the application for admission into the United States.

9 FAM 202.2-7(B) LPR Travel with a Valid ADIT Stamp

(CT:VISA-213; 10-12-2016)

- a. **(U)** When an LPR presents a passport with an Alien Documentation and Identification System (ADIT) stamp indicating admission to the United States as an LPR (or adjustment to that status), the LPR may travel (without a boarding foil) while the ADIT stamp is valid.
- b. **(U)** You should be aware, however, that you may encounter passports with counterfeit ADIT stamps. Any questions on the legitimacy of an ADIT stamp should be directed to DHS.
- c. **(U)** Before advising the alien or the transportation carrier that a valid ADIT stamp is sufficient evidence of probable LPR status, you should make all reasonable efforts locally to verify the alien's claimed status. This generally can be accomplished by checking immigrant visa records in the CCD and using the Person Centric Query Service (available under the Other Agencies/Bureaus tab in the CCD – see [9 FAM 202.2-6](#), subparagraph c(1)).

d. **(U)** The ADIT stamp should read:

(U) Upon endorsement, serves as
 Temporary I-551 evidencing
 Permanent Residency for 1 year.
 [Issue Date]
 [Officer]
 EMPLOYMENT AUTHORIZED
 Valid Until [date]

(U) In addition, directly below the stamp and to the left, the issuing officer should have written the A-number and the class of admission.

9 FAM 202.2-7(C) LPR Travel with a Boarding Foil

(CT:VISA-213; 10-12-2016)

(U) If the LPR does not have a valid Form I-551 or ADIT stamp, a consular officer, at posts where there is not a DHS counter presence, may issue a secure boarding foil to facilitate the boarding of an in-status LPR on a U.S.–bound flight and the application for admission to the United States. A consular officer may issue a secure boarding foil to an LPR whose Form I-551 is lost, stolen, or expired, if the alien presents a passport with an Alien Documentation and Identification System (ADIT) stamp or the consular officer is able to confirm the applicant's LPR status. See additional information on the consular officer role in issuing boarding foils in [9 FAM 202.2-5\(B\)](#).

9 FAM 202.2-7(D) I-131A File Retention

(CT:VISA-213; 10-12-2016)

(U) Both issued and refused I-131A cases will be held at the consular section for the near future. USCIS and the Visa Office are developing a mechanism to eventually transmit case file information electronically. Until such time, the paper files should be held at the consular section.

9 FAM 202.2-7(E) LPR Travel with Other Documents

(CT:VISA-307; 03-17-2017)

a. **(U) Reentry Permit:**

- (1) **(U)** An immigrant returning to an unrelinquished lawful permanent U.S. residence after a temporary absence abroad not exceeding 2 years may present a valid, unexpired Permit to Reenter the United States (Form I-327) in lieu of an immigrant visa (IV);
- (2) **(U)** In the absence of contrary evidence, the Department presumes that application for a Reentry Permit prior to departure is prima facie evidence of intent to retain LPR status. However, failure to obtain a Reentry Permit should not be viewed automatically as intent to abandon residence and LPR status. A Reentry Permit, unless otherwise restricted, is valid for a maximum of two years and cannot be renewed. An alien cannot apply for a Reentry Permit outside the United States; and
- (3) **(U) Lost/Stolen Re-Entry Permits:** Individuals whose Reentry Permit was lost or stolen can apply for a boarding foil in the same manner as those who lost their Form I-551 (see [9 FAM 202.2-5](#)). An individual could receive a boarding foil until 2 years from the date the applicant left the United States to the date the I-131A was paid. To confirm whether a Reentry Permit was issued, you should review the PCQS case record. The USCIS Customer Profile Management Service (CPMS) in PCQS serves as the best report for confirming whether USCIS approved a Reentry Permit for a given individual. An approval date can be found in the "Transaction" field of the CPMS report. A consular officer would then request to see a passport showing pertinent entry and exit stamps and and/or airline tickets that show when the applicant departed the United States. You can also run a check of entry/exit records through ADIS.

b. **(U) Refugee Travel Document:**

- (1) **(U)** DHS issues refugee travel documents on Form I-571, Refugee Travel Document, in implementation of Article 28 of the United Nations Convention of July 28, 1951. Form I-571 entitles refugees to return to the United States, provided such persons have not abandoned their residence, lost their refugee status, or become excludable; and
- (2) **(U)** In some instances, a lawful permanent resident alien may be issued a refugee travel document, but only upon surrender of any prior Reentry Permit.

A valid Refugee Travel Document (Form I-571) issued to an asylee, refugee, or lawful permanent resident (LPR) should be regarded as a Reentry Permit. See [9 FAM 203.7](#) for additional information on Refugee Travel Documents and consular officers' role in handling requests for extra pages and dealing with lost Refugee Travel Documents.

- c. **(U) Returning Resident (SB-1) Visa:** Lawful permanent resident (LPR) aliens who are unable to return to the United States within the travel validity of their Form I-551, Permanent Resident Card, or Reentry Permit may apply at a U.S. embassy or consulate for a special immigrant Returning Resident (SB-1) visa. See [9 FAM 502.7-2](#) for additional information on SB-1 visas.

9 FAM 202.2-7(F) LPR Travel with DHS Waiver

(CT:VISA-213; 10-12-2016)

(U) An immigrant returning to an unrelinquished residence in the United States who does not possess a valid immigrant visa (IV), Form I-551, a Permit to Reenter the United States, or a Refugee Travel Document may be granted a waiver under INA 211(b), if the Department of Homeland Security (DHS) district director of the port of entry (POE) is satisfied that there is good cause for failure to present the document. See [9 FAM 305](#) for additional information on DHS waivers of documentary requirements.

9 FAM 202.2-8 LOSS OF LAWFUL PERMANENT RESIDENT (LPR) STATUS

(CT:VISA-375; 06-07-2017)

- a. **(U)** The Executive Office for Immigration Review (EOIR) of the Department of Justice reserves the right to determine loss or retention of lawful resident status. Consular officers are not authorized to make such determinations. However, see [9 FAM 502.7-2](#) for a discussion of eligibility for Returning Resident (SB-1) status and the consular role in adjudicating such cases.
- b. **(U) Loss by Renunciation:**
- (1) **(U)** In a case in which the applicant has abandoned residence and voluntarily surrenders Form I-551, Permanent Resident Card, you should request that the applicant complete Form I-407, Record of Abandonment of Lawful Permanent Resident Status (see more guidance on this in [9 FAM 202.2-8](#), paragraph c) and accept the alien's permanent resident card and return the card to DHS. You may not require a visa applicant to relinquish Form I-551 as a condition to issuance of either an IV or NIV; and
 - (2) **(U)** You should keep in mind it is not the statement renouncing residence, but the absence of a fixed intent to return, that results in the loss of LPR status.
- c. **(U) Record of Abandonment of Lawful Permanent Resident Status:**

- (1) **(U)** Form I-407 provides a means by which an individual may formally record that he or she has voluntarily abandoned Lawful Permanent Resident (LPR) status. In addition to creating a record, using Form I-407 is designed to ensure that the individual acts voluntarily, willingly, and affirmatively with the intent to abandon LPR status. The decision to abandon LPR status is strictly voluntary and consular staff should not encourage or require individuals to abandon LPR status under any circumstances. Per [9 FAM 502.7-2\(B\)](#), subparagraph (b)(6), visa applicants are not required to relinquish their LPR status as a condition to immigrant or nonimmigrant visa (NIV) issuance. The processing of Form I-407 at consular sections is not an adjudication, and consular officers accepting and processing the form do not make a formal finding of loss of LPR status through abandonment. This determination falls exclusively to immigration judges within the Department of Justice Executive Office for Immigration Review;
- (2) **(U)** Any individual with LPR status may file Form I-407 to formally record abandonment of LPR status. The parent(s) or legal guardian(s) of an individual who is 17 years of age or younger may file Form I-407 on behalf of the minor;
- (3) **(U)** Form I-407 may be filed by individuals who are outside of the United States or at a port-of-entry. Form I-407 may be filed in person or by mail. Individuals should be strongly encouraged to file by mail. However, consular sections should accommodate requests to file in person if there are legitimate reasons why the individual might require immediate proof of having recorded their abandonment of LPR status (i.e., a copy of the signed Form I-407).
- (4) **(U)** USCIS has delegated authority to consular officers to accept and process Form I-407 in countries and at posts where USCIS does not have a presence. If USCIS has an office at your post, Form I-407 should be filed and processed with USCIS. USCIS International Field Offices are not limited to accepting Form I-407 from LPRs who only reside in the country in which the office is located. International Field Offices may accept Form I-407 from any person who walks in or mails it, regardless of country of residence;
- (5) **(U)** In countries or at posts where USCIS is not present, consular officers can either provide the link to the USCIS website in order for the individual to locate the mailing address for the nearest USCIS International Office, or accept Form I-407 and any surrendered documents in person;
- (6) **(U) Filing by Mail:** Individuals may, and are encouraged to, file Form I-407 by mail directly to the nearest USCIS International Office.
- (7) **(U)** Documents required for filing Form I-407 by mail include:
 - (a) **(U)** Completed, signed Form I-407, or signed statement of abandonment;
 - (b) **(U)** Form I-551, if available. If not available, the appropriate box in Part 1, item 11.b, should be checked; and
 - (c) **(U)** All other issued USCIS booklets and cards, if applicable;
- (8) **(U)** Consular sections should advise those choosing to file by mail that any

submissions containing an unsigned Form I-407 or unsigned statement of abandonment will be rejected and returned unprocessed by USCIS;

- (9) **(U)** Any Form I-407s that are received by a consular section by mail may be processed by a consular officer, if all the filing requirements are met. The processing consular officer has the discretion to request the LPR to appear in person if that is deemed necessary;
- (10) **(U) Filing in Person:** Individuals submitting Form I-407 in person must be interviewed by an officer only if there is any indication that the individual is not acting voluntarily in recording the abandonment of LPR status. The purpose of the interview is to ensure that the individual is acting voluntarily and to dispel any misinformation that may have led the LPR to believe he or she must abandon LPR status. However, if there is no indication of involuntary abandonment either on the statement on Form I-407, or in any statement made to consular staff who accepts the form at the intake window, an interview is not required; and
- (11) **(U)** Documents required for filing Form I-407:
- (a) **(U)** Completed Form I-407 (signed or unsigned);
 - (b) **(U)** Form I-551, if available; and
 - (c) **(U)** All other issued USCIS booklets or cards, if applicable and available;
- (12) **(U)** If an interview is conducted, the consular officer should confirm the identity of the individual and that the person filing Form I-407 is in fact the LPR. During the interview, the consular officer should ensure that the action of abandonment is voluntary and that the individual understands the implications of abandonment of LPR status. The officer should ascertain that the individual did not make this decision based on misinformation or incorrect advice;
- (13) **(U)** Before asking the individual to sign Form I-407, the consular officer must recite the following:
- (U)** "By signing Form I-407, the alien waives the right to a hearing before an immigration judge who would decide whether the alien lost his/her legal permanent resident status due to abandonment. If the alien chooses a hearing before an immigration judge instead, the alien would have the right:
- (a) **(U)** To be represented at no expense to the U.S. Government by an attorney or accredited representative;
 - (b) **(U)** To challenge any evidence that DHS may present against the alien;
 - (c) **(U)** To present evidence in the alien's favor;
 - (d) **(U)** To require that DHS prove, by clear, unequivocal, and convincing evidence, that the alien has lost his or her lawful permanent resident status through abandonment; and
 - (e) **(U)** To appeal a decision against the alien";

- (14) **(U)** If the action is determined to be informed and voluntary, the consular

officer should verify the filing individual's signature, and accept the form;

- (15) **(U)** The individual should sign the form in front of the consular officer. If the form was already signed, the consular officer should confirm that the signature is of that individual. There is no requirement for an oath;
- (16) **(U)** The right to a hearing before an immigration judge can only be exercised in the United States. An individual who resides abroad and who wishes to exercise this right will have to travel to the United States;
- (17) **(U)** If an interpreter is used for the interview, the interpreter must complete Part 2 of the form, providing the language he or she is fluent in, his or her full name, his or her signature and date;
- (18) **(U) Parental consent:** If Form I-407 is filed on behalf of a minor who is 17 or younger, each parent, custodian or legal guardian must sign the form and consent to the submission of the form. The minor does not need to be present, but the relationship and identity of the persons signing for the minor should be clear and certain. If there is only one parent, guardian or custodian, proof (death certificate, custody decree, guardianship papers) must be submitted demonstrating that the person filing is indeed the sole decision maker for the child, and Form I-407 must be completed accordingly (in Part 1, item 14.d). A parent, guardian or custodian must have sole legal custody in order to file Form I-407. Consular staff should use local norms in determining and verifying that the sole legal custody requirement is met, and a copy of the applicable document should be submitted to USCIS along with Form I-407;
- (19) **(U)** Following the interview, the consular officer should complete Part 3 (for government use only) of Form I-407. The consular officer should check Part 3, item 1, sign and date the form (in Part 3, items 4a to 4e). A copy of the signed form should be provided to the individual as a record of the action. Form I-407, Form I-551 (if available), any other submitted documents, and a cover letter should be sent to the USCIS Texas Service Center:

USCIS TSC

P.O. Box 850965

Mesquite, TX 75185-0965

- (20) **(U) Fees:** There is no fee for the customer. However this service falls under the Economy Act agreement between DHS/USCIS and the Department of State and a no-fee ACRS receipt (service code 100) should be issued for accounting purposes;
- (21) **(U) Statement of Abandonment:** A signed statement of abandonment, with or without Form I-551, may be accepted in lieu of Form I-407. The statement should be reviewed to determine whether the individual has made an informed decision regarding the abandonment of LPR status. Consular officers should strongly encourage the filing of Form I-407 instead of a statement of abandonment, however, when an LPR appears for this service in person;

- (22) **(U)** Form I-407 and instructions on how to complete the form can be found on the USCIS website; and
- (23) **(U)** The Form I-407 is only for the abandonment of LPR status, not for expired cards of LPRs who intend to keep their status.
- d. **(U) Loss by Recision:** Within 5 years of an alien's adjustment of status, DHS may rescind an adjustment of status if it is later determined that the alien was ineligible. In such cases, intent is not the issue: it is a question of statutory eligibility.
- e. **(U) Loss due to Deportation:** The Board of Immigrations Appeals (BIA) has held that LPR status ends with the entry of a final administrative order of deportation. Intent in such cases is not the issue; the loss of status occurs by operation of law.
- f. **(U) Loss by Removal:** Removal ends an alien's LPR status. Removal is the process by which an alien is removed from the United States at U.S. Government expense. Removal is the equivalent of deportation.
- g. **(U) Loss due to Exclusion:** LPR status is terminated by the entry of a final administrative order of exclusion. As with deportation (see [9 FAM 202.2-8](#), paragraph e), operation of law, not intent, controls in this case.
- h. **(U) Loss by Reversion:** Reversion terminates LPR status. Reversion is the process whereby an LPR can be adjusted to the status of a nonimmigrant to A, E, or G status. The LPR can prevent reversion by waiving all the rights and benefits of the nonimmigrant status. In such instances, DHS is without discretion and must effect a reversion when the alien fails to exercise action to contest the reversion. Thus, reversion is a change in LPR status that may be viewed as primarily driven by the operation of law. However, the alien's intent is important, because the alien can always prevent reversion by executing the statutory waiver of rights.

9 FAM 202.3

(U) PAROLEES

(CT:VISA-296; 03-06-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 202.3-1 (U) RELATED STATUTORY AND REGULATORY AUTHORITIES

9 FAM 202.3-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 212(d)(5) (8 U.S.C. 1182(d)(5)).

9 FAM 202.3-1(B) (U) Public Law

(CT:VISA-1; 11-18-2015)

(U) Homeland Security Act of 2002, Public Law 107-29, sec. 402.

9 FAM 202.3-2 (U) PAROLE – OVERVIEW

9 FAM 202.3-2(A) (U) Parole Authorization

(CT:VISA-179; 09-22-2016)

- a. **(U)** Parole authority is governed by section 212(d)(5) of the Immigration and Nationality Act. Sections 402 of the Homeland Security Act of 2002, Public Law 107-29 transfers authority for immigration matters to the Secretary of Homeland Security (DHS), including authorizing parole for an alien into the United States for urgent humanitarian reasons or for significant public benefit.
- b. **(U)** Parole is an extraordinary measure, sparingly utilized to permit an otherwise inadmissible alien to enter the United States for a temporary period due to an urgent humanitarian reason or for significant public benefit. Parole may be requested for an alien outside the United States by filing Form I-131, Application for Travel Document, or by a request from a U.S. Government agency, including the Department.
- c. **(U)** Parole under INA 212(d)(5)(A) is not an admission to the United States.
- d. **(U)** A Memorandum of Agreement (MOA) between DHS component agencies, U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP) sets out the

division of responsibility for parole of each DHS agency. While USCIS and ICE can authorize issuance of an advance parole document, CBP makes the actual decision whether to parole an individual when the individual arrives at the port of entry in the United States on a case-by-case basis.

- e. **(U)** There is only one parole authority, but there are different terms used for granting parole. "Authorization of Parole" refers to the DHS issuance of a document, before the alien travels to a port of entry and requests parole. This advance authorization requests can be made for aliens outside the United States who seek to travel to the United States on a temporary basis but cannot obtain visas or other proper travel documents. Alternatively, "Advance Parole" may be authorized for aliens inside the United States who seek to depart and return to the United States. In most cases, Advance Parole authority for individuals within the United States rests with DHS' U.S. Citizenship and Immigration Services (USCIS) and are processed by a USCIS Service Center or domestic Field Office. Some cases may be processed by ICE, Homeland Security Investigations (HSI).
- f. **(U)** Parole is not a method for circumventing normal visa issuing procedures, including noncurrent priority dates for preference IV categories. Parole is neither a method to bypass established refugee processing nor should it be used to avoid meeting host country or U.S. legal requirements in adoption cases. It should be seen as a last resort for persons with urgent needs to travel to the United States or for cases with significant public benefit.
- g. **(U)** Neither the Department nor consular officers have the authority to approve or extend any type of parole under any circumstances. Parole is a discretionary authority of the Secretary of Homeland Security.

9 FAM 202.3-2(B) (U) Parole Does Not Confer Immigration Benefits

(CT:VISA-179; 09-22-2016)

- a. **(U)** Parole does not, in and of itself, confer any immigration benefits. Parole is authorized for a specific and temporary period, and parolees must depart the United States at the end of their parole authorization period, adjust to immigrant status (usually based on a previously approved petition), otherwise obtain lawful immigration status, or request to be re-paroled. Generally, parole authorization permits the alien to travel to the United States only one time and generally does not allow an alien to travel abroad and then return to the United States after the initial parole without prior approval from DHS.
- b. **(U)** Those authorized parole based on a Department request for protection of that alien may apply for asylum in the United States, and, if asylum is approved, may eventually adjust status to lawful permanent resident, if qualified.
- c. **(U)** Parolees may apply for employment authorization. Parolees who are paroled pursuant to INA 212(d)(5)(A) for urgent humanitarian reasons or for significant public benefit reasons do not receive the type of resettlement assistance that is provided to refugees. Therefore, it is imperative that all parole requests, whether

by Form I-131 or by government request, identify a sponsor who will provide financial support for the parolee once in the United States.

- d. **(U)** Parolees generally must depart the United States before the end of the authorized parole period; however, some circumstances may permit an alien to remain in the United States beyond the authorized parole period. In such situations, an alien may request to be re-paroled by filing Form I-131, or the U.S. Government agency that made the original parole request may request an alien be re-paroled. USCIS and ICE grant such requests on a case-by-case basis and approve them only for a specific period, not indefinitely. Consular officers should refer to USCIS' or ICE's parole authorization memo for each prospective parolee to determine the limits on the duration of stay in the United States. Consular officer must verbally inform the alien of this limit (see [9 FAM 202.3-3\(B\)\(1\)](#) for additional information on post processing parole authorization memos).

9 FAM 202.3-3 (U) TYPES OF PAROLE

9 FAM 202.3-3(A) (U) Advance Parole for Aliens Inside the United States

(CT:VISA-1; 11-18-2015)

- a. **(U)** In some instances, USCIS or ICE authorizes Advance Parole to aliens in the United States whose immigration status is under review (e.g., pending an asylum hearing or an adjustment of status), but who request to travel abroad. Aliens seeking Advance Parole generally must apply and have approval before departing the United States. USCIS or ICE usually approves Advance Parole for a specific period of time and the alien must return to the United States before its expiration. Generally in this situation, the Advance Parole document may authorize the person to travel abroad and return to the United States multiple times, so long as the parole document has not expired or been revoked.
- b. **(U)** USCIS or ICE, upon authorizing Advance Parole, issues a Form I-512-L, Authorization of Parole of an Alien into the United States, directly to the individual obtaining Advance Parole, to allow him or her to return to the United States to seek parole into the United States. There is usually no consular role in Advance Parole cases for aliens in the United States. However, such aliens might seek assistance from consular officers after such parole has expired or the Form I-512-L is lost or stolen. The consular officer should refer the applicant to the nearest USCIS or ICE office abroad.

9 FAM 202.3-3(B) (U) Parole for Aliens Outside the United States

(CT:VISA-1; 11-18-2015)

- (U)** Parole may be requested in one of two ways for individuals outside the United

States. A humanitarian parole request may be made by an individual filing USCIS Form I-131, Application for Travel Document on his or her own behalf or on behalf of an individual outside the U.S. (see [9 FAM 202.3-3\(B\)\(1\)](#) below, or parole may be requested by a U.S. Government agency, including the Department (see [9 FAM 202.3-3\(B\)\(2\)](#) below).

9 FAM 202.3-3(B)(1) (U) Parole Request by Alien (Form I-131 – “Humanitarian Parole”)

(CT:VISA-1; 11-18-2015)

- a. **(U)** Commonly, Form I-131 (Application for Travel Document), is filed by aliens requesting parole for urgent humanitarian reasons. This type of parole authorization is sometimes referred to as “humanitarian parole.” An alien may file Form I-131 on his or her own behalf or on behalf of an individual outside the United States.
- b. **(U)** According to a Memorandum of Agreement between DHS component agencies USCIS, ICE, and CBP, an alien outside the United States who is currently in removal proceedings, who has been removed, or who has a final order of removal must request parole authorization from ICE.
- c. **(U)** Consular officers should not routinely suggest parole as an option to applicants who are denied a visa. Post should direct aliens who inquire about parole to www.uscis.gov for information on how to apply for parole directly with USCIS. With advance authorization from USCIS International Operations Division (USCIS/IO), Form I-131 may be filed at post (see [9 FAM 202.3-2\(B\)](#)). Parole should be a last option for aliens who:
 - (1) **(U)** Are otherwise ineligible for a visa; and
 - (2) **(U)** Cannot benefit from a waiver; and
 - (3) **(U)** Have urgent humanitarian reasons to travel to the United States; or
 - (4) **(U)** Whose travel to the United States presents a significant public benefit.
- d. **(U)** When responding to inquiries from potential applicants regarding parole, the consular officer must stress that the authority to authorize parole rests solely with DHS and adjudication is on a case-by-case basis.

9 FAM 202.3-3(B)(2) (U) Parole Authorization for Aliens Outside the United States – Request by U.S. Government Agency or Department

(CT:VISA-296; 03-06-2017)

- a. **(U) DHS Handling of Parole Requests:** In certain compelling circumstances, U.S. Government agencies, including the Department, may submit a request to DHS to parole an alien who is outside the United States. Authority to adjudicate U.S. government agency and Department parole requests for aliens outside the United States generally rests with both USCIS’ International Operations Division

(IO) and ICE's Parole and Law Enforcement Programs Unit (PLEPU), depending on the nature of the parole request and the immigration history of the alien for whom parole is requested. An alien outside the United States who is currently in removal proceedings, has been previously removed, or has a final order of removal must request parole from ICE. CBP also has authority to parole aliens who present themselves at a U.S. port-of-entry without filing a formal request for parole, but will also make the final determination on whether any parole is appropriate at the time that the individual presents him or herself for inspection. There may be limited instances where the Department may coordinate directly with CBP on a parole request that is so urgent that it cannot wait for processing by USCIS or ICE.

b. **(U) Department Requests for Parole from USCIS:** Parole requested by the Department must be coordinated through CA/VO. The Department may request parole by submitting the appropriate parole request template along with supporting documentation in cases where there is a clear U.S. Government interest and a need to admit an alien to the United States as quickly as possible. Paragraphs (1) through (3) below describe circumstances in which the Department may request parole from USCIS. See [9 FAM 202.3-4\(A\)](#) below for detailed instructions on submitting such requests.

(1) **(U) "Significant Public Benefit Parole (SPBP)/Public Interest Parole":**

In rare instances, the Department may request that USCIS authorize parole of an alien into the United States for either urgent humanitarian or significant public benefits reasons, also known as "significant public benefit parole" or "public interest parole." Parole requested by the Department must be coordinated through CA/VO. USCIS will notify posts of parole authorization in such cases via a parole authorization memo, authorizing the post to issue a boarding foil.

(2) **(U) Certain Protection Cases:** Parole cannot be used in lieu of normal refugee processing except where there is a clear U.S. government interest and a need for the alien to travel to the United States as quickly as possible. In order to meet the Department's criteria for requesting USCIS to parole an alien into the United States for protection reasons, the alien must be in imminent danger of serious harm and, *as a result of this imminent danger*, unable to be processed as a refugee through the United Nations High Commissioner for Refugees (UNHCR) or as a U.S. Department of State P1 refugee referral. See [9 FAM 202.3-4\(B\)](#) below for additional information on circumstances in which asylees or refugees may seek humanitarian parole directly from USCIS. [9 FAM 202.3-3\(B\)\(1\)](#) above provides information on humanitarian parole.

(3) **(U) Certain Child Abductors in Hague Cases:** Pursuant to [9 FAM 302.12-4\(B\)\(2\)\(4\) providing guidance on INA 212\(a\)\(10\)\(C\)\(i\) ineligibility](#), an alien parent who abducts a child to, or wrongfully retains a child in, a country that is a party to the Hague Convention on the Civil Aspects of International Child Abduction is not inadmissible. However, such aliens may be inadmissible for reasons not related to the child abduction. When the presence of such an alien is required in the United States in order to attend a custody hearing

concerning the abducted child, and the alien is ineligible for a nonimmigrant visa, the consular officer must contact the appropriate officer in the Office of Children's Issues (CA/OCS/CI). CA/OCS/CI, working with CA/VO/F and the post, will request *an SPBP* parole for the alien, if appropriate, using the U.S. government agency parole request process.

- c. **(U) ICE Parole Requested by Enforcement or Intelligence Agency through Department (Law Enforcement Agency Significant Public Benefit Parole):** Department parole requests to USCIS for urgent humanitarian or significant public benefit reasons should not be confused with the more commonly encountered significant public benefit parole (SPBP) cases requested by law enforcement agencies (LEAs) through Department of Justice channels. LEA SPBP cases involve an alien whose presence is necessary in connection with legal cases or investigations, whether at the federal, state, local, or tribal level of government. Such requests are submitted to ICE. These cases will generally come to a post's attention via a parole authorization MEMO authorizing the issuance of a transportation letter. See paragraph d in [9 FAM 202.3-4\(D\)](#) below for guidance on issuing transportation letters. Other types of non-Department cases are those requested directly by intelligence agencies.

9 FAM 202.3-3(B)(3) (U) Parole Authorization for Aliens Outside the United States – Parole of Removed Aliens Who Successfully Appeal Removal Decision

(CT:VISA-296; 03-06-2017)

(U) If an alien who was previously removed from the United States successfully appeals the removal decision and wishes to return to the United States, the alien must receive a parole authorization from ICE. (See ICE Policy Directive Number 11061.1.)

If ICE determines that it will facilitate the return to the United States of a previously removed alien in this circumstance, it will send a parole notification to post. After receiving such parole notification from ICE, post must process the case as expeditiously as possible, following the standard operating procedures for parole cases outlined in [9 FAM 202.3-4\(D\)](#). If posts are contacted by an alien who appears to fall within this category, they must notify the parole portfolio holder in [CA/VO/F](#) and advise the alien to contact the ICE Public Advocate (EROPublicAdvocate@ice.dhs.gov; 202-732-3100).

9 FAM 202.3-4 UNAVAILABLE

9 FAM 202.3-4(A) Unavailable

(CT:VISA-1; 11-18-2015)

a. **Unavailable**

b. **Unavailable**

c. Unavailable

- (1) **Unavailable**
 - (2) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
 - (d) **Unavailable**
 - (e) **Unavailable**
 - (3) **Unavailable**
 - (4) **Unavailable**
 - (5) **Unavailable**
 - (6) **Unavailable**
 - (7) **Unavailable**
- Unavailable**

d. Unavailable**9 FAM 202.3-4(B) Unavailable**

(CT:VISA-80; 03-04-2016)

a. Unavailable**b. Unavailable**

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

9 FAM 202.3-4(C) Unavailable

(CT:VISA-296; 03-06-2017)

a. Unavailable**b. Unavailable**

- (1) **Unavailable**
- (2) **Unavailable**

c. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

(4) **Unavailable**

(5) **Unavailable**

(6) **Unavailable**

(7) **Unavailable**

d. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

(5) **Unavailable**

9 FAM 202.3-4(D) Unavailable

(CT:VISA-296; 03-06-20177)

a. **Unavailable**

b. **Unavailable**

(1) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(d) **Unavailable**

(2) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(d) **Unavailable**

(e) **Unavailable**

(f) **Unavailable**

(3) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(4) **Unavailable**

(a) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(5) **Unavailable**

(a) **Unavailable**

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(c) **Unavailable**

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(c) **Unavailable**

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(f) **Unavailable**

- d. **(U)** Transportation Letter, Boarding Authorization for Transportation Lines: You may use the Transportation Letter, Boarding Authorization for Transportation Lines for parole cases under INA 212(d)(5). The following is sample text of the Transportation Letter, Boarding Authorization for Transportation Lines.

[Insert date this letter is issued]

The Transportation Company and
The Port Director
U.S. Customs and Border Protection at Port of Entry

Re: (Name of Alien)
(Date and Place of Birth)
(United States Destination)
(Address and Interested Party)

(Department of Homeland Security (DHS) 'A' number)

(Approving office of DHS)

Dear Sir/Madam:

[U.S. Citizenship and Immigration Services/ U.S. Immigration and Customs Enforcement] has approved parole into the United States for [insert period of time from parole authorization memo] beginning with subject's arrival in the United States, as specified in the attached parole authorization memo, for the above-named alien under Section 212(d)(5) of the Immigration and Nationality Act.

This letter is valid through [insert date seven calendar days after date of issuance of this letter, unless there are different instructions in the parole authorization memo].

An airline may accept this letter as assurance that the above-named alien may be transported to the United States without liability under Section 273(b) of the Immigration and Nationality Act.

Very truly yours,

/s/

[name]

(Vice) Consul of the United States of America

Attachments:

Copy of parole authorization memo- #xxxx dated mm/dd/yyyy

Photograph (attached on DHS copy only)

Form DS-2054, Medical Examination for Immigrant or Refugee Applicant (attached only if applicable and only on DHS copy)

e. Unavailable

9 FAM 202.3-4(E) Unavailable

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 202.4

(U) FAMILY MEMBERS OF FILIPINO WORLD WAR II VETERANS PAROLE PROGRAM (FP-1 OR FP-D) PROCESSING

(CT:VISA-282; 01-19-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 202.4-1 (U) OVERVIEW OF FAMILY MEMBERS OF FILIPINO WORLD WAR II VETERANS PAROLE PROGRAM

(CT:VISA-282; 01-19-2017)

(U) U.S. Citizenship and Immigration Services (USCIS) has developed a parole program to expedite family reunifications for qualifying family members of certain Filipino WWII veterans. Consular sections will issue these individuals boarding foils, with either a FP-1 (principal applicant) or FP-D (derivative) classification. The Filipino World War II Veterans Parole Program (FWVP) benefits only qualifying Filipino WWII veteran family members with approved or reinstated I-130 petitions who are waiting for their priority dates to become current. You should review these cases in a similar manner as you would a typical IV preference case. Where USCIS is co-located with a consular section, the USCIS office will adjudicate these case files, but consular sections will still have a role in developing a boarding foil. All work performed on behalf of USCIS will be captured under the Economy Act, and the service will be tracked for invoicing purposes through adjudicated case volumes captured at the NVC.

9 FAM 202.4-2 UNAVAILABLE

(CT:VISA-282; 01-19-2017)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**

9 FAM 202.4-3 UNAVAILABLE

9 FAM 202.4-3(A) (U) Interview Scheduling

(CT:VISA-282; 01-19-2017)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**

9 FAM 202.4-3(B) Unavailable

(CT:VISA-282; 01-19-2017)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 202.4-3(C) Unavailable

(CT:VISA-282; 01-19-2017)

- a. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**

 - (4) **Unavailable**
- b. **Unavailable**

9 FAM 202.4-4 (U) PROCEDURES WHEN USCIS IS NOT CO-LOCATED AT POST

9 FAM 202.4-4(A) (U) Overview

(CT:VISA-282; 01-19-2017)

Unavailable

9 FAM 202.4-4(B) (U) Consular Officer Determination of Eligibility

(CT:VISA-282; 01-19-2017)

- a. **(U)** The consular section receives hard-copy and electronic case files from NVC and stamps the hard-copy file with the date the case is received at post.

b. Unavailable**c. (U) Consular Interview Appointment Scheduling:**

- (1) **(U)** Following the NVC instructions to the petitioner (or self-petitioner), the beneficiary contacts the consular section to schedule an interview appointment.
- (2) **(U)** If neither the petitioner nor the beneficiary contact Post to schedule the interview within six months, the Consular section should send the case to USCIS Manila for the case to be denied.

d. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**

e. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**

9 FAM 202.4-4(C) Unavailable

(CT:VISA-282; 01-19-2017)

a. Unavailable**b. Unavailable**

- (1) **Unavailable**
- (2) **Unavailable**

- c. (U) Approved files:** The applicant will only travel to the United States with his/her boarding foil, a sealed envelope containing the panel physician's medical report, and the IV applicant summary page. The rest of the content of the applicant's case must be sent to USCIS at the following address:

REFUGEE, ASYLUM AND INTL OPS

Mail Stop - 2100

20 MASSACHUSETTS AVENUE, NW, SUITE 3009

WASHINGTON, DC 20529

ATTN: RIA Records

9 FAM 202.4-4(D) Unavailable

(CT:VISA-282; 01-19-2017)

Unavailable

- (1) **Unavailable**
 - (a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(2) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(d) **Unavailable**

(e) **Unavailable**

(3) **Unavailable**

(a) **(U)** If the beneficiary, petitioner, and/or representative (if applicable) do not respond to a INA 221(g) letter (or if the beneficiary does not appear for the interview), then you must prepare a Consular Return memo, indicating that the beneficiary failed to appear for an interview and citing all the attempts made to contact the beneficiary, petitioner, and/or representative. This applies to instances where the case was refused under INA 221(g), pending a request for documentation, and the applicant has failed to respond after six months.

(i) **(U)** NVC Notice of Case Transfer;

(ii) **(U)** Notice of Interview (sent by consular section); and

(iii) **(U)** Notice of Failure to Appear for Interview (sent by consular section).

(U) NOTE: If at any point the beneficiary, petitioner and/or representative (if applicable) contact the consular section to try to schedule or reschedule an interview, you should make every attempt to schedule the beneficiary interview.

(b) **(U)** If neither the petitioner nor the beneficiary contact Post to schedule the interview within six months, the consular section should send the case to USCIS Manila for the case to be denied following the process discussed above for cases where the parole is denied but the IV petition is still valid. In all such cases, post should include a basic memo or cover letter to USCIS Manila informing of the basis for recommended denial.

9 FAM 202.4-5 UNAVAILABLE

(CT:VISA-282; 01-19-2017)

Unavailable

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

(5) **Unavailable**

(6) **Unavailable**

9 FAM 203 REFUGEES AND ASYLEES

9 FAM 203.1 REFUGEES – STATUTORY AND REGULATORY AUTHORITIES

*(CT:VISA-76; 03-04-2016)
(Office of Origin: CA/VO/L/R)*

9 FAM 203.1-1 IMMIGRATION AND NATIONALITY ACT

(CT:VISA-76; 03-04-2016)

INA 101(a)(35) (8 U.S.C. 1101(a)(35)); INA 101(a)(42) (8 U.S.C. 1101(a)(42)); INA 101(b)(1)(A) (8 U.S.C. 1101(b)(1)(A)); INA 101(b)(1)(B) (8 U.S.C. 1101(b)(1)(B)); INA 101(b)(1)(C) (8 U.S.C. 1101(b)(1)(C)); INA 101(b)(1)(D) (8 U.S.C. 1101(b)(1)(D)); INA 101(b)(1)(E) (8 U.S.C. 1101(b)(1)(E)); INA 207 (8 U.S.C. 1157); INA 208 (8 U.S.C. 1158); INA 222(f) (8 U.S.C. 1202(f)).

9 FAM 203.1-2 CODE OF FEDERAL REGULATIONS

(CT:VISA-76; 03-04-2016)

8 CFR Part 207; 8 CFR Part 208; 45 CFR Part 500.

9 FAM 203.1-3 PUBLIC LAW

(CT:VISA-76; 03-04-2016)

The Refugee Act of 1980, Public Law 96-212; the Child Status Protection Act, Public Law 107-208 (2002).

9 FAM 203.1-4 PRESIDENTIAL DIRECTIVES; MEMORANDUM

(CT:VISA-76; 03-04-2016)

Presidential Memorandum--FY 2015 Refugee Admission.

9 FAM 203.2

(U) WHAT IS A REFUGEE? WHAT IS AN ASYLEE?

(CT:VISA-1; 11-18-2015)
(Office of Origin: CA/VO/L/R)

9 FAM 203.2-1 (U) REFUGEE

(CT:VISA-1; 11-18-2015)

- a. **(U) In General:** A refugee is a person who is outside his or her country of origin and is unwilling or unable to return because of persecution or a well-founded fear of persecution based on: race, religion, nationality, membership in a particular social group, or political opinion. Persons who have ordered, incited, assisted, or otherwise participated in the persecution of others are excluded from the refugee definition.
- b. **(U) Visas 93:** The spouse or child of an approved Form I-730 filed by the principal refugee is often referred to as a refugee follow-to-join, or, more commonly, a "Visas 93" or V93 beneficiary.

9 FAM 203.2-2 (U) ASYLEE

(CT:VISA-1; 11-18-2015)

- a. **(U) Unavailable**
- b. **(U) Applying for Asylum:**
 - (1) **(U) Affirmative Application:** With a few exceptions, a person already in the United States may affirmatively apply for asylum irrespective of status. Decisions on whether to grant asylum to persons who have affirmatively filed an asylum application are made by U.S. Citizenship and Immigration Services (USCIS).
 - (2) **(U) Defensive Application:** The U.S. Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) govern the adjudication of claims for asylum made defensively in removal proceedings before an immigration judge.
- c. **(U) Visas 92:**
 - (1) **(U) What does Visas 92 mean?** The spouse or child of an approved Form I-730 filed by the principal asylee is often referred to as an asylee follow-to-join, or more commonly, a "Visas 92" or V92 beneficiary.
 - (2) **(U) Discretionary:** A spouse or child is not automatically entitled to the same asylum status as the principal asylee, rather the grant of derivative

status is discretionary. USCIS has excluded from eligibility spouses and children who have committed certain kinds of acts (e.g., persecution, serious crimes) and/or who constitute a danger to the United States, and persons whose relationship to the principal asylee does not meet certain requirements established in furtherance of the "following-to-join" requirement. Because the grant of status is discretionary, USCIS may also deny VISAS 92 for other reasons

9 FAM 203.2-3 (U) CONSULAR ROLE IN PROCESSING FOLLOW-TO-JOIN ASYLEES AND REFUGEES

(CT:VISA-1; 11-18-2015)

- a. **(U) Consular Officers:** Consular officers, particularly ones at posts without a USCIS presence, are required to assist in processing cases of spouses and children of persons granted asylum ("asylees"). Posts with questions should direct about refugee or asylee processing should contact the Office of Field Operations (CA/VO/F), which will coordinate a response with USCIS as appropriate.
- b. **(U) National Visa Center:** The National Visa Center (NVC) transmits Form I-730, Refugee/Asylee Relative Petition approved by USCIS to consulates overseas.
- c. **(U) More Information:** For more information on role of overseas posts see [9 FAM 203.3-2](#), (U) Overseas Posts.

9 FAM 203.3

ROLES AND RESPONSIBILITIES

(CT:VISA-77; 03-04-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 203.3-1 DEPARTMENT OF STATE

(CT:VISA-77; 03-04-2016)

The Department of State develops, coordinates, and manages U.S. resettlement policy and programs for refugee admission to the United States.

- (1) **Bureau of Population, Refugees, and Migration (PRM):** The Department of State's Bureau of Population, Refugees and Migration (PRM) is responsible for developing and coordinating refugee admissions policies and for management of resettlement programs. (See [1 FAM 520](#), Bureau of Population, Refugees and Migration (PRM), for a complete statement of the bureau's organization and responsibilities.)
 - (a) **PRM/A – Office of Admissions:** The Office of Admissions in the Bureau of Population, Refugees and Migration (PRM/A) develops, implements, manages, and oversees policies and programs for overseas refugee processing, transportation, and initial domestic reception and placement. (See [1 FAM 527](#), Office of Refugee Admissions (PRM/A).)
 - (i) **Overseas Refugee Processing:** Program officers with overseas responsibilities within PRM/A manage and oversee programs in assigned geographic areas for the selection, processing, and transportation of refugees to be admitted to the United States. These program officers also supervise and coordinate closely with operations of Resettlement Support Centers (RSCs) under cooperative agreement with PRM.
 - (ii) **Domestic Reception and Placement:** Program officers with domestic responsibilities in PRM/A manage and oversee the domestic reception and placement program. PRM/A implements the program through cooperative agreements with national resettlement agencies that maintain networks of affiliates throughout the United States. These program officers coordinate with the Office of Refugee Resettlement in the Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention (CDC), as well as with coordinators of state refugee programs and local providers of services to refugees in the United States.
 - (b) **RPC - Refugee Processing Center:** The Refugee Processing Center (RPC), located in Arlington, Virginia, is the central data repository for all

overseas and domestic resettlement operations. Under PRM/A, the RPC manages the Worldwide Refugee Admissions Processing System (WRAPS). WRAPS is the Department of State database for all refugee applicants processed for resettlement consideration to the United States. The system tracks cases and generates reports on case status and worldwide admissions levels for program managers. The RPC performs security name checks for all refugee applicants. RPC manages the process of allocating refugee cases to the domestic resettlement agencies, assigns case and alien numbers, and assists Consular officers in processing Visas 93s.

9 FAM 203.3-2 OVERSEAS POSTS

(CT:VISA-77; 03-04-2016)

- a. **General Post Support:** Diplomatic missions overseas may play a variety of roles in processing refugees for resettlement to the United States. Missions may assist in processing individuals identified for resettlement as Visas 92/93, conduct security reviews of the sites identified for refugee processing, or provide logistical support to TDY USCIS officers conducting refugee interviews.
- b. **Embassy Officers Handling of Refugee and Asylee Cases:** While many overseas U.S. missions have an interest in global humanitarian issues related to refugees, direct mission responsibility for processing individual cases for refugee resettlement is limited. Unless the Bureau of Population, Refugees and Migration (PRM) has designated a Regional Refugee Coordinator, embassy officers usually handle only two types of cases:
 - (1) Individuals under consideration for referral by an U.S. embassy under Priority 1 (see [9 FAM 203.4](#), Referrals for Refugee Status, for more on Embassy refugee referrals and direct requests for refuge or asylum at missions overseas); and
 - (2) V92 and V93 cases (derivative family members who are beneficiaries of Form I-730 Refugee/Asylee Relative Petitions from refugee and asylee relatives already in the United States), which are processed by DHS and/or consular sections at post (see [9 FAM 203.5](#), Casework for Follow-to-Join Asylees and Refugees, for guidance on processing cases for family members of asylees or refugees).
- c. **Refugee Coordinators:** Refugee coordinators (Refcoords) assigned to selected U.S. embassies overseas support the activities of the Bureau of Population, Refugees, and Migration (PRM), including the Office of Admissions (PRM/A). In the geographic area of responsibility designated by PRM, the refugee coordinator may refer individuals for refugee processing or accept referrals of individuals from:
 - (1) The United Nations High Commissioner for Refugees (UNHCR);
 - (2) U.S. Embassies; and
 - (3) Certain non-governmental organizations working with refugees.

- d. **(U) Designated Refugee Officers:** In countries where the United States regularly processes refugees for resettlement but a Refcoord is not present, posts generally designate an officer to handle refugee admissions issues. This Refcoord maintains liaison with PRM/A, the Refugee Processing Center (RPC), and the Resettlement Support Center (RSC), as well as the Department of Homeland Security's U.S. Citizenship and Immigration Services (DHS/USCIS) officers, UNHCR, and the International Organization for Migration (IOM).

9 FAM 203.3-3 DHS, HHS, AND OTHER ENTITIES

(CT:VISA-77; 03-04-2016)

- a. **U.S. Citizenship and Immigration Services:** The Secretary of Homeland Security has delegated the authority to determine refugee eligibility and admissibility to the U.S. Citizenship and Immigration Services (USCIS). Under USCIS regulations, immigration officers must interview every applicant presented for resettlement and decide if the applicant is eligible to be admitted to the United States as a refugee. USCIS officers who have received specialized refugee training conduct refugee adjudications overseas. There is supervisory review of the decision, but there is no appeal from a denial.
- b. **HHS Office of Refugee Resettlement:** The Office of Refugee Resettlement, established under INA 411, 8 U.S.C. 1521, within the Department of Health and Human Services (HHS), funds and administers programs for resettled refugees through the states and other service providers. These programs help refugees to achieve economic self-sufficiency, develop English skills and otherwise integrate into communities in the United States. ORR is also responsible for safeguarding the welfare of refugee children who are resettled unaccompanied by a parent or other close adult relatives, and for services to victims of severe forms of human trafficking.
- c. **International Organization for Migration:**
- (1) The International Organization for Migration (IOM) provides a wide variety of overseas processing services under a Memorandum of Understanding with PRM. IOM serves as a Resettlement Support Center (RSC) in several locations, conducts or oversees medical screening in many locations, handles transportation arrangements and pre-embarkation inspections for all refugees traveling to the United States, and administers the Department's refugee travel loan program.
 - (2) IOM contact information for the U.S. refugee program is:
122 East 42nd Street, Suite 1610
New York, New York 10168
Telephone: (212) 681-7000
Fax: (212) 867-5887
Email: onewyork@iom.int

d. Resettlement Support Centers (Non-Governmental Partners Under Cooperative Agreement):

- (1) Resettlement Support Centers (RSC) provide processing services under the direction of the Bureau of Population, Refugees, and Migration (PRM). They are operated by non-governmental organizations, the International Organization for Migration (IOM), and U.S. mission contractors. (See PRM's website for a current list of RSCs.)
- (2) All RSCs have direct electronic links to WRAPS (Worldwide Refugee Admissions Processing System). The RSC maintains refugee files for the State Department.
- (3) The RSC screens applicants, prepares cases for U.S. Citizenship and Immigration Services (USCIS) adjudication, schedules refugee interviews with USCIS, prepares approved cases for travel, including medical screening, obtains an assurance from the resettlement agency in the United States and provides cultural orientation. The RSC coordinates directly with PRM, the Refugee Processing Center (RPC), USCIS, panel physicians, the United Nations High Commissioner for Refugees (UNHCR), and the International Organization for Migration (IOM), as needed.
- (4) **RSC Circuit Rides:** At posts where the United States processes fewer refugees, an RSC resident in another country may send staff to your country to prepare cases and support temporary duty officers from USCIS. These missions are known as "circuit rides." USCIS will request country clearance from the post in advance of their visits and inform the post if they need logistical support.
- (5) **Processing at Posts without an RSC:** If an Embassy refers an individual for consideration for resettlement as described in [9 FAM 203.4-2](#), U.S. Embassy Referrals to the U.S. Refugee Program, PRM's Office of Admissions (PRM/A) details an RSC staff member to prepare the case and assist the adjudicating officer from USCIS. Contact PRM/A for further guidance.

9 FAM 203.4

REFERRALS FOR REFUGEE STATUS

(CT:VISA-83; 03-07-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 203.4-1 REQUESTS FOR REFUGEE OR ASYLUM, REFERRALS OVERVIEW

(CT:VISA-83; 03-07-2016)

- a. Priority 1 (P-1) refugee cases include all cases individually identified and referred to the U.S. Refugee Admissions Program by the United Nations High Commissioner for Refugees (UNHCR), a U.S. embassy (see [9 FAM 203.4-2](#)), or a non-governmental organization (see paragraph d below).
- b. In most instances, persons potentially in need of protection are served by UNHCR, which has an international mandate for refugee protection and which may refer the individuals for third country resettlement.
- c. **Requests at U.S. Missions:** Individuals seeking temporary refuge or asylum in the United States sometimes approach diplomatic missions directly.
 - (1) If someone approaches U.S. Government agency representatives seeking such assistance, missions should see the guidance in:
 - (a) [2 FAM 227](#), Requests for Asylum by Foreign Nationals;
 - (b) [2 FAM 227.2 paragraph b](#), Handling Asylum Requests by Persons Within Foreign Jurisdictions; and
 - (c) Refer to the most recent walk-in guidance cable for Diplomatic and Consular Establishments.
 - (2) In general, refugees seeking third-country resettlement should be referred to the host government or the nearest representative of the United Nations High Commissioner for Refugees (UNHCR) for information or assistance. The international community has given UNHCR the responsibility to protect refugees worldwide.
- d. **NGO Referrals:** Individuals may be referred for U.S. resettlement by non-governmental organization (NGO) employees engaged in refugee assistance or protection activities. Certain NGOs trained by PRM and USCIS may submit cases to the regional refugee coordinator working in the area for consideration. If an NGO approaches a post, refer them to the nearest regional refugee coordinator.

9 FAM 203.4-2 U.S. EMBASSY REFERRALS TO THE

U.S. REFUGEE PROGRAM

(CT:VISA-83; 03-07-2016)

- a. **Embassy Referrals:** This section explains how an embassy may identify and refer persons for consideration for refugee status under Priority 1.
- b. **Who is Eligible for an Embassy Referral?**
- (1) A U.S. embassy may refer any individual who appears to meet the definition of a refugee to the U.S. Refugee Admissions Program (USRAP) for consideration under Priority 1.
 - (2) Embassies may refer someone to ensure protection or provide a durable solution in compelling circumstances. Because of resource constraints and other foreign policy concerns, posts usually refer individuals only because of a significant humanitarian concern, a particular U.S. Government interest, or an especially close link to the United States.
 - (3) An example of Embassy referrals under Priority 1 would be someone personally known to the embassy (or to the embassy in another country) such as a prominent member of a political opposition or religious minority. An embassy in another country may contact you about a judge, a well-known journalist, or lesbian, gay, bisexual, transgender, or intersex (LGBTI) individual or advocate, for example, who has fled to avoid arrest or has been threatened while outside the country.
 - (4) Of particular importance is the need to avoid promises about approval of the case by the U.S. Citizenship and Immigration Services (USCIS) or admissibility to the United States. Processing time should also be considered in deciding to refer someone, since a DHS officer must interview each refugee applicant personally and other processing requirements (medical, security, etc.) take time.
 - (5) Contact the Office of Admissions in the Bureau of Population, Refugees, and Migration (PRM/A) for help in evaluating cases or for guidance on the most effective way to help a person in need of protection.
- c. **Submitting Embassy Referrals:**
- (1) **Authority to Make Embassy Referrals:** The refugee coordinator will usually be responsible for referring individuals to the U.S. Refugee Admissions Program. However, most posts do not have a refugee coordinator. Such posts should submit referrals by cable to the appropriate regional refugee coordinator and the Department slugged for PRM/A. Posts are encouraged to consult with regional refugee coordinators and/or PRM/A in developing referrals.
 - (2) **How to Submit Embassy Referrals:**
 - (a) The embassy should submit the referral by cable to the Office of Admissions in the Bureau of Population, Refugees, and Migration (PRM/A). PRM/A will coordinate processing of the case with the appropriate RSC.

Send the cable by IMMEDIATE precedence captioned "FOR PRM/A." No standard application form exists for an embassy referral. PRM/A recommends that the referral include at least the following information:

- (i) Biographic details, including full name and aliases, gender, date and place of birth, nationality, and current address. Give the same information for accompanying family members, as well as their relationship to the principal applicant;
- (ii) Reason for referral, including perceived U.S. interest and how the Embassy knows of the individual and his circumstances;
- (iii) General outline of any harm which may be viewed as persecution or fear of harm and the reasons for such fear;
- (iv) Assessment of the risk to the individual and of the need for urgency; and
- (v) Name and contact information for embassy officer following up on the referral, including email address.

(3) **When You Need Prior Department Concurrence:** You must have prior concurrence from the Department and U.S. Citizenship and Immigration Services (USCIS) to refer persons of certain nationalities or to refer persons located in their country of nationality or habitual residence. Contact the Office of Admissions in the Bureau of Population, Refugees, and Migration (PRM/A) before referring persons in the latter category or persons of the following nationalities for consideration by the USRAP:

- (a) North Koreans; and
- (b) Palestinians.

d. **Processing Embassy Referrals:** If no Resettlement Support Center (RSC) is present, the Office of Admissions in the Bureau of Population, Refugees, and Migration (PRM/A) will designate the regional RSC to interview the applicant and family members, prepare the case for interview by the U.S. Citizenship and Immigration Services (USCIS), and handle other processing requirements.

e. **Urgent or Emergency Cases:** Notify the Office of Admissions in the Bureau of Population, Refugees, and Migration (PRM/A) immediately if a crisis arises which threatens the life, safety or health of someone being processed for U.S. refugee admission. In exceptional situations, PRM/A will coordinate with U.S. Citizenship and Immigration Services (USCIS) about methods to address such a case. Given the number of clearances required from a number of U.S. Government agencies before admitting an individual as a refugee, the U.S. Refugee Admissions Program is often not the optimal option for an individual in urgent need of protection.

9 FAM 203.5

(U) CASEWORK FOR FOLLOW-TO-JOIN ASYLEES AND REFUGEES

(CT:VISA-373; 06-06-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 203.5-1 (U) INTRODUCTION

(CT:VISA-1; 11-18-2015)

a. (U) V92 and V93 Introduction:

- (1) **(U)** V92/93 beneficiaries are eligible for derivative status on the basis of their relationship to a principal asylee or principal refugee (see [9 FAM 203.5-4\(A\)](#)). They are not required to establish that they have been persecuted, or have a well-founded fear of persecution (see [9 FAM 203.5-4\(A\)](#) paragraph c(2)). However, consular officers must determine whether the beneficiary is barred, inadmissible, or subject to denial (see [9 FAM 203.5-4\(B\)](#)).
 - (2) **(U)** The roles of consular officers in processing V92 and V93 cases are discussed in [9 FAM 203.5-2](#), and the need for confidentiality in handling such cases is covered in [9 FAM 203.5-3](#). Eligibility for V92 and V93 status is covered in [9 FAM 203.5-4](#), and detailed instructions on processing procedures for V92/V93 cases are provided in [9 FAM 203.6](#).
 - (3) **(U)** Use care when processing cases to be sure that you are using instructions appropriate for the type of automated system you're using, for the appropriate consular section roles (see [9 FAM 203.5-2](#)), and for V92 vs. V93 benefits. V93 beneficiaries, like all refugees, have very specific processing and eligibility requirements, and are entitled to certain benefits that V92 beneficiaries do not receive. These include U.S. Government-funded medical exams, voluntary agency sponsorship, travel loans, and reception and placement benefits upon arrival to the United States.
- b. **(U) Lifecycle of V92/V93 Case:** See [9 FAM 203.6](#) for detailed instructions on processing steps for V92/V93 cases. In overview, the lifecycle of a Form I-730, Refugee/Asylee Relative Petition, filed on behalf of a beneficiary overseas is as follows:
- (1) **(U)** Petition is filed with and adjudicated at either the U.S. Citizenship and Immigration Services (USCIS) Nebraska or Texas Service Center. If the petition is approved, it is forwarded overseas via the National Visa Center (NVC) to the post having jurisdiction over the beneficiary's place of residence;
 - (2) **(U)** A USCIS officer or consular officer (where USCIS is not present) interviews the beneficiary to determine eligibility to travel to the United States;

- (3) **(U)** If the beneficiary is approved to travel, the officer issues travel documentation to enable the beneficiary to travel to the U.S. and request admission at a U.S. port of entry (POE). For V93 cases, the officer also helps make travel arrangements. A U.S. Customs and Border Protection (CBP) officer makes the final decision whether to admit the beneficiary to the United States.
- (4) **(U)** If the beneficiary is found ineligible to travel, the consular officer informs the beneficiary and returns the case as a Consular Return via the NVC to the appropriate USCIS Service Center for possible denial. If the evidence provided by the overseas office is insufficient to support a denial or is overcome by additional evidence provided by the petitioner, the USCIS Service Center reaffirms the case and sends it back to post for continued processing.

9 FAM 203.5-2 (U) ROLES IN V92 AND V93 CASES

(CT:VISA-373; 06-06-2017)

a. **(U) USCIS and Consular Authorities:**

- (1) **(U)** As a matter of law, authority to adjudicate and process refugee and affirmative asylum claims, including Form I-730 follow-to-join derivatives of asylees and refugees, rests exclusively with DHS. (See INA 207, INA 208 and 6 USC 271)
- (2) **(U)** USCIS is the DHS administering agency, and the USCIS Nebraska and Texas Service Centers have primary responsibility for all I-730 adjudications for spouse and children of refugees and asylees. (Note: The Executive Office for Immigration Review of the Department of Justice also adjudicates asylum claims filed defensively or referred by USCIS, but does not adjudicate Form I-730 applications for derivative refugee or asylee status.)
- (3) **(U)** Consular officers act as agents of the USCIS Service Centers for the purpose of facilitating overseas V92/V93 case processing and verifying the eligibility of the approved beneficiaries, but not for final adjudication of the I-730. If a consular officer uncovers information during case processing that suggests USCIS should not have approved an I-730 petition, the officer should return the case via the NVC to the adjudicating USCIS Service Center for further action, following the guidance in [9 FAM 203.6-9](#) and [9 FAM 203.6-11](#) for reporting information that calls into question whether the beneficiary is eligible for derivative refugee or asylum status.

b. **(U) Consular Role in Case Processing:**

- (1) **(U)** The role of consular officers in case processing differs depending on whether USCIS is present at post, whether the case is an asylee follow-to-join ("Visas 92" - V92) or a refugee follow-to-join ("Visas 93" - V93), and whether post has immigrant visa processing software (IVO) or is a non-IVO post.
- (2) **(U)** [9 FAM 203.6](#) provides general guidance on processing V92/V93 cases.

Where there is a difference in handling cases based on visa systems (NIV system vs. IVO), specific instructions are provided in the appropriate section (for example, system-related entries when a case is received in [9 FAM 203.6-2](#), or IVO status settings in consular returns in [9 FAM 203.6-9](#). Similarly, where there are different eligibility standards (for example, in [9 FAM 203.5-4\(B\)](#) on bars, discretionary denials or inadmissibilities), or different processing instructions for V92 vs. V93 cases (for example, instructions on medical exams and treatment in [9 FAM 203.6-4](#), or guidelines on travel arrangements in [9 FAM 203.6-8](#)), the 9 FAM guidelines specify to which cases they apply. Posts must carefully follow guidelines for the particular kind of case they are processing.

- (3) **(U)** With regard to USCIS and non-USCIS presence posts and the consular role in V92/V93 processing, posts should follow the guidelines below. Note that a USCIS-presence post is one where USCIS is co-located, has a permanent office and a counter-presence that regularly sees the public.
 - (a) **(U) USCIS Presence Posts:**
 - (i) **Unavailable**
 - (ii) **Unavailable**
 - (b) **Unavailable**
- c. **(U) Workflow Description for V92/V93 Cases Handled by Both USCIS and Visa Units with IVO Systems:**
 - (1) **(U) How to Use This Section:**
 - (a) **Unavailable**
 - (b) **(U)** In addition, per paragraph b above, V93 eligibility standards and processing are different from those used in V92 cases – the example shown below notes steps which apply only to V93 or only to V92 case processing; if neither is specified, the instruction applies to both V92 and V93 cases.
 - (c) **(U)** Note that the following workflow descriptions are intended to show how USCIS and consular sections interact in V92/V93 cases, and to give consular sections information about USCIS instructions to its officers. However, IVO posts (with a USCIS presence) must follow applicable processing guidelines in [9 FAM 203.6](#) related to the processing steps for which they are responsible; such posts must not rely solely on the following workflow charts for processing instructions.
 - (2) **Unavailable**

9 FAM 203.5-3 (U) CONFIDENTIALITY IN REFUGEE, ASYLEE, V92 AND V93 CASEWORK

(CT:VISA-1; 11-18-2015)

- a. **(U) Overview:** Department of State records related to visa and refugee processing are considered "confidential" under INA 222(f) and use of these records is restricted to "the formulation, amendment, administration, or enforcement of immigration, nationality and other laws of the United States." With limited exceptions further described below, information regarding specific refugee cases may not be released to anyone other than the applicant himself or herself and authorized third parties, except as needed by organizations directly involved in the refugee processing system or for use by Members of Congress who have need of the information for "the formulation, amendment, administration, or enforcement of immigration, nationality, or other laws of the United States." See [9 FAM 603.1](#) for additional information on protecting visa information.
- (1) **(U)** Confidentiality in this context refers to its disclosure and releasability, not its security classification. (See also [9 FAM 603.1-3](#).)
 - (2) **(U)** United Nations High Commissioner for Refugees (UNHCR) policy requires strict confidentiality regarding refugees and asylum seekers. Refugees referred to the U.S. refugee program by UNHCR have signed a confidentiality release to permit UNHCR to release personal information to resettlement governments and processing agencies.
- c. **(U) Guidance on Release of Information:**
- (1) **(U) Applicant Inquiries:** A refugee applicant (beneficiary) may make a direct inquiry to the Resettlement Support Center (RSC) or consulate responsible for the processing of his/her V92/93 case – orally or in writing – concerning the status of his or her case. If an applicant has a serious impediment such as age, illness, or physical disability that prevents him or her from asking on his or her own behalf, minimal case status information may be provided to a third party if the inquirer satisfactorily establishes his or her bona fides. Consular officers should exercise common sense and caution in responding to such inquiries and should provide only the minimum information necessary to respond to the inquiry. Case status information may also be provided to certain authorized third parties as described below.
 - (2) **(U) PRM, UNHCR, IOM, DHS and Other Official Entity Inquiries:** Consular officers may respond directly to oral or written inquiries about the status of cases made by t (PRM, UNHCR, and IOM, the sponsoring resettlement agency in the United States, or any other official entity such as a U.S. Embassy or DHS office that requires case information to facilitate processing of the case.
 - (3) **(U) Congressional Inquiries:**
 - (a) **(U)** Written (including emails) inquiries from Members of Congress or their staffs that do not specifically relate to adjudication decisions by DHS should be answered with only the information necessary to answer the

inquiry. Case-specific information in response to telephonic inquiries from Members or their staffs may not be provided. No copies of documents or other items from a case file may be provided. Responses to case status inquiries should include a reminder that, pursuant to INA Section 222(f), the information:

- (i) **(U)** is to be treated as confidential;
 - (ii) **(U)** is being provided to them solely for the purposes related to "the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States;"
 - (iii) **(U)** should not be shared with other Members of Congress or their staffs except as specifically needed for the aforementioned purposes; and
 - (iv) **(U)** should not be released to the public.
- (b) **(U)** If the incoming Congressional letter requests that the Embassy respond directly to a constituent or other third party, the consular officer should provide the requested case summary information to the Member of Congress unless it relates to adjudication decisions made by DHS. Include the following statement: Pursuant to Section 222(f) of the Immigration and Nationality Act, "The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of immigration, nationality, and other laws of the United States". In accordance with law and policies governing the confidentiality of Department of State refugee processing records, we are unable to provide information on specific refugee cases directly to your constituent. The refugee applicant or a third party authorized by the applicant to receive information may obtain information about the case by inquiring directly to the Resettlement Support Center handling the case. We appreciate your understanding of the Department's concern to ensure confidentiality in the U.S. Refugee Admissions Program (USRAP).

(4) (U) Third Party Inquiries:

- (a) **(U)** Written (including emails) inquiries from U.S. Government law enforcement entities that do not specifically relate to adjudication decisions by DHS, but are made for official purposes, will generally be answered with the requested information. Information in response to telephonic inquiries may not be provided. Responses must be coordinated with and sent from PRM/Refugee Admissions, with involvement of the Legal Adviser's Office, where needed.
- (b) **(U)** Written (including email) inquiries for case status information from third parties such as attorneys or accredited representatives may be answered with the requested information if the request is accompanied by

or preceded by a completed and signed Form G-28 or Form G-28I, which is issued by DHS.

- (i) **(U)** The Form G-28 or Form G-28I must include complete and verified information, including signature, from the refugee applicant, as well as complete information, including signature, from the relevant third party. RSCs or consular officers should ensure that the applicant's signature on the form is verified against his/her signature on file, if available. Responses to case status inquiries may only be sent to the physical address or email address provided in the original Form G-28 or G-28I. Case status information in response to telephonic requests from third parties may not be provided.
 - (ii) **(U)** There is not a defined validity period for the G-28 or G-28I. However, it may be appropriate to check whether the G-28 or G-28I remains valid - whether the authorized third party remains the representative of the individual.
- (c) **(U)** Written inquiries (including email) for case status information from other third parties, such as family members, may be answered with the requested information if the request is accompanied by or preceded by a letter from the applicant providing authorization that the information be shared with the third party. There is no specific format for this letter, but it must contain at a minimum the applicant's full name and USRAP case number, along with the full name of the third party to whom the information may be released, and it must be signed by the applicant. RSCs or consular officers should ensure that the applicant's signature on the letter is verified against his/her signature on file, if available. The letter must also contain a physical address and/or email address for the authorized third party. Case status information in response to telephonic requests from third parties may not be provided.
- (d) **(U)** The information that can be provided to an authorized third party is limited to case status information. Inquiries for other information regarding specific refugee cases may not be provided to third parties, even if authorization has been provided. For example, an authorized third party may not inquire as to the reason a refugee applicant has been deemed ineligible for P-2 access. Further, an authorized third party is not permitted to accompany a refugee applicant to RSC intake and prescreening or engage in other forms of involvement in refugee processing.
- (e) **(U)** If information disclosure to third parties has not be authorized, responses to inquiries must be limited to general descriptive material about the USRAP or a description of program procedures that might be of assistance to the inquirer.
- (5) **(U)** Contact the Office of Admissions in the Bureau of Population, Refugees and Migration (PRM/A) for further information on refugee records or templates for

response to inquiries.

d. **Unavailable**

9 FAM 203.5-4 (U) ELIGIBILITY FOR FOLLOWING-TO-JOIN REFUGEE OR ASYLEE (V92/V93) STATUS

(CT:VISA-373; 06-06-2017)

- a. **(U) Eligibility Guidelines:** To be eligible to travel to the U.S. as a family member of an individual granted refugee or asylee status:
- (1) **(U)** The beneficiary must establish their identity and a qualifying relationship with the refugee or asylee (see [9 FAM 203.5-4\(A\)](#)); and
 - (2) **(U)** The beneficiary must be determined to not be subject to any bars, inadmissibilities, or reasons for denial of their case, unless such issues have been satisfactorily resolved (see [9 FAM 203.5-4\(B\)](#)).
- b. **(U) No Adjudication of Refugee or Asylum Claim:** V92/93 beneficiaries are eligible for derivative status on the basis of their relationship to a principal asylee or principal refugee. They are not required to establish that they have been persecuted, or have a well-founded fear of persecution (see [9 FAM 203.5-4 paragraph b](#)). Similarly, the credibility of the petitioner's original asylum or refugee claim is not within consular officers' jurisdiction to revisit (see [9 FAM 203.6-11](#) for guidance on cases in which information presented by the beneficiary indicates a significant issues with the petitioner's refugee or asylee claim.)
- c. **(U) Case Processing:** This section deals only with eligibility for V92 and V93 status. See general V92 and V93 case processing guidelines in [9 FAM 203.6](#).

9 FAM 203.5-4(A) (U) V92/V93 Qualifying Relationship with Refugee or Asylee

(CT:VISA-373; 06-06-2017)

- a. **(U) Introduction:** There are two factors in demonstrating a qualifying relationships with a refugee or asylee:
- (1) **(U)** An eligible petitioner – see paragraph b; and
 - (2) **(U)** A "spouse" or "child" relationship with the petitioner – see paragraph c for an overview of these qualifying relationships, paragraph d for information on the "spouse" relationship, and paragraph e for information on the "child" relationship. Other familial relationships (which cannot be the basis for V92/V93 status) are addressed in paragraph f.
- b. **(U) Eligible Petitioner:**
- (1) **(U) Refugee or Asylee Status:** The Form I-730 Refugee/Asylee Relative Petition for V92/V93 beneficiaries may be filed by a refugee who was admitted to the United States as a principal refugee, or by an asylee who was granted

asylum as a principal asylee either by USCIS or by the Department of Justice's Executive Office for Immigration Review. See also [9 FAM 203.6-2](#) paragraph a(1)(b) for information on petitions filed by LPRs and naturalized citizens who were refugees or asylees. For more general information on filing, adjudication and processing of I-730 petitions, see [9 FAM 203.6-2](#).

(2) **(U) Effect of Death of Petitioner:**

(a) **(U)** A beneficiary is ineligible for Form I-730 benefits if the petitioner dies before the beneficiary's arrival to the United States. In such circumstances, the beneficiary should not be issued travel authorization. Instead, the officer should obtain a death certificate or other evidence of the petitioner's death and return it along with the Form I-730 via the NVC to USCIS for the case to be reopened and denied (see [9 FAM 203.6-9](#) on consular returns).

(b) **(U)** In some circumstances, the beneficiary may apply for humanitarian parole with USCIS in order to travel to the United States. (See [9 FAM 202.3-3\(B\)\(1\)](#) for more information on humanitarian parole.)

c. **(U) Beneficiary Eligibility:**

(1) **(U) Spouse or Child:** A Form I-730 may be filed on behalf of either a spouse or a child as defined, respectively, in INA 101(a)(35) and INA 101(b)(1)(A-E) (see definitions in [9 FAM 102.8-1](#) and [102.8-2](#)). A separate Form I-730 must be filed for each qualifying family member. Paragraphs d and e below provide additional information on spouse and child relationships; paragraph f addresses other familial relationships.

(2) **(U) Relationship Key to Eligibility:** V92/93 beneficiaries are eligible for derivative status on the basis of their relationship to a principal asylee or principal refugee. They are not required to establish that they have been persecuted, or have a well-founded fear of persecution, on account of race, religion, nationality, membership in a particular social group, or political opinion as described in the first sentence of the refugee definition at INA 101(a)(42).

(a) **(U)** Unlike a principal refugee or asylum applicant, V92/93 beneficiaries may be eligible for derivative status even if they are firmly resettled in another country since the firm resettlement bar does not apply to them.

(b) **(U)** These beneficiaries also need not be the same nationality as the I-730 petitioner and may reside in their country of nationality or any other country.

(3) **(U) Nature of V92/93 Qualifying Relationships:**

(a) **(U)** In order to derive V92 or V93 status under 8 CFR 207.7(c) and 8 CFR 208.21(b), the qualifying relationship between the petitioner and the beneficiary:

(i) **(U)** Must have existed at the time that the petitioner was granted asylum (for V92 cases) or admitted to the United States as a refugee (for V93 cases), and

- (ii) **(U)** Must continue to exist at the time of filing for Form I-730 following-to-join benefits, and at the time of the spouse or child's subsequent admission to the United States.
 - (b) **(U)** The exception to this is a child who had been conceived but was not born (was in utero) as of the date on which the petitioner acquired status (see paragraph e (2) below).
 - (c) **(U)** Relationships created after the date of the petitioner's asylum grant or refugee admission do not qualify for Form I-730 purposes, although the refugee or asylee may be eligible to file a Form I-130 for the same individual once that refugee or asylee adjusts to Lawful Permanent Resident (LPR) status.
 - (d) **(U)** A qualifying relationship will cease to exist if, prior to the approval of the Form I-730 or a beneficiary's admission into the United States, the petitioner and spouse divorce, the petitioner's child marries (see paragraph e(5) below), or the petitioner dies (see paragraph b(2) above).
- d. (U) Eligibility of V92/V93 Spouse:**
- (1) **(U) Qualifying Marriage:** To qualify as a V92/V93 beneficiary spouse, the individual must meet the definition of spouse as defined in INA 101(a)(35). A child's parent only qualifies as a beneficiary if married to the petitioner at the time the petitioner acquired asylee or refugee status.
 - (2) **(U) Proxy Marriage:** The terms "spouse," "wife," and "husband" do not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other (i.e., proxy marriages), unless the marriage has been consummated.
 - (a) **(U)** If a proxy marriage has subsequently been consummated, then the date of the marriage is deemed to relate back to the date of the proxy marriage ceremony (i.e., the date of the proxy marriage contract). See [9 FAM 102.8-1\(A\)](#)'s definition of "marriage". Thus, if a proxy ceremony has occurred prior to the petitioner's asylum grant or refugee admission, but consummation occurred after such grant or admission, that marriage is valid because the marriage date relates back to the proxy marriage ceremony date.
 - (b) **(U)** Consummation prior to the proxy marriage ceremony does not make the marriage valid. If the couple has not been in each other's presence since the proxy ceremony (i.e., could not have had any opportunity to engage in physical relations), then the marriage is not valid.
 - (3) **(U) Marriage Fraud:** The beneficiary is not eligible to derive status if he/she is a husband or wife determined by USCIS to have attempted or conspired to enter into a marriage solely for the purpose of evading immigration laws.
- e. (U) Eligibility of V92/V93 Child:** To qualify as a V92/V93 beneficiary as a child, the individual must be unmarried and meet the definition of "child" in INA 101(b)

(1)(A)-(E).

(1) **(U) Child Status When I-730 Filed and Adjudicated, and at Admission:**

- (a) **(U)** The parent-child relationship must exist at the time the I-730 was filed, at the time of its adjudication, and at the time of the beneficiary's subsequent admission to the United States (see 8 CFR 208.21(b) and 207.7(c)).
- (b) **(U)** Subject to certain situations governed by the Child Status Protection Act's (CSPA - Public Law 107-208) "aging out" provisions, a child includes only an unmarried person under the age of 21. Accordingly, the child must be both unmarried and under 21 years of age at the time he or she is issued the appropriate documentation for travel and at the time that he or she applies for admission to the United States, unless the CSPA applies. See paragraph (4) below for more information on CSPA provisions).

(2) **(U) Child in Utero:** 8 CFR 207.7(c) and 8 CFR 208.21(b) allow a child to qualify for V92 or V93 status even if the child was not born until after the petitioner was granted asylum or admitted as a refugee, provided such child was in utero (i.e., the child had been conceived but was not yet born) prior to the date on which the petitioner acquired such status. As such, a Form I-730 may be approved for a child who had been conceived but was not born as of the date on which the petitioner acquired status, so long as the beneficiary falls within one of the definitions of "child" set forth in INA 101(b)(1).

(3) **(U) Bases for Child Status:**

- (a) **(U)** Although a petitioner will usually be the biological parent of the in utero child claimed as the derivative, it is possible for such a beneficiary to qualify as a derivative even if the petitioner is not the biological father. This results from the breadth of the definition of "child" in INA 101(b). For example, such a child could be considered a stepchild which requires that the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred whether or not born out of wedlock and therefore qualify as a child under INA 101(b)(1)(C).
- (b) **(U)** Other definitions of "child" such as step-child or adopted child may also create a qualifying relationship in cases where the petitioner is not a biological parent. Each circumstance must be reviewed on a case-by-case basis that will often involve not only U.S., but foreign laws and potentially international conventions, particularly if there is a biological parent who objects to his or her child going to the United States as the petitioner's child. Post should seek an advisory opinion from USCIS via CA/VO/F if there is any question as to whether an I-730 beneficiary qualifies as the petitioner's child or if there is an objection by the biological parent to the child's immigration to the United States.

(c) **(U) The beneficiary is not eligible to derive status if:**

- (i) **(U)** He/she is an adopted child whose adoption took place after the

age of 16, or who has not been in the legal custody of and living with the adoptive parent(s) for at least two years (there is an exception to the 2 year residence requirement for certain children who have been battered or subjected to extreme cruelty). See INA 101(b)(1)(E); or

- (ii) **(U)** He/she is a stepchild from a marriage that occurred after the child was 18 years old. See INA 101(b)(1)(B).

(4) (U) Effect of Child Status Protection Act (CSPA) on I-730 Beneficiaries:

- (a) **(U)** The Child Status Protection Act (CSPA) (Public Law 107-208, 116 Statute 927, effective August 6, 2002) allows some children reaching the age of 21 to continue being classified as a "child" in order to derive eligibility for asylum or refugee status from a parent. This provision continues to protect the beneficiary through approval of the Form I-730 until he or she enters the U.S. as a derivative asylee or refugee. The CSPA applies if the child was under 21 when:
 - (i) **(U)** (For V92) The principal applicant filed his/her I-589, Application for Asylum and Withholding of Removal; or
 - (ii) **(U)** (For V93) The principal applicant was first interviewed by USCIS (the USCIS interview date as indicated in WRAPS is used to calculate CSPA eligibility for V93 beneficiaries, as there is no formal I-590, Registration for Classification as Refugee, filing date in refugee processing); and
 - (iii) **(U)** The child was listed on the I-589 or I-590 (Registration for Classification as Refugee), as appropriate, and the child is unmarried; or
 - (iv) **(U)** The child was not included in his/her parent's refugee or asylum application, but the child was under 21 when his/her parent filed the I-730, and the child is unmarried.
- (b) **(U)** Children who turned 21 years of age prior to August 6, 2002 are not covered by the CSPA, unless either the Form I-730 or the petitioner's Form I-589 or I-590 was pending on that date. If the Form I-730 was approved prior to August 6, 2002, but the beneficiaries had not yet been issued documentation to travel to the United States, the form is still considered to be pending.
- (c) **(U)** If a child marries after the I-730 was filed with USCIS, eligibility for CSPA protection ends, but a subsequent divorce before the beneficiary travels to the United States can make the individual eligible once for V92 or V93 status. The intent of Congress was for CSPA to be ameliorative and thus it is liberally construed. For example:
 - (i) **(U)** If a beneficiary was unmarried and under 21 at the time of the I-730 filing and adjudication, she or he is eligible for CSPA

protection.

- (ii) **(U)** If he or she turns 21 and marries before the consular interview, she or he loses CSPA protection. However, if he or she divorces before the interview, she or he is again eligible for CSPA protection and I-730 benefits.
- (d) **(U)** For complete guidance on applying the CSPA to V92/93 processing, see the following USCIS memoranda, both available at USCIS website:
 - (i) **(U)** U.S. Citizenship and Immigration Service Memorandum, Processing Derivative Refugees and Asylees under the Child Status Protection Act, HQIAO 120/5.2, dated July 23, 2003; and
 - (ii) **(U)** U.S. Citizenship and Immigration Service Memorandum, The Child Status Protection Act -- Children of Asylees and Refugees, HWOPRD 70/6.1, dated August 17, 2004.

(5) (U) Marriage of Child Beneficiary Prior to Travel:

- (a) **(U)** Consistent with procedures for immigrant visa derivatives, unmarried children approved as beneficiaries of Form I-730 petitions lose eligibility if they marry after approval of their travel authorization but prior to arrival in the United States. For this reason, I-730 child beneficiaries aged 14 and older are required to sign a Notice on Pre-Departure Marriage & Declaration at interview to affirm they are unmarried and understand they can no longer derive status from their petitioning parent if they marry before arriving in the United States (see [9 FAM 203.6-5](#) paragraph a(2)(g)).
- (b) **(U)** However, if the married child subsequently divorces before traveling to the United States, he or she should be considered eligible, including any applicability of the CSPA, as if the marriage had not occurred. Per INA 101(a)(39), the term "unmarried" when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married. As such, a child must be unmarried when he or she "seeks" (in present tense) to accompany or follow to join. A new I-730 does not need to be filed; the previously approved I-730 may still be used.
- (c) **(U) Examples:**
 - (i) **(U)** If a beneficiary child married after the I-730 was filed and divorced before final adjudication of the I-730 or travel to the United States, that beneficiary is eligible for I-730 benefits;
 - (ii) **(U)** If the beneficiary child was married and divorced before the I-730 was even filed, that beneficiary is eligible for I-730 benefits;
 - (iii) **(U)** If the beneficiary child was married at the time the principal was granted asylum or admitted as a refugee or at the time an I-730 was filed on that beneficiary's behalf, even if the beneficiary subsequently divorced, that individual is not eligible for I-730 benefits. See 8 CFR

208.21(b) and 8 CFR 208.7(c), showing that the parent/child relationship must have existed at the time of the petitioner's asylum grant or refugee admission and "at the time of filing" the I-730).

- f. **(U) Other Familial Relationships:** A parent, sister, brother, grandparent, grandchild, uncle, aunt, nephew, niece, cousin, or in-law does not have a qualifying relationship, and is not eligible for V92/V93 status. In certain circumstances where an individual does not have the requisite relationship to the petitioner in order to qualify for follow-to-join benefits, humanitarian parole may be an option (see [9 FAM 202.3-3\(B\)\(1\)](#) for more information on humanitarian parole).

9 FAM 203.5-4(B) (U) Bars, Inadmissibilities, and Bases for Denial Affecting V92/V93 Beneficiaries

(CT:VISA-373; 06-06-2017)

a. (U) V92/V93 Bars, Inadmissibilities, Denials - Introduction:

- (1) **(U)** It is the responsibility of the consular officer to elicit information pertaining to derogatory information to determine if the beneficiary is barred or inadmissible.
- (2) **Unavailable**
- (3) **(U)** Paragraph b below addresses a reason to not approve travel that affects both V92 and V93 cases. However, the bases for not approving cases for travel generally vary depending on whether the case involves a V92 or V93 beneficiary – paragraph c provides an overview of the applicability of various bars and inadmissibilities. See more detailed information in paragraph d, for issues involving V92 beneficiaries, and paragraph e, for issues involving V93 beneficiaries.

- b. **(U) Previous Grant of Asylum or Refugee Status for V92/V93 Beneficiary:** Even if a V92/V93 beneficiary is a spouse or unmarried child of the petitioner and meets the criteria for relationship eligibility (see [9 FAM 203.5-4\(A\)](#)), the beneficiary is not eligible to derive status if he/she was previously granted asylum or refugee status (see INA 207(c)(2)(A) and INA 208(b)(3)(A)).

c. Unavailable

- (1) **Unavailable**
- (2) **(U)** See [9 FAM 203.6-7](#) for general information on processing V92/V93 cases which may involve bars or inadmissibilities.

d. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

- (4) **(U) V92 Relief Provisions:** There are no waivers available for V92 applicants.
- (5) **(U)** See [9 FAM 203.6-7](#) for instructions on processing cases which may involve V92 bars or discretionary denials.

e. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **(U)** See [9 FAM 203.6-7](#) for instructions on processing cases which may involve V93 bars or inadmissibilities, and for information on waivers for INA 212(a) ineligibilities.

9 FAM 203.6

(U) PROCESSING V92/V93 CASES

(CT:VISA-289; 02-22-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 203.6-1 (U) OVERVIEW OF V92/V93 PROCESSING

(CT:VISA-1; 11-18-2015)

(U) The following sections provide instructions on processing cases of asylee and refugee following-to-join spouse and children (V92 and V93 cases, respectively). It is very important to review [9 FAM 203.5-2](#) to determine which of these processing steps apply to particular posts and cases; V92 and V93 cases have some similarities in processing, but also differ significantly. See, for example, the different paperwork required in [9 FAM 203.6-5](#) paragraph b(2). These cases also differ in processing from visa cases, and it is important that you follow the guidance in this section when handling V92 and V93 cases. See also [9 FAM 203.5-3](#) on confidentiality and V92/V93 cases.

9 FAM 203.6-2 (U) USCIS AND NVC ACTION ON I-730 PETITION FOR V92/V93 CASES

(CT:VISA-255; 11-29-2016)

- a. **(U) Filing I-730 Petition with USCIS:** The principal refugee or asylee files a Form I-730, Refugee/Asylee Relative Petition, for each qualifying relative with the USCIS Service Center having jurisdiction over the petitioner's place of residence.
- (1) **(U) Status of Petitioner:**
- (a) **(U) Refugee or Asylee:** Form I-730, the Refugee/Asylee Relative Petition, may be filed by a refugee who was admitted to the United States as a principal refugee, or by an asylee who was granted asylum as a principal asylee either by USCIS or by the Department of Justice's Executive Office for Immigration Review.
- (b) **(U) LPR or Naturalized Citizen May File I-130:** The I-730 petition may also be filed by a Lawful Permanent Resident (LPR) who received such status after having been admitted as a principal refugee or after having been granted asylum as a principal asylee. If the petitioner has naturalized, he or she may submit Form I-130, Petition for Alien Relative, instead of a Form I-730. However, if the petitioner filed a Form I-730 when he or she was a principal refugee or principal asylee (or an LPR who

acquired such status after being admitted to the United States as a principal refugee or being granted asylum as a principal asylee), and he or she has since become a naturalized U.S. citizen, USCIS may continue to process the Form I-730 if it has not yet been adjudicated (see 8 CFR 207.7(d) and instructions to Form I-730, which are incorporated into the regulations in 8 CFR 103.2(a)(1)). In such cases, the Form I-730 still must have been filed within two years of the principal's refugee admission or grant of asylum, or within any time extension for filing granted by the USCIS Service Center (see paragraph (2) below).

- (2) **(U) Timing of I-730 Filing:** The Form I-730 must be filed within two years of the principal's admission to the United States as a refugee or grant of asylum. A USCIS Service Center can grant an extension of time to file for humanitarian reasons.
- b. **(U) USCIS Service Center I-730 Petition Adjudication and Approval:**
- (1) **Unavailable**
 - (2) **(U) Validity of I-730 Approval:** An approved Form I-730 is valid indefinitely, as long as the qualifying relationship between the petitioner and the beneficiary continues to exist and the beneficiary is found otherwise eligible to travel to the United States. The approved I-730 ceases to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative asylee or refugee (see 8 CFR 207.7(f)(3) and 8 CFR 208.21(d)).
- c. **(U) National Visa Center Processing:**
- (1) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**
 - (4) **Unavailable**
 - (5) **Unavailable**
 - (6) **Unavailable**
- d. **(U) Consular Support:** In countries where USCIS has no presence, consular officers are responsible for interviewing the beneficiaries of Form I-730s to verify the identity and the relationship to the petitioner, as well as determining if any inadmissibilities or bars to derivative asylum or refugee status exist.

9 FAM 203.6-3 (U) V92/V93 PRE-INTERVIEW PROCESSING

(CT:VISA-255; 11-29-2016)

- a. **Unavailable**
- (1) **Unavailable**

(2) **Unavailable IVO Posts:**

b. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(a) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(iv) **Unavailable**

(b) **(U) Re-Scheduling Request:**

(i) **(U)** If a beneficiary responds requesting further re-scheduling, post should work with them to re-schedule the interview as soon as possible.

(ii) **(U)** If the petitioner or beneficiary cannot commit to an interview time within six months, post should inform the petitioner and/or beneficiary in writing that post will hold the case for six months pending further contact from them about scheduling an interview.

(iii) **(U)** If the petitioner or beneficiary does not contact post to schedule the interview within six months, the consular section should return the case to the USCIS Service Center via the NVC as a Consular Return. All attempts to communicate with the beneficiary and petitioner must be clearly documented in the Consular Return memo. A copy of all interview notification requests to the beneficiary and petitioner and related correspondence should be included with the memo (see [9 FAM 203.6-9](#) paragraph e for more information on consular returns).

(iv) **(U)** Post should then inform the petitioner and beneficiary that the case has been transferred back to the Service Center.

(c) **Unavailable**

c. **(U) Preparation for V92/V93 Interview:**

(1) **(U) V92/V93 Preparation:**

(a) **(U) Photos:** Each beneficiary must have eight color photos that meet the current passport application standard; post may take the photos or ask the beneficiary to provide them at the time of interview.

(b) **(U) Evidence of Identity and Relationship:** V92/V93 beneficiaries must be prepared to show evidence of identity and family relationship. Consular officers should examine marriage, death, divorce, and/or birth certificates or certificates of adoption, if available. If civil documents are

not available, credible oral testimony and secondary documentary evidence may be used. Although specific documentary evidence is not required, burden of proof is on the V92/V93 beneficiary to verify the existence of qualifying relationship.

(c) **Unavailable**

- (2) **(U) Medical Examination:** See [9 FAM 203.6-4](#) for additional information on scheduling medical exams.

9 FAM 203.6-4 (U) MEDICAL ISSUES AND V92/V93 BENEFICIARIES

(CT:VISA-289; 02-22-2017)

a. **Unavailable**

b. **(U) Medical Examinations:**

(1) **(U) V92 Medical Exams:**

- (a) **(U) Exam Requirement:** All V92 beneficiaries entering the United States must have the same medical examination as immigrant visa applicants have under INA 221(d) and INA 234. The medical examination for V92 beneficiaries must be conducted by a panel physician.
- (b) **(U) Exam Results:** The result of the medical exam must be reported on *Form DS-2054*, Medical Examination for Immigrant or Refugee Applicant. Include three copies in the V92 travel packet, along with the beneficiary's X-rays. (See [9 FAM 302.2-2\(B\)](#) for more general information on medical exams and panel physicians' findings.)
- (c) **(U) Exam Timing:** The medical exam may take place before the consular interview if the V92 beneficiary is known to have what may be a significant medical condition that may merit a discretionary denial or if the processing is being expedited.
- (d) **(U) Paying for Exam:** Unlike V93 beneficiaries, V92 beneficiaries must pay for their own medical exams.
- (e) **(U) Validity of V92 Medical Clearance:** See [9 FAM 302.2-3\(C\)](#), Validity Period of an Applicant's Medical Examination.

(2) **(U) V93 Medical Exams:**

- (a) **(U) Arranging for V93 Medical Examination:** All V93 beneficiaries entering the United States must have the same medical examination as immigrant visa applicants have under INA 221(d).
- (i) **Unavailable**
- (ii) **Unavailable**
- (b) **(U) Validity of Medical Clearance:**

- (i) **(U)** See [9 FAM 302.2-3\(C\)](#), Validity Period of an Applicant's Medical Examination.
 - (ii) **(U)** Occasionally, V93 medical exams expire. In such situations, the exam should be repeated.
- (c) **(U) Who Pays for the V93 Medical Examination?**
 - (i) **Unavailable**
 - (ii) **Unavailable**
 - (iii) **Unavailable**
 - (iv) **Unavailable**
- (d) **Unavailable**
- (e) **Unavailable**
- c. **(U) Class A and Class B Conditions:** V92/V93 beneficiaries identified by a panel physician as having a Class A condition (e.g., infectious tuberculosis or Hansen's disease) must receive treatment to reduce their medical conditions from Class A to Class B status before they can be processed for travel to the United States. See [9 FAM 203.6-7](#) for additional instructions on processing cases involving Class A medical conditions.
- d. **Unavailable**
 - (1) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
 - (d) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**
- e. **(U) V92/V93 Medical Treatment:**
 - (1) **(U) V92 Medical Treatment:** Unlike V93 beneficiaries, V92 beneficiaries must pay for their own medical treatment.
 - (2) **Unavailable**
- f. **Unavailable**

9 FAM 203.6-5 UNAVAILABLE

(CT:VISA-255; 11-29-2016)

- a. **Unavailable**
 - (1) **Unavailable**

- (a) **Unavailable**
 - (i) **Unavailable**
 - (ii) **Unavailable**
 - (iii) **Unavailable**
 - (iv) **Unavailable**
- (b) **Unavailable**
- (c) **Unavailable**
 - (i) **Unavailable**
 - (ii) **Unavailable**

(2) **(U) Other Procedural Requirements for the V92/V93 Interview:**

- (a) **(U) Oath:** The interview should begin with the beneficiary(ies) taking an oath or affirmation.
- (b) **Unavailable**
- (c) **(U) Biometrics:** Posts should collect biometric fingerprints from V92/V93 beneficiaries at the interview.
- (d) **(U) Forms To Be Signed When Concluding the V92/V93 Interview:**
The following documents must be signed by the beneficiary prior to the conclusion of the interview. The consular officer must also sign the forms where indicated:

Documents requiring signature	V92	V93
Form I-730, Refugee/Asylee Relative Petition, Part 8. The interviewing officer must also sign in Part 8.	X	X
Form G-325-C, Biographic Information, required for each beneficiary 14 years old or older	X	X
Original completed Form I-590, Registration for Classification as Refugee, also signed by the interviewing officer.		X
Completed Form G-646, Sworn Statement of Refugee Applying for Admission to the United States (concerning grounds of exclusion), required for each beneficiary 14 years of age or older.		X
Completed Form I-765, Application for Employment Authorization, regardless of age, with photos attached. If the beneficiary is approved for travel, the I-765 will be included in his or her travel packet so that the EAD is issued shortly after	X	X

admission to the United States. Officers must review the completed form to ensure the beneficiary's biographic data on the form matches his or her passport and travel authorization documents.		
Notice on Pre-Departure Marriage and Declaration, required for all beneficiary children age 14 and older (see paragraph (g) below).	X	X
Original Form DS-1810, Notice of Duty to Register with U.S. Selective Service System (if applicable), required for all males who will be between 18 and 26 when they enter the U.S.	X	X

Note: **(U)** All Follow to join refugee beneficiaries (Visas 93) must complete their own I-590, separate from the petitioner, before or at the time of interview. The beneficiary's completed I-590 should be included with the travel packet.

(e) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

- **Unavailable**
- **Unavailable**
- **Unavailable**
- **Unavailable**
- **Unavailable**
- **Unavailable**
- **Unavailable**
- **Unavailable**
- **Unavailable**

(f) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(g) **Unavailable**

b. **Unavailable**

(1) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(d) **Unavailable**

(2) **Unavailable**

(a) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(b) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(c) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(d) **Unavailable**

(e) **Unavailable**

(3) **Unavailable**

(a) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(b) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(iv) **Unavailable**

(v) **Unavailable**

(c) **Unavailable**

(d) **Unavailable**

c. **Unavailable**

(1) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(d) **Unavailable**

(e) **Unavailable**

(f) **Unavailable**

(g) **Unavailable**

(2) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(3) **Unavailable**

d. **Unavailable**

e. **Unavailable**

(1) **Unavailable**

(2) **(U) Editable Letter:** Request for Evidence 221g Letter.

f. **(U) V93 Notice of Conditional Approval to Travel:** For V93 cases only, complete a copy of the V93 Notice of Conditional Approval to Travel Letter. Below is the sample text for the Notice of Conditional Approval to Travel Letter:

[On USCIS or Department of State letterhead, as appropriate]

NOTICE OF CONDITIONAL APPROVAL TO TRAVEL

{DATE}

Form: I-730, Refugee/Asylee Relative Petition

Petitioner Name: {PET_FIRST_NAME} {PET_LAST_NAME}

Beneficiary Relative: {BENE_FIRST_NAME} {BENE_LAST_NAME}

Beneficiary A-Number: {BENE A-NUMBER}

Receipt Number: {RECEIPT NUMBER}

Case Number: {DOS CASE NUMBER}

Case Type: Follow-to-Join Refugee

We are pleased to inform you that you have been conditionally approved to travel to the United States as a follow-to-join refugee. Final approval is dependent upon successful completion of any remaining clearances that are required in the screening process. These clearances may include a medical examination by an authorized physician, receipt of a sponsorship assurance from a voluntary resettlement agency in the United States, and other administrative processing.

Please bear in mind that if you qualified for derivative status as an unmarried child of your petitioning relative in the United States, you will no longer be eligible for that status if you marry prior to traveling to the United States. If you marry and do not disclose your marriage to this office before traveling to and entering the United States, your refugee status may be terminated, and you could be removed from the United States. In addition, if you file a Form I-730, Refugee/Asylee Relative Petition, on behalf of a spouse under these circumstances, USCIS will not approve the petition.

Every follow-to-join refugee must complete a medical examination. Some health conditions are grounds for exclusion from admission to the United States, but they may be waived on an exceptional basis by USCIS for humanitarian purposes, in the public interest, or for family

unity. The medical exam is free of charge. The examining physician will explain to you the medical tests that are required subject to your consent. Failure to comply with or consent to the requirements for medical exams may jeopardize your eligibility to join your relative in the United States. You will be contacted by this office or one of the U.S. Refugee Admission Program participating organizations to arrange for your medical exam.

Prior to travel, this office will issue a Travel Packet to you. Please notify us if you have any changes in your family composition, such as a new birth, death, marriage, and/or divorce. The International Organization for Migration (IOM) will assist in arranging for your departure to the United States and provide you with an interest-free travel loan for your airfare.

[Interviewing Office inserts location-specific instructions on next steps in the process (if applicable). Otherwise this section should be deleted.]

Sincerely,

[insert name]

[USCIS Field Office Director or DOS Consular Officer]

9 FAM 203.6-6 UNAVAILABLE

(CT:VISA-27; 12-21-2015)

a. Unavailable

(1) **Unavailable**

(2) **Unavailable**

b. Unavailable

(1) **Unavailable**

(2) **Unavailable**

c. Unavailable

9 FAM 203.6-7 UNAVAILABLE

(CT:VISA-72; 03-02-2016)

a. Unavailable

b. Unavailable

(1) **Unavailable**

(2) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(3) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

c. **Unavailable**

(1) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(2) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(3) **Unavailable**

(a) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(b) **Unavailable**

(4) **Unavailable**

(a) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

9 FAM 203.6-8 (U) V92/V93 BENEFICIARIES APPROVED TO TRAVEL

(CT:VISA-142; 06-10-2016)

a. **(U) Approval to Travel:**

(1) **(U)** A V92/V93 beneficiary is “approved to travel,” if the interviewing officer finds that:

(a) **(U)** The beneficiary has established by a preponderance of the evidence his or her identity, and a qualified relationship to the petitioner;

- (b) **(U)** He or she is not subject to any mandatory bars or relevant inadmissibility grounds (which means that the beneficiary has cleared all medical and security checks); and
 - (c) **(U)** The beneficiary was not previously granted asylum or refugee status by the United States,
- (2) **(U)** See [9 FAM 203.6-9](#) for beneficiaries who do not meet these standards, and are therefore “not approved for travel.” In this situation, “preponderance of the evidence” means that the evidence in the case demonstrates that it is more likely than not that the alien has met his or her burden to show eligibility for the benefit. This standard is not as high as the requirement for “clear and convincing” evidence or proof required in certain other immigration contexts.
- (3) **(U)** The IVO, if available, or NIV system should be updated to note approval to travel. V92 and V93 beneficiaries who have been approved to travel should have boarding foils and travel packets prepared on their behalf – see paragraph b below for details, particularly noting the instructions in paragraph b(1)(b) on who should receive the documents. For V93 beneficiaries, post must also complete all post-interview actions described in [9 FAM 203.6-10](#).
- b. (U) V92/V93 Travel Documentation:**
- (1) **(U) Overview:**
- (a) **(U)** A V92 or V93 boarding foil (see paragraph (2)), placed in a passport or other travel document (see paragraph (4)), and a travel packet (see paragraph (3)) must be prepared for each beneficiary found eligible to travel to the United States. Airlines flying to the United States are required to examine travel documents before boarding passengers to avoid fines imposed by the U.S. Government. Travel packets and boarding foils should be provided to beneficiaries per instructions in paragraph (b) below.
 - (b) **(U) Delivery of V92 Travel Packets, Boarding Foils:**
 - (i) **(U)** Travel packets and travel documents with boarding foils should be given directly to the beneficiaries (following local procedures, either the beneficiary picks them up, or they are couriered to the beneficiary). Inform the V92 beneficiary about the importance of not opening or losing the travel packet and that any tampering with the packet or loss or theft will result in a considerable delay in the individual’s future travel to the United States.
 - (ii) **(U)** The V92 traveler will present the envelope addressed to the transportation company to the airline attendant at check-in. The other sealed envelope(s) will be presented to the Customs and Border Protection (CBP) and U.S. Department of Health and Human Services Officers at the POE upon arrival to the United States.
 - (iii) **(U)** V92 beneficiaries are responsible for scheduling and financing their own travel to the United States.
- (c) **Unavailable**

(2) **(U) Boarding Foils:**

(a) **(U)** For purposes of security, uniformity, and workload tracking, all V92 and V93 cases processed by consular officers must be issued V92 or V93 boarding foils. These foils also facilitate the boarding of beneficiaries by airlines flying to the United States.

(b) **Unavailable**

(c) **Unavailable**

(d) **Unavailable**

(3) **(U) Travel Packet:**

(a) **Unavailable**

(b) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(iv) **Unavailable**

(v) **Unavailable**

(vi) **Unavailable**

(c) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(d) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(e) **Unavailable**

(f) **(U) Lost or Stolen V92/V93 Packet:** If a V92/V93 travel packet is lost or stolen:

(i) **(U)** Take a sworn statement as to the circumstances of the loss or theft;

(ii) **(U)** If a travel packet is stolen, the beneficiary should provide a police report;

(iii) **Unavailable**

(iv) **Unavailable**

(v) **Unavailable**

(vi) **Unavailable**

(4) **Unavailable**

9 FAM 203.6-9 UNAVAILABLE

(CT:VISA-72; 03-02-2016)

a. **Unavailable**

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**

b. **Unavailable**

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

c. **Unavailable**

d. **Unavailable**

e. **Unavailable**

- (1) **Unavailable**
 - (a) **Unavailable**
 - (i) **Unavailable**
 - (ii) **Unavailable**
 - (iii) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**

(d) **(U)** Sample Consular Return Memo:

[On USCIS or Department of State letterhead, as appropriate.]

Date:

To: National Visa Center
32 Rochester Ave.
Portsmouth, NH 03801

From: [insert name]
[insert title]
[insert post]

Subject: Form I-730, Refugee/Asylee Relative Petition(s)

Beneficiary Name: [insert beneficiary name]

Beneficiary A-Number: [insert beneficiary A-number]

Receipt Number: [insert USCIS Service Center receipt number]

Case Number: [insert IVO case number]

Case Type: [insert Follow-to-Join Refugee (Visas 93) or Follow-to-Join Asylee (Visas 92), as applicable]

We are returning the above-cited Form I-730, Refugee/Asylum Relative Petition, to the USCIS Service Center for further action.

Instructions: Select the reason for the Consular Return from the list below and provide the required justification. Delete all other portions of this template that are not applicable. This Memo must be accompanied by any documents, evidence or other materials referenced in your justification for denial, and any relevant officer notes. Remember that the purpose of the I-730 interview is to verify the beneficiary's identity or qualifying relationship with the petitioner, and to ensure that he or she is not subject to any mandatory bars or applicable grounds of inadmissibility. As such, the justification for a denial must focus on the factual elements of the case that have direct bearing on why the beneficiary did not meet his or her burden and establish by a preponderance of the evidence his or her identity, qualifying relationship to the petitioner, or the fact that a bar to asylum or ground of inadmissibility does not apply.

USCIS Service Centers may release to the petitioner and representative of record (if applicable) all unclassified information provided in support of a Notice of Intent to Deny, so please provide information in a form that protects the identity of confidential sources.

- Beneficiary identity not established.

Evidence needed: Insert or attach detailed, factual, and verifiable evidence demonstrating why the beneficiary did not establish by a preponderance of the evidence that he or she is the individual listed as the beneficiary on the I-730. Evidence may include fraudulent identity documents or significant material discrepancies in testimony, etc.

- Qualifying relationship between beneficiary and petitioner not established.

Evidence needed: Insert or attach detailed, factual, and verifiable evidence demonstrating why the beneficiary-petitioner relationship was not established by a preponderance of the evidence. Evidence may include 0% DNA match for biological claimed parent-child relationships, civil documents found to be fraudulent upon verification or not to support claimed relationship, significant material discrepancies in testimony, testimony credible but qualifying relationship not present, etc.

Note on Marriage Fraud: If the officer suspects marriage fraud for the purposes of obtaining immigration benefits, but the beneficiary has presented a valid civil marriage certificate, the officer must provide sufficient factual evidence – i.e., significant material discrepancies in the beneficiary's testimony, implausible lack of knowledge regarding his or her spouse, etc. – to overcome the existence of the validly issued civil document and establish by a preponderance of the evidence that the relationship was entered into fraudulently. In the refugee context, pre-departure RE-1 marriages frequently occur. While a pre-departure marriage may be a flag to indicate possible marriage fraud, this is not necessarily the case. A Consular Return based on suspected marriage fraud must present sufficient material evidence to overcome a presumption that the validly registered civil marriage was entered into for the purpose of immigration fraud.

- Beneficiary is barred or inadmissible.

[Please note: Visas 92 cases are subject to bars to derivative asylum in INA 208(b)(2)(A)(i-v) (but not firm resettlement). They are not subject to grounds of inadmissibility in INA 212. In contrast, Visas 93 are subject to the persecutor bar and certain grounds of inadmissibility in INA 212.]

Evidence needed: Insert detailed, factual, and verifiable evidence demonstrating why a bar

applies or inadmissibility applies. Evidence may include beneficiary sworn statements, security check results, significant material discrepancies in testimony, etc.

Note on Visas 93 and inadmissibilities: If a ground of inadmissibility applies and a waiver exists, place the I-730 case on hold to await the adjudication of the I-602 waiver. Proceed with a Consular Return if a waiver is not available or the waiver was denied.

- Interviewing Officer determined case warrants discretionary denial (Visas 92 only).

[Although inadmissibility grounds do not apply to Visas 92, the benefit of asylum is discretionary. As such, officers may consider, in the exercise of discretion, derogatory evidence that relates to whether the person should be permitted to enter the United States as an asylee. The sound exercise of discretion requires a full assessment of the totality of circumstances in a case, and the balancing of all positive factors against any negative factors that exist. In the Consular Return, the officer must evaluate the evidence presented as a whole and explain why travel to the United States is being denied. Please refer to USCIS Overseas Processing of Asylee and Refugee Derivatives:

Form I-730 Beneficiaries (“Visas 92/93”) or [9 FAM 203.5-4\(B\)](#), (U) Bars, Inadmissibilities, and Bases for Denial Affecting V92/V93 Beneficiaries for further instructions.

- i. Negative factors to consider include, but are not limited to, the following:

If known, communicable disease of public health significance and failure to seek or follow appropriate medical treatment;

If known, physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others;

Criminal convictions;

Violation of any law or regulation relating to a controlled substance;

Evidence of moral depravity, or criminal tendencies reflected by an ongoing or continuing police record;

Instances of fraud in dealings with USCIS or other US Government officials or provision of false testimony; or

The presence of other evidence indicative of the alien’s bad character (e.g., money launderer, smuggler, child abductor, etc.).

- ii. Positive factors to consider include, but are not limited to, the following:

Humanitarian interests;

Family reunification;

Public interest;

Age of the derivative;

The likelihood of harm the derivative might experience in his/her country or the country of first asylum if not permitted to join his/her family in the United States;

The likelihood that the past negative action(s) will not recur;

Whether the beneficiary may have been compelled or coerced to commit the act;

Evidence of rehabilitation;

Whether the I-730 was approved by the Service Center even though the center knew of the criminal history of the beneficiary at the time;

Minimal sentences for low level criminal convictions, such as misdemeanors or violations;

Distance in time since the derogatory event(s) happened;

Whether the evidence consists of a single instance of derogatory activity (or very few such occurrences);

The possibilities for successful medical treatment (i.e., for poor health of the beneficiary) and willingness to seek and participate in medical treatment.

When an officer believes derogatory evidence could support a denial of derivative asylum as a matter of discretion, the officer must give the beneficiary an opportunity to rebut the derogatory information and to provide any countervailing positive factors that the beneficiary believes merit a favorable exercise of discretion. In documenting the basis for how discretion should be exercised, the officer's assessment should be couched in terms of whether that negative evidence, when weighed against the positive factors, justifies or does not justify denial as a matter of discretion.]

Evidence needed: Discretionary denials may only be made in Visas 92 derivative asylum cases. Insert detailed analysis which identifies all derogatory and positive factors in the case and clearly demonstrates how the negative evidence, when weighed against the totality of countervailing positive facts, justifies a denial as a matter of discretion, even though the person is not barred from asylum under INA 208(b)(2)(A)(i-v). The officer must submit beneficiary testimony that was offered in rebuttal of any derogatory evidence that was raised to the beneficiary at interview.

- Failure to appear for interview.

The above-referenced I-730 petition was received at this office on [insert date]. On [insert date], this office sent an interview notice to the beneficiary [and (if applicable), the petitioner and representative of record]. The beneficiary did not appear for the interview. On [insert date], this office sent a Notice of Failure to Appear for Interview to the beneficiary and the petitioner [and (if applicable), the representative of record], requesting that they contact us within sixty (60) days to reschedule the beneficiary's interview. We did not receive any response to our request within that time frame. Therefore, this case is being returned for further action.

Evidence needed: Attach copies of the Notice of Receipt and Interview and Notice of Failure to Appear for Interview and/or any other evidence documenting your attempted communications - by phone, mail, or email - with the beneficiary and petitioner. Cases should only be returned after a minimum of 2 attempts have been made to contact the beneficiary and petitioner and no response is received.

- Petitioner is deceased.

This office has learned that the petitioner died on [insert date].

Evidence needed: Insert or attach the death certificate of petitioner, or officer's notes including detailed testimony confirming the petitioner's death.

- Beneficiary is deceased.

This office has learned that the beneficiary died on [insert date].

Evidence needed: Insert or attach the death certificate of beneficiary, or officer's notes including detailed testimony confirming the beneficiary's death.

- Beneficiary child is married and therefore no longer eligible to derive status.

This office has learned that the beneficiary got married on [insert date].

Evidence needed: Attach copy of marriage certificate and/or officer's notes including detailed specific, factual evidence that confirms child's marriage.

- Beneficiary was not under 21 at time of petitioner's refugee admission or asylum grant.

Evidence needed: Attach a copy of the child's birth certificate, investigation report, testimony or other evidence which establishes that the child was 21 prior to the petitioner's

admission into the United States as a refugee or the petitioner's grant of asylum.

- Beneficiary already in the United States.

This office has learned that the beneficiary has already traveled to the U.S. under another visa type.

Evidence needed: Please insert or attach detailed testimony explaining how this information is known and provide a copy of arrival records and/or systems checks (ADIS, IBIS) as evidence of the beneficiary's arrival in the United States.

- Petitioner wishes to withdraw the I-730 petition.

On [insert date], the petitioner requested the withdrawal of the above-mentioned petition. The petitioner's written statement is attached.

Evidence needed: Attach withdrawal letter from petitioner. Withdrawal must be in writing. Please note: the beneficiary may not withdraw the petition, only the petitioner can do that.

- Beneficiary no longer wishes to travel to the United States.

On [insert date], the beneficiary notified this office that he or she no longer wishes to travel to the United States. The beneficiary's written statement is attached.

Evidence needed: Attach letter from beneficiary indicating he or she has no wish to travel to the United States as a follow-to-join beneficiary. This notification must be in writing.

- Beneficiary found eligible but unable or unwilling to travel to the U.S. for at least 12 months.

[This option is applicable if the beneficiary appears eligible for the benefit (there is no derogatory information on the case) but he or she is unable or unwilling to travel to the United States within 12 months. These cases should be returned via the NVC to the Service Center where they will be administratively closed until USCIS receives notification from the petitioner, beneficiary or the Consular post that the beneficiary is ready and able to travel. At that time, the Service Center will reopen the case and route it via the NVC overseas for continued processing.

Posts should hold on to cases where the beneficiary indicates he or she will travel within 12 months.]

Evidence needed: Indicate that the beneficiary appears eligible for I-730 benefits, but fully explain the reason why the beneficiary to be unable or unwilling to travel to the United States for at least 12 months. Reasons may include inability of the beneficiary to obtain exit permission or a passport (if one is required by the country of residence to depart, such as in China), or the beneficiary's desire to substantially delay travel for personal reasons.

- Other.

[If the reason for the Consular Return is not included above, explain your reason for returning the case and provide the necessary justification and evidence. Please note: this option would only be appropriate in extremely rare circumstances.]

Please keep this office informed of any action you take regarding this petition. Thank you.

ENCLOSURES:

- (ii) **(U) Editable Version:** Consular Return Memo.

(2) **Unavailable**

- (a) **Unavailable**

- (b) **Unavailable**

f. **Unavailable**

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

g. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**

9 FAM 203.6-10 (U) V93 POST-INTERVIEW ACTIONS

(CT:VISA-289; 02-22-2017)

a. (U) Overview:

- (1) **(U)** All V93 beneficiaries must travel to the United States under IOM's auspices; they may not make their own separate travel arrangements. This section outlines the steps required to complete those travel arrangements, once the V93 beneficiary had been approved to travel:
 - (a) **(U)** Reporting V93 interview results – paragraph b
 - (b) **(U)** Obtaining V93 sponsorship assurance – paragraph c
 - (c) **(U)** Making V93 travel arrangements – paragraph d
 - (d) **(U)** Paying for V93 travel – paragraph e
 - (e) **(U)** Reporting V93 itinerary – paragraph f
- (2) **(U)** Note that V92 beneficiaries are responsible for scheduling and financing their own travel to the United States; no further post action is required once they have received their travel documentation.

b. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**

c. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**

- (a) **Unavailable**
- (b) **Unavailable**
- (c) **Unavailable**
- (d) **Unavailable**

d. Unavailable

(1) (U) IOM Flights and Assistance for V93 Beneficiaries:

- (a) **(U)** In order to comply with travel security regulations and ensure access to important Reception and Placement benefits in the United States, all V93 beneficiaries must travel on International Organization for Migration (IOM)-arranged flights to the United States.
- (b) **(U)** IOM also provides travel assistance for V93 beneficiaries, including travel reservations, ticketing, escorts, help in transit, and help at the port of entry upon arrival in the United States. In addition, IOM manages the refugee travel loan program.
- (c) **(U)** Refugees and V93 beneficiaries generally travel coach class, and must pay for their travel and for any excess luggage and shipment of pets (see paragraph e below).

(2) Unavailable

- (a) **Unavailable**
- (b) **Unavailable**
- (c) **Unavailable**
- (d) **Unavailable**

(3) Unavailable

- (a) **Unavailable**
- (b) **Unavailable**

e. (U) Paying for V93 Travel:

(1) Unavailable

(2) Unavailable

(3) Unavailable

- (a) **Unavailable**
- (b) **Unavailable**

(4) (U) Promissory Note:

- (a) **(U) Text:** For the following is a sample of the Promissory Note text:

PROMISSORY NOTE

Quote TL. No

IOM Travel Loan Note

Amount of Loan Note US\$

1. I, as an individual or as head of family, acknowledge that at my request the Intergovernmental Committee for European Migration, now designated International Organization for Migration (IOM) has paid with kinds originally made available by the United States Government for the expenses associated with my (our) transportation and related processing services from _____ to the United States. I (we) agree that IOM's payment of these expenses represents a _____ US dollar loan to myself (ourselves) from IOM, for collection by the following refugee resettlement agency _____ or such other person, including the United States Government, as is subsequently designated by IOM. Hereinafter in this note, the above-named refugee resettlement agency or such other person designated by IOM shall each be considered the "designated agency".
2. I (we) agree to repay this IOM loan through regular payments made to the designated agency within forty-two (42) months after my (our) arrival in the United States or within the time schedule agreed upon with IOM or the designated agency. The obligation to repay this loan will remain until the full amount of the loan specified above has been received by the designated agency. Unless otherwise notified by IOM or the designated agency, loan payments shall be made to _____ located at _____. The monthly amount of US dollars to be paid is _____ based on a payment schedule established by IOM considering the total amount owed and the number of people receiving transportation services. I (we) agree to pay this amount without interest, in monthly installments on the first day of each month, with the first installment to be paid not later than six (6) months after my (our) arrival in the United States.
3. I (we) agree to keep the designated agency informed of my (our) address(es) after arrival in the United States, until such time as this loan is repaid in full. I (we) understand that it is my (our) responsibility to inform the designated agency in writing if, because of financial hardship, I am (we are) unable to comply with the payment schedule and terms established in this note. At its option and upon my (our) written request, IOM, through the designated agency, may extend and/or modify the payment schedule of this loan. Such an extension or modification will not take effect until confirmed in writing by IOM, through the designated agency.
4. I (we) agree that if I (we) fail to make full payment within forty-two (42) months after arrival in the United States, or if any monthly payment on this note remains unpaid and past due for four (4) months or more, and I (we) have not received a written extension or modification of the payment schedule in accordance with paragraph 3 above, the designated agency may so inform IOM.

In addition, if I (we) fail to make full payment within forty-six (46) months after arrival in the United States, or if any monthly payment on this note remains unpaid and past due for four (4) months or more, and I (we) have not received a written extension or modification of the payment schedule in accordance with paragraph 3 above, I (we) agree that IOM may declare in writing that the loan is in default, accelerate payment and demand immediate repayment of the entire unpaid indebtedness including charges, if any, for my (our) failure to make the scheduled repayments. I (we) agree that I (we) may be required to pay all attorney's fees and other collection costs and charges associated with collecting on this loan.

5. I (we) understand that IOM may request the assistance of the United States Government or any other designated entity in collecting this loan at any time after any monthly payment is past due and owing and I (we) have not received a written modification or extension of the payment schedule in accordance with paragraph 3 above. I (we) also agree that all legal means may be used to collect any amounts owing on the loan for which a written modification or extension has not been received.
6. I (we) agree that, in the event IOM has declared this loan note to be in default it may choose at its option, and without limitation on other actions it may take, to refer that note to the United States Government for collection or to assign that note to the United States

Government. Whether the note is assigned or referred to it for collection, the United States Government may use all legal means to collect amounts past due and payable. I (we) also agree that in the case of an assignment to the United States Government, the United States Government may charge interest from the date of assignment at a rate established by United States Federal Law on the entire unpaid indebtedness.

7. In the event IOM declares this note to be in default, any payments received in accordance with this note will be credited as of the date received, first to any interest which may be imposed in accordance with paragraph 6 above and, second, to the outstanding principal sum, including any costs which may have been imposed in accordance with this note.

8. If any monthly payment is past due and owing and I (we) have not received a written extension or modification in accordance with paragraph 3 above, (we) understand that this fact and other relevant information may be reported to a consumer reporting agency, credit bureau organization, or to an agency of the United States Government.

9. I (we) agree that this note shall be governed by the laws of the District of Columbia and that any actions with respect to this note shall be heard in a court of competent jurisdiction within the United States.

10. Each of the undersigned hereby accepts full responsibility for the repayment of the total funds provided under the conditions outlined above.

SIGNED _____

NAME (PRINTED) _____

Address in the United States

Date _____

Witnessed _____

Date and point of departure _____

Name of carrier _____

PF No _____

(b) **(U) Editable Version:** Editable version of Promissory Note.

f. **Unavailable**

9 FAM 203.6-11 UNAVAILABLE

(CT:VISA-1; 11-18-2015)

a. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

b. **Unavailable**

(1) **Unavailable**

(a) **Unavailable**

- (b) **Unavailable**
- (c) **Unavailable**
- (2) **Unavailable**
 - (a) **Unavailable**
 - (i) **Unavailable**
 - (ii) **Unavailable**
 - (b) **Unavailable**
 - (i) **Unavailable**
 - (ii) **Unavailable**
- (3) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
 - (d) **Unavailable**
 - (e) **Unavailable**
 - (f) **Unavailable**
 - (g) **Unavailable**

9 FAM 203.6-12 UNAVAILABLE

(CT:VISA-289; 02-22-2017)

- (1) Unavailable*
- (2) Unavailable*

9 FAM 203.7

REFUGEE TRAVEL DOCUMENTS

(CT:VISA-84; 03-07-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 203.7-1 ISSUANCE OF REFUGEE TRAVEL DOCUMENTS

(CT:VISA-84; 03-07-2016)

DHS issues refugee travel documents on Form I-571, Refugee Travel Document, in implementation of Article 28 of the United Nations Convention of July 28, 1951. Form I-571 entitles refugees to return to the United States, provided such persons have not abandoned their residence, lost their refugee status, or become excludable. A valid Refugee Travel Document issued to an asylee, refugee or lawful permanent resident (LPR) should be regarded as a reentry permit. In some instances, an LPR may be issued a refugee travel document, but only upon surrender of any prior reentry permit.

9 FAM 203.7-2 REFUGEES WITH OTHER TRAVEL DOCUMENTS

(CT:VISA-84; 03-07-2016)

- a. Posts are occasionally contacted by aliens who were admitted to the United States as refugees or who were granted asylum, and who subsequently departed without obtaining a Form I-571, Refugee Travel Document. If such an alien has been outside of the United States for one year or less, the consular officer should refer him or her to the USCIS Office abroad that has jurisdiction over the person's location, where he or she may be authorized to file Form I-131, Application for Travel Document, to apply for a Form I-571. USCIS has the discretion to decide whether to accept the Form I-131 filing abroad. If such an alien has been outside of the United States for more than 1 year, the consular officer may refer him or her to USCIS website for information on how to apply for parole to return to the United States.
- b. Refugees and asylees who obtained a Form I-551, Permanent Resident Card, and traveled abroad, but who are unable to return due to having an expired, lost or stolen Form I-551, are not eligible for refugee processing. If they are not eligible for a waiver of documentary requirements and do not have an unexpired immigrant visa, reentry permit or other valid entry document, they are potentially eligible for humanitarian parole. Refer such aliens to the USCIS website for instructions on how to apply. (See also [9 FAM 202.2-5](#) for more on LPR travel with Form I-551 (including situations involving expired lost or stolen I-551 cards), boarding foils,

and other documents.)

9 FAM 203.7-3 EXTRA PAGE INSERTS IN REFUGEE TRAVEL DOCUMENTS

(CT:VISA-84; 03-07-2016)

- a. The bearer of Form I-571 may personally request additional pages from any DHS office upon return to the United States or, if abroad, may mail the document directly to the DHS office having jurisdiction over the area where the alien is residing. In the latter case, the DHS will return the document to a consular office within the DHS area of responsibility for subsequent forwarding to the applicant.
- b. Consular officers may, upon request, attach extra page extension inserts into Form I-571. The extra page extension consists of an additional fourfold insert that provides eight additional pages, lettered "A" to "H", and has a tab for attachment to the main body of the document. The tab must be glued to page 14 of the document. It does not require a dry seal impression.
- c. To obtain additional inserts, consular officers should contact the DHS officer at their respective post. If there is no DHS representation at the post in question, the consular officer should contact the nearest DHS office.

9 FAM 203.7-4 LOST REFUGEE TRAVEL DOCUMENTS

(CT:VISA-84; 03-07-2016)

When an alien claims to have lost Form I-571, the consular officer should send a telegram requesting verification to DHS/HQ, Washington, D.C. (ATTN: HQIAO), the appropriate district director, and the Department (ATTN: VO/F). The alien's full name, date and place of birth, and the DHS "A" number if known, must be included in the text of the telegram. Upon DHS verification of the alien's refugee status, the consular officer should issue a boarding authorization letter (see [9 FAM 202.3-4\(D\)](#)). The refugee will be readmitted to the United States as a parolee, not as a refugee.

9 FAM 300 ELIGIBILITY AND INELIGIBILITY TO RECEIVE A VISA

9 FAM 301 ELIGIBILITY OVERVIEW

9 FAM 301.1 ISSUANCE AND REFUSALS OF VISAS BASED ON LAW

*(CT:VISA-329; 04-10-2017)
(Office of Origin: CA/VO/L/R)*

9 FAM 301.1-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 301.1-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15) and (27) (8 U.S.C. 1101); INA 201 (8 U.S.C. 1151); INA 203 (8 U.S.C. 1153); INA 212 (8 U.S.C. 1182); INA 214(b) (8 U.S.C. 1184(b)); INA 221 (8 U.S.C. 1201); INA 222 (8 U.S.C. 1202).

9 FAM 301.1-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR Part 40; 22 CFR 40.6; 22 CFR 40.9.

9 FAM 301.1-2 ADJUDICATION DECISIONS BASED ON LAW, REGULATIONS

(CT:VISA-329; 04-10-2017)

Consular officers may approve visas for immigrants and non-immigrants who

demonstrate that they qualify for visa classification and who are not subject to a law that would make them ineligible for a visa.

- (1) **Legal Basis for Issuance, Refusal:** In accordance with INA 221(a)(1), a consular officer may issue a visa to an immigrant or nonimmigrant who has made proper application based on INA 222. However, in accordance with INA 221(g), no visa or other documentation may be issued to an alien if:
 - (a) It appears to the consular officer, from statements in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa or such other documentation under INA 212, or any other provision of law;
 - (b) The application fails to comply with the provisions of the INA, or the regulations issued thereunder; or
 - (c) The consular officer knows or has reason to believe that such alien is ineligible to receive a visa or such other documentation under section 212, or any other provision of law.
- (2) **Issuing a Visa:** Eligibility for a visa is based on three legal and regulatory criteria – if all three of the criteria below are met, an applicant would generally be considered eligible for a visa:
 - (a) **Classification:** The applicant successfully demonstrates that they fall within a visa classification as established in INA 101(a)(15) for nonimmigrants and INA 201 or 203 for immigrants. (See [9 FAM 301.3](#) for more information on eligibility for classification. Information on specific classifications is in [9 FAM 402](#) (nonimmigrant classifications) and [9 FAM 502](#) (immigrant classifications); see also [9 FAM 504.2](#) on the role of immigrant visa petitions in establishing eligibility for IV classification);
 - (b) **Documentary and Processing Requirements:** The applicant provides a complete visa application and completes all required steps in the application process. (See [9 FAM 403](#) for information on nonimmigrant visa applications and processing, and [9 FAM 504](#) for information on immigrant visa applications and processing);
 - (c) **Ineligibilities:** The applicant successfully demonstrates that they are not subject to any legal provision which would make them ineligible for a visa and therefore inadmissible into the United States. See [9 FAM 301.4](#) on grounds of refusal, the *Ineligibilities or Grounds of Refusals Applicability and Waivers* chart for an overview of grounds of ineligibility/refusal and possible waivers, [9 FAM 302](#) for information on specific ineligibilities, and [9 FAM 301.5](#) on obtaining information on ineligibilities.
- (3) **Refusing a Visa:** A visa can be refused only upon a ground specifically set out in law or implementing regulations. *The visa adjudicator is required to make a determination* based upon facts or circumstances that would lead a reasonable person to conclude that the applicant is ineligible to receive a visa as provided in the INA and as implemented by the regulations. See [9 FAM](#)

[301.4](#) for general information on grounds for refusal, and [9 FAM 302](#) for information on specific ineligibilities. See also [9 FAM 403.10](#) on NIV refusals and [9 FAM 504.11](#) on IV refusals.

- (4) **Familiarity with Visa Laws and Regulations:** Consular officers must carefully review 9 FAM provisions, and related statutory and regulatory citations when adjudicating visa applications. See [9 FAM 100](#) for an overview of 9 FAM and its relationship to laws and regulations, as well as resources to support 9 FAM users.

9 FAM 301.2

CONSULAR OFFICER RESPONSIBILITIES RELATED TO ELIGIBILITY

(CT:VISA-328; 04-10-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 301.2-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 301.2-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15) and (27) (8 U.S.C. 1101); INA 201 (8 U.S.C. 1151); INA 203 (8 U.S.C. 1153); INA 212 (8 U.S.C. 1182); INA 214(b) (8 U.S.C. 1184(b)); INA 221 (8 U.S.C. 1201); INA 222 (8 U.S.C. 1202).

9 FAM 301.2-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR Part 40; 22 CFR 40.6.

9 FAM 301.2-2 CASE ADJUDICATION

(CT:VISA-328; 04-10-2017)

- a. See [9 FAM 102.2-1](#) for a general description of the role of the consular officer related to visas.
- b. Consular officers' eligibility-related responsibilities are all part of the case adjudication process. Once visa applicants have properly applied for a visa, consular officers must make a decision as to whether each applicant is eligible for a visa. All visa applications must be adjudicated – that is, each case must be refused or approved in accordance with U.S. law, regulations and policy documents. (See more on the legal bases for adjudication in [9 FAM 301.1](#). See also [9 FAM 403.7](#) for additional information on adjudication of nonimmigrant visas, and [9 FAM 504.9](#) on adjudication of immigrant visas.)
- c. The adjudicating officer (the officer who approves the visa for issuance in NIV, IVO, or similar system) is responsible for conducting as complete a clearance as is necessary to establish the eligibility of an applicant to receive a visa. See [9 FAM 301.5](#) on obtaining ineligibility-related information, [9 FAM 303](#) on clearances, and [9](#)

[FAM 304](#) on advisory opinions.

- d. Adjudicating officers must comply with all applicable Visa Lookout Accountability Act requirements, as outlined in [9 FAM 307](#). For supervisors, see also [9 FAM 601.4](#) on supervision and supervisory case review related to ineligibilities.
- e. Once a case has been adjudicated, consular staff must follow all FAM guidance and Department instructions related to visa issuance and refusal. For nonimmigrant visas, see [9 FAM 403.9](#) on NIV issuance and [9 FAM 403.10](#) on NIV refusals. For immigrant visas, see [9 FAM 504.10](#) on IV issuance and [9 FAM 504.11](#) on IV refusals.

9 FAM 301.3

ELIGIBILITY – CLASSIFICATION REQUIREMENTS

(CT:VISA-327; 04-10-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 301.3-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 301.3-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15) (8 U.S.C. 1101(a)(15)); INA 101(a)(27) (8 U.S.C. 1101(a)(27)); INA 201 (8 U.S.C. 1151); INA 203 (8 U.S.C. 1153).

9 FAM 301.3-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 41; 22 CFR 42.

9 FAM 301.3-2 ELIGIBILITY FOR VISA CLASSIFICATION

(CT:VISA-327; 04-10-2017)

- a. Visa applicants must demonstrate that they fit within a group of people authorized to apply for a visa; these groups are called classifications, and are established in the Immigration and Nationality Act. Most nonimmigrant classifications are outlined in INA 101(a)(15), and immigrant *classifications* are established in INA 201 and 203.
- b. The INA descriptions of each classification establish what must be demonstrated to show that an applicant is eligible for that classification. For example, an immigrant spouse of a U.S. citizen (INA 201(b)(2)) must demonstrate that he or she is a “spouse,” in accordance with U.S. laws and regulations. A nonimmigrant visitor for pleasure under INA 101(a)(15)(B) must show that his or her purpose of travel fits within regulatory and policy definitions for “pleasure” and that he or she has a residence abroad which they have no intent of abandoning. A nonimmigrant student (INA 101(a)(15)(F)) must be a bona fide student qualified to pursue a full course of study, must have a residence abroad he or she does not intend to

abandon, and must have been accepted to pursue a full course of study at a DHS-approved institution.

- c. In all cases, consular officers must verify that applicants are entitled to visa classification. See discussion of individual classifications in [9 FAM 402](#) (nonimmigrants) and [9 FAM 502](#) (immigrants) for specific requirements to establish entitlement to each classification. Note also instructions on the significance of DHS approval of petitions (for example, see [9 FAM 402.10-7\(B\)](#) related to nonimmigrant H-1B petitions, or [9 FAM 502.3-4\(D\)](#) on petitions for Convention adoptees).
- d. See also [9 FAM 301.1](#) for a general overview on eligibility for visas. Eligibility for classification is only one element in visa adjudication; applicants must also complete all documentary and procedural requirements and must show that they are not subject to ineligibilities or grounds for refusal.

9 FAM 301.4

INELIGIBILITIES AND GROUNDS FOR REFUSALS

(CT:VISA-343; 04-18-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 301.4-1 OVERVIEW OF GROUNDS FOR REFUSAL

(CT:VISA-343; 04-18-2017)

- a. **Basis for Refusal:** The bases on which applicants must be denied visas are established by law, as part of the Immigration and Nationality Act (INA). INA 214(b) and 221(g) are common bases for refusal. Other grounds for refusal are found in INA 212 (INA 212(a), 212(e) and 212(f)). (Note: The Department generally uses the term "ineligibilities" to refer *to* these grounds for refusal; the Department of Homeland Security usually refers to these grounds as "inadmissibilities.")
- b. **Summary of Grounds for Refusal (by Section of Law):** See paragraph c for a list by category.
- (1) INA 212(a)(1): Health-related grounds (see [9 FAM 302.2](#));
 - (2) INA 212(a)(2): Criminal and related grounds (see [9 FAM 302.3](#) and 302.4);
 - (3) INA 212(a)(3): Security and related grounds (see [9 FAM 302.5](#), 302.6, 302.7 and 302.11);
 - (4) INA 212(a)(4): Public charge (see [9 FAM 302.8](#));
 - (5) INA 212(a)(5): Labor certification, qualification (see [9 FAM 302.1-5](#));
 - (6) INA 212(a)(6): Illegal entrants, immigration violators, misrepresentation (see [9 FAM 302.9](#));
 - (7) INA 212(a)(7): Documentation requirements (see [9 FAM 302.1-3](#));
 - (8) INA 212(a)(8): Ineligible for citizenship (see [9 FAM 302.9-11](#));
 - (9) INA 212(a)(9): Previously removed, unlawfully present (see [9 FAM 302.9-13](#) and [9 FAM 302.9-14](#));
 - (10) INA 212(a)(10): Miscellaneous (see [9 FAM 302.10](#));
 - (11) INA 212(e): Former exchange visitors (see [9 FAM 302.10-7](#));
 - (12) INA 212(f): Presidential Proclamations (see [9 FAM 302.11-3](#));
 - (13) INA 214(b): Presumption of immigrant status (see [9 FAM 302.1-2](#));

- (14) INA 221(g): Application does not comply with INA (see [9 FAM 301.1-2](#)); and
- (15) INA 222(g): Nonimmigrant overstay, application not in country of nationality (see [9 FAM 302.9-10](#)).

c. Summary of Grounds for Refusal (by Category): See paragraph b for a list by section of law.

(1) Inadequate Documentation or Qualification:

- (a) Presumption of immigrant status – see [9 FAM 302.1-2](#);
- (b) IV documentary requirements – see [9 FAM 302.1-3](#);
- (c) NIV documentary requirements – see [9 FAM 302.1-4](#);
- (d) Labor certification requirements – see [9 FAM 302.1-5](#);
- (e) Unqualified physician – see [9 FAM 302.1-6](#);
- (f) Uncertified foreign health care worker – see [9 FAM 302.1-7](#);
- (g) Failure of application to comply with INA – see [9 FAM 302.1-8](#); and
- (h) Waivers of rights, privileges, exemptions and immunities – see [9 FAM 302.13-5](#).

(2) Medical Grounds:

- (a) Communicable diseases – see [9 FAM 302.2-5](#);
- (b) Required vaccinations – see [9 FAM 302.2-6](#);
- (c) Disorder or condition posing threat to property or safety – see [9 FAM 302.2-7](#); and
- (d) Drug abuse or addiction – see [9 FAM 302.2-8](#).

(3) Criminal Grounds:

- (a) Crimes involving moral turpitude – see [9 FAM 302.3-2](#);
- (b) Multiple criminal convictions – see [9 FAM 302.3-4](#);
- (c) Prostitution and criminalized vice – see [9 FAM 302.3-6](#);
- (d) Criminal activity where immunity asserted – see [9 FAM 302.3-7](#);
- (e) Human trafficking – see [9 FAM 302.3-8](#); and
- (f) Money laundering – see [9 FAM 302.3-9](#).

(4) Grounds Related to Controlled Substances:

- (a) Controlled substance violations – see [9 FAM 302.4-2](#) *and* [9 FAM 302.2-3](#); and
- (b) Controlled substance trafficking – see [9 FAM 302.4-3](#) *and* [9 FAM 302.2-5](#).

(5) National Security Grounds:

- (a) Intent to commit espionage or sabotage – see [9 FAM 302.5-2](#);
- (b) Intent to violate export control laws – see [9 FAM 302.5-3](#);

- (c) Intent to commit an unlawful act in the U.S. – see [9 FAM 302.5-4](#);
 - (d) Intent to overthrow U.S. government – see [9 FAM 302.5-5](#);
 - (e) Immigrant membership in a totalitarian party – see [9 FAM 302.5-6](#).
- (6) **Terrorism-Related Grounds:** See [9 FAM 302.6](#).
- (7) **Human Rights Violations:**
- (a) Participation in Nazi persecutions – see [9 FAM 302.7-4](#);
 - (b) Participation in genocide - see [9 FAM 302.7-5](#);
 - (c) Participation in torture – see [9 FAM 302.7-6](#);
 - (d) Participation in extrajudicial killing – see [9 FAM 302.7-7](#);
 - (e) Participation in violations of religious freedom – see [9 FAM 302.7-3](#);
 - (f) Participation in forced or coercive abortion or sterilization – see [9 FAM 302.7-9](#);
 - (g) Participation in coercive organ or tissue transplantation – see [9 FAM 302.7-10](#);
 - (h) Participation in the use or recruitment of child soldiers – see [9 FAM 302.7-8](#); and
 - (i) Participation in political killings – see [9 FAM 302.14-9](#).
- (8) **Public Charge:** See [9 FAM 302.8](#).
- (9) **Immigration Violation-Related Issues:**
- (a) Present without admission or parole – see [9 FAM 302.9-2](#);
 - (b) Failure to attend removal proceedings – see [9 FAM 302.9-3](#);
 - (c) Misrepresentation – see [9 FAM 302.9-4](#);
 - (d) Falsely claiming citizenship – see [9 FAM 302.9-5](#);
 - (e) Stowaways – see [9 FAM 302.9-6](#);
 - (f) Smugglers – see [9 FAM 302.9-7](#);
 - (g) Subject to civil penalty – see [9 FAM 302.9-8](#);
 - (h) Student visa abusers – see [9 FAM 302.9-9](#);
 - (i) Subject to INA 222(g) – see [9 FAM 302.1-9](#);
 - (j) Ineligible for citizenship – see [9 FAM 302.10-2](#);
 - (k) Departed, remained outside U.S. to avoid military service – see [9 FAM 302.10-3](#);
 - (l) Individuals previously removed – see [9 FAM 302.11-2](#);
 - (m) Individuals unlawfully present – see [9 FAM 302.11-3](#); and
 - (n) Individuals unlawfully present after previous immigration violation - see [9 FAM 302.11-4](#).

(10) Other Activities:

- (a) Practicing polygamists – see [9 FAM 302.12-2](#);
- (b) Guardian required to accompany helpless individual – see [9 FAM 302.12-3](#);
- (c) International child abduction – see [9 FAM 302.12-4](#);
- (d) Unlawful voters – see [9 FAM 302.12-5](#);
- (e) Former citizens who renounced citizenship to avoid taxation – see [9 FAM 302.12-6](#);
- (f) *Former foreign* exchange visitors – see [9 FAM 302.13-2](#);
- (g) Unauthorized disclosure of U.S. confidential business information – see [9 FAM 302.13-3](#);
- (h) Frivolous asylum applications – see [9 FAM 302.13-4](#); and
- (i) Waivers of rights, privileges, exemptions, and immunities – see [9 FAM 302.13-5](#).

(11) Sanctioned Activities:

- (a) Adverse foreign policy consequences – see [9 FAM 302.14-2](#);
- (b) Suspension of entry by the president – see [9 FAM 302.14-3](#);
- (c) Individuals who have aided and abetted Colombian insurgent and paramilitary groups – see [9 FAM 302.14-4](#);
- (d) Individuals involved in confiscation of property of U.S. nationals – see [9 FAM 302.14-5](#);
- (e) *Specially Designated Nationals* – see [9 FAM 302.14-6](#);
- (f) Iran Threat Reduction and Syria Human Right Act – see [9 FAM 302.14-7](#);
- (g) Sergei Magnitsky Rule of Law Accountability Act of 2012– see [9 FAM 302.14-8](#); and
- (h) Participation in certain political killings– see [9 FAM 302.14-9](#).

9 FAM 301.4-2 APPLICABILITY OF INELIGIBILITIES TO IV AND NIV CASES

(CT:VISA-343; 04-18-2017)

- a. **Does This Ineligibility Apply to This Case?** Particular ineligibilities may apply only to immigrants, only to nonimmigrants, or, more commonly, to both types of applicants. Consular officers must use care in determining which grounds of refusal apply in particular cases.
- b. **Nonimmigrants:** NIV applicants are subject to INA 212 ineligibilities, except as noted below:
 - (1) Nonimmigrant are subject to [9 FAM 212](#)(a)(1) health-related ineligibilities, with

the exception of [9 FAM 212\(a\)\(1\)\(A\)\(ii\)](#) related to vaccinations, which applies to immigrants only.

- (2) Nonimmigrants are not subject to INA 212(a)(3)(D) related to immigrant membership in or affiliation with Communist or other totalitarian parties.
 - (3) Nonimmigrants are not subject to INA 212(a)(5), related to labor certifications for immigrants.
 - (4) Nonimmigrants are not subject to INA 212(a)(7)(A)(i), related to immigrant documentation requirements.
 - (5) Nonimmigrants are not subject to INA 212(a)(8)(A), related to immigrant ineligibility for citizenship, due to desertion, draft evasion or exemption from military service.
 - (6) Nonimmigrants are not subject to INA 212(a)(10)(A), related to immigrants who are practicing polygamists.
- c. **Immigrants:** IV applicants are subject to INA 212 and other refusal provisions, *except* as noted below:
- (1) Immigrants are not subject to INA 212(a)(7)(B)(i), related to nonimmigrant documentation requirements.
 - (2) Immigrants are not subject to INA 214(b), related to the presumption that applicants are immigrants.
 - (3) Immigrants are not subject to INA 222(g), related to place of application for nonimmigrants with previous overstays of their nonimmigrant visas.

9 FAM 301.4-3 WAIVING OR OVERCOMING REFUSALS AND INELIGIBILITIES

(CT:VISA-1; 11-18-2015)

Certain refusals and findings of ineligibilities can be overcome or waived. For information on overcoming a refusal see [9 FAM 306](#). For information on waiving ineligibilities see [9 FAM 305](#) or the individual grounds of ineligibility in [9 FAM 302](#). The Ineligibilities or Grounds of Refusals Applicability and Waivers chart provides you with an overview of the grounds of ineligibility/refusal and possible waiver and where in the FAM to find more information on each ground.

9 FAM 301.5

(U) OBTAINING INELIGIBILITY-RELATED INFORMATION

(CT:VISA-335; 04-13-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 301.5-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 301.5-1(A) (U) Immigration and Nationality Act

(CT:VISA-66; 02-26-2016)

(U) INA 212 (8 U.S.C. 1182); INA 214(b) (8 U.S.C. 1184(b)); INA 221 (8 U.S.C. 1201); INA 222 (8 U.S.C. 1202).

9 FAM 301.5-1(B) (U) Code of Federal Regulations

(CT:VISA-66; 02-26-2016)

(U) 22 CFR 40; 22 CFR 41.101; 22 CFR 42.61-81.

9 FAM 301.5-2 (U) DISCOVERING VISA INELIGIBILITIES

(CT:VISA-335; 04-13-2017)

- a. **(U) Methods:** Consular officers usually learn about ineligibilities in one of three ways:
 - (1) **(U)** From applicants, through the application form and supporting documents (see paragraph b) or during the interview (see paragraph c);
 - (2) **(U)** From U.S. government sources, including other agencies (see paragraph d) or posts (see paragraph e); or
 - (3) **(U)** From third parties (see paragraph f).
- b. **(U) Ineligibilities, Application Forms and Supporting Documents:** Applicants may reveal grounds for ineligibility when filling out the visa application form, either in response to direct questions about potential ineligibilities, or in responses to other questions (for example, responses to questions *about* previous visits indicating long periods of time in the United States). Particularly for immigrant visas, many supporting documents like medical examination forms, affidavits of

- support, and military, police, and prison records provide ineligibility-related information. For both immigrant and nonimmigrant visas, applicants' *passports* or travel documents may also raise questions leading to an ineligibility finding (for example, entry and exit stamps indicating time spent in the United States or travel to a country or region which may require a clearance request). See [9 FAM 403.2](#) on NIV applications and [9 FAM 504.4](#) on IV applications and supporting documents.
- c. **(U) Ineligibilities Revealed During Interview:** Consular officers must seek information on possible ineligibilities during the interview, and clarify any ambiguities to determine whether an ineligibility applies. It is important to correctly document interview questions and responses when a possible ineligibility is present. See [9 FAM 403.5](#) for information on NIV interviews and [9 FAM 504.7](#) on IV interviews.
- d. **Unavailable**
- e. **(U) Posts' Ineligibility Information:** Consular officers must review case notes and other information sources at post for any indication that post has information that would indicate that an applicant is ineligible for a visa. Consular officers must also consult with other posts on applicants' ineligibility when required by Country Reciprocity tables or because of INA 212(a), L, or P CLASS entries made by other posts. See [9 FAM 303.4](#) for additional information on post-based reviews and clearances.
- f. **(U) Third-Party Ineligibility Information:** In some cases, host country law enforcement or other officials may provide information that may become the basis for a finding of ineligibility. Sometimes, ineligibility-related information may be noted in public sources like newspapers or local magazines. Consular officers also receive information from other non-official sources that may become the basis for refusing a visa; without knowledge of the motivations or circumstances surrounding provision of such information, it is important to carefully evaluate all allegations of misconduct or bad intentions. Note that no final ineligibility finding can be made without an application and interview from the individual involved. See [9 FAM 303.3-4\(B\)](#) for information on CLASS entries related to potentially ineligible individuals.
- g. **(U) Waivers, Overcomes:** Note that the sources of ineligibility-related information may be the same sources for information related to whether a waiver or overcome of an ineligibility or ground for refusal is appropriate. See [9 FAM 305](#) and [9 FAM 306](#) for additional information on waivers and overcomes.

9 FAM 302

(U) GROUNDS OF INELIGIBILITY

9 FAM 302.1

(U) INELIGIBILITY BASED ON INADEQUATE DOCUMENTATION OF QUALIFICATION - INA 212(A)(5), INA 212(A)(7), INA 214(B), INA 221(G), AND INA 222(G)

(CT:VISA-160; 08-19-2016)

(Office of Origin: CA/VO/L/R)

9 FAM 302.1-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 302.1-1(A) (U) Immigration and Nationality Act

(CT:VISA-160; 08-19-2016)

(U) INA 101(a)(15) (8 U.S.C. 1101(a)(15)); INA 101(a)(41) (8 U.S.C. 1101(a)(41)); INA 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)); INA 212(a)(5)(B) (8 U.S.C. 1182(a)(5)(B)); INA 212(a)(5)(C) (8 U.S.C. 1182(a)(5)(C)); INA 212(a)(5)(D) (8 U.S.C. 1182(a)(5)(D)); INA 212(a)(7)(A) (8 U.S.C. 1182(a)(7)(A)); INA 212(a)(7)(B) (8 U.S.C. 1182(a)(7)(B)); INA 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)); INA 212(k) (8 U.S.C. 1182(k)); INA 212(r) (8 U.S.C. 1182(r)); INA 214(b) (8 U.S.C. 1184(b)), INA 221(g) (8 U.S.C. 1201(g)); INA 222(g) (8 U.S.C. 1202(g)); INA 291 (8 U.S.C. 1363).

9 FAM 302.1-1(B) (U) Code of Federal Regulations

(CT:VISA-160; 08-19-2016)

(U) 8 CFR 205.2(c); 8 CFR 212.15(g)(2); 20 CFR 656.5; 20 CFR 656.15; 20 CFR 656.16; 20 CFR 656.17; 20 CFR 656.18; 20 CFR 656.20; 20 CFR 656.30; 22 CFR 40.6; 22 CFR 40.51; 22 CFR 40.52; 22 CFR 40.53; 22 CFR 40.71; 22 CFR 40.72; 22 CFR 40.201; 8 CFR 41.101

9 FAM 302.1-1(C) (U) Public Laws

(CT:VISA-160; 08-19-2016)

(U) Immigration and Nationality Act Amendments of 1976, Public Law 94-571; Armed Forces Immigration Adjustment Act of 1991, Public Law 102-110; Omnibus Consolidated Appropriations Act, 1997, Public Law 104-208, sec. 343.

9 FAM 302.1-2 (U) PRESUMPTION OF IMMIGRANT STATUS - INA 214(B)

9 FAM 302.1-2(A) (U) Grounds

(CT:VISA-160; 08-19-2016)

(U) An alien (other than a H-1B, L, and V applicant) is presumed to be an immigrant until he or she establishes to your satisfaction that he or she is entitled to nonimmigrant status under INA 101(a)(15).

9 FAM 302.1-2(B) (U) Application

9 FAM 302.1-2(B)(1) (U) In General

(CT:VISA-160; 08-19-2016)

(U) Refusals under INA 214(b) are the most common refusal in nonimmigrant visa (NIV) adjudications. INA 214(b) applies only to nonimmigrant visa applicants.

9 FAM 302.1-2(B)(2) (U) How Do I Apply INA 214(b)?

(CT:VISA-160; 08-19-2016)

(U) With limited exceptions, all visa applicants are presumed to be immigrants (and thus not eligible for a nonimmigrant visa (NIV)) unless and until they satisfy you that they qualify for one of the NIV categories defined in INA 101(a)(15). INA 291 places the burden of proof on the applicant at all times, which means the applicant must convince you that he or she is entitled to the requested visa. Otherwise, the alien must be considered to be an applicant for immigrant status and cannot receive an NIV.

9 FAM 302.1-2(B)(3) (U) Refusals Under INA 214(b) Versus Inadmissibility

(CT:VISA-160; 08-19-2016)

- a. **(U) In General:** A refusal under INA 214(b) does not constitute a finding of permanent inadmissibility, in contrast to an INA 212(a)(6)(C)(i) refusal, for example, which would be a permanent ineligibility. INA 214(b) serves as a basis for refusal of a visa to an alien who has not established entitlement to an NIV classification by proving that he or she falls within a definition of INA 101(a)(15). An NIV applicant who is denied under INA 214(b) may be approvable for an IV or another class of NIV or may even reapply for the same visa category and establish eligibility to the satisfaction of the consular officer who adjudicates the new

application.

- b. **(U) Applying Both** INA 214(b) **and** INA 212(a): You may refuse a visa under either INA 214(b) or INA 212(a) or, if applicable, both INA 214(b) and INA 212(a).

9 FAM 302.1-2(B)(4) (U) Standards for Applying

(CT:VISA-160; 08-19-2016)

- a. **(U) NIV Qualification Standards:** When adjudicating NIV applications, you must be careful to recognize that the standards for qualifying for an NIV are found in the relevant subsections of INA 101(a)(15) and corresponding regulations and FAM guidance, not in INA 214(b) itself. INA 214(b) does not provide any independent standards for qualifying for an NIV. The applicant's failure to convince you that he or she meets any one of the specific requirements of the applicable NIV category will result in an INA 214(b) denial. (See [9 FAM 401.1-3\(E\)](#) for more information on INA 214(b) and immigrant intent).
- b. **(U) Example:** For example, failure to possess sufficient funds to cover educational expenses results in a 214(b) denial of a student visa. Failure to make a substantial investment results in a 214(b) denial of a treaty investor visa. And the failure to possess the intent not to abandon a foreign residence results in a 214(b) denial of a B visa. In each of these cases, the visa is denied under 214(b) because the applicant has not met the requirements set out for that particular visa category.
- c. **(U) Overcoming:** The 214(b) basis of refusal may be overcome if the applicant demonstrates to your satisfaction that he or she lawfully meets and will abide by all the requirements of the particular NIV classification.

9 FAM 302.1-2(B)(5) (U) Not Applicable in All Categories

(CT:VISA-160; 08-19-2016)

(U) It is important to note that Congress expressly excluded H-1B, L, and V visas from the statutory presumption of immigrant intent contained in INA 214(b). In adjudicating visa applications in these categories, you must carefully review FAM guidance and other statutory provisions, including INA 212(a) grounds of inadmissibility.

9 FAM 302.1-2(B)(6) (U) More than Just Ties

(CT:VISA-160; 08-19-2016)

- a. **(U)** INA 214(b) cannot be simplified to mean only that applicants have "ties" or must intend to return home. A refusal under INA 214(b) means that the applicant has failed to qualify for NIV status. The most common reason that an applicant fails to qualify is a failure to show the sufficient ties to his or her home country that are required for most NIV classifications. However, while a failure to show sufficient ties is the most common reason for a INA 214(b) finding, there are other reasons that an applicant could fail to qualify for NIV status and thus be found inadmissible under INA 214(b).

- b. **(U)** INA 214(b) requires the visa applicant to establish to the satisfaction of the consular officer that he or she is entitled to nonimmigrant status under INA 101(a)(15). As stated above, this simply means that the NIV applicant must prove to you that he or she meets the standards required by the particular visa classification for which he or she is applying. In other words, the applicant must make a credible showing to you that all activities in which the applicant is expected to engage while in the United States are consistent with the claimed nonimmigrant status. Proper visa adjudication requires you to assess the credibility of the applicant and of the evidence he or she submits in support of the application. INA 291 places the burden of proof at all times on the applicant.
- c. **(U)** If you are not satisfied that the applicant meets the standards required by the particular visa classification for which he or she is applying, you must refuse the applicant under INA 214(b). This is the case regardless of the applicant's financial situation or ties abroad and regardless of whether there is sufficient evidence to refuse the applicant under another section of the law (for example, INA 212(a)(2)(C), INA 212(a)(3), INA 212(a)(6)(C), or INA 212(a)(6)(E)).

9 FAM 302.1-2(C) (U) Advisory Opinions

(CT:VISA-160; 08-19-2016)

(U) An AO is not required for a potential INA 214(b) refusal; however, if you have a question about the interpretation or application of law or regulation, you may request guidance from CA/VO/L/A.

9 FAM 302.1-2(D) (U) Waiver

9 FAM 302.1-2(D)(1) Waivers for Immigrants

(CT:VISA-160; 08-19-2016)

(U) INA Section 214(b) does not apply to immigrant visa applicants.

9 FAM 302.1-2(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-160; 08-19-2016)

(U) There is no waiver available. An applicant may overcome a 214(b) refusal. For more information on overcoming a refusal see [9 FAM 306.2-2](#).

9 FAM 302.1-2(E) Unavailable

(CT:VISA-160; 08-19-2016)

Unavailable

9 FAM 302.1-3 (U) DOCUMENTATION

REQUIREMENTS FOR IMMIGRANT VISA APPLICANTS - INA 212(A)(7)(A)

9 FAM 302.1-3(A) (U) Grounds

(CT:VISA-160; 08-19-2016)

(U) To comply with INA 212(a)(7)(A), an immigrant must possess a valid, unexpired U.S. immigrant visa (IV) and valid, unexpired travel document at the time of admission into the United States. In order to demonstrate that there are no legal impediments to obtaining an IV, applicants must submit police records, court or military records if applicable, and evidence of financial support. You must also review results of applicants' medical exams, namechecks and special clearance results when evaluating applicants' eligibility for the IV. If a specific document is unobtainable, you must require substitute documentation or secondary evidence.

9 FAM 302.1-3(B) (U) Application

(CT:VISA-160; 08-19-2016)

- a. **(U)** You may not issue a visa to the holder of an improperly issued travel document, obtained either by providing fraudulent biographical data or issued by other than a competent authority as described in [9 FAM 403.9-3\(A\)\(1\)](#). Likewise, you may not issue a visa to the holder of an expired passport unless the applicant is able to present to you collateral documentation, which together with the expired passport, meets the requirements of INA 101(a)(30) and INA 212(a)(7)(B)(i)(I).
- b. **(U)** In addition to a valid travel document, immigrants require valid supporting documentation to demonstrate eligibility for a visa. You must ensure that the immigrant visa application complies with the documentation requirements of INA 222(a) through (d).

9 FAM 302.1-3(C) (U) Advisory Opinions

(CT:VISA-160; 08-19-2016)

(U) An AO is not required for a potential INA 212(a)(7)(A) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.1-3(D) (U) Waivers

9 FAM 302.1-3(D)(1) (U) Waivers for Immigrants

(CT:VISA-160; 08-19-2016)

(U) No waiver is available at the time of visa application. However, under INA 212(k), DHS has discretionary authority to admit an IV holder at the port of entry, despite this

inadmissibility.

9 FAM 302.1-3(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-160; 08-19-2016)

(U) INA Section 212(a)(7)(A) is not applicable to nonimmigrant visa applicants.

9 FAM 302.1-3(E) Unavailable

(CT:VISA-160; 08-19-2016)

Unavailable

9 FAM 302.1-4 (U) DOCUMENTATION REQUIREMENTS FOR NONIMMIGRANT VISA APPLICANTS - INA 212(A)(7)(B)

9 FAM 302.1-4(A) (U) Grounds

(CT:VISA-160; 08-19-2016)

(U) A nonimmigrant without a passport valid for a at least six months from the date of the expiration of the initial period of the individual's admission or without a valid nonimmigrant visa or border crossing card at the time of application for admission is inadmissible.

9 FAM 302.1-4(B) (U) Application

9 FAM 302.1-4(B)(1) (U) Passports and Visas

(CT:VISA-160; 08-19-2016)

(U) In certain circumstances a nonimmigrant without a valid visa and/or passport may be admissible. For waivers of and exemptions from documentary requirements, see [9 FAM 201.1](#).

9 FAM 302.1-4(B)(2) (U) Passports with Less than Six Month Validity and Automatic Extensions

(CT:VISA-160; 08-19-2016)

(U) Some countries have agreements with the United States whereby their passports are recognized as valid for return to the country concerned for a period of six months beyond the expiration date specified in the passport. The effect of these agreements is to extend the period of validity of the passport for six months beyond the expiration date appearing on the face of the document, for the purposes of INA 212(a)(7)(B) (i)(I). For more information see [9 FAM 403.9](#).

9 FAM 302.1-4(C) (U) Advisory Opinions

(CT:VISA-160; 08-19-2016)

(U) An AO is not required for a potential INA 212(a)(7)(B) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.1-4(D) (U) Waiver

9 FAM 302.1-4(D)(1) (U) Waivers for Immigrants

(CT:VISA-160; 08-19-2016)

(U) INA 212(a)(7)(B) is not applicable to immigrant visa applicants.

9 FAM 302.1-4(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-160; 08-19-2016)

(U) For more information the waiver or exemptions from passport and visa requirements please see [9 FAM 201.1](#) and [9 FAM 305.3-1\(C\)](#).

9 FAM 302.1-4(E) Unavailable

9 FAM 302.1-4(E)(1) Unavailable

(CT:VISA-160; 08-19-2016)

Unavailable

9 FAM 302.1-4(E)(2) Unavailable

(CT:VISA-160; 08-19-2016)

Unavailable

9 FAM 302.1-5 (U) LABOR CERTIFICATION REQUIREMENTS - INA 212(A)(5)(A)

9 FAM 302.1-5(A) (U) Grounds

(CT:VISA-160; 08-19-2016)

(U) Consular officers use INA Section 212(a)(5)(A) to designate the ineligibility of employment-based second and third preference category immigrant visa applicants whose intended employment has not been certified by the Department of Labor or who are clearly unqualified for their certified employment. There are some exceptions for second preference applicants. See [9 FAM 302.1-5\(B\)\(2\)](#) below.

9 FAM 302.1-5(B) (U) Application

9 FAM 302.1-5(B)(1) (U) In General

(CT:VISA-160; 08-19-2016)

(U) The Department of Labor has responsibility for granting labor certifications for two categories of employment-based immigrants - preference groups 2 and 3. Second preference includes immigrants who are members of the professions holding advanced degrees and immigrants of exceptional ability in the sciences, arts, or business. Third preference includes professionals, skilled, and other unskilled workers.

9 FAM 302.1-5(B)(2) (U) Labor Certification

(CT:VISA-160; 08-19-2016)

(U) In general, aliens in the second and third preferences must possess an individual labor certification, an application for Schedule A certification, or evidence that he or she qualifies for the Labor Market Information Pilot Program. However, in the case of a second preference applicant, the Secretary of Homeland Security may waive the job offer requirement, and thus a labor certification, for aliens of exceptional ability in the sciences, arts, professions, or business and for certain alien physicians (see [9 FAM 502.4-3\(E\)](#)) when it is deemed to be in the national interest.

9 FAM 302.1-5(B)(3) (U) Obtaining Labor Certification

(CT:VISA-160; 08-19-2016)

- a. **(U) In General:** The Department of Labor attempts to minimize the operational impact of its statutory responsibilities through the use of "Schedules" for types of cases in which either a definite approval or a very probable disapproval will result, without having to undertake the individual analysis required in the great majority of cases.
- b. **(U) Schedule A Certifications:**
 - (1) **(U)** The Department of Labor's Schedule A (see 20 CFR 656.5) sets forth occupational and professional groups in which there is a nation-wide shortage of workers willing, able, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts), and available and in which the employment of aliens will not, presumably, affect adversely the wages and working conditions of workers in the United States similarly employed.
 - (2) **(U)** An employer for an alien in an occupation which qualifies for Schedule A may file an application for certification with the appropriate Department of Homeland Security (DHS) office. Schedule A, as amended as a result of the Immigration Act of 1990, lists two such occupational groups as follows:
 - (a) **(U)** Group I - Physical Therapists and Nurses; and
 - (b) **(U)** Group II - Aliens of Exceptional Ability in Sciences or Arts.

- (c) **(U)** Because the Immigration Act of 1990 requires all applicants for employment-based classification to be the beneficiary of a petition filed with DHS, you no longer have responsibility for determining whether an alien is within one of these occupational groups. You must refer aliens who may qualify under Schedule A to the appropriate DHS office.
- c. **(U) Individual Job Offer Certifications:** An employer who wishes to file a labor certification for an alien who does not qualify for Schedule A certification must file, signed by hand and in duplicate, a Department of Labor Application for Alien Employment Certification form and any attachments required with the local Employment Service office (see 20 CFR 656.17 or 20 CFR 656.18) serving the area where the alien proposes to be employed.
- d. **(U) Schedule B:**
- (1) **(U) In General:** Certification under INA 212(a)(5)(A) will not ordinarily be granted for aliens coming to engage in occupations listed on Schedule B. Schedule B (see [9 FAM 302.1-5\(B\)\(3\)](#) paragraph d(5)) lists categories of employment in which the Department of Labor has found that generally there is no shortage of workers in the United States. If an employer wishes to employ an alien whose occupation is on Schedule B, the employer should petition the regional certifying officer for the geographic area in which the job opportunity is located for a Schedule B waiver.
 - (2) **(U) Assumptions:** If a labor certification is received at post for an alien who is seeking an occupation listed on Schedule B, you should assume that the certification by the Department of Labor is correct.
 - (3) **(U) Shepherd Certification:** Shepherders are not considered to be included in the category of "Laborers, Farm" under Schedule B for whom certification will not ordinarily be granted. An employer may apply for a labor certification to employ the alien (who has been employed legally as a nonimmigrant shepherd in the United States for at least 33 of the preceding 36 months) as a shepherd by filing a Form ETA-9089, Application for Permanent Employment Certification, directly with DHS, not with an office of the Department of Labor. (See 20 CFR 656.16.)
 - (4) **(U) Certifications for Household Domestic Workers:** Household domestic workers with less than one year of paid experience are listed under Schedule B as non-certifiable because there is generally no shortage of such workers in the United States. However, employers who believe that domestic employees are in short supply in a particular area may apply for a Schedule B waiver provided for by the Department of Labor regulations which would allow an application to be processed much like any other.
 - (5) **(U) Schedule B Occupational Titles and Definitions:** The Department of Labor identifies these occupations as Schedule B:
 - (a) **(U) Assemblers:** Perform one or more repetitive tasks to assemble components and subassemblies using hand or power tools to mass produce a variety of components, products, or equipment. They perform

such activities as riveting, drilling, filing, bolting, soldering, spot welding, cementing, gluing, cutting, and fitting. They may use clamps or other work aids to hold parts during assembly, inspect or test components, or tend previously set-up or automatic machines.

- (b) **(U) Attendants, parking lot:** Park automobiles for customers in parking lots or garages and may collect fees based on time span or parking.
- (c) **(U) Attendants, service workers (such as personal service attendants, amusement and recreation service attendants):** Perform a variety of routine tasks attending to the personal needs of customers at such places as amusement parks, bath houses, clothing checkrooms, and dressing rooms; including such tasks as taking and issuing tickets, checking and issuing clothing and supplies, cleaning premises and equipment, answering inquiries, checking lists, and maintaining simple records.
- (d) **(U) Automobile service station attendants:** Service automotive vehicles with fuel, lubricants, and automotive accessories at drive-in service facilities; may also compute charges and collect fees from customers.
- (e) **(U) Bartenders:** Prepare, mix and dispense alcoholic beverages for consumption by bar customers, and compute and collect charges for drinks.
- (f) **(U) Bookkeepers II:** Keep records of one facet of an establishment's financial transactions by maintaining one set of books; specialize in such areas as accounts-payable, accounts-receivable, or interest accrued rather than a complete set of records.
- (g) **(U) Caretakers:** Perform a combination of duties to keep a private home clean and in good condition such as cleaning and dusting furniture and furnishings, hallways, and lavatories; beating, vacuuming, and scrubbing rugs; washing windows, waxing and polishing floors; removing and hanging draperies; cleaning and oiling furnaces and other equipment; repairing mechanical and electrical appliances; and painting.
- (h) **(U) Cashiers:** Receive payments made by customers for goods or services, make change, give receipts, operate cash registers, balance cash accounts, prepare bank deposits and perform other related duties.
- (i) **(U) Charworkers and Cleaners:** Keep the premises of commercial establishments, office buildings, or apartment houses in clean and orderly condition by performing, according to a set routine, such tasks as mopping and sweeping floors, dusting and polishing furniture and fixtures, and vacuuming rugs.
- (j) **(U) Chauffeurs and Taxicab Drivers:** Drive automobiles to convey passengers according to the passengers' instructions.
- (k) **(U) Cleaners, hotel and motel:** Clean hotel rooms and halls, sweep and

mop floors, dust furniture, empty wastebaskets, and make beds.

- (l) **(U) Clerks, general:** Perform a variety of routine clerical tasks not requiring knowledge of systems or procedures such as copying and posting data, proofreading records or forms, counting, weighing, or measuring material, routing correspondence, answering telephones, conveying messages, and running errands.
- (m) **(U) Clerks, hotel:** Perform a variety of routine tasks to serve hotel guests such as registering guests, dispensing keys, distributing mail, collecting payments, and adjusting complaints.
- (n) **(U) Clerks and Checkers, grocery stores:** Itemize, total, and receive payments for purchases in grocery stores, usually using cash registers; often assist customers in locating items, stock shelves, and keep stock-control and sales transaction records.
- (o) **(U) Clerk Typists:** Perform general clerical work which, for the majority of duties, requires the use of typewriters; perform such activities as typing reports, bills, application forms, shipping tickets, and other matters from clerical records, filing records and reports, sorting and distributing mail, answering phones and similar duties.
- (p) **(U) Cooks, short order:** Prepare and cook to order all kinds of short-preparation time foods; may perform such activities as carving meats, filling orders from a steamtable, preparing sandwiches, salads and beverages, and serving meals over a counter.
- (q) **(U) Counter and Fountain Workers:** Serve food to patrons at lunchroom counters, cafeterias, soda fountains, or similar public eating places; take orders from customers and frequently prepare simple items, such as dessert dishes; itemize and total checks; receive payment and make change; clean work areas and equipment.
- (r) **(U) Dining Room Attendants:** Facilitate food service in eating places by performing such tasks as removing dirty dishes, replenishing linen and silver supplies, serving water and butter to patrons, and cleaning and polishing equipment.
- (s) **(U) Electric Truck Operators:** Drive gasoline or electric-powered industrial trucks or tractors equipped with forklift, elevating platform, or trailer hitch to move and stack equipment and materials in a warehouse, storage yard, or factory.
- (t) **(U) Elevator Operators:** Operate elevators to transport passengers and freight between building floors.
- (u) **(U) Floorworkers:** Perform a variety of routine tasks in support of other workers in and around such work sites as factory floors and service areas, frequently at the beck and call of others; perform such tasks as cleaning floors, materials and equipment, distributing materials and tools to workers, running errands, delivering messages, emptying containers, and

removing materials from work areas to storage or shipping areas.

- (v) **(U) Groundskeepers:** Maintain grounds of industrial, commercial, or public property in good condition by performing such tasks as cutting lawns, trimming hedges, pruning trees, repairing fences, planting flowers, and shoveling snow.
- (w) **(U) Guards:** Guard and patrol premises of industrial or business establishments or similar types of property to prevent theft and other crimes and prevent possible injury to others.
- (x) **(U) Helpers, any industry:** Perform a variety of duties to assist other workers who are usually of a higher level of competency or expertness by furnishing such workers with materials, tools, and supplies, cleaning work areas, machines and equipment, feeding or offbearing machines, and/or holding materials or tools.
- (y) **(U) Hotel Cleaners:** Perform routine tasks to keep hotel premises neat and clean such as cleaning rugs, washing walls, ceilings and windows, moving furniture, mopping and waxing floors, and polishing metalwork.
- (z) **(U) Household Domestic Service Workers:** Perform a variety of tasks in private households, such as cleaning, dusting, washing, ironing, making beds, maintaining clothes, marketing, cooking, serving food, and caring for children or disabled persons. This definition, however, applies only to workers who have had less than one year of documented full-time paid experience in the tasks to be performed, working on a live-in or live-out basis in private households or in public or private institutions or establishments where the worker has performed tasks equivalent to tasks normally associated with the maintenance of a private household. This definition does not include household workers who primarily provide health or instructional services.
- (aa) **(U) Housekeepers:** Supervise workers engaged in maintaining interiors of commercial residential buildings in a clean and orderly fashion, assign duties to cleaners (hotel and motel), charworkers, and hotel cleaners, inspect finished work, and maintain supplies of equipment and materials.
- (bb) **(U) Janitors:** Keep hotels, office buildings, apartment houses or similar buildings in clean and orderly condition and tend furnaces and boilers to provide heat and hot water; perform such tasks as sweeping and mopping floors, emptying trash containers, and doing minor painting and plumbing repairs; often maintain their residence at their places of work.
- (cc) **(U) Key Punch Operators:** Using machines similar in action to typewriters, punch holes in cards in such a position that each hole can be identified as representing a specific item of information. These punched cards may be used with electronic computers or tabulating machines.
- (dd) **(U) Kitchen Workers:** Perform routine tasks in the kitchens of restaurants. Their primary responsibility is to maintain work areas and

equipment in a clean and orderly fashion by performing such tasks as mopping floors, removing trash, washing pots and pans, transferring supplies and equipment, and washing and peeling vegetables.

- (ee) **(U) Laborers, common:** Perform routine tasks upon instructions and according to set routine, in an industrial, construction or manufacturing environment such as loading and moving equipment and supplies, cleaning work areas, and distributing tools.
- (ff) **(U) Laborers, farm:** Plant, cultivate, and harvest farm products, following the instructions of supervisors, often working as members of a team. Their typical tasks are watering and feeding livestock, picking fruit and vegetables, and cleaning storage areas and equipment.
- (gg) **(U) Laborers, mine:** Perform routine tasks in underground and surface mines, pits, or quarries, or at tipples, mills, or preparation plants such as cleaning work areas, shoveling coal onto conveyors, pushing mine cars from working places to haulage roads, and loading or sorting material onto wheelbarrows.
- (hh) **(U) Loopers and Toppers:**
 - (i) Tend machines that shear nap, loose threads, and knots from cloth surfaces to give uniform finish and texture.
 - (ii) Operate looping machines to close openings in the toes of seamless hose or join knitted garment parts.
 - (iii) Loop stitches or ribbed garment parts on the points of transfer bars to facilitate the transfer of garment parts to the needles of knitting machines.
- (ii) **(U) Material Handlers:** Load, unload, and convey materials within or near plants, yards, or worksites under specific instructions.
- (jj) **(U) Nurses' Aides and Orderlies:** Assist in the care of hospital patients by performing such activities as bathing, dressing and undressing patients and giving alcohol rubs, serving and collecting food trays, cleaning and shaving hair from skin areas of operative cases, lifting patients onto and from beds, transporting patients to treatment units, changing bed linens, running errands and directing visitors.
- (kk) **(U) Packers, Markers, Bottlers and Related:** Pack products into containers, such as cartons or crates, mark identifying information on articles, insure that filled bottles are properly sealed and marked, often working in teams on or at end of assembly lines.
- (ll) **(U) Porters:**
 - (i) **(U)** Carry baggage by hand or handtruck for airline, railroad or bus passengers, and perform related personal services in and around public transportation environments.
 - (ii) **(U)** Keep building premises, working areas in production

departments of industrial organizations, or similar sites in clean and orderly condition.

- (mm) **(U) Receptionists:** Receive clients or customers coming into establishments, ascertain their wants, and direct them accordingly; perform such activities as arranging appointments, directing callers to their destinations, recording names, times, nature of business and persons seen and answering phones.
- (nn) **(U) Sailors and Deck Hands:** Stand deck watches and perform a variety of tasks to preserve painted surfaces of ships and to maintain lines, running gear, and cargo handling gear in safe operating condition; perform such tasks as mopping decks, chipping rust, painting chipped areas and splicing rope.
- (oo) **(U) Sales Clerks, general:** Receive payment for merchandise in retail establishments, wrap or bag merchandise, and keep shelves stocked.
- (pp) **(U) Sewing Machine Operators and Handstitchers:**
- (i) **(U)** Operate single-or multiple-needle sewing machines to join parts in the manufacture of such products as awnings, carpets, and gloves; specialize in one type of sewing machine limited to joining operations;
 - (ii) **(U)** Join and reinforce parts of articles such as garments and curtains, sew button-holes and attach fasteners to such articles, or sew decorative trimmings on such articles, using needles and threads.
- (qq) **(U) Stock Room and Warehouse Workers:** Receive, store, ship, and distribute materials, tools, equipment, and products within establishments as directed by others.
- (rr) **(U) Streetcar and Bus Conductors:** Collect fares or tickets from passengers, issue transfers, open and close doors, announce stops, answer questions, and signal operators to start or stop.
- (ss) **(U) Telephone Operators:** Operate telephone switchboards to relay incoming and internal calls to phones in an establishment, and make connections with external lines for outgoing calls; often take messages, supply information and keep records of calls and charges; often are involved primarily in establishing, or aiding telephone users in establishing, local or long distance telephone connections.
- (tt) **(U) Truck Drivers and Tractor Drivers:**
- (i) **(U)** Drive trucks to transport materials, merchandise, equipment or people to and from specified destinations, such as plants, railroad stations, and offices.
 - (ii) **(U)** Drive tractors to move materials, draw implements, pull out objects imbedded in the ground, or pull cables of winches to raise,

lower, or load heavy materials or equipment.

- (uu) **(U) Typists (lesser skilled):** Type straight-copy material, such as letters, reports, stencils, and addresses, from drafts or corrected copies. They are not required to prepare materials involving the understanding of complicated technical terminology, the arrangement and setting of complex tabular detail or similar items. Their typing speed in English does not exceed 52 words per minute on a manual typewriter and/or 60 words per minute on an electric typewriter and their error rate is 12 or more errors per 5 minute typing period on representative business correspondence.
- (vv) **(U) Ushers, Recreation and Amusement:** Assist patrons at entertainment events to find seats, search for lost articles and locate facilities.
- (ww) **(U) Yard Workers:** Maintain the grounds of private residences in good order by performing such tasks as mowing and watering lawns, planting flowers and shrubs, and repairing and painting fences. They work on the instructions of private employers.

9 FAM 302.1-5(B)(4) (U) Approved Labor Certifications

(CT:VISA-160; 08-19-2016)

a. (U) Validity of Approved Labor Certifications:

- (1) **(U)** Department of Labor regulations (20 CFR 656.30(a)) provide that all labor certifications, unless invalidated by a DHS or consular officer upon a determination of fraud or willful misrepresentation, are valid for an indefinite period and do not require re-certification. (See [9 FAM 302.1-5\(B\)\(10\)](#) below for pertinent procedures.)
- (2) **(U)** If the employer has withdrawn the offer of employment or the alien has decided not to accept the employment offered (see [9 FAM 302.1-5\(B\)\(4\)](#) paragraph b below); or if the alien's registration was terminated because the alien failed to apply for a visa within one year of notification of the availability of a visa (see INA 203(g) you must return the petition to the approving office of DHS under cover of a memorandum explaining why the petition is being returned.

b. (U) Limitations on Labor Certifications:

- (1) **(U) Cases Involving Individual Job Offers:** In all cases involving individual job offer certification, the alien or the alien's employer may act at any time to terminate the validity of the certification. If the employer withdraws the offer of employment or if the alien decides not to accept the employment, the validity of the certification is terminated. Such action could occur at any time after the certification is issued. In all cases, a job offer certification is valid only for the particular job, and the geographic location set forth by the prospective employer in Form ETA-9089, Application for Permanent

Employment Certification, or Form ETA-750, Application for Alien Employment Certification.

- (2) **(U) Cases Involving Schedule A Certifications or Shepherders:** A labor certification for a Schedule A occupation or shepherders is valid only for the occupation set forth on the Form ETA-750, Application for Alien Employment Certification, or the Form ETA-9089, Application for Permanent Employment Certification, and only for the alien named on the original application unless a substitution was approved prior to July 16, 2007. The certification is valid throughout the United States unless the certification contains a geographic limitation.
- (3) **(U) Limitations on Pre-1977 Certifications:** Public Law 94-571 contains a savings clause for aliens who filed for third preference status prior to January 1, 1977, regardless of when their application was finally approved. Public Law 102-110 provided for the up-grading of former third preference applicants to employment-based second preference. Thus such aliens are exempt from the necessity of having a job offer in order to retain their eligibility for an immigrant visa under INA 203(b)(2).

c. **(U) Verifying Individual Job Offer Cases :**

- (1) **(U) Alien on Arrival Destined to Certified Employment:** In order to be admissible under INA 212(a)(5)(A):
- (a) **(U)** An alien for whom an individual offer of employment has been certified must still be destined to that specific employment when admission is sought at a port of entry (POE);
- (b) **(U)** In order to ensure that the alien is aware that admissibility is so conditioned, you must, when issuing immigrant visas to aliens with certified individual employment offers, require the alien to read and sign a statement and attach a copy of the following statement to the immigrant visa (IV).

STATEMENT TO BE SIGNED BEFORE CONSULAR OFFICER

Prior to Visa Issuance, by Immigrant Whose Application for Labor Certification Includes Job Offer on Form ETA 9089 or ETA-750, Part A "Offer of Employment"

I am aware that my eligibility for an immigrant visa and for admission to the United States is based upon the fact that I have been offered a job by the employer who executed the job offer and/or visa petition in my behalf, and also upon my intention to enter into his/her employ. To the best of my knowledge and belief the job described in the job offer and/or visa petition is still available to me. If I am informed of any change in this employment before I leave for the United States, I will immediately notify the nearest United States Consul of such change. I intend to proceed to that employer and commence the job described promptly after my arrival in the United States.

SIGNATURE

DATE

- (c) **(U)** The post must reproduce the statement locally and translate it as required. When a visa applicant informs the consular officer of a material change in plans (for example, a change of employer, type of work to be performed, or location of employment) the officer must require the alien to obtain certification for the new employment or otherwise satisfy certification requirements before a visa may be issued. If a material change of plans becomes known after a visa has been issued, you must withdraw the visa for possible revocation pursuant to [9 FAM 504.12](#), and so inform the alien.
- (2) **(U) Continuing Availability of Certified Employment:** In certain cases involving labor certification, it may be necessary to confirm that the original offer of employment remains open to the alien. In any case in which the instruction packet (formerly known as "Packet 3" (see [9 FAM 504.1-2](#))) is mailed to the alien more than nine months after the date of certification of the job offer, you must ensure that the alien receives a copy of the notice shown in [9 FAM 302.1-5\(B\)\(4\)](#) paragraph c(1)(b). This notice requires the alien to obtain from the employer in the United States a written statement that the employment offered to the alien is still available. Posts should reproduce the notice locally and translate it as required. When translated copies are reproduced, the English-language text should be reproduced as well, since aliens send the form to prospective employers.
- d. **(U) Commencement of Validity Period:** The Department of Labor's regulations (see 20 CFR 656.30(a)) provide that:
- (1) **(U)** Labor certification involving job offers must be deemed validated as of the date the local employment service office date-stamped the application;
 - (2) **(U)** The validity date of labor certifications for Schedule A occupations or shepherders is the date the application was dated by the Immigration Officer; and
 - (3) **(U)** The filing date, established under 20 CFR 656.17(c), of an approved labor certification may be used as priority date by the Department of Homeland Security (DHS) and the Department, as appropriate.
- e. **(U) Substitution of Beneficiary on Approval Labor Certification:** If the DHS service center determines that a substituted alien meets the requirements set forth in the original certification as of the date it was filed with the state employment office and the Form I-140, Immigrant Petition for Alien Worker, is otherwise approved, the petition should be approved and processed like any other Form I-140 petition. The priority date must be the date on which the labor certification was filed with any office within the employment service system of the Department of Labor.

f. (U) Change in Petitioner's Name, Ownership, or Location:

- (1) **(U) When a New Petition is Required:** A new Form I-140, Immigrant Petition for Alien Worker, must be filed if:
 - (a) **(U) The petitioning employer:**
 - (i) **(U)** Has been bought out by, or merged into, another corporation;
 - (ii) **(U)** Has experienced a major organizational change; or
 - (iii) **(U)** Has changed its name;
 - (b) **(U)** The assets of a corporate petitioner have been sold; or
 - (c) **(U)** There is a change in the location of the business entity where the applicant will be employed.
- (2) **(U) When There is No "Significant" Change in Ownership:** If, however, the petitioner is a sole proprietor or a partnership, and there is a change in the name of the business entity for which the applicant will work, without a significant change in the ownership of the business, no new petition is required provided the position described in the petition still exists.
- (3) **(U) New Petition When Location of Employment Changes:** A new petition is required in non-Schedule A cases where the petitioning employer has moved the location of the business to a different city or town. A non-Schedule A labor certification is valid only in the standard metropolitan statistical area which includes the place of employment shown on the Form ETA-750, Application for Alien Employment Certification, or Form ETA-9089, Application for Permanent Employment Certification. If the employer moves to a different location in the same standard metropolitan statistical area the certification remains valid. Nevertheless, DHS requires that a new Form I-140, Immigrant Petition for Alien Worker, be filed whenever there is a change of location in a non-Schedule A case.
- (4) **(U) Referring the Case for an Advisory Opinion:** If you have difficulty determining whether there has been a "significant" change in ownership, the case should be referred to CA/VO/L/A.

9 FAM 302.1-5(B)(5) (U) Employment Intent Upon Admission

(CT:VISA-160; 08-19-2016)

- a. **(U) Labor Certification Based on Job Offer:** Any alien whose certification was based on an offer of employment must proceed immediately to the employment specified in the visa petition and/or job offer. An alien who is unable or unwilling to proceed to the specified employment is inadmissible under INA 212(a)(5)(A). In order that an alien may be aware that admissibility is conditioned on an intent to proceed to the specified employment, you must require the alien to read and sign a statement affirming such intention and attach the signed statement to the alien's visa. Posts shall reproduce the statement (see [9 FAM 302.1-5\(B\)\(4\)](#) paragraph c(1)(b)) locally and translate it as required.

- b. **(U) Alien Not Destined to Specified Employment or Seeking Work Outside Stated Profession:** You should not issue a visa if there is reason to believe that the applicant is not destined to the employment specified in the job offer or does not intend to engage in work related to the profession concerned. You should tell the applicant what appropriate steps may be taken to show eligibility for the visa category on the basis of the actual intended employment, if it appears that the actual intended employment could qualify.
- c. **(U) Alien Appears Overqualified for Position:** The mere belief that an alien will not accept a menial job because of his or her socio-economic status is not sufficient to justify the cancellation of Part B of a labor certification or to justify a finding of inadmissibility under INA 212(a)(5)(A).

9 FAM 302.1-5(B)(6) (U) Consular Officer Responsibility Regarding Certification

(CT:VISA-160; 08-19-2016)

- a. **(U) In General:** Certifications are made by the Department of Labor or DHS on the basis of documents submitted by the alien. The certifying office has no means of verifying that the alien does, in fact, possess the skills, training, experience, or other qualifications claimed in the documents. Therefore, if you, based upon the interview or an investigation, have reason to doubt whether the alien possesses such skills, training, experience, or other qualifications, you have a responsibility to resolve such doubts. (See [9 FAM 302.1-5\(B\)\(10\)](#) below.) The Department of Labor has stressed that experience gained with the certified employer should be considered without prejudice in assessing the alien's qualifications for the certified job.
- b. **(U) Authority for Denial Under INA 212(a)(5)(A):**
- (1) **(U)** Drawing upon the Board of Immigration Appeals (BIA) and the Board of Alien Labor Certification Appeals (BALCA) precedents, we have concluded that a "Totality of the Circumstances Test," rather than a "per se rule" should be used to determine whether an alien intends to comply with the labor certification. Before a consular officer may deny an applicant for lack of intent to accept employment, you should have objective reasons to believe the alien does not intend to accept the employment. These objective reasons should be evaluated using the "totality of circumstances" standard.
 - (2) **(U)** The factors listed below, although not exclusive, tend to indicate that an applicant will not accept the prospective employment:
 - (a) **(U)** Admission or statements that indicate that the applicant will not undertake the employment or will do so for only a brief time;
 - (b) **(U)** Evidence that the applicant has bought or leased housing in a distant or different location in the United States from where the prospective employment will be located;
 - (c) **(U)** Evidence that the applicant has bought a business in the United States

or other evidence that the applicant intends to engage in some other full-time activity in the United States other than the prospective employment;
or

- (d) **(U)** Evidence that the applicant has never worked before, or has never worked in the same type of business as that of the prospective employment.
- (3) **(U)** You should note that in the case of professionals, an applicant may legitimately intend to accept the employment even though commencement may not be immediate. It may be necessary for the applicant to complete licensing procedures first. The applicant must intend to commence work in the foreseeable future.
- c. **(U) When to Cancel a Labor Certification:** You should only cancel a labor certification when the totality of circumstances shows evidence that the employer was involved in fraud or material misrepresentation in obtaining the labor certification. This may include cases in which it appears that no bona fide job offer opportunity for U.S. workers exists because the alien will be self-employed or self-petitioned. The Board of Alien Labor Certification Appeals has ruled the factors to consider in determining whether an alien has sought self-employment or self-certification is as follows:
- (1) **(U)** Whether the applicant is in a position to control or influence hiring decisions regarding the job for which labor certification is sought;
 - (2) **(U)** Whether the alien is related to corporate directors, officers or employees;
 - (3) **(U)** Whether the alien was an incorporator or founder of the company;
 - (4) **(U)** Whether the alien is involved in the management of the company;
 - (5) **(U)** Whether the alien is one of a small number of employees;
 - (6) **(U)** Whether the alien has qualifications for the job that are identical to specialized or unusual job duties and requirements stated in the application;
 - (7) **(U)** Whether the alien is so inseparable from the sponsoring employer because of his or her pervasive presence and personal attributes that the employer would be unlikely to continue operation without the alien; or
 - (8) **(U)** Whether the business was established for the sole purpose of obtaining certification for the alien.

9 FAM 302.1-5(B)(7) (U) Work Experience

(CT:VISA-160; 08-19-2016)

- a. **(U) Requirements for Labor Certification Approval:** In cases where work experience was required for the approval of the labor certification, the experience must have been gained prior to filing the labor certification. If you have reason to believe that an alien had the required experience at the time the labor certification was filed, even if that experience was not indicated at the time of the filing, you may consider the labor certification to have been properly approved.

- b. **(U) Experience Gained While in Unlawful Status:** There is no law or regulation which precludes experience gained by an alien while in unlawful status from being applied to fulfill job requirements for certification provided the experience was gained prior to filing the labor certification.

9 FAM 302.1-5(B)(8) (U) Labor Certification Indicates Higher Wage than Alien Currently Earning

(CT:VISA-160; 08-19-2016)

(U) In a situation where an alien is already working for the employer who filed the labor certification, and the alien is currently earning a salary lower than the labor certification indicates the alien will be paid, the Department of Labor has determined that the higher wage need not be paid until the alien immigrates to the United States.

9 FAM 302.1-5(B)(9) (U) English Proficiency

(CT:VISA-160; 08-19-2016)

(U) Proficiency in English is not essential to certification under Schedule A or in job offer cases, except for graduates of medical schools. You must evaluate the importance of English proficiency, particularly for secretaries, stenographers, and teachers, in relation to the public charge provisions in INA 212(a)(4). Proficiency in English is essential if an employer specifies on Part A of Form ETA-750, Application for Alien Employment Certification, that knowledge of English is required for satisfactory job performance, or in the case of a graduate of a medical school.

9 FAM 302.1-5(B)(10) (U) Misrepresentations in Labor Certification Cases

(CT:VISA-160; 08-19-2016)

a. (U) In General:

- (1) **(U)** Certification and employer's statements are assumed to be valid in the absence of any evidence to the contrary, and you should not interpret their role as a requirement to readjudicate each and every petition. Examples of indicators which could justify further scrutiny, however, would include:
 - (a) **(U)** A known high frequency of fraud in cases of a particular profession within the consular district;
 - (b) **(U)** Inconsistencies between the applicant's general demeanor and the claimed profession; or
 - (c) **(U)** Obvious discrepancies among the petition's supporting documentation which warrant investigation by the anti-fraud unit.
- (2) **(U)** If you determine that the certification was obtained by fraud or misrepresentation of a material fact on the part of the employer, you would have to document your findings in a memorandum and return the petition to U.S. Citizenship and Immigration Services (USCIS) with a recommendation for

reconsideration and revocation. If you determine that the certification was obtained by fraud or misrepresentation of a material fact on the part of the alien, you must submit an advisory opinion request to the Department. If the Department concurs, then you may :

- (a) **(U)** Invalidate the labor certification;
 - (b) **(U)** Cancel any priority date obtained therefrom; and
 - (c) **(U)** Refuse the visa application under INA 212(a)(5)(A).
- (3) **(U)** Invalidation of the labor certification automatically revokes the petition in accordance with the DHS regulations at 8 CFR 205.2(c), and the Department of Labor, 20 CFR Part 656.30 or Part 656.31.
- b. **(U) Misrepresentation by the Employee:** Since misrepresentation by the employee would constitute concealment of an independent ground of inadmissibility (i.e., INA 212(a)(5)(A)), a material misrepresentation of the employee's qualifications for the position that result in an AO concurring in cancellation of the labor certification would also result in the visa applicant being found ineligible under INA 212(a)(6)(C)(i).
- c. **(U) Misrepresentation by the Employer:** A misrepresentation by the employer alone would not make the applicant inadmissible under INA 212(a)(6)(C). However, if the employer is not a U.S. citizen, it might bring the employer within the purview of INA 212(a)(6)(E).
- d. **(U) Cases in Which the Employee Will Be Self-Employed :** If it appears that the applicant will be self-employed or self-petitioned, that would provide a basis for returning the petition to USCIS with a recommendation for petition recommendation and invalidation of the labor certification. The Board of Alien Labor Certification Appeals has ruled that the following factors should be considered in determining whether an alien has sought self-employment certification:
- (1) **(U)** Whether the applicant is in a position to control or influence hiring decisions regarding the job for which the labor certification is sought;
 - (2) **(U)** Whether the alien is related to corporate directors, officers, or employees;
 - (3) **(U)** Whether the alien was an incorporator or founder of the company;
 - (4) **(U)** Whether the alien is involved in the management of the company;
 - (5) **(U)** Whether the alien is one of a small number of employees;
 - (6) **(U)** Whether the alien has qualifications for the job that are identical to specialized or unusual job duties and requirements stated on the application;
 - (7) **(U)** Whether the alien is so inseparable from the sponsoring employer because of his or her pervasive presence and personal attributes that the employer would be unlikely to continue operation without the alien; or
 - (8) **(U)** Whether the business was established for the sole purpose of obtaining labor certification for the alien.

9 FAM 302.1-5(B)(11) (U) Defining Full-time Employment

(CT:VISA-160; 08-19-2016)

(U) Generally, full-time employment consists of 35 to 40 hours of work a week. The controlling principle, however, is what is prevailing for the occupation. Airline pilots, for example, may work considerably less than 40 hours a week, but this would probably be considered full-time employment.

9 FAM 302.1-5(B)(12) (U) Requests for Employment Information

(CT:VISA-160; 08-19-2016)

- a. **(U)** The Department of Labor and its regional and State offices are not equipped to provide information on job openings for prospective immigrants.
- b. **(U)** The U.S. Employment Service is a domestic service only and cannot assist people abroad in locating employment in this country. Therefore, you and other employees engaged in visa work must not suggest to visa applicants that they write to such agencies requesting advice and assistance in finding prospective employment and must, as necessary, advise them against such action.

9 FAM 302.1-5(B)(13) (U) Procedures for Obtaining Labor Certification

(CT:VISA-160; 08-19-2016)

(U) For detailed Department of Labor information about Schedule A labor certifications please see 20 CFR 656.5.

9 FAM 302.1-5(B)(14) (U) Disposition of Unused Labor Certifications

(CT:VISA-160; 08-19-2016)

- a. **(U) Alien Ineligible:** When there is a refusal or a quasi-refusal and Form ETA-750, Application for Alien Employment Certification, or Form ETA-9089, Application for Permanent Employment Certification, and supporting documents are pertinent to the alien's ineligibility, the consular officer shall retain them in the post's refusal file. However, posts shall retain the original of Form ETA-750-A "Offer of Employment", or Form ETA-9089 only if it appears that the employer made incorrect statements therein or that the offer of employment was not made in good faith. You must inform the employer that the alien is ineligible and that the pertinent form and documents have been retained as part of the post's file.
- b. **(U) Certification Unused for Other Reasons:** If the certification will not be used because the job offer has been withdrawn or because the alien decides not to accept the employment offered, you must return the petition and the supporting documents to the approving office of USCIS under cover of a memorandum.

9 FAM 302.1-5(B)(15) (U) Spouse or Child of Principal Alien

Exempt from Labor Certification

(CT:VISA-160; 08-19-2016)

(U) The spouse or child of an alien who is not inadmissible under INA 212(a)(5)(A) does not need a certification regardless of sex, dependency, or future employment plans. Although only one spouse needs a certification or must be in a status which renders INA 212(a)(5)(A) inapplicable, the other spouse and the children would be exempt from the certification requirement only if accompanying or following to join the principal alien. They could not be exempt for the purpose of preceding the principal alien.

9 FAM 302.1-5(B)(16) (U) Address of U.S. Department of Labor Regional Officers

- a. **(U) Region I–Boston serves:** (Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, Puerto Rico and Virgin Islands): U.S. Department of Labor, Employment and Training Administrator John F. Kennedy Federal Building Room E 350 Boston, MA 02203 Phone: (617) 788-0170 Fax: (617) 788-0101
- b. **(U) Region II- Philadelphia serves:** (Delaware, Washington D.C., Maryland, Pennsylvania, Virginia and West Virginia): U.S. Department of State, Employment and Training Administration Suite 825 East The Curtis Center 170 South Independence Mall West Philadelphia, PA 19106 Phone: (215) 861-5205
- c. **(U) Region III- Atlanta serves:** (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee): Regional Administrator U.S. Department of Labor/ETA, Atlanta Federal Center 61 Forsyth St. Rm. 6M12 Atlanta, Georgia Phone: (404) 302-5300 Fax: (404) 302-5382
- d. **(U) Region IV – Dallas serves:** (Arkansas, Louisiana, New Mexico, Oklahoma, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming and Texas): Regional Administrator U.S. Department of Labor/ETA, 525 Griffin Street Room 317 Dallas, TX 75202
Phone: (972) 850-4600 Fax: (972) 850-4605
- e. **(U) Region V – Chicago serves:** (Illinois, Indiana, Michigan, Minnesota, Ohio, Iowa, Kansas, Missouri, Nebraska and Wisconsin):
Acting Regional Administrator U.S. Department of Labor/ETA, 230 South Dearborn Street, 6th floor Chicago, IL 60604
Phone: (312) 596-5403 Fax: (312) 569-5401
- f. **(U) Region VI – San Francisco serves:** (Arizona, California, Hawaii, Nevada, Alaska, Idaho, Oregon, Washington and Guam):
Regional Administration U.S. Department of Labor/ETA, 90 7th Street, Suite 17-300 San Francisco, CA 94103 Phone: (415) 625-7900 Fax: (415) 625-7903 (West)
(415) 625-7923 (East)

The telephone numbers set forth in this section are not toll-free.

9 FAM 302.1-5(C) (U) Advisory Opinions

(CT:VISA-160; 08-19-2016)

- a. **(U) Significant Changes in Ownership:** If you have difficulty determining whether there has been a "significant" change in ownership, refer the case to CA/VO/L/A for an AO.
- b. **(U) Invalidating Labor Certifications:** In all cases where you believe the certification should be invalidated, request an AO from CA/VO/L/A. The request must detail the basis for the doubts.

9 FAM 302.1-5(D) (U) Waiver

9 FAM 302.1-5(D)(1) (U) Waivers for Immigrants

(CT:VISA-160; 08-19-2016)

(U) No waiver is available at the time of visa application. However, under INA 212(k), DHS may waive this inadmissibility for an IV holder at the port of entry.

9 FAM 302.1-5(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-160; 08-19-2016)

(U) INA 212(a)(5) does not apply to nonimmigrants.

9 FAM 302.1-5(E) Unavailable

9 FAM 302.1-5(E)(1) Unavailable

(CT:VISA-160; 08-19-2016)

Unavailable

9 FAM 302.1-5(E)(2) Unavailable

(CT:VISA-160; 08-19-2016)

Unavailable

9 FAM 302.1-6 (U) UNQUALIFIED PHYSICIANS - INA 212(A)(5)(B)

9 FAM 302.1-6(A) (U) Grounds

(CT:VISA-160; 08-19-2016)

(U) INA 212(a)(5)(B) renders inadmissible an alien who is coming to the United States for the principal purpose of performing services as a member of the medical

profession if the alien is a graduate of a medical school not accredited, unless, the alien:

- (1) **(U)** Passed parts I and II of the National Board of Medical Examiners Examination (NBME) or an equivalent as determined by the Secretary of Health and Human Services; and
- (2) **(U)** Is competent in oral and written English. INA 212(a)(5)(B) is applicable only to "graduates of a medical school" as defined in INA 101(a)(41) and only to such graduates who are beneficiaries of employment-based second or third preference petitions. This section is not applicable to an alien who is an immediate relative, a family-sponsored preference immigrant, or a refugee. Moreover, it is not applicable to an alien entitled to derivative preference status as the spouse of an employment-based preference petition beneficiary.

9 FAM 302.1-6(B) (U) Application

9 FAM 302.1-6(B)(1) (U) Defining "Graduates of a Medical School"

(CT:VISA-160; 08-19-2016)

- a. **(U) Graduates of a Medical School:** The term "graduates of a medical school" is defined in INA 101(a)(41). An alien who has graduated from a foreign medical school is commonly referred to as a "foreign medical graduate" or, usually, "FMG".
- b. **(U) National or International Renown:** The phrase "national or international renown" has not been defined. Determinations as to whether an alien is of national or international renown are made on a case-by-case basis. In general, evidence required to support a claim to international renown would be similar to that required to support a claim to qualification for labor certification under Schedule A, Group II Aliens of Exceptional Ability in Sciences or Arts. Evidence required to support a claim to national renown, while not required to be of the same high standard, would nonetheless have to show a degree of excellence comparable to that which would result in national renown in the United States.

9 FAM 302.1-6(B)(2) (U) Meeting Requirements

(CT:VISA-160; 08-19-2016)

- a. **(U) In General:** An alien subject to the provisions of INA 212(a)(5)(B) may meet the requirements of that section in one of several ways, as described in below.
- b. **(U) Graduating from Accredited Medical School:** An alien may meet the requirements of INA 212(a)(5)(B) by establishing that the medical school from which he or she graduated has been accredited by a body or bodies approved for the purpose by the Secretary of Education. The only body so approved is the Liaison Committee for Medical Education (LCME). The LCME was founded in 1942 and has confined itself to evaluating and accrediting medical schools in the United States and Canada. In this connection, any case involving an alien who graduated

from a medical school in Canada or the United States before the accreditation system began in 1942 will require individual verification of the status of the medical school as of the time the alien graduated.

- c. **(U) National Board of Medical Examiners (NBME) Examination:**
- (1) **(U) NBME Examination Applicable to U.S. and Canadian Medical Schools:** The policy of the NBME is that only students at, or graduates of, U.S. or Canadian medical schools are eligible to take the NBME Part I and Part II Examination. (See [9 FAM 302.1-6\(B\)\(2\)](#) paragraph c(2) below concerning the American University Medical School at Beirut.) The NBME exam (and the FMGES) have been replaced by the United States Medical Licensing Examination (USMLE).
 - (2) **(U) NBME Examination at American University in Beirut Prior to 1982:** Although the American University Medical School in Beirut, Lebanon is not a U.S. or Canadian medical school, through 1982 it had a special relationship with American education authorities under which its graduates were permitted to take the NBME Examination. Medical students took Part I of the Examination in the next-to-last year of study and Part II shortly after graduation. This arrangement was terminated in 1982 and graduates thereafter will not have taken the examination.
- d. **(U) Examinations Equivalent to NBME Examination:** In 1992, the Federation of State Medical Boards and the National Board of Medical Examiners announced that all licensure programs would be replaced by the United States Medical Licensing Examination (USMLE). This examination has been determined by the Secretary of Health and Human Services to be the equivalent of Parts I and II of the NBME for the purposes of INA 212(a)(5)(B).
- e. **(U) Special Provisions for Certain Foreign Medical Graduates:** Special provisions have been enacted by the Congress relating to foreign medical graduates (FMG's) in the United States as of January 9, 1978. An FMG who, as of that date, was both fully and permanently licensed to practice medicine in a State of the United States (as defined in INA 101(a)(36)) and actually practicing medicine in a State is considered to have passed Parts I and II of the NBME Examination.

9 FAM 302.1-6(B)(3) (U) Competence in Written and Oral English

(CT:VISA-160; 08-19-2016)

- a. **(U) English not Required for Alien of National or International Renown:** An alien of national or international renown in the field of medicine (see [9 FAM 302.1-6\(B\)\(1\)](#) above) is not required to demonstrate competence in written or oral English.
- b. **(U) English Proficiency Examination:** An alien required to demonstrate competence in oral and written English must do so by passing the USMLE English proficiency examination.
- c. **(U) Evidence of English Language Competence in Some Cases:** Aliens were

allowed to take the 1977 VQE (the first time it was given) without first demonstrating competence in oral and written English. This is also true of the 1982 and 1983 VQE. In 1978, 1979, 1980, and 1981, however, an alien had to demonstrate the requisite competence in order to be allowed to take the VQE. Thus, an alien who took the 1978, 1979, 1980, or 1981 VQE is presumed to have met the requirement for competence in oral and written English, while an alien who took the 1977, 1982, or 1983 VQE will have to present separate evidence that the alien meets the oral and written English competence requirement.

- d. **(U) English Language Competence for Foreign Medical Graduates Licensed in United States as of January 9, 1978:** An alien who benefits from the special provision described in [9 FAM 302.1-6\(B\)\(2\)](#) paragraph e above (relating to FMG's fully licensed and practicing in the United States as of January 9, 1978) will have to establish by separate evidence the requisite competence in oral and written English.

9 FAM 302.1-6(B)(4) (U) Adjudicating

(CT:VISA-160; 08-19-2016)

- a. **(U) Determining Applicability at Time of Adjudication of Applications for Labor Certification and/or Second or Third Employment-Based Preference Petitions:** Since all aliens to whom INA 212(a)(5)(B) applies are also aliens to whom INA 212(a)(5)(A) applies as well, determinations under INA 212(a)(5)(B) are made in connection with the adjudication of the application for labor certification and/or, if applicable, the adjudication of the second or third preference petition. For this reason, you will not normally have occasion to make such determinations.
- b. **(U) Employment-Based Preference Petitions for Eligibility:** Department of Homeland Security/U.S. Citizenship and Immigration Services(DHS/USCIS) will not approve an employment-based preference petition in behalf of an FMG unless it has established that the beneficiary is not inadmissible under INA 212(a)(5)(B). All such petitions are supposed to bear a notation signifying that this determination has been made. Approved employment-based preference petitions in behalf of FMG's which bear the appropriate notation should be given the same credence as any other approved petition and should be questioned only as provided for in section [9 FAM 504.2](#). An employment-based preference petition approved in behalf of an FMG that does not bear the appropriate notation should be returned to the approving office of USCIS with a request that the question be addressed and that the petition be appropriately annotated.

9 FAM 302.1-6(C) (U) Advisory Opinions

(CT:VISA-160; 08-19-2016)

(U) An AO is not required for a potential INA 212(a)(5)(B) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.1-6(D) (U) Waiver

9 FAM 302.1-6(D)(1) (U) Waivers for Immigrants

(CT:VISA-160; 08-19-2016)

(U) There is no waiver available for immigrant visa applicants.

9 FAM 302.1-6(D)(2) (U) Waivers for Immigrants

(CT:VISA-160; 08-19-2016)

(U) This is not applicable to nonimmigrant visa applicants.

9 FAM 302.1-6(E) Unavailable

9 FAM 302.1-6(E)(1) Unavailable

(CT:VISA-160; 08-19-2016)

Unavailable

9 FAM 302.1-6(E)(2) Unavailable

(CT:VISA-160; 08-19-2016)

Unavailable

9 FAM 302.1-7 (U) UNCERTIFIED FOREIGN HEALTH-CARE WORKERS - INA 212(A)(5)(C)

9 FAM 302.1-7(A) (U) Grounds

(CT:VISA-160; 08-19-2016)

(U) INA 212(a)(5)(C) of the Immigration and Nationality Act (INA) provides that, subject to INA 212(r), any alien seeking to enter the United States, as an immigrant or a nonimmigrant, for the purpose of performing health-care occupations (other than physicians), is inadmissible unless he or she presents a certificate from the Commission on Graduates of Foreign Nursing Schools (CFNS) or an equivalent independent credentialing organization approved by the Attorney General, who transferred exercise of this authority from the Department of Justice to the Department of Homeland Security (DHS) in consultation with the Secretary of the Department of Health and Human Services (HHS), verifying that:

- (1) **(U)** The alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States specified in the application; are comparable with that of an American healthcare worker;

- (2) **(U)** The alien has the level of competence in oral and written English language proficiency considered by the Secretary of HHS, in consultation with the Secretary of Education, to be appropriate for the healthcare worker of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write English; and
- (3) **(U)** The majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, that the alien has passed such examination.

9 FAM 302.1-7(B) (U) Application

9 FAM 302.1-7(B)(1) (U) Definitions - Healthcare Occupations

(CT:VISA-160; 08-19-2016)

- a. **(U) Nurse, Professional (Medical Service) [Alternate Titles: Nurse, Certified Nurse, Licensed, Registered]:** applies to persons meeting the educational, legal, and training requirements to practice as professional nurses, as required by a State Board of Nursing. This individual performs acts requiring substantial specialized judgment and skill, care and counsel of ill, injured, or infirm persons and in promotion of health and prevention of illness. Classifications are made according to types of nursing activity such as:
 - (1) **(U)** Director;
 - (2) **(U)** Nursing Service (Medical Service); or
 - (3) **(U)** Nurse, General Duty (Medical Service).
- b. **(U) Physical Therapist (Medical Service) [Alternate Titles Physiotherapist]:**
 - (1) **(U)** Plans and administers medically prescribed physical therapy treatment for patients suffering from injuries, or muscle, nerve, joint, and bone disease, in order to restore function, relieve pain, and prevent disability; reviews physicians' referrals (prescription) and patients' conditions and medical records to determine physical therapy treatment required;
 - (2) **(U)** Tests and measures patients' strength, motor development, sensory perception, respiratory and circulatory efficiency and records, and develops treatment programs;
 - (3) **(U)** Plans and prepares written treatment program;
 - (4) **(U)** Administers manual exercises; instructs, motivates, and assists patient to perform various physical activities, including use of crutches, canes, and prosthesis;
 - (5) **(U)** Administers treatments involving application of physical agents, using equipment such as hydrotherapy tanks and whirlpool baths, moist packs, ultraviolet and infrared lamps, ultrasound machines, massage techniques, and body physiology;

- (6) **(U)** Records and evaluates the effects of treatment at various stages and adjusts treatments to achieve maximum benefit, and may instruct patient and family in treatment procedures to be continued at home;
 - (7) **(U)** Confers with physician and other practitioners to obtain additional patient information, suggests revisions in treatment program, and integrates physical treatment with other aspects of patient's healthcare;
 - (8) **(U)** Instructs and directs work activities of assistants, aides, and students;
 - (9) **(U)** Plans and conducts lectures and training programs on physical therapy and related topics for medical staff, students, and community groups;
 - (10) **(U)** May teach physical therapy techniques and procedures in educational institutions; and
 - (11) **(U)** May write technical articles and reports for publications; may plan, direct, and coordinate physical therapy program and be the designated director.
 - (12) **(U)** Physical therapist must comply with State requirement for licensure.
- c. **(U) Occupational Therapist (Medical Service):**
- (1) **(U)** Plans, organizes, and conducts occupational therapy programs in hospital, institution, or community settings to facilitate development and rehabilitation of mentally, physically, or emotionally handicapped individuals;
 - (2) **(U)** Plans activities such as manual arts and crafts, practice in functional, prevocational, vocational and homemaking skills, and activities of daily living, and participation in sensorimotor, educational, recreational, and social activities to help patient or handicapped persons develop or regain physical and mental functioning;
 - (3) **(U)** Consults and coordinates with other members of the rehabilitation team to select activity program consistent with needs and capabilities of the individual;
 - (4) **(U)** Selects constructive activities suited to the individual's physical capacity, intelligence level, and interest;
 - (5) **(U)** Prepares the individual for return to employment, assists in restoration of functions, and aids in adjustment to disability;
 - (6) **(U)** Teaches individual skills and techniques required for participation in activities and evaluates individual progress; and
 - (7) **(U)** May conduct, plan, direct, and coordinate training program and occupational therapy programs and be designated director, occupational therapy (Medical Service).
- d. **(U) Speech-Language Pathologists and Audiologists (Profess. & Kin)
[Alternate Titles: Speech Clinician; Speech Therapist]:**
- (1) **(U)** Specialize in diagnosis and treatment of speech and language problems, and engage in scientific study of human communication: diagnose and evaluate speech and language skills as related to educational, medical, social, and psychological factors;

- (2) **(U)** Plan, direct, or conduct habilitative and rehabilitative treatment programs to restore communicative efficiency of individuals with communication problems of organic and nonorganic etiology;
 - (3) **(U)** Provide counseling and guidance and language development therapy to handicapped individuals;
 - (4) **(U)** Administer, score, and interpret specialized hearing and speech tests;
 - (5) **(U)** Develop, implement, and monitor individualized plans for assigned clients to meet individual needs, interests, and abilities, using audio-visual equipment, such as tape recorders, overhead projectors, filmstrips, and other demonstrative materials;
 - (6) **(U)** Review treatment plans and assess individual performance to modify and change, or write new programs;
 - (7) **(U)** Maintain records, establishment's policy, and administrative regulations as required by law;
 - (8) **(U)** May act as consultant to educational, medical, and other professional groups, and serve as consultant to classroom teachers to incorporate speech and language activities into daily schedule;
 - (9) **(U)** May teach manual sign language to students incapable of speaking, and instruct staff in use of special equipment designed to serve handicapped. See audiologist (Medical Service) 076.101-010 for one who specializes in diagnosis of rehabilitative services for auditory problems; and
 - (10) **(U)** Attend meetings and conferences and participate in other activities to promote professional growth.
- e. **(U) Medical Technologist (also known as Clinical Laboratory Scientists Service):**
- (1) **(U)** Performs medical laboratory tests, procedures, experiments, and analyses to provide data for diagnosis, treatment, and prevention of disease and conduct chemical analyses of body fluids, such as blood, urine, and spinal fluid to determine presence of normal and abnormal components;
 - (2) **(U)** Studies blood cells, their numbers, and morphology, using microscopic techniques;
 - (3) **(U)** Performs blood group, type, and compatibility test for transfusion purposes;
 - (4) **(U)** Analyzes test results and enters findings in computer;
 - (5) **(U)** Engages in medical research under direction of the Medical Technologist, Chief (medical service) 078.161-010;
 - (6) **(U)** May train and supervise students; and
 - (7) **(U)** May specialize in areas such as hematology, blood-bank, serology, immunohematology, bacteriology, histology, or chemistry.

f. **(U) Medical-Laboratory Technician (Medical Service) [Alternate Titles: Clinical Laboratory Technicians]:**

- (1) **(U)** Performs routine tests in medical laboratory to provide data for use in diagnosis and treatment of disease;
- (2) **(U)** Conducts quantitative and qualitative chemical analyses of body fluid, such as blood, urine, and spinal fluid, under the supervision of medical technologist (Medical Service) 078.261-038;
- (3) **(U)** Incubates bacteria for specified period and prepares vaccines and serums by standard laboratory methods;
- (4) **(U)** Inoculates fertilized eggs, broths, or other bacteriological media with organism;
- (5) Performs blood counts, using microscope; conducts blood tests for transfusion purposes;
- (6) Prepares standard volumetric solutions and reagents used in testing;
- (7) Tests vaccines for sterility and virus inactivity;
- (8) May draw blood from patient's finger, ear lobe, or vein, observing principles of asepsis to obtain blood samples; and
- (9) May specialize in hematology, blood bank, cytology, histology, or chemistry.

g. **Physician Assistant (Medical Service):**

- (1) Provides healthcare services to patients under the direction and responsibility of physician: examines patient, performs comprehensive physical examination, and compiles patient medical data, including health history and results of physical examination;
- (2) Administers or orders diagnostic tests, such as x-ray, electrocardiogram, and laboratory tests, and interprets test results for deviation from normal;
- (3) Performs therapeutic procedures, such as injections, immunizations, suturing, wound care, and managing infections;
- (4) Develops, implements, records patient management plans, and assists provision of continuity of care; and
- (5) Instructs and counsels patients regarding compliance with prescribed therapeutic regimens, normal growth and development, family planning, emotional problems of daily living, and health maintenance.

9 FAM 302.1-7(B)(2) (U) Occupations to Which INA 212(a)(5)(C) Applies

(CT:VISA-160; 08-19-2016)

(U) The requirement of INA 212(a)(5)(C) has been interpreted to apply only to the following seven healthcare occupations:

- (1) **(U)** Licensed Practical Nurses, Licensed Vocational Nurses, and Registered

Nurses;

- (2) **(U)** Physical Therapists;
- (3) **(U)** Occupational Therapists;
- (4) **(U)** Speech-language Pathologists and Audiologists;
- (5) **(U)** Medical Technologists (also known as clinical laboratory scientists);
- (6) **(U)** Medical Technicians (also known as clinical laboratory technicians; and
- (7) **(U)** Physician Assistants.

9 FAM 302.1-7(B)(3) (U) Alternative Qualifications Under INA 212(r)

(CT:VISA-160; 08-19-2016)

(U) In lieu of a certification under the standards of INA 212(a)(5)(C), an alien nurse can present to you a certified statement from the CGFNS (or equivalent, independent credentialing organization approved for the certification of nurses) that:

- (1) **(U)** The alien has a valid and unrestricted license as a nurse in a State where the alien intends to be employed and that such State verifies that the foreign licenses of the alien nurses are authentic and unencumbered;
- (2) **(U)** The alien has passed the National Council Licensure Examination (NCLEX); and
- (3) **(U)** The alien is a graduate of a nursing program that meets the following requirements:
 - (a) **(U)** The language of instruction was English;
 - (b) **(U)** The nursing program was located in a country which:
 - (i) **(U)** Was designated by CGFNS no later than 30 days after the enactment of the NRDA, based on CGFNS' assessment that designation of such country is justified by the quality of nursing education and English language proficiency;
 - (ii) **(U)** Was designated on the basis of such assessment by unanimous agreement of CGFNS and any equivalent credentialing organizations which the DHS has approved for the certification of nurses; and
 - (iii) **(U)** The nursing program was in operation on or before November 12, 1999; or has been approved by unanimous agreement of CGFNS or any equivalent credentialing organizations, which the DHS has approved for certification of nurses.

9 FAM 302.1-7(B)(4) (U) Health-care Workers Not Subject to INA 212(a)(5)(C)

(CT:VISA-160; 08-19-2016)

- a. **(U) Other Healthcare Workers:** Any other health-care occupations that are not mentioned in [9 FAM 302.1-7\(B\)\(2\)](#), above, such as chiropractors, dentists, dental technicians, dental assistants, acupuncturists, psychologists, nutritionists, medical teachers, medical researchers, managers of health-care facilities, medical consultants to the insurance industry, etc., will not be required to obtain certification requirements under INA 212(a)(5)(C) and their visa cases should, therefore, be processed to conclusion.
- b. **(U) Spouse or Dependent of Immigrant Alien:** INA 212(a)(5)(C) specifically refers to aliens who are seeking to enter the United States under INA 203(b). A dependent alien admitted for the primary purpose of family unity whose occupation may be that of health-care worker is not subject to the provisions of INA 212(a)(5)(C).
- c. **(U) Family-Sponsored Immigrant or Employment-Based Immigrant in a Non-Healthcare Occupation:** An alien whose usual occupation is that of health care worker who is seeking permanent status as a family-sponsored immigrant or as an employment-based immigrant who will not be providing health-care services is not subject to INA 212(a)(5)(C).

9 FAM 302.1-7(B)(5) (U) Certification Authority Granted to Certain Organizations

(CT:VISA-160; 08-19-2016)

(U) DHS has published the final regulations relating to the credentialing of immigrants coming to the United States in all health-care occupations. Nurses, occupational therapists, physical therapists, speech language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants, who have been certified by the Commission on Graduates of Foreign Nursing Schools (CGFNS), as well as occupational therapists certified by the National Board for Certification in Occupational Therapy (NBCOT), and physical therapists certified by the Foreign Credentialing Commission on Physical Therapy (FCCPT), may obtain immigrant visas, if otherwise qualified.

9 FAM 302.1-7(B)(6) (U) Qualifying as an Immigrant Health-care Worker

(CT:VISA-160; 08-19-2016)

- a. **(U)** An alien who wishes to immigrate to the United States to perform in a health-care occupation must be the beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker, and must be certified by the CGFNS, the NBCOT, or the FCCPT.
- b. **(U)** Certification by these organizations is evidence that the applicants have satisfied the requirements of section 343 of Public Law 104-208, including a passing score on the appropriate English language examination.

- c. **(U)** If, however, the personal interview reveals an obvious lack of appropriate English language proficiency or appropriate knowledge of the certified healthcare field, you should submit the case to the Department (CA/VO/L/A) for an advisory opinion. An approved certificate does not excuse the applicant from all the other relevant statutory and regulatory requirements for visa issuance.

9 FAM 302.1-7(B)(7) (U) Validity of Certificates Issued by Commission on Graduates of Foreign Nursing Schools (CGFNS), National Board for Certification in Occupational Therapy (NBCOT), and Foreign Credentialing Commission on Physical Therapy (FCCPT)

(CT:VISA-160; 08-19-2016)

(U) Certificates issued by CGFNS, NBCOT, and FCCPT must be valid at the time of visa issuance and at the time for any admission into the United States, or change of status within the United States. Individual's certification or certified statement must be used within five years of the date that it was issued.

9 FAM 302.1-7(B)(8) (U) Aliens Exempt from English Tests

(CT:VISA-160; 08-19-2016)

- a. **(U) In General:** INA 212(a)(5)(C)(ii) gives the Secretary of Health and Human Services, in consultation with the Secretary of Education, the sole authority to set the level of competence in oral and written English appropriate for all health care fields in which the alien will be engaged. Individuals who seek to meet the English language requirements will be required to do one of the English language tests mentioned in [9 FAM 302.1-7\(B\)\(8\)](#) paragraph c.
- b. **(U) General Exemption for Certain Individuals:** According to 8 CFR 212.15(g)(2), aliens who have graduated from a college or university of professional training school located in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States, are exempt from the English language requirement.
- c. **(U) Approved English Language Tests for Certain Healthcare Workers:** The HHS has approved the following tests as acceptable English language testing systems for the purpose of health care workers certification in certain occupations:
- (1) **(U)** Educational Testing Service (ETS);
 - (2) **(U)** Test of English in International Communication (TOEIC) Service International; and
 - (3) **(U)** International English Language Testing System (IELTS).
- d. **(U) Passing English Test Scores for Certain Healthcare Occupations:**
- (1) **(U)** Occupational and physical therapists. An alien seeking to join the labor force in the United States as an occupational or physical therapist must obtain the following scores on the English tests administered by ETS:

- (a) **(U)** Test of English as a Foreign Language (TOEFL);
- (b) **(U)** Paper-Based 560;
- (c) **(U)** Computer-Based 220;
- (d) **(U)** Test of Written English (TWE): 4.5; and
- (e) **(U)** Test of Spoken English: 50.

(U) NOTE: The certifying organizations shall not accept the results of the TOEIC or the IELTS for the occupation of occupational therapy or physical therapy.

- (2) **(U) Registered nurses and other health care workers requiring the attainment of a baccalaureate degree:** An alien coming to the United States to perform labor as a registered nurse (other than a nurse presenting a certified statement under section 212 (r) of the Act) or to perform labor in another health care occupation requiring a baccalaureate degree (other than occupational or physical therapy) must obtain one of the following combinations of scores to obtain a certificate:
 - (a) **(U)** ETS: TOEFL: Paper-Based 540, Computer-Based 207, TWE: 4.0; TSE: 50;
 - (b) **(U)** TOEIC Service International: TOEIC: 725; plus TWE:4.0 and TSE: 50;
or
 - (c) **(U)** IELTS: 6.5 overall with a spoken band score of 7.0. This would require the academic module.
- (3) **(U) Occupations requiring less than a baccalaureate degree:** An alien coming to the United States to perform labor in a health care occupation that does not require a baccalaureate degree must obtain one of the following combinations of scores to obtain a certificate:
 - (a) **(U)** ETS: TOEFL: Paper-based 530, computer-Based 197; TWE: 4.0; TSE; 50;
 - (b) **(U)** TOEIC Service International: TOEIC: 700; plus TWE 4.0 and TSE: 50;
or
 - (c) **(U)** IELTS: 6.0 overall with a spoken band score of 7.0. This would allow either the academic or the General module.

9 FAM 302.1-7(C) (U) Advisory Opinions

(CT:VISA-160; 08-19-2016)

(U) If the personal interview reveals an obvious lack of appropriate English language proficiency or appropriate knowledge of the certified healthcare field, submit the case to CA/VO/L/A for an AO. An approved certificate does not excuse the applicant from all the other relevant statutory and regulatory requirements for visa issuance.

9 FAM 302.1-7(D) (U) Waivers

9 FAM 302.1-7(D)(1) (U) Waivers for Immigrants

(CT:VISA-160; 08-19-2016)

(U) No waiver is available, but this can be overcome.

9 FAM 302.1-7(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-160; 08-19-2016)

(U) To ensure that health-care facilities remain fully staffed, DHS and the Department have agreed to exercise blanket waiver authority under INA 212(d)(3)(A) for nonimmigrants and temporarily waive the certification requirement until July 26, 2004. On and after July 26, 2004, discretion must be applied on a case-by-case basis. This waiver also applies to Canadians seeking admission in Trade NAFTA (TN) status. Health-care workers who receive waivers for INA 212(a)(5)(C) ineligibilities should be issued visas limited to a single entry with six-month validity.

9 FAM 302.1-7(E) Unavailable

9 FAM 302.1-7(E)(1) Unavailable

(CT:VISA-160; 08-19-2016)

Unavailable

9 FAM 302.1-7(E)(2) Unavailable

(CT:VISA-160; 08-19-2016)

Unavailable

9 FAM 302.1-8 (U) FAILURE OF APPLICATION TO COMPLY WITH INA - INA 221(G)

9 FAM 302.1-8(A) (U) Grounds

(CT:VISA-160; 08-19-2016)

(U) No visa or other documentation shall be issued to an alien if the application fails to with the provisions of the INA or implementing regulations.

9 FAM 302.1-8(B) (U) Application

(CT:VISA-160; 08-19-2016)

- a. **(U) Refusal Under INA 221(g):** You may refuse an alien's visa application under INA 221(g)(2) as failing to comply with the provisions of INA or the implementing regulations if:

- (1) **(U)** The applicant fails to furnish information as required by law or regulations;
 - (2) **(U)** The application contains a false or incorrect statement other than one which would constitute a ground of ineligibility under INA 212(a)(6)(C);
 - (3) **(U)** The application is not supported by the documents required by law or regulations;
 - (4) **(U)** The applicant refuses to be fingerprinted as required by regulations;
 - (5) **(U)** The necessary fee is not paid for the issuance of the visa or, in the case of an immigrant visa, for the application therefor;
 - (6) **(U)** In the case of an immigrant visa application, the alien fails to swear to, or affirm, the application before the consular officer; or
 - (7) **(U)** The application otherwise fails to meet specific requirements of law or regulations for reasons for which the alien is responsible.
- b. **(U) Reconsideration of Refusals:** A refusal of a visa application under paragraph (a)(1) of this section does not bar reconsideration of the application upon compliance by the applicant with the requirements of INA and the implementing regulations or consideration of a subsequent application submitted by the same applicant.

9 FAM 302.1-8(C) (U) Advisory Opinions

(CT:VISA-160; 08-19-2016)

(U) An AO is not required for a potential INA 221(g) refusal; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.1-8(D) (U) Waiver

9 FAM 302.1-8(D)(1) (U) Waivers for Immigrants

(CT:VISA-160; 08-19-2016)

(U) There is no waiver available under 221(g). However, see [9 FAM 306.2-2\(A\)](#) for information on overcoming an INA 221(g) refusal.

9 FAM 302.1-8(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-160; 08-19-2016)

(U) There is no waiver available under 221(g). However, see [9 FAM 306.2-2\(A\)](#) for information on overcoming an INA 221(g) refusal.

9 FAM 302.1-8(E) Unavailable

(CT:VISA-160; 08-19-2016)

Unavailable

9 FAM 302.1-9 (U) ALIENS SUBJECTS TO INA 222(G)

9 FAM 302.1-9(A) (U) Grounds

(CT:VISA-160; 08-19-2016)

(U) [INA 222\(g\)](#) renders void the visas of nonimmigrants who remain in the United States "beyond the period of stay authorized by the Secretary of Homeland Security."

9 FAM 302.1-9(B) (U) Application

9 FAM 302.1-9(B)(1) (U) In General

(CT:VISA-160; 08-19-2016)

- a. **(U) In General:** [INA 222\(g\)](#) applies only to aliens:
- (1) **(U)** Admitted on the basis of a NIV; and
 - (2) **(U)** Who remained beyond the period of authorized stay (see [9 FAM 302.1-9\(B\)\(1\)](#)). Also, see Summary of [INA 222\(g\)](#) Scenarios for examples of when [INA 222\(g\)](#) would or would not apply at [9 FAM 302.1-9\(B\)\(6\)](#) below.
- b. **(U) Admission of Nonimmigrant Visa:** [INA 222\(g\)](#) does not apply to aliens:
- (1) **(U)** Who entered the United States on the Visa Waiver Program (VWP) (or some other type of visa waiver);
 - (2) **(U)** Who entered via parole;
 - (3) **(U)** Who entered without inspection;
 - (4) **(U)** Who entered through one of the 'diplomatic visa' categories ;
 - (5) **(U)** Who entered through any other means, other than on the basis of a NIV;
 - (6) **(U)** Who were admitted from [Canada](#) or [Mexico](#) with an I-68 or DSP-150 Border crossing card, or any other Canadian or Mexican entrants to the United States who were not issued an I-94 (and who were not subsequently formally found to be out of status by [USCIS](#), an immigration judge (IJ) or the Board of Immigration Appeals (BIA).); or
 - (7) **(U)** Who physically could not depart the United States due to the fact that they were in custody of law enforcement at the time (in prison, for example), see Matter of C-C-, 3 I&N Dec.221, 222 (BIA 1948).
- c. **(U) Remaining Beyond Period Authorized by the Secretary of Homeland Security:**
- (1) **(U) In General:** For the purposes of [INA 222\(g\)](#), an alien who entered the

United States on an NIV will be considered to have overstayed his or her period of authorized stay if:

- (a) **(U)** The alien remained in the United States beyond the specific date stated on the Form [I-94](#), Arrival-Departure Record; or
 - (b) **(U)** [USCIS](#), an IJ, or the BIA has formally found that the alien has violated his or her status.
- (2) **(U) Aliens Admitted Until Date Certain:** Aliens admitted on "B" visas and most other visa categories are granted a specified period of stay and must depart on or before the date specified on the Form [I-94](#). An alien who departs by the date indicated on the Form [I-94](#) would not be ineligible under [INA 222\(g\)](#), unless the [USCIS](#), an IJ, or the BIA actually makes a finding of a status violation before such departure.
- (3) **(U) Aliens Admitted for Duration of Stay:** Although most nonimmigrants are admitted for a specified period of time, students ("F"), exchange visitors ("J"), information media representatives ("I"), and diplomats and other foreign officials ("A," "G" or "NATO") as well as many Canadians are usually admitted for "duration of status." An alien admitted for duration of status is ineligible under [INA 222\(g\)](#) only if:
- (a) **(U)** [USCIS](#) finds a status violation while adjudicating a request for an immigration benefit; or
 - (b) **(U)** An IJ finds a status violation in proceedings against the alien. In determining whether [INA 222\(g\)](#) applies, your assessment of whether the alien did or did not maintain lawful status is irrelevant.
- (4) **(U) Aliens with Pending Change of Status or Extension of Status Applications:** An alien is not ineligible under [INA 222\(g\)](#) even though the departure date on Form [I-94](#), Arrival-Departure Record, passes, if:
- (a) **(U)** The alien files a timely application for extension of stay or for a change of status; and
 - (b) **(U)** The application is subsequently approved. In addition, if an alien departs after the date on the Form [I-94](#) passes, but before his or her application for extension or change of status has been decided by [USCIS](#), they must be subject to a blanket exemption from [INA 222\(g\)](#), if the application was filed in a "timely manner" and is "nonfrivolous" in nature. You may consider an application nonfrivolous if it is not, on its face, a groundless excuse for the applicant to remain in the United States to engage in activities incompatible with his or her status. Posts may be satisfied that an alien filed in a timely manner using evidence such as a record in [USCIS](#) Person Centric Query Service (PCQS) or the dated receipt or canceled check from [USCIS](#) for the payment of the application fee to extend or change status together with evidence of the expiration of the alien's legal status.
 - (c) **(U)** Nonimmigrants admitted D/S (Duration of Stay) who leave the United

States while the extension of stay or change of status application is pending, are not subject to INA 222(g), provided that no status violation was found that would have resulted in the termination of the period of stay authorized. In addition, D/S nonimmigrants whose extension of stay or change of status applications were denied for reasons other than a status violation are not subject to INA 222(g).

- (5) **(U) Aliens Granted Voluntary Departure:** An alien who stays beyond the date indicated on his or her Form [I-94](#), or an alien who is found by DHS, an IJ, or the BIA to have violated his or her status, is subject to [INA 222\(g\)](#), even if the alien is simultaneously or subsequently granted voluntary departure. This remains true even though the alien would not be "unlawfully present" under [INA 212\(a\)\(9\)\(B\)](#) during the period granted for voluntary departure (VD).

9 FAM 302.1-9(B)(2) (U) Requirement to Obtain Future Visas In Country of Nationality INA 222(g)(2)

(CT:VISA-160; 08-19-2016)

a. (U) In General:

- (1) **(U)** An alien who has overstayed the authorized period of admission may no longer use the visa with which he or she entered the United States. To re-enter the United States, the alien must obtain a new NIV in the country of the alien's nationality. If an alien is in possession of two valid visas, however, only the visa used by the alien to enter the United States (i.e., the visa which is the subject of the overstay finding) is void under [INA 222\(g\)](#).
- (2) **(U)** The combination B-1/B-2 NIV/BCCs are subject to INA 222(g) and become automatically void when the alien remains in the United States beyond the authorized admission date. Combination B-1/B-2 NIV/BCCs that have become automatically void under INA 222(g) must be physically canceled. (See 9 FAM 41.112 N7.5.) BCCs, however, as defined in INA 101(a)(26) are not nonimmigrant visas per se, and do not become automatically void under INA 222(g) when the alien remains in the United States beyond the period of authorized stay.

b. (U) "Homeless" Cases: Where there is no consular office in the country of the alien's nationality, an alien subject to [INA 222\(g\)](#) may apply for a new visa at either:

- (1) **(U)** A consular office designated by the Department to accept the IV application of such alien regardless whether he or she has filed such application (see [9 FAM 302.9-9\(B\)\(6\)](#)); or
- (2) **(U)** A post in the country in which the alien has the right of permanent residence.

c. (U) Aliens with Dual Nationality: An alien who possesses more than one nationality and who has, or immediately prior to the alien's last entry into the United States had, a residence in one of the countries of the alien's nationality must

apply at a consular office in the country of such residence.

- d. **(U) "Stateless" Aliens:** An alien determined by the consular officer to be "stateless," shall, for the purposes of [INA 222\(g\)](#), be considered to be a national of the country that issued the alien's travel documentation.
- e. **(U) Aliens Benefitting From the Extraordinary Circumstances Exemption:**
- (1) **(U) In General:**
 - (a) **(U)** An alien subject to [INA 222\(g\)](#) may be exempted from the requirement of applying for future NIV in his or her country of nationality, if the Department finds that "extraordinary circumstances" exist.
 - (b) **(U)** The Department's regulation at [22 CFR 41.101\(d\)\(1\)](#) defines "extraordinary circumstances" as circumstances where compelling humanitarian or national interests exist or where necessary for the effective administration of the immigration laws.
 - (c) **(U)** Extraordinary circumstances shall not be found upon the basis of convenience or financial burden to the alien, the alien's relative, or the alien's employer.
 - (2) **(U) Physicians Serving in Under-Served Area:** The Department has determined that "extraordinary circumstances" exist for an alien physician serving in an under-served area of the United States under [INA 214\(I\)](#) for whom an application for a waiver of the two-year foreign residence requirement of INA section 212(e) and/or a petition to accord H-1B status was filed prior to the end of the alien's authorized stay and was subsequently approved, but whose authorized stay expired during the adjudication of such application(s).
 - (3) **(U) Alien with Residence in Third Country:** An alien subject to [INA 222\(g\)](#) whose current foreign residence is in a country other than the country of his or her nationality, should be considered to be applying under "extraordinary circumstances" if he or she applies for a visa at a post in the country of his or her current residence rather than in the country of his or her nationality.
 - (4) **(U) Alien Applying for Diplomatic Visa:** [INA 102](#) limits the applicability of provisions of the INA relating to ineligibilities to certain classes of nonimmigrants. The classes include the nonimmigrant categories A-1, A-2, G-1 through G-4, and NATO-1 through NATO-6; i.e., the "diplomatic visa" categories. Generally, applicants in these categories must, therefore, be exempted from the reapplication provisions of [INA 222\(g\)](#). If, however, they are formally found by [USCIS](#) to have committed a status violation while [USCIS](#) was adjudicating a request for an immigration benefit or an IJ or the BIA finds a status violation in proceedings against the alien, then they should be subject to [INA 222\(g\)](#).
 - (5) **(U) Extraordinary Circumstance Findings in Individual Cases:** Upon the favorable recommendation of an immigration or consular officer, if the Deputy Assistant Secretary for Visa Services determines that extraordinary

circumstances exist, an alien or group of aliens may be exempted from the requirements of [INA 222\(g\)](#). (See [9 FAM 302.9-9\(C\)](#).)

- f. **(U) Individual Exceptions:** Aliens not eligible for the blanket 222(g)(2)(B) extraordinary circumstances exception may seek the exception on a case-by-case basis. If it appears to you that compelling humanitarian or national interests may exist or that an exception may be necessary for the effective administration of the immigration laws, you have the discretionary authority to recommend to the Deputy Assistant Secretary for Visa Services (VO DAS) that exceptional circumstances be found in the individual case. In determining whether to make a favorable recommendation to the VO DAS, keep in mind that extraordinary circumstances shall not be found upon the basis of convenience or financial burden to the alien, the alien's relative, or the alien's employer. If the VO DAS determines that extraordinary circumstances exist, an individual exception will be granted.
- (1) **(U) When INA 222(g)(2)(B) exception is granted:** When a nonimmigrant visa is issued to a third country applicant based on the extraordinary circumstances exception in INA 222(g)(2)(B) (blanket or individual exception), the new visa is to be annotated "INA section 222(g) overcome under extraordinary circumstances." This annotation indicates that INA 222(g) was overcome and that the alien was allowed to apply for the nonimmigrant visa in a third country; or
 - (2) **(U) When INA 222(g)(2)(B) exception is denied:** When an alien subject to INA 222(g) files a nonimmigrant visa application in a third country, and that application is denied, you will place a notation in the Consular Lookout and Support System (CLASS) under code "222." The notation "222" means the applicant was instructed to obtain a visa at a consular office located in the country of his or her nationality.

9 FAM 302.1-9(B)(3) (U) Determining Overstays

(CT:VISA-160; 08-19-2016)

a. (U) Reliance on CLASS Entries:

- (1) **(U)** In some instances, the Department of Homeland Security (DHS) may enter a lookout when a visa is cancelled under [INA 222\(g\)](#) and DHS removes the alien or permits the alien to withdraw his or her application for admission. In such cases, DHS will use the code "275" for voluntary withdrawals or "ER7" (or "ER6") to indicate expedited removal for aliens not in possession of the required document (or for fraud). Also, if USCIS, an IJ, or the BIA determines that an alien previously admitted for duration of status has violated status, the alien's name may be entered into the DHS lookout database. These entries would automatically pass into CLASS.
- (2) **(U)** In those instances when DHS does not enter the lookout, it is your responsibility to determine whether the alien is inadmissible under [INA 222\(g\)](#).

b. (U) Department of Homeland Security (DHS) Departure Controls: Eventually,

when DHS departure controls are in place, DHS will document overstays at the time of departure. Until such time, you cannot be expected to make a complete search and determination as to whether an alien has remained beyond the period of authorized stay. Therefore, unless in the course of visa processing the possibility of a previous overstay becomes apparent through information otherwise routinely obtained (e.g., through inspection of passport, answer to the section on Previous U.S. Travel Information on the Form [DS-160](#), Online Nonimmigrant Visa Application (see [9 FAM 403.2-5\(A\)](#))), lengthy interrogation of applicants to determine whether the alien is subject to [INA 222\(g\)](#) should not ordinarily be undertaken.

9 FAM 302.1-9(B)(4) (U) Annotating the Visa

(CT:VISA-160; 08-19-2016)

(U) Nonimmigrant visas (NIV) issued to aliens exempted from INA 222(g) under extraordinary circumstances should be annotated:

INA Section 222(g) overcome where extraordinary circumstances are found by the Secretary of State to exist.

9 FAM 302.1-9(B)(5) (U) Refusal and Fee Retention

(CT:VISA-160; 08-19-2016)

(U) If you determine that an alien is ineligible for visa processing under INA 222(g):

- (1) **(U)** The visa on which the overstay occurred should be physically cancelled (if it is still valid);
- (2) **(U)** The alien should be advised, in writing, that he or she has been determined to be ineligible under INA 222(g) and must apply for a visa in the country of his or her nationality;
- (3) **(U)** The applicant's name should be entered into CLASS under code "222" with the annotation "Visa Overstay" in the free field; and
- (4) **(U)** The Machine Readable Visa (MRV) fee should be retained.

9 FAM 302.1-9(B)(6) (U) Summary of INA 222(g) Scenarios

(CT:VISA-160; 08-19-2016)

CATEGORY	Subject to INA 222(g)	Not Subject to INA 222(g)
Alien admitted until specified date; maintains status; departs by date specified.		Not Subject
Alien admitted until specified date; maintains status; departs after date specified.	Subject	

9 FAM 302.1-9(C) (U) Advisory Opinions

(CT:VISA-160; 08-19-2016)

- a. **(U)** If posts are unsure whether an applicant is subject to INA 222(g), or if posts have questions as to whether "extraordinary circumstances" exist for a favorable recommendation for an exemption from INA 222(g), you may request an AO from (CA/VO/L/A).
- b. **(U)** If you believe that "extraordinary circumstances" do exist, you must request an AO from CA/VO/L/A for approval of an exception to 222(g). CA/VO/L/A will not render an AO on an "extraordinary circumstances" request unless the applicant has been found subject to INA 222(g).

9 FAM 302.1-9(D) (U) Waiver

9 FAM 302.1-9(D)(1) (U) Waivers for Immigrants

(CT:VISA-160; 08-19-2016)

(U) INA 222(g) is not applicable to immigrant visa applicants.

9 FAM 302.1-9(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-160; 08-19-2016)

(U) No waiver is available. See [9 FAM 302.1-9\(B\)\(2\)](#) paragraph e for examples of aliens benefitting from the extraordinary circumstances exception.

9 FAM 302.1-9(E) Unavailable

9 FAM 302.1-9(E)(1) Unavailable

(CT:VISA-160; 08-19-2016)

Unavailable

9 FAM 302.1-9(E)(2) Unavailable

(CT:VISA-160; 08-19-2016)

Unavailable

9 FAM 302.2

(U) INELIGIBILITY BASED ON HEALTH AND MEDICAL GROUNDS - INA 212(A)(1)

(CT:VISA-177; 09-15-2016)

(Office of Origin: CA/VO/L/R)

9 FAM 302.2-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 302.2-1(A) (U) Immigration and Nationality Act

(CT:VISA-177; 09-15-2016)

(U) INA 101(a)(51) (8 U.S.C. 1101(a)(51)); INA 212(a)(1) (8 U.S.C. 1182(a)(1)); INA 212(a)(4) (8 U.S.C. 1182(a)(4)); INA 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)); INA 212(g) (8 U.S.C. 1182(g)); INA 221(c) (8 U.S.C. 1201(c)); INA 221(d) (8 U.S.C. 1201(d)).

9 FAM 302.2-1(B) (U) Code of Federal Regulations

(CT:VISA-177; 09-15-2016)

(U) 22 CFR 40.11; 22 CFR 40.301; 22 CFR 41.108; 22 CFR 42.66; 42 CFR Part 34.

9 FAM 302.2-2 (U) IN GENERAL - INA 212(A)(1)

9 FAM 302.2-2(A) (U) Grounds

(CT:VISA-177; 09-15-2016)

- a. **(U) Communicable Disease of Public Health Significance:** INA 212(a)(1)(i) provides that an individual is ineligible for a visa if the individual has a communicable disease of public health significance. See [9 FAM 302.2-5](#).
- b. **(U) Vaccinations:** INA 212(a)(1)(A)(ii) provides that an individual is ineligible for an immigrant visa if the individual lacks the required vaccinations. See FAM 302.2-6.
- c. **(U) Physical or Mental Disorders:** INA 212(a)(1)(A)(iii) of the Immigration and Nationality Act provides that an individual is ineligible for a visa if the individual has a physical or mental disorder and behavior associated with that disorder that may pose, or has posed, a threat to the property, safety, or welfare of the individual or others, or a history of such behavior likely to occur or lead to other harmful

behavior. [9 FAM 302.2-7](#).

- d. **(U) Drug Addict or Abuse:** INA 212(a)(1)(A)(iv) of the Immigration and Nationality Act provides that an individual is ineligible for a visa if the individual is a drug abuser or drug addict. See [9 FAM 302.2-8](#).

9 FAM 302.2-2(B) (U) Major Elements of Medical-Related Ineligibilities

(CT:VISA-1; 11-18-2015)

(U) The major elements relating to a finding of inadmissibility under INA 212(a)(1) for medical-related reasons include:

- (1) **(U)** The general requirement for a medical examination (see [9 FAM 302.2-3](#));
- (2) **(U)** The role of panel physicians (see [9 FAM 302.2-3\(E\)](#));
- (3) **(U)** Potential public charge factors (see [9 FAM 302.2-3\(G\)](#));
- (4) **(U)** Communicable diseases of public health significance (see [9 FAM 302.2-5\(B\)](#));
- (5) **(U)** Immunization requirements (see [9 FAM 302.2-6\(B\)](#));
- (6) **(U)** Physical or mental disorder with associated harmful behavior (see [9 FAM 302.2-7\(B\)](#));
- (7) **(U)** Drug abuse or addiction (see [9 FAM 302.2-8](#));
- (8) **(U)** Immigrant visa waivers (see [9 FAM 302.2-5\(D\)\(1\)](#), [9 FAM 302.2-6\(D\)\(1\)](#), [9 FAM 302.7\(D\)\(1\)](#), and [9 FAM 302.8\(D\)\(1\)](#));
- (9) **(U)** Nonimmigrant visa waivers (see [9 FAM 302.2-5\(D\)\(2\)](#), [9 FAM 302.6\(D\)\(2\)](#), [9 FAM 302.7\(D\)\(2\)](#), and [9 FAM 302.8\(D\)\(2\)](#)); and
- (10) **Unavailable.**

9 FAM 302.2-3 (U) MEDICAL EXAMINATIONS

9 FAM 302.2-3(A) (U) General Requirements

(CT:VISA-177; 09-15-2016)

- a. **(U) Immigrant Visa Applicants:** INA 221(d) requires all applicants applying for immigrant visas (IV) to undergo a physical and mental examination. The results of this statutorily required medical examination are used to determine the alien's eligibility for such a visa. The medical finding by the panel physician or the Department of Health and Human Services/Public Health Service/Centers for Disease Control and Prevention (HHS/PHS/CDC), if referred to that agency, is binding on you. (See [9 FAM 504.4-7](#).)
- b. **(U) Nonimmigrant Visa Applicants:** Generally, medical examinations are not required for nonimmigrant visa applicants, except for K visa (fiancé) applicants.

However, you may require a nonimmigrant applicant to undergo a medical examination if you have reason to believe that the applicant may be inadmissible for a visa under INA 212(a)(1). Applicants referred to a panel physician because of a suspected medical ground of inadmissibility, including INA 212(a)(1)(A)(iii) or INA 212(a)(1)(A)(iv), must receive the same, full examination, as immigrant visa applicants, minus vaccination requirement. (See [9 FAM 504.4-7](#) for additional information.)

c. (U) Medical Examination for Fiancé(e)s:

- (1) **(U)** Since applicants for K visas are essentially intending immigrants, a complete medical examination is required in every case. (See [9 FAM 502.7-5](#) paragraph c(3). As nonimmigrant visa (NIV) applicants, fiancé(e) visa applicants technically are not subject to the INA 212(a)(1)(A)(ii) vaccination requirement. However, we (the Department of State) and the Department of Homeland Security (DHS) have agreed that medical exams for fiancé(e) visa applicants should include the vaccination assessment as a matter of expediency. Therefore, you should make every effort to encourage fiancé(e) visa applicants to meet the vaccination requirements before admission to the United States. Nevertheless, you may not refuse K-visa applicants for refusing to meet the vaccination requirements.
- (2) **(U)** In cases where the vaccination requirement is not met by the alien prior to the issuance of a fiancé(e) visa, posts may prepare a single page addendum to the Form DS-3025, Vaccination Documentation Worksheet. A decision on the waiver of INA 212(a)(1)(A)(ii) will be deferred pending the filing of the adjustment of status application and review by DHS.
- (3) **(U)** After the alien is admitted to the United States in K status and applies for adjustment of status based on the relationship to the U.S. citizen named in the approved Form I-129-F, Petition for Alien Fiancé(e), DHS will use the panel physician's findings set forth on the Form DS-3025 to determine the alien's admissibility on medical grounds. Where the applicant has fully met the vaccination's requirements of INA 212(a)(1)(A)(ii), as indicated on the Form DS-3025, no further action is required. Aliens who have not fully satisfied the vaccination requirements, however, will have to do so before they may finalize their adjustment of status in the United States (unless otherwise entitled to an individual or blanket waiver from DHS).

d. (U) Asylee Follow-to-Join (V-92 Beneficiaries): All asylee follow-to-join derivatives (Visa 92 (V-92) applicants) entering the United States must have the same medical examination as IV applicants have under INA 221(d) and 234. The medical examination for V-92 beneficiaries must be conducted by a panel physician. Similar to refugees, asylee follow-to-join beneficiaries are not required to meet the immunization requirements for immigrants until after one year when they apply for adjustment of status to become permanent residents in the United States.

e. (U) Refugees and V-93 Beneficiaries: All refugees and follow-to-join derivatives (Visa 93 (V-93) beneficiaries) entering the United States must have the same

medical examination as IV applicants have under the INA 221(d) and INA 234. The medical examination for refugees may be conducted by a panel physician or by the International Organization for Migration (IOM). The U.S. Government pays the cost of refugee medical exams through the IOM. Unlike IV applicants, refugees, including V-93 beneficiaries, are not required to meet the immunization requirements for immigrants until one year after arrival, when they apply for adjustment status to become permanent residents in the United States.

- f. **(U) Applicants Resident in the United States Applying at Post:** An individual who resides in the United States or who is present in the United States at the time of application, but is applying for a visa at post must receive a medical examination from a panel physician designated by post. Such individuals may not submit a medical examination conducted by a civil surgeon in the United States.

9 FAM 302.2-3(B) (U) Purpose

(CT:VISA-177; 09-15-2016)

- a. **(U)** The purpose of the medical examination required under the provisions of INA 221(d) is to determine whether the applicant has a:
- (1) **(U)** "Class "A"" condition—A medical condition that renders him or her ineligible to receive a visa; or
 - (2) **(U)** "Class "B"" condition—A medical condition that, although not constituting an inadmissible condition, represents a departure from normal health or well-being that is significant enough to possibly:
 - (a) **(U)** Interfere with the applicant's ability to care for himself or herself or to attend school or work; or
 - (b) **(U)** Require extensive medical treatment or institutionalization in the future.
- b. **(U)** See 42 CFR Part 34 for the scope of the medical examination.

9 FAM 302.2-3(C) (U) Validity Period of an Applicant's Medical Examination for Immigrant Visa Applicants

(CT:VISA-177; 09-15-2016)

- a. **(U) Technical Instructions for Tuberculosis Screening and Treatment Using Cultures and Directly Observed Therapy:** Medical examination validity is determined by the CDC. The following validity periods apply:
- (1) **(U) 6 Month Validity:** No Class, a Non-TB Class condition, a Class B2 LTBI, and Class B3TB (Contact Evaluation), and all no-TB Class B conditions including Specific Class B conditions and Class B Other Conditions:
(U) NOTE: For the complete table on medical exam validity, see below.
 - (2) **(U) 3 Month Validity:** Class "A" TB with a waiver (rare), a Class "B"1 TB Pulmonary, or Class "B"1 TB Extrapulmonary, and HIV Infection (with or

without a TB class).

(3) **(U) Not Medically Cleared:** If there was a finding of Class "A" TB and no waiver was granted the applicant is not medically cleared to travel until completion of successful treatment.

(4) **(U) TB Technical Instructions Table:**

		Medical Examination Validity Periods		
CONDITION		Length of Validity for All Components of the Medical Exam	Medical Examination date that should be listed on Form DS-2054	Examination Expiration Date That Should Be Listed On Form DS-2054
<ul style="list-style-type: none"> · No Class (i.e., No apparent Defect, Disease or Disability) · Class A, Other than TB · Class B2 LTBI · Class B3 TB (Contact Evaluation) · Class B, all except TB, including: Specific Class B conditions & Class B Other conditions <p>(Use 6 month validity except when any of the following is also present: Class A TB with waiver, Class B1 TB, or Class B Other for HIV Infection [see below])</p> <ul style="list-style-type: none"> · No HIV Infection 		6 months ¹	Physical examination date	6 months from the examination date
<ul style="list-style-type: none"> · Class A TB with Waiver (rare) 		3 months ²	Date final TB culture results reported by	3 months from date final TB

<ul style="list-style-type: none"> · Class B1 TB, Pulmonary · Class B1 TB, Extrapulmonary · HIV infection³ (with or without a TB Class) 		lab	culture results reported by lab
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¹ **(U)** If the TB portion of the examination has expired before immigration, the entire medical examination (all components, including vaccination, syphilis, mental health/substance abuse, etc. assessment) needs to be repeated at the same time the TB re-evaluation is performed. The expired DS forms should be submitted to the Consular Section along with the complete set of current DS forms for the new medical examination.

² **(U)** If Class B1 TB, Extrapulmonary – Medical exam date listed on DS-2054 should be the date of the physical exam if cultures were not performed for extrapulmonary site. If culture results are obtained from extrapulmonary site, the medical exam date listed on DS-2054 should be the date of final culture results reported by lab.

³ **(U)** Document HIV infection as "Class B1 TB, Pulmonary" on Form DS-2054.

- b. **(U) Visa Validity:** Notwithstanding the provisions of INA 221(c), you should make sure to limit the validity of the visa to the validity of the medical examination. For example, if an alien has a medical examination that is only valid for four months from the time of visa issuance, the visa should be valid for only four months.
- c. **(U) New Medical Examinations:** Applicants not traveling to the United States within the exam validity period will need to undergo a new medical examination. If the TB portion of the examination has expired before immigration, the entire medical examination (all components, including vaccination, syphilis, mental health/substance abuse, etc. assessment) needs to be repeated at the same time the TB re-evaluation is performed. The expired DS forms should be submitted to the Consular Section along with the complete set of current DS forms for the new medical examination.

9 FAM 302.2-3(D) (U) U.S. Department of Health and Human Services , Centers for Disease Control and Prevention (HHS/CDC) Regulations Governing Medical Examinations

(CT:VISA-177; 09-15-2016)

- a. **(U)** CDC regulations relating to medical examinations of applicants are contained in 42 CFR Part 34. For specific instructions for performance of medical examinations see Technical Instructions (TIs) for Panel Physicians, the 2007 Tuberculosis (TB)

TIs, TIs for Vaccinations and all other TIs available on CDC's portal. Each panel physician should have his or her own personal copy of these instructions.

- b. **(U)** On July 30, 2011, the CDC posted instructions to panel physicians for completing Form DS-2054, Medical Examination for Immigrant or Refugee Applicant and associated worksheets, Form DS-3030, Tuberculosis Worksheet, Form DS-3025 and Form DS-3026, Medical History and Physical Examination Worksheet. (See CDC's Instructions for Department of State Forms for more information.)
- c. **(U)** Please provide a copy of these instructions to your panel physicians. These instructions are also available from the Consular Affairs Intranet home page under the visa office links. In addition, the Technical instructions are available directly from the CDC's website.

9 FAM 302.2-3(E) (U) Panel Physicians

9 FAM 302.2-3(E)(1) (U) Role of Panel Physicians

(CT:VISA-177; 09-15-2016)

- a. **(U) Medical Examinations:** The panel physician is responsible for the entire examination. The examination must include:
 - (1) **(U)** a medical history;
 - (2) **(U)** an immunization history and the administration of any required immunizations (for immigrant visa applicants);
 - (3) **(U)** a physical examination;
 - (4) **(U)** a mental examination;
 - (5) **(U)** a full-size chest radiograph;
 - (6) **(U)** a serologic test for syphilis;
 - (7) **(U)** a laboratory test for gonorrhea;
 - (8) **(U)** sputum smears and cultures if signs/symptoms of tuberculosis are detected or known HIV infection;
 - (9) **(U)** a report of the results of all required tests and consultations;
 - (10) **(U)** verification that the completed medical report forms are sent directly to you; and
 - (11) **(U)** verification that the person appearing for the medical examination is the person actually applying for the visa.
- b. **(U) Authority:** The panel physician does not have the authority to determine whether an applicant is eligible for a visa. You must make that determination after reviewing all the records, including the report of the medical examination.

9 FAM 302.2-3(E)(2) (U) Selection of Panel Physicians

(CT:VISA-177; 09-15-2016)

- a. **(U) In General:** USPHS/CDC Division of Global Migration and Quarantine, in collaboration with CA/VO oversees and monitors panel physician activity. While there are no specific regulations governing the selection or termination of panel physicians, posts must notify CA/VO/F and the CDC before adding or removing panel physicians. The CDC has provided guidelines on how to select a panel physician (see [9 FAM 302.2-3\(E\)\(2\)](#) paragraph e). The CDC recommends that consular officers, in selecting panel physicians, seek the advice of the local medical community, medical associations in the area, and any U.S. government physicians who may be available locally. Posts **must** have current written agreements with panel physicians. (See [9 FAM 302.2-3\(E\)\(2\)](#) paragraph e(4), for text of Sample Physician Written Agreement and [9 FAM 302.2-3\(E\)\(2\)](#) paragraph f(7), Overall Review of Performance.
- b. **(U) Criteria for Appointment of Panel Physicians:** CDC recommends that the following criteria be applied, when possible, in the appointment of panel physicians:
- (1) **(U)** The physician must have satisfactorily completed medical education and have a medical degree from an accredited medical school;
 - (2) **(U)** The physician should have special competence in the diagnosis and treatment of individuals with tuberculosis and sexually transmitted illnesses (STIs) and should be able to recognize mental illness;
 - (3) **(U)** The physician should have demonstrated competence to perform large numbers of examinations for specific purposes, such as insurance, industrial employment, etc. (this point is less important for a post where there are a limited number of medical examinations);
 - (4) **(U)** The physician should have reliable X-ray facilities or access to such facilities and should be able to make arrangements for laboratory work to be performed by a laboratory of recognized competence; and
 - (5) **(U)** The physician should have reliable storage facilities or have access to such facilities for vaccines, according to the CDC's Technical Instructions for Vaccinations. Proper handling and storage of vaccines are important to ensure their potency.
- c. **(U) Small Number of Panel Physicians with Convenient Offices:** The CDC recommends that the number of examining physicians be kept to a minimum and that a high percentage of the visa medical examinations be done by no more than two physicians. Additional physicians may be appointed at posts with a large volume of cases, or in the event of a protracted illness, or extended absence of a physician. To enable the consular officer to minimize possible fraud and for better communications with the examining physician, it is best to have the physician's examining facility located near the visa-issuing post. The Department is aware that many posts feel obligated to approve greater numbers of panel physicians in scattered locations under their jurisdiction out of considerations of convenience and cost to the alien. The current recommendation is to have one panel physician per 2,000 applicants.

- d. **(U) Use of Hospital Physicians for Examinations:** When the post uses the facilities of a hospital with a large turnover of doctors, CDC suggests that the post appoint two hospital physicians to be responsible and accountable for the medical examinations and authorized to sign the Form DS-2054 (for use with TB Technical Instructions 2007). Sample signatures of these physicians should be kept on file at the post.
- e. **(U) Consultations with the CDC and the Visa Office on Panel Physician Appointments and Terminations:**
- (1) **(U)** You must communicate with the CDC (cdcqap@cdc.gov) and CA/VO/F when considering the addition of a panel site or physician, although final authority rests with the consular chief at post.
 - (2) **(U)** You must communicate with the CDC (cdcqap@cdc.gov) and CA/VO/F prior to the termination of a panel site or physician, although final authority rests with the consular chief at post.
 - (3) **(U)** The CDC may recommend that a consular section either terminate or not renew an existing panel physician agreement for cause. Such a request will be addressed to both the consular section and CA/VO/F. The consular section must communicate in writing to the cdcqap@cdc.gov mailbox and CA/VO/F within 45 days of the date of the written report, indicating whether it will terminate or continue the agreement of the panel physician.
 - (4) **(U)** Posts are reminded to include the address "CDC ATLANTA GA" with pass line "CDC FOR CDC/DGMQ" on any cable associated with panel physician issues.

9 FAM 302.2-3(E)(3) (U) Contact with Panel Physicians

(CT:VISA-177; 09-15-2016)

- a. **(U) Introductory Visit to the Panel Physician:** If possible, you should pay an introductory call on each panel physician at the physician's office. During the visit, you should ensure that the physician is thoroughly familiar with the all of CDC's Technical Instructions including CDC's Technical Instructions For the Medical Examination of Aliens, Culture and Directly Observed Therapy Tuberculosis (TB) Technical Instructions, Technical Instructions for Vaccinations, Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, and any CDC published updates, and is performing examinations in strict compliance with CDC instructions. You should review proper procedures for establishing the identity of persons being tested. You should also inspect the laboratory facilities and review prescribed procedures for ensuring the proper control of X-rays and blood samples. (See [9 FAM 302.2-3\(E\)\(2\)](#) paragraph f below.)
- b. **(U) Visiting Outside Laboratories:** If the panel physicians use outside laboratory facilities, you should require them to keep the total number of labs to a minimum; we suggest no more than three per country. Where feasible, panel physicians should oversee the drawing of the blood samples to ensure against substitution.

Consular officers and panel physicians should also visit outside labs on a periodic basis to ensure that proper identification safeguards and good laboratory procedures are being followed. Finally, you should emphasize the necessity of the physician personally contacting the officer in the event of a Class A finding in any applicant.

- c. **(U) Follow-Up Contacts:** You should maintain periodic contact with the panel physicians, and should, if possible, make occasional, unannounced visits. You should occasionally ask immigrant visa (IV) applicants to describe the scope of the medical examination they received, the procedures used to establish identity, and the arrangements for pick-up of the medical reports. You should discuss any lax or improper procedures with the panel physician.
- d. **(U) Group Sessions:** Where workload and logistics permit, you may host group meetings, which involve all panel physicians. Such meetings give panel physicians the opportunity to share notes and raise any current problems or issues which they may wish to discuss.
- e. **(U) Panel Physician Agreements:**
- (1) **(U)** Upon assuming duty as an immigrant visa chief (or chief of a small consular section), you should review all existing panel physician agreements to verify that they are valid and conform to suggested standard language (see below), or meet the criteria for a derivative contract developed and approved by CDC. A copy of each agreement should have been sent to:

QAP Immigrant, Refugee, and Migrant Health
Division of Global Migration Quarantine, (MS-E03)
Centers for Disease Control and Prevention
Atlanta, GA 30333
 - (2) **(U)** You may also send scanned signed Panel Physician Agreements to CDC via email at: cdcqap@cdc.gov.
 - (3) **(U)** It is no longer necessary to send copies of these agreements to the Department, unless post wishes confirmation from CA/VO/F that the agreement meets basic requirements.
 - (4) **(U) Sample Written Agreement:** You must draft individual panel physician agreement or use the sample panel physician agreement provided by clicking on Panel Physician Agreement anywhere it appears in the FAM to open an editable and printable word version of the document.
- f. **(U) How to Select a Panel Physician and Monitor the Medical Examination for Immigrant Visas:**
- (1) **(U)** Physicians, under agreement with the Consular Section (panel physicians) of the embassy or consulate, conduct the medical examination of U.S.-bound immigrants and refugees.
 - (2) **(U)** Standard criteria should be used in determining if a physician has adequate training and/or experience to be a panel physician. An agreement of 1-year duration is signed between the consular officer and the physician for

his/her services for that time period. A model of that agreement is provided below. The termination of a panel physician should occur when due cause is found. Finally, the consular officer should maintain a good relationship with the panel physician. This usually occurs by periodic visits to his/her facility or telephone communication. At least once a year, the consular officer should perform an evaluation of all the components of the medical examination, including the panel physician.

(a) **(U) Standard Criteria for Panel Physicians:**

- (i) **(U)** Make sure the need for such a physician exists. The number of examining panel physicians must be kept to a minimum. It is recommended that post consider appointing one panel physician for each 2,000 visa applicant examinations.
- (ii) **(U)** If a hospital facility is used, it is recommended that two permanent hospital staff physicians be responsible and accountable for the medical examinations of all the visa applicants. Furthermore, a co-signature by one of these permanent physicians should appear on all the Department of State medical documents (DS-2054, etc.)
- (iii) **(U)** The panel physician must speak and write in English.
- (iv) **(U)** The panel physician should submit a résumé or CV, showing satisfactory completion of medical education and a medical degree from a national government accredited medical school.
- (v) **(U)** The panel physician should have a full local license with no restrictions that they have used for the past 4 years.
- (vi) **(U)** The panel physician should have an official governmental certificate of good standing, or the equivalent, in the medical profession, if available in the country where the physician has his/her license.
- (vii) **(U)** The consular officer should obtain, two independent professional references provided by the physician.
- (viii) **(U)** The consular officer should follow-up on these independent professional references with verbal contact to one of the references prior to the appointment of the panel physician.
- (ix) **(U)** In selecting a panel physician, the consular officer should seek the advice of the local medical community, medical associations, and any U.S. Government physicians in the area.
- (x) **(U)** The panel physician appointment is person and location specific. If the physician moves, the appointment is reviewed rather than automatically being transferred. A need for the physician's services must exist.
- (xi) **(U)** If another physician acts of behalf of the panel physician, the final responsibility of exam results lies with the panel physician.

- (xii) **(U)** A sample signature must be given to the post to keep on file to periodically assess for fraud.
- (xiii) **(U)** The panel physician must be available for a minimum of 46 weeks out of 52 weeks a year. Any absence of greater than 2 weeks requires notification to the post with the recommendation of a physician to take over emergency duties during the absence of the panel physician.
- (xiv) **(U)** Knowledge of the stand-in physician needs to be conveyed to the responsible post.

(b) **(U) Medical Requirements:**

- (i) **(U)** The panel physician should be adept in primary care (pediatrics, internal medicine, or family medicine) and have specialty training or experience after graduating from medical school. Some countries do not have residency programs; therefore, on-the-job training must suffice. The panel physician must have specific competence in the diagnosis and treatment of individuals with tuberculosis and sexually transmitted diseases, and should be able to recognize mental disorders.
- (ii) **(U)** The panel physician should identify a psychiatrist, if at all possible, for the referral of any individual who appears to have a mental disorder.
- (iii) **(U)** The panel physician should have reliable radiology (X-ray) and serology (syphilis laboratory) facilities identified. These can either be on the premises or contracted out.
- (iv) **(U)** Specialty training in pediatrics is desired for posts with large volumes of international adoptee cases.
- (v) **(U)** The panel physician should have accumulated 4 years in practice after their internship training is completed. Less than 4 years in practice would mean a probation period would be established before full panel physician status would be bestowed.
- (vi) **(U)** The panel physician must agree to participate in quality control surveillance.

(c) **(U) Facility requirements:**

- (i) **(U)** The physical plant must be acceptable; it should be at a minimum a well-lit facility with an examination table, a blood pressure cuff, instruments to examine the eyes and ears (ophthalmoscope and otoscopy), and an eye chart (at 20 feet).
- (ii) **(U)** Email or fax communication capabilities identified by the panel physician is highly desirable.
- (iii) **(U)** Examinations must be given within 10 working days of the date that is asked for by the applicant.

- (iv) **(U)** The panel physician must be able to verify the identity of each applicant and use fraud prevention measures at every step in the process (at time of blood draw [phlebotomy], X-ray, vaccine administration, and sputum collection).

(U) Note: Where possible and the number of visa applicants warrant two or more, panel physicians should be of both sexes at every location.

(3) (U) Removal Standards for Panel Physicians:

- (a) **(U)** Panel Physicians can be removed for due cause (such as misconduct, fraud, loss of license, and criminal conviction). This would result in the immediate loss of appointment as panel physician. Short of this, posts are encouraged to consider additional training and counsel the panel physician in areas that are deficient.
- (b) **(U)** Any complaint against a panel physician will be investigated by the consular officer, and if possible by the Division of Global Migration and Quarantine of the Centers for Disease Control and Prevention (CDC/DGMQ /CDC), and any action resulting will be communicated to CA/VO/F in Washington, DC and CDC/DGMQ via cdcqap@cdc.gov prior notifying the panel physician.
- (c) **(U)** If the post decides they no longer wish to continue the relationship with the panel physician, but does not have due cause to remove the panel physician, they can either wait until the yearly time limit on the panel physician agreement expires, then notify the panel physician that their services will not be continued by the embassy/consulate or give 90 days notice as noted in the panel physician agreement above. For either option, post must notify CA/VO/Fin Washington DC and CDC/DGMQ via cdcqap@cdc.gov prior notifying the panel physician.

(4) (U) Maintenance of the Appointment for a Panel Physician:

- (a) **(U)** Renew the written agreement annually, usually every October 1st.
- (b) **(U)** Check that there is a current full local license with no restrictions.
- (c) **(U)** Check that there is a current official governmental certificate of good standing, or equivalent, in the medical profession, if available in the country where the physician has his/her license.

(5) (U) The Components of the Medical Examination, which should be Evaluated by the Consular Officer are:

- (a) **(U)** The Panel Physician's Contact with the Applicant, Consisting of Collecting Past Medical History and Performing a Physical Examination;
- (b) **(U)** Determining Vaccination History and Administering Vaccines, if Necessary;
- (c) **(U)** Collecting Blood Samples;
- (d) **(U)** Testing for Syphilis;

- (e) **(U)** Testing for Gonorrhea;
 - (f) **(U)** Taking Chest X-Rays;
 - (g) **(U)** Collecting Sputum Samples, if Necessary; and
 - (h) **(U)** Microscopy Testing for Tuberculosis (TB).
- (6) **(U) Evaluating the Panel Physician and Panel Site :**
- (a) **(U)** Consular officers should consider three elements in their evaluation of each of the components of the Medical Examination for an Immigrant Visa:
 - (i) **(U)** Fraud Prevention Measures taken;
 - (ii) **(U)** Reliability and Quality of the various components; and
 - (iii) **(U)** Safety Measures taken while conducting the component, or Education provided to the applicant.
 - (b) **(U)** The following methods are the proposed Ideal by the CDC for fraud Prevention measures by the panel physicians or their staff, the laboratory directors or their staff, or the radiologists or their staff during the medical examination process:
 - (i) **(U)** Verifying the applicant's identity by comparing the person with an official document that contains the applicant's photograph (such as a passport or official government issued identification card).
 - (ii) **(U)** Verifying the applicant's signature by comparing a sample signature with one from an official document containing their signature.
 - (iii) **(U)** The applicants have 3 recent photographs of themselves, with the likenesses confirmed with official documents containing the applicants' photographs. One photo will be presented at the time of the panel physician contact, and will be attached to the front of the Medical Examination for Immigrant or Refugee Applicant (DS-2054). The other two will be separately attached to the requests for blood collection, and for Chest X-ray.
- (7) **(U) Overall Review of Performance:** You must use sample Review of Performance by clicking on Review of Performance anywhere it appears in the FAM to open an editable and printable word version of the document.

9 FAM 302.2-3(F) (U) Medical Examination and Findings

9 FAM 302.2-3(F)(1) (U) Fee for Medical Examination

(CT:VISA-177; 09-15-2016)

(U) The fees charged for the medical examination, chest x-rays, vaccinations, and serological tests are determined by the consular officer and the selected physician and should be based on prevailing medical fees charged within the country for similar

services.

9 FAM 302.2-3(F)(2) (U) Medical Screening Forms

(CT:VISA-177; 09-15-2016)

- a. **(U) Required Forms:** The panel physician must complete the following forms for all visa applicants referred to them for visa medical examinations:
 - (1) Form DS-2054, Medical Examination for Immigrant or Refugee Applicant;
 - (2) Form DS-3030, Tuberculosis Worksheet;
 - (3) Form DS-3025, Vaccination Documentation Worksheet; and
 - (4) Form DS-3026, Medical History and Physical Examination Worksheet.
- b. **(U) Nurses and Authorized Staff:** A nurse or other authorized staff may complete the forms on behalf of the panel physical. The panel physician, however, must review the records and make the determination as to whether the applicant meets all necessary medical requirements or if the applicant should seek a waiver.
- c. **(U) Providing Copies:** Posts can review and download forms from e-Forms. Posts should make hard copies of the forms locally, either through photocopies or through a local printer. Reproduction costs must come from post funds.
- d. **(U) Medical Examination Report:** All completed forms and any related worksheets should be provided to you as the panel physician's medical examination report for each applicant.
- e. **(U) Form DS-2054, Medical Examination for Immigrant or Refugee Applicant:** You must ensure that a panel physician has recorded the results of medical examinations on Form DS-2054, and related worksheets. The panel physician must complete this form for any applicants receiving a medical examination, including NIV applicants.
 - (1) **(U)** Form DS-2054, is essential for immigrant applicants or refugee resettlement. It should be used consistently and always be included in the immigrant or refugee packet. Form DS-2054 is used to establish eligibility under INA 212(a)(1). You are responsible for ensuring that the physician has completely filled out all of the information at the top of the form.
 - (2) **(U)** If a Class A condition is found, you must determine which Class A condition(s) applies to the immigrant visa (IV) applicant and whether a waiver under INA 212(g) is applicable. (If a refugee is found to have a Class A condition, you should seek the assistance of Bureau of Population, Refugees and Migration/Office of Admissions (PRM/A) or follow guidance on waiver processing for refugees.) If the Class A condition is non-TB, the medical exam is only valid for six months (with waiver). In the case of Class A, TB condition with a waiver, the medical exam is only valid for three months from the date of the final TB culture results. You should inform the visa applicant of the time frame validity of the medical exam and the requirement that they must get a new medical examination if they do not depart for the United States within the

validity period of their exam. Class A waivers for tuberculosis or mental disorders should be annotated on the Machine Readable Immigrant Visa (MRIV) to reflect the applicant's condition for CDC. (See [9 FAM 504.10-3\(B\)\(1\)](#).)

- (3) **(U)** If a Class B condition is found in the case of immigrant visa (IV) applicants, the box in "Class B Conditions" is checked, and you should annotate the MRIV. (See [9 FAM 504.10-3\(B\)\(1\)](#).) You should also determine if there are any public charge issues. If there are not, the visa process can continue. If there is a Class B2 TB or Class B3 TB the medical exam is valid for six months. In cases involving a Class B1 TB Pulmonary or Class B1 TB Extrapulmonary the medical exam is only valid for three months. You should inform the visa applicant of the time frame validity of the medical exam and the requirement to get a new medical exam if they do not depart for the United States within the validity period of the examination.
- f. **(U) Form DS-3030, Tuberculosis Worksheet:** Form DS-3030 is designed for the physician's use in diagnosing a tuberculosis (TB) condition and classification. The panel physician should ascertain fraud prevention measures in collecting information. The panel physician should ascertain that fraud prevention measures for applicant identity verification and information collection are taken by outside x-rays labs to which applicants are referred. (See [9 FAM 302.2-3\(F\)\(5\)](#).)
- g. **(U) Form DS-3025, Vaccination Documentation Worksheet:** Form DS-3025 provides a list of immunizations needed by the applicant as required by law. A copy of the vaccination worksheet must be provided to the applicant.
- h. **(U) Form DS-3026, Medical History and Physical Examination Worksheet:** Form DS-3026 includes information regarding past medical history as reported by the applicant and recorded by the panel physician or by other qualified medical personnel. Rules concerning the requirements of medical history and medical examination can be found in the Technical Instructions and in the panel physician agreement. (See [9 FAM 302.2-3\(E\)\(2\)](#) paragraph e(4).) This form should be reviewed by you to determine whether an additional medical condition would raise public charge issues. (Public charge concerns are not applicable to refugee applicants.)

9 FAM 302.2-3(F)(3) (U) Basis for Medical Report in Determining Eligibility

(CT:VISA-177; 09-15-2016)

- a. **(U) In General:** The panel physician conducts the examination and testing required to assess the applicant's medical condition and then completes Form DS-2054, Form DS-3030, Form DS-3025, and Form DS-3026. The panel physician determines whether diagnostic tests are needed when the medical condition is self-described by the applicant.
- b. **(U) The Report:** Upon completion of the applicant's medical examination, the examining physician must submit the report to you. The report must include the results of any diagnostic tests required for the diagnosis of the diseases identified

as communicable diseases of public health significance and any other tests necessary to confirm suspected diagnoses of any other Class A or Class B condition. You will see the list of result on the form as follows:

- (1) **(U)** No apparent defect, disease, or disability;
 - (2) **(U)** Class A—a communicable disease of public health significance, immigrant visa applicant vaccination refusal, a physical or mental disorder with harmful behavior, or addiction abuse of specific substance on the CSA; or
 - (3) **(U)** Class B—physical or mental defect, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal physical or mental well-being.
- c. **(U) Report Necessary for Finding:** You may not find an applicant inadmissible under INA 212(a)(1) without a report from the panel physical.

9 FAM 302.2-3(F)(4) (U) Effect of Findings

(CT:VISA-177; 09-15-2016)

- a. **(U) Class A Findings:** A "Class "A"" medical finding requires you to find an alien inadmissible under INA 212(a)(1) . The physician's examination must be conducted in accordance with the current Technical Instructions.
- b. **(U) Class B Findings:** A Class B medical finding informs you that a serious medical condition exists which constitutes a departure from normal health or well-being. You must consider such finding when assessing the eligibility for visa issuances; i.e., the likelihood of the alien becoming a public charge.

9 FAM 302.2-3(F)(5) (U) Precautions in Establishing Identity of Visa Applicants Undergoing Medical Examinations

(CT:VISA-177; 09-15-2016)

- a. **(U) Verifying Identity of Person Examined:** Consular officers must ensure that panel physicians take every possible safeguard to verify that the person who is examined by the physician is, in fact, the visa applicant. Appropriate steps must be taken to preclude the substitution of persons at medical examinations as well as other fraud.
- b. **(U) Physicians' Responsibilities Regarding Alien's Identity:**
 - (1) **(U)** Post should provide an instruction sheets to the alien outlining the medical examination requirements and procedures. The consular officer should instruct the applicant that they must present these instructions and their passport to the panel physician at the time of the medical examination.
 - (2) **(U)** The instruction sheets must convey to the examining physician the need for careful comparison of the identity of the visa applicant with the photograph attached to the alien's passport or with other documents of identity in order to prevent potential fraud. Instruction sheets must also include a requirement that the physician endorse Form DS-2054 for use with TB Technical

Instructions 2007).

- c. **(U) X-Ray and Other Medical Documents to Refer to Specific Alien by Name:** Reports of serological or other tests, particularly the chest x-ray, must include the name of the alien examined to prevent document substitution. This requirement applies to all images, regardless of format. As of October 1, 2014, the only CDC acceptable format for chest radiograph is digital radiograph provided on recordable compact disks (CD-Rs). You should instruct the panel physician(s) to follow the procedure set forth in [9 FAM 302.2-3\(F\)\(5\)](#) paragraph b above when he or she refers a visa applicant to another physician or to a laboratory for an x-ray examination or laboratory tests. Also instruct the physician or laboratory to which the alien is referred to take similar care in establishing the visa applicant's identity on all documentation.

9 FAM 302.2-3(F)(6) (U) Chest X-Rays, Serologic Tests, and X-Ray Requirement for Applicants under 15 years old and Pregnant Women

(CT:VISA-177; 09-15-2016)

- a. **(U) Applicants Under 15 Years Old:** In most cases, CDC regulations provide that neither a chest x-ray examination nor testing for syphilis or gonorrhea shall be required if the alien is under the age of 15. However, applicants under the age of 15 who are ill and have signs or symptoms suggestive of tuberculosis or who are a known contact of someone diagnosed with tuberculosis should have a tuberculin skin test (TST). A chest x-ray (CXR) examination may be required, depending on the result of the TST. Applicants under 10 years of age who receive a CXR should have a standard view and lateral view images. If the applicant has a CXR with findings suggestive of tuberculosis, the applicant should provide three sputum specimens to undergo microscopy for acid-fast bacilli, as well as cultures for mycobacteria and confirmation of the Mycobacterium species (in accordance with the current TB TIs). A serologic or laboratory test may also be required for applicants under the age of 15 if there is reason to suspect infection with syphilis or gonorrhea.
- b. **(U) Pregnant Women:**
- (1) **(U)** CDC requires that women who are pregnant and required to have a medical examination in connection with the issuance of a visa must have a chest x-ray examination conducted.
 - (2) **(U)** Pregnant women will have to provide the panel physician with consent to conduct the chest x-ray. For the health of the applicant and her unborn child, CDC instructs panel physicians and laboratories to provide abdominal and pelvic protection with double layer, wrap-around lead shields when they receive the chest radiographs.

9 FAM 302.2-3(F)(7) (U) Referral of Doubtful Cases to Local Specialist and Centers for Disease Control

(CT:VISA-177; 09-15-2016)

- a. **(U) Cases to be Referred Locally if Possible:** Since CDC does not currently have physicians stationed abroad to whom panel physicians may refer doubtful cases, consular officers should inform local panel physicians that whenever further medical consultation is deemed advisable, the applicant should be referred to an appropriate local specialist at the applicant's expense. Under generally accepted medical procedures, the specialist should report the findings and opinion to the panel physician who remains responsible for the completion of Form DS-2054, Form DS-3026, Form DS-3030, and Form DS-3025 and final results of the medical examination.
- b. **(U) Referral to the CDC in Rare Instances:**
- (1) **(U)** In those comparatively rare instances where no local specialist is available for consultation, local panel physicians shall refer specific problems to CDC at the following address:

QAP Manager
Immigrant, Refugee, and Migrant Health
Division of Global Migration and Quarantine, (MS-E03)
Centers for Disease Control and Prevention
Atlanta, Georgia 30333

Email: cdcqap@cdc.gov
 - (2) **(U)** In submitting medical questions relating to diseases of the chest, the panel physician should furnish the following:
 - (a) **(U)** A complete medical history including history of the clinical course of the disease;
 - (b) **(U)** Bacteriological studies (AFB smears or culture results);
 - (c) **(U)** Description of X-ray findings (transmit all X-rays);
 - (d) **(U)** Detailed account of treatment (chemotherapy and other); and
 - (e) **(U)** Organism resistance studies, if done.
 - (3) **(U)** If the problem relates to mental illness, the panel physician should furnish the following information:
 - (a) **(U)** A complete medical history of the alien, including details of any hospitalization or institutional care or treatment for any physical or mental condition;
 - (b) **(U)** Findings as to the current physical condition of the alien, including reports of chest X-ray examination and of serologic testing for syphilis infection if the alien is 15 years of age or older, and other pertinent diagnostic tests; and
 - (c) **(U)** Findings as to the current mental condition of the alien, with information as to prognosis and life expectancy and with a report of a psychiatric examination conducted by a psychiatrist who, in case of

intellectual disability, shall also provide an evaluation of intelligence.

- (4) **(U)** For an alien with a past history of mental illness, the medical report must also contain information on which the CDC can base a finding as to whether the alien has been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery.
- c. **(U) Confidentiality of Reports Received from CDC:** Consular officers receiving reports from the CDC in response to direct requests for review may inform inquirers for this review that the report has been received but may furnish additional information only as consistent with the requirements of INA 222(f) concerning the confidentiality of records pertaining to the issuance or refusal of visas

9 FAM 302.2-3(F)(8) (U) Divulgence of Contents of Medical Examination Reports

(CT:VISA-177; 09-15-2016)

(U) Consular officers must be guided by the information in [9 FAM 603.2-3](#) in responding to inquiries on individual visa cases and grounds of visa ineligibility for medical reasons. Consular officers should not divulge the particulars of an applicant's general physical and mental health. The inquirer should be told only that the applicant has been found to be medically qualified for a visa. The inquirer should be referred to the visa applicant for further information.

9 FAM 302.2-3(F)(9) (U) Disposition of Medical Reports

(CT:VISA-177; 09-15-2016)

- a. **(U)** In cases in which no Class A or Class B TB medical condition is detected, the panel physician may give the medical reports in a sealed envelope to the applicant to take to the interview.
- b. **(U)** In cases in which a Class A medical condition is detected, the panel physician must not give the medical report to the applicant but shall ensure that it is delivered directly to the consular officer, except in rare instances when the physician must give the report to the applicant to deliver to the consular officer. In those rare instances in which it is necessary for the applicant to take the medical report to the consular officer, the panel physician must ensure that the report is placed in a sealed envelope in such a way that the consular officer can easily determine if it has been opened.
- c. **(U)** In cases in which a Class B TB medical condition is detected, the panel physician must not give the medical report to the applicant but must ensure that it is delivered directly to the consular officer, except in cases in which the procedure is impractical. In those rare instances in which it is necessary for the applicant to take the medical report to the consular officer, the panel physician must ensure that the report is placed in a sealed envelope in such a way that the consular officer can easily determine if it has been opened.

9 FAM 302.2-3(F)(10) (U) Disposition of Medical Documents After Visa Issuance to Applicants With and Without Class A or B Medical Conditions

(CT:VISA-177; 09-15-2016)

- a. **(U) No Class A or Class B Medical Condition:** The panel physician may provide a copy of all medical examination forms and related worksheets to the alien. Aliens without a Class A or Class B medical condition are not required to present copies of their medical evaluation at the port of entry. In cases where the applicant has had a chest x-ray, you should instruct the panel physician to give the x-ray image(s) on a CD-R directly to the alien. If, however, the x-ray image(s) or CD-R is hand-carried or sent to the consular section, you must give the images to the applicant for their medical records. Instruct the alien to:
- (1) **(U)** Retain this x-ray image as an important record of his or her physical condition at the time of the medical examination; and
 - (2) **(U)** Take the chest x-ray image(s) to the United States as part of his or her permanent health record.
- b. **(U) Class A or Class B Medical Condition:** If an applicant has a Class A or Class B Medical Condition, with the exception of "Class B Other" conditions, at the time of visa issuance, attach, by staples, to the Immigrant's Data summary page a sealed envelope containing the original and three copies of Form DS-2054 and all related worksheets with two heavy-duty staples in the upper left corner of Summary Page, well above the space for the alien's name so as not to obscure the name. When attaching an envelope containing medical forms, consular officers should ensure that staples do not go through the documents inside the envelope. Posts must assemble individually the visas of members of a family group; they must not be attached together with staples. U.S. Customs and Border Protection (CBP) will collect the original form, give one copy to the alien and two copies to the CDC Quarantine Station, which will keep one copy and send the other to CDC Headquarters. The envelope must be clearly marked "Medical Report (Form 4 and related worksheets) enclosed." Give to the applicant all available x-ray image(s) (in a CDC accepted format) pertaining to the case in a separate sealed envelope.
- (U)** Instruct the alien to:
- (1) **(U)** Retain the x-ray image(s) as an important record of his or her physical condition at the time of the medical examination; and
 - (2) **(U)** Take the chest x-ray image(s) to the United States as part of his or her permanent health record.
- (U)** Since these images are for follow-up evaluation purposes only, the alien need not hand-carry the x-ray image(s) for presentation at the port of entry.

9 FAM 302.2-3(F)(11) (U) Immigrants Advised to Carry Immunization and Other Records to United States

(CT:VISA-177; 09-15-2016)

- a. **(U)** Every state in the United States now requires that children have a record of completed immunization(s) at the time of a child's first enrollment into school. In most states, this applies to transfer students entering any grade. Therefore, the CDC strongly recommends that children entering the country should either have evidence of immunity consisting of physician documentation of prior disease or a record of immunizations.
- b. **(U)** Panel physicians must inform immigrant visa (IV) applicants at the time of examination that problems may be encountered should they enter the United States without proper health records and certifications of vaccinations, and they must urge the applicants to obtain such documents from their private physicians, local health departments, or schools prior to departure.
- c. **(U)** Panel physicians must provide a copy of Form DS-3025 to all immigrants as part of their permanent health record. Immigrants should be advised to hand-carry this document with their other medical paperwork.

9 FAM 302.2-3(G) (U) Basis of Medical Report in Determining Ineligibility Under Public Charge - INA 212(a)(4)

(CT:VISA-177; 09-15-2016)

- a. **(U)** In addition to the examination for specific inadmissible conditions, the examining physician must also look for other physical and mental abnormalities that suggest the alien is likely to become a public charge.
- b. **(U)** When identifying a "Class "B"" medical condition that may render the alien inadmissible under INA 212(a)(4) , the examining physician is required to reveal not only the full extent of the condition, but the extent of the approximate treatment needed to care for such condition. Based on the results of the examination, you must determine whether the disease or disability would be likely to render the alien unable to care for him or herself or attend school or work, or require extensive medical care or institutionalization. Thus, certain conditions (e.g., developmental disability) are no longer explicitly listed as inadmissible conditions. Instead, the examining physician's diagnosis and opinion regarding treatment and disability would be factors for you to consider in your "totality of the circumstances" analysis of admissibility under INA 212(a)(4). (See [9 FAM 302.8\(B\)\(3\)](#).)
- c. **(U)** When the alien's own resources are not sufficient or are not available for use outside the country of residence and sponsorship affidavits are accepted, the affidavits must include explicit information regarding the arrangements made or the facilities available to the alien for support in the United States during the proposed period of medical treatment and assurance that a bond will be available if required by DHS.
- d. **(U)** Whenever an NIV applicant is seeking admission for medical treatment,

complete information is required regarding the nature of the disease, effect, or disability for which treatment is being sought. (If action under INA 212(d)(3)(A) will be required, see [9 FAM 302.2-3\(G\)](#) and [9 FAM 305.4.](#))

9 FAM 302.2-4 UNAVAILABLE

9 FAM 302.2-4(A) Unavailable

(CT:VISA-177; 09-15-2016)

Unavailable.

- (1) **Unavailable.**
- (2) **Unavailable.**

9 FAM 302.2-4(B) Unavailable

(CT:VISA-177; 09-15-2016)

- a. **Unavailable.**
- b. **Unavailable.**
- c. **Unavailable.**
- d. **Unavailable.**
- e. **Unavailable.**

9 FAM 302.2-4(C) Unavailable

(CT:VISA-177; 09-15-2016)

Unavailable.

9 FAM 302.2-5 (U) COMMUNICABLE DISEASES - INA 212(A)(1)(A)(I)

9 FAM 302.2-5(A) (U) Grounds

(CT:VISA-177; 09-15-2016)

(U) INA 212(a)(1)(A)(i) provides that an applicant is ineligible for a visa if he or she "has a communicable disease of public health significance."

9 FAM 302.2-5(B) (U) Application

9 FAM 302.2-5(B)(1) (U) Centers of Disease Control and

Prevention's Technical Instructions List of Communicable Diseases of Public Health Significance

(CT:VISA-177; 09-15-2016)

(U) INA 212(a)(1)(A)(i) refers to an inadmissible disease as a "communicable disease of public health significance." The CDC's Technical Instructions lists these disease which are also defined at 42 CFR 34.2(b). The following diseases are those that the CDC currently defines as "communicable diseases of public health significance." Note that as of January 4, 2010, HIV is no long included on this list.

- (1) **(U)** Communicable diseases listed in a Presidential Executive Order, as provided under Section 316(b) of the Public Health Service Act. The revised list of quarantinable communicable diseases is available at the CDC's, website and the Federal Register;
- (2) **(U)** Communicable diseases that may pose a public health emergency of international concern if it meets one or more of the listed factors in 42 CFR 34.3(d);
- (3) **(U)** Gonorrhea;
- (4) **(U)** Hansen's disease (Leprosy), infectious;
- (5) **(U)** Syphilis, infectious stage; and
- (6) **(U)** Tuberculosis, active.

9 FAM 302.2-5(B)(2) (U) Applicants Infected with Human Immunodeficiency Virus (HIV)

(CT:VISA-177; 09-15-2016)

a. **(U) In General:**

- (1) **(U)** HIV-infected applicants who were refused a visa under INA 212(a)(1)(A)(i) prior to January 4, 2010 are no longer ineligible under INA 212(a)(1)(A)(i). If the applicant requires a medical examination for their visa classification, the applicant must reapply for a visa, complete a new medical examination with a panel physician, and pay all applicable fees. The panel physician should classify the applicant as "Class B1 TB Pulmonary." Nonimmigrant visa applicants are not required to complete a new medical examination to overcome the HIV-infection INA 212(a)(1)(A)(i) ineligibility, unless otherwise required for the visa classification or a separate medical reason.

(2) **Unavailable.**

b. **(U) Applicant's Suspected of Being HIV Infected by the Panel Physician:**

For applicants who may benefit from being tested for HIV, such as those with signs or symptoms suggestive of HIV or those with TB disease, the panel physician may counsel the applicant about HIV, and may administer an HIV serologic test, if the applicant consents to the testing. The applicant may also choose to undergo HIV testing at a non-panel-physician site. The panel physician must also inform the

applicant that they do not have to be tested for HIV and that any results of the HIV serologic testing will be provided to the consular section processing his or her visa application as part of the visa medical examination packet of forms.

9 FAM 302.2-5(B)(3) (U) Immigrant Afflicted with Tuberculosis

(CT:VISA-177; 09-15-2016)

- a. **(U) In General:** All posts are required to use the current version of TB Tis available on CDC's website.
- b. **(U) TB TIs:**
 - (1) **(U) In General:** The medical examination is not considered complete until you obtain a determination from the medical examiner(s) with the application's tuberculosis classification(s). Applicants should be assigned one or more of the following TB classifications:
 - (a) **(U)** No TB classification;
 - (b) **(U)** "Class 'A' TB" meaning chest x-ray findings suggestive of pulmonary TB and positive sputum smears or positive cultures (see subparagraph (2) below for more information);
 - (c) **(U)** "Class 'B1' TB, Pulmonary" meaning either:
 - (i) **(U)** No treatment – chest x-ray findings are suggestive of pulmonary TB but sputum smear and cultures are negative (see paragraph (d) below for more information); or
 - (ii) **(U)** Completed treatment – the applicant was diagnosed with pulmonary TB and successfully completed directly observed therapy and sputum smears and cultures are negative;
 - (iii) **(U)** HIV infection, negative sputum smears and culture.
 - (d) **(U)** "Class 'B1' TB, Extrapulmonary" meaning the applicant has clinically active but not infectious TB, and the chest x-ray or other evidence indicate TB outside of the lung (see paragraph (e) below for more information);
 - (e) **(U)** "Class 'B2' TB, Latent Tuberculosis Infection (LTBI) Evaluation" meaning the applicant has had a tuberculin skin test (TST) greater than or equal to 10 mm or a positive IGRA but otherwise had a negative evaluation to TB (see paragraph (d) below for more information); or
 - (f) **(U)** "Class 'B3' TB, Contact Evaluation" meaning the applicant has had contact with a known TB case. Contact is defined as having shared the same enclosed air space (i.e., exposure) in a household or other closed environment for a prolonged period of time (days or weeks, not minutes or hours) with a person who had a smear and/or culture-positive for pulmonary tuberculosis) (see paragraph (d) below for more information).
 - (2) **(U) Class "A" TB Medical Examinations:** For applicants infect with Class "A" TB, the medical examination is not considered complete until the applicant:

- (a) **(U)** Successfully completes the recommended treatment in accordance with the TB TIs. The Technical Instructions are available on the CDC's website. The recommended treatment involves directly observed therapy (DOT) where a health care worker watches a patient swallow each dose of medication. DOT treatment enhances adherence and reduces risk of development of drug resistance. The TB TIs require drug susceptibility testing (DST) of sputum cultures to determine which medications will treat the applicant's disease; and
- (b) **(U)** Has the negative sputum spears and culture for acid fast bacilli for three consecutive working days. The TB TIs require laboratory cultures of sputum samples which are more effective in detecting tuberculosis than chest x-rays or sputum smears along.

(3) (U) Children under 10:

- (a) **(U)** Visa applicants ten (10) years of age or younger who require TB sputum cultures during their visa medical examination, regardless of their HIV infection status, may be medically cleared to travel to the United States immediately after sputum smear analysis (while sputum cultures results are pending) if they do not have:
 - (i) **(U)** Sputum smears positive for acid-fast bacilli (AFB);
 - (ii) **(U)** Chest x-ray that include one or more cavities and/or extensive disease;
 - (iii) **(U)** Respiratory symptoms that include forceful and productive cough; and or
 - (iv) **(U)** Are in known contact with a person with multidrug-resistant (MDR) TB who was infectious at the time of contact.
- (b) **(U)** Children who meet the above criteria should be found to have a Class "B1" TB, Pulmonary classification by the examining panel physician. Because this classification is not considered to be an inadmissibility, you may issue visas, to otherwise qualified applicants, without first processing a waiver.

(U) NOTE: If the applicant has other medical ineligibilities, then a waiver may still need to be filed. (See [9 FAM 302.2-5\(C\)](#), Waiver, below for more information)

- c. **(U) "CLASS 'A'" Finding for Infectious Tuberculosis:** A visa applicant identified by the panel physician as having Class "A" infectious tuberculosis is ineligible to receive a visa under INA 212(a)(1)(A)(i).
 - (1) **(U) TB TIs:** A visa applicant identified by the panel physician as having "Class "A"" infectious tuberculosis is ineligible to receive a visa under INA 212(a)(1). However, in exceptional medical situations, a provision allows applicants undergoing pulmonary tuberculosis treatment to petition for a Class "A" waiver. Waivers can be pursued for any applicant who has a complicated clinical course and who would benefit from receiving treatment of their TB in the United States. It should be noted that historically these waivers have

rarely been granted due to the infectious nature of the illness.

- (2) **(U) Waivers:** You may recommend a waiver of the ground of inadmissibility to DHS/USCIS for IV or DHS/CBP for NIV; provided that the alien has met certain CDC requirements. (See [9 FAM 302.2-5\(D\)\(1\)](#) below for waiver procedures for immigrants or [9 FAM 302.2-5\(D\)\(2\)](#) for waiver procedures for nonimmigrants.)
 - (3) **(U) When Waiver is Not Granted:** Any applicant with Class "A" TB who needs treatment overseas and who is not granted a waiver, is medically ineligible to receive a visa until the completion of successful DOT treatment and have negative sputum smears and cultures at the end of therapy in accordance to the TB TIs. Consistent with other applicants started on tuberculosis treatment prior to travel, if TB therapy is started for an applicant ten years of age or younger, the applicant should be found to have a Class "A" TB classification by the panel physician. In this case, a Class "A" waiver can be filed with CDC so that it can be reviewed and the applicant can travel to the United States before completion of therapy.
(U) NOTE: For any Class "A" TB case involving a young child, the CDC supports the filing of a waiver application so that they may review and adjudicate in a timely manner.
 - (4) **(U) Refusal of Treatment:** Do not issue a visa to applicants with positive sputum smears or positive cultures who do not want to be treated.
 - (5) **(U) History of Noncompliance:** Do not issue a visa to an applicant with a history of noncompliance until he or she has completed DOT treatment in accordance with the TB TIs.
- d. **(U) CLASS "B" FINDING FOR INFECTIOUS TUBERCULOSIS:** An alien who is found to have Class "B" medical condition for tuberculosis is not inadmissible under INA 212(a)(1)(A)(i).
- e. **(U) Medical Treatment at U.S. Military Institution:** Although alien dependents of U.S. military personnel may not use U.S. military facilities for visa-related medical examinations, such facilities are authorized to treat alien dependents that have tuberculosis. Those military facilities designated by the Surgeon General of any of the U.S. Armed Services, or by the Chief Surgeon of any major Army command abroad, are considered acceptable to the CDC for the treatment of tuberculosis. A statement from the Surgeon General or a Chief Surgeon that the alien will be admitted for treatment may be accepted as meeting the requirements of [9 FAM 302.2-5\(D\)\(2\)](#). The name and address of the military hospital in the United States where the treatment will be provided must be shown on Form I-601, Application for Waiver of Ground of Inadmissibility, Section B.

9 FAM 302.2-5(C) (U) Advisory Opinion

(CT:VISA-177; 09-15-2016)

(U) An AO is not required for a potential INA 212(a)(1)(A)(i) ineligibility; however, if

you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A. If you have question about the application of policy of procedure contact CA/VO/F.

9 FAM 302.2-5(D) (U) Waiver

9 FAM 302.2-5(D)(1) (U) Waivers for Immigrants

(CT:VISA-177; 09-15-2016)

- a. **(U) In General:** INA 212(g) provides for a discretionary waiver of subsections (i) of INA 212(a)(1)(A) if the alien is:
 - (1) **(U)** The spouse, unmarried son or daughter, or the minor unmarried lawfully adopted child of:
 - (a) **(U)** A U.S. citizen;
 - (b) **(U)** An alien lawfully admitted for permanent residence; or
 - (c) **(U)** An alien who has been issued an immigrant visa (IV); or
 - (2) **(U)** The parent of:
 - (a) **(U)** A U.S. citizen son or daughter;
 - (b) **(U)** An alien lawfully admitted for permanent residence; or
 - (c) **(U)** An alien who has been issued an immigrant visa (IV); or
 - (3) **(U)** A VAWA self-petitioner (as defined in INA 101(a)(51)).
- b. **(U) Waivers for "Class A" Tuberculosis:**
 - (1) **(U)** Waivers for immigrant visa (IV) applicants identified by the panel physician as being afflicted with Class "A" infectious tuberculosis are only for exceptional medical situations because of the infectious nature of the illness. If the applicant requires a completed clinical treatment course that he or she can only receive in the United States, the applicant should provide that information to USCIS.
 - (2) **(U)** You may inform an applicant that he or she may file a Form I-601 with USCIS for a waiver of medical grounds of inadmissibility provided that the alien qualifies per above. For cases involving communicable diseases, the applicant must be the spouse, unmarried son or daughter (regardless of age), or parent of a U.S. citizen, of a lawful permanent resident (LPR), or of an alien who has been issued an IV, or must be a VAWA self-petitioner (as defined in INA 101(a)(51)).
 - (3) **(U)** If you determine that the IV applicant is eligible to apply for the waiver, direct the applicant to the Form I-601 instructions on the USCIS website.
 - (4) **(U)** For complete NIV medical waiver procedures, see [9 FAM 302.2-5\(D\)\(2\)](#).
- c. **(U) Procedures:**

- (1) **(U)** If you determine that an immigrant visa (IV) applicant is eligible to apply for a waiver of his or her ineligibilities, you should instruct the applicant to file Form I-601, Application for Waiver of Ground of Inadmissibility, with USCIS per the instructions for Form I-601.
 - (2) **(U)** When posts refuse an IV case on medical grounds of ineligibility, they must scan the medical exam file into CCD so that it can be accessed by I-601 adjudicators at the USCIS Nebraska Service Center (NSC).
 - (3) **(U)** When the NSC receives an I-601 seeking to waive a ground of inadmissibility under INA 212(a)(1)(A)(i) or (iii), the NSC will download a copy of the medical exam and any related medical records from CCD and send a copy of the Form I-601, medical exam and related medical records to the CDC for review. The NSC will not approve the Form I-601 until after consulting with CDC.
 - (4) **(U)** Posts should not liaise with CDC while a Form I-601 is being adjudicated. USCIS will liaise as necessary with the CDC.
 - (5) **(U)** If USCIS approves the waiver, and the applicant has no other ineligibilities, you may issue the visa.
- c. **(U) When Waiver is not Recommended:** If you don't believe that waiver is warranted, then you are not obligated to submit the case to USCIS or CPB for review. However, you must send a report to CA/VO/L/A for consideration under INA 212(d)(3)(A) on any case referred to in [9 FAM 305.4-2](#).

9 FAM 302.2-5(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-177; 09-15-2016)

- a. **(U) In General.** If you determine that an alien is inadmissible for a nonimmigrant visa (NIV) under INA 212(a)(1)(A), you may recommend to CBP, through the Admissibility Review Information Service (ARIS) system, that a waiver under INA 212(d)(3)(A) be granted to the alien. CBP may, in its discretion, authorize a waiver to allow the alien temporary admission. (See [9 FAM 305.4-2](#).)
- b. **(U) Waivers for NIV Applicants Afflicted with "Class A" Tuberculosis:** Do not recommend a waiver for an NIV applicant identified by the panel physician as being afflicted with Class "A" infectious tuberculosis, unless he or she has a complicated clinical course and would benefit from receiving TB treatment in the United States. This type of waiver is for exceptional medical situations and historically these waivers have rarely been granted, due to the infectious nature of the illness.
- c. **(U) Aliens Traveling for Medical Reasons:** The requirements listed below must be fulfilled in the case of an alien traveling for medical treatment of a condition that leads to a finding of inadmissibility under INA 212(a)(1)(A)(i). When a waiver of a medical ground of inadmissibility is deemed necessary, the applicant must establish that arrangements, including financial, have been made for treatment. When the personal resources of an alien are not sufficient or may not be available outside the

alien's country of residence, the alien must include explicit information regarding which facilities are available for support during the proposed medical treatment. The sponsor of the affidavit must confirm that a bond will be made available if required by the DHS.

9 FAM 302.2-5(D)(3) (U) Additional Waiver Information

(CT:VISA-177; 09-15-2016)

- a. **(U) Applicant Inadmissible Under Grounds Other than INA 212(a)(1):**
Although any applicant who has a medical ineligibility and qualifying relationship may apply for a waiver, you should not advise an applicant to file an I-601 waiver if an applicant has other grounds of ineligibility that cannot be waived. If the applicant is ineligible under a ground of the INA that cannot be waived, you may not issue a visa even if the INA 212(a)(1) inadmissibility could be or is waived. An applicant ineligible under multiple grounds may apply for a waiver of other inadmissibility grounds at the same time as the waiver for INA 212(a)(1) inadmissibility on the same Form I-601.
- b. **(U) Simultaneous Visa Issuance to Family Members:** To prevent separation of families, when an accompanying family member must seek a waiver the principal alien should be encouraged to begin the waiver procedures promptly.
- c. **(U) Issuing New or Replacement Visas:** You may issue a new or replacement visa to an alien who was previously granted a waiver under INA 212(g) if the conditions for the waiver are still met.
- d. **(U) Validity of Waiver for Subsequent Entries:** The Department has accepted a DHS ruling that a waiver granted under INA 212(g) remains in full force and effect for any subsequent entries by the alien provided:
 - (1) **(U)** The waiver remains unrevoked;
 - (2) **(U)** No new grounds of inadmissibility have arisen; and
 - (3) **(U)** The alien is complying with the conditions imposed in the original waiver.

9 FAM 302.2-5(E) Unavailable

9 FAM 302.2-5(E)(1) Unavailable

(CT:VISA-177; 09-15-2016)

Unavailable.

9 FAM 302.2-5(E)(2) Unavailable

(CT:VISA-177; 09-15-2016)

Unavailable.

9 FAM 302.2-6 (U) REQUIRED VACCINATIONS - INA 212(A)(1)(A)(II)

9 FAM 302.2-6(A) (U) Grounds

(CT:VISA-177; 09-15-2016)

(U) INA 212(a)(1)(A)(ii) provides that an individual is ineligible for an immigrant visa if the individual lacks the required vaccinations. Internationally adopted children (IR-3s and IR-4s) 10 years of age or younger are exempt from vaccination requirement.

9 FAM 302.2-6(B) (U) Application

9 FAM 302.2-6(B)(1) (U) Required Vaccinations

(CT:VISA-177; 09-15-2016)

- a. **(U) Specified and Recommended Vaccinations:** Although INA 212(a)(1)(A)(ii) lists specific vaccine-preventable diseases, the language of INA 212(a)(1)(A)(ii) requires immigrants "to present documentation of having received vaccination against vaccine-preventable diseases" including any other vaccinations against vaccine preventable diseases recommended by the Advisory Committee for Immunization Practices (ACIP).
- b. **(U) ACIP Recommendations:** On November 13, 2009, the CDC issued a final notice, which changed the criteria for requiring vaccinations based on recommendations from the ACIP. Effective December 14, 2009, in order for a vaccination recommended by ACIP to be required for immigrants under the new criteria, the vaccine must:
 - (1) **(U)** Be age appropriate as recommended by ACIP for the general U.S. population; and
 - (2) **(U)** Protect against a disease that has the potential to cause an outbreak; or
 - (3) **(U)** Protect against a disease that has been eliminated in the United States or is in the process of being eliminated.
- c. **(U) Currently Required Vaccinations:** Vaccinations currently required by CDC are as follows (Note – many vaccines have age-appropriate guidelines):
 - (1) **(U)** Mumps;
 - (2) **(U)** Measles;
 - (3) **(U)** Rubella;
 - (4) **(U)** Polio;
 - (5) **(U)** Tetanus;
 - (6) **(U)** Diphtheria;
 - (7) **(U)** Pertussis;

- (8) **(U)** Haemophilus influenzae Type B
 - (9) **(U)** Rotavirus;
 - (10) **(U)** Hepatitis A;
 - (11) **(U)** Hepatitis B;
 - (12) **(U)** Meningococcal disease;
 - (13) **(U)** Varicella;
 - (14) **(U)** Pneumococcal;
 - (15) **(U)** Influenza.
- d. **(U) Dosage:** Applicants are required to receive at least one dose of each age-appropriate vaccine. If the applicant had previously received a dose or doses of a required vaccine but had not completed the series, then the next required dose should be administered. Although applicants are not required to complete the vaccine series they are encouraged to receive as many as possible prior to travel to the United States. The vaccinations required by the CDC include:
- (1) **(U)** Vaccinations against vaccine-preventable diseases explicitly listed in INA 212(a)(1)(A)(ii); and
 - (2) **(U)** Vaccinations recommended by the ACIP for U.S. immigration purposes.
- e. **(U) ACIP Contact:** For information regarding the ACIP, contact:
- Advisory Committee on Immunization Practices (ACIP) Centers for Disease Control and Prevention
- 1600 Clifton Road, N.E., Mailstop E-05
- Atlanta, GA 30333 USA
- Phone: 404-639-8836
- Fax: 404-639-8905
- Email: acip@cdc.gov

9 FAM 302.2-6(B)(2) (U) "Not Medically Appropriate"

(CT:VISA-177; 09-15-2016)

(U) The CDC and the Department accept that in many cases it might not be medically appropriate to administer a dose of a particular vaccine. Form DS-3025 has six "Not Medically Appropriate" categories that are acceptable. These categories should be used when determining an applicant's eligibility for a blanket waiver. A blanket waiver is a waiver that is applied uniformly to a group of conditions and does not require a separate waiver application or fee to be filed with USCIS. The six categories are:

- (1) **(U)** Not age appropriate – for all applicants this box will need to be checked for at least one of the required vaccines. For example, infants and adults do not need all the same vaccinations;
- (2) **(U)** Insufficient time interval between doses – this box will be checked if administration of the single dose of a vaccine at the time of the medical

examination does not complete the series for that vaccine. Only one dose of each series is required to be administered by the panel physician for immigration purposes;

- (3) **(U)** Contraindicated – A contraindication is a condition in a recipient which is likely to result in a life-threatening problem if the vaccine is given (i.e., an allergic reaction);
- (4) **(U)** Not routinely available – “Not routinely available” can mean that a vaccine is not available in a particular country, that a panel site does not regularly stock the vaccine, or that due to a shortage it cannot be obtained in a reasonable amount of time. Cost should not be a factor of consideration.
- (5) **(U)** Not fall (flu) season – The influenza vaccine is required during the influenza (flu) season; if it is not flu season at post this vaccination is not required. Influenza occurs throughout the year in tropical areas.
- (6) **(U)** Known chronic Hepatitis B virus infection - Individuals with Hepatitis B are not required to receive the Hepatitis B vaccine.

9 FAM 302.2-6(B)(3) (U) Vaccination Requirements for K-Visa Applicants

(CT:VISA-177; 09-15-2016)

(U) K-visa applicants, as nonimmigrant visa applicants, technically are not subject to INA 212(a)(1)(A)(ii) vaccination requirements. However, we and DHS have agreed that medical exams for K-visa applicants should include the vaccination assessment as a matter of expediency. Every effort should be made, therefore, to encourage K- visa applicants to meet the vaccination requirements before admission to the United States. Nevertheless, do not refuse a K-visa applicant for refusing to meet the vaccination requirements.

9 FAM 302.2-6(B)(4) (U) Vaccination Requirements for Foreign Adopted Children

(CT:VISA-177; 09-15-2016)

- a. **(U) Exemption:** Applicants for IH-3, IR-3, IH-4, and IR-4 immigrant visas who are age 10 year or younger are exempt from the vaccination requirement if:
 - (1) **(U)** prior to the child’s admission to the United States, an adoptive parent or prospective adoptive parents executes Form DS-1981, Affidavit Concerning Exemption from Immigrant Vaccination Requirements for a Foreign Adopted Child, stating that he or she is aware of the vaccination requirement;
 - (2) **(U)** the adoptive or prospective adoptive parent(s) will ensure that, within 30 days of the child’s admission to the United States, or at the earliest time that is medically appropriate, the child will comply with the INA 212(a)(1)(A)(ii) vaccination requirement; and
 - (3) **(U)** the adoptive or prospective adoptive parent(s) provide an original copy of

the signed affidavit you either prior to or at the time of the visa interview for inclusion in the case file. (This copy must be attached to Form DS-2054 and included with the supporting documents attached to the issued IH-3, IR-3, IH-4, or IR-4 visa.)

b. (U) Panel Physician's Role and Form DS-1981:

- (1) **(U)** A panel physician may accept the verbal assurances of an adoptive parent, prospective adoptive parent, or individual representing the child's interests, as evidence that a completed Form DS-1981, Affidavit Concerning Exemption From Immigrant Vaccination Requirements for a Foreign Adopted Child, will be presented on behalf of the child at the time of the visa interview. In such cases, the panel physician should not conduct a vaccination assessment as part of the medical interview.
- (2) **(U)** The adoptive or prospective adoptive parent must provide a copy of the signed Form DS-1981 to you either prior to or at the time of the visa interview. The copy is to be included in the case file. This copy must be attached to the Form DS-3025 and included with the supporting documents attached to the issued IH-3, IR-3, IH-4, or IR-4 visa.

9 FAM 302.2-6(B)(5) (U) Fraudulent Vaccination Records

(CT:VISA-177; 09-15-2016)

- a. **(U) Acceptable Documentation:** Acceptable vaccination documentation must come from a vaccination record, either a personal vaccination record or a copy of the medical chart record with entries made by the physician or other appropriate medical personnel. Only those records of doses or vaccines that include the dates of receipt (month, day and year) are acceptable. Self-reported doses of vaccines without written documentation are not acceptable. This could mean that the applicant might be required to repeat doses of vaccines that he or she has actually received, if he or she is not able to provide sufficient acceptable documentation. In accordance with the CDC Technical Instructions, administering a second dose, however, will not endanger the applicant's health.
- b. **(U) Suspected Fraudulent Documentation:** If the panel physician believes that the applicant's vaccination record is fraudulent, you should treat the applicant in the same fashion as if he or she failed to present the vaccination record. Consular officers should mention any incidents of potential vaccination fraud in the Notes section of the CCD case file.
- c. **(U) Designated Vaccination Facilities:** To guarantee that applicants actually receive the required vaccinations and to guard against fraudulent vaccination records, the CDC has agreed that posts may require applicants to receive the vaccinations from designated facilities. These facilities must follow the Technical Instructions on Vaccinations Requirements and must sign a separate contract. (The CDC CA/VO/F can assist posts in developing a suitable contract.) Posts that plan to designate a specific facility must provide CA/VO/F and the CDC with the name and address of the facility. The panel physician must still review the applicant's

vaccination record, Form DS-3025.

9 FAM 302.2-6(B)(6) (U) Cost of Vaccinations

(CT:VISA-177; 09-15-2016)

(U) The CDC and the Department accept that some panel physicians will raise the cost of the medical examination to take into account the cost of vaccinations. The costs for the vaccinations and the administering of such vaccination, however, should not be in excess of those charged the general public.

9 FAM 302.2-6(C) (U) Advisory Opinion

(CT:VISA-177; 09-15-2016)

(U) An AO is not required for a potential INA 212(a)(1)(A)(ii) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A. If you have question about the application of policy of procedure contact CA/VO/F.

9 FAM 302.2-6(D) (U) Waiver

9 FAM 302.2-6(D)(1) (U) Waivers for Immigrant Visa Applicants

(CT:VISA-177; 09-15-2016)

a. **(U) In General:**

- (1) **(U) Grounds for Waiver:** An immigrant visa applicant who is ineligible under INA 212(a)(1)(A)(ii) may benefit from an INA 212(g)(2)(A) or INA 212(g)(2)(B) waiver if:
 - (a) **(U)** The missing vaccinations are subsequently received; or
 - (b) **(U)** The panel physician determines that administration of the required vaccination would be medically inappropriate given the applicant's age, medical history, or current medical condition.
- (2) **(U) Blanket Authority:** DHS/USCIS has delegated blanket authority to you to grant INA 212(g)(2)(A) and INA 212(g)(2)(B) waivers without the need for a fee or the filing of a form.
- (3) **(U) Religious or Moral Objections:** Immigrant visa applicants who object to receiving vaccinations on religious or moral grounds must seek an INA 212(g)(2)(C) waiver from DHS/USCIS by filing Form I-601, Application for Waiver of Grounds of Inadmissibility. You do not have the authority to adjudicate or grant INA 212(g)(2)(C) waivers.

- b. **(U) Waiver Under INA 212(g)(2)(A):** INA 212(g)(2)(A) appears to have been written chiefly to accommodate cases where an applicant seeks adjustment of status. Since medical exams for most immigrant applicants are conducted prior to the visa interview, most applicants will not need an INA 212(g)(2)(A) waiver.

However, in cases where the applicant appears for the interview without a completed Form DS-2054 (i.e., before their medical examination), refuse the application under INA 212(a)(1)(A)(ii) and tell the applicant to return to the panel physician to complete the medical examination. Once the medical examination, including the required vaccinations, is complete, the applicant will obtain the completed Form DS-2054 from the panel physician. The form is submitted to you and you should approve the blanket waiver under INA 212(g)(2)(A).

- c. **(U) Waiver Under INA 212(g)(2)(B):** INA 212(g)(2)(B) provides a waiver in cases where the panel physician determines that a required vaccination is medically inappropriate. In such cases, the panel physician will indicate on page two of Form DS-2054, if the vaccine history is incomplete and which type of waiver is requested. You must refer to Form DS-3025 and may then authorize a waiver in accordance in INA 212(g)(2)(B) for any of the following reasons:
- (1) **(U)** Not age appropriate;
 - (2) **(U)** Contraindication;
 - (3) **(U)** Insufficient time interval between doses;
 - (4) **(U)** Seasonal administration; or
 - (5) **(U)** Vaccine unavailable;
 - (6) **(U)** Known chronic Hepatitis B virus infection.
- d. **(U) Waiver Under INA 212(g)(2)(C):**
- (1) **(U) Basis for Waiver:** The Secretary of Homeland Security may authorize an INA 212(g)(2)(C) waiver when the alien establishes that compliance with the vaccination requirements for immigrants would be contrary to his or her religious beliefs or moral convictions.
 - (2) **(U)** You may inform an applicant seeking a waiver under INA 212(g)(2)(C) that he or she may file a Form I-601 with USCIS for a waiver of medical grounds of inadmissibility provided that the alien qualified per [9 FAM 302.2-6\(C\)](#).
 - (3) **(U) Procedures:** If you determine that the IV applicant is eligible to apply for the waiver, direct the applicant to the Form I-601 instructions on USCIS's website.
 - (4) **(U) Waivers for IR-3 or IR-4 Applicants:** Applicants for IH-3, IR-3, IH-4, or IR-4 immigrant visas who are 10 years of age or younger are exempt from the vaccination requirement if:
 - (a) **(U)** Adoptive or prospective adoptive parent(s) could otherwise take advantage of the exemption from the vaccination requirement available to IH-3, IR-3, IH-4, and IR-4 applicants; and
 - (b) **(U)** Adoptive or prospective adoptive parent(s) must seek an INA 212(g)(2)(C) waiver on behalf of the their adopted child. This is because the exemption is available to IH-3, IR-3, IH-4, and IR-4 applications is conditioned on the adoptive parent signing Form DS-1981, attesting that the child will receive any required and medically appropriate vaccinations

following their arrival in the United States.

9 FAM 302.2-6(D)(2) (U) Additional Waiver Information

(CT:VISA-177; 09-15-2016)

- a. **(U) Applicant Inadmissible Under the Grounds:** Although any applicant who has a medical ineligibility and qualifying relationship may apply for a waiver, you should not advise an applicant to file an I-601 waiver if an applicant has other grounds of ineligibility that cannot be waived. If the applicant is ineligible under a ground of the INA that cannot be waived, you may not issue a visa even if the INA 212(a)(1) inadmissibility could be or is waived. An applicant ineligible under multiple grounds may apply for a waiver of other inadmissibility grounds at the same time as the waiver for INA 212(a)(1) inadmissibility on the same Form I-601.
- b. **(U) Simultaneous Visa Issuance to Family Members:** To prevent separation of families, when an accompanying family member must seek a waiver under INA 212(g), the principal alien should be encouraged to being the waiver procedures promptly.
- c. **(U) Issuing New or Replacement Visas:** You may issue a new or replacement visa to an alien who was previously granted a waiver under INA 212(g) if the conditions for the waiver are still met.
- d. **(U) Validity of Waiver for Subsequent Entries:** The department has accepted a DHS ruling that a waiver granted under INA 212(g) remains in full force and effect for any subsequent entries by the alien provide:
 - (1) **(U)** The waiver remains unrevoked;
 - (2) **(U)** No new grounds of inadmissibility have arisen; and
 - (3) **(U)** The alien is complying with the conditions imposed in the original waiver.

9 FAM 302.2-6(E) Unavailable

9 FAM 302.2-6(E)(1) Unavailable

(CT:VISA-177; 09-15-2016)

Unavailable.

9 FAM 302.2-6(E)(2) Unavailable

(CT:VISA-177; 09-15-2016)

Unavailable.

9 FAM 302.2-7 (U) PHYSICAL OR MENTAL DISORDERS WITH ASSOCIATED HARMFUL

BEHAVIOR INCLUDING SUBSTANCE-RELATED DISORDER - INA 212(A)(1)(A)(III)

9 FAM 302.2-7(A) (U) Grounds

(CT:VISA-177; 09-15-2016)

(U) INA 212(a)(1)(A)(iii) provides that an individual is ineligible for a visa if the individual has a physical or mental disorder and behavior associated with that disorder that may pose, or has posed, a threat to the property, safety, or welfare of the individual or others.

9 FAM 302.2-7(B) (U) Application

9 FAM 302.2-7(B)(1) (U) Basis for Finding an Individual Ineligible

(CT:VISA-177; 09-15-2016)

(U) The mere presence of a physical and mental disorder does not by itself render the applicant ineligible. Under INA 212(a)(1)(A)(iii)(I) and INA 212(a)(1)(A)(iii)(II) in order to find the applicant ineligible, it must be determined that the applicant:

- (1) **(U)** Has a current physical or mental disorder and behavior associated with the disorder that may pose, or has posed a threat to the property, safety, or welfare of the alien or others; or
- (2) **(U)** Has had a physical or mental disorder and a history with behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior in the future.

9 FAM 302.2-7(B)(2) (U) Key Concepts of Mental Health

(CT:VISA-177; 09-15-2016)

a. (U) Physical and Mental Health Disorder Key Concepts:

Note: **(U)** Only medical conditions that are included in the current version of the World Health Organization's Manual of International Classification of Diseases (ICD) are considered for visa medical exams.

- (1) **(U)** A physical disorder is a clinically diagnosed medical condition where the focus of attention is physical manifestations.
- (2) **(U)** Mental disorders are health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof).
- (3) **(U)** Harmful behavior is defined as an action associated with a physical or mental disorder that is or has caused:
 - (a) **(U)** Serious psychological or physical injury to the alien or to others (e.g., suicide attempt or pedophilia);

- (b) **(U)** A serious threat to the health or safety of the alien or others (e.g., driving while intoxicated or verbally threatening to kill someone); and
 - (c) **(U)** Major property damage.
- (4) **(U)** Current harmful behavior is defined as currently engaging in harmful behavior that has continuously occurred and seems ongoing.
 - (5) **(U)** A determination of future harmful behavior must be made if the applicant presently is or has in the past engaged in harmful behavior associated with a physical or mental disorder, and the panel physician must evaluate whether the harmful behavior is likely to recur. Many factors enter into this determination of classification, and the decision requires clinical judgment.

(U) NOTE: Only harmful behavior that is associated with a physical or mental disorder is relevant for the classification of visa ineligibility. Neither harmful behavior nor the physical or mental disorder alone causes an alien to be medically ineligible.

- b. **(U) REMISSION:** The current version of the DSM defines sustained, full remission as a period of at least 12 months during which no associated substance use or mental disorder or associated harmful behavior has occurred. The panel physician has discretion to use their clinical judgment to determine if 12 months is an acceptable period of time for an individual applicant to demonstrate sustained, full remission.

(U) Note: For general mental disorders, the determination of remission must be made based on the assessment of associated harmful behavior, either current or a history of harmful behavior judged likely to recur, and DSM criteria. This includes substance-related disorders for those substances, including alcohol, not listed in Schedules I through V of Section 202 of the Controlled Substances Act.

9 FAM 302.2-7(B)(3) (U) Substance-Related Disorders Under INA 212(a)(1)(A)(iii) - Alcohol and Other Non-Controlled Substances

(CT:VISA-177; 09-15-2016)

- a. **(U) In General:** Although, INA 212(a)(1)(A)(iii) does not refer explicitly to alcoholics or alcoholism, substance-related disorders including alcohol use disorder constitutes a medical condition. The same criteria apply for evaluation of dependence or abuse of alcohol as are found in the current DSM for other substances (drugs). The diagnosis of a substance-related disorder alone does not make an applicant ineligible to receive a visa unless there is evidence of current or past harmful behavior associated with the disorder that has posed or is likely to pose a threat to the property, safety, or welfare of the applicant or others in the future.
 - (1) **(U)** To establish any substance-related disorder diagnosis, the examining physician must document the pattern or use of the substance and behavioral, physical, and psychological effects associated with the use or cessation of use of that substance. Diagnoses of substance-related disorders are to be made in

accordance with existing medical standards as determined by the current edition of the DSM. In the current DSM, substance-related disorders are divided into the following two groups: substance-use disorders and substance-induced disorders.

- (2) **(U) Substance-use disorders:** The essential feature of a substance use disorder is a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems. The DSM criteria for substance use disorders fit within overall groupings of impaired control, social impairment, risky use, and pharmacological criteria. Pharmacological criteria include tolerance and withdrawal.
 - (3) **(U) Substance-induced disorders:** in addition to substance-use disorders, the DSM has a separate category called substance-induced disorders. The DSM list of substance-induced disorders includes but is not limited to intoxication, withdrawal, and other substance/medication-induced disorders (psychotic disorders, bipolar and related disorders, depressive disorders, anxiety disorders, obsessive-compulsive and related disorders, sleep disorders, sexual dysfunctions, delirium, and neurocognitive disorders/substance-induced psychotic disorder, and substance-induced depressive disorder).
- b. **(U) Referring Applicants to the Panel Physician:** To ensure proper evaluation, you must refer applicants (immigrant and nonimmigrant) to the panel physician when they have:
- (1) **(U)** A single alcohol related arrest or conviction within the last five years;
 - (2) **(U)** Two or more alcohol related arrests or convictions with the last ten years;
or
 - (3) **(U)** If there is any other evidence to suggest an alcohol problem.
- c. **(U) Medical Examination Required:** Applicants, including NIV applicants, who are referred to a panel physician due to alcohol-related offenses must receive a full medical exam evaluation, less the vaccination requirements for nonimmigrant visa applicants. Chest X-rays and any other necessary testing must be conducted for the exam to be considered complete.
- d. **(U) Repeat Medical Examination:** An NIV applicant with a single alcohol-related arrest or conviction within the last five years, who the panel physician finds to have a Class "B" or no physical or mental condition, who is otherwise eligible to receive a visa, and who has not had another alcohol-related arrest or conviction since the original or previous exam does not have to repeat the medical exam with each new nonimmigrant visa application. If an applicant diagnosed with a substance-related disorder and classified with a Class "A" condition for any physical or mental (including other substance-related disorder with harmful behavior or history of such behavior likely to recur under INA 212(a)(1)(A)(iii)) or has two or more alcohol-related arrests or convictions within the last ten years, the applicant must be referred to the panel physician with each new nonimmigrant visa application if the original medical exam has expired.

- e. **(U)** You may discover during the course of an adjudication that an applicant was previously arrested/convicted for an alcohol or substance-related offense. If the applicant failed to disclose this information during the initial examination to the panel physician, then you may choose to refer the applicant to the panel physician for a second evaluation and provide information regarding the relevant previous incident/s to the panel physician. The panel physician is authorized to charge the applicant again for just the mental health evaluation.

9 FAM 302.2-7(B)(4) (U) Screening

(CT:VISA-177; 09-15-2016)

(U) The medical screening for physical and mental disorders with associated harmful behavior is required by law and is an essential component of the medical examination of visa applicants.

9 FAM 302.2-7(B)(5) (U) Role of the Panel Physician in Evaluating Physical or Mental Disorders with Associated Harmful Behavior

(CT:VISA-177; 09-15-2016)

- a. **(U) Technical Instructions:** Effective June 1, 2010, the CDC updated the Technical Instructions for Physical or Mental Disorders with Associated Harmful Behavior and Substance Related Disorders (MH TIs) to provide clarification that the diagnosis of physical and mental disorders with associated harmful behavior and substance-related disorders is made based on existing medical standards, as determined by the current version of the DSM. Panel physicians must follow these new instructions when evaluating visa applicants for physical or mental disorders with associated harmful behavior and substance-related disorders.
- b. **(U) Medical Examination:** As part of the medical examination of aliens, the panel physician will carry out or obtain a mental health evaluation:
- (1) **(U)** To identify and diagnosis any physical or mental disorder (including substance-related disorders);
 - (2) **(U)** To identify any harmful behavior associated with a disorder;
 - (3) **(U)** To identify the use of drugs, other than those required for medical reasons, and diagnosis any substance-related disorder;
 - (4) **(U)** To determine the remission status of any disorder previous diagnosis; and
 - (5) **(U)** To determine the likelihood of recurrence of harmful behaviors associated with a physical or mental disorder.
- c. **(U) Disorder Can Be Noted at Any Time During the Examination:** The panel physician can recognize that an applicant with a physical or mental disorder must have associated harmful behavior during any point of the examination (while taking the medical history or a mental disorder, while taking history of harmful behavior, or while observing for current abnormal behavior during the physical examination.
- d. **(U) Multiple Appointments:** For most applicants, the panel physician's

examination will require only one appointment. However, for some applicants multiple appoints or specialist consultations may be required to make an accurate diagnosis of whether the applicant has a Class "A" or Class "B" condition as it related to physical or mental disorders with associated harmful behavior.

9 FAM 302.2-7(B)(6) (U) Referrals to Mental Health Specialists for Further Evaluation

(CT:VISA-177; 09-15-2016)

- a. **(U) Required Referrals:** The panel physician may refer an applicant to a specialist consultant (that is agreed upon with a consular section) if after the medical interview, review of records (including Form DS-3026) and performing a mental status and physical examination, the panel physician is not able to:
- (1) **(U)** Arrive at a probable psychiatric diagnosis for purposes of determine of a mental disorder with associated harmful behavior (past or present); or
 - (2) **(U)** Arrive at a probable diagnosis of a substance-related disorder according to DSM criteria; or
 - (3) **(U)** Classify as a Class "A" or "B" condition.
 - (4) **(U) Cases to be Referred Locally if Possible:** Since CDC does not currently have physicians stationed abroad to whom panel physicians may refer doubtful cases, consular officers should inform local panel physicians that whenever further medical consultation is deemed advisable, the applicant should be referred to an appropriate local specialist at the applicant's expense. Under generally accepted medical procedures, the specialist should report the findings and opinion to the panel physician who remains responsible for the completion of medical screening forms (see [9 FAM 302.2-3\(F\)\(2\)](#) above) and final results of the medical examination.
- b. **(U) Referral to CDC:** If an applicant is referred to a specialist for psychiatric evaluation and further assistance in determining the diagnosis and classification is needed CDC's Division of Global Migration and Quarantine (DGMQ) may be consulted. If CDC/DGMQ is consulted, a copy of all pertinent medical information may be faxed to (404) 639-4441 or sent via secure email to cdcQAP@cdc.gov.

9 FAM 302.2-7(B)(7) (U) Determine Class "A" or Class "B" Physical or Mental Disorders with Associated Harmful Behaviors

(CT:VISA-177; 09-15-2016)

- a. **(U) Class A Conditions:** Class "A" medical conditions render a visa applicant ineligible to receive a visa and, for mental health, include applicants who are determined by the panel physician to have:
- (1) **(U)** A current physical or mental disorder with associated harmful behavior; and/or
 - (2) **(U)** A past history of mental disorder with associated harmful behavior if the

harmful behavior is likely to recur or to lead to other harmful behavior in the future.

- b. **(U) Class B Condition:** Class "B" medical conditions are not medically ineligible conditions and includes applicants who are determined to have a physical or mental abnormality, disease, or disability serious in degree or nature amounting to a substantial departure from well-being.
- c. **(U) Deferring Classification:** If a panel physician is unable to determine whether an applicant has a diagnosis of a physical or mental disorder, or substance-related disorder, then classification may be deferred in order to obtain additional medical evidence. When this occurs, the panel physician must explain to the applicant that he or she would like to see the applicant during the next 3 to 6 months to determine if abstinence is present (in order to classify the applicant).
- d. **(U) Multiple Classifications:** Applicants may have more than one classification. However, applicant cannot be classified as both Class "A" and "B" for the same physical or mental disorder.
- e. **(U) Classifications and Descriptions:** Physical and mental disorders with associated harmful behavior and substance-related disorders classification and description are listed below:
 - (1) **(U) No Class "A" or Class "B" Classification.**—The applicant has no diagnosis of a physical or mental disorder, or substance related disorder.
 - (2) **(U) Class "A" Physical or Mental Disorder with Associated Harmful Behavior or History of Such Behavior Likely to Recur** (includes alcohol and other substances NOT listed in Schedule I-V of Section 202 of the Controlled Substances Act);
 - (3) **(U) Class "B" Current Physical or Mental Disorder with No Associated Harmful Behavior** (includes alcohol and other substances NOT listed in Schedule I-V of Section 202 of the Controlled Substances Act); and
 - (4) **(U) Class "B" History of Physical or Mental Disorder with Associated Harmful Behavior Unlikely to Recur** (includes alcohol and other substances NOT listed in Schedule I-V of Section 202 of the Controlled Substances Act).

9 FAM 302.2-7(B)(8) (U) Applicants with Previous INA 212(a)(1)(A)(iii) Ineligibilities

(CT:VISA-177; 09-15-2016)

(U) For cases previously refused under INA 212(a)(1)(A)(iii) due to a Class "A" medical finding you should take the following steps:

- (1) **(U) Last Refusal Within 12 Months:** If the last refusal on the case was less than one year ago, send the applicant to the panel physician for a new medical examination to determine whether the Class "A" finding for physical or mental disorder(s) with associated harmful behavior(s) still applies. A new medical examination is required, regardless of whether the previous exam is expired. If the applicant is applying for a NIV, then the applicant must reapply for a visa

and pay all the applicable fees. If the applicant is found Class "B" you can overcome/waive the INA 212(a)(1)(A)(iii) refusal and send a CLOK request. If the applicant is otherwise eligible, then you may issue the visa.

- (2) **(U) Last Refusal More Than 12 Months Ago:** If the last refusal on the case was more than one year ago, then the applicant must reapply for a visa, complete a new medical examination with a panel physician, and pay all applicable fees. If the applicant is found Class "B" you can overcome/waive the INA 212(a)(1)(A)(iii) refusal and send a CLOK request. If the applicant is otherwise eligible, then you may issue the visa.

9 FAM 302.2-7(C) (U) Advisory Opinion

(CT:VISA-177; 09-15-2016)

(U) An AO is not required for a potential INA 212(a)(1)(A)(iii) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A. If you have question about the application of policy of procedure contact CA/VO/F.

9 FAM 302.2-7(D) (U) Waiver

9 FAM 302.2-7(D)(1) (U) Waivers for Immigrants

(CT:VISA-177; 09-15-2016)

(U) The Secretary of Homeland Security may, under terms that he or she sets forth, in his or her discretion, and after consultation with the Secretary of Health and Human Services, grant a waiver to an alien inadmissible under INA 212(a)(1)(A)(iii).

9 FAM 302.2-7(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-177; 09-15-2016)

- a. **(U) In General:** If you determine that an alien is inadmissible for a nonimmigrant visa (NIV) under INA 212(a)(1)(A)(iii), you may recommend to DHS/CBP, through ARIS, that a waiver under INA 212(d)(3)(A) be granted to the alien. DHS/CBP may, in its discretion, authorize a waiver to allow the alien temporary admission. (See [9 FAM 305.4-2](#).)
- b. **(U) Aliens Traveling for Medical Reasons:** The requirements listed below must be fulfilled in the case of an alien traveling for medical treatment of a condition that leads to a finding of inadmissibility under INA 212(a)(1)(A)(iii). When a waiver of a medical ground of inadmissibility is deemed necessary, the applicant must establish that arrangements, including financial, have been made for treatment. When the personal resources of an alien are not sufficient or may not be available outside the alien's country of residence, the alien must include explicit information regarding which facilities are available for support during the proposed medical treatment. The sponsor of the affidavit must confirm that a bond will be made available if

required by the DHS.

9 FAM 302.2-7(E) Unavailable

9 FAM 302.2-7(E)(1) Unavailable

(CT:VISA-177; 09-15-2016)

Unavailable.

9 FAM 302.2-7(E)(2) Unavailable

(CT:VISA-177; 09-15-2016)

Unavailable.

9 FAM 302.2-8 (U) DRUG ABUSE OR ADDICTION - INA 212(A)(1)(A)(IV)

9 FAM 302.2-8(A) (U) Grounds

(CT:VISA-177; 09-15-2016)

(U) INA 212(a)(1)(A)(iv) provides that an individual is ineligible for a visa if the individual is a drug abuser or drug addict.

9 FAM 302.2-8(B) (U) Application of Grounds

9 FAM 302.2-8(B)(1) (U) Basis for Finding an Individual Ineligible

(CT:VISA-177; 09-15-2016)

- a. **(U) In General:** For a Class "A" determination under INA 212(a)(1)(A)(iv) for drug abuse or drug addiction, an applicant must meet current DSM diagnostic criteria for substance-related disorder with any the specific substances listed in Schedule I through V of Section 202 of the Controlled Substances Act. Such a Class "A" medical determination by the panel physician, renders the applicant ineligible for a visa under INA 212(a)(1)(A)(iv).
- b. **(U) No Harmful Behavior Required:** Harmful behavior is not a relevant factor in rendering a determination of ineligibility under the provisions of INA 212(a)(1)(A)(iv).
- c. **(U) Non-Section 202 Substance Dependence:** An applicant that meets current DSM criteria for a substance-related disorder for other substances, including alcohol, not listed in Schedules I through V of Section 202 of the Controlled Substance Act is not Class "A" (medical). However, if there is associated harmful behavior, the applicant may be classified as Class "A" and found ineligible under INA

212(a)(1)(A)(iii).

- d. **(U) Clinical Care:** Substances used for clinical care in medical practice are not prohibited and do not represent substance abuse.

9 FAM 302.2-8(B)(2) (U) Key Concepts

(CT:VISA-177; 09-15-2016)

(U) In General:

- (1) **(U)** To establish any substance-related disorder, the examining physician must document the pattern or use of the substance and behavioral, physical, and psychological effects associated with the use or cessation of the use for that substance. Diagnoses of substance-related disorders are to be made in accordance with existing medical standards as determined by the current edition of the DSM. In the current DSM, substance-related disorders are divided into the following two groups: substance-use disorders and substance-induced disorders.
- (2) **(U)** Substance-use disorders: The essential feature of the substance use disorder is a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems. The DSM criteria for substance use disorders fit within overall groupings of impaired control, social impairment, risky use, and pharmacological criteria. Pharmacological criteria include tolerance and withdrawal.
- (3) **(U)** Substance-induced disorders: in addition to substance-use disorders, the DSM has a separate category called substance-induced disorders. The DSM list of substance-induced disorders includes but is not limited to intoxication, withdrawal, and other substance/medication-induced disorders (psychotic disorders, bipolar and related disorders, depressive disorders, anxiety disorders, obsessive-compulsive and related disorders, sleep disorders, sexual dysfunctions, delirium, and neurocognitive disorders/substance-induced psychotic disorder, and substance-induced depressive disorder).
- (4) **(U)** The current version of the DSM defines sustained, full remission as a period of at least 12 months during which no substance use or mental disorder-associated harmful behavior have occurred. The panel physician has discretion to use their clinical judgment to determine if 12 months is an acceptable period of time for an individual applicant to demonstrate sustained, full remission. Remission must be considered in two contexts: (a) mental disorders and (b) substance-related disorders. For substance-related disorders for those substances listed in Schedule I through V of Section 202 of the Controlled Substances Act, the determination of remission must be made based on the applicants use and DSM criteria.
- (5) **(U)** The practical significance for diagnosis for remission is that immigrant visa applicants who are or have been determined to be Class "A" for drug abuse or addiction for those substance listed in Schedule I through V of Section 202 of

the Controlled Substances Act are not eligible for a waiver and must complete the time period for sustained, full remission before reapplying for admission.

9 FAM 302.2-8(B)(3) (U) Screening

(CT:VISA-177; 09-15-2016)

(U) The medical screening for substance-related disorders is required by law and is an essential component of the medical examination of visa applicants.

9 FAM 302.2-8(B)(4) (U) Role of the Panel Physician in Evaluating Substance Related Disorders

(CT:VISA-177; 09-15-2016)

- a. **(U) Technical Instructions:** As noted above in [9 FAM 302.2-7\(B\)\(4\)](#), effective June 1, 2010, the CDC updated the MH TIs. Panel physicians must follow these new instructions when evaluating visa applicants for physical or mental disorders with associated harmful behavior and substance related disorders.
- b. **(U) Medical Examination:** As part of the medical examination of aliens, the panel physician will carry out or obtain a mental health evaluation:
 - (1) **(U)** To identify the use of drugs, other than those required for medical reasons, and diagnosis any substance-related disorder; and
 - (2) **(U)** To determine the remission status of any disorder or previous diagnosis; and
- c. **(U) Disorder Can Be Noted at Any Time During Examination:** The panel physician can recognize that an applicant with a physical or mental disorder might have associated harmful behavior during any point of the examination (while taking the medical history or a mental disorder, while taking history of harmful behavior, or while observing for current abnormal behavior during the physical examination).
- d. **(U) Multiple Appointments:** For most applicants, the panel physician's examination will require only one appointment. However, for some applicants multiple appoints or specialist consultations may be required to make an accurate diagnosis of whether the applicant is afflicted with a Class "A" or Class "B" condition as it related to physical or mental disorders with associated harmful behavior or substance-related disorders.
- e. **(U) Random Drug Screening:** Random screening for drugs is not a part of the routine medical examination. The panel physician must evaluate the applicant's history, behavior, and physical appearance, when determining if drug screening should be performed. Whole populations of applicants should not routinely be subject to random laboratory screening. The panel physician should make an individual decision based on the indications for drug screening.

9 FAM 302.2-8(B)(5) (U) Referrals to Specialists for Further Evaluation

(CT:VISA-177; 09-15-2016)

- a. **(U) Required Referrals:** The panel physician may refer an applicant to a specialist consultant (that is agreed upon with the consular section) if after the medical interview, review of records (including Form DS-3026) and performing a mental status and physical examination, the panel physician is not able to:
 - (1) **(U)** Arrive at a probable diagnosis of a substance-related disorder according to DSM criteria; or
 - (2) **(U)** Classify as a Class "A" or "B" condition.
- b. **(U) Referral to CDC:** If an applicant is referred to a specialist for psychiatric evaluation and further assistance in determining the diagnosis and classification is needed, CDC's Division of Global Migration and Quarantine (DGMQ) may be consulted. If CDC/DGMQ is consulted, a copy of all pertinent medical information may be faxed to (404) 639-4441 or sent via secure email to cdcQAP@cdc.gov.

9 FAM 302.2-8(B)(6) (U) Determine Class "A" or Class "B" Substance Related Disorders

(CT:VISA-177; 09-15-2016)

- a. **(U) Class A Conditions:** Class "A" medical conditions render a visa applicant ineligible to receive a visa and, for mental health, include applicants who are determined by the panel physician to have drug abuse or addiction (substance-related disorder) for specific substances provided in Schedule I-V of Section 202 of the Controlled Substances Act.
- b. **(U) Class B Condition:** Class "B" medical conditions are not medically ineligible conditions and includes applicants who are determined to have a physical or mental abnormality, disease or disability serious in degree or nature amounting to a substantial departure from well-being.
- c. **(U) Deferring Classification:** If a panel physician is unable to determine whether an applicant has a diagnosis of a substance related-disorder, then classification may be deferred in order to obtain additional medical evidence. When this occurs, the panel physician must explain to the applicant that he or she would like to see the applicant during the next 3 to 6 months to determine if abstinence is present (in order to classify the applicant).
- d. **(U) Multiple Classifications:** Applicants may have more than one classification. However, applicant cannot be classified both Class "A" and "B" for the same substance related disorder.
- e. **(U) Classifications and Descriptions:** Substance-related disorders classification and description are listed below:
 - (1) **(U) No Class "A" or Class "B" Classification:** The applicant has no diagnosis of a substance related disorder.
 - (2) **(U) Class "A" Abuse or Addiction** (for specific substances provided in Schedule I-V of Section 202 of the Controlled Substances Act);

- (3) **(U) Class "B" Abuse or Addiction in Full Remission:** The applicant was diagnosed with full, sustained remission of substance related disorder based on current DSM criteria.

9 FAM 302.2-8(B)(7) (U) Applicants with Previous INA 212(a)(1)(A)(iv) Ineligibilities

(CT:VISA-177; 09-15-2016)

(U) For cases previously refused under INA 212(a)(1)(A)(iv) due to a Class "A" medical finding you should take the following steps:

- (1) **(U) Last Refusal Within 12 Months:** If the last refusal on the case was less than one year ago, send the applicant to the panel physician for a new medical examination to determine whether the Class "A" finding for substances-related disorder(s) still applies. A new medical examination is required, regardless of whether the previous exam is expired. If the applicant is applying for a NIV, then the applicant must reapply for a visa and pay all the applicable fees. If the applicant is found Class "B" you can overcome/waive the INA 212(a)(1)(A)(iv) refusal and send a CLOK request. If the applicant is otherwise eligible, then you may issue the visa.
- (2) **(U) Last Refusal More Than 12 Months Ago:** If the last refusal on the case was more than one year ago, then the applicant must reapply for a visa, complete a new medical examination with a panel physician, and pay all applicable fees. If the applicant is found Class "B" you can overcome/waive the INA 212(a)(1)(A)(iv) refusal and send a CLOK request. If the applicant is otherwise eligible, then you may issue the visa.

9 FAM 302.2-8(C) (U) Advisory Opinion

(CT:VISA-177; 09-15-2016)

(U) An AO is not required for a potential INA 212(a)(1)(A)(iv) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A. If you have question about the application of policy of procedure contact CA/VO/F.

9 FAM 302.2-8(D) (U) Waiver

9 FAM 302.2-8(D)(1) (U) Waivers for Immigrants

(CT:VISA-177; 09-15-2016)

(U) There is no waiver relief for an immigrant visa applicant who is ineligible under INA 212(a)(1)(A)(iv). Do not issue an immigrant visa to an alien that the panel physician identifies as a drug abuser or addicted to a drug described in Section 202 of the Controlled Substances Act.

9 FAM 302.2-8(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-177; 09-15-2016)

- a. **(U) In General.** If you determine that an alien is inadmissible for a nonimmigrant visa (NIV) under INA 212(a)(1)(A)(iv), you may recommend to DHS/CBP through ARIS, that a waiver under INA 212(d)(3)(A) be granted to the alien. DHS/CBP may, in its discretion, authorize a waiver to allow the alien temporary admission. (See [9 FAM 305.4-2](#).)
- b. **(U) Aliens Traveling for Medical Reasons:** The requirements listed below must be fulfilled in the case of an alien traveling for medical treatment of a condition that leads to a finding of inadmissibility under INA 212(a)(1)(A)(iv). When a waiver of a medical ground of inadmissibility is deemed necessary, the applicant must establish that arrangements, including financial, have been made for treatment. When the personal resources of an alien are not sufficient or may not be available outside the alien's country of residence, the alien must include explicit information regarding which facilities are available for support during the proposed medical treatment. The sponsor of the affidavit must confirm that a bond will be made available if required by the DHS.
- c. **(U) Use of Notations "Med" in Visa Stamp:** A nonimmigrant visa (NIV) should be annotated as indicated in the following cases:
 - (1) **(U)** When the medical examination has revealed a Class A tuberculosis or another Class A medical condition, and an INA 212(d)(3)(A) waiver has been granted, the visa should be annotated: "MED: 212(d)(3)(A)."
 - (2) **(U)** When the medical examination has revealed a Class B tuberculosis condition or Class B leprosy, non-infectious, the visa should be annotated: "MED: Class B."

9 FAM 302.2-8(E) Unavailable

9 FAM 302.2-2(E)(1) Unavailable

(CT:VISA-177; 09-15-2016)

Unavailable.

9 FAM 302.2-2(E)(2) Unavailable

(CT:VISA-177; 09-15-2016)

Unavailable.

9 FAM 302.3

(U) INELIGIBILITY BASED ON CRIMINAL ACTIVITY, CRIMINAL CONVICTIONS AND RELATED ACTIVITIES - INA 212(A)(2)

(CT:VISA-352; 04-24-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 302.3-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 302.3-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 101(a)(48) (8 U.S.C. 1101(a)(48)); INA 212(a)(1) (8 U.S.C. 1182(a)(1)); INA 212(a)(2)(A) (8 U.S.C. 1182(a)(2)(A)); INA 212(a)(2)(B) (8 U.S.C. 1182(a)(2)(B)); INA 212(a)(2)(C) (8 U.S.C. 1182(a)(2)(C)); INA 212(a)(2)(D) (8 U.S.C. 1182(a)(2)(D)); INA 212(a)(2)(E) (8 U.S.C. 1182(a)(2)(E)); INA 212(a)(2)(H) (8 U.S.C. 1182(a)(2)(H)); INA 212(a)(2)(I) (8 U.S.C. 1182(a)(2)(I)); INA 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)); INA 212(g) (8 U.S.C. 1182(g)); INA 212(h) (8 U.S.C. 1182(h)); INA 212(i) (8 U.S.C. 1182(i)); INA 216 (8 U.S.C. 1186a); INA 221(g) (8 U.S.C. 1201(g)); INA 237(a)(2)(A) (8 U.S.C. 1227(a)(2)(A)).

9 FAM 302.3-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 8 CFR 212.7(a)(4); 22 CFR 40.21; 22 CFR 40.22; 22 CFR 40.24; 22 CFR 40.25; 22 CFR 40.27; 22 CFR 40.28.

9 FAM 302.3-1(C) (U) Public Laws

(CT:VISA-1; 11-18-2015)

(U) Juvenile Justice and Delinquency Prevention Act of 1974, Public Law 93-415; Comprehensive Crime Control Act of 1984, Public Law 98-473; Immigration Act of 1990, Public Law 101-649, sec. 505; Omnibus Consolidated Appropriations Act, 1997, Public Law 104-208, sec. 322; USA Patriot Act, Public Law 107-56, sec. 1006; William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457.

9 FAM 302.3-1(D) (U) United States Code

(CT:VISA-1; 11-18-2015)

(U) 18 U.S.C. 16; 18 U.S.C. 1621; 18 U.S.C. 1956; 18 U.S.C. 1957; 18 U.S.C. 3607; 18 U.S.C. 5031; 22 U.S.C. 7102(8).

9 FAM 302.3-2 (U) CRIMES INVOLVING MORAL TURPITUDE - INA 212(A)(2)(A)(I)(I)

9 FAM 302.3-2(A) (U) Grounds

(CT:VISA-352; 04-24-2017)

(U) *In general, aliens* who have been convicted of, or admit to commission of, certain statutory offenses that involve moral turpitude, *whether under U.S. law or foreign law*, are ineligible under INA 212(a)(2)(A)(i)(I).

9 FAM 302.3-2(B) (U) Application

9 FAM 302.3-2(B)(1) (U) Applying INA 212(a)(2)(A)(i)(I)

(CT:VISA-352; 04-24-2017)

- a. **(U) Determining Ineligibility:** When adjudicating a visa application for an applicant whom you have reason to believe has committed a crime involving moral turpitude, you must determine whether:
- (1) **(U)** The offense *committed involves moral turpitude* (see [9 FAM 302.3-2\(B\)\(2\)](#));
 - (2) **(U)** The applicant has been convicted (see [9 FAM 302.3-2\(B\)\(3\)](#)); and/or
 - (3) **(U)** The applicant has admitted or may admit that he or she has committed acts which constitute the essential elements of a crime (see [9 FAM 302.3-2\(B\)\(4\)](#)).
- b. **(U) Exceptions to Ineligibility:** Certain statutory exceptions may prevent a determination of *INA 212(a)(2)(A)(i)(I)* ineligibility by reason of a conviction for a crime involving moral turpitude. *These exceptions are not necessarily exceptions to other ineligibilities that may result from the same arrest record, for example INA 212(a)(2)(C)(i) or INA 212(a)(3)(B). These INA 212(a)(2)(A)(i)(I) exceptions relate to:*
- (1) **(U)** Crimes *that fall under* the "sentencing exception" (see [9 FAM 302.3-2\(B\)\(6\)](#));
 - (2) **(U)** Crimes committed prior to age 18 (see [9 FAM 302.3-2\(B\)\(7\)](#) and [302.3-2\(B\)\(8\)](#)); and
 - (3) **(U)** Certain purely political offenses and convictions (see [9 FAM 302.3-2\(B\)\(9\)](#)).

- c. **(U)** *Use of the Exceptions to Quickly Determine Lack of INA 212(a)(2)(A)(i)(I) Ineligibility in Some Cases:* In some cases where it may be difficult to determine whether the crime in question is a crime involving moral turpitude, it may be more efficient to determine if any of the exceptions apply. For example, if you already know that the sentencing exception will apply, or if the crime happened when the applicant was younger than 18 years of age (see [9 FAM 302.3-2\(B\)\(1\) paragraph b](#) above), you may be able to rule out a potential INA 212(a)(2)(A)(i)(I) ineligibility irrespective of whether or not the crime is a true "crime involving moral turpitude."

9 FAM 302.3-2(B)(2) (U) Defining Moral Turpitude

(CT:VISA-352; 04-24-2017)

- a. **(U) Evaluating Moral Turpitude Based Upon Statutory Definition of Offense and U.S. Standards:** To render an alien inadmissible under INA 212(a)(2)(A)(i)(I), the conviction *or admission* must be for a statutory offense which involves moral turpitude. The presence of moral turpitude is determined by the nature of the statutory offense for which the alien was convicted, and not by the acts underlying the conviction. Therefore, evidence relating to the underlying act, including the testimony of the applicant, is not relevant to a determination of whether the conviction involved moral turpitude except when the statute is divisible (see [9 FAM 302.3-2](#)) or a political offense (see [9 FAM 302.3-2\(B\)\(9\)](#)). The presence of moral turpitude in a statutory offense, *whether a U.S. state law, U.S. Federal law, or a foreign law*, is determined according to *U.S. Federal law*.
- b. **(U) Defining Moral Turpitude:** Statutory definitions of crimes in the United States consist of various components, which must be met before a conviction can be supported. Some of these components have been determined in *previous* judicial or administrative decisions to involve moral turpitude. A conviction for a statutory offense will involve moral turpitude if one or more of the parts of that offense have been determined to involve moral turpitude. The most common offenses involving moral *turpitude include*:
- (1) **(U)** Fraud;
 - (2) **(U)** Larceny; and
 - (3) **(U)** Intent to harm persons or things.
- c. **(U) Common Crimes Involving Moral Turpitude:** Categorized below are some of the more common *crimes involving* moral turpitude. Each category is followed by a separate list of related crimes, which are held not to involve moral turpitude.
- (1) **(U) Crimes Committed Against Property:**
 - (a) **(U)** Most crimes committed against property that involve moral turpitude include the element of fraud. The act of fraud involves moral turpitude whether it is aimed against individuals or government. Fraud generally involves:
 - (i) **(U)** Making false representation;

- (ii) **(U)** Knowledge of such false representation by the perpetrator;
 - (iii) **(U)** Reliance on the false representation by the person defrauded;
 - (iv) **(U)** An intent to defraud; and
 - (v) **(U)** The actual act of committing fraud
- (b) **(U)** Other crimes committed against property involving moral turpitude involve an inherently evil intent. The following list comprises crimes frequently committed against property, which may *generally* be held to involve moral turpitude for the purposes of visa issuance:
- (i) **(U)** Arson;
 - (ii) **(U)** Blackmail;
 - (iii) **(U)** Burglary;
 - (iv) **(U)** Embezzlement;
 - (v) **(U)** Extortion;
 - (vi) **(U)** False pretenses;
 - (vii) **(U)** Forgery;
 - (viii) **(U)** Fraud;
 - (ix) **(U)** Larceny (grand or petty);
 - (x) **(U)** Malicious destruction of property;
 - (xi) **(U)** Receiving stolen goods (with guilty knowledge);
 - (xii) **(U)** Robbery;
 - (xiii) **(U)** Theft (when it involves the intention of permanent taking); and
 - (xiv) **(U)** Transporting stolen property (with guilty knowledge).
- (c) **(U)** Crimes against property which do not fall within the definition of *crimes involving* moral turpitude include:
- (i) **(U)** Damaging private property (where intent to damage not required);
 - (ii) **(U)** Breaking and entering (requiring no specific or implicit intent to commit a crime involving moral turpitude);
 - (iii) **(U)** Passing bad checks (where intent to defraud not required);
 - (iv) **(U)** Possessing stolen property (if guilty knowledge is not essential);
 - (v) **(U)** Joy riding (where the intention to take permanently not required); and
 - (vi) **(U)** Juvenile delinquency.
- (2) **(U) Crimes Committed Against Governmental Authority:**
- (a) **(U) Moral Turpitude Crimes:** Crimes committed against governmental authority which fall within the definition of *crimes involving* moral turpitude

include:

- (i) **(U)** Bribery;
 - (ii) **(U)** Counterfeiting;
 - (iii) **(U)** Fraud against revenue or other government functions;
 - (iv) **(U)** Mail fraud;
 - (v) **(U)** Perjury;
 - (vi) **(U)** Harboring a fugitive from justice (with guilty knowledge); and
 - (vii) **(U)** Tax evasion (willful).
- (b) **(U) Crimes Without Moral Turpitude:** Crimes committed against governmental authority, which would not constitute *crimes involving* moral turpitude, are, in general, violation of laws which are regulatory in character and which do not involve the element of fraud or other evil intent. The following list assumes that the statutes involved do not require the showing of an intent to defraud, or evil intent:
- (i) **(U)** Black market violations;
 - (ii) **(U)** Breach of the peace;
 - (iii) **(U)** Carrying a concealed weapon;
 - (iv) **(U)** Desertion from the Armed Forces;
 - (v) **(U)** Disorderly conduct;
 - (vi) **(U)** Drunk or reckless driving (however, aggravated drunk driving may be a CIMT);
 - (vii) **(U)** Drunkenness;
 - (viii) **(U)** Escape from prison;
 - (ix) **(U)** Failure to report for military induction;
 - (x) **(U)** False statements (not amounting to perjury or involving fraud);
 - (xi) **(U)** Firearms violations;
 - (xii) **(U)** Gambling violations;
 - (xiii) **(U)** Immigration violations;
 - (xiv) **(U)** Liquor violations;
 - (xv) **(U)** Loan sharking;
 - (xvi) **(U)** Lottery violations;
 - (xvii) **(U)** Possessing burglar tools (without intent to commit burglary);
 - (xviii) **(U)** Smuggling and customs violations (where intent to commit fraud is absent);
 - (xix) **(U)** Tax evasion (without intent to defraud); and

(xx) **(U)** Vagrancy.

(3) **(U) Crimes Committed Against Person, Family Relationship, And Sexual Morality:**

(a) **(U) Moral Turpitude:** Crimes committed against the person, family relationship, and sexual morality, which *are normally considered crimes involving* moral turpitude include:

- (i) **(U)** Abandonment of a minor child (if willful and resulting in the destitution of the child);
- (ii) **(U)** Assault (this crime is broken down into several categories, which involve moral turpitude):
 - **(U)** Assault with intent to kill;
 - **(U)** Assault with intent to commit rape;
 - **(U)** Assault with intent to commit robbery;
 - **(U)** Assault with intent to commit serious bodily harm; and
 - **(U)** Assault with a dangerous or deadly weapon (some weapons may be found to be lethal as a matter of law, while others may or may not be found factually to be such, depending upon all the circumstances in the case. Such circumstances may include, but are not limited to, the size of the weapon, the manner of its use, and the nature and extent of injuries inflicted.);
- (iii) **(U)** Bigamy;
- (iv) **(U)** Contributing to the delinquency of a minor;
- (v) **(U)** Gross indecency;
- (vi) **(U)** Incest (if the result of an improper sexual relationship);
- (vii) **(U)** Kidnapping;
- (viii) **(U)** Lewdness;
- (ix) **(U) Voluntary** Manslaughter:
 - **(U)** Involuntary *Manslaughter*, where the statute requires proof of recklessness *generally will involve moral turpitude*. A conviction for the statutory offense of vehicular homicide or other involuntary manslaughter that only requires a showing of negligence will not involve moral turpitude even if it appears the defendant in fact acted recklessly.
- (x) **(U)** Mayhem;
- (xi) **(U)** Murder;
- (xii) **(U)** Pandering;
- (xiii) **(U)** Possession of child pornography;

- (xiv) **(U)** Prostitution; and
- (xv) **(U)** Rape, including statutory rape.

(b) **(U) No Moral Turpitude:** Crimes committed against the person, family relationship, or sexual morality which *are not normally found to be crimes involving moral* turpitude include:

- (i) **(U) Simple** Assault (i.e., any assault, which does not require an evil intent or depraved motive, although it may involve the use of a weapon, which is neither dangerous nor deadly);
- (ii) **(U)** Creating or maintaining a nuisance (where knowledge that premises were used for prostitution is not necessary);
- (iii) **(U)** Incest (when a result of a marital status prohibited by law);
- (iv) **(U)** Involuntary manslaughter (when *only negligence is required for conviction*);
- (v) **(U)** Libel;
- (vi) **(U)** Mailing an obscene letter;
- (vii) **(U)** Mann Act violations (where coercion is not present);
- (viii) **(U)** Riot; and
- (ix) **(U)** Suicide (attempted).

(4) **(U) Intentional Distribution of Controlled Substances:** The Board of Immigration Appeals has determined that *in general*, a conviction for the intentional distribution of a controlled substance or a conviction for drug trafficking is a crime involving moral turpitude. *The mere possession or use of a controlled substance is not generally sufficient for INA 212(a)(2)(A)(i)(I) however it may result in an INA 212(a)(2)(A)(i)(II) ineligibility.* A typical drug statute that would constitute a crime involving moral turpitude is "possession with intent to distribute." In order to *result in an INA 212(a)(2)(A)(i)(I) ineligibility, , a conviction is required. consular officers should note that applicants may be found ineligible under both INA 212(a)(2)(A)(i)(I) and INA 212(a)(2)(A)(i)(II) and perhaps even under INA 212(a)(2)(C)(1) which requires only that the "reason to believe" standard be met, and does not require a conviction. Consular Officers may also wish to consider whether the applicant should be referred to the panel physician for an assessment of a possible ineligibility under INA sections 212(a)(1)(A)(iii) for a physical or mental disorder with associated harmful behavior including substance-related disorders or 212(a)(1)(A)(iv) for drug abuse or addiction.*

d. (U) Attempts, Aiding and Abetting, Accessories, and Conspiracy

- (1) **(U)** The following types of crimes *have been* held to be crimes involving moral turpitude:
 - (a) **(U)** An attempt to commit a crime *involving* moral turpitude;
 - (b) **(U)** Aiding and abetting in the commission of a crime *involving moral*

turpitude;

- (c) **(U)** Being an accessory (before or after the fact) in the commission of a crime *involving* moral turpitude; or
 - (d) **(U)** Taking part in a conspiracy (or attempting to take part in a conspiracy) to commit a crime involving moral turpitude.
- (2) **(U)** Conversely, where an alien has been convicted of, or admits having committed the essential elements of, a criminal attempt, or a criminal act of aiding and abetting, accessory before or after the fact, or conspiracy, and the underlying crime is not deemed to involve moral turpitude, then INA 212(a)(2)(A)(i)(I) would not be applicable.

9 FAM 302.3-2(B)(3) (U) Cases in which Conviction Exists

(CT:VISA-352; 04-24-2017)

- a. **(U) Defining Conviction:** INA 101(a)(48) defines "conviction" as either:
 - (1) **(U)** A formal judgment of guilt entered by a court; or
 - (2) **(U)** If adjudication has been withheld:
 - (a) **(U)** a finding of guilty by a judge or jury, a plea of guilty or nolo contendere by the alien, or an admission from the alien of sufficient facts to warrant a finding of guilt; and
 - (b) **(U)** The imposition of some form of punishment, penalty, or *restraint* of liberty by a judge.
- b. **(U) Other Factors Bearing On Existence Of Conviction:** *Whether* a conviction *exists* is a factual matter *for the consular officer*, independent of *any* official record *that appears in a database*. An indication that an alien has been convicted of a crime may appear in:
 - (1) **(U)** replies to questions, *including as part of a visa application*;
 - (2) **(U)** reports of investigations and other government activities;
 - (3) **(U)** police records or other documents that the applicant may be required to submit; or
 - (4) **(U)** any other information which may be developed concerning the applicant.
- c. **(U) Evidence Of Conviction:** Official *police and/or court* records generally establish the existence of a conviction. However, some convictions that would *trigger a finding of* INA 212(a)(2)(A)(i)(I) *and (II)* are no longer a matter of record *due to the passage of time, generous expungement provisions under local law, or other reasons*. *However*, not all expungements or pardons relieve the *applicant* of the effects of the conviction for immigration purposes. Therefore, in cases where an expungement or pardon may have removed the record of conviction from official records, or where the accuracy of records is otherwise suspect, the consular officer may require any evidence relevant to the alien's history which may appear necessary to determine the facts. *Consular officers may require that the applicant*

provide any or all of the following documents: a copy of the statute of conviction, a copy of the relevant sentencing guidelines, court records, police records, a translation into English if these documents are in a language other than English, and any other records the consular officer determines are relevant. If consular officers have questions about whether a conviction exists for purposes of INA 212(a)(2)(A)(i)(I) or (II), consular officers may send an AO to CA/VO/L/A.

d. (U) Expunging Conviction Under U.S. Law:

- (1) **(U)** Prior to the passage of INA 101(a)(48) a full expungement of a conviction under U.S. law had been held to be equivalent in effect to a pardon granted under INA 237(a)(2)(A)(v) and served to eliminate the effect of the conviction for most immigration purposes. In light of the passage of INA 101(a)(48), the Board of Immigration Appeals in *Matter of Roldan*, 22 I & N. Dec. 512, determined that, effective April 1, 1997 judicial expungements based on rehabilitative or ameliorative statutes (laws that allowed for expungement of a sentence by a court based on a showing that the defendant had been rehabilitated or was otherwise worthy of relief) would no longer be recognized as effective for eliminating the conviction for immigration purposes.
- (2) **(U)** The Ninth Circuit Court of Appeals, however, disagreed *for a certain period* with this holding, and in a series of cases determined that state judicial expungements will be considered effective, for eliminating the conviction if the alien would have been eligible for relief under the Federal First Offender Act or similar statute (see [9 FAM 302.4-2\(B\)\(3\)](#)). The Ninth Circuit subsequently overturned these decisions in the case *Nunez-Reyes v. Holder*, 646 F.3d 684 (July 14, 2011), and now follows the holding in *Roldan*. However, this decision did not have retroactive effect, so state judicial expungements *prior to July 14, 2011 may* still be effective for immigration purposes in the Ninth Circuit. Because of the complexity of this issue, *if a visa applicant makes a claim* for state judicial expungement relief, *this* must be submitted as an advisory opinion request to CA/VO/L/A.

e. (U) Expunging Conviction Under U.S. Federal Law: The Comprehensive Crime Control Act of 1984, effective October 12, 1984, repealed the Federal First Offender provisions cited as 21 U.S.C. 844(b)(1) and the Federal Youth Corrections Act provisions cited as 18 U.S.C. 5021. Both of these procedures expunged convictions for all purposes. You should honor certificates verifying expungement under either of these sections. 18 U.S.C. 3607 has replaced these procedures. An expungement under this section likewise *negates* a conviction for purposes of INA 212(a)(2)(A)(i)(I).

f. (U) Convictions Relating To Pre-Trial Actions:

- (1) **(U)** An applicant has not been convicted of a crime if he or she merely:
 - (a) **(U)** Is under investigation;
 - (b) **(U)** Has been arrested or detained;
 - (c) **(U)** Has been charged with a crime; or

(d) **(U)** Is under indictment.

- (2) **(U)** However, such facts may indicate that some other basis of *ineligibility* may exist (e.g., INA 212(a)(2)(C)(i), INA 212(a)(1)(A)(iii), etc.). At your discretion, you may refuse any *applicant* under INA 221(g) which involves an *applicant who has been charged with*, but not convicted of, a crime *in order* to await the outcome of the proceedings (if the outcome is imminent) or to permit local authorities in appropriate cases to take steps to prevent the departure of the alien from their jurisdiction. Where applicable, in the case of a nonimmigrant visa applicant charged with a crime, you should also consider how the *pending* charge may affect the applicant's intention to return to his or her place of residence, *for purposes of INA 214(b)*

g. (U) Convictions Relating To Actions During Trial:

- (1) **(U) "Nolo Contendere" Plea:** *Any court* action following a plea of no contest or "nolo contendere" *constitutes* a conviction.
- (2) **(U) Conviction in Absentia:** A conviction in absentia does not constitute a conviction, unless the accused had a meaningful opportunity to participate in the judicial proceedings. Any participation in judicial proceedings by the accused may mean that the conviction was not one made in absentia. For example, *in cases where a conviction* in absentia has been appealed by the person convicted, *if* the person has "appeared" for *the purpose of appealing*, and the conviction *is* affirmed, *then* it is no longer considered a conviction in absentia. Similarly, representation by the accused in a trial proceeding may preclude a finding that the trial was conducted in absentia. You must submit all cases where the facts suggest that a conviction may have been made in absentia *by AO* to CA/VO/L/A.
- (3) **(U) Conviction by Court-Martial:** A conviction by court-martial is a conviction for purposes of visa *eligibility*.
- (4) **(U) Judicial Recommendation Against Deportation (JRAD):**
- (a) **(U)** Section 505 of the Immigration Act of 1990, Public Law 101-649, eliminated judicial recommendation against deportation (JARAD) for convictions which occurred on or after November 29, 1990, the date of enactment of Public Law 101-649. The Department of Homeland Security (DHS), and the Department of State will recognize JRADs granted prior to that date. Those *JRADs issued* on or after that date will not be recognized.
- (b) **(U)** *JRADs* granted prior to November 29, 1990, has "the effect of immunizing the alien" from the application of INA 212(a)(2)(A)(i)(I) with regard to the conviction for which the JRAD was issued. It has no effect, however, on INA 212(a)(2)(A)(i)(II) *ineligibility* since *INA* 241(a)(2)(B) specifically exempted convictions for violations of drug laws from eligibility for a JRAD. *Also*, JRADs affect convictions within the U.S. judicial system only. Convictions in foreign courts are not susceptible to a JRAD.
- (5) **(U) Conviction While a U.S. Citizen:**

- (a) **(U)** In view of the elimination of JRAD, the finding of the Supreme Court in *Costello v. INA*, 376 U.S. 120, is now in question. *In that case, the Supreme Court held that a conviction of a naturalized citizen did not invoke deportation under INA 241(a)(2)(A)(i)(I) since the possibility of a JRAD was not available for a U.S. citizen. Consequently, an alien who was convicted of a crime while a U.S. citizen was found to be not ineligible under INA 212(a)(2)(A)(i)(I) based solely upon that conviction.*
- (b) **(U)** You must submit all cases involving the conviction of an applicant while he or she was a citizen of the United States to CA/VO/L/A for an advisory opinion. (See [9 FAM 302.3-2\(C\)](#).)
- h. **(U) Pardons Relating To Convictions:** INA 237(a)(2)(A)(vi) provides that certain U.S. pardons remove deportability for U.S. convictions. *Matter of H--*, 6 I&N Dec. 90 (*BIA 1954*), holds that such pardons *also* remove *ineligibility* under INA 212(a)(2)(A)(i)(I). Generally, *pardons that remove an INA 212(a)(2)(A)(i)(I) ineligibility* must be pardons granted by the highest appropriate executive authority *such as* the President, State Governor, or other person specified in 22 CFR 40.21(a)(5); *a legislative pardon alone will not remove the ineligibility..* A pardon granted by a mayor is acceptable if *has designated the mayor as* the supreme pardoning authority under *the* relevant municipal ordinances. A pardon will remove *ineligibility* only when it is full and unconditional. *Post must* submit any case *involving* a pardon which bears limitations or restrictions to CA/VO/L/A for an advisory opinion. (See [9 FAM 302.3-2\(C\)](#).)
- i. **(U) Suspended Sentence, Probation, etc., Relating to Convictions:** An alien who has been convicted and whose sentence has been suspended or reduced, mitigated, or commuted; or who has been convicted and has been granted probation or parole or has otherwise been relieved in whole or in part of the penalty imposed, is nevertheless, considered to have been convicted *for purposes of INA 212(a)(2)(A), even if the applicant's record has now been expunged (see 9 FAM 302.3-2(B)(3) paragraph c above).*
- j. **(U) Appeals Pertaining To Convictions:** For the purposes of adjudicating a visa application, a visa applicant has been "convicted" of offense *once* the conviction is entered in the trial court. It does not matter whether the applicant has filed a direct appeal of the conviction to a higher court, nor whether the appeal period has expired. But a conviction no longer exists if the judgment of conviction has been vacated by the trial court on the merits, or overturned on appeal to a higher court. If an applicant presents evidence that the conviction was vacated *on the merits*, or overturned on appeal, *you must ensure* that all convictions that would result in *ineligibility* have been reversed. *You should note that having a conviction vacated on the merits or overturned on appeal is different than completing probation or other requirements of the original sentencing, it means that the court is reversing the original decision.* If you are uncertain whether all relevant charges were reversed on appeal, you may submit the case to CA/VO/L/A for an advisory opinion. A prior visa denial based on a conviction does not require denial of a later visa application, if the applicant establishes that the conviction has been vacated on

the merits or overturned on appeal.

k. (U) Vacating A Conviction:

(1) *To determine whether a judicial modification of a conviction, such as a vacatur, is effective for immigration purposes, you must determine whether the court modified or vacated the original conviction for substantive reasons (e.g., a legal or serious procedural defect) or for some other purpose, such as avoiding negative consequences of U.S. immigration laws. Note, however, that as of March 31, 2010, a conviction vacated due to ineffective assistance of counsel based on failure of an alien's attorney to advise of the immigration consequences of pleading guilty to criminal charges should be treated as substantive reason. See Padilla v. Kentucky, 130 S. Ct. 1473 (2010) and Chaidez v. U.S., 133 S. Ct. 1103 (2013).*

(2) The vacating of a conviction on a writ of coram nobis eradicates the conviction for *INA 212(a)(2)(A)*. (Matter of Sirhan, 13 I&N Dec. 592). A writ of coram nobis is an order by a court of appeal *back down* to *the lower* court which rendered *the original* judgment requiring that trial court to consider facts not on the trial record which might have resulted in a different judgment if *those facts had been* known at the time of the *original* trial.

l. (U) Absence Of Conviction In Nolle Prosequi Cases: The grant of a new trial by a judge following a conviction, together with a dismissal of cause "nolle prosequi" (a decision not to proceed with a case), eradicates the conviction for *INA 212(a)(2)(A) and (B)* purposes.

9 FAM 302.3-2(B)(4) (U) Admitting to Crimes Involving Moral Turpitude

(CT:VISA-352; 04-24-2017)

a. (U) Alien Admission To Crime Involving Moral Turpitude: *A finding of INA 212(a)(2)(A)(i) ineligibility requires either a conviction or an "admission." It is often difficult to obtain a legally-valid "admission" for purposes of INA 212(a)(2)(A)(i). In eliciting admissions from visa applicants for purposes of applying INA 212(a)(2)(A), you must observe carefully the following rules of procedure which have been imposed by judicial and Board of Immigration Appeals decisions:*

(1) **(U)** The crime, which the alien has admitted, must appear to constitute moral turpitude based on the statute. It is not necessary for the alien to admit that the crime involves moral turpitude.

(2) **(U)** Before the actual questioning, you must give the applicant an adequate definition of the crime, including all *of the* essential elements. You must explain the definition to the applicant in terms he or she understands; making certain *the explanation* conforms *carefully* to the law of the jurisdiction where the offense is alleged to have been committed.

(3) **(U)** *You must give the applicant a full explanation of the purpose of the questioning. The applicant must then be placed under oath and the*

proceedings must be recorded verbatim.

- (4) **(U)** The applicant must then admit all *of* the factual elements which constituted the crime (Matter of P--, 1 I&N Dec. 33).
 - (5) **(U)** The applicant's admission of the crime must be explicit, unequivocal and unqualified (Howes v. Tozer, 3 F2d 849).
- b. **(U) Admissions Relating To Acquittals Or Dismissals:** An admission by an alien is deemed ineffective with respect to a crime for which the alien has been tried and acquitted, or, for which, charges have been dismissed by a court.
 - c. **(U) Failing To Prosecute Charges Concerning Offense:** The failure of the authorities to prosecute an alien who has been arrested will not prevent a finding of ineligibility based upon an admission by the applicant.
 - d. **(U) Guilty Plea Without Conviction:** A plea of guilty in a trial will not constitute an admission if a conviction does not result or if it is followed by a new trial and subsequent acquittal or dismissal of charges.
 - e. **(U) Official Confession Constituting Admission:** An official confession made in a prior hearing or to a police officer may constitute an admission if the statement meets the standards of these Notes.
 - f. **(U) Cases Involving Retraction Of Admission:** Once an admission has been made, attempts to retract it need not remove the basis of ineligibility. However, you must evaluate the truthfulness of such an admission. If you believe the admission to be true despite the alien's retraction, a finding of inadmissibility is warranted. Conversely, if you believe the retraction to be justifiable, the alien's admission to a crime will have no effect on the case. (See [9 FAM 302.9-4\(B\)\(4\)](#)).
 - g. **(U) Coercing To Obtain Admission Prohibited:** You must not resort to threats or promises in an attempt to extract an admission from an alien. Action that tends to induce an alien to make an admission may constitute entrapment, and any admission or confession obtained by such methods may have no legal force or effect.
 - h. **(U) Admitting All Essential Elements:**
 - (1) **(U)** In each case, the reviewing consular officer must keep in mind the essential elements of the offense. For example, the essential elements of the crime of perjury (which is an offense involving moral turpitude) as defined in 18 U.S.C. 1621 are:
 - (a) **(U)** The taking of an oath;
 - (b) **(U)** Duly administered by a competent authority;
 - (c) **(U)** In a case in which an oath is required by law;
 - (d) **(U)** A false statement;
 - (e) **(U)** Knowingly or willfully made; and
 - (f) **(U)** Regarding a material matter.

- (2) **(U)** To legally constitute the admission of the commission of the crime of perjury in the example given above, an alien must fully, completely, and unequivocally admit elements (a), (d), and (e). Elements (b), (c), and (f) are primarily questions of law which the alien is not required to admit but which you must find to exist to constitute the crime of perjury.
- i. **(U) Quality Of Admission:** In any case where an admission is considered independent of any other evidence, you must develop that admission to a point where there is no reasonable doubt that the alien committed the crime in question. (See [9 FAM 302.9-4\(B\)\(4\)](#)).

9 FAM 302.3-2(B)(5) (U) Determining Whether a Statute a Crime Involving Moral Turpitude

(CT:VISA-352; 04-24-2017)

- a. **(U) Provisions Of Law Defining Particular Offense:** Where the record clearly shows the conviction to be predicated on *one* specific provision of law, whose terms embrace only acts that are offenses involving moral turpitude, the fact that the conviction was predicated supports a conclusion that the conviction was *for* a crime that involves moral turpitude. *The statutory* definition of the offense will determine whether the conviction involves moral turpitude. Each separate provision of law defining an offense must be read in conjunction with such other provisions of law as are pertinent to its interpretation.
- b. **(U) Divisible Statutes Under U.S. And Foreign Law:**
- (1) **(U)** If the provision of law on which a conviction is predicated has multiple sections, only some of which involve moral turpitude, you must evaluate the nature of the act to determine if the conviction was predicated on the section of the statute involving moral turpitude. If the divisible statute in question is part of the law of one of the *U.S.* states, you may only examine the charge, plea, verdict, and sentence in assessing the presence of moral turpitude in the *certain* act for which the conviction was obtained.
 - (2) **(U)** If the statute in question is *a* foreign *law*, you may assess the presence of moral turpitude in the act for which conviction has been obtained by reference to any part of the record or from admissions of the alien. *The alien must provide you with copies of any relevant laws that will allow you to make this determination. See [9 FAM 302.3-2\(C\)](#), below.*

9 FAM 302.3-2(B)(6) (U) The Sentencing Exception

(CT:VISA-352; 04-24-2017)

- a. **(U) Provisions Of INA 212(a)(2)(A)(ii)(II):** A conviction or admission of the commission of a crime of moral turpitude will not serve as the basis of ineligibility under *INA 212(a)(2)(A)(i)(I)* under the sentencing exception (also known as the petty offense exception), if the following conditions have been met:
- (1) **(U)** The applicant has been convicted of or has admitted to the commission of

only one crime *involving moral turpitude; and*

- (2) **(U)** The maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed, see [9 FAM 302.2-2\(B\)\(4\)](#)) did not exceed imprisonment for one year; and
 - (3) **(U)** If the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of six months.
- b. **(U) Applying The Sentencing Exception:** The language that the alien was not sentenced to a term of imprisonment in excess of six months refers to how long the alien was originally sentenced for, regardless of the extent to which the sentence was ultimately executed. The "term of imprisonment" that you need to analyze constitutes the specific sentence meted out by the court prior to the imposition of any suspension. For example, if a court imposes a sentence of nine months of imprisonment, but suspends all nine months and imposes two years of probation, the alien cannot benefit from the sentencing exception because the nine months term of imprisonment exceeds the statutory six months maximum. *Because you will need to analyze what sentence was originally handed down by the court, you may require that the applicant provide you with a copy of the sentencing provisions that accompany the statute under which he or she was convicted, as well as the court records which show what the original sentence was. See [9 FAM 302.3-2\(C\)](#)*
- c. **(U) Applicability Of Law, Foreign Or Domestic, Relevant To Crime:** In assessing the applicability of this provision to an applicant who has admitted the commission of acts constituting a crime of moral turpitude (*rather than being convicted*), it is necessary only to look to the law, foreign or domestic, of the jurisdiction where the acts were committed. It is not necessary to refer to federal or other U.S. standards to distinguish between felonies and misdemeanors.
- d. **(U) Early Release, Parole:** An applicant whose imposed sentence exceeds imprisonment for a period of six months cannot receive consideration under *the sentencing exception* even though the applicant was released early on parole or for good behavior. (See [9 FAM 302.3-2\(B\)\(6\)](#) paragraph b above.)
- e. **(U) Applying the Sentencing Exception:** Since the sentencing exception is to be applied retrospectively as well as prospectively, aliens previously found to be inadmissible under INA 212(a)(2)(A)(i)(I) might no longer be inadmissible under the terms of a statute if that statute is amended or changed. All visa applications, therefore, must be assessed under the current statute without regard to any previous finding(s) of inadmissibility.
- f. **(U) Distinguishing Between Single Offense And Single Conviction:** The INA language requires that the sentencing exception is applicable only if the alien has committed only one crime involving moral turpitude. You must determine, as a matter of fact, whether despite the fact that there is a single conviction, the alien may have committed more than one crime *involving moral turpitude*.
- (1) **(U) Multiple Counts:** An alien convicted on two counts involving moral turpitude in one indictment is ineligible for the sentencing exception even though only one conviction exists and the two offenses constituted a single

scheme of criminal misconduct.

- (2) **(U) Relevant Facts:** In Matter of S. R., 7 I&N Dec. 495; Matter of DeM., 9 I&N Dec. 218, it has been held that when an alien's conviction has been expunged under a state expungement proceeding, you may use the conviction as evidence that the alien committed more than one crime of moral turpitude and is therefore ineligible for relief under the sentencing exception.

9 FAM 302.3-2(B)(7) (U) *The Minor Exception*

(CT:VISA-352; 04-24-2017)

- a. **(U) Provisions of INA 212(a)(2)(A)(ii)(I):** A conviction or admission of a crime *involving* moral turpitude will not serve as the basis of ineligibility under INA 212(a)(2)(A)(i)(I), if the following conditions have been met:
- (1) **(U)** The crime was committed when the alien was under 18 years of age; and
 - (2) **(U)** The crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than five years before the date of application for a visa or other documentation and the date of application for admission to the United States.
- b. **(U) More Than One Crime:** In some instances, court records in a case might show that an alien under the age of 18 years had committed more than one crime involving moral turpitude although only one conviction resulted. In such a case, the alien is ineligible for the *minor* exception *and remains ineligible under INA 212(a)(2)(A)(i)(I)*.
- c. **(U) Conviction When *Applicant Was Over 18*:** It does not matter if the conviction occurred when the applicant was over the age of 18, as long as the relevant crime was committed when the applicant was under the age of 18.
- d. **(U) Confirm Existence of a Conviction:** Before seeking to apply the minor exception for a criminal offense, you should first consider whether the offense may be a "juvenile delinquency" per [9 FAM 302.3-2\(B\)\(8\)](#) and therefore *may* not *be* a conviction for *INA 212(a)(2)(A) or (B)* purposes.

9 FAM 302.3-2(B)(8) (U) *Juvenile Delinquency*

(CT:VISA-352; 04-24-2017)

- a. **(U) Definition:** The Federal Juvenile Delinquency Act (FJDA) defines a juvenile as a "person who has not attained his 18th birthday" and defines juvenile delinquency as "the violation of a law of the United States committed by a person prior to his or her 18th birthday which might have been considered a crime if committed by an adult."
- b. **(U)** *While the FJDA may sound similar to the minor exception explained at [9 FAM 302.3-2\(B\)\(7\)](#), it provides a distinct legal criteria that you must consider in determining whether a conviction exists for immigration purposes. In short, the FJDA requires that certain offenses committed by minors will be treated as juvenile*

delinquency rather than a crime. As such, someone convicted for an offense of juvenile delinquency cannot be considered to have been convicted for a crime involving moral turpitude.

- c. **(U) Using U.S. Standards:** A foreign conviction based on conduct which *would constitute* an act of juvenile delinquency under U.S. *law*, however *it was* treated by the foreign court, is not a conviction for a "crime" for the purpose of *INA 212(a)(2)(A)(i)* and, accordingly, may not serve as the basis for a finding of inadmissibility under INA 212(a)(2)(A)(i)(I).
- d. **(U) Controlling Legislation:** The standards embodied in the Federal Juvenile Delinquency Act (FJDA), as amended, govern whether an offense is considered a delinquency or a crime by U.S. standards. The FJDA, set forth in 18 U.S.C. 5031, was amended by the Juvenile Justice and Delinquency Prevention Act of 1974 (Public Law 93-415) and the Comprehensive Crime Control Act of 1984 (Public Law 98-473).
- e. **(U) Two Classes Of Juvenile Delinquents:** The Federal Juvenile Delinquency Act (FJDA) differentiates between two classes of juvenile delinquents. Therefore, each must be analyzed differently for the purposes of INA 212(a)(2)(A)(i)(I).
- (1) **(U) Under Age 15:** Juveniles who were under the age of 15 at the time of commission of acts constituting a delinquency, are not to be considered as having been convicted of a crime. Therefore, no alien may be found inadmissible under INA 212(a)(2)(A)(i)(I) by reason of any offense committed prior to the alien's 15th birthday.
 - (2) **(U) Between Ages 15 and 18:** Juveniles between the ages of 15 and 18 at the time of commission of an offense will not be considered to have committed a crime, and thus be inadmissible under INA 212(a)(2)(A)(i)(I), unless *they were* tried and convicted as an adult for a felony involving violence. A felony is defined in 18 U.S.C. 3559(a) or 18 U.S.C. 3156(a) as an offense punishable by death or imprisonment for a term exceeding one year. A crime of violence is defined in 18 U.S.C. 16 as:
 - (a) **(U)** An offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or
 - (b) **(U)** Any offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.
- f. **(U) Juveniles Demonstrating Patterns Of Criminal Behavior:** Any case in which an alien's misconduct as a juvenile over a period of time has demonstrated a pattern of criminal behavior must be *referred* to the *panel* physician for a possible finding of inadmissibility under INA 212(a)(1).

9 FAM 302.3-2(B)(9) (U) Political Offenses

(CT:VISA-352; 04-24-2017)

- a. **(U)** 22 CFR 40.21(a) states that the term political offenses includes “offenses that resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious, or political minorities.” This regulation incorporates language from the legislative history of the 1952 Act, and therefore reflects to some extent the original Congressional intent in adopting the political offense exemption. Based on this regulation, most political offense exemptions will involve cases where you determined that the alien was not guilty of the charges but was wrongly prosecuted because of political repression against racial, religious, or political minorities.
- b. **(U)** The imposition of a cruel or unusual punishment, or of a punishment which is clearly disproportionate to the offense, can also be relevant to this consideration when there is evidence that the applicant was innocent of the charges. Absent evidence of political motivation for a wrongful prosecution, you cannot look behind a conviction to determine whether the applicant was guilty of the offense for purposes of determining INA 212(a)(2)(A)(i)(I) inadmissibility, although evidence of a wrongful conviction can be relevant to waiver considerations. The mere fact that an alien is or was a member of a racial, religious, or political minority shall not be considered as sufficient in itself to warrant a conclusion that the crime for which the alien was convicted was purely a political offense.
- c. **(U)** It has been generally considered that, in the extradition context, the crimes of espionage, treason and sedition are “pure” political offenses. Convictions for these crimes will generally be eligible for the political offense exemption.
- d. **(U)** You *must submit an AO* where there is any indication that the offense for which the alien was convicted was of a political nature, or prosecution and therefore was politically motivated.
- e. **(U)** Many offenses that are political in nature do not involve moral turpitude. If the offense does not involve moral turpitude or the provisions of INA 212(a)(2)(B) (multiple criminal convictions), the applicant is not ineligible and it is not necessary to determine whether the offense is political in nature. Moreover, the Board of Immigration Appeals has determined that convictions for crimes that are not crimes in the United States will not be recognized for U.S. immigration purposes. Therefore, many offenses with political implications such as illegal political campaigning or labor organizing will not result in immigration consequences because they do not constitute crimes in the United States.

9 FAM 302.3-2(B)(10) (U) Convicted War Criminals

(CT:VISA-239; 10-28-2016)

(U) See [9 FAM 302.7-4\(B\)\(4\)](#) and 302.7-4(B)(1) for cases of persons convicted of war crimes.

9 FAM 302.3-2(C) (U) Advisory Opinions

(CT:VISA-352; 04-24-2017)

- a. **(U) In General:** When an advisory opinion is required and the case involves a criminal conviction, *before submitting an AO, you should request that the applicant provide you records of-*
- (1) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**
 - (4) **Unavailable**
 - (5) **Unavailable**
- b. **Unavailable**

9 FAM 302.3-2(D) (U) Waiver

9 FAM 302.3-2(D)(1) (U) Waivers for Immigrants

(CT:VISA-352; 04-24-2017)

- a. **(U) Principal Alien:** An immigrant alien who is inadmissible under INA 212(a)(2)(A)(i)(I) is eligible to apply for a waiver of inadmissibility under INA 212(h) if it is established to the satisfaction of the Secretary of Homeland Security (DHS) that:
- (1) **(U)** The activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa for admission, or adjustment of status; the alien's admission to the United States would not be contrary to the national welfare, safety, or security, and the alien has been rehabilitated; or
 - (2) **(U)** In certain cases involving close relatives (see [9 FAM 302.3-2\(D\)\(1\)](#) paragraph b); or
 - (3) **(U)** If the alien is a Violence Against Women's Act (VAWA) self-petitioner.
- b. **(U) Certain Relatives Of U.S. Citizens Or Legal Permanent Residents (LPRs):** An alien immigrant who is the spouse, parent, son, or daughter of a U.S. citizen or an alien lawfully admitted for permanent residence in the United States may apply for a waiver under INA 212(h) (see also [9 FAM 302.3-2\(D\)\(1\)](#)) if:
- (1) **(U)** It is established of the Secretary of Homeland Security's (DHS) satisfaction that the alien's denial of admission would result in extreme hardship to the U.S. citizen or lawfully resident spouse, parent, son, or daughter; and
 - (2) **(U)** The Secretary of Homeland Security (DHS) has consented to the alien's applying or reapplying for a visa for admission or adjustment of status to the United States.
- c. **(U) Evidence Of Eligibility To Apply For A Waiver:** When the court records or statutes leave doubt concerning an alien's eligibility for a waiver, you must ensure that you have obtained complete records and copies of all relevant portions of the statute under which the conviction was obtained are assembled, as well as any

available commentary by authorities, prior judicial holdings and the like, *along with translations into English, and scan* these documents *into* the *CCD*. (See [9 FAM 302.3-2\(D\)\(1\)](#) for waiver procedures.) Because DHS has exclusive authority for approving *INA* 212(h) waivers, any question concerning waiver eligibility *should* be *directed* to DHS for resolution.

d. **(U) Procedures:**

- (1) **(U) Making Waiver Request Directly to Department of Homeland Security:** *INA* 212(h) waiver applications are submitted directly to DHS without recommendation *of the Department* or joint action. Applicants *file* their Form I-601 *directly* with USCIS per *the* Form I-601 instructions. To ensure that the original finding of ineligibility is fully in accord with both law and regulations, you must carefully review cases of aliens who have been found inadmissible under *INA* 212(a)(2)(A)(i)(I), (B), (D), or (E) who intend to apply for relief under *INA* 212(h).
- (2) **(U) Form I-601, Application for Waiver of Grounds of Inadmissibility:** You must interview the alien and the alien's spouse or other qualifying relatives, if appropriate, and make every effort to identify all grounds of ineligibility at the time of the formal refusal of the visa. Clearly describe applicable grounds of refusal in the case notes. If the applicant's ineligibilities can be waived, *or if the applicant asks about the potential for a waiver, you should* inform the applicant of Form I-601, Application for Waiver of Grounds of Inadmissibility.
- (3) **(U) Executing Form I-601:** Post should not assist applicants with completing Form I-601. Applicants should file their Form I-601 with USCIS according to the USCIS instructions. Instruct the applicant to direct all Form I-601 inquiries to USCIS.
- (4) **(U)** When a waiver is granted by USCIS, DHS will notify the consular office via an encrypted spreadsheet. *Upon* its receipt:
 - (a) **(U)** Note the waiver decision in the case notes with the following standard case note:
Per USCIS/NSC notification received (date), (grounds of ineligibility) waived for (NVC case number). Spreadsheet
POST_DD_MM_YYYY_HR_MIN.csv
 - (b) **(U)** Make a notation regarding the waiver on the Online IV Application Report for the applicant's Form DS-260, Online Application for Immigrant Visa and Alien Registration using the "Add Remarks" button at the top of the report and attach the notification to the other supporting documents contained in the packet
 - (c) **(U)** Consular sections will not receive a physical copy of the approved waiver of inadmissibility form from USCIS. There is no need to scan a record of approval into the case. CBP officers may verify the waiver of inadmissibility decision through DHS's system Computer Linked Application

Information Management System (CLAIMS) as necessary as part of the inspections process.

- (5) **(U) Validity of Waivers:** DHS regulations at 8 CFR 212.7(a)(4) provide that a waiver granted under INA 212(h) must apply only to those grounds of inadmissibility and to those crimes, events or incidents specified in the application for a waiver. Once granted, the waiver must be valid indefinitely, even if the recipient of the waiver later abandons or otherwise loses lawful permanent resident (LPR) status. However, a waiver granted to an alien who obtains LPR on a conditional basis under INA 216 must automatically terminate concurrently with the termination of such residence pursuant to the provisions of INA 216. A waiver granted under INA 212(g), INA 212(h) or INA 212(i) must apply only to those grounds of inadmissibility and to those crimes, events or incidents specified in the application for a waiver. A new or replacement visa may be issued to an alien who was previously granted such a waiver.
- (6) **(U) Waiver for Alien Fiancé(e)s of Armed Forces Personnel:** When an alien fiancé(e) of a member of the Armed Forces has been found inadmissible and it appears that the benefits of INA 212(h) might be available once the marriage has taken place, you must explain the applicable section to the military officer from whom permission to marry is being sought. You must also inform the authorizing officer that DHS does not make advance determinations regarding the granting of a waiver.
- (7) **(U) Authority for Issuing Waivers is Discretionary:** The authority exercised by DHS under INA 212(h) is discretionary. In cases where an eligible alien insists upon preceding an ineligible relative to the United States, you must ask the alien to sign a statement that he or she has been informed that an exercise of DHS's discretionary authority cannot be guaranteed. (See [9 FAM 504.9-5](#).) You must not *suggest* the separation of a family in order to place the ineligible alien in a position to apply for a waiver of the grounds of inadmissibility.

9 FAM 302.3-2(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-352; 04-24-2017)

(U) For those who do not fall under the exceptions to *ineligibility* listed in [9 FAM 302.3-2\(B\)\(8\)](#), INA 212(d)(3)(A) waivers are available. *As with any INA 212(a)(d)(3)(A) waiver, the Department of Homeland Security cannot authorize the waiver unless it is accompanied by a favorable recommendation from either the consular officer or the Secretary of State.* You should consider the following factors, among others, when deciding whether to recommend a waiver:

- (1) **(U)** The recency and seriousness of the activity or condition causing the alien's inadmissibility;
- (2) **(U)** The reasons for the proposed travel to the United States;
- (3) **(U)** The positive or negative effect, if any, of the planned travel on U.S. public interests.

- (4) **(U)** If you do not wish to recommend a waiver and the applicant or their representative pursue the case then you must submit the case to the Department by AO through the NIV or IV system stating that post does not wish to recommend a waiver.

9 FAM 302.3-2(E) Unavailable

9 FAM 302.3-2(E)(1) Unavailable

(CT:VISA-239; 10-28-2016)

Unavailable

9 FAM 302.2-2(E)(2) Unavailable

(CT:VISA-352; 04-24-2017)

Unavailable

9 FAM 302.3-3 (U) CRIMES INVOLVING CONTROLLED SUBSTANCE VIOLATIONS - INA 212(A)(2)(A)(I)(II)

9 FAM 302.3-3(A) (U) Grounds

(CT:VISA-239; 10-28-2016)

(U) INA Section 212(a)(2)(A)(i)(II) renders ineligible any alien with past convictions for (or who admits to) violations of, or conspiracy to violate, any law of a state, the United States, or a foreign country relating to a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802). Note that whether or not a controlled substance is legal under a state law is not relevant to its illegality under federal law.

9 FAM 302.3-3(B) (U) Application

(CT:VISA-239; 10-28-2016)

(U) For guidance on how to apply INA Section 212(a)(2)(A)(i)(II) see [9 FAM 302.4-2](#).

9 FAM 302.3-4 (U) MULTIPLE CRIMINAL CONVICTIONS - INA 212(A)(2)(B)

9 FAM 302.3-4(A) (U) Grounds

(CT:VISA-239; 10-28-2016)

(U) INA 212(a)(2)(B) provides that any alien convicted of two or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were five years or more is inadmissible.

9 FAM 302.3-4(B) (U) Application

9 FAM 302.3-4(B)(1) (U) Cases Involving Both INA 212(a)(2)(A)(i) and (2)(B)

(CT:VISA-239; 10-28-2016)

(U) A case may arise in which the pertinent court records indicate that the alien had been convicted and sentenced to imprisonment for four years for committing rape, a crime involving moral turpitude, and that the alien had also been convicted and sentenced to imprisonment for one year for drunkenness, a crime not involving moral turpitude. In such a case, the alien would be inadmissible under INA 212(a)(2)(A)(i) and (2)(B).

9 FAM 302.3-4(B)(2) (U) Effects of Suspended Sentence, Foreign Pardon, or Amnesty Decree

(CT:VISA-239; 10-28-2016)

- a. **(U)** A sentence to confinement, the execution of which has been suspended by a court of competent jurisdiction, is still considered to have been “actually imposed” within the meaning of INA 212(a)(2)(B) (Matter of Castro, 19 I&N 692). Hence, if an alien has been convicted of committing two or more offenses for which the aggregate sentences to confinement were five years or more, but the court suspended the execution of the sentence in whole or in part so as to reduce the actual term of confinement to less than 5 years, the case would still come within the purview of INA 212(a)(2)(B).
- b. **(U)** If a court of competent jurisdiction suspends the imposition of sentence, (i.e., chooses some other form of punishment, such as probation or community service), any period of confinement proscribed by law for the crime in question for which the applicant was convicted is not within the meaning of INA 212(a)(2)(B) since it was never “actually imposed.”
- c. **(U)** A further distinction must be made between a sentence suspended by the court and, on the other hand, a pardon or general amnesty. An alien who has been convicted of two or more offenses for which the aggregate sentences to confinement were five years or more but which are later extinguished by reason of the granting of an unconditional foreign pardon or amnesty decree of any kind, whether granted at the conclusion of the original trial, in appellate proceedings, or in any other type of proceedings, would be inadmissible under INA 212(a)(2)(B). The fact that the beneficiary of such a pardon or decree was relieved in whole or in

part from serving a sentence to confinement would not alter the fact that such a sentence would be compatible in determining the aggregate sentences to confinement actually imposed.

9 FAM 302.3-4(B)(3) (U) Effect of One Conviction for Two or More Offenses

(CT:VISA-239; 10-28-2016)

(U) In view of the specific language of INA 212(a)(2)(B), it is not necessary to establish that an alien has been convicted on two separate and distinct occasions in order to sustain a finding of inadmissibility thereunder. For example, a record of conviction showed that an alien had been convicted on four separate and distinct counts of violating the following sections of the Internal Revenue laws (1934 Edition): Section 1162 (Registry of Stills); Section 1170 (Premises Prohibited for Distilling); Section 1184 (Distilling Without Posting Bond); and Section 1185 (Distilling Mash). A sentence to imprisonment of two years was imposed on each count in the indictment or a total of eight years. Although there was only one conviction, and although the offenses were predicated on a single scheme of misconduct, the fact that there was a series of criminal acts would require a finding of inadmissibility under the provisions of INA 212(a)(2)(B).

9 FAM 302.3-4(B)(4) (U) Political Offenses

(CT:VISA-239; 10-28-2016)

(U) In connection with the term "purely political offenses" as used in INA 212(a)(2)(B), see [9 FAM 302.3-2\(B\)\(9\)](#). Requests for advisory opinions should be submitted in accordance with [9 FAM 302.3-2\(C\)](#).

9 FAM 302.3-4(B)(5) (U) Two Classes of Juvenile Delinquents

(CT:VISA-239; 10-28-2016)

(U) The controlling law differentiates between two classes of juvenile delinquents: those under the age of fifteen at the time of commission of the acts underlying their delinquency, and those between the ages of fifteen and eighteen at the time of commission of the underlying offense.

- (1) **(U)** A juvenile whose offense was perpetrated before the alien's fifteenth birthday cannot be held inadmissible under INA 212(a)(2)(B) by reason of the offense, regardless of the nature of the offense, the type of court which heard the case, or whether the alien was treated as a juvenile or as an adult.
- (2) **(U)** A juvenile whose offense was perpetrated between the ages of fifteen and eighteen will be subject to the provisions of INA 212(a)(2)(B) if the:
 - (a) **(U)** Alien was tried and convicted as an adult; and
 - (b) **(U)** Alien was convicted of a violent felony as defined in sections 18 U.S.C. 3559(a), 18 U.S.C. 3156(a), and of 18 U.S.C. 16 (Title 18 of the United

State Code Section 16). (See [9 FAM 302.3-2\(B\)\(8\).](#))

- (3) **(U)** Juvenile delinquency is not a crime and may not serve as the basis for a finding of INA 212(a)(2)(B) inadmissibility. (See [9 FAM 302.3-2\(B\)\(8\).](#))

9 FAM 302.3-4(C) (U) Advisory Opinions

(CT:VISA-239; 10-28-2016)

(U) An AO is not required for a potential INA 212(a)(2)(B) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.3-4(D) (U) Waiver

9 FAM 302.3-4(D)(1) (U) Waivers for Immigrants

(CT:VISA-239; 10-28-2016)

(U) An immigrant visa applicant who is found inadmissible under INA 212(a)(2)(B) and is the spouse, parent, son, or daughter of a U.S. citizen or of a lawful resident alien may seek a waiver of inadmissibility under INA 212(h). (See [9 FAM 302.3-2\(D\)\(1\)](#) for detailed waiver information and procedures.)

9 FAM 302.3-4(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-352; 04-24-2017)

(U) An INA 212(d)(3)(A) waiver is available for a nonimmigrant visa applicant who is found inadmissible under INA 212(a)(2)(B) *if the consular officer or the Secretary of State chooses to recommend that waiver*. You should consider the following factors, among others, when deciding whether to recommend a waiver:

- (1) **(U)** The recency and seriousness of the activity or condition causing the alien's inadmissibility;
- (2) **(U)** The reasons for the proposed travel to the United States;
- (3) **(U)** The positive or negative effect, if any, of the planned travel on U.S. public interests.

9 FAM 302.3-4(E) Unavailable

9 FAM 302.3-4(E)(1) Unavailable

(CT:VISA-239; 10-28-2016)

Unavailable

9 FAM 302.2-4(E)(2) Unavailable

(CT:VISA-352; 04-24-2017)

Unavailable

9 FAM 302.3-5 (U) CONTROLLED SUBSTANCE TRAFFICKING - INA 212(A)(2)(C)

9 FAM 302.3-5(A) (U) Grounds

(CT:VISA-239; 10-28-2016)

(U) INA Section 212(a)(2)(C) renders ineligible any alien whom you know or have reason to believe is or has been an illicit trafficker in any controlled substances, or who assisted, conspired, or colluded with others in the illicit trafficking in any controlled substance or chemical, or any endeavored to do so. This ineligibility also applies to the spouse, son, and daughter of the trafficker if they obtained any financial or other benefit from the illicit activity within the past five years.

9 FAM 302.3-5(B) (U) Application

(CT:VISA-239; 10-28-2016)

(U) For guidance on how to apply INA 212(a)(2)(A)(i)(II), see 9FAM 302.4-2.

9 FAM 302.3-6 (U) PROSTITUTION AND COMMERCIALIZED VICE - INA 212(A)(2)(D)

9 FAM 302.3-6(A) (U) Grounds

(CT:VISA-239; 10-28-2016)

(U) INA 212(a)(2)(D) provides three separate sections for a visa ineligibility for prostitution and commercialized vice. Each of the three sections is explained at [9 FAM 302.3-6\(A\)\(1\)-\(3\)](#).

9 FAM 302.3-6(A)(1) (U) Prostitution - INA 212(a)(2)(D)(i)

(CT:VISA-239; 10-28-2016)

(U) INA 212(a)(2)(D)(i) renders ineligible any alien who "is coming to the United States to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status..."

9 FAM 302.3-6(A)(2) (U) Procuring Prostitution - INA 212(a)(2)(D)(ii)

(CT:VISA-239; 10-28-2016)

(U) INA 212(a)(2)(D)(ii) renders ineligible any alien who “directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for visa, admission, or adjustment of status procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution...”

9 FAM 302.3-6(A)(3) (U) Commercialized Vice - INA 212(a)(2)(D)(iii)

(CT:VISA-239; 10-28-2016)

(U) INA 212(a)(2)(D)(iii) renders ineligible any alien who “is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution.”

9 FAM 302.3-6(B) (U) Application

9 FAM 302.3-6(B)(1) (U) Definition of Prostitution

(CT:VISA-239; 10-28-2016)

(U) “Prostitution” means engaging in promiscuous sexual intercourse for hire. A conviction is not necessary for a finding that an applicant engaged in prostitution. However, a finding that someone has “engaged” in prostitution must be based a regular pattern of “prostitution” for financial gain – not casual or isolated acts. An individual can be found inadmissible under INA 212(a)(2)(D)(i) for engaging in prostitution, in a jurisdiction where prostitution is not illegal, so long as it involves is a regular pattern of prostitution for financial gain. INA 212(a)(2)(D)(i) would not apply to a “John” or someone who hired a prostitute.

9 FAM 302.3-6(B)(2) (U) Conviction Under Statute Defining Prostitution

(CT:VISA-239; 10-28-2016)

(U) A conviction under a statute which precisely defines prostitution will not render an alien inadmissible under INA 212(a)(2)(D) unless the record of conviction shows or it is otherwise reasonably established that the alien had engaged in prostitution. On the other hand, such a conviction would bring the alien within the purview of INA 212(a)(2)(A)(i)(I) (because prostitution is a crime of moral turpitude) unless the sentencing clause is applicable. The sentencing clause would not be applicable if the record showed or the consular officer would be justified in concluding on the basis of an admission by the alien or other evidence that the alien had committed another act of prostitution or other act involving moral turpitude.

9 FAM 302.3-6(B)(3) (U) Convictions Under Broad Statute Encompassing Several Crimes

(CT:VISA-239; 10-28-2016)

(U) A person might be convicted under a statute so broad in content as to encompass within it, for example, the crimes of vagrancy, disorderly conduct, loitering for the purpose of prostitution. Such a conviction would generally not involve moral turpitude within the meaning of INA 212(a)(2)(A)(i)(I) because of the divisibility of the pertinent statute. However, the evidence of record might be such as to prompt you to question the alien along lines that would make possible a determination of the applicability of INA 212(a)(2)(D) to the case.

9 FAM 302.3-6(B)(4) (U) Definition of the term "Procure" Prostitution

(CT:VISA-239; 10-28-2016)

(U) INA 212(a)(2)(D)(ii) would not apply to a single act of soliciting prostitution. The Board of Immigration appeals has noted that Congress chose the term "procure" prostitution not "solicit" prostitution in INA 212(a)(2)(D)(ii). A person who "procures" prostitution would be a person "who receives money to obtain a prostitute for another person."

9 FAM 302.3-6(B)(5) (U) Definition of Unlawful Commercialized Vice

(CT:VISA-239; 10-28-2016)

(U) Commercialized vice would apply to activity connected to a "moral failing," which the Board of Immigration Appeals has said can be prostitution, gambling and addiction to narcotics. It would not apply to "loan sharking," and other forms of commercial extortion.

9 FAM 302.3-6(B)(6) (U) 10 Year Statute of Limitation

(CT:VISA-239; 10-28-2016)

(U) If the nonimmigrant or immigrant visa applicant has not engaged in prostitution or has not attempted to procure or has not procured persons for prostitution or has not received proceeds from prostitution, within ten years preceding the date of application for a visa, entry, or adjustment of status, the provisions of INA 212(a)(2)(D) do not apply. It should be noted that INA 212(a)(2)(D)(iii) does not extend the ten year statute of limitations to aliens who have engaged in other unlawful commercialized vice whether or not related to prostitution.

9 FAM 302.3-6(C) (U) Advisory Opinions

(CT:VISA-239; 10-28-2016)

(U) An AO is not required for a potential INA 212(a)(2)(D) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.3-6(D) (U) Waiver

9 FAM 302.3-6(D)(1) (U) Waivers for Immigrants

(CT:VISA-239; 10-28-2016)

(U) An alien who is inadmissible under INA 212(a)(2)(D) and is the spouse, parent, son, or daughter of a U.S. citizen or of a permanent resident alien is eligible under INA 212(h) to apply for a waiver of inadmissibility. (See [9 FAM 302.3-2\(C\)](#) for detailed waiver information and procedures.)

9 FAM 302.3-6(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-352; 04-24-2017)

(U) An INA 212(d)(3)(A) waiver is available for an alien who is inadmissible under INA 212(a)(2)(D) *if the consular officer or the Secretary of State chooses to recommend one*. You should consider the following factors, among others, when deciding whether to recommend a waiver:

- (1) **(U)** The recency and seriousness of the activity or condition causing the alien's inadmissibility;
- (2) **(U)** The reasons for the proposed travel to the United States;
- (3) **(U)** The positive or negative effect, if any, of the planned travel on U.S. public interests.

9 FAM 302.3-6(E) Unavailable

9 FAM 302.3-6(E)(1) Unavailable

(CT:VISA-239; 10-28-2016)

Unavailable

9 FAM 302.2-6(E)(2) Unavailable

(CT:VISA-239; 10-28-2016)

Unavailable

9 FAM 302.3-7 (U) CRIMINAL ACTIVITY WHERE IMMUNITY ASSERTED - INA 212(A)(2)(E)

9 FAM 302.3-7(A) (U) Grounds

(CT:VISA-239; 10-28-2016)

(U) An alien is ineligible under INA 212(a)(2)(E) who has committed in the United States at any time a serious criminal offense (as defined in INA 101(h)), for whom immunity from criminal jurisdiction was exercised with respect to that offense, who as a consequence of the offense and exercise of immunity has departed from the United States, and who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense.

9 FAM 302.3-7(B) (U) Application

(CT:VISA-352; 04-24-2017)

a. **(U) Determining Ineligibility:** *An alien is ineligible under INA 212(a)(2)(E) if:*

- (1) (U) The alien has committed a serious criminal offense (as defined in INA 101(h)) at any time in the United States;*
- (2) (U) The foreign mission or international organization exercised immunity from criminal jurisdiction on behalf of the alien and with respect to that offense;*
- (3) (U) The alien has departed from the United States as a consequence of the offense and exercise of immunity; and*
- (4) (U) The alien has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense.*

b. **(U)** *You may not issue a visa to an individual who is found ineligible under INA 212(a)(2)(E). Applicants subject to INA 212(a)(2)(E) **ineligibility** may apply for a **waiver** of the ineligibility as authorized in INA 212(h). For the procedure **regarding waiver for an immigrant visa applicant**, see [9 FAM 302.3-2\(D\)\(1\)](#). (See also [9 FAM 302.3-7\(D\)](#) regarding waivers of ineligibility under INA 212(a)(2)(E) in general.)*

9 FAM 302.3-7(C) (U) Advisory Opinions

(CT:VISA-352; 04-24-2017)

- a. **(U)** An AO is not required for a potential INA 212(a)(2)(E) ineligibility, *except as described below*; however, *if an applicant is subject to a P2E hit entered by the Department, you should reach out to CA/VO/L/A. If you have a question about the interpretation or application of law or regulation you may request an AO from CA/VO/L/A.*
- b. **(U)** *Prior to issuing an A, C-2, C-3, G or NATO visa to an applicant who would otherwise be ineligible under INA 212(a)(2)(E) if such applicant were applying for a visa other than an A-1, A-2, C-2, C-3, G-1, G-2, G-3, G-4, or NATO-1 through NATO-6 nonimmigrant visa, you must submit an advisory opinion to CA/VO/L/A.*

9 FAM 302.3-7(D) (U) Waiver

9 FAM 302.3-7(D)(1) (U) Waivers for Immigrants

(CT:VISA-352; 04-24-2017)

- a. **(U) General:** An INA 212(h) waiver is available for *an* immigrant visa applicant inadmissible under INA 212(a)(2)(E) if the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application, the alien's admission to the United States would not be contrary to the national welfare, safety, or security, and the alien has been rehabilitated; for applicants with a close family relationship (spouse, parent, son, or daughter) to a U.S. citizen or LPR, if, in the opinion of DHS, refusing the waiver would result in extreme hardship to the U.S. citizen or LPR; or the alien is a VAWA self-petitioner.
- b. **(U) Limitation:** No waiver is available if the alien has committed murder or criminal acts involving torture, or conspiracy to commit either murder or criminal acts involving torture.

9 FAM 302.3-7(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-352; 04-24-2017)

(U) An INA 212(d)(3)(A) waiver is available for a nonimmigrant visa *applicant* inadmissible under INA 212(a)(2)(E). You should consider the following factors, among others, when deciding whether to recommend a waiver:

- (1) **(U)** The recency and seriousness of the activity or condition causing the alien's inadmissibility;
- (2) **(U)** The reasons for the proposed travel to the United States;
- (3) **(U)** The positive or negative effect, if any, of the planned travel on U.S. public interests.

9 FAM 302.3-7(E) Unavailable

9 FAM 302.3-7(E)(1) Unavailable

(CT:VISA-239; 10-28-2016)

Unavailable

9 FAM 302.2-7(E)(2) Unavailable

(CT:VISA-239; 10-28-2016)

Unavailable

9 FAM 302.3-8 (U) HUMAN TRAFFICKERS - INA 212(A)(2)(H)

9 FAM 302.3-8(A) (U) Grounds

(CT:VISA-239; 10-28-2016)

(U) Under INA 212(a)(2)(H), an alien is inadmissible if he or she:

- (1) **(U)** Commits or conspires to commit a human trafficking offense inside or outside the United States;
- (2) **(U)** Knowingly aided, abetted, assisted, conspired, or colluded with such a trafficker in severe forms of trafficking in persons (see [9 FAM 302.3-8\(B\)\(1\)](#) below); or
- (3) **(U)** Is the spouse, son, or daughter of an alien who has engaged in one of the above activities and has:
 - (a) **(U)** Received a financial or other benefit from the principal alien's illicit activity within the five years prior to the visa application date and,
 - (b) **(U)** Knew or reasonably should have known that the source of the benefit was illicit human trafficking activity.

9 FAM 302.3-8(B) (U) Application

9 FAM 302.3-8(B)(1) (U) Defining Severe Forms of Trafficking in Persons

(CT:VISA-239; 10-28-2016)

- a. **(U)** An individual is inadmissible for having knowingly aided, abetted, assisted, conspired or colluded with a trafficker, only if the trafficker engaged in a "severe forms of trafficking in persons," which is defined in 22 U.S.C. 7102(8) as follows:
 - (1) **(U)** "Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age;" or
 - (2) **(U)** "The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."
- b. **(U)** "Sex trafficking" is defined at 22 U.S.C. 7102(9) as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act."

9 FAM 302.3-8(B)(2) (U) Son or Daughter Benefiting from Trafficking

(CT:VISA-239; 10-28-2016)

(U) INA 212(a)(2)(H) does not apply to a son or daughter who was a child (unmarried, under 21) at the time he or she received the benefit.

9 FAM 302.3-8(B)(3) (U) A, C-2, C-3, G, and NATO Visa Applicants

(CT:VISA-352; 04-24-2017)

(U) Applicants for A-1, A-2, C-2, C-3, G-1, G-2, G-3, G-4, NATO-1 through NATO-4 and NATO-6 visas are not subject to this ground of ineligibility.

9 FAM 302.3-8(B)(4) Unavailable

(CT:VISA-239; 10-28-2016)

Unavailable

9 FAM 302.3-8(C) (U) Advisory Opinion

(CT:VISA-352; 04-24-2017)

- a. (U) **AO Required:** If you suspect that an applicant is ineligible for a visa under this ground, you must request an Advisory Opinion (AO) from the Advisory Opinions Division in the Visa Office (CA/VO/L/A).
- b. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**
 - (4) **Unavailable**

9 FAM 302.3-8(D) (U) Waiver

9 FAM 302.3-8(D)(1) (U) Waivers for Immigrants

(CT:VISA-239; 10-28-2016)

(U) There is no waiver available for immigrants found inadmissible under INA 212(a)(2)(H).

9 FAM 302.3-8(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-352; 04-24-2017)

(U) An INA 212(d)(3)(A) waiver is available for nonimmigrants found inadmissible under INA 212(a)(2)(H) *if the consular officer or the Secretary of State chooses to recommend one*. You should consider the following factors, among others, when deciding whether to recommend a waiver:

- (1) (U) The recency and seriousness of the activity or condition causing the alien's inadmissibility;
- (2) (U) The reasons for the proposed travel to the United States;
- (3) (U) The positive or negative effect, if any, of the planned travel on U.S. public

interests.

9 FAM 302.3-8(E) Unavailable

9 FAM 302.3-8(E)(1) Unavailable

(CT:VISA-239; 10-28-2016)

Unavailable

9 FAM 302.2-8(E)(2) Unavailable

(CT:VISA-239; 10-28-2016)

Unavailable

9 FAM 302.3-9 (U) MONEY LAUNDERING - INA 212(A)(2)(I)

9 FAM 302.3-9(A) (U) Grounds

(CT:VISA-239; 10-28-2016)

(U) INA 212(a)(2)(I) provides that an alien is inadmissible, and thus ineligible for a visa, if there is reason to believe the alien has engaged, is engaging, or seeks to enter the United States to engage in, money laundering, as defined in 18 U.S.C. 1956 or 18 U.S.C. 1957. It also provides that any alien who you or the Attorney General knows is, or has been, a knowing aider, abettor, assistor, conspirator, or colluder with money launderers is inadmissible.

9 FAM 302.3-9(B) (U) Application

9 FAM 302.3-9(B)(1) (U) In General

(CT:VISA-352; 04-24-2017)

- a. **(U)** In order to apply this ineligibility, you must articulate specific facts, relevant to the elements of the crime of money laundering as defined in 18 U.S.C. 1956 or 18 U.S.C. 1957. These facts must provide a basis for "reason to believe," as described in [9 FAM 302.4-3\(B\)\(3\)](#), *that the applicant has engaged, is engaged, or seeks to enter the United States to engage in money laundering or that there is "reason to believe" the applicant is or has been a knowing aider, abettor, assistor, conspirator, or colluder with money launderers.*
- b. **(U)** *Both 18 U.S.C. 1956 and 18 U.S.C. 1957 require a U.S. nexus. Therefore, you must be able to demonstrate that the activities either occurred or will occur in the United States or involved a U.S. person (which includes U.S. nationals, lawful permanent residents, an employee of the U.S. government, or a corporation*

organized under the laws of the United States, any State, the District of Columbia, or any U.S. possession or territory) in order to find an alien ineligible under INA 212(a)(2)(I). You must also articulate specific facts to show that the applicant (1) engaged in "specified unlawful activity", which is broadly defined in 18 U.S.C. 1956(c)(7); and (2) that the applicant acted knowing the property or funds involved represent the proceeds of some form of unlawful activity or with intent to engage in such "specified unlawful activity".

9 FAM 302.3-9(B)(2) (U) Money Laundering Watchlist

(CT:VISA-239; 10-28-2016)

- a. **(U)** The USA Patriot Act (10/26/01) also requires the Secretary of State in cooperation with the Attorney General, the Secretary of Treasury, and the Director of the Central Intelligence Agency, to develop within 90 days of enactment, and thereafter, continually implement, update, and certify to the Congress a "MONEY LAUNDERING WATCHLIST" which identifies individuals worldwide who are known or suspected of money laundering.
- b. **(U)** The WatchList must be readily accessible to, and must be checked by you or other Federal official prior to issuance of a visa or admission of an alien to the United States. Pursuant to this requirement, relevant Washington, DC agencies are providing names of known and suspected money launderers to the Department for addition into the CLASS database under the appropriate code (ordinarily 00). (These entries will be in addition to CLASS entries made at the post level by consular personnel. (See [9 FAM 302.3-9\(B\)\(3\)](#) below.)

9 FAM 302.3-9(B)(3) Unavailable

(CT:VISA-239; 10-28-2016)

- a. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
- b. **Unavailable**

9 FAM 302.3-9(C) (U) Advisory Opinions

(CT:VISA-352; 04-24-2017)

- a. **(U) Advisory Opinion Mandatory:**
 - (1) **(U)** The two Federal money laundering statutes (*18 U.S.C. 1956 or 18 U.S.C. 1957*) on which *ineligibility under* INA 212(a)(2)(I) is based, are complex and incorporate, by reference, a large number of other criminal statutes. *Posts* must submit all cases involving potential INA 212(a)(2)(I) ineligibilities to the Advisory Opinion Division, CA/VO/L/A, for an advisory opinion.
 - (2) **(U)** The mandatory advisory opinion requirement is applicable when an alien

applies for a visa so long as *post has reason to believe* the alien *has engaged, is engaged in, or seeks to engage in, money laundering activity; or that the applicant is or has been a knowing aider, abettor, assistor, conspirator, or colluder with money launderers*. Any case that appears to involve criminal activity of the type described in 18 U.S.C. 1956 or 18 U.S.C. 1957 *must* be referred to CA/VO/L/A.

b. Unavailable

9 FAM 302.3-9(D) (U) Waiver

9 FAM 302.3-9(D)(1) (U) Waivers for Immigrants

(CT:VISA-239; 10-28-2016)

(U) There is no waiver available for immigrants found inadmissible under INA 212(a)(2)(I).

9 FAM 302.3-9(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-239; 10-28-2016)

An INA 212(d)(3)(A) waiver is available for nonimmigrants found inadmissible under INA 212(a)(2)(I). You should consider the following factors, among others, when deciding whether to recommend a waiver:

- (1) **(U)** The recency and seriousness of the activity or condition causing the alien's inadmissibility;
- (2) **(U)** The reasons for the proposed travel to the United States;
- (3) **(U)** The positive or negative effect, if any, of the planned travel on U.S. public interests.

9 FAM 302.3-9(E) Unavailable

9 FAM 302.3-9(E)(1) Unavailable

(CT:VISA-239; 10-28-2016)

Unavailable

9 FAM 302.2-9(E)(2) Unavailable

(CT:VISA-239; 10-28-2016)

Unavailable

9 FAM 302.4

(U) INELIGIBILITY BASED ON CONTROLLED SUBSTANCE VIOLATIONS - INA 212(A)(2)(A) (I)(II) AND INA 212(A)(2)(C)

*(CT:VISA-344; 04-18-2017)
(Office of Origin: CA/VO/L/R)*

9 FAM 302.4-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 302.4-1(A) (U) Immigration and Nationality Act

(CT:VISA-206; 09-30-2016)

(U) INA 101(a)(48) (8 U.S.C. 1101(a)(48)); INA 212(a)(2)(A) (8 U.S.C. 1182(a)(2)(A)); INA 212(a)(2)(C) (8 U.S.C. 1182(a)(2)(C)); INA 212(d)(3)(A) (8 U.S.C. 182(d)(3)(A)); INA 212(h) (8 U.S.C. 1182(h)).

9 FAM 302.4-1(B) (U) Code of Federal of Regulations

(CT:VISA-206; 09-30-2016)

(U) 21 CFR 1308.11; 21 CFR 1308.12; 21 CFR 1308.13; 21 CFR 1308.14; 21 CFR 1308.14; 21 CFR 1308.15; 22 CFR 40.21.

9 FAM 302.4-1(C) (U) United States Code

(CT:VISA-206; 09-30-2016)

(U) 21 U.S.C. 802.

9 FAM 302.4-1(D) (U) Public Laws

(CT:VISA-206; 09-30-2016)

(U) Comprehensive Crime Control Act of 1984 (Public Law 98-473); Anti-Drug Abuse Act of 1986 (Public Law 99-570).

9 FAM 302.4-2 (U) CRIMES INVOLVING CONTROLLED SUBSTANCE VIOLATIONS - INA 212(A)(2)(A)(I)(II)

9 FAM 302.4-2(A) (U) Grounds

(CT:VISA-344; 04-18-2017)

(U) INA 212(a)(2)(A)(i)(II) renders ineligible any alien with past convictions for (or who admits having committed, or who admits committing acts *constituting*), a violation of, or conspiracy or attempt to violate, any law or regulation of a state, the United States, or a foreign country relating to a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802). Note that whether or not a controlled substance is legal under a state law is not relevant to its illegality under federal law.

9 FAM 302.4-2(B) (U) Application

9 FAM 302.4-2(B)(1) (U) "Controlled Substance" List and its Effect on INA 212(a)(2)(A)(i)(II)

(CT:VISA-206; 09-30-2016)

The Drug Enforcement, Education and Control Act (DEECA) of 1986, also known as the Anti-Drug Abuse Act of 1986, was signed into law on October 27, 1986. DEECA broadened the scope of INA 212(a)(2)(A)(i) to encompass a conviction for any violation relating to a controlled substance as defined in section 102 of that Act rather than certain violations relating to drugs or narcotics specifically enumerated in the predecessor section to INA 212(a)(2)(A)(i)(II) or specifically listed in the statute. For example, LSD, amphetamines, barbiturates, Seconal and Phencyclidene (PCP or "Angel Dust"), which are included in the list of controlled substances, are now incorporated into INA 212(a)(2)(A)(i)(II), whereas, previously, they had not been. Moreover, the distinction between "use" and "possession" has been eliminated by the Anti-Drug Abuse Act. Furthermore, removing the phrase "guilty knowledge" from the earlier version of INA 212(a)(2)(A)(i)(II) eliminates the "Lennon" distinction. (See [9 FAM 302.4-2\(B\)\(3\).](#)) In addition, the law applies to both foreign and domestic drug convictions. For a list of controlled substances please see 21 CFR 1308.11 through 1308.15.

9 FAM 302.4-2(B)(2) (U) Controlled Substance Includes Marijuana

(CT:VISA-206; 09-30-2016)

(U) A controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), applies to marijuana as well as other controlled substances, which are defined in section 102 of the Controlled Substances Act and in 21 CFR 1308. For the purpose of these Notes, the term "marijuana" includes any of the various parts or products of the plant Cannabis Sativa L., such as bhang, ganga, charras, Indian hemp, dagga, hashish, and cannabis resin.

9 FAM 302.4-2(B)(3) (U) Defining Conviction

(CT:VISA-236; 10-28-2016)

- a. **(U) In General:** A finding of inadmissibility under INA 212(a)(2)(A)(i)(II) may be based on a conviction of a violation of, or a conspiracy to violate, any law or regulation of a State, the United States, or a foreign country relating to a controlled substance.
- b. **(U) Determining Existence of Conviction and Evidence:**
- (1) **(U) General Definition:** For a definition of the term conviction for purposes of INA 212(a)(2)(A)(i)(II) please see [9 FAM 302.3-2\(B\)\(3\)](#).
 - (2) **(U) Juvenile Delinquency:** The Federal provisions relating to juvenile delinquency discussed in [9 FAM 302.3-2\(B\)\(8\)](#) would also relate to convictions for simple possession of controlled substances.
 - (3) **(U) Federal First Offense Judicial Actions and State Equivalents:**
 - (a) **(U)** The Comprehensive Crime Control Act of 1984, effective October 12, 1984, repealed the Federal First Offender provisions cited as 21 U.S.C. 844(b)(1). Prior to the repeal it had been held that judicial treatment under this section did not result in a "conviction" for immigration purposes, Matter of Seda, 17 I&N Dec. 550 (Matter of Werk, 6 I&N Dec. 234). In cases involving simple possession of a controlled substance, 21 U.S.C. 844(b)(1) permitted the court to withhold a "judgment of guilt" following a "finding of guilt" (thus drawing a distinction between "a judgment" and a "finding of guilt" by a guilty plea or trial). Therefore, a withholding of a judgment of guilt by a court under the Federal First Offender Provisions did not meet the standard required for establishing that an offender had been "convicted".
 - (b) **(U)** Cases processed under 21 U.S.C. 844(b)(1) prior to its repeal of the Federal First Offender Provisions retain the favorable treatment of this procedure and, likewise, retain the benefit for visa purposes.
 - (c) **(U) Applying State Equivalents to 21 U.S.C. 844(b)(1):**
 - (i) **(U)** In general, a state expungement or other relief for controlled substance convictions will not be effective for immigration purposes. An alien "convicted" under a state statute for a drug-related offense, however, may not be subject to INA 212(a)(2)(A)(i)(II) if it can be established that he or she would have been eligible for Federal first offender treatment had the prosecution occurred under Federal law.
 - (ii) **(U)** Relief can be extended to aliens prosecuted under state law who meet the following criteria:
 - **(U)** The alien is a first offender, i.e., he or she has not previously been convicted of violating any Federal or state law relating to controlled substances;
 - **(U)** The alien has pled to or been found guilty of the offense of simple possession of a controlled substance;

- **(U)** The alien has not previously been accorded first offender treatment under any law; and
 - **(U)** The court has entered an order pursuant to a state rehabilitative statute under which the alien's criminal proceedings have been deferred pending successful completion of probation or the proceedings have been or will be dismissed after probation.
- (d) **(U) Requests for Advisory Opinions:** You must seek an AO from CA/VO/L/A if a visa applicant claims eligibility for an exception under the current Federal first offender criteria.
- (4) **(U) Judicial Recommendation Against Deportation (JARd):** See [9 FAM 302.3-2\(B\)\(3\)](#).
- (5) **(U) Action After Conviction:**
- (a) **(U) Expungements:** In general, expungements (domestic or foreign expungements) of convictions for purposes of INA 212(a)(2)(A)(i)(II) do not remove the fact of a conviction with respect to a finding of ineligibility under that section. The one exception to this generalization is noted below:
- (i) **(U)** Prior to the passage of 101(a)(48) a full expungement of a conviction under U.S. law had been held to be equivalent in effect to a pardon granted under INA 237(a)(2)(A)(v) and served to eliminate the effect of the conviction for most immigration purposes. In light of the passage of 101(a)(48), the Board of Immigration Appeals in Matter of Roldan, 22 I & N. Dec. 512, determined that judicial expungements based on rehabilitative or ameliorative statutes (laws that allowed for expungement of a sentence by a court based on a showing that the defendant had been rehabilitated or was otherwise worthy of relief) would no longer be recognized as effective for eliminating the conviction for immigration purposes.
 - (ii) **(U)** The Ninth Circuit Court of Appeals, however, disagreed with this holding, and in a series of cases determined that state judicial expungements will be considered effective for eliminating the conviction if the alien would have been eligible for relief under the Federal First Offender Act or similar statute (see [9 FAM 302.4-2\(B\)\(3\)](#) paragraph b Federal First Offense Judicial Actions and State Equivalents). Because of the complexity of this issue, cases that involve claims for state judicial expungement relief, must be submitted as an AO to CA/VO/L/A.)
- (b) **(U) Pardons:** No pardon of whatever kind, executive or legislative, foreign or domestic, has any effect with respect to inadmissibility under INA 212(a)(2)(A)(i)(II).
- (c) **(U) Suspending Sentence, Probation, or Commutation:** A conviction exists for the purpose of INA 212(a)(2)(A)(i)(II) even if the sentence has

been suspended, reduced, mitigated, or commuted, or the alien has been granted probation or parole or has otherwise been relieved in whole or in part of the penalty imposed.

- (d) **(U) Appeals:** For the purposes of adjudicating a visa application, a visa applicant has been “convicted” of a criminal offense when the conviction is entered in the trial court. It does not matter whether the applicant has filed a direct appeal of the conviction to a higher court, nor whether the appeal period has expired. You must refuse the visa accordingly. But a conviction no longer exists if the judgment of conviction has been vacated by the trial court on the merits, or overturned on appeal to a higher court. If an applicant presents evidence that the conviction was vacated or overturned on appeal, review the document to make sure that all convictions that would result in inadmissibility have been reversed. If you are uncertain whether all relevant charges were reversed on appeal, you may submit the case to CA/VO/L/A for an advisory opinion. A prior visa denial based on a conviction does not require denial of a later visa application, if the applicant establishes that the conviction has been vacated on the merits or overturned on appeal.
 - (e) **(U) Vacating Conviction:** Various jurisdictions use different terms and procedures for the act of vacating (i.e., annulling or repealing) their own prior judgments. These are not appellate actions but actions of the original court. Whatever it is called (e.g., “request to vacate” or “writ of error coram nobis” as in Matter of Sirhan, 13 I&N Dec. 592 or anything else), the vacating of a conviction by the court of original jurisdiction eradicates the conviction for the purposes of INA. However, a determination of ineligibility under INA 212(a)(2)(C) might still be appropriate.
 - (f) **(U) Writ of Error Coram Nobis:** Definition - A writ calling the attention of the trial court to facts which do not appear on the record despite the exercise of reasonable diligence by the defendant and which if known and established at the time a judgment was rendered would have resulted in a different judgment petitioned for a writ of error coram nobis on the ground that newly discovered evidence exonerated him.
 - (g) **(U) Dismissing “Nolle Prosequi”:** The grant of a new trial by a trial judge following a conviction together with a dismissal of cause nolle prosequi eradicates the conviction for the purposes of INA. However, a determination of inadmissibility under INA 212(a)(2)(C) might still be appropriate.
- c. **(U) Intent Relating to Ineligibility Resulting from Conviction:**
- (1) **(U)** Prior to its amendment under the DEECA of 1986, the former 212(a)(23) provided for a finding of ineligibility resulting from a conviction for the “illicit” possession of certain substances. In the Lennon case (527 F.2d 287) the term “illicit” was interpreted to mean “guilty knowledge”. In order for an alien to be found ineligible as the result of a conviction for the “possession” of drugs, the statute or statutes (substantive possession, i.e. the term “illicit” or procedural)

under which the alien was convicted had to have contained a requirement that the alien knew the drugs were in his or her possession, i.e., the term "illicit" was equated to an intent to possess contrary to law.

- (2) **(U)** The current version of INA 212(a)(2)(A)(i)(II) contains no word equivalent to "illicit". Therefore, a conviction for possession or any other activity "relating to" a controlled substance will render an alien ineligible regardless of whether the statute under which the alien was convicted contains an element of guilty knowledge as a requirement for conviction and regardless of whether it is alleged that the alien did not knowingly participate in the activity.

9 FAM 302.4-2(B)(4) (U) Admissions

(CT:VISA-206; 09-30-2016)

(U) An alien may be found ineligible if he or she admits to committing the essential elements of a drug violation in lieu of a conviction under INA 212(a)(2)(A)(i)(II) (see [9 FAM 302.3-2\(B\)\(4\)](#) for the standards that must be followed in obtaining an admission).

9 FAM 302.4-2(B)(5) (U) Juvenile Drug Convictions

(CT:VISA-206; 09-30-2016)

- a. **(U) Aliens Under Age 18:** An alien who is convicted of or who admits to having committed or who admits committing acts which constitute the essential elements of a minor drug offense(s) relating to simple possession or use of controlled substances, i.e., offenses other than those involving trafficking, importing/exporting, or manufacturing (18 U.S.C. 802(15)), shall not be considered ineligible for any visa based solely upon any such conviction or admission if the acts which are the subject of the conviction or admission occurred while the alien was under the age of eighteen. Specifically excluded from such treatment, however, are convictions or admissions relating to drug trafficking, importing/exporting, and manufacturing.
- b. **(U) Minors Involved in Trafficking, Importing/Exporting or Manufacturing of Controlled Substances:** If there is reasonable belief on your part that, despite having been convicted of or having admitted to only a minor drug offense, the alien was directly involved in or aided or abetted trafficking, importing/exporting, or manufacturing of a controlled substance, you may still find the alien inadmissible under INA 212(a)(2)(C). Likewise, after medical examination, the alien could be found inadmissible under INA 212(a)(1) for substance abuse. (See [9 FAM 302.2-2\(B\)](#).)

9 FAM 302.4-2(B)(6) (U) Notification of Travel Plans

(CT:VISA-206; 09-30-2016)

(U) The Department should be notified in advance of the travel plans of any alien to whom a visa has been issued in whose case it is believed that the Drug Enforcement Agency may have an interest and the reasons why there may be interest in the case

by that Agency. Telegrams should show:

"CAPTIONS: "VISAS"; TAGS: "CVIS, DEA" and SUBJECT: OPERATIONS; Travel of (name of alien): possible interest Drug Enforcement Agency."

9 FAM 302.4-2(C) (U) Advisory Opinion

(CT:VISA-236; 10-28-2016)

(U) When an advisory opinion is required and the case involves a criminal conviction, you must submit a complete report to CA/VO/L/A, consistent with the guidance in [9 FAM 302.3-2\(C\)](#).

9 FAM 302.4-2(D) (U) Waiver

9 FAM 302.4-2(D)(1) (U) Waivers for Immigrants

(CT:VISA-206; 09-30-2016)

- a. **(U) Principal Alien and Simple Possession of Marijuana:** An immigrant alien who is inadmissible under INA 212(a)(2)(A)(i)(II) insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana is eligible to apply for a waiver of inadmissibility under INA 212(h) if it is established to the satisfaction of the Attorney General that:
 - (1) **(U)** The activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for visa;
 - (2) **(U)** The alien's admission to the United States would not be contrary to the national welfare, safety, or security; and
 - (3) **(U)** The alien has been rehabilitated.
- b. **(U) Certain Relatives of U.S. Citizens or Lawful Permanent Residents (LPRs):** An alien immigrant who is the spouse, parent, son, or daughter of a U.S. citizen or an alien lawfully admitted for permanent residence in the United States may apply for a waiver under INA 212(h) if:
 - (1) **(U)** The principal alien was found inadmissible under INA 212(a)(2)(A)(i)(II) insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana;
 - (2) **(U)** It is established to the Attorney General's satisfaction that the exclusion of such alien would result in extreme hardship to the U.S. citizen or lawfully resident spouse, parent, son, or daughter; and
 - (3) **(U)** The Attorney General has consented to the alien's applying or reapplying for a visa to the United States.
- c. **(U) Evidence of Eligibility to Apply for a Waiver:** When the court records or statutes leave doubt concerning an alien's eligibility for a waiver, you must ensure that complete records and copies of all relevant portions of the statute under which the conviction was obtained are assembled, as well as any available commentary by

authorities or prior judicial holdings. The post must forward these documents to Department of Homeland Security (DHS), with the waiver application, and the best available evidence (in whatever form) indicating the actual amount of marijuana. (See also [9 FAM 302.3-2\(D\)\(1\)](#).)

d. **(U) Procedures:** See [9 FAM 302.3-2\(D\)\(1\)](#) paragraph d.

9 FAM 302.4-2(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-206; 09-30-2016)

(U) An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants found inadmissible under INA 212(a)(2)(A)(i)(II). You should consider the following factors, among others, when deciding whether to recommend a waiver:

- (1) **(U)** The recency and seriousness of the activity or condition causing the alien's inadmissibility;
- (2) **(U)** The reasons for the proposed travel to the United States;
- (3) **(U)** The positive or negative effect, if any, of the planned travel on U.S. public interests.

9 FAM 302.4-2(E) Unavailable

9 FAM 302.4-2(E)(1) Unavailable

(CT:VISA-206; 09-30-2016)

Unavailable

9 FAM 302.4-2(E)(2) Unavailable

(CT:VISA-206; 09-30-2016)

Unavailable

9 FAM 302.4-3 (U) CONTROLLED SUBSTANCE TRAFFICKING - INA 212(A)(2)(C)

9 FAM 302.4-3(A) (U) Grounds

(CT:VISA-344; 04-18-2017)

(U) INA 212(a)(2)(C) renders ineligible:

- (1) **(U)** Any alien who the consular officer or DHS knows *or* has reason to believe is or has been an illicit trafficker in any controlled substance or in any listed chemicals as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others, in the illicit trafficking in any controlled or listed substance

or chemicals, or endeavored to do so *is ineligible under INA 212(a)(2)(C)(i)*; or

- (2) **(U)** *Any alien who the consular officer has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), and has, within previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity is inadmissible under INA 212(a)(2)(C)(ii). Ineligibility under INA 212(a)(2)(C)(ii) does not require that the primary alien have been formally refused under INA 212(a)(2)(C)(i). It requires a finding that if the primary alien were to apply for a visa he or she would be found ineligible under INA 212(a)(2)(C)(i).*

9 FAM 302.4-3(B) (U) Application

9 FAM 302.4-3(B)(1) (U) Examples of Trafficking

(CT:VISA-344; 04-18-2017)

- a. **(U)** The first clause of INA 212(a)(2)(C) has been found to apply in a broad range of cases, including a single purchase of drugs with the intent to resell them, but without the resale actually having occurred. It has also been held that an alien is a trafficker even though the alien receives no personal gain or profit from the transaction if the alien acts knowingly and consciously as a conduit between supplier and customer. The Attorney General has held that a "single act of conscious participation as an "illicit trafficker" is within the meaning of INA 212(a)(2)(C).
- b. **(U)** It must be noted that, unlike INA 212(a)(2)(D), the language in the first clause of INA 212(a)(2)(C) makes no mention of "engaging" in any proscribed activities. Therefore, the term "illicit trafficker" does not require that one has been "engaged" continuously in illicit trafficking. Rather, it denotes a person whose involvement with narcotic drugs includes trafficking, whether primary or incidental. Since the standard of proof for this provision "reason to believe" is substantially lower than that required for a conviction, it has been held that a consular officer may have reason to believe an alien is a trafficker even though criminal charges against the alien which relate to the facts forming the basis of ineligibility as a trafficker have been dismissed, *or even if an alien has never been arrested.*
- c. **(U)** *If an alien has been convicted of a narcotics-related crime, it is possible that he or she may be ineligible under INA 212(a)(2)(A)(i)(I), INA 212(a)(2)(A)(i)(II), and/or INA 212(a)(2)(C)(i). All related INA 212(a) ineligibilities should be assessed and entered separately, if applicable.*

9 FAM 302.4-3(B)(2) (U) Assistor, Abettor, Conspirator or Colluder

(CT:VISA-344; 04-18-2017)

- a. **(U) In General:** Aliens who, although not traffickers as defined in above, are

actively involved in activities supporting the illegal trafficking in controlled substances *are also ineligible*. These activities include:

- (1) **(U)** Knowingly laundering money for traffickers either directly or by claiming ownership or direction of, or operating for traffickers a front business financed at least in part by drug proceeds;
 - (2) **(U)** Knowingly facilitating trafficking by providing airstrips for the movement of drugs or secure premises for drug transactions; or
 - (3) **(U)** Knowingly accepting the proceeds of trafficking in return for direct assistance in trafficking activities, especially acceptance of such proceeds by public officials such as police, customs inspectors, immigration officials or judges.
- b. **(U) Foreign Policy Implication or Public Interest Cases:** Other than cases with significant foreign policy implication or significant public interest, findings of ineligibility in the cases listed above should not require an advisory opinion from the Department. However, in those types of cases listed above where such foreign policy implication or public interest is apparent and in any case not of the type listed above involving the second clause of INA 212 (a)(2)(C), you must submit a request for an advisory opinion to the Department (CA/VO/L/A). For information on submitting an advisory opinion see [9 FAM 302.4-3\(C\)](#) below.

9 FAM 302.4-3(B)(3) (U) "Reason to Believe"

(CT:VISA-344; 04-18-2017)

- a. **(U)** Under INA 212(a)(2)(C), if you have "reason to believe" that the alien is or has been engaged in trafficking, the standard of proof is met and you should make a finding of *ineligibility*.
- b. **(U)** "Reason to believe" might be established by a conviction, an admission, a long record of arrests with an unexplained failure to prosecute by the local government, or several reliable and corroborative reports. The essence of the standard is that the consular officer must have more than a mere suspicion; there must exist a probability, supported by evidence that the alien is or has been engaged in trafficking. You are required to assess independently evidence relating to a finding of *ineligibility*.
- c. **(U)** You must assess all evidence relating to a finding of *ineligibility*. This evidence might include conclusions of other evaluators. Such conclusions, no matter how trustworthy, cannot alone support a finding of inadmissibility; *however, they might be relevant to forming an overall "reason to believe."*

9 FAM 302.4-3(C) (U) Advisory Opinion

(CT:VISA-344; 04-18-2017)

- a. **(U) Required:** When a case *implicates* foreign policy concerns or has a potential public interest, it must be submitted for an AO. See [9 FAM 302.4-3\(B\)\(2\)](#)

paragraph b for more information.

b. **Unavailable**

c. **Unavailable**

d. **Unavailable**

9 FAM 302.4-3(D) (U) Waiver

9 FAM 302.4-3(D)(1) (U) Waivers for Immigrants

(CT:VISA-206; 09-30-2016)

(U) The INA provides for no immigrant visa waiver under INA 212(h) for persons ineligible under 212(a)(2)(C).

9 FAM 302.4-3(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-344; 04-18-2017)

(U) An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants found inadmissible under INA 212(a)(2)(C) *if the consular officer or the Secretary of State chooses to recommend one*. You should consider the following factors, among others, when deciding whether to recommend a waiver:

- (1) **(U)** The recency and seriousness of the activity or condition causing the alien's inadmissibility;
- (2) **(U)** The reasons for the proposed travel to the United States;
- (3) **(U)** The positive or negative effect, if any, of the planned travel on U.S. public interests.

9 FAM 302.4-3(E) Unavailable

9 FAM 302.4-3(E)(1) Unavailable

(CT:VISA-206; 09-30-2016)

Unavailable

Unavailable

9 FAM 302.4-3(E)(2) Unavailable

(CT:VISA-206; 09-30-2016)

Unavailable

Unavailable

9 FAM 302.5

(U) INELIGIBILITY BASED ON NATIONAL SECURITY GROUNDS - INA 212(A)(3)(A) AND INA 212(A)(3)(D)

*(CT:VISA-376; 06-08-2017)
(Office of Origin: CA/VO/L/R)*

9 FAM 302.5-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 302.5-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 101(a)(37) (8 U.S.C. 1101(a)(37)); INA 101(e)(2) (8 U.S.C. 1101(e)(2)); INA 212(a)(3)(A) (8 U.S.C. 1182(a)(3)(A)); INA 212(a)(3)(D) (8 U.S.C. 1182(a)(3)(D)); INA 221(g) (8 U.S.C. 1201(g)); INA 222(a) (8 U.S.C. 1202(a)).

9 FAM 302.5-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 40.34.

9 FAM 302.5-1(C) (U) Public Laws

(CT:VISA-1; 11-18-2015)

(U) Immigration Act of 1990, Public Law 101-649; Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, Public Law 102-138, Section 127.

9 FAM 302.5-2 (U) INTENT TO COMMIT ESPIONAGE OR SABOTAGE - INA 212(A)(3)(A)(I)(I)

9 FAM 302.5-2(A) (U) Grounds

(CT:VISA-219; 10-20-2016)

(U) INA 212(a)(3)(A)(i)(I) of the Immigration and Nationality Act (INA) renders inadmissible any alien who the consular or immigration officer knows or has reason to believe seeks to enter the United States to engage solely, principally, or incidentally in

any activity which violates any United States law relating to espionage or sabotage.

9 FAM 302.5-2(B) (U) Application

(CT:VISA-219; 10-20-2016)

a. **(U)** INA 212(a)(3)(A) contains three main subcategories. The first, (i), is divided into two subcategories. The first main subcategory, Section (i)(I), makes an applicant inadmissible who you know or have reason to believe is entering the United States solely, principally, or incidentally to engage in espionage or sabotage.

b. **Unavailable**

9 FAM 302.5-2(C) Unavailable

9 FAM 302.5-2(C)(1) Unavailable

(CT:VISA-51; 02-22-2016)

Unavailable

9 FAM 302.5-2(C)(2) (U) Procedures

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.5-2(C)(3) (U) Past Activity

(CT:VISA-51; 02-22-2016)

Unavailable

9 FAM 302.5-2(D) (U) Waiver

9 FAM 302.5-2(D)(1) (U) Waivers for Immigrants

(CT:VISA-219; 10-20-2016)

(U) No waiver is available for immigrants found inadmissible under INA 212(a)(3)(A) but the inadmissibility applies only to current circumstances.

9 FAM 302.5-2(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-219; 10-20-2016)

(U) No waiver is available for nonimmigrants found inadmissible under iNA 212(a)(3)(A) but the inadmissibility applies only to current circumstances.

9 FAM 302.5-2(E) Unavailable

9 FAM 302.5-2(E)(1) Unavailable

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.5-2(E)(2) Unavailable

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.5-3 (U) INTENT TO VIOLATE EXPORT CONTROL LAWS RELATED TO GOODS, TECHNOLOGY OR SENSITIVE INFORMATION - INA 212(A)(3)(A)(I)(II)

9 FAM 302.5-3(A) (U) Grounds

(CT:VISA-1; 11-18-2015)

(U) INA 212(a)(3)(A)(i)(II) renders inadmissible any alien who the consular or immigration officer knows or has reason to believe seeks to enter the United States to engage solely, principally, or incidentally in any activity which violates or evades any law prohibiting the export from the United States of goods, technology, or sensitive information.

9 FAM 302.5-3(B) (U) Application

9 FAM 302.5-3(B)(1) (U) In General

(CT:VISA-334; 04-13-2017)

(U) The second main subcategory, INA 212(a)(3)(A)(i)(II) makes inadmissible an applicant who you know or have reason to believe is coming to the United States solely, incidentally, or principally to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information. (See [9 FAM 302.5-2\(B\)](#) above for information about the first subcategory of (i).)

(1) **Unavailable**

(2) **Unavailable**

9 FAM 302.5-3(B)(2) Unavailable

(CT:VISA-219; 10-20-2016)

a. **Unavailable**

- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**
- e. **Unavailable**
- f. **Unavailable**
- g. **Unavailable**
- h. **Unavailable**

9 FAM 302.5-3(C) Unavailable

9 FAM 302.5-3(C)(1) Unavailable

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.5-3(C)(2) Unavailable

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.5-3(D) (U) Waiver

9 FAM 302.5-3(D)(1) (U) Waivers for Immigrants

(CT:VISA-219; 10-20-2016)

(U) No waiver is available for immigrants found inadmissible under INA 212(a)(3)(A)(i)(II) but the inadmissibility applies only to current circumstances.

9 FAM 302.5-3(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-219; 10-20-2016)

(U) No waiver is available for nonimmigrants found inadmissible under INA 212(a)(3)(A)(i)(II) but the inadmissibility applies only to current circumstances.

9 FAM 302.5-3(E) Unavailable

9 FAM 302.5-3(E)(1) Unavailable

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.5-3(E)(2) Unavailable

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.5-4 (U) INTENT TO COMMIT AN UNLAWFUL ACT IN THE UNITED STATES - INA 212(A)(3)(A)(II)

9 FAM 302.5-4(A) (U) Grounds

(CT:VISA-1; 11-18-2015)

(U) INA 212(a)(3)(A)(ii) makes a visa applicant inadmissible if you have reasonable grounds to believe that the applicant is coming to the United States solely, principally, or incidentally to engage in "any other unlawful activity."

9 FAM 302.5-4(B) (U) Application

9 FAM 302.5-4(B)(1) (U) Notification by Law Enforcement or Intelligence Agency

(CT:VISA-334; 04-13-2017)

(U) Law enforcement or intelligence agencies would normally inform the post and the Department about INA 212(a)(3)(A)(ii) cases.

9 FAM 302.5-4(B)(2) (U) Aliens Engaging in Organized Crime

(CT:VISA-219; 10-20-2016)

- a. **(U)** An INA 212(a)(3)(A)(ii) visa ineligibility may arise from the fact that the applicant is a member of a known criminal organization which includes the Chinese Triads; the Mafia; the Yakuza; any of the various groups constituting the organized crime families of the Former Soviet Union; any of the organized Salvadoran, Honduran, Guatemalan, and Mexican street gangs in North America, including, but not limited to, the Mara Salvatrucha 13 (MS 13), Mexican Mafia, SUR-13, Matidos-13, Florencia-13, La Familia, Nortenos, Clanton-14, Center Street Locos, Diablos, South Los, La Raza, Vatos Locos, Tortilla Flats, Latin Kings, Eastside Homeboys, Varrio Northside, Rebels-13, Brown Pride, and 18th Street (18th Street) gangs; and the biker gangs the Hells Angels, Outlaws, Bandidos, and the Mongols. If an active member of one of these organized crime groups applies for a visa, you must suspend processing the visa application, deny it under INA 221(g), and submit a request for an advisory opinion to CA/VO/L/A.
- b. **(U)** As written, INA 212(a)(3)(A)(ii) is applicable to an individual entry, although the basis for applying INA 212(a)(3)(A)(ii) to active members of organized criminal societies makes it a de facto permanent ground of ineligibility. The Department

began considering organized crime membership as a ground of ineligibility in 1965, when then Attorney General Katzenbach concurred with a recommendation by Secretary of State Rusk that an alien's membership in the Mafia was sufficient basis to find the alien ineligible under then section 212(a)(27). In 1992, the Department obtained concurrence from the INS to treat Triad membership as a ground of ineligibility pursuant to INA 212(a)(3)(A)(ii). In 1995, this was extended with INS concurrence to organized crime groups operating in the former Union of Soviet Socialist Republics. By agreement with DHS in 2005, the ineligibility was extended to active members of organized Salvadoran street gangs in North America, including, but not limited to, the Mara Salvatrucha 13 (MS 13) and 18th Street (18th Street) gangs. By agreement with DHS in 2011, the ineligibility was extended to active members of the organized crime group known as the Yakuza, and the organized biker gangs Hells Angels, Outlaws, Bandidos, and Mongols.

- c. **(U)** The basis for these determinations was that these groups operated as permanent organized criminal societies. Active membership in these groups could reasonably be considered to involve a permanent association with criminal activities and, therefore, could reasonably support a conclusion that any travel by such an alien to the United States could result in a violation of U.S. law, whether as a principal or incidental result of such travel. Therefore, while the ineligibility as a matter of law related to the specific nature of the trip, the basis for making the finding gave a reasonable basis for treating this as a blanket ineligibility which would apply to every application for entry to the United States.
- d. **(U)** There are some rare occasions where a prior finding that an alien was a member of an organized crime group will not result in a finding of inadmissibility for that alien with respect to a specific application. For example, if the alien was entering on a controlled basis as part of an official governmental delegation on official business, a visa could be issued since there would be reason to believe the alien was not going to engage, even incidentally, in violations of United States law. Similarly, a visa could be issued if a serious medical emergency issuance could be justified, or if the alien was coming to cooperate in a U.S. Government investigation into criminal activities. Clear and compelling evidence that the alien has ceased to be associated in any way with an organized crime group (such as might be the case with Mafia members who have cooperated with their government and testified against other members) might also justify issuance.
- e. **(U)** CA/VO has not developed formal guidance on when one can issue a visa to a member of an organized criminal group because INA 212(a)(3)(A)(ii) grounds are so compelling in such cases that exceptions to these determinations are extremely rare. You must consult with CA/VO/L/A on such cases and receive their concurrence that an alien can overcome a 3A2 visa inadmissibility finding before issuing a visa to an alien with a previous 3A2 refusal.
- f. **(U) Determining Membership:** When compiling evidence to support a P3A2 CLASS entry, posts must lay out in detail the factors that gave rise to the suspicion that the alien is a member of an organized crime group. An alien may be suspected of organized crime group membership without evidence of actual participation in

the group's activities. In some cases, membership may be clear because of engagement in activities, such as the taking of an oath that is a prerequisite of membership. In most cases, however, membership requirements do not exist or are not open to public scrutiny and membership in the organization must be inferred from the totality of the information available. Relevant factors to determine membership include, but are not limited to:

- (1) **(U)** Acknowledgement of membership by the individual, the organization, or another party member;
- (2) **(U)** Actively working to further the organization's aims in a way to suggest close affiliation;
- (3) **(U)** Receiving financial support or recognition from the organization;
- (4) **(U)** Determination of membership by a competent court;
- (5) **(U)** Statement from local or U.S. law enforcement authorities that the individual is a member;
- (6) **(U)** Frequent association with other members;
- (7) **(U)** Voluntarily displaying symbols of the organization; and
- (8) **(U)** Participating in the organization's activities, even if lawful.

g. **Unavailable**

h. **(U) Reason to Suspect Versus Reason to Believe:**

- (1) **(U) In General:** The "reasonable suspicion" criterion for determining that sufficient evidence exists to enter a P3A2 CLASS hit based on organized crime ties is a lesser standard than the "reasonable ground to believe" standard necessary to find an alien inadmissible under INA 212(a)(3)(A)(ii). The "reasonable suspicion" is met if the derogatory information available would warrant further detailed inquiry into the subject's background should he or she apply for a visa.
- (2) **(U) Applying:**
 - (a) **Unavailable**
 - (b) **Unavailable**

i. **Unavailable**

9 FAM 302.5-4(B)(3) (U) Information Relating to Aliens' Organized Crime Affiliations (Formerly Russian Business Investigation Initiative (RBII) Reports)

(CT:VISA-219; 10-20-2016)

- a. **(U)** You must submit a request for an AO to CA/VO/L/A for review of the application of any applicant who is identifiable with a P3A2 CLASS entry or who you have reason to believe may be inadmissible under INA 212(a)(3)(A)(ii) based upon membership in or extensive business relationships with an organized crime group.

If you obtain evidence of organized crime membership of an alien who holds a valid U.S. visa and you believe that information was not available to the adjudicating consular officer at the time of issuance, you should refer the case to your CA/VO/L/A desk officer by email to determine whether sufficient evidence exists to recommend a revocation of the alien's visa.

b. Unavailable

- c. **(U)** The requirement to submit formal AO requests to CA/VO/L/A for any applicant who may have an inadmissibility under INA 212(a)(3)(A)(ii) based upon organized crime involvement replaces the former VISAS EEL requirement. See [9 FAM 302.5-4\(B\)\(2\)](#) above.

9 FAM 302.5-4(B)(4) (U) Officials of Taiwan

(CT:VISA-334; 04-13-2017)

(U) Unless the alien is otherwise inadmissible, INA 212(a)(3)(A)(ii) will not apply to the President of Taiwan or any other high-level official of Taiwan who applies to enter the United States for the purposes of discussions with the U.S. Federal or State government concerning:

- (1) **(U)** Trade or business with Taiwan that will reduce the United States and/or Taiwan trade deficit;
- (2) **(U)** Prevention of nuclear proliferation;
- (3) **(U)** Threats to the national security of the United States;
- (4) **(U)** The protection of the global environment;
- (5) **(U)** The protection of endangered species; or
- (6) **(U)** Regional humanitarian disasters.

9 FAM 302.5-4(B)(5) (U) National Security Entry-Exit Registration System (NSEERS)

(CT:VISA-334; 04-13-2017)

(U) The National Security Entry-Exit Registration System (NSEERS) program required that certain nonimmigrant aliens be fingerprinted, photographed, and register at either U.S. ports of entry (POE) or an Immigration and Naturalization Service or Department of Homeland Security office in order to provide specific information at regular intervals to ensure compliance with visa and admission requirements. These aliens were also required to verify departure from the United States at the end of their authorized stay. However, not all aliens were registered at POEs, these were so called "call-in" registrations of certain nonimmigrants who were admitted to the United States prior to promulgation of the NSEERS program. The NSEERS program was discontinued in April 28, 2011.

- (1) **Unavailable**
- (2) **Unavailable**

9 FAM 302.5-4(B)(6) (U) Classification and Handling

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.5-4(B)(7) (U) Removing P3A2 CLASS Entries

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.5-4(C) (U) Advisory Opinions

(CT:VISA-219; 10-20-2016)

a. **(U)** For INA 212(a)(3)(A) cases involving primarily criminal matters (e.g., organized crime and gang activities, child abduction cases, etc.), you must request an formal AO from CA/VO/L/A through NIV or IVO.

b. **Unavailable**

9 FAM 302.5-4(D) (U) Waiver

9 FAM 302.5-4(D)(1) (U) Waivers for Immigrants

(CT:VISA-219; 10-20-2016)

(U) No waiver is available for immigrants found inadmissible under INA 212(a)(3)(A) but the inadmissibility applies only to current circumstances.

9 FAM 302.5-4(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-219; 10-20-2016)

(U) No waiver is available for nonimmigrants found inadmissible under INA 212(a)(3)(A) but the inadmissibility applies only to current circumstances.

9 FAM 302.5-4(E) Unavailable

9 FAM 302.5-4(E)(1) Unavailable

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.5-4(E)(2) Unavailable

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.5-5 (U) INTENT TO OVERTHROW THE U.S. GOVERNMENT - INA 212(A)(3)(A)(III)

9 FAM 302.5-5(A) (U) Grounds

(CT:VISA-219; 10-20-2016)

(U) INA 212(a)(3)(A)(iii) renders inadmissible any alien who the consular or immigration officer knows or has reason to believe seeks to enter the United States to engage solely, principally, or incidentally in any activity, a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means.

9 FAM 302.5-5(B) (U) Application

(CT:VISA-219; 10-20-2016)

- a. **(U)** INA 212(a)(3)(A)(iii) makes a visa applicant inadmissible if the applicant seeks to enter the United States solely, principally, or incidentally to engage in any activity to oppose, control, or overthrow the Government of the United States by force, violence, or other unlawful means.
- b. **(U)** The Department does not construe this section to cover the legitimate exercise of free speech, normal diplomatic activity, or activities related to a recognized judicial or legal process, but rather to include sedition, treason, terrorism, and overt or covert military operations against the Government of the United States.
- c. **Unavailable**

9 FAM 302.5-5(C) Unavailable

9 FAM 302.5-5(C)(1) Unavailable

(CT:VISA-51; 02-22-2016)

Unavailable

9 FAM 302.5-5(C)(2) (U) Procedures

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.5-5(D) (U) Waiver

9 FAM 302.5-5(D)(1) (U) Waivers for Immigrants

(CT:VISA-219; 10-20-2016)

(U) No waiver is available for immigrants found inadmissible under INA 212(a)

(3)(A)(iii) but the inadmissibility applies only to current circumstances.

9 FAM 302.5-5(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-219; 10-20-2016)

(U) No waiver is available for nonimmigrants found inadmissible under INA 212(a)(3)(A)(iii) but the inadmissibility applies only to current circumstances.

9 FAM 302.5-5(E) Unavailable

9 FAM 302.5-5(E)(1) Unavailable

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.5-5(E)(2) Unavailable

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.5-6 (U) IMMIGRANT MEMBERSHIP IN TOTALITARIAN PARTY - INA 212(A)(3)(D)

9 FAM 302.5-6(A) (U) Grounds

(CT:VISA-1; 11-18-2015)

(U) INA 212(a)(3)(D) renders ineligible any alien applying for an immigrant visa who is or has been a member of or affiliated with the Communist or other totalitarian party.

9 FAM 302.5-6(B) (U) Application

9 FAM 302.5-6(B)(1) (U) Immigrants Only

(CT:VISA-219; 10-20-2016)

(U) INA 212(a)(3)(D) is a refusal category that applies only to immigrant visa applications.

9 FAM 302.5-6(B)(2) (U) Major Elements

(CT:VISA-219; 10-20-2016)

(U) The major elements of INA 212(a)(3)(D) are as follows:

- (1) **(U)** Immigrant visa applicants who are or have been members of, or are affiliated with the Communist party or proscribed domestic or foreign

organizations, are inadmissible unless the membership or affiliation terminated either two years before the date of visa application, or five years before the date of visa application in the case of an alien whose membership or affiliation with a party controlling a totalitarian dictatorship;

- (2) **(U)** Relief is available for aliens whose association with a proscribed organization is or was non-meaningful;
- (3) **(U)** An exception is provided for immigrants whose membership or affiliation is or was involuntary, under the age of 16, by operation of law, or to provide the essentials of living; and
- (4) **(U)** The Department of Homeland Security (DHS) may waive ineligibility for immigrant visa applicants who have the requisite family relationship with a U.S. citizen or permanent resident alien for humanitarian purposes.

9 FAM 302.5-6(B)(3) (U) Requirements for a Finding Elements

(CT:VISA-1; 11-18-2015)

(U) In determining possible inadmissibility under INA 212(a)(3)(D):

- (1) **(U)** You should first establish whether the immigrant alien was a member or affiliate of a proscribed organization (see [9 FAM 302.5-6\(B\)\(4\)](#) below);
- (2) **(U)** If such association is found to exist, the question of whether the membership or affiliation was terminated at least two (or in some cases, five) years ago should be examined (see [9 FAM 302.5-6\(B\)\(5\)](#) below); and
- (3) **(U)** If the membership or affiliation continued to a point within the two or five year period will it be necessary to consider whether the association may have been non-meaningful or non-voluntary (see [9 FAM 302.5-6\(B\)\(6\)](#) and [9 FAM 302.5-6\(B\)\(7\)](#) below), or whether the alien is entitled to seek an individual waiver under INA 212(a)(3)(D)(iv) (see [9 FAM 302.5-6\(D\)\(1\)](#) below).

9 FAM 302.5-6(B)(4) (U) Immigrant Members or Affiliates of Proscribed Organizations Inadmissible

(CT:VISA-376; 06-08-2017)

- a. **(U) In General:** An immigrant visa applicant who is or has been a member of, or affiliated with, the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible under INA 212(a)(3)(D) unless qualifying for one of the exceptions described in [9 FAM 302.5-6\(B\)\(5\)](#) below. Nonimmigrants are not subject to the provisions of INA 212(a)(3)(D).
- b. **(U) Proscribed Organizations:** The term "proscribed organization" means any group that falls within the purview of INA 212(a)(3)(D). A member of or affiliated with the Communist or any other totalitarian proscribed organization is inadmissible for an immigrant visa unless he or she qualifies for relief.
- c. **(U) Application To Non-Communist Totalitarian Parties:** As indicated in 22 CFR 40.34(f), the definition of totalitarian party contained in INA 101(a)(37), a

former or present voluntary member of, or an alien who was, or is voluntarily affiliated with a noncommunist party, organization, or group, or any section, subsidiary, branch, affiliate, or subdivision thereof, during the time of existence did not or does not advocate the establishment of totalitarian dictatorship in the United States, is not considered inadmissible under INA 212(a)(3)(D) to receive a visa.

d. **(U) Adjudicating Membership In Or Affiliation With Proscribed Organization:**

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **(U) Sources of Information:** A finding of inadmissibility under INA 212(a)(3)(D) may be based upon evidence available through:

(a) **(U)** The visa application;

(b) **(U)** The applicant's statements;

(c) **Unavailable**

(d) **(U)** A check of post files, consular lookout and support system (CLASS), or Independent Name Check (INC), or any other outside information available.

(5) **(U) Applicants Required to Divulge Memberships:** INA 222(a) requires immigrant visa applicants to respond to questions on the visa application:

(a) **(U)** Applicant's full and true name, any other name which he or she has used or by which he or she has been known;

(b) **(U)** Age and sex;

(c) **(U)** Date and place of birth; and

(d) **(U)** Additional information necessary to identify the applicant (e.g., organizational memberships).

(U) If an applicant fails to do so, you should ask him or her questions.

e. **(U) Definition Of Affiliate:**

(1) **(U) In General:** The term affiliate as used in INA 212(a)(3)(D) an organization related to, or identified with, a proscribed party or association, including any section, subsidiary, branch, or subdivision thereof, in such close association as to evidence to or furtherance of the purposes and objectives of such association or party, or to indicate a working alliance to bring the purposes and objectives of such association or party.

(2) **(U) Defining Affiliation:** INA 101(e)(2) states: "The giving, loaning or promises support, money or any other thing of value for any purpose to any proscribed association is presumed to be an affiliate of such association of party; but nothing in this paragraph shall be construed as an exclusive definition of affiliation."

- (3) **(U) Affiliation Requires Positive Action:** A mere intellectual interest in, sympathy for, or favoring the ideologies of the Communist or other totalitarian party does not constitute affiliation with such an organization unless accompanied by some positive and voluntary action that provides support, money, or another thing of value.
- f. **(U) Government Workers In Communist And Communist-Controlled Countries:**
- (1) **(U) Responsible Position With Communist Government Generally Constitutes Affiliation:** As stated in 22 CFR 40.34(c), voluntary service in a political capacity constitutes affiliation with the political party or organization in power at the time of such service. Employment in a responsible position in the government of a communist or communist-controlled country generally constitutes grounds for a finding of inadmissibility under INA 212(a)(3)(D). This presupposition of inadmissibility, however, may be rebutted by the presentation of credible evidence that would bring the case within the exceptions discussed in [9 FAM 302.5-6\(B\)\(5\)](#) through [9 FAM 302.5-6\(B\)\(7\)](#) below.
- (2) **(U) Rank and File Government Workers Not Presupposed Inadmissible:** Rank-and-file government workers in communist and communist-controlled countries, including those employed in the information media, are not presupposed to be inadmissible under INA 212(a)(3)(D). Their cases should be evaluated on the same basis as all other immigrant visa applicants.
- (3) **(U) Type of Passport May Indicate Nature of Position:** One criterion for determining the nature of an alien's position is the type of passport he or she holds. Possession of a diplomatic, special, or service passport issued by a communist or communist-controlled country, while not conclusive, raises the probability of communist membership or affiliation and should be the subject of further inquiry and/or investigation.
- (4) **(U) Consular Post in Alien's Home Country Consulted:** United States consular posts in the alien's country of nationality have the best perspective on whether an alien's government employment constitutes sufficient grounds for a finding of ineligibility. Therefore, in third-country cases, you must consult with the appropriate United States post in the alien's home country prior to taking final action on the visa application and should ordinarily defer to the opinion of the consular officer at that post.
- g. **(U) Service In Armed Forces Of Communist Or Communist-Controlled Countries:** As indicated in 22 CFR 40.34(b), service, whether voluntary or not in the armed forces of any country, shall not be regarded, of itself as constituting or establishing an alien's membership in or affiliation with, any proscribed organization, and shall not constitute a ground of ineligibility to receive a visa. However, continuing service and/or promotion to a higher rank, e.g., the officer corps, could result in the alien's serving in a political capacity which would be cause for a finding of inadmissibility under INA 212(a)(3)(D).

- h. **(U) Aliens Previously Presumed Ineligible:** In the past, nonimmigrant aliens were often presumed to be inadmissible under former 212(a)(28)(C) based on factors in the applicant's case which indicated possible communist membership or affiliation (e.g., type of passport carried, nature of employment). These presumptive findings were always made without the benefit of a personal interview. You shall adjudicate such cases anew during the immigrant visa interview, giving the alien every opportunity to rebut the previous presumptive finding of ineligibility.

9 FAM 302.5-6(B)(5) (U) Exception for Past Membership

(CT:VISA-219; 10-20-2016)

a. (U) In General:

- (1) **(U)** INA 212(a)(3)(D)(iii) relieves an alien of visa ineligibility if his or her membership or affiliation terminated at least:
 - (a) **(U)** Two years before the date of application for a visa or for admission; or
 - (b) **(U)** Five years before the date of application for a visa or for admission, in the case of an alien whose membership or affiliation was with the party controlling the Government of a foreign state that is a totalitarian dictatorship as of the date of application.
 - (2) **(U)** This exception does not apply if it is determined that the alien is a threat to the security of the United States. It should be noted, however, that this issue will normally arise if there is also a question of possible inadmissibility under INA 212(a)(3)(A) or INA 212(a)(3)(B).
 - (3) **(U)** Exception for close family members, the Secretary of Homeland Security (DHS) may, in the Secretary's discretion, waive the application of clause (i) INA 212(a)(3)(D):
 - (a) **(U)** In the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States; and
 - (b) **(U)** Or a spouse, son or daughter of an alien lawfully admitted for permanent residence for humanitarian purposes, and to assure family unity or when it is in public interest, if the immigrant is not a threat to the security of the United States.
- b. **(U) Active Opposition No Longer Required:** The previous requirement for a showing of active opposition to communism as a condition for relief from visa ineligibility was eliminated by the Immigration Act of 1990. Mere termination of membership or affiliation for the requisite time period now suffices to provide relief under INA 212(a)(3)(D)(iii).
- c. **(U) Credible Assertion Of Termination Usually Sufficient:** If an alien admits a past membership or affiliation but asserts credibly that the membership or affiliation was terminated two (or in some cases, five) or more years ago, you should accept the assertion at face value. You should reject the alien's assertion

only if the officer has controverting evidence or has another articulable reason for doing so.

d. **Unavailable**

e. **Unavailable**

(U) All other cases involving relief under INA 212(a)(3)(D)(iii) you may adjudicate the case without reference to the Department.

9 FAM 302.5-6(B)(6) (U) Relief for Non-meaningful Association

(CT:VISA-51; 02-22-2016)

a. **(U) In General:**

(1) **(U)** Non-meaningful membership or affiliation has never been codified in the INA, but is rather a judicially-created concept. It does, however, afford relief from inadmissibility in appropriate cases.

(2) **Unavailable.**

b. **(U) Illustrative Cases:** In the illustrative cases which follow, it was held that membership or affiliation in a proscribed organization did not constitute a meaningful association. In each case, the alien had not had a commitment to the political and ideological convictions of communism.

(1) **(U)** The Supreme Court held in *Rowoldt v. Perfetto* (355 U.S. 115, 1957) that an alien's connection with a proscribed organization must constitute a meaningful association, and that membership was not present when the dominating impulse to the affiliation was wholly devoid of any political implications. This modified the ruling in *Galvan v. Press* (347 U.S. 522, 1954) that membership was present if there is a substantial basis for finding that an alien consciously committed himself or herself to the Communist Party by joining an organization known as the Communist Party which operates as a distinct and active political organization.

(2) **(U)** The Supreme Court in *Gastelum-Quinones v. Kennedy* (374 U.S. 469, 1963) cited the *Galvan* and *Rowoldt* decisions with approval and held that membership was not present if the alien, during the association with the proscribed organization, was not aware of its nature as a political organization, and that even participation in the organization's activities would not constitute membership unless the participation would substantially support the inference of awareness of the political aspects of the organization.

(3) **(U)** Membership is not present if it is proven that the alien joined accidentally, artificially, or unconsciously, or in appearance only. (*Colyer v. Skeffington*, 265 Fed. 17, 72, 1920)

(4) **(U)** Membership is not present if it is established that the alien joined an affiliate of the Communist Party, or a subdivision thereof, when the alien had no knowledge of the relationship of the affiliate to the Communist Party or its subdivisions. (In the Matter of C-6 I&N Dec. 20; approved by the Attorney

General, March 14, 1955.)

- c. **(U) Membership Without Knowledge Or Consent:** Membership is not present if the alien establishes enrollment as a member without his or her knowledge or consent.
- d. **(U) Membership For Anti-Communist Intelligence Purposes:** Membership is not present if it is established that the alien joined a proscribed organization for intelligence purposes at the request of an anti-communist group, or that the alien joined the organization solely to combat communist control and to carry on anti-communist activities within the organization.

9 FAM 302.5-6(B)(7) (U) Relief for Non-voluntary Membership

(CT:VISA-51; 02-22-2016)

a. (U) In General:

- (1) **(U)** INA 212(a)(3)(D)(ii) provides that a membership or affiliation that would otherwise render an alien inadmissible under INA 212(a)(3)(D) will not do so if the membership or affiliation is or was:
 - (a) **(U)** Involuntary (see paragraph b below);
 - (b) **(U)** Solely when the alien was under 16 years of age (see paragraph c below);
 - (c) **(U)** Solely by operation of law (see [9 FAM 302.5-6\(B\)\(7\)](#) paragraph d below); or
 - (d) **(U)** Solely for the purpose of obtaining employment, food rations, or other essentials of living (see paragraph e below).

(2) Unavailable

- b. **(U) Involuntary Membership:** Membership or affiliation is involuntary when it is the result of such factors as fraud, duress, coercion, incapacity, or error which impair or negate the capacity for affirmative and intentional action. A common example is when police repression or the threat and/or use of political or economic sanctions compels membership in the party or an affiliate organization. The burden is on the alien to establish that the association was involuntary. The alien's credibility is enhanced if membership or affiliation is or was nominal and without active participation in the affairs of the proscribed organization, other than periodic payment of dues and/or attendance at required meetings of the organization.
- c. **(U) Membership While Under 16 Years Of Age:** If an immigrant applicant's membership or affiliation occurred prior to 16 years of age, the relief provided by INA 212(a)(3)(D)(ii) applies. The alien's activities and/or continuing commitment to communism after 16 years of age, however, are not covered by this exception.
- d. **(U) Membership Solely By Operation Of Law:** Membership solely by operation of law is considered to include any case wherein the alien automatically, and without personal acquiescence, became a member of or affiliated with a proscribed party or organization resulted from an official act, proclamation, order, or decree.

- e. **(U) Membership For Purposes Of Obtaining Essentials Of Living:**
- (1) **(U) In General:**
 - (a) **(U)** In the absence of an ideological commitment to communism, membership or affiliation established for the purpose of obtaining the various physical essentials of living falls within the exemptions of INA 212(a)(3)(D)(ii).
 - (b) **(U)** The phrase "essentials of living" refers to a minimum standard of civilized life and not simply to mere continued survival. It includes but is not limited to housing, food rations, employment, medical and dental care, clothing, furnishings, transportation, and education.
 - (2) **(U) Membership to Obtain or Continue High Education:** An alien whose membership was nominal and who does not appear to have subscribed to communist ideology may be considered to fall within the purview of INA 212(a)(3)(D)(ii) if he or she joined for one or more of the following reasons:
 - (a) **(U)** Membership was a prerequisite for admission to a university or other advanced school; or
 - (b) **(U)** Although membership was not a prerequisite for admission to a university or other advanced school, membership was necessary for the alien to continue his or her studies; or
 - (c) **(U)** Membership was necessary to obtain academic benefits such as scholarships, dormitory accommodations, food rations, reduced transportation fares, etc.
 - (3) **(U) Membership for Employment:** Aliens who joined communist organizations solely for the purpose of obtaining, retaining, changing, or advancing in employment commensurate with their educational background and experience, whose memberships were nominal, and who do not appear to have subscribed to communist ideology, may be considered to be within the purview of INA 212(a)(3)(D)(ii).
- f. **(U) Non-Voluntary Membership Usually Occurs In Communist Countries:** Membership or affiliation falling within the purview of INA 212(a)(3)(D)(ii) is usually found to occur in a communist or communist-controlled country. While it is possible for such association to happen in noncommunist countries, it is substantially more difficult to establish.
- g. **(U) Membership In Mass Organizations:** Membership in a mass organization in a communist or communist-controlled country may come under INA 212(a)(3)(D)(ii) if:
- (1) **(U)** The membership meets one or a combination of the criteria listed in paragraph a above;
 - (2) **(U)** It is shown that there was no ideological commitment to communism; and
 - (3) **(U)** The membership was of a mere rank-and-file nature without active participation in the activities of the organization.

9 FAM 302.5-6(B)(8) (U) Annotating Immigrant Visa Application Forms in Non-Voluntary Association and Past Membership Cases

(CT:VISA-1; 11-18-2015)

(U) When an immigrant alien has been found to benefit from the relief provided by INA 212(a)(3)(D)(ii) the action should be noted in the CCD record, or in the remarks box for the Security and Background section of the Form DS-260, Online Application for Immigrant Visa and Alien Registration CCD Application Web Report.

9 FAM 302.5-6(C) Unavailable

9 FAM 302.5-6(C)(1) Unavailable

(CT:VISA-376; 06-08-2017)

a. Unavailable

b. Unavailable

9 FAM 302.5-6(C)(2) Unavailable

(CT:VISA-51; 02-22-2016)

Unavailable

9 FAM 302.5-6(C)(3) (U) Clearances for Third-Country Applicants

(CT:VISA-219; 10-20-2016)

(U) When an alien is applying in a country other than in which the claimed non-meaningful or non-voluntary association occurred, you should consult with, and obtain a clearance from, the appropriate post prior to visa issuance. (See Reciprocity Schedule)

9 FAM 302.5-6(C)(4) (U) Procedures

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.5-6(D) (U) Waiver

9 FAM 302.5-6(D)(1) (U) Waivers for Immigrants

(CT:VISA-1; 11-18-2015)

- a. (U) In General:** An immigrant alien who is inadmissible for a visa under INA 212(a)(3)(D) may seek a waiver of ineligibility from the Department of Homeland Security (DHS) under INA 212(a)(3)(D)(iv) if he or she is the parent, spouse, son, daughter, brother, or sister of a U.S. citizen, or the spouse, son, or daughter of a

lawful permanent resident (LPR) for humanitarian purposes to assure family unity, or when it is otherwise in the public interest. A waiver of ineligibility may not be granted to an alien who is a threat to the security of the United States.

b. (U) Procedures:

- (1) **(U) Waiver Applications Submitted Directly to DHS:** Instruct ineligible applicants to file their Form I-601, Application for Waiver of Ground of Inadmissibility, with USCIS per the USCIS Form I-601 instructions. If the applicant also requires Form I-212, they must submit it simultaneously with the Form I-601. Approved I-601 waivers on behalf of aliens who obtain lawful permanent residence on a conditional basis under INA 216 automatically terminate concurrently with the termination of such status, and separate notification of termination of the waiver is not required when the alien is notified of the termination of residence under INA 216.
- (2) **(U) Responsibility of Consular Officers:** You must interview the alien to establish that the finding of ineligibility is fully in accord with law and regulations and that any necessary qualifying relationship exists. Consular officers should record notes that clearly and thoroughly document the factual findings that support each element of the ineligibility so that U.S. Citizenship and Immigration Services (USCIS) will have available the information required to adjudicate Form I-601.

(3) **(U) Notating DHS Waiver Action:**

- (a) **(U)** When a waiver is granted under INA 212(a)(3)(D)(iv), USCIS will notify the consular post via an encrypted spreadsheet if the waiver was adjudicated at the Nebraska Service Center (NSC). Post must make a case note indicating the date USCIS's decision, the grounds of ineligibility waived and the name of the spreadsheet file that post received:

Per USCIS/NSC notification received (date), (grounds of ineligibility) waived for (NVC case number). Spreadsheet POST_DD_MM_YYYY_HR_MIN.csv

- (b) **(U)** If the applicant filed Form DS-260, Online Application for Immigrant Visa and Alien Registration, you should note DHS's waiver approval on the Online IV Application Report using the "Add Remarks" function at the top of the Report. The post must also note "212(a)(3)(D)(iv)" in the block provided for specifying waiver action on the machine readable immigrant visa (MRIV). Consular sections will not receive a physical copy of the approval record from USCIS. There is no need to scan.

9 FAM 302.5-6(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-1; 11-18-2015)

(U) INA 212(a)(3)(D) does not apply to nonimmigrant visa applicants.

9 FAM 302.5-6(E) Unavailable

9 FAM 302.5-6(E)(1) Unavailable

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.5-6(E)(2) Unavailable

(CT:VISA-219; 10-20-2016)

Unavailable

9 FAM 302.6

(U) INELIGIBILITIES BASED ON TERRORISM-RELATED GROUNDS - INA 212(A)(3)(B), INA 212(A)(3)(F) AND 8 U.S.C. 1735

*(CT:VISA-370; 05-31-2017)
(Office of Origin: CA/VO/L/R)*

9 FAM 302.6-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 302.6-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 101(b)(1) (8 U.S.C. 1101(b)(1)); INA 212(a)(3)(B)(8 U.S.C. 1182(a)(3)(B)); INA 212(a)(3)(F) (8 U.S.C. 1182(a)(3)(f)); INA 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)); INA 212(d)(3)(B) (8 U.S.C. 1182(d)(3)(B)); INA 219 (8 U.S.C. 1189).

9 FAM 302.6-1(B) (U) United States Code

(CT:VISA-55; 02-23-2016)

(U) 18 U.S.C. 2339D(c)(1); 22 U.S.C. 2723.

9 FAM 302.6-1(C) (U) Public Laws

(CT:VISA-1; 11-18-2015)

(U) Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, Public Law 102-138, section 128; Homeland Security Act of 2002, Public Law 107-296; Consolidated Appropriations Act, 2008, Public Law 110-161, at section 691 of Title VI of Division J (the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008); An Act to Remove the African National Congress from Treatment as a Terrorist Organization for Certain Acts or Events, Provide Relief for Certain Members of the African National Congress Regarding Admissibility, and for Other Purposes, Public Law 110-257.

9 FAM 302.6-2 (U) TERRORIST ACTIVITIES - INA 212(A)(3)(B)

9 FAM 302.6-2(A) (U) Grounds

(CT:VISA-218; 10-20-2016)

(U) INA 212(a)(3)(B)(i) renders ineligible any alien who:

- (1) **(U)** has engaged in a terrorist activity;
- (2) **(U)** you know, or have a reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity;
- (3) **(U)** has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;
- (4) **(U)** is a representative of:
 - (a) **(U)** a terrorist organization; or
 - (b) **(U)** a political, social, or other group that endorses or espouses terrorist activity;
- (5) **(U)** is a member of a terrorist organization;
- (6) **(U)** is a member of a terrorist organization, unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;
- (7) **(U)** endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;
- (8) **(U)** has received military-type training from or on behalf of any organization that, at the time the training was received, was a terrorist organization; or
- (9) **(U)** is the spouse or child of an alien who is inadmissible, if the activity causing the alien to be found inadmissible occurred within the last 5 years.

9 FAM 302.6-2(B) (U) Application

9 FAM 302.6-2(B)(1) (U) Summary

(CT:VISA-218; 10-20-2016)

- a. **(U)** INA 212(a)(3)(B) describes visa ineligibilities related to terrorism. The ineligibilities hinge on terrorism-related definitions that were significantly expanded by post-9/11 legislation, most significantly, the USA PATRIOT Act (2001) and the REAL ID Act (2005). As a result of these amendments, the scope of activities covered by the phrase "engage in terrorist activity" is broad. As defined in INA 212(a)(3)(B)(vi), the term "terrorist organization" encompasses both organizations that have been designated previously by the Department of State as terrorist organizations and organizations that have never been so designated by the Department of State or any other U.S. Government agency, but that have engaged in any of the activities listed in INA 212(a)(3)(B)(iv)(I)-(IV). Because terms in INA 212(a)(3)(B) are defined broadly, you must take particular care in eliciting as much pertinent information from visa applicants as possible, including the names of all

groups potentially covered by these provisions with which the applicant may be linked, for example, by current membership or past financial contributions or other support. You must also inquire into the nature and activities of those organizations, bearing in mind the definition of "terrorist organization" in INA 212(a)(3)(B)(vi), described in [9 FAM 302.6-2\(B\)\(3\)](#) paragraph i and other FAM provisions referenced therein.

b. Unavailable

9 FAM 302.6-2(B)(2) (U) Background

(CT:VISA-218; 10-20-2016)

- a. **(U)** The Immigration Act of 1990 (Public Law 101-649) generally amended INA 212(a) by replacing the previous 43 classes of excludable aliens with nine broad classes, each with subclasses. New INA 212(a)(3)(B), "Terrorist Activities," incorporated aspects of former 212(a)(27) and 212(a)(29).
- b. **(U)** The Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) expanded the scope of INA 212(a)(3)(B) to make inadmissible representatives and members of organizations designated by the Secretary under INA 219 as Foreign Terrorist Organizations (FTOs).
- c. **(U)** The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208) amended INA 212(a)(3)(B)(i) again to make inadmissible any alien who, "under circumstances indicating an intention to cause death or serious bodily harm," incited terrorist activity. The new provision applied retroactively to all such incitement activities, regardless of when they occurred.
- d. **(U)** The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act") (Public Law 107-56), enacted after the terrorist attacks on September 11, 2001, expanded the scope of INA 212(a)(3) in several important respects:
 - (1) **(U)** It gave the Secretary of State new authority to designate organizations as terrorist organizations for purposes of INA 212(a)(3)(B) if certain criteria are met. Organizations so designated are listed on the "Terrorist Exclusion List" or "TEL";
 - (2) **(U)** It defined "terrorist organization" for the first time, creating three categories. The first category is FTOs designated under INA 219 (see INA 212(a)(3)(B)(vi)(I)) (Tier I); the second is entities designated under the Terrorism Exclusion List (TEL) authority included in the USA PATRIOT Act (Tier II) (see INA 212(a)(3)(B)(vi)(II)). The third category, referred to as "undesignated terrorist organizations," includes entities that engage in specified "terrorist activities" listed in the INA, but that have not been designated under FTO or TEL authorities (Tier III) (see INA 212(a)(3)(B)(vi)(III)); and
 - (3) **(U)** It created INA 212(a)(3)(F), "Association with Terrorist Organizations," which made aliens who have been associated with a terrorist organization, and

who are engaged or likely to engage in certain activities that endanger the United States, inadmissible under certain circumstances.

- e. **(U)** The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief of 2005 ("REAL ID Act") (Public Law 109-13) at sections 103 and 104 of Division B further expanded the scope of INA 212(a)(3)(B) by:
- (1) **(U)** Broadening "terrorist organization" to capture undesignated groups with subgroups that "engage in terrorist activity";
 - (2) **(U)** Making it harder for an alien suspected of "engaging in terrorist activities" to escape inadmissibility based on an alleged lack of knowledge concerning an undesignated terrorist organization or how any contribution of material support might be used by a terrorist organization (see (5), (6), and (8) below);
 - (3) **(U)** Making inadmissible "representatives" of all three types of terrorist organizations, regardless of alien's knowledge or intent. Previously, only representatives of groups designated under INA 219 (Tier I) were specified;
 - (4) **(U)** Making inadmissible all representatives of "a political, social, or other group that endorses or espouses terrorist activity." Previously the Secretary of State had to find that the group's public endorsement of acts of terrorist activity undermines U.S. efforts to reduce or eliminate terrorist activities;
 - (5) **(U)** Eliminating the knowledge defense to inadmissibility for members of entities designated for the TEL (Tier II) and raising the standard to "clear and convincing evidence" for an alien to avoid inadmissibility for being a member of an undesignated terrorist organization on the grounds that he did not know, and should not reasonably have known, that the organization was a terrorist organization;
 - (6) **(U)** Raising the standard to "clear and convincing evidence" for an alien to avoid inadmissibility for soliciting funds or members for an undesignated terrorist organization on the grounds that he did not know, and should not reasonably have known, that the organization was a terrorist organization;
 - (7) **(U)** Expanding the "material support" bar to admissibility for knowingly providing support to any terrorist organization or its members, except, with respect to undesignated terrorist organizations, where an alien presents "clear and convincing evidence" that the alien lacked knowledge of any terrorist activity. The amendment eliminated the requirement that the alien intended to support terrorist activity;
 - (8) **(U)** Making inadmissible any alien who commits an act the alien knows or reasonably should know provides material support to an undesignated terrorist organization or a member of an undesignated terrorist organization, unless the alien can demonstrate "by clear and convincing evidence" that he did not know, and should not reasonably have known, that the organization was a terrorist organization. Prior to amendment, the provision did not include material support afforded to a member of an undesignated terrorist organization. The

REAL ID Act added the “clear and convincing evidence” standard for an alien attempting to prove lack of knowledge of an undesignated group’s terrorist activity;

- (9) **(U)** Making inadmissible any alien who “endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization.” Before amendment, the provision covered only persons who used their position of prominence to endorse or espouse terrorist activity or to persuade others to support terrorist activity or a terrorist organization in a way the Secretary of State determined undermines U.S. efforts to reduce or eliminate terrorist activities;
 - (10) **(U)** Making inadmissible any alien who has “received military-type training” from or on behalf of a terrorist organization; and
 - (11) **(U)** Applying the terrorism provisions of the REAL ID Act amendments to actions taken by an alien before, on, or after the date of enactment, May 11, 2005.
- f. **(U)** The Consolidated Appropriations Act, 2008, Public Law 110-161, 121 Stat. 1844, at section 691 of Title VI of Division J (the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008) amended the discretionary authority of the Secretary of Homeland Security and the Secretary of State, under INA 212(d)(3)(B)(i), to exempt an alien from most of the terrorism-related bars to admissibility under INA 212(a)(3)(B) and to exempt a group from treatment as an undesignated terrorist organization under INA 212(a)(3)(B)(vi)(III). The amendment also provided that certain groups should not be considered terrorist organizations on the basis of any act or event occurring before the amendment’s enactment on December 26, 2007, and that the Taliban must be considered to be a designated foreign terrorist organization, under INA 212(a)(3)(B)(vi)(I), for immigration purposes. (See [9 FAM 302.6-2\(B\)\(3\)](#) paragraph i.) The amendments were effective upon enactment and apply to acts before or after enactment.

9 FAM 302.6-2(B)(3) (U) Definitions

(CT:VISA-247; 11-14-2016)

- a. **(U)** This section explains terms used in INA 212(a)(3)(B) in alphabetical order. Where listed terms are specifically defined in the statute, the statutory reference follows immediately after the term.
- b. **(U) CLEAR AND CONVINCING EVIDENCE:**
 - (1) **(U)** The phrase “clear and convincing evidence” appears several times in INA 212(a)(3)(B) with reference to undesignated terrorist organizations. The INA places the burden of proof on the applicant to establish that he or she did not know, or should not have reasonably known, that the undesignated terrorist organization was, in fact, a terrorist organization. (Applicants are deemed to know that designated terrorist organizations are terrorist organizations, regardless of their actual knowledge or belief).

- (2) **(U)** You must consider the following in determining whether a visa applicant can demonstrate by “clear and convincing evidence” that he or she did not know, and should not reasonably have known, that an undesignated organization was a terrorist organization:
 - (a) **(U)** Facts particular to the individual, such as residence, profession, education, and people with whom and groups with which the applicant has associated;
 - (b) **(U)** The public availability of information about the organization and more specifically, about the activities that make it a terrorist organization under the INA’s broad definition; and
 - (c) **(U)** The extent to which the organization is actively and overtly engaged in the activities that make it a terrorist organization under the INA.
- (3) **Unavailable**
- c. **(U) ENDORSING OR ESPOUSING TERRORISM:**
 - (1) **(U)** An alien is inadmissible under INA 212(a)(3)(B)(i)(VII) if the alien endorses or espouses terrorist activity or persuades others to endorse or support terrorist activity or a terrorist organization.
 - (2) **Unavailable**
- d. **Unavailable**
 - (1) **(U)** A safe house;
 - (2) **(U)** Transportation;
 - (3) **(U)** Communications;
 - (4) **(U)** Funds;
 - (5) **(U)** Transfer of funds or other material financial benefit;
 - (6) **(U)** False documentation or identification;
 - (7) **(U)** Weapons including chemical, biological, or radiological weapons;
 - (8) **(U)** Explosives; or
 - (9) **(U)** Training.
- e. **(U) MEMBER OF A TERRORIST ORGANIZATION:**
 - (1) **(U)** Aliens who are members of designated FTOs or entities on the Terrorism Exclusion List are inadmissible. The INA does not require the alien to know that the organization has been designated. Members of undesignated terrorist organizations are inadmissible, but there is a narrow exception based on lack of knowledge (see [9 FAM 302.6-2\(B\)\(3\)](#) paragraph i).
 - (2) **(U)** Evidence of membership in a terrorist organization might include the individual’s taking of an oath or performance of some act that is a prerequisite of membership. A formal induction is not necessary for a finding of membership.

- (3) **(U)** Membership must be determined in light of all relevant facts, including, but not limited to, the following:
 - (a) **(U)** Acknowledgment of membership;
 - (b) **(U)** Frequent association with other members;
 - (c) **(U)** Participation in the organization's activities, even if lawful;
 - (d) **(U)** Actively working to further the organization's aims and methods in a way suggesting close affiliation constituting membership;
 - (e) **(U)** Occupying a position of trust in the organization, past or present;
 - (f) **(U)** Receiving financial support from the organization, e.g., scholarships, pensions, salary;
 - (g) **(U)** Contributing money to the organization;
 - (h) **(U)** Determination of membership by a competent court;
 - (i) **(U)** Voluntarily displaying symbols of the organization; or
 - (j) **(U)** Receiving honors and awards given by the organization.
 - (4) **(U)** No single factor necessarily determines that an alien was a member of an organization.
 - (5) **Unavailable**
 - (6) **Unavailable**
 - (7) **(U)** Note that former members will still be inadmissible if they have previously provided material support (such as membership fees), raised money, or solicited members for the organization.
- f. **(U) INCITEMENT OF TERRORISM:**
- (1) **(U)** "Incitement with intent to cause bodily harm" renders an alien inadmissible under INA 212(a)(3)(B)(i)(III) if he or she has incited terrorist activity under circumstances indicating an intention to cause death or serious bodily harm.
 - (2) **(U)** "Incited" in the context of INA 212(a)(3)(B) is speech that induces or otherwise moves another person to undertake terrorist activity. Normally speech will not rise to the level of "inciting" unless there is a clear link between the speech and an actual effort to undertake the terrorist activity. It connotes speech that is not merely an expression of views but that directs or induces action, typically in a volatile situation.
 - (3) **(U)** The applicant may have incited terrorist activity even if a terrorist attack does not actually occur (e.g., because an attempt to commit such activity was thwarted).
 - (4) **(U)** An applicant who has "incited" terrorist activity must also have acted in circumstances indicating an intention to cause death or serious bodily harm to be inadmissible under INA 212(a)(3)(B). In other words, the alien's speech must not only have induced others to undertake terrorist activity, but it must

also have been made with the specific intent that such activity would result in death or serious bodily injury.

(5) **(U)** Incitement and the requisite intent to cause bodily harm could be inferred in the following situations:

(a) **(U)** Widespread opposition to Country A's policies and actions lead to a series of protests, some violent, outside Country A's embassy in Country B. The applicant goes to the embassy, stands on a box, and shouts to the crowd to join him in standing up to Country A and humiliating it. Shortly afterwards, when he sees an embassy vehicle approaching, he yells: "Don't let them in! Make them pay for what they have done!" The crowd blocks the car and removes occupants (including a diplomat working at Country A's embassy), from the car, beating them severely and taking them hostage.

(U) Analysis: Diplomatic hostage-taking and violent attacks on diplomats are terrorist activities. Given the alien's urging the crowd to stop the embassy vehicle and "make them pay," you would have reasonable ground to believe that the applicant's speech incited terrorist activity. The alien's "make them pay" statement, when viewed against the backdrop of previous violent protests and his general comments about standing up to Country A and humiliating it, would provide you with reasonable ground to believe that the applicant intended to cause death or serious bodily harm.

(b) **(U)** The applicant is an ardent nationalist whose opinions voiced to a particular audience regularly blame "foreigners" for his country's problems and who argues that the only solution to these problems is that "foreigners" should be driven out of the country. Press reports say that some of those in the targeted audience have been purchasing weapons and seeking to obtain and manufacture explosives. Police notify the applicant or those associated with the applicant that they are investigating several of those in the targeted audience for weapons-related offenses. At the end of a week of particularly strong anti-foreign sentiment, the applicant gives a special speech entitled "A Call to Action." With the knowledge that those under investigation are in the audience, the applicant begins his speech with: "The time has come for action!" He then reiterates throughout his speech that "The only solution to the country's problems is to purge our great land of these foreigners once and for all through whatever means necessary." Shortly thereafter, some of those in the target audience detonate a truck bomb outside a restaurant frequented by foreign nationals, killing several foreign nationals and injuring many restaurant employees.

(U) Analysis: The use of any explosive with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property is a terrorist activity. In the example, the applicant helps foster anti-foreign sentiments and then, during a particularly tense

period, urges students to act to drive “foreigners” from the country “through whatever means necessary.” Under these circumstances, you would have reasonable ground to believe that the applicant’s speech incited terrorist activity. The fact that the applicant knew that several students likely had access to weapons and/or explosives and that those students were in attendance at his special lecture would provide you with reasonable ground to believe that the applicant intended to cause death or serious bodily harm.

(U) NOTE: The USA PATRIOT Act amended INA 212(a)(3)(B)’s definition of “engaging in terrorist activity” also to include incitement (see INA 212(a)(3)(B)(iv)(I)). As a result, a person who is inadmissible under INA 212(a)(3)(B)(i)(III) for inciting terrorist activity will also now be inadmissible under INA 212(a)(3)(B)(i)(I) for engaging in a terrorist activity.

- g. **(U) REPRESENTATIVE:** A “representative” is defined in INA 212(a)(3)(B)(v) as “an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.”
- h. **(U) SUBGROUP:** A group (Group X), even if not organized, can be a “subgroup” of another organization (Group Y) if there are reasonable grounds to believe that either (1) Group X as a whole or (2) the members of Group X are affiliated with Group Y. If a subgroup engages in terrorist activities, then both groups are terrorist organizations. (See [9 FAM 302.6-2\(B\)\(3\)](#) paragraph i(1)(c).) A subgroup relationship may be found where there are reasonable grounds to believe that Group X is subordinate to, or affiliated with, Group Y and Group X is dependent on, or otherwise relies upon, Group Y in whole or in part to support or maintain its operations. As an example, Group X would be a subgroup of Group Y if the latter establishes rules or guidelines that Group X generally follows and Group X relies on Group Y as a source of funds for Group X operations.
- i. **(U) TERRORIST ORGANIZATION:**
- (1) **(U)** “Terrorist organization,” as defined in INA 212(a)(3)(B)(vi), includes both designated terrorist organizations (paragraphs (a) and (b), below) and undesignated terrorist organizations (paragraph (c), below):
- (a) **(U)** An organization designated by the Secretary of State as a “foreign terrorist organization” (FTO) under INA 219. This designation has implications beyond the INA, including penalties under U.S. criminal law. Aliens who engage in certain activities in connection with these organizations can be rendered inadmissible under the INA. Organizations currently designated as FTOs and information about the designation process can be found on the S/CT website.
- (b) **(U)** An organization designated by the Secretary of State for inclusion in the Terrorist Exclusion List (TEL), pursuant to INA 212(a)(3)(B)(vi)(II). The TEL designation is for immigration purposes only. Information about

the designation process can be found on the S/CT website.

- (c) **(U)** An organization that has not been designated but is a group of two or more individuals, whether organized or not, that engages in, or has a subgroup (see [9 FAM 302.6-2\(B\)\(3\)](#) paragraph h) that engages in, terrorist activities described in the INA 212(a)(3)(B)(iv)(I) – (VI). With respect to undesignated terrorist organizations:

(i) **Unavailable**

(ii) **Unavailable**

(iii) **(U)** Where a finding of inadmissibility would involve an undesignated terrorist organization, the alien may overcome the finding by demonstrating, by clear and convincing evidence (see [9 FAM 302.6-2\(B\)\(3\)](#) paragraph b), that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization (except with respect to representatives of undesignated terrorist organizations, those who persuade others to support an undesignated terrorist organization, and those who receive military-type training on behalf of an undesignated terrorist organization, for whom there is no such defense); and,

- (2) **(U)** Pursuant to section 691(b) of Fiscal Year 2008 Department of State, Foreign Operations and Related Programs Appropriations (Division J of the Omnibus Appropriations Act, HR 2764) ("FY08 Appropriations Act"), the following groups are not considered terrorist organizations under INA 212(a)(3)(B)(vi) for acts or events that occurred prior to December 26, 2007:

- **(U)** Karen National Union/Karen Liberation Army (KNU/KNLA)
- **(U)** Chin National Front/Chin National Army (CNF/CNA)
- **(U)** Chin National League for Democracy (CNLD)
- **(U)** Kayan New Land Party (KNLP)
- **(U)** Arakan Liberation Party (ALP)
- **(U)** Tibetan Mustangs
- **(U)** Cuban Alzados
- **(U)** Karenni National Progressive Party
- **(U)** "Appropriate groups affiliated with" the Hmong
- **(U)** "Appropriate groups affiliated with" the Montagnards

As a result of this legislation, an alien who did any of the following prior to December 26, 2007, is no longer inadmissible on account of the following terrorism-related grounds of inadmissibility:

- **(U)** Solicited funds or other things of value on behalf of one of these named groups (INA 212(a)(3)(B)(iv)(IV)(cc))
- **(U)** Solicited an individual for membership in one of these named

groups (INA 212(a)(3)(B)(iv)(V)(cc))

- **(U)** Committed an act that provided material support, including transfer of funds, false documentation, weapons or training to one of these named terrorist groups (INA 212(a)(3)(B)(iv)(VI)(dd))
 - **(U)** Is a representative of one of these named groups (INA 212(a)(3)(B)(i)(IV)(aa))
 - **(U)** Is a member of one of these named terrorist groups (INA 212(a)(3)(B)(i)(VI))
 - **(U)** Persuaded others to endorse or support one of these named terrorist groups (INA 212(a)(3)(B)(i)(VII))
 - **(U)** Received military-type training from one these named terrorist groups (INA 212(a)(3)(B)(i)(VIII))
- (3) **(U)** Pursuant to 691(d) of the FY08 Appropriations Act, as of December 26, 2007, the Taliban must be treated as a designated terrorist organization described in INA 212(a)(3)(B)(vi)(I) for purposes of immigration law.
- (4) **(U)** Public Law No. 110-257, codified at 8 U.S.C. 1182 note, added the African National Congress to the list of groups in subparagraph b, above, that are not considered terrorist organizations.
- (5) **(U)** In determining whether an organization may be an undesignated terrorist organization; i.e., that it “engaged in terrorist activities” as described in INA 212(a)(3)(B)(iv)(I) – (VI). Post must evaluate information obtained in the visa interview, take advantage of available local resources, as appropriate, and check relevant databases, including:
- (a) **(U)** The United Nations 1267 Committee’s list of individuals and entities belonging or related to the Taliban, Osama Bin Laden and the Al-Qaida organization.
 - (b) **(U)** Terrorists and groups identified under E.O. 13224.

Unavailable

9 FAM 302.6-2(B)(4) (U) Inadmissibility Under INA 212(a)(3)(B)

(CT:VISA-240; 10-31-2016)

a. (U) OVERVIEW:

- (1) **(U)** INA 212(a)(3)(B) generally identifies as grounds for inadmissibility “engaging in terrorist activities” and having certain links to “terrorist organizations.” The standards apply even if the relevant acts or associations preceded enactment of the law and regardless of any link to an actual terrorist attack. The section defines “terrorist activities” to include a broad range of violent acts (see INA 212(a)(3)(B)(iii)), while also making inadmissible representatives and members of groups engaging in listed activities; those endorsing, espousing, or promoting terrorism; those who have received

military-type training from terrorist organizations; and immediate family members of any covered persons – with certain exceptions.

- (2) **(U)** It also explicitly makes PLO officers, officials, representatives, and spokesmen inadmissible. INA 212(a)(3)(B) next defines "engaging in terrorist activities," which covers a broad range of activities that support or promote the commission of terrorist activities or groups that engage in them (see INA 212(a)(3)(B)(iv)). See [9 FAM 302.6-2\(B\)\(4\)](#) paragraph b for more detail.

b. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**
- (6) **Unavailable**

c. (U) ENGAGED IN TERRORIST ACTIVITY:

- (1) **(U)** After defining the violent acts that constitute terrorist activity (see INA 212(a)(3)(B)(iii)), the INA identifies the acts that render aliens inadmissible because of their connections to those violent acts or to those who commit them. (See definition of "engage in terrorist activity" INA 212(a)(3)(B)(iv)).
- (2) **(U)** An alien is inadmissible on any of the grounds identified below if either the alien has engaged in terrorist activity in the past or you or the Secretary of Homeland Security or the Attorney General knows or has reason to believe that the alien currently is engaged in, or likely after entry to engage in, a terrorist activity. (See INA 212(a)(3)(B)(i)(I)-(II)).
- (3) **(U)** An alien is inadmissible for "engaging in terrorist activity" if the alien acts, as an individual or as a member of a group, to:
 - (a) **(U)** Commit or incite to commit a terrorist activity, under circumstances that indicate an intention to cause death or serious bodily injury;
 - (b) **(U)** Prepare or plan a terrorist activity;
 - (c) **(U)** Gather information on potential targets for terrorist activity;
 - (d) **(U)** Solicit funds or other things of value for a terrorist activity or solicit any individual to engage in terrorist activity;
 - (e) **(U)** Solicit funds or other things of value for, or solicit any individual for membership in, a terrorist organization. If the terrorist organization is undesignated at the time the solicitation occurred, (see [9 FAM 302.6-2\(B\)\(3\)](#) paragraph i(3));
 - (f) **(U)** Commit an act that the actor knows, or reasonably should know, affords material support for the commission of a terrorist activity;
 - (g) **(U)** Commit an act that the actor knows, or reasonably should know,

affords material support to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity; or

- (h) **(U)** Commit an act that the actor knows, or reasonably should know, affords material support to an entity that was a terrorist organization (i.e., engaged in terrorist activity) at the time the material support was provided or to a member of a terrorist organization, without regard to how the contribution was to be used. If the terrorist organization was undesignated at the time material support was provided, (see [9 FAM 302.6-2\(B\)\(3\)](#) paragraph i(3)).

(4) **Unavailable**

- (5) **(U)** Current representatives of the following are inadmissible:

- (a) **(U)** A terrorist organization (designated or undesignated; there is no defense based on lack of knowledge concerning the organization's activities); or
- (b) **(U)** A political, social, or other similar group that endorses or espouses terrorist activity, regardless of whether the group's endorsement or espousing undermines U.S. efforts.

- (6) **(U)** Current members of a terrorist organization are inadmissible. (See [9 FAM 302.6-2\(B\)\(3\)](#) paragraph e) If the terrorist organization is undesignated, the alien is not admissible if the applicant can demonstrate "by clear and convincing evidence" that he or she did not know, and should not reasonably have known, that the organization was a terrorist organization (See [9 FAM 302.6-2\(B\)\(3\)](#) paragraph b).

- (7) **(U)** Endorsing or espousing terrorist activity or persuading others to endorse or espouse terrorist activity or support a terrorist organization, whether designated or undesignated renders an alien is inadmissible. (See [9 FAM 302.6-2\(B\)\(3\)](#) paragraph c)

- (8) **(U)** Military-type training, received from or on behalf of any organization that, at the time the training was received, was a terrorist organization, makes an alien inadmissible. "Military-type training," as defined in 18 U.S.C. 2339D(c)(1), includes training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including any weapon of mass destruction.

d. **(U) PALESTINE LIBERATION ORGANIZATION (PLO) AND OTHER PALESTINIAN ENTITIES:**

- (1) **(U)** Any alien who is an officer, official, representative, or spokesperson of the PLO is considered to be engaged in terrorist activity and therefore inadmissible. See INA 212(a)(3)(B)(i). This provision applies only to those individuals who are currently PLO officers, officials, representatives, or spokespersons. Although not covered by the PLO-specific provisions, past

officers, officials, representatives, or spokespersons likely would be inadmissible under the other provisions of INA 212(a)(3)(B). "PLO Officials" would be individuals with substantive or policy-making responsibility in the PLO. Members of the PLO Executive Committee, PLO Representatives at Missions around the world, and PLO Representatives to the United Nations and other International Organizations clearly would be inadmissible under this provision.

(2) **(U)** Applicants who no longer occupy official positions with the PLO and persons who may be viewed as current or former members or employees, but are not officers, officials, representatives, or spokespersons, are not inadmissible under the PLO-specific provision. You should be alert to the possibility that applicants with present or past associations with the PLO may be inadmissible under INA 212(a)(3)(B) for other reasons.

(3) **Unavailable**

(4) **(U) Composition of the Palestine Liberation Organization (PLO)**

(a) **Unavailable**

(b) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(iv) **Unavailable**

(v) **Unavailable**

(vi) **Unavailable**

(vii) **Unavailable**

(viii) **Unavailable**

(ix) **Unavailable**

(x) **Unavailable**

(xi) **Unavailable**

(xii) **Unavailable**

(5) **(U) Implications for Other Palestinian Entities:**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

e. **(U) SPOUSE AND CHILDREN OF AN INADMISSIBLE ALIEN:**

(1) **(U)** Spouses and children of aliens found inadmissible under INA 212(a)(3)(B) are also inadmissible if the activity causing the alien to be inadmissible occurred within the last five years. However, there are exceptions to this

inadmissibility.

- (2) **(U)** INA 101(b)(1) defines child as an unmarried person under twenty-one years of age.
- (3) **Unavailable**
- (4) **(U)** This ground of inadmissibility does not apply to a spouse or child who did not know or should not reasonably have known of the alien's activity that caused the alien to be found inadmissible. It also does not apply if you or the Secretary of Homeland Security finds that there are reasonable grounds to believe the spouse or child has renounced the activity causing the alien to be found inadmissible. The statutory exception to spouse and child inadmissibility applicable in cases where the spouse or child didn't know of the terrorist activity or renounced the activity is found in INA 212(a)(3)(B)(ii).
- (5) **Unavailable**

9 FAM 302.6-2(B)(5) (U) Exemptions

(CT:VISA-240; 10-31-2016)

- a. **(U) EXEMPTION VERSUS WAIVER:** Both of these discretionary authorities allow an alien to receive an immigration benefit, even though the alien would not otherwise qualify for the benefit. One significant difference is that when using a waiver authority, the Department first determines that the alien is not qualified to receive a benefit (e.g., a visa) and then follows the applicable procedures for obtaining a waiver of the disqualification from DHS. The waiver authority, found in INA 212(d)(3)(A), is available only for non-immigrant visas. In contrast, when exemption authority is exercised, the Secretary, following interagency consultations, determines that the disqualification (which must arise under the INA's terrorism-related grounds for inadmissibility) "shall not apply" in the particular case. Exemptions are available for both NIV and IV cases, as well as other immigration-related benefits. These authorities are further discussed below.
- b. **(U) EXEMPTION AUTHORITY FOR INDIVIDUALS UNDER INA 212(d)(3)(B)(i):**
 - (1) **(U)** Under INA 212(d)(3)(B)(i), the Secretaries of Homeland Security and State, in consultation with each other and the Attorney General, each are authorized to conclude, in their sole and unreviewable discretion, that almost any of the terrorism-related provisions under INA 212(a)(3)(B) should not apply to an alien. If the alien is in the United States, however, and removal proceedings have commenced, only the Secretary of Homeland Security has the authority to apply the exemption.
 - (2) **(U)** INA 212(d)(3)(B)(i) exemptions cannot be granted to:
 - (a) **(U)** Aliens for whom there are reasonable grounds to believe are engaged in (present activities) or likely to engage after entry in (future activities) terrorist activity (INA 212(a)(3)(B)(i)(II));
 - (b) **(U)** Members of Tier I and Tier II terrorist organizations (designated by

- the State Department) (INA 212(a)(3)(B)(i)(V));
- (c) **(U)** Representatives of Tier I and Tier II terrorist organizations (designated by the State Department) (INA 212(a)(3)(B)(i)(IV)(aa));
 - (d) **(U)** Aliens who voluntarily and knowingly engaged in terrorist activity on behalf of a Tier I or Tier II group (INA 212(a)(3)(B)(i)(I), as defined by INA 212(a)(3)(B)(iv));
 - (e) **(U)** Aliens who voluntarily and knowingly endorsed or espoused terrorist activity or persuaded others to do so on behalf of a Tier I or Tier II group (INA 212(a)(3)(B)(i)(VII));
 - (f) **(U)** Aliens who voluntarily and knowingly received military-type training from a Tier I or II terrorist organization (INA 212(a)(3)(B)(i)(VIII)).
- (3) **(U)** It is important to note that with respect to past activities, the limitations on the exemption authority relate only to aliens with ties to designated (Tier I and Tier II) terrorist organizations. The exemption potentially may overcome inadmissibility for any past terrorist activity associated with an undesignated (Tier III) terrorist organization.
 - (4) **(U)** By including “voluntarily or knowingly” in the statute, Congress made clear that exemptions may be used to overcome inadmissibility for past terrorist activity associated with a designated (Tier I or II) terrorist organization, if the alien acted under duress or without the relevant knowledge.
 - (5) **(U)** Although exercises of the exemption authority require action by the Secretary following interagency consultations and, therefore, will not be commonplace, you may recommend that the Department pursue an exemption from provisions of INA 212(a)(3)(B) for a nonimmigrant visa applicant, if politically justified, or an immigrant visa applicant. Such requests must be submitted to the Department with a detailed assessment explaining why an exemption is appropriate and any balancing considerations.
- c. **(U) EXEMPTION AUTHORITY FOR INDIVIDUALS ASSOCIATED WITH THE AFRICAN NATIONAL CONGRESS:**
- (1) **(U) In General:**
 - (a) **(U)** Under Public Law No. 110-257, codified at 8 U.S.C. 1182 note, the Secretaries of State and Homeland Security, in consultation with each other and the Attorney General, each are authorized to determine, in their sole and unreviewable discretion, that (2)(A)(i)(I), (2)(B), and (3)(B) (other than clause (i)(II)) of INA 212(a), must not apply to an alien with respect to activities undertaken in association with the African National Congress in opposition to apartheid rule in South Africa. This authority operates the same as the general individual exemption authority described in [9 FAM 302.6-2\(B\)\(5\)](#) paragraph b, but for activities that may fall within the scope of this law, only this exemption should be considered. An exemption under the Public Law may cover both terrorism-related and some of the criminal-related grounds of inadmissibility. The same law also

establishes that the ANC must not be treated as a terrorist organization, for purposes of section 212(a)(3)(B) of the INA, based on past actions. See [9 FAM 302.6-2\(B\)\(3\)](#) paragraph i.

- (b) **(U)** Effective March 30, 2011, the Secretary of State, following consultations with the Secretary of Homeland Security and the Attorney General, exercised her discretionary authority under Public Law 110-257 to determine that INA 212(a)(2)(A)(i)(I), INA 212(a)(2)(B), and INA 212(a)(3)(B) (other than clause (i)(II)) "shall not apply" to individuals for activities undertaken in association with the African National Congress (ANC) in opposition to apartheid rule in South Africa (the "ANC categorical exemption"). The ANC categorical exemption sets out conditions for eligibility, described below, that must be applied by consular officers and other relevant U.S. Government officials in accordance with the procedures below. Please see CAWeb Exemption Authorities for the complete text.

(2) **Unavailable**

- (a) **Unavailable**
- (b) **Unavailable**
- (c) **Unavailable**
- (d) **Unavailable**

(3) **(U) Requirements for ANC Exemptions:**

- (a) **Unavailable**
 - (i) **Unavailable**
 - (ii) **Unavailable**
- (b) **Unavailable**
- (c) **Unavailable**
- (d) **Unavailable**
 - (i) **Unavailable**
 - (ii) **Unavailable**

(4) **Unavailable**

- (a) **Unavailable**
- (b) **Unavailable**
- (c) **Unavailable**
- (d) **Unavailable**
 - (i) **Unavailable**
 - (ii) **Unavailable**
 - (iii) **Unavailable**
 - (iv) **Unavailable**

- (e) **Unavailable**
Unavailable
- (f) **Unavailable**
 - (i) **Unavailable**
 - (ii) **Unavailable**
 - (A) **Unavailable**
 - (B) **Unavailable**
 - (C) **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
 - **Unavailable**
 - **Unavailable**
 - **Unavailable**
 - **Unavailable**
 - (3) **Unavailable**
 - (iii) **Unavailable**
 - (iv) **Unavailable**

d. **(U) EXEMPTION AUTHORITY FOR UNDESIGNATED TERRORIST**

ORGANIZATIONS (TIER III) UNDER INA 212(d)(3)(B)(i): The Secretaries of State and Homeland Security, in consultation with each other and the Attorney General, each are authorized, in their sole and unreviewable discretion, to exempt any group from being treated as an undesignated terrorist organization, with two exceptions:

- (1) **(U)** Groups that have engaged in terrorist activity against the United States or another democratic country; and
- (2) **(U)** Groups that have purposefully engaged in a pattern or practice of terrorist activity that is directed at civilians.

e. **(U) EXEMPTION AUTHORITY FOR KURDISTAN DEMOCRATIC PARTY, IRAQI NATIONAL CONGRESS, AND PATRIOTIC UNION OF KURDISTAN:**

- (1) **(U) Background:**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
Unavailable
 - (d) **Unavailable**
 - (e) **Unavailable**

- (2) **(U) In General:** In September 2009, the Secretary of Homeland Security and Secretary of State granted an exemption under INA212(d)(3)(B)(i) covering the category of individuals who meet certain conditions, as determined by consular or DHS officials, as appropriate, from certain inadmissibility grounds in INA 212(a)(3)(B) of the INA with respect to any activities or associations related to the Kurdistan Democratic Party (KDP), the Patriotic Union of Kurdistan (PUK) or the Iraqi National Congress (INC) (hereinafter the "categorical exemption"). Please see CAWeb Exemptions for the full text of the exemption.
- (3) **(U) Procedures:**
- (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
 - (d) **Unavailable**
 - (e) **Unavailable**
 - (f) **Unavailable**
 - (g) **Unavailable**
- (4) **Unavailable**
- (a) **Unavailable**
 - (i) **Unavailable**
 - (ii) **Unavailable**
 - (iii) **Unavailable**
 - (iv) **Unavailable**
 - (v) **Unavailable**
 - (vi) **Unavailable**
 - (vii) **Unavailable**
 - (viii) **Unavailable**
 - (ix) **Unavailable**
 - (x) **Unavailable**
 - (b) **Unavailable**
- f. **(U) APPLICATION OF EXEMPTION FOR INDIVIDUALS ASSOCIATED WITH KOSOVO LIBERATION ARMY (KLA):**
- (1) Unavailable**
- (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**

(d) **Unavailable**

(e) **Unavailable**

(2) **Unavailable**

(a) **Unavailable**

(b) **(U)** The applicant is seeking a benefit or protection under the INA, which may include a non-immigrant visa, and is otherwise eligible for the benefit or protection.

(c) **(U)** The applicant has undergone and passed all relevant background and security checks.

Unavailable

(d) **(U)** The applicant has fully disclosed, to the best of his or her knowledge, in all relevant applications and interviews with U.S. government representatives and agents, the nature and circumstances of activities or associations falling within the scope of INA section 212(a)(3)(B).

(e) **Unavailable**

(U) NOTE: A conviction is not required; rather, an indictment will suffice to make the applicant ineligible for the exemption. If you are unsure whether the applicant was or is subject to indictment, email your CA/VO/SAC analyst.

(f) **(U)** The applicant has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or United States interests.

(U) NOTE: For further information on material support, see [9 FAM 302.6-2\(B\)\(3\)](#).

(g) **(U)** The applicant has established to your satisfaction that he or she poses no danger to the safety and security of the United States.

(h) **(U)** The applicant warrants an exemption from the relevant inadmissibility provisions in the totality of the circumstances.

(U) NOTE: The exemption gives you broad latitude to consider any relevant factors and determine that an applicant who might otherwise appear eligible for the exemption should not benefit based on the totality of circumstances.

(i) **Unavailable**

(j) **Unavailable**

(3) **Unavailable**

(a) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(iv) **Unavailable**

(b) **Unavailable**

(4) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(d) **Unavailable**

(e) **Unavailable**

(f) **Unavailable**

Unavailable

(5) **Unavailable**

(6) **Unavailable**

9 FAM 302.6-2(B)(6) (U) Reports to Congress

(CT:VISA-1; 11-18-2015)

- a. **(U) Report on 3B Denials:** Section 128 of Public Law 102-138 of October 28, 1991, added to the law a permanent requirement that the Secretary of State report, on a timely basis, to the Judiciary Committees of the House and Senate, the House Foreign Affairs Committee, and the Senate Foreign Relations Committee every denial of a visa "on grounds of terrorist activity," along with a brief description of the factual basis for the denial.
- b. **(U) Report on 3B Waivers:** The Secretary of State also must report on all aliens inadmissibility under INA 212(a)(3)(B) to whom the Department issued a visa, or failed to object to the issuance of a visa. This report, required by section 51 of the State Department Basic Authorities Act, as amended by Section 231 of the Foreign Relations Authorization Act, Fiscal Year 2003, must be submitted to appropriate committees on a semi-annual basis. The requirement for these reports may be found at 22 U.S.C. 2723.
- c. **(U) Report on Exemptions under INA 212(d)(3)(B):** Not later than 90 days after the end of each fiscal year, the Secretaries of State and Homeland Security must submit a report to specified congressional committees on all individuals exempted under INA 212(d)(3)(B)(i). Exemptions for groups must be reported within one week (INA 212(d)(3)(B)(ii)).

9 FAM 302.6-2(C) Unavailable

9 FAM 302.6-2(C)(1) Unavailable

(CT:VISA-218; 10-20-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**
- e. **Unavailable**
- f. **Unavailable**
- g. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**
- h. **Unavailable**
- i. **Unavailable**
- j. **Unavailable**

9 FAM 302.6-2(C)(2) Unavailable

(CT:VISA-218; 10-20-2016)

- a. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**
 - (4) **Unavailable**
 - (5) **Unavailable**
- b. **Unavailable**
 - (1) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
 - (2) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
 - (d) **Unavailable**
 - (e) **Unavailable**
 - (f) **Unavailable**

9 FAM 302.6-2(C)(3) Unavailable

(CT:VISA-218; 10-20-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**
- e. **Unavailable**
- f. **Unavailable**
- g. **Unavailable**
- h. **Unavailable**
- i. **Unavailable**

9 FAM 302.6-2(C)(4) (U) Exemption Authority for Individuals or Activities Associated with the Kosovo Liberation Army (KLA)

(CT:VISA-218; 10-20-2016)

- a. (U) On June 4, 2012, Homeland Security Secretary Napolitano, following consultations with the Secretary of State and the Attorney General, exercised her authority under INA 212(d)(3)(B)(i), not to apply certain inadmissibility grounds under INA 212(a)(3)(B) for certain activities or associations relating to the Kosovo Liberation Army (KLA). Prior to applying this "exemption" to a visa applicant, there are several issues that must be considered. These are described below and differ for immigrant and non-immigrant visa applicants.
- b. (U) The exemption cannot be applied to any immigrant or non-immigrant visa applicant you know or have reasonable grounds to believe is engaged in or is likely to engage after entry into the United States in any terrorist activity, as defined in INA 212(a)(3)(B)(iv).

9 FAM 302.6-2(D) (U) Waivers

9 FAM 302.6-2(D)(1) (U) Waivers for Immigrants

(CT:VISA-218; 10-20-2016)

(U) No waiver is available for immigrant visa applicants found inadmissible under INA 212(a)(3)(B).

9 FAM 302.6-2(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-370; 05-31-2017)

(U) You may request that a finding of INA 212(a)(3)(B) inadmissibility be waived for a nonimmigrant found inadmissible under INA 212(a)(3)(B) in a particular case. Such

requests must be submitted to the Department with a detailed assessment explaining why a waiver is appropriate and any balancing considerations. Where appropriate, the Department will forward the request with a recommendation to Department of Homeland Security (DHS) Washington to grant the waiver. You may not request waivers from DHS attachés at post.

(U) NOTE: The Department may request a waiver from DHS on its own initiative if it believes a waiver is appropriate under the circumstances in a particular case. The Department will advise you whenever a waiver has been approved, and you must annotate the visa in accordance with [9 FAM 403.9-5](#).

9 FAM 302.6-2(E) Unavailable

9 FAM 302.6-2(E)(1) Unavailable

(CT:VISA-218; 10-20-2016)

Unavailable

9 FAM 302.6-2(E)(2) Unavailable

(CT:VISA-218; 10-20-2016)

Unavailable

9 FAM 302.6-3 (U) ASSOCIATION WITH TERRORIST ORGANIZATIONS - INA 212(A)(3)(F)

9 FAM 302.6-3(A) (U) Grounds

(CT:VISA-218; 10-20-2016)

(U) INA 212(a)(3)(F) renders inadmissible any alien who the Secretary of State, after consultation with the Secretary of Homeland Security, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States.

9 FAM 302.6-3(B) (U) Application

9 FAM 302.6-3(B)(1) (U) Background and Summary

(CT:VISA-218; 10-20-2016)

- a. **(U)** INA 212(a)(3)(F) was added by section 411(a)(2) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of October 26, 2001 (Public Law 107-56) (USA PATRIOT ACT). It was proposed by the Executive Branch and modeled in part on former INA

212(a)(27) and (28).

- b. **(U)** INA 212(a)(3)(F) was added to provide a flexible legal basis for denying entry to aliens who have been associated with terrorist organizations and whose travel to the United States would be inconsistent with the welfare, safety, or security of the United States. To ensure its use only in appropriate circumstances, it applies only if the Secretary of State, after consultation with the Secretary of Homeland Security, or Secretary of Homeland Security after consultation with the Secretary of State, determines that the alien has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States. The Secretary of State's authority to make such a determination has not been delegated to consular officers. Thus this provision can be used to deny visas only when such use is approved by the Department after a determination is made by the Secretary or an official to whom the Secretary's authority has been delegated.

9 FAM 302.6-3(B)(2) (U) Recommending a Finding

(CT:VISA-218; 10-20-2016)

- a. **(U)** The authority to determine whether an alien is inadmissible under INA 212(a)(3)(F) rests with the Secretary of State or the Secretary of Homeland Security, each in consultation with the other. Accordingly, if you believe that an individual may be inadmissible under this provision, you must refer the matter back to us for decision.
- b. **(U)** You should address the following in any request for a determination of inadmissibility under this provision:
- (1) **(U) Terrorist organization(s) involved:** If the organization involved has been designated as a foreign terrorist organization under INA 219 as a Terrorist Exclusion List (TEL) organization under INA 212(a)(3)(B)(vi)(II) or under Executive Order 13224, or has been defined by INA 212(a)(3)(B)(vi)(III) as a Tier III terrorist organization, provide the name of the organization and note the relevant designation(s). If an organization has not been designated under any of these authorities, explain why the organization is considered to be a terrorist organization and provide as much information as possible regarding the nature and structure of the organization and its activities. Include information on the nature, timing, and relevant circumstances surrounding the organization's terrorist activities;
(U) NOTE: "Terrorist Organization" is defined in INA 212(a)(3)(B)(vi) and references the definition of "engaged in terrorist activity" under INA 212(a)(3)(B)(iv) and "terrorist activity" as defined in INA 212(a)(3)(B)(iii);
 - (2) **(U) Nature of the alien's association:** We believe that for an alien to be inadmissible under INA 212(a)(3)(F), the association must be meaningful. Therefore, provide information concerning:
 - (a) **(U)** The frequency, duration, and level of the alien's contacts with the organization;

- (b) **(U)** The nature and purpose of the alien's contacts with the organization; and
- (c) **(U)** The alien's awareness of association. Because terrorist organizations often operate in secret, provide your assessment of:
 - (i) **(U)** Whether the alien knew or should have known that the organization was a terrorist organization (see [9 FAM 302.6-2\(B\)\(3\)](#) paragraph e for relevant factors to consider);
 - (ii) **(U)** Whether the alien knew or should have known that the person(s) with whom the alien had contact was a member, representative, or affiliate of a terrorist organization; and
 - (iii) **(U)** Whether the alien knew or should have known that the person(s) with whom the alien had contact was engaged in terrorist activity;
- (3) **(U)** Alien's activities in the United States: Provide as much information as possible regarding the alien's proposed activities in the United States and explain why these activities are cause for concern – i.e., why the determination required under subsection F should be made; and
- (4) **Unavailable**

(U) NOTE: INA 212(a)(3)(F) applies to an alien who "has been" associated with a terrorist organization, regardless of when that association occurred. Therefore, an alien whose association with a terrorist group took place prior to enactment of INA 212(a)(3)(F) could be found inadmissible. On the other hand, the inadmissibility can be triggered only if the alien intends while in the United States to engage in activities that could endanger the welfare, safety, or security of the United States.

9 FAM 302.6-3(B)(3) (U) Findings

(CT:VISA-218; 10-20-2016)

- a. **(U)** In order to find an alien inadmissible under INA 212(a)(3)(F), the Secretary of State or Homeland Security, each in consultation with the other (or their delegees), must find:
 - (1) **(U)** That the alien has been associated with a terrorist organization; and
 - (2) **(U)** That the alien intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States.
- b. **(U)** Within the Department, Consular Affairs will normally take the lead in coordinating the necessary interagency consultations and ensuring that a determination, if made, is made by an appropriate Department official with delegated authority. Generally, a determination will be made only if INA 212(a)(3)(B) is not applicable.
- c. **(U)** As noted above, we believe that "associated with" requires a meaningful

association. Generally, to be found inadmissible, an alien must have had contact over a period of time with individuals who the alien knew or should have known were members or representatives of a terrorist organization. A single meeting with a terrorist operative could be sufficient for finding that an alien has been “associated with” a terrorist organization, however. For example, we would likely find an alien was associated with a terrorist organization if the alien had made a commitment at a single meeting with a known recruiter for a terrorist organization to act on the organization’s behalf.

- d. **(U)** A finding that an alien “intends while in the United States to engage in activities that could endanger the welfare, safety, or security of the United States” can be made in appropriate cases by inferring the necessary intent from the relevant facts and circumstances. For example, an alien who has extensive knowledge of explosives who has been meeting regularly with well-known members of a terrorist organization and seeks to travel to the United States could be found inadmissible under INA 212(a)(3)(F). Similarly, an alien who has received flight training, or has received counter-surveillance training from a terrorist organization (as defined in INA 212(a)(3)(B)(vi)) could be found to have such an intent based on these and other relevant facts, and therefore be found inadmissible under INA 212(a)(3)(F).
- e. **(U)** It is not necessary that the alien intend to engage in activities that would be illegal or otherwise prohibited under the laws and regulations in the United States for us to find the alien inadmissible under INA 212(a)(3)(F). For example, an alien who intends to attend flight school in the United States – a lawful activity – could be found inadmissible under INA 212(a)(3)(F) if the facts are sufficient to permit the Secretary or her delegate to determine that the alien has been associated with a terrorist organization and that the alien’s attendance at the flight school could endanger the security of the United States.

9 FAM 302.6-3(B)(4) (U) Not a Permanent Bar

(CT:VISA-67; 03-01-2016)

Unavailable

9 FAM 302.6-3(C) Unavailable

(CT:VISA-218; 10-20-2016)

Unavailable

9 FAM 302.6-3(D) (U) Waivers

9 FAM 302.6-3(D)(1) (U) Waivers for Immigrants

(CT:VISA-218; 10-20-2016)

(U) No waiver is available for immigrant visa applicants found inadmissible under INA 212(a)(3)(F).

9 FAM 302.6-3(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-218; 10-20-2016)

(U) An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants found inadmissible under INA 212(a)(3)(F).

9 FAM 302.6-3(E) Unavailable

9 FAM 302.6-3(E)(1) Unavailable

(CT:VISA-218; 10-20-2016)

Unavailable

9 FAM 302.6-3(E)(2) Unavailable

(CT:VISA-218; 10-20-2016)

Unavailable

9 FAM 302.6-4 (U) SECTION 306 OF THE ENHANCED BORDER SECURITY AND VISA REFORM ACT OF 2002 - 8 U.S.C. 1735 ALIENS FROM A STATE SPONSOR OF TERRORISM

9 FAM 302.6-4(A) (U) Grounds

(CT:VISA-218; 10-20-2016)

(U) Section 306 of the Enhanced Border Security and Visa Reform Act of 2002 ("section 306"), 8 U.S.C. 1735, prohibits issuance of visas to nonimmigrant visa applicants from a state sponsor of terrorism unless the Secretary of State determines the applicant does not pose a threat to the safety and security of the United States.

9 FAM 302.6-4(B) (U) Application

(CT:VISA-218; 10-20-2016)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(4) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(d) **Unavailable**

9 FAM 302.6-4(C) Unavailable

(CT:VISA-247; 11-14-2016)

a. **Unavailable**

b. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

c. **Unavailable**

9 FAM 302.6-4(D) (U) Waivers

9 FAM 302.6-4(D)(1) (U) Waivers for Immigrants

(CT:VISA-218; 10-20-2016)

(U) Immigrant visa applicants are not subject to Section 306.

9 FAM 302.6-4(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-218; 10-20-2016)

(U) No waiver is available for nonimmigrant visa applicants ineligible under Section 306.

9 FAM 302.6-4(E) Unavailable

9 FAM 302.6-4(E)(1) Unavailable

(CT:VISA-218; 10-20-2016)

Unavailable

9 FAM 302.6-4(E)(2) Unavailable

(CT:VISA-218; 10-20-2016)

Unavailable

9 FAM 302.7

(U) INELIGIBILITY BASED ON HUMAN RIGHTS VIOLATIONS - INA 212(A)(2)(G), INA 212(A)(3)(E), INA 212(A)(3)(G)

*(CT:VISA-377; 06-08-2017)
(Office of Origin: CA/VO/L/R)*

9 FAM 302.7-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 302.7-1(A) (U) Immigration and Nationality Act

(CT:VISA-200; 09-30-2016)

(U) INA 101(a)(42) (8 U.S.C. 1101(a)(42)); INA 102 (8 U.S.C. 1102); INA 212(a)(2)(G) (8 U.S.C. 1182(a)(2)(G)); INA 212(a)(3)(E) (8 U.S.C. 1182(a)(3)(E)); INA 212(a)(3)(G) (8 U.S.C. 1182(a)(3)(G)); INA 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)); INA 221(g) (8 U.S.C. 1201(g)).

9 FAM 302.7-1(B) (U) United States Code

(CT:VISA-200; 09-30-2016)

(U) 8 U.S.C. 1182e; 8 U.S.C. 1182f;; 18 U.S.C. 2340; 18 U.S.C. 2442; 19 U.S.C. 1091(a); 22 U.S.C. 2151n; 22 U.S.C. 2304; 22 U.S.C. 4028; 22 U.S.C. 6401 et seq.; 22 U.S.C. 7101 et seq.

9 FAM 302.7-2 UNAVAILABLE

9 FAM 302.7-2(A) (U) Background

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 302.7-2(B) (U) Interagency Process for Human Rights Visa Cases

(CT:VISA-1; 11-18-2015)

a. Unavailable

b. **Unavailable**

9 FAM 302.7-2(C) Unavailable

9 FAM 302.7-2(C)(1) Unavailable

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 302.7-2(C)(2) Unavailable

(CT:VISA-377; 06-08-2017)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

9 FAM 302.7-2(D) Unavailable

(CT:VISA-200; 09-30-2016)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

d. **Unavailable**

e. **Unavailable**

9 FAM 302.7-2(E) (U) Visa Revocations

(CT:VISA-127; 05-10-2016)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

d. **Unavailable**

e. **Unavailable**

f. **Unavailable**

9 FAM 302.7-2(F) (U) Waivers of Inadmissibility

(CT:VISA-1; 11-18-2015)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

d. **Unavailable**

9 FAM 302.7-3 (U) PARTICIPATION IN PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM - INA 212(A)(2)(G)

9 FAM 302.7-3(A) (U) Grounds

(CT:VISA-200; 09-30-2016)

(U) INA 212(a)(2)(G) requires the refusal of a visa and the denial of entry to any alien who, while serving as a foreign government official (FGO) was responsible for, or directly carried out, at any time, particularly severe violations of religious freedom.

9 FAM 302.7-3(B) (U) Application

9 FAM 302.7-3(B)(1) (U) Particularly Severe Violations of Religious Freedom Defined

(CT:VISA-1; 11-18-2015)

(U) 22 U.S.C. 6402(11) defines “particularly severe violations of religious freedom” as: systematic, ongoing, egregious violations of religious freedom, including violations such as:

- (1) **(U)** Torture or cruel, inhuman, or degrading treatment or punishment;
- (2) **(U)** Prolonged detention without charges;
- (3) **(U)** Causing the disappearance of persons by the abduction or clandestine detention of those persons; or
- (4) **(U)** Other flagrant denial of the right of life, liberty, or the security of persons.

9 FAM 302.7-3(B)(2) (U) Violations of Religious Freedom Defined

(CT:VISA-1; 11-18-2015)

(U) Violations of the internationally recognized right to freedom of religion and religious beliefs and practice, as described in 22 U.S.C. 6402(13) include the following violations such as:

- (1) **(U)** Arbitrary prohibitions on, restrictions of, or punishment for:
 - (a) **(U)** Assembling for peaceful religious activities such as worship, preaching, and prayer, including arbitrary registration requirements;
 - (b) **(U)** Speaking freely about one's religious beliefs;
 - (c) **(U)** Changing one's religious beliefs and affiliation;

- (d) **(U)** Possession and distribution of religious literature, including Bibles; or
 - (e) **(U)** Raising one's children in the religious teachings and practices of one's choice; or
- (2) **(U)** Any of the following acts if committed on account of an individual's religious belief or practice:
- (a) **(U)** Detention;
 - (b) **(U)** Interrogation;
 - (c) **(U)** Imposition of an onerous financial penalty;
 - (d) **(U)** Forced labor;
 - (e) **(U)** Forced mass resettlement;
 - (f) **(U)** Imprisonment;
 - (g) **(U)** Forced religious conversion;
 - (h) **(U)** Beating;
 - (i) **(U)** Torture;
 - (j) **(U)** Mutilation;
 - (k) **(U)** Rape;
 - (l) **(U)** Enslavement; and
 - (m) **(U)** Murder and execution.

9 FAM 302.7-3(B)(3) (U) Foreign Government Officials Defined

(CT:VISA-377; 06-08-2017)

(U) Per 22 U.S.C. 6402(8) the term "government" or "foreign government" includes any agency or instrumentality of the government. The determination of whether an applicant is an official of a foreign government is dependent on whether the services performed by the alien are themselves of an inherently governmental character. In determining whether such services rise to the level of making the alien an FGO, you should assess the applicant's level of responsibility within the government and any policy-making components of the position in question. You should consult with the Visa Office for cases where the applicant's status as an FGO is not clear.

9 FAM 302.7-3(B)(4) (U) Bureau of Democracy, Human Rights, and Labor, Officer of International Religious Freedom (DRL/IRF)

(CT:VISA-53; 02-22-2016)

- a. **(U) In General:** DRL/IRF was created within the Department and is headed by the Ambassador-at-Large for International Religious Freedom. The President appoints the Ambassador-at-Large with the advice and consent of the Senate, (22 U.S.C. 6411).
- b. **(U) Responsibilities of Ambassador-at-Large:**

- (1) **(U) According to 22 U.S.C. 6411(c), the Ambassador-at-Large has the following primary responsibilities:**
 - (a) **(U)** Advancing the right to freedom of religion abroad;
 - (b) **(U)** Denouncing violations of that right, and recommending responses by the U.S. Government when that right is violated;
 - (c) **(U)** Acting as a principal advisor to the President and the Secretary on matters affecting religious freedom abroad and, with the advice from the Commission on International Religious Freedom, must make recommendations regarding the policies of the U.S. Government toward governments that violate freedom of religion or that fail to ensure the individual's right to religious belief and practice and policies to advance the right to religious freedom abroad;
 - (d) **(U)** Subject to the direction of the President and the Secretary of State, acting as the U.S. representative in matters relating to religious freedom abroad; and
 - (e) **(U)** Fulfilling the requirements under 22 U.S.C. 6412, including preparing the annual International Religious Freedom Report and sections of the annual Human Rights Report relating to freedom of religion and freedom from discrimination based on religion and those portions of other information provided Congress under 22 U.S.C. 2151n and 22 U.S.C. 2304 that relate to the right to freedom of religion.
- (2) **(U)** Pursuant to 22 U.S.C. 6412 (b), on September 1 of each year, or the first day thereafter on which the appropriate House of Congress is in session, the Secretary, with the assistance of the Ambassador-at-Large, submits to Congress the annual report on International Religious Freedom, supplementing the most recent Human Rights Report. The report is written with the assistance of and input from all posts; and identifies on a country-by-country basis the developments in protection and deterioration of the right to religious freedom. You should consider the annual reports' descriptions of particularly severe violations of religious freedom committed or tolerated by a country's government and its officials, when you are making a determination of whether to request an advisory opinion regarding an applicant's possible inadmissibility under INA 212(a)(2)(G).

9 FAM 302.7-3(B)(5) (U) Training Requirements of the International Religious Freedom Act (IRFA)

(CT:VISA-1; 11-18-2015)

- a. **(U)** The IRFA amended the Foreign Service Act of 1980 by adding new training requirements for foreign service officers, which are found at 22 U.S.C. 4028. This section requires the Secretary of State, with the assistance of the Ambassador-at-Large and other relevant officials to establish training in the field of internationally recognized human rights. Such training is to include:

- (1) **(U)** Instruction on international documents and United States policy in human rights, which is to be mandatory for all members of the Foreign Service having reporting responsibilities relating to human rights and for chiefs of mission; and
 - (2) **(U)** Instruction on the internationally recognized right to freedom of religion, the nature, activities, and beliefs of different religions, and the various aspects and manifestations of violations of religious freedom.
 - (3) **(U)** Instruction on international documents and United States policy on trafficking in persons, including provisions of the Trafficking Victims Protection Act of 2000 (division A of Public Law 106-386; 22 U.S.C. 7101 et seq.) which may affect the United States bilateral relationships.
 - (4) **(U)** Instruction on refugee law and adjudications and on religious persecution to each individual seeking a commission as a United States consular officer. The Secretary must also ensure that any member of the Service who is assigned to a position that may be called upon to assess requests for consideration for refugee admissions, including any consular officer, has completed training on refugee law and refugee adjudications.
- b. **(U)** Section 105 of the IRFA requires that United States chiefs of mission seek out and contact religious nongovernmental organizations for high-level meetings "where appropriate and beneficial." It also provides that United States chiefs of mission and Foreign Service officers abroad are to seek to meet with imprisoned religious leaders where appropriate and beneficial.

9 FAM 302.7-3(C) (U) Advisory Opinions

9 FAM 302.7-3(C)(1) (U) Advisory Opinion Required General

(CT:VISA-1; 11-18-2015)

(U) You must submit all cases involving potential INA 212(a)(2)(G) ineligibilities for a formal AO to CA/VO/L/A through either IVO or NIV.

9 FAM 302.7-3(C)(2) (U) Conditions for Request for Advisory Opinion

(CT:VISA-200; 09-30-2016)

(U) You must request an AO in cases in which both of the following conditions are met:

- (1) **(U)** The applicant served as a foreign government official (FGO) from a country cited by the Human Rights Report and/or the Annual Report on International Religious Freedom as having committed particularly severe violations of religious freedom; and
- (2) **(U)** You reasonably believe the applicant, during his or her official tenure and at any time immediately preceding the date of application, has engaged in, was

responsible for, or directly carried out particularly severe violations of religious freedom.

9 FAM 302.7-3(C)(3) Unavailable

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-3(D) (U) Waiver

9 FAM 302.7-3(D)(1) (U) Waivers for Immigrants

(CT:VISA-200; 09-30-2016)

(U) There is no waiver of INA 212(a)(2)(G) for immigrants.

9 FAM 302.7-3(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-200; 09-30-2016)

(U) INA Section 212(d)(3)(A) waiver provisions apply to nonimmigrants ineligible under INA 212(a)(2)(G).

9 FAM 302.7-3(E) Unavailable

9 FAM 302.6-3(E)(1) Unavailable

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.6-3(E)(2) Unavailable

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-4 (U) PARTICIPATION IN NAZI PERSECUTIONS - INA 212(A)(3)(E)(I)

9 FAM 302.7-4(A) (U) Grounds

(CT:VISA-1; 11-18-2015)

(U) INA 212(a)(3)(E)(i) renders ineligible for a visa any alien who participated in the persecution of any person because of race, religion, national origin, or political opinion during the period from March 23, 1933, to May 8, 1945, under the direction of or in association with the Nazi Government of Germany or an allied or occupied

government.

9 FAM 302.7-4(B) (U) Application

9 FAM 302.7-4(B)(1) (U) Aliens Presumed Ineligible

(CT:VISA-200; 09-30-2016)

- a. **(U) In General:** Many members of organizations found to be “criminal organizations” by the international Military Tribunal at Nuremburg have been listed in CLASS under P3E1. All such CLASS entries, as well as all other aliens who were members of one or more of these organizations, are presumed to be inadmissible under INA 212(a)(3)(E)(i). It must be borne in mind that this is a presumption only. While such membership does not automatically render the alien ineligible for a visa, the applicant has the burden of establishing that, despite being a member of a designated criminal organization, he or she did not participate in activities which would fall within the purview of INA 212(a)(3)(E)(i). “Criminal organizations,” which are identified and characterized below.
- b. **(U) Criminal Organizations:** The Leadership Corps of the Nazi Party, the Gestapo, the SD, and the SS were found by the International Military Tribunal to be criminal organizations. The Tribunal concluded that these groups were utilized for purposes involving the persecution and extermination of the Jews, brutalities and killings in concentration camps, the administration of the slave labor program, excesses in the administration of occupied territories, and the mistreatment and murder of prisoners of war.
 - (1) **(U) Leadership Corps of Nazi Party (NSDAP):** The Leadership Corps was the governing cadre of the Nazi Party (NSDAP). Membership at all levels was voluntary. The Corps included full-time employees ranging from heads of the various main departments and offices attached to the Party’s Reich Directorate to persons with territorial jurisdiction over a single area as large as a country.
 - (2) **(U) GESTAPO-Geheime Staatspolizei (German Secret State Police):** In 1936, the German police forces were centralized under Himmler and reorganized into two new offices: The Gendarmerie and municipal police and the Sicherheitspolizei, consisting of the criminal police and the political police. The Gestapo was the active branch of the political police and had authority to commit persons to concentration camps. During the war years, the Gestapo also supervised prisoners of war.
 - (3) **(U) SD-Sicherheitsdienst des Reichsfuehreres SS (Security Service of Police Organization of Nazi Party):** The SD, which began as an intelligence agency, was a security service engaged in police work in Germany and behind the lines in occupied territories.
 - (4) **(U) SS-Schutzstaffel der NSDAP (Defense Echelon of Nazi Party):** The SS was established as an elite body guard and security force for top Nazi leaders, replacing by the mid-1930’s the Nazi Storm Troopers (the SA or Sturmabteilung), a mass paramilitary organization which played an important

role in Hitler's rise to power. By the end of the war, the SS included the regular and security police as well as divisions of combat troops. For membership purposes, the SS was divided into two categories: The Allgemeine SS (General SS) and the Waffen SS (Armed or Military SS).

- (a) **(U) Allgemeine SS:** While the Allgemeine SS was officially charged with other, non-criminal duties, some Allgemeine SS members did, in fact, staff and administer agencies which were responsible for carrying out policies of persecution throughout Germany and occupied Europe. These agencies included the:
- (i) **(U)** SD;
 - (ii) **(U)** Gestapo;
 - (iii) **(U)** Office of the Reich Commissar for the Strengthening of German Nationhood;
 - (iv) **(U)** Race and Settlement Main Office;
 - (v) **(U)** Regionally based SS and Police Leaders;
 - (vi) **(U)** Order Police; and
 - (vii) **(U)** SS Death's Head units.
- (b) **(U) Waffen SS:** The Waffen SS developed out of the pre-war Special Service Troops (SS Verfügungstruppe), whose original purpose was to provide an ideologically loyal military response to a potential coup against the Nazi regime by the German Armed Forces. With the outbreak of the war, these units were expanded into an SS army which the Nazi leadership hoped would one day replace the traditional German Army. While the Waffen SS did include many front-line combat units, its members were deeply implicated in the persecution, mass murder, and other war crimes committed against innocent civilians and prisoners of war. The Waffen SS was directly involved in countless deportation, shooting, and anti-partisan actions, the purpose of which was the tracking down and extermination of persons and groups slated for death by the Nazi regime. It supplied personnel to and assisted the Einsatzgruppen which rounded up people for forced labor, concentration camps, and executions. Many Waffen SS units were composed of renegades and collaborators recruited from among the peoples of the occupied territories.

9 FAM 302.7-4(B)(2) (U) Other Aliens Suspected of Ineligibility

(CT:VISA-1; 11-18-2015)

(U) Aliens who engaged in activities proscribed by INA 212(a)(3)(E)(i) are ineligible for visas regardless of whether or not they were members of one of the "criminal organizations" described in [9 FAM 302.7-4\(B\)\(1\)](#). Evidence of possible ineligibility may be found in:

- (1) **(U)** The visa application;

- (2) **(U)** The applicant's statements;
- (3) **(U)** A check of post files; or
- (4) **(U)** In outside information available to the consular officer.

9 FAM 302.7-4(B)(3) (U) Initial Interview of Possibly Ineligible Applicants

(CT:VISA-200; 09-30-2016)

(U) The following lines of inquiry should be pursued when the applicant affirmatively answers the questions related to genocide on either Form DS-160, Online Nonimmigrant Visa Application or DS-260, Online Immigrant Visa Application and Registration, or when other information relating to the application indicates the possibility of inadmissibility under INA 212(a)(3)(E)(i).

- (1) **(U) Certain German or Austrian Applicants:** If the applicant was a German or Austrian national during the period encompassed by INA 212(a)(3)(E)(i) and there is reason to believe he or she may be inadmissible under that section, you inquire whether the applicant:
 - (a) **(U)** Was ever a member of, or in any way affiliated with, any of the following organizations:
 - (i) **(U)** The Leadership Corps of the Nazi Party;
 - (ii) **(U)** The Gestapo (Geheime Staatspolizei);
 - (iii) **(U)** The SD (Sicherheitsdienst des Reichsfuhrer SS); or
 - (iv) **(U)** The SS (Schutzstaffel der NSDAP), including the Allgemeine SS and Waffen SS.
 - (b) **(U)** Was ever a member or affiliate of a police unit or ever performed police duties in any territory occupied by or allied with the Nazi Government of Germany; and
 - (c) **(U)** Ever served as a guard or received military training at an extermination, concentration, or prisoner-of-war (POW) camp under the control of the Nazi Government of Germany, or the government of any area occupied by or allied with the Nazi Government of Germany.
- (2) **(U) Non-German or Austrian Nationals:** In the case of possibly inadmissible aliens from countries allied with or occupied by Nazi Germany during the relevant time period (see [9 FAM 302.7-4\(B\)\(5\)](#) and (6)), the same inquiries specified in paragraph a above should be pursued concerning the alien's activities and his or her possible association with organizations involved in persecutions. Many, but not all, such organizations are listed in [9 FAM 302.7-4\(B\)\(7\)](#).
- (3) **Unavailable**
 - (a) **(U)** Specific identification of the organization(s) and/or unit(s) with which the alien served;

- (b) **(U)** Inclusive dates of service in each organization or unit;
- (c) **(U)** The activities or mission of each organization or unit;
- (d) **(U)** The alien's rank or position therein;
- (e) **(U)** The duties and responsibilities of the alien;
- (f) **(U)** The alien's duty station(s), if applicable; and
- (g) **(U)** The names of the alien's commanding officers or superiors.

9 FAM 302.7-4(B)(4) (U) Availability of Records from Berlin Document Center

(CT:VISA-200; 09-30-2016)

- a. **(U) In General:** The Berlin Document Center (BDC) serves as the repository for a substantial portion of the original official archives, records, and files of the former Nazi Party and some of its most important affiliated organizations. Although not complete, the records maintained by the Berlin Document Center were meticulously compiled and the data contained therein are considered accurate and reliable. The records of all aliens who have P3E1 entries in the CLASS system are on file at the BDC, as are those of many other Nazi Party members and members of the "criminal organizations" listed in [9 FAM 302.7-4\(B\)\(1\)](#) above.
- b. **(U) Requesting Information from Bundesarchiv:**
 - (1) **(U)** You must request by immediate cable to USOFFICE BERLIN a summary of the records of any alien entered in CLASS as P3E1, any alien who is otherwise known or believed to have been a member of one of the "criminal organizations" ([9 FAM 302.7-4\(B\)\(1\)](#) paragraph b), and any former Nazi Party member who is suspected of falling within the purview of INA 212(a)(3)(E)(i). Any known aliases and/or alternate biographic data should be included. The cable should be in the following format:

ACTION: AmEmbassy Berlin

INFO: Consular Section
Clayallee 170
14191 Berlin

TAGS: CVIS, PGOV, PEPR, (Country TAG for Applicant's Nationality)

(Applicant's Name)

SUBJECT: Requesting Information from German Federal Authorities

- (1) (Subject's name, DPOB) applied for a (type of visa) on (date of application).
- (2) In order to assist in determination of visa eligibility, request BUNDESARCHIV provide a summary of information on applicant contained in BUNDESARCHIV files.

- (2) **(U)** Upon receipt of the BUNDESARCHIV summary (which we will also have received as an addressee), you should schedule a visa interview and ask the applicant to bring any pertinent documentation.
- c. **(U) Reinterview Based on Bundesarchiv Summaries:**
- (1) **(U)** Following receipt of a BUNDESARCHIV summary, you should:
 - (a) **(U)** Re-interview the alien in depth regarding his or her military or civilian government service and his or her other activities during the 1933 to 1945 period; and
 - (b) **(U)** Ask explicit questions regarding the alien's participation in and/or awareness of the activities proscribed by INA 212(a)(3)(E)(i).
 - (2) **(U)** Particular attention should be paid to any apparent discrepancies between the alien's statements and the BUNDESARCHIV summary.

9 FAM 302.7-4(B)(5) (U) Governments Allied with Nazi Germany

(CT:VISA-1; 11-18-2015)

- a. **(U)** Bulgaria;
- b. **(U)** Hungary;
- c. **(U)** Italy (Oct. 25, 1936 to Sept. 3, 1943);
- d. **(U)** Japan (Nov. 25, 1936 to May 8, 1945);
- e. **(U)** Romania; and
- f. **(U)** USSR (Aug. 23, 1939 to June 22, 1941)

9 FAM 302.7-4(B)(6) (U) Countries or Areas Occupied by Germany and/or Nazi-Aligned Governments

(CT:VISA-1; 11-18-2015)

- a. **(U)** Albania;
- b. **(U)** Austria;
- c. **(U)** Belgium;
- d. **(U)** Channel Islands (U. K.);
- e. **(U)** Czechoslovakia;
- f. **(U)** Denmark;
- g. **(U)** Estonia;
- h. **(U)** France;
- i. **(U)** Greece;
- j. **(U)** Latvia;
- k. **(U)** Lithuania;

- l. **(U)** Luxembourg;
- m. **(U)** Netherlands;
- n. **(U)** Norway;
- o. **(U)** Poland;
- p. **(U)** Parts of the Former USSR; and
- q. **(U)** Yugoslavia Former.

9 FAM 302.7-4(B)(7) (U) Organizations Under the Direction of the Nazi Government of Germany

(CT:VISA-1; 11-18-2015)

- a. **(U)** Albania;
 - (1) **(U)** Albanian Fascist Militia
 - (2) **(U)** Albanian Fascist Party
- b. **(U)** Armenia;
 - (1) **(U)** Dashnags
- c. **(U)** Belgium;
 - (1) **(U)** De Vlag (The Flag)
 - (2) **(U)** Rex Movement
 - (3) **(U)** Vlaamech Nationaal Verbond (Flemish National Movement)
- d. **(U)** Bulgaria;
 - (1) **(U)** Sigurnost (State Security Police)
 - (2) **(U)** International Macedonian Revolutionary Organization (IMRO)
 - (3) **(U)** Motorized Police
 - (4) **(U)** Rodna Zashtita (Defense of the Fatherland and the Race)
 - (5) **(U)** Uniformina Politsia (Uniformed Police);
 - (6) **(U)** Voenna Politsia (Military Police)
- e. **(U)** Czechoslovakia;
 - (1) **(U)** Nationalsozialistische Deutsche Arbeiter-Partei (NSDAP)
 - (2) **(U)** Deutsche Partei;
 - (3) **(U)** Elite Guard Death's Head Batallions
 - (4) **(U)** Free Corps
 - (5) **(U)** Freiwillige Schutzstaffel
 - (6) **(U)** Hlinka Guard
 - (7) **(U)** SS Einsatzstaffel

- (8) **(U)** SS Einsatztruppe
- (9) **(U)** Svatoplukova Garda
- (10) **(U)** Vlajka
- (11) **(U)** Volksspor
- f. **(U)** Estonia;
 - (1) **(U)** Einsatzgruppe
 - (2) **(U)** Estonian Legion
 - (3) **(U)** Estonian Police
 - (4) **(U)** Schutzmannschaften
 - (5) **(U)** SD
 - (6) **(U)** SS
- g. **(U)** France;
 - (1) **(U)** Charlemagne SS Division;
 - (2) **(U)** Francisme;
 - (3) **(U)** French Police;
 - (4) **(U)** Legion des Volontaires Francais contre le Bolchevisme (LVF);
 - (5) **(U)** Parti Populaire Francaise (PPF);
 - (6) **(U)** Rassemblement National Populaire (RNP)
- h. **(U)** Greece;
 - (1) **(U)** Security Corps
- i. **(U)** Holland;
 - (1) **(U)** Allgemeine SS Vlaanderen;
 - (2) **(U)** Dutch SS;
 - (3) **(U)** NSB (Nationaal Socialistische Beweging);
 - (4) **(U)** NSB Weerafdelingen (Storm Detachment)
- j. **(U)** Hungary;
 - (1) **(U)** Arrow Cross Party (Nyilas or Pfeilkreuzler);
 - (2) **(U)** Awakening Hungarians (Ebredo Magyarok);
 - (3) **(U)** Berczenyui League (Berczenyi Egyesulet);
 - (4) **(U)** Deutsche Mannschaft;
 - (5) **(U)** Heimatschutz;
 - (6) **(U)** Hungarian Gendarmerie (Nagyar Kiralyi Czendorseg);
 - (7) **(U)** Hungarian Waffen SS;

- (8) **(U)** Hunyadi Division (Hunyadi Hadoztaly);
 - (9) **(U)** Order of Heroes (Vitezi Rend);
 - (10) **(U)** Ragged Guard (Rongyos Garda);
 - (11) **(U)** Turanian Hunters (Turani Vadaszok);
 - (12) **(U)** Volksbund der Deutschen in Ungarn
- k. **(U)** Latvia;
- (1) **(U)** Aisbargi;
 - (2) **(U)** Arajs Command;
 - (3) **(U)** Einsatzgruppe;
 - (4) **(U)** Latvian Legion;
 - (5) **(U)** Latvian Police;
 - (6) **(U)** Perkonkrusts;
 - (7) **(U)** Schutzmannschaften;
 - (8) **(U)** SD;
 - (9) **(U)** SS
- l. **(U)** Lithuania;
- (1) **(U)** Einsatzgruppe;
 - (2) **(U)** Iron Wolf (Gelezinis Vilkas);
 - (3) **(U)** Lithuanian Police;
 - (4) **(U)** Schutzmannschaften;
 - (5) **(U)** SD;
 - (6) **(U)** SS
- m. **(U)** Norway;
- (1) **(U)** Norwegian Police;
 - (2) **(U)** Nasjonal Samling
- n. **(U)** Poland;
- (1) **(U)** Deutsche Mannschaft;
 - (2) **(U)** Einstzgruppe;
 - (3) **(U)** Einsatzstaffel;
 - (4) **(U)** Hilfspolizei;
 - (5) **(U)** Order Police;
 - (6) **(U)** Polish Police;
 - (7) **(U)** SD;

- (8) **(U)** Selbstschutz;
- (9) **(U)** Sonderdienst;
- (10) **(U)** SS
- o. **(U)** Romania;
 - (1) **(U)** Iron Guard;
 - (2) **(U)** Legion of Archangel Michael;
 - (3) **(U)** Romanian Gendarmerie
- p. **(U)** Russia;
 - (1) **(U)** Cossak Units;
 - (2) **(U)** Vlassov Army (Russian Army of Liberation)
- q. **(U)** **(U)** Ukraine; and
 - (1) **(U)** Einsatzgruppe
 - (2) **(U)** Galician Division
 - (3) **(U)** Office for Ukrainian Affairs in Germany
 - (4) **(U)** Schutzmannschaft
 - (5) **(U)** SD
 - (6) **(U)** SS
 - (7) **(U)** Ukrainian Aid Committee (Ukrainisches Hilfskomite)
 - (8) **(U)** Ukrainian Military Association (UWO - Ukrainska Wyskowa Organizacja)
 - (9) **(U)** Ukrainian Partisan Army (UPA)
 - (10) **(U)** Ukrainian Police
- r. **(U)** Yugoslavia
 - (1) **(U)** Croatia;
 - (a) **(U)** Association of Yugoslav Moslems (Elhiadaje);
 - (b) **(U)** Croat Blue (Flava) Division;
 - (c) **(U)** Croatian Gendarmerie (Oruznistvo);
 - (d) **(U)** Crusaders (Krizari);
 - (e) **(U)** Devil (Vraza) Division;
 - (f) **(U)** Prinz Eugen SS Division;
 - (g) **(U)** SD;
 - (h) **(U)** Specialist Political Police;
 - (i) **(U)** SS;
 - (j) **(U)** 13th. SS Handzar Division;

- (k) **(U)** Ustas (Ustachi);
- (2) **(U)** Slovenia; and
 - (a) **(U)** Slovene Homeguard (Slovene Domobrans)
- (3) **(U)** Serbia
 - (a) **(U)** Prinz Eugen SS Division;
 - (b) **(U)** Serbian Volunteer Corps;
 - (c) **(U)** Special Police (Belgrade);
 - (d) **(U)** Zbor.

9 FAM 302.7-4(C) Unavailable

(CT:VISA-200; 09-30-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 302.7-4(D) (U) Waiver

9 FAM 302.7-4(D)(1) (U) Waivers for Immigrants

(CT:VISA-1; 11-18-2015)

(U) There is no waiver relief available to immigrants who are inadmissible under INA 212(a)(3)(E)(i).

9 FAM 302.7-4(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-1; 11-18-2015)

(U) There is no waiver relief available to nonimmigrants who are inadmissible under INA 212(a)(3)(E)(i).

9 FAM 302.7-4(E) Unavailable

9 FAM 302.7-4(E)(1) Unavailable

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-4(E)(2) Unavailable

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-5 (U) PARTICIPATION IN GENOCIDE - INA 212(A)(3)(E)(II)

9 FAM 302.7-5(A) (U) Grounds

(CT:VISA-200; 09-30-2016)

(U) INA 212(a)(3)(E)(ii) provides that applicants are inadmissible if they ordered, incited, assisted, or otherwise participated in genocide, as defined in 18 U.S.C. 1091(a).

9 FAM 302.7-5(B) (U) Application

9 FAM 302.7-5(B)(1) (U) In General

(CT:VISA-200; 09-30-2016)

(U) To find aliens inadmissible because of participated in genocide, you must conclude that they:

- (1) **(U)** Ordered genocide;
- (2) **(U)** Conspired to commit genocide;
- (3) **(U)** Directly and publicly incited another to commit genocide;
- (4) **(U)** Attempted to commit genocide; or
- (5) **(U)** Assisted or otherwise participated in genocide.

9 FAM 302.7-5(B)(2) (U) Defining Genocide

(CT:VISA-200; 09-30-2016)

a. Unavailable

b. **(U) Elements of Genocide:** According to 19 U.S.C. 1091(a), genocide means any of the following acts committed, whether in time of peace or time of war, with the specific intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such:

- (1) **(U)** Killing members of a national, ethnic, racial or religious group;
- (2) **(U)** Causing serious bodily injury to members of a national, ethnic, racial, or religious group;
- (3) **(U)** Causing the permanent impairment of the mental faculties of members of a national, ethnic, racial or religious group through drugs, torture, or similar techniques;
- (4) **(U)** Subjecting a national, ethnic, racial or religious group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;

- (5) **(U)** Imposing measures intended to prevent births within a national, ethnic, racial or religious group; or
 - (6) **(U)** Transferring by force children of a national, ethnic, racial or religious group to another group.
- c. **(U) Intent to Commit Genocide:** An individual cannot be found inadmissible under this group unless you conclude that in ordering, inciting, assisting, or otherwise participating in one of the acts outlined in [9 FAM 302.7-5\(B\)\(2\)\(b\)](#) above, the alien was motivated by a specific intent to destroy, in whole or in substantial part, the national, ethnic, racial, or religious group(s) being targeted as such. War crimes, per se, do not constitute genocide absent the specific intent to destroy one of these groups, as such, as required by the definition of genocide at 18 U.S.C. 1091(a), as explained in [9 FAM 302.7-5\(B\)\(2\)\(b\)](#) above (although war crimes could form the basis of an ineligibility under Presidential Proclamation 8697 ["Suspension of Entry of Immigrants and Nonimmigrants of Persons Who Participate in Serious Human Rights and Humanitarian Law Violations and Other Abuses"]). See [9 FAM 302.14-3\(B\)\(3\)](#) on Presidential Proclamation 8697.

9 FAM 302.7-5(C) Unavailable

9 FAM 302.7-5(C)(1) Unavailable

(CT:VISA-53; 02-22-2016)

Unavailable

9 FAM 302.7-5(C)(2) Unavailable

(CT:VISA-53; 02-22-2016)

Unavailable

- (1) **(U)** The applicant's name, date and place of birth, and position or rank (if applicable);
- (2) **(U)** The type of visa applied for, the date of application, and the intended travel plans and destination(s) in the United States;
- (3) **(U)** the nature of the acts of genocide performed and the applicant's role in their commission;
- (4) **(U)** The national, ethnic, racial, or religious group(s) against whom the acts were targeted;
- (5) **(U)** The place where, the circumstances under, and the time period within which the acts were committed;
- (6) **(U)** The applicant's purpose for committing such acts and the sanctioning authority, if any; and
- (7) **(U)** Your evaluation of the case and recommendation regarding visa eligibility.

9 FAM 302.7-5(C)(3) (U) Genocide Committed Under Government Authority

(CT:VISA-53; 02-22-2016)

Unavailable

9 FAM 302.7-5(D) (U) Waiver

9 FAM 302.7-5(D)(1) (U) Waivers for Immigrants

(CT:VISA-1; 11-18-2015)

(U) There is no waiver relief available to immigrants who are inadmissible under INA 212(a)(3)(E)(ii).

9 FAM 302.7-5(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-1; 11-18-2015)

(U) There is no waiver relief available to nonimmigrants who are inadmissible under INA 212(a)(3)(E)(ii).

9 FAM 302.7-5(E) Unavailable

9 FAM 302.7-5(E)(1) Unavailable

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-5(E)(2) Unavailable

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-6 (U) PARTICIPATION IN TORTURE - INA 212(A)(3)(E)(III)

9 FAM 302.7-6(A) (U) Grounds

(CT:VISA-127; 05-10-2016)

(U) INA 212(a)(3)(E)(iii) makes inadmissible any alien who, outside of the United States, has committed , ordered, incited, assisted, or otherwise participated in the commission of any act of torture under color of law as defined under 18 U.S.C. 2340.

9 FAM 302.7-6(B) (U) Application

9 FAM 302.7-6(B)(1) (U) In General

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-6(B)(2) (U) Defining Torture

(CT:VISA-127; 05-10-2016)

- a. **(U) In General:** As mandated by the INA, the definition of torture to be used in the application of this ground of inadmissibility is found at 18 U.S.C. 2340.
- b. **(U) Elements of Torture:** According to 18 U.S.C. 2340 torture is:
 - (1) **(U)** An act;
 - (2) **(U)** Committed by a person;
 - (3) **(U)** Acting under the color of law;
 - (4) **(U)** Specifically intended to inflict severe physical or mental pain and suffering (other than pain or suffering incidental to lawful sanction);
 - (5) **(U)** Upon another person within his [or her] custody or physical control. See 18 U.S.C. 2340(1).
- c. **(U) Acts by Private Individuals:** Actions by private individuals not acting under color of law do not constitute torture for purposes of this ground of inadmissibility. "Color of law" is defined below.
- d. **(U) Definition of "Severe Mental Pain or Suffering":** "The prolonged mental harm caused by or resulting from:
 - (1) **(U)** The intentional infliction or threatened infliction of severe physical pain or suffering;
 - (2) **(U)** The administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
 - (3) **(U)** The threat of imminent death; or
 - (4) **(U)** The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality." See 18 U.S.C. 2340(2).

9 FAM 302.7-6(B)(3) (U) Color of Law

(CT:VISA-127; 05-10-2016)

(U) For INA 212(a)(3)(E)(iii) purposes, "color of law" applies when an official person acts, purports, or pretends to act in the performance of official duties. Also consider the following when evaluating color of law:

- (1) **(U)** Off-duty conduct may be covered under the color of law standard if the

perpetrator asserts his or her official status in some manner.

- (2) **(U)** Public officials who are not law enforcement officers, such as judges and prosecutors, or even nongovernmental employees also may assert authority under color of law.

9 FAM 302.7-6(B)(4) (U) Command Responsibility

(CT:VISA-127; 05-10-2016)

- a. **(U) In General:** The INA language "committed, ordered, incited, assisted, or otherwise participate in" is intended to reach behavior of persons directly or personally associated with the covered acts, including those with command or superior responsibility. An applicant may be found inadmissible not only for the commission of an act of torture, but also for planning, ordering, authorizing, encouraging, or permitting subordinates to commit torture, or exercising command responsibility over, conspiring with, aiding and abetting such forces in their commission of, such abuses.
- b. **(U) Application of Command Responsibility:** For the purposes of applying this ground of inadmissibility, command responsibility can refer to the responsibility of a military commander, a person effectively acting as a military commander or other superior, including non-military contexts, for unlawful acts when:
 - (1) **(U)** The forces who committed the abuses or unlawful acts were subordinates of the commander or superior (i.e., they were under the superior or commander's control either as a matter of law or as a matter of fact);
 - (2) **(U)** The superior or commander knew or, in light of the circumstances at the time, should have known, that the subordinates had committed, were committing, or were about to commit unlawful acts; and
 - (3) **(U)** The superior or commander failed to prove that he had taken the necessary and reasonable measures to (a) prevent or stop the subordinates from committing such acts or (b) investigate the acts committed by subordinates in a genuine effort to punish the perpetrators.

9 FAM 302.7-6(B)(5) (U) "Otherwise Participated In" Encompasses "Attempts" and "Conspiracies"

(CT:VISA-127; 05-10-2016)

- a. **(U) In General:** Attempts and conspiracies to commit torture under this ground are encompassed in the "otherwise participated in" language in the law.
- b. **(U) Defining Attempt:** It will be considered an attempt if the individual:
 - (1) **(U)** Intends to commit, order, incite, assist, or otherwise participate in acts of torture as defined above; and
 - (2) **(U)** Performs any overt act constituting a substantial step towards committing, ordering, inciting, assisting or otherwise participating in torture. The overt act itself need not be a crime.

- c. **(U) Defining Conspiracy:** It will be considered a conspiracy if the individual:
- (1) **(U)** Knowingly agrees with at least one other individual to commit, order, incite, assist, or otherwise participate in torture; and
 - (2) **(U)** Any one of the conspirators commits an overt act in furtherance of the agreement. The overt act itself need not be a crime.

9 FAM 302.7-6(B)(6) (U) Incitement

(CT:VISA-127; 05-10-2016)

- a. **(U) In General:** Incitement is speech that intends to induce and specifically calls on another person to imminently participate in acts of torture.
- b. **(U) There Must Be a Clear Link between Speech and Torture:** Normally speech will not rise to the level of "inciting" unless there is a clear link between the speech and an actual effort to participate in torture, including proximity in time. It connotes speech that is not merely an expression of views but that directs or induces action, typically in a volatile situation. Normally, "incitement" will not include an individual exercising free speech.
- c. **(U) Incitement without Torture:** The applicant may have incited participation in torture even if such acts do not actually occur (e.g., because an attempt to commit such activity was thwarted).

9 FAM 302.7-6(B)(7) (U) A, G, and NATO Applicants

(CT:VISA-377; 06-08-2017)

(U) Under 22 CFR 41.21(d), this ground of inadmissibility does not apply to applicants for A-1, A-2, C-2, C-3, G-1 through G-4, and NATO-1 through NATO-6 visas. However, if it appears such a visa applicant has engaged in conduct covered by this section and is not coming to the United States for UN-business, please see [9 FAM 302.14](#) and the implementation procedures for Presidential Proclamation 8697 (Serious Human Rights and Humanitarian Law Violations and Other Abuses). Please also see the notes regarding the need to enter lookouts for such individuals in order to address potential inadmissibility grounds should they apply for another visa classification.

9 FAM 302.7-6(B)(8) Unavailable

(CT:VISA-127; 05-10-2016)

Unavailable

9 FAM 302.7-6(C) Unavailable

9 FAM 302.7-6(C)(1) Unavailable

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-6(C)(2) Unavailable

(CT:VISA-127; 05-10-2016)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 302.7-6(C)(3) Unavailable

(CT:VISA-127; 05-10-2016)

Unavailable

9 FAM 302.7-6(C)(4) Unavailable

(CT:VISA-127; 05-10-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 302.7-6(D) (U) Waiver**9 FAM 302.7-6(D)(1) (U) Waivers for Immigrants**

(CT:VISA-1; 11-18-2015)

(U) There is no waiver available for immigrant visa applicants found inadmissible under INA 212(a)(3)(E)(iii) based on the commission of acts of torture.

9 FAM 302.7-6(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-127; 05-10-2016)

Unavailable

9 FAM 302.7-6(E) Unavailable**9 FAM 302.7-6(E)(1) Unavailable**

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-6(E)(2) Unavailable

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-7 (U) PARTICIPATION IN EXTRAJUDICIAL KILLINGS - INA 212(A)(3)(E)(III)

9 FAM 302.7-7(A) (U) Grounds

(CT:VISA-200; 09-30-2016)

(U) INA 212(a)(3)(E)(iii) makes inadmissible any alien who, outside of the United States, has under color of law committed, ordered, incited, assisted, or otherwise participated in the commission of an extrajudicial killing as defined in section 3(a) of the Torture Victim Protection Act of 1991 ("TVPA"), 28 U.S.C. 1350.

9 FAM 302.7-7(B) (U) Application

9 FAM 302.7-7(B)(1) (U) In General

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-7(B)(2) (U) Defining Extrajudicial Killing

(CT:VISA-127; 05-10-2016)

- a. **(U) In General:** As mandated by the INA, the definition of extrajudicial killing to be used in the application of this ground of inadmissibility is that found in section 3(a) of the Torture Victims Protection Act of 1991 (28 U.S.C. 1350 note).
- b. **(U) Elements of Extrajudicial Killing:** According to 28 U.S.C. 1350 note extrajudicial killing is:
 - (1) **(U)** A deliberated killing;
 - (2) **(U)** Not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation. TVPA Section 3(a), 28 U.S.C. 1350 note.
- c. **(U) Acts by Private Individuals:** Actions by private individuals not acting under color of law do not constitute extrajudicial killing for purposes of this ground of inadmissibility.

9 FAM 302.7-7(B)(3) (U) Color of Law

(CT:VISA-127; 05-10-2016)

(U) For INA 212(a)(3)(E)(iii) purposes, "color of law" applies when an official person acts, purports or pretends to act in the performance of official duties. Also consider the following when evaluating color of law:

- (1) **(U)** Off-duty conduct may be covered under the color of law standard if the perpetrator asserts his or her official status in some manner.
- (2) **(U)** Public officials who are not law enforcement officers, such as judges and prosecutors, or even nongovernmental employees also may assert authority under color of law.

9 FAM 302.7-7(B)(4) (U) Command Responsibility

(CT:VISA-127; 05-10-2016)

- a. **(U) In General:** The INA language "committed, ordered, incited, assisted, or otherwise participate in" is intended to reach behavior of persons directly or personally associated with the covered acts, including those with command or superior responsibility. See S.REP 108-209 at 10. An applicant may be found inadmissible not only for the commission of an act of extrajudicial killing, but also for planning, ordering, authorizing, encouraging, or permitting subordinates to commit extrajudicial killing, or exercising command responsibility over, conspiring with, aiding and abetting such forces in their commission of, such abuses.
- b. **(U) Application of Command Responsibility:** For the purposes of applying this ground of inadmissibility, command responsibility can refer to the responsibility of a military commander, a person effectively acting as a military commander or other superior, including non-military contexts, for unlawful acts when:
 - (1) **(U)** The forces who committed the abuses or unlawful acts were subordinates of the commander or superior (i.e., they were under the superior or commander's control either as a matter of law or as a matter of fact);
 - (2) **(U)** The superior or commander knew or, in light of the circumstances at the time, should have known, that the subordinates had committed, were committing, or were about to commit unlawful acts; and
 - (3) **(U)** The superior or commander failed to prove that he had taken the necessary and reasonable measures to (a) prevent or stop the subordinates from committing such acts or (b) investigate the acts committed by subordinates in a genuine effort to punish the perpetrators.

9 FAM 302.7-7(B)(5) (U) "Participated in" includes "Attempts" and "Conspiracies"

(CT:VISA-127; 05-10-2016)

- a. **(U) In General:** Attempts and conspiracies to commit extrajudicial killing under this ground are encompassed in the "otherwise participated" language.
- b. **(U) Defining Attempt:** It will be considered an attempt if the individual:
 - (1) **(U)** Intends to commit, order, incite, assist, or otherwise participate in acts of extrajudicial killing as defined above; and
 - (2) **(U)** Performs any overt act constituting a substantial step towards committing, ordering, inciting, assisting or otherwise participating in extrajudicial killing.

The overt act itself need not be a crime.

- c. **(U) Defining Conspiracy:** It will be considered a conspiracy if the individual:
- (1) **(U)** Knowingly agrees with at least one other individual to commit, order, incite, assist, or otherwise participate in extrajudicial killing; and
 - (2) **(U)** Any one of the conspirators commits an overt act in furtherance of the agreement. The overt act itself need not be a crime.

9 FAM 302.7-7(B)(6) (U) Incitement

(CT:VISA-127; 05-10-2016)

- a. **(U) In General:** Incitement is speech that intends to induce and specifically calls on another person to imminently participate in acts of extrajudicial killing.
- b. **(U) Clear Link between Speech and Torture:** Normally speech will not rise to the level of "inciting" unless there is a clear link between the speech and an actual effort to participate in extrajudicial killing, including proximity in time. It connotes speech that is not merely an expression of views but that directs or induces action, typically in a volatile situation. Normally, "incitement" will not include an individual exercising free speech.
- c. **(U) Incitement without Killing:** The applicant may have incited participation in extrajudicial killing even if such acts do not actually occur (e.g., because an attempt to commit such activity was thwarted).

9 FAM 302.7-7(B)(7) (U) A, G, and NATO Applicants

(CT:VISA-377; 06-08-2017)

(U) Under 22 CFR 41.21(d), this ground of inadmissibility does not apply to applicants for A-1, A-2, C-2, C-3, G-1 through G-4, and NATO-1 through NATO-6 visas. However, if it appears such a visa applicant has engaged in conduct covered by this section and is not coming to the United States for UN-business, please see [9 FAM 302.14](#) and the implementation procedures for Presidential Proclamation 8697 (Serious Human Rights and Humanitarian Law Violations and Other Abuses). Please also see the notes regarding the need to enter a lookout for such individuals in order to address potential inadmissibility grounds should they apply for another visa classification.

9 FAM 302.7-7(B)(8) Unavailable

(CT:VISA-127; 05-10-2016)

Unavailable

9 FAM 302.7-7(C) Unavailable

9 FAM 302.7-7(C)(1) Unavailable

(CT:VISA-377; 06-08-2017)

Unavailable**9 FAM 302.7-7(C)(2) Unavailable**

(CT:VISA-200; 09-30-2016)

a.

b. **Unavailable**

9 FAM 302.7-7(C)(3) Unavailable

(CT:VISA-127; 05-10-2016)

Unavailable**9 FAM 302.7-7(C)(4) Unavailable**

(CT:VISA-127; 05-10-2016)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

9 FAM 302.7-7(D) (U) Waiver**9 FAM 302.7-7(D)(1) (U) Waivers for Immigrants**

(CT:VISA-1; 11-18-2015)

(U) There is no waiver available for immigrant visa applicants found inadmissible under INA 212(a)(3)(E)(iii) based on the commission of an act of extrajudicial killing.

9 FAM 302.7-7(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-127; 05-10-2016)

Unavailable**9 FAM 302.7-7(E) Unavailable****9 FAM 302.7-7(E)(1) Unavailable**

(CT:VISA-200; 09-30-2016)

Unavailable**9 FAM 302.7-7(E)(2) Unavailable**

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-8 (U) PARTICIPATION IN THE USE OR RECRUITMENT OF CHILD SOLDIERS - INA 212(A)(3)(G)

9 FAM 302.7-8(A) (U) Grounds

(CT:VISA-200; 09-30-2016)

(U) INA 212(a)(3)(G) makes inadmissible any alien who has engaged in the recruitment or use of child soldiers (persons under the age of 15) in violation of 18 U.S.C. 2442.

9 FAM 302.7-8(B) (U) Application

9 FAM 302.7-8(B)(1) (U) In General

(CT:VISA-200; 09-30-2016)

- a. **(U)** Under 18 U.S.C. 2442, it is a criminal offense for anyone to:
 - (1) **(U)** Have knowingly recruited, enlisted, or conscripted a person to serve while such person is under 15 years of age in an armed force or group, knowing that the person is under 15 years of age; or
 - (2) **(U)** Have knowingly used a person under 15 years of age to participate actively in hostilities, knowing that the person is under 15 years of age; or
 - (3) **(U)** Have attempted or conspired to violate paragraphs (1) or (2).
- b. **(U)** Applicants who have engaged in the activities described in subsection (a) above are inadmissible under INA 212(a)(3)(G). A conviction or indictment under 18 U.S.C. 2442, or under any other domestic or foreign statute, by a U.S. or foreign court, is not required.
- c. **(U)** The ground of inadmissibility is retroactive, so actions taken at any time can make an applicant inadmissible.
- d. **(U)** An applicant may have engaged in the recruitment or use of child soldiers in violation of 18 U.S.C. 2442 but may not have been physically proximate to the location of the violation. Therefore, the physical proximity of the applicant to the violation is not necessarily determinative of whether this provision applies.

9 FAM 302.7-8(B)(2) (U) Definitions

(CT:VISA-127; 05-10-2016)

(U) For purposes of INA 212(a)(3)(G), or other purposes as specifically indicated below:

- (1) **(U)** "Child" in this context refers to a person under 15 years of age;
- (2) **(U)** "Recruitment," or variations thereof, refers to any act of recruitment, enlistment, or conscription into an armed group or armed force or any attempt or conspiracy to recruit, enlist, or conscript into an armed group or armed force, even if the relevant action occurred during peace time and the child was never involved in combat or other military activities related to combat;
- (3) **(U)** "Use" refers to any use of child soldiers for active participation in hostilities;
- (4) **(U)** "Armed force or group" refers to any army, militia, or other military organization, whether or not it is state-sponsored, excluding any group assembled solely for nonviolent political association, consistent with the definition in 18 U.S.C. 2442(d)(2);
- (5) **(U)** "Active participation in hostilities," means:
 - (a) **(U)** Taking part in combat or military activities related to combat, including sabotage and serving as a decoy, a courier, or at a military checkpoint; or
 - (b) **(U)** Taking part in direct support functions related to combat, including transporting supplies or providing other services

Note: This definition is consistent with 18 U.S.C. 2442(d)(1).

 - (c) **(U)** Active participants in hostilities may include (nonexhaustive):
 - (i) **(U)** Combatants;
 - (ii) **(U)** Porters;
 - (iii) **(U)** Spies or informants;
 - (iv) **(U)** Couriers;
 - (v) **(U)** Human mine detectors; or
 - (vi) **(U)** Executioners.

9 FAM 302.7-8(B)(3) (U) Attempt or Conspiracy to Recruit or Use Child Soldiers

(CT:VISA-1; 11-18-2015)

- a. **(U) "Attempt":** An applicant may be ineligible for a visa based on attempts to recruit, enlist, or conscript a child into an armed force or group, or any attempt to use a child as an active participant in hostilities. It will be considered an attempt if the individual:
 - (1) **(U)** Intends to recruit or use child soldiers as defined in this Act; and
 - (2) **(U)** Performs any overt act constituting a substantial step towards recruiting or using child soldiers. The overt act itself does not need to be a crime.
- b. **(U) "Conspiracy":** An applicant may be ineligible based on involvement in a conspiracy to recruit, enlist, or conscript a child into an armed force or group, or a

conspiracy to use a child as an active participant in hostilities. It will be considered conspiracy if the individual:

- (1) **(U)** Knowingly agrees with at least one other individual to recruit or use child soldiers; and
- (2) **(U)** Any one of the conspirators commits an overt act in furtherance of the agreement. The overt act itself does not need to be a crime.

9 FAM 302.7-8(B)(4) (U) Gathering Information

(CT:VISA-200; 09-30-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

- d. **Unavailable**

9 FAM 302.7-8(B)(5) Unavailable

(CT:VISA-377; 06-08-2017)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 302.7-8(C) Unavailable

9 FAM 302.7-8(C)(1) Unavailable

(CT:VISA-7; 11-24-2015)

Unavailable

9 FAM 302.7-8(C)(2) Unavailable

(CT:VISA-1; 11-18-2015)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 302.7-8(C)(3) Unavailable

(CT:VISA-1; 11-18-2015)

- a. **Unavailable**

b. **Unavailable**

c. **(U)** Include all available information on the following:

9 FAM 302.7-8(D) (U) Waiver

9 FAM 302.7-8(D)(1) (U) Waivers for Immigrants

(CT:VISA-1; 11-18-2015)

(U) There is no waiver available for immigrants found inadmissible under INA 212(a)(3)(G).

9 FAM 302.7-8(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-8(E) Unavailable

9 FAM 302.7-8(E)(1) Unavailable

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-8(E)(2) Unavailable

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-9 (U) PARTICIPATION IN FORCED OR COERCIVE ABORTION OR STERILIZATION - 8 U.S.C. 1182E

9 FAM 302.7-9(A) (U) Grounds

(CT:VISA-1; 11-18-2015)

(U) 8 U.S.C. 1182e prohibits the issuance of a visa to any individual whom the Secretary of State finds, based on credible and specific information, to have been directly involved in the establishment or enforcement of population control by forced abortion or sterilization unless the Secretary has substantial grounds for believing that the individual has discontinued his or her involvement with, and support, for such policies.

9 FAM 302.7-9(B) (U) Application

(CT:VISA-1; 11-18-2015)

(U) 8 U.S.C. 1182e does not apply to an applicant who is a head of state, head of government, or cabinet level minister.

9 FAM 302.7-9(C) (U) Advisory Opinions

(CT:VISA-1; 11-18-2015)

(U) If you believe an applicant is covered by 8 U.S.C. 1182e please submit an advisory opinion to CA/VO/L/A.

9 FAM 302.7-9(D) (U) Waiver

9 FAM 302.7-9(D)(1) (U) Waivers for Immigrants

(CT:VISA-200; 09-30-2016)

(U) A waiver of 8 U.S.C. 1182e is available if the Secretary of State determines that it is important to the national interest of the United States to do so and provides written notification to the appropriate congressional committees containing a justification for the waiver.

9 FAM 302.7-9(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-200; 09-30-2016)

(U) A waiver of 8 U.S.C. 1182e is available if the Secretary of State determines that it is important to the national interest of the United States to do so and provides written notification to the appropriate congressional committees containing a justification for the waiver.

9 FAM 302.7-9(E) Unavailable

9 FAM 302.7-9(E)(1) Unavailable

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-9(E)(2) Unavailable

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-10 (U) PARTICIPATION IN COERCIVE

ORGAN OR TISSUE TRANSPLANTATION - 8 U.S.C. 1182F

9 FAM 302.7-10(A) (U) Grounds

(CT:VISA-1; 11-18-2015)

(U) 8 U.S.C. 1182f prohibits the issuance of a visa to any individual whom the Secretary of State finds, based on credible and specific information, to have been directly involved in with the coercive transplanted of human organs or bodily tissue, unless there is substantial grounds for believing that the individual has discontinued his or her involvement with, and support for, such practices.

9 FAM 302.7-10(B) (U) Application

(CT:VISA-1; 11-18-2015)

(U) 8 U.S.C. 1182f does not apply to an applicant who is a head of state, head of government, or cabinet level minister.

9 FAM 302.7-10(C) (U) Advisory Opinions

(CT:VISA-1; 11-18-2015)

(U) If you believe an applicant is covered by 8 U.S.C. 1182f please submit an advisory opinion to CA/VO/L/A.

9 FAM 302.7-10(D) (U) Waiver

9 FAM 302.7-10(D)(1) (U) Waivers for Immigrants

(CT:VISA-200; 09-30-2016)

(U) A waiver of 8 U.S.C. 1182f is available if the Secretary of State determines that it is important to the national interest of the United States to do so and not later than 30 days after the issuance of a visa, provides written notification to the appropriate congressional committees containing a justification for the waiver.

9 FAM 302.7-10(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-200; 09-30-2016)

(U) A waiver of 8 U.S.C. 1182f is available if the Secretary of State determines that it is important to the national interest of the United States to do so and not later than 30 days after the issuance of a visa, provides written notification to the appropriate congressional committees containing a justification for the waiver.

9 FAM 302.7-10(E) Unavailable

9 FAM 302.7-10(E)(1) Unavailable

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.7-10(E)(2) Unavailable

(CT:VISA-200; 09-30-2016)

Unavailable

9 FAM 302.8

(U) PUBLIC CHARGE - INA 212(A)(4)

(CT:VISA-293; 03-06-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 302.8-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 302.8-1(A) (U) Immigration and Nationality Act

(CT:VISA-198; 09-30-2016)

(U) INA 101(a)(15) (8 U.S.C. 1101(a)(15)); INA 101(b)(1)(E) (8 U.S.C. 1101(b)(1)(E)); INA 102 (8 U.S.C. 1102); INA 203(g) (8 U.S.C. 1153(g)); INA 212(a)(4) (8 U.S.C. 1182(a)(4)); INA 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)); INA 213 (8 U.S.C. 1183); INA 213A (8 U.S.C. 1183a); INA 221(g) (8 U.S.C. 1201(g)); INA 245 (8 U.S.C. 1255); INA 248 (8 U.S.C. 1258); INA 316 (8 U.S.C. 1427); INA 317 (8 U.S.C. 1428); INA 319(b)(1) (8 U.S.C. 1430(b)(1)); INA 320 (8 U.S.C. 1431).

9 FAM 302.8-1(B) (U) Code of Federal Regulations

(CT:VISA-198; 09-30-2016)

(U) 8 CFR 205.1(a)(3)(i)(C); 8 CFR 316.20; 8 CFR 213a; 22 CFR 40.41.

9 FAM 302.8-1(C) (U) United States Code

(CT:VISA-198; 09-30-2016)

(U) 8 U.S.C. 1641(c); 28 U.S.C. 1746; 42 U.S.C. 9902(2).

9 FAM 302.8-1(D) (U) Public Laws

(CT:VISA-198; 09-30-2016)

(U) Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193.

9 FAM 302.8-2 (U) PUBLIC CHARGE

9 FAM 302.8-2(A) (U) Grounds

(CT:VISA-254; 11-29-2016)

(U) Under INA 212(a)(4), any alien is inadmissible who, in the opinion of the consular officer at the time of application for a visa, for admission, or adjustment of status, is likely at any time to become a public charge.

9 FAM 302.8-2(B) (U) Application

9 FAM 302.8-2(B)(1) (U) Definition of Public Charge

(CT:VISA-293; 03-06-2017)

a. (U) In General:

- (1) **(U)** For the purpose of determining inadmissibility under INA 212(a)(4), the term "public charge" means that an alien, after admission into the United States, is likely to become primarily dependent on the U.S. Government for subsistence. This means either:
 - (a) **(U)** Receipt of public cash assistance for income maintenance (see paragraph b below); or
 - (b) **(U)** Institutionalization for long-term care at U.S. Government expense (see paragraph d below). Short-term confinement in a medical institution for rehabilitation does not constitute primary dependence on the U.S. Government for subsistence.
- (2) **(U)** When considering the likelihood of an applicant becoming such a "public charge," you must take into account, the totality of the alien's circumstances at the time of visa application. *(See [9 FAM 302.8-2\(B\)\(3\) below.](#))*
- (3) **(U)** USCIS states that, in determining inadmissibility *under INA 212(a)(4)* a number of factors are considered, including age, health, family status, assets, resources, financial status, education, and skills. No single factor, other than the lack of an affidavit of support, if required, will determine whether an individual is a public charge." (USCIS, Public Charge Fact Sheet, April 29, 2011.)

b. (U) Defining Public Cash Assistance: In the "public charge" context, "public cash assistance" for income maintenance includes:

- (1) **(U)** Supplemental security income (SSI);
- (2) **(U)** Cash temporary assistance for needy families (TANF), but not including supplemental cash benefits or any non-cash benefits provided under TANF; and
- (3) **(U)** State and local cash assistance programs that provide for income maintenance (often called state general assistance).
- (4) **(U)** These types of assistance are sometimes also referred to as "means tested benefits."

c. (U) Benefits Not Considered Public Cash Assistance For Income Maintenance:

- (1) **(U)** There are many forms of U.S. Government assistance that an alien may

have accepted in the past, or that you may reasonably believe an alien might receive after admission to the United States, that are of a non-cash and/or supplemental nature and would not create an inadmissibility under INA 212(a)(4). Certain programs are funded with public funds for the general good, such as public education and child vaccination programs, etc., and are not considered to be benefits for the purposes of INA 212(a)(4). Although the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 prohibit aliens from receiving many kinds of public benefits, it specifically exempts from this prohibition several of the public benefits indicated below. Neither the past nor possible future receipt of such non-cash or supplemental assistance may be considered in determining whether an alien is likely to become a public charge. The benefits that are not to be considered as public cash assistance or income include, but are not limited to:

- (a) **(U)** The Food Stamp Program;
 - (b) **(U)** The Medicaid Program (other than payments under Medicaid for long-term institutional care);
 - (c) **(U)** The Child Health Insurance Program (CHIP);
 - (d) **(U)** Emergency medical services;
 - (e) **(U)** The Women, Infants and Children (WIC) Program;
 - (f) **(U)** Other nutrition and food assistance programs;
 - (g) **(U)** Other health and medical benefits;
 - (h) **(U)** Child-care benefits;
 - (i) **(U)** Foster care;
 - (j) **(U)** Transportation vouchers;
 - (k) **(U)** Job training programs;
 - (l) **(U)** Energy assistance, such as the low-income home energy assistance program (LIHEAP);
 - (m) **(U)** Educational assistance, such as Head Start or aid for elementary, secondary, or higher education;
 - (n) **(U)** Job training;
 - (p) **(U)** In-kind emergency community services, such as soup kitchens and crisis counseling;
 - (q) **(U)** State and local programs that serve the same purposes as the Federal in-kind programs listed above; and
 - (r) **(U)** Any other Federal, State, or local program in which benefits are paid in-kind, by voucher or by any means other than payment of cash benefits to the eligible person for income maintenance.
- (2) **(U)** In all cases, the underlying nature of the program reveals whether it is considered a "public charge" (i.e., is the program intended to be a primary

source of cash for income maintenance?). Some programs which provide cash benefits for special purposes are supplemental and not for income maintenance. *The programs may* include such help as transportation or child care benefits paid in cash, or one-time emergency payments made under TANF to avoid the need for on-going cash assistance. *None of these forms of assistance would create an inadmissibility under INA 212(a)(4).*

- (3) **(U)** Cash benefits that have been earned (e.g., social security payments, old age survivors disability insurance (OASDI), U.S. Government pension benefits, and veterans benefits) are not considered public cash assistance for the purposes of a public charge determination under INA 212(a)(4).

d. (U) Institutionalization for Long Term Care:

- (1) **(U)** For INA 212(a)(4) purposes, "institutionalization for long-term care" refers to care for an indefinite period of time for mental or other health reasons, rather than temporary rehabilitative or recuperative care even if such rehabilitation or recuperation may last weeks or months.
- (2) **(U)** In addition, USCIS notes that "public assistance, including Medicaid, that is used to support aliens who reside in an institution for long-term care – such as a nursing home or mental health institution – may be considered as an adverse factor in the totality of the circumstances for purposes of public charge determinations. Short-term institutionalization for rehabilitation is not subject to public charge consideration." See USCIS, Public Charge Fact Sheet, April 29, 2011.

9 FAM 302.8-2(B)(2) (U) Applying INA 212(a)(4) to Immigrants

(CT:VISA-293; 03-06-2017)

- a. **(U) Determining Likelihood of Inadmissibility:** INA 212(a)(4) applies to all aliens seeking entry into the United States, with a few exceptions (see [9 FAM 302.8-2\(B\)\(18\)](#) below). With respect to immigrant visa applicants, the amount and type of evidence generally required is much greater than that required in a nonimmigrant case. In all cases, however, you must base the determination of the likelihood that the applicant will become a public charge *based on an assessment* of the alien's present circumstances. You may not refuse a visa on the basis of "what if" type considerations (e.g., "what if the applicant loses the job before reaching the intended destination," or "what if the applicant is faced with a medical emergency."). Instead, you must assess only the "totality of the circumstances" existing at the time of visa application. (See [9 FAM 302.8-2\(B\)\(3\)](#) below.) In short, you must be able to point to circumstances which make it not merely possible, but likely, that the applicant will become a public charge, as defined in [9 FAM 302.8-2\(B\)\(1\)](#), above. *"Any applicant determined to be ineligible pursuant to INA 212(a)(4) in light of the totality of their circumstances, whether or not he or she is required to submit an I-864, should be refused using the refusal code "4". For more information on entering refusals see [9 FAM 303.3-4\(A\)](#).*

Note: *"Totality of circumstances" cannot serve as the basis for overcoming Section*

212(a)(4) if the poverty guidelines are not met.

- b. **(U) Applicants Required to Submit Form I-864:** Applicants in any of the following immigrant categories must present Form I-864, properly executed in compliance with INA 213A, in order to establish their eligibility under INA 212(a)(4)(C). The term "relative" has been defined by 8 CFR 213a.1 to mean a husband, wife, father, mother, child, adult son or daughter, or brother or sister.
- (1) **(U) Immediate relatives, including:**
 - (a) **(U) Spouse of a U.S. citizen;**
 - (b) **(U) Parent of a U.S. citizen;**
 - (c) **(U) Child of a U.S. citizen (including adopted orphans unless the orphan would become a citizen upon lawful admission as an immigrant pursuant to section 320 of the Act); (See paragraph d(1) below); and**
 - (d) **(U) K nonimmigrants adjusting to lawful permanent resident (LPR) status (See paragraph d(3)(e) below).**

(U) NOTE: Certain children classified Immediate Relative (IR-2 or IR-3) do not need Form I-864 (see paragraph d(1) below).
 - (2) **(U) Family-based preference applicants, including:**
 - (a) **(U) Unmarried sons and daughters of U.S. citizens (F1);**
 - (b) **(U) Spouses, children, and unmarried sons and daughters of permanent resident aliens (F2A/F2B);**
 - (c) **(U) Married sons and daughters of U.S. citizens (F3); and**
 - (d) **(U) Brothers and sisters of U.S. citizens (F4).**
 - (3) **(U) Certain employment-based preference applicants including:**
 - (a) **(U) Beneficiary of a petition filed by a U.S. citizen or LPR alien relative who is the sole proprietor of the business filing the petition;**
 - (b) **(U) Beneficiary of a petition filed by an entity in which a U.S. citizen or LPR relative of the alien has a 5 percent or greater ownership interest. (Note that in such cases, the petitioning entity cannot file Form I-134, but must show intent to honor the employment offer.) The citizen or LPR relative of the applicant to be employed by the petitioning entity must file Form I-864 on behalf of the applicant;**
 - (c) **(U) An accompanying or following-to-join family member of such immigrants, but only if the principal applicant, at the time of his or her entry, was required to submit Form I-864.**
- c. **(U) Effect of Form I-864 on Public Charge Determinations:** A properly filed, non-fraudulent Form I-864, should normally be considered sufficient to overcome the INA 212(a)(4) requirements. In determining whether the INA 213A requirements creating a legally binding affidavit have been met, the credibility of an offer of support from a person who meets the definition of a sponsor and who has

verifiable resources is not a factor - the affidavit is enforceable regardless of the sponsor's actual intent and should not be considered by you, unless there are significant public charge concerns relating to the specific case, such as if the applicant is of advanced age or has a serious medical condition. If you have concerns about whether a particular Form I-864 may be "fraudulent", you should contact CA/FPP for guidance.

d. **(U) Applicant Who Are Not Required To Submit Form I-864:**

(1) **(U) Certain IR-2 and IR-3 Applicants who benefit from the Child Citizenship Act:**

- (a) **(U)** Public Law 106-395 (the Child Citizenship Act of 2000) went into effect on February 27, 2001. The Act amended INA 320 to confer automatic citizenship upon certain categories of children born abroad upon their admission to the United States as lawful permanent residents (LPRs). Because the obligations that INA 213A imposes on a sponsor who executes a Form I-864 terminate when the sponsored alien acquires citizenship, Form I-864 should not be required for those categories of immigrants who will acquire citizenship upon admission to the United States.
- (b) **(U)** Instead, the intending immigrant (or U.S. citizen parent if the immigrant is under 14 years of age) must file Form I-864-W, Intending Immigrant's Affidavit of Support Exemption. Although such a visa applicant is still subject to the public charge provisions of INA 212(a)(4) even without an affidavit of support requirement, the public charge concern will no longer apply to the applicant once the immigrant acquires citizenship. You should consider the applicant's acquisition of citizenship immediately upon admission when you determine whether the applicant is likely to become a public charge at any time while in the United States as an alien.
- (c) **(U)** Form I-864 is, therefore, not required in any case in which the visa applicant qualifies for automatic citizenship *upon admission* under Section 320 of the Act. That would include the following categories of immigrants:
 - (i) **(U)** Orphan classified IR-3, provided the child will be admitted to the United States while still under age 18 and will be residing permanently in the United States in the legal and physical custody of the adoptive U.S. citizen parent as of the time of admission;
 - (ii) **(U)** Adopted child classified IR-2 who meets the requirements of INA 101(b)(1)(E), provided the child will be admitted to the United States while under age 18 and will be residing permanently in the United States in the legal and physical custody of the adoptive U.S. citizen parent as of the time of admission; and
 - (iii) **(U)** Child classified IR-2 (born in or out of wedlock) to a parent who is now a U.S. citizen, provided the child will be admitted to the United States while still under age 18 and will be residing permanently in the United States in the legal and physical custody of

the U.S. citizen parent as of the time of admission.

- (d) **(U)** Except as explained in the notes in this section, the Form I-864 is required for all other family-based immigrants, including biological and adopted children of U.S. citizens who are not eligible for automatic naturalization upon admission as a legal permanent resident (LPR). Form I-864 is therefore required for:
- (i) **(U)** An alien classified IR-2 based on a stepparent and/or stepchild relationship with a U.S. citizen;
 - (ii) **(U)** An alien classified IR-2 or IR-3 who will be age 18 or over upon admission to the United States as an LPR;
 - (iii) **(U)** An alien classified IR-2 or IR-3 who will not be residing in the United States in the legal and physical custody of the U.S. citizen parent at the time of lawful admission; or
 - (iv) **(U)** An alien classified IR-4 orphan to be adopted in United States by a U.S. citizen.
- (e) **(U)** In any case in which *post questions* whether *or not* the visa applicant will immediately qualify for U.S. citizenship upon admission to the United States as an LPR, posts should Consult Consular Affairs/Overseas Citizens Services (CA/OCS) on the citizenship issue. If CA/OCS advises that the applicant will acquire U.S. citizenship at the moment of admission at the port of entry (POE), and not at any later point; then the applicant is exempt from the Form I-864 requirement, but the applicant instead should file the Form I-864-W.
- (f) **(U)** In cases involving immigrant visa applicants who will be acquiring citizenship upon admission, pursuant to INA 320 it is unlikely in the absence of unusual circumstances that the individual will become a public charge while still an alien prior to naturalization. For adoption cases, you should also keep in mind that the Department of Homeland Security (DHS) does not approve Form I-600, Petition to Classify Orphan as an Immediate Relative, or Form I-600-A, Application for Advance Processing of Orphan Petition, unless satisfied that the petitioners are capable of supporting the child.
- (2) **(U) Aliens with 40 Quarters of Work under the Social Security Act (SSA):**
- (a) **(U) The requirement for visa petitioners to submit Form I-864:**
 - (i) **(U)** Terminates once the sponsored alien has worked in the U.S. in a job covered under Title II of the Social Security Act (SSA); and
 - (ii) **(U)** Can be credited with 40 qualifying quarters of coverage under Title II of the SSA.
- (U)** Therefore, you must waive the Form I-864 requirement if the alien can demonstrate 40 quarters of work under the SSA. (See [9 FAM](#)

[302.8-2\(B\)\(14\)](#) for procedures to follow in such cases.) Post should advise immigrant visa (IV) beneficiaries seeking to demonstrate 40 quarters of the SSA coverage to submit Form I-864-W and to attach an earnings and benefits statement from the SSA. To obtain an earnings and benefits statement from SSA, immigrant visa (IV) applicants should complete Form SSA-7004-SM, Request for Social Security Statement. *If you have questions about Social Security please call, 1-800-772-1213 (toll free). For General Information TDD/TTY, call 1 (800) 325-0778 (toll free).*

(b) **(U) The term "quarter" means:**

- (i) **(U)** The three-calendar-month period ending on March 31, June 30, September 30, or December 31 of any year;
- (ii) **(U)** Quarters of coverage are obtained by working at a job or as a self-employed individual, earning a specified minimum income, and making Social Security payments on the earnings; and
- (iii) **(U)** Quarters are calculated based on the amount of income earned during the course of the year, rather than the actual number of days worked within a given quarter.

(c) **(U)** Every year the SSA establishes the requisite per quarter minimum income. Any individual earning three times this established amount during the calendar year, for example, would be credited with three quarters of coverage, even if the individual worked for only one month. The sponsored immigrant is not to be credited with any quarter beginning after December 31, 1996 during which the sponsored immigrant received any Federal means-tested public benefit.

(d) **(U)** INA 213A(a)(3)(B) states that, in determining the number of qualifying quarters of coverage under title II of the Social Security Act, an alien is to be credited with:

- (i) **(U)** All of the qualifying quarters of coverage as defined under title II of the Social Security Act worked by a parent of such alien while the alien was under age 18; and
- (ii) **(U)** All of the qualifying quarters worked by a spouse of such alien during their marriage and the alien remains married to such spouse or such spouse is deceased.

(e) **(U)** A parent-child relationship need not have existed when the parent worked the 40 quarters. For example, an alien can claim those quarters that the parent worked prior to the alien's birth or adoption.

(f) **(U)** If the intending immigrant has or can be credited with 40 quarters of coverage under the Social Security Act, and thus is not required filing an I-864, the applicant should file the I-864W instead.

(3) **(U) Other Aliens Exempt from the Form I-864 Requirement:**

(a) **(U)** The I-864 requirement does not apply to employment-based visa

cases, including Special Immigrant Visas (SIVs), other than those involving a relative who is a U.S. citizen or Legal Permanent Resident. Thus, if the I-864 is not required of the principal applicant in these employment-based cases, the accompanying or follow to join aliens are similarly not required to file the I-864.

- (b) **(U)** The I-864 is not required for Diversity Immigrants (DV applicants) or returning resident (SB) applicants.
- (c) **(U)** The I-864 is not required for self-petitioning widows or widowers; or the battered spouse or child of a U.S. citizen who have an approved I-360, *Petition for Amerasian, Widow(er), or Special Immigrant*. However, these applicants must file the I-864W, Intending Immigrant's Affidavit of Support Exemption.
- (d) **(U)** The I-864 is not required for K visa applicants. However, such applicants will have to submit Form I-864 to DHS/USCIS at the time of adjustment of status to that of a lawful permanent resident (LPR).

9 FAM 302.8-2(B)(3) (U) Determining "Totality of Circumstances"

(CT:VISA-293; 03-06-2017)

a. (U) In General:

- (1) **(U)** In making a determination *whether* an *alien is inadmissible* under *INA 212(a)(4)(B)*, you must consider at a minimum the alien's:
 - (a) **(U)** Age;
 - (b) **(U)** Health;
 - (c) **(U)** Family status;
 - (d) **(U)** Assets, resources, *and financial status*; and;
 - (e) **(U)** Education or skills.
- (2) **(U)** These factors, and any other factors thought relevant by an officer in a specific case, will make up the "totality of the circumstances" that you must consider when making a public charge determination. As noted in [9 FAM 302.8-2\(B\)\(2\)](#), a properly filed, non-fraudulent Form I-864 in those cases where it is required, should normally be considered sufficient to meet the INA 212(a)(4) requirements and satisfy the "totality of the circumstances" analysis. Nevertheless, the factors cited above could be given consideration in an unusual case in which a Form I-864 has been submitted and should be considered in cases where *a* Form I-864 is not required.

b. (U) Consideration of Current or Prior Receipt of Public Assistance:

- (1) **(U)** The public charge provisions of INA 212(a)(4) are generally considered to be forward looking. You must, therefore, base *the determination of the likelihood that the applicant will become a public charge based on the assessment of the alien's present circumstances*. *You may not refuse a visa on*

the basis of "what if" type considerations (e.g., "what if the applicant loses the job before reaching the intended destination," or "what if the applicant is faced with a medical emergency."). Instead, you must assess only the "totality of the circumstances" existing at the time of visa application. Past or current receipt of cash benefits for income maintenance by a family member of the visa applicant may be factored into the applicant's case only when such benefits also constitute(d) the primary means of subsistence of the applicant.

- (2) **(U)** Past or current receipt of other types of benefits, such as those listed in [9 FAM 302.8-2\(B\)\(1\)](#) must not be considered. Further, you should not try to find out whether an alien has previously or is currently receiving benefits such as those listed in [9 FAM 302.8-2\(B\)\(1\)](#).
 - (3) **(U)** There is no provision in the law to indicate that the receipt of means-tested benefits by the sponsor would, in itself, result in a finding of inadmissibility for the applicant under INA 212(a)(4). The sponsor's reliance on such benefits, however, would clearly be an important factor in considering whether the applicant might have to become a public charge. If the sponsor or any member of his or her household has received public means-tested benefits within the past three years, you must review fully the sponsor's current ability to provide the requisite level of support, taking into consideration the kind of assistance provided and the dates received. You must review carefully Form I-864 or Form I-134 and all attachments submitted with Form I-134, as well as evidence of the sponsor's current financial circumstances, in such cases.
- c. **(U) Health:** You must take into consideration the panel physician's report regarding the applicant's health, especially if there is a prognosis that might prevent or ultimately hinder the applicant from maintaining employment successfully or indicate the likelihood that the alien will require institutionalization.
 - d. **(U) Family Status:** You should consider the marital status of the applicant and, if married, the number of dependents for whom he or she would have financial responsibility.
 - e. **(U) Applicant's Age:** You should consider the age of the applicant. If the applicant is under the age of 16, he or she will need the support of a sponsor. If the applicant is 16 years of age or older, you should consider what skills the applicant has to make him or her employable in the United States.
 - f. **(U) Education and Work Experience:** You should review the applicant's education and work experience to determine if these are compatible with the duties of the applicant's job offer (if any). You should consider the applicant's skills, length of employment, and frequency of job changes. Even if a job offer is not required, you should assess the likelihood of the alien's ability to become or remain self-sufficient, if necessary, within a reasonable time after entry into the United States. (See paragraph h below.)
 - g. **(U) The Applicant's Financial Resources:**
 - (1) **(U) Aliens Subject to** INA 212(a)(4)(C) **or** INA 212(a)(4)(D): An alien who must have Form I-864, will generally not need to have extensive personal

resources available unless considerations of health, age, skills, etc., suggest that the likelihood of his or her ever becoming self-supporting is marginal at best. In such cases, the degree of support that the affiant will be able and likely to provide becomes more important than in the average case.

(2) **(U) Evidence of Support When Form I-864 Not Required:**

- (a) **(U)** An applicant relying solely on personal financial resources for support for him or herself and family members after admission into the United States should be presumed inadmissible for a visa under INA 212(a)(4) unless his or her income (including any to be derived from prearranged employment) will equal or exceed the poverty guideline level for the applicant and accompanying family members. You should refer to [9 FAM 302.8-2\(B\)\(17\)](#), Poverty Income Guidelines, published by the Department of Health and Human Services (HHS).
- (b) **(U)** Normally, all accompanying dependent family members and other dependent family members already in the United States are considered to be within the family unit for purposes of applying the poverty income guidelines. However, an applicant seeking to join *family members* in the United States, who are *already* receiving public assistance, may *still* be determined to overcome the public charge provision if the applicant's prospective income will exceed on the poverty income guideline table for a single person. In this instance only, it does not matter that the applicant's prospective income will be below that shown in the poverty income guideline table for a family of four. It is quite possible that the admission of the applicant and the applicant's income in the United States may permit the lowering of the public assistance benefits the family members now receive.
- (c) **(U)** You should not rely exclusively on the submission of documents to determine whether an applicant is inadmissible under INA 212(a)(4). Repeated requests for documents in an effort to resolve every small doubt should be avoided. There is a limit to the value of documents in a situation in which the applicant must satisfy the officer of his or her future activities, intentions, and prospects.
- (d) **(U)** You should make every effort to inform applicants in advance of the visa interview of the required support documents. You should be in a position to issue or deny the visa under INA 212(a)(4) at the end of the initial visa interview, assuming that the applicant has made reasonable efforts to submit the evidence originally requested. (For example, in cases where a Form I-864 is required, an application cannot be considered until that document and related information have been executed and considered satisfactory by you.) Applicants who are not likely to overcome the public charge provision even after the presentation of additional evidence should be refused under INA 212(a)(4) instead of INA 221(g). Adequate time and effort spent prior to and during the initial interview can save work for the post and the applicant in this respect.

- (e) **(U)** An applicant may establish the adequacy of financial resources by submitting evidence of bank deposits, ownership of property or real estate, ownership of stocks and bonds, insurance policies, or income from business investments sufficient to provide for his or her needs, as well as those of any dependent family member, until suitable employment is located. (The amount sufficient will depend on the applicant's age, physical condition, and family circumstances and size.)
- (i) **(U)** Bank Deposits—Applicants relying on bank deposits to meet the public charge requirements should present as evidence a letter signed by a senior officer of the bank over the officer's title, showing:
- **(U)** The date the account was opened;
 - **(U)** The number and amount of deposits and withdrawals during the last 12 months;
 - **(U)** The present balance. This information may prevent attempted abuse such as an initial deposit of a substantial sum of money being made within a relatively short time prior to the immigrant visa application; and
 - **(U)** How the money, if in a foreign bank in foreign currency, is to be transferred to the United States.
- (ii) **(U)** Real estate investments—Evidence of property ownership may be in the form of a title deed or equivalent or certified copies. The applicant must satisfy you as to the plans for disposal or rental of such property and the manner in which the income from the property (if abroad) is to be transferred to the United States for the applicant's support.
- (iii) **(U)** Stocks and Bonds—Evidence of income from these sources should indicate present cash value or expected earnings and, if the income is derived from a source outside the United States, a statement as to how the income is to be transferred to the United States.
- (iv) **(U)** Income from business investments; or
- (v) **(U)** Insurance policies.
- (f) **(U)** An applicant may also support a finding that he or she meets the public charge requirements by:
- (i) **(U)** Evidence of employment of a permanent nature in the United States that will provide an adequate income. A certified Labor Department Form ETA-9089, Application for Permanent Employment Certification, or Form ETA-750-Part A & B, Application for Alien Employment Certification, will show this if the applicant is subject to the provisions of INA 212(a)(5)(A). If the labor certification provisions do not apply, the employer may submit a notarized letter

of employment, in duplicate, on letterhead stationery attesting to the offer of prearranged employment; or

- (ii) **(U)** Assurance of support by relatives or friends in the United States.
- (iii) **(U)** Sufficient support from a combination of the above sources.

(3) (U) Use of Form I-134, Affidavit of Support:

- (a) **(U)** Because INA 212(a)(4)(C) and INA 213A require the use of Form I-864 for so many classes of immigrants, the use of Form I-134, has been reduced considerably. Nevertheless, there still are circumstances when Form I-134 will be beneficial. This affidavit, submitted by the applicant at your request, is not legally binding on the sponsor and should not be accorded the same weight as Form I-864. Form I-134 should be given consideration as one form of evidence, however, in conjunction with the other forms of evidence mentioned below.
- (b) **(U)** If any of the following applicants need an Affidavit of Support to meet the public charge requirement, they must use Form I-134, as they are not authorized to use Form I-864:
 - (i) **(U)** Returning resident aliens (SBs);
 - (ii) **(U)** Diversity visa applicants (DVs); and
 - (iii) **(U)** Fiancé(e)s (K-1s or K-3s).
- (c) **(U)** The simple submission of Form I-134, however, is not sufficient to establish that the beneficiary is not likely to become a public charge. Although the income requirements of Form I-864 do not apply in such cases (e.g., the 125 percent minimum income), you must make a thorough evaluation of other factors, such as:
 - (i) **(U)** The sponsor's motives in submitting the affidavit;
 - (ii) **(U)** The sponsor's relationship to the applicant (e.g., relative by blood or marriage, former employer or employee, schoolmates, or business associates);
 - (iii) **(U)** The length of time the sponsor and applicant have known each other;
 - (iv) **(U)** The sponsor's financial resources; and
 - (v) **(U)** Other responsibilities of the sponsor.

(U) NOTE: When there are compelling or forceful ties between the applicant and the sponsor, such as a close family relationship or friendship of long standing, you may favorably consider the affidavit. On the other hand, an affidavit submitted by a casual friend or distant relative who has little or no personal knowledge of the applicant has more limited value. If the sponsor is not a U.S. citizen or lawful permanent resident (LPR), the likelihood of the sponsor's support of an immigrant visa (IV) applicant until the applicant can become self-supporting is a particularly important

consideration.

- (d) **(U)** The degree of corroborative detail necessary to support the affidavit will vary depending upon the circumstances. In immigrant cases, however, the sponsor's statement should include:
 - (i) **(U)** Information regarding income and resources;
 - (ii) **(U)** Financial obligations for the support of immediate family members and other dependents;
 - (iii) **(U)** Other obligations and expenses; and
 - (iv) **(U)** Plans and arrangements made for the applicant's support in the absence of a legal obligation toward the applicant.
- (e) **(U)** To substantiate the information regarding income and resources, the sponsor should attach to the affidavit a copy of the latest Federal income tax return filed prior to the signing of the Form I-134, including all supporting schedules. If you determine that the tax return and/or additional evidence in the file do not establish the sponsor's financial ability to carry out the commitment toward the immigrant for what might be an indefinite period of time, or there is a specific reason (other than the passage of time) to question the veracity of the income stated on the Form I-134 or the accompanying document(s), you should request additional evidence (i.e., statement from an employer showing the sponsor's salary and the length and permanency of employment, recent pay statements, or other financial data).
- (f) **(U)** If the sponsor has a well-established business and submits a rating from a recognized business rating organization, you do not need to insist on a copy of the sponsor's latest income tax return or other evidence.

(4) (U) Surety Bonds:

- (a) **(U)** *Submission to the Department: In rare cases where you have to consider the use of a bond in either a NIV or IV case, you must consult with CA/VO/L/A for assistance. The procedures for posting a bond is the same for IV and NIV cases.* In cases where the applicant appears to be otherwise unable to meet the public charge requirements, the sponsor may wish to post an indemnity bond pursuant to INA 213. Although the posting of bond does not, in itself, establish that an applicant is not likely to become a public charge, it might be sufficient, depending upon the circumstances in a particular case, to make possible a finding that the applicant overcomes INA 212(a)(4). The bond should be used sparingly and only in borderline cases. When an applicant appears likely on the facts to become a public charge (for example because of an acute physical condition and lack of adequate resources), the filing of a bond would not serve any purpose if the needs of the applicant would easily overcome the value of the bond.
- (b) **(U)** The specifics of such a bond and the means of posting one are:

- (i) **(U)** The U.S. sponsor would file the Form I-352, Immigration Bond, with the Department of Homeland Security. Either a district director or, in some cases, a regional director, will then review the I-352;
- (ii) **(U)** If a family is proceeding as a unit to the United States, a bond may be required for more than one member of the family. You should specify the name(s) of the person(s) for whom a bond is being requested. If only the principal applicant is immigrating immediately, the number of remaining family members should not be taken into account until they are applying for visas;
- (iii) **(U)** *The bond is canceled when the alien dies, leaves the United States permanently, or is naturalized. The Department of Homeland Security/U.S. Citizenship and Immigration Services (DHS/USCIS) may, however, cancel a bond at any time if the alien has not become and does not appear likely to become a public charge five years after the entry into the United States. The bond will be reviewed for cancellation upon the filing of Form I-356, Request for Cancellation of a Public Charge Bond. *The district director will then render a decision to breach or cancel the bond after review of the evidence supporting the form.**
- (iv) **(U)** You should inform the alien, in these cases, that DHS/USCIS may require a larger bond to be posted at the time of application for admission; and
- (v) **(U)** The visa issued in such cases must carry a notation that the bond was *posted* and the notification (or a certified copy thereof) from DHS that the bond had been posted must *also* be attached to the visa.

h. (U) Employment Considerations and the I-864:

- (1) **(U) Effect of Applicant's Own Employment in the United States:** You may not consider an offer of employment to an applicant in place of a required Form I-864 in cases where the I-864 is required. You may consider the applicant's employment in determining whether the 125 percent minimum income requirement has been met in a visa case only if the beneficiary of Form I-864 has worked in the same job he or she will have after entry as an immigrant. Under these circumstances, the alien's income may be considered part of the sponsor's income. If the above criteria are met, and any of the applicant's family members will be accompanying him or her to the United States, the principal applicant in such cases may provide Form I-864-A, Contract between Sponsor and Household Member, on their behalf to help reach the additional income level that will be required.
- (2) **(U) Information Contained on Approved Labor Certification:** Only a small percentage of employment-based immigrants will require an I-864. See [9 FAM 302.8-2\(B\)\(2\)](#) paragraph b above. The majorities of employment-based immigrants who do not require an I-864 have been offered prearranged

employment and are immigrating based on that offer of employment. They are therefore subject to the labor certification requirement under INA 212(a)(5) (see 22 CFR 40.51 and [9 FAM 302.1-5\(B\)](#)). You may assume, that in cases such as this, when a labor certification is granted, that the position is permanent and the prevailing wage has been met.

9 FAM 302.8-2(B)(4) (U) Completion of Form I-864, Affidavit of Support under Section 213A of the Act

(CT:VISA-293; 03-06-2017)

a. (U) In General: The purpose of Form I-864:

- (1) **(U)** Is to create a legally binding contract between certain immigrant visa applicants, their sponsor(s) and the U.S. Government;
- (2) **(U)** It requires an applicant to have sponsorship at 125 percent of the Federally determined poverty income guidelines (or 100 percent if the sponsor is an active member of the U.S. Armed Forces, other than for training, and is sponsoring his or her spouse or child(ren)) to ensure that newly-arrived aliens will be able to subsist for an extended period at a level above the poverty level; and
- (3) **(U)** The intention is to encourage immigrants to become and remain self-reliant, one of the oldest tenets of national immigration policy, and to provide the government with indemnification if they do not.

b. (U) Affidavit of Support (AOS) Packet:

- (1) **(U)** The documents listed below, make up the affidavit of support packet and are designed to assist the sponsor's understanding and proper completion of the affidavit of support (AOS) required by INA 213A:
 - (a) **(U)** Form I-864 or Form I-864-EZ;
 - (b) **(U)** Current Federal Poverty Guidelines Schedule, Form I-864-P;
 - (c) **(U)** Form I-864-A, Contract Between Sponsor and House Member;
 - (d) **(U)** Form I-865, Sponsor's Notice of Change of Address; and
 - (e) **(U)** Checklist for preparing Form I-864.
- (2) **(U)** The National Visa Center (NVC) will include the checklist and other documents in the Instruction Package for Immigrant Visa Applicants, indicating the supporting documents required with Form I-864 or Form I-864-EZ. Posts may reproduce the checklist for local use and include it with Form I-864 or Form I-864-EZ that are distributed locally. Posts should also, when possible, make it available through websites and information units. Posts must maintain updated poverty guidelines and ensure that they are included with all AOS forms. NVC and posts should also make sponsors aware of the facts that their income must meet the poverty guidelines at the time of AOS filing with NVC or with post.

- (3) **(U)** This documentation, supported by items listed in paragraph (1) above, constitutes the primary (but not sole) evidence for establishing that the applicant is not inadmissible under INA 212(a)(4)(C) for those categories specified in [9 FAM 302.8-2\(B\)\(2\)](#) above, and establishes the sponsor's income and, if need be, assets.
- (4) **(U)** The validity of Form I-864 or Form I-864-EZ is indefinite from the time the sponsors and contributing household members have signed Form I-864, Form I-864-EZ and Form I-864-A. The AOS is based on the Federal Poverty Guidelines in effect at the time of its submission in support of an IV application. Paragraph e below describes circumstances in which additional documentation and/or consideration of income on the basis of the current poverty guidelines may be necessary at post. Newly issued poverty guidelines generally become effective for INA 213A affidavit purposes at the beginning of the second month after being published in the Federal Register (FR). However, you must review the text of the FR notice to determine the exact date on which new poverty guidelines become effective.
- (5) **(U)** A sponsor may use the Form I-864-EZ in place of Form I-864 if he or she meets all of the following requirements:
 - (a) **(U)** The sponsor is the visa petitioner (who filed the Form I-130, Petition for Alien Relative);
 - (b) **(U)** The affidavit of support is filed on behalf of only one intending immigrant, who is the only person listed on the Form I-130;
 - (c) **(U)** The sponsor is seeking to qualify based solely on his or her income from salary or pension (not on the basis of any other income or assets) as shown on the most recent Federal income tax return that the sponsor filed prior to the time of signing the Form I-864-EZ; and
 - (d) **(U)** All of the sponsor's income is shown on one or more IRS Form W-2, Wage and Tax Statement to demonstrate employment income, and/or Form IRS-1099-MISC, Miscellaneous Income, to document pension income (except, in cases where the copy of the tax return is an IRS-generated transcript, a copy of the W-2 or 1099-MISC is not necessary). The Form I-864-EZ may not be filed if the sponsor will be submitting a Form I-864-A, if a joint sponsor will be required, or if the sponsor is an "alternative sponsor" who is substituting for the original sponsor, who has died (see paragraph e below).

c. **(U) Defining Sponsor:**

(1) **(U) In General:**

- (a) **(U)** To qualify as a sponsor, an individual must be a natural person (not a corporation or other business entity) who:
 - (i) **(U)** Is a citizen, national, or lawful permanent resident (LPR) of the United States (including conditional residents);
 - (ii) **(U)** Is at least 18 years of age;

- (iii) **(U)** Filed the petition which forms the basis for the visa application (or has a substantial interest in the entity which filed the petition); and
 - (iv) **(U)** Is domiciled in any of the 50 States of the United States, the District of Columbia, or any territory or possession of the United States. (See [9 FAM 302.8-2\(B\)\(5\)](#) below.)
 - (b) **(U)** If the relative petitioner does not meet the qualifying criteria to be a sponsor (for example, by being under 18 years of age or not domiciled in the United States), the visa applicant *will require a joint sponsor*
 - (c) **(U)** The "sponsor" for purposes of the AOS is the petitioner; anyone else is either a joint or co-sponsor. All references to requirements for the "sponsor" or "sponsors" would apply not only to the petitioner sponsor, but also to any co-sponsor household members executing Form I-864-A and joint sponsors submitting a supplementary Form I-864.
- (2) **(U) Petitioner Must Submit Form I-864 or Form I-864-EZ:** If the I-864 is required, the petitioner must submit Form I-864 or (if eligible) Form I-864-EZ. In other words, the petitioner must file the I-864 for all applicants contained in the petition. *An original or a copy of the I-864 should* be included for each applicant *included* on the petition. In most cases, the petitioner must submit Form I-864 or Form I-864-EZ, Affidavit of Support under Section 213A of the Act. This is true even if he or she cannot meet the requirements outlined in paragraph (1) above. Such adverse circumstances would not necessarily mean that the applicant would be inadmissible under INA 212(a)(4), since a joint sponsor may be used to overcome the Federal poverty level income requirements. If a joint sponsor is used, the petitioner may not use Form I-864-EZ and must use Form I-864. (See [9 FAM 302.8-2\(B\)\(7\)](#) below.) The petitioner must submit a Form I-864, even in the case of a following-to-join derivative beneficiary of the petition where the principal applicant has adjusted status in the United States. There are, however, two exceptions to the requirement of the petitioner completing Form I-864. (See paragraph d below for the exceptions.)
- (3) **(U) Petitioner May Limit Number of Applicants Sponsored:** A petitioner may limit sponsorship to just the principal applicant and any dependents that will be traveling to the United States at the same time. By limiting the number of sponsored individuals, the petitioner will reduce the household size and thereby lower the income requirement. The petitioner could file another affidavit of support (AOS) on behalf of the other (following-to-join) dependents at a later date when the petitioner and the principal applicant have improved their financial situation. Alternatively, in cases that involve more than one visa applicant, a petitioner may sponsor one or more immigrants and choose to use a joint sponsor for the remainder of the applicants, so as to comply with the poverty guidelines. Regardless, a Form I-864 would have to be executed by the petitioner for all applicants. Only then could a joint sponsor be used if needed.

- d. **(U) Sponsor When The Petitioner Is A Business Entity:** When the petitioner is a business entity, a U.S. citizen or lawful permanent resident (LPR) relative (defined at 8 CFR 213a.1 as a husband, wife, father, mother, child, adult son or daughter, or sibling) who has a significant ownership interest in the petitioning entity, the petitioner must submit Form I-864. The alternative sponsor must be the U.S. citizen or lawful permanent resident (LPR) relative who filed the petition or has a significant ownership interest in the petitioning entity and he or she must meet the other criteria outlined in [9 FAM 302.8-2\(B\)\(4\)](#) paragraph c.
- e. **(U) Substitute Sponsor When The Petitioner Has Died:**
- (1) **(U)** INA 213A(f)(5)(B) now allows certain family members to become "substitute sponsors" if a visa petitioner dies following approval of the visa petition, but before the beneficiary obtains his or her permanent residence. If the visa petition was approved prior to the death of the petitioner, the Secretary of Homeland Security (DHS), may, in its discretion, reinstate the petition for humanitarian reasons, (8 CFR 205.1(a)(3)(i)(C)), and determine that the original sponsor's petition should not be revoked. (See [9 FAM 504.2-8\(C\)\(4\).](#)) The substitute or alternative sponsor must be the spouse, parent, mother-in-law, father-in-law, sibling, child (at least 18 years of age), son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, or grandchild of the sponsored alien, or the legal guardian of the sponsored alien. The substitute or alternative sponsor must meet the other criteria outlined in paragraph c above.
 - (2) **(U)** Eligibility of derivative applicants seeking to follow-to-join a principal applicant who has already acquired lawful permanent resident (LPR) status is dependent on the continuing LPR status of the principal, not on the status of the petitioner. Therefore, if the petitioner dies after the principal applicant has already become an LPR and one or more derivative applicants seek to follow to join the principal applicant, the derivatives retain eligibility to follow-to-join despite the death of the petitioner, and there is no need for reinstatement of the petition. In such circumstances, the derivative applicant seeking to follow-to-join is inadmissible unless a substitute or alternative sponsor, as described in the paragraph above, executes a Form I-864 with respect to the derivative applicant. The substitute or alternative sponsor may not file a Form I-864-EZ.
- f. **(U) Supporting Evidence Must Be Submitted With Form I-864:**
- (1) **(U)** The "sponsor" is the petitioner; anyone else is a joint or co-sponsor. All references to requirements for the "sponsor" or "sponsors" would apply not only to the petitioner sponsor, but also to any co-sponsor household members executing Form I-864-A and joint sponsors submitting a supplementary Form I-864.

(U) Defining Income: Income, for the purpose of Form I-864, means the total unadjusted income as shown on the tax return, before deductions. *Total unadjusted income includes not only salary (if any) but also monetary gains from any other source, such as rent, interest, dividends, etc.*

(U) The sponsor(s) must provide the following documentation to satisfactorily complete Form I-864:

(a) **(U)** Sponsor's Federal income tax returns for the most recent tax year:

- (i) **(U)** Each sponsor must submit with Form I-864 a photocopy or Internal Revenue Service (IRS)-generated transcript of the most recent income tax return that the sponsor had filed prior to the time of the AOS signing. A person may obtain a free IRS-generated transcript by filing IRS Form 4506-T (Form IRS-4506-T), Request for Transcript of Tax Return. Ordinarily, the sponsor's signature on Form I-864 is sufficient to qualify the photocopy or transcript as a "certified" copy. In those cases where you question *the authenticity of* the submitted tax return or transcript, you may require the sponsor to submit an IRS-certified copy of the tax return.
- (ii) **(U)** A person obtains an IRS-certified copy by submitting form IRS-4506, Request for Copy of Tax Return, and paying the requisite filing fee. In such cases, you should generally require that the sponsor have the IRS-certified copy sent directly to post by the IRS. The sponsor should ask the IRS to include the applicant's name and case number on the form so that it can be readily attached to the correct file upon receipt at post. You may not require IRS-certified copies of tax returns of all sponsors prior to review of the submitted tax return. IRS-certified copies may only be required on a case-by-case basis when you question the validity of the submitted tax return.
- (iii) **(U)** Failure to file a required income tax return does not excuse the sponsor from the requirement *of providing* tax returns as supporting documents. If a tax return should have been filed, the affidavit will not be considered sufficient until the sponsor has done so and supplied the appropriate copies for consideration with Form I-864. If the income requirement cannot be met, *based on the income reported in the tax return*, but the sponsor claims to have reported his or her income *on the tax* return, *you* may advise applicants or sponsors that an original or amended tax return will be required in order to process the immigrant visa (IV) application to conclusion.

(U) NOTE: You do not have the authority to require an individual to pay taxes or correctly report income.

- (iv) **(U)** *If the sponsor is claiming to meet the poverty guidelines based on money earned at work (salary) and submitted an original tax transcript, the sponsor will only need to submit a Form W-2 if his or her status is "married filing jointly." If the sponsor submitted a copy of a tax return (Form-1040) – not a transcript – then the sponsor, regardless of filing status, will need to include a W-2.*

(b) **(U)** Tax returns of other household members: If the sponsor is relying on

income from any household member or dependents (as defined at [9 FAM 302.8-2\(B\)\(6\)](#) below) to reach the minimum income requirement, an IRS transcript or a copy of each such individual's most recent tax return is also required, and each such person must complete a Form I-864-A;

(c) **(U) Employment evidence:**

(i) **(U)** Except as provided in paragraphs (iii) and (iv), below, if the information on the Affidavit of Support (AOS) and tax return establish that the sponsor's current income meets or exceeds the poverty guidelines for the year the sponsor submitted Form I-864 in support of the Immigrant Visa (IV) application, either by submitting to NVC directly or to post at the time of application, you must determine that Form I-864 is sufficient without requesting any further evidence. (See [9 FAM 302.8-2\(B\)\(17\)](#), Poverty Income Guidelines.)

(U) *You should request additional evidence (i.e., employment letter, recent pay statements, or other financial data) only if there is a specific reason (other than the passage of time) to question the veracity of the income stated on Form I-864 or the accompanying document(s).*

(ii) **(U)** If the AOS or tax return reflects income below the poverty guidelines for the year Form I-864 was submitted, you should request additional evidence of:

- **(U)** Current employment or self-employment; and
- **(U)** Recent pay statements, a letter from the employer on business letterhead - showing dates of employment, wages paid, and type of work performed - or other financial data.
- **(U)** If the sponsor with income below the poverty guidelines is unemployed or retired, you should request evidence of ongoing income from other means, such as retirement benefits, other household members' income, or other significant assets.

(d) **(U)** Evidence of Sponsorship Eligibility—Evidence to establish eligibility as a sponsor, including citizenship or lawful permanent resident (LPR) status, age, and domicile (as defined in paragraph c above).

(2) **(U)** Tax-free income (such as a housing allowance for clergy or military personnel) and other tangible benefits in lieu of salary are considered income. The sponsor bears the burden of proving the nature and amount of income.

(3) **(U)** Assembling the documents is the sponsor's responsibility. If the I-864 and supporting documents are incomplete or poorly assembled, the post must refuse the applicant under INA 221(g) and return the entire package to the applicant with a copy of the checklist. However, *the applicant is no longer required to submit the three most recent federal tax returns, therefore, this is not a valid basis to refuse applicants under 221(g).*

- (4) **(U)** For more information on what is required on the I-864, you may refer to the instructions which accompany the Form I-864 itself.

g. (U) Additional Assets Evidence:

- (1) **(U)** The Form I-864 does not require sponsors to submit evidence of assets, if income alone is sufficient to meet the minimum Federal poverty guidelines income requirement described in paragraph a(2) above. The mere fact that the petitioner and/or sponsor have met the minimum requirement, however, does not preclude a finding of inadmissibility under INA 212(a)(4). You may request evidence of assets and liabilities, if such information is necessary to determine the applicant's eligibility. If a sponsor or joint sponsor uses assets to prove the ability to support the sponsored immigrant, he or she may not use the Form I-864-EZ.
- (2) **(U)** The sponsor or joint sponsor may include his or her assets (and offsetting liabilities), and/or the assets of any household members signing Form I-864-A, as income to make up any shortfall toward meeting the Federal poverty guidelines. The assets (bank accounts, stock, other personal property, and real estate) must be available in the United States for the applicant's support and must be readily convertible to cash within one year. In most cases, the sponsor must present evidence as described in [9 FAM 302.8-2\(B\)\(3\)](#) paragraph g(2), establishing location, ownership and value of each asset listed, including liens and liabilities for each asset listed. The combined cash value of all the assets (i.e., the total value of the assets less any offsetting liabilities) must total at least five times the difference between the total household income and the minimum Federal poverty income requirement.
- (3) **(U)** Sponsors of immediate relative spouses and children of U.S. citizens, however, must only show combined cash value of assets in the amount of three times the difference between the poverty guideline and actual household income. In addition, sponsors of alien orphans who will acquire citizenship after admission to the United States need only prove a combined cash value of assets in the amount of the difference between the poverty guideline and actual household income.
- (4) **(U)** Sponsors of alien orphans who will acquire citizenship after admission to the United States based upon either adoption in the United States subsequent to admission, or a need to obtain formal recognition of a foreign adoption under the law of the State of proposed residence because at least one of parents did not see the child before or during the foreign adoption, need only prove a combined cash value of assets in the amount of the difference between the poverty guidelines and actual household income.
- (5) **(U)** If assets of the sponsored applicant are being used in such a fashion, the sponsored applicant is not required to submit Form I-864-A, but must show the same kinds of evidence as described in and show that the assets can be converted into cash within one year.

9 FAM 302.8-2(B)(5) (U) Domicile

(CT:VISA-293; 03-06-2017)

a. (U) Definition:

- (1) **(U) In General:** For the purposes of INA 213A, "domicile" means:
 - (a) **(U)** The place where a sponsor has his or her principal "residence" or (as defined in INA 101(a)(33)) in the United States, with the intention to maintain that residence for the foreseeable future.
 - (b) **(U)** A legal permanent resident alien (LPR) living abroad temporarily is considered to have a domicile in the United States, if he or she has applied for and obtained the preservation of residence benefit under INA 316(b) or INA 317.
 - (c) **(U)** A U.S. citizen living abroad whose employment meets the requirements of INA 319(b)(1) is considered to be domiciled in the United States.
- (2) **(U) Maintaining U.S. Domicile:**
 - (a) **(U)** Unless the petitioner meets the conditions outlined in paragraph (3) below, a petitioner who is maintaining a principal residence outside the United States could not normally claim a U.S. domicile and would be ineligible to submit Form I-864. In order to provide an AOS for his or her relative, such a petitioner would have to reestablish a domicile in the United States. (See paragraph (4) below.)
 - (b) **(U)** However, in a situation in which the petitioner has maintained both a U.S. residence and a residence abroad, you must determine which the principal abode is. Some petitioners have remained abroad for extended periods but still maintain a principal residence in the United States (i.e., students, contract workers, and non-governmental organization (NGO) volunteers). To establish that one is also maintaining a domicile in the United States, the petitioner must satisfy you that he or she:
 - (i) **(U)** Departed the United States for a limited, and not indefinite, period of time;
 - (ii) **(U)** Intended to maintain a U.S. domicile at the time of departure; and,
 - (iii) **(U)** Can present convincing evidence of continued ties to the United States.
- (3) **(U) Establishing U.S. Domicile:**
 - (a) **(U)** A petitioner living abroad not meeting the criteria in [9 FAM 302.8-2\(B\)\(5\)](#) paragraph a(2) who wishes to qualify as a sponsor must satisfy you:
 - (i) **(U)** That he or she has taken steps to establish a domicile in the United States;

- (ii) **(U)** That he or she has either already taken up physical residence in the United States or will do so concurrently with the applicant;
 - (iii) **(U)** The sponsor does not have to precede the applicant to the United States but, if he or she does not do so, he or she must at least arrive in the United States concurrently with the applicant;
 - (iv) **(U)** The sponsor must establish an address (a house, an apartment, or arrangements for accommodations with family or friend) and either must have already taken up physical residence in the United States; or
 - (v) **(U)** Must at a minimum to satisfy you that he or she intends to take up residence there no later than the time of the applicant's immigration to the United States.
- (b) **(U)** Although there is no time frame for the resident to establish residence, you must be satisfied that the sponsor has, in fact, taken up principal residence in the United States. Evidence that the sponsor has established a domicile in the United States and is either physically residing there or intends to do so before or concurrently with the applicant may include the following:
- (i) **(U)** Opening a bank account;
 - (ii) **(U)** Transferring funds to the United States;
 - (iii) **(U)** Making investments in the United States;
 - (iv) **(U)** Seeking employment in the United States;
 - (v) **(U)** Registering children in U.S. schools;
 - (vi) **(U)** Applying for a Social Security number; and
 - (vii) **(U)** Voting in local, State, or Federal elections.
- (c) **(U)** If a petitioner cannot satisfy the domicile requirement, the petitioner fails to qualify as a "sponsor" for the purposes of submitting Form I-864, and a joint sponsor cannot be accepted and the applicant must be refused pursuant to INA 212(a)(4). Without a properly executed I-864, signed by a sponsor (the petitioner) who is "domiciled" in the United States, in visa cases which require an I-864, then an immigrant visa cannot be approved.
- (4) **(U) U.S. Domicile for Employment-Based Preference Applicants:** Employment-based beneficiaries who are petitioned for by U.S. citizen or permanent resident alien relatives or by entities in which such a relative has a significant ownership interest are required to submit a Form I-864. However, the DHS/USCIS has determined that Congress did not intend to impose this requirement on a petitioning relative, or a relative with a substantial interest in a business enterprise who is not a U.S. citizen or a lawful permanent resident (LPR) and is not domiciled in the United States. In these cases only, the lack of Form I-864 will not be an impediment to admissibility. We concur with this finding; therefore, in these cases, lack of a Form I-864 would not be an

impediment to visa issuance.

b. (U) Employment Abroad Meeting Requirements of INA 319(b)(1) :

- (1) **(U)** A U.S. citizen who is living abroad temporarily is considered to be domiciled in the United States if the citizen's employment meets the requirements of INA 319(b)(1). That section requires, for qualifying "employment abroad," that the citizen be in the employ of:
 - (a) **(U)** The U.S. Government;
 - (b) **(U)** A U.S. institution of research recognized as such by the Secretary of Homeland Security (DHS) (see 8 CFR 316.20 for the list of institutions);
 - (c) **(U)** A U.S. firm or corporation engaged in whole or in part in the development of foreign trade and commerce with the United States or a subsidiary thereof;
 - (d) **(U)** A public international organization in which the United States participates by treaty or statute;
 - (e) **(U)** A religious denomination having a bona fide organization in the United States, if the individual concerned is authorized to perform the ministerial or priestly functions thereof; and
 - (f) **(U)** A religious denomination or an interdenominational mission organization having a bona fide organization in the United States, if the person concerned is engaged solely as a missionary.
- (2) **(U)** See INA 316 and INA 317 regarding continuous residence requirements for LPRs.

9 FAM 302.8-2(B)(6) (U) Household Member

(CT:VISA-293; 03-06-2017)

- a. **(U) Definition:** Household members for determining the applicable Federal poverty line levels and all other associated purposes include:
- (1) **(U)** The sponsor; (see [9 FAM 302.8-2\(B\)\(4\)](#) paragraph e);
 - (2) **(U)** The sponsor's spouse; and the sponsor's children by birth, marriage, or adoption living in the sponsor's residence;
 - (3) **(U)** Any other dependents of the sponsor (if identified as such on the sponsor's Federal income tax return for the most recent year, regardless of whether they are related to the sponsor or have the same principal address as the sponsor);
 - (4) **(U)** Any immigrants previously sponsored using Form I-864, if the obligation has not terminated;
 - (5) **(U)** Family members immigrating at the same time or within six months of the principal immigrant listed in the chart in Part 3 of Form I-864; and
 - (6) **(U)** The sponsor's nondependent siblings, parents, or adult children who reside in the sponsor's household who are not dependents, if they complete a Form

I-864-A.

b. (U) Use of Form I-864-A, Contract Between Sponsor and Household Member:

- (1) **(U)** If a sponsor's individual income meets or exceeds the required level of the Poverty Guidelines, no other evidence is necessary. In cases in which the sponsor's individual income is insufficient, however, a Form I-864-A, Contract between Sponsor and Household Member must be submitted by any household member who is willing for his or her income to be used by the sponsor to meet the guidelines. *A separate Form I-864-A must be used for each household member whose income and and/or assets are being used by a sponsor to qualify. Each Form I-864A is completed and signed by two individuals: a sponsor who is completing Form I-864 and a household member who is promising to make his or her income and/or assets available to the sponsor to help support the sponsored immigrant(s).* The primary sponsor must include the names of these individuals and their contributions on his or her Form I-864.
- (2) **(U)** Under Form I-864-A, the household member agrees to provide as much financial assistance as may be necessary to enable the sponsor to maintain the sponsored immigrant(s) at the required annual income level. The household member will be legally liable for any reimbursement obligations that the sponsor may incur.

c. (U) Applicant's Use of Form I-864-A:

- (1) **(U)** If the sponsored immigrant has accompanying family members and the sponsor seeks to rely on the sponsored immigrant's continuing income in the United States to establish the sponsor's ability to support the accompanying family members, the sponsored immigrant must sign Form I-864-A. Income shown in a sponsored immigrant's Form I-864-A cannot be based on an offer of employment that has not yet been effected. (See [9 FAM 302.8-2\(B\)\(3\)](#) paragraph g above.)
- (2) **(U)** If the sponsored immigrant does not have accompanying family members, he or she cannot submit Form I-864-A. His or her income may be counted in the household income, however, if he or she will continue to work in the same job after he or she immigrates to the United States. You may request evidence of the applicant's income such as pay statements and tax returns, if he or she was required to file them, and should request a letter from the employer certifying that the employment will continue after the applicant's immigration to the United States.

9 FAM 302.8-2(B)(7) (U) Defining Joint Sponsor

(CT:VISA-293; 03-06-2017)

- a. **(U)** A "joint sponsor" is one who is not the petitioner for the sponsored immigrant but who otherwise meets the citizenship, residence, age, and household income requirements, as set forth in [9 FAM 302.8-2\(B\)\(4\)](#) paragraph c, and has executed a

separate Form I-864, on behalf of the intending immigrant. The joint sponsor differs from a "household member" in that the joint sponsor can be a friend or *third party who* and is not necessarily financially connected with the sponsor's household. *As noted in 9 FAM 302.8-2(B)(2), a properly filed, non-fraudulent Form I-864 in those cases where it is required, should normally be considered sufficient to meet the INA 212(a)(4) requirements and satisfy the "totality of the circumstances" analysis. Therefore, in cases where the sponsor's I-864 is sufficient, a joint sponsor is not required. A joint sponsor would only be required in those cases if you determine that the AOS is not sufficient. For example, if the sponsor's income is from a job that is merely temporary or seasonal, you might reasonably conclude that the AOS, for that reason, is not sufficient.*

- b. **(U)** Two joint sponsors can be used per family unit intending to immigrate based upon the same petition. No individual may have more than one joint sponsor, but it is not necessary for all family members to have the same joint sponsor. If two joint sponsors are used, each joint sponsor is responsible only for the intending immigrant(s) listed on the joint sponsor's Form I-864.
- c. **(U)** A joint sponsor is jointly and severally liable with petitioning sponsor and any household members who have signed a Form I-864-A. He or she must individually meet the minimum income requirements as set forth above. Anyone outside the petitioner's household may be considered a joint sponsor. Joint sponsors may include the income and assets of members of their own household and dependents to meet the income requirement.
- d. **(U)** In the event a sponsor has died before all family members have followed to join the principal, a joint sponsor is permitted to execute a Form I-864. The new sponsor may submit a Form I-864, regardless of the status of the deceased petitioner's estate.

9 FAM 302.8-2(B)(8) (U) Legal Obligations of Sponsors

(CT:VISA-254; 11-29-2016)

a. (U) In General:

- (1) **(U)** The execution of Form I-864 creates a legally-binding contract between the sponsor(s) (including any household members who have executed Form I-864-A, and any joint sponsor), and any Federal, State, local, or private entities that provide means-tested public benefits (SSI, TANF, etc.) throughout the duration of the contract. By executing Form I-864, the sponsor agrees to:
 - (a) **(U)** Provide financial support necessary to maintain the sponsored immigrant at an income that is at least 125 percent of the Federal poverty guidelines for the indicated family size (see [9 FAM 302.8-2\(B\)\(17\)](#)); and
 - (b) **(U)** Reimburse any agencies that provide means-tested benefits to a sponsored alien.
- (2) **(U)** In most cases, an alien is not eligible to receive any Federal benefits during his or her first five years in the United States. Although the alien may

obtain public benefits thereafter, disbursing entities may seek reimbursement from the alien's sponsor for certain means-tested benefits received by the alien, for the duration of the validity of the affidavit of support. In the event that petitioner's Form I-864 does not meet the minimum Federal poverty guideline amount and a joint sponsor is necessary, the petitioner is still responsible for any amount of income or assets included in his or her Form I-864.

- b. **(U) Duration of Obligation Under Form I-864, Affidavit Of Support Under Section 213a of the Act:** Sponsors, joint sponsors, and household members (who have executed Form I-864 or Form I-864-A, (Contract Between Sponsor and Household Member) are bound by the contract terms until the applicant:
- (1) **(U)** Is naturalized;
 - (2) **(U)** Has worked, or can be credited with, 40 qualifying quarters of work;
 - (3) **(U)** Leaves the United States permanently; or
 - (4) **(U)** Dies.
- c. **(U) Death of the Sponsor:** In the event that a sponsor dies, the sponsor's estate remains liable for the duration of the contract. If the sponsor dies after the principal applicant has immigrated, but before the qualified family members who are following to join have immigrated, the applicants must get another sponsor, although no new petition need be filed. If the principal applicant can meet the requirements to be a sponsor, he or she may submit Form I-864 for his or her family members.

9 FAM 302.8-2(B)(9) (U) Means-Tested Benefits

(CT:VISA-293; 03-06-2017)

- a. **(U)** During the life of the contract, a sponsor is liable for "means-tested benefits" received by the sponsored applicant. Federal, State, and local agencies will define which benefits are "means-tested" and whether they wish to seek reimbursement.
- b. **(U)** The agency supplying the means-tested benefit must have designated the program as such prior to the sponsor's submission of Form I-864 for expenses relating to that benefit to be reclaimable from the sponsor. Moreover, the agency must request reimbursement. In the absence of such a request, the sponsor is not liable.
- c. **(U)** As the Department has no role with respect to designating means-tested benefits or with reimbursement, any question regarding whether a benefit should be considered a means-tested benefit is outside the scope of your inquiry into an applicant's eligibility for a visa.

9 FAM 302.8-2(B)(10) (U) Public Charge Considerations in Nonimmigrant Cases

(CT:VISA-293; 03-06-2017)

a. **(U) Nonimmigrants and INA 212(a)(4):**

- (1) **(U)** All nonimmigrants, except those mentioned in [9 FAM 302.8-2\(B\)\(18\)](#) below, must overcome the public charge presumption.
- (2) **(U)** Additionally, since INA 212(a)(4) can be overcome by a non-immigrant or immigrant visa applicant at any time, if an applicant cannot overcome INA 214(b), you should not expend resources on pursuing a possible INA 212(a)(4) ineligibility.
- (3) **(U)** In determining admissibility under INA 212(a)(4), you must be aware of the differences in the requirements imposed on a would-be immigrant as opposed to a nonimmigrant applicant. The amount and type of evidence generally required in an immigrant visa case is much greater than that which is required in a nonimmigrant visa case. Evidence that establishes the applicant is entitled to a nonimmigrant classification is generally sufficient to meet the requirements of INA 212(a)(4), absent evidence that gives you reason to believe that a public charge concern exists.

b. **(U) Additional Evidence of Support in Nonimmigrant Visa Cases:**

- (1) **(U)** Your extensive inquiry into the question of the possible public charge inadmissibility of a nonimmigrant visa (NIV) applicant should be rare if the alien is otherwise qualified for the visa category for which the alien has applied. Ordinarily, a nonimmigrant would be required to provide evidence on the question of public charge only when there are clear indications, based on the usual evidence required to support the application, that the alien does not have sufficient resources to sustain assistance.
- (2) **(U)** However, if the evidence of nonimmigrant status submitted does not indicate adequate provision for the applicant's support while in the United States and for the return abroad, you may request specific financial evidence. Such evidence may take the form of a letter of invitation, Form I-134, from a sponsor that clearly indicates the sponsor's willingness to act in such capacity and the extent of financial responsibility undertaken for the applicant, or a *surety* bond ([See 9 FAM 302.8-2\(B\)\(3\) paragraph g\(4\)](#)).
- (3) **(U)** Unless you are satisfied that the sponsor's financial position is sound, the affidavit of support (AOS) should contain evidence of the sponsor's ability to carry out the commitment. Such AOS's for NIV are not legally-binding contracts, and it is at your discretion to determine if such evidence would assist a nonimmigrant alien in overcoming a finding of inadmissibility because of the likelihood of becoming a public charge after entering the United States. If the applicant is proceeding to the United States for a brief visit, the presentation of evidence of the sponsor's financial condition may not be necessary.

- c. **(U) Unwarranted Requirements:** Under U.S. law, no individual can make binding assertions about another person's possible future actions. If you determine that a Form I-134 is necessary, the sponsor (meaning the individual who has completed the Form I-134) is not required to declare that the applicant will neither seek nor accept employment in the United States nor apply for permanent

residence. Under certain circumstances, nonimmigrants are permitted to work or, if not permitted to work at the time of admission, they may be permitted to work after their nonimmigrant classification has been changed under INA 248. Moreover, a nonimmigrant in the United States is entitled to apply for adjustment of status under INA 245 if eligible therefore.

- d. **(U) Alien's Government Requiring Evidence of Support:** Some foreign governments require their nationals to present evidence of support from a U.S. sponsor prior to the issuance of a passport or exit permit. Such documentation is usually required in the form of an AOS guaranteeing that, while in the United States, the alien will not become a burden on the applicant's country. Consular officers who are serving in a country with this requirement should not automatically require all aliens applying for visas to submit a copy of the support evidence submitted to the alien's government. However, in some instances, you may decide such evidence would be advisable.
- e. **(U) Aliens Seeking Admission For Medical Treatment:** If the personal resources of an applicant seeking admission to the United States for medical treatment are not sufficient or are unavailable for use outside the country of residence, you may accept a sponsorship affidavit. The affidavit should include explicit information regarding the arrangements made for the alien's support, medical care, and, if applicable, assurance that a bond will be posted if required by the DHS/USCIS.
- f. **(U) Alien Seeking Admission As K Nonimmigrants:** See [9 FAM 302.8-2\(B\)\(2\)](#) paragraph d above.
- g. **(U) Surety Bonds:** In cases where the applicant is otherwise eligible, including under INA 214(b), the procedures for posting bond for NIVs are the same as those for immigrant visas (IV). (See [9 FAM 302.8-2\(B\)\(3\)](#) paragraph g(4).)

9 FAM 302.8-2(B)(11) (U) INA 221(g) versus INA 212(a)(4) Refusals

(CT:VISA-293; 03-06-2017)

(U) The determination of whether INA 221(g) or INA 212(a)(4) is the appropriate ground of refusal is determined by whether or not you have decided that you have enough information to make a finding of whether the applicant is ineligible under INA 212(a)(4).

- (1) **(U)** For example, if Form I-864 is submitted without *a copy of the latest Federal income tax return filed prior to the signing of the Form I-864*, then this is a documentary problem; the refusal should be INA 221(g).
- (2) **(U)** On the other hand, if the AOS is technically complete, but does not reflect sufficient financial resources, even after any possible joint sponsors have submitted an AOS; or the applicant has no Form I-864, because the petitioner or sponsor does not meet the qualifying criteria set forth in INA 213A, that is a substantive problem and you must refuse the visa under INA 212(a)(4).

- (3) **(U)** You should note that applications refused under INA 212(a)(4), unlike those refused under INA 221(g), are not subject to termination under INA 203(g).

9 FAM 302.8-2(B)(12) (U) Submitting Form I-864, Affidavit of Support Under Section 213A of the Act

(CT:VISA-293; 03-06-2017)

a. (U) Notarizing and Photocopying Documentation:

- (1) **(U)** Required signatures do not need to be notarized. This includes the signature of the sponsor(s), or the sponsor's household members or dependents on Form I-864 and Form I-864-EZ, Affidavit of Support under Section 213A of the Act; Form I-864-A; and Form I-864-W. Consular officers should not require ink signature on the I-864. A photocopy of the I-864 with the sponsor's signature is sufficient. A typed or printed name is not acceptable.
(U) NOTE: The sponsor, by signing the Form I-864 under penalty of perjury, certifies that the transcript or photocopy is true and correct. This certification meets the statutory requirement of presenting a "certified" copy and, per 28 U.S.C. 1746, the requirement that the affidavit of support be sworn or affirmed before a notary, consular officer, or immigration officer.
- (2) **(U)** Principal applicants and accompanying spouses and/or children may travel together on one complete set of the documents prepared in support of Form I-864.
- (3) **(U)** The supporting documents should be made a part of the principal applicant's Instruction Package for Immigrant Visa (IV). The principal applicant's alien registration number (the Department of Homeland Security (DHS) assigned "A number") should be recorded on each accompanying individual's Form I-864 "for agency use only" box (on page 1 of the form).
- (4) **(U)** Similarly, following-to-join applicants, traveling either alone or in a group, will require only one complete set of the documents prepared in support of the principal applicant's Form I-864.
- (5) **(U)** For following-to-join applicants traveling together, the documents should be included in only one applicant's issued visa packet.
- (6) **(U)** The alien registration number of the applicant carrying the support documentation must be recorded on Form I-864 (page 1 of the form).
- (7) **(U)** *A correct and complete signed Form I-864 submitted to the NVC is sufficient. An individual does not need to submit an original I-864 at the time of the interview. The I-864 submitted to NVC (either in hard copy or electronically) must be included in the immigrant visa packet.*
- (8) **(U)** The supporting documents carried by the designated following-to-join applicant may be photocopies of the originals and do not need notarization or

an original signature.

b. **(U)** Where to Submit:

- (1) **(U)** As of October 1, 2002, all posts are participants in a review program at the National Visa Center (NVC).
- (2) **(U)** The sponsor (or joint sponsor) is instructed to send the Form I-864, and all supporting documents (a complete set for the principal and a signed Form I-864 under penalty of perjury, (and form I-864-A, if necessary) for each accompanying dependent) directly to NVC.
- (3) **(U)** NVC will review the submitted Form I-864 and documents for clerical completeness and provide the sponsor two opportunities to supply any missing information or documents. After the second review, NVC forwards the Affidavit of Support with the case file directly to the post.
- (4) **(U)** The NVC review does not apply to immigrant visa (IV) cases where the petitioner has filed the Form I-130, Petition for Alien Relative, at post.

9 FAM 302.8-2(B)(13) (U) Reviewing Form I-864 or Form I-864-EZ, Affidavit of Support Under Section 213A of the Act

(CT:VISA-293; 03-06-2017)

- a. **(U) In General:** You must ensure that each section of Form I-864 or Form I-864-EZ has been completed properly. It is your responsibility to review the information provided with the petition packet and other documents provided at the time of interview.
- b. **(U) Part 1 of Form I-864 or Form I-864-EZ, Basis For Filing Affidavit of Support:** Verify that sponsor has checked the appropriate box(es):
 - (1) **(U)** If Form I-864-EZ is being used, sponsors must check "Yes" on boxes a, b, and c;
 - (2) **(U)** If Form I-864 is being used and box "d" has been checked, indicating a single joint sponsor, you should ensure that there are two Forms I-864: one from the petitioner and one from the joint sponsor; and
 - (3) **(U)** If Form I-864 is being used and box "e" has been checked, indicating two joint sponsors, you should ensure that there are three Forms I-864: one from the petitioner, one from the first joint sponsor, and one from the second joint sponsor.
- c. **(U) Parts 2-4 of Form I-864 Or Form I-864-EZ, Basis For Filing Affidavit of Support:** Information on the Principal Immigrant, Accompanying Family Members, and Information on the Sponsor.
 - (1) **(U)** Compare the information provided from other documents included in the application and/or verifying data with the sponsored immigrant at the time of the visa interview;
 - (2) **(U)** If the sponsor is using Form I-864 only "accompanying" family members

should be listed in the chart in Part 3. Be sure that the first and last name of each accompanying family member is listed; and

- (3) **(U)** Family members “following to join” (i.e., intending to immigrate more than 6 months after the principal intending immigrant) should not be listed in Part 3.
- d. **(U) Part 5 of Form I-864 or Part 4 of Form I-864-EZ: Sponsor’s Household Size:** The sponsor’s total household size is used to determine the correct Federal Poverty Guideline threshold. For Form I-864, a household size includes the following groups of individuals:
- (1) **(U)** Sponsor;
 - (2) **(U)** Person(s) the sponsor is sponsoring on the Affidavit of Support (will always be one if the sponsor is using Form I-864-EZ);
 - (3) **(U)** Sponsor’s spouse, if the sponsor is married;
 - (4) **(U)** The sponsor’s children, as defined in section 101(b)(1) of the Act, except those that have:
 - (a) **(U)** Reached the age of majority (i.e., are at least 18 years old) or liberated under the law of sponsor’s domicile; and
 - (b) **(U)** Are not claimed as dependents on the sponsor’s most recent Federal income tax return;
 - (5) **(U)** Other persons lawfully claimed as dependents on the sponsor’s tax return for the most recent tax years; and
 - (6) **(U)** The number of siblings, parents, and/or adult children who:
 - (a) **(U)** Have the same principal residence as the sponsor; and
 - (b) **(U)** Have combined their income with the sponsor’s income by submitting Form I-864-A.
- e. **(U) Part 6 of Form I-864 or Part 5 of Form I-864-EZ *Sponsor’s Information About Employment and Income:***
- (1) **(U) General Rule and Active Duty Military Exception:**
 - (a) **(U)** Either the petitioning sponsor, substitute sponsor, or a joint sponsor must show the ability to maintain his or her annual household income at 125 percent of the governing Federal Poverty Guideline threshold (see also [9 FAM 302.8-2\(B\)\(7\)](#));
 - (b) **(U)** A petitioner on active duty in the U.S. Armed Forces, other than for training, needs to demonstrate an annual income equal to at least 100 percent of the Federal Poverty Guidelines if he or she is petitioning for a spouse or child;
 - (c) **(U)** A substitute sponsor or joint sponsor is not eligible to claim 100% income level based on petitioner’s relationship to the intending immigrant, or petitioner’s military status;

- (d) **(U)** A substitute or joint sponsor may claim the 100% income level only if he or she is on active duty in the U.S. Armed Forces (other than training) and the intending immigrant is the spouse or child of the substitute sponsor or joint sponsor;
 - (e) **(U)** To qualify for the Military Exception:
 - (i) **(U)** The petitioner must provide evidence that he or she is on active duty, such as military dependent's identification card for the intending immigrant (spouse or child); and
 - (ii) **(U)** A photocopy of the military identification card of the sponsor (spouse or parent).
 - (f) **(U)** Regardless of whether a sponsor qualifies for the military exception, all of his or her income counts toward the 125% (or 100%) income requirement, including (in the case of Armed Forces personnel) any allotments received for the dependents.
- (2) **(U) Poverty Guidelines:** See [9 FAM 302.8-2\(B\)\(17\)](#), Poverty Income Guidelines.
- (3) **(U) Determining the Sponsor's Ability to Provide Sufficient Support:**
- (a) **(U)** If a sponsor is using Form I-864-EZ, he or she must only use his or her salary or pension as shown on his or her most recent Federal income tax return. If the sponsor provides a photocopy of the return, he or she must include a copy of W-2 provided by the sponsor's employer(s) and/or Form(s) IRS-1099 to show pension income. As with other sponsors, these copies are not needed if the sponsor provides an IRS transcript of the return. (See Part 1(a) of Form I-864-EZ.);
 - (b) **(U)** The sponsor must use Form I-864, rather than Form I-864-EZ, if the sponsor will be submitting any Forms I-864-A. (See also [9 FAM 302.8-2\(B\)\(4\)](#) paragraph b(5));
 - (c) **(U)** Sponsors who use Form I-864 may qualify based only upon their own income and/or assets if either or both are sufficient to reach the income requirement. If the sponsor's combined income and assets are not sufficient to meet the governing threshold, the sponsor may include the income and or/assets of another household member if the household member:
 - (i) **(U)** Is at least 18 years of age;
 - (ii) **(U)** Is included in the calculation of the household size;
 - (iii) **(U)** Has the same principal residence as the sponsor (or is the sponsor's spouse); and
 - (iv) **(U)** Has completed and signed the Form I-864-A;
 - (d) **(U)** Federal Tax Return(s):
 - (i) **(U)** Whether a sponsor submits Form I-864 or Form I-864-EZ, the

- sponsor must provide a copy or an IRS-generated transcript of the sponsor's Federal income tax return for the most recent tax year;
- (ii) **(U)** By signing the Form I-864 or Form I-864-EZ under the penalty of perjury, a sponsor certifies that the transcript or photocopy is true and correct. This certification meets the statutory requirement of presenting a "certified" copy of the transcript or photocopy. Certification of the returns by the IRS is not necessary, the sponsor's certification under the penalty of perjury is sufficient; and
- (iii) **(U)** A sponsor who filed a joint tax return with a spouse, but is qualifying using only his or her own individual income must submit evidence of that individual income. For example, the sponsor's own W-2, Wage and Tax Statement, to reach the income requirement and/or evidence of other income reported to the IRS which can be attributed to him or her on Form 1099.
- (e) **(U)** Other Evidence of Income:
- (i) **(U)** Total income means before deductions in the sponsor's tax return for the most recent taxable year should be generally determinative. There is no requirement to determine whether the sponsor would have met 125% (or 100%) of the governing Poverty Guideline before the most recent tax year;
- (ii) **(U)** You, however, may consider other evidence of income (e.g., pay stub(s), or employer letter(s), or both), if:
- **(U)** The sponsor establishes that he or she was not legally obligated to file a Federal income tax return for the most recent tax year
 - **(U)** You have determined that the income listed on the Federal tax return for the sponsor's most recent tax year does not meet the governing threshold
- (iii) **(U)** If a sponsor recently started a new job (that the officer is satisfied will likely continue), the income from the job now meets or exceeds the legal requirement, you may find the Affidavit of Support (AOS) to be sufficient; and
- (iv) **(U)** *As noted in [9 FAM 302.8-2\(B\)\(2\)](#), a properly filed, non-fraudulent Form I-864 in those cases where it is required, should normally be considered sufficient to meet the INA 212(a)(4) requirements and satisfy the "totality of the circumstances" analysis. 8 CFR 213a.2(c)(2)(ii)(C), however, permits you to conclude that a Form I-864 is not sufficient, even if the sponsor's household income meets the Poverty Guideline threshold. For example, if the sponsor's income is from a job that is merely temporary or seasonal, you might reasonably conclude that the AOS,*

for that reason, is not sufficient.

(f) **(U) Means-Tested Public Benefits Received by the Sponsor:**

- (i) **(U)** The Department of State and U.S. Citizenship and Immigration Services (USCIS) has decided that, as a matter of policy, it will *not* require the sponsor to disclose his or her receipt of means-tested public benefits and not consider the fact that a sponsor has received such means-tested public benefits in the past in evaluating a Form I-864 or Form I-864-EZ; and
- (ii) **(U)** The sponsor may not include any means-tested public benefits currently being received in calculating the household income. (See also [9 FAM 302.8-2\(B\)\(9\).](#))

(g) **(U) Compare Total Household Income with Governing Poverty Guideline:**

- (i) **(U)** If the sponsor's total household income (line 24c of Form I-864 or line 18 of Form I-864-EZ) is greater than or equal to the governing Poverty Guideline threshold, the sponsor does not need to show evidence of assets and does not require a joint sponsor. In this case, you may move to part 8 of Form I-864 or Part 6 of Form I-864-EZ;
- (ii) **(U)** If Form I-864-EZ does not demonstrate means to maintain the required income, you may choose to request that the applicant submit a new Form I-864 from the sponsor (if the applicant seeks to qualify based on showing "significant assets") or submit a sufficient Form I-864 from a joint sponsor;
(U) NOTE: This request of evidence should go to the applicant, not to the sponsor.
- (iii) **(U)** If a Form I-864 does not demonstrate means to maintain the required income, you should consider the assets listed in Part 7 of the form.

f. **(U) Part 7 of Form I-864: Use of Assets to Supplement Sponsor's Income:**

- (1) **(U)** If a sponsor cannot meet the Poverty Guideline requirement based upon total household income listed on line 24c, he or she may show evidence of assets owned by the sponsor and/or members of the sponsor's household that are available to support the sponsored immigrant(s) and can be readily converted into cash within 1 year.
- (2) **(U)** For assets of the intending immigrant and/or household member to be considered, the household member must complete and sign Form I-864-A.
- (3) **(U)** You should check to make sure that the Form I-864-A is completed and signed by the sponsor and the household member.
- (4) **(U)** Evidence of the sponsor's assets should be attached to the Form I-864. Evidence of the principal sponsored immigrant's and/or household

member assets should be attached to Form I-864-A. (See [9 FAM 302.8-2\(B\)\(4\)](#) paragraph g.)

g. (U) Joint Sponsor:

(1) (U) Joint Sponsor Needed:

- (a) **(U)** If the petitioner or substitute sponsor cannot demonstrate ability to maintain a household income of at least 125% (or 100% when applicable) of the Federal Poverty Guidelines, the intending immigrant may meet the AOS requirement by obtaining a joint sponsor who is willing to accept joint and several liability with the principal sponsor as to provide support to the sponsored alien during the period that the affidavit is enforceable;
- (b) **(U)** If a joint sponsor submits an AOS, remember that the petitioner (the principal sponsor) still must submit an AOS, regardless of whether the sponsor had no income, or did not make enough income to be required to file income tax returns;
- (c) **(U)** The joint sponsor must demonstrate income or assets that independently meet the requirements to support the sponsored immigrant(s). It is not sufficient for the combination of incomes of the primary sponsor, sponsored immigrant, and joint sponsor to meet the threshold; and
- (d) **(U)** 8 CFR 213a.2(c) allows but does not require two joint sponsors per family unit intending to immigrate based upon the same family petition. No individual may have more than one joint sponsor, but it is not necessary for all family members to have the same joint sponsor.

(2) (U) Joint Sponsor not needed:

- (a) **(U)** *As noted in [9 FAM 302.8-2\(B\)\(2\)](#), a properly filed, non-fraudulent Form I-864 in those cases where it is required, should normally be considered sufficient to meet the INA 212(a)(4) requirements and satisfy the "totality of the circumstances" analysis. Therefore, in cases where the sponsor's I-864 is sufficient, a joint sponsor is not required. A joint sponsor would only be required in those cases if you determine that the AOS is not sufficient. For example, if the sponsor's income is from a job that is merely temporary or seasonal, you might reasonably conclude that the AOS, for that reason, is not sufficient.*
- (b) **(U)** If any additional Forms I-864 from the joint sponsors are included in the record, they should be removed from the file and returned to the intending immigrant. Remove all unneeded Forms I-864 from the file so there is no confusion about who is legally responsible for the immigrant and any enforcement action.

h. (U) Part 8 of Form I-864 or Part 6 of Form I-864-EZ Sponsor's Contract:

- (1) **(U)** Part 8 of Form I-864 or part 6 of Form I-864-EZ constitutes the bulk of contractual provisions and outlines the purpose of Form I-864, AOS under Section 213A of the Act, which is to overcome the public charge grounds of

inadmissibility. It includes:

- (a) **(U)** Notice of Address requirements (the sponsor must notify Department of Homeland Security (DHS) of the sponsor's new address within 30 days);
 - (b) **(U)** Means-tested Public Benefit Prohibitions and Exceptions;
 - (c) **(U)** Consideration of sponsor's income in determining eligibility for benefits;
 - (d) **(U)** Civil action to enforce the affidavit; and
 - (e) **(U)** It requires certification under the penalty of perjury that the sponsor is aware of the legal ramifications of being a sponsor under section 213A of the Act.
- (2) **(U)** Once signed, the concluding provisions satisfy the statutory requirement that the sponsor must make written statement under the penalty of perjury indicating that the copies of the Federal income tax returns submitted with the AOS are true copies of the returns filed with the Internal Revenue Service.
- (3) **(U)** A photocopy of the signed Form I-864 may be submitted for each spouse and/or child of the principal beneficiary of the adjustment of status application. Copies of supporting documentation are not required.
- i. **(U) Federal Income Tax Returns:** See [9 FAM 302.8-2\(B\)\(4\)](#) paragraph f.
- j. **(U) When Sponsor Cannot Provide Income Tax Returns:** See [9 FAM 302.8-2\(B\)\(4\)](#) paragraph f.
- k. **(U) Part 9 of Form I-864 Preparer Information:** If someone other than the sponsor prepares the form on the sponsor's behalf, the preparer must complete and sign Part 9 of the Form I-864. The preparer's signature is in addition to the sponsor's signature and does not replace the sponsor's obligation to sign the affidavit of support.
- l. **(U) Consular Posts/U.S. Citizenship and Immigration Services (USCIS) Completion of "Agency Use Only" Box:** In adjustment cases adjudicated by posts/USCIS, you must complete the "agency Use Only" box on the first page of the Form I-864 or Form I-864-EZ. If the petitioner sponsor does not qualify, you should check the box "Does not meet." In order for the applicant to be approved, there must be in the file another Form I-864 that meets the requirements from a joint sponsor. In such a case you must check the "Meets" box, and then sign, date, and note the post code for location.
- m. **(U) Verification of Information:**
- (1) **(U)** The U.S. Government may pursue verification of any information provided on or with Form I-864, Form I-864-EZ, Form I-864-A (e.g., employment, income, and/or assets) with the employer, financial or other institutions, the Internal Revenue Service, or the Social Security Administration. If the Department finds that a sponsor, joint sponsor, or household member has concealed or misrepresented material facts concerning income, household size, or other material facts, we will conclude that the Affidavit of Support is not

sufficient to establish that the sponsored immigrant is not likely to become a public charge.

- (2) **(U)** In this situation, the sponsor or joint sponsor may be liable for criminal prosecution under the general statutes relating to the submission of fraudulent immigration documents. Failure of the sponsor or joint sponsor to provide adequate evidence of income and/or assets will result in the denial of the application for adjustment to lawful permanent residence status.

9 FAM 302.8-2(B)(14) (U) Accepting Form I-864-W, Intending Immigrant's Affidavit of Support Exemption When Alien Can Demonstrate 40 Quarters of Work Under SSA

(CT:VISA-293; 03-06-2017)

- a. **(U)** [9 FAM 302.8-2\(B\)\(2\)](#) paragraph d(2) states that you must waive the Form I-864 requirement if the alien can demonstrate 40 quarters of earnings under the Social Security Act. Any individual seeking to demonstrate the number of quarters he or she has earned may request a Social Security earnings statement from the Social Security Administration, which shows income reported, years worked, and whether or not the applicant has earned 40 quarters (also known as "credits") and therefore qualifies for benefits.
- b. **(U)** Even if the applicant qualifies for a waiver of the Form I-864 affidavit requirement, he or she must still complete a Form I-864-W. Form I-864-W is the applicant's signed statement that he or she has earned (or can be credited with) 40 quarters (credits) of coverage under the Social Security Act (SSA). The applicant must include SSA earnings statements with their completed Form I-864-W. Applicants may not count any quarters during which he or she received a means-tested public benefit. An applicant may be credited with all the qualifying quarters of coverage earned by their spouse during their marriage, provided that the applicant remains married to that spouse, or the spouse is deceased. As stated in [9 FAM 302.8-2\(B\)\(12\)](#) paragraph b, the National Visa Center (NVC) performs a review of documents, including AOS, for most consular posts. In those instances where the petitioner or the sponsor notifies NVC that they wish to use the Social Security quarters provision in lieu of a Form I-864, NVC requires submission of the Form I-864-W and the SSA earnings statement as described above before qualifying the case for forwarding to the post.
- c. **(U)** If the petitioner and sponsor do not submit the Form I-864-W to NVC, indicating that they intend to use the Social Security quarters provision, NVC will require the Form I-864 and supporting documents, including the most recent Federal income tax return filed prior to the time of Form I-864 signing.

9 FAM 302.8-2(B)(15) (U) Reserved

(CT:VISA-293; 03-06-2017)

9 FAM 302.8-2(B)(16) (U) Evidence of Sponsor's Awareness of

Obligations

(CT:VISA-198; 09-30-2016)

- a. **(U)** In cases involving the use of Form I-134 (not Form I-864):
- (1) **(U)** The Department shares the responsibility for ensuring that persons who undertake to sponsor the immigration of aliens are informed, prior thereto, that:
 - (a) **(U)** If the alien applies for public assistance, the sponsorship affidavit will be made available to the public assistance agency;
 - (b) **(U)** Sponsors may be required to provide additional information concerning income and assets in connection with the alien's application for assistance; and
 - (c) **(U)** A form which posts are authorized to reproduce locally, designed to inform such sponsors of their responsibilities and obligations under the Social Security Act and the Food Stamp Act, must be included in all the "Instruction Package for Immigrant Visa Applicants" (formerly Packets 3) as an attachment to Form DS-2001, Notification of Applicant Readiness.
 - (2) **(U)** You may not accept an affidavit of support for purposes of INA 212(a)(4) unless the designated form concerning Social Security Insurance (SSI) benefits is signed by the sponsor(s) and attached to the affidavit.

9 FAM 302.8-2(B)(17) (U) Poverty Income Guidelines 2017

(CT:VISA-293; 03-06-2017)

a. **(U) In General:**

- (1) **(U)** Section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)) requires the Secretary of the Department of Health and Human Services (HHS) to update the poverty guidelines annually.
 - (2) **(U)** On January 26, 2017, HHS published its annual updates of the Poverty Guidelines, adjusting them on the basis of the Consumer Price Index for all Urban Consumers. The guidelines in this 2017 reflect the 1.3 percent price increase between calendar years 2015 and 2016.
 - (3) **(U)** The guidelines are rounded and adjusted to standardize the differences between family sizes. HHS used the same calculation procedure this year as in previous year. These guidelines apply to all persons of all ages in the family/household.
 - (4) **(U)** This simplified version of the poverty threshold used by the Bureau of Census to prepare statistical estimates of the number of persons and families living in poverty.
 - (5) **(U)** Applicants who cannot meet the applicable minimum poverty guideline threshold are inadmissible for immigrant visa issuance under INA 212(a)(4)(C).
- (U) NOTE:** The 2017 guidelines should be considered in determinations of

whether a Form I-864, or Form I-864-EZ submitted on or after March 1, 2017, meets the minimum Federal poverty income guidelines threshold. In cases in which the sponsor has filed the Form I-864 prior to March 1, 2017 consider the guidelines that were in effect at the time of submission.

b. (U) Annual Guidelines:

- (1) **(U) Minimum Income Requirements for Use in Completing Form I-864:**
 Use whichever table below reflects the poverty guidelines that were in effect for the 48 contiguous states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands at time the affidavit of Support was submitted.

<p><i>The following figures represent the annual income.</i></p> <p>(U) 2017 HHS Poverty Income Guidelines</p> <p><i>Column 1</i></p>	<p><i>Column 2</i></p>	<p><i>Column 3</i></p>	<p><i>Column 4</i></p>	<p><i>Column 5</i></p>	<p><i>Column 6</i></p>	<p><i>Column 7</i></p>
<p><i>Persons in Family/ Household Unit</i></p>	<p><i>48 Contiguous States and D.C. 100 percent</i></p>	<p><i>125 percent of HHS Poverty Guidelines</i></p>	<p><i>Alaska 100 percent of HHS Poverty Guidelines</i></p>	<p><i>125 percent of HHS Poverty Guidelines</i></p>	<p><i>Hawaii 100 percent of HHS Poverty Guidelines</i></p>	<p><i>125 percent of HHS Poverty Guidelines</i></p>
	<p><i>For all sponsors on active duty in the U.S. Armed Forces who are</i></p>	<p><i>For all other sponsors.</i></p>	<p><i>For all sponsors on active duty in the U.S. Armed Forces who are</i></p>	<p><i>For all other sponsors.</i></p>	<p><i>For all sponsors on active duty in the U.S. Armed Forces who are</i></p>	<p><i>For all other sponsors.</i></p>

	<i>petitioning for their spouses or child.</i>		<i>petitioning for their spouses or child.</i>		<i>petitioning for their spouses.</i>	
2	\$16,240	\$20,300	\$20,290	\$25,362	\$18,670	\$23,337
3	20,420	25,525	25,520	31,900	23,480	29,350
4	24,600	30,750	30,750	38,437	28,290	35,362
5	28,780	35,975	35,980	44,975	33,100	41,375
6	32,960	41,200	41,210	51,512	37,910	47,387
7	37,140	46,425	46,440	58,050	42,720	53,400
8	41,320	51,650	51,670	64,587	47,530	59,412
<i>For each additional person, add</i>	\$4,180	\$5,225	\$5,230	\$6,537	\$4,810	\$6,012

- (U)** These figures represent annual income. These poverty guidelines remain in effect for use with Form I-864, Affidavit of Support, from March 1, 2017, until new guidelines go into effect in 2018.
- (U)** Source: 82 FR 8831-8832
- (U)** NOTE: For families/households with more than 8 persons, add \$4,180.00, 100 percent) or \$5,225 (125 percent) for each additional person for the 48 contiguous States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of Northern Mariana Islands. See chart above for Alaska and Hawaii guidelines.
- (U)** Refer to the figures in orange columns (see 3, 5, and 7) when processing immigrant visa (IV) involving Form I-864 or Form I-864-EZ. Refer to the gray (see columns 2, 4, and 6) for active members of the U.S. Armed sponsoring spouses and children.
- (U)** These poverty guidelines remain in effect for use with Form I-864, Affidavit of Support from March 1, 2017, until the new guidelines go into effect in 2018.

(U) 2016 HHS Poverty Income Guidelines:

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Size of Family/ Household Unit	48 Contiguous States and D.C. 100 percent	125 percent	Alaska 100 percent	125 percent	Hawaii 100 percent	125 percent
	For all sponsors on active duty in the U.S. Armed Forces who are petitioning for their spouses or child.	For all other sponsors.	For all sponsors on active duty in the U.S. Armed Forces who are petitioning for their spouses.	For all other sponsors.	For all sponsors on active duty in the U.S. Armed Forces who are petitioning for their spouses.	For all other sponsors.
2	\$16,020	\$20,025	\$20,020	\$25,025	\$18,430	\$23,037
3	20,160	25,200	25,200	31,500	23,190	28,987
4	24,300	30,375	30,380	37,975	27,950	34,937
5	28,440	35,550	35,560	44,450	32,710	40,887
6	32,580	40,725	40,740	50,925	37,470	46,837
7	36,730	45, 912	45,920	57,400	42,230	52,787
8	40,890	51,112	51,120	63,900	47,010	58,762
For each additional person, add	\$4,160	\$5,200	5,200	6,500	\$4,780	\$5,975

(U) These figures represent annual income. These poverty guidelines remain in effect for use with Form I-864 from March 1, 2016, until new guidelines go into effect in 2017.

(U) Source: 81 FR 4036-4037

(U) NOTE: For families/households with more than 8 persons, add \$4,160, (100 percent) or \$5,200 (125 percent) for each additional person for the 48 contiguous States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of Northern Mariana Islands. See chart above for Alaska and Hawaii guidelines.

(U) Refer to the figures in orange columns (see 3, 5, and 7) when processing immigrant visa (IV) involving Form I-864 or Form I-864-EZ. Refer to the gray (see columns 2, 4, and 6) for active members of the U.S. Armed sponsoring spouses and children.

(U) 2015 HHS Poverty Income Guidelines:

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Size of Family Unit	48 Contiguous States and D.C. 100 percent	125 percent	Alaska 100 percent	125 percent	Hawaii 100 percent	125 percent
	For all sponsors on active duty in the U.S. Armed Forces who are petitioning for their spouses or child.	For all other sponsors.	For all sponsors on active duty in the U.S. Armed Forces who are petitioning for their spouses.	For all other sponsors.	For all sponsors on active duty in the U.S. Armed Forces who are petitioning for their spouses.	For all other sponsors.
2	15,930	19,912	19,920	24,900	18,330	22,912
3	20,090	25,112	25,120	31,400	23,110	28,887

4	24,250	30,312	30,320	37,900	27,890	34,862
5	28,410	35,512	35,520	44,400	32,670	40,837
6	32,570	40,712	40,720	50,900	37,450	46,812
7	36,730	45,912	45,920	57,400	42,230	52,787
8	40,890	51,112	51,120	63,900	7,010	56,762
For each additional person, add	4,160	5,200	\$5,200	6,500	\$4,780	\$5,975

(U) These poverty guidelines remain in effect for use with Form I-864 from March 1, 2015 until new guidelines go into effect in 2016.

(U) Source: 80 FR 3236-3237 [Published by HHS January 22, 2015.]

(U) NOTE: For families/households with more than 8 persons, add \$4,160, (100 percent) or \$5,200 (125 percent) for each additional person for the 48 contiguous States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of Northern Mariana Islands. See chart above for Alaska and Hawaii guidelines.

Refer to the figures in orange columns (see 3, 5, and 7) when processing immigrant visa (IV) involving Form I-864 or Form I-864-EZ. Refer to the gray (see columns 2,4, and 6) for active members of the U.S. Armed sponsoring spouses and children.

- c. **(U) Important Notice For Sponsors:** Read the following section before submitting Form I-864, or Form I-864-EZ.
- (1) **(U) Who needs Form I-864, Affidavit of Support under Section 213A of the Act?** Applicants for family-based immigrant visa (IV) categories, including biological and adopted children of U.S. citizens who are not eligible for automatic naturalization upon admission as a legal permanent resident:
- (U)** Any alien classified IR-2 based on a stepparent-stepchild relationship with a U.S. citizen;
 - (U)** Any alien classified IR-2 who will be age 18 or over upon admission to the United States as a lawful resident;
 - (U)** Any alien classified IR-2 who will not be taking up residence in the United States;
 - (U)** Any alien classified IR-2 who will not be residing with, and in the legal custody of, the U.S. citizen;

- (e) **(U)** Orphans adopted abroad by U.S. citizen (IR-3/IR-4); and
 - (f) **(U)** Applicants for employment-based immigrant visas where a relative filed the immigrant visa petition or have a five percent or greater ownership interest in the business that filed the petition.
- (2) **(U) Which Applicants for Family-based Immigrant Visas Do Not Need the form I-864, or Form I-864-EZ, Affidavit of Support under Section 213A Of the Act?** Applicants meeting the criteria below are not required to submit I-864 or I-864-EZ Affidavits of Support, but must submit Forms I-864-W, to demonstrate an exemption from the affidavit of support requirement:
- (a) **(U)** Biological (natural-born, in or out of wedlock) children of U.S. citizens (IR-2 immigrant visa (IV) category), provided the child will be admitted to the United States while under the age of 18 and will reside in the United States with, and in the custody of, the U.S. citizen parent;
 - (b) **(U)** Self-petitioning widow or widower and battered spouses and children;
 - (c) **(U)** An adopted child classified IR-2 who satisfies the requirement of INA 101(b)(1)(E) with respect to U.S. citizen parent; provided the child will be admitted to the United States while under age 18 and will reside in the United States with, and in the custody of, the adoptive U.S. citizen parent;
 - (d) **(U)** Orphans adopted abroad by U.S. citizen (IR-3/IR-4 immigrant visa (IV) category) with a full and final adoption, who will be admitted to the United States while under age 18 and will reside in the United States with, and in the custody of, the adoptive U.S. citizen parent; or
 - (e) **(U)** Immigrants who have already worked or can be credited with 40 qualifying quarters of work as defined in Title II of the Social Security Act (SSA).
- d. **(U) Checklist for preparing the Form I-864, or Form I-864-EZ, Affidavit of Support under Section 213A of the Act**
- (1) **(U) Documents must be submitted in the following order:**
 - (a) **(U)** Petitioner's Documents—Form I-864. The petitioner in family-based immigrants, or the employment-based immigrants where a relative filed the petition or has ownership interest (5% or more) in the petitioning entity, or a joint sponsor must complete a Form I-864.
 - (b) **(U)** For Form I-864, all pages in correct order, 1, 2, 3, 4, 5, 6, 7, 8, 9 10, 11 and 12 are stapled together; for Form I-864-EZ; 1, 2 3 4, 5, 6, and 7 are stapled together. Please see instructions for Form I-864-EZ.
 - (c) **(U)** Each page filled out completely.
 - (d) **(U)** Part 8 (Form I-864) or Part 6 (Form I-864-EZ) signed by the petitioner (for employment cases, by the relative) (not required to be notarized).
 - (e) **(U)** Photocopy or Internal Revenue Service (IRS) transcript of the most recent Federal tax return with all supporting schedules that the sponsor had filed prior to the time of Affidavit of Support (AOS) signing. The

return must have all pages in the correct order and must be stapled together.

- (f) **(U)** If *the sponsor* did not have to file a tax return, attach a written explanation and a copy of the instructions from the IRS publication that shows you was not obligated to file. (For information on most income tax obligations visit the IRS Web site.)
- (g) **(U)** If assets are needed to meet the minimum income requirement:
- (i) **(U)** Amount of assets required. In order to qualify using the assets, the total net value of all assets must generally equal at least five times the difference between the sponsor's total household income and the minimum income requirement of the current year.

(U) Example for a Household of 4:

125% Poverty Guideline (48 Contiguous States, District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam)	\$30,750.00 (2017)
Sponsor's Income	\$45,500.00
Difference	\$14,750.00
Multiply by 5	X 5
Minimum Required Net Value of Assets	\$73,750.00

(U) There are two exceptions, however: If the applicant intends to immigrate as a spouse of a U.S. citizen or the child of a U.S. citizen who will not become a citizen under section 320 of the Act because the child has already reached his or her 18th birthday, the "significant assets" requirement will be satisfied if the assets equal three times, rather than five times, the difference between the applicable income threshold and the actual household income.

(U) Example for a Household size of 4:

125% Poverty Guideline	\$30,750 (2017)
Sponsor's Income	\$45,500.00
Difference	\$14,750.00
Multiply by 3	X 3

Minimum Required Net Value of Assets	\$44,250.00
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(U) If the applicant intends to immigrate as an IR-4 immigrant (orphans coming to the United States for adoption), the parents' assets only need to equal or exceed the difference between the applicable income threshold and the actual household income.

(U) Example for a Household size of 4:

125% Poverty Guideline	\$30,750 (2017)
Sponsor's Income	\$45,500.00
Difference (Minimum Required Net Value of Assets)	\$14,750.00

- (ii) **(U)** Evidence of ownership, location, and the value of each asset;
- (iii) **(U)** Evidence of liens, mortgages, and liabilities for each asset (if any); and
- (iv) **(U)** When required under [9 FAM 302.8-2\(B\)\(3\)](#), evidence of current employment or self-employment, such as a recent pay statement or a statement from your employer on business stationery, showing the beginning date of employment, type of work performed, and salary or wages paid.

e. (U) Joint Sponsors (if required):

(1) (U) Form I-864:

- (a) **(U)** Must be completed by a joint sponsor if the petitioner or substitute sponsor cannot demonstrate the ability to maintain a household income of at least 125 percent (or 100 percent when applicable of the Federal Poverty Guidelines).
- (b) **(U)** The intending immigrant may meet the Affidavit of Support requirement by obtaining a joint sponsor who is willing to accept joint and several liability with the principal sponsor as to the obligation to provide support to the sponsored alien during the period that the Affidavit is enforceable.
- (c) **(U)** 8 CFR 213a(2)(iii)(C) allow but do not require two joint sponsors per family unit intending to immigrate based on the same petition.

- (2) **(U)** The joint sponsor: Must meet the same qualifications as the petitioner and submit the same documentation as noted in paragraph a, Petitioner's Documents above.

(U) NOTE: The petitioner must also submit a Form I-864.

f. (U) Household Members Whose Income and Assets are to be considered:

- (1) **(U)** A separate Form I-864-A, Contract Between Sponsor and Household Member, must be completed for each household member whose income and assets are to be considered.
 - (2) **(U)** Each page must be filled out completely and stapled together.
 - (3) **(U)** All tax, employment, and asset documents must be assembled in the same manner as the sponsor's (see above) and attached to the correct Form I-864-A, Contract Between Sponsor and Household Member.
 - (4) **(U)** Part 1 Information on the Household Member.
 - (5) **(U)** Part 2 Your (the household Member's) Relationship to the Sponsor must be completed by sponsor.
 - (6) **(U)** Part 3 Your (the Household Member's) Employment and Income must be completed by the household member.
- g. (U) Documents for the Principal Immigrant and Accompanying Dependents:**
- (1) **(U)** Principal Applicant:
 - (a) **(U)** Original *or copy of* Form I-864 and Form I-864-A, Contract Between Sponsor and Household Member (if needed); must be signed (not required to be notarized).
 - (b) **(U)** The sponsor's most recent Federal income tax return filed prior to the time of Form I-864 signing is needed for each principal immigrant.
 - (2) **(U) Accompanying Dependents:**
 - (a) **(U)** Accompanying dependents, if listed on the original Form I-864 affidavit of support submitted for the principal applicant and accompanying the principal applicant (traveling and entering the United States at the same time) may submit and travel together on one complete set of signed documents (not required to be notarized): Form I-864 and Form I-864-A, Contract Between Sponsor and Household Member, if needed.
 - (b) **(U)** Accompanying dependents, if travelling together with the principal applicant, may submit copies of the principal's Form I-864 and Form I-864-A (photocopied signatures are acceptable.)
 - (c) **(U)** Copies of supporting documents are not required for dependents applying for visas or adjustment of status together with the principal immigrant.
 - (3) **(U)** Follow to join dependents (travelling separately from the principal applicant and entering after the principal, or following to join a principal applicant who has adjusted status in the United States) must submit a signed affidavit of support from the sponsor, along with a complete set of supporting documents. *A photocopy of the affidavit of support previously submitted by the principal applicant is acceptable.*

9 FAM 302.8-2(C) (U) Advisory Opinions

(CT:VISA-1; 11-18-2015)

(U) An AO is not required for a potential INA 212(a)(4) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.8-2(D) (U) Waiver

9 FAM 302.8-2(D)(1) (U) Waivers for Immigrants

(CT:VISA-1; 11-18-2015)

(U) No waiver is available for immigrants ineligible under INA 212(a)(4). Applicants may overcome the finding by presenting evidence to convince you that the inadmissibility no longer applies. While there are provisions for overcoming the inadmissibility by posting a bond with DHS, the applicant is still subject to Affidavit of Support (AOS) and income requirements. Consequently, there are few circumstances in which a bond would be offered as an alternative to the AOS.

9 FAM 302.8-2(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-1; 11-18-2015)

(U) No waiver is available for nonimmigrants ineligible under INA 212(a)(4). The refusal on this ground may be overcome. Typically, refusals are overcome if an applicant presents evidence that convinces the consular officer that the inadmissibility no longer applies.

9 FAM 302.8-2(E) Unavailable

9 FAM 302.8-2(E)(1) Unavailable

(CT:VISA-198; 09-30-2016)

Unavailable

9 FAM 302.8-2(E)(2) Unavailable

(CT:VISA-198; 09-30-2016)

Unavailable

9 FAM 302.9

(U) INELIGIBILITY BASED ON ILLEGAL ENTRY, MISREPRESENTATION AND OTHER IMMIGRATION VIOLATIONS - INA 212(A)(6)

(CT:VISA-369; 05-31-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 302.9-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 302.9-1(A) (U) Immigration and Nationality Act

(CT:VISA-272; 12-20-2016)

(U) INA 101(a)(49) (8 U.S.C. 1101(a)(49)); INA 212(a)(6)(A) (8 U.S.C. 1182(a)(6)(A)); INA 212(a)(6)(B) (8 U.S.C. 1182(a)(6)(B)); INA 212(a)(6)(C) (8 U.S.C. 1182(a)(6)(C)); INA 212(a)(6)(D) (8 U.S.C. 1182(a)(6)(D)); INA 212(a)(6)(E) (8 U.S.C. 1182(a)(6)(E)); INA 212(a)(6)(F) (8 U.S.C. 1182(a)(6)(F)); INA 212(a)(6)(G) (8 U.S.C. 1182(a)(6)(G)); INA 212(d)(3) (8 U.S.C. 1182(d)(3)); INA 212(d)(11) (8 U.S.C. 1182(d)(11)); INA 212(d)(12) (8 U.S.C. 1182(d)(12)); INA 212(i) (8 U.S.C. 1182(i)); INA 214(m) (8 U.S.C. 1184(m)); INA 274A (8 U.S.C. 1324a); INA 274C (8 U.S.C. 1324c).

9 FAM 302.9-1(B) (U) Code of Federal Regulations

(CT:VISA-272; 12-20-2016)

(U) 22 CFR 40.61; 22 CFR 40.62; 22 CFR 40.63; 22 CFR 40.64; 22 CFR 40.65; 22 CFR 40.66; 22 CFR 40.67.

9 FAM 302.9-2 (U) PRESENT WITHOUT ADMISSION OR PAROLE - INA 212(A)(6)(A)

9 FAM 302.9-2(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(6)(A) provides that an alien who is present in the United States without being admitted or paroled, or who arrives in the United States at an undesignated time or place is inadmissible.

9 FAM 302.9-2(B) (U) Application

(CT:VISA-74; 03-03-2016)

(U) INA 212(a)(6)(A)(i) does not apply at the time of visa application because it applies only to aliens present or arriving in the United States.

9 FAM 302.9-3 (U) FAILURE TO ATTEND REMOVAL PROCEEDING - INA 212(A)(6)(B)

9 FAM 302.9-3(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(6)(B) provides that an alien who without reasonable cause failed to attend, or remain in attendance at, a hearing to determine inadmissibility or deportability is ineligible for a visa for five years following the alien's subsequent departure or removal from the United States.

9 FAM 302.9-3(B) (U) Application

9 FAM 302.9-3(B)(1) (U) Definitions

(CT:VISA-74; 03-03-2016)

- a. **(U) Admission and Admitted:** INA 101(a)(13) defines the terms "admission" and "admitted" to mean the lawful entry of an alien into the United States after inspection and authorization by an immigration officer. An alien who is paroled under INA 212(d)(5) or permitted to land temporarily as an alien crewman shall not be considered to have been "admitted". Aliens who have entered without inspection are not considered to have been "admitted".
- b. **(U) Application for Admission:** The term "application for admission" refers to an alien's application for admission into the United States and not to the alien's application for a visa.

9 FAM 302.9-3(B)(2) (U) Failure to Attend Removal Proceedings

(CT:VISA-272; 12-20-2016)

- a. **(U)** An alien placed in removal proceedings on or after April 1, 1997, who without reasonable cause, fails or refuses to attend or remain in attendance at proceedings to determine the alien's inadmissibility or deportability is inadmissible under INA 212(a)(6)(B) for five years following the alien's departure or removal from the United States. Reasonable cause is defined as "something that is not within the reasonable control of the alien."
- b. **(U)** Federal courts have found that the following were not "reasonable causes" for failing to attend removal proceedings:

- (1) **(U)** Changes in venue;
 - (2) **(U)** The alien moving to a new residence;
 - (3) **(U)** Misplacing a hearing notice;
 - (4) **(U)** Claiming ineffective assistance of counsel without complying with the requirements of such a claim (e.g. filing a motion to reopen the proceedings claiming ineffective assistance, etc.); and
 - (5) **(U)** Heavy traffic.
- c. **(U)** The BIA has twice found that serious illness could be a reasonable cause for failing to attend or remain in attendance at removal proceedings.

9 FAM 302.9-3(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

(U) An AO is not required for a potential INA 212(a)(6)(B) ineligibility; however, if you have a question about the interpretation or application of law or regulation, such as what constitutes "reasonable cause," you may request an AO from CA/VO/L/A.

9 FAM 302.9-3(D) (U) Waivers

9 FAM 302.9-3(D)(1) (U) Waivers for Immigrants

(CT:VISA-74; 03-03-2016)

(U) The INA does not provide a waiver of INA 212(a)(6)(B) for immigrant visa applicants.

9 FAM 302.9-3(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-369; 05-31-2017)

(U) You may, in your discretion, recommend that DHS grant a waiver under INA 212(d)(3)(A) for an alien inadmissible under INA 212(a)(6)(B) provided the alien meets the criteria specified in [9 FAM 305.4-3\(C\)](#).

9 FAM 302.9-3(E) Unavailable

9 FAM 302.9-3(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.9-3(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.9-4 (U) MISREPRESENTATION - INA 212(A)(6)(C)(I)

9 FAM 302.9-4(A) (U) Grounds

(CT:VISA-74; 03-03-2016)

(U) INA 212(a)(6)(C)(i) provides an alien who seeks to procure, or has sought to procure, or has procured a visa, other documentation, or entry into the United States or other benefit provided under the INA by fraud or willfully misrepresenting a material fact at any time shall be ineligible for a visa.

9 FAM 302.9-4(B) (U) Application

9 FAM 302.9-4(B)(1) (U) Criteria for Finding

(CT:VISA-74; 03-03-2016)

(U) In order to find an alien inadmissible under INA 212(a)(6)(C)(i), it must be determined that:

- (1) **(U)** There has been a misrepresentation made by the applicant (see [9 FAM 302.9-4\(B\)\(3\)](#));
- (2) **(U)** The misrepresentation was willfully made (see [9 FAM 302.9-4\(B\)\(4\)](#));
- (3) **(U)** The fact misrepresented is material (see [9 FAM 302.9-4\(B\)\(5\)](#)); and
- (4) **(U)** The alien by using fraud or misrepresentation (see [9 FAM 302.9-4\(B\)\(2\)](#)) seeks to procure, has sought to procure, or has procured a visa, other documentation, admission into the United States (see [9 FAM 302.9-4\(B\)\(7\)](#) paragraph a), or other benefit provided under the INA (see [9 FAM 302.9-4\(7\)](#) paragraph b).

9 FAM 302.9-4(B)(2) (U) Different Standards for Finding of Fraud or Willfully Misrepresenting a Material Fact

(CT:VISA-74; 03-03-2016)

- a. **(U)** Congress used the terms "fraud" and "willfully misrepresenting a material fact" in the alternative. For the purposes of this section, the Board of Immigration Appeals has determined that a finding of "fraud" requires a determination that the alien made a false representation of a material fact with knowledge of its falsity and with the intent to deceive a consular or immigration officer. Further, the representation must have been believed and acted upon by the officer. (See Matter of G, 7 I & N 161, 1956.) On the other hand, "material misrepresentation" includes simply a willful misrepresentation, which is relevant to the alien's visa entitlement. It is not necessary that an "intent to deceive" be established by proof, or that the officer believes and acts upon the false representation. (See Matter of S and B-C, 9 I & N 436, 448-449 (A.G. 1961) and Matter of Kai Hing Hui, 15 I & N 288 (1975)).

- b. **(U)** Most cases of inadmissibility under this section will involve "material misrepresentations" rather than "fraud" since actual proof of an alien's intent to deceive may be hard to come by. As a result, the Notes in this section will deal principally with the interpretation of "material misrepresentation."

9 FAM 302.9-4(B)(3) (U) Interpretation of the Term Misrepresentation

(CT:VISA-272; 12-20-2016)

- a. **(U) "Misrepresentation" Defined:** As used in INA 212(a)(6)(C)(i), a misrepresentation is an assertion or manifestation not in accordance with the facts. Misrepresentation requires an affirmative act taken by the alien. A misrepresentation can be made in various ways, including in an oral interview or in written applications, or by submitting evidence containing false information.
- b. **(U) Differentiation Between Misrepresentation and Failure to Volunteer Information:** In determining whether a misrepresentation has been made, it is necessary to distinguish between misrepresentation of information and information that was merely concealed by the alien's silence. Silence or the failure to volunteer information does not in itself constitute a misrepresentation for the purposes of INA 212(a)(6)(C)(i).
- c. **(U) Misrepresentation Must Have Been Before U.S. Official:** For a misrepresentation to fall within the purview of INA 212(a)(6)(C)(i), it must have been practiced on an official of the U.S. Government, generally speaking, a consular officer or a Department of Homeland Security (DHS) officer.
- d. **(U) Misrepresentation Must be Made on Alien's Own Application:** The misrepresentation must have been made by the alien with respect to the alien's own visa application. Misrepresentations made in connection with some other person's visa application do not fall within the purview of INA 212(a)(6)(C)(i). Any such misrepresentations may be considered with regard to the possible application of INA 212(a)(6)(E).
- e. **(U) Misrepresentation Made by Applicant's Agent or Attorney:** The fact that an alien pursues a visa application through an attorney or travel agent does not serve to insulate the alien from liability for misrepresentations made by such agents, if it is established that the alien was aware of the action being taken in furtherance of the application. This standard would apply, for example, where a travel agent executed a visa application on an alien's behalf. Similarly, an oral misrepresentation made on behalf of an alien at the port of entry by an aider or abettor of the alien's illegal entry will not shield the alien in question from inadmissibility under INA 212(a)(6)(C)(i), irrespective of what penalties the aider or abettor might incur, if it can be established that the alien was aware at the time of the misrepresentation made on his or her behalf.
- f. **(U) Timely Retraction:** A timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for INA 212(a)(6)(C)(i) and INA 212(a)(6)(C)(ii) inadmissibility. Whether a retraction is timely depends on the

circumstances of the particular case. In general, it should be made at the first opportunity. If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. If the misrepresentation has been noted in a "mail-order" application, the applicant must be called in for an interview and the retraction must be made during the course thereof. For this reason, aliens must be warned of the penalty imposed by INA 212(a)(6)(C)(i) and INA 212(a)(6)(C)(ii) once you are aware that the applicant made a misrepresentation that might be material.

g. (U) Applying the 30/60 Day Rule:

(1) (U) In General:

- (a) **(U)** In determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application or to immigration officers when applying for admission. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, either:
 - (i) **(U)** Apply for adjustment of status to permanent resident; or
 - (ii) **(U)** Fail to maintain their nonimmigrant status (for example, by engaging in employment without authorization by DHS).
- (b) **(U)** To address this problem, the Department developed the 30/60-day rule. This rule is intended to facilitate adjudication of these types of cases consistent with the statutory mandates.
- (c) **(U)** Aliens who apply for adjustment or change of status pursuant to the INA are within the jurisdiction of the United States Citizenship and Immigration Services (USCIS) unless the application is abandoned upon the departure of the alien from the United States. If you become aware of derogatory information indicating that an alien who has applied to USCIS to adjust to immigrant status or change nonimmigrant status in the United States may have misrepresented his or her intentions to you at the time of visa application or to the immigration officer at the port of entry, you should bring the derogatory information to the attention of the appropriate USCIS office that has jurisdiction over the adjustment or change of status application. Do not request an advisory opinion from the Advisory Opinions Division (CA/VO/L/A) in these cases, because it would not be binding on USCIS.
- (d) **(U)** With respect to the second category referred to above, nonimmigrant visa holders who fail to maintain their nonimmigrant status, the fact that an alien's subsequent actions are other than as stated at the time of visa application or admission does not necessarily prove that the alien's intentions were misrepresented at the time of application or entry. You should recognize that the precise circumstances under which the change in activities have an important bearing on whether a knowing and willful

misrepresentation was made. The existence of a misrepresentation must therefore be clearly and factually established by direct or circumstantial evidence sufficient to meet the "reason to believe" standard. Although indeed more flexible than the judicial "beyond reasonable doubt" standard demanded for a conviction in court, a "reason to believe" standard requires that a probability exists, supported by evidence which goes beyond mere suspicion.

- (2) **(U) Applying 30/60 Day Rule When Alien Violates Status:** You should apply the 30/60-day rule if an alien states on his or her application for a nonimmigrant visa, or informs an immigration officer at the port of entry (POE), that the purpose of his or her visit is consistent with that nonimmigrant status and then violates such status by:
 - (a) **(U)** Actively seeking unauthorized employment and, subsequently, becomes engaged in such employment;
 - (b) **(U)** Enrolling in a full course of academic study without the benefit of the appropriate change of status;
 - (c) **(U)** Marrying and taking up permanent residence; or
 - (d) **(U)** Undertaking any other activity for which a change of status or an adjustment of status would be required, without the benefit of such a change or adjustment.
- (3) **(U) Inconsistent Conduct Within 30 Days of Entry:** If an alien violates his or her nonimmigrant status in a manner described in [9 FAM 302.9-4\(B\)\(3\)](#) paragraph g(2) within 30 days of entry, you may presume that the applicant's representations about engaging in status-compliant activity were misrepresentations of his or her intention in seeking a visa or entry. For a finding of an inadmissibility for inconsistent conduct within 30 days of entry, you must request an AO from CA/VO/L/A.
- (4) **(U) After 30 Days But Within 60 Days:** If an alien violates his or her nonimmigrant status more than 30 days but less than 60 days after entry into the United States, no presumption of misrepresentation arises. However, if the facts in the case give you reasonable belief that the alien misrepresented his or her intent, then you must give the alien the opportunity to present countervailing evidence. If you do not find such evidence to be persuasive, you must request an AO from CA/VO/L/A. (See [9 FAM 302.9-4\(C\)\(2\)](#)).
- (5) **(U) After 60 Days:** If an alien violates his or her nonimmigrant status more than 60 days after admission into the United States, the Department does not consider such conduct alone to constitute a basis for an INA 212(a)(6)(C)(i) inadmissibility.

h. (U) Evidence of Violation of Status:

- (1) **(U)** To find an alien inadmissible under INA 212(a)(6)(C)(i), there must be evidence that, at the time of the visa application or entry into the United States, the alien stated orally or in writing to a consular or immigration officer

that the purpose of the visit to the United States was other than to work or remain indefinitely. Ordinarily, such evidence would be in the form of an admission, from information taken from the alien's nonimmigrant visa (NIV) application, or a report by an immigration officer that the alien made such a statement (e.g., as would be found on the DHS Form I-275, Withdrawal of Application/Consular Notification).

(U) NOTE: For all findings of inadmissibility under the 30/60-day guidelines described in section g, above, you must request an AO from CA/VO/L/A.

- (2) **(U)** The burden of proof falls on the alien to establish that his or her true intent at the time of the suspected misrepresentation was permissible in his or her nonimmigrant status. In the absence of any further offering of proof by the alien to rebut the presumption, a finding of ineligibility will result. You must give the alien the opportunity to rebut the presumption by presentation of evidence to overcome it.
- (a) **(U)** If you are satisfied that the presumption is overcome, and the alien is otherwise eligible, process the case to conclusion.
- (b) **Unavailable**
- (i) **Unavailable**
- (ii) **Unavailable**
- (iii) **Unavailable**

9 FAM 302.9-4(B)(4) (U) Interpretation of the Term Willfully

(CT:VISA-74; 03-03-2016)

- a. **(U) Willfully Defined:** The term "willfully" as used in INA 212(a)(6)(C)(i) is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately made an untrue statement.
- b. **(U) Misrepresentation is Alien's Responsibility:** An alien who acts on the advice of another is considered to be exercising the faculty of conscious and deliberate will in accepting or rejecting such advice. It is no defense for an alien to say that the misrepresentation was made because someone else advised the action unless it is found that the alien lacked the capacity to exercise judgment.

9 FAM 302.9-4(B)(5) (U) Interpretation of the Term Material Fact

(CT:VISA-272; 12-20-2016)

- a. **(U) Materiality Defined:** Materiality is determined in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa. The Attorney General has declared the definition of "materiality" with respect to INA 212(a)(6)(C)(i) to be as

follows: "A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:

- (1) **(U)** The alien is inadmissible on the true facts; or
- (2) **(U)** The misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he or she be inadmissible." (Matter of S- and B-C, 9 I & N 436, at 447.)

b. **(U) Independent Ground of Inadmissibility:** The first part of the Attorney General's definition of materiality comprises those cases where the material facts disclose a situation rendering the alien ineligible for a visa as a matter of law. These are known as independent or objective grounds of inadmissibility. Objective grounds of inadmissibility are those encompassed within the provisions of INA 212(a)(1) through (10). Special circumstances are as follows:

- (1) **(U)** There are grounds of inadmissibility that are not permanent and for which some aliens may be relieved of ineligibility by operation of law. For example, an alien who incurred an ineligibility under INA 212(a)(9)(B)(i)(I) and made a misrepresentation about prior unlawful presence in the United States would not be concealing an independent grounds of inadmissibility if more than three years had elapsed since the alien's departure from the United States.
- (2) **(U)** As another example, INA 212(a)(2)(A)(i)(I) has the sentencing clause exception of INA 212(a)(2)(A)(ii)(II). An alien who lies about a criminal conviction that involves a crime involving moral turpitude but which comes under the sentencing clause exception would therefore not be ineligible under INA 212(a)(6)(C)(i) for concealing an independent grounds of inadmissibility.
- (3) **(U)** In judicial and administrative decisions about the applicability of INA 212(a)(6)(C)(i), a distinction has been drawn between those other provisions of INA 212 which grant relief from ineligibility as a result of an evaluation of all relevant factors pro and con, on the one hand, and those which provide relief automatically by standard operation of law, as described above. The essence of these decisions, according to the Attorney General, is that:
 - (a) **(U)** The fact in question is material if the final determination of relief would depend on an exercise in judgment (i.e., one cannot predicate immateriality on the possibility that the exercise of judgment would have erased the ground of inadmissibility when it is also possible that the judgment could have gone the other way);
 - (b) **(U)** The fact is not material under the independent grounds of inadmissibility prong of INA 212(a)(6)(C)(i)'s [materiality test](#) if the relief stems from the automatic operation of law; and

c. **(U) "Rule of Probability" Defined:**

- (1) **(U) In General:** The second part of the Attorney General's definition is directed to those cases when the alien's misrepresentation tended to shut off a line of inquiry which is relevant to visa eligibility. These are cases where the

exercise of further consular judgment is required. Past judicial and administrative decisions concerning this part have evolved into what has become to be known as the "rule of probability."

- (2) **(U) "Tends" Defined:** The word "tends" as used in "tended to cut off a line of inquiry" means that the misrepresentation must be of such a nature as to be reasonably expected to foreclose certain information from your knowledge. It does not mean that the misrepresentation must have been successful in foreclosing further investigation by you in order to be deemed material; it means only that the misrepresentation must reasonably have had the capacity of foreclosing further investigation.
 - (a) **(U)** If an alien's eligibility for a visa is resolved against the alien on the known circumstances of the case, a subsequent discovery that the alien had misrepresented certain aspects of the case would not be considered material since the misrepresented facts did not tend to lead you into making an erroneous conclusion. For example, an applicant for a nonimmigrant visa (NIV) falsifies the visa application by claiming to have a well-paying job in order to show that the applicant has a residence abroad, but before the misrepresentation was discovered, the visa was refused because the alien could not, on the known facts, qualify as a nonimmigrant. The subsequent ascertainment of the false statement would not support a finding of materiality because it had no objective significance to the finding that the alien was not a nonimmigrant.
 - (b) **(U)** If the truth of the fact being misrepresented is available to you through consular systems, or through reference to the post's own files, it cannot be said that the alien's misrepresentation tended to cut off a line of inquiry since the line of inquiry was readily available to you. While the availability of the true facts does not support the "materiality" of the misrepresentation under the "rule of probability" (part two of the Attorney General's definition), if those facts disclose an independent ground of ineligibility, then the misrepresentation is material under the first part of the Attorney General's definition. (See [9 FAM 302.9-4\(B\)\(5\)](#) paragraph a).
- (3) **(U) Questionable Cases:** Frequently, a question arises concerning the effect on ineligibility of a false document presented in support of an application, or a false statement made to you, each of which purports to establish a fact which is material to the application for a visa, but which, in the case of the document, is so poorly crafted, or in the case of the statement is so unbelievable as to lack credibility. Despite the lack of credibility, if the document or statement is offered for the purpose of establishing a fact which would be material if the information in the document or statement were to be accepted as truthful, you may consider that the document or statement "tends" to cut off a line of inquiry.
- (4) **(U) Facts Considered Material:**
 - (a) **(U) Residence and Identity:** The Board of Immigration Appeals has held that misrepresentations of residence and identity are not

automatically material and must be considered as any other misrepresentation. That means they can be material for purposes of 212(a)(6)(C)(i) if the alien is inadmissible on the true facts or the misrepresentation tends to cut off a relevant line of inquiry which might have led to a proper finding of ineligibility. Misrepresentations regarding identity may also involve an independent ground of ineligibility if they involve a false identity in a passport. INA 212(a)(7)(B) makes inadmissible any alien not in possession of a valid passport. The definition of a passport in INA 101(a)(30) requires that the document show the bearer's "identity." Therefore, an alien who applies using a passport issued in a false identity to which they have no legitimate claim would not have a valid passport as defined under the INA and would be inadmissible under the independent ground of INA 212(a)(7)(B) and thus also ineligible under INA 212(a)(6)(C)(i). This does not apply, however, where the alien uses a nickname, some other reasonable variant of a name, a legally changed name, or any other name for which the alien has some legitimate entitlement.

Unavailable

Unavailable

- (b) **(U) Misrepresentations Concerning Previous Visa Applications:**
- (i) **(U)** Applying for an immigrant visa or seeking adjustment of status in the United States does not render an alien ineligible for a nonimmigrant visa (NIV) in itself, but it does raise questions about the nonimmigrant intent of the applicant. Because a misrepresentation with respect to permanent status in the United States might tend to cut off the proper line of inquiry into the nonimmigrant intent of the alien, such a misrepresentation is normally considered to be of material importance. However, there may be factors, including events intervening between the registration and the nonimmigrant visa (NIV) application (DS-160 Online Non-Immigrant Visa Application) that must render a prior registration for an immigrant visa (IV) immaterial in connection with the NIV application at hand. Although no list of exemplary intervening events may be all-inclusive, one might include: a marriage; a purchase of a new home; a substantial investment in the local economy; and business or familial emergencies in the United States.
 - (ii) **(U)** A misrepresentation concerning a previous application on the part of an immigrant visa (IV) applicant would not be considered to be material unless the misrepresentation also concealed the existence of an independent ground of inadmissibility;
 - (iii) **(U)** A misrepresentation concerning a previous application for a nonimmigrant visa made on the part of an IV applicant is not in itself

considered to be material; and

- (iv) **(U)** A nonimmigrant visa (NIV) applicant's misrepresenting the fact that the applicant was previously refused an NIV is not, in itself, a material misrepresentation, even though you may feel that knowledge of the previous visa refusal might have been useful. In the absence of anything to the contrary, assume that the previous refusal was predicated on the previous interviewing officer's finding that the alien was not a qualified nonimmigrant at the time of that interview. Such an opinion is necessarily limited to the circumstances of the alien's prior application at that time. Since circumstances change, eligibility must be decided in light of the current situation in each application. Consequently, a misrepresentation which conceals only the fact of a previous refusal is not material. Where the misrepresentation conceals not only the fact of the previous refusal, but also objective information not otherwise known or available to you, there may be a basis for finding that the absence of such facts tended to cut off a line of inquiry and thus rendered the misrepresentation material.

- (5) **(U) Application of Phrase "Which Might Have Resulted in a Proper Determination of Exclusion":** In order to sustain a finding of materiality, it must be shown that the information foreclosed by the misrepresentation was of basic significance to the alien's eligibility for a visa. A remote, tenuous, or fanciful connection between a misrepresentation and a line of inquiry which relevant to the alien's eligibility is insufficient to satisfy this aspect of the materiality test. The information concealed by the misrepresentation must, when balanced against all the other information of record, have been controlling or crucial to a final decision of the alien's eligibility to receive a visa. For example, if an alien was trying to establish a residence abroad by submitting false evidence of particular employment and it appeared that the alien had other ties meriting favorable consideration, then the misrepresentation would not be considered to be material.

(6) **(U) The True Facts:**

- (a) **(U)** An applicant will never be ineligible under INA 212(a)(6)(C)(i) if he or she can demonstrate eligibility on the true facts. For this reason, an assessment of ineligibility under this ground is not complete until you have considered, to the extent possible in light of the applicant's misrepresentation, the true facts. "The applicant bears the burden of establishing the true facts and bears the risk that uncertainties caused by his or her misrepresentation may be resolved against the applicant, if the facts support a finding that the alien is eligible for a visa, the misrepresented fact is not material."
- (i) **(U)** If an alien were to make a misrepresentation to establish an advantageous immigrant visa (IV) status and it were discovered that the alien was, in truth, entitled to another equally advantageous

status, the misrepresentation would not be considered to be material. For example, if the son or daughter of a U.S. citizen were to misrepresent marital status as being unmarried for the purpose of qualifying for first preference status, and was, in fact, married and thus qualified for only third preference consideration, but the third preference was currently available for the alien's state of chargeability, the misrepresentation should not be considered material. If, however, there were a waiting period for third preference applicants in the state of the alien's chargeability or world-wide, the alien must then be found to have sought an unwarranted advantage by means of a willful misrepresentation and the misrepresentation would, therefore, be material;

(ii) **(U)** If an alien were to make a misrepresentation in order to enhance or exaggerate the alien's qualifications for a visa, but the true facts alone were sufficient to establish qualifications, the misrepresentation would not be considered to be material. For example, if an alien were to misrepresent employment prospects in the United States as a means of establishing qualifications for a visa under INA 212(a)(4), and it were discovered that, in truth, the alien had other comparable employment or other satisfactory prospects, the misrepresentation is not considered material.

(b) **(U)** Once it has been established that a misrepresentation was made in securing a visa, the burden is on the person making the misrepresentation to establish that the facts support eligibility or that, had you known the truth, a refusal of a visa could not properly have been made. Be receptive to any further evidence the alien may provide in order to ensure that a proper finding has been made.

d. **(U) Cases Not Involving the "Rule of Probability"**: The following cases do not involve the "rule of probability."

(1) **(U)** Cases where the alien has expressly admitted to you that, at the time the alien applied for a visa or entry into the United States as a visitor, it was the alien's intention to accept unauthorized employment in the United States or to reside indefinitely in the United States. A written confession is not required if:

(a) **(U)** The alien admitted under oath to the misrepresentation;

(b) **(U)** You have accurately recorded the statement in the notes of the interview;

(c) **(U)** You have signed and dated the notes; and

(d) **(U)** You have refused the visa and scanned the refusal into the CCD.

(2) **(U)** Cases where DHS has reported to you that an alien attempted to enter or procured entry into the United States by presenting to the inspecting officer at the port of entry (POE) forged or materially altered entry documentation. Such documentation may include a U.S. visa, a foreign passport, or a U.S. passport;

if such documentation was required under the INA or other laws of the United States for the alien's entry, or, in the case of the U.S. passport, if the alien was posing as a U.S. citizen for the purpose of gaining illegal entry, see [9 FAM 302.9-5](#).

9 FAM 302.9-4(B)(6) (U) Cases Based on Evidence Developed at Port of Entry (POE)

(CT:VISA-272; 12-20-2016)

(U) DHS may provide post with evidence that a port-of-entry (POE) official denied an alien admission on the grounds of INA 212(a)(6)(C)(i). We consider these statements to reflect only the officer's opinion at the time. No entry by DHS should be found in the Consular Lookout and Support System (CLASS) unless the alien has formally been found inadmissible under INA 212(a)(6)(C)(i) either through removal proceedings or otherwise. However, if DHS has made a "6C1" or an "ER6" entry in the lookout system, the post may assume that a formal finding of inadmissibility was made, and you should refuse the visa application under INA 212(a)(6)(C)(i). If a CLASS check reveals no "6C1," or other entry by DHS, or only a P6C1 entry, the notation on the Form I-275, Withdrawal of Application/Consular Notification, alone, is insufficient to justify a determination of inadmissibility. However, you may use the factual evidence cited in the Form I-275 as the basis for a rule of probability determination if you believe that the evidence is sufficient to justify a finding of inadmissibility.

9 FAM 302.9-4(B)(7) (U) Interpretation of the Terms "Other Documentation" or "Other Benefit"

(CT:VISA-74; 03-03-2016)

a. (U) Other Documentation:

- (1) **(U)** The "other documentation" mentioned in the text of INA 212(a)(6)(C)(i), in addition to visas, refers to documents required at the time of an alien's application for admission. This includes such documents as:
 - (a) **(U)** Reentry permits;
 - (b) **(U)** Border crossing identification cards;
 - (c) **(U)** U.S. Coast Guard identity cards; and
 - (d) **(U)** U.S. passports.
- (2) **(U)** Such documents as applications for parole into the United States are not considered to be entry documents under INA 212(a)(6)(C)(i). Other types of documents, such as Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status for Academic and Language Students, petitions, and labor certification forms are documents in support of a visa application. You must judge these documents in the light of their effect on a visa application. In themselves, they are not "other documentation" within the meaning of INA 212(a)(6)(C)(i).

- (3) **(U)** As stated in [9 FAM 302.9-4\(B\)\(3\)](#) paragraph c, in order for a misrepresentation to be considered within the purview of this section, the misrepresentation must have been made to an official of the U.S. Government. Counterfeit documents or documents obtained by fraud or willful misrepresentation presented to foreign government officials or other individuals are not relevant under INA 212(a)(6)(C)(i).
- b. **(U) Other Benefit:** The term "other benefit" refers to any immigration benefit or entitlement provided for by the Immigration and Nationality Act, as amended, and may in a given case include:
 - (1) **(U)** Requests for extension of stay, change of status, permission to re-enter, waivers, alien authorization, advance parole, voluntary departure, adjustment of status, stay of deportation;
 - (2) **(U)** Application for Forms I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status for Academic and Language Students, and DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status; and
 - (3) **(U)** All immigrant and nonimmigrant petitions with respect to misrepresentations made by the petition's beneficiary or by an agent representing such beneficiary.

9 FAM 302.9-4(B)(8) (U) Additional Information

(CT:VISA-272; 12-20-2016)

- a. **(U) Misrepresentations in Family Relationship Petitions:** USCIS retains exclusive authority to disapprove or revoke family-relationship IV petitions. Thus, a misrepresentation with respect to entitlement to the classification based on the relationship, e.g., sham marriage, cannot be deemed material as long as the petition is valid. Upon discovery of a misrepresentation, you must return the petition to the appropriate USCIS office. If the petition is revoked, the materiality of the misrepresentation is established. In some cases, the relationship and thus petition may still be valid, but the alien may misrepresent eligibility for the classification and still be ineligible under INA 212(a)(6)(C)(i).
- b. **(U) Attempts to Obtain Visa by Bribery:** An attempt by an unqualified applicant to obtain a visa or entry to the United States through bribery of a U.S. Government employee is an attempt to perpetrate fraud on the U.S. Government and will result in ineligibility under INA 212(a)(6)(C)(i). The bribe must be directed to a consular officer, a member of post's Locally Employed Staff, or an immigration officer. Ordinarily, no advisory opinion is required, but posts should report the circumstances of all such cases to the appropriate Departmental offices; e.g., CA/VO/L/A, the Office of Fraud Prevention Programs (CA/FPP), and the Visa Fraud Branch (DS/CR/CFI).

9 FAM 302.9-4(C) (U) Advisory Opinions

9 FAM 302.9-4(C)(1) (U) Cases Involving the Rule of Probability

(CT:VISA-272; 12-20-2016)

(U) In view of the judicial and administrative uncertainties surrounding the rule of probability, and in order to achieve uniformity in the application of the rule throughout the world, certain cases falling under that rule must be submitted to the Department for an AO. Although you may submit any difficult cases, no AO is required for:

- (1) **(U)** Cases decided in the applicant's favor;
- (2) **(U)** Cases involving use of fraudulent documentation related to establishing qualification for a particular nonimmigrant category in order to overcome the presumption of intending immigration in INA 214(b). Such documents would include:
 - (a) **(U)** Fraudulent primary documentation, such as job letters;
 - (b) **(U)** School enrollment records;
 - (c) **(U)** Deeds; or
 - (d) **(U)** Bank or business statements relating to personal financial stability or to business ownership and activity, or similar documents, other than tax records, which was determined material to the visa qualification of an applicant;
- (3) **(U)** Cases in which the DHS has revoked a petition submitted to you for review on the basis of fraud;
- (4) **(U)** Diversity visa (DV) cases, where there is a misrepresentation of the education or work requirements needed to qualify for the visa; or
- (5) **(U)** Cases based on evidence developed at the port of entry (POE). (See [9 FAM 302.9-4\(B\)\(6\).](#))

9 FAM 302.9-4(C)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**

9 FAM 302.9-4(C)(3) (U) Request for an Advisory Opinion in Other Benefit Cases

(CT:VISA-272; 12-20-2016)

(U) You must request an AO from CA/VO/L/A in those cases where you believe that some other item constitutes an "Other Benefit" under the Immigration and Nationality Act.

9 FAM 302.9-4(C)(4) (U) Cases Not Involving the Rule of Probability

(CT:VISA-272; 12-20-2016)

(U) You do not need to request an AO from CA/VO/L/A for cases not involved the rule of rule of probability as outlined in [9 FAM 302.9-4\(B\)\(5\)](#) paragraph d above.

9 FAM 302.9-4(D) (U) Waiver

9 FAM 302.9-4(D)(1) (U) Waivers for Immigrants

(CT:VISA-74; 03-03-2016)

- a. **(U)** An applicant for an immigrant visa (IV) who is inadmissible under provision (i) of INA 212(a)(6)(C) may seek a waiver from DHS under INA 212(i) if:
- (1) **(U)** The alien is the spouse, son, or daughter of a U.S. citizen or a lawful resident; and
 - (2) **(U)** The Secretary of Homeland Security is satisfied that the refusal of the alien's admission to the United States would result in extreme hardship to the U.S. citizen or lawful resident spouse or parent of such alien.

9 FAM 302.9-4(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-74; 03-03-2016)

(U) You may, in your discretion, recommend that DHS grant a waiver under INA 212(d)(3)(A) for an alien inadmissible under INA 212(a)(6)(C)(i) provided the alien meets the criteria specified in [9 FAM 305.4-3\(H\)](#).

9 FAM 302.9-4(E) Unavailable

9 FAM 302.9-4(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.9-4(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.9-5 (U) FALSELY CLAIMING CITIZENSHIP - INA 212(A)(6)(C)(II)

9 FAM 302.9-5(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(6)(C)(ii) renders inadmissible any alien who, after September 30, 1996, falsely claimed U.S. citizenship in order to obtain a U.S. passport, entry into the United States, or any other benefit under any U.S. State or Federal law. According to the BIA, "a false claim to United States citizenship falls within the scope of INA 212(a)(6)(C)(ii)(I)...where there is direct or circumstantial evidence that the false claim was made with the subjective intent of obtaining a purpose or benefit under the (INA) or any other Federal or State law, and where United States citizenship actually affects or matters to the purpose or benefit sought." Matter of Richmond, 26 I&N Dec. 779 (BIA 2016).

9 FAM 302.9-5(B) (U) Application

9 FAM 302.9-5(B)(1) (U) In General

(CT:VISA-272; 12-20-2016)

- a. **(U)** On December 6, 2014, the DHS Office of the General Counsel issued an opinion concluding that:
 - (1) **(U)** Only a knowingly false claim can support a charge that an individual is inadmissible under INA 212(a)(6)(C)(ii). The individual claiming not to know that the claim to citizenship was false has the burden of establishing this affirmative defense by the appropriate standard of proof (for applicants for admission or adjustment, "clearly and beyond doubt").
 - (2) **(U)** A separate affirmative defense is that the individual was (a) under the age of 18 at the time of the false citizenship claim; and (b) at that time lacked the capacity (i.e., the maturity and the judgment) to understand and appreciate the nature and consequences of a false claim to citizenship. The individual must establish this claim by the appropriate standard of proof (for applicants for admission or adjustment, "clearly and beyond doubt").
- b. **(U)** An applicant who has been refused in the past and believes that their case meets the requirements above may follow standard post application procedures for a new visa application.

c. **Unavailable**

9 FAM 302.9-5(B)(2) (U) Not Retroactive

(CT:VISA-369; 05-31-2017)

(U) The provisions of INA 212(a)(6)(C)(ii) are not retroactive. It applies only to aliens

who have made false claims to U.S. citizenship on or after September 30, 1996. An alien who has attempted or achieved entry to the United States before September 30, 1996, on a false claim of U.S. citizenship is not inadmissible under the terms of INA 212(a)(6)(C)(ii). They are, however, inadmissible under 212(a)(6)(C)(i), provided such claim was made to procure a visa, other documentation, or admission into the United States or other benefit under INA. This is a significant difference because the waiver provisions of INA 212(a)(6)(C)(iii) apply to aliens inadmissible under (6)(C)(i), but not to aliens inadmissible under (6)(C)(ii).

9 FAM 302.9-5(B)(3) (U) Scope

(CT:VISA-369; 05-31-2017)

(U) Inadmissibility under INA 212(a)(6)(C)(ii) applies not only to an alien who makes false claims to U.S. citizenship in order to obtain:

- (1) **(U)** A U.S. passport;
- (2) **(U)** Entry into the United States; or
- (3) **(U)** Other documentation or benefit under the INA (provided such claim was made before a U.S. Government official);

but also applies to an alien who made false claims to U.S. citizenship for any purpose or benefit under any other Federal or State law. For example, an alien who made a false claim to U.S. citizenship to obtain welfare benefits or for the purpose of voting in a Federal or State election would be inadmissible under INA 212(a)(6)(C)(ii). (See also [9 FAM 302.12-5](#) regarding unlawful voters.) A false claim to citizenship to avoid removal proceedings would qualify as a "purpose" under U.S. law.

9 FAM 302.9-5(B)(4) (U) False Claims to U.S. Citizenship Under INA 274A

(CT:VISA-74; 03-03-2016)

(U) INA 212(a)(6)(C)(ii) also applies for the purposes of INA 274A, which makes it unlawful to hire an alien who is not authorized to work in the United States. Thus, an alien who makes false claims to U.S. citizenship to secure employment in violation of INA 274A would be inadmissible under INA 212(a)(6)(C)(ii).

9 FAM 302.9-5(B)(5) (U) Citizenship Claims Made to Other Than U.S. Government Officials

(CT:VISA-74; 03-03-2016)

(U) There is nothing in the language of INA 212(a)(6)(C)(ii) that would require that the false claim to U.S. citizenship be made to a U.S. official implementing the provisions of the INA. INA 212(a)(6)(C)(ii) specifically says "under this Act (including section 274A) or other Federal or State law." Thus, the language presupposes that the false claim may have been made to a State or Federal Government official outside the Department of State or DHS, or even to a prospective employer to circumvent INA

274A.

9 FAM 302.9-5(B)(6) (U) Exception

(CT:VISA-74; 03-03-2016)

(U) The Child Citizenship Act of 2000 (section 201(b) of Public Law 106-395) added an exception for inadmissibility under INA 212(a)(6)(C)(ii) for an alien who falsely claimed citizenship if:

- (1) **(U)** Each parent is or was a U.S. citizen by birth or naturalization;
- (2) **(U)** The alien resided permanently in the United States prior to the age of 16; and
- (3) **(U)** The alien reasonably believed at the time of such violation that he or she was a U.S. citizen.

9 FAM 302.9-5(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

(U) An AO is not required for a potential INA 212(a)(6)(C)(ii) ineligibility, unless the applicant was previously refused under INA 212(a)(6)(C)(ii) but believes that the case comes under the December 6, 2012 guidance from DHS Office of General Counsel. However, if you have a question about the interpretation or application of law or regulation, including those cases involving a false claim to U.S. citizenship to an employer on a Form I-9, Employment Eligibility Verification, you may request an AO from CA/VO/L/A.

9 FAM 302.9-5(D) (U) Waiver

9 FAM 302.9-5(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) There is no immigrant visa waiver available for an alien who is inadmissible under INA 212(a)(6)(C)(ii).

9 FAM 302.9-5(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-74; 03-03-2016)

(U) You may, at your discretion, recommend that DHS grant a waiver under INA 212(d)(3)(A) for an alien inadmissible under INA 212(a)(6)(C)(ii) provided the alien meets the criteria specified in [9 FAM 305.4-3\(H\)](#).

9 FAM 302.9-5(E) Unavailable

9 FAM 302.9-5(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.9-5(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.9-6 (U) STOWAWAYS - INA 212(A) (6)(D)

9 FAM 302.9-6(A) (U) Grounds

(CT:VISA-74; 03-03-2016)

(U) INA 212(a)(6)(D) provides that any alien who is a stowaway is inadmissible.

9 FAM 302.9-6(B) (U) Application

9 FAM 302.9-6(B)(1) (U) Defining "Stowaway"

(CT:VISA-74; 03-03-2016)

(U) INA 101(a)(49) defines "stowaway" as "...any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered as a stowaway."

9 FAM 302.9-6(B)(2) (U) Applying INA 212(a)(6)(D)

(CT:VISA-74; 03-03-2016)

(U) The fact that a person may have been a stowaway in the past does not in itself make the person ineligible to receive a visa.

9 FAM 302.9-6(C) (U) Advisory Opinions

(CT:VISA-74; 03-03-2016)

(U) INA 212(a)(6)(D) is not applicable at the time of visa application because it applies only to aliens arriving in the United States as stowaways.

9 FAM 302.9-6(D) (U) Waiver

9 FAM 302.9-6(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(6)(D) is not applicable at the time of visa application.

9 FAM 302.9-6(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(6)(D) is not applicable at the time of visa application.

9 FAM 302.9-7 (U) SMUGGLERS - INA 212(A)(6)(E)

9 FAM 302.9-7(A) (U) Grounds

(CT:VISA-74; 03-03-2016)

(U) INA 212(a)(6)(E) provides that "any alien" who "at any time"... "knowingly"... has "encouraged, induced, assisted, abetted or aided"... "any other alien"... "to enter or to try to enter the United States" in violation of law is ineligible for a visa and inadmissible to the United States.

9 FAM 302.9-7(B) (U) Application

9 FAM 302.9-7(B)(1) (U) Defining "Any Alien"

(CT:VISA-272; 12-20-2016)

(U) All aliens, including lawful permanent residents seeking reentry into the United States, are potentially subject to this provision. However, the Secretary of Homeland Security may waive inadmissibility (see [9 FAM 302.9-7\(D\)](#)) for:

- (1) **(U)** An immigrant visa applicant where the applicant sought to assist only an individual who was his spouse, child or parent at the time of the assistance, or
- (2) **(U)** A permanent resident alien who is returning to the United States under the conditions found in INA 211(b), i.e., one who returns under circumstances not requiring a returning resident visa (within one year without a reentry permit, or within a maximum of two years with a reentry permit).

9 FAM 302.9-7(B)(2) (U) Visa Ineligibility and Inadmissibility Covering "At Any Time..." Period Applies to Smuggling

(CT:VISA-74; 03-03-2016)

(U) The conduct which is proscribed under this section may have occurred at any time in the past. Therefore, there will be instances in which an alien previously exempted from the effects of this particular inadmissibility in its original version (prior to June 1, 1991) may currently be ineligible for a visa and inadmissible.

9 FAM 302.9-7(B)(3) (U) Smuggler Must Act "Knowingly"

(CT:VISA-272; 12-20-2016)

(U) A key element of the new INA 212(a)(6)(E) provision is that the “smuggler” must act “knowingly” to encourage, induce, or assist an illegal alien to enter the United States. In other words, in order to find an alien inadmissible under this provision, the consular officer must find that the “smuggler” must be aware of sufficient facts such that a reasonable person in the same circumstances would conclude that his or her encouragement, inducement, or assistance could result in the entry of the alien into the United States illegally, further, the “smuggler” must act with intention of encouraging, inducing, or assisting the alien to achieve the illegal entry. Therefore, belief that the alien was entitled to enter legally, although mistaken, would be a defense to inadmissibility for a suspected “smuggler.”

9 FAM 302.9-7(B)(4) (U) “Encourage, Induce, Assist, Abet, or Aid”

(CT:VISA-272; 12-20-2016)

(U) The actions for which a “smuggler” might be found inadmissible are numerous. The acts generally involve engagement in an “affirmative act of assistance,” that is an act or acts that are of direct encouragement, inducement or assistance to the alien’s attempted illegal entry:

- (1) **(U)** Offering an alien a job under circumstances where it is clear that the alien will not enter the United States legally in order to accept the employment (encourage and induce);
- (2) **(U)** Physically bringing an alien into the United States illegally (aid and assist);
- (3) **(U)** With regard to a visa application, an alien who knowingly makes false oral or written statements on behalf of a visa applicant, including a family member, is inadmissible under this section, provided the false statement was material (i.e., the visa applicant was or would have been found eligible for the visa based on the alien’s false statement but, on the true facts the visa applicant was not eligible for the visa);
- (4) **(U)** INA 212(a)(6)(E) relates to assisting aliens to enter the United States “in violation of law”, and therefore where the assistance relates to a misrepresentation in another alien’s application for a visa or admission to the United States it would only be a violation of law if the misrepresentation meets the standards for a INA 212(a)(6)(C) finding; and
- (5) **(U)** If an advisory opinion (AO) would be required for the materiality of a INA 212(a)(6)(C) finding in accordance with the guidelines in [9 FAM 302.9-7\(C\)](#), an AO must be submitted before a INA 212(a)(6)(E) finding can be made.

9 FAM 302.9-7(B)(5) (U) “Any Other Alien”... Effect of Revision on Family Related Smuggling

(CT:VISA-74; 03-03-2016)

(U) Encouraging inducing, or assisting any other alien, even close family members, to enter the United States illegally can result in inadmissibility under this section. This is

in contrast to the previous version (INA 212(a)(31)) which was interpreted to exclude actions on behalf of close family members where the sole motive for the actions was family affection and not financial or other "gain."

9 FAM 302.9-7(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

(U) Generally, an AO is not required for a potential INA 212(a)(6)(E) ineligibility. However, an AO must be submitted to CA/VO/L/A in order to establish that the alien's aid or assistance was material to the other alien's eligibility consistent with the guidance related to materiality for INA 212(a)(6)(C) as outlined in [9 FAM 302.9-4\(C\)\(1\)](#) above.

9 FAM 302.9-7(D) (U) Waiver

9 FAM 302.9-7(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

- a. **(U)** With respect to an immigrant, pursuant to INA 212(d)(11), the Secretary of Homeland Security may, in his or her discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive visa ineligibility and inadmissibility under INA 212(a)(6)(E) if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter. DHS has advised that a waiver under INA 212(d)(11) is only available to immigrant visa applicants in the following categories:
 - (1) **(U)** Immediate relatives (IR categories);
 - (2) **(U)** Unmarried sons and daughters of U.S. citizens;
 - (3) **(U)** Spouses and unmarried sons and daughters of permanent resident aliens; and
 - (4) **(U)** Married sons and daughters of U.S. citizens.
- b. **(U)** The Secretary of Homeland Security may also waive inadmissibility for a lawful permanent resident who has sought to assist only his spouse, parent, son or daughter and who is returning to the United States under the conditions found in INA 211(b), i.e., one who returns under circumstances not requiring a returning resident visa (within one year without a reentry permit, or within a maximum of two years with a reentry permit).
- c. **(U)** Because a waiver is only available where the alien has encouraged, induced, assisted, abetted or aided an individual who at the time of such action was the alien's spouse, parent, son or daughter, it is of particular importance for consular officer to make specific factual findings to include the date of the smuggling act and the relationship, if known, to the individual(s) smuggled. The consular officer should document these findings in the case record and in the OF-194 refusal letter

provided to the applicant.

9 FAM 302.9-7(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-74; 03-03-2016)

(U) You may, in your discretion, recommend that DHS grant a waiver under INA 212(d)(3)(A) for an alien inadmissible under INA 212(a)(6)(E) provided the alien meets the criteria specified in [9 FAM 305.4-3\(H\)](#).

9 FAM 302.9-7(E) Unavailable

9 FAM 302.9-7(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.9-7(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.9-8 (U) SUBJECT TO CIVIL PENALTY - INA 212(A)(6)(F)

9 FAM 302.9-8(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(6)(F) renders excludable any alien subject to a final order, rendered by an administrative law judge or by a court, of civil penalties for immigration related document fraud.

9 FAM 302.9-8(B) (U) Application

9 FAM 302.9-8(B)(1) (U) Section 274C

(CT:VISA-272; 12-20-2016)

(U) INA 274C, entitled "Penalties For Document Fraud" provides for civil penalties for persons determined by an administrative law judge to have been involved in virtually any activity regarding forged, altered or stolen documents for any purpose under the INA. The issuance of a final order under this section in the name of an alien renders the alien ineligible for visa issuance.

9 FAM 302.9-8(B)(2) (U) Final Order

(CT:VISA-74; 03-03-2016)

(U) An order of the administrative law judge under INA 274C becomes final thirty days after the date of issuance unless the Attorney General modifies or vacates the order within that period. A decision by the Attorney General modifying the original order shall be considered a final order.

9 FAM 302.9-8(B)(3) (U) Effect of Appeal

(CT:VISA-272; 12-20-2016)

- a. **(U)** A final order under INA 274C may be appealed to the Court of Appeals within forty-five days of becoming final. Nevertheless, for the purpose of visa adjudication, the order must be considered final until such time as it is overturned.
- b. **(U)** It is quite possible, depending upon the facts of the individual case, that an alien who is the subject of a final order under INA 274C might also be ineligible under INA 212(a)(6)(C) - Misrepresentation or INA 212(a)(9)(A) - Certain Aliens Previously Removed or INA 212(a)(6)(E) - Smuggling.

9 FAM 302.9-8(C) (U) Advisory Opinions

(CT:VISA-74; 03-03-2016)

(U) An AO is not required for a potential INA 212(a)(6)(F) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.9-8(D) (U) Waiver

9 FAM 302.9-8(D)(1) (U) Waivers for Immigrants

(CT:VISA-74; 03-03-2016)

(U) The Attorney General may, in his or her discretion, grant a waiver for humanitarian purposes to an alien ineligible to receive a visa under INA 212(a)(6)(F). The waiver under INA 212(d)(12) may be granted provided:

- (1) **(U)** The alien is a lawful permanent resident alien who temporarily proceeds abroad voluntarily and is otherwise admissible as a returning resident under INA 211(b); or
- (2) **(U)** The alien is seeking admission under INA 201(b)(2)(A) (as an immediate relative) or 203(a) (as family sponsored immigrant); and
 - (a) **(U)** The offense was solely to assist the alien's spouse or child; and
 - (b) **(U)** No previous money penalty was imposed under INA 274C.

9 FAM 302.9-8(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-74; 03-03-2016)

(U) You may, in your discretion, recommend that DHS grant a waiver under INA 212(d)(3)(A) for an alien inadmissible under INA 212(a)(6)(F) provided the alien meets the criteria specified in [9 FAM 305.4-3\(H\)](#).

9 FAM 302.9-8(E) Unavailable

9 FAM 302.9-8(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.9-8(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.9-9 (U) STUDENT VISA ABUSERS - INA 212(A)(6)(G)

9 FAM 302.9-9(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(6)(G) renders inadmissible for five years any student who enters the U.S. to study at a private institution in F-1 status and then switches to a public school in violation of INA 214(m)(2).

9 FAM 302.9-9(B) (U) Application

9 FAM 302.9-9(B)(1) (U) In General

(CT:VISA-272; 12-20-2016)

(U) INA 214(m) prohibits an alien from obtaining F-1 student status to pursue a course of study at a:

- (1) **(U)** Public elementary school or publicly-funded adult education program; and
- (2) **(U)** Public secondary school, unless the:
 - (a) **(U)** Aggregate period of study at such school does not exceed 12 months; and
 - (b) **(U)** The alien demonstrates reimbursement of the full, unsubsidized per capital cost of the education.

9 FAM 302.9-9(B)(2) (U) Date of Applicability

(CT:VISA-74; 03-03-2016)

(U) The provisions of INA 212(a)(6)(G) affect only aliens who received F-1 status after November 30, 1996, or aliens whose status was extended on or after that date. It does not apply to aliens attending public schools or programs while in other nonimmigrant status (e.g., F-2, E, H-4, J, or B-2—even out-of-status B-2).

9 FAM 302.9-9(B)(3) (U) Definitions

(CT:VISA-74; 03-03-2016)

- a. **(U) Defining "Elementary"**: For the purposes of INA 214(m), the term "elementary" means grades kindergarten through eighth.
- b. **(U) Defining "Secondary"**: For the purposes of INA 214(m), the term "secondary" means grades ninth through twelfth.
- c. **(U) Defining "Public"**: A public school is any school that receives more than half of its financing through State or local taxes or through Federal grants. The definition of "public" can encompass "alternative" or "charter" schools that allow parents to exercise extensive control over curriculum. It can also encompass the term "corporate charter school"—applied to schools that have received major grants and land, buildings, or educational materials from a corporation providing major employment opportunities in the local area, unless it can be established that the value of the grant on an ongoing annual basis exceeds the value of financing from public taxes and grants.
- d. **(U) Defining "Publicly Funded Adult Education"**: The Department of Homeland Security/U.S. Citizenship and Immigration Service (DHS/USCIS) defines "publicly-funded adult education" as programs run tuition-free at or in conjunction with public secondary schools. It does not apply to schools such as community colleges that receive public funds but charge students tuition.

9 FAM 302.9-9(B)(4) (U) Participation in Language Programs

(CT:VISA-74; 03-03-2016)

(U) The provisions of INA 214(m) prohibit an alien's participation in any publicly-funded language program.

9 FAM 302.9-9(B)(5) (U) Transferring Schools

(CT:VISA-74; 03-03-2016)

(U) An alien may transfer from public to private secondary school only if they reimburse the school as indicated in [9 FAM 302.9-9\(B\)\(8\)](#) and do not exceed the one-year time limitation. Non-adherence to these requirements automatically voids the alien's visa and renders the alien subject to INA 212(a)(6)(G) as a student abuser.

9 FAM 302.9-9(B)(6) (U) Penalty for Violation of INA 214(m)

(CT:VISA-74; 03-03-2016)

- a. **(U)** An alien who violates the provisions of INA 214(m) becomes inadmissible under INA 212(a)(6)(G) and must remain outside the United States for a continuous period of five years before qualifying for another nonimmigrant visa (NIV).
- b. **(U)** An alien who transfers from private to public school has, under INA 101(a)(15)(F), violated his and/or her status unless the student has reimbursed the school as noted in [9 FAM 302.9-9\(B\)\(8\)](#).

9 FAM 302.9-9(B)(7) (U) Determining Whether School is Public or Private

(CT:VISA-74; 03-03-2016)

(U) The responsibility for documenting whether the school meets the definition of "public" rests with the applicant. For example, a letter from a responsible official from the public school district could resolve doubts as to whether a "corporate charter school" is private.

9 FAM 302.9-9(B)(8) (U) Determining Compliance With Financial Reimbursement Requirement

(CT:VISA-74; 03-03-2016)

- a. **(U) In General** The school is responsible for determining what amount constitutes the "unsubsidized per capita cost of education", the school's estimate of their per student expenditure of public revenues (Federal, State, and local). This figure is not necessarily the school's nonresident tuition. You should not inquire into the calculation. However, you should not accept estimates that are unrealistically low. In such cases, you should request additional information from the school district. You must refer cases that appear to be deliberate attempts to circumvent the law to the Office of Field Operations (CA/VO/F).
- b. **(U) Evidence of Financial Reimbursement:** The public school authority must actually collect the student's reimbursement before a visa can be issued. DHS/USCIS has instructed its ports of entry (POE) that, if the public school reimbursement is not entered on the student's Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, with a notarized signature, the student must provide a notarized statement on school district letterhead. A school district official (usually the superintendent or someone designated by him or her) must sign the statement that reimbursement has been made. To avoid complications at the POE, visa applicants should provide the same evidence to qualify for an F-1 visa.
- c. **(U) Lack of Evidence of Financial Reimbursement:** You must refuse an applicant who cannot present evidence of financial reimbursement under INA 221(g). You should advise the applicant to arrange reimbursement directly with the school authority and return with proof of payment.

9 FAM 302.9-9(B)(9) (U) Twelve-Month Limit on School Attendance

(CT:VISA-74; 03-03-2016)

(U) INA 214(m) places a 12-month limit on attendance at public secondary schools while in F-1 status. Attendance at a secondary public school, while in a status other than F-1, while in unlawful status, or prior to November 30, 1996, does not count against the 12-month limit. You must not issue an F-1 visa if the proposed length of study would exceed the 12-month limit.

9 FAM 302.9-9(C) (U) Advisory Opinions

(CT:VISA-74; 03-03-2016)

(U) An AO is not required for a potential INA 212(a)(6)(G) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.9-9(D) (U) Waiver

9 FAM 302.9-9(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) No waiver for immigrant visa applicants is available found inadmissible under INA 212 (a)(6)(G).

9 FAM 302.9-9(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

(U) You may, in your discretion, recommend that DHS grant a waiver under INA 212(d)(3)(A) for an nonimmigrant inadmissible under INA 212(a)(6)(G) provided the alien meets the criteria specified in [9 FAM 305.4-3\(H\)](#).

9 FAM 302.9-9(E) Unavailable

9 FAM 302.9-9(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.9-9(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.10

(U) INELIGIBILITY BASED ON CITIZENSHIP RESTRICTIONS - INA 212(A)(8)

(CT:VISA-333; 04-12-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 302.10-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 302.10-1(A) (U) Immigration and Nationality Act

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(8)(A) (8 U.S.C. 1182(a)(8)(A)); INA 212(a)(8)(B) (8 U.S.C. 1182(a)(8)(B)); INA 212(d)(3) (8 U.S.C. 1182(d)(3)); INA 314 (8 U.S.C. 1425); INA 315 (8 U.S.C. 1426).

9 FAM 302.10-1(B) (U) Code of Federal Regulations

(CT:VISA-272; 12-20-2016)

(U) 22 CFR 40.81; 22 CFR 40.82.

9 FAM 302.10-1(C) (U) Other

(CT:VISA-272; 12-20-2016)

(U) Presidential Proclamation 4483, Granting pardon for violations of the Selective Service Act, August 4, 1964, to March 28, 1973.

9 FAM 302.10-2 (U) INELIGIBLE FOR CITIZENSHIP - INA 212(A)(8)(A)

9 FAM 302.10-2(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(8)(A) renders inadmissible any immigrant who is permanently ineligible for citizenship.

9 FAM 302.10-2(B) (U) Application

9 FAM 302.10-2(B)(1) (U) Resident Alien Previously Exempt from Military Service

(CT:VISA-272; 12-20-2016)

- a. **(U)** INA 212(a)(8)(A) only applies to immigrant visa applicants. It does not apply to nonimmigrant visa applicants. INA 315 states that "any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on the ground that he is an alien, and is or was relieved or discharged from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States."
- b. **(U)** A grant of exemption from military service does not in itself constitute a ground of deportation, and some resident aliens continue to reside in the United States after being relieved from service. However, if such aliens depart from the United States, INA 212(a)(8)(A) may bar their readmission as an immigrant. Any alien who requested and was granted exemption from military service based upon alienage (whether pursuant to treaty agreement or a provision of U.S. law) is generally disqualified from becoming a U.S. citizen by INA 315, and is, therefore, ineligible to receive an immigrant visa under INA 212(a)(8)(A). The only exception to ineligibility to citizenship under INA 315 arises when the alien claims exemption from training or service in the U.S. military pursuant to rights accorded in a treaty, if before the alien claimed such an exemption he or she has served in the armed forces of a foreign country of which the alien was a national. Such aliens would not be ineligible under INA 212(a)(8)(A). INA 212(a)(8)(A) does not apply to nonimmigrant visa applicants. Any alien listed in CLASS, credited to the "refusing Post" SSL (Selected Service System) may be regarded as having applied for and received relief from U.S. military service on the basis of alienage.
- c. **(U)** An alien who had previously been found to be ineligible under INA 212(a)(8)(A) may, subsequent to November 29, 1990, reapply for a visa and be found eligible to receive a visa.

9 FAM 302.10-2(B)(2) (U) Alien's Conviction of Desertion

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(8)(A) also extends to instances in which a person is disqualified from citizenship by INA 314. However, INA 314 is limited to cases where the person deserted or departed from the United States in time of war and was duly convicted before an appropriate tribunal for such desertion or departure.

9 FAM 302.10-2(B)(3) (U) Effect of President Carter's Pardon

(CT:VISA-333; 04-12-2017)

(U) See Presidential Proclamation 4483.

9 FAM 302.10-2(C) (U) Advisory Opinions

(CT:VISA-333; 04-12-2017)

(U) You must request an AO from CA/VO/L/A for cases involving aliens listed under this category who deny applying for and obtaining relief from U.S. military service on the basis of alienage.

9 FAM 302.10-2(D) (U) Waiver

9 FAM 302.10-2(D)(1) (U) Waivers for Immigrants

(CT:VISA-333; 04-12-2017)

(U) No waiver is available. However, INA 212(c) relief is available for certain returning residents. An AO is required in all cases.

9 FAM 302.10-2(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-333; 04-12-2017)

(U) INA 212(a)(8)(A) is not applicable to nonimmigrant visa applicants.

9 FAM 302.10-2(E) Unavailable

9 FAM 302.10-2(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.10-2(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.10-3 (U) ALIENS WHO DEPARTED OR REMAINED OUTSIDE THE UNITED STATES TO AVOID MILITARY SERVICE - INA 212(A)(8)(B)

9 FAM 302.10-3(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) Any person who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency is inadmissible.

9 FAM 302.10-3(B) (U) Application

9 FAM 302.10-3(B)(1) (U) Draft Evaders

(CT:VISA-272; 12-20-2016)

- a. **(U) Scope of Section:** INA 212(a)(8)(B) applies to anyone, including a former U.S. citizen, who is currently applying for a visa (other than a person who left as a nonimmigrant and is seeking to reenter the United States as a nonimmigrant)
- b. **(U) Primary Purpose of Departure From or Remaining Outside United States:** To invoke ineligibility under INA 212(a)(8)(B), the departure or remaining abroad must have been for the primary purpose of evading or avoiding military service. The consular officer must determine in the light of all the facts and circumstances of the individual case whether an alien departed from or remained outside the United States primarily to evade or avoid military service or whether they did so for some other reason.

9 FAM 302.10-3(B)(2) (U) War or National Emergency

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(8)(B) has application at any time the United States is at war or in a state of national emergency, and a state of national emergency existed from September 24, 1939, to September 24, 1978. Consequently, as indicated in [9 FAM 302.10-3\(B\)\(5\)](#) below, an alien who departed from or remained outside the United States to evade or avoid military service between September 8, 1939, and September 24, 1978, would be subject to the second clause of INA 212(a)(8)(B).

9 FAM 302.10-3(B)(3) (U) Status at Time of Departure Determines Applicability

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(8)(B) does not bar the issuance of a nonimmigrant visa to an alien who departed to evade or avoid military service while in the United States as a nonimmigrant. A permanent resident legal alien, however, who departed from or remained outside the United States to evade or avoid military service would be ineligible for both immigrant and nonimmigrant visas.

9 FAM 302.10-3(B)(4) (U) Conviction Not Necessary for Ineligibility

(CT:VISA-272; 12-20-2016)

(U) Under this ground of ineligibility, no conviction for desertion or draft evasion is required. The consular officer need only be satisfied from the evidence that the applicant departed from or remained outside the United States to evade or avoid military service.

9 FAM 302.10-3(B)(5) (U) Presidential Pardon for Vietnam-era Violators of Selective Service Laws

(CT:VISA-272; 12-20-2016)

- a. **(U) Vietnam-Era Draft Evaders Considered Relieved of Ineligibility Under INA(a)(8)(B):** President Carter's general pardon has been interpreted to include alien Vietnam-era violators of the Selective Service laws only. Vietnam-era deserters are not included in the pardon. Accordingly, aliens who departed the United States or remained abroad for the purpose of avoiding induction into service between August 4, 1964, and March 28, 1973, are considered to have been relieved of excludability under the second clause of INA 212(a)(8)(B), and may be issued any type of immigrant or nonimmigrant visa for which they are found eligible, if they have not been convicted for that action.
- b. **(U) Effect of Pardon on Vietnam-Era Deserters:** Vietnam-era deserters are not included in the pardon, thus they are subject to a finding of ineligibility under INA 212(a)(8)(B).
- c. **(U) Aliens Ineligible for Citizenship Not Affected by Pardon:** The Presidential pardon provides no relief for an alien found ineligible under the first part of INA 212(a)(8)(B) as an alien who is ineligible for citizenship i.e., a person who was convicted of either desertion from or leaving the country to evade military service. (See [9 FAM 302.10-3\(B\)\(2\)](#).) Ineligibility to citizenship because of seeking and obtaining exemption from service on the grounds of alienage is irrelevant in this context.

9 FAM 302.10-3(B)(6) (U) Effect of Discharge on Deserters

(CT:VISA-272; 12-20-2016)

(U) A deserter who subsequently received a discharge may (or may not) have been relieved of such ineligibility, depending on the disposition of the desertion aspect of the case by the appropriate branch of service.

9 FAM 302.10-3(B)(7) (U) Requesting Alien's Selective Service Record

(CT:VISA-272; 12-20-2016)

- a. **(U) In General:** If you are unable to establish clearly the applicability of INA 212(a)(8)(B) from the alien's statements and from records available at the post, you must request an AO from CA/VO/L/A in order to obtain the alien's Selective Service Record.
- b. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**
 - (4) **Unavailable**
 - (5) **Unavailable**

(6) **Unavailable**

(7) **Unavailable**

(8) **Unavailable**

(9) **Unavailable**

(10) **Unavailable**

(11) **Unavailable**

9 FAM 302.10-3(B)(8) (U) Obtaining Information from Selective Service Records

(CT:VISA-272; 12-20-2016)

(U) National Archives and Records Administration has sole responsibility of ownership, storage, and retrieval of Selective Service records for men born before 1960. Consequently, Selective Service can no longer access any of these records. All requests should be mailed directly to:

National Archives & Records Administration
ATTN: Archival Programs
P.O. Box 28989
St. Louis, MO 63132-0989

9 FAM 302.10-3(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

(U) You must request an AO from CA/VO/L/A for any potential INA 212(a)(8)(B) ineligibility involving a subsequent discharge.

9 FAM 302.10-3(D) (U) Waiver

9 FAM 302.10-3(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) No waiver is available.

9 FAM 302.10-3(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

(U) An INA 212(d)(3)(A) waiver is available. See [9 FAM 305.4-3](#) for additional information.

9 FAM 302.10-3(E) Unavailable

9 FAM 302.10-3(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.10-3(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.11

(U) INELIGIBILITY BASED ON PREVIOUS REMOVAL AND UNLAWFUL PRESENCE IN THE UNITED STATES - INA 212(A)(9)

(CT:VISA-379; 06-09-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 302.11-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 302.11-1(A) (U) Immigration and Nationality Act

(CT:VISA-272; 12-20-2016)

(U) INA 101(g) (8 U.S.C. 1101(g)); INA 212(a)(9)(A) (8 U.S.C. 1182(a)(9)(A)); INA 212(a)(9)(B) (8 U.S.C. 1182(a)(9)(B)); INA 212(a)(9)(C) (8 U.S.C. 1182(a)(9)(C)); INA 212(d)(3) (8 U.S.C. 1182(d)(3)); INA 235 (8 U.S.C. 1225).

9 FAM 302.11-1(B) (U) Code of Federal Regulations

(CT:VISA-272; 12-20-2016)

(U) 8 CFR 212.7(e); 22 CFR 40.93.

9 FAM 302.11-2 (U) INDIVIDUALS PREVIOUSLY REMOVED - INA 212(A)(9)(A)

9 FAM 302.11-2(A) (U) Grounds

(CT:VISA-347; 04-18-2017)

- a. **(U)** INA 212(a)(9)(A)(i) makes inadmissible, and therefore ineligible for a visa, any alien who has been ordered removed under INA 235(b)(1) or INA 240 as an arriving alien, and who seeks admission within 5 years (or 20 years if second or subsequent removal or at any time if convicted of an aggravated felony) of the date of such removal, unless prior permission has been granted (see [9 FAM 302.11-2\(B\)\(5\)](#)).
- b. **(U)** INA 212(a)(9)(A)(ii) makes inadmissible, and therefore ineligible for a visa, any alien who has been ordered removed from the U.S. or departed while an order of removal was outstanding and who seeks admission within 10 years (or within 20

years if it is after a second or subsequent removal or at any time if the individual is convicted of an aggravated felony) from the date of such departure or removal, unless prior permission has been granted (see [9 FAM 302.11-2\(B\)\(5\)](#)).

9 FAM 302.11-2(B) (U) Application

9 FAM 302.11-2(B)(1) (U) Five Year Bar

(CT:VISA-272; 12-20-2016)

(U) An alien who has been found to be inadmissible as an arriving alien, whether as a result of a summary determination of inadmissibility by an immigration officer at the port of entry under INA 235(b)(1) – (“Expedited Removal”) or as a result of a finding of inadmissibility by an Immigration Judge during a hearing in Immigration Court under INA 240 (“Removal Proceedings”) that DHS initiated upon the alien’s arrival in the United States, is inadmissible under INA 212(a)(9)(A)(i) unless the alien has remained outside of the United States for five consecutive years since the date of deportation or removal. Under INA 101(g), an alien who departs the United States while a final removal order is in effect is deemed to have been removed, even if the alien leaves on his or her own.

9 FAM 302.11-2(B)(2) (U) Ten Year Bar

(CT:VISA-272; 12-20-2016)

(U) An alien who has otherwise been removed from the United States under any provision of law, or who departed while an order of removal was in effect, is inadmissible under INA 212(a)(9)(A)(ii) unless the alien has remained outside of the United States for 10 consecutive years since the date of removal or departure.

9 FAM 302.11-2(B)(3) (U) Twenty Year Bar

(CT:VISA-272; 12-20-2016)

(U) An alien who has been removed from the United States two or more times is inadmissible under INA 212(a)(9)(A)(i) or INA 212(a)(9)(A)(ii), as appropriate, unless the alien has remained outside of the United States for 20 consecutive years since the date of such removal or departure while a removal order was outstanding.

9 FAM 302.11-2(B)(4) (U) Permanent Bar

(CT:VISA-272; 12-20-2016)

(U) If an alien who has been removed has also been convicted of an aggravated felony, the alien is permanently inadmissible for a visa under INA 212(a)(9)(A)(i) or 212(a)(9)(A)(ii), as appropriate. “Aggravated felony” is defined in INA 101(a)(43) (see [9 FAM 102.3-1](#) for additional information). For purposes of this permanent bar, it does not matter whether the individual has been convicted of an aggravated felony in the United States or outside of the United States; it also does not matter whether the

conviction itself resulted in the removal of the alien, or whether the alien was convicted prior to or after the removal of the alien.

9 FAM 302.11-2(B)(5) (U) Permission to Reapply or Consent to Reapply (CTR)

(CT:VISA-347; 04-18-2017)

- a. **(U)** An alien is not inadmissible under INA 212(a)(9)(A)(i) or (ii) if prior to the alien's re-embarkation at a place outside the United States or attempt to be admitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission. This is referred to foreign national who is inadmissible under section 212(a)(9)(A) or (C) of the Immigration and Nationality Act (INA) must file Form I-212 an (Application for Permission to Reapply for Admission into the United States After Deportation or Removal) to obtain "Consent to Reapply"(CTR) before the foreign national can lawfully return to the United States. "Consent to Reapply" is also called "permission to reapply." If the Secretary of Homeland Security consents, then the inadmissibility no longer applies. Although the consent to reapply removes the ground of ineligibility, it does not remove the factual circumstances which led to the original finding of ineligibility nor does it affect any other ground of ineligibility.
- b. **(U)** However, for nonimmigrant visa (NIV) applicants only, DHS will consider CTR to have been granted for ineligibility under INA 212(a)(9)(A)(i) or (ii) with the approval of a consent to reapply through the Admissibility Review Information Service (ARIS) via an "ARIS Waiver Request Form". You may favorably recommend an NIV applicant ineligible under INA 212(a)(9)(A)(i) or (ii) at any time within the applicability period of the 5, 10, 20 year, or permanent bar. Therefore, when posts are recommending a waiver through ARIS for NIV applicants, the applicant should not file an I-212.
- c. **(U)** When submitting the ARIS request for a 9A ineligibility, post must clearly state, "Post recommends consent to reapply" and provide the reason for recommending in the written comments of the ARIS request.

9 FAM 302.11-2(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

(U) An AO is not required for a potential INA 212(a)(9)(A) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.11-2(D) (U) Reserved

(CT:VISA-347; 04-18-2017)

9 FAM 302.11-2(E) Unavailable

9 FAM 302.11-2(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

- a. **Unavailable.**
- b. **Unavailable.**

9 FAM 302.11-2(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

- a. **Unavailable.**
- b. **Unavailable.**

9 FAM 302.11-3 (U) INDIVIDUALS UNLAWFULLY PRESENT - INA 212(A)(9)(B)

9 FAM 302.11-3(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(9)(B) makes inadmissible, and therefore ineligible for a visa aliens who have, since April 1, 1997, been "unlawfully present" in the United States for more than 180 days.

9 FAM 302.11-3(B) (U) Application

9 FAM 302.11-3(B)(1) (U) Interpretation of "Unlawful Presence"

(CT:VISA-347; 04-18-2017)

- a. **(U)** INA 212(a)(9)(B)(ii) provides the following construction for the term "unlawful presence": "... the alien is present in the United States after the expiration of the period of stay authorized by the [Secretary of Homeland Security] or is present in the United States without being admitted or paroled." Under this construction, an alien would generally be unlawfully present if he or she entered the United States without inspection, or stayed beyond the date specified on the Form I-94, Arrival and Departure Record, or was found by the Department of Homeland Security (DHS) or an immigration judge (IJ) or the Board of Immigration Appeals (BIA) to have violated status. However, even aliens fitting into one of these categories may be deemed to be in a period of authorized stay in certain circumstances, as noted below.
- b. **(U)** DHS has interpreted "period of stay authorized by the Secretary of Homeland Security" as used in this context to include:
 - (1) **(U)** For aliens inspected and admitted or paroled until a date specified on the Form I-94 or any extension, any period of presence in the United States up

until either:

- (a) **(U)** The expiration of the Form I-94 (or any extension); or
 - (b) **(U)** A formal finding of a status violation made by DHS, IJ, or the BIA in the context of an application for an immigration benefit or in removal proceedings, whichever comes first.
- (2) **(U)** For aliens inspected and admitted for "duration of status" (DOS), any period of presence in the United States, unless DHS, IJ, or the BIA makes a formal finding of a status violation, in which case unlawful presence will only begin to accrue as of the date of the formal finding;
 - (3) **(U)** For aliens granted "voluntary departure" (VD), pursuant to INA 240B, the period of time between the granting of VD and the date for their departure, if the alien departs according to the terms of the grant of VD;
 - (4) **(U)** For aliens who have applied for extension of stay or change of nonimmigrant classification and who have remained in the United States after expiration of the Form I-94 while awaiting DHS's decision, the entire period of the pendency of the application, provided that:
 - (a) **(U)** The alien does not work unlawfully while the application is pending and did not unlawfully work prior to filing the application; and
 - (b) **(U)** The alien did not otherwise fail to maintain his or her status prior to the filing of the application (unless the application is approved at the discretion of USCIS and the failure to maintain status is solely a result of the expiration of the Form I-94), and further provided either:
 - (i) **(U)** That the application was subsequently approved; or
 - (ii) **(U)** If the application was denied or the alien departed while the application was still pending, that the application was timely filed and nonfrivolous.
 - (5) **(U)** For aliens who have properly filed an application for adjustment of status to that of a lawful permanent resident (LPR), the entire period of the pendency of the application, even if the application is subsequently denied or abandoned, provided the alien (unless seeking to adjust status under NACARA or HRIFA) did not file for adjustment "defensively" (i.e., after deportation proceedings had already been initiated);
 - (6) **(U)** For aliens covered by Temporary Protected Status (TPS), the period after TPS went into effect and prior to its expiration; and
 - (7) **(U)** For aliens granted deferred action, the period during which deferred action is authorized.
- (U)** The foregoing above list is not exhaustive.
- c. **(U)** You should note that any unauthorized presence accrued prior to the filing of an application for adjustment of status, or the granting of voluntary departure, or the date a prima facie TPS application is filed (if the application is approved) is not "cured" by the subsequent period of authorized stay that result from the approval

of these applications. Additional unauthorized presence will resume accruing after these authorized periods lapse.

- d. **(U)** For persons who have been admitted for duration of status (DOS) (as is usually the case with aliens in A, G, F, J, and I visa status), unlawful presence will not accrue unless DHS, IJ, or the BIA finds a status violation in the context of a request for an immigration benefit in the course of a removal proceedings. This finding of status violation by the DHS, an IJ, or the BIA will cause a period of "unlawful presence" to begin. In DOS cases where DHS or an IJ or the BIA makes a formal status violation finding, the alien begins accruing unlawful presence on the date of the finding (i.e., the date the finding was published /communicated. For example, if an applicant presents a letter from DHS dated December 1, 2008, that says the applicant was out of status starting on May 28, 2001, the applicant began to accrue unlawful presence as of December 1, 2008, not May 28, 2001.
- e. **(U)** A finding of status violation by DHS, an IJ, or the BIA is not required in the case of an illegal entrant or an alien who admitted to a date certain overstays the specified period of stay indicated on their Form I-94. If you find that an alien entered without inspection and admission or stayed beyond the date on the Form I-94, and remained in the United States more than 180 days after entering without admission or after the expiration of his or her Form I-94, a determination of inadmissibility under INA 212(a)(9)(B) would be warranted (unless some exception to INA 212(a)(9)(B) applies in the particular case).
- f. **(U)** When calculating unlawful presence, the actual date that the Form I-94 (or any extension) expires is considered authorized and is not counted. In addition, the date of departure from the United States is not counted as unlawful presence.

9 FAM 302.11-3(B)(2) (U) Time Frames

(CT:VISA-347; 04-18-2017)

a. (U) In General:

- (1) **(U)** INA 212(a)(9)(B) went into effect on April 1, 1997, and the statute is not retroactive. Periods prior to April 1, 1997, therefore, cannot be considered when calculating the period of unlawful presence accrued for purposes of 212(a)(9)(B).
- (2) **(U)** Neither of the INA 212(a)(9)(B)(i)(I) (180+ days but less than a year) or INA 212(a)(9)(B)(i)(II) (one year+) time frames is cumulative across trips. The unlawful presence must occur in the same trip to the United States, and periods of unlawful presence accrued on separate trips cannot be added together. However, separate periods of unlawful presence occurring during the same overall period of stay (e.g., unlawful presence before and after a period of voluntary departure) should be added together to calculate total unlawful presence during a particular stay.
- (3) **(U)** Both provisions are triggered by departure from the United States, and the bar against reentry applies from the date of departure.

- b. **(U) INA 212(a)(9)(B)(i) Departure Prior to Commenced Proceedings Required:** The three-year bar of INA 212(a)(9)(B)(i)(I) applies only to aliens who left the United States voluntarily before the DHS commenced proceedings against them. If the alien was (1) unlawfully present for a period of more than 180 days but less than a year and (2) was placed in proceedings before the alien's departure (3) those proceedings concluded without a removal, the alien would not be inadmissible under the three-year bar of INA 212(a)(9)(B)(i)(I).
- c. **(U) INA 212(a)(9)(B)(i)(II) Departure at Any Time:** The 10-year bar under INA 212(a)(9)(B)(i)(II) does not contain the same language as the three-year bar under INA 212(a)(9)(B)(i)(I) relating to the alien having departed voluntarily prior to commencement of removal proceedings. Thus, an alien who departs the United States after having been unlawfully present for a period of one year or more subsequent to April 1, 1997, is barred from returning to the United States for 10 years, whether the departure was before, during, or after removal proceedings and regardless of whether the alien departed on his or her own initiative or under removal order. The one exception to this rule (see also INA 212(a)(9)(B)(v)) is that an alien cannot become inadmissible under INA 212(a)(9)(B)(i)(II) solely by virtue of a departure and return to the United States undertaken pursuant to a valid grant of advance parole based on the alien's pending application for adjustment of status. Note that this does not preclude a trip under a grant of advance parole from being considered a "departure" for any other purposes under the INA, nor does it call into question the applicability of any other inadmissibility ground. On the contrary, it is well settled that an alien who leaves the United States and returns under a grant of advance parole is subject to those grounds of inadmissibility that may apply, rather than grounds of deportability, once parole is terminated. (See *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012).)

9 FAM 302.11-3(B)(3) (U) Asylee Exception

(CT:VISA-347; 04-18-2017)

- a. **(U) In General:** INA 212(a)(9)(B)(iii)(II) provides that no period of time in which an alien has a bona fide application for asylum pending should be taken into account when calculating the period of unlawful presence, unless during such period the alien was employed in the United States without authorization. DHS has determined that an application for asylum that has an arguable basis in law or fact, and is not frivolous, whether or not approvable, is a bona fide application for purposes of the exception set forth in INA 212(a)(9)(B)(iii). The decision regarding whether or not an asylum claim is frivolous is reserved to an Immigration Judge or the Board of Immigration not an asylum claim is frivolous is reserved to an Immigration Judge or the Board of Immigration Appeals. (See 8 CFR 208.20.)
- b. **(U) Confirming Bona Fide Application for Asylum:**
- (1) **(U)** If a visa applicant who would otherwise be inadmissible for a visa under INA 212(a)(9)(B) claims the benefit of the bona fide asylum exception, you should first determine whether the alien engaged in unauthorized employment while the asylum claim was pending, and if any part of such employment

occurred on or after April 1, 1997. (See paragraph c below.) If so, the alien would not be eligible for the bona fide asylum exception, and he or she should, therefore, be refused under INA 212(a)(9)(B). If the applicant did not engage in authorized employment, it will then be necessary to determine whether or not DHS determines the asylum claim was not "bona fide."

- (2) **(U)** If you have doubts about whether or not the DHS or an IJ has made a decision regarding the bona fides of the asylum claim, you should cable a request to the DHS/USCIS Asylum Division Headquarters Office of Asylum C Posts ("RUEAHLA/HQ CIS IAO Washington DC"), copy to CA/VO/F, to confirm the bona fides of such application. Posts should classify such cables "SBU-NOFORN". You may not take the fact that the alien has received advance parole back into the United States to pursue the asylum application as proof that DHS has already made a determination that asylum claim is "bona fide." Your request for confirmation should provide the DHS Asylum Office with a short, simple statement of the basic facts and should, at a minimum, include the following information:
 - (a) **(U)** The alien's complete name, date of birth, and "A" number (DHS file number);
 - (b) **(U)** When and where the alien lived in the United States;
 - (c) **(U)** When and where the alien filed the asylum application;
 - (d) **(U)** Whether the alien worked in the United States;
 - (e) **(U)** If the alien worked in the United States, whether DHS had authorized such employment and, if so, what type of authorization documents the alien had been given;
- (3) **(U)** You may presume the application to have been bona fide if the post receives no report from the "HQDHS for Asylum Office" within 60 days from the date of the referral.

c. (U) Work Without Authorization After April 1, 1997, Bars Use of Asylee Exception:

- (1) **(U)** Under INA 212(a)(9)(B)(iii)(II), an alien is entitled to the exception for bona fide asylum applicants only if the alien has not worked without authorization while such application is/was pending. Because INA 212(a)(9)(B) only went into effect on April 1, 1997, however unauthorized employment prior to that date should not count against the alien. Therefore, only unauthorized employment occurring on or after April 1, 1997, will disqualify the alien from being eligible for the bona fide asylum exception in INA 212(a)(9)(B)(iii)(II).
- (2) **(U)** Prior to seeking the DHS confirmation that the asylum application was bona fide, you should interview the applicant with particular attention to questions relating to possible unauthorized employment by the alien. If the alien has engaged in unauthorized employment during the pendency of the asylum application, and if any portion of the unauthorized employment occurred on or after April 1, 1997, then the alien would be ineligible for the

exception and no purpose would be served in submitting the case to DHS for a determination of whether the asylum claim was bona fide.

- (3) **(U)** You should note that aliens who apply for asylum may be able to obtain work authorization from DHS if their application is pending for more than 180 days even if they are not in a status that would normally allow employment. In such cases, the alien will receive an "employment authorization document" (EAD) from DHS. Posts should, therefore, examine the facts carefully when determining whether or not a particular employment was not authorized.

9 FAM 302.11-3(B)(4) (U) Other Exceptions

(CT:VISA-347; 04-18-2017)

- a. **(U) Minors:** Any period of time that an alien spends unlawfully in the United States while under the age of 18 does not count toward calculating the accrual of unlawful presence for purposes of INA 212(a)(9)(B).
- b. **(U) Family Unity:** Any period of time in which an alien is the beneficiary of the family unity protection of Section 301 of the Immigration Act of 1990 (IMMACT 90) would not count toward calculating the accrual of unlawful presence for purposes of INA 212(a)(9)(B). Alien beneficiaries of such protection must maintain their status by regularly applying to re-register.
- c. **(U) Battered Spouses and Children:** Battered spouses and children benefitting under INA 204(a)(1)(A)(iii)(I) and INA 212(a)(6)(A)(ii) for immigrant visas may not accrue unlawful presence if there is a substantial connection between the battering or cruelty and the violation of the terms of the alien's nonimmigrant visa. In this context, the abuse must have started before and led to the alien's accrual of unlawful presence. This requires, at a minimum, establishing the dates of arrival and termination of the authorized stay, as well as the timing of the abuse and its relationship to the continued stay beyond that date.
- d. **(U) Victims of Severe Form of Trafficking in Persons:** INA 212(a)(9)(B)(i) will not apply to an alien who demonstrates that a severe form of trafficking (as that term is defined in 22 U.S.C. 7102) was at least one central reason for the alien's unlawful presence in the United States.

9 FAM 302.11-3(B)(5) (U) "Tolling" for Good Cause

(CT:VISA-347; 04-18-2017)

- a. **(U)** "Tolling" is a legal doctrine which allows for the pausing or delaying of the running of the period of time set forth by a statute of limitations. Subparagraph (iv) of INA 212(a)(9)(B) provides for "tolling" for up to 120 days of a possible period of unlawful presence during the pendency of an application to change or extend NIV status. This subparagraph applies only to possible inadmissibility under subsection INA 212(a)(9)(B)(i)(I). The tolling is only permitted if the alien is lawfully admitted to or paroled into the United States, has filed a nonfrivolous application for a change or extension of status prior to the date of expiration of the

authorized period of stay, and has not been employed without authorization in the United States before or during the pendency of such application, but not to exceed 120 days.

- b. **(U)** DHS has inferred that the "120 days" limitation was probably predicated on an assumption that they would be able to adjudicate applications for change or extensions of status within that time frame. Due to DHS backlogs, however, some cases have been pending as long as six months or more, during which the applicants could incur the three or 10-year penalties through no fault of their own if only the first 120 days were tolled and the application was ultimately denied. Therefore, for all cases involving potential inadmissibility under INA 212(a)(9)(B) whether under the three-year bar of 212(a)(9)(B)(i)(I) or the 10-year bar of INA 212(a)(9)(B)(i)(II), DHS has decided to consider all time during which an application for extension of stay (EOS) or change of nonimmigrant status (COS) is pending to be a period of stay authorized by the Secretary of Homeland Security provided:
- (1) **(U)** The application was filed in a timely manner; i.e., before the expiration date of the Form I-94, Arrival and Departure Record;
 - (2) **(U)** The application was "nonfrivolous"; and
 - (3) **(U)** The alien has not engaged in unauthorized employment (whether before or after April 1, 1997).

NOTE: **(U)** Although INA 212(a)(9)(B) did not go into effect until April 1, 1997, and the law is not retroactive, unauthorized employment prior to April 1, 1997, will render an alien ineligible for the nonfrivolous COS and/or EOS exception because aliens who have engaged in unauthorized employment are generally not eligible for change or extension of nonimmigrant stay, and therefore, an application under such circumstances should generally be considered frivolous.

- c. **(U)** To be considered "nonfrivolous" the consular officer must find that the application had an arguable basis in law and fact and must not have been filed for an improper purpose (e.g., as a groundless excuse for the applicant to remain in activities incompatible with his or her status). It is not necessary to determine that the DHS would have approved the application for it to be considered nonfrivolous.

9 FAM 302.11-3(C) (U) Advisory Opinions (AO)

(CT:VISA-347; 04-18-2017)

(U) An AO is not required for a potential INA 212(a)(9)(B) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.11-3(D) (U) Waiver

9 FAM 302.11-3(D)(1) (U) Waivers for Immigrants

(CT:VISA-379; 06-09-2017)

a. **(U) In General:** An applicant for an IV who is inadmissible under INA 212(a)(9)(B) may seek a waiver from DHS under INA 212(a)(9)(B)(v) if: (1) the alien is the spouse, son, or daughter of a U.S. citizen or lawful permanent resident; and (2) The Secretary of Homeland Security is satisfied that *denying the alien admission* to the United States would result in extreme hardship to the U.S. citizen or lawful *permanent* resident spouse or parent of such alien.

b. **(U) I-601A Provisional Waiver of Unlawful Presence:**

(1) (U) In General: *All IV applicants* unlawfully present in the United States who would be found ineligible for an IV by a consular officer at the time of their IV interview solely under INA 212(a)(9)(B) may apply for a provisional unlawful presence waiver (*provisional waiver*) of this ineligibility prior to leaving the United States for their immigrant visa interview. Applicants seeking a provisional waiver must file a Form I-601A provisional unlawful presence waiver application with USCIS. *On August 29, 2016, USCIS expanded the provisional unlawful presence waiver process to all IV categories with a qualifying relationship to a U.S. citizen or lawful permanent resident. If a consular officer identifies any other ground(s) of ineligibility during the immigrant visa interview, an approved Form I-601A would no longer be deemed valid.*

(2) (U) Eligibility:

- (a) **(U)** *An alien may be eligible to apply for a* Form I-601A provisional unlawful presence waiver with USCIS, *if the* individual *meets* the following criteria:
- (i) **(U)** *Is* physically present in the United States at the time of filing and *appears* for biometrics collection at a USCIS Application Support Center;
 - (ii) **(U)** *Is* at least 17 years of age at the time of filing;
 - (iii) **(U)** *Is* the beneficiary of an approved Form I-130, Petition for Alien Relative, *Form I-140, Immigrant Petition for Alien Worker or a Diversity Visa Program selectee. [Please note that fiancé(e) beneficiaries are ineligible to file Form I-601A];*
 - (iv) **(U)** *Has a case pending with the Department of State based on:*
 - **(U)** *An approved immigrant visa petition, for which the Department of State IV processing fee has been paid;*
 - **(U)** *Selection by the Department of State to participate in the Diversity Visa (DV) Program under INA 203(c) for the fiscal year for which the alien is registered; or*
 - **(U)** *Eligibility as a derivative beneficiary under INA 203(d) of an approved immigrant visa petition or of an alien selected to participate in the DV Program or other appropriate evidence.*

- (v) **(U)** *Is*, or will be at the time of the IV interview, ineligible *for an immigrant visa based solely on unlawful presence in the United States* under INA 212(a)(9)(B)(i)(I) or INA 212(a)(9)(B)(i)(II);
 - (vi) **(U)** Will depart from the United States to obtain the immigrant visa;
 - (vii) **(U)** *Has* a U.S. citizen *or LPR* spouse or parent who would experience extreme hardship if *DHS* refused to admit the IV applicant to the United States and otherwise merit favorable exercise of discretion for a provisional waiver in accordance with INA 212(a)(9)(B)(v); and
 - (viii) **(U)** *Meets* all other requirements for the provisional unlawful presence waiver as stated in 8 CFR 212.7(e), and the Form I-601A and its instructions.
- (b) **(U)** An alien is ineligible for a provisional unlawful presence waiver if the applicant is otherwise ineligible in accordance with 8 CFR 212.7(e), or the Form I-601A and its instructions.
- (3) **(U) USCIS Processing and NVC Scheduling:**
- (a) **(U)** Those interested in applying for the provisional unlawful presence waiver must submit the Form I-601A directly to USCIS, which will use the Consular Consolidated Database (CCD) to confirm that *a petition was filed or that an applicant is a selectee under the DV Program*.
 - (b) **(U)** Upon receipt of an I-601A application, USCIS will notify *the NVC, or the Kentucky Consular Center (KCC) if related to a DV case*, that an applicant has applied for an I-601A provisional unlawful presence waiver. NVC will notify the applicant that it will not schedule the case for an IV appointment until USCIS notifies NVC of its adjudication decision. Once USCIS notifies the applicant and NVC of its decision on the I-601A application, NVC will schedule the case of any documentarily-qualified applicant for an IV appointment, notify the applicant of the appointment date, and forward the case to post for processing. In the IV case file sent to post, NVC will include a post supplement report with information confirming whether USCIS processed an I-601A for the applicant and whether USCIS approved or denied the provisional unlawful presence waiver. IV case files will not include a stand-alone I-601A approval or denial document. NVC will also record the USCIS decision as a case note for the consular officer to see in the CCD's IVIS Beneficiary Report and posts may use the USCIS receipt number to verify the I-601A decision in CLAIMS via the DHS Person Centric Query System (PCQS) under Other Agencies/Bureaus in CCD. *USCIS will notify KCC of any I-601A decision associated with a DV application. KCC will, in turn, contact the appropriate consular section.*
 - (c) **(U)** *Follow-to-Join Applicants: To qualify for an I-601A waiver, an applicant must demonstrate an extreme hardship to a U.S. citizen or LPR spouse or parent would result if the U.S. government refused to admit the*

alien to the United States. For this reason, a derivative spouse may only to be able to demonstrate a qualifying extreme hardship after the principal applicant obtains LPR status. FTJ applicants are instructed to appear with a USCIS approval notice. You will then verify I-601A approval through PCQS.

(4) **Unavailable.**

(5) **(U) Revocation of Approved I-601A:**

- (a) **(U)** The approved provisional unlawful presence waiver is revoked automatically if:
- (i) **(U)** A consular officer determines that the applicant is ineligible to receive an IV under any section of law other than INA 212(a)(9)(B)(i)(I) or INA 212(a)(9)(B)(i)(II); or
 - (ii) **(U)** The immigrant visa petition approval associated with the provisional unlawful presence waiver is at *any* time revoked, withdrawn, or rendered invalid but not otherwise reinstated for humanitarian reasons or converted to a widow or widower petition; or
 - (iii) **(U)** The immigrant visa registration is terminated and has not been reinstated in accordance with INA 203(g); or
 - (iv) **(U)** The applicant, at any time *after filing but* before approval of the provisional unlawful presence waiver *takes effect* enters or attempts to reenter the United States without being inspected and admitted or paroled.
- (b) **(U)** If a consular officer determines that the provisional unlawful presence waiver is revoked, the consular officer should enter "I-601A revoked" into the case notes, explain why the provisional unlawful presence waiver is revoked, and then refuse the applicant on all appropriate grounds that exist (including unlawful presence using the code "9B1" or "9B2" in IVO). If the *underlying* petition remains valid after the I-601A is revoked, the applicant may file an I-601, Application for Waiver of Grounds of Inadmissibility, using existing procedures for all ineligibilities with USCIS.
- (c) **(U)** Posts with a question regarding a specific I-601A decision should contact NVC (*or KCC if it is a DV case*), which will liaise with USCIS. Please remember, however, that only USCIS has authority to adjudicate the I-601A provisional unlawful presence waiver application and determine whether the grounds for extreme hardship submitted as justification for I-601A approval merit favorable exercise of discretion by USCIS.

(6) **(U) Processing Applicants with Approved I-601A:**

- (a) **(U)** The provisional unlawful presence waiver process allows a consular officer to issue an IV to an applicant with an approved I-601A who is otherwise qualified for the IV and has no other ineligibilities beyond INA 212(a)(9)(B)(i). Prior to issuing the *immigrant* visa, consular officers must

confirm and note the I-601A approval. For legal, accountability, and tracking purposes, a consular officer must make a formal finding of ineligibility and refuse an approved I-601A applicant in IVO using the 9B1W refusal code for applicants ineligible under INA 212(a)(9)(B)(i)(I) and the 9B2W refusal code for applicants ineligible under INA 212(a)(9)(B)(i)(II) *except in conditional visa classes (CR) for which a standard 9B1 or 9B2 refusal code would be used*. These codes may be used ONLY for cases with an approved I-601A for which no other ineligibility exists. After refusing the approved I-601A applicant using the appropriate 9B1W or 9B2W refusal code, *except for CR applicants*, the consular officer may immediately proceed to print authorize the case by waiving the refusal in IVO.

(b) **(U)** Consular officers should not send a CLOK Deletion request to have the 9B1W or 9B2W hits removed. Both hits will expire in CLASS after one month and will not replicate to CBP's TECS system. U.S. Customs and Border Protection therefore will not see the hits at the port of entry when the applicant seeks admission to the United States as an immigrant. Because USCIS will notify NVC *or KCC* electronically of its I-601A decisions, posts do not have to include information regarding the I-601A approval in the applicant's IV packet. Posts must, however, annotate the visa to read "Waiver Section 212(a)(9)(B)(v)," which will inform the CBP inspector at the port of entry of the waiver approval. CBP will also be able to access the waiver information in the CCD and CLAIMS if necessary.

(7) **(U) Processing Applicants with Denied I-601A:** Those applicants denied an I-601A may not appeal the USCIS decision, but may file a new I-601A. If the applicant chooses not to submit a new I-601A to USCIS, the applicant must leave the United States to appear for his or her IV interview and submit a Form I-601, Application for Waiver of Grounds of Inadmissibility, to USCIS after a consular officer has found the applicant ineligible for a visa under INA 212(a) or any other section of law.

9 FAM 302.11-3(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-347; 04-18-2017)

(U) Nonimmigrants who are inadmissible under INA 212(a)(9)(B) may apply for an INA 212(d)(3)(A) waiver through the Admissibility Review Information Service (ARIS) via an "ARIS Waiver Request Form". (See [9 FAM 305.4](#).)

9 FAM 302.11-3(E) Unavailable

9 FAM 302.11-3(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable.

9 FAM 302.11-3(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable.

9 FAM 302.11-4 (U) INDIVIDUALS UNLAWFULLY PRESENT AFTER PREVIOUS IMMIGRATION VIOLATION - INA 212(A)(9)(C)

9 FAM 302.11-4(A) (U) Grounds

(CT:VISA-347; 04-18-2017)

(U) Under INA 212(a)(9)(C), any alien who:

- (1) Has been unlawfully present in the U.S. for an aggregate period of more than one year, or
- (2) Has been ordered removed under section 235(b)(1), or other provision of law and who enters or attempts to reenter the United States without being admitted or attempts to enter without inspection is inadmissible.

9 FAM 302.11-4(B) (U) Application

9 FAM 302.11-4(B)(1) (U) In General

(CT:VISA-347; 04-18-2017)

- a. **(U)** This provision applies to aliens who, having previously been unlawfully present for more than a year (in the aggregate) or having been previously removed, subsequently enter or try to enter the United States without being admitted. You should note that the aggregate year of illegal presence must have occurred after April 1, 1997 to support a 212(a)(9)(C)(i)(I) or 9C1 finding. A prior removal, however, may have occurred at any time to support a 212(a)(9)(C)(i)(II) or 9C2 finding. The triggering event for both—the entry or attempted entry into the United States without admission, must have occurred after April 1, 1997.
- b. **(U)** An “admission” in this context is preceded by an inspection by CBP. Therefore, an individual who has either an aggregate year of illegal presence or a prior removal may trigger a 212(a)(9)(C)(i) ineligibility by making a false claim to U.S. citizenship at a Port of Entry (POE). U.S. citizens are not subject to inspection and admission at POEs, therefore, the attempted entry via a false claim to citizenship has the same effect as an attempted entry without inspection outside of a POE.

9 FAM 302.11-4(B)(2) (U) Effect of INA 212(a)(9)(C) Ineligibility

(CT:VISA-347; 04-18-2017)

(U) An alien subject to INA 212(a)(9)(C) is permanently inadmissible and ineligible for a visa. Such an alien may, however, seek permission to reapply or consent to reapply. See [9 FAM 302.11-4\(D\)](#).

9 FAM 302.11-4(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

(U) An AO is not required for a potential INA 212(a)(9)(C) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.11-4(D) (U) Waiver

9 FAM 302.11-4(D)(1) (U) Waivers for Immigrants

(CT:VISA-347; 04-18-2017)

(U) An alien subject to INA 212(a)(9)(C) is permanently inadmissible and ineligible for a visa. Such an alien may, however, after ten years seek the Secretary of Homeland Security's consent to reapply (CTR, also sometimes referred to as "permission to reapply") which the alien can obtain through DHS by submitting an Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212). If the Secretary of Homeland Security consents, then the inadmissibility no longer applies. Although the consent to reapply removes the ground of ineligibility, it does not remove the factual circumstances which led to the original finding of ineligibility nor does it affect any other ground of ineligibility.

9 FAM 302.11-4(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-347; 04-18-2017)

- a. **(U)** For nonimmigrant visa (NIV) applicants with a 212(a)(9)(C)(i)(I) or 9C1 ineligibility, the consular officer make seek relief on behalf of the applicant by submitting an "ARIS Waiver Request Form" through the Admissibility Review Information Service (ARIS). A consular officer may favorably recommend an NIV applicant ineligible under 9C1 at any time. This relief is temporary.
- b. **(U)** When submitting the ARIS request for a 9A ineligibility, post must clearly state, "Post recommends consent to reapply" and provide the reason for recommending in the written comments of the ARIS request.
- c. **(U)** If 9C1 is the applicant's only ineligibility and more than ten years have passed since the ineligibility was incurred, the applicant may choose to apply for relief by filing form I-212 with DHS in order to obtain permanent relief, which, if granted, allows for issuance of a full validity visa.
- d. **(U)** For nonimmigrant visa (NIV) applicants with a 212(a)(9)(C)(i)(II) or 9C2 ineligibility, a visa applicant is eligible to seek relief only after the ten year bar has passed. The applicant is only eligible for relief via filing form I-212 with DHS. The

applicant is not eligible for relief via ARIS. If the I-212 is granted, it provides permanent relief which allows for issuance of a full validity visa.

9 FAM 302.11-4(E) Unavailable

9 FAM 302.11-4(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable.

9 FAM 302.11-4(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable.

9 FAM 302.12

(U) INELIGIBILITY BASED ON OTHER ACTIVITIES - INA 212(A)(10)

(CT:VISA-303; 03-16-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 302.12-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 302.12-1(A) (U) Immigration and Nationality Act

(CT:VISA-272; 12-20-2016)

(U) INA 203(c)(2) (8 U.S.C. 1153(c)(2)); INA 212(a)(10)(A) (8 U.S.C. 1182(a)(10)(A)); INA 212(a)(10)(B) (8 U.S.C. 1182(a)(10)(B)); INA 212(a)(10)(C) (8 U.S.C. 1182(a)(10)(C)); INA 212(a)(10)(D) (8 U.S.C. 1182(a)(10)(D)); INA 212(a)(10)(E); INA 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)); INA 214(i) (8 U.S.C. 1184(i)); INA 214(l) (8 U.S.C. 1184 (l)); INA 237(a)(6) (8 U.S.C. 1227(a)(6)).

9 FAM 302.12-1(B) (U) Code of Federal Regulations

(CT:VISA-272; 12-20-2016)

(U) 22 CFR 40.101; 22 CFR 40.102; 22 CFR 40.103; 22 CFR 40.104; 22 CFR 40.105 8 CFR 208.20.

9 FAM 302.12-2 (U) PRACTICING POLYGAMISTS - INA 212(A)(10)(A)

9 FAM 302.12-2(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(10)(A) provides that an immigrant visa applicant who is coming to the United States to practice polygamy is ineligible for a visa.

9 FAM 302.12-2(B) (U) Application

9 FAM 302.12-2(B)(1) (U) Polygamy Defined

(CT:VISA-303; 03-16-2017)

(U) Polygamy is the historical custom or religious practice of having more than one wife or husband at the same time. It is also called plural marriage. It is distinguished from bigamy which is a criminal act resulting from having more than one spouse at a time without benefit of a prior divorce. *A conviction for or an admission of bigamy might preclude issuance under INA 212(a)(2)(A)(i)(I) (crime involving moral turpitude). (See generally, Matter of G-, 6 IN Dec. 9 (B.I.A 1953.)*

9 FAM 302.12-2(B)(2) (U) Reserved

(CT:VISA-303; 03-16-2017)

9 FAM 302.12-2(B)(3) (U) Distinguishing Current Practice from Advocacy, Belief, or Past Practice

(CT:VISA-303; 03-16-2017)

(U) In order for ineligibility to result, the alien must intend to actually practice polygamy in the United States. The alien's mere advocacy of or belief in the practice, or the fact that the alien at one time in the past may actually have practiced polygamy, would not be sufficient to render a finding of inadmissibility. *To sustain an inadmissibility, an officer would have to find the applicant will maintain a married relationship with more than one spouse while in the United States. If one spouse is traveling with the alien while the other spouse remains overseas, the alien can only be found ineligible, if the officer believes the alien will continue a relationship with the left-behind spouse - for example visiting the spouse, providing financial support, keeping in phone contact. If an alien is legally married to a second spouse, but maintains no active relationship with that spouse, then that would not be practicing polygamy and would not sustain an ineligibility.*

9 FAM 302.12-2(B)(4) (U) Aliens Coming to the United States to Practice Polygamy

(CT:VISA-272; 12-20-2016)

(U) We interpret the phrase "...coming to the United States to practice polygamy..." to mean that an alien who intends to practice polygamy when he or she enters the United States in any immigrant category is ineligible, not that the alien necessarily must be coming to the United States in a spousal category. Thus, an immigrant who seeks an immigrant visa based upon his or her employment in the United States and who intends to practice polygamy upon entry is inadmissible.

9 FAM 302.12-2(B)(5) (U) Inapplicable to Nonimmigrants

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(10)(A) is not applicable to nonimmigrants. However, those visa categories which confer derivative status for the spouse of a principal alien do not allow for issuance of derivative visas to multiple spouses. Only the first spouse may qualify for a derivative visa. You may, however, use discretion in issuing the additional

spouse(s) a B-2 visa, if otherwise eligible and qualified.

9 FAM 302.12-2(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

(U) An AO is not required for a potential INA 212(a)(10)(A) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.12-2(D) (U) Waiver

9 FAM 302.12-2(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) No waiver is available for immigrant visa applicants ineligible under INA 212(a)(10)(A). INA 212(c) relief is available for certain returning residents.

9 FAM 302.12-2(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(10)(A) is not applicable to nonimmigrants.

9 FAM 302.12-2(E) Unavailable

9 FAM 302.12-2(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.12-2(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.12-3 (U) GUARDIAN REQUIRED TO ACCOMPANY A HELPLESS ALIEN - INA 212(A) (10)(B)

9 FAM 302.12-3(A) (U) Grounds

(CT:VISA-303; 03-16-2017)

(U) INA 212(a)(10)(B) provides that an alien, accompanying another alien who *is*

certified to be helpless as a result from sickness, mental or physical disability, or infancy pursuant to INA 232(c) who is inadmissible.

9 FAM 302.12-3(B) (U) Application

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(10)(B) applies at the time an alien applies for admission to the United States and does not apply at the time of the visa application.

9 FAM 302.12-3(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(10)(B) does not apply at the time of the visa application.

9 FAM 302.12-3(D) (U) Waiver

9 FAM 302.12-3(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(10)(B) is not applicable at the time of visa application.

9 FAM 302.12-3(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(10)(B) is not applicable at the time of visa application.

9 FAM 302.12-3(E) Unavailable

9 FAM 302.12-3(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.12-3(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.12-4 (U) INTERNATIONAL CHILD ABDUCTION - INA 212(A)(10)(C)

9 FAM 302.12-4(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(10)(C) renders an alien inadmissible so long as the alien withholds custody of a U.S. citizen child outside of the United States from the individual granted custody of the child by a U.S. court, and so long as the child remains a "child" according to INA 101(b)(1) (i.e., unmarried and under 21 years of age). It also renders ineligible those assisting or providing material support or safe haven to the abductor. There is an exception for aliens who take abducted children to a country that is party to the Hague Convention on the Civil Aspects of International Child Abduction (the Convention) because the Convention provides a legal framework for the return of abducted children to the child's place of habitual residence in order to resolve custody disputes.

9 FAM 302.12-4(B) (U) Application

9 FAM 302.12-4(B)(1) (U) Definitions

(CT:VISA-272; 12-20-2016)

- a. **(U) "Agent"**: An agent is generally defined as a person authorized by another person to represent or act for that person. Most cases of agent representation will be based on a contractual relationship such as attorney client, but numerous other possibilities exist. Such determinations should be made in consultation CA/VO/L/A.
- b. **(U) "Any Alien"**: Any alien refers to any individual who is not a U.S. citizen or U.S. national, including lawful permanent residents (LPRs).
- c. **(U) "Assisted"**: Assisted includes any action that enabled the abductor to detain or retain the child or withhold custody. However, it does not include any assistance that was "de minimis," or that bore no nexus to actions that form the basis of an ineligibility under INA 212(a)(10)(C)(i). For example, assistance that can result in ineligibility under INA 212(a)(10)(C)(ii) may include, but is not necessarily limited to: helping the abductor get re-established in the foreign country; providing housing, financial support, or free child care; and/or actively interfering with the custodial parent's efforts to enforce the U.S. custody order.
- d. **(U) "Child Abduction"**: Child Abduction is defined in the statute as detaining or retaining the child, or withholding custody of the child, outside the United States after the entry of a custody order by a court in the United States granting custody to a different person. The alien need not be responsible for removing the child from the United States to be found ineligible so long as the alien detains or retains the child outside the United States. The fact that the child might express a preference to reside with the alien is not a relevant consideration. Provided the child continues to reside with the alien in violation of the custody order, the alien will be considered to be detaining or retaining the child or withholding custody of the child.
- e. **(U) "A Court Order Granting Custody"**: A "court order granting custody" refers to any order by a court in the United States granting custody. The order may be of

a temporary nature, providing no subsequent order by a court in the United States has been entered and temporary order has not expired. In the event there are conflicting custody orders, the custody order from the country to which the child was abducted is irrelevant to the INA 212(a)(10)(C) finding. The 10(C) finding is based on the order by a court in the United States, regardless of whether that order was issued before or after the abduction. Custody may be physical, legal, sole, or joint. Generally, 10(C) will not apply in access-only cases, including those cases in which the child's alien parent had the right to move overseas with the child or the right to designate the child's primary residence.

- f. **(U) "A Court in the United States":** A "court in the United States" refers to any federal, state, or local court having jurisdiction to grant an order custody.
- g. **(U) "Intentionally":** Intentionally means that the alien providing such assistance, material support or safe haven did so, purposefully and knew or reasonably should have known that such aid enabled an abductor to detain or retain a child or withhold custody of the child in violation of an order by a court in the United States. An alien cannot make himself or herself willfully blind to the abductor's bad conduct, the child's custodial history, the child's parents' relationship, how the child came to live outside the United States, or other factors that would lead a reasonable person to conclude that the child is being detained, retained or withheld in violation of an order by a court in the United States. While the applicant does not need to know definitively that there is a custody order, he or she would need to know (or reasonably should have known) that there is an ongoing dispute as to the custody of the child.
- h. **(U) "Material Support":** Material support includes, but is not limited to, an alien aiding an abductor in the abduction itself by providing transportation, funds, false documentation, or identification to, or aiding in the communication of, any abductor.

9 FAM 302.12-4(B)(2) (U) Elements for INA 212(a)(10)(C)(i)

(CT:VISA-272; 12-20-2016)

- a. **(U)** An alien is ineligible under INA 212(a)(10)(C)(i) if:
 - (1) **(U)** The child is a U.S. citizen;
 - (2) **(U)** A court in the United States has issued an order granting custody of the child to someone other than the alien;
 - (3) **(U)** The alien is detaining or retaining the child, or withholding custody of the child, from the person granted custody by the U.S. court order; and
 - (4) **(U)** The child is outside of the United States and in a country that is NOT a U.S. partner to the Convention.
- b. **(U)** Note that INA 212(a)(10)(C)(i) does not require the child to have been taken out of the United States nor does it require the alien to have been in the United States.

9 FAM 302.12-4(B)(3) (U) Elements for INA 212(a)(10)(C)(ii)

(CT:VISA-303; 03-16-2017)

- a. **(U)** INA 212(a)(10)(C)(ii) provides grounds of ineligibility for aliens who support an alien whose conduct has satisfied all the elements necessary to be found ineligible under INA 212(a)(10)(C)(i).
- b. **(U)** An alien is ineligible under INA 212(a)(10)(C)(ii) if, the following elements are satisfied:
 - (1) **(U)** The primary abductor is an alien described in INA 212(a)(10)(C)(i), even if the primary abductor never applied for a visa. Note that if the primary abductor is a U.S. citizen, INA 212(a)(10)(C)(ii) cannot be applied to any persons assisting the abductor because both INA 212(a)(10)(C)(i) and INA 212(a)(10)(C)(ii) require the primary abductor to be an alien; and
 - (2) **(U)** The applicant intentionally assisted the abductor or intentionally provided material support or safe haven to the abductor *as described in clause (i)*.

9 FAM 302.12-4(B)(4) (U) Designation Under INA 212(a) (10)(C) (ii)(III)

(CT:VISA-272; 12-20-2016)

- a. **(U)** Under INA 212(a)(10)(C)(ii)(III), the spouse (other than the spouse who is the parent of the abducted child), child (other than the abducted child), parent, sibling or agent of an abductor can be designated inadmissible by the Secretary of State in the Secretary's sole and unreviewable discretion.
- b. **(U)** An alien is inadmissible under INA 212(a)(10)(C)(ii)(III) if the following essential elements are present:
 - (1) **(U)** The visa applicant is either a spouse, child, parent, sibling, or an agent of the abductor;
 - (2) **(U)** The abducted child has not been returned to the person granted custody or the abducted child has aged out; and
 - (3) **(U)** The agent or relatives has been designated by the Secretary of State as ineligible. Note: There is no process currently in place for such designation and the use of INA 212(a)(10)(C)(ii)(III) will be rare. Please contact your Country Officer in Children's Issues if you think there is a case for which use of this provision may be appropriate.

9 FAM 302.12-4(B)(5) (U) Withholding a Child Outside the United States

(CT:VISA-272; 12-20-2016)

(U) In many cases, the most difficult element in establishing inadmissibility under this section will be determining the location of the child. Where an alleged abductor refuses to divulge the location of a child and the abductor is currently residing abroad,

you may presume that the child is residing with the abductor. Any assertion by an abductor who resides abroad that the child remains in the United States (e.g., with relatives) should be established to your satisfaction by direct evidence.

9 FAM 302.12-4(B)(6) (U) Time of Abduction

(CT:VISA-272; 12-20-2016)

- a. **(U)** The timing of a U.S. custody order's entry in relation to the time of abduction is irrelevant to visa ineligibility. The existence of a U.S. custody order, whether it was entered before or after the abduction, satisfies the custody order requirement for a finding of inadmissibility under INA 212(a)(10)(C). In other words, if a court in the United States enters a U.S. custody order after the child has already left, and then any alien who is bound by the order must return the child to the United States, in order to avoid inadmissibility.
- b. **(U)** For an alien to be ineligible under INA 212(a)(10)(C)(ii), the assistance or material support does not need to be ongoing; it only has to have been provided after the applicant knew or reasonably should have known about the custody order.

9 FAM 302.12-4(B)(7) (U) Exceptions

(CT:VISA-272; 12-20-2016)

- a. **(U) Government Officials:** The exceptions for U.S. Government and foreign government officials apply to those government officials who are providing support to a household or individual that currently holds an abducted, when such officials are acting in their official capacity.
- b. **(U) Hague Convention Countries:** The law provides for an exception to be made for an alien who takes an abducted child to a country that is a U.S. partner to the Hague Convention because the Convention provides an established legal mechanism or framework for returning the child to the child's place of habitual residence so that custody disputes may be resolved. Since the Convention provides a remedy of return, the Congress chose not to penalize an abductor who removes a child to a country that is a Hague partner. If you are uncertain whether a particular country is a Convention partner country, please inquire with your country desk office in CA/OCS/CI's Outgoing Abductions divisions or visit the abduction resources page.
- c. **(U) Lawful Permanent Residents:** If you know or suspect a lawful permanent resident has incurred an ineligibility under INA 212(a)(10)(C), you should not make any entries into CLASS. Instead contact CA/OCS/CI-Abduction for guidance.

9 FAM 302.12-4(B)(8) (U) Removal of the Inadmissibility

(CT:VISA-272; 12-20-2016)

(U) An alien remains ineligible under INA 212(a)(10)(C) only so long as the child has not been returned to the person granted custody by the order of a court in the United States and such person and child are permitted to return to the United States or such

person's place of residence. Once the child is surrendered to the person having lawful custody, the ineligibility ceases to apply, and OCS/CI country officer will require that Post delete any INA 212(a)(10)(C) ineligibilities entered into CLASS. (See [9 FAM 303.3-4\(D\)\(1\)](#) for more information.) The alien's ineligibility will also cease if the child reaches 21 years of age, marries, "or death(dies)."

9 FAM 302.12-4(B)(9) (U) Requests Initiated by the Office of Children's Issues (CA/OCS/CI)

(CT:VISA-272; 12-20-2016)

- a. **(U)** In many cases, the OCS/CI country desk officer will initiate the INA 212(a)(10)(C) visa ineligibility request and provide supporting case details and documentation such as the U.S. custody order.
- b. **(U)** When there is no pending visa application or valid U.S. visa, the OCS/CI country desk officer will submit a request for a P10C lookout or L lookout directly to the Fraud Prevention Manager at post, copying the American Citizens Services (ACS) chief. Supporting documentation, most importantly the U.S. custody order, must be included with all requests. Within five business days, the Fraud Prevention Unit at post must enter the appropriate CLASS entries as requested or respond to CA/OCS/CI with any questions or concerns about the request.
- c. **(U)** When requesting a visa revocation, the OCS/CI country desk officer will work with CA/VO/L/A, OCS/L, and L/CA for concurrence prior to sending the request to post. If you concur with the facts as presented by the Department, you should then follow normal visa revocation procedures under [9 FAM 403.11](#).

9 FAM 302.12-4(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

- a. **(U)** You must refer the case to CA/VO/L/A for an AO if you believe the alien is inadmissible under INA 212(a)(10)(C). Any formal opinions rendered by CA/VO/L/A will be made in consultation with L/CA, CA/OCS/CI, and CA/OCS/L.
- b. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**

9 FAM 302.12-4(D) (U) Waiver

9 FAM 302.12-4(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) No waiver is available for immigrant visa applicants ineligible under INA 212(a)(10)(C).

9 FAM 302.12-4(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

- a. **(U)** A INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants ineligible under INA 212(a)(10)(C). See [9 FAM 305.4-3](#).
- b. **(U)** Even if an alien expresses an interest in returning the child to the United States, the ineligibility still applies until the child is surrendered to the person granted custody by a court in the United States. An alien may, however, be eligible to receive a NIV waiver pursuant to INA 212(d)(3)(A). Please see [9 FAM 305.4](#) for more information on NIV waivers. Please also see [9 FAM 202.3-3\(B\)\(1\)](#) for more information on humanitarian parole.

9 FAM 302.12-4(E) Unavailable

9 FAM 302.12-4(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

Unavailable

9 FAM 302.12-4(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

Unavailable

9 FAM 302.12-5 (U) UNLAWFUL VOTERS - INA 212(A)(10)(D)

9 FAM 302.12-5(A) (U) Grounds

(CT:VISA-303; 03-16-2017)

(U) INA 212(a)(10)(D) states that an alien *who* has voted in violation of any Federal, State or local constitutional provisions, statute, ordinance, or regulation *is inadmissible*.

9 FAM 302.12-5(B) (U) Application

9 FAM 302.12-5(B)(1) (U) In General

(CT:VISA-272; 12-20-2016)

(U) Normally, you can presume that an alien voting in a political election did so in

violation of some law or ordinance. The alien should be provided every opportunity to prove that the particular election regulations permitted his or her participation. If, however, you seek verification of those voting requirements, or if a case arises in which you have any question of this ground of inadmissibility, you should submit an AO to the CA/VO/L/A. (See [9 FAM 302.12-5\(C\)](#) for more information on AOs.)

9 FAM 302.12-5(B)(2) (U) Applicability

(CT:VISA-272; 12-20-2016)

(U) Inadmissibility under INA 212(a)(10)(D) applies to an alien who at any time has voted in violation of any federal, state, or local constitutional provision, statute, ordinance, or regulation. (See 22 CFR 40.104.)

9 FAM 302.12-5(B)(3) (U) Admissions by the Alien

(CT:VISA-272; 12-20-2016)

(U) An alien who admits voting in the United States in violation of a Federal, State or local law, ordinance, or regulation would generally be inadmissible under INA 212(a)(10)(D), (See [9 FAM 302.12-5\(B\)\(4\)](#) below for Exceptions). If the alien admits to voting in the United States, you should make a record of the circumstances in the case notes, in the event that the alien later refutes the statement or circumstances. If in your judgment, the alien may later on refute the finding of ineligibility, you should give the alien an opportunity to write a statement regarding the circumstances of his or her voting. Such details may also be necessary if an advisory opinion is requested.

9 FAM 302.12-5(B)(4) (U) Exception

(CT:VISA-303; 03-16-2017)

(U) INA 212(a)(10)(D) does not apply to an alien who voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation if:

- (1) **(U)** *Each natural parent (or, in the case of an adopted alien or adoptive parent)* is or was a U.S. citizen by birth or naturalization;
- (2) **(U)** The alien resided permanently in the United States prior to the age of 16; and
- (3) **(U)** The alien reasonably believed at the time of such violation that he or she was a U.S. citizen.

9 FAM 302.12-5(B)(5) (U) Dual Application of INA 212(a)(6)(C)

(CT:VISA-272; 12-20-2016)

(U) You should consider whether an ineligibility under INA 212(a)(6)(C) may also apply in circumstances under INA 212(a)(10)(D), since the act of voting in the United States often involve an affirmative assertion of U.S. citizenship (see [9 FAM 302.9-4](#) and [9 FAM 302.9-5](#)).

9 FAM 302.12-5(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

(U) An AO is not required for a potential INA 212(a)(10)(D) ineligibility; however, if you have a question about the interpretation or application of law or regulation, or you need to seek verification of voting requirements, you may request an AO from CA/VO/L/A.

9 FAM 302.12-5(D) (U) Waiver

9 FAM 302.12-5(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) There is no waiver available for immigrants inadmissible under INA 212(a)(10)(D).

9 FAM 302.12-5(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-303; 03-16-2017)

(U) INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(10)(D). (See [9 FAM 305.4-2.](#))

9 FAM 302.12-5(E) Unavailable

9 FAM 302.12-5(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.12-5(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.12-6 (U) FORMER CITIZENS WHO RENOUNCED CITIZENSHIP TO AVOID TAXATION - INA 212(A)(10)(E)

9 FAM 302.12-6(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(10)(E) provides that an alien is inadmissible if the alien has officially renounced his or her United States citizenship for the purpose of avoiding taxation by

the United States.

9 FAM 302.12-6(B) (U) Application

9 FAM 302.12-6(B)(1) (U) In General

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(10)(E) applies to any alien who is a former citizen of the United States and who is determined by the Attorney General to have officially renounced United State Citizenship for the purpose of avoiding taxation by the United States that took place on or after September 30, 1996.

9 FAM 302.12-6(B)(2) (U) Consular Officer's Role

(CT:VISA-272; 12-20-2016)

(U) The role of the Department and the consular officer is very limited in implementing this ground of inadmissibility. Unless the applicant appears as a hit in the lookout system revealing a finding of inadmissibility under INA 212(a)(10)(E), you must assume the applicant is eligible.

9 FAM 302.12-6(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

(U) An AO is not required for a potential INA 212(a)(10)(E) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.12-6(D) (U) Waiver

9 FAM 302.12-6(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) There is no waiver available for immigrants found inadmissible under INA 212(a)(10)(E).

9 FAM 302.12-6(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

(U) A INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(10)(E). The waiver is discretionary and applications are evaluated on a case-by-case basis. (See [9 FAM 305.4-3.](#))

9 FAM 302.12-6(E) Unavailable

9 FAM 302.12-6(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.12-6(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.13

(U) MISCELLANEOUS INELIGIBILITIES - INA 208(D), INA 212(E), 22 U.S.C. 6091 AND 22 U.S.C. 6713

(CT:VISA-294; 03-06-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 302.13-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 302.13-1(A) (U) Immigration and Nationality Act

(CT:VISA-272; 12-20-2016)

(U) INA 208(d)(6) (8 U.S.C. 1158(d)(6)); INA 212(e) (8 U.S.C. 1182(e)); INA 214(b) (8 U.S.C. 1184(b)); INA 247(b) (8 U.S.C. 1257(b)).

9 FAM 302.13-1(B) (U) Code of Federal Regulations

(CT:VISA-272; 12-20-2016)

(U) 22 CFR 40.202; 22 CFR 40.203; 22 CFR 40.205.

9 FAM 302.13-1(C) (U) Public Laws

(CT:VISA-85; 03-07-2016)

(U) Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (INTCA) (Public Law 103-416).

9 FAM 302.13-1(D) (U) United States Code

(CT:VISA-272; 12-20-2016)

(U) 22 U.S.C. 6091; 22 U.S.C. 6713.

9 FAM 302.13-2 (U) FORMER EXCHANGE VISITORS - INA 212(E)

9 FAM 302.13-2(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) INA 212(e) provides that any alien who was admitted into the United States as an exchange visitor (J-1 and dependents), or who acquired such status after admission, is not eligible to apply for or receive an immigrant visa or a nonimmigrant visa under INA 101(a)(15)(H), INA 101(a)(15)(K), or INA 101(a)(15)(L) unless the alien has resided and has been physically present in the country of the alien's nationality or last residence for an aggregate of at least two years following the termination of the alien's exchange visitor status or the foreign residence requirement has been waived by the Secretary of Homeland Security on the alien's behalf.

9 FAM 302.13-2(B) (U) Application

9 FAM 302.13-2(B)(1) (U) Aliens Subject to INA 212(e)

(CT:VISA-272; 12-20-2016)

a. (U) In General:

- (1) **(U)** Certain J-1 exchange visitors are subject to the two-year foreign residence requirement of INA 212(e) (see [9 FAM 402.5-6\(M\)\(1\)](#)). These exchange visitors must reside and be physically present in their country of nationality or last residence for an aggregate of at least two years following completion of the exchange program and departure from the United States. If the exchange visitor's country of nationality differs from his or her country of last residence, then he or she is required to return to the country of his or her residence at the time he or she obtained J status. These exchange visitors are ineligible to apply for or receive an H, K, or L nonimmigrant visa (NIV), nor are they eligible for an immigrant visa (IV) or permanent residence status until they have either complied with the foreign residence requirement, or received a waiver.
- (2) **(U)** The following categories of exchange visitors (and their accompanying dependents in J-2 status) are subject to the foreign residence requirement:
 - (a) **(U)** Aliens participating in an exchange program financed in whole or in part, directly or indirectly, by an agency of the U.S. Government, the alien's home government, or an international organization which received funding from the U.S. Government or the alien's home government;
 - (b) **(U)** Aliens whose exchange program involves an area of study or field of specialized knowledge that has been designated as necessary for further development of their home countries on the Exchange Visitor Skills List in effect at the time they were admitted to the United States in or acquired, J status; or
 - (c) **(U)** Aliens who entered the United States to receive graduate medical education or training.
- (3) **(U)** If a waiver of the INA 212(e) foreign residence requirement is being sought, the applicant should be directed to the "Waiver of the Exchange Visitor Two-Year Home-Country Physical Presence Requirement" website on travel.state.gov (TSG) for an application and all necessary information about

the process. In most cases, post will only be involved in the waiver process if a No Objection Statement is issued by the alien's designated ministry and sent to the U.S. Chief of Mission within that country. In this case, the No Objection Statement should be forwarded directly by the consular section to the Waiver Division (CA/VO/DO/W) in accordance with [9 FAM 302.13-2\(D\)\(1\)](#) below.

- b. **(U) Two-Year Residence Abroad or Waiver Requirement:** An exchange visitor who is subject to the requirements of INA 212(e) is ineligible to apply for the H, K, or L nonimmigrant visa (NIV) categories, an immigrant visa (IV), or permanent resident status until he or she has complied with the foreign residence requirement or a waiver of that requirement has been favorably recommended by the State Department and then approved by Department of Homeland Security (DHS). (See [9 FAM 502.7-5\(C\)\(6\)](#) for applicability of INA 212(e) to K visa applicants.)
- c. **(U) Two-Year Residence Must be in Country of Nationality or Last Residence:** Residence for two years in a country other than the country of nationality or last residence, when J status was acquired, does not satisfy the requirements of INA 212(e). If the country of nationality differs from the country of last residence at the time of admission, or acquisition of, J status, then the alien is required to fulfill the two years in the country of last residence.
- d. **(U) Time in Country Nationality or Residence Need Not be Continuous:** In determining whether a former exchange visitor has resided and been physically present in the country of nationality or last legal permanent residence for an aggregate of at least two years upon completion of the exchange program and departure from the United States, physical presence need not be continuous and may be cumulative.

9 FAM 302.13-2(B)(2) (U) Applying INA 212(e) to Aliens Issued J-2 Visas

(CT:VISA-272; 12-20-2016)

(U) The spouse or child of an exchange visitor subject to the provisions of INA 212(e) who is issued a J-2 visa is also subject to the provisions of that section. But, if such a spouse or child ceases to be the spouse or child of the former exchange visitor (that is, the child marries, or turns 21, or, in the case of a spouse, the marriage is terminated, either by death or divorce), and the former J-2 alien wishes to obtain a waiver of the two year foreign requirement, a full report of the circumstances surrounding the case may be submitted by the J-2 alien requesting that the State Department act on his or her behalf for a waiver recommendation. However, the State Department will act on behalf of such applicants only rarely and for humanitarian circumstances. Such an application by the J-2 should be submitted as an Interested Government Agency (IGA) request to the State Department. If you receive inquiries regarding the possibility of obtaining such a waiver, direct the applicant to the Waiver of the Exchange Visitor Two-Year Home-Country Physical Presence Requirement website on TSG for additional information.

9 FAM 302.13-2(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

(U) If post is unsure as to whether INA 212(e) applies to the J applicant, an opinion may be requested from CA/VO/DO/W.

9 FAM 302.13-2(D) (U) Waiver

9 FAM 302.13-2(D)(1) (U) No Objection Statement From Foreign Government

(CT:VISA-272; 12-20-2016)

- a. **(U) In General:** It is the responsibility of the alien to seek and receive a No Objection Statement from his or her applicable government.
- b. **(U) Diplomatic Missions in the United States May Issue Statement:** The No Objection Statement is a diplomatic note from the alien's home government stating that it has no objection to the exchange visitor not returning home for two years to fulfill the INA 212(e) requirement and to the possibility of the alien remaining in the United States and becoming a resident. It is issued on behalf of the alien by the alien's home government embassy located in Washington, DC or, if there is not an embassy, then by its diplomatic mission. The No Objection Statement must be sent directly to CA/VO/DO/W from the embassy or the diplomatic mission:

Waiver Review Division, CA/VO/DO/W
U.S. Department of State
600 19th Street, NW (SA-17, 11th Floor)
Washington, DC 20006
- c. **(U) Alien Requesting Statement Directly from Own Government:** An alien seeking to obtain a waiver of the two-year foreign residence requirement on the basis of a statement from the alien's government should comply with the following:
 - (1) **(U)** The alien should apply directly to his or her government for such a statement. It is up to the alien's government to determine whether it will issue such statement;
 - (2) **(U)** The No Objection Statement, a diplomatic note from the alien's home government stating that it has no objection to the exchange visitor not returning home for two years to fulfill the INA 212(e) requirement and to the possibility of the alien remaining in the United States and becoming a resident, may also be issued by the designated ministry of the alien's country. Such a statement must be sent from the designated ministry to the U.S. chief diplomatic mission in the home country; and
 - (3) **(U)** Upon receipt at the U.S. mission, the U.S. consular section should forward the statement directly to CA/VO/DO/W. See paragraph b above for mailing address.
- d. **(U) Foreign Government's Opinion to Determine Who May Make**

Statement: It is the prerogative of the alien's government to determine which ministry or official is authorized to issue a No Objection Statement on its behalf. Once made, however, the statement should be transmitted to CA/VO/DO/W as stated in [9 FAM 302.13-2\(D\)\(1\)](#) paragraph b or [9 FAM 302.13-2\(D\)\(1\)](#) paragraph c above.

- e. **(U) Contents of No Objection Statement:** To enable the Department to process the case expeditiously, a copy of the Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, (part of the Student and Exchange Visitor Information System (SEVIS) program) should be attached to the No Objection Statement along with the alien's waiver case number issued by CA/VO/DO/W, if available, and should contain the following information:
- (1) **(U)** Full name of exchange visitor, date and place of birth;
 - (2) **(U)** Date of entry into the United States;
 - (3) **(U)** List of exchange visitor program or programs and program numbers, if known, in which the alien participated;
 - (4) **(U)** The exchange visitor's alien registration number, if known; and
 - (5) **(U)** The name of the foreign government official with whom the case can be discussed, if necessary.
- f. **(U) No Objection Statement Does Not Guarantee Waiver Approval:** Some exchange visitors have incorrectly assumed that No Objection Statements by their governments guarantee that waivers will be granted. It should be emphasized that the submission of such a statement by a foreign government serves only to initiate the consideration of the alien's request for a waiver. Each waiver case is reviewed on a case-by-case basis and a recommendation is made to DHS by reviewing program, policy, and foreign relations considerations. If an alien has received U.S. Government financing to participate in the exchange program, such funding may be an indication of strong program considerations against granting the waiver.
- g. **(U) No Objection Waiver Unavailable to Medical Graduates:** Exchange visitors who came to the United States, or those who acquired such status after January 9, 1977, in order to receive graduate medical education or training, are precluded by INA 212(e) from obtaining a waiver based solely on a No Objection Statement from their government. They may, however, request waivers on the basis of one of the other situations outlined in INA 212(e). (See [9 FAM 302.13-2\(D\)\(2\)](#), [9 FAM 302.13-2\(D\)\(3\)](#), [9 FAM 302.13-2\(D\)\(4\)](#), and [9 FAM 302.13-2\(D\)\(5\)](#) below.)

9 FAM 302.13-2(D)(2) (U) Exceptional Hardship to U.S. Citizen or Permanent Resident Spouse or Child

(CT:VISA-272; 12-20-2016)

- a. **(U)** If an exchange visitor believes that fulfillment of the two year home country residence requirement would impose exceptional hardship upon his or her U.S. citizen or U.S. lawful permanent resident (LPR) spouse or child, the exchange

visitor may apply to DHS for a waiver based on exceptional hardship.

- b. **(U)** If you are receiving inquiries regarding the possibility of obtaining waivers under INA 212(e) on exceptional hardship grounds, direct the applicant to the Waiver of the Exchange Visitor Two-Year Home-Country Physical Presence Requirement website on TSG for additional information and advise the applicant:
- (1) **(U)** To communicate with the DHS office having jurisdiction over the issue; and
 - (2) **(U)** Applications for waivers on the basis of exceptional hardship must be made to DHS on Form I-612, Application for Waiver of the Foreign Residence Requirement, (under Section 212(e) of the Immigration and Nationality Act, as Amended).

9 FAM 302.13-2(D)(3) (U) Alien Subject to Persecution

(CT:VISA-272; 12-20-2016)

(U) An exchange visitor who believes that he or she would be subject to persecution on account of race, religion, or political opinion if he or she returned to his or her home country to fulfill the two-year home residence requirement may submit a waiver application to DHS. If you receive inquiries regarding the possibility of obtaining a persecution-based waiver under INA 212(e) direct the applicant to the Waiver of the Exchange Visitor Two-Year Home-Country Physical Presence Requirement website on TSG and advise the applicant:

- (1) **(U)** To communicate with the DHS office having jurisdiction over the issue; and
- (2) **(U)** Applications for waivers on the basis of persecution must be made to DHS on Form I-612.

9 FAM 302.13-2(D)(4) (U) Request from Interested Government Agency

(CT:VISA-272; 12-20-2016)

- a. **(U)** An alien desiring to apply for a waiver on the basis that an Interested Government Agency (IGA) has requested a waiver on his or her behalf should be directed to the Waiver of the Exchange Visitor Two-Year Home-Country Physical Presence Requirement website on TSG for additional information. Such a request by an IGA must state that the alien's services are considered to be essential to a program or activity of official interest to that U.S. Government agency and:
- (1) **(U)** A U.S. Federal Government agency must make a written request signed by the head of the requesting agency, or the designated signatory, for a waiver of the alien's INA 212(e) requirement;
 - (2) **(U)** Such a request must state that it is in public interest for the waiver to be granted and that it will be detrimental to a project sponsored by or of interest to the requesting agency if the alien is unable to continue his or her involvement with the project; and
 - (3) **(U)** The request must be submitted directly from the requesting agency to

CA/VO/DO/W. See [9 FAM 302.13-2\(D\)\(1\)](#) paragraph b for the mailing address.

- b. **(U)** If the request is recommended by the Department, it will be forwarded to the DHS office having jurisdiction over INA 212(e) waivers. The DHS office will inform the alien of the final decision.

9 FAM 302.13-2(D)(5) (U) Requests from State Departments of Public Health for Certain Foreign Medical Graduates

(CT:VISA-294; 03-06-2017)

- a. **(U)** Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (INTCA) (Public Law 103-416) established the Conrad State 20 Program (later changed to the Conrad State 30 Program), which provides for a waiver of the two-year foreign residence requirement for alien physicians, who received J-1 status to pursue graduate medical education or training, in return for at least three years of medical service in an underserved area or for services to patients from underserved areas. If you receive inquiries regarding the possibility of obtaining waivers on this basis, direct the applicant to the Waiver of the Exchange Visitor Two-Year Home-Country Physical Presence Requirement website on TSG for additional information.
- b. **(U)** This waiver basis allows each state's Department of Public Health, or its equivalent, to submit 30 such applications annually on behalf of J-1 physicians:
- (1) **(U)** Who were admitted in, or acquired J-1 status before *April 28, 2017*, to pursue graduate medical education or training in the United States;
 - (2) **(U)** Who entered into a bona fide, full-time employment contract for three years to practice medicine at a health care facility located in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals;
 - (3) **(U)** Who agree to commence employment within 90 days of receipt of the waiver and agree to practice medicine for three years at the facility indicated by the state and named in the waiver application; and
 - (4) **(U)** For whom the requesting state agency has submitted in writing that it is in public interest that a waiver of the two-year foreign residence requirement be granted and for whom the Department submits a favorable waiver recommendation to DHS.

9 FAM 302.13-2(D)(6) (U) Failure to Fulfill Three-Year Employment Contract

(CT:VISA-272; 12-20-2016)

- a. **(U)** If a foreign medical graduate fails to meet the terms and conditions imposed by the waiver under INA 214(I) the alien will again become subject to the two-year foreign residency requirement.
- b. **(U)** For extenuating circumstances, DHS may exercise discretion to excuse early termination of a specific three-year employment contract, but the full three years of

service must still be provided. Extenuating circumstances may include, but are not limited to:

- (1) **(U)** Closure of the facility named in the waiver application; or
 - (2) **(U)** Hardship to the alien.
- c. **(U)** Under no circumstances may an alien who fails to comply with the waiver conditions be allowed to change status, apply for adjustment of status to lawful permanent resident or apply for an immigrant visa (IV) prior to completing the three-year period of employment.

9 FAM 302.13-2(D)(7) (U) Required Evidence for Excuse of Early Employment Termination

(CT:VISA-272; 12-20-2016)

- a. **(U)** A foreign medical graduate who seeks to have early termination of employment excused due to extenuating circumstances shall submit to DHS:
- (1) **(U)** An employment contract with another health care facility in an HHS-designated shortage area for the balance of the three-year period;
 - (2) **(U)** Evidence that the facility he or she worked for has closed or is about to be closed; or
 - (3) **(U)** Evidence that hardship was caused by unforeseen circumstances beyond his or her control.
- b. **(U)** Note that the decision whether extenuating circumstances justify a change of employer is made by DHS and is not subject to review by the consular officer.

9 FAM 302.13-2(D)(8) (U) Waiver Review Responsibility in the Waiver Division (CA/VO/DO/W)

(CT:VISA-272; 12-20-2016)

(U) The office responsible for INA 212(e) waiver recommendations in the Department is CA/VO/DO/W. The waiver applicant should access the Visa Office Web site for information on the waiver application process and to download the J-1 visa waiver recommendation application Form DS-3035, Waiver of the J Visa Two-Year Foreign Residence Requirement, 212(e). Once the applicant has applied and received a waiver case number, he or she may obtain the current information on the status of his or her application on the Waiver of the Exchange Visitor Two-Year Home-Country Physical Presence Requirement website on TSG.

9 FAM 302.13-2(E) Unavailable

9 FAM 302.13-2(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.13-2(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.13-3 (U) UNAUTHORIZED DISCLOSURE OF UNITED STATES CONFIDENTIAL BUSINESS INFORMATION - 22 U.S.C. 6713(F)

9 FAM 302.13-3(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) 22 U.S.C. 6713(f) prohibits the issuance of a visa to any person who:

- (1) **(U)** is, or previously served as, an officer or employee of the Organization for the Prohibition of Chemical Weapons, and who has willfully published, divulged, disclosed, or made known in any manner or to any extent not authorized by the Chemical Weapons Convention any United States, confidential business information coming to him in the course of his employment or official duties, or by reason of any examination or investigation of any return, report, or record made to or filed with the Organization, or any officer or employee thereof, such practice or disclosure having resulted in financial losses or damages to a United States person and for which actions or omissions the United States has been found liable of a tort or taking pursuant to this Act;
- (2) **(U)** traffics in United States confidential business information, a proven claim to which is owned by a United States national;
- (3) **(U)** is a corporate officer, principal, shareholder with a controlling interest of an entity which has been involved in the unauthorized disclosure of United States confidential business information, a proven claim to which is owned by a United States national; or
- (4) **(U)** is a spouse, minor child, or agent of a person excludable under paragraph (1), (2), or (3).

9 FAM 302.13-3(B) (U) Application

(CT:VISA-272; 12-20-2016)

(U) For purpose of 22 U.S.C. 6713(f) , the term "United States confidential business information" means any trade secrets or commercial or financial information that is privileged and confidential—

- (1) **(U)** Including:

- (a) **(U)** data described in section 6724(e)(2) of title 22, United States Code,
 - (b) **(U)** any chemical structure,
 - (c) **(U)** any plant design process, technology, or operating method,
 - (d) **(U)** any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed, or produced, or
 - (e) **(U)** any commercial sale, shipment, or use of a chemical, or
- (2) **(U)** As described in section 552(b)(4) of title 5, United States Code, and that is obtained—
- (a) **(U)** from a United States person; or
 - (b) **(U)** through the United States Government or the conduct of an inspection on United States territory under the Convention.

9 FAM 302.13-3(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

(U) An AO is not required for a potential 22 U.S.C. 6713(f) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.13-3(D) (U) Waiver

9 FAM 302.13-3(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) There is no waiver available for immigrant visa applicants ineligible under 22 U.S.C. 6713(f).

9 FAM 302.13-3(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

(U) There is no waiver available for nonimmigrant visa applicants ineligible under 22 U.S.C. 6713(f).

9 FAM 302.13-3(E) Unavailable

9 FAM 302.13-3(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.13-3(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.13-4 (U) FRIVOLOUS ASYLUM APPLICATIONS - INA 208(D)(6)

9 FAM 302.13-4(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) INA 208(d)(6) provides that an alien who applied for asylum on or after April 1, 1997 and who has knowingly made a frivolous application for asylum after being notified of the consequences is permanently ineligible for any benefit under the INA.

9 FAM 302.13-4(B) (U) Application

(CT:VISA-272; 12-20-2016)

(U) The frivolous asylum application ineligibility only applies if a final order from an Immigration Judge or the Board of Immigration Appeals specifically finds that the alien knowingly filed a frivolous asylum application, consistent with 8 CFR 208.20 and 8 CFR 1208.20.

9 FAM 302.13-4(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

(U) An AO is not required for a potential INA 208(d)(6) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.13-4(D) (U) Waiver

9 FAM 302.13-4(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) There is no waiver available for immigrant visa applicants ineligible under INA 208(d)(6).

9 FAM 302.13-4(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

(U) There is no waiver available for nonimmigrant visa applicants ineligible under INA 208(d)(6).

9 FAM 302.13-5 (U) WAIVERS OF RIGHTS, PRIVILEGES, EXEMPTIONS, AND IMMUNITIES - INA 214(B) AND INA 247(B)

9 FAM 302.13-5(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) An alien entitled to nonimmigrant classification under INA 101(a)(15)(A), (E), or (G), who is applying for an immigrant visa and who intends to continue the activities required for such nonimmigrant classification in the United States is not eligible to receive an immigrant visa until the alien executes a written waiver of all rights, privileges, exemptions, and immunities which would accrue by reason of such occupational status.

9 FAM 302.13-5(B) (U) Application

9 FAM 302.13-5(B)(1) (U) Executing Waiver of Rights, Privileges, Exemptions, and Immunities

(CT:VISA-272; 12-20-2016)

(U) In view of the provisions of INA 214(b) and INA 247(b), an applicant for an immigrant visa (IV) who would be eligible for a nonimmigrant classification under INA 101(a)(15)(A), (E), or (G) because of occupational status is required to execute Form I-508, Waiver of Rights, Privileges, Exemptions and Immunities, prior to the issuance of an IV. An appropriate nonimmigrant visa (NIV) may be issued to an otherwise qualified applicant who refuses to sign Form I-508 or who is unable or unwilling to defer departure for the United States until final action can be taken on the IV application.

9 FAM 302.13-5(B)(2) (U) Effect of Waiver

(CT:VISA-272; 12-20-2016)

- a. **(U)** Execution of Form I-508 does not waive any rights, privileges, exemptions, or immunities derived from treaties or other international agreements.
- b. **(U)** The effect of the waiver is to insure that an immigrant alien employee of a foreign government or international organization may not assert or obtain any privilege which would not be available to a U.S. citizen in a similar situation. For example, the waiver removes the exemption from payment of Federal income tax but does not affect the statutory provision for immunity from suit and legal process relating to official acts performed by officers and employees of international organizations and does not apply to benefits accorded under double taxation treaties.

9 FAM 302.13-5(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

(U) An AO is not required for a potential privilege, exemptions, and immunities cases; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.13-5(D) (U) Waiver

9 FAM 302.13-5(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) There is no waiver of the requirement that an immigrant visa applicant eligible for an A or G visa because of occupational status execute Form I-508.

9 FAM 302.13-5(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

(U) This is not applicable to nonimmigrant visa applicants.

9 FAM 302.14

(U) INELIGIBILITY BASED ON SANCTIONED ACTIVITIES - INA 212(A)(3)(C), INA 212(F) AND PP 8693

(CT:VISA-272; 12-20-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 302.14-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 302.14-1(A) (U) Immigration and Nationality Act

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(3)(C) (8 U.S.C. 1182(a)(3)(C)); INA 212(a)(3)(D)(iv) (8 U.S.C. 1182(a)(3)(D)(iv)); INA 212(f) (8 U.S.C. 1182(f)).

9 FAM 302.14-1(B) (U) Public Laws

(CT:VISA-272; 12-20-2016)

(U) Section 401 of the Cuban Liberty and Democratic Solidarity (Libertad) Act (Public Law 104-114); Section 616 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public 105-277); Section 3205 of the Military Construction Appropriations Act, 2001 (Public Law 106-246); Section 501 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (Public Law 112-158); the Sergei Magitsky Rule of Law Accountability Act of 2012, Title IV of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 (Public Law 112-208).

9 FAM 302.14-1(C) (U) Presidential Proclamations and Executive Orders

(CT:VISA-272; 12-20-2016)

(U) Executive Order 13606 - Blocking the Property and Suspending Entry Into the United States of Certain Person With Respect to Grave Human Rights Abuses by the Government of Iran and Syria via Information Technology; Executive Order 13608 - Prohibiting Certain Transactions With and Suspending Entry Into the United States of Foreign Sanctions Evaders With Respect to Iran and Syria; Presidential Proclamation 8693 - Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions; Presidential

Proclamation 8697 of August 4, 2011 - Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Participate in Serious Human Rights and Humanitarian Law Violations and Other Abuses.

9 FAM 302.14-2 (U) ADVERSE FOREIGN POLICY CONSEQUENCES - INA 212(A)(3)(C)

9 FAM 302.14-2(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) INA 212(a)(3)(C) allows the Secretary of State may exclude, under certain circumstances, any alien whose entry or proposed activities in the United States would have potentially serious adverse foreign policy consequences for the United States.

9 FAM 302.14-2(B) (U) Application

9 FAM 302.14-2(B)(1) (U) Exceptions for Foreign Officials or Candidates for Government Office

(CT:VISA-272; 12-20-2016)

(U) An alien who is an official of a foreign government or purported government, or who is a candidate for election to a foreign government office, may not be excluded under INA 212(a)(3)(C) solely because of any past, current, or expected beliefs, statements, or associations which would be lawful in the United States. In such cases, exclusion must be based on factors related to the alien's entry or proposed activities which go beyond the applicant's beliefs, statements, and associations, and which have the requisite potential for serious adverse foreign policy consequences.

9 FAM 302.14-2(B)(2) (U) Exceptions for Other Aliens

(CT:VISA-272; 12-20-2016)

(U) Aliens other than foreign government officials or candidates for government office may not be excluded because of their past, current, or expected beliefs, statements, or associations, if lawful in the United States, unless the Secretary of State personally determines that the alien's admission would compromise a compelling U.S. foreign policy interest. It should be noted that "compromise a compelling United States foreign policy interest" is a significantly higher standard than the "have potentially serious adverse foreign policy consequences" standard generally required for a finding of inadmissibility under INA 212(a)(3)(C).

9 FAM 302.14-2(B)(3) (U) Reports to Congress

(CT:VISA-272; 12-20-2016)

(U) You should be aware that INA 212(a)(3)(C)(iv) added to the law a permanent

requirement that the Secretary of State report, on a timely basis, to the Judiciary Committees of the House and Senate, the House Foreign Affairs Committee, and the Senate Foreign Relations Committee every denial of a visa "on the grounds of foreign policy." The Department has interpreted the words "on a timely basis" to mean within thirty days following the denial. Accordingly, whenever we render an opinion that the entry or proposed activities of an alien would have potentially serious adverse foreign policy consequences within the meaning of section INA 212(a)(3)(C), you will be required to report promptly to the Department the precise date on which the alien's application was denied for that reason.

9 FAM 302.14-2(C) Unavailable

9 FAM 302.14-2(C)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-2(C)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-2(D) (U) Waiver

9 FAM 302.14-2(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) No waiver is available but inadmissibility under INA 212(a)(3)(C) applies only to current circumstances.

9 FAM 302.14-2(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

(U) No waiver is available but inadmissibility under INA 212(a)(3)(C) applies only to current circumstances.

9 FAM 302.14-2(E) Unavailable

9 FAM 302.14-2(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-2(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-3 (U) SUSPENSION OF ENTRY BY PRESIDENT - INA 212(F)

9 FAM 302.14-3(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) INA 212(f) provides that whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he deems necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

9 FAM 302.14-3(B) (U) Application

9 FAM 302.14-3(B)(1) (U) In General

(CT:VISA-272; 12-20-2016)

- a. **(U) Basis for Suspension of Entry:** INA 212(f) authorizes the President to suspend entry into the United States of "any aliens or any class of aliens" or to "impose on the entry of aliens any restrictions he may deem appropriate" for such period as he deems necessary upon determining that their entry "would be detrimental to the interests of the United States."
- b. **(U) Presidential Proclamations:** The President exercises this authority by issuing a Presidential Proclamation ("PP") barring certain aliens or a class of aliens ineligible for entry into the United States or imposing appropriate restrictions on their entry.
 - (1) **(U)** A Presidential Proclamation typically grants the Secretary of State authority to identify individuals covered by the presidential proclamation and waive its application for foreign policy or other national interests.
 - (2) **(U)** Some Presidential Proclamations bar entry based on affiliation, such as:
 - (a) **(U)** PP 7062 (suspends the entry of "members of the military junta in Sierra Leone and members of their families"); and
 - (b) **(U)** PP 6958 (suspends the entry of "members of the Government of Sudan, officials of that Government, and members of the Sudanese armed forces").
 - (3) **(U)** Other Presidential Proclamations suspend the entry of persons based on objectionable conduct. Examples include:
 - (a) **(U)** PP 7524 (suspends the entry of "persons responsible for actions that

threaten Zimbabwe's democratic institutions and transition to multi-party democracy"); and

- (b) **(U)** PP 7750 (suspends the entry of certain "persons engaged in or benefitting from corruption").
- (4) **(U)** A complete list of Presidential Proclamations may be found on the consular Affairs Website, [here](#).
- c. **(U)** **INA 212(f) and Other Statutory Inadmissibilities:** Aliens who have engaged in conduct covered by a Presidential Proclamation issued under the authority of section 212(f) may also be inadmissible under other sections of the INA or other statutes. These statutory inadmissibilities are to be considered prior to determining whether a Presidential Proclamation applies. For example, an alien believed to have engaged in public corruption covered by PP 7750, but who also has one or more criminal convictions making him ineligible under INA 212(a)(2) would be denied under the latter authority.

9 FAM 302.14-3(B)(2) Unavailable

(CT:VISA-272; 12-20-2016)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 302.14-3(B)(3) (U) Presidential Proclamation 8697

(CT:VISA-272; 12-20-2016)

a. (U) In General:

- (1) **(U)** On August 4, 2011, President Obama issued Presidential Proclamation 8697 on the Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Participate in Serious Human Rights and Humanitarian Law Violations and Other Abuses. See the full text at PP 8697. Again, please see CA Web for a list of all Presidential Proclamations.
- (2) **(U)** PP 8697 generally covers the following classes of persons:
 - (a) **(U)** Any alien who planned, ordered, assisted, aided and abetted, committed or otherwise participated in, including through command responsibility, widespread or systematic violence against any civilian population based in whole or in part on race, color, descent, sex, disability, membership in an indigenous group, language, religion, political opinion, national origin, ethnicity, membership in a particular social group, birth, or sexual orientation or gender identity, or who attempted or conspired to do so. (See [9 FAM 302.14-3\(B\)\(3\)](#) paragraph b); or
 - (b) **(U)** Any alien who planned, ordered, assisted, aided and abetted, committed or otherwise participated in, including through command responsibility, war crimes, crimes against humanity, or other serious violations of human rights, or who attempted or conspired to do so. (See

[9 FAM 302.14-3\(B\)\(3\)](#) paragraph b below.)

- (3) **(U)** PP 8697 does not apply to an alien if the Secretary determines that the individual's particular entry either would not harm U.S. foreign relations interests or would be in the interests of the United States. This latter determination is to be made in consultation with the Secretary of Homeland Security on matters related to admissibility or inadmissibility within the authority of the Secretary of Homeland Security.
- b. **(U) Definitions:** The definitions below were developed to help you determine whether an alien's conduct falls within the scope of PP 8697; they do not represent a definitive state of the Department's views on these issued under international or domestic law.
- (1) **(U) Widespread or Systematic Violence:**
- (a) **(U)** "Widespread" violence can be characterized by its extensive nature. Factors in assessing whether violence was widespread could include the number of victims or locations, and the number, type, or frequency of violent incidents involved.
- (b) **(U)** "Systematic" violence can be characterized by a pattern, policy, or plan, such as an organized nature to the violence in question.
- (U)** Note: "Widespread or Systematic Violence," like "Other Serious Violations of Human Rights" (see paragraph (2)(c) below), does not require contextual determinations regarding the existence of an "armed conflict" or "state or organizational policies." To the extent that certain acts meet this definition, it is not necessary to determine whether they also or independently meet the definitions in section (2)(a) or (2)(b) below.
- (2) **(U) War Crimes, Crimes Against Humanity, or Other Serious Violations of Human Rights:**
- (a) **(U)** The term "war crimes" refers to serious violations of the laws of war committed by, or conspired, attempted, or ordered to be committed by, any person (civilian or military). War crimes only occur in the context of armed conflict. Internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature generally are not considered "armed conflicts" in this context. The following acts may be examples of "war crimes" (see also, the War Crimes Act, 18 U.S.C. 2441):
- (i) **(U)** Grave breaches of the Geneva Conventions of August 12, 1949, which include any of the following acts against persons (e.g., civilians, detainees, wounded combatants) or property protected under the Geneva Conventions:
- (A) **(U)** Willful killing;
- (B) **(U)** Torture or inhuman treatment, including biological experiments;

- (C) **(U)** Willfully causing great suffering, or serious injury to body or health;
- (D) **(U)** Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;
- (E) **(U)** Compelling a prisoner of war or other protected person to serve in the forces of the hostile Power;
- (F) **(U)** Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (G) **(U)** Unlawful deportation or transfer or unlawful confinement of a protected person;
- (F) **(U)** Taking of hostages.
- (ii) **(U)** Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided that these buildings are not military objectives;
- (iii) **(U)** Intentionally directing attacks against the civilian population as such or against individual civilians or civilian objects (objects that are not military objectives);
- (iv) **(U)** Rape, sexual assault, sexual slavery, or sexual abuse;
- (v) **(U)** Making use of poison, such as poisoning wells or streams;
- (vi) **(U)** Maltreatment of dead bodies;
- (vii) **(U)** Purposeless destruction, such as firing on civilian localities that are undefended and without military significance;
- (viii) **(U)** Misuse of a flag of truce (e.g., a person using a flag of truce to feign an intention to surrender when there is no such intention);
- (ix) **(U)** Misuse of the Red Cross emblem (e.g., a person using a red cross to attempt to shield a building from attack when the building is actually being used for military purposes and may lawfully be attacked);
- (x) **(U)** Pillage (i.e., a commander forcibly taking an enemy civilian's private property for private or personal use without any military necessity nor other proper legal authorization);
- (xi) **(U)** Summarily executing detainees without trial;
- (xii) **(U)** Declaring that no quarter be given (i.e., a commander directing his forces not to accept any surrender from the enemy and instead to execute summarily captured enemy persons who have surrendered);
- (xiii) **(U)** Using measures of intimidation or of terrorism against the

- civilian population;
- (xiv) **(U)** Intentionally directing attacks against non-combatant personnel, installations or vehicles used in humanitarian assistance or in peacekeeping missions;
 - (xv) **(U)** Subjecting persons who are in the power of an adverse party to physical mutilation or scientific experiments;
 - (xvi) **(U)** Using human shields;
 - (xvii) **(U)** Ordering the displacement of the civilian population unless the security of the civilians involved or imperative military reasons so demand;
 - (xviii) **(U)** Conscripting or enlisting children under the age of fifteen years into the national armed forces or armed groups or using them to participate actively in hostilities.
- (b) **(U)** "Crimes against humanity" are generally characterized by certain acts that are committed as part of a widespread and systematic attack, as defined in (a) above, directed against a civilian population, where the attack is pursuant to or in furtherance of a state or organizational policy to commit such an attack.
- (i) **(U)** The act itself must be committed with knowledge of the larger attack (e.g., the act must be committed under circumstances in which the perpetrator knew of the attack and was aware of the connection between his or her act and the attack).
 - (ii) **(U)** The attack need not amount to, or occur in the context of, an armed conflict.
 - (iii) **(U)** The types of acts that can amount to crimes against humanity when committed in the circumstances described above in section 2 and 2(a) include:
 - (A) **(U)** Murder;
 - (B) **(U)** Extermination;
 - (C) **(U)** Enslavement;
 - (D) **(U)** Deportation or forcible transfer of a civilian population;
 - (E) **(U)** Imprisonment or other severe deprivation of physical liberty;
 - (F) **(U)** Torture;
 - (G) **(U)** Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - (H) **(U)** Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, or gender

- grounds;
- (I) **(U)** Enforced disappearances of persons;
 - (J) **(U)** Apartheid;
 - (K) **(U)** Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
- (c) **(U)** "Other Serious Violations of Human Rights" do not need to be committed within the context of a widespread and systematic attack or an armed conflict. They include:
- (i) **(U)** acts of slavery, the slave trade, and genocide regardless of who commits the acts; and
 - (ii) **(U)** the following and similar types of acts when committed under color of authority whether at a national, state, provincial, local or municipal level of government:
 - (A) **(U)** Torture or cruel, inhuman or degrading treatment or punishment;
 - (B) **(U)** Prolonged arbitrary detention;
 - (C) **(U)** Enforced disappearance of a person;
 - (D) **(U)** Arbitrary or extrajudicial killings and other flagrant denial of the right to life, liberty or security of a person;
 - (E) **(U)** Rape, enforced prostitution, forced pregnancy, forced abortion, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - (G) **(U)** Abuse of prisoners and detainees;
 - (H) **(U)** Arbitrary imprisonment for political motives;
 - (I) **(U)** Forced labor;
 - (J) **(U)** Egregious suppression, meaning "to put down [by force or otherwise], to subdue, quell or crush," of a person's right to freedom of opinion, belief, expression or association (suppression here covers actions that are more extreme and serious rather than any action that somehow interferes with someone's rights);
 - (K) **(U)** Unlawful recruitment into or use of children in armed forces or armed groups;
 - (L) **(U)** Apartheid or systematic racial discrimination;
 - (M) **(U)** Systematic discrimination against or persecution of members of any identifiable group based in whole or in part on race, color, descent, sex, disability, membership in an indigenous group, language, religion, political opinion, national origin, ethnicity, membership in a particular social group, birth or sexual orientation

or gender identity.

(U) Discrimination based on "birth," as used here, refers to discrimination against someone because he or she was born out of wedlock, born of stateless parents, was adopted, or is part of a family including such persons. It also could involve discrimination because of descent, especially on the basis of caste and analogous systems of inherited status.

- (d) **(U)** "Command responsibility" can refer to the responsibility of a military commander, a person effectively acting as a military commander, or other superiors that exercise effective control over their subordinates for any of the acts referred to above committed by a subordinate. Command responsibility exists in circumstances in which the commander knew or should have known that the subordinate was about to commit such acts or was in the process of committing or had committed such acts, and the commander failed to take the necessary and reasonable measures to prevent such acts, to halt such acts, and/or to punish the perpetrators. The commander need not have exercised formal supervisory authority; however, he or she must have exercised effective control over the subordinate, including the power to prevent and punish the prohibited acts of persons under his or her control, in order to be held responsible on this basis.

c. **Unavailable**

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**
- (6) **Unavailable**
- (7) **Unavailable**
- (8) **Unavailable**

d. **Unavailable**

- (1) **Unavailable**
- (2) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**

e. **Unavailable**

- (1) **Unavailable**
- (2) **Unavailable**

f. (U) Revocations:

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
Unavailable

g. Unavailable**h. Unavailable****i. Unavailable****j. (U) Confidentiality Under INA 222(f):**

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

9 FAM 302.14-3(C) Unavailable

(CT:VISA-272; 12-20-2016)

a. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**

b. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (i) **Unavailable**
 - (ii) **Unavailable**
- (5) **Unavailable**
- (6) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
- (7) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**

(c) **Unavailable**

9 FAM 302.14-3(D) (U) Waivers

9 FAM 302.14-3(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) No waiver is available for immigrants under INA 212(f).

9 FAM 302.14-3(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

(U) No waiver is available for nonimmigrants inadmissible under INA 212(f).

9 FAM 302.14-3(E) Unavailable

9 FAM 302.14-3(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-3(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-4 (U) INDIVIDUALS WHO AIDED AND ABETTED COLOMBIAN INSURGENT AND PARAMILITARY GROUPS - SECTION 3205 OF PUBLIC LAW 106-246

9 FAM 302.14-4(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) Section 3205 of Public Law 106-246 provides that any alien who provided direct or indirect support to the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), or the United Colombian Self Defense Organization (AUC) is ineligible for a visa.

9 FAM 302.14-4(B) (U) Application

(CT:VISA-272; 12-20-2016)

(U) [RESERVED]

9 FAM 302.14-4(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

(U) An AO is not required for a potential Section 3205 ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

9 FAM 302.14-4(D) (U) Waiver

9 FAM 302.14-4(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) No waiver is available for immigrant visa applicants inadmissible under Section 3205.

9 FAM 302.14-4(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

- a. **(U) Medical Necessity:** Section 3025 may be waived for nonimmigrants if the Secretary of State finds, on a case-by-case basis, that the entry into the United States of a person who would otherwise be inadmissible is necessary for medical reasons.
- b. **(U) Criminal Prosecution or Investigations:** Section 3025 may be waived for a nonimmigrant to permit the prosecution of the individual or when the individual has cooperated fully with the investigation of crimes committed by individuals associated with the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Arm (ELN), or the United Colombian Self Defense Organization (AUC).
- c. **(U) National Interest:** The President may waive the limitation for a nonimmigrant if he determines that the waiver is in the national interest.

9 FAM 302.14-4(E) Unavailable

9 FAM 302.14-4(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-4(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-5 (U) INDIVIDUALS INVOLVED IN CONFISCATION OF PROPERTY OF A U.S. NATIONAL - SECTION 401 OF LIBERTAD

9 FAM 302.14-5(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) Section 401 of Public Law 104-114 of the Cuban Liberty and Democratic Solidarity (Libertad) Act (hereinafter the "Libertad Act") renders ineligible an individual who:

- (1) **(U)** has confiscated property a claim to which is owned by a U.S. national;
- (2) **(U)** has directed or overseen the confiscation of property a claim to which is owned by a U.S. national;
- (3) **(U)** has converted, for personal gain, confiscated property a claim to which is owned by a U.S. national;
- (4) **(U)** has trafficked in confiscated property a claim to which is owned by a U.S. national;
- (5) **(U)** is a corporate officer, principal, or shareholder with a controlling interest of an entity which has been involved in the confiscation of property or trafficking in confiscated property, a claim to which is owned by a U.S. national; or
- (6) **(U)** is a spouse, minor child, or agent of a person described in (a) through (e) above.

9 FAM 302.14-5(B) (U) Application

9 FAM 302.14-5(B)(1) (U) In General

(CT:VISA-272; 12-20-2016)

(U) Title IV, Section 401 of Public Law 104-114 of the Cuban Liberty and Democratic Solidarity (Libertad) Act (hereinafter the "Libertad Act") makes excludable from the United States, upon determination of the Secretary of State, either through denial of a visa or exclusion at the port of entry, any alien who has confiscated property of United States nationals or who traffics in such property after the enactment date of the (Helms-Burton) law, March 12, 1996. The purpose of this section of the Libertad Act was to discourage foreign investment in expropriated properties in Cuba, the claims to which are owned by U.S. nationals. In addition to any one individual who meets the definition of trafficking or confiscation (see section 401(b) of the Libertad Act), this inadmissibility applies to a corporate officer, principal, or controlling shareholder in a company or entity that has been involved in such confiscations or trafficking or, is a spouse, minor child, or agent of any person who has been involved in such trafficking or confiscation.

9 FAM 302.14-5(B)(2) (U) Definitions

(CT:VISA-272; 12-20-2016)

(U) Unless otherwise defined herein, the terms associated with section 401 of the Libertad Act are defined as they appear in the Libertad Act (e.g., “confiscate” or “trafficking”) or in the Immigration and Nationality Act (e.g., “minor child”):

- (1) **(U)** “Agent” means a person who acts on behalf of a corporate officer, principal, or shareholder with a controlling interest to carry out or facilitate acts or policies that result in a determination under section 401(a) of the Libertad Act;
- (2) **(U)** “Corporate Officer” means the president; chief executive officer; principal financial officer; principal accounting officer (or, if there is no accounting officer, the controller); any vice president of the entity in the charge of a principal business unit, division or function (such as sales, administration or finance); or any other officer or person who performs policy-making functions for the entity. Corporate officers of a parent or subsidiary of the entity may be deemed corporate officers of the entity if they perform policy-making functions for the entity;
- (3) **(U)** “Principal” means:
 - (a) **(U)** When the entity is a general partnership, any general partner and any officer or employee of the general partnership who performs a policy-making function for the partnership;
 - (b) **(U)** When the entity is a limited partnership, any general partner and any officer or employee of a general partner of the limited partnership who performs a policy-making function for the limited partnership;
 - (c) **(U)** When the entity is a trust, any trustee and any officer or employee of the trustee who performs policy-making for the trust; and
 - (d) **(U)** Any other person who performs similar policy-making functions for an entity;
- (4) **(U)** “Shareholder with a controlling interest” means a person possessing the power, directly or indirectly, to direct or cause the direction of the management and policies of the entity through the ownership of voting securities; and
- (5) **(U)** “Transactions and uses of property incident to lawful travel in Cuba” are such incidental transactions and uses of confiscated property as are necessary to the conduct of lawful travel in Cuba (see [9 FAM 302.11-5](#)).

9 FAM 302.14-5(B)(3) (U) Determination of Inadmissibility Under Libertad Act

(CT:VISA-272; 12-20-2016)

- a. **(U)** The Secretary of State has delegated authority to the Assistant Secretary of State for Western Hemisphere Affairs to make determinations of excludability and

visa ineligibility under section 401(a) of the Libertad Act. The Office of the Coordinator for Cuban Affairs in the Bureau of Western Hemisphere Affairs (WHA/CCA) at the Department is the central point of contact for all inquiries about implementation of Title IV of the Libertad Act. Determinations of ineligibility and inadmissibility under Title IV will be made when facts or circumstances exist that would lead the Department reasonably to conclude that a person has engaged in confiscation or trafficking after March 12, 1996.

- b. **(U)** These determinations are made by the Department (WHA) and not by posts. The CLASS lookout system code for such refusals is 401, with the annotation "refuse Helms-Burton" appearing in the comment field of the CLASS entry. If, while processing a visa application, information comes to light that suggests an applicant may be involved in confiscation or trafficking, or post is unsure whether the 401 hit relates to the particular applicant, posts should forward the information to the Department, slugged to Bureau of Western Hemisphere Affairs/Office of Cuban Affairs (WHA/CCA), and request a Helms-Burton advisory opinion (see [9 FAM 302.11-5\(C\)](#) for styling of such request). This could occur, for example, if a new spouse had married an individual known to be involved in trafficking, but the new spouse had not yet been entered into CLASS; or, an individual recently had become an agent for a trafficking entity, but had not yet been entered into CLASS as such. You should note that it is not sufficient in itself for a determination under section 401(a) that a person has merely had business dealings with a person for whom a determination is made under section 401(a).
- c. **(U)** Any section 401(a) determination must be entered in CLASS. Entry into CLASS is the exclusive means by which you and the United States Citizenship and Immigration Services (USCIS) will verify that the alien has been determined to be excludable under section 401 of the Libertad Act. If the determination of inadmissibility has already been made, there is no need to refer the case to the Department.

9 FAM 302.14-5(B)(4) (U) Notification of Finding of Section 401(a) Ineligibility or Excludability Under Libertad Act

(CT:VISA-272; 12-20-2016)

- a. **(U) In General:** An alien who may be the subject of a determination under section 401(a) of the Libertad Act will be notified by registered mail from the Office of the Coordinator for Cuban Affairs (CCA). This notification will inform the alien that his or her name will be entered into the Department visa lookout system and the Department of Homeland Security (DHS) port-of-entry screening system, and that he or she will be denied a visa upon application or have his or her visa revoked 45 days after the date of the notification letter.
- b. **(U) Contesting a Finding Under Section 401(a) of the Libertad Act:** After receiving notification from the Department (WHA/CCA), an applicant may, at any time, submit information to WHA/CCA to attempt to show that he or she is not part of a confiscation or trafficking arrangement. If such information leads the Department to reasonably conclude that the applicant or company has not, or is no

longer, engaged in confiscation or trafficking, that the original determination was in error, or that an exception applies under section 401(b)(2)(B) of the Libertad Act, the Department may review and/or reverse its determination. If such information comes forward within 45 days of the original notification of the exclusion, and the Department determines that the applicant should not be inadmissible, the applicant's name will not be entered into the lookout system. If the lookout entry has been made, and the Department reverses the decision, the Department will notify you and USCIS through appropriate channels of the reversal of the original decision and delete the lookout entry from the system.

- c. **(U)** The Department may review a determination made under Title IV of the Libertad Act at any time, as appropriate, based on receipt of information that may lead to any of the above findings.
- d. **(U) Exemptions from a Finding Under Section 401(a) of the Libertad Act:**
- (1) **(U)** The Department (WHA) may grant an exemption from visa ineligibility for diplomatic and consular personnel of foreign governments and representatives to and officials of international organizations. An applicant may also request from the Department an exemption for medical reasons or for purposes of litigation of an action under Title III of the Libertad Act to the extent permitted under section 401(c) of the Libertad Act. The Department may impose appropriate conditions on any exemption granted.
 - (2) **(U)** Although applicants are to request exemptions from the Department, it is probable that they will submit such requests at consular posts. If the case is time-sensitive (i.e., medical emergencies, travel by foreign officials, imminent court appearances), you should submit the request by immediate cable to the Department in the same format as an advisory opinion request (see [9 FAM 302.11-5\(C\)](#) below). In all other cases, you will provide the applicant with the following address to which he or she is to direct the request:

Office of the Coordinator for Cuban Affairs,
HST Room 3234
Department of State, Washington, D.C. 20520
(202) 647-7488
(202) 647-7050 (Fax)
Attn: Consular Unit

- e. **(U) Effect of Divesting from Trafficking Arrangement:** Divesting from a trafficking arrangement averts the inadmissibility, as specifically excluded from the definition of trafficking is the sale or abandonment of confiscated property in Cuba for purposes of disengaging from Cuba. If the applicant can prove to the Department that he or she divested the property for the purpose of eliminating ties with Cuba, then the section 401 ineligibility will be removed.

9 FAM 302.14-5(B)(5) (U) Revocation of Previously Issued Visa Because of Section 401 Ineligibility

(CT:VISA-272; 12-20-2016)

(U) Forty-five (45) days after an alien has received the notification letter, the alien's visa will be revoked in accordance with INA 221(i) (see [9 FAM 302.14-5\(B\)\(4\)](#) above) under the consular officer's general authority to revoke visas (assuming the alien has a visa and has not submitted adequate rebuttal evidence within the 45-day period). However, if you have reason to believe the alien in question is in the United States, you must notify the Department, WHA/CCA, and CA/VO/L/A.

9 FAM 302.14-5(B)(6) (U) Other Inquiries by Alien Regarding Section 401 Ineligibility

(CT:VISA-272; 12-20-2016)

(U) Any inquiry received by you outside the context of a visa application, as may be likely from aliens who have been notified of their inadmissibility or who are concerned that the Department is building a case against them, should be referred to the Office of the Coordinator for Cuban Affairs (see [9 FAM 302.14-5\(B\)\(4\)](#) above).

9 FAM 302.14-5(C) (U) Advisory Opinions

9 FAM 302.14-5(C)(1) (U) In General

(CT:VISA-272; 12-20-2016)

(U) If, after encountering a 401 CLASS hit and re-interviewing the applicant, you are unable to determine whether the hit relates to that particular applicant, you must refuse the application under section 221(g) and submit a Helms-Burton advisory opinion request WHA/CCA.

9 FAM 302.14-5(C)(2) (U) Preparing Cable

(CT:VISA-272; 12-20-2016)

(U) The cable should contain the following key elements:

Subject line: Helms-Burton Advisory Opinion Request

TAGS: REL, CVIS, CU, Appropriate host country TAG

Caption/slug line: Dept. for WHA/CCA (NOTE: Do not slug for CA/VO.)

The advisory opinion request should provide WHA/CCA with the exact hit, as it appears in CLASS, the full name, date and place of birth of applicant, his or her employer and position, other relevant biographic information on the applicant, and any other relevant information.

9 FAM 302.14-5(D) (U) Waiver

9 FAM 302.14-5(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) No waiver is available for immigrant visa applicants inadmissible under Section 401.

9 FAM 302.14-5(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

(U) Section 401 may be waived for nonimmigrants where the Secretary of State finds, on a case by case basis, that entry into the United States of the individual who would otherwise be inadmissible is necessary for medical reasons or for purposes of litigation under the Cuban Libertad Act.

9 FAM 302.14-5(E) Unavailable

9 FAM 302.14-5(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-5(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-6 (U) SPECIALLY DESIGNATED NATIONALS - PP 8693

9 FAM 302.14-6(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-6(B) (U) Application

9 FAM 302.14-6(B)(1) (U) Scope

(CT:VISA-272; 12-20-2016)

(U) The information below addresses certain non-statutory visa sanctions, but is not intended to be a comprehensive list of all visa-related Presidential Proclamations, Executive Orders, and other non-statutory visa sanctions.

9 FAM 302.14-6(B)(2) (U) Presidential Proclamation 8693

(CT:VISA-272; 12-20-2016)

- a. **(U) Role of the Department of Treasury:** IEEPA sanctions implemented by the EOs are enforced by the Department of the Treasury's Office of Foreign Assets Control (OFAC). Designated individuals and organizations are listed on OFAC's Specially Designated Nationals (SDN) list.
- b. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**
 - (4) **Unavailable**
 - (5) **Unavailable**
 - (6) **Unavailable**
- c. **Unavailable**
- d. **Unavailable**

9 FAM 302.14-6(B)(3) (U) Executive Order 13606

(CT:VISA-272; 12-20-2016)

- a. **Unavailable**
- b. **(U) Criteria for Sanctions:** The EO imposes sanctions, including suspension of immigrant and nonimmigrant entry into the United States, of aliens who are either listed in the Annex to the EO, or designated subsequently under the EO. Any alien who is later designated must meet the following criteria, as laid out in E.O. 13606:
 - (1) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**
 - (4) **Unavailable**
- c. **(U) Designating Individuals and Entering CLASS Records:**
 - (1) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**
 - (4) **Unavailable**
- d. **(U) Confidentiality Under INA 222(f):**
 - (1) **Unavailable**
 - (2) **(U)** See [9 FAM 603.1](#) for further information on INA 222(f).

9 FAM 302.14-6(B)(4) (U) Executive Order 13608 Prohibiting Certain Transactions With and Suspending Entry Into the United

States of Foreign Sanctions Evaders with Respect to Iran and Syria

(CT:VISA-272; 12-20-2016)

- a. **(U) Background:** On April 30, 2012, President Obama issued Executive Order 13608 on Foreign Sanctions Evaders ("FSE EO"), under the International Emergency Economic Powers Act, which targets foreign individuals and entities that have violated, attempted to violate, conspired to violate, or caused a violation of U.S. sanctions against Iran or Syria, or that have facilitated deceptive transactions on behalf of Iran.
- b. **(U) General Consequences of Designation:**
 - (1) **(U) Designees are generally cut off from doing business with U.S. companies and individuals.** The FSE EO prohibits all transactions or dealings involving such person in or related to (i) any goods, services, or technology in or intended for the United States, or (ii) any goods, services or technology provided by or to United States persons, wherever located.
 - (2) **(U) Designees are generally restricted from entering the United States, either for immigrant or nonimmigrant purposes.** See more on the specific criteria set forth in [9 FAM 302.14-6\(B\)\(3\)](#) paragraph c below. Restriction of entry must not apply where entry of the person into the United States would not be contrary to the interests of the United States, as determined by the Secretary of State.
- c. **(U) Criteria for Restricting Immigrant and Nonimmigrant Entry Into the United States:** The FSE EO restricts immigrant and nonimmigrant entry into the United States, of aliens who meet the following criteria, as listed in E.O. 13608:
 - (1) **(U)** Has violated, attempted to violate, conspired to violate, or caused a violation of any license, order, regulation, or prohibition contained in, or issued pursuant to any Executive Order ("EO") related to the national emergencies declared in E.O.. 12957 March 15, 1995, or in E.O. 13338 of May 11, 2004, as modified in scope in subsequent EOs;
 - (2) **(U)** Has violated, attempted to violate, conspired to violate, or caused a violation of any license, order, regulation, or prohibition to the extent such conduct relates to property and interests in property of any person subject to U.S. sanctions concerning Iran or Syria, E.O. 13382 of June 28, 2005, any E.O. subsequent to E.O. 13382 of June 28, 2005 that relates to the national emergency declared in E.O. 12938 of November 14, 1994, or any E.O. relating to the national emergency declared in E.O. 13224 of September 23, 2001;
 - (3) **(U)** Has facilitated deceptive transactions for or on behalf of any person subject to U.S. sanctions concerning Iran or Syria; or
 - (4) **(U)** Is owned or controlled by, or is acting or purporting to act for or on behalf of, directly or indirectly, any person determined to meet the criteria set forth above.

9 FAM 302.14-6(C) Unavailable

9 FAM 302.14-6(C)(1) (U) PP 8693

(CT:VISA-272; 12-20-2016)

a. Unavailable

(1) **Unavailable**

(2) **Unavailable**

b. Unavailable**c. Unavailable****d. Unavailable****e. Unavailable****f. Unavailable****g. Unavailable**

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

h. Unavailable**i. Unavailable****9 FAM 302.14-6(D) (U) Waiver****9 FAM 302.14-6(D)(1) (U) Waivers for Immigrants**

(CT:VISA-272; 12-20-2016)

(U) No waiver is available for immigrant visa applicants.

9 FAM 302.14-6(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

(U) No waiver is available for nonimmigrant visa applicants.

9 FAM 302.14-6(E) Unavailable**9 FAM 302.14-6(E)(1) Unavailable**

(CT:VISA-272; 12-20-2016)

Unavailable For more information on refusals codes see [9 FAM 303.3-4\(A\)](#).

9 FAM 302.14-6(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-7 (U) IRAN THREAT REDUCTION AND SYRIA HUMAN RIGHTS ACT - SECTION 501 OF PUBLIC LAW 112-158

9 FAM 302.14-7(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) In General: Section 501 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (Public Law 112-158) makes ineligible for a visa or admission any alien who is a citizen of Iran who seeks to enter the United States to participate in coursework at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) to prepare the alien for a career in the energy sector of Iran or in nuclear science or nuclear engineering or a related field in Iran.

9 FAM 302.14-7(B) (U) Application

9 FAM 302.14-7(B)(1) (U) Effective Date

(CT:VISA-272; 12-20-2016)

(U) Section 501 applies to applications for new or renewed visas filed on or after August 10, 2012. Visa applications filed before August 10, 2012 are not subject to Section 501.

9 FAM 302.14-7(B)(2) (U) Common Visa Classes

(CT:VISA-272; 12-20-2016)

(U) You are most likely to encounter potential ineligibilities under Section 501 with aliens applying for an F visa. However, you may also encounter aliens applying for other visa classifications including, but not limited to, B, H3, H4, J, and M.

9 FAM 302.14-7(B)(3) (U) Determining Participation in Coursework and Intent to Return to Iran

(CT:VISA-272; 12-20-2016)

(U) A citizen of Iran is ineligible for a visa or admission if he or she meets either of the following conditions:

- (1) **Unavailable**
- (2) **(U)** Intends to participate in coursework at an institution of higher education in the United States in any field related to nuclear science or nuclear engineering

or a related field in Iran. (Any case relating to potential coursework in fields related to nuclear science or nuclear engineering or a related field should be processed pursuant to [9 FAM 302.5-2.](#))

9 FAM 302.14-7(B)(4) (U) Energy Sector Definition

(CT:VISA-272; 12-20-2016)

(U) For purposes of Section 501, the term "energy sector" is defined to include activities to develop petroleum or natural gas resources, or nuclear power in Iran, but does not include alternative energy resources, such as electric, solar, or wind power.

9 FAM 302.14-7(B)(5) (U) Refusals

(CT:VISA-272; 12-20-2016)

(U) If you determine that the alien is ineligible as described in [9 FAM 302.14-7\(A\)\(1\)](#) you must deny the applicant under refusal code "ITRA." Applicants who may be ineligible under [9 FAM 302.14-7\(A\)\(2\)](#) above should be processed per [9 FAM 302.5](#).

9 FAM 302.14-7(B)(6) (U) Point of Contact

(CT:VISA-272; 12-20-2016)

(U) Questions, including those related to fields of study that may render an applicant ineligible, can be directed to the Iran visa specialists or point of contact (POC) CA/VO/SAC as found on the "Who's Who in CA" Intranet page.

9 FAM 302.14-7(C) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-7(D) (U) Waiver

9 FAM 302.14-7(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) No waiver is available for immigrant visa applicants inadmissible under Section 501.

9 FAM 302.14-7(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

(U) No waiver is available for nonimmigrant visa applicants inadmissible under Section 501.

9 FAM 302.14-7(E) Unavailable

9 FAM 302.14-7(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-7(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-8 (U) SERGEI MAGNITSKY RULE OF LAW ACCOUNTABILITY ACT OF 2012 - SECTION 405 OF PUBLIC LAW 112-208

9 FAM 302.14-8(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) The Sergei Magnitsky Rule of Law Accountability Act of 2012, Public Law 112-208, Title IV, ("the Act") requires that the President provide to Congress and publish in the Federal Register a list of persons involved in abuses in the Magnitsky case, as well as persons involved in gross human rights violations against whistleblowers or advocates for human rights or democratic freedoms in Russia (Section 404); that persons on the list will be ineligible to hold or obtain visas to enter the United States (Section 405); and that persons on the list will be subject to financial sanctions (Section 406).

9 FAM 302.14-8(B) (U) Application

9 FAM 302.14-8(B)(1) (U) Scope

(CT:VISA-272; 12-20-2016)

(U) This guidance addresses the visa sanctions portion of the Act only.

9 FAM 302.14-8(B)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-8(B)(3) (U) Presidential Delegation of Authorities

(CT:VISA-272; 12-20-2016)

- a. **(U)** The President has delegated the functions and authorities set forth in Public Law 112-208, sections 404 and 406, to the Secretary of State and the Secretary of the Treasury. In accordance with the Act and the delegation of authorities, no later

than 120 days after the date of the enactment of the Act, the Secretary of State and Secretary of Treasury were required to provide the appropriate congressional committees with a list of persons determined to meet the criteria set forth in Section 404(a) of the Act. The submission was completed on April 12th, 2013.

b. **Unavailable**

c. **Unavailable**

9 FAM 302.14-8(C) Unavailable

(CT:VISA-272; 12-20-2016)

a. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

b. **Unavailable**

c. **Unavailable**

d. **Unavailable**

e. **Unavailable**

f. **Unavailable**

g. **Unavailable**

9 FAM 302.14-8(D) (U) Waiver

9 FAM 302.14-8(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) No waiver is available for immigrant visa applicants inadmissible under Magnitsky.

9 FAM 302.14-8(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

- a. **(U) In General:** The Act allows the Secretary of State to authorize a waiver of the visa ineligibilities for nonimmigrants to meet U.S. obligations under the U.N. Headquarters Agreement or other international obligations, or in cases in the national security interests of the United States.
- b. **(U) Congressional Notification:** Note that prior to granting such a waiver, the Secretary is required to provide the appropriate congressional committees with notice and a justification for the waiver. If the waiver is being granted notification must be made no later than 15 days prior to granting the waiver. It is therefore imperative that you notify your VO/SAC analyst as soon as possible if you believe there are applicable grounds on which to seek a waiver.

9 FAM 302.14-8(E) Unavailable

9 FAM 302.14-8(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-8(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-9 (U) PARTICIPATION IN POLITICAL KILLINGS - SECTION 616 OF PUBLIC LAW 105-277

9 FAM 302.14-9(A) (U) Grounds

(CT:VISA-272; 12-20-2016)

(U) Section 616 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277) prohibits the issuance of a visa to any person who:

- (1) **(U)** has been credibly alleged to have ordered, carried out, or materially assisted in the extrajudicial and political killings of Antoine Izemery, Guy Malary, Father Jean-Marie Vincent, Pastor Antoine Leroy Jacques Fleurival, Mireille Durocher Bertin, Eugene Baillergeau, Michelange Hermann, Max Mayard, Romulus Dumarsais, Claude Yvez Marie, Mario Beau brun, Leslie Grimar, Joseph Chilove, Michel Gonzalez, and Jean-Hubert Feuille;
- (2) **(U)** has been included in the list presented to former President Jean-Bertrand Aristide by former National Security Council Adviser Anthony Lake in December 1995, and acted upon by President Rene Preval;
- (3) **(U)** was sought for an interview by the Federal Bureau of Investigation as part of its inquiry into the March 28, 1965, murder of Mireille Durocher Bertin and Eugene Baillergeau, Jr., and was credibly alleged to have ordered, carried out, or materially assisted in those murders, per a June 28, 1995, letter to the then minister of Justice of the Government of Haiti, Jean-Joseph Erume;
- (4) **(U)** was a member of the Haitian High Command during the period 1991 through 1994, and has been credibly alleged to have planned, ordered, or participated with members of the Haitian Armed Forces in:
 - (a) **(U)** The September 1991 coup against any person who was a duly elected government official of Haiti (or a member of the family of such official), or
 - (b) **(U)** The murders of thousands of Haitians during the period 1991 through 1994; or

- (5) **(U)** has been credibly alleged to have been a member of the paramilitary organization known as FRAPH who planned, ordered, or participated in acts of violence against the Haitian people.

9 FAM 302.14-9(B) (U) Application

(CT:VISA-272; 12-20-2016)

(U) Section 616 will not apply if the Secretary of State finds, on a case-by-case basis, that the entry into the United States of a person who would otherwise be excluded under this section is necessary for medical reasons or such person has cooperated fully with the investigation of these political murders. If the Secretary of State exempts any such person, the Secretary will notify the appropriate congressional committees in writing.

9 FAM 302.14-9(C) (U) Advisory Opinions

(CT:VISA-272; 12-20-2016)

(U) An AO is not required for a potential Section 616 ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A

9 FAM 302.14-9(D) (U) Waiver

9 FAM 302.14-9(D)(1) (U) Waivers for Immigrants

(CT:VISA-272; 12-20-2016)

(U) There is no waiver available for immigrant visa applicants found inadmissible under Section 616.

9 FAM 302.14-9(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-272; 12-20-2016)

(U) There is no waiver available for nonimmigrant visa applicants found inadmissible under Section 616.

9 FAM 302.14-9(E) Unavailable

9 FAM 302.14-9(E)(1) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 302.14-9(E)(2) Unavailable

(CT:VISA-272; 12-20-2016)

Unavailable

9 FAM 303 (U) CLEARANCES

9 FAM 303.1 (U) OVERVIEW OF CLEARANCES

(CT:VISA-338; 04-13-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 303.1-1 (U) RELATED STATUTORY AND REGULATORY AUTHORITIES

9 FAM 303.1-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 212(a) (8 U.S.C. 1182(a)).

9 FAM 303.1-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.106; 22 CFR 41.113.

9 FAM 303.1-1(C) (U) Public Law

(CT:VISA-1; 11-18-2015)

(U) Title III of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99-399); Section 140(c) of the Foreign Relations Authorization Act, FY-94 and 95 (Public Law 103-236).

9 FAM 303.1-1(D) (U) United States Code

(CT:VISA-1; 11-18-2015)

(U) 22 U.S.C. 4831.

9 FAM 303.1-2 UNAVAILABLE

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 303.1-2(A) Unavailable

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 303.1-2(B) Unavailable

9 FAM 303.1-2(B)(1) Unavailable

(CT:VISA-165; 08-29-2016)

Unavailable

9 FAM 303.1-2(B)(2) Unavailable

(CT:VISA-1; 11-18-2015)

Unavailable

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **(U)** See [9 FAM 303.4-3](#) for additional information.

9 FAM 303.1-2(C) Unavailable

(CT:VISA-165; 08-29-2016)

Unavailable

9 FAM 303.1-2(D) Unavailable

(CT:VISA-165; 08-29-2016)

Unavailable

9 FAM 303.1-2(D)(1) (U) Fingerprinting

(CT:VISA-1; 11-18-2015)

- a. **(U)** Apart from the exemptions listed in [9 FAM 403.3-3](#), all nonimmigrant visa (NIV) applicants ages 14 to 79 must be fingerprinted, and all immigrant visa (IV) applicants ages 14 and above must be fingerprinted. In some limited cases, children age 7 or over applying for an IV or NIV may be subject to fingerprinting.
- b. **(U)** The Automated Biometric Identification (IDENT) System works by checking visa applicant fingerprints against a database containing principally Department of Homeland Security (DHS) and State Department fingerprint data, with some other fingerprints from the Federal Bureau of Investigation and the Department of Defense. See [9 FAM 303.7](#) for information about IDENT and processing search

results. See [9 FAM 303.7](#) for information about the Next Generation Identification (NGI) fingerprint system, which replaced the Integrated Automated Fingerprint Identification System (IAFIS) in September 2014, and how to process results.

9 FAM 303.1-2(D)(2) Unavailable

(CT:VISA-1; 11-18-2015)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 303.1-2(E) Unavailable

(CT:VISA-338; 04-13-2017)

- a. **Unavailable**
- b. **Unavailable**
- c. **(U)** See [9 FAM 303.9](#) for additional information about processing visa cases with hits from the Interpol Stolen and Lost Travel Document (SLTD) database.

9 FAM 303.1-2(F) Unavailable

(CT:VISA-165; 08-29-2016)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 303.2

(U) GUIDES ON PROPER NAMES AND NAME CITING

(CT:VISA-378; 06-09-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 303.2-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 303.2-1(A) (U) Immigration and Nationality Act

(CT:VISA-59; 02-25-2016)

(U) INA 212(a) (8 U.S.C. 1182(a)); INA 221(g) (8 U.S.C. 1201(g)); INA 222(a) and (c) (8 U.S.C. 1202(a) and (c)).

9 FAM 303.2-1(B) (U) Public Laws

(CT:VISA-59; 02-25-2016)

(U) Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, section 140(c) of Public Law 103-236.

9 FAM 303.2-2 UNAVAILABLE

(CT:VISA-378; 06-09-2017)

a. The remaining content of this subchapter is unavailable

9 FAM 303.3

(U) CLASS - CONSULAR LOOKOUT AND SUPPORT SYSTEM

(CT:VISA-351; 04-20-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 303.3-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 303.3-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 105 (8 U.S.C. 1105); INA 222(f) (8 U.S.C. 1202(f)); INA 221(g) (8 U.S.C. 1201(g)).

9 FAM 303.3-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 40.5; 22 CFR 41.105(b); 22 CFR 42.67(c).

9 FAM 303.3-1(C) (U) Public Law

(CT:VISA-1; 11-18-2015)

(U) United and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Public Law 107-56, section 403(a)).

9 FAM 303.3-2 (U) CLASS OVERVIEW

(CT:VISA-244; 11-04-2016)

a. **Unavailable**

b. **Unavailable**

9 FAM 303.3-2(A) (U) Namechecking

(CT:VISA-2; 11-18-2015)

a. **Unavailable**

b. **Unavailable**

9 FAM 303.3-2(B) (U) The CLASS Database

(CT:VISA-151; 08-05-2016)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
 - (d) **Unavailable**
 - **Unavailable**
 - **Unavailable**
 - **Unavailable**
 - **Unavailable**
 - **Unavailable**

9 FAM 303.3-3 (U) NAMECHECK PROCEDURES

(CT:VISA-244; 11-04-2016)

Unavailable

9 FAM 303.3-3(A) (U) Interpreting Namecheck Results

(CT:VISA-1; 11-18-2015)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 303.3-3(B) Unavailable

(CT:VISA-244; 11-04-2016)

Unavailable

9 FAM 303.3-3(B)(1) Unavailable

(CT:VISA-2; 11-18-2015)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 303.3-4 (U) ADDITIONS TO THE CLASS DATABASE

9 FAM 303.3-4(A) (U) Entry of Visa Refusals

(CT:VISA-244; 11-04-2016)

Unavailable

- (1) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**

9 FAM 303.3-4(B) (U) Entry of Potentially Ineligible Aliens

(CT:VISA-244; 11-04-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**
- e. **Unavailable**

9 FAM 303.3-4(C) (U) Corrections to CLASS Entries

(CT:VISA-244; 11-04-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 303.3-4(D) (U) Deletions from the CLASS Database

9 FAM 303.3-4(D)(1) (U) Deletions Overview

(CT:VISA-244; 11-04-2016)

- a. **Unavailable**
- b. **Unavailable**

- c. **Unavailable**
- d. **Unavailable**
- e. **Unavailable**
- f. **Unavailable**
- g. **Unavailable**
- h. **Unavailable**
- i. **Unavailable**

9 FAM 303.3-4(D)(2) (U) Routine CLASS Deletions

(CT:VISA-244; 11-04-2016)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**
- (6) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
- (7) **Unavailable**

9 FAM 303.3-4(D)(3) (U) Special CLASS Deletion Cases

(CT:VISA-244; 11-04-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 303.3-4(D)(4) (U) CLOK Deletions of Class Hits Created at the Department, Other Posts or by Other Agencies

(CT:VISA-281; 01-19-2017)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

d. **Unavailable**

e. **Unavailable**

9 FAM 303.3-4(D)(5) (U) Automatic Deletions from CLASS

(CT:VISA-44; 02-02-2016)

a. **Unavailable**

b. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

9 FAM 303.3-4(D)(6) (U) Requests from the Public for Removal of Entries from CLASS

(CT:VISA-2; 11-18-2015)

a. **Unavailable**

b. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

(5) **Unavailable**

c. **Unavailable**

d. **Unavailable**

e. **Unavailable**

f. **Unavailable**

9 FAM 303.3-5 (U) PROCESSING APPLICATIONS WITH CLASS HITS

(CT:VISA-1; 11-18-2015)

(U) This guidance provides an overview to processing the Consular Lookout and Support System (CLASS) hits consular officers are most likely to encounter when adjudicating visa applications.

9 FAM 303.3-5(A) Unavailable

9 FAM 303.3-5(A)(1) Unavailable

(CT:VISA-244; 11-04-2016)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**

9 FAM 303.3-5(A)(2) Unavailable

(CT:VISA-244; 11-04-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**

9 FAM 303.3-5(A)(3) Unavailable

(CT:VISA-100; 03-28-2016)

Unavailable

9 FAM 303.3-5(B) Unavailable

9 FAM 303.3-5(B)(1) Unavailable

(CT:VISA-244; 11-04-2016)

- a. **(U)** Cases with 212(a) hits in CLASS cannot be issued until a waiver of ineligibility is approved or post determines that the hit no longer applies. This guidance applies to both Department-originated hits and hits from other agency records. Certain hits may be overcome when post determines that they no longer apply, while others must be removed or waived before a visa may be issued. If a waiver is available in a nonimmigrant visa (NIV) case, post should determine whether it will recommend a waiver to the Department of Homeland Security (DHS). [9 FAM 305.4-2](#) addresses waivers for ineligible nonimmigrant visa applicants. You should advise immigrant visa (IV) applicants, including K and V applicants who are found ineligible (and for whom a waiver is available) that, if they wish to request a waiver, they must submit the I-601 waiver request to the United States Citizenship and Immigration Services (USCIS) lockbox. [9 FAM 305.2](#) addresses immigrant visa waivers.
- b. **Unavailable**

c. **Unavailable**

9 FAM 303.3-5(B)(2) (U) DHS Findings of Ineligibilities

(CT:VISA-351; 04-20-2017)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

d. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

e. **Unavailable**

f. **Unavailable**

g. **Unavailable**

9 FAM 303.3-5(B)(3) (U) P212(a) Non-Security Quasi-Ineligibilities

(CT:VISA-244; 11-04-2016)

a. **Unavailable**

b. **Unavailable**

c. **(U)** You should carefully review [9 FAM 302.1-2\(B\)](#) on the proper interpretation of 214(b) when adjudicating these cases. In the case that you encounter derogatory information that would lead to a P212(a) ineligibility for an individual already in possession of an NIV, you may need to revoke or request a prudential revocation of the visa from CA/VO/SAC. Refer to [9 FAM 403.11](#) for instructions on revocations.

9 FAM 303.3-5(B)(4) Unavailable

(CT:VISA-351; 04-20-2017)

a. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

b. **Unavailable**

c. **Unavailable**

9 FAM 303.3-5(C) Unavailable

(CT:VISA-281; 01-19-2017)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**

9 FAM 303.3-5(D) (U) Processing Federal Bureau of Investigation Records in CLASS

(CT:VISA-244; 11-04-2016)

Unavailable

9 FAM 303.3-5(D)(1) (U) FBI codes in CLASS

(CT:VISA-244; 11-04-2016)

- a. **Unavailable**

Unavailable	

- b. **Unavailable**

9 FAM 303.3-5(D)(2) (U) Reduction in NCIII Records and Certain NCIC WP and DF Records in Namecheck Returns if Ten Prints are Collected in a Visa Case

(CT:VISA-244; 11-04-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 303.3-5(D)(3) (U) Determining NCIC Matches in CLASS

(CT:VISA-244; 11-04-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**

- **Unavailable**
- **Unavailable**
- **Unavailable**
- **Unavailable**
- **Unavailable**
- **Unavailable**

e. **Unavailable**

- **Unavailable**
- **Unavailable**
- **Unavailable**
- **Unavailable**

Unavailable

f. **Unavailable**

9 FAM 303.3-5(D)(4) (U) Procedures to be followed for A-1, A-2, G-1 through G-4, and NATO-1 through NATO-6 Applicants, Who Have National Crime Interstate Identification Index (NCIII) Hits

(CT:VISA-244; 11-04-2016)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

d. **Unavailable**

e. **Unavailable**

f. **Unavailable**

- g. **(U)** If you have any questions regarding whether an ineligibility applies to an A-1, A-2, C-3, G-1 through G-4, or NATO-1 through NATO-6 applicant, submit a request for an AO to CA/VO/L/A. The request must provide a detailed summary of any information you have been able to obtain regarding the reported offense, include any court actions. Final action on the case must wait the final AO determination. If you have determined that the NCIII hit does not lead to an applicable ineligibility, you do not need to send an AO. Enter case notes in the remarks section field of the NIV section to record actions taken.

9 FAM 303.3-5(D)(5) (U) Limitations on Use of National Crime Information Center (NCIC) Information

(CT:VISA-244; 11-04-2016)

- a. **(U) Authorized access:** The FBI's National Crime Information Center (NCIC) criminal history records are law enforcement sensitive and can only be accessed by authorized consular personnel with visa processing responsibilities.

- b. **(U) Use of information:** NCIC criminal history record information shall be used solely to determine whether or not to issue a visa to an alien or to admit an alien to the United States. All third party requests for access to NCIC criminal history record information shall be referred to the FBI.
- c. **(U) Confidentiality and Protection of Records:** To protect applicants' privacy, authorized Department personnel must secure all NCIC criminal history records, automated or otherwise, to prevent access by unauthorized persons. Such criminal history records must be destroyed, deleted or overwritten upon receipt of updated versions.

9 FAM 303.3-5(E) Unavailable

(CT:VISA-244; 11-04-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 303.3-5(F) (U) Processing Visa Cases with P2A1 INTERPOL Hits

(CT:VISA-244; 11-04-2016)

Unavailable

9 FAM 303.3-5(G) (U) Guidance Broken Down by CLASS Code

(CT:VISA-311; 03-24-2017)

(U) CLASS refusal/lookout codes that may be returned in response to a namecheck are listed in [9 FAM 303.3-3\(B\)\(1\)](#).

- (1) **(U) 212(e) Foreign Residency Requirement:** Certain former exchange visitors applying for a K, H, or L nonimmigrant visa, or immigrant visa cannot be issued until the applicant has been physically present or resided in the country of nationality or last legal permanent residence for an aggregate of two years following completion of the exchange program and departure from the United States. [9 FAM 302.13-2\(B\)\(1\)](#) describes those categories of former exchange visitors who are subject to this requirement. This ineligibility applies unless a waiver of the two-year requirement has been granted. CA/VO/DO/W determines whether to recommend that DHS grant a waiver. Waiver approvals can be verified via the CCD or with official notification from USCIS.
- (2) **Unavailable**
- (3) **(U) 222(g) Visa Overstays:** 222(g) of the INA renders void the visas of non-immigrants who overstay their authorized period of stay in the U.S., and

requires (except in certain exceptional circumstances) that the individual apply for a visa in the country of his or her nationality. See [9 FAM 302.1-9\(B\)](#) for further information on 222(g).

(4) **Unavailable**

(5) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(6) **(U) ABS or ABSI Absconder Data:** Reasons for a DHS ABS or ABSI entry include, among other things, an alien failing to appear at a deportation hearing, failing to comply with a deportation order, failing to comply with a deportation order in a timely fashion, or failing to notify DHS of a return abroad. It is not a visa ineligibility in and of itself, but a flag that indicates failure to comply with a regulation or court order. If the applicant is otherwise eligible for a visa, you should carefully determine whether a visa ineligibility exists based upon the absconder hit.

(7) **Unavailable**

(8) **Unavailable**

(9) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(10) **Unavailable**

(11) **Unavailable**

(12) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(iv) **Unavailable**

(13) **Unavailable**

(14) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(15) **Unavailable**

(16) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **(U)** The Visa Office trusts that this information will be useful to consular managers and adjudicating officers. We have done our best to anticipate the most common scenarios officers will encounter. Should you have any questions, don't hesitate to contact your CA/VO/F liaison officer.

9 FAM 303.4

(U) POST-BASED REVIEWS AND CLEARANCES

(CT:VISA-290; 03-02-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 303.4-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 303.4-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 212(a) (8 U.S.C. 1182).

9 FAM 303.4-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.106.

9 FAM 303.4-1(C) (U) United States Code

(CT:VISA-1; 11-18-2015)

(U) 22 U.S.C. 4831.

9 FAM 303.4-1(D) (U) Public Law

(CT:VISA-1; 11-18-2015)

(U) Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99-399, Title III); Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236, Section 140(c)).

9 FAM 303.4-2 (U) REVIEWING CASE NOTES AND POST FILES

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 303.4-3 UNAVAILABLE

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 303.4-3(A) (U) Consulting With Other Posts

9 FAM 303.4-3(A)(1) Unavailable

(CT:VISA-204; 09-30-2016)

a. Unavailable

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **(U)** Visa Reciprocity and Country Documents Finder specifically requires a clearance of applicants from that country.

b. Unavailable

9 FAM 303.4-3(A)(2) Unavailable

(CT:VISA-290; 03-02-2017)

Unavailable

9 FAM 303.4-3(B) Unavailable Clearance Not Required

(CT:VISA-204; 09-30-2016)

Unavailable

(1) **Unavailable**

(2) **Unavailable**

9 FAM 303.4-3(C) (U) Requests for Information From Other Posts

9 FAM 303.4-3(C)(1) Unavailable

(CT:VISA-1; 11-18-2015)

a. Unavailable

b. Unavailable

9 FAM 303.4-3(C)(2) (U) Assessment of Information and Source

(CT:VISA-1; 11-18-2015)

Unavailable

(1) **Unavailable**

(2) **Unavailable**

9 FAM 303.4-3(C)(3) (U) Evaluation of Organizational Membership

(CT:VISA-204; 09-30-2016)

Unavailable

9 FAM 303.5

(U) BIOMETRIC SCREENING

(CT:VISA-308; 03-17-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 303.5-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 303.5-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 105(b) (8 U.S.C. 1105(b)); INA 221(b) (8 U.S.C. 1202(b)); INA 222(a)-(d) (8 U.S.C. 1202(a)-(d)).

9 FAM 303.5-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.105; 22 CFR 42.65; 22 CFR 42.67.

9 FAM 303.5-1(C) (U) Public Law

(CT:VISA-1; 11-18-2015)

(U) Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107-173, Section 303).

9 FAM 303.5-2 (U) BIOMETRIC VISA OVERVIEW

9 FAM 303.5-2(A) (U) Biometric Technology

(CT:VISA-308; 03-17-2017)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 303.5-2(B) (U) Biometric Visa Coordination with the DHS Office of Biometric Identity Management (OBIM)

(CT:VISA-308; 03-17-2017)

Unavailable

9 FAM 303.5-2(B)(1) (U) Use of BioVisa Fingerprints at Ports of Entry

(CT:VISA-1; 11-18-2015)

a. **Unavailable**

b. **Unavailable**

9 FAM 303.5-2(B)(2) (U) Use of BioVisa Fingerprints When Exiting the U.S.

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 303.6

(U) FACIAL RECOGNITION

(CT:VISA-280; 01-19-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 303.6-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 303.6-1(A) (U) Immigration and Nationality Act

(CT:VISA-167; 09-06-2016)

(U) INA 105(b) (8 U.S.C. 1105(b)); INA 221(b) (8 U.S.C. 1201(b)).

9 FAM 303.6-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.105; 22 CFR 42.65(f).

9 FAM 303.6-1(C) (U) Public Law

(CT:VISA-1; 11-18-2015)

(U) Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236, Section 140(c)); Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107-173, Section 303).

9 FAM 303.6-2 (U) SUBMITTING FACIAL RECOGNITION (FR) REQUESTS

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 303.6-2(A) (U) FR Procedures

9 FAM 303.6-2(A)(1) (U) Photo Standards

(CT:VISA-178; 09-20-2016)

- a. **(U) Photographic Standards:** Visa applicants must provide with their applications un-mounted, full-face photographs of themselves and derivative applicants, taken within the past six months. The photos must meet the following

specific standards to be accepted by the FR software:

- (1) **(U)** The photo must be good quality; grainy photos, overexposed photos, or photos that are too dark are not acceptable. Instant-type photos are acceptable, if the photographs submitted meet all specifications.
- (2) **(U)** Glossy, untouched, un-mounted, on a white or off-white background. You should not accept photos taken in front of busy, patterned, or dark backgrounds.
- (3) **(U)** If a hard-copy photograph is submitted, it should measure 2 inches square (roughly 50 mm square) with the head centered in the frame. The head (measured from the top of the hair to the bottom of the chin) should measure between 1 to 1 3/8 inches (25 mm to 35 mm) with the eye level between 1 1/8 inch to 1 3/8 inches (28 mm and 35 mm) from the bottom of the photo.
- (4) **(U)** The applicant must be shown in full frontal view, with full head, from crown of the head to the tip of the chin and from hair line side-to-side, with the eyes wide open and have a neutral facial expression.; and
- (5) **(U)** The ears and hair should be exposed, unless local or religious custom prohibits this, in which case a head covering is permitted. The key requirement is that the photograph clearly identifies the applicant. In addition, the eyes must be open, and the photo must be of a front view. The head should be centered and should take up at least half, but no more than two thirds, of the picture. The dimension of the facial image must be about one inch (33 mm) from the chin to the top of the hair.
- (6) **(U) Headcoverings:** Generally, applicants must have their photo taken without head covering of any kind. You may accept a photo with a head covering only when the presentation of a photo without head covering would conflict with the applicant's religious practices. A photograph depicting a person wearing a head covering must show enough of the face so as to establish identity. A photo depicting a person wearing a traditional facemask or veil, which conceals portions of the face and does not permit adequate identification, is not acceptable. A photo is required of all applicants regardless of age.
- (7) **(U) Eyeglasses:** Effective for applications filed on or after November 1, 2016, eyeglasses must not be worn in a photo provided for a visa application, except in rare circumstances when eyeglasses cannot be removed for medical reasons; e.g., the applicant has recently had ocular surgery and the eyeglasses are necessary to protect the applicant's eyes. A medical statement signed by a medical professional/health practitioner must be provided in these cases. If the eyeglasses are accepted for medical reasons:
 - (a) **(U)** The frames of the eyeglasses must not cover the eye(s) (consistent with International Civil Aviation Organization guidelines; see [7 FAM 1340 Appendix E](#) paragraph e)).
 - (b) **(U)** There must not be glare on eyeglasses that obscures the eye(s).

- (c) **(U)** There must not be shadows or refraction from the eyeglasses that obscures the eye(s).
- b. **(U) Problems with Photo Quality:** On occasion, you will encounter visa applicants whose appearance varies slightly from that of the photographs they submit with their NIV applications. In many instances, the Visa Office attributes these variances to recent advances in digital photography software programmed to flatter the subject of the photograph. You may use the photograph if it otherwise appears to be of the applicant (per [9 FAM 403.3-4\(A\)](#)). The color variance is not a significant issue because current facial recognition (FR) technology does not employ color. Rather, it converts color pictures to black and white before matching. Uniform contrast or brightening enhancement will not significantly impede FR unless it is exaggerated to the point of saturation.

9 FAM 303.6-2(A)(2) Unavailable

(CT:VISA-167; 09-06-2016)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

9 FAM 303.6-2(A)(3) Unavailable

(CT:VISA-167; 09-06-2016)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 303.6-2(B) (U) Voluntary FR on Demand Searches

(CT:VISA-2; 11-18-2015)

Unavailable

9 FAM 303.6-2(B)(1) Unavailable

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 303.6-2(B)(2) Unavailable

(CT:VISA-2; 11-18-2015)

- a. **Unavailable**
 - (1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

(5) **Unavailable**

b. **Unavailable**

9 FAM 303.6-2(C) Unavailable

(CT:VISA-2; 11-18-2015)

a. **Unavailable**

b. **Unavailable**

9 FAM 303.6-3 (U) FACIAL RECOGNITION (FR) RESPONSES

9 FAM 303.6-3(A) Unavailable

9 FAM 303.6-3(A)(1) Unavailable

(CT:VISA-2; 11-18-2015)

a. **Unavailable**

b. **Unavailable**

9 FAM 303.6-3(A)(2) Unavailable

(CT:VISA-2; 11-18-2015)

a. **Unavailable**

b. **Unavailable**

9 FAM 303.6-3(B) Unavailable

(CT:VISA-2; 11-18-2015)

Unavailable

9 FAM 303.6-3(B)(1) Unavailable

(CT:VISA-2; 11-18-2015)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

d. **Unavailable**

e. **Unavailable**

9 FAM 303.6-3(B)(2) Unavailable

(CT:VISA-2; 11-18-2015)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

d. **Unavailable**

9 FAM 303.6-3(B)(3) Unavailable

(CT:VISA-2; 11-18-2015)

Unavailable

9 FAM 303.6-3(C) Unavailable

9 FAM 303.6-3(C)(1) Unavailable

(CT:VISA-2; 11-18-2015)

a. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

(5) **Unavailable**

b. **Unavailable**

c. **Unavailable**

9 FAM 303.6-3(C)(2) Unavailable

(CT:VISA-2; 11-18-2015)

a. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

b. **Unavailable**

9 FAM 303.6-3(C)(3) Unavailable

(CT:VISA-2; 11-18-2015)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 303.6-3(D) (U) FR for Urgent and Non-Urgent Cases**9 FAM 303.6-3(D)(1) Unavailable**

(CT:VISA-214; 10-13-2016)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

9 FAM 303.6-3(D)(2) Unavailable

(CT:VISA-280; 01-19-2017)

Unavailable**9 FAM 303.6-4 (U) CREATING AND DELETING FACIAL RECOGNITION (FR) LOOKOUTS****9 FAM 303.6-4(A) Unavailable**

(CT:VISA-2; 11-18-2015)

Unavailable**9 FAM 303.6-4(B) Unavailable**

(CT:VISA-1; 11-18-2015)

Unavailable**9 FAM 303.6-4(B)(1) Unavailable**

(CT:VISA-2; 11-18-2015)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 303.6-4(B)(2)

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 303.6-4(B)(3) Unavailable

(CT:VISA-2; 11-18-2015)

a. **Unavailable**

b. **Unavailable**

9 FAM 303.6-4(B)(4) (U) User Guide for FR Enrollment on Demand

(CT:VISA-2; 11-18-2015)

(U) An FR on Demand User Guide providing step-by-step, illustrated instructions is available by clicking a link at the bottom of the FR on Demand Report. Any user with questions about submitting lookouts using the FR Enrollment on Demand report should consult with a liaison officer from either CA/VO/F or CA/FPP.

9 FAM 303.7

(U) FINGERPRINTING

(CT:VISA-386; 06-20-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 303.7-1 (U) RELATED STATUTORY AND REGULATORY AUTHORITIES

9 FAM 303.7-1(A) (U) Public Laws

(CT:VISA-1; 11-18-2015)

(U) Enhanced Border Security and Visa Entry Reform Act of 2002, section 303 of Public Law 107-173; Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, section 140(c) of Public Law 103-236.

9 FAM 303.7-1(B) (U) United States Code

(CT:VISA-1; 11-18-2015)

(U) 8 U.S.C. 1732.

9 FAM 303.7-2 (U) MEETING THE LEGAL REQUIREMENTS FOR FINGERPRINTING

(CT:VISA-361; 05-02-2017)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**

9 FAM 303.7-3 (U) FINGERPRINT DATABASES

9 FAM 303.7-3(A) (U) Overview of the Automated Biometric Identification (IDENT) System

(CT:VISA-2; 11-18-2015)

- a. **Unavailable**

b. Unavailable**9 FAM 303.7-3(B) (U) Which Databases Are Searched After Prints Are Submitted?**

(CT:VISA-2; 11-18-2015)

Unavailable

9 FAM 303.7-3(B)(1) (U) The Full Gallery IDENT Database

(CT:VISA-217; 10-19-2016)

a. Unavailable**b. Unavailable**

(1)

(2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

(5) **Unavailable**

(6) **Unavailable**

9 FAM 303.7-3(B)(2) (U) The IDENT Watchlist

(CT:VISA-2; 11-18-2015)

Unavailable

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

(5) **Unavailable**

(6) **Unavailable**

(7) **Unavailable**

(8) **Unavailable**

(9) **Unavailable**

(10) **Unavailable**

9 FAM 303.7-3(B)(3) (U) IDENT Search Results

(CT:VISA-2; 11-18-2015)

Unavailable

9 FAM 303.7-3(B)(4) (U) IDENT Questions

(CT:VISA-217; 10-19-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 303.7-3(C) (U) Maintaining and Using IDENT Records

9 FAM 303.7-3(C)(1) (U) Removing Incorrect Entry or Exit Information

(CT:VISA-217; 10-19-2016)

Unavailable

9 FAM 303.7-3(C)(2) (U) The IDENT Watchlist Database

(CT:VISA-217; 10-19-2016)

- a. **(U) Removing Cases:**
 - (1) **Unavailable**
 - (2) **Unavailable**
- b. **(U) Demoting cases:**
 - (1) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**
 - (4) **Unavailable**

9 FAM 303.7-4 (U) WHO IS SUBJECT TO FINGERPRINT REQUIREMENTS?

9 FAM 303.7-4(A) (U) Fingerprints Required

(CT:VISA-361; 05-02-2017)

Unavailable

9 FAM 303.7-4(B) (U) Exemptions to and Waivers of the Fingerprinting Requirement

9 FAM 303.7-4(B)(1) (U) Exempted Classes

(CT:VISA-270; 12-14-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **(U) Officials Representing Unrecognized Governments and United Nations (UN) Missions:**
 - (1) **Unavailable**
 - (2) **Unavailable**
- d. **Unavailable**

9 FAM 303.7-4(B)(2) (U) Fingerprint Waivers

(CT:VISA-217; 10-19-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 303.7-4(B)(3) (U) Chief of Mission (COM) Waiver Authority

(CT:VISA-361; 05-02-2017)

- a. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**
 - (4) **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**

9 FAM 303.7-4(C) (U) Procedure for Waiving Fingerprinting

(CT:VISA-2; 11-18-2015)

Unavailable

9 FAM 303.7-5 (U) COLLECTING FINGERPRINTS

(CT:VISA-2; 11-18-2015)

(U) It is important for the visa chief at each post to remind personnel taking fingerprints to follow closely the instructions in the online training course entitled "Fingerprint Quality for TPLS," which is located under the Biometrics tab in the Consular Application Training Center on CAWeb.

9 FAM 303.7-5(A) (U) Implementing Ten-Print Collection

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 303.7-5(A)(1) (U) Locally Employed Staff (LE Staff) Collection, Officer Verification

(CT:VISA-88; 03-09-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 303.7-5(A)(2) (U) Locally Employed Staff (LE Staff) Collection or Contractor Collection at Offsite, Verification by IDENT

(CT:VISA-217; 10-19-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 303.7-5(A)(3) (U) Fingerprint Collection by Cleared American Employees

(CT:VISA-88; 03-09-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**

9 FAM 303.7-5(B) (U) Fingerprint Capture Procedures

(CT:VISA-2; 11-18-2015)

Unavailable

9 FAM 303.7-5(B)(1) (U) Correct Fingerprint Segmentation

(CT:VISA-1; 11-18-2015)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**

9 FAM 303.7-5(B)(2) (U) Finger Placement

(CT:VISA-88; 03-09-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**
- e. **Unavailable**

9 FAM 303.7-5(B)(3) (U) Thumb Placement

(CT:VISA-88; 03-09-2016)

Unavailable

9 FAM 303.7-5(B)(4) (U) Common Fingerprinting Problems

(CT:VISA-88; 03-09-2016)

- a. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**
- e. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**

9 FAM 303.7-5(B)(5) (U) Fingerprint Reuse

(CT:VISA-361; 05-02-2017)

(U) The following are criteria for fingerprint reuse:

- (1) **(U)** The applicant has had all ten fingerprints previously captured for a visa that was issued;
- (2) **(U)** The visa that was issued has not been revoked;
- (3) **(U)** The visa being applied for is the same visa class category as the previous visa, except for visa classes starting with B, which will be matched on the first letter of the visa class only;
- (4) **(U)** The same name (or alias), date of birth, nationality, and place of birth are on both applications.

9 FAM 303.7-6 (U) PROCESSING AUTOMATED BIOMETRIC IDENTIFICATION (IDENT) SYSTEM RESULTS

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 303.7-6(A) (U) Interpreting IDENT Results

9 FAM 303.7-6(A)(1) (U) IDENT Clearance Status Codes

(CT:VISA-88; 03-09-2016)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable Package Received:** The fingerprint package has been transmitted
- (3) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**
- (6) **Unavailable**
- (7) **Unavailable**
- (8) **Unavailable**
- (9) **Unavailable**
- (10) **Unavailable**
- (11) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**

(d) **Unavailable**

(e) **Unavailable**

9 FAM 303.7-6(A)(2) (U) IDENT Response Codes

(CT:VISA-2; 11-18-2015)

a. **Unavailable**

b. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

(5) **Unavailable**

c. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

9 FAM 303.7-6(A)(3) (U) IDENT Encounter Types

(CT:VISA-217; 10-19-2016)

Unavailable

(1) **Unavailable**

(2) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(d) **Unavailable**

(5) **Unavailable**

(6) **Unavailable**

(a) **Unavailable**

- (b) **Unavailable**
- (7) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
 - (d) **Unavailable**
- (8) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
- (9) **Unavailable**
- (10) **Unavailable**

9 FAM 303.7-6(B) (U) Resolving Problems with IDENT Returns

9 FAM 303.7-6(B)(1) (U) Data Mismatches

(CT:VISA-217; 10-19-2016)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

9 FAM 303.7-6(B)(2) (U) Requesting a Second Review of an IDENT Hit

(CT:VISA-217; 10-19-2016)

- a.
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**

9 FAM 303.7-6(B)(3) (U) Requesting a Second Review of an IDENT Miss

(CT:VISA-217; 10-19-2016)

- a. **Unavailable**
 - (1) **Unavailable**

- (2) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
 - (d) **(U)** Name of Applicant:

(3) **Unavailable**

b. **Unavailable**

- (1) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
 - (d) **(U)** Highlight the desired case.
 - (e) **Unavailable**
 - (f) **Unavailable**
- (2) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
 - (d) **Unavailable**
 - (i)
 - (ii) **Unavailable**
 - (iii) **Unavailable**
 - (iv) **Unavailable**
 - (v) **(U)** Name of Applicant:

9 FAM 303.7-6(C) (U) Processing IDENT Watchlist Hits

9 FAM 303.7-6(C)(1) (U) Clearing (IDENT) Watchlist Promotes from the System Messages Window

(CT:VISA-361; 05-02-2017)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

- (4) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
- (5) **Unavailable**
- (6)
- (7) **Unavailable**
- (8) **Unavailable**
- (9) **Unavailable**
 - Unavailable**
 - Unavailable**
 - Unavailable**
- (10) **Unavailable**
- (11) **Unavailable**
- (12) **Unavailable**
 - (a) **Unavailable**
 - Unavailable**
 - Unavailable**
 - (b) **Unavailable**
 - Unavailable**
 - Unavailable**
- (13) **Unavailable**

9 FAM 303.7-6(C)(2) (U) Clearing (IDENT) Watchlist Promotes from the System Messages Window in IVO

(CT:VISA-2; 11-18-2015)

Unavailable

9 FAM 303.7-6(C)(3) (U) Watchlist Entries

(CT:VISA-386; 06-20-2017)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
 - (1) **Unavailable**

(2) **Unavailable**

d. **Unavailable**

(1) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(2) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(3) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(4) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(5) **Unavailable**

(a) **Unavailable**

(b) Unavailable

(6) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(7) **Unavailable**

(8) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

e. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(4) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(5) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(d) **Unavailable**

(6) **Unavailable**

(a) **Unavailable**

(b)

(c) **Unavailable**

(d) **Unavailable**

9 FAM 303.7-6(D) (U) Processing Applicants of Active Interest to Law Enforcement

(CT:VISA-361; 05-02-2017)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

d. **Unavailable**

9 FAM 303.7-6(D)(1) (U) Processing of Violent Gang (VG) CLASS Hits

(CT:VISA-2; 11-18-2015)

Unavailable

9 FAM 303.7-6(D)(2) (U) Processing Deported Felon Cases

(CT:VISA-88; 03-09-2016)

a. **Unavailable**

b. **Unavailable**

9 FAM 303.7-7 (U) ADJUDICATING IDENT HITS

(CT:VISA-2; 11-18-2015)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

9 FAM 303.7-7(A) (U) Reviewing Hits in the Systems

(CT:VISA-2; 11-18-2015)

a. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

b. **Unavailable**

c. **Unavailable**

d. **Unavailable**

9 FAM 303.7-7(B) (U) Visa Lookout Accountability Policy for IDENT

(CT:VISA-2; 11-18-2015)

Unavailable

9 FAM 303.7-8 (U) FINGERPRINT SERVICES FOR OTHER OFFICES AND AGENCIES

9 FAM 303.7-8(A) (U) Obtaining Fingerprints From IDENT

(CT:VISA-217; 10-19-2016)

Unavailable

9 FAM 303.7-8(B) (U) Fingerprint Services for Other Agencies

(CT:VISA-2; 11-18-2015)

- a. **(U)** In countries where there is no Department of Defense or Department of Homeland Security presence, consular officers should provide fingerprint services for residents in their district applying for expeditious naturalization or adoption. (See [9 FAM 602.2-2\(A\)\(1\).](#))
- b. **(U)** Do not use the nonimmigrant visa (NIV) or immigrant visa overseas (IVO) systems to collect or check fingerprints electronically for DHS services. Instead, collect ink prints using the Fingerprint Card (Form FD-258).

9 FAM 303.7-9 (U) THE NEXT GENERATION

IDENTIFICATION (NGI) FINGERPRINT SYSTEM

(CT:VISA-2; 11-18-2015)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**

9 FAM 303.7-9(A) (U) How to Process Next Generation Identification (NGI) Results - Adverse and Not Adverse

(CT:VISA-2; 11-18-2015)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**

9 FAM 303.7-9(B) (U) Foreign Partner Records in NGI

(CT:VISA-88; 03-09-2016)

Unavailable

9 FAM 303.7-9(C) (U) Procedures for Fingerprinting Error Messages From Next Generation Identification (NGI) System

(CT:VISA-361; 05-02-2017)

Unavailable

- (1) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
- (2) **Unavailable**
 - (a) **Unavailable**
 - (i) **Unavailable**
 - (ii) **Unavailable**
 - (iii) **Unavailable**

- (iv) **Unavailable**
- (b) **Unavailable**
- (c) **Unavailable**
- (3) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
 - (d) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**

9 FAM 303.7-9(D) (U) Wanted Persons with No Fingerprints on File

(CT:VISA-361; 05-02-2017)

a. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
 - (d) **Unavailable**
 - (e) **Unavailable**
 - (f) **Unavailable**
 - (g) **Unavailable**
 - (h) **Unavailable**
 - (i) **Unavailable**

b. Unavailable

9 FAM 303.7-9(E) (U) Special NGI Procedures

(CT:VISA-361; 05-02-2017)

a. Unavailable

- (1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

b. Unavailable

c. (U) Validity Period of FBI Fingerprint Checks for IV Cases: There is no fixed expiration date on an NGI (IAFIS) check once it has been completed. If the IV applicant has never been to the United States, the check need never be done again. Officers should exercise judgment on any clearance that is more than 1 year old. If the officer has reason to believe the applicant was in the United States since the NGI clearance, the officer should update the clearance. Officers should use discretion and any available evidence at hand in determining whether to resubmit the fingerprints to NGI before immigrant visa issuance.

d. Unavailable

e. (U) Applicants Who Question the National Crime Information Center Record:

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

9 FAM 303.8 UNAVAILABLE

*(CT:VISA-371; 06-02-2017)
(Office of Origin: CA/VO/L/R)*

9 FAM 303.8-1 UNAVAILABLE

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 303.8-1(A) Unavailable

(CT:VISA-243; 11-02-2016)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

9 FAM 303.8-1(B) Unavailable

9 FAM 303.8-1(B)(1) Unavailable

(CT:VISA-180; 09-22-2016)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 303.8-1(B)(2) (U) Continuous Vetting

(CT:VISA-1; 11-18-2015)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 303.8-2 UNAVAILABLE

9 FAM 303.8-2(A) Unavailable

9 FAM 303.8-2(A)(1) Unavailable

(CT:VISA-3; 11-18-2015)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 303.8-2(A)(2) Unavailable

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 303.8-2(A)(3) Unavailable

(CT:VISA-243; 11-02-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**
- e. **Unavailable**
- f. **Unavailable**
- g. **Unavailable**

9 FAM 303.8-2(B) Unavailable

(CT:VISA-1; 11-18-2015)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**

9 FAM 303.8-2(C) Unavailable

(CT:VISA-243; 11-02-2016)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 303.8-2(D) Unavailable

FAM 303.8-2(D)(1) Unavailable

(CT:VISA-1; 11-18-2015)

- a. **Unavailable**

b. **Unavailable**

9 FAM 303.8-2(D)(2) Unavailable

(CT:VISA-137; 05-20-2016)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

d. **Unavailable**

e. **Unavailable**

9 FAM 303.8-2(E) Unavailable

(CT:VISA-1; 11-18-2015)

a. **Unavailable**

b. **Unavailable**

9 FAM 303.8-2(F) Unavailable

(CT:VISA-1; 11-18-2015)

Unavailable .

9 FAM 303.8-3 UNAVAILABLE

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 303.8-3(A) Unavailable

(CT:VISA-1; 11-18-2015)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

d. **Unavailable**

e. **Unavailable**

9 FAM 303.8-3(B) Unavailable

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 303.8-3(B)(1) Unavailable

(CT:VISA-1; 11-18-2015)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 303.8-3(B)(2) Unavailable

(CT:VISA-371; 06-02-2017)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**

9 FAM 303.8-4 UNAVAILABLE**9 FAM 303.8-4(A) Unavailable**

(CT:VISA-180; 09-22-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**

9 FAM 303.8-4(B) Unavailable

(CT:VISA-137; 05-20-2016)

Unavailable**9 FAM 303.8-4(B)(1) Unavailable**

(CT:VISA-137; 05-20-2016)

Unavailable**9 FAM 303.8-4(B)(2) Unavailable**

(CT:VISA-137; 05-20-2016)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 303.8-4(B)(3) Unavailable

(CT:VISA-180; 09-22-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**
- e. **Unavailable**
- f. **Unavailable**

9 FAM 303.8-5 (U) LEAHY VETTING

9 FAM 303.8-5(A) (U) Statutory and Regulatory Authority

9 FAM 303.8-5(A)(1) (U) United States Code

(CT:VISA-1; 11-18-2015)

(U) 22 U.S.C. 2378d.

9 FAM 303.8-5(B) (U) Background

(CT:VISA-109; 04-14-2016)

- a. **(U)** The Leahy Amendment prohibits assistance to foreign security force units and members of such units implicated in a gross human rights violations (GVHR). 22 U.S.C. 2378d prohibit training, material or other forms of assistance to foreign security forces units or personnel if the Department has credible information that the unit or personnel has committed a GVHR, unless the Secretary determines that the host government is taking effective measures to bring the responsible members of the security force to justice.
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**
- e. **Unavailable**
- f. **Unavailable**
- g. **Unavailable**
- h. **Unavailable**

9 FAM 303.8-5(C) Unavailable

(CT:VISA-137; 05-20-2016)

- a. **Unavailable**

b. Unavailable

- **(U)** INA 212(a)(2)(G): Foreign Government Officials Who Have Committed Particularly Severe Violations of Religious Freedom
- **(U)** INA 212(a)(3)(E)(I): Participation in Nazi Persecution
- **(U)** INA 212(a)(3)(E)(II): Participation in Genocide
- **(U)** INA 212(a)(3)(E)(III): Commission of Acts of Torture or Extrajudicial Killings
- **(U)** INA 212(a)(3)(G): Recruitment or Use of Child Soldiers
- **Unavailable**
- **Unavailable**
- **Unavailable**

9 FAM 303.8-5(D) Unavailable

(CT:VISA-137; 05-20-2016)

a. Unavailable**b. Unavailable**

- **Unavailable**
- **(U)** INA 212(a)(2)(C): Controlled Substance Traffickers;
- **(U)** INA 212(a)(2)(G): Foreign Government Officials who have Engaged in Particularly Severe Violations of Religious Freedom ;
- **(U)** INA 212(a)(2)(H): Significant Traffickers In Persons;
- **(U)** INA 212(a)(3)(B): Terrorist Activities;
- **(U)** INA 212(a)(3)(G): Recruitment or Use of Child Soldiers;
- **(U)** INA 212(a)(6)(C): Misrepresentation;
- **(U)** INA 212(a)(6)(E): Smugglers;
- **Unavailable**
- **(U)** INA 212(a)(10)(C): International Child Abduction;
- **(U)** Political Killings in Haiti (Omnibus Consolidated and Emergency Supplemental Appropriations Act section 616);

c. Unavailable

- **(U)** INA 212(a)(1): Health-Related Grounds;
- **(U)** INA 212(a)(4): Public Charge;
- **(U)** INA 212(a)(5): Labor Certification, Qualification;
- **(U)** INA 212(a)(7): Documentation requirements;
- **(U)** INA 212(e): Former exchange visitors;

- **(U)** INA 214(b): Presumption of immigrant status;
- **(U)** INA 221(g): Application doesn't comply with INA;
- **(U)** INA 222(g): Nonimmigrant overstay, application in country of nationality.

9 FAM 303.8-5(E) (U) Procedures for Reporting CLASS Results in Leahy Vetting

(CT:VISA-115; 04-20-2016)

Unavailable

9 FAM 303.8-5(F) Unavailable

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 303.8-5(G) Unavailable

(CT:VISA-115; 04-20-2016)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

9 FAM 303.8-5(H) (U) American Citizens

(CT:VISA-109; 04-14-2016)

Unavailable

9 FAM 303.8-5(I) Unavailable

(CT:VISA-109; 04-14-2016)

Unavailable

9 FAM 303.8-6 UNAVAILABLE

(CT:VISA-47; 02-18-2016)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

9 FAM 303.9

(U) PROCESSING VISA CASES WITH HITS FROM INTERPOL'S STOLEN AND LOST TRAVEL DOCUMENT (SLTD) DATABASE

(CT:VISA-174; 09-13-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 303.9-1 UNAVAILABLE

(CT:VISA-174; 09-13-2016)

- a. **Unavailable.**
- b. **Unavailable.**

9 FAM 303.9-2 UNAVAILABLE

9 FAM 303.9-2(A) Unavailable

(CT:VISA-174; 09-13-2016)

- a. **Unavailable.**
- b. **Unavailable.**
- c. **Unavailable.**
 - (1) **Unavailable.**
 - (2) **Unavailable.**
 - (3) **Unavailable.**
 - (4) **Unavailable.**
 - (5) **Unavailable.**
 - (6) **Unavailable.**
 - (7) **Unavailable.**
 - (8) **Unavailable.**
 - (9) **Unavailable.**
 - (10) **Unavailable.**
 - (11) **Unavailable.**
 - (12) **Unavailable.**

(13) **Unavailable.**

(14) **Unavailable.**

(15) **Unavailable.**

(16) **Unavailable.**

9 FAM 303.9-2(B) Unavailable

(CT:VISA-174; 09-13-2016)

a. **Unavailable.**

b. **Unavailable.**

c. **Unavailable.**

d. **Unavailable.**

e. **Unavailable.**

9 FAM 303.9-2(C) Unavailable

(CT:VISA-174; 09-13-2016)

a. **Unavailable.**

b. **Unavailable.**

c. **Unavailable.**

d. **Unavailable.**

9 FAM 303.9-2(D) Unavailable

(CT:VISA-174; 09-13-2016)

Unavailable.

9 FAM 303.9-1(E) (U) Independent Queries of the SLTD Database

(CT:VISA-174; 09-13-2016)

Unavailable.

9 FAM 303.9-2(F) Unavailable

(CT:VISA-174; 09-13-2016)

Unavailable.

9 FAM 303.10 UNAVAILABLE

*(CT:VISA-295; 03-06-2017)
(Office of Origin: CA/VO/L/R)*

9 FAM 303.10-1 UNAVAILABLE

(CT:VISA-143; 06-21-2016)

Unavailable

9 FAM 303.10-2 UNAVAILABLE

(CT:VISA-143; 06-21-2016)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**

9 FAM 303.10-3 UNAVAILABLE

9 FAM 303.10-3(A) Unavailable

(CT:VISA-181; 09-22-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 303.10-3(B) Unavailable

(CT:VISA-143; 06-21-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**
- e. **Unavailable**

9 FAM 303.10-4 UNAVAILABLE

(CT:VISA-181; 09-22-2016)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 303.10-5 UNAVAILABLE

(CT:VISA-181; 09-22-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**
- e. **Unavailable**
- f. **Unavailable**
- g. **Unavailable**
- h. **Unavailable**
- i. **Unavailable**

9 FAM 303.10-6 UNAVAILABLE

(CT:VISA-181; 09-22-2016)

Unavailable

9 FAM 303.10-7 UNAVAILABLE

(CT:VISA-181; 09-22-2016)

9 FAM 303.10-8 UNAVAILABLE

(CT:VISA-295; 03-06-2017)

Unavailable

9 FAM 304 (U) SPECIAL CLEARANCES

9 FAM 304.1 (U) OVERVIEW

(CT:VISA-56; 02-24-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 304.1-1 (U) IN GENERAL

(CT:VISA-1; 11-18-2015)

(U) Certain visa cases will require you to obtain an opinion from the Department before final adjudication.

9 FAM 304.1-2 UNAVAILABLE

(CT:VISA-56; 02-24-2016)

Unavailable

9 FAM 304.1-3 (U) ADVISORY OPINION OVERVIEW

(CT:VISA-1; 11-18-2015)

(U) An advisory opinion (AO) should be submitted in cases where there is a question regarding the interpretation or application of law or regulation. Some AOs are required. For more information on AOs see [9 FAM 304.3](#).

9 FAM 304.1-4 UNAVAILABLE

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 304.1-5 UNAVAILABLE

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 304.2

UNAVAILABLE

(CT:VISA-389; 06-20-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 304.2-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 304.2-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 105 (8 U.S.C. 1105)); INA 212(a)(3) (8 U.S.C. 1182(a)(3)); INA 212(f) (8 U.S.C. 1182(f)); INA 221(g) (8 U.S.C. 1201(g)).

9 FAM 304.2-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 40.34; 22 CFR 41.121(d).

9 FAM 304.2-1(C) (U) Public Laws

(CT:VISA-237; 10-28-2016)

Enhanced Border Security and Visa Entry Reform Act of 2002, Title III of Public Law 107-173

9 FAM 304.2-1(D) (U) Executive Orders and Presidential Proclamation

(CT:VISA-1; 11-18-2015)

(U) Presidential Proclamation 7750.

9 FAM 304.2-2 UNAVAILABLE

(CT:VISA-372; 06-06-2017)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

- (a) **Unavailable**
- (b) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
- (6) **Unavailable**
- (7) **Unavailable**
- (8) **Unavailable**

9 FAM 304.2-3 UNAVAILABLE

9 FAM 304.2-3(A) Unavailable

(CT:VISA-237; 10-28-2016)

a. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**
- (6) **Unavailable**
- (7) **Unavailable**

b. Unavailable

c. Unavailable

9 FAM 304.2-3(B) Unavailable

9 FAM 304.2-3(B)(1) Unavailable

(CT:VISA-237; 10-28-2016)

a. Unavailable

b. Unavailable

9 FAM 304.2-3(B)(2) Unavailable

(CT:VISA-372; 06-06-2017)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

9 FAM 304.2-3(B)(3) Unavailable

(CT:VISA-237; 10-28-2016)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

9 FAM 304.2-4 UNAVAILABLE

(CT:VISA-237; 10-28-2016)

Unavailable**9 FAM 304.2-4(A) Unavailable**

(CT:VISA-372; 06-06-2017)

a. Unavailable**b. Unavailable**

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**
- (6) **Unavailable**
- (7) **Unavailable**

c. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**

(a) **Unavailable**

(b) ***Unavailable***

(6) **Unavailable**

d. **Unavailable**

e. **Unavailable**

f. **Unavailable**

9 FAM 304.2-4(B) Unavailable

(CT:VISA-237; 10-28-2016)

a. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

b. **Unavailable**

c. **Unavailable**

9 FAM 304.2-4(C) Unavailable

(CT:VISA-237; 10-28-2016)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

9 FAM 304.2-4(D) Unavailable

(CT:VISA-237; 10-28-2016)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

9 FAM 304.2-4(E) Unavailable

(CT:VISA-237; 10-28-2016)

Unavailable

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

9 FAM 304.2-4(F) Unavailable

(CT:VISA-237; 10-28-2016)

a. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**

b. Unavailable

c. Unavailable

9 FAM 304.2-4(G) Unavailable

(CT:VISA-372; 06-06-2017)

a. Unavailable

b. Unavailable

c. Unavailable

9 FAM 304.2-5 (U) VISAS MANTIS CLEARANCE REQUESTS

9 FAM 304.2-5(A) (U) Visas Mantis Overview

(CT:VISA-237; 10-28-2016)

a. Unavailable

b. Unavailable

c. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**

d. Unavailable

9 FAM 304.2-5(B) Unavailable

9 FAM 304.2-5(B)(1) (U) The Technology Alert List

(CT:VISA-65; 02-26-2016)

- a. **(U)** The revised Technology Alert List (TAL) consists of four parts: Tab A, "Critical Fields List" (CFL) of major fields of controlled goods and technologies of tech transfer concern, including those subject to export controls for nonproliferation reasons; Tab B, the Department's list of designated state sponsors of terrorism, Tab C, "Other Countries of Proliferation Concern", and Tab D, "FAQs and Guidance". While restrictions on the export of goods and technologies apply to nationals of all countries, applicants from countries on the list of state sponsors of terrorism seeking to engage in a commercial exchange or academic pursuit involving one of the critical fields warrant special scrutiny. Officers are not expected to be versed in all the fields on the list. Rather, you should shoot for familiarization and listen for key words or phrases from the list in applicants' answers to interview questions.
- b. **Unavailable**
- c. **Unavailable**

9 FAM 304.2-5(B)(2) Unavailable

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 304.2-5(B)(3) Unavailable

(CT:VISA-237; 10-28-2016)

- a. **Unavailable**
- (1) **Unavailable**
 - (2) **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 304.2-5(B)(4) Unavailable

(CT:VISA-237; 10-28-2016)

- a. **Unavailable**
- (1) **Unavailable**
 - (2) **Unavailable**
- b. **Unavailable**

9 FAM 304.2-5(B)(5) (U) Other Considerations

(CT:VISA-237; 10-28-2016)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 304.2-5(C) (U) Visas Mantis Procedures

9 FAM 304.2-5(C)(1) (U) Drafting a Visas Mantis

(CT:VISA-237; 10-28-2016)

Unavailable

- (1) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
 - (d) **Unavailable**
 - (e) **Unavailable**
 - (f) **Unavailable**
 - (g) **Unavailable**
 - (h) **Unavailable**
 - (i) **Unavailable**
 - (j) **Unavailable**
 - (k) **Unavailable**
- (2) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
 - (d) **Unavailable**
 - (e) **Unavailable**
 - (f) **Unavailable**
 - (g) **Unavailable**
 - (h) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**

9 FAM 304.2-5(C)(2) (U) Mantis Clearance Validities

(CT:VISA-389; 06-20-2017)

a. Unavailable

- (1) **Unavailable**
- (2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

(5) **Unavailable**

b. **Unavailable**

c. **Unavailable**

d. **Unavailable**

e. **Unavailable**

f. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

9 FAM 304.2-5(C)(3) (U) Visa Validity Periods

(CT:VISA-1; 11-18-2015)

Unavailable

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(d) **Unavailable**

(4) **Unavailable**

9 FAM 304.2-5(C)(4) (U) Visa Issuance

(CT:VISA-1; 11-18-2015)

a. **Unavailable**

b. **Unavailable**

9 FAM 304.2-5(C)(5) (U) Postcheck Mantis

(CT:VISA-237; 10-28-2016)

a. **Unavailable**

b. **Unavailable**

(1) **Unavailable**

- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**
- c. **Unavailable**
- d. **Unavailable**
- e. **Unavailable**

9 FAM 304.2-6 (U) VISAS DONKEY, VISAS BEAR, AND VISAS MERLIN

9 FAM 304.2-6(A) (U) Visas Donkey

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 304.2-6(A)(1) (U) Applicants Subject to a Visas Donkey

(CT:VISA-237; 10-28-2016)

- a. **Unavailable**
 - (1) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
 - (c) **Unavailable**
 - (d) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**
- b. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
Unavailable
 - (3) **Unavailable**
 - (4) **Unavailable**
 - (5) **Unavailable**
 - (6) **Unavailable**

9 FAM 304.2-6(A)(2) (U) Drafting a Visas Donkey

(CT:VISA-237; 10-28-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 304.2-6(B) (U) Visas Bear

(CT:VISA-237; 10-28-2016)

Unavailable

9 FAM 304.2-6(B)(1) (U) Applicants Subject to a Visas Bear

(CT:VISA-285; 02-07-2017)

- a. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**
 - (4) **Unavailable**

b. **Unavailable**

9 FAM 304.2-6(B)(2) (U) Drafting a Visas Bear Request

(CT:VISA-237; 10-28-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**

9 FAM 304.2-6(B)(3) (U) Visa Issuance

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 304.2-6(C) (U) Visas Merlin/Merlin 92

(CT:VISA-372; 06-06-2017)

- a. **Unavailable**
- b. **Unavailable**
 - (1) **Unavailable**

- (a) **Unavailable**
- (b) **Unavailable**
- (c) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- c. **Unavailable.**
- d. **Unavailable**

9 FAM 304.2-7 (U) VISAS HORSE, VISAS PEGASUS, AND VISAS EAGLE

(CT:VISA-237; 10-28-2016)

Unavailable

9 FAM 304.2-7(A) (U) Visas Horse

(CT:VISA-1; 11-18-2015)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 304.2-7(B) (U) Visas Pegasus

(CT:VISA-237; 10-28-2016)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

9 FAM 304.2-7(C) (U) Visas Eagle

(CT:VISA-376; 06-08-2017)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
 - (a) **Unavailable**
 - (b) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**
 - (a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(d) **Unavailable**

9 FAM 304.3

(U) ADVISORY OPINIONS

(CT:VISA-355; 04-26-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 304.3-1 UNAVAILABLE

(CT:VISA-355; 04-26-2017)

- a. **Unavailable**
- b. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
- c. **Unavailable**
- d. **Unavailable**
- e. **Unavailable**
- f. **Unavailable**

9 FAM 304.3-2 UNAVAILABLE

9 FAM 304.3-2(A) Unavailable

(CT:VISA-355; 04-26-2017)

Unavailable

9 FAM 304.3-2(B) Unavailable

(CT:VISA-355; 04-26-2017)

9 FAM 304.3-2(C) Unavailable

(CT:VISA-355; 04-26-2017)

9 FAM 304.3-2(D) Unavailable

(CT:VISA-355; 04-26-2017)

9 FAM 304.3-2(E) Unavailable

(CT:VISA-355; 04-26-2017)

9 FAM 304.3-2(F) Unavailable

(CT:VISA-355; 04-26-2017)

9 FAM 304.3-2(G) Unavailable

(CT:VISA-355; 04-26-2017)

9 FAM 304.3-2(H) Unavailable

(CT:VISA-355; 04-26-2017)

9 FAM 304.3-2(I) Unavailable

(CT:VISA-1; 11-18-2015)

9 FAM 304.3-2(J) Unavailable

(CT:VISA-355; 04-26-2017)

9 FAM 304.3-2(K) Unavailable

(CT:VISA-355; 04-26-2017)

9 FAM 304.3-2(L) Unavailable

(CT:VISA-355; 04-26-2017)

9 FAM 304.3-2(M) Unavailable

(CT:VISA-355; 04-26-2017)

9 FAM 304.3-2(N) Unavailable

(CT:VISA-355; 04-26-2017)

9 FAM 304.3-3 UNAVAILABLE

(CT:VISA-355; 04-26-2017)

Unavailable

9 FAM 304.3-4 UNAVAILABLE

(CT:VISA-355; 04-26-2017)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**

9 FAM 304.4

(U) VISAS VIPER

(CT:VISA-227; 10-25-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 304.4-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 304.4-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 101(a)(15) (8 U.S.C. 1101(a)(15)); INA 212(a)(3)(B) (8 U.S.C. 1182(a)(3)(B)); INA 212(a)(3)(F) (8 U.S.C. 1182(a)(3)(F)); INA 214(b) (8 U.S.C. 1184(b)).

9 FAM 304.4-1(B) (U) Public Law

(CT:VISA-1; 11-18-2015)

(U) Enhanced Border Security and Visa Entry Reform Act of 2002, Section 304 (Public Law 107-173).

9 FAM 304.4-2 (U) VISAS VIPER OVERVIEW

9 FAM 304.4-2(A) (U) History of the Visas Viper Program

(CT:VISA-227; 10-25-2016)

- a. Unavailable
- b. Unavailable
- c. Unavailable
- d. Unavailable
 - (1) Unavailable
 - (2) Unavailable
 - (3) Unavailable
 - (4) Unavailable
 - (5) Unavailable
 - (6) Unavailable

- (7) Unavailable
- (8) Unavailable
- (9) Unavailable
- (10) Unavailable
- (11) Unavailable
- (12) Unavailable

9 FAM 304.4-2(B) (U) Mission of the Visas Viper Program

(CT:VISA-227; 10-25-2016)

Unavailable

- (1) Unavailable
- (2) Unavailable
- (3) Unavailable
- (4) Unavailable
- (5) Unavailable

9 FAM 304.4-2(C) (U) Scope of the Visas Viper Program

(CT:VISA-227; 10-25-2016)

- a. Unavailable
- b. Unavailable
- c. Unavailable
- d. Unavailable
- e. Unavailable

9 FAM 304.4-3 (U) VISAS VIPER PROGRAM ADMINISTRATION WITHIN WASHINGTON

(CT:VISA-227; 10-25-2016)

- a. Unavailable
- b. Unavailable
 - (1) Unavailable
 - (2) Unavailable
 - (3) Unavailable
 - (4) Unavailable
- c. Unavailable

9 FAM 304.4-4 (U) VISAS VIPER PROGRAM ADMINISTRATION AT FOREIGN SERVICE POSTS

9 FAM 304.4-4(A) (U) Post Visas Viper Program Coordinator

9 FAM 304.4-4(A)(1) (U) Visas Viper Coordinator Duties

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 40.37 N4.2 a; CT:VISA-1901; 09-25-2012)

Unavailable

- (1) Unavailable
- (2) Unavailable
- (3) Unavailable
- (4) Unavailable

9 FAM 304.4-4(A)(2) (U) Visas Viper Coordinator Designation Memo

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 40.37 N4.2 a in part CT:VISA-1901; 09-25-2012)

a. Unavailable

(Previous Location: 9 FAM 40.37 N4.2 b-d CT:VISA-1901; 09-25-2012)

b. Unavailable

c. Unavailable

Unavailable

(U) As the Visas Viper Coordinator you are responsible for:

- Unavailable
- Unavailable
- Unavailable
- Unavailable

d. Unavailable

9 FAM 304.4-4(B) (U) Visas Viper Committees

(CT:VISA-227; 10-25-2016)

a. Unavailable

b. Unavailable

9 FAM 304.4-4(C) (U) Visas Viper Monthly Reporting Requirement

(CT:VISA-227; 10-25-2016)

- a. Unavailable
- b. Unavailable
- c. Unavailable

9 FAM 304.4-4(C)(1) (U) Contents of Monthly Report

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 40.37 N5.1,b; CT:VISA-1825; 03-19-2012)

Unavailable

- (1) Unavailable
- (2) Unavailable
- (3) Unavailable
- (4) Unavailable
- (5) Unavailable
- (6) Unavailable
- (7) Unavailable

9 FAM 304.4-4(C)(2) (U) Format for Monthly Report

(CT:VISA-227; 10-25-2016)

- a. Unavailable
- b. Unavailable
- c. Unavailable
- d. Unavailable

- 1. Unavailable
- 2. Unavailable
- 3. Unavailable

4. **(U)** Embassy Visas Viper Coordinator is [name and title of coordinator, e.g., John Q. Smith, Consular Section Chief]. Visas Viper Committee Chair is [name and title of chairperson, e.g., Jane K. Doe, DCM or John M. Doe, Principal Officer].

AMBASSADOR, CDA or PRINCIPAL OFFICER ##

9 FAM 304.4-5 (U) VISAS VIPER REPORTING AND

NOMINATION PROCEDURES

9 FAM 304.4-5(A) (U) Visas Viper Reporting Channel

(CT:VISA-227; 10-25-2016)

- a. Unavailable
- b. Unavailable
- c. Unavailable

9 FAM 304.4-5(B) (U) Prioritizing and Evaluating Terrorist Information

9 FAM 304.4-5(B)(1) (U) Priorities for Terrorist Reporting

(CT:VISA-227; 10-25-2016)

Unavailable

- (1) Unavailable
- (2) Unavailable
- (3) Unavailable
- (4) Unavailable

9 FAM 304.4-5(B)(2) (U) Evaluating Terrorist Information

(CT:VISA-227; 10-25-2016)

- a. Unavailable
 - (1) Unavailable
 - (2) Unavailable
 - (3) Unavailable
 - (4) Unavailable
- b. Unavailable
- c. Unavailable

9 FAM 304.4-5(C) (U) Visas Viper Cable Content

9 FAM 304.4-5(C)(1) (U) Key Identifying Data

(CT:VISA-227; 10-25-2016)

Unavailable

- (1) Unavailable

- (2) Unavailable
- (3) Unavailable
- (4) Unavailable

9 FAM 304.4-5(C)(2) (U) Subject's Known Spouse and Children

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 40.37 N9.3 CT:VISA-2178; 09-22-2014)

- a. Unavailable
- b. Unavailable
 - (1) Unavailable
 - (2) Unavailable
 - (3) Unavailable

9 FAM 304.4-5(C)(3) (U) Subject's Visa Status

(CT:VISA-227; 10-25-2016)

- a. Unavailable
- b. Unavailable
- c. Unavailable
 - (1) Unavailable
 - (2) Unavailable
 - (3) Unavailable
 - (4) Unavailable
 - (5) Unavailable
- d. Unavailable
- e. Unavailable
- f. Unavailable
- g. Unavailable

9 FAM 304.4-5(C)(4) (U) Reason to Suspect Terrorist Activity

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 40.37 N6.2 CT: CT:VISA-2076; 03-24-2014)

- a. Unavailable
 - (1) Unavailable
 - (2) Unavailable
 - (3) Unavailable

b. Unavailable

9 FAM 304.4-5(C)(5) (U) Evaluation of Information and Sourcing

(CT:VISA-227; 10-25-2016)

Unavailable

- (1) Unavailable
- (2) Unavailable
- (3) Unavailable
- (4) Unavailable

9 FAM 304.4-5(D) (U) Preparing Visas Viper Nomination Cables

9 FAM 304.4-5(D)(1) (U) General Cable Format

(CT:VISA-227; 10-25-2016)

- a. Unavailable
- b. Unavailable
- c. Unavailable
- d. Unavailable
- e. Unavailable

9 FAM 304.4-5(D)(2) (U) Email the Department Any Viper Nomination Cables that Contain Subjects with Valid Visas

(CT:VISA-227; 10-25-2016)

- a. Unavailable
- b. Unavailable
- c. Unavailable
- d. Unavailable

9 FAM 304.4-5(D)(3) (U) Do Not Make Recommendations for Transportation Security Administration No-Fly or Selectee Lists

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 40.37 N9.6: CT:VISA-1825; 03-19-2012)

Unavailable

9 FAM 304.4-5(D)(4) (U) CLASS Checks and Appropriate

Classification

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 40.37 N9.7 CT:VISA-2076; 03-24-2014)

- a. Unavailable
- b. Unavailable
- c. Unavailable

9 FAM 304.4-5(D)(5) (U) Procedures for CCD and CLASS Checks When Nominating a Large Number of Subjects

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 40.37 N9.8 CT:VISA-2178; 09-22-2014)

Unavailable

9 FAM 304.4-5(E) (U) Standard Nomination Tool

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 40.37 PN1 CT:VISA-1824; 03-16-2012)

Unavailable

9 FAM 304.4-5(E)(1) (U) Person Folder of Nomination Tool

(CT:VISA-227; 10-25-2016)

- a. Unavailable
- b. Unavailable
- c. Unavailable
- d. Unavailable
- e. Unavailable
- f. Unavailable
- g. Unavailable
- h. Unavailable
- i. Unavailable
- j. Unavailable
- k. Unavailable
- l. Unavailable
- m. Unavailable
- n. Unavailable
- o. Unavailable

- (1) Unavailable
- (2) Unavailable
- (3) Unavailable
- (4) Unavailable

- p. Unavailable
- q. Unavailable
- r. Unavailable

9 FAM 304.4-5(E)(2) (U) Biographic Folder of Nomination Tool

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 40.37 PN3 CT:VISA-1824; 03-16-2012)

- a. Unavailable
- b. Unavailable
- c. Unavailable
- d. Unavailable
- e. Unavailable
- f. Unavailable
- g. Unavailable

9 FAM 304.4-5(E)(3) (U) Additional Folders of Nomination Tool

(CT:VISA-227; 10-25-2016)

- a. Unavailable
- b. Unavailable
- c. Unavailable
- d. Unavailable
- e. Unavailable
 - (1) Unavailable
 - (2) Unavailable

9 FAM 304.4-5(E)(4) (U) Final Action – Formatted Nomination

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 40.37 PN5: CT:VISA-1824; 03-16-2012)

- a. Unavailable
- b. Unavailable
- c. Unavailable

9 FAM 304.4-5(E)(5) (U) Visas Viper Nomination Cable Format*(CT:VISA-1; 11-18-2015)**(Previous Location: 9 FAM 40.37 Exhibit II CT:VISA-1826; 03-19-2012)*

MRN: 12 [Your Post] 0000
Date/DTG: Jan 01, 2012 / 010001Z JAN 12
From: AMEMBASSY [Your Post]
Action: WASHDC, SECSTATE ROUTINE; VISAS VIPER MONTHLY REPORTING ROUTINE
E.O.: 13526
TAGS: CVIS, KVPR, CMGT, PINR, PTER, ASEC [Post's Country Code]
Captions: VISAS, SENSITIVE
Subject: VISAS VIPER: NAME SUBMISSIONS FOR EMBASSY [Your Post] JANUARY 2012

1. (U//FOUO) The following information is provided for watchlisting purposes as NCTC deems appropriate, but it may not be used as the basis for any United States legal process without prior authorization and may not be passed to representative of foreign governments that do not have an agreement with the United States regarding such information. We suggest that the individuals named in this nomination be watchlisted in the category recommended for each name. Individuals recommended for inclusion in the No-Fly/Selectee security directive for release to U.S. and foreign air carriers may pose a threat to civil aviation in the U.S. or abroad.

2. (U) This nomination provides information for entry into NCTC's Terrorist Identities Datamart Environment (TIDE) and for onward movement to the Terrorist Screening Center (TSC) for inclusion in the Terrorist Screening Database (TSDB).

This nomination is classified U in its entirety.

BEGIN WATCHLISTING DATA

Standard Nomination (v.2.10-RC7):

Subject A:

Action: (U) NEW

Biometric Holdings Searched: (U) YES

Watchlist Recommendation: (U) NEITHER

Person:

US Person: (U) NO

Category Code: (U) 18 - PLAN TERRORIST ACT

Gender: (U) MALE

Name:

Given Name: (U) JOHN

Surname: (U) SMITH

Date of Birth: (U) 10 APR 1970 EXACT

Citizenship: (U) COLOMBIA

Derogatory Comments: (U) Colombian authorities captured JOHN SMITH on October 5, 2010. He was indicted for rebellion and terrorism.

Subject B:

Action: (U) NEW

Biometric Holdings Searched: (U) YES

Watchlist Recommendation: (U) NEITHER

Person:

US Person: (U) NO

Category Code: (U) 23 - LEADERSHIP

Gender: (U) FEMALE

Name:

Given Name: (U) MARY

Surname: (U) SMITH

Date of Birth: (U) 28 MAR 1974 EXACT

Citizenship: (U) COLOMBIA

Derogatory Comments: (U) Colombian authorities captured MARY SMITH on 12 October 2010. She is a militia leader of the 25th front of the FARC, a terrorist organization.

END WATCHLISTING DATA

(U) We appreciate your assistance in this important matter.

9 FAM 304.4-6 (U) WATCHLISTING TERRORISTS

(CT:VISA-227; 10-25-2016)

Unavailable

9 FAM 304.4-6(A) (U) Enter P3B Lookout into CLASS

(CT:VISA-227; 10-25-2016)

- a. Unavailable
- b. Unavailable
- c. Unavailable
- d. Unavailable
- e. Unavailable

9 FAM 304.4-6(B) (U) Removing Visas Viper Program CLASS and TECS Entries

(CT:VISA-227; 10-25-2016)

- a. Unavailable
- b. Unavailable
- c. Unavailable

9 FAM 304.4-6(C) (U) Visa Revocations in Exigent Circumstances

(CT:VISA-227; 10-25-2016)

- a. Unavailable
- b. Unavailable

9 FAM 304.5 UNAVAILABLE

*(CT:VISA-376; 06-08-2017)
(Office of Origin: CA/VO/L/R)*

9 FAM 304.5-1 UNAVAILABLE

The entirety of this Subchapter is unavailable.

9 FAM 305 WAIVERS

9 FAM 305.1

TYPES OF WAIVERS AVAILABLE

(CT:VISA-112; 04-14-2016)

(Office of Origin: CA/VO/L/R)

9 FAM 305.1-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 305.1-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)).

9 FAM 305.1-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 40.301.

9 FAM 305.1-2 INA 212(D)(3)(A) WAIVERS

(CT:VISA-112; 04-14-2016)

Section 212(d)(3)(A) of the Immigration and Nationality Act (INA) provides for a Department of Homeland Security (DHS) waiver of INA 212(a) ineligibilities (except for INA 212(a)(3)(A)(i)(I), INA 212(a)(3)(A)(ii), INA 212(a)(3)(C), INA 212(a)(3)(E)(i), and INA 212(a)(3)(E)(ii)) for nonimmigrant visa applicants.

9 FAM 305.1-3 OTHER INA 212 WAIVERS

(CT:VISA-112; 04-14-2016)

There are a number of other waivers specifically written into sections of the INA. These waivers are discussed in the respective FAM subchapters relating to the grounds of ineligibility. *The Ineligibilities or Grounds of Refusals Applicability and Waivers chart provides you with an overview of the grounds of ineligibility/refusal and possible waiver and where in the FAM to find more information on each ground.*

9 FAM 305.2

WAIVERS FOR IMMIGRANT VISA APPLICANTS

(CT:VISA-287; 02-17-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 305.2-1 WAIVERS FOR IMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON INADEQUATE DOCUMENTATION OR QUALIFICATION

9 FAM 305.2-1(A) Presumption of Immigrant Status - INA 214(b)

(CT:VISA-1; 11-18-2015)

- a. **Not Applicable:** INA 214(b) does not apply to immigrant visa applicants.
- b. **Additional Information:** For additional information on INA 214(b) see [9 FAM 302.1-2](#).

9 FAM 305.2-1(B) Documentation Requirements for Immigrants - INA 212(a)(7)(A)

(CT:VISA-222 10-20-2016)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under INA 212(a)(7)(A). However, under INA 212(k), the Department of Homeland Security may waive this inadmissibility for an immigrant visa holder at the port of entry.
- b. **Additional Information:** For additional information on INA 212(a)(7)(A) see [9 FAM 302.1-3](#).

9 FAM 305.2-1(C) Documentation Requirements for Nonimmigrants - INA 212(a)(7)(B)

(CT:VISA-1; 11-18-2015)

- a. **Not Applicable:** INA 212(a)(7)(B) is not applicable to immigrant visa applicants.
- b. **Additional Information:** For additional information on INA 212(a)(7)(B) see [9 FAM 302.1-4](#).

9 FAM 305.2-1(D) Labor Certification Requirements - INA

212(a)(5)(A)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available at the time of visa application. However, under INA 212(k), the Department of Homeland Security (DHS) may waive the inadmissibility for an immigrant visa holder at the port of entry.
- b. **Additional Information:** For additional information on INA 212(a)(5)(A) see [9 FAM 302.1-5](#).

9 FAM 305.2-1(E) Unqualified Physicians - INA 212(a)(5)(B)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available.
- b. **Additional Information:** For additional information on INA 212(a)(5)(B) see [9 FAM 302.1-6](#).

9 FAM 305.2-1(F) Uncertified Foreign Health-Care Workers - INA 212(a)(5)(C)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available, but the inadmissibility may be overcome.
- b. **Additional Information:** For additional information on INA 212(a)(5)(C) see [9 FAM 302.1-7](#).

9 FAM 305.2-1(G) Failure of Application to Comply with INA - INA 221(G)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available, but the inadmissibility may be overcome.
- b. **Additional Information:** For additional information on INA 221(g) see [9 FAM 302.1-8](#).

9 FAM 305.2-2 WAIVERS FOR IMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON MEDICAL GROUNDS

9 FAM 305.2-2(A) Communicable Diseases - INA 212(a)

(1)(A)(i)

(CT:VISA-287; 02-17-2017)

a. **Waiver Available:** An INA 212(g) waiver is available for:

- (1) The spouse, unmarried son or daughter, or minor unmarried lawfully adopted child of a U.S. citizen, alien issued an immigrant visa, or alien who has been lawfully admitted for permanent residence; or
- (2) The parent of a son or daughter who is a U.S. citizen, a lawfully admitted permanent resident alien, or an alien who has been issued an immigrant visa; or
- (3) A Violence Against Women Act (VAWA) self-petitioner.

b. **Additional Information:** For additional information on INA 212(a)(1)(A)(i) see [9 FAM 302.2-5](#).

9 FAM 305.2-2(B) Vaccination Requirements - INA 212(a)(1)(A)(ii)

(CT:VISA-287; 02-17-2017)

a. **Waiver Available:**

- (1) If the alien receives vaccines that are initially missing, you may approve a waiver under the blanket delegation of authority by U.S. Citizenship and Immigration Services (USCIS) pursuant to INA 212(g)(2)(A).
- (2) If the panel physician determines that required vaccinations would be medically inappropriate, you may approve a waiver under the blanket delegation of authority by USCIS pursuant to INA 212(g)(2)(A).
- (3) If there is religious or moral objection to vaccination, a waiver may be approved by the Department Homeland Security (DHS) pursuant to INA 212(g)(2)(C).

b. **Additional Information:** For additional information on INA 212(a)(1)(A)(ii) see [9 FAM 302.2-6](#).

9 FAM 305.2-2(C) Disorder or Condition Posing a Threat to Property or Safety - INA 212(a)(1)(A)(iii)

(CT:VISA-1; 11-18-2015)

a. **Waiver Available:** An INA 212(g)(3) waiver may be granted at the discretion of DHS in consultation with Department of Health and Human Services (HHS). Waivers may be subject conditions proposed by HHS, such as the giving of bond or requirement that a family member or medical escort accompany the applicant.

b. **Additional Information:** For additional information on INA 212(a)(1)(A)(iii) see [9 FAM 302.2-7](#).

9 FAM 305.2-2(D) Drug Abuse or Addiction - INA 212(a)(1)(A)(iv)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available. However, a "CLASS A" finding by the panel physician can be overcome in the future according to Centers for Disease Control and Prevention (CDC) guidelines.
- b. **Additional Information:** For additional information on INA 212(a)(1)(A)(iv) see [9 FAM 302.2-8](#).

9 FAM 305.2-3 WAIVERS FOR IMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON CRIMINAL GROUNDS

9 FAM 305.2-3(A) Crimes of Moral Turpitude - INA 212(a)(2)(A)(i)(I)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(h) waiver is available in cases where:
 - (1) The alien's admission to the United States would not be contrary to the national welfare, safety and security of the United States and the applicant has been rehabilitated, and the activities occurred more than 15 years before the date of the visa application;
 - (2) The alien is the spouse, parent, son or daughter of a U.S. citizen or legal permanent resident (LPR) and, in the opinion of DHS, not granting a waiver would result in extreme hardship to the U.S. citizen or LPR; or
 - (3) The alien is a VAWA self-petitioner.
- b. **No Waiver Available:** No waiver is available if the applicant has been convicted of (or has admitted committing acts that constitute) murder, criminal acts involving torture, or conspiracy to commit either murder or criminal acts involving torture.
- c. **Additional Information:** For additional information on INA 212(a)(2)(A)(i)(I) see [9 FAM 302.3-2](#).

9 FAM 305.2-3(B) Multiple Criminal Convictions - INA 212(a)(2)(B)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(h) waiver is available in cases where:
 - (1) The alien's admission to the United States would not be contrary to the national welfare, safety and security of the United States and the applicant has

been rehabilitated, and the activities occurred more than 15 years before the date of the visa application;

- (2) The alien is the spouse, parent, son or daughter of a U.S. citizen or legal permanent resident (LPR) and, in the opinion of DHS, not granting a waiver would result in extreme hardship to the U.S. citizen or LPR; or
 - (3) The alien is a VAWA self-petitioner.
- b. **No Waiver Available:** No waiver is available if the applicant has been convicted of (or has admitted committing acts that constitute) murder, criminal acts involving torture, or conspiracy to commit either murder or criminal acts involving torture.
- c. **Additional Information:** For additional information on INA 212(a)(2)(B) see [9 FAM 302.3-4](#).

9 FAM 305.2-3(C) Prostitution and Commercialized Vice - INA 212(a)(2)(D)

(CT:VISA-287; 02-17-2017)

a. Waiver Available:

- (1) **Prostitution and Procuring Prostitution:** An INA 212(h) waiver is available in cases of prostitution or procuring prostitution if:
 - (a) The alien's admission to the United States would not be contrary to the national welfare, safety and security of the United States and the applicant has been rehabilitated;
 - (b) The alien is the spouse, parent, son or daughter of a U.S. citizen or legal permanent resident (LPR) and, in the opinion of DHS, not granting a waiver would result in extreme hardship to the U.S. citizen or LPR; or
 - (c) The alien is a VAWA self-petitioner.
 - (2) **Other Commercialized Vice:** An INA 212(h) waiver is available in cases of other commercialized visa if:
 - (a) The alien's admission to the United States would not be contrary to the national welfare, safety and security of the United States and the applicant has been rehabilitated, the activities occurred more than 15 years before the date of the visa application;
 - (b) The alien is the spouse, parent, son or daughter of a U.S. citizen or legal permanent resident (LPR) and, in the opinion of DHS, not granting a waiver would result in extreme hardship to the U.S. citizen or LPR; or
 - (c) The alien is a VAWA self-petitioner.
- b. **Additional Information:** For additional information on INA 212(a)(2)(D) see [9 FAM 302.3-6](#).

9 FAM 305.2-3(D) Criminal Activity Where Immunity

Asserted - INA 212(a)(2)(E)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(h) waiver is available in cases where:
- (1) The alien's admission to the United States would not be contrary to the national welfare, safety and security of the United States and the applicant has been rehabilitated, and the activities occurred more than 15 years before the date of the visa application;
 - (2) The alien is the spouse, parent, son or daughter of a U.S. citizen or legal permanent resident (LPR) and, in the opinion of DHS, not granting a waiver would result in extreme hardship to the U.S. citizen or LPR; or
 - (3) The alien is a VAWA self-petitioner.
- b. **No Waiver Available:** No waiver is available if the applicant has been convicted of (or has admitted committing acts that constitute) murder, criminal acts involving torture, or conspiracy to commit either murder or criminal acts involving torture.
- c. **Additional Information:** For additional information on INA 212(a)(2)(E) see [9 FAM 302.3-7](#).

9 FAM 305.2-3(E) Human Traffickers - INA 212(a)(2)(H)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** No waiver is available for an immigrant visa applicant ineligible under INA 212(a)(2)(H).
- b. **Additional Information:** For additional information on INA 212(a)(2)(G) see [9 FAM 302.3-8](#).

9 FAM 305.2-3(F) Money Laundering - INA 212(a)(2)(I)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** No waiver is available for an immigrant visa applicant inadmissible under INA 212(a)(2)(I).
- b. **Additional Information:** For additional information on INA 212(a)(2)(I) see [9 FAM 302.3-9](#).

9 FAM 305.2-4 WAIVERS FOR IMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON CONTROLLED SUBSTANCE VIOLATIONS

9 FAM 305.2-4(A) Crimes involving Controlled Substance Violations - INA 212(a)(2)(A)(i)(II)

(CT:VISA-45; 02-18-2016)

- a. **Waiver Available:** An INA 212(h) waiver is available in cases where:
- (1) The alien's admission to the United States would not be contrary to the national welfare, safety and security of the United States and the applicant has been rehabilitated, and the activities occurred more than 15 years before the date of the visa application;
 - (2) The alien is the spouse, parent, son or daughter of a U.S. citizen or legal permanent resident (LPR) and, in the opinion of DHS, not granting a waiver would result in extreme hardship to the U.S. citizen or LPR; or
 - (3) The alien is a VAWA self-petitioner.
- b. **Limitation:** An INA 212(h) waiver is only available if the violation relates to a single offense of simple possession of 30 grams or less of marijuana.
- c. **Additional Information:** For additional information on INA 212(a)(2)(A)(i)(II) see [9 FAM 302.4-2](#).

9 FAM 305.2-4(B) Controlled Substance Trafficking - INA 212(a)(2)(C)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for immigrant visa applicants ineligible under INA 212(a)(2)(C).
- b. **Additional Information:** For additional information on INA 212(a)(2)(C) see [9 FAM 302.4-3](#).

9 FAM 305.2-5 WAIVERS FOR IMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON NATIONALITY SECURITY GROUNDS

9 FAM 305.2-5(A) Intent to Commit Espionage or Sabotage - INA 212(a)(3)(A)(i)(I)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for immigrant visa applicants inadmissible under INA 212(a)(3)(A)(i)(I), but inadmissibility applies only to current circumstances.
- b. **Additional Information:** For additional information on INA 212(a)(3)(A)(i)(I) see [9 FAM 302.5-2](#).

9 FAM 305.2-5(B) Intent to Evade Laws Prohibiting

Export from the United States of Goods, Technology or Sensitive Information - INA 212(a)(3)(A)(i)(II)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for immigrant visa applicants inadmissible under INA 212(a)(3)(A)(i)(II), but inadmissibility applies only to current circumstances.
- b. **Additional Information:** For additional information on INA 212(a)(3)(A)(i)(II) see [9 FAM 302.5-3](#).

9 FAM 305.2-5(C) Intent to Commit an Unlawful Activity in the United States - INA 212(a)(3)(A)(ii)

(CT:VISA-45; 02-18-2016)

- a. **No Waiver Available:** No waiver is available for immigrant visa applicants inadmissible under INA 212(a)(3)(A)(ii), but inadmissibility applies only to current circumstances.
- b. **Additional Information:** For additional information on INA 212(a)(3)(A)(ii) see [9 FAM 302.5-4](#).

9 FAM 305.2-5(D) Intent to Overthrow the U.S. Government - INA 212(a)(3)(A)(iii)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for immigrant visa applicants inadmissible under INA 212(a)(3)(A)(iii), but inadmissibility applies only to current circumstances.
- b. **Additional Information:** For additional information on INA 212(a)(3)(A)(iii) see [9 FAM 302.5-5](#).

9 FAM 305.2-5(E) Immigrant Membership in Totalitarian Party - INA 212(a)(3)(D)

(CT:VISA-222 10-20-2016)

- a. **Waiver Available:** An INA 212(a)(3)(D) waiver is available. Also, there are exceptions within INA 212(a)(3)(D) relating to past membership and/or involuntary membership.
- b. **Additional Information:** For additional information on INA 212(a)(3)(D) see [9 FAM 302.5-6](#).

9 FAM 305.2-6 WAIVERS FOR IMMIGRANT VISA

APPLICANTS INELIGIBLE BASED ON TERRORISM-RELATED GROUNDS

9 FAM 305.2-6(A) Terrorist Activities - INA 212(a)(3)(B)

(CT:VISA-222 10-20-2016)

- a. **No Waiver Available:** No waiver is available for immigrant visa applicants inadmissible under INA 212(a)(3)(B). However, certain exemptions do exist that allow the Secretary of Homeland Security or the Secretary of State, following interagency consultations, to determine that the inadmissibility for terrorist activities "shall not apply" in the particular case. For a detailed discussion of exemptions of INA 212(a)(3)(B) inadmissibility's, see [9 FAM 302.6-2\(B\)\(5\)](#).
- b. **Additional Information:** For additional information on INA 212(a)(3)(B) see [9 FAM 302.6-2](#).

9 FAM 305.2-6(B) Association with Terrorist Organizations - INA 212(a)(3)(F)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for immigrant visa applicants inadmissible under INA 212(a)(3)(F).
- b. **Additional Information:** For additional information on INA 212(a)(3)(F) see [9 FAM 302.6-3](#).

9 FAM 305.2-7 WAIVERS FOR IMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON HUMAN RIGHTS VIOLATIONS

9 FAM 305.2-7(A) Government Officials who Committed Severe Violations of Religious Freedom - INA 212(a)(2)(G)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for immigrant visa applicants inadmissible under INA 212(a)(2)(G).
- b. **Additional Information:** For additional information on INA 212(a)(2)(G) see [9 FAM 302.7-3](#).

9 FAM 305.2-7(B) Participation in Nazi Persecutions - INA 212(a)(3)(E)(i)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for immigrant visa applicants inadmissible under INA 212(a)(3)(E)(i).
- b. **Additional Information:** For additional information on INA 212(a)(3)(E)(i) see [9 FAM 302.7-4](#).

9 FAM 305.2-7(C) Participation in Genocide - INA 212(a)(3)(E)(ii)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for immigrant visa applicants inadmissible under INA 212(a)(3)(E)(ii).
- b. **Additional Information:** For additional information on INA 212(a)(3)(E)(ii) see [9 FAM 302.7-5](#).

9 FAM 305.2-7(D) Participation in Torture - INA 212(a)(3)(E)(iii)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for immigrant visa applicants inadmissible under INA 212(a)(3)(E)(iii) for participation in acts of torture.
- b. **Additional Information:** For additional information on INA 212(a)(3)(E)(iii) see [9 FAM 302.7-6](#).

9 FAM 305.2-7(E) Participation in Extrajudicial Killings - INA 212(a)(3)(E)(iii)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for immigrant visa applicants inadmissible under INA 212(a)(3)(E)(iii) for participation in extrajudicial killing(s).
- b. **Additional Information:** For additional information on INA 212(a)(3)(E)(iii) see [9 FAM 302.7-7](#).

9 FAM 305.2-7(F) Participation in the Use or Recruitment of Child Soldiers - INA 212(a)(3)(G)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for immigrant visa applicants inadmissible under INA 212(a)(3)(G).
- b. **Additional Information:** For additional information on INA 212(a)(3)(G) see [9 FAM 302.7-8](#).

9 FAM 305.2-7(G) Participation in Forced or Coercive Abortion or Sterilization - 8 U.S.C. 1182e

(CT:VISA-1; 11-18-2015)

- a. **Not Applicable:** 8 U.S.C. 1182e does not apply for immigrant visa applicants.
- b. **Additional Information:** For additional information on 8 U.S.C. 1182e see [9 FAM 302.7-9](#).

9 FAM 305.2-7(H) Participation in Coercive Organ or Tissue Transplantation - 8 U.S.C. 1182f

(CT:VISA-1; 11-18-2015)

- a. **Not Applicable:** 8 U.S.C. 1182f does not apply for immigrant visa applicants.
- b. **Additional Information:** For additional information on 8 U.S.C. 1182f see [9 FAM 302.7-10](#).

9 FAM 305.2-8 WAIVERS FOR IMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON PUBLIC CHARGE GROUNDS - INA 212(A)(4)(A)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver:** No waiver is available for immigrant visa applicants inadmissible under INA 212(a)(4)(A). Applicants may overcome the finding by presenting evidence to convince you that the inadmissibility no longer applies. While there are provisions for overcoming the inadmissibility by posting a bond with DHS, the applicant is still subject to Affidavit of Support (AOS) and income requirements. Consequently, there are few circumstances in which a bond would be offered as an alternative to the AOS.
- b. **Additional Information:** For additional information on INA 212(a)(4)(A) see [9 FAM 302.8](#).

9 FAM 305.2-9 WAIVERS FOR IMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON IMMIGRATION VIOLATION-RELATED GROUNDS

9 FAM 305.2-9(A) Present without Admission or Parole - INA 212(a)(6)(A)

(CT:VISA-1; 11-18-2015)

- a. **Not Applicable:** INA 212(a)(6)(A) does not apply to immigrant visa applicants.

- b. **Additional Information:** For additional information on INA 212(a)(6)(A) see [9 FAM 302.9-2](#).

9 FAM 305.2-9(B) Failure to Attend Removal Proceeding - INA 212(a)(6)(B)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver:** There is no waiver available for immigrant visa applicants inadmissible under INA 212(a)(6)(B). The inadmissibility applies for 5 years following departure or removal subsequent to a removal hearing.
- b. **Additional Information:** For additional information on INA 212(a)(6)(B) see [9 FAM 302.9-3](#).

9 FAM 305.2-9(C) Misrepresentation - INA 212(a)(6)(C)(i)

(CT:VISA-45; 02-18-2016)

- a. **Waiver Available:** An INA 212(i) waiver is available if the alien is:
- (2) The spouse, son, or daughter of a U.S. citizen or LPR, but only if the petitioner would suffer extreme hardship if the waiver were not granted, or
 - (3) A VAWA self-petitioner and the alien can demonstrate extreme hardship to the alien, or the alien's U.S. citizen or LPR relative.
- b. **Additional Information:** For additional information on INA 212(a)(6)(C)(i) see [9 FAM 302.9-4](#).

9 FAM 305.2-9(D) Falsely Claiming Citizenship - INA 212(a)(6)(C)(ii)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver:** There is no waiver available for immigrant visa applicants inadmissible under INA 212(a)(6)(C)(ii).
- b. **Additional Information:** For additional information on INA 212(a)(6)(C)(ii) see [9 FAM 302.9-5](#).

9 FAM 305.2-9(E) Stowaways - INA 212(a)(6)(D)

(CT:VISA-1; 11-18-2015)

- a. **Not Applicable:** INA 212(a)(6)(D) does not apply at the time of immigrant visa application.
- b. **Additional Information:** For additional information on INA 212(a)(6)(D) see [9 FAM 302.9-6](#).

9 FAM 305.2-9(F) Smugglers - INA 212(a)(6)(E)

(CT:VISA-222 10-20-2016)

a. Waiver Available:

- (1) INA 212(d)(11): An INA 212(d)(11) waiver is available for immigrant visa applicants inadmissible under INA 212(a)(6)(E). DHS may grant a waiver to an applicant for family-based immigration if the alien applicant aided an individual who at the time of such action was the alien's spouse, parent, son, or daughter entering or attempting to enter the United States in violation of the law. The brother or sister of a U.S. citizen is not eligible for this waiver.
- (2) INA 212(c): DHS may grant a waiver under former section INA 212(c) to a LPR who is returning to the United States after a temporary absence abroad; had illegally assisted only his or her spouse, son, daughter, or parent, and no other others; and is otherwise eligible for admission. In this way, DHS avoids penalizing too heavily aliens already admitted to the United States who were not ineligible prior to the 1990 amendments to the law, who would now be inadmissible because of the 1990 amendments, and who had assisted only a close family member's entry into the United States.

- b. **Additional Information:** For additional information on INA 212(a)(6)(E) see [9 FAM 302.9-7](#).

9 FAM 305.2-9(G) Subject to Civil Penalty - INA 212(a)(6)(F)

(CT:VISA-222 10-20-2016)

- a. **Waiver Available:** An INA 212(d)(12) waiver is available for immigrant visa applicants inadmissible under INA 212(a)(6)(F). DHS may grant a waiver to:
- (1) Certain permanent resident aliens who have been abroad temporarily and are not under an order of deportation or removal; or
 - (2) To aliens seeking admission or adjustment of status as immediate relatives or family-based beneficiaries (but for aliens seeking adjustment it must have been committed solely to assist, aid, or support the alien's spouse or child).
- b. **Additional Information:** For additional information on INA 212(a)(6)(F) see [9 FAM 302.9-8](#).

9 FAM 305.2-9(H) Student Visa Abusers - INA 212(a)(6)(G)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under INA 212(a)(6)(G).
- b. **Additional Information:** For additional information on INA 212(a)(6)(G) see [9](#)

[FAM 302.9-9.](#)

9 FAM 305.2-9(I) Aliens Subject to INA 222(g)

(CT:VISA-287; 02-17-2017)

- a. **Not Applicable:** INA 222(g) does not apply to immigrant visa applicants.
- b. **Additional Information:** For additional information on INA 222(g) see [9 FAM 302.1-9.](#)

9 FAM 305.2-9(J) Ineligible for Citizenship - INA 212(a)(8)(A)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under INA 212(a)(8)(A). Relief under former INA 212(c) is available for certain returning residents.
- b. **Additional Information:** For additional information on INA 212(a)(8)(A) see [9 FAM 302.10.](#)

9 FAM 305.2-9(K) Aliens Who Departed or Remained Outside the United States to Avoid Military Service - INA 212(a)(8)(B)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under INA 212(a)(8)(B). INA 212(c) relief is available for certain returning residents.
- b. **Additional Information:** For additional information on INA 212(a)(8)(B) see [9 FAM 302.10-3.](#)

9 FAM 305.2-9(L) Individuals Previously Removed - INA 212(a)(9)(A)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under INA 212(a)(9)(A). However, DHS may grant permission to reapply for admission to the United States to an alien otherwise inadmissible. Permission to reapply does not remove the grounds which led to the alien's denial of admission to or removal from the United States. The reason for such denial or removal may lead to another ground of inadmissibility.
- b. **Additional Information:** For additional information on INA 212(a)(9)(A) see [9 FAM 302.11-2.](#)

9 FAM 305.2-9(M) Individuals Unlawfully Present - INA 212(a)(9)(B)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** DHS has sole discretion to grant an INA 212(a)(9)(B)(v) waiver in the case of an immigrant visa applicant inadmissible under INA 212(a)(9)(B) who is the spouse, son, or daughter of a U.S. citizen or LPR, if the refusal of admission to such alien would result in extreme hardship to the citizen or LPR spouse or parent.
- b. **Additional Information:** For additional information on INA 212(a)(9)(B) see [9 FAM 302.11-3](#).

9 FAM 305.2-9(N) Individuals Unlawfully Present After Previous Immigration Violation - INA 212(a)(9)(C)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under INA 212(a)(9)(C). However, DHS may grant permission to reapply for admission to the United States to an alien otherwise inadmissible provided at least ten years have passed following the alien's last departure from the United States.
- b. **Additional Information:** For additional information on INA 212(a)(9)(C) see [9 FAM 302.11-4](#).

9 FAM 305.2-10 WAIVERS FOR IMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON OTHER GROUNDS

9 FAM 305.2-10(A) Practicing Polygamists - INA 212(a)(10)(A)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under INA 212(a)(10)(A). Relief under former INA 212(c) is available for certain returning residents.
- b. **Additional Information:** For additional information on INA 212(a)(10)(A) see [9 FAM 302.12-2](#).

9 FAM 305.2-10(B) Guardian Required to Accompany Helpless Alien - INA 212(a)(10)(B)

(CT:VISA-287; 02-17-2017)

- a. **Not Applicable:** INA 212(a)(10)(B) does not apply at the time of visa application.
- b. **Additional Information:** For additional information on INA 212(a)(10)(B) see [9 FAM 302.12-3](#).

9 FAM 305.2-10(C) International Child Abduction - INA 212(a)(10)(C)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under INA 212(a)(10)(C).
- b. **Additional Information:** For additional information on INA 212(a)(10)(C) see [9 FAM 302.12-4](#).

9 FAM 305.2-10(D) Unlawful Voters - INA 212(A)(10)(D)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under INA 212(a)(10)(D).
- b. **Additional Information:** For additional information on INA 212(a)(10)(D) see [9 FAM 302.12-5](#).

9 FAM 305.2-10(E) Former Citizens Who Renounced Citizenship to Avoid Taxation - INA 212(a)(10)(E)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under INA 212(a)(10)(E).
- b. **Additional Information:** For additional information on INA 212(a)(10)(E) see [9 FAM 302.12-6](#).

9 FAM 305.2-10(F) Former Exchange Visitors - INA 212(e)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** The foreign residence requirement of INA 212(e) maybe waived by DHS upon recommendation from CA/VO/DO/W.
- b. **Additional Information:** For additional information on INA 212(e) see [9 FAM 302.13-2](#).

9 FAM 305.2-10(G) Unauthorized Disclosure of United

States Confidential Business Information - Section 103 of Public Law 105-277

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under Section 103 of Public Law 105-277.
- b. **Additional Information:** For additional information on Section 103 see [9 FAM 302.13-3](#).

9 FAM 305.2-10(H) Frivolous Asylum Applications - INA 208(d)(6)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under INA 208(d)(6).
- b. **Additional Information:** For additional information on INA 208(d)(6) see [9 FAM 302.13-4](#).

9 FAM 305.2-10(I) Waivers of Rights, Privileges, Exemptions, and Immunities - INA 214(b) and INA 247(b)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under INA 214(b) and INA 247(b) because of occupational status, without execution of Form I-508, Waiver of Rights, Privileges, Exemptions and Immunities.
- b. **Additional Information:** For additional information see [9 FAM 302.13-5](#).

9 FAM 305.2-11 WAIVERS FOR IMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON SANCTIONED ACTIVITIES

9 FAM 305.2-11(A) Adverse Foreign Policy Consequences - INA 212(a)(3)(C)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under INA 212(a)(3)(C).
- b. **Additional Information:** For additional information on INA 212(a)(3)(C) see [9 FAM 302.14-2](#).

9 FAM 305.2-11(B) Suspension of Entry by the President - INA 212(f)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under INA 212(f).
- b. **Additional Information:** For additional information on Section 401 see [9 FAM 302.14-3](#).

9 FAM 305.2-11(C) Individuals Who Aided and Abetted Colombian Insurgent and Paramilitary Groups - Section 3205 of Public Law 106-246

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under Section 3205 of Public Law 106-246.
- b. **Additional Information:** For additional information on Section 3205 see [9 FAM 302.14-4](#).

9 FAM 305.2-11(D) Individuals Involved in Confiscation of Property of a U.S. National - Section 401 of Public Law 104-114

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under Section 401 of Public Law 104-114.
- b. **Additional Information:** For additional information on Section 401 see [9 FAM 302.14-5](#).

9 FAM 305.2-11(E) Visa Sanctions – PP 8693

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under visa sanctions.
- b. **Additional Information:** For additional information see [9 FAM 302.14-6](#).

9 FAM 305.2-11(F) Iran Threat Reduction and Syria Human Rights Act of 2012 - Section 501 of Public Law 112-158

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under Section 501 of Public Law 112-158.
- b. **Additional Information:** For additional information on Section 501 see [9 FAM 302.14-7](#).

9 FAM 305.2-11(G) Sergei Magnitsky Rule of Law Accountability Act of 2012 - Section 405 of Public Law 112-208

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under Section 405 of Public Law 112-208.
- b. **Additional Information:** For additional information on Section 405 see [9 FAM 302.14-8](#).

9 FAM 305.2-11(H) Participation in Certain Political Killings - Section 616 of Public Law 105-277

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under Section 616 of Public Law 105-277.
- b. **Additional Information:** For additional information on Section 401 see [9 FAM 302.14-9](#).

9 FAM 305.3

WAIVERS FOR NONIMMIGRANT VISAS APPLICANTS

(CT:VISA-287; 02-17-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 305.3-1 WAIVERS FOR NONIMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON INADEQUATE DOCUMENTATION OR QUALIFICATION

9 FAM 305.3-1(A) Presumption of Immigrant Status - INA 214(b)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** There is no waiver available for INA 214(b).
- b. **Additional Information:** For additional information on INA 214(b), see [9 FAM 302.1-2](#).

9 FAM 305.3-1(B) Documentation Requirements for Immigrants - INA 212(a)(7)(A)

(CT:VISA-1; 11-18-2015)

- a. **Not Applicable:** INA 212(a)(7)(A) does not apply to nonimmigrant visa applicants.
- b. **Additional Information:** For additional information on INA 212(a)(7)(A), see [9 FAM 302.1-3](#).

9 FAM 305.3-1(C) Documentation Requirements for Nonimmigrants - INA 212(a)(7)(B)

(CT:VISA-1; 11-18-2015)

- a. **Waiver Available:** An INA 212(d)(4) waiver is available for nonimmigrant not in possession of a passport valid for six months, a nonimmigrant visa, or a border crossing card on the basis of:
 - (1) unforeseen emergency in individual cases;
 - (2) reciprocity to nationals of foreign contiguous territory or of adjacent islands

(and residents of those territories or islands having a common nationality with such nations).

- b. **Additional Information:** For additional information on INA 212(a)(7)(A), see [9 FAM 302.1-4](#).

9 FAM 305.3-1(D) Labor Certification Requirements - INA 212(a)(5)(A)

(CT:VISA-1; 11-18-2015)

- a. **Not Applicable:** INA 212(a)(5)(A) does not apply to nonimmigrant visa applicants.
- b. **Additional Information:** For additional information on INA 212(a)(5)(A), see [9 FAM 302.1-5](#).

9 FAM 305.3-1(E) Unqualified Physicians - INA 212(a)(5)(B)

(CT:VISA-1; 11-18-2015)

- a. **Not Applicable:** INA 212(a)(5)(B) does not apply to nonimmigrant visa applicants.
- b. **Additional Information:** For additional information on INA 212(a)(5)(B), see [9 FAM 302.1-6](#).

9 FAM 305.3-1(F) Uncertified Foreign Healthcare Workers - INA 212(a)(5)(C)

(CT:VISA-1; 11-18-2015)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrants inadmissibility under INA 212(a)(5)(C); discretion must be applied on a case-by-case basis in recommending a waiver.
- b. **Additional Information:** For additional information on INA 212(a)(5)(C), see [9 FAM 302.1-7](#).

9 FAM 305.3-1(G) Failure of Application to Comply with INA - INA 221(G)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available, but the inadmissibility may be overcome.
- b. **Additional Information:** For additional information on INA 221(g), see [9 FAM 302.1-8](#).

9 FAM 305.3-2 WAIVER FOR NONIMMIGRANT APPLICANTS INELIGIBLE BASED ON MEDICAL GROUNDS

9 FAM 305.3-2(A) Communicable Diseases - INA 212(a)(1)(A)(i)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(1)(A)(i).
- b. **Additional Information:** For additional information on INA 212(a)(1)(A)(i) see [9 FAM 302.2-5](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-2(B) Required Vaccinations - INA 212(a)(1)(A)(ii)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(1)(A)(ii).
- b. **Additional Information:** For additional information on INA 212(a)(1)(A)(ii) see [9 FAM 302.2-6](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-2(C) Disorder or Condition Posing a Threat to Property or Safety - INA 212(a)(1)(A)(iii)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(1)(A)(iii), subject to conditions that may be proposed by the Department of Health and Human Services (HHS), such as a requirements that a family member or medical escort accompany the applicant.
- b. **Additional Information:** For additional information on INA 212(a)(1)(A)(iii) see [9 FAM 302.2-7](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-2(D) Drug Abuse or Addiction - INA 212(a)(1)(A)(iv)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa

applicants inadmissible under INA 212(a)(1)(A)(iv) upon your recommendation to DHS/USCIS.

- b. **Additional Information:** For additional information on INA 212(a)(1)(A)(iv) see [9 FAM 302.2-8](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-3 WAIVER FOR NONIMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON CRIMINAL GROUNDS

9 FAM 305.3-3(A) Crimes of Moral Turpitude - INA 212(a)(2)(A)(i)(I)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** For those that fall under the exceptions to inadmissibility provide for in INA 212(a)(2)(A), an INA 212(d)(3)(A) waiver is available for nonimmigrant applicants. Factors in considering whether to recommend a waiver include the nature and date of the offense, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.
- b. **Additional Information:** For additional information on INA 212(a)(2)(A)(i)(I) see [9 FAM 302.3-2](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-3(B) Multiple Criminal Convictions - INA 212(a)(2)(B)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(2)(B). Factors in considering whether to recommend a waiver include the nature and date of the offense, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.
- b. **Additional Information:** For additional information on INA 212(a)(2)(B), see [9 FAM 302.3-4](#). For additional information on INA 212(d)(3)(A) waivers, see [9 FAM 305.4-3](#).

9 FAM 305.3-3(C) Prostitution and Commercialized Vice - INA 212(a)(2)(D)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(2)(D). Factors in considering whether to recommend a waiver include the nature and date of the offense, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.
- b. **Additional Information:** For additional information on INA 212(a)(2)(D) see [9 FAM 302.3-6](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-3(D) Criminal Activity Where Immunity Asserted - INA 212(a)(2)(E)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(2)(E). Factors in considering whether to recommend a waiver include the nature and date of the offense, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.
- b. **Additional Information:** For additional information on INA 212(a)(2)(E) see [9 FAM 302.3-7](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-3(E) Human Traffickers - INA 212(a)(2)(G)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(2)(G).
- b. **Additional Information:** For additional information on INA 212(a)(2)(G) see [9 FAM 302.3-8](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-3(F) Money Laundering - INA 212(a)(2)(I)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(2)(I).
- b. **Additional Information:** For additional information on INA 212(a)(2)(I) see [9 FAM 302.3-9](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-4 WAIVER FOR NONIMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON CONTROLLED

SUBSTANCE VIOLATIONS

9 FAM 305.3-4(A) Crimes involving Controlled Substance Violations - INA 212(a)(2)(A)(i)(II)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(2)(A)(i)(II). Factors in considering whether to recommend a waiver include the nature and date of the offense, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.
- b. **Additional Information:** For additional information on INA 212(a)(2)(A)(i)(II) see [9 FAM 302.4-2](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-4(B) Controlled Substance Trafficking - INA 212(a)(2)(C)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(2)(A)(2)(C). Factors in considering whether to recommend a waiver include the nature and date of the offense, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.
- b. **Additional Information:** For additional information on INA 212(a)(2)(C) see [9 FAM 302.4-3](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-5 WAIVER FOR NONIMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON NATIONALITY SECURITY GROUNDS

9 FAM 305.3-5(A) Intent to Commit Espionage or Sabotage - INA 212(a)(3)(A)(i)(I)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for nonimmigrant visa applicant inadmissible under INA 212(a)(3)(A)(i)(I), but inadmissibility applies only to current circumstances.
- b. **Additional Information:** For additional information on INA 212(a)(3)(A)(i)(I) see [9 FAM 302.5-2](#).

9 FAM 305.3-5(B) Intent to Violate Export Control Laws Related to Goods, Technology, or Sensitive Information - INA 212(a)(3)(A)(i)(II)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(3)(A)(i)(II), but inadmissibility applies only to current circumstances.
- b. **Additional Information:** For additional information on INA 212(a)(3)(A)(i)(II) see [9 FAM 302.5-3](#).

9 FAM 305.3-5(C) Intent to Commit an Unlawful Act in the U.S. - INA 212(a)(3)(A)(ii)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(3)(A)(ii), but inadmissibility applies only to current circumstances.
- b. **Additional Information:** For additional information on INA 212(a)(3)(A)(ii) see [9 FAM 302.5-4](#).

9 FAM 305.3-5(D) Intent to Overthrow the U.S. Government - INA 212(a)(3)(A)(iii)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(3)(A)(iii), but inadmissibility applies only to current circumstances.
- b. **Additional Information:** For additional information on INA 212(a)(3)(A)(iii) see [9 FAM 302.5-5](#).

9 FAM 305.3-5(E) Immigrant Membership in Totalitarian Party - INA 212(a)(3)(D)

(CT:VISA-1; 11-18-2015)

- a. **Grounds Not Applicable:** INA 212(a)(3)(D) applies only to immigrant visa applicants.
- b. **Additional Information:** For additional information on INA 212(a)(3)(D) see [9 FAM 302.5-6](#).

9 FAM 305.3-6 WAIVER FOR NONIMMIGRANT VISA

APPLICANTS INELIGIBLE BASED ON TERRORISM-RELATED GROUNDS

9 FAM 305.3-6(A) Terrorist Activities - INA 212(a)(3)(B)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(3)(B).
- b. **Additional Information:** For additional information on INA 212(a)(3)(B) see [9 FAM 302.6-2](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-6(B) Association with Terrorist Organization - INA 212(a)(3)(F)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(3)(F).
- b. **Additional Information:** For additional information on INA 212(a)(3)(F) see [9 FAM 302.6-3](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-7 WAIVER FOR NONIMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON HUMAN RIGHTS VIOLATIONS

9 FAM 305.3-7(A) Participation in Violations of Religious Freedom - INA 212(A)(2)(G)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(2)(G).
- b. **Additional Information:** For additional information on INA 212(a)(2)(G) see [9 FAM 302.7-3](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-7(B) Participation in Nazi Persecutions - INA 212(a)(3)(E)(i)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(3)(E)(i).
- b. **Additional Information:** For additional information on INA 212(a)(3)(E)(i) see [9 FAM 302.7-4](#).

9 FAM 305.3-7(C) Participation in Genocide - INA 212(a)(3)(E)(ii)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(3)(E)(ii).
- b. **Additional Information:** For additional information on INA 212(a)(3)(E)(ii) see [9 FAM 302.7-5](#).

9 FAM 305.3-7(D) Participation in Torture - INA 212(a)(3)(E)(iii)(I)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(3)(E)(iii) for participation in acts of torture.
- b. **Additional Information:** For additional information on INA 212(a)(3)(E)(iii) see [9 FAM 302.7-6](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-7(E) Participation in Extrajudicial Killings - INA 212(a)(3)(E)(iii)(II)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(3)(E)(iii) for participation in extrajudicial killing(s).
- b. **Additional Information:** For additional information on INA 212(a)(3)(E)(iii) see [9 FAM 302.7-7](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-7(F) Participation in the Use or Recruitment of Child Soldiers - INA 212(a)(3)(G)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(3)(G).

- b. **Additional Information:** For additional information on INA 212(a)(3)(G) see [9 FAM 302.7-8](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-7(G) Participation in Force or Coercive Abortion or Sterilization - 8 U.S.C. 1182e

(CT:VISA-1; 11-18-2015)

- a. **Waiver Available:** 8 U.S.C. 1182e may be waived if the Secretary of State determines that it is important to the national interest of the United States to do so and provides written notification to the appropriate congressional committees containing justification for the waiver.
- b. **Additional Information:** For additional information on 8 U.S.C. 1182e see [9 FAM 302.7-9](#).

9 FAM 305.3-7(H) Participation in Coercive Organ or Tissue Transplantation - 8 U.S.C. 1182f

(CT:VISA-1; 11-18-2015)

- a. **Waiver Available:** 8 U.S.C. 1182f may be waived if the Secretary of State determines that it is important to the national interest of the United States to do so, and no later than 30 days after the issuance of a visa, the Secretary provides written notification to the appropriate Congressional committee containing a justification for the waiver.
- b. **Additional Information:** For additional information on 8 U.S.C. 1182f see [9 FAM 302.7-10](#).

9 FAM 305.3-8 WAIVER FOR NONIMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON PUBLIC CHARGE GROUNDS - INA 212(a)(4)(A)

(CT:VISA-1; 11-18-2015)

- a. **No Waiver Available:** No waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(4)(A). Applicants may overcome the finding by presenting evidence to convince you that the inadmissibility no longer applies.
- b. **Additional Information:** For additional information on INA 212(a)(4)(A) see [9 FAM 302.8](#).

9 FAM 305.3-9 WAIVER FOR NONIMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON IMMIGRATION

VIOLATION-RELATED GROUNDS

9 FAM 305.3-9(A) Present Without Admission of Parole - INA 212(a)(6)(A)

(CT:VISA-1; 11-18-2015)

- a. **Not Applicable:** INA 212(a)(6)(A) does not apply at the time of nonimmigrant visa application.
- b. **Additional Information:** For additional information on INA 212(a)(6)(A) see [9 FAM 302.9-2](#).

9 FAM 305.3-9(B) Failure to Attend Removal Proceeding - INA 212(a)(6)(B)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrants inadmissible under INA 212(a)(6)(B).
- b. **Additional Information:** For additional information on INA 212(a)(6)(B) see [9 FAM 302.9-3](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-9(C) Misrepresentation - INA 212(a)(6)(C)(i)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrants inadmissible under INA 212(a)(6)(C)(i). Factors to be considered in deciding whether to recommend a waiver include the nature and date of the offence, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.
- b. **Additional Information:** For additional information on INA 212(a)(6)(C)(i) see [9 FAM 302.9-4](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-9(D) Falsely Claiming Citizenship - INA 212(a)(6)(C)(ii)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrants inadmissible under INA 212(a)(6)(C)(ii). Factors to be considered in deciding whether to recommend a waiver include the nature and date of the offence, possible rehabilitation of the alien's character, and the necessity for, or urgency of,

the alien's proposed trip to the United States.

- b. **Additional Information:** For additional information on INA 212(a)(6)(C)(ii) see [9 FAM 302.9-5](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-9(E) Stowaways - INA 212(a)(6)(D)

(CT:VISA-1; 11-18-2015)

- a. **Waiver Available:** INA 212(a)(6)(D) does not apply at the time of nonimmigrant visa application.
- b. **Additional Information:** For additional information on INA 212(a)(6)(D) see [9 FAM 302.9-6](#).

9 FAM 305.3-9(F) Smugglers - INA 212(a)(6)(E)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrants inadmissible under INA 212(a)(6)(E). Factors to be considered in deciding whether to recommend a waiver include the nature and date of the offence, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.
- b. **Additional Information:** For additional information on INA 212(a)(6)(E) see [9 FAM 302.9-7](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-9(G) Subject to Civil Penalty - INA 212(a)(6)(F)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrants inadmissible under INA 212(a)(6)(F). Factors to be considered in deciding whether to recommend a waiver include the nature and date of the offence, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.
- b. **Additional Information:** For additional information on INA 212(a)(6)(F) see [9 FAM 302.9-8](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-9(H) Student Visa Abusers - INA 212(a)(6)(G)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrants

inadmissible under INA 212(a)(6)(G). Factors to be considered in deciding whether to recommend a waiver include the nature and date of the offence, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.

- b. **Additional Information:** For additional information on INA 212(a)(6)(G) see [9 FAM 302.9-9](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-9(I) Aliens Subject to INA 222(g)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** INA 222(g) cannot be waived unless the Secretary of State finds extraordinary circumstances warrant a waiver.
- b. **Additional Information:** For additional information on INA 222(g) see [9 FAM 302.1-9](#).

9 FAM 305.3-9(J) Ineligible for Citizenship - INA 212(a)(8)(A)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** INA 212(a)(8)(A) does not apply to nonimmigrant visa applicants.
- b. **Additional Information:** For additional information on INA 212(a)(8)(A) see [9 FAM 302.10](#).

9 FAM 305.3-9(K) Aliens Who Departed or Remained Outside the United States to Avoid Military Service - INA 212(a)(8)(B)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrants inadmissible under INA 212(a)(8)(B). Factors to be considered in deciding whether to recommend a waiver include the nature and date of the offence, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.
- b. **Additional Information:** For additional information on INA 212(a)(8)(B) see [9 FAM 302.10-3](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-9(L) Individuals Previously Removed - INA 212(a)(9)(A)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrants inadmissible under INA 212(a)(9)(A). Factors to be considered in deciding whether to recommend a waiver include the nature and date of the offence, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.
- b. **Additional Information:** For additional information on INA 212(a)(9)(A) see [9 FAM 302.11-2](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-9(M) Individuals Unlawfully Present - INA 212(a)(9)(B)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrants inadmissible under INA 212(a)(9)(B). Factors to be considered in deciding whether to recommend a waiver include the nature and date of the offence, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.
- b. **Additional Information:** For additional information on INA 212(a)(9)(B) see [9 FAM 302.11-3](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-9(N) Individuals Unlawfully Present After Previous Immigration Violation - INA 212(a)(9)(C)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrants inadmissible under INA 212(a)(9)(C). Factors to be considered in deciding whether to recommend a waiver include the nature and date of the offence, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.
- b. **Additional Information:** For additional information on INA 212(a)(9)(C) see [9 FAM 302.11-4](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-10 WAIVER FOR NONIMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON OTHER GROUNDS

9 FAM 305.3-10(A) Practicing Polygamists - INA 212(a)(10)(A)

(CT:VISA-287; 02-17-2017)

- a. **Not Applicable:** INA 212(a)(10)(A) is not applicable to nonimmigrant visa applicants.
- b. **Additional Information:** For additional information on INA 212(a)(10)(A) see [9 FAM 302.12-2](#).

9 FAM 305.3-10(B) Guardian Required to Accompany Helpless Alien - INA 212(a)(10)(B)

(CT:VISA-287; 02-17-2017)

- a. **Not Applicable:** INA 212(a)(10)(B) does not apply at the time of visa application.
- b. **Additional Information:** For additional information on INA 212(a)(10)(B) see [9 FAM 302.12-3](#).

9 FAM 305.3-10(C) International Child Abduction - INA 212(a)(10)(C)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrants inadmissible under INA 212(a)(10)(C). Factors to be considered in deciding whether to recommend a waiver include the nature and date of the offence, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.
- b. **Additional Information:** For additional information on INA 212(a)(10)(C) see [9 FAM 302.12-4](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-10(D) Unlawful Voters - INA 212(a)(10)(D)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrants inadmissible under INA 212(a)(10)(D). Factors to be considered in deciding whether to recommend a waiver include the nature and date of the offence, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.
- b. **Additional Information:** For additional information on INA 212(a)(10)(D) see [9 FAM 302.12-5](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-10(E) Former Citizens Who Renounced Citizenship to Avoid Taxation - INA 212(a)(10)(E)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** An INA 212(d)(3)(A) waiver is available for nonimmigrants inadmissible under INA 212(a)(10)(E). Factors to be considered in deciding whether to recommend a waiver include the nature and date of the offence, possible rehabilitation of the alien's character, and the necessity for, or urgency of, the alien's proposed trip to the United States.
- b. **Additional Information:** For additional information on INA 212(a)(10)(E) see [9 FAM 302.12-6](#). For additional information on INA 212(d)(3)(A) waivers see [9 FAM 305.4-3](#).

9 FAM 305.3-10(F) Former Exchange Visitors - INA 212(e)

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** The foreign residence requirement of INA 212(e) maybe waiver by DHS upon recommendation from CA/VO/DO/W.
- b. **Additional Information:** For additional information on INA 212(e) see [9 FAM 302.13-2](#).

9 FAM 305.3-10(G) Unauthorized Disclosure of United States Confidential Business Information - Section 103 of Public Law 105-277

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for immigrant visa applicants inadmissible under Section 103 of Public Law 105-277.
- b. **Additional Information:** For additional information on Section 103 see [9 FAM 302.13-3](#).

9 FAM 305.3-10(H) Frivolous Asylum Applications - INA 208(d)(6)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for nonimmigrant visa applicants inadmissible under INA 208(d)(6).
- b. **Additional Information:** For additional information on INA 208(d)(6) see [9 FAM 302.13-4](#).

9 FAM 305.3-10(I) Waivers of Rights, Privileges, Exemptions, and Immunities - INA 214(b) and INA 247(b)

(CT:VISA-287; 02-17-2017)

- a. **Not Applicable:** This inadmissibility does not apply to nonimmigrant visa

applicants.

- b. **Additional Information:** For additional information on Section 103 see [9 FAM 302.13-5](#).

9 FAM 305.3-11 WAIVER FOR NONIMMIGRANT VISA APPLICANTS INELIGIBLE BASED ON SANCTIONS ACTIVITIES

9 FAM 305.3-11(A) Adverse Foreign Policy Consequences - INA 212(a)(3)(C)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** No waiver is available for nonimmigrant visa applicants inadmissible under INA 212(a)(3)(C), but inadmissibility applies only to current circumstances.
- b. **Additional Information:** For additional information on INA 212(a)(3)(C) see [9 FAM 302.14-2](#).

9 FAM 305.3-11(B) Suspension of Entry by the President - INA 212(f)

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for nonimmigrant visa applicants inadmissible under INA 212(f).
- b. **Additional Information:** For additional information on Section 401 see [9 FAM 302.14-3](#).

9 FAM 305.3-11(C) Individuals Who Aided and Abetted Colombian Insurgent and Paramilitary Groups - Section 3205 of Public Law 106-246

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** Section 3205 can be waived:
- (1) If the Secretary finds, on a case-by-case basis, that the entry into the United States of a person who would otherwise be inadmissible under this section is necessary for medical reasons;
 - (2) To permit the prosecution of such person in the United States or when the person has cooperated fully with the investigation of crimes committed by individuals associated with the Revolutionary Armed Forces in Colombia (FARC), the National Liberation Army (ELN), or the United Colombian Self

Defense Organization (AUC); or

(3) The President determines that the waiver is in the national interest.

- b. **Additional Information:** For additional information on Section 3205 see [9 FAM 302.14-4](#).

9 FAM 305.3-11(D) Individuals Involved in Confiscation of Property of a U.S. National - Section 401 of Public Law 104-114

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** Section 401 may be waived where the Secretary finds, on a case-by-case basis, that entry into the United States of the person who would otherwise be inadmissible is necessary for medical reasons or for litigation purposes of an action under Title III of Public Law 104-114.
- b. **Additional Information:** For additional information on Section 401, see [9 FAM 302.14-5](#).

9 FAM 305.3-11(E) Visa Sanctions

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for nonimmigrant visa applicants inadmissible under visa sanctions.
- b. **Additional Information:** For additional information on Section 401 see [9 FAM 302.14-6](#).

9 FAM 305.3-11(F) Iran Threat Reduction and Syria Human Rights Act - Section 501 of Public Law 112-158

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for nonimmigrant visa applicants inadmissible under Section 501 of Public Law 112-158.
- b. **Additional Information:** For additional information on Section 501 see [9 FAM 302.14-7](#).

9 FAM 305.3-11(G) Sergei Magnitsky Rule of Law Accountability Act of 2012 - Section 405 of Public Law 112-208

(CT:VISA-287; 02-17-2017)

- a. **Waiver Available:** The Secretary may authorize a waiver to meet U.S. obligations under the U.N. Headquarters Agreement or other international obligations, or in cases in the national security interests of the United States

- b. **Additional Information:** For additional information on Section 405 see [9 FAM 302.14-8](#).

9 FAM 305.3-11(H) Participation in Certain Political Killings - Section 616 of Public Law 105-277

(CT:VISA-287; 02-17-2017)

- a. **No Waiver Available:** There is no waiver available for nonimmigrant visa applicants inadmissible under Section 616 of Public Law 105-277.
- b. **Additional Information:** For additional information on Section 616 see [9 FAM 302.14-9](#).

9 FAM 305.4

(U) PROCESSING WAIVERS

(CT:VISA-339; 04-13-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 305.4-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 305.4-1(A) (U) Immigration and Nationality Act

(CT:VISA-31; 12-30-2015)

(U) INA 212(a) (8 U.S.C. 1182(a)); INA 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)); INA 212 (h) and (i) (8 U.S.C. 1182(h) and (i)); INA 214(b) (8 U.S.C. 1184(b)).

9 FAM 305.4-1(B) (U) Code of Federal Regulations

(CT:VISA-31; 12-30-2015)

(U) 22 CFR 40.301.

9 FAM 305.4-2 (U) PROCESSING INA 212(D)(1) WAIVERS

(CT:VISA-31; 12-30-2015)

(U) [Reserved.]

9 FAM 305.4-3 (U) PROCESSING INA 212(D)(3)(A) WAIVERS

9 FAM 305.4-3(A) (U) Department's INA 212(d)(3)(A) Waiver Authority

(CT:VISA-31; 12-30-2015)

(U) The Congress, in enacting INA 212(d)(3)(A), conferred upon the Secretary of State and consular officers the important discretionary function of recommending waivers for nonimmigrant visa (NIV) ineligibilities to the Department of Homeland Security (DHS) for approval. You should not hesitate to exercise this authority when the alien is entitled to seek waiver relief and is otherwise qualified for a visa, and when

the granting of a waiver is not contrary to U.S. interests. The proper use of this authority should serve to further our immigration policy supporting freedom of travel, exchange of ideas, and humanitarian considerations, while at the same time ensuring, through appropriate screening, that our national welfare and security are being safeguarded.

9 FAM 305.4-3(B) (U) Criteria for Waiver Recommendation

(CT:VISA-82; 03-04-2016)

(U) The following conditions must be met before an INA 212(d)(3)(A) waiver can be recommended or granted:

- (1) **(U)** The applicant is not inadmissible under INA 214(b);
- (2) **(U)** The applicant is not inadmissible under INA 212(a)(3)(A)(i)(I), INA 212(a)(3)(A)(ii), INA 212(a)(3)(A)(iii), INA 212(a)(3)(C), INA 212(a)(3)(E)(i), or INA 212(a)(3)(E)(ii);
- (3) **(U)** **The applicant is not seeking a waiver of nonimmigrant documentary requirements** of INA 212(a)(7)(B), which may only be waived under the provisions of INA 212(d)(4). (See [9 FAM 201.1](#).); and
- (4) **(U)** The applicant is, otherwise, qualified for the nonimmigrant visa (NIV) he or she is seeking.

9 FAM 305.4-3(C) (U) Factors to Consider When Recommending a Waiver

(CT:VISA-339; 04-13-2017)

- a. **(U)** You may recommend an INA 212(d)(3)(A) waiver for any nonimmigrant whose case meets the criteria of [9 FAM 305.4-3\(B\)](#) above and whose presence would not be harmful to U.S. interests. Eligibility for a waiver is not conditioned on having some qualifying family relationship, or the passage of a specific amount of time since the commission of the offense, or any other special statutory threshold requirement. The law does not require that such action be limited to humanitarian or other exceptional cases. While the exercise of discretion and good judgment is essential, you may recommend waivers for any legitimate purpose such as family visits, medical treatment (whether or not available abroad), business conferences, tourism, etc.
- b. **(U)** You should consider the following factors, among others, when deciding whether to recommend a waiver:
 - (1) **(U)** The recency and seriousness of the activity or condition causing the alien's inadmissibility;
 - (2) **(U)** The reasons for the proposed travel to the United States; and
 - (3) **(U)** The positive or negative effect, if any, of the planned travel on U.S. public

interests.

- (4) **(U)** *Whether there is a single, isolated incident or a pattern of misconduct; and*
- (5) **(U)** *Evidence of reformation or rehabilitation.*

- c. **(U)** Explain your *complete* reasoning for recommending a waiver in the comments section of ARIS, including identifying any factors that lead you to conclude the applicant has been rehabilitated and unlikely to repeat actions that led to the ineligibility *as only the reasons expressed will be considered by ARO*.

9 FAM 305.4-3(D) (U) Consistency in Requesting a Waiver

(CT:VISA-339; 04-13-2017)

(U) You must maintain consistency in your waiver recommendations. If another consular officer requested a waiver for a particular applicant in the past, you should do so for future applications, unless there is new derogatory information, a material change in the purpose of their trip, or some other material change in circumstances relevant to the factors to be considered under INA 212(d)(3)(A). *Although you must maintain consistency in recommendations it does not guarantee that ARO will approve subsequent waivers.*

9 FAM 305.4-3(E) (U) Referral of Waiver Recommendations

9 FAM 305.4-3(E)(1) (U) When to Submit Applications to Department of Homeland Security (DHS) / Customs and Border Protection (CBP)

(CT:VISA-82; 03-04-2016)

- a. **(U)** With the exception of those cases described in [9 FAM 305.4-3\(E\)\(2\)](#) below, and cases involving K and V nonimmigrants, you must submit INA 212(d)(3)(A) waiver recommendations to CBP Admissibility Review Office (ARO) via ARIS.
- b. **(U)** If you do not believe that the alien should be admitted temporarily despite the ground of inadmissibility (if you do not want to recommend a waiver), do not submit an ARIS waiver recommendation to ARO. CBP/ARO requires a positive recommendation from State (normally the consular officer) in order to take action on a waiver request, but the Visa Office can also make the recommendation (see [9 FAM 305.4-3\(E\)\(2\)](#)). However, you are generally in a better position to adjudicate waiver requests since you have direct access to the applicant and are more familiar with the case than the Department.

9 FAM 305.4-3(E)(2) (U) When to Submit Applications to the Department for Review

(CT:VISA-82; 03-04-2016)

a. Unavailable

- b. **(U)** You may not refuse an alien's request to submit the waiver request to the Department. You, however, may submit a recommendation to the Department against such waiver along with the reasons for your objection to the waiver.
- c. **(U)** You cannot submit a waiver request to DHS if you are required to submit the waiver to the Department.
- d. **(U)** You must refer the following categories of cases to the Department where you do not recommend a waiver be granted, but ask for the Department's determination of whether a request for a waiver of inadmissibility should be sent to CBP/ARO:
- (1) **(U)** Any case in which you have doubts as to whether an INA 212(d)(3)(A) waiver recommendation is warranted, or know or believe the Department has pertinent information not available to you;
 - (2) **(U)** Any case, regardless of the ground of inadmissibility, in which the alien or the alien's representative (e.g., family member, attorney) requests that a waiver be considered, even if you believe the waiver is not warranted;
 - (3) **Unavailable**
 - (4) **(U)** Any case in which the Department previously declined to recommend, or the Attorney General or Secretary of Homeland Security, to grant, an INA 212(d)(3)(A) waiver to an alien;
 - (5) **(U)** Any case in which the alien's presence or activities in the United States might become a matter of public interest or of foreign relations significance.

e. Unavailable

- f. **(U)** As a reminder, you should report fraud or any other criminal immigration violation to the responsible Immigration and Customs Enforcement (ICE) Attaché, through the appropriate channels. If you have an ineligible K or V nonimmigrant visa applicant, instruct the applicant to file Form I-601, Application for Waiver of Grounds of Inadmissibility, with United States Citizenship and Immigration Services (USCIS). (See [9 FAM 303.3-5\(B\)](#).)

9 FAM 305.4-3(F) (U) Expedite Requests

(CT:VISA-339; 04-13-2017)

- a. **(U)** Expedite requests must be reserved for cases with urgent humanitarian need for travel, such as medical treatment or a death in the applicant's family and cases where there is clear and significant U.S. government interest. The expedite request should include specific dates (of meetings, funerals, etc.) whenever possible. ARO will not expedite cases in which applicants fail to apply well in advance of their intended travel dates. Contact CA/VO/F for assistance and advice on potential expedite requests.

- b. **(U)** ARO prefers that posts contact the ARO via the VO/F officer with the waivers portfolio if post needs a case expedited after it has been submitted. Please refer to the Visa Office Who's Who page for the appropriate officer.

9 FAM 305.4-3(G) (U) Waiver Validity Requests

9 FAM 305.4-3(G)(1) (U) In General

(CT:VISA-339; 04-13-2017)

- a. **(U)** If you determine that an alien meets the criteria for a waiver as set forth above, you may recommend a waiver valid for multiple applications for admission for a period of five years; i.e., 60 months. Generally, CBP/ARO will grant a 60 month, multiple entry waiver to first time waiver recipients, with exceptions. Note that 60 months, multiple entries is the maximum waiver validity that ARO can grant by regulation. [Exception: The maximum waiver validity that ARO can grant for a C1/D visa is 24 months.] *You must manually limit the validity of the visa to the validity of the waiver.*
- b. **Unavailable**

9 FAM 305.4-3(G)(2) (U) Cases with Number of Entries and/or Period of Validity Authorized by Waiver Exceeds Reciprocity

(CT:VISA-339; 04-13-2017)

(U) If DHS grants a waiver for more entries or a longer period than the appropriate visa reciprocity schedule specifies:

- (1) (U) Issue the visa for not more than the number of entries and validity period listed in the reciprocity schedule (For example, if DHS grants a waiver for multiple entries for a six-month period and the reciprocity schedule calls for one entry of three months, issue the visa for one entry, three months).*
- (2) (U) You may not use the remaining period of time authorized under the terms of the approved waiver to issue a new visa. An approved waiver is inseparable from the underlying NIV application and is not transferrable to another NIV application under any circumstances. (For example, an applicant for a temporary worker visa that receives a waiver approved for multiple entries spanning a 60 month period who is only issued a 12 month visa due to the reciprocity schedule/petition validity cannot be issued another visa based on the approved waiver under the assumption that the waiver remains valid for 48 more months. Contact the CA/VO/F officer for assistance and advice on matters regarding waiver validity.*

9 FAM 305.4-3(G)(3) (U) Aliens Not Eligible for Multiple Entry Waiver Recommendations

(CT:VISA-31; 12-30-2015)

(U) A recommendation for waiver of inadmissibility valid for multiple applications for admission is not available to an alien who:

- (1) **(U)** Has a mental or physical disorder;
- (2) **(U)** Is a narcotic drug addict or a narcotic trafficker;
- (3) **(U)** Is afflicted with a communicable disease;
- (4) **(U)** Was convicted for committing a serious crime involving moral turpitude such as arson, assault with a dangerous weapon, housebreaking, incest, rape, or voluntary manslaughter and has not been rehabilitated and integrated into society for at least five years since the date of conviction or release from confinement, whichever is later in time; or
- (5) **(U)** Has engaged in prostitution or has procured or attempted to procure or import prostitutes or has received proceeds of prostitution within 10 years immediately preceding the visa application.

9 FAM 305.4-3(H) (U) Submitting Waiver Recommendations

(CT:VISA-339; 04-13-2017)

(U) To submit INA 212(d)(3)(A)(i) waiver recommendations , you must use the Admissibility Review Information Service (ARIS) *review form, available through the NIV applicant information screen*. Consular officers and managers may both initiate and submit new waiver requests as well as update and submit waiver requests with a status of Pending Manager Approval. *Locally Engaged staff with the Senior FSN Role* may only initiate cases before sending them to an officer for approval.

- (1) **(U)** From the NIV Applicant Clearance window, users can click the "ARIS Waiver Request" button *located at the bottom of the window, which will retrieve* the ARIS Waiver request form . *Once the form is completed, users will open the action drop-down list to submit the request.*
- (2) **(U) *Before creating an ARIS waiver request, the applicant must be refused.*** You must refuse the applicant under all grounds of ineligibility that apply in the NIV system, and not simply 221(g) the case while the waiver request is pending. (3) **(U)** You must scan all supporting documents into the NIV case. Depending on the ineligibility, this may include police/court records, OF-194, panel physician evaluation, copy of an approved petition, etc. Any document in a foreign language must be accompanied by an English translation. Clearly label supporting documents scanned into NIV, or identify them in the case notes. If records no longer exist because of time elapsed, posts must explicitly state so in the comments section of ARIS.
- (4) **(U)** The ARO will review the waiver recommendation and submit the response to post through the CCD.
- (5) **(U) *For more information on processing the ARIS request, see Chapter 19 of the NIV User Manual.***

- (6) **(U)** Since August 15, 2016, CBP's Admissibility Review Office (ARO) stopped issuing A file numbers (A#'s) for Admissibility Review Information Service (ARIS) waiver and Consent to Reapply (CTR) applicants. Accordingly, the existing 'Alien File Number' field on the ARIS screen will be left blank when ARO completes a waiver decision. No further action is needed from posts and there is no need to manually enter the Fingerprint Identification Number (FIN ID).

9 FAM 305.4-3(I) (U) Monitoring Submitted Waiver Recommendations

(CT:VISA-339; 04-13-2017)

(U) Response times for ARIS waivers average 120 days. Posts can check on the status of a waiver request through the NIV ARIS Request window and the NIV Clearance window. ARO uses the ARIS waiver request form to communicate with post so monitor the responses in order to help facilitate the processing of the case to conclusion. Email alerts can be setup to notify you when post receives a response to an ARIS waiver using the ARIS menu within CCD:

- (1) **(U)** Select the "Admissibility Review Information Service" option in CCD.
- (2) **(U)** Select "ARIS Email Maintenance", and enter the email address of those that you would like to receive notifications when a response for an ARIS waiver is received.

9 FAM 305.4-3(J) (U) Name Check Requirements

(CT:VISA-339; 04-13-2017)

(U) See reciprocity schedule for individual countries.

9 FAM 305.4-3(K) (U) Annotations for INA 212(d)(3)(A) Cases

(CT:VISA-339; 04-13-2017)

(U) You must comply with all "Conditions of Waiver" noted by ARO in ARIS after an approved waiver decision is returned to post. Visas with approved waivers must be annotated with the "Grounds for waiver" information as it appears in ARIS (generally "212(d)(3)(A): [insert ineligibility waived]").

9 FAM 305.4-3(L) (U) When Processing Waivers for Government Grantees

(CT:VISA-339; 04-13-2017)

Unavailable

9 FAM 305.4-3(M) (U) INA 212(d)(3)(A) Waiver of Medical Ineligibilities

(CT:VISA-339; 04-13-2017)

(U) For information regarding an INA 212(d)(3)(A) waiver of a medical ground of ineligibility for an alien proceeding to the United States to undergo medical treatment, see [9 FAM 302.2-5\(D\)\(2\)](#), 302.2-6(D)(2), 302.2-7(D)(2) and 302.2-8(D)(2).

9 FAM 305.4-3(N) (U) Special Processing for Certain Waivers Requested by U.S. Law Enforcement Agencies

(CT:VISA-339; 04-13-2017)

(U) Certain INA 212(d)(3)(A) waivers requested at the initiative of interested U.S. Government agencies for law enforcement purposes require special handling and should be processed in accordance with the guidance provided in [9 FAM 701.2](#), Appendix A.

9 FAM 305.4-3(O) (U) Posting of Bonds in Certain Cases

(CT:VISA-339; 04-13-2017)

(U) Whenever the posting of a departure bond is required by DHS in connection with INA 212(d)(3)(A) action, the bond is to be posted at the time the alien applies for admission into the United States; you should not require evidence that the bond has been filed as a condition of visa issuance.

9 FAM 305.4-4 (U) PROCESSING CONSENT TO REAPPLY THROUGH ARIS AND FILING I-212, FILING I-192S AND COMMUNICATING WITH CBP, ARO

9 FAM 305.4-4(A) (U) In General

(CT:VISA-339; 04-13-2017)

(U) *An applicant who is ineligible under INA Sections 212(a)(9)(A)(i) ("9A1"), 212(a)(9)(A)(ii) ("9A2"), or 212(a)(9)(C) ("9CP") will be ineligible unless the Attorney General or the Secretary of Homeland Security consents to the applicant reapplying for admission to the United States. The ARO is the office in the Department of Homeland Security with the authority to adjudicate waiver recommendations for nonimmigrant applicants and Form I-212, Application for Permission to Re-apply for Admission Into the United States After Deportation or Removal (known as "Consent to Reapply" or "CTR").*

9 FAM 305.4-4(B) (U) Requesting Consent to Reapply ("CTR") and Filing an Form I-212 with CBP

(CT:VISA-339; 04-13-2017)

- a. **(U)** Applicants who have been ordered removed will be ineligible for a visa under INA 212(a)(9)(A) unless CTR has been granted by CBP. See [9 FAM 302.11-2](#) for more information about this refusal ground. Nonimmigrant visa applicants refused under 9A may obtain CTR through an ARIS waiver after receiving a favorable recommendation from the Department or a consular officer pursuant [9 FAM 305.4-3\(E\)](#). Once CBP approves the waiver recommendation through ARIS, CTR is granted. When considering whether to recommend a waiver for an applicant who is ineligible for a prior removal, you should bear in mind that once CTR is granted, INA 212(a)(9)(A) will no longer apply and the applicant will never again need a waiver for that ineligibility ground.
- b. **(U)** CTR requests for applicants refused under INA 212(a)(9)(A) of the INA differ from applicants refused under INA 212(a)(9)(C) ("9CP"). NIV applicants are only required to file the Form I-212 for CTR if they are refused under 9CP and seeking permanent relief:
 - (1) **(U)** NIV applicants refused under 212(A)(9)(C)(i)(I) ("9C1") may file the I-212 application 10 years after the ineligibility incurred if they are seeking permanent relief. NIV applicants refused under 9C1 who seek to reenter the United States before the 10 years have elapsed from when the ineligibility was incurred may seek temporary relief if the consular officer or the Department recommends an ARIS waiver. These applicants will need to apply for a waiver until granted permanent relief.
 - (2) **(U)** NIV applicants refused under 212(A)(9)(C)(i)(II) ("9C2") may not seek temporary relief through an ARIS waiver recommendation and must file the Form I-212 application 10 years after the alien's last departure from the United States with CBP for permanent relief.
- c. **(U)** NIV Applicants, not Post, must submit the Form I-212 application to CBP/ARO using the instructions found at [CBP.gov](#). If CBP/ARO approves an Form I-212 a 9C lookout is entered into TECS which will also replicate to CLASS to inform Post of ARO's adjudication of the application. The applicant should also receive Form I-272 indicating CBP's decision. Once Post receives notification that CTR is approved post may process case to conclusion.

9 FAM 305.4-4(C) (U) Processing Form I-192s

(CT:VISA-339; 04-13-2017)

- a. **(U)** A Form I-192 is an Application for Advance Permission to Enter as a Nonimmigrant and is used for applicants who are:
 - (1) **(U)** Inadmissible nonimmigrant(s) already in possession of appropriate travel documents.

- (2) **(U)** Applying for T nonimmigrant status; or applicants for U nonimmigrant status.
- b. **(U)** Only ARO has the authority to adjudicate I-192 applications.
- (U)** Exception: USCIS has jurisdiction over I-192 applications for individuals filing for T or U NIV classifications.
- c. **(U)** Processing times for I-192 applications is comparable to ARIS waiver processing times. Individuals submitting I-192 applications may do so only at a designated POE (e.g., northern border and Canadian preclearance locations). The POE generally makes appointments for the submission of this application so when a person submits an I-192 application he or she is not technically an applicant for admission and would not typically be admitted at this time. There is no expedite process in place for I-192 applicants.
- d. **(U)** Applicants seeking guidance on I-192 processing should contact CBP directly.

9 FAM 305.4-4(D) (U) Communicating with ARO

(CT:VISA-339; 04-13-2017)

- a. (U) ARO prefers that posts contact the ARO via the VO/F officer with the NIV waiver portfolio/ ARO Liaison. Please refer to the Visa Office Who's Who page for the appropriate officer.
- b. (U) Additionally, Post may communicate with ARO using the Comments section of the ARIS waiver request form. This method is usually appropriate for "Information Required" requests received from ARO. If a response is not received, then contact ARO Liaison.

9 FAM 305.4-5 (U) PROCESSING 212(E) WAIVERS

(CT:VISA-339; 04-13-2017)

(U) See [9 FAM 302.13-2\(B\)\(1\)](#).

9 FAM 305.4-6 (U) PROCESSING 212(G) WAIVERS

(CT:VISA-339; 04-13-2017)

(U) See [9 FAM 302.2-5\(D\)](#).

9 FAM 305.4-6(A) (U) Waiver Application And Interview for Immigrant Visa Applications

(CT:VISA-339; 04-13-2017)

- a. **(U)** When you refuse an immigrant visa to an applicant who is eligible to apply for the benefits of a waiver under INA 212(a)(9)(B)(v), (g), (h), or (i), you should record notes that clearly and thoroughly document the factual findings that support

each element of the inadmissibility or ineligibility so that U.S. Citizenship and Immigration Services (USCIS) will be able to have a clear understanding of why you found the applicant inadmissible and ineligible for the immigrant visa. This information will assist USCIS in adjudicating Form I-601, Application for Waiver of Grounds of Inadmissibility. Unlike an NIV application, a consular officer does not recommend a waiver to DHS.

- b. **(U)** If you determine that the ineligibility grounds associated with an individual can likely be waived, you should instruct the applicant that he/she may benefit from an I-601 waiver. If the applicant is interested, you should refer the individual to the USCIS webpage with instructions on completing the Form I-601, Application for Waiver of Grounds of Inadmissibility (and, if necessary, Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal), and file it with USCIS per the instructions on the website. The applicant will send all supporting documents, including evidence of extreme hardship to a qualifying U.S. citizen or lawful permanent resident family member, directly to USCIS.
- c. **(U)** Post should then wait for notification of waiver approval or denial from USCIS before taking further action on a case.

9 FAM 305.4-6(B) (U) When USCIS Permission To Reapply After Deportation Or Removal Needed

(CT:VISA-339; 04-13-2017)

(U) An alien who has been ordered removed under INA 235(b)(1) or at the end of proceedings under INA 240 initiated upon the alien's arrival in the United States, and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal, or at any time in the case of an alien convicted of an aggravated felony), is inadmissible. If the individual is filing a Form I-601 for one or more ineligibilities, the individual must file the Form I-212 concurrently with USCIS according to the form instructions located on the USCIS Web site. If the individual only requires a Form I-212, the applicant should file with the appropriate domestic USCIS Field Office according to the form instructions located on the USCIS website.

9 FAM 305.4-6(C) (U) Filing Form I-601 Or I-212 Filing With USCIS

(CT:VISA-339; 04-13-2017)

- a. **(U)** An alien seeking a waiver under INA 212(a)(9)(B)(v), (g), (h), or (i) files Form I-601, Application for Waiver of Grounds of Inadmissibility with USCIS. As of May 2015, IV, K and V applicants will be required to mail their I-601 and any supporting documentation to the USCIS Phoenix Lockbox address noted below. You should advise an alien to consult the USCIS website for the most current filing information for the Form I-601 *to the USCIS Phoenix Lockbox.*

(U) By U.S. Postal Service:

USCIS

P.O. Box 21600

Phoenix, AZ, 85036

(U) By Express mail or Courier deliveries:

USCIS

ATTN: 601/212 Foreign Filers

1820 E. Skyharbor, Circle S, Suite 100

Phoenix, AZ, 85034

- b. **(U)** IV applicants requiring consent to reapply for admission must file their Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, according to the form's instructions. The Form I-212 instructions also specify where the alien should submit the Form I-212, if the alien also needs to file Form I-601. You should advise the alien to consult the USCIS website for the most current information about filing Form I-212, either alone or together with a Form I-601.
- c. **(U)** After filing Form I-601 or Form I-212, application is adjudicated at the USCIS Nebraska Service Center (NSC), applicants will be able to view their case status online by searching the USCIS receipt number (which is located on the receipt notice) in the "Case Status" field on the USCIS homepage (uscis.gov). Applicants can also call the USCIS National Customer Service Center to request the status of their case. Contact information for USCIS is available at www.uscis.gov/contact.
- d. **(U)** An alien seeking a waiver of inadmissibility relating to accrual of unlawful presence under INA 212(a)(9)(B)(v) may be eligible to apply for a provisional unlawful presence waiver before leaving the United States to attend an immigrant visa interview. Aliens seeking a provisional unlawful presence waiver while in the United States should file a Form I-601A, Application for Provisional Unlawful Presence Waiver.

9 FAM 305.4-6(D) (U) Resolving Discrepancies with USCIS

(CT:VISA-339; 04-13-2017)

a. **Unavailable**

b. **Unavailable**

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

- c. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**

d. **Unavailable**

9 FAM 305.4-6(E) (U) Notification Of Waiver Decisions *by USCIS*

(CT:VISA-339; 04-13-2017)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**

- d. **Unavailable**

- e. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
- f. **Unavailable**
- g. **Unavailable**
- h. **Unavailable**
- i. **Unavailable**
- j. **Unavailable**

9 FAM 306 OVERCOMES

9 FAM 306.1

STATUTORY AND REGULATORY AUTHORITIES

(CT:VISA-1; 11-18-2015)
(Office of Origin: CA/VO/L/R)

9 FAM 306.1-1 IMMIGRATION AND NATIONALITY ACT

(CT:VISA-1; 11-18-2015)

See INA 212(b) (8 U.S.C. 1182(b)); INA 214(b) (8 U.S.C. 1184(b)); INA 221(g) (8 U.S.C. 1201(g)); INA 291 (8 U.S.C. 1361).

9 FAM 306.1-2 CODE OF FEDERAL REGULATIONS

(CT:VISA-1; 11-18-2015)

22 CFR 40.6; 22 CFR 41.121; 22 CFR 42.81.

9 FAM 306.2

(U) OVERCOMING A REFUSAL

(CT:VISA-276; 01-05-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 306.2-1 (U) OVERVIEW

(CT:VISA-63; 02-26-2016)

(U) INA 291 places the burden of proof upon the applicant to establish eligibility to receive a visa. However, the applicant is entitled to have full consideration given to any evidence presented to overcome a presumption or finding of ineligibility. It is the policy of the U.S. Government to give the applicant every reasonable opportunity to establish eligibility to receive a visa. This policy is the basis for the review of refusals at consular offices and by the Department. With regard to cases involving classified information, the cooperation accorded the applicant must be consistent with security considerations, within the reasonable, non-arbitrary, exercise of discretion in the subjective judgments required under INA 214(b) and 221(g).

9 FAM 306.2-2 (U) JUSTIFICATIONS FOR OVERCOMES

9 FAM 306.2-2(A) (U) When a Refusal May Be Overcome

(CT:VISA-276; 01-05-2017)

- a. **(U) 221(g) Cases:** You should find that an applicant has overcome an immigrant visa (IV) or nonimmigrant visa (NIV) refusal under INA 221(g) in two instances: when additional evidence is presented or administrative processing is completed.
- (1) **(U) Additional Evidence:** When the applicant has presented additional evidence, allowing you to re-open and re-adjudicate the case. Examples include:
 - (a) **(U)** An IV applicant missing a birth certificate, for instance, should be refused INA 221(g) pending that certificate (see [9 FAM 403.10-3\(A\)](#) for guidance on INA 221(g) refusals). When the applicant returns with the document, you should overcome the previous refusal, allowing the case to be adjudicated.
 - (b) **(U)** Similarly, if an applicant refused *INA 221(g) because you decided that you do not have enough information to make a finding of whether the applicant is ineligible under* INA 212(a)(4) subsequently presents sufficient evidence to *make a determination relating to* the public charge

inadmissibility *ground*, you should overcome the *INA 221(g)* refusal and process the case to completion. [9 FAM 302.8-2\(B\)\(11\)](#) provides guidance on when to use INA 221(g) and when INA 212(a)(4) would be more appropriate in these circumstances.

NOTE: 22 CFR 42.81(e) "limits the period of review of an IV refusal to one year from the date of refusal."

(2) **(U) Administrative Processing:**

(a) **(U)** INA 221(g) *refusals entered for administrative processing may be overcome once you can determine administrative processing is completed and you receive any required advisory opinion or other needed information.*

(b) **Unavailable**

b. **(U) 214(b) Cases:**

(1) **(U) In general:** Most INA 214(b) cases are refused because the applicant has not convinced the officer of his or her intent to return abroad after his or her stay in the United States, as required under INA 101(a)(15)(B) (see [9 FAM 402.2-2\(C\)](#) and [9 FAM 302.1-2](#)). *Except in unusual cases, as described in [9 FAM 403.10-3\(D\)](#), below, these refusals should not be overcome. Instead, you should suggest the applicant reapply when relevant circumstances have changed. If you believe you have an unusual case in which an INA 214(b) refusal was erroneous and should be overcome, you should discuss it with your supervisor.*

(2) **(U) Refusal in error:** Overcome/Waive (O/W) may be appropriate for INA 214(b) cases when a supervisor *determines* the INA 214(b) refusal *clearly* was in error; for example, if *the supervisor determines* the *adjudicating consular officer incorrectly found the* applicant *did not* fit the standards of the particular NIV classification for which he or she had applied (see [9 FAM 302.1-2\(B\)\(4\)](#)) *or the supervisor determines, following a re-interview in-person or by telephone, that the applicant's circumstances overcome the INA 214(b) presumption of immigrant intent, based on local conditions and any written adjudication standards established by the manager.* If a supervisor *intends to overcome a denial in* such a case, he or she should discuss it with the refusing officer and take personal responsibility for the case *and complete adjudication following the re-interview.*

c. **(U) Documenting Overcome/Waive:** *All Overcome/Waive decisions must be supported by clear case notes explaining the error or additional information that resulted in the Overcome/Waive.*

9 FAM 306.2-2(B) (U) Change of Circumstances

9 FAM 306.2-2(B)(1) (U) 214(b) Refusals

(CT:VISA-63; 02-26-2016)

(U) Most refusals of NIVs are made under INA 214(b) which requires that every visa applicant is presumed to be an immigrant until he or she establishes entitlement to nonimmigrant status under INA 101(a)(15) at the time of application for a visa. There is no waiver of this ground of ineligibility, nor are there any provisions under INA 214(b) for permanent refusals. The determination that the alien is not a nonimmigrant can be made only on the basis of the facts existing at the time of a specific visa application. The fact that a visa applicant was unable to establish nonimmigrant status at one time would not preclude such applicant from subsequently qualifying for a visa by showing a change in circumstances.

9 FAM 306.2-2(B)(2) (U) Overcoming a Refusal Based on a DHS Finding

(CT:VISA-63; 02-26-2016)

(U) If you refuse an application based on a definitive DHS lookout entry and DHS subsequently determines that the finding was erroneous and deletes its entry, then you may process the case to conclusion. You should send in a Visas CLOK cable requesting deletion of any post-originated CLASS entry which may have been made as a result of the DHS entry. If, notwithstanding the DHS removal of the entry, you believe that the facts on which the DHS entry were based justify a finding of inadmissibility, you should refer the case to the Department for an advisory opinion (AO).

9 FAM 306.2-2(C) (U) Never Delete a Case *That Meets the Definition of "Making a Visa Application"* or a Refusal

(CT:VISA-276; 01-05-2017)

(U) In no case should you delete a case *that meets the criteria for having made a visa application as outlined in [9 FAM 403.2-3](#)* or a refusal from the system.

- (1) **(U)** Even if the refusal is overturned, there must be a record of the original adjudication and subsequent decisions.
- (2) **(U)** Officers should use the overcome/waive functions in the Nonimmigrant Visas (NIV) and Immigrant Visa Overseas (IVO) systems when appropriate. *(See [9 FAM 403.10-4\(B\)\(1\)](#) and [9 FAM 504.11-4\(A\)](#).)*
- (3) **(U)** You should only delete cases from the system when no visa application *has been made per [9 FAM 403.2-3](#), or when* a case is clearly a duplicate entered in error. *See [9 FAM 403.2-7](#) for information on deleting cases.*
- (4) **(U)** An NIV record without an application can occur when cases have been data-entered but *the case does not meet the definition of having made a visa application (see [9 FAM 403.2-3](#)).*
- (5) **(U)** Some posts may still have test cases in the system that *were* put in during IV or NIV system installations. You may delete those cases.

(6) (U) Deleted cases will no longer be available in post's database, but they may

be found in the CCD using the Deleted NIV Applicant Full report under the Non-Immigrant Visa tab in the CCD menu.

9 FAM 306.2-2(D) (U) Waivers of Ineligibility

(CT:VISA-63; 02-26-2016)

(U) You should refer to the ineligibility-specific notes in [9 FAM 302](#) as well as the notes in [9 FAM 305](#) regarding waivers for information regarding the availability of waivers of ineligibility for immigrant and nonimmigrant visa applicants.

9 FAM 307

VISA LOOKOUT ACCOUNTABILITY

9 FAM 307.1

STATUTORY AND REGULATORY AUTHORITY

(CT:VISA-1; 11-18-2015)
(Office of Origin: CA/VO/L/R)

9 FAM 307.1-1 IMMIGRATION AND NATIONALITY ACT

(CT:VISA-1; 11-18-2015)

INA 212(a) (8 U.S.C. 1182(a)).

9 FAM 307.1-2 CODE OF FEDERAL REGULATIONS

(CT:VISA-1; 11-18-2015)

22 CFR 41.102; 22 CFR 41.106; 22 CFR 41.121.

9 FAM 307.1-3 UNITED STATES CODE

(CT:VISA-1; 11-18-2015)

22 U.S.C. 4831.

9 FAM 307.1-4 PUBLIC LAWS

(CT:VISA-1; 11-18-2015)

Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Title III of Public Law 99-399); Foreign Relations Authorization Act, Fiscal Year 1994 and 1995 (Section 140(c) of the (Public Law 103-236)).

9 FAM 307.2

(U) DEFINITIONS

(CT:VISA-321; 04-06-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 307.2-1 (U) DEFINITIONS

(CT:VISA-321; 04-06-2017)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**
- (6) **Unavailable**
- (7) **Unavailable**
- (8) **(U)** "Port of entry" (POE) means the place at which an alien is inspected by the Department of Homeland Security (DHS) to determine his or her eligibility for entry into the United States.
- (9) **Unavailable**
- (10) **Unavailable**
- (11) **(U)** "Proscribed organization" means any group that falls within the purview of INA 212(a)(3)(D). A member or affiliate of a proscribed organization is ineligible for an immigrant visa unless he or she qualifies for relief.
- (12) **(U)** "Residence" means a person's place of general abode; i.e., his or her principal, actual dwelling place in fact, without regard to intent.
- (13) **Unavailable**
- (14) **Unavailable**
- (15) **(U)** "Visa record" for VLA purposes includes information or documents pertaining to an individual visa applicant. A visa record may consist of:
 - (a) **(U)** Any document presented by a visa applicant, including a visa application form itself, in electronic or paper form, or in connection with a visa application and retained by you at the conclusion of a visa interview;
 - (b) **(U)** Any item, which may have a bearing on the alien's visa application, submitted to the post by the alien, by other agencies, or by the

Department, such as an advisory opinion; and

- (c) **(U)** Any item generated by the post dealing with the alien's entitlement to visa status or ineligibility including, but not limited to:
- (i) **(U)** Correspondence with other posts about a visa;
 - (ii) **(U)** Correspondence with the applicant;
 - (iii) **(U)** Investigative reports;
 - (iv) **(U)** Immigrant visa and nonimmigrant visa refusal worksheets;
 - (v) **(U)** Medical examination; and
 - (vi) **(U)** The post's requests for advisory opinions from the Department.

9 FAM 307.3

(U) MEETING THE VISA LOOKOUT ACCOUNTABILITY (VLA) REQUIREMENT

(CT:VISA-337; 04-13-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 307.3-1 (U) VISA LOOKOUT ACCOUNTABILITY (VLA) AN ONGOING REQUIREMENT

(CT:VISA-337; 04-13-2017)

a. **Unavailable**

b. **(U) Legal Authority:** Section 140(c) of Public Law 103-236 (Foreign Relations Authorization Act, FY-94 and 95, as amended) (8 U.S.C. 1182 note) states the following about visa processing:

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

9 FAM 307.3-2 (U) CONSULAR OFFICERS' RESPONSIBILITIES

(CT:VISA-337; 04-13-2017)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**
- (6) **Unavailable**
- (7) **Unavailable**

9 FAM 307.3-3 (U) HOW TO MEET THE VISA LOOKOUT ACCOUNTABILITY (VLA) REQUIREMENT

(CT:VISA-337; 04-13-2017)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**
 - (3) **Unavailable**
- d. **Unavailable**
 - (1) **Unavailable**
 - (2) **Unavailable**

9 FAM 307.3-4 (U) ISSUING OFFICER

(CT:VISA-337; 04-13-2017)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 307.3-5 (U) VISA LOOKOUT ACCOUNTABILITY (VLA) COMPLIANCE PROCEDURES

9 FAM 307.3-5(A) (U) Check of All Lookout Systems

(CT:VISA-337; 04-13-2017)

Unavailable

9 FAM 307.3-5(A)(1) Unavailable

(CT:VISA-337; 04-13-2017)

- a. **Unavailable**
- b. **Unavailable**
- c. **(U)** See [9 FAM 303.3-5](#) for instructions on how to properly resolve CLASS hits. Failure to follow those instructions could result in a VLA violation.

9 FAM 307.3-5(A)(2) (U) Biometric Lookout Systems

(CT:VISA-337; 04-13-2017)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

9 FAM 307.3-5(B) Unavailable

(CT:VISA-337; 04-13-2017)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 307.3-5(C) (U) Other Sources of Information

(CT:VISA-337; 04-13-2017)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**

9 FAM 307.3-6 (U) PROCEDURES TO DOCUMENT AND CERTIFY COMPLIANCE

(CT:VISA-337; 04-13-2017)

- a. **Unavailable**
 - (1) **Unavailable**
Unavailable
 - (2) **Unavailable**
 - (3) **Unavailable**
- b. **Unavailable**
Unavailable
- c. **Unavailable**
- d. **Unavailable**
- e. **Unavailable**

9 FAM 307.4 (U) SUPERVISORY DUTIES

*(CT:VISA-320; 04-06-2017)
(Office of Origin: CA/VO/L/R)*

9 FAM 307.4-1 (U) SUPERVISORY DUTIES

(CT:VISA-320; 04-06-2017)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**

9 FAM 307.5

(U) DOCUMENTING VISA LOOKOUT ACCOUNTABILITY (VLA) VIOLATIONS

(CT:VISA-319; 04-06-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 307.5-1 (U) WHEN DOES A VLA VIOLATION OCCUR?

(CT:VISA-319; 04-06-2017)

a. Unavailable

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

Unavailable

b. Unavailable

9 FAM 307.5-2 (U) Procedures to Document VLA Violations

(CT:VISA-319; 04-06-2017)

a. Unavailable

b. Unavailable

c. Unavailable

(1) **Unavailable**

(2) **Unavailable**

(3) **Unavailable**

(4) **Unavailable**

f. Unavailable

g. Unavailable

9 FAM 307.6

(U) OTHER AVAILABLE GUIDANCE

(CT:VISA-318; 04-06-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 307.6-1 (U) SPECIAL CLEARANCE AND ISSUANCE PROCEDURES

(CT:VISA-318; 04-06-2017)

- a. **Unavailable**
- b. **(U) Country-Specific Guidance:**
 - (1) **Unavailable**
 - (2) **Unavailable**

9 FAM 400 NONIMMIGRANT VISAS

9 FAM 401 NONIMMIGRANT STATUS

9 FAM 401.1 INTRODUCTION TO NONIMMIGRANT VISAS AND STATUS

*(CT:VISA-277; 01-05-2017)
(Office of Origin: CA/VO/L/R)*

9 FAM 401.1-1 RELATED STATUTORY AND REGULATORY AUTHORITIES

9 FAM 401.1-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15) (8 U.S.C. 1101(a)(15)); INA 101(a)(33) (8 U.S.C. 1101(a)(33)); INA 214(b) (8 U.S.C. 1184(b)); INA 221(g) (8 U.S.C. 1201(g)).

9 FAM 401.1-1(B) Code of Federal Regulations

(CT:VISA-277; 01-05-2017)

8 CFR Part 213; 22 CFR 40.6; 22 CFR 41.11; 22 CFR 41.26; 22 CFR 41.27.

9 FAM 401.1-1(C) United States Code

(CT:VISA-1; 11-18-2015)

22 U.S.C. 611 - 613.

9 FAM 401.1-2 OVERVIEW- NONIMMIGRANT VISAS AND STATUS

(CT:VISA-1; 11-18-2015)

- a. Nonimmigrant visas are for international travelers coming to the United States temporarily. The visa allows the bearer to travel to a U.S. port of entry and request permission of the Department of Homeland Security (DHS) Customs and Border Protection (CBP) immigration officer to enter the United States. However, a visa does not guarantee entry into the United States. CBP will decide how long a nonimmigrant alien may remain in the United States in nonimmigrant status.
- b. International travelers come to the United States for a wide variety of reasons, including tourism, business, medical treatment and certain types of temporary work. Nonimmigrant visa classification is defined by immigration law and relates to the principal purpose of travel.

9 FAM 401.1-3 ENTITLEMENT TO NONIMMIGRANT STATUS

9 FAM 401.1-3(A) Statutory and Regulatory Authorities

9 FAM 401.1-3(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15) (8 U.S.C. 1101(a)(15)); INA 101(a)(33) (8 U.S.C. 1101(a)(33)); INA 214(b) (8 U.S.C. 1184(b)); INA 221(g) (8 U.S.C. 1201(g)).

9 FAM 401.1-3(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 40.6; 22 CFR 41.11.

9 FAM 401.1-3(B) Length of Stay and Permissible Activities

(CT:VISA-225; 10-20-2016)

The Immigration and Nationality Act (INA) makes basic distinctions between immigrant aliens and nonimmigrant aliens with regard to length of stay and permissible activities. The immigrant is admitted into the United States for permanent residence without restriction as to length of stay and may engage in virtually every legitimate activity in which a U.S. citizen may engage. An immigrant may be subject for removal if, for example, he or she is convicted of a crime or other conduct specified in the INA as a ground of removal. The nonimmigrant alien may remain only until a predetermined date and may engage only in activities allowed for the assigned nonimmigrant classification under INA 101(a)(15). The nonimmigrant alien will be subject to removal or other measures if he or she fails to maintain nonimmigrant status, fails to depart at the end of the authorized period of stay, or engages in

unauthorized activities.

9 FAM 401.1-3(C) Restrictions on Employment

(CT:VISA-225; 10-20-2016)

- a. The most significant restriction on activities of nonimmigrant aliens relates to employment. In certain nonimmigrant classifications, employment is prohibited. In others, employment of a specified, restricted kind may be authorized upon fulfillment of certain requirements. Therefore, an applicant expecting to be gainfully employed in the United States may not be classified as a nonimmigrant unless the intended employment is, or may be, authorized under a nonimmigrant classification for which all other requirements are met by the applicant. Refer to 9 FAM guidance on the particular NIV class at issue for specific employment-related restrictions.
- b. An intention to accept employment is often tied with an intention to remain in the United States for an extended period of time. It is important to note, however, that this need not always be the case. For example, an alien employed in an occupation subject to seasonal fluctuations might apply for a tourist visa for the purpose of earning money in the United States during the slack season at home and then returning home to resume regular employment. Thus, the alien may not intend to remain in the United States longer than would be authorized, but may clearly intend to engage in unauthorized activities during the stay in the United States and thus may not qualify under certain nonimmigrant classifications for that reason.

9 FAM 401.1-3(D) Intent to Adjust Status

(CT:VISA-225; 10-20-2016)

If an alien wishes to enter the United States in order to remain there permanently, you must not generally suggest that the alien apply for a nonimmigrant visa (NIV) and then seek adjustment of status under INA 245. You must review the requirements of the specific visa classification sought in order to advise the applicant regarding adjustment of status. If the classification is subject to a residence abroad requirement, then travel to the United States for the specific purpose of adjusting status would be inconsistent with that visa classification. On the other hand, there are NIV classifications, such as those found at INA 101(a)(15)(H)(i)(b), (K), and (L), which hold no prohibition on residence in the U.S. or adjustment of status to lawful permanent resident.

9 FAM 401.1-3(E) INA 214(b)

(CT:VISA-277; 01-05-2017)

- a. The INA distinguishes nonimmigrants from immigrants by considering all visa applicants to be immigrants unless they can prove that they are entitled to an NIV classification. INA 101(a)(15) of the Act defines an immigrant as a visa applicant who does not meet the requirements of one of the nonimmigrant classifications

listed in that section. To render this distinction operational, INA 214(b) presume all applicants to be immigrants until they prove to you that they qualify for the nonimmigrant visa classification sought (with the exception of H-1B, L, and V visas).

- b. In order to be classified as a nonimmigrant, the alien must prove "to your satisfaction that he or she is entitled to a nonimmigrant status under INA 101(a)(15) (with certain exceptions)." Thus, the alien must provide you a credible showing that he is entitled to nonimmigrant status and that his intended activities are consistent with the status for which he is applying.
- c. You must assess the credibility of the applicant and the evidence submitted to determine qualifications under INA 101(a)(15). You must be satisfied that the applicant will credibly engage in the activities authorized under the particular NIV classification, that the alien will abide by the conditions of that nonimmigrant classification, and that the alien will thereby maintain lawful status.
- d. When adjudicating NIV applications, you must be careful to recognize that the standards for qualifying for an NIV are found in the relevant subsections of INA 101(a)(15) rather than in INA 214(b) itself. If an applicant fails to satisfy you that he or she is entitled to the relevant status under INA 101(a)(15), that determination does not constitute an independent ground of inadmissibility under INA 212(a) and shall not be used as such. Any questions arising under those sections *regarding whether or not an activity is permissible in the specific classification* must be addressed through the appropriate advisory opinion (AO) process.

9 FAM 401.1-3(F) Residence Abroad

9 FAM 401.1-3(F)(1) When Residence Abroad Required

(CT:VISA-225; 10-20-2016)

Some NIV classifications impose the specific requirement that the applicant maintain a residence abroad. These classes are B, F, H (except H-1), J, M, O-2, P, and Q. Like purpose of travel, maintaining a residence abroad is an essential part of eligibility for these NIVs. If an applicant fails to satisfy you of this requirement, he or she is not eligible for the requested NIV classification and you must refuse the applicant accordingly.

9 FAM 401.1-3(F)(2) Residence Abroad Defined

(CT:VISA-225; 10-20-2016)

- a. The term "residence" is defined in INA 101(a)(33) as the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. This does not mean that an alien must maintain an independent household in order to qualify as an alien who has a residence in a foreign country and has no intention of abandoning. If the alien customarily

resides in the household of another, that household is the residence in fact. NOTE: Only the following visa categories are subject to residence abroad requirements: B, F, H (except H1), J, M, O2, P, and Q. When adjudicating this requirement, it is essential to view the requirement within the nature of the visa classification. Discussion of the requirement in the relevant sections will provide guidance.

- b. The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.
- c. The residence in a foreign country need not be the alien's former residence. For example, an alien who has been living in Germany may meet the residence abroad requirement by showing a clear intention to establish a residence in Canada after a temporary visit in the United States.
- d. Suspicion that an alien, after admission, may be swayed to remain in the United States because of more favorable living conditions is not a sufficient ground to refuse a visa as long as the alien's current intent is to return to a foreign residence.
- e. You may properly issue visitor visas to aliens with immigrant visa (IV) applications pending with the United States Citizenship and Immigration Services (USCIS). You must be satisfied that the alien's intent in seeking entry into the United States is to engage in activities consistent with B1/B2 classification for a temporary period and that the alien has a residence abroad which he or she does not intend to abandon. While immigrant visa registration is reflective of an intent to immigrate, it may not be proper for you to refuse issuance of a visa under INA 214(b) solely on the basis of such registration, unless you have reason to believe the applicant's true intent is to remain in the United States until such a time as an immigrant visa (IV) becomes available.

9 FAM 401.1-4 MAINTENANCE OF STATUS AND DEPARTURE BOND

9 FAM 401.1-4(A) Statutory and Regulatory Authorities

9 FAM 401.1-4(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 214(b); INA 221(g).

9 FAM 401.1-4(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR Part 213; 22 CFR 41.11(b).

9 FAM 401.1-4(B) Bonds Should Rarely Be Used

(CT:VISA-1; 11-18-2015)

- a. Although 22 CFR 41.11(b)(2) permits you, in certain cases, to require a maintenance of status and departure bond, it is Department policy that such bonds will rarely, if ever, be used. The mechanics of posting, processing, and discharging a bond are cumbersome, and many Department of Homeland Security (DHS) offices are reluctant to accept them. In addition, the nature of the bond can often lead to misunderstanding and confusion, especially in countries where surety bonds are uncommon. The result can be a public misperception that you actually have requested a bribe in order to issue the visa.
- b. Bonds are not effective guarantees of departure. In an era when some potential migrants are willing to pay thousands of dollars for false documents or smugglers' services, possible forfeiture of a bond is little deterrence, and sometimes might be cheaper than other means of illegal entry. If an applicant is likely to violate status or fail to return to his or her residence abroad, you must refuse the visa under INA 214(b).

9 FAM 401.1-4(C) Department Approval Required in Bond Cases

(CT:VISA-1; 11-18-2015)

You must obtain approval from the Department (CA/VO/F) before requesting that an applicant post a maintenance of status and departure bond.

9 FAM 401.1-4(D) Bond Requirement Determined by Consular Officer

(CT:VISA-1; 11-18-2015)

The second proviso to INA 221(g) provides for the posting of the maintenance of status and departure bond only in cases of applicants for B or F visas. The posting of such a bond should be required of an applicant only if you are not fully satisfied that the applicant will maintain visitor or student status in the United States and depart as required. Under no circumstances should a consular officer rely on such a bond as a substitute for a reasoned judgment with respect to the applicant's eligibility for a visa.

9 FAM 401.1-4(E) Amount, Validity Period, and Posting of Bond

(CT:VISA-1; 11-18-2015)

The maintenance of status and departure bond is to be posted with the DHS district director having jurisdiction over the area of the United States in which the applicant proposes to visit or pursue a course of study. After acceptance by DHS, the bond is valid for 1 year. Bonds are normally required in amounts ranging from a minimum of \$1,000 to a maximum of \$5,000 in increments of \$500. In considering applications by a family group, you may require the posting of a bond by all, some, or only one of the

applicants.

9 FAM 401.1-4(F) Bond Posted and Accepted Prior to Visa Issuance

(CT:VISA-1; 11-18-2015)

After requiring the posting of a bond, you may not issue a visa to the applicant prior to the receipt of notification from the appropriate DHS district director that the bond has been posted and accepted.

9 FAM 401.1-4(G) Forfeiture of Bond

(CT:VISA-1; 11-18-2015)

The maintenance of status and departure bond is not forfeited unless the alien violates status in the United States. A change of nonimmigrant status pursuant to INA 248 or adjustment of status pursuant to INA 245 does not result in forfeiture so long as the alien complies with the terms and conditions of the status in which the alien was admitted or to which the alien later changed or adjusted.

9 FAM 401.1-4(H) Limitation on Visa Validity When Bond Posted

(CT:VISA-225; 10-20-2016)

You must limit visas for which a bond has been required and posted to one entry and 6 months validity. This will enable the DHS to cancel bonds upon request without communicating with the visa-issuing post.

9 FAM 401.1-4(I) Procedures Relating to Bonds

(CT:VISA-1; 11-18-2015)

- a. **Notification to Applicant:** When a bond is to be required of an applicant for a B or F visa, you must notify the applicant in writing of the requirement, and specify both the classification of the visa under consideration and the exact amount of the bond required. This notification must also include the applicant's full name, nationality, date of birth, and country of birth. If a bond is to be required of more than one member of a family group, your notification must include all of the foregoing information for each person for whom a bond is to be required. The amount of the bond for each person is to be specified. The applicant, (or the applicant's representative in the United States), is to be instructed to submit the original, or a copy of your written notification to the DHS as explained below.
- b. **Form of Collateral:** A bond may be posted in the form of cash (U.S. currency only), U.S. Treasury Bonds or Notes, or an international or domestic postal money order made payable to the "Department of Homeland Security" (DHS) in U.S. dollars. U.S. Savings Bonds are not acceptable for this purpose.

- c. **Posting of Bond by Applicant:** An applicant who wishes to post the bond personally may write directly to the appropriate DHS district director, enclosing your notification.
- (1) Upon receipt of such a request, the district director prepares Form I-352, Immigration Bond, in duplicate, and transmits it to the applicant for signature. The applicant must sign the form at the consular office in the presence of two national employees as witnesses. The applicant must also execute the block captioned "PLEDGE AND POWER OF ATTORNEY FOR USE WHEN CASH IS DEPOSITED AS SECURITY." You must witness the execution of this block and affix the consular seal. You must then return Form I-352 to the appropriate DHS district director.
 - (2) If the applicant will post the bond personally, but does not have, or does not desire to obligate the full amount required, he or she may also consult a foreign insurance or indemnity company to have the bond posted by an approved surety company in the United States. In this case, your notification is to be sent to the surety company for presentation to the appropriate DHS district director. A representative of the surety company will complete Form I-352.
- d. **Posting of Bond by Interested Person in the United States:** If the applicant has a friend, relative, or other interested person in the United States who is prepared to post the bond, the applicant should send your notification to that person for presentation to the DHS district director.
- e. **Cancellation of Bond After Issuance of Visa:** If an interested person in the United States has posted a bond on behalf of an applicant and subsequently seeks to withdraw or cancel the bond before the applicant departs for the United States, the DHS district director will direct the interested person to have the applicant visit the consular office for cancellation of his or her visa. Upon cancellation of the visa, you must inform the district director of the visa cancellation so that the bond may be canceled and the collateral returned to the interested person.
- f. **Notify DHS When Visa Cancelled:** In some cases the sponsor may request, prior to the alien's departure, that the alien's visa be canceled in order to withdraw the bond. The consular officer, after physically canceling the visa, should notify by letter the DHS office at which the bond was posted so that the bond may be canceled and the money released. The letter should contain the applicant's full name, date and place of birth, nationality, the amount of the bond, the applicant's "A" serial number (shown on DHS notification of bond posting), and the date on which the visa was actually canceled. You must make the appropriate notation on the Form DS-160, Online Nonimmigrant Visa Application to show that the visa was canceled. See [9 FAM 403.2-5\(B\)\(1\)](#).
- g. **Cancellation of Bond After Applicant's Departure from the United States:** In some cases in which DHS has no record of the departure of an applicant for whom a bond was posted, the district director may request that the applicant appear before a consular officer abroad to verify that he or she has, in fact, returned to a foreign country. In these cases, the officer must confirm to the district director that

the applicant has departed the United States, and must furnish the date of departure as stated by the applicant, and indicate any confirming data that would serve to verify that date.

- h. **Notations to be Placed in Visa Issued to Applicant for Whom Bond Posted:**
See [9 FAM 403.10-4\(D\)\(2\)](#) paragraph (7).

9 FAM 401.1-5 FOREIGN AGENTS REGISTRATION ACT

9 FAM 401.1-5(A) Statutory and Regulatory Authorities

(CT:VISA-1; 11-18-2015)

22 U.S.C. 611 - 613.

9 FAM 401.1-5(B) Registration Requirement

(CT:VISA-225; 10-20-2016)

- a. **Persons Subject to Act:** The Foreign Agents Registration Act (22 U.S.C. 611 - 613) requires persons within the United States acting as agents of a foreign principal to register with the Department of Justice (DOJ). The purpose of this Act is "to protect the national defense, internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the Government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in the light of their associations and activities." If statements obtained from an alien in connection with a visa application suggest that the applicant may be subject to the registration requirement of the Act, you must so inform the alien and advise that registration forms may be obtained, after arrival in the United States, from the DOJ, Washington, DC.
- b. **Foreign Officials Exempted:** Accredited diplomatic or consular officers and other officials of a foreign government are exempted from the registration requirement of the Act.

9 FAM 402

NONIMMIGRANT VISA CLASSIFICATIONS

9 FAM 402.1

OVERVIEW OF NIV CLASSIFICATIONS

(CT:VISA-257; 11-30-2016)

(Office of Origin: CA/VO/L/R)

9 FAM 402.1-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 402.1-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15) (8 U.S.C. 1101(a)(15)); INA 101(a)(26) (8 U.S.C. 1101(a)(26)); INA 291 (8 U.S.C. 1363).

9 FAM 402.1-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 41.11; 22 CFR 41.22(b).

9 FAM 402.1-2 INTRODUCTION TO NIV CLASSIFICATION

(CT:VISA-257; 11-30-2016)

A visa issued to a nonimmigrant alien within one of the classes described in this section must bear an appropriate visa symbol to show the classification of the alien. The symbol must be inserted in the space provided on the visa. The following visa symbols must be used:

Nonimmigrants

Symbol	Class	Section of law
A1	Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family	INA 101(a)(15)(A)(i).
A2	Other Foreign Government Official or Employee, or Immediate Family	INA 101(a)(15)(A)(ii).

A3	Attendant, Servant, or Personal Employee of A1 or A2, or Immediate Family	INA 101(a)(15)(A)(iii).
B1	Temporary Visitor for Business	INA 101(a)(15)(B).
B2	Temporary Visitor for Pleasure	INA 101(a)(15)(B).
B1/B2	Temporary Visitor for Business & Pleasure	INA 101(a)(15)(B).
C1	Alien in Transit	INA 101(a)(15)(C).
C1/D	Combined Transit and Crewmember Visa	INA 101(a)(15)(C) and (D).
C2	Alien in Transit to United Nations Headquarters District Under Section 11.(3), (4), or (5) of the Headquarters Agreement	INA 101(a)(15)(C).
C3	Foreign Government Official, Immediate Family, Attendant, Servant or Personal Employee, in Transit	INA 212(d)(8).
CW1	Commonwealth of Northern Mariana Islands Transitional Worker	Section 6(d) of Public Law 94-241, as added by Section 702(a) of Public Law 110-229.
CW2	Spouse or Child of CW1	Section 6(d) of Public Law 94-241, as added by Section 702(a) of Public Law 110-229.
D	Crewmember (Sea or Air)	INA 101(a)(15)(D).
E1	Treaty Trader, Spouse or Child	INA 101(a)(15)(E)(i).
E2	Treaty Investor, Spouse or Child	INA 101(a)(15)(E)(ii).
E2C	Commonwealth of Northern Mariana Islands Investor, Spouse or Child	Section 6(c) of Public Law 94-241, as added by Section 702(a) of Public Law 110-229.
E3	Australian Treaty Alien coming to the United States Solely to Perform Services in a Specialty Occupation	INA 101(a)(15)(E)(iii).

E3D	Spouse or Child of E3	INA 101(a) (15)(E)(iii).
E3R	Returning E3	INA 101(a) (15)(E)(iii).
F1	Student in an academic or language training program	INA 101(a) (15)(F)(i).
F2	Spouse or Child of F1	INA 101(a) (15)(F)(ii).
F3	Canadian or Mexican national commuter student in an academic or language training program	INA 101(a) (15)(F)(iii).
G1	Principal Resident Representative of Recognized Foreign Government to International Organization, Staff, or Immediate Family	INA 101(a) (15)(G)(i).
G2	Other Representative of Recognized Foreign Member Government to International Organization, or Immediate Family	INA 101(a) (15)(G)(ii).
G3	Representative of Nonrecognized or Nonmember Foreign Government to International Organization, or Immediate Family	INA 101(a) (15)(G)(iii).
G4	International Organization Officer or Employee, or Immediate Family	INA 101(a) (15)(G)(iv).
G5	Attendant, Servant, or Personal Employee of G1 through G4, or Immediate Family	INA 101(a) (15)(G)(v).
H1B	Alien in a Specialty Occupation (Profession)	INA 101(a) (15)(H)(i)(b).
H1B1	Chilean or Singaporean National to Work in a Specialty Occupation	INA 101(a) (15)(H)(i)(b1).
H1C	Nurse in health professional shortage area	INA 101(a) (15)(H)(i)(c).
H2A	Temporary Worker Performing Agricultural Services Unavailable in the United States	INA 101(a) (15)(H)(ii)(a).
H2B	Temporary Worker Performing Other Services Unavailable in the United States	INA 101(a) (15)(H)(ii)(b).
H3	Trainee	INA 101(a) (15)(H)(iii).
H4	Spouse or Child of Alien Classified H1B/B1/C, H2A/B, or H-3	INA 101(a) (15)(H)(iv).
I	Representative of Foreign Information Media, Spouse and Child	INA 101(a) (15)(I).
J1	Exchange Visitor	INA 101(a) (15)(J).
J2	Spouse or Child of J1	INA 101(a) (15)(J).
K1	Fiance(e) of United States Citizen	INA 101(a) (15)(K)(i).

K2	Child of Fiance(e) of U.S. Citizen	INA 101(a) (15)(K)(iii).
K3	Spouse of U.S. Citizen awaiting availability of immigrant visa	INA 101(a) (15)(K)(ii).
K4	Child of K3	INA 101(a) (15)(K)(iii).
L1	Intracompany Transferee (Executive, Managerial, and Specialized Knowledge Personnel Continuing Employment with International Firm or Corporation)	INA 101(a) (15)(L).
L2	Spouse or Child of Intracompany Transferee	INA 101(a) (15)(L).
M1	Vocational Student or Other Nonacademic Student	INA 101(a) (15)(M)(i).
M2	Spouse or Child of M1	INA 101(a) (15)(M)(ii).
M3	Canadian or Mexican national commuter student (Vocational student or other nonacademic student)	INA 101(a) (15)(M)(iii).
N8	Parent of an Alien Classified SK3 or SN3	INA 101(a) (15)(N)(i).
N9	Child of N8 or of SK1, SK2, SK4, SN1, SN2 or SN4	INA 101(a) (15)(N)(ii).
NATO 1	Principal Permanent Representative of Member State to NATO (including any of its Subsidiary Bodies) Resident in the U.S. and Resident Members of Official Staff; Secretary General, Assistant Secretaries General, and Executive Secretary of NATO; Other Permanent NATO Officials of Similar Rank, or Immediate Family	Art. 12, 5 UST 1094; Art. 20, 5 UST 1098.
NATO 2	Other Representative of member state to NATO (including any of its Subsidiary Bodies) including Representatives, Advisers, and Technical Experts of Delegations, or Immediate Family; Dependents of Member of a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement or in Accordance with the provisions of the "Protocol on the Status of International Military Headquarters"; Members of Such a Force if Issued Visas	Art. 13, 5 UST 1094; Art. 1, 4 UST 1794; Art. 3, 4 UST 1796.
NATO 3	Official Clerical Staff Accompanying Representative of Member State to NATO (including any of its Subsidiary Bodies), or Immediate Family	Art. 14, 5 UST 1096.
NATO 4	Official of NATO (Other Than Those Classifiable as NATO1), or Immediate Family	Art. 18, 5 UST 1098.

NATO 5	Experts, Other Than NATO Officials Classifiable Under NATO4, Employed in Missions on Behalf of NATO, and their Dependents	Art. 21, 5 UST 1100.
NATO 6	Member of a Civilian Component Accompanying a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement; Member of a Civilian Component Attached to or Employed by an Allied Headquarters Under the "Protocol on the Status of International Military Headquarters" Set Up Pursuant to the North Atlantic Treaty; and their Dependents	Art. 1, 4 UST 1794; Art. 3, 5 UST 877.
NATO 7	Attendant, Servant, or Personal Employee of NATO1, NATO2, NATO 3, NATO4, NATO5, and NATO6 Classes, or Immediate Family	Arts. 12–20, 5 UST 1094–1098.
O1	Alien with Extraordinary Ability in Sciences, Arts, Education, Business or Athletics	INA 101(a)(15)(O)(i).
O2	Alien Accompanying and Assisting in the Artistic or Athletic Performance by O1	INA 101(a)(15)(O)(ii).
O3	Spouse or Child of O1 or O2	INA 101(a)(15)(O)(iii).
P1	Internationally Recognized Athlete or Member of Internationally Recognized Entertainment Group	INA 101(a)(15)(P)(i).
P2	Artist or Entertainer in a Reciprocal Exchange Program	INA 101(a)(15)(P)(ii).
P3	Artist or Entertainer in a Culturally Unique Program	INA 101(a)(15)(P)(iii).
P4	Spouse or Child of P1, P2, or P3	INA 101(a)(15)(P)(iv).
Q1	Participant in an International Cultural Exchange Program	INA 101(a)(15)(Q)(i).
R1	Alien in a Religious Occupation	INA 101(a)(15)(R).
R2	Spouse or Child of R1	INA 101(a)(15)(R).
S5	Certain Aliens Supplying Critical Information Relating to a Criminal Organization or Enterprise	INA 101(a)(15)(S)(i).
S6	Certain Aliens Supplying Critical Information Relating to Terrorism	INA 101(a)(15)(S)(ii).
S7	Qualified Family Member of S5 or S6	INA 101(a)(15)(S).
T1	Victim of a severe form of trafficking in persons	INA 101(a)(15)(T)(i).
T2	Spouse of T1	INA 101(a)(15)(T)(ii).

T3	Child of T1	INA 101(a)(15)(T)(ii).
T4	Parent of T1	INA 101(a)(15)(T)(ii).
T5	Unmarried Sibling under age 18 of T1	INA 101(a)(15)(T)(ii)
<i>T6</i>	<i>Adult or Minor Child of a Derivative Beneficiary of a T1</i>	INA 101(a)(15)(T)(ii)
TN	NAFTA Professional	INA 214(e)(2).
TD	Spouse or Child of NAFTA Professional	INA 214(e)(2).
U1	Victim of criminal activity	INA 101(a)(15)(U)(i).
U2	Spouse of U1	INA 101(a)(15)(U)(ii).
U3	Child of U1	INA 101(a)(15)(U)(ii).
U4	Parent of U1 under 21 years of age	INA 101(a)(15)(U)(ii).
U5	Unmarried Sibling under age 18 of U1 under 21 years of age	INA 101(a)(15)(U)(ii).
V1	Spouse of a Lawful Permanent Resident Alien Awaiting Availability of Immigrant Visa	INA 101(a)(15)(V)(i) or INA 101(a)(15)(V)(ii).
V2	Child of a Lawful Permanent Resident Alien Awaiting Availability of Immigrant Visa	INA 101(a)(15)(V)(i) or INA 101(a)(15)(V)(ii).
V3	Child of a V1 or V2	INA 203(d) & INA 101(a)(15)(V)(i) or INA 101(a)(15)(V)(ii).

[Source: 22 CFR 41.12]

9 FAM 402.1-3 CHOICE OF CLASSIFICATION

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 41.11 N3.1 CT:VISA-1155; 02-17-2009; and 9 FAM 41.31 N6.1 CT:VISA-767; 08-30-2005))

a. Principal Purpose of Admission: An alien desiring to come to the United States for one principal, and one or more incidental purposes, must be classified in accordance with the principal purpose. For example, you must classify an alien seeking to enter the United States as a student who desires, prior to entering an approved school, to make a tourist trip of not more than 30 days within the United States, as F-1 or M-1. Also, when a family member's primary purpose to come to the United States is to accompany the principal, the classification of the accompanying family member is either of a derivative of the principal if the

classification provides or as a B-2, if not. This is the case even if the accompanying family member decides to attend school. (See [9 FAM 402.1-5\(C\)](#) below.)

(Previous location: 9 FAM 41.11 N3.2 TL:VISA-356; 02-14-2002 and 9 FAM 41.31 N6.2 CT:VISA-701; 02-15-2005)

b. Choice When More Than One Classification Possible: When it appears that an alien can properly be classified under two or more nonimmigrant classifications, you must explain to the alien the terms and requirements of each, including documentary requirements, maximum lengths of stay which may be authorized upon admission, and any other pertinent factors. You must then base the classification of the visa on the alien's stated preference. (See the "Visa Reciprocity and Country Documents Finder.")

(Previous location: 9 FAM 41.11 N3.3 CT:VISA-1660; 06-14-2011 and 9 FAM 41.31 N6.3 CT:VISA-701 02-15-2005)

c. No Alternative to A and G Classification: The provisions of 22 CFR 41.22(b) relating to the A and G classifications are always controlling. You must not suggest alternative classifications.

9 FAM 402.1-4 CLASSIFICATION OF SPOUSE

9 FAM 402.1-4(A) Derivative Classification of Spouse Accompanying the Principal Alien

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 41.11 N4.1 CT:VISA-717; 03-10-2005)

In all nonimmigrant classifications except B, C, D, K, and V, the principal alien's spouse is entitled to derivative nonimmigrant classification. You must be satisfied that a valid marital relationship exists. If the spouse is applying in company with the principal alien, the determination that the principal alien is eligible for one of the nonimmigrant classifications is sufficient to establish that the spouse is eligible for the corresponding derivative classification.

9 FAM 402.1-4(B) Principal Alien Must be Maintaining Status for Spouse to Receive Derivative Classification

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 41.11 N4.2 CT:VISA-1155; 02-17-2009)

If the spouse is seeking to follow to join a principal alien already in the United States, you must be satisfied that the principal alien is, in fact, maintaining the nonimmigrant status from which the spouse seeks derivative classification. In questionable cases, you may request verification from the Department of Homeland Security (DHS) or from the Department for holders of A, G, and NATO visas. If, in the course of processing an application, you learn that the principal alien is not in fact maintaining

the status claimed (for example, is not pursuing a full course of study, participating in an exchange program, or performing the specified services or undertaking the specified training), such information must be reported to the appropriate DHS district office. (See [9 FAM 402.1-4\(C\)](#) below concerning nonimmigrant intent.)

9 FAM 402.1-4(C) Establishment of Nonimmigrant Status Also Required for Derivative Classification

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 41.11 N4.3 TL:VISA-458; 08-29-2002)

A spouse applying for a visa on the basis of derivative classification must establish the requisite nonimmigrant intent to the same extent as the principal alien. Thus, an applicant for a(n) F-2, J-2, H-4 (except the derivatives of an H-1), M-2, O-3, and P-4 visa must establish having a residence in a foreign country which the applicant has no intention of abandoning. If the spouse is applying for a visa in the same company with the principal alien, both applicants must be evaluated collectively. Differing conclusions concerning their entitlement to nonimmigrant classification would be rare and must be based on clearly defined, objective differences in their situations. If the derivative applicant is seeking to join a principal applicant already in the United States, a different situation may exist from that which existed at the time of the issuance of the principal alien's visa and could justify a determination by you that the derivative applicant does not have the requisite nonimmigrant intent. (See [9 FAM 401.1-3](#).)

9 FAM 402.1-4(D) Choice of Alternate Classification When Derivative Status is Too Limiting for Spouse

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 41.11 N4.4 TL:VISA-2; 08-30-1987)

A spouse eligible for derivative classification may also qualify for and be issued another type of visa. For instance, the spouse of an F-1 student may wish to work. Since F-2 visa holders may not work, the spouse may wish to apply for an immigrant visa (IV), temporary worker visa, or another type of visa, which allows work for pay.

9 FAM 402.1-4(E) Derivative Nonimmigrant Classification for Spouse of Permanent Resident Alien Signing INA 247(b) Waiver

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 41.11 N4.5 TL:VISA-2; 08-30-1987)

A permanent resident may accept a position or establish a business, which, if the alien were a nonimmigrant, would lead to A, E, or G classification. In order to retain permanent residence, the alien must sign a waiver of rights, privileges, exemptions, and immunities under INA 247(b). However, the spouse of such an alien may be granted derivative A, E, or G status if the spouse is a nonimmigrant or does not wish

to maintain permanent residence. As an example, a permanent resident that is a citizen of a small country might be named to the country's permanent U.N. delegation. The alien could retain permanent residence by signing the waiver. The spouse may, however, be granted derivative G-1 status if the spouse does not wish to maintain permanent residence or has never had it. For instance, if the principal alien has married after becoming a permanent resident and the spouse does not wish to remain permanently in the United States because of illness in the family abroad, a derivative G classification would be the only way for the spouse to join the principal alien for visits from time to time.

9 FAM 402.1-4(F) Classification of Spouse Accompanying Alien Crew Member

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 41.11 N4.6 CT:VISA-1155; 02-17-2009)

The spouse of an alien crewmember entering the United States as a nonimmigrant under INA 101(a)(15)(D), who is coming to the United States solely to accompany the principal alien, is classifiable B-2. (See [9 FAM 402.2-4\(A\)](#).)

9 FAM 402.1-4(G) Classification of Party to Proxy Marriage

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 41.11 N4.7 CT:VISA-1155; 02-17-2009)

- a. INA 101(a)(35) provides that the term "spouse", "wife", or "husband" does not include a party to a proxy marriage, which has not been consummated.
- b. Therefore, a spouse by a proxy marriage, which has not been consummated, cannot derive a nonimmigrant classification from a principal alien in the United States. In such cases, a B-2 visa may be issued to an otherwise qualified proxy spouse, provided you conclude that the principal alien in the United States is maintaining the appropriate nonimmigrant status and that the spouse seeks to travel to the United States for the purpose of joining the principal alien. After admission to the United States in B-2 status and consummation of the marriage, the spouse by proxy marriage can then apply to DHS for a change to the appropriate derivative nonimmigrant status.

9 FAM 402.1-5 CLASSIFICATION OF CHILD

9 FAM 402.1-5(A) Derivative Classification of Child Accompanying or Following to Join the Principal Alien

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 41.11 N5.1 TL:VISA-2; 08-30-1987)

The provisions of [9 FAM 402.1-4\(A\)](#) and (B) above are applicable to an alien child of a principal alien, provided the child is a “child” as defined in INA 101(b)(1)(A) through (E).

9 FAM 402.1-5(B) Adopted Children

(CT:VISA-257; 11-30-2016)

a. Children adopted by American citizens who do not intend to live in the United States may visit the United States on NIVs (see [9 FAM 402.2-4\(B\)\(4\)](#)) and, in some cases, qualify for a B-2 visa to participate in expeditious naturalization procedures ([9 FAM 402.2-4\(B\)\(7\)](#)).

b. Adopted children who meet INA 101(b)(1)(E) criteria may also qualify for nonimmigrant status as the derivative child of a principal NIV applicant. For example, the principal applicant for a nonimmigrant F visa may bring their adopted child to the United States under the nonimmigrant F-2 classification as long as the otherwise-qualified child was adopted before age 16 and has already spent two years in the applicant’s residence and custody.

NOTE: Unless INA 101(b)(1)(E) requirements are met, the adopted child does not qualify as a derivative child; INA 101(b)(1)(F) criteria cannot be applied to nonimmigrant derivative cases. However, as stated in [9 FAM 402.3-4\(J\)\(2\)](#), to qualify for derivative A or G NIV status as a member of the principal alien’s immediate family, a legal son or daughter need not have qualified as a “child” as defined in INA 101(b)(1).

c. You must carefully review NIV applications for children who have been adopted or will be adopted by U.S. citizens and who intend to live in the United States with their adoptive parents. Such children may wish to visit the United States for a short period of time and return to their country of residence for IV processing, thereby satisfying INA 214(b) provisions and qualifying for a B-2 visa. However, for cases where you are not satisfied that the child will return to their place of residence, a NIV should not be issued to the child. Such an issuance would violate the law, circumvent scrutiny intended to protect the child and adoptive parents, and place the child in an untenable immigration predicament since DHS regulations generally prohibit the approval of an immigrant petition for a child who is in the United States either illegally or in nonimmigrant status.

d. In rare cases where there are significant humanitarian concerns (i.e., natural disaster, civil disorder/war, etc.), adoptive parents may seek humanitarian parole for an adoptive child who will be legally able to adjust status in the United States based on an immigrant classification (see [9 FAM 202.3-3](#)).

e. You should also recognize that you may also very occasionally encounter cases of adopted children who are not eligible for any immigrant or NIV classification, usually due to their advanced age or the circumstances of the adoption.

9 FAM 402.1-5(C) Classification of Children Who Will also

be Attending School

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 41.11 N5.2 TL:VISA-2; 08-30-1987)

A principal alien's child entitled to derivative nonimmigrant classification from the principal alien is not required to qualify under INA 101(a)(15)(F) as a nonimmigrant student, even though the child will attend school in the United States while accompanying the principal alien.

9 FAM 402.1-6 ISSUANCE OF NONIMMIGRANT VISAS (NIV) TO SPOUSES AND/OR CHILDREN WHEN PRINCIPAL IS IN STATUS BUT HAS NO VISA

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 41.11 N6 CT:VISA-1360; 10-23-2009)

Derivative beneficiaries are entitled to apply for visas to follow and/or join principals who are maintaining status in the United States, even when the principal was never issued a visa in the classification being sought by the dependent. Take, for instance, a world-class soccer player, who changes his or her status from F-1 to O-1. The spouse and/or children are entitled to apply for nonimmigrant O-3 visas. Typical documentation for establishing entitlement to visas in such an instance might include marriage and birth certificates for the spouse and dependent(s), a copy of the principal beneficiary's approval notice, and any Form I-797, Notice of Action notices relating to the dependents' own change of status filings. Another example would be a foreign national who entered the United States on a B-1 visa and subsequently changed status to F-1. The spouse and/or child of the F-1 would be entitled to seek F-2 visas. In such cases, the dependent would need to present a properly endorsed Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status - for Academic and Language Students, as evidence that the principal is enrolled, or will be enrolled within 60 days, in a full course of study or is in approved practical training.

9 FAM 402.2

(U) TOURISTS AND BUSINESS VISITORS AND MEXICAN BORDER CROSSING CARDS – B VISAS AND BCCS

*(CT:VISA-336; 04-13-2017)
(Office of Origin: CA/VO/L/R)*

9 FAM 402.2-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 402.2-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 101(a)(6) (8 U.S.C. 1101(a)(6)); INA 101(a)(15)(B) (8 U.S.C. 1101(a)(15)(B)); INA 101(a)(33) INA 212(q) (8 U.S.C. 1182(q)).

9 FAM 402.2-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.31; 22 CFR 41.32

9 FAM 402.2-2 (U) OVERVIEW

9 FAM 402.2-2(A) (U) Introduction to B Visas

(CT:VISA-1; 11-18-2015)

(U) Visitor visas are nonimmigrant visas for persons who want to enter the United States temporarily for business (B1), tourism, pleasure or visiting (B2), or a combination of both purposes (B1/B2).

9 FAM 402.2-2(B) (U) Temporary Visitors

(CT:VISA-1; 11-18-2015)

a. **(U)** Factors to be used in determining entitlement to Temporary Visitor Classification are as follows:

- (1) **(U)** In determining whether visa applicants are entitled to temporary visitor classification, you must assess whether the applicants:

- (a) **(U)** Have a residence in a foreign country, which they do not intend to abandon;
 - (b) **(U)** Intend to enter the United States for a period of specifically limited duration; and
 - (c) **(U)** Seek admission for the sole purpose of engaging in legitimate activities relating to business or pleasure.
- (2) **(U)** If an applicant for a B1/B2 visa fails to meet one or more of the above criteria, you must refuse the applicant under section 214(b) of the INA. (See [9 FAM 302](#) for a complete discussion on Refusals Under INA 214(b)).
- b. **(U)** If you doubt an alien's intent to return abroad, the alien cannot satisfy your doubts by offering to leave a child, spouse, or other dependent abroad.

9 FAM 402.2-2(C) (U) Residence Abroad

(CT:VISA-225; 10-20-2016)

(U) The term "residence" is defined in INA 101(a)(33) as the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. NOTE: Only the following visa categories are subject to residence abroad requirements: B, F, H (except H1), J, M, O2, P, and Q. When adjudicating this requirement, it is essential to view the requirement within the nature of the visa classification. See [9 FAM 401.1-3\(F\)\(2\)](#) for a more in depth definition of residence abroad.

9 FAM 402.2-2(D) (U) Temporary Period of Stay

(CT:VISA-1; 11-18-2015)

- a. **(U)** Although "temporary" is not specifically defined by either statute or regulation, it generally signifies a limited period of stay. The fact that the period of stay in a given case may exceed six months or a year is not in itself controlling, provided that you are satisfied that the intended stay actually has a time limitation and is not indefinite in nature.
- b. **(U)** The period of time projected for the visit must be consistent with the stated purpose of the trip. The applicant must establish with reasonable certainty that departure from the United States will take place upon completion of the temporary visit.
- c. **(U)** The applicant must have specific and realistic plans for the entire period of the contemplated visit.
- d. **(U)** In evaluating these cases, you should not focus on the absolute length of the stay, but on whether the stay has some finite limit. For example, the temporariness requirement would be met in a case where the cohabitating partner will accompany, and depart with, the "principal" alien on a two-year work assignment or a four-year degree program.

9 FAM 402.2-2(E) (U) Unlawful Activity While in Visitor Status

(CT:VISA-1; 11-18-2015)

- a. **(U)** The law contemplates that an alien is traveling to the United States for legal purposes. Therefore, an application for a visitor visa must be denied in those cases where you have reason to believe or know that, while in the United States as a visitor, the applicant will engage in unlawful or criminal activities.
- b. **(U)** The arrangements which the applicant has made for defraying the expenses of his or her visit and return abroad must be adequate in order to prevent their obtaining unlawful employment in the United States.

9 FAM 402.2-2(F) (U) Importance of Facilitating International Travel

(CT:VISA-1; 11-18-2015)

- a. **(U)** The policy of the U.S. Government is to facilitate and promote international travel and the free movement of people of all nationalities to the United States both for the cultural and social value to the world and for economic purposes.
- b. **(U)** You should expedite applications for the issuance of a visitor visa if the issuance is consistent with U.S. immigration and naturalization laws and regulations. You must be satisfied that the applicants have overcome the presumption of intending immigration. You should give particular attention to applicants traveling to the United States to attend conferences, conventions, or meetings on specific dates.

9 FAM 402.2-3 (U) CATEGORIES OF B VISAS

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.12 identifies the following B visa classification symbols for aliens engaging in temporary business (B1), tourism, pleasure or visiting (B2), or a combination of both purposes in accordance with INA 101(a)(15)(B):

B1	Temporary Visitor for Business
B2	Temporary Visitor for Pleasure
B1/B2	Temporary Visitor for Business & Pleasure

9 FAM 402.2-4 (U) TOURIST VISAS (B2) - ALIENS COMING TO THE UNITED STATES AS VISITORS FOR PLEASURE

9 FAM 402.2-4(A) (U) Visitors for Pleasure

(CT:VISA-1; 11-18-2015)

(U) Aliens who wish to enter the United States temporarily for pleasure, and who are otherwise eligible to receive visas, may be classifiable as nonimmigrant B-2 visitors provided they meet the criteria listed below.

- (1) **(U) Tourism or Family Visits:** Aliens traveling to the United States for purposes of tourism or to make social visits to relative or friends.
- (2) **(U) Medical Reasons:** Aliens coming to the United States for health purposes.
- (3) **(U) Participation in Social Events:** Aliens participating in conventions, conferences, or convocation of fraternal, social, or service organizations.
- (4) **(U) Armed Forces Dependents:** Dependents of an alien member of any branch of the U.S. Armed Forces temporarily assigned for duty in the United States.
- (5) **(U) Dependents of Crewmen:** Alien dependents of category "D" visa crewmen who are coming to the United States solely for the purpose of accompanying the principal alien.
- (6) **(U) Short Course of Study:** The following annotation is to be placed in the 88-character field of the visa for aliens coming to the United States primarily for tourism, who also incidentally will engage in a short course of study during their visit: STUDY INCIDENTAL TO VISIT—Form I-20 NOT REQUIRED.
- (7) **(U) Amateur Entertainers and Athletes:** A person who is an amateur in an entertainment or athletic activity is, by definition, not a member of any of the profession associated with that activity. An amateur is someone who normally performs without remuneration (other than an allotment for expenses). A performer who is normally compensated for performing cannot qualify for a B-2 visa based on this note even if the performer does not make a living at performing, or agrees to perform in the United States without compensation. Thus, an amateur (or group of amateurs) who will not be paid for performances and will perform in a social and/or charitable context or as a competitor in a talent show, contest, or athletic event is eligible for B-2 classification, even if the incidental expenses associated with the visit are reimbursed.

9 FAM 402.2-4(B) (U) Visitors under Special Circumstances

(CT:VISA-1; 11-18-2015)

(U) The following classes of aliens may be classified B-2 visitors under the following special circumstances.

9 FAM 402.2-4(B)(1) (U) Fiancé(e) of U.S. Citizens or Permanent Resident Aliens

(CT:VISA-1; 11-18-2015)

(U) An alien proceeding to the United States to marry a U.S. citizen is classifiable K-1 as a nonimmigrant under INA 101(a)(15)(K). (See 22 CFR 41.81.) The fiancé(e) of a U.S. citizen or lawful permanent resident (LPR) may, however, be classified as a B-2 visitor if you are satisfied that the fiancé(e) intends to return to a residence abroad soon after the marriage. A B-2 visa may also be issued to an alien coming to the United States:

- **(U)** Simply to meet the family of his or her fiancé;
- **(U)** To become engaged;
- **(U)** To make arrangements for the wedding; or
- **(U)** To renew a relationship with the prospective spouse.

9 FAM 402.2-4(B)(2) (U) Fiancé(e) of Nonimmigrant Alien in United States

(CT:VISA-1; 11-18-2015)

(U) Fiancé(e)s who establish a residence abroad to which they intend to return, and who are otherwise qualified to receive visas, are eligible for B-2 visas if the purpose of the visit is to marry a nonimmigrant alien in the United States in a valid nonimmigrant F, H, J, L M, O, P, or Q status. You should advise the fiancé(e) to apply soon after the marriage to the nearest office of Department of Homeland Security (DHS) to request a change in nonimmigrant status to that of the alien spouse. B status is not appropriate if the fiancé(e) intends to remain in the United States after admission and adjust status to immigrant status, or intends to abandon the residence abroad after marrying and change to a non-immigrant status that does not require such a residence (adjust status means to apply for immigrant status while changing status means to apply for a different non-immigrant status).

9 FAM 402.2-4(B)(3) (U) Proxy Marriage Spouse

(CT:VISA-1; 11-18-2015)

(U) A spouse married by proxy to an alien in the United States in a nonimmigrant status may be issued a visitor visa in order to join the spouse already in the United States. Upon arrival in the United States, the joining spouse must apply to the DHS for permission to change to the appropriate derivative nonimmigrant status after consummation of the marriage.

9 FAM 402.2-4(B)(4) (U) Spouse or Child of U.S. Citizen or Resident Alien

(CT:VISA-1; 11-18-2015)

(U) An alien spouse or child, including an adopted alien child, of a U.S. citizen or resident alien may be classified as a nonimmigrant B-2 visitor if the purpose of the travel is to accompany or follow to join the spouse or parent for a temporary visit.

9 FAM 402.2-4(B)(5) (U) Cohabiting Partners, Extended Family Members, and Other Household Members not Eligible for Derivative Status

(CT:VISA-193; 09-28-2016)

(U) The B-2 classification is appropriate for aliens who are members of the household of another alien in long-term nonimmigrant status, but who are not eligible for derivative status under that alien's visa classification. This is also an appropriate classification for aliens who are members of the household of a U.S. citizen who normally lives and works overseas, but is returning to the United States for a temporary time period. Such aliens include, but are not limited to the following: cohabiting partners or elderly parents of temporary workers, students, diplomats posted to the United States, and accompanying parent(s) of minor F-1 child-student. B-2 classification may also be accorded to a spouse or child who qualifies for derivative status (other than derivative A or G status) but for whom it may be inconvenient or impossible to apply for the proper H-4, L-2, F-2, or other derivative visa, provided that the derivative individual intends to maintain a residence outside the United States and otherwise meets the B visa eligibility requirements. If such individuals plan to stay in the United States for more than six months, they should be advised to ask DHS for a one-year stay at the time they apply for admission. If needed, they may thereafter apply for extensions of stay, in increments of up to six months, for the duration of the principal alien's nonimmigrant status in the United States. You should consider annotating to indicate the purpose and length of stay in such cases.

9 FAM 402.2-4(B)(6) (U) Aliens Seeking Naturalization under INA 329

(CT:VISA-1; 11-18-2015)

(U) An alien who is entitled to the benefits of INA 329, and who seeks to enter the United States to take advantage of such benefits, may be classified B-2 without having to meet the foreign residence abroad requirement of INA 101(a)(15)(B).

9 FAM 402.2-4(B)(7) (U) Children Seeking Expeditious Naturalization under INA 322

(CT:VISA-336; 04-13-2017)

- a. **(U)** Naturalization is a permissible activity in B-2 status. You may issue a B-2 visa to an eligible foreign-born child to facilitate that child's expeditious naturalization pursuant to INA 322. The child's intended naturalization, however, does not exempt the child from the requirements of INA 214(b); the child must intend to return to a residence abroad after naturalization. A child whose parents are residing abroad will generally overcome the presumption of intended immigration, whereas a child whose parents habitually reside in the United States will not.
- b. **(U)** If the applicant for a nonimmigrant visa (NIV) to facilitate naturalization under INA 322 is the adopted foreign-born child of a U.S. citizen who resides abroad and

does not intend to reside permanently in the United States, you may issue a B-2 visa if the applicant:

- **(U)** Presents a DHS-issued Form G-56, General Call-In letter;
- **(U)** Establishes eligibility under INA 101(a)(15)(B); and
- **(U)** Either:
 - **(U)** If not an orphan, satisfies the two-year residency and custody requirement of INA 101(b)(1)(E); or
 - **(U)** If an orphan, is the beneficiary of an approved Form I-600, Petition to Classify Orphan as an Immediate Relative, and establishes that the Form I-604, Determination on Child for Adoption, has been conducted showing that the applicant meets the criteria of INA 101(b)(1)(F).

c. **(U)** The applicant must:

- (1) **(U)** Overcome INA 214(b);
- (2) **(U)** If not the natural child of the parents, prove that the U.S. citizen parents have legally and fully adopted him or her;
- (3) **(U)** Present a Form G-56, General Call-In Letter, from DHS, signifying the child has an appointment for a naturalization interview; and
- (4) **(U)** Show that he or she is the beneficiary of either an approved Form N-600-K, Application for Certificate of Citizenship and Issuance of Certificate Under Section 322, or Form N-643, Application for Certificate of Citizenship in Behalf of an Adopted Child, which confirms that the child qualifies for naturalization under INA 322.

d. **(U)** The parents must meet the transmission requirements.

e. **(U)** Because the child is applying for a nonimmigrant visa (NIV), Form I-864, Affidavit of Support Under INA 213A, is not required.

f. **(U)** The child would not qualify for a B-2 visa if the family were relocating to the United States. If this were the case, then the child would be required to have an immigrant visa (IV). You should not issue a nonimmigrant visa in lieu of the IR3/4. The issuance of an NIV to an orphan to effect a child's immigration violates the law, places the child in an untenable immigration predicament, and circumvents the scrutiny intended to protect the orphan and the adoptive parents. The issuance of an NIV also does not accomplish the intended goal, since the orphan cannot adjust status under DHS regulations.

g. **(U)** Children paroled into the United States have not been lawfully admitted to the United States for the purpose of the certificate of citizenship under INA 322.

9 FAM 402.2-4(B)(8) (U) Dependents of Alien Members of U.S. Armed Forces Eligible for Naturalization under INA 328

(CT:VISA-193; 09-28-2016)

- a. **(U)** An alien who is a dependent of an alien member of the U.S. Armed Forces who qualifies for naturalization under INA 328 and whose primary intent is to accompany the spouse or parent on the service member's assignment to the United States may be issued a B visa. The further possibility of adjustment of status need not necessitate a "denial of visa" under INA 214(b). A dependent of an alien service member who is refused a visa under INA 214(b) as an intending immigrant must be referred to the DHS office having jurisdiction over the dependent's place of residence for parole consideration under INA 212(d)(5).
- b. **(U)** Since the purpose of parole in these cases is to serve humanitarian interests, it is not appropriate for an alien dependent to seek parole from DHS to enter the United States while the service member served a tour of duty outside the United States.

9 FAM 402.2-4(B)(9) (U) Aliens Destined to an Avocational or Recreational School

(CT:VISA-1; 11-18-2015)

(U) An alien enrolling in such a school may be classified B-2 if the purpose of attendance is recreational or avocational. When the nature of a school's program is difficult to determine, you should request from DHS the proper classification of the program and whether approval of Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status – for Academic and Language Students, will be more appropriate.

9 FAM 402.2-4(B)(10) (U) Lawful Permanent Resident (LPR) Issued Nonimmigrant Visitor Visa for Emergency Temporary Visit to United States

(CT:VISA-193; 09-28-2016)

(U) A lawful permanent resident (LPR) may, in some cases, need to get a visa more quickly than obtaining a returning resident visa would permit. For example: a permanent resident alien employed by a U.S. corporation is temporarily assigned abroad but has necessarily remained more than one year and may not use Form I-551, Permanent Resident Card, in order to travel to the United States for an urgent conference and then return abroad. The alien has never relinquished permanent residence, has continued to pay U.S. income taxes, and perhaps even maintains a home in the United States. The alien may be issued a nonimmigrant visa for this purpose and Form I-551 need not be surrendered. The relinquishment of either of these forms must not be required as a condition precedent to the issuance of either an immigrant or nonimmigrant visa (NIV) unless DHS has requested such action.

9 FAM 402.2-4(B)(11) (U) Adoptive Child Coming to United States for Acquisition of Citizenship

(CT:VISA-1; 11-18-2015)

(U) You may issue a B-2 visa to a child seeking to enter the United States for the

acquisition of U.S. citizenship under the Child Citizenship Act of 2000 (Public Law 106-395) provided the child demonstrates an intent to return abroad after a temporary stay in the United States.

9 FAM 402.2-5 (U) BUSINESS VISAS (B1)

9 FAM 402.2-5(A) (U) Overview of Business Visas

(CT:VISA-336; 04-13-2017)

- a. **(U)** Aliens who desire to enter the United States for business and who are otherwise eligible for visa issuance, may be classifiable as nonimmigrant B1 visitors provided they meet the criteria described in [9 FAM 402.2-5\(B\)](#) through (F) below. Engaging in business contemplated for B1 visa classification generally entails business activities other than the performance of skilled or unskilled labor. Thus, the issuance of a B1 visa is not intended for the purpose of obtaining and engaging in employment while in the United States. Specific circumstances or past patterns have been found to fall within the parameters of this classification and are listed below.
- b. **(U)** It can be difficult to distinguish between appropriate B1 business activities, and activities that constitute skilled or unskilled labor in the United States that are not appropriate on B status. The clearest legal definition comes from the decision of the Board of Immigration Appeals in *Matter of Hira*, affirmed by the Attorney General. *Hira* involved a tailor measuring customers in the United States for suits to be manufactured and shipped from outside the United States. The decision stated that this was an appropriate B1 activity, because the principal place of business and the actual place of accrual of profits, if any, was in the foreign country. Most of the following examples of proper B1 relate to the *Hira* ruling, in that they relate to activities that are incidental to work that will principally be performed outside of the United States.
- c. **(U)** You may encounter a case involving temporary employment in the United States, which does not fall within the categories listed below. You should submit such cases to the Advisory Opinions Division (CA/VO/L/A) of the Visa Office in accordance with the procedures in [9 FAM 402.2-5\(H\)](#) for an advisory opinion (AO) to ensure uniformity and proper application of the law.

9 FAM 402.2-5(B) (U) Aliens Traveling to United States to Engage in Commercial Transactions, Negotiations, Consultations, Conferences, Etc.

(CT:VISA-1; 11-18-2015)

(U) Aliens should be classified B1 visitors for business, if otherwise eligible, if they are traveling to the United States to:

- (1) **(U)** Engage in commercial transactions, which do not involve gainful

employment in the United States (such as a merchant who takes orders for goods manufactured abroad);

- (2) **(U)** Negotiate contracts;
- (3) **(U)** Consult with business associates;
- (4) **(U)** Litigate;
- (5) **(U)** Participate in scientific, educational, professional, or business conventions, conferences, or seminars; or
- (6) **(U)** Undertake independent research.

9 FAM 402.2-5(C) (U) Aliens Coming to United States to Pursue Employment Incidental To their Professional Business Activities

(CT:VISA-1; 11-18-2015)

(U) The statutory terms of INA 101(a)(15)(B) specifically exclude from this classification aliens coming to the United States to perform skilled or unskilled labor. Aliens coming to the United States for the purpose of pursuing employment which does not qualify them for A, C, D, E, G, H, I, J, L, O, P, Q, or NATO status must be classified as immigrants. Exception is made for aliens who may be eligible for B1 business visas provided they meet the criteria of one of the categories listed below.

9 FAM 402.2-5(C)(1) (U) Ministers of Religion and Missionaries

(CT:VISA-3; 11-18-2015)

- a. **(U)** Ministers of religion and members of religious denominations meeting the following criteria may be issued B1 visas.
 - (1) **(U)** Ministers of religion proceeding to the United States to engage in an evangelical tour who do not plan to take an appointment with any one church and who will be supported by offerings contributed at each evangelical meeting. (See [9 FAM 403.9-5\(C\)](#).)
 - (2) **(U)** Ministers of religion temporarily exchanging pulpits with U.S. counterparts who will continue to be reimbursed by the foreign church and will draw no salary from the host church in the United States.
 - (3) **(U)** Members of religious denominations, whether ordained or not, entering the United States temporarily for the sole purpose of performing missionary work on behalf of a denomination, so long as the work does not involve the selling of articles or the solicitation or acceptance of donations and provided the minister will receive no salary or remuneration from U.S. sources other than an allowance or other reimbursement for expenses incidental to the temporary stay. "Missionary work" for this purpose may include religious instruction, aid to the elderly or needy, proselytizing, etc. It does not include ordinary administrative work, nor should it be used as a substitute for ordinary labor for

hire.

- b. **(U)** In cases where an applicant is coming to perform voluntary services for a religious organization, and does not qualify for R status, the B1 status remains an option, provided that the applicant meets the requirements in [9 FAM 402.2-5\(C\)\(2\)](#) below, even if he or she intends to stay a year or more in the United States.

9 FAM 402.2-5(C)(2) (U) Participants in Voluntary Service Programs

(CT:VISA-193; 09-28-2016)

- a. **(U)** Aliens participating in a voluntary service program benefiting U.S. local communities, who establish that they are members of, and have a commitment to, a particular recognized religious or nonprofit charitable organization. No salary or remuneration should be paid from a U.S. source, other than an allowance or other reimbursement for expenses incidental to the volunteers' stay in the United States.
- b. **(U)** A "voluntary service program" is an organized project conducted by a recognized religious or nonprofit charitable organization to assist the poor or the needy or to further a religious or charitable cause. The program may not, however, involve the selling of articles and/or the solicitation and acceptance of donations. The burden that the voluntary program meets the DHS definition of "voluntary service program" is placed upon the recognized religious or nonprofit charitable organization, which must also meet other criteria set out in the DHS Operating Instructions with regard to voluntary workers.
- c. **(U)** You must assure that the written statement issued by the sponsoring organization is attached to the passport containing the visa for presentation to the DHS officer at the port of entry. The written statement will be furnished by the alien participating in a service program sponsored by the religious or nonprofit charitable organization and must contain DHS required information such as the:
- **(U)** Volunteer's name and date and place of birth;
 - **(U)** Volunteer's foreign permanent residence address;
 - **(U)** Name and address of initial destination in the United States; and
 - **(U)** Volunteer's anticipated duration of assignment.

9 FAM 402.2-5(C)(3) (U) Members of Board of Directors of U.S. Corporation

(CT:VISA-1; 11-18-2015)

(U) An alien who is a member of the board of directors of a U.S. corporation seeking to enter the United States to attend a meeting of the board or to perform other functions resulting from membership on the board.

9 FAM 402.2-5(C)(4) (U) Professional Athletes

(CT:VISA-1; 11-18-2015)

- a. **(U)** Professional athletes, such as golfers and auto racers, who receive no salary or payment other than prize money for his or her participation in a tournament or sporting event.
- b. **(U)** Athletes or team members who seek to enter the United States as members of a foreign-based team in order to compete with another sports team should be admitted provided:
 - (1) **(U)** The foreign athlete and the foreign sports team have their principal place of business or activity in a foreign country;
 - (2) **(U)** The income of the foreign-based team and the salary of its players are principally accrued in a foreign country; and
 - (3) **(U)** The foreign-based sports team is a member of an international sports league or the sporting activities involved have an international dimension.
- c. **(U)** Amateur hockey players who are asked to join a professional team during the course of the regular professional season or playoffs for brief try-outs. The players are draft choices who have not signed professional contracts, but have signed a memorandum of agreement with a National Hockey League (NHL)-parent team. Under the terms of the agreement, the team will provide only for incidental expenses such as round-trip fare, hotel room, meals, and transportation. At the time of the visa application or application for admission to the United States, the players must provide a copy of the memorandum of agreement and a letter from the NHL team giving the details of the try-outs. If an agreement is not available at that time, a letter from the NHL team must give the details of the try out and state that such an agreement has been signed.

9 FAM 402.2-5(C)(5) (U) Yacht Crewmen

(CT:VISA-1; 11-18-2015)

(U) Crewmen of a private yacht who are able to establish that they have a residence abroad which they do not intend to abandon, regardless of the nationality of the private yacht. The yacht is to sail out of a foreign home port and cruise in U.S. waters for more than 29 days.

9 FAM 402.2-5(C)(6) (U) Coasting Officers

(CT:VISA-17; 12-11-2015)

(U) See [9 FAM 402.8-5](#) for aliens seeking to enter the United States as "coasting officers."

9 FAM 402.2-5(C)(7) (U) Investor Seeking Investment in United States

(CT:VISA-288; 02-22-2017)

(U) An alien seeking investment in the United States, including an investment that would qualify him or her for status as an E-2 nonimmigrant investor, is not ineligible for a B visa on that basis alone. Similarly, an alien pursuing EB-5 immigrant visa may be issued a B visa to examine or monitor potential qualifying investments as long as the applicant otherwise establishes qualification for a B visa, including that they do not intend to enter the United States to pursue adjustment of status. See [9 FAM 402.2-2\(C\)](#) paragraph e. Applicants seeking investment, like all B-1/B-2 travelers, are precluded from performing productive labor or from actively participating in the management of the business while in the United States in B status.

9 FAM 402.2-5(C)(8) (U) Horse Races

(CT:VISA-1; 11-18-2015)

(U) An alien coming to the United States to perform services on behalf of a foreign-based employer as a jockey, sulky driver, trainer, or groomer.

9 FAM 402.2-5(C)(9) (U) Outer Continental Shelf (OCS) Employees

(CT:VISA-1; 11-18-2015)

- a. **(U)** The Outer Continental Shelf Lands Act Amendments of 1978 (OCSLA) were enacted on September 18, 1978. 43 U.S.C. 1356 of OCSLA directs, that with specified exceptions, all units operating on the Outer Continental Shelf (OCS) must employ only U.S. citizens or lawful permanent resident (LPR) aliens as members of the regular complement of the unit. Subsequently, the U.S. Coast Guard issued regulations (33 CFR 141) which became effective on April 5, 1983. The regulations contain guidelines concerning exemptions available to units operating on the OCS.
- b. **(U)** Not included are nonmembers of the regular complement of a unit such as specialists, professionals, or other technically trained personnel called in to handle emergencies or other temporary operations, and extra personnel on a unit for training or for specialized operation; i.e., construction, alteration, well logging, or unusual repairs or emergencies.
- c. **(U)** The citizenship requirement under the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLA) and the U.S. Coast Guard regulations may be waived in certain circumstances specified in the U.S. Coast Guard's regulations at 33 CFR 141. Exemptions to the OCSLA manning restrictions can be obtained from the U.S. Coast Guard, which will issue a letter of exemption for the vessel or individual(s). Based on this letter, a B1/OCS (Outer Continental Shelf) visa may be issued for the purpose and validity specified in the letter, without the need of an advisory opinion (AO) from the Department. If an alien requests a B1 visa to work on the OCS, and cannot satisfy that the work has been exempted by the U.S. Coast Guard, an AO request must be submitted to the Department (CA/VO/L/A) before a visa can be issued.
- d. **(U)** Employers who wish to employ persons other than citizens of the United States or permanent resident aliens as part of the regular complement of the unit must

request, in writing, an exemption from the restrictions on employment in accordance with specific U.S. Coast Guard regulations. The request for the exemption must be addressed to:

Commandant
U.S. Department of Homeland Security
U.S. Coast Guard
(G-MOC-2)
2100 2nd Street, SW
Washington, DC 20593-0001

- e. **(U) Procedures:** If issuance of a visa is approved, you should annotate the visa with "OCS."

9 FAM 402.2-5(D) (U) Personal *Employees/Domestic Workers*

(CT:VISA-336; 04-13-2017)

(U) Aliens employed *in a personal capacity by a particular individual as personal employees* or domestic employees may be classified as B1 visitors if they meet the following special circumstances.

9 FAM 402.2-5(D)(1) (U) Personal *Employees/Domestic Workers of U.S. Citizens Residing Abroad*

(CT:VISA-336; 04-13-2017)

- a. **(U)** Personal *employees* or domestic *workers may accompany or follow to join a U.S. citizen employer who is traveling to the United States temporarily, provided the U.S. citizen employer has a permanent home or is stationed in a foreign country, and the following requirements are met:*
- (1) **(U)** The employee has a residence abroad which he or she has no intention of abandoning;
 - (2) **(U)** The alien has been employed abroad by the employer as a personal *employee* or domestic *worker* for at least six months prior to the date of the employer's admission to the United States; or the employer can show that while abroad the employer has regularly employed a domestic *worker* in the same capacity as that intended for the applicant;
 - (3) **(U)** The employee can demonstrate at least one year experience as a personal *employee* or domestic worker; and
 - (4) **(U)** The employee is in possession of an original contract or a copy of the contract, to be presented at the port of entry. *The employment contract must be signed and dated by the employer and the employee. The employment contract must include the following provisions:*
 - (a) **(U)** *The employer will be the only provider of employment to the domestic employee;*

- (b) **(U)** *The employer will provide the employee free room and board and a round trip airfare;*
- (c) **(U)** *The employee will receive the greater of the minimum wage under U.S. federal, state, or local law for an eight hour work-day;*
- (d) **(U)** *The employer will give at least two weeks' notice of his or her intent to terminate the employment, and the employee need not give more than two weeks' notice of his or her intent to leave the employment; and*
- (e) **(U)** *The employment contract must also reflect any other benefits normally required for U.S. domestic workers in the area of employment.*

9 FAM 402.2-5(D)(2) (U) Personal *Employees/Domestic Workers* of U.S. Citizens on Temporary Assignment in United States

(CT:VISA-336; 04-13-2017)

- a. **(U)** *Personal employees or domestic workers may accompany or following to join a U.S. citizen employer who is traveling to the U.S. temporarily, provided the U.S. citizen employer has a permanent home or is routinely stationed in a foreign country (as set out in paragraph (b) below) and the following requirements are met:*
 - (1) **(U)** *The employee has a residence abroad which he or she has no intention of abandoning;*
 - (2) **(U)** *The alien has been employed abroad by the employer as a personal employee or domestic worker for at least six months prior to the date of the employer's admission to the United States; or the employer can show that while abroad the employer has regularly employed a domestic worker in the same capacity as that intended for the applicant;*
 - (3) **(U)** *The employee can demonstrate at least one year experience as a personal employee or domestic worker by producing statements from previous employers attesting to such experience; and*
 - (4) **(U)** *The employee is in possession of an original contract or a copy of the contract, to be presented at the port of entry. The employment contract must be signed and dated by the employer and employee and must include the following provisions:*
 - (a) **(U)** *The employer will be the only provider of employment to the domestic employee;*
 - (b) **(U)** *The employer will provide the employee free room and board and a round trip airfare;*
 - (c) **(U)** *The employee will receive the greater of the minimum or prevailing wage under U.S. federal, state, or local law for an eight hour work-day;*
 - (d) **(U)** *The employer will give at least two weeks' notice of his or her intent to terminate the employment, and the employee need not give more than two weeks' notice of his or her intent to leave the employment; and*

(e) **(U)** *The employment contract must also reflect any other benefits normally required for U.S. domestic workers in the area of employment.*

- b. **(U)** The U.S. citizen employer *must be* subject to frequent international transfers lasting two years or more as a condition of the job as confirmed by the employer's personnel office and is returning to the United States for a stay of no more than six years.

9 FAM 402.2-5(D)(3) (U) Personal *Employees/Domestic Workers* of Foreign Nationals in Nonimmigrant Status

(CT:VISA-336; 04-13-2017)

(U) A personal *employee* or domestic *worker* who accompanies or follows to join an employer who is seeking admission into, or is already in, the United States in B, E, F, H, I, J, L, M, O, P, or Q nonimmigrant status, must meet the following requirements:

- (1) **(U)** The employee has a residence abroad which he or she has no intention of abandoning (notwithstanding the fact that the employer may be in a nonimmigrant status which does not require such a showing);
- (2) **(U)** The employee can demonstrate at least one year's experience as a personal *employee* or domestic *worker*;
- (3) **(U)** The employee has been employed abroad by the employer as a personal *employee* or domestic *worker* for at least one year prior to the date of the employer's admission to the United States or if the employee-employer relationship existed immediately prior to the time of visa application, the employer can demonstrate that he or she has regularly employed (either year-round or seasonally) personal *employees* or domestic *worker's* over a period of several years preceding the domestic employee's visa application for a nonimmigrant B-1 visa;
- (4) **(U)** *The applicant must have an employment contract that has been signed and dated by the employer and employee, and such contract includes the following provisions:*
 - (a) **(U)** *The employee will receive the greater of the minimum wage under U.S. federal, state, or local law;*
 - (b) **(U)** *The employee will receive free room and board;*
 - (c) **(U)** *The employer will be the only provider of employment to the employee; and*
 - (d) **(U)** *The employer must pay the domestic's initial travel expenses to the United States, and subsequently to the employer's onward assignment, or to the employee's country of normal residence at the termination of the assignment.*

9 FAM 402.2-5(D)(4) (U) Personal *Employees/Domestic Workers* of Lawful Permanent Residents (LPRs)

(CT:VISA-336; 04-13-2017)

(U) Personal employees *or domestic workers* of all lawful permanent residents (LPRs), including conditional permanent residents and LPRs who have filed Form N-470, Application to Preserve Residence for Naturalization Purposes, must obtain permanent resident status, as it is contemplated that the employing LPR is a resident of the United States.

9 FAM 402.2-5(D)(5) (U) Source of Payment to B1 Personal Employees/Domestic Workers

(CT:VISA-336; 04-13-2017)

(U) The source of payment to a B1 personal *employee* or domestic *worker* or the place where the payment is made or the location of the bank is not relevant.

9 FAM 402.2-5(D)(6) (U) Consular Officer Responsibilities in Processing Applications Under the William Wilberforce Trafficking Victims Protection Act

(CT:VISA-336; 04-13-2017)

- a. **(U)** The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA) requires you to ensure that an alien applying for a B1 nonimmigrant visa (NIV) as a personal *employee* or domestic *worker* accompanying or following to join an employer, is made aware of his or her legal rights under Federal immigration, labor, and employment laws. This includes information on the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States. At the time of the NIV interview, you must confirm that a pamphlet prepared by the Department detailing this information has been received, read, and understood by the applicant. See [9 FAM 402.3-9\(C\)](#) for information about WWTVPRA enforcement and consular officer responsibilities. You must add a mandatory case note in the NIV system stating the pamphlet was provided and the applicant indicated that s/he understood its contents.
- b. **(U)** If a B1 personal employee/domestic *worker* is eligible for an in-person interview waiver (see [9 FAM 403.5-4\(A\)](#)) and the applicant's previous visa was issued at a time when post was adhering to the WWTVPRA requirements, you may apply the fingerprint reuse/interview waiver policies and ensure a copy of the pamphlet is returned to every issued applicant along with his/her visa.

9 FAM 402.2-5(E) (U) Certain Other Business Activities Classifiable B1

(CT:VISA-1; 11-18-2015)

(U) While the categories listed below generally may be classified under the proper applicable nonimmigrant class, i.e., A, E, H, F, L, or M visas, you may issue B1 visas to

otherwise eligible aliens under the criteria provided below.

9 FAM 402.2-5(E)(1) (U) Commercial or Industrial Workers

(CT:VISA-1; 11-18-2015)

- a. **(U)** An alien coming to the United States to install, service, or repair commercial or industrial equipment or machinery purchased from a company outside the United States or to train U.S. workers to perform such services. However, in such cases, the contract of sale must specifically require the seller to provide such services or training and the visa applicant must possess specialized knowledge essential to the seller's contractual obligation to perform the services or training and must receive no remuneration from a U.S. source.
- b. **(U)** These provisions do not apply to an alien seeking to perform building or construction work, whether on-site or in-plant. The exception is for an alien who is applying for a B1 visa for supervising or training other workers engaged in building or construction work, but not actually performing any such building or construction work.

9 FAM 402.2-5(E)(2) (U) Foreign Airline Employees

(CT:VISA-133; 05-16-2016)

- a. **(U)** Foreign airline employee aliens who:
 - (1) **(U)** Seek to enter the United States for employment with a foreign airline that is engaged in international transportation of passengers and freight;
 - (2) **(U)** Are working in an executive, supervisory, or highly technical capacity; and
 - (3) **(U)** Otherwise meet the requirements for E visa classification but are precluded from entitlement to treaty trader E-1 classification solely because there is no treaty of friendship, commerce, and navigation in effect between the United States and the country of the aliens' nationality, or because they are not nationals of the airline's country of nationality.
- b. **(U)** Employees of foreign airlines coming to the United States to join an aircraft for an onward international flight may also be documented as B-1 visitors in that they are not transiting the United States and are not admissible as crewmen. Work on solely domestic flights within the United States is not permissible in B-1 status. Applicants for admission are inspected by a CBP officer to determine their admissibility in the United States.

9 FAM 402.2-5(E)(3) (U) Clerkship

(CT:VISA-1; 11-18-2015)

- a. **(U)** Except as in the cases described below, aliens who wish to obtain hands-on clerkship experience are not deemed to fall within B1 visa classification.
- b. **(U) Medical Clerkship:** An alien who is studying at a foreign medical school and

seeks to enter the United States temporarily in order to take an "elective clerkship" at a U.S. medical school's hospital without remuneration from the hospital. The medical clerkship is only for medical students pursuing their normal third or fourth year internship in a U.S. medical school as part of a foreign medical school degree. (An "elective clerkship" affords practical experience and instructions in the various disciplines of medicine under the supervision and direction of faculty physicians at a U.S. medical school's hospital as an approved part of the alien's foreign medical school education. It does not apply to graduate medical training, which is restricted by INA 212(e) and normally requires a J-visa.)

- c. **(U) Business or other Professional or Vocational Activities:** An alien who is coming to the United States merely and exclusively to observe the conduct of business or other professional or vocational activity may be classified B1, provided the alien pays for his or her own expenses. However, aliens, often students, who seek to gain practical experience through on-the-job training or clerkships must qualify under INA 101(a)(15)(H) or INA 101(a)(15)(L), or when an appropriate exchange visitors program exists (J).

9 FAM 402.2-5(E)(4) (U) Participants in Foreign Assistance Act Program

(CT:VISA-1; 11-18-2015)

(U) An alien invited to participate in any program furnishing technical information and assistance under section 635(f) of the Foreign Assistance Act of 1961, 75 Statute 424.

9 FAM 402.2-5(E)(5) (U) Peace Corps Volunteer Trainers

(CT:VISA-1; 11-18-2015)

(U) An alien invited to participate in the training of Peace Corps volunteers or coming to the United States under contract pursuant to sections 9 and 10(a)(4) of the Peace Corps Act (75 Statute 612), unless the alien qualifies for A classification. (See [9 FAM 403.9-5\(C\)](#) notation to be inserted on any visa issued under this legislation.)

9 FAM 402.2-5(E)(6) (U) Internship with United Nations Institute for Training and Research (UNITAR)

(CT:VISA-1; 11-18-2015)

(U) Participants in the United Nations Institute for Training and Research (UNITAR) program of internship for training and research who are not employees of foreign governments.

9 FAM 402.2-5(E)(7) (U) Aliens Employed by Foreign or U.S. Exhibitors at International Fairs or Expositions

(CT:VISA-1; 11-18-2015)

(U) Aliens who are coming to the United States to plan, construct, dismantle,

maintain, or be employed in connection with exhibits at international fairs or expositions may, depending upon the circumstances in each case, qualify for one of the following classifications.

- (1) **(U)** Aliens representing a foreign government in a planning or supervisory capacity and/or their immediate staffs are entitled to "A" classification if an appropriate note is received from their government, and if they are otherwise properly documented.
- (2) **(U)** Employees of foreign exhibitors at international fairs or expositions who are not foreign government representatives and do not qualify for "A" classification ordinarily are classified B1.
- (3) **(U)** While alien employees of U.S. exhibitors or employers are not eligible for B1 visas they may be classifiable as H1 or H2 temporary workers.

9 FAM 402.2-5(F) (U) Aliens Normally Classifiable H1 or H3

(CT:VISA-288; 02-22-2017)

- a. **(U)** There are cases in which aliens who qualify for H1 or H3 visas may more appropriately be classified as B1 visa applicants in certain circumstances; e.g., a qualified H1 or H3 visa applicant coming to the United States to perform H1 services or to participate in a training program. In such a case, the applicant must not receive any salary or other remuneration from a U.S. source other than an expense allowance or other reimbursement for expenses incidental to the alien's temporary stay. For purposes of this Section, it is essential that the remuneration or source of income for services performed in the United States continue to be provided by the business entity located abroad, and that the alien meets the following criteria:
 - (1) **(U)** With regard to foreign-sourced remuneration for services performed by aliens admitted under the provisions of INA 101(a)(15)(B), the Department has maintained that where a U.S. business enterprise or entity has a separate business enterprise abroad, the salary paid by such foreign entity should not be considered as coming from a "U.S. source;"
 - (2) **(U)** In order for an employer to be considered a "foreign firm" the entity must have an office abroad and its payroll must be disbursed abroad. To qualify for a B1 visa, the employee must customarily be employed by the foreign firm, the employing entity must pay the employee's salary, and the source of the employee's salary must be abroad; and
 - (3) **(U)** An alien classifiable H-2 must be classified as such notwithstanding the fact that the salary or other remuneration is being paid by a source outside the United States, or the fact that the alien is working without compensation (other than a voluntary service worker classifiable B1 in accordance with [9 FAM 402.2-5\(C\)](#) above). A nonimmigrant visa petition accompanied by an approved labor certification must be filed on behalf of the alien.

- b. **(U)** B1 visas issued in accordance with the guidance in this section must be annotated as such. The annotation should read:

"B-1 IN LIEU OF H, PER [9 FAM 402.2-5\(F\)](#)"

9 FAM 402.2-5(F)(1) (U) Incidental Expenses or Remuneration

(CT:VISA-1; 11-18-2015)

(U) A nonimmigrant in B1 status may not receive a salary from a U.S. source for services rendered in connection with his or her activities in the United States. A U.S. source, however, may provide the alien with an expense allowance or reimbursement for expenses incidental to the temporary stay. Incidental expenses may not exceed the actual reasonable expenses the alien will incur in traveling to and from the event, together with living expenses the alien reasonably can be expected to incur for meals, lodging, laundry, and other basic services.

9 FAM 402.2-5(F)(2) (U) Honorarium Payment

(CT:VISA-336; 04-13-2017)

(U) INA 212(q) provides that a B1 nonimmigrant may accept an honorarium payment and associated incidental expenses for usual academic activities (which can include lecturing, guest teaching, or performing in an academic sponsored festival) if:

- (1) **(U)** The activities last no longer than nine days at any single institution or organization;
- (2) **(U)** Payment is offered by an institution or organization described in [INA 212\(p\)\(1\)](#);
- (3) **(U)** The honorarium is for services conducted for the benefit of the institution or entity; and
- (4) **(U)** The alien has not accepted such payment or expenses from more than five institutions or organizations over the last six months.

9 FAM 402.2-5(F)(3) (U) Medical Doctor

(CT:VISA-288; 02-22-2017)

(U) A medical doctor otherwise classifiable H1 as a member of a profession whose purpose for coming to the United States is to observe U.S. medical practices and consult with colleagues on latest techniques, provided no remuneration is received from a U.S. source and no patient care is involved. Failure to pass the Foreign Medical Graduate Examination (FMGE) is irrelevant in such a case.

9 FAM 402.2-5(F)(4) (U) H-3 Trainees

(CT:VISA-288; 02-22-2017)

- a. **(U)** Aliens already employed abroad, who are coming to undertake training and who are classifiable as H-3 trainees. Department of Homeland Security (DHS)

regulations state that in order for an alien to be classifiable as H-3, the petitioner must demonstrate that:

- (1) **(U)** The proposed training is not available in the alien's own country;
 - (2) **(U)** The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;
 - (3) **(U)** The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and
 - (4) **(U)** The training will benefit the beneficiary in pursuing a career outside the United States.
- b. **(U)** They will continue to receive a salary from the foreign employer and will receive no salary or other remuneration from a U.S. source other than an expense allowance or other reimbursement for expenses (including room and board) incidental to the temporary stay. In addition, the fact that the training may last one year or more is not in itself controlling and it should not result in denial of a visa, provided you are satisfied that the intended stay in the United States is temporary, and that, in fact, there is a definite time limitation to such training.

9 FAM 402.2-5(G) (U) Entertainers and Artists

(CT:VISA-336; 04-13-2017)

- a. **(U)** Except for the following cases, B visa status is not appropriate for a member of the entertainment profession (professional entertainer) who seeks to enter the United States temporarily to perform services. Instead, performers should be accorded another appropriate visa classification, which in most cases will be P, regardless of the amount or source of compensation, whether the services will involve public appearance(s), or whether the performance is for charity or U.S. based ethnic society. (See [9 FAM 402.2-4\(A\)](#)) above on B-2 visas for amateur performances.)
- b. **(U)** The term "member of the entertainment profession" includes not only performing artists such as stage and movie actors, musicians, singers and dancers, but also other personnel such as technicians, electricians, make-up specialists, film crew members coming to the United States to produce films, etc.

c. Unavailable

9 FAM 402.2-5(G)(1) (U) Participants in Cultural Programs

(CT:VISA-288; 02-22-2017)

(U) A professional entertainer may be classified B1 if the entertainer:

- (1) **(U)** Is coming to the United States to participate only in a cultural program sponsored by the sending country;
- (2) **(U)** Will be performing before a nonpaying audience; and

- (3) **(U)** All expenses, including per diem, will be paid by the member's government.

9 FAM 402.2-5(G)(2) (U) Participants in International Competitions

(CT:VISA-288; 02-22-2017)

(U) A professional entertainer may be classified B1 if the entertainer is coming to the United States to participate in a competition for which there is no remuneration other than a prize (monetary or otherwise) and expenses.

9 FAM 402.2-5(G)(3) (U) Still Photographers

(CT:VISA-288; 02-22-2017)

(U) DHS permits still photographers to enter the United States with B1 visas for the purpose of taking photographs, provided that they receive no income from a U.S. source.

9 FAM 402.2-5(G)(4) (U) Musicians

(CT:VISA-288; 02-22-2017)

(U) An alien musician may be issued a B1 visa, provided:

- (1) **(U)** The musician is coming to the United States in order to utilize recording facilities for recording purposes only;
- (2) **(U)** The recording will be distributed and sold only outside the United States; and
- (3) **(U)** No public performances will be given.

9 FAM 402.2-5(G)(5) (U) Artists

(CT:VISA-288; 02-22-2017)

(U) An artist coming to the United States to paint, sculpt, etc. who is not under contract with a U.S. employer and who does not intend to regularly sell such art-work in the United States.

9 FAM 402.2-5(H) (U) Advisory Opinion Required if Applicant not Clearly Identifiable B1

(CT:VISA-288; 02-22-2017)

- a. **(U) In General:** An advisory opinion (AO) must be requested prior to the issuance of a B1 visa in any case involving temporary employment in the United States, other than as clearly set forth in [9 FAM 402.2-5\(C\)](#), (D), (E), and (F) above. The Department recognizes that there are cases which might possibly be classifiable B1, but which do not fit precisely within one of the classes described above. An AO is

required in these cases to ensure uniformity and to avoid the issuance of a B1 to an alien classifiable H-2 and thus subject to the safeguards of the petition and labor certification requirements.

- b. **(U) Procedures:** The request may be made through the AO feature in the nonimmigrant visas (NIV) process and must provide full details as to:
- (1) **(U)** Occupation of the applicant;
 - (2) **(U)** Type of work to be performed;
 - (3) **(U)** Place and duration of the contemplated employment;
 - (4) **(U)** Source and amount of salary to be paid;
 - (5) **(U)** Identity of United States and/or foreign employer;
 - (6) **(U)** Your reasons for believing B1 classification appropriate; and
 - (7) **(U)** Any other relevant information.

9 FAM 402.2-5(I) (U) Nonimmigrants Obtaining Social Security Cards

(CT:VISA-288; 02-22-2017)

- a. **(U)** The Department, DHS, and the Social Security Administration (SSA) have agreed that certain nonimmigrant aliens who are coming to the United States for the purpose of pursuing certain employment activities incidental to the aliens' professional business commitments, and who will receive remuneration or salary from sources in the United States, may apply for a social security card. Although for immigration purposes these activities might not constitute "employment in the United States," even with a U.S. source of income, the activities might be considered "employment" for other purposes or by other agencies, such as the Internal Revenue Service (IRS). In order to qualify for a social security card, the employee must have the B1 visa annotated to identify the employer for whom the employee will be working in the United States and the applicable 9 FAM reference. This annotation will enable the social security officer to quickly identify these aliens as being eligible for issuance of a working social security card which in turn will enable the employer and employee to comply with legal requirements such as participation in the social security fund, IRS tax payments, workmen compensation and any other work related requirements.
- b. **(U)** Personal or domestic servants of U.S citizen employers or nonimmigrant employers who are classifiable B1, E, F, H, I, J, L, M, O, P, or Q provided they meet the criteria under [9 FAM 402.2-5\(D\)](#) above.
- c. **(U)** Airline employees who, because of their visa classification and the nature of their work, are authorized to be employed and receive compensation in the United States. (See [9 FAM 402.2-5\(E\)\(2\)](#).)
- d. **(U)** Visiting Ministers in B1 visa category who are engaged in an evangelical tour and are supported by offerings contributed at each evangelical meeting. (See [9](#)

[FAM 402.2-5\(C\)\(1.\)](#)

9 FAM 402.2-6 (U) PROCEDURES RELATED TO B VISAS

9 FAM 402.2-6(A) (U) Authority to Classify Certain Visas "B1/B2" and Amount of Fees to Be Collected

(CT:VISA-1; 11-18-2015)

- a. **(U)** You may issue combined B1/B2 visas to qualified applicants whose principal purpose for visiting the United States at various times falls within the B1 or B2 category.
- b. **(U)** When the fee prescribed in the appropriate reciprocity schedule is not the same for each classification, the higher of the two fees must be collected.

9 FAM 402.2-6(B) (U) Notations on Nonimmigrant Visas

(CT:VISA-1; 11-18-2015)

(U) Notations on nonimmigrant visas (NIV) regarding the purpose and duration of stay are encouraged when the visas are limited and when the use of such notations would be helpful to the Department of Homeland Security (DHS) inspectors or other consular officers when processing future visa applications. Positive notations such as VISIT UNCLE SAN FRANCISCO, THREE WEEKS are helpful and are authorized. However, endorsements of a negative type such as NO ADJUSTMENT OF STATUS OR EXTENSION OF STAY RECOMMENDED or any other notation which tends to tell DHS what to do or which questions the alien's veracity are not allowed.

9 FAM 402.2-6(C) (U) Maintenance of Status and Departure Bonds

(CT:VISA-17; 12-11-2015)

(U) See [9 FAM 401.1-4](#).

9 FAM 402.2-6(D) (U) Issuance of Two-Entry Visa in Lieu of Reciprocal Single-Entry Visa

(CT:VISA-1; 11-18-2015)

(U) See [9 FAM 403.9-4\(D\)](#).

9 FAM 402.2-7 (U) NONRESIDENT ALIEN MEXICAN BORDER CROSSING CARDS (BCC); COMBINED

BORDER CROSSING IDENTIFICATION CARDS AND B1/B2 VISAS (B1/B2-BCC)

9 FAM 402.2-7(A) (U) Authorization for Issuance

(CT:VISA-1; 11-18-2015)

- a. **(U)** The B1/B2 BCC may be in the form of a card (BBCC) or a Lincoln Foil (BBBCV), the former of which is issued as the default B1/B2 visa at all posts in Mexico. A valid Mexican passport is required at the time of application. With a valid passport, the BBBCV or BBCC is valid for entry regardless of the point of origin of travel. The BCC aspect of a BBCC or BBBCV can still be used for land border entry without a passport within the border zone (25 miles in TX and CA; 55 miles in NM; and 75 miles in AZ) for up to 30 days. You may issue a BBCC or BBBCV to a nonimmigrant alien who:
 - (1) **(U)** Is a citizen and resident of Mexico;
 - (2) **(U)** Seeks to enter the United States as a temporary visitor for business or pleasure as defined in INA 101(a)(15)(B) for periods of stay not exceeding six months; and
 - (3) **(U)** Is otherwise eligible for a B1 or a B2 temporary visitor visa.
- b. **(U)** The Mexico residency requirement does not prohibit BCC holders from retaining the card and using it to travel to the United States after taking up residence in another country subsequent to receiving the BCC, although DHS or a consular officer are authorized to revoke the card as a result of abandonment of Mexican residency.

9 FAM 402.2-7(B) (U) Application Procedure

(CT:VISA-1; 11-18-2015)

- a. **(U)** Mexican applicants must apply for a B1/B2 Visa/BCC at any U.S. consular office in Mexico designated by the Deputy Assistant Secretary of State for Visa Services to accept such applications.
- b. **(U)** The application must be submitted electronically on Form DS-160, Electronic Nonimmigrant Visa Application. It must be signed electronically by clicking the box designated "Sign Application" in the certification section of the application.

9 FAM 402.2-7(C) (U) Personal Appearance

(CT:VISA-3; 11-18-2015)

(U) Each applicant must appear in person before a consular officer to be interviewed regarding eligibility for a visitor visa, unless the consular officer waives personal appearance (see [9 FAM 403.5-4\(A\)](#)).

9 FAM 402.2-7(D) (U) Reviewing Applications for Mexican Border Crossing Cards (BCC) and B1/B2 BCC

(CT:VISA-1; 11-18-2015)

(U) In reviewing an application for a combined Border Crossing Identification Card and B1/B2 visa (B1/B2 BCC) card (BBBCC) or foil (BBBCV), you must determine the applicant's eligibility for a visitor visa for business or pleasure.

9 FAM 402.2-7(E) (U) Refusing Mexican Border Crossing Cards (BCC) and B1/B2 BCC

(CT:VISA-1; 11-18-2015)

(U) If you find an alien ineligible for a visitor visa, you may not issue a B1/B2 BCC. You must proceed in the same manner as a nonimmigrant visa (NIV) case, refusing under the pertinent paragraph of INA 212(a), 221(g), or 214(b). You should also consider whether waiver action would be appropriate.

9 FAM 402.2-7(F) (U) Validity

(CT:VISA-193; 09-28-2016)

- a. **(U)** The Department intends that the Mexican B1/B2 BCC card or foil be used in place of the B1/B2 visa and that full validity be given in all cases where applicants are qualified to receive B1/B2 visas. If an applicant under age 15 pays the reduced fee for a BCC or BBBCV, it must be valid until the day prior to the applicant's fifteenth birthday. No annotations other than "DSP-150 US B1/B2 Visa/BCC" are permitted on a B1/B2 BCC foil. If additional annotations are required, or validity must be limited due to a waiver approval, a B1/B2 visa must be issued instead of a B1/B2 BCC foil.
- b. **Unavailable**
- c. **(U)** Applicants may not be issued concurrently valid B1/B2 foils and B1/B2 BCC cards or foils.

9 FAM 402.2-7(G) (U) Replacement

(CT:VISA-225; 10-20-2016)

(U) When a B1/B2 Visa/BCC card or foil has been lost, mutilated, destroyed, or expired, the person to whom such card or foil was issued may apply for a new B1/B2 Visa/BCC card or foil as provided in this section. BCC cards recovered by post or submitted by an applicant applying for a replacement card or B1/B2 visa should be handled following the procedures outlined in [9 FAM 402.2-7\(H\)\(2\)](#) below.

9 FAM 402.2-7(H) (U) Procedures Relating to Border Crossing Cards

9 FAM 402.2-7(H)(1) (U) Issuance and Format

(CT:VISA-1; 11-18-2015)

- a. **(U)** A B1/B2 Visa/BCC issued on or after April 1, 1998, consists of a card or a foil, Form DSP-150, B1/B2 Visa and Border Crossing Card, containing a machine-readable biometric identifier. It must contain the following data:
 - (1) **(U)** Number of the card or foil;
 - (2) **(U)** Date of issuance;
 - (3) **(U)** Indicia "B-1/B-2 Visa and Border Crossing Card";
 - (4) **(U)** Name, date of birth, and sex of the person to whom issued; and
 - (5) **(U)** Date of expiration.
- b. **(U)** If the applicant is approved for the B1/B2 BCC card, but has an urgent need to travel before delivery of the card can be reasonably expected, the applicant shall be issued a B1/B2 BCC foil. The applicant shall not be issued a limited validity B1/B2 visa foil for immediate use in addition to the B1/B2 BCC card.

9 FAM 402.2-7(H)(2) (U) Proper Handling of Defective, Spoiled, and Found BCCs

(CT:VISA-193; 09-28-2016)

- a. **(U)** Overseas posts should send all defective/spoiled/found new-style (issued on or after October 1, 2008) Border Crossing Cards to the Department via unclassified pouch using the following address:

U.S. Department of State
Arkansas Passport Center (CA/PPT/APC)
191 Office Park Drive
Hot Springs, AR 71913
- b. **(U)** Old-style BCCs, issued prior to October 1, 2008, should be destroyed at post unless they have been tampered with or altered.
- c. **(U)** All Border Crossing Cards, regardless of issue date, that have been tampered with or altered should be sent to Consular Affairs' Office of Fraud Prevention Programs via unclassified pouch using the following address:

U.S. Department of State
Office of Fraud Prevention Programs (CA/FPP)
600 19th Street, N.W., Suite 8.200
Washington, D.C. 20522-1708

(U) Defective/spoiled/found travel documents should be sent back to the Department at least monthly for destruction, and may be sent more frequently, if necessary, depending on the quantity of such travel documents at post. These travel documents must be bundled according to the reason they are being returned. The categories are as follows:

- (1) **(U)** "Data Entry or Operator Errors" includes name misspellings, incorrect birth date, incorrect place of birth, poor photo quality, or poor laminate quality. These errors usually originate at post or at the domestic passport partner center. The Data Entry or Operator Errors category also includes cards damaged during transit, such as if the delivery truck catches fire in an accident and the book/card is singed.
- (2) **(U)** "All Other Errors" (manufacturing errors) include misaligned printing, and problems with reading the electronic chip, which may not be discovered until the bearer attempts to use the card.

9 FAM 402.3

(U) OFFICIALS AND EMPLOYEES OF FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS – A, C-2, C-3, G, NATO VISAS, AND DIPLOMATIC TYPE AND OFFICIAL TYPE VISAS

(CT:VISA-362; 05-04-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 402.3-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 402.3-1(A) (U) Immigration and Nationality Act

(CT:VISA-78; 03-04-2016)

(U) INA 101(a)(15)(A) (8 U.S.C. 1101(a)(15)(A)); INA 101(a)(15)(C) (8 U.S.C. 1101(a)(15)(C)); INA 212(d)(8) (8 U.S.C. 1182(d)(8)); INA 101(a)(15)(G) (8 U.S.C. 1101(a)(15)(G)).

9 FAM 402.3-1(B) (U) Code of Federal Regulations

(CT:VISA-78; 03-04-2016)

(U) 22 CFR 41.12; 22 CFR 41.21; 22 CFR 41.22; 22 CFR 41.23; 22 CFR 41.24; 22 CFR 41.25; 22 CFR 41.26; 22 CFR 41.27.

9 FAM 402.3-1(C) (U) United States Code

(CT:VISA-78; 03-04-2016)

(U) 22 U.S.C. 288; 22 U.S.C. 611 - 613.

9 FAM 402.3-1(D) (U) Public Law

(CT:VISA-78; 03-04-2016)

(U) Section 301 of the Visa Waiver Permanent Program Act (Public Law 106-396); Section 203 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA) (Public Law 110-457).

9 FAM 402.3-2 (U) OVERVIEW

9 FAM 402.3-2(A) (U) Foreign Government Officials; A Visas

(CT:VISA-78; 03-04-2016)

(U) Diplomats and other foreign government officials traveling to the United States to engage solely in official duties or activities on behalf of their national government must obtain A-1 or A-2 visas prior to entering the United States; they cannot travel using visitor visas or under the Visa Waiver Program (VWP). With certain exceptions, such as the Head of State or Head of Government (and their immediate family) -- who qualifies for an A-1 visa regardless of the purpose of travel -- the applicant's position within his/her country's government and purpose of travel determine whether he/she qualifies for an A-1 or A-2 visa. See [9 FAM 402.3-5](#) below for details.

9 FAM 402.3-2(B) (U) Officials in Transit; C Visas

(CT:VISA-362; 05-04-2017)

- a. **(U) C-2 Visas:** C-2 visas are appropriate for an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Headquarters Agreement with United Nations.
- b. **(U) C-3 Visas:** An accredited official of a foreign government proceeding in immediate and continuous transit through the United States on official business for that government is classifiable C-3, provided the foreign government grants similar privileges to officials of the United States.
- c. **(U)** See [9 FAM 402.3-6](#) below for details.

9 FAM 402.3-2(C) (U) Persons Associated with International Organizations; G Visas

(CT:VISA-362; 05-04-2017)

(U) Foreign government officials and employees traveling on assignment to their country's mission to a designated international organization or for temporary meetings of a designated international organization should obtain G-1, G-2, or G-3 visas; they cannot travel using visitor visas or under the VWP. Officers and employees of designated international organizations should obtain G-4 visas; *they cannot travel using visitor visas or under the VWP.* See [9 FAM 402.3-7\(B\)](#) below for details.

9 FAM 402.3-2(D) (U) North Atlantic Treaty Organization Representatives, Officials, and Employees; NATO Visas

(CT:VISA-362; 05-04-2017)

(U) NATO visas are regulated by 22 CFR 41.12 and 41.25. NATO-1 through NATO-5 visas are appropriate for aliens seeking admission to the United States under the Agreement on the Status of the North Atlantic Treaty Organization, national representatives to, and staff of NATO traveling to the United States on behalf of NATO (and their immediate family). NATO-6 visas are appropriate for members of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status of Forces Agreements or members of a civilian component attached to or employed by an Allied Headquarters under the Protocol on the Status of International Military Headquarters (and their dependents). *See [9 FAM 402.3-8](#) below for details.*

9 FAM 402.3-2(E) (U) Attendants, Servants, and Personal Employees of Officials; A-3, G-5 and NATO-7 Visas

(CT:VISA-362; 05-04-2017)

(U) Personal employees of an alien classified as an A-1 or A-2 (A-3 visas), G-1 through G-4 (G-5 visas), or NATO-1 through NATO-6 (NATO-7 visas) must obtain an A-3, G-5, or NATO-7 visa; they cannot travel using visitor visas or under the VWP. *See [9 FAM 402.3-9](#) below for details.*

9 FAM 402.3-3 (U) CLASSIFICATION CODES

(CT:VISA-78; 03-04-2016)

(U) 22 CFR 41.12 identifies the following classifications symbols for officials and employees of foreign governments and international organizations in accordance with INA 101(a)(15)(A), INA 101(a)(15)(C), INA 101(a)(15)(G), and NATO agreements:

A1	Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family
A2	Other Foreign Government Official or Employee or Immediate Family
A3	Attendant, Servant, or Personal Employee of A1 or A2, or Immediate Family
C2	Alien in Transit to United Nations Headquarters District Under Sec. 11.(3), (4), or (5) of the Headquarters Agreement
C3	Foreign Government Official, Immediate Family, Attendant, Servant or Personal Employee, in Transit
G1	Principal Resident Representative of Recognized Foreign Government to International Organization, Staff, or Immediate Family
G2	Other Representative of Recognized Foreign Member Government to International Organization, or Immediate Family
G3	Representative of Nonrecognized or Nonmember Foreign Government to International Organization, or Immediate Family
G4	International Organization Officer or Employee, or Immediate Family
G5	Attendant, Servant, or Personal Employee of G1 through G4, or Immediate Family

NATO1	Principal Permanent Representative of Member State to NATO (including any of its Subsidiary Bodies) Resident in the U.S. and Resident Members of Official Staff; Secretary General, Assistant Secretaries General, and Executive Secretary of NATO; Other Permanent NATO Officials of Similar Rank, or Immediate Family
NATO2	Other Representative of member state to NATO (including any of its Subsidiary Bodies) including Representatives, Advisers, and Technical Experts of Delegations, or Immediate Family; Dependents of Member of a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement or in Accordance with the provisions of the "Protocol on the Status of International Military Headquarters"; Members of Such a Force if Issued Visas
NATO3	Official Clerical Staff Accompanying Representative of Member State to NATO (including any of its Subsidiary Bodies), or Immediate Family
NATO4	Official of NATO (Other Than Those Classifiable as NATO1), or Immediate Family
NATO5	Experts, Other Than NATO Officials Classifiable Under NATO4, Employed in Missions on Behalf of NATO, and their Dependents
NATO6	Member of a Civilian Component Accompanying a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement; Member of a Civilian Component Attached to or Employed by an Allied Headquarters Under the "Protocol on the Status of International Military Headquarters" Set Up Pursuant to the North Atlantic Treaty; and their Dependents
NATO7	Attendant, Servant, or Personal Employee of NATO1, NATO2, NATO 3, NATO4, NATO5, and NATO6 Classes, or Immediate Family

9 FAM 402.3-4 (U) GENERAL INFORMATION

9 FAM 402.3-4(A) (U) No Alternative to A or G Visa Classification

(CT:VISA-362; 05-04-2017)

(U) In accordance with 22 CFR 41.22(b), an alien who is entitled to classification under INA 101(a)(15)(A) must be issued an "A" visa, even if eligible for another nonimmigrant classification *and must enter the United States in that status*. In accordance with 22 CFR 41.24(b)(4), an alien not classified under INA 101(a)(15)(A) but entitled to classification under INA section 101(a)(15)(G) shall be classified under INA 101(a)(15)(G), even if also eligible for another nonimmigrant classification *and must enter the United States in that status*. This applies equally to entry under the Visa Waiver Program (VWP). Foreign officials who intend to travel to the United States on official business must, therefore, obtain the appropriate "A" or "G" visa prior to their entry, even if the official travel will occur within the ninety-day time limit. Furthermore, persons who enter the United States under the VWP may not *change or*

adjust status to another visa category.

9 FAM 402.3-4(B) (U) Limited Ineligibilities Apply

(CT:VISA-362; 05-04-2017)

- a. **(U) A-1, A-2, G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, and NATO-6 Applicants:** A-1, A-2, G-1 through G-4, and NATO-1 through NATO-6 visa applicants are subject to limited grounds of ineligibility (see 22 CFR 41.21(d)). Of the INA 212(a) ineligibilities, only INA 212(a)(3)(A), INA 212(a)(3)(B), and INA 212(a)(3)(C) apply.
- b. **(U) C-2 and C-3 Applicants:** Of the INA 212(a) ineligibilities, only INA 212(a)(3)(A), INA 212(a)(3)(B), INA 212(a)(3)(C) and INA 212(a)(7)(B) apply to C-2 and C-3 applicants.
- c. **(U) A-3, G-5, and NATO-7 Applicants:** A-3, G-5, and NATO-7 applicants are subject to all of the INA 212(a) ineligibilities.
- d. **(U)** If an applicant appears to be ineligible on grounds other than INA 212(a), send an AO to CA/VO/L/A. *Prior to issuing an A, C-2, C-3, G or NATO visa to an applicant who would otherwise be ineligible under INA 212(a)(2)(E) if such applicant were applying for a visa other than an A-1, A-2, C-2, C-3, G-1, G-2, G-3, G-4, or NATO-1 through NATO-6 nonimmigrant visa, you must submit an advisory opinion to CA/VO/L/A. (See [9 FAM 302.3-7\(C\)](#).)*
- e. **Unavailable**

9 FAM 402.3-4(C) (U) Issuing Visas Only Upon Appropriate Request *and In Appropriate Travel Document*

(CT:VISA-362; 05-04-2017)

- a. **(U)** Ordinarily, you may issue a visa in the A, C-2, C-3, G, or NATO categories only upon receipt of a note from the appropriate foreign office, mission, international organization, or NATO authority. You must scan the note into the application record in the nonimmigrant visa (NIV) system.
- b. **(U)** The note should include the following information concerning the principal applicant:
 - (1) **(U)** Name and date of birth;
 - (2) **(U)** Position and title;
 - (3) **(U)** Place of assignment or visit;
 - (4) **(U)** Purpose of travel;
 - (5) **(U)** Brief description of duties;
 - (6) **(U)** Travel date;
 - (7) **(U)** Anticipated length of stay or tour of duty in the United States; and

- (8) **(U)** The names, relationships, and dates of birth of any dependents and other members of household who will be accompanying or joining the principal.
- c. **(U)** For any non-TDY foreign government official or employee who will serve at a diplomatic or consular mission (including a mission to an international organization) or at a miscellaneous foreign government office in the United States for 90 days or more, the diplomatic note should be issued by the sending government's foreign ministry, and not by a mission or miscellaneous foreign government office in the United States. In the case of a career official currently assigned outside of the United States, you may accept a note from the embassy or consulate outside the United States where the official is currently assigned, provided that the note certifies that the foreign ministry requests the visa application.
- d. **(U)** In emergency situations, you may issue a visa upon the oral request of a competent foreign authority, international organization, or NATO. You should make a note in the nonimmigrant visa (NIV) system regarding the request (e.g., name and position of requester, date of request, etc.). You should also solicit a written confirmation from the appropriate foreign office, international organization, or NATO authority. Under unusual circumstances, if you issue a visa based on an incomplete note, you should solicit the missing information from the appropriate foreign office, international organization, or NATO authority as soon as possible.
- e. **(U)** An application for an "A" visa should not be accepted for an alien who is not a resident of the consular district without the requisite diplomatic note, unless the alien is a current head of state or head of government whose eligibility for A-1 status is not in question.
- f. **(U) Travel Documents:** *An A, C-2, C-3, G, or NATO visa must only be placed in a travel document that meets the definition of a "passport" as defined in INA 101(a)(30). In addition to any passport which has been determined to fulfill the requirements of a "passport" and that is referenced in the appropriate reciprocity schedule, the Department also accepts the following travel documents for issuance of A, C-2, C-3, G, or NATO visas, as described below:*
- (1) **(U) European Union Laissez-Passer (EULP):** *The EULP is a bound booklet in passport format. The cover is dark blue in color and bears the gold embossed seal of the European Union (EU). Only an official type A-1, A-2, or G-3 visa may be placed in an EULP. The bearer must present a Form DS-160, Online Nonimmigrant Visa Application, and a photograph for visa in connection with the EULP. (See 9 FAM 403.3-4(A) for photograph requirements.) You must receive written confirmation from the appropriate EU office indicating that the applicant is traveling on official EU business. The period of visa validity should correspond with the reciprocity schedule of the applicant's country of nationality as indicated in the EULP, but may not exceed the validity of the EULP. (See also 9 FAM 403.9-3(A)(3).)*
- (2) **(U) United Nations Laissez-Passer (UNLP):** *See 9 FAM 402.3-7(D)(6).*
- Note: Travel documents issued by international organizations (other than the United Nations as listed above) do not meet the definition of a "passport" as*

defined in INA 101(a)(30), and therefore, visas must not be placed in these travel documents. Such travel documents include, but are not limited to, the travel documents issued by the Organization of American States (OAS) (see [9 FAM 402.3-7\(E\)\(2\)](#)), the World Bank, and INTERPOL. (See also [9 FAM 403.9-3\(A\)\(2\)](#).)

9 FAM 402.3-4(D) (U) Confirmation of Status; Questionable Application

(CT:VISA-78; 03-04-2016)

(U) If a foreign mission, or an individual attached to such a mission, has presented a diplomatic note which fraudulently portrays an applicant qualifying for "A" visa status, you may request that the U.S. mission in the applicant's country confirm his or her diplomatic status and the reason for travel. This should be done in situations where fraud concerns warrant a delay in processing and involvement of another U.S. mission.

9 FAM 402.3-4(E) (U) Waiver of Personal Appearance; Interviews

(CT:VISA-362; 05-04-2017)

- a. **(U)** Under the provisions of 22 CFR 41.102(a)(2) and 22 CFR 41.102(b)(3), you are authorized to waive personal appearances for A-1, A-2, C-2, C-3, G-1 through G-4, and NATO-1 through NATO-6 aliens, as well as applicants for diplomatic type or official type visas. However, in such cases, pursuant to 22 CFR 41.103(a)(3) even if a personal appearance of a visa applicant is waived, the filing of an application is not waived. *Waiver of personal appearance does not automatically include waiver of fingerprints; these are two separate requirements. Only certain classes of nonimmigrants are exempt from fingerprinting requirements under [9 FAM 303.7-4\(B\)](#). A-1, A-2, C-3, G-1, G-2, G-3, G-4, and NATO-1 through NATO-6 visa applicants are exempt from fingerprint requirements. Qualification for a diplomatic type or official type visa (of any other nonimmigrant visa classification) does not provide waiver or exemption from fingerprinting requirements. (See [9 FAM 303.7-4\(B\)](#) for additional information regarding fingerprint waiver or exemption.)*
- b. **(U)** Normally posts should waive the personal interview requirement for bona fide A-1 and A-2 visa applicants who are citizens of, or accredited to, the host country. However, posts may wish to interview an individual if a review of the application and supporting documentation raises questions concerning the applicant's eligibility for "A" visa status. Posts may also wish to interview non-resident "A" visa applicants, particularly those who could have applied for a visa in their home country and who do not have a clear reason for seeking their visa elsewhere. If the personal interview is waived for such applicants, posts should confirm that the applicant is physically present in the consular district before accepting the application.

9 FAM 402.3-4(F) (U) No Fees

(CT:VISA-78; 03-04-2016)

(U) There are no machine readable visa (MRV) (processing) fees or reciprocity fees for A-1, A-2, C-2, C-3, G-1 through G-4, or NATO-1 through NATO-6 applicants. These exemptions also apply to their domestic and personal employees in the A-3, G-5, or NATO-7 visa categories. There is also no fee for a B-1 visa issued to individuals assigned, for any length of time, to an official observer mission to the United Nations. Moreover, aliens issued a diplomatic type visa, as described in [9 FAM 402.3-10\(C\)\(4\)](#) below are exempt from all visa processing and reciprocity fees, irrespective of whether the travel is official or non-official. This fee exemption is not accorded to recipients of official type visas under [9 FAM 402.3-10\(D\)\(2\)](#) below (unless the recipient qualifies for a fee exemption on some other basis, such as receiving a visa in one of the A, G, or NATO visa classifications referenced above).

9 FAM 402.3-4(G) (U) Visa Validity - Full Validity vs. Limited Validity

(CT:VISA-362; 05-04-2017)

- a. **(U) General Guidance:** General guidance relating to visa validity can be found in [9 FAM 403.9-4\(B\)](#). *Post should follow the general guidance except as provided in this section for certain A, C, G, or NATO visa applicants.*
- b. **(U) A-1 and A-2 Visas:** Foreign diplomats who qualify for A-1 or A-2 status should be issued the full validity allowed by reciprocity. In some instances, however, due to fraud concerns, prior abuse of "A" visas, and/or the purpose of travel, a limited visa may be justified. For example, a government employee who will visit the United States on a one-time basis for a limited period of time does not necessarily require a multi-year visa in order to conduct his or her official duties.
- c. **(U) A-3, G-5, and NATO-7:** See [9 FAM 402.3-9\(B\)\(6\)](#) below regarding visa validity for A-3, G-5, and NATO-7 visas.

9 FAM 402.3-4(H) (U) Visa Annotations

(CT:VISA-78; 03-04-2016)

(U) You should annotate A, C-2, C-3, G, and NATO visas. Annotations for each visa classification should follow the guidance provided below.

(1) **(U) Foreign Government Officials:**

- (a) **(U)** You should annotate the visa of a principal applicant to reflect his or her place of employment. For example:

JOHN DOE, EMBASSY OF Z
WASHINGTON, DC

- (b) **(U)** Visa annotations for foreign government officials assigned to a mission to a designated international organization should reflect the mission, the

IO with which it is associated, and the location. For example:

JOHN DOE, PERMANENT MISSION OF Z TO UN
NEW YORK, NY

- (2) **(U) Dependents of Foreign Government Officials:** You should annotate the visa of a dependent of a foreign government official to reflect the principal applicant's name and place of employment.

PRINCIPAL APPLICANT: JOHN DOE, EMBASSY OF Z
WASHINGTON, DC

- (3) **(U) International Organization Officials and Employees:** You should annotate the visa of a principal applicant to reflect his or her place of employment. For example:

JANE DOE, NAME OF DESIGNATED IO
NEW YORK, NY

- (4) **(U) Dependents of International Organization Officials and Employees:** You should annotate the visa of a dependent of an international organization official or employee to reflect the principal applicant's name and place of employment.

PRINCIPAL APPLICANT: JANE DOE, NAME OF DESIGNATED IO
NEW YORK, NY

- (5) **(U) Temporary Duty (TDY) Travel:**

- (a) **(U)** Posts are to enter "TDY" (for temporary duty) in the annotation field of a machine readable visa (MRV) issued to the recipient of an A or G visa who is coming to the United States for assignments of less than 90 days. You should annotate the place of his or her employment. For example:

JOHN DOE, CONSULATE GENERAL OF Z
SAN FRANCISCO, CA. (TDY)

- (b) **(U)** The request for an A or G visa must clearly specify that the official is coming for a temporary assignment of less than 90 days, and such information should be included in the note received pursuant to [9 FAM 402.3-4\(C\)](#) above. Absent this information, you are to seek clarification about the length of the assignment from the authorities concerned.

- (6) **(U) A-2 TDY Visas for Antiterrorism Assistance Training (ATA):**

- (a) **(U)** The validity and duration of an A-2 visa issued to participants in the Diplomatic Security's Office of Antiterrorism Assistance (ATA) training courses must be limited to a single entry and limited to the timeframe of the specific course in which the alien is to participate and reasonable transportation time domestically to and from the training site. The visa should be annotated as: "ATA training, commencing on (date) and ending on (date)."
- (b) **(U)** With written consent of the sending government and the concurrence of both the Consular Section Chief and the Regional Security Officer (RSO),

the annotation on an A-2 visa issued to an ATA participant may also include identification of a specific period of time, of up to 30 days after the training period, that the alien intends to remain in the United States for personal reasons.

- (7) **(U) A-3, G-5, and NATO-7 Visas:** Posts are to endorse A-3, G-5, and NATO-7 visas issued to attendants, servants, and personal employees of aliens classified A-1 or A-2 (A-3 visa), G-1 through G-4 (G-5 visa), or NATO-1 through NATO-6 (NATO-7 visa). The notation is to be placed in the annotation field of the MRV and is to contain the name of the principal alien and his/her place of employment. In addition to the applicant's information, you must also indicate the employer's nationality using the abbreviations in [9 FAM 102.5-2](#). For example, the annotation for an A-3 domestic worker hired by the Italian Consul General in New York should read:

EMP: Luigi Marinara, ITLY

Consul General

Italian Consulate General

New York, NY

- (8) **(U) Privatized INTELSAT Employees:** In addition to the standard annotation for G-4 visas, the G-4 visas issued to qualifying privatized INTELSAT officers and/or employees and their immediate family should include the following additional line at the end of the annotation:

"ISSUED PURSUANT TO SECTION 301 OF Public Law 106-396."

- (9) **(U) G-4 for Transit Purposes:** Officers and employees of designated international organizations who are not assigned in the United States may be accorded G-4 classification if they desire to transit the United States. Posts must endorse G-4 visas issued to such applicants who are generally on, or returning from home leave, as follows:

VALID FOR IMMEDIATE AND CONTINUOUS TRANSIT ONLY

NOTE: **(U)** Such an applicant who expects to spend time in the United States for personal business or pleasure must also possess a "B" visa.

- (10) **(U) Permanent Observer Missions at the United Nations:**

- (a) **(U) Principal Applicants:** You must annotate B-1 visas for principal applicants at Permanent Observer Missions at the United Nations to reflect their places of employment. For example:

JOHN DOE

OBSERVER MISSION TO THE UNITED NATIONS

(NAME OF ORGANIZATION), NEW YORK, NY

- (b) **(U) Dependents:**

PRINCIPAL APPLICANT: JOHN DOE

UNITED NATIONS OBSERVER MISSION

(NAME OF ORGANIZATION), WASHINGTON, DC

9 FAM 402.3-4(I) (U) Other Procedural Matters for A, G, and NATO Visas

9 FAM 402.3-4(I)(1) (U) Designated Ports of Entry (POE) for Certain Diplomatic and International Organization Personnel

(CT:VISA-78; 03-04-2016)

(U) See the Visa Reciprocity and Country Documents Schedule under country concerned.

9 FAM 402.3-4(I)(2) Unavailable

(CT:VISA-78; 03-04-2016)

Unavailable

9 FAM 402.3-4(I)(3) (U) Renewal of A, G, and NATO Visas

(CT:VISA-78; 03-04-2016)

- a. **(U)** Aliens and their dependents who are in the United States in the A, G, or NATO visa category, except A-3, G-5, and NATO-7 aliens (see [9 FAM 402.3-4\(I\)\(5\)](#) below) may have their visa(s) renewed by CA/VO/DO/DL in the Department. For information on visa renewal requirements, CA/VO/DO/DL may be reached by telephone at (202) 485-7681, Monday through Friday, excluding holidays, between the hours of 2:00 p.m. and 4:00 p.m. (Eastern Time).
- b. **(U)** Passports containing visas to be reissued may be delivered to the Diplomatic Reception Desk between 10:30 a.m. and 11:30 a.m. (Eastern Time), Monday through Friday, excluding holidays. The envelope should be clearly marked to indicate "Visa Reissuance."
- c. **(U)** G visas (except G-5) for applicants who are part of the United Nations (UN) community are processed through the U.S. Mission to the UN in New York, Monday through Friday, excluding U.S. holidays, between 9:00 a.m. and 5:30 p.m. (Eastern Time).

9 FAM 402.3-4(I)(4) (U) Change of Status to A or G in the United States

(CT:VISA-362; 05-04-2017)

(U) An alien in the United States who accepts employment with a diplomatic mission or an international organization must first obtain a change of status prior to commencing his or her employment with that particular mission. Applicants requesting a change of status to either the A or G category should submit Form I-566, Interagency Record of Request -- A, G or NATO Dependent Employment Authorization

or Change/Adjustment to/from A, G or NATO Status, to the Office of *Foreign Missions (OFM)*. Upon receipt of the certified Form I-566 from *OFM*, the diplomatic mission or international organization should then contact CA/VO/DO/DL at (202) 485-7681, Monday through Friday (excluding holidays), between the hours of 2:00 p.m. to 4:00 p.m. (Eastern Time), for information on specific documentation to be submitted. Information can also be found online at travel.state.gov.

9 FAM 402.3-4(I)(5) (U) A-3 and G-5 Revalidations in the United States

(CT:VISA-362; 05-04-2017)

- a. **(U)** CA/VO/DO/DL and the United States Mission to the United Nations (USUN) no longer adjudicate A-3 or G-5 visa applications in the United States. Applicants *must apply* for an A-3 or G-5 visa at a U.S. consular office abroad.
- b. **(U)** A-3 and G-5 visa holders whose visas have expired, but who remain in status *and continue to work for the same employer for which their A-3 or G-5 visa was issued, do not* need to apply for new visas while they remain in the United States.

9 FAM 402.3-4(I)(6) (U) Departure Required for Issuance of A or G Visa Abroad

(CT:VISA-362; 05-04-2017)

- a. **(U)** DHS may require aliens who entered the United States in "B" status to apply for the appropriate A or G visa at a U.S. embassy or consulate *abroad and may not allow such aliens to seek a change of status in the United States*. If this is the case, the applicant need not apply for a change of status in the United States. The foreign mission where the applicant is to be employed should contact the nonimmigrant *visa* section of the U.S consular office where the applicant will *apply for* the visa to make the necessary arrangements for application for an A or G visa.
- b. **(U)** Persons who have overstayed their previous nonimmigrant status in the United States are required to apply at a U.S. embassy or consulate abroad. Such applicants, except those applying for A-3, G-5 *and NATO-7* visas, are not subject to INA 222(g) and may apply *for a visa* at *a post* other than that in their home country. Additionally, DHS will not change the status of an alien who enters the United States under the Visa Waiver Program (VWP).
- c. **Unavailable**

9 FAM 402.3-4(J) (U) Immediate Family of Foreign Government Officials or Representatives, International Organization Officers and Employees, and Certain NATO Personnel

9 FAM 402.3-4(J)(1) (U) Immediate Family Members Also

Classifiable A or G

(CT:VISA-362; 05-04-2017)

- a. **(U)** In accordance with 22 CFR 41.22(b), an alien who is entitled to classification under INA 101(a)(15)(A) must be issued an "A" visa, even if eligible for another nonimmigrant classification *and must enter the United States in that status*. Therefore, immediate family members of the principal alien must also receive "A" visas, unless the family member is independently classifiable as a principal alien under INA 101(a)(15)(G) (e.g., tandem couples).
- b. **(U)** In accordance with 22 CFR 41.24(b)(4), an alien who is not entitled to an "A" visa, but who is entitled to classification under INA 101(a)(15)(G) must be issued a "G" visa, even if eligible for another nonimmigrant classification *and must enter the United States in that status*. Therefore, immediate family members of the principal alien must also receive "G" visas. If an immediate family member obtains employment once in the United States which would normally fall under "A" classification, such immediate family member may continue to be classifiable "G" and is not required to seek a change of status in the United States to "A" nonimmigrant status or apply for a new "A" visa abroad.
- c. **(U) NATO Immediate Family Members/Dependents:** NATO-1, NATO-2 (Limited to: Other Representative of a member state to NATO (including any of its Subsidiary Bodies) including Representatives, Advisers, and Technical Experts of Delegations, or Immediate Family), NATO-3, NATO-4, and NATO-7 visa classifications include "immediate family." Eligible immediate family members within these classifications should also receive the same NATO visa classification as the principal NATO visa holder/applicant. NATO-2 (Limited to: Dependents of a Member of a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement or in Accordance with the provisions of the "Protocol on the Status of International Military Headquarters"; Members of Such a Force if Issued Visas), NATO-5, and NATO-6 visa classifications include "dependents", which are defined in the relevant NATO agreement. (See [9 FAM 402.3-8](#) below.)

9 FAM 402.3-4(J)(2) (U) Spouse

(CT:VISA-262; 12-05-2016)

(U) The term "immediate family" includes the spouse of the principal alien, who is not a member of some other household and who will reside regularly in the household of the principal alien.

9 FAM 402.3-4(J)(3) (U) Unmarried Sons and Daughters

(CT:VISA-262; 12-05-2016)

- a. **(U)** The term "immediate family" includes unmarried legal sons and daughters of the principal alien, who are not members of some other household and who will reside regularly in the household of the principal alien, provided that such unmarried sons and daughters are:

- (1) **(U)** Under the age of 21; or
 - (2) **(U)** Under the age of 23 and in full-time attendance as students at post-secondary educational institutions.
- b. **(U)** Such legal sons and daughters need not previously have qualified as a "child" as defined in INA 101(b)(1). For example: children who are subject to a full and final adoption by the principal applicant are considered immediate family members and do not need to meet the two-year requirement of INA 101(b)(1)(E), the orphan definition of INA 101(b)(1)(F) or INA 101(b)(1)(G).
- c. **(U)** If a son or daughter does not qualify under this section, he/she may still qualify as immediate family under "Other Members of Household" below.

9 FAM 402.3-4(J)(4) (U) Other Members of the Principal Alien's Household

(CT:VISA-262; 12-05-2016)

- a. **(U)** The term "immediate family" may also include, upon individual authorization from the Department (see paragraph d below), any other alien who:
- (1) **(U)** will reside regularly in the household of the principal alien;
 - (2) **(U)** is not a member of some other household; and
 - (3) **(U)** is recognized as an immediate family member of the principal alien by the sending government or designated International Organization (IO), as demonstrated by eligibility for rights and benefits, such as the issuance of a diplomatic or official passport or other similar documentation, or travel or other allowances.
- b. **(U)** Aliens who may qualify for immediate family status on this basis include: any other relative, by blood, marriage, or adoption, of the principal alien or his/her spouse; a same-sex domestic partner; and a relative by blood, marriage, or adoption of the same-sex domestic partner. The term "domestic partner" for the purpose of this section means a same-sex domestic partner.
- c. **(U) Reciprocal Treatment of Same-Sex Domestic Partners:** Before you issue a derivative visa in an A or G classification, other than a G-4 visa to a same-sex domestic partner of an IO officer or employee, you must confirm that the sending state would provide reciprocal treatment to same-sex domestic partners of U.S. Mission members.
- d. **(U) Department Authorization:** You may consider an individual to be authorized by the Department of State as a member of the "immediate family" in accordance with 22 CFR 41.21(a)(3)(iii)(D) in all cases in which you have made a favorable determination on the alien's application.
- e. **(U) Notification to the Department:** You do not need to seek Departmental authorization to issue a visa when you determine that a close relative qualifies as immediate family of the principal alien. Likewise, you may deny such derivative status without referring the case to the Department. If you are unable to confirm

reciprocal treatment (see paragraph c above) or if significant foreign policy issues or public interest exist, you may refer the case to the Department (CA/VO/L/A) for an advisory opinion (AO). In any request for an AO for an individual case involving significant foreign policy issues or public interest, address how the policy issues or public interest relate to the visa application.

9 FAM 402.3-4(J)(5) (U) Aliens Who Will Reside Regularly in Household of Principal Alien

(CT:VISA-78; 03-04-2016)

(U) An alien may be held to reside regularly in the household of the principal alien even though actually absent from the household for a large part of the year while attending a boarding school or college.

9 FAM 402.3-4(J)(6) (U) Aliens Who Are Members of Some Other Household

(CT:VISA-262; 12-05-2016)

- a. **(U)** An alien who has been a member of a household other than the household of the principal alien would not normally be included within the "immediate family" of the principal alien as that term is defined in 22 CFR 41.21(a)(3), regardless of other circumstances. Thus a nephew of college age who has resided in the household of the principal alien's sister and brother-in-law would not qualify as an immediate relative of the principal alien simply to join the principal alien's household with the intention of attending college in the United States. F-1 classification under sponsorship of the principal alien might be appropriate in such a situation.
- b. **(U)** However, the fact that an alien has been, even in the recent past, a member of some other household does not preclude a finding that, at the time of visa application, the applicant is a member of the household of the principal alien. For example, a recently widowed, divorced or aging parent may have closed a former household with the intention of becoming part of the principal alien's household. This could also occur because, due to advanced age or infirmity, the parent has experienced significant difficulty in maintaining his or her own household. The test in adjudicating these cases is whether the applicant, for reasons of age, health, or change in circumstances, has a compelling reason to join the household of the principal alien rather than maintain or reestablish an independent household.
- c. **(U)** If you are satisfied that the applicant is currently a member of the principal alien's household, a visa may be issued without submitting an AO to the Department.

9 FAM 402.3-4(J)(7) (U) Immediate Family of Foreign Official Who has Requested Status of Permanent Resident

(CT:VISA-262; 12-05-2016)

- a. **(U)** An alien who is a member of the immediate family of a principal alien

classifiable as A-2, or G-1 through G-4 (other than diplomatic agents), may receive that classification even when the principal alien has requested permission to obtain or retain the status of permanent resident under INA 247(b). The principal alien must have waived his and/or her rights, privileges, exemptions, and immunities by filing Form I-508 with USCIS.

- b. **(U)** A LPR cannot serve as a diplomatic agent in the United States. You should contact CA/VO/L/A for any questions regarding immediate family members of an LPR seeking an A-1 or G visa (other than a G-4 visa).

9 FAM 402.3-4(J)(8) (U) Individuals Who Do Not Qualify as Immediate Family

(CT:VISA-262; 12-05-2016)

(U) Individuals who do not qualify as immediate family, as described above, may otherwise potentially qualify for a B-2 visa (see [9 FAM 402.2-4\(B\)\(5\)](#)) or some other nonimmigrant visa based on their purpose of travel.

9 FAM 402.3-5 (U) FOREIGN GOVERNMENT OFFICIALS – A VISAS

9 FAM 402.3-5(A) (U) Statutory and Regulatory Authority

9 FAM 402.3-5(A)(1) (U) Immigration and Nationality Act

(CT:VISA-78; 03-04-2016)

(U) INA 101(a)(15)(A) (8 U.S.C. 1101(a)(15)(A)).

9 FAM 402.3-5(A)(2) (U) Code of Federal Regulations

(CT:VISA-78; 03-04-2016)

(U) 22 CFR 41.21; 22 CFR 41.22.

9 FAM 402.3-5(B) (U) General Information on A Visa Classification

9 FAM 402.3-5(B)(1) (U) Importance of “A” Visas

(CT:VISA-362; 05-04-2017)

(U) A-1 and A-2 visas are issued to aliens coming to the United States to perform diplomatic and official business of a governmental nature. Errors made in the issuance or refusal of an “A” visa could cause embarrassment for the U.S. Government and may have serious consequences. You should ensure that “A” visa applications are adjudicated accurately and promptly. *If you have any questions, contact CA/VO/L/A.*

9 FAM 402.3-5(B)(2) (U) A Visa Classification vs. Diplomatic Type Visas

(CT:VISA-362; 05-04-2017)

- a. **(U)** As described in [9 FAM 402.3-10\(B\)](#), "A" visa classification should not be confused with the issuance of "diplomatic" type visas; *visa classification is distinct from visa type (regular, official, or diplomatic)*. Heads of state or heads of government (and their immediate family members) are always accorded A-1 visa status *regardless of their purpose of travel*. Otherwise, visa classification is determined by the purpose of entry and the intended official duties, and not by the official's title, rank, or type of passport (diplomatic, official, or regular) which he or she is carrying. *However, the type of passport is relevant for issuance of a diplomatic type visa as 22 CFR 41.26 requires the applicant possess a diplomatic passport or the equivalent of a diplomatic passport to qualify for a diplomatic type visa (regardless of visa classification)*.
- b. **(U)** Foreign officials coming to the United States on official business on behalf of their government, whether on permanent assignment or temporary duty (*TDY*), are accorded "A" status, as are their *immediate family members*. Foreign officials coming to perform non-governmental functions of a commercial or competitive nature *do not qualify for A-1 or A-2 visas, but may* fall into the "B", "E", or "L" categories, and would be issued diplomatic type visas in those categories if qualified.
- c. **(U) National, Not Local Level:** "A" visa status only pertains to officials who are *traveling to the United States* on behalf of their national government, and the immediate family of such officials. Local government officials who intend to come to the United States exclusively on behalf of their state, province, borough, or other local political entity would not qualify for "A" visa status. A foreign official who is assigned to a third country *(or the immediate family of such foreign official)* and who wishes to visit and/or vacation in the United States would not qualify for "A" visa status. Based on the applicant's reason for coming to the United States (vacation or visit), he or she may be issued a *diplomatic type or official type* B-2 visa if qualified.

9 FAM 402.3-5(B)(3) (U) Exemptions From Ineligibility Provisions for A-1 and A-2 Visa Classes

(CT:VISA-362; 05-04-2017)

- a. **(U)** A-1 and A-2 visa applicants are subject to limited grounds of ineligibility. Of the INA 212(a) ineligibilities, only INA 212(a)(3)(A), INA 212(a)(3)(B), and INA 212(a)(3)(C) apply. Thus, an applicant who demonstrates that he or she is qualified for A-1 or A-2 visa status may not be refused as an intending immigrant or on grounds of health, criminal activities, or prior visa violations. If an applicant appears to be ineligible on grounds other than INA 212(a), send an AO to CA/VO/L/A. *Prior to issuing an A -1 or A-2 visa to an applicant who would otherwise be ineligible under INA 212(a)(2)(E) if such applicant were applying for a visa other than an A-1 or A-2*

visa, you must submit an advisory opinion to CA/VO/L/A. (See [9 FAM 302.3-7\(C\)](#).)

b. Unavailable

- c. **(U)** In exempting class A-1 foreign government officials from the provisions of the Immigration and Nationality Act (INA) relating to aliens ineligible to receive visas, Congress acted on the assumption that to do otherwise might infringe upon the constitutional prerogative of the President to receive ambassadors and other public ministers (Article II, Section 3 of the Constitution). The legislative history underlying the distinctions made in the INA between A-1 and A-2 classes of foreign government officials offers some assistance in determining legislative intent. Committee Report No. 1365 which accompanied House Report No. 5678, 82nd Congress contains the following paragraph on page 34.

Ambassadors, public ministers, and career diplomatic and consular officers who have been accredited by foreign governments recognized de jure by the United States and accepted by the President or the Secretary of State, and members of their immediate families, are exempted from all provisions relating to the exclusion and deportation of aliens generally, except those provisions relating to reasonable requirements of passport and visas as means of identification and documentation. In view of constitutional limitations, such aliens may be excluded on grounds of public safety only under such regulations as may be deemed necessary by the President.

- d. **(U)** The President has not issued a directive to date applying the provisions of INA 212(a)(3)(A), INA 212(a)(3)(B), and INA 212(a)(3)(C) to aliens within the A-1 classification (See INA 102(1)).

9 FAM 402.3-5(C) (U) Aliens Entitled to A-1 Classification

(CT:VISA-78; 03-04-2016)

(U) The following aliens are entitled to A-1 nonimmigrant classification under INA 101(a)(15)(A)(i).

9 FAM 402.3-5(C)(1) (U) Alien Head of State or Government

(CT:VISA-362; 05-04-2017)

(U) An alien holding the position of head of state or head of government in a foreign government recognized de jure by the United States *is classifiable as A-1 regardless of purpose of travel. The immediate family members of such head of state or head of government are also classifiable as A-1 regardless of purpose of travel. You must not issue a visa other than an A-1 to the current head of state or head of government (and their qualifying immediate family members).*

9 FAM 402.3-5(C)(2) (U) Alien Accredited by Foreign Government as Officer at Diplomatic or Consular Post

(CT:VISA-78; 03-04-2016)

- a. **(U)** An alien duly accredited by a foreign government recognized de jure by the United States as an officer of a permanent diplomatic mission or consular post

established in the United States with the consent of the Department, who seeks to enter the United States solely for the purpose of performing duties appropriately performed by such an officer. (Officers of diplomatic missions usually have the title of "Ambassador," "Minister," "Counselor," "Secretary," or "Attaché" such as military, commercial, financial, agriculture, or scientific; and those of consular posts, "Consul General," "Deputy Consul General," "Consul," "Deputy Consul," "Consular Agent," or "Vice Consul.") (See [9 FAM 402.3-5\(F\)](#), Honorary Consul, below.)

- b. **(U)** Such alien should be at least 21 years old at the time of entry into the United States, is expected to perform services for the foreign government on an essentially full-time basis (at least 35 hours per week), and is expected to reside in the metropolitan area of the diplomatic mission or consular post where the individual will be serving.
- c. **(U)** De jure recognition is not synonymous with diplomatic relations, and de jure recognition may continue even though diplomatic relations have been severed. Consequently, an A-1 visa may be issued to an alien who seeks to enter the United States for the purpose of performing official duties for a government which has severed diplomatic relations with the United States, provided that:
 - (1) **(U)** The United States has recognized that government de jure prior to severance of diplomatic relations;
 - (2) **(U)** There is a continuing status of de jure recognition; and
 - (3) **(U)** There is a reciprocal exchange of representatives between the United States and that government. An A-1 classification for such an alien is warranted even if, owing to the absence of diplomatic relations, the individual will function under the aegis of the embassy of a third country protecting power.
 - (4) **(U)** Post has consulted with CA/VO/L/A regarding the application.

9 FAM 402.3-5(C)(3) (U) Certain Alien Officials of Foreign Governments

(CT:VISA-78; 03-04-2016)

(U) An alien seeking to enter the United States to perform official duties for a government recognized de jure by the United States who holds any of the following positions in that government:

- (1) **(U)** A position corresponding to that of a member of the U.S. Cabinet;
- (2) **(U)** The presiding officer of a national legislative body; or
- (3) **(U)** A member of the highest judicial tribunal.

9 FAM 402.3-5(C)(4) (U) Immediate Family of Alien Classifiable A-1

(CT:VISA-362; 05-04-2017)

(U) See 22 CFR 41.21(a)(3) and [9 FAM 402.3-4\(J\)](#), Immediate Family of Foreign Government and International Organization Officials and Employees. *Qualifying immediate family members of an alien classifiable as A-1 are also classifiable as A-1.*

9 FAM 402.3-5(C)(5) (U) Career Courier

(CT:VISA-78; 03-04-2016)

(U) See 22 CFR 41.22(h)(1).

9 FAM 402.3-5(D) (U) Aliens Entitled to A-2 Classification

(CT:VISA-78; 03-04-2016)

(U) The following aliens are entitled to A-2 nonimmigrant classification under INA 101(a)(15)(A)(ii).

9 FAM 402.3-5(D)(1) (U) Alien Accredited by Foreign Government as Employee at Diplomatic or Consular Post

(CT:VISA-362; 05-04-2017)

- a. **(U)** An alien duly accredited by a foreign government recognized de jure by the United States who seeks to enter the United States solely to serve as an employee of a permanent diplomatic mission or consular post established in the United States by that government, who is not within any of the categories entitled to A-1 classification, and whose duties are those normally performed by employees of permanent diplomatic missions or consular posts established in the United States. Accordingly, A-2 visas are generally appropriate for foreign government officials or employees not holding a diplomatic rank or a consular officer title, and instead working essentially full-time as administrative and technical staff and service staff at embassies, as consular employees and service staff at consulates, or as qualifying miscellaneous foreign government office personnel. Such alien is expected to perform services for the foreign government on an essentially full-time basis (at least 35 hours per week) and to reside in the metropolitan area of the mission where the individual will be serving.
- b. **(U)** You must pay close attention to the differences between A-2 service staff and A-3 domestic workers, and be prepared to ask for detailed descriptions of the duties to be performed and/or request an interview to determine proper visa classification. (Note: These standards also apply to G visa applicants (G-1 service staff and G-5 domestic workers). These applicants may be considered either service staff (A-2), personal attendants (A-3), or domestic workers (A-3), depending on the facts of their employment and duties. An applicant may qualify for an A-2 visa as service staff if he/she is engaged in certain duties owed to the sending government in furtherance of the official functions of the mission pertaining to the maintenance of the residence and representational duties performed at the residence of the head of a diplomatic mission or the principal officer of a consular post (or a permanent representative to the UN for G-1 visa applicants). In

contrast, "attendants" are generally paid from the funds of the sending government (or IO for some G-5 visa applicants) and are accompanying or following-to-join a principal to whom a duty of service is owed in his/her personal capacity; they are therefore classifiable as A-3. Similar to attendants, servants and other personal employees employed by the principal in a domestic or personal capacity – such as to cook, clean, or take care of children – in the private residence of a mission member are classifiable as A-3. These applicants do not qualify for A-2 visas even if the sending government pays the domestic worker. Please contact CA/VO/L/A or CA/VO/DO/DL if you have any questions or concerns about an applicant's eligibility for an A-2 (or G-1) visa as service staff.

- c. **(U) Interns:** *Interns applying for a visa to work at an embassy, consulate, or miscellaneous foreign government office (MFGO) may qualify for an A-2 visa if the intern's visa application is accompanied by a diplomatic note that contains either (1) an express statement that the mission considers the applicant its employee during the internship, or (2) an acknowledgement that the mission will exercise ultimate authority over the continuation of the intern's assignment and the control and direction of the official duties to be performed for the duration of the intern's U.S. assignment. The duration of the internship and status as paid/unpaid are not relevant for classifying an intern as an A-2.*

9 FAM 402.3-5(D)(2) (U) Alien Seeking to Perform Official Duties for Foreign Government

(CT:VISA-362; 05-04-2017)

- a. **(U)** An alien holding an official position with a foreign government recognized de jure by the United States who seeks to enter the United States pursuant to orders or instructions from such government, solely to perform duties or services for that government (including participation in an international meeting or conference, other than one convened by or under the auspices of a *designated* international organization, held in the United States) which, in the view of the Department, are official in nature. (See [9 FAM 402.3-7\(B\)](#) for classification of aliens attending meetings or conferences convened by or under the auspices of a *designated* international organization.)
- b. **(U) ATA Training:** In accordance with the above provisions, foreign government officials and law enforcement personnel coming to the United States under sponsorship of the foreign government for training by Diplomatic Security's Office of Antiterrorism Training Assistance (DS/ATA) shall be accorded A-2 visas. As the training program is less than 90 days, the visa should include the required "TDY" designation per [9 FAM 402.3-4\(H\)](#) paragraph 5. (See [9 FAM 402.3-4\(H\)](#) paragraph 6 for guidance on annotating the "ATA" visas.)

9 FAM 402.3-5(D)(3) (U) 90 Day Rule Limitations

(CT:VISA-362; 05-04-2017)

- (U)** Under the "90-day-rule," foreign government officials coming to the United States

for 90 days or more should only be issued A-2 visas if they are coming to work at an embassy, consulate, or miscellaneous foreign government office in the United States. *There are limited exceptions to this rule.* One exception to the rule is for personnel of foreign armed forces for education or training in accordance with [9 FAM 402.3-5\(D\)\(6\)](#) below. *A second exception is for foreign government officials traveling to the United States pursuant to an executed Technical Assistance Agreement (TAA) or Manufacturing Licensing Agreement (MLA) relating to direct commercial sales (DCS) or a Letter of Offer and Acceptance (LOA) for a foreign military sale (FMS) for U.S. defense articles, services, or training at DoD facilities and/or the facility(ies) of the provider of such articles, services, or training.* You may also issue an A-2 visa to a foreign government official who otherwise qualifies and is coming to work at a U.S. Government agency on behalf of a foreign government for longer than 90 days, as long as the foreign government and the U.S. Government agency request A-2 visa issuance. The U.S. Government agency letter must provide a point of contact and should be scanned into the CCD. If you determine there is a particular U.S. Government interest in A-2 visa issuance in any other case outside the scope of the 90-day-rule, please submit a request for an AO *to* CA/VO/L/A, which will consult with the Office of the Legal Adviser and the Office of *Foreign Missions* on the case.

9 FAM 402.3-5(D)(4) (U) Immediate Family of Alien Classifiable A-2

(CT:VISA-362; 05-04-2017)

(U) See 22 CFR 41.21(a)(3) and [9 FAM 402.3-4\(J\)](#), Immediate Family of Foreign Government and International Organization Officials and Employees. *Qualifying immediate family members of an alien classifiable as A-2 are also classifiable as A-2.*

9 FAM 402.3-5(D)(5) (U) Official Acting as Courier

(CT:VISA-147; 07-13-2016)

(U) See 22 CFR 41.22(h)(2).

9 FAM 402.3-5(D)(6) (U) Personnel of Foreign Armed Services

(CT:VISA-147; 07-13-2016)

- a. **(U)** Personnel of foreign armed services from other than NATO countries, coming to the United States in connection with their military status for education or training at any of the U.S. military schools or on a U.S. military installation, are treated as foreign government officials for visa classification purposes.
- b. **(U)** Also treated as foreign government officials are personnel of foreign armed services from other than NATO countries, coming to receive military training for up to 90 days on TDY status at a location other than a U.S. military school or a U.S. military installation, provided that the training is either U.S. Government-provided or sponsored, or the training has been licensed by the Office of Defense Trade Control Licensing (PM/DTCL). To verify PM/DTCL licensing of training, submit a

request for an advisory opinion (AO) via e-mail or through the NIV system. Post should include detailed information about the training in the AO, including where the training is being held, the company holding the training (and a point of contact at the company if possible), the military equipment and any parts or components of that equipment.

9 FAM 402.3-5(D)(7) (U) Students at the Inter-American Defense College (IADC)

(CT:VISA-362; 05-04-2017)

(U) Students at the Inter-American Defense College (IADC) are classifiable as A-2; this includes military and civilians attending the IADC as students. All other staff members, advisors, and other representatives traveling to the IADC are classifiable either G-1 or G-4, depending on their roles (see [9 FAM 402.3-7\(E\)\(3\)](#)).

9 FAM 402.3-5(E) (U) Qualifying for A-1 or A-2 Classification: Purpose of Entry and Official Duties in the United States Determines Classification

(CT:VISA-362; 05-04-2017)

- a. **(U)** Qualification for A-1 or A-2 classification is determined by the purpose for which the alien seeks to enter the United States and the nature of the official duties the alien will perform while there. Therefore, the fact that an alien is an official or employee of a foreign government or is the holder of a diplomatic, official, or service passport does not in itself, except for a head of state or head of government *(and their immediate family)* as provided in [9 FAM 402.3-5\(C\)\(1\)](#) above, qualify the alien for an A-1 or A-2 visa.
- b. **(U)** The fact that there may be government interest or control in a given organization is not in itself controlling on the matter of A-2 entitlement. There must be some further showing that the particular duties or services to be performed by the applicant are themselves of an inherently governmental character or nature. Where an organization is essentially engaged in commercial and/or competitive activities (e.g., banking, mining, or transportation), an official *traveling on behalf* of such organization would generally not be qualified for an A-2 visa. Depending upon the purpose of travel to the United States, consideration may be given to B-1, L-1, or E classification. You must review all applications for A-2 visas for officials of organizations which are not directly engaged in functions of a governmental nature as measured by U.S. standards.
- c. **(U)** If any difficulty is encountered in resolving a particular case, you should submit the case to CA/VO/L/A for an AO. The **AO** request should include a full report as to the nature, structure and purpose of the organization concerned, together with your analysis and comments.

9 FAM 402.3-5(F) (U) Honorary Consuls

(CT:VISA-362; 05-04-2017)

(U) Honorary consuls are usually so designated because the performance of duties for the foreign government which appoints them is only incidental to the primary purposes of entry into, or presence in, the United States, typically for business, employment, study, or some other nongovernmental purpose. Therefore, an honorary consul does not usually seek to enter solely in order to perform governmental official duties and is not normally classifiable A-1 or A-2. However, the term "honorary" may be used in the consul's title even though the consul is coming solely to perform official duties. In such a case, you should request *an AO from CA/VO/L/A* for the appropriate visa classification of the alien.

9 FAM 402.3-5(G) (U) Aliens Entitled to A-3 Classification

(CT:VISA-78; 03-04-2016)

(U) See [9 FAM 402.3-9](#) Attendants, Servants, and Personal Employees of Officials – A-3, G-5, and NATO-7 Visas.

9 FAM 402.3-5(H) (U) Other Considerations for A Visas

9 FAM 402.3-5(H)(1) (U) "A" Status for Lawful Permanent Residents (LPRs) and Dependents

(CT:VISA-362; 05-04-2017)

(U) *Post must not issue an A visa to an LPR.* If an LPR *is* employed by a foreign government and seeks a visa to travel to the United States on assignment to their country's mission in the United States, he or she would be eligible for *an A-1 or A-2* visa status *only* if he or she surrendered his or her status as a legal permanent resident and was otherwise acceptable *and eligible for the A-1 or A-2 visa*. Please note that an LPR cannot serve as a diplomatic agent or consular officer in the United States *(as an LPR, but must instead have an A-1 visa)*. You should contact CA/VO/L/A for any questions regarding immediate family members of an LPR seeking an A-1 visa. *However, an LPR can serve as administrative and technical staff/support staff (as an LPR, without an A-2 visa) in an Embassy or Consulate. The immediate family members of these LPRs may be issued A-2 visas, provided they are eligible to receive visas (See 9 FAM 402.3-4(J)(7)).*

9 FAM 402.3-5(H)(2) (U) Advisory Opinions

(CT:VISA-362; 05-04-2017)

(U) Occasionally, posts may receive instructions to request AOs for diplomats of certain countries for a variety of reasons unrelated to security concerns (e.g., unwillingness or inability to meet debts incurred by diplomatic missions in the United States). The instructions *may* identify the office(s) in the Department *that should be consulted prior to visa issuance*. Posts receiving "A" visa applications from diplomats who purport to represent former governments of countries which have experienced

civil unrest or war should contact the Department (CA/VO/L/A and the relevant country desk) for guidance on whether "A" status is still appropriate.

9 FAM 402.3-5(I) (U) Taipei Economic and Cultural Representative Office (TECRO) Employees

9 FAM 402.3-5(I)(1) (U) TECRO Employees Unable to Receive A or G Visas

(CT:VISA-78; 03-04-2016)

(U) The United States does not have official relations with Taiwan, nor does it recognize Taiwan as an independent, sovereign state. Therefore, employees of the Taipei Economic and Cultural Representative Office (TECRO) may not receive "A" or "G" nonimmigrant visa classification. Representatives of Taiwan employed by TECRO currently receive E nonimmigrant visas and are admitted to the United States in E-1 nonimmigrant classification.

9 FAM 402.3-5(I)(2) (U) TECRO Dependents Over 21 Years of Age Entitled to "E-1" Classification

(CT:VISA-362; 05-04-2017)

- a. **(U)** Under INA 101(a)(15)(E) and INA 101(b)(1), as amended, children of treaty traders and investors who reach the age of 21 become ineligible for "E" nonimmigrant classification. However, TRA 4(A) of the Taiwan Relations Act (TRA) preserves for the dependent sons and daughters of TECRO employees over the age of 21, the entitlements "applied with respect to Taiwan prior to January 01, 1979," the date of Taiwan's derecognition by the United States.
- b. **(U)** Accordingly, pursuant to TRA 4(A), unmarried dependent sons and daughters of TECRO employees may remain in valid "E" nonimmigrant classification. They may also be issued visas for such classification after the age of 21, provided that they continue to meet the definition of "immediate family" as defined in 22 CFR 41.21(a)(3). "Immediate family" includes "unmarried sons and daughters" whether by blood or adoption, who are not members of some other household and who will reside regularly in the household of the principal alien, *provided that such unmarried sons and daughters are:*
 - (1) **(U)** *Under the age of 21; or*
 - (2) **(U)** *Under the age of 23 and in full-time attendance as students at post-secondary educational institutions. (See [9 FAM 402.3-4\(J\)\(3\).](#))*

9 FAM 402.3-5(I)(3) (U) TECRO Employees and/or Dependents Authorized Duration of Status (D/S)

(CT:VISA-78; 03-04-2016)

(U) Employees of TECRO and their dependents admitted in E-1 status are authorized to use D/S by the United States Customs and Border Protection (USCBP) Officer, who will annotate the Form I-94, Arrival -Departure Record, "D/S" for these aliens at the port of entry.

9 FAM 402.3-5(I)(4) (U) Procedures for Making Application for "E" Reinstatement

(CT:VISA-362; 05-04-2017)

- a. **(U)** The dependents of TECRO employees who were deemed to be out of status because the USCIS officer at the port of entry annotated their Form I-94, with an expiration date instead of "D/S," may apply for reinstatement to "E" status.
- b. **(U)** TECRO must submit the following to *CA/VO/DO/DL*, through the American Institute/Taiwan (AIT):
 - (1) **(U)** An applicant's passport, valid for at least 6 months;
 - (2) **(U)** A currently valid Form I-94 (USCIS will not consider processing a case whose Form I-94 has expired); and
 - (3) **(U)** A letter from TECRO requesting that USCIS annotate the applicant's Form I-94 to read: D/S.

9 FAM 402.3-5(I)(5) (U) Employment Authorization for TECRO Dependents

(CT:VISA-78; 03-04-2016)

- a. **(U)** An alien spouse or unmarried son or daughter of a TECRO employee may apply for employment authorization under 8 CFR 274a.12(C)(2). In order to be eligible to apply for employment authorization under this section, unmarried sons and daughters of TECRO employees who are older than 21 must meet the definition of "immediate family" members set forth in 22 CFR 41.21(a)(3). They must also fall within the definition of the term "dependent" set forth in 8 CFR 214.2(A)(2).
- b. **(U)** Accordingly, employment authorization may be requested by unmarried sons and daughters of TECRO employees who are older than 21 years of age, under the age of 23, and in full-time attendance as students at post-secondary educational institutions as provided in 8 CFR 214.2(A)(2)(III). Under no circumstances may the employment authorization benefits afforded to dependents of TECRO employees exceed those provided to dependents under 8 CFR 214.2(A)(2) and (G)(2). TECRO dependents seeking to apply for employment authorization should follow existing procedures set forth in 8 CFR 274a.

9 FAM 402.3-6 (U) OFFICIALS IN TRANSIT – C-2 AND C-3 VISAS

9 FAM 402.3-6(A) (U) Statutory and Regulatory Authority

9 FAM 402.3-6(A)(1) (U) Immigration and Nationality Act

(CT:VISA-78; 03-04-2016)

(U) INA 101(a)(15)(C) (8 U.S.C. 1101(a)(15)(C)); INA 212(d)(8) (8 U.S.C. 1182(d)(8)).

9 FAM 402.3-6(A)(2) (U) Code of Federal Regulations

(CT:VISA-78; 03-04-2016)

(U) 22 CFR 41.23.

9 FAM 402.3-6(B) (U) In General

(CT:VISA-362; 05-04-2017)

- a. (U) **C-2 Visas:** C-2 visas are appropriate for an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Headquarters Agreement with United Nations. *Section 11 of the Headquarters Agreement provides:*

The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of (1) representatives of Members or officials of the United Nations, or of specialized agencies as defined in Article 57, paragraph 2, of the Charter, or the families of such representatives or officials; (2) experts performing missions for the United Nations or for such specialized agencies; (3) representatives of the press, or of radio, film or other information agencies, who have been accredited by the United Nations (or by such a specialized agency) in its discretion after consultation with the United States; (4) representatives of nongovernmental organizations recognized by the United Nations for the purpose of consultation under Article 71 of the Charter; or (5) other persons invited to the headquarters district by the United Nations or by such specialized agency on official business. The appropriate American authorities shall afford any necessary protection to such persons while in transit to or from the headquarters district. This section does not apply to general interruptions of transportation which are to be dealt with as provided in Section 17, and does not impair the effectiveness of generally applicable laws and regulations as to the operation of means of transportation.

- b. (U) **C-3 Visas:** An accredited official of a foreign government intending to proceed in immediate and continuous transit through the United States on official business for that government is entitled to the benefits of INA 212(d)(8). The foreign government must grant similar privileges to officials of the United States, and is classifiable C-3 under the provisions of INA 101(a)(15)(C). Members of the immediate family, attendants, servants, or personal employees of such an official receive the same classification as the principal alien.
- c. (U) **Transit Visa:** For information on transit visas for non-diplomatic or *non-*official purposes see [9 FAM 402.4](#).

9 FAM 402.3-6(C) (U) Ineligibilities

(CT:VISA-362; 05-04-2017)

(U) C-2 and C-3 visa classifications are exempt from most visa ineligibilities *under INA 212(a)*. *Of the INA 212(a) ineligibilities, only INA 212(a)(3)(A), INA 212(a)(3)(B), INA 212(a)(3)(C), and INA 212(a)(7)(B) apply* (see [9 FAM 402.3-4\(B\)](#)).

9 FAM 402.3-6(D) (U) Exemptions and Travel Limitations for Holders of C-2 Visas

9 FAM 402.3-6(D)(1) (U) Admission to United Nations Headquarters District

(CT:VISA-78; 03-04-2016)

(U) Because of the obligations undertaken by the United States pursuant to the United Nations (UN) Headquarters Agreement, applicants for C-2 visas are exempted from the grounds of ineligibility listed in INA 212(a) except for INA 212(a)(3)(A), INA 212(a)(3)(B), INA 212(a)(3)(C), and INA 212(a)(7)(B) thereof. Therefore, DHS regulations provide that holders of C-2 visas may be admitted only on the following conditions:

- (1) **(U)** The alien must proceed directly to New York City and remain continuously within the Headquarters District and its immediate vicinity, departing therefrom only to leave the United States; and
- (2) **(U)** The alien must be in possession of a document establishing the alien's ability to enter a foreign country following the alien's sojourn in the United Nations Headquarters District.

9 FAM 402.3-6(D)(2) (U) Defining "United Nation Headquarters District" and Explaining Travel Restrictions

(CT:VISA-78; 03-04-2016)

(U) Persons referred to in [9 FAM 402.3-6\(D\)\(1\)](#) above are restricted to "the United Nations Headquarters District and its immediate vicinity," defined as the "area lying within a twenty-five mile radius of Columbus Circle, New York, N.Y." Consular officers shall advise applicants for C-2 visas of these travel restrictions.

9 FAM 402.3-6(D)(3) (U) Waiver of Ineligibility

(CT:VISA-78; 03-04-2016)

(U) For discussions of waiver of ineligibility under INA 212(d)(3)(A) for C-2 visa applicants, see [9 FAM 305.4-2](#) and [9 FAM 701.2](#), Appendix A.

9 FAM 402.3-6(E) (U) Certain Aliens Proceeding to the

United Nations

(CT:VISA-78; 03-04-2016)

(U) An alien who is classified C-2 may, as an alternative, be issued a B-1 or I visa if the consular officer finds the alien otherwise qualified for such classification and the alien pays any required fee. If the alien is ineligible to receive a visa under any of the provisions of INA 212(a), the consular officer may recommend a waiver of ineligibility under INA 212(d)(3)(A) only if the circumstances in the alien's case justify such a recommendation pursuant to the rules set out in [9 FAM 305.4-2](#) and 9 FAM Appendix A, 200.

9 FAM 402.3-6(F) (U) Information Media Representatives Proceeding to United Nations

(CT:VISA-78; 03-04-2016)

(U) In the case of an alien coming within the provisions of paragraph (3) of section 11 of the Headquarters Agreement with the United Nations (for example, representatives of the press, radio, film, or other information agencies), the consular officer may not issue a C-2 visa unless the alien presents evidence of accreditation by the United Nations. The consular officer shall refer an applicant for a C-2 visa inquiring about the procedure for obtaining such accreditation to the appropriate United Nations information center or to the Accreditation Office, Office of Public Information, United Nations, New York, N.Y. If the consular officer obtains a waiver of ineligibility under INA 212(d)(3)(A) in the alien's behalf through the Department, the consular officer may presume that the Department has resolved the question of accreditation.

9 FAM 402.3-6(G) (U) G-4 Aliens in Transit

(CT:VISA-78; 03-04-2016)

(U) See [9 FAM 402.3-7\(I\)](#) below for information on issuing G-4 Visas to officers and employees of designated international organizations for transit through the United States.

9 FAM 402.3-7 (U) PERSONS ASSOCIATED WITH INTERNATIONAL ORGANIZATIONS - G VISAS

9 FAM 402.3-7(A) (U) Statutory and Regulatory Authority

9 FAM 402.3-7(A)(1) (U) Immigration and Nationality Act

(CT:VISA-78; 03-04-2016)

(U) INA 101(a)(15)(G) (8 U.S.C. 1101(a)(15)(G)).

9 FAM 402.3-7(A)(2) (U) Code of Federal Regulations

(CT:VISA-78; 03-04-2016)

(U) 22 CFR 41.21; 22 CFR 41.24.

9 FAM 402.3-7(A)(3) (U) United States Code

(CT:VISA-78; 03-04-2016)

(U) 22 U.S.C. 288.

9 FAM 402.3-7(B) (U) G Visa Classifications

(CT:VISA-362; 05-04-2017)

- a. (U) A qualified person may be issued a "G" visa in one of the categories listed below:
- (1) (U) **G-1 visas:** Issued to *foreign government officials and employees assigned to work for 90 days or more as* members of a permanent mission to a *designated* international organization, regardless of rank, and to members of their immediate families. Mission members having a rank equivalent to diplomatic agents should be at least 21 at the time of entry into the U.S. G-1 visas are *therefore appropriate for the principal permanent representative as well as* the mission's secretaries, chauffeurs, and custodial employees. *However, a G-1 visa should not be issued* to domestic employees of *such* mission members; *domestic employees are classifiable as* G-5.
 - (2) (U) **G-2 visas:** Issued to *foreign government officials and employees traveling for less than 90 days as* representatives of a recognized government *for activities of a designated international organization*, and to members of their immediate families. *Such representatives may be traveling* to attend meetings of a designated international organization, *for example, to* represent their governments at the United Nations General Assembly (*UNGA*), or as TDY officers to that country's mission to the international organization. G-2 visas may *also* be issued to military officers who are assisting the United Nations Secretariat with peacekeeping matters.
 - (3) (U) **G-3 visas:** Issued to *foreign government officials and employees traveling as* representatives of non-recognized or non-member governments, regardless of rank, and to members of their immediate families. *This includes TDY travel for* representatives of such governments to participate in temporary meetings of designated international organizations (e.g., a meeting of the *UNGA* and Security Council).
 - (4) (U) **G-4 visas:** Issued to *officers and employees of designated international organizations traveling on official business on behalf of the international organization, and to members of their immediate families. Specifically, G-4 visas may be issued for* personnel of any rank who are proceeding to the United States to take up an appointment at a designated

international organization (including the United Nations) *or traveling on behalf of the international organization for temporary (TDY) travel*. G-4 visas are also appropriate for *officers* and employees of designated international organizations, who are not assigned in the United States, *but are transiting* the United States *on official business on behalf of that international organization*. *For transit G-4 visas, the number of entries must be limited to the official request. Domestic employees of international organization personnel are not classifiable as G-4, and should be issued G-5 visas if eligible.*

- (5) **(U) G-5 visas:** Issued to the attendants and personal employees of persons in G-1 through G-4 status. (See [9 FAM 402.3-9](#).)
- b. **(U)** A person who meets the foregoing requirements for G-1, G-3 (non-TDY), or G-4 classification is expected to perform services for the foreign government or international organization on an essentially full-time basis (at least 35 hours per week) and to reside in the metropolitan area of the international organization where the individual will be serving.
- c. **(U) Interns:** *Interns applying for a visa to work at a mission to an IO or at an IO may qualify for a G visa if the intern's visa application is accompanied by a diplomatic note that contains either (1) an express statement that the mission or IO considers the applicant its employee during the internship, or (2) an acknowledgement that the mission or IO will exercise ultimate authority over the continuation of the intern's assignment and the control and direction of the official duties to be performed for the duration of the intern's U.S. assignment. The duration of the internship and status as paid/unpaid are not relevant in classifying an intern as G-1 (intern at a mission to a designated IO for more than 90 days), G-2 (intern at a mission to a designated IO for less than 90 days), G-3 (intern at a mission to a designated IO where the foreign government is not a member of the IO or where the government is not recognized), or G-4 (intern at a designated IO). (Also see [9 FAM 402.3-7\(D\)\(2\)](#) regarding UN interns.)*

9 FAM 402.3-7(C) (U) Limited Grounds of Ineligibility

9 FAM 402.3-7(C)(1) (U) Cases Involving Possible Ineligibility

(CT:VISA-362; 05-04-2017)

Unavailable

9 FAM 402.3-7(C)(2) (U) Communications to Department Regarding Ineligibility

(CT:VISA-78; 03-04-2016)

(U) You must cable the Department concerning persons who are found ineligible for visas and who are coming to the United Nations. Cables must be addressed "For CA/VO/L/A, IO/UNP and USUN." In referring a case to the Department, the cable

must include:

- (1) **(U)** All available details of the supporting evidence;
- (2) **(U)** The applicable statutory provision; and
- (3) **(U)** The conclusions and recommendations of the consular officer.

9 FAM 402.3-7(D) (U) Persons Proceeding to the United Nations

9 FAM 402.3-7(D)(1) (U) Expeditious Processing of United Nations Visa Applications

(CT:VISA-362; 05-04-2017)

- a. **(U)** Representatives to the United Nations and officials of the United Nations Secretariat are sensitive to the performance by the United States of its host obligations under the Headquarters Agreement with the United Nations. Consequently, any mention of the United Nations on a visa application calls for expeditious consideration, or, where necessary, prompt submission for an AO.
- b. **(U)** When the United Nations was invited to locate its headquarters in the United States it was evident that persons of many political backgrounds would need to be admitted to the United States on United Nations business. For this reason, Congress provided that persons entitled to international organization status are exempt from most of the grounds of ineligibility listed in INA 212(a). (See [9 FAM 402.3-7\(C\)\(1\)](#) or 22 CFR 41.21(d) for the grounds of *ineligibility that apply to these applicants*.)

9 FAM 402.3-7(D)(2) (U) Interns Temporarily Employed at the United Nations

(CT:VISA-362; 05-04-2017)

- a. **(U)** Interns are generally not classifiable B because they perform hands-on services; however, United Nations interns may be classified for temporary employment as a B-1 "intern" at the United Nations if he or she is of H-1B caliber. In order to determine that an alien intern has met the H-1B caliber standard, the consular officer should:
 - (1) **(U)** Be able to answer affirmatively that the proposed duties chiefly involve the theoretical and practical application of a body of highly specialized knowledge; and
 - (2) **(U)** Ensure that the alien attained a bachelor or higher degree (or its equivalent) in a specific specialty that, in practice, requires the attainment of such a degree in order to enter that specialty.
- b. **(U)** For instance, a degree in chemistry would not qualify the applicant for employment as an accountant. On the other hand, certain jobs in accounting,

marketing, and finance would be considered "specialty occupations." Professions requiring state licensure are generally considered "specialty occupations." You should seek an advisory opinion from CA/VO/L/A in any situation where a question exists about a prospective United Nations intern's qualifications.

- c. **(U)** *A United Nations intern may alternatively qualify for a G-4 visa provided the applicant meets the requirements in [9 FAM 402.3-7\(B\)](#).*

9 FAM 402.3-7(D)(3) (U) Transportation Cable/Note Required for United Nations Officers and Employees

(CT:VISA-362; 05-04-2017)

(U) G-4 visas must be issued to officers and employees of the United Nations and to their immediate families based on a telegraphic request authorized by the Chief of the Transportation Section, United Nations Secretariat ("*Transportation Cable/Note*"). A *Transportation Cable/Note* is also required for personal employees (classified *as* G-5) of officers and *employees of* the UN (classified *as* G-4). A *Transportation Cable/Note* from the Chief is not required in the case of a G-5 who will be employed by a person classified G-1, G-2, or G-3. (See [9 FAM 402.3-7\(N\)](#) below for a listing of the international organizations.)

9 FAM 402.3-7(D)(4) (U) Participants in United Nations Secretariat Exchange Visitor Program

(CT:VISA-362; 05-04-2017)

(U) *Participants in the exchange visitor program of the Training and Fellowship Program Section, Bureau of Technical Assistance Operations, United Nations Secretariat, are classifiable "J."* (See [9 FAM 402.5-6](#) regarding exchange visitors.)

9 FAM 402.3-7(D)(5) (U) Director and Teachers of United Nations International School

(CT:VISA-362; 05-04-2017)

(U) The director and teachers of the United Nations International School (*UNIS*) are not considered to be staff members. A G-4 visa, however, may be issued to a qualified applicant destined to the school as a director or a teacher, provided you receive a *Transportation Cable/Note* from the Chief of the Transportation Section, United Nations Secretariat *as described above in [9 FAM 402.3-7\(D\)\(3\)](#).*

9 FAM 402.3-7(D)(6) (U) United Nations Laissez-Passer (UNLP)

(CT:VISA-362; 05-04-2017)

a. (U) Issuing G-4 Visa in United Nations Laissez-Passer (UNLP):

- (U)** The UNLP is a bound booklet in passport format. The cover bears the gold embossed seal of the United Nations, and is either red or light blue in color, depending upon the rank of the recipient.

- (2) **(U)** Only a G-4 visa may be placed in a UNLP. The bearer must present a Form DS-160, Online Nonimmigrant Visa Application, and a photograph for a G-4 visa in connection with the UNLP. (See [9 FAM 403.3-4\(A\)](#) for photograph requirements.) You must receive a written or telegraphic confirmation from the Department or from the Chief of the Transportation Section, United Nations Secretariat, indicating that the applicant is an employee of the United Nations traveling on official business.
- b. **(U) Validity of G-4 Visa in UNLP:** The period of validity of a G-4 visa placed in a UNLP must be restricted to cover the official travel certified in *the* letter or telegram from the Chief of the Transportation Section, United Nations Secretariat. The visa must be valid for one entry, unless the letter or telegram from the Chief of the Transportation Section, United Nations Secretariat, requests more entries. If the letter or telegram is not clear on these points, you must contact the U.S. Mission to the United Nations (USUN) either by phone on (212) 415-4167, by fax (212) 415-4162, or by cable. Cables must be *addressed* to the attention of Host Country.
- c. **(U) Placing G-4 Visa in National Passport Rather Than in UNLP:** The Secretary General, all under secretaries, and all assistant secretaries general of the United Nations may be issued G-4 visas valid for 60 months with multiple entries. The visas, however, must be placed in the national passport rather than in the UNLP.
- d. **(U)** For all others at the United Nations or United Nations Secretariat, refer to the reciprocity schedule of the country concerned.

9 FAM 402.3-7(D)(7) (U) United Nations Permanent Observer Mission Representatives and Dependents

(CT:VISA-362; 05-04-2017)

- a. **(U) Types of Missions:** Permanent Observer Missions at the United Nations include Intergovernmental Organizations and other entities invited to participate as observers. United Nations Observer Mission personnel may be entitled to A or G visas because they are foreign government officials traveling on behalf of the foreign government *or* are officers or employees of a designated IO. However, there are numerous United Nations Observer Missions whose representatives do not qualify for *A or G visas*, generally because they are representatives of an organization that is not designated under the International Organizations Immunities Act (IOIA) and therefore are not entitled to G-4 classification. In addition, certain individuals who are invited by the U.N. may apply and qualify for a B-1 or C-2 visa, as appropriate.
- b. **(U) B Visa Classification:** Principal applicants seeking to serve at United Nations Permanent Observer Missions who are not otherwise entitled to A or G visas are to be issued B-1 visas. Dependents are to be issued B-2 visas. (See [9 FAM 403.9-5](#) for visa annotation procedures.)
- c. **(U) Exemption from fees:** Principals and dependents of United Nations Permanent Observer Missions who are issued 'B' visas are exempt from all visa

fees. (See also [9 FAM 402.3-4\(F\)](#), [9 FAM 403.4-3\(A\)](#) and [9 FAM 403.4-3\(B\)](#).)

- d. **(U) Notification Requirements Regarding "B" Visas for Permanent Observers:** Observer Missions are not required to notify the United States Mission to the United Nations (USUN) of visa requests for Observer Mission personnel and their dependents, but may do so *on occasion* via e-mail to USUNvisas@state.gov. If the Observer Mission notifies USUN that it will request a visa for an individual, then the USUN Visa Unit will inform post that it received notification that a particular applicant is Observer Mission personnel and will seek a visa to travel to the Observer Mission. If you have any questions regarding observer mission personnel, reach out to CA/VO/L/A, CA/VO/DO/DL (diplomaticvisas@state.gov), and the USUN Visa Unit. You can reach the USUN Visa Unit by e-mail (USUNvisas@state.gov), telephone at (212) 415-4167, and by fax at (212)415-4162.
- e. **Unavailable**

9 FAM 402.3-7(E) (U) Persons Proceeding to the Organization of American States (OAS)

9 FAM 402.3-7(E)(1) (U) Issuing G-4 Visas to Officers and Employees of OAS General Secretariat

(CT:VISA-362; 05-04-2017)

(U) The Secretariat for Management, through the Department of Human Resources (Personnel Office) of the Organization of American States (OAS) General Secretariat, is responsible for requesting the issuance of visas for persons appointed to, or under contract to serve in, the General Secretariat of the OAS. You must accept requests for *G-4* visas on behalf of such persons (including *immediate* family members (*also classifiable as G-4*) and domestic *employees (classifiable as G-5)*) only from the Secretariat for Management or from the Department of Human Resources of the OAS.

9 FAM 402.3-7(E)(2) (U) Official Travel Document of OAS Not Considered "Passport"

(CT:VISA-362; 05-04-2017)

(U) The official travel document of the OAS is issued to an employee of the OAS General Secretariat or other agency of the OAS. The purpose of the document is to identify the holder as an *officer* or employee of an agency of the OAS, and to facilitate travel compatible with the interests of the OAS. The document is not considered a "passport" as defined in INA 101(a)(30), and therefore, visas must not be placed in this document. (*See also* [9 FAM 403.9-3\(A\)\(2\)](#).)

9 FAM 402.3-7(E)(3) (U) Personnel at the Inter-American Defense Board (IADB) and Inter-American Defense College (IADC)

(CT:VISA-362; 05-04-2017)

- a. **(U) G-1 Visas Classification:** *IADB Members of the Council of Delegates and persons assigned to serve on the delegations as diplomatic advisors and accredited as such at their representative OAS mission are classifiable G-1.*
- b. **(U) G-4 Visa Classification:** *The following staff positions at the IADB are classifiable as G-4: The Chair and Vice-Chair at the IADB; the Director of Staff at the IADB; the Secretary of the IADB; and members of the international staff of the IADB, including commissioned military officers from the various OAS member states and civil members of the international staff. Staff members and advisors for the IADC, including the Vice Director and Chief of Studies at the IADC and military officers who are advisors at the IADC (i.e., staff of the IADB at the IADC) are also classifiable G-4. (For students at the IADC, see [9 FAM 402.3-5\(D\)\(7\).](#))*

9 FAM 402.3-7(F) (U) Participants in Courses Given by *the* International Monetary Fund (IMF) Institute

(CT:VISA-362; 05-04-2017)

(U) An applicant who is nominated by a member government of the International Monetary Fund (IMF), and accepted by the IMF to attend courses given by the Fund's Institute, is classifiable G-2. The applicant must possess evidence from the Fund certifying acceptance for participation in a specific course. The request for the visa must be made or supported by the foreign government concerned.

9 FAM 402.3-7(G) (U) Participants *at the* Economic Development Institute of International Bank for Reconstruction and Development (World Bank)

(CT:VISA-362; 05-04-2017)

(U) A *applicant who is* nominated by a member government of the World Bank and accepted by the *World* Bank to attend a course given at the Economic Development Institute of the Bank is classifiable G-2. The applicant must possess a letter from the Economic Development Institute of the Bank certifying acceptance for participation in the course of study. The request for a visa must be made or supported by the foreign government concerned.

9 FAM 402.3-7(H) (U) Employees of INTELSAT

9 FAM 402.3-7(H)(1) (U) Employee Six Months or More Prior to Privatization Date

(CT:VISA-362; 05-04-2017)

- a. **(U)** An alien employed as an officer or employee of INTELSAT, six months or more prior to July 18, 2001, the date of privatization, must be considered to be a

nonimmigrant under INA 101(a)(15)(G)(iv) (*G-4*) provided the alien:

- (1) **(U)** Was continuously an officer or employee of INTELSAT during the six month period prior to the date of privatization; and
 - (2) **(U)** Maintained lawful nonimmigrant status as a G-4 during that six month period.
- b. **(U)** Immediate family members of aliens meeting the above criteria (in paragraph a) are also entitled to G-4 status. (*See 9 FAM 402.3-4(J) regarding qualification as immediate family.*)

9 FAM 402.3-7(H)(2) (U) Employee of Successor or Separated Entity of INTELSAT

(CT:VISA-362; 05-04-2017)

- a. **(U)** If an alien commences service as an officer or employee of a successor or separated entity of INTELSAT before the date of privatization, but after March 17, 2000, such alien must be considered to be a nonimmigrant under INA 101(a)(15)(G)(iv) (*G-4*), if the alien:
- (1) **(U)** Was continuously an officer or employee during the six month period prior to the date of privatization; and
 - (2) **(U)** Maintained lawful nonimmigrant status as a G-4 during that six month period.
- b. **(U)** The term "successor entity" means any privatized entity created from the privatization of INTELSAT or from the assets of INTELSAT. It does not include any entity that is a separated entity.
- c. **(U)** The term "separated entity" means a privatized entity to which a portion of the assets owned by INTELSAT are transferred prior to full privatization of INTELSAT.

9 FAM 402.3-7(H)(3) (U) Newly Hired INTELSAT Personnel

(CT:VISA-78; 03-04-2016)

(U) Officers and/or employees of privatized INTELSAT who were hired after the date of privatization (July 18, 2001), as well as any employees who may have been hired less than six months prior to privatization, are not eligible for G-4 status and would require an immigrant visa (IV), H visa, or another classification of visa authorizing employment.

9 FAM 402.3-7(H)(4) (U) Domestic *Workers* of Privatized INTELSAT Personnel

(CT:VISA-362; 05-04-2017)

(U) Domestic *employees* of privatized INTELSAT personnel are not eligible for G-5 status, *regardless of whether* their employer holds G-4 status under the "grandfathering" provisions in [9 FAM 402.3-7\(H\)\(1\)](#) and (2) above.

9 FAM 402.3-7(H)(5) (U) Annotating Visas of Privatized INTELSAT Employees

(CT:VISA-78; 03-04-2016)

(U) In addition to the standard annotation for G-4 visas (see [9 FAM 402.3-4\(H\)](#)), G-4 visas issued to qualifying privatized INTELSAT officers and/or employees and their immediate family should include the following additional line at the end of the annotation:

“ISSUED PURSUANT TO SECTION 301 OF Public Law 106-396.”

9 FAM 402.3-7(H)(6) (U) International Telecommunications Satellite Organization (ITSO) Personnel

(CT:VISA-362; 05-04-2017)

(U) A small part of former INTELSAT was not privatized and will remain a qualifying international organization under the acronym ITSO (International Telecommunications Satellite Organization). ITSO personnel and their immediate family are eligible for G-4 classification regardless of the date on which the principal alien was hired. In addition, domestic *employees* of ITSO personnel are eligible for G-5 classification as *domestic employees* of personnel employed by an international organization.

9 FAM 402.3-7(I) (U) Issuing G-4 Visas for Transit Purposes

(CT:VISA-362; 05-04-2017)

- a. (U) Officers and employees of designated international organizations who are not assigned in the United States may be accorded G-4 classification to transit the United States *on official business of the international organization*. Posts must endorse G-4 visas issued to such applicants who are generally on, or returning from home leave, as follows:

VALID FOR IMMEDIATE AND CONTINUOUS TRANSIT ONLY

- b. (U) Such an applicant who expects to spend time in the United States for personal business or pleasure must also possess a “B” visa.

9 FAM 402.3-7(J) (U) Issuing Diplomatic *Type* or Official *Type* Visas to Applicants Classified G-4

(CT:VISA-362; 05-04-2017)

(U) Except in those cases listed in 22 CFR 41.26(c)(2) (see also [9 FAM 402.3-10\(C\)](#) regarding *diplomatic type visas*), persons who are classifiable G-4 are not entitled to receive diplomatic *type G-4* visas. In all *G-4 visa* cases, you must receive a request, as described in [9 FAM 402.3-7\(D\)\(3\)](#) above, from a designated international organization listed in [9 FAM 402.3-7\(N\)](#) below, prior to *G-4* visa issuance.

9 FAM 402.3-7(K) (U) Issuing G-5 Visa to Attendants and Personal Employees

(CT:VISA-78; 03-04-2016)

(U) See [9 FAM 402.3-9](#), Attendants, Servants, and Personal Employees of Officials – A-3, G-5, and NATO-7 Visas.

9 FAM 402.3-7(L) (U) Issuing Visa to Applicants Entitled to Documentary Waiver

(CT:VISA-78; 03-04-2016)

(U) See [9 FAM 201.1-2](#).

9 FAM 402.3-7(M) (U) Designated International Organizations

(CT:VISA-362; 05-04-2017)

(U) The following is an alphabetical listing of the international organizations that have been designated by Executive Order pursuant to various treaties or under the International Organizations Immunities Act (IOIA) of December 29, 1945. *A G-1, G-2, G-3, or G-4 visa may only be issued to an applicant who is traveling to the United States (or in some cases transiting the United States) for activities of one of these international organizations.*

International Organization	E.O.	International Organization	E.O.
African Development Bank	E.O. 12403 (Feb. 8, 1983)	African Development Fund	E.O. 11977 (Mar. 14, 1977)
Asian Development Bank	E.O. 11334 (Mar. 7, 1967)	African Union	E.O. 13377 (April 13, 2005)
Border Environmental Cooperation Commission	E.O. 12904 (Mar. 16, 1994)	Caribbean Organization	E.O. 10983 (Dec. 30, 1961)
Commission for Environmental Cooperation	E.O. 12904 (Mar. 16, 1994)	Commission for Labor Cooperation	E.O. 12904 (Mar. 16, 1994)
Commission for the Study of Alternatives to the Panama Canal	E.O. 12567 (Oct. 2, 1986)	Customs Cooperation Council	E.O. 11596 (June 5, 1971)
European Bank for Reconstruction and Development	E.O. 12766 (June 18, 1991)	European Space Agency (formerly the European Space Research Organization)	E.O. 11318 (Dec. 5, 1966) & E.O. 12766 (June 18, 1991)
Food and Agriculture Organization	E.O. 9698 (Feb. 19, 1946)	Global Fund	E.O. 13395 (Jan. 13, 2006)
Great Lakes Fishery Commission	E.O. 11059 (Oct. 23, 1962)	GRECO (Council of Europe in Respect of the Group of States Against Corruption)	E.O. 13240 (Dec. 18, 2001)

Hong Kong Economic and Trade Offices	E.O. 13052 (June 30, 1997)	Inter-American Defense Board	E.O. 10228 (Mar. 26, 1951)
Inter-American Development Bank	E.O. 10873 (April 8, 1960) & E.O. 11019 (April 27, 1962)	Inter-American Institute for Cooperation for Agriculture	E.O. 9751 (July 11, 1946)
Inter-American Investment Corporation	E.O. 12567 (Oct. 2, 1986)	Inter-American Statistical Institute	E.O. 9751 (July 11, 1946)
Inter-American Tropical Tuna Commission	E.O. 11059 (Oct. 23, 1962)	International Atomic Energy Agency	E.O. 10727 (Aug. 31, 1957)
International Bank for Reconstruction and Development (World Bank)	E.O. 9751 (July 11, 1946)	International Boundary and Water Commission - the United States and Mexico	E.O. 12467 (Mar. 2, 1984)
International Centre for Settlement of Investment Disputes	E.O. 11966 (Jan. 19, 1977)	International Civil Aviation Organization	E.O. 9863 (May 31, 1947)
International Coffee Organization	E.O. 11225 (May 22, 1965)	International Committee of the Red Cross	E.O. 12643 (June 23, 1988)
International Cotton Advisory Committee	E.O. 9911 (Dec. 19, 1947)	International Cotton Institute	E.O. 11283 (May 27, 1966)
International Criminal Police Organization (INTERPOL) (Limited Privileges)	E.O. 12425 (June 16, 1983)	International Development Association	E.O. 11966 (Jan. 19, 1977)
International Development Law Organization	E.O. 12842 (Mar. 29, 1993)	International Fertilizer Development Center	E.O. 11977 (Mar. 14, 1977)
International Finance Corporation	E.O. 10680 (Oct. 2, 1956)	International Food Policy Research Institute (Limited Privileges)	E.O. 12359 (April 22, 1982)
International Fund for Agricultural Development	E.O. 12732 (Oct. 31, 1990)	International Hydrographic Bureau	E.O. 10769 (May 29, 1958)
International Joint Commission - the United States and Canada	E.O. 9972 (June 25, 19480)	International Labor Organization	E.O. 9698 (Feb. 19, 1946)
International Maritime Organization (formerly the Intergovernmental Maritime Consultative Organization)	E.O. 10795 (Dec. 13, 1958)	International Mobile Satellite Organization	E.O. 12238 (Sept. 12, 1980)
International Monetary Fund	E.O. 9751 (July 11, 1946)	International Organization for Migration (Formerly Provisional Intergovernmental Committee for the Movement of Migrants for Europe and Intergovernmental Committee for European Migration)	E.O. 10335 (Mar. 28, 1952)

International Pacific Halibut Commission	E.O. 11059 (Oct. 23, 1962)	International Renewable Energy Agency (IRENA)	E.O. 13705 (Sept. 3, 2015)
International Secretariat for Volunteer Service	E.O. 11363 (July 20, 1967)	International Telecommunications Satellite Organization (INTELSAT)	E.O. 11718 (May 14, 1973) & E.O. 11966 (Jan. 19, 1977)
International Telecommunication Union	E.O. 9863 (May 31, 1947)	International Union for Conservation of Nature and Natural Resources (Limited Privileges)	E.O. 12986 (Jan. 18, 1966)
International Wheat Advisory Committee (International Wheat Council)	E.O. 9823 (Jan. 24, 1947)	Interparliamentary Union	E.O. 13097 (Aug. 7, 1998)
Israel-United States Binational Industrial Research and Development Foundation	E.O. 12956 (Mar. 13, 1995)	ITER International Fusion Energy Organization	E.O. 13451 (Nov. 19, 2007)
Korean Peninsula Energy Development Organization	E.O. 12997 (April 1, 1996)	Multilateral Investment Guarantee Agency	E.O. 12467 (Aug. 22, 1988)
Multinational Force and Observers	E.O. 12359 (April 22, 1982)	North American Development Bank	E.O. 12904 (Mar. 16, 1994)
North Pacific Anadromous Fish Commission	E.O. 12895 (Jan. 26, 1994)	North Pacific Marine Science Organization	E.O. 12894 (Jan. 26, 1994)
Office of the High Representative in Bosnia and Herzegovina and the International Civilian Office in Kosovo	E.O. 13568 (Mar. 8, 2011)	Organization for American States (including Pan American Union)	E.O. 10533 (June 3, 1954)
Organization for Eastern Caribbean States	E.O. 12669 (Feb. 20, 1989)	Organization for Economic Cooperation and Development (formerly the Organization for European Economic Cooperation)	E.O. 10133 (June 27, 1950)
Organization for the Prohibition of Chemical Weapons	E.O. 13049 (June 11, 1997)	Pacific Salmon Commission	E.O. 12567 (Oct. 2, 1986)
Pan American Health Organization (including Pan American Sanitary Bureau)	E.O. 10864 (Feb. 18, 1960)	South Pacific Commission	E.O. 10086 (Nov. 25, 1949)
United International Bureau for the Protection of Intellectual Property (BIPRI)	E.O. 11484 (Sept. 29, 1969)	United Nations	E.O. 9698 (Feb. 19, 1946)
United Nations Educational, Scientific, and Cultural Organization	E.O. 9863 (May 31, 1947)	United Nations Industrial Development Organization	E.O. 12628 (Mar. 8, 1988)
Universal Postal Union	E.O. 10727 (Aug. 31, 1957)	World Health Organization	E.O. 10025 (Dec. 30, 1948)
World Intellectual Property Organization	E.O. 11866 (June 18, 1975)	World Meteorological Organization	E.O. 10676 (Sept. 1, 1959)

World Tourism Organization

E.O. 12507
(Mar. 22, 1985)

World Trade Organization

E.O. 13042 (April
9, 1997)

9 FAM 402.3-7(N) (U) Requirements for Request for G-4 of G-5 Visa by Chief of Transportation Section, United Nations Secretariat

(CT:VISA-362; 05-04-2017)

I. (U) United Nations Organizations for Which a *Transportation Cable/Note* Is Required *from the Chief of the Transportation Section, United Nations Secretariat*:

(U) Principal Organs

- General Assembly
- Security Council
- Economic and Social Council
- Trusteeship Council
- Secretariat

(U) United Nations Organizations

- World Food Program (WFP)
- United Nations University (UNU)
- United Nations Relief and Works Agency (UNRWA)
- United Nations Center for Human Settlements (UN HABITAT)
- United Nations Children's Fund (UNICEF)
- United Nations Environment Program (UNEP)
- United Nations Development Program (UNDP)
- United Nations Fund for Population Activities (UNFPA)

(U) Regional Commissions

- Economic Commission for Africa (ECA)
- Economic Commission for Western Asia (ESCWA)
- Economic and Social Commission for Asia and the Pacific (ESCAP)
- Economic Commission for Latin America (ECLAC)

II. (U) ALL UNITED NATIONS PEACEKEEPING OPERATIONS AND OBSERVER MISSIONS

(Alphabetized by Region)

(U) AFRICAN AFFAIRS (AF)

(U) COTE D'IVOIRE – UNOCI

United Nations Operation in Cote d'Ivoire

April 2004 – to present

(U) DARFUR – UNAMID

United Nations Africa Mission in Darfur

July 2007 – to present

(U) DEMOCRATIC REPUBLIC OF CONGO – MONUSCO

United Nations Organization Stabilization Mission in the Democratic Republic of the Congo

July 2010 – to present

(U) LIBERIA - UNMIL

United Nations Observer Mission in Liberia

September 1993 - to present

(U) MALI – MINUSMA

United Nations Multidimensional Integrated Stabilization Mission in Mali

April 2013 – to present

(U) SUDAN /SOUTHERN SUDAN – UNISFA

United Nations Interim Security Force for Abyei

June 2011

(U) EUROPEAN AND EURASIAN AFFAIRS (EUR)

(U) CYPRUS - UNFICYP

United Nations Peacekeeping Force in Cyprus

March 1964 - to present

(U) NEAR EASTERN AFFAIRS (NEA)**(U) GOLAN HEIGHTS - UNDOF**

United Nations Disengagement Observer Force

June 1974 - to present

(U) LEBANON - UNIFIL

United Nations Interim Force in Lebanon

March 1978 to present

(U) MIDDLE EAST - UNTSO

United Nations Truce Supervision Organization

June 1948 to present

(U) WESTERN SAHARA - MINURSO

United Nations Mission for the Referendum in Western Sahara

September 1991 - to present

(U) SOUTH AND CENTRAL ASIAN AFFAIRS (SCA)**(U) AFGHANISTAN - UNAMA**

United Nations Assistance Mission in Afghanistan

March 2002 - to present

(U) INDIA/PAKISTAN - UNMOGIP

United Nations Military Observer Group in India and Pakistan

January 1949 - to present

(U) WESTERN HEMISPHERE AFFAIRS (WHA)

(U) HAITI - MINUSTAH

United Nations Transition Mission in Haiti

August 1997 to present

9 FAM 402.3-8 (U) NORTH ATLANTIC TREATY ORGANIZATION (NATO) REPRESENTATIVES, OFFICIALS, AND EMPLOYEES – NATO VISAS**9 FAM 402.3-8(A) (U) Statutory and Regulatory Authority****9 FAM 402.3-8(A)(1) (U) Code of Federal Regulations**

(CT:VISA-362; 05-04-2017)

(U) *22 CFR 41.12*; 22 CFR 41.25.

9 FAM 402.3-8(A)(2) (U) Treaties and Agreements

(CT:VISA-78; 03-04-2016)

(U) Article III, Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff; Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces; and the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty.

9 FAM 402.3-8(B) (U) General Information on NATO Visa Classification**9 FAM 402.3-8(B)(1) (U) In General**

(CT:VISA-362; 05-04-2017)

(U) NATO visas are regulated by 22 CFR 41.12 and 41.25. NATO-1 through NATO-5 visas are appropriate for aliens seeking admission to the United States under the Agreement on the Status of the North Atlantic Treaty Organization, national representatives to, and staff of NATO traveling to the United States on behalf of NATO (and their immediate family *or dependents*). NATO-6 visas are appropriate for members of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status of Forces Agreements or members of a civilian component attached to or employed by an Allied Headquarters under the Protocol on the Status of International Military Headquarters (and their dependents).

9 FAM 402.3-8(B)(2) (U) Categories of NATO Visas

(CT:VISA-78; 03-04-2016)

(U) The following symbols are used for NATO visa classification and can be found in 22 CFR 41.12:

NATO 1	Principal Permanent Representative of Member State to NATO (including any of its Subsidiary Bodies) Resident in the U.S. and Resident Members of Official Staff; Secretary General, Assistant Secretaries General, and Executive Secretary of NATO; Other Permanent NATO Officials of Similar Rank, or Immediate Family
NATO 2	Other Representative of member state to NATO (including any of its Subsidiary Bodies) including Representatives, Advisers, and Technical Experts of Delegations, or Immediate Family; Dependents of Member of a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement or in Accordance with the provisions of the "Protocol on the Status of International Military Headquarters"; Members of Such a Force if Issued Visas
NATO 3	Official Clerical Staff Accompanying Representative of Member State to NATO (including any of its Subsidiary Bodies), or Immediate Family
NATO 4	Official of NATO (Other Than Those Classifiable as NATO1), or Immediate Family
NATO 5	Experts, Other Than NATO Officials Classifiable Under NATO4, Employed in Missions on Behalf of NATO, and their Dependents
NATO 6	Member of a Civilian Component Accompanying a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement; Member of a Civilian Component Attached to or Employed by an Allied Headquarters Under the "Protocol on the Status of International Military Headquarters" Set Up Pursuant to the North Atlantic Treaty; and their Dependents
NATO 7	Attendant, Servant, or Personal Employee of NATO1, NATO2, NATO3, NATO4, NATO5, and NATO6 Classes, or Immediate Family

9 FAM 402.3-8(B)(3) (U) Qualifying for a NATO Visa

(CT:VISA-362; 05-04-2017)

(U) 22 CFR 41.25 provides:

- (a) **(U) Classification.** An alien shall be classified under the symbol NATO-1, NATO-2, NATO-3, NATO-4, or NATO-5 if you are satisfied that the alien is seeking admission to the United States under the applicable provision of the Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff, or is a member of the immediate family (*see 9 FAM 402.3-4(J)*) or dependent (*as defined in 9 FAM 402.3-8(F) or (G)*) of an alien classified NATO-1 through NATO-5.
- (b) **(U) Armed services personnel.** Armed services personnel entering the United States in accordance with the provisions of the Agreement Between the

Parties to the North Atlantic Treaty Regarding the Status of Their Forces or in accordance with the provisions of the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty may enter the United States under the appropriate treaty waiver of documentary requirements contained in [22 CFR 41.1 \(d\) or \(e\)](#). If a visa is issued it is classifiable under the NATO-2 symbol.

- (c) **(U) Dependents of armed services personnel.** Dependents of armed services personnel referred to in paragraph (b) of this section shall be classified under the symbol NATO-2.
- (d) **(U) Members of civilian components and dependents.** Alien members of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, and *dependents (as defined in [9 FAM 402.3-8\(G\)](#))*, or alien members of a civilian component attached to or employed by an Allied Headquarters under the Protocol on the Status of International Military Headquarters, and dependents (*as defined in [9 FAM 402.3-8\(F\)](#)*) shall be classified under the symbol NATO-6.
- (e) **(U) Attendant, servant, or personal employee of an alien classified NATO-1 through NATO-6.** An alien attendant, servant, or personal employee of an alien classified NATO-1 through NATO-6, and any member of the immediate family (*see [9 FAM 402.3-4\(J\)](#)*) of such attendant, servant, or personal employee, shall be classified under the symbol NATO-7. (See [9 FAM 402.3-9](#).)

9 FAM 402.3-8(C) (U) Countries Signatory to NATO Agreements

(CT:VISA-78; 03-04-2016)

- a. **(U) Parties to North Atlantic Treaty and Agreement of Status of NATO, National Representatives and International Staff:** The following countries are currently parties to the North Atlantic Treaty signed in Washington on April 4, 1949, and also have ratified the Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff:

Albania	Belgium	Bulgaria	Canada
Czech Republic	Denmark	Estonia	France
Germany	Greece	Hungary	Iceland
Italy	Latvia	Lithuania	Luxembourg
Netherlands	Norway	Poland	Portugal
Romania	Slovakia	Slovenia	Spain
Turkey	United Kingdom	United States	

- b. **(U) Parties to NATO Status of Forces Agreement:** All countries mentioned in paragraph a above and Croatia are parties to the Agreement Between the Parties to the North Atlantic Treaty regarding the Status of their Forces (the NATO Status of Forces Agreement).

c. **(U) Parties to Protocol on Status of International Military Headquarters:**

With the exception of Canada and France, all countries mentioned in paragraph a. above and Croatia are parties to the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty.

9 FAM 402.3-8(D) (U) Passport and Visa Exemptions for Certain NATO Personnel

(CT:VISA-78; 03-04-2016)

(U) See 22 CFR 41.1(d) and 22 CFR 41.1(e) for provisions regarding NATO personnel exempted from passport and visa requirements.

9 FAM 402.3-8(E) (U) Applying NATO Status of Forces Agreement

(CT:VISA-78; 03-04-2016)

(U) The U.S. Senate gave its advice and consent to ratification of the NATO Status of Forces Agreement with the following statement:

It is the understanding of the Senate, which understanding inheres in its advice and consent to the ratification of the Agreement, that nothing in the Agreement diminishes, abridges, or alters the right of the United States of America to safeguard its own security by excluding or removing persons whose presence in the United States is deemed prejudicial to its safety or security, and that no person whose presence in the United States is deemed prejudicial to its safety or security shall be permitted to enter or remain in the United States.

9 FAM 402.3-8(F) (U) Definitions in Protocol on Status of International Military Headquarters

(CT:VISA-78; 03-04-2016)

(U) The Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty provides in part:

Article 1 - In the present Protocol the expression:

(a) "The Agreement" means the Agreement signed in London on 19th June, 1951, by the Parties to the North Atlantic Treaty regarding the Status of their Forces;

(b) "Supreme Headquarters" means Supreme Headquarters Allied Powers in Europe, Headquarters of the Supreme Allied Commander Atlantic and any equivalent international military Headquarters set up pursuant to the North Atlantic Treaty;

(c) "Allied Headquarters" means any Supreme Headquarters and any international military Headquarters set up pursuant to the North Atlantic Treaty which is immediately subordinate to a Supreme Headquarters; and

(d) "North Atlantic Council" means the Council established by Article 9 of the North Atlantic Treaty or any of its subsidiary bodies authorized to act on its behalf."

Article 3 - For the purpose of applying the Agreement to an Allied Headquarters the expressions "force", "civilian component" and "dependent", wherever they occur in the Agreement, shall have the meanings set out below:

(a) "Force" means the personnel attached to the Allied Headquarters who belong to the land, sea or air armed services of any Party to the North Atlantic Treaty;

(b) "Civilian component" means civilian personnel who are not stateless persons, nor nationals of any State which is not a Party to the Treaty, nor nationals of, nor ordinarily resident in the receiving State, and who are (i) attached to the Allied Headquarters and in the employ of an armed service of a Party to the North Atlantic Treaty or (ii) in such categories of civilian personnel in the employ of the Allied Headquarters as the North Atlantic Council shall decide; and

(c) "Dependent" means the spouse of a member of a force or civilian component, as defined in sub-paragraphs (a) and (b) of this paragraph, or a child of such member depending on him or her for support.

9 FAM 402.3-8(G) (U) Definitions in NATO Status of Forces Agreement

(CT:VISA-78; 03-04-2016)

(U) The NATO Status of Forces Agreement provides in part:

Article I - In this Agreement the expression:

(a) "Force" means the personnel belonging to the land, sea, or air armed services of one Contracting Party when in the territory of another Contracting Party in the North Atlantic Treaty area in connection with their official duties, provided that the two Contracting Parties concerned may agree that certain individuals, units, or formations shall not be regarded as constituting or included in a "force" for the purposes of the present Agreement;

(b) "Civilian component" means the civilian personnel accompanying a force of a Contracting Party who are in the employ of an armed service of that Contracting Party, and who are not stateless persons, nor nationals of any State which is not a Party to the North Atlantic Treaty, nor nationals of, nor ordinarily resident in, the State in which the force is located; and

(c) "Dependent" means the spouse of a member of a force or of a civilian component, or a child of such member depending on him or her for support.

9 FAM 402.3-8(H) (U) Readmitting into United States Alien Dependents of Members of U.S. Force or Civilian Component Stationed in Territory of Member State of NATO

(CT:VISA-78; 03-04-2016)

a. (U) Paragraph 5 of Article III of the Agreement Between the Parties to the North Atlantic Treaty regarding the Status of their Forces provides as follows:

"If the receiving State has requested the removal from its territory of a member of a force, or civilian component or has made an expulsion order against an ex-member of a force or of a civilian component or against a dependent of a member or ex-member, the authorities of the sending State shall be responsible for receiving the person concerned within their own territory or otherwise disposing of him outside the receiving State. This paragraph shall apply only to persons who are not nationals of the receiving State and have entered the receiving State as members of a force or civilian component or for the purpose of becoming such members, and to the dependents of such persons."

- b. **(U)** Therefore, DHS has agreed to parole into the United States an alien dependent of a member of the Armed Forces of the United States or U.S. civilian component stationed abroad under the Status of Forces Agreement, who is seeking to return to the United States and is found ineligible to receive a visa. The applicant for admission must return to the U.S. port of entry by means of a government vessel or aircraft in order to overcome the restriction imposed by INA 273, and must possess documents establishing identity and eligibility for parole. The status of individuals paroled into the United States in this manner is determined in normal immigration proceedings after parole.

9 FAM 402.3-8(I) (U) Issuing NATO-7 Visa to Attendants and Personal Employees

(CT:VISA-78; 03-04-2016)

- a. **(U) Wilberforce Act Requirements:** See [9 FAM 402.3-9\(C\)\(1\)](#) for general information. See [9 FAM 402.3-9\(C\)\(2\)](#) for information about Wilberforce Act enforcement and consular officer responsibilities.
- b. **(U) Interview Required:** All applicants for NATO-7 visas must be interviewed, regardless of whether the applicant has been issued a previous visa in the same classification to work for the same employer. The interview of a NATO-7 applicant must be conducted outside the presence of the employer or recruitment agent.
- c. **(U) Reciprocity:** NATO-7 visas are not limited to nationals from NATO party countries. The attendants, servants, or personal employees of an alien classified NATO-1 through NATO-6 may be issued a NATO-7 visa in a passport of a non-member country. However, only NATO party countries' reciprocity schedules provide data for NATO visas. Therefore, the number of entries, fees, and validity for personal employees from non-member NATO countries seeking a NATO-7 visa is based on the A-3 data provided in the reciprocity schedule of the respective country of the NATO-7 alien. (See [9 FAM 403.9-4\(C\)](#).)

9 FAM 402.3-8(J) (U) Issuing NATO Visas to *Immediate Family and Dependents Not Possessing Citizenship of a NATO Member Country*

(CT:VISA-362; 05-04-2017)

(U) *Immediate family members and dependents* of NATO status holders are eligible for NATO visas even if they are citizens of a non-member country. If the *immediate family member or* dependent of a NATO status holder is a permanent resident of the sending country, the number of entries, fees, and validity for the *immediate family member/dependent* is based on the reciprocity schedule of the NATO principal alien. If the *immediate family member/dependent* is not a permanent resident of the sending country, the number of entries, fees, and validity is based on the A-2 data provided in the reciprocity schedule of the *immediate family member's/dependent's* country of nationality.

9 FAM 402.3-9 (U) ATTENDANTS, SERVANTS, AND PERSONAL EMPLOYEES OF OFFICIALS - A-3, G-5, AND NATO-7 VISAS

9 FAM 402.3-9(A) (U) Statutory and Regulatory Authority

9 FAM 402.3-9(A)(1) (U) Immigration and Nationality Act

(CT:VISA-78; 03-04-2016)

(U) INA 101(a)(15)(A)(iii) (8 U.S.C. 1101(a)(15)(A)(iii)); INA 101(a)(15)(G)(v) (8 U.S.C. 1101(a)(15)(G)(v)).

9 FAM 402.3-9(A)(2) (U) Code of Federal Regulations

(CT:VISA-362; 05-04-2017)

(U) 22 CFR 41.21; 22 CFR 41.22; *22 CFR 41.23*; 22 CFR 41.24; 22 CFR 41.25.

9 FAM 402.3-9(B) (U) Basis for Classification

9 FAM 402.3-9(B)(1) (U) Aliens Entitled to A-3, G-5, or NATO-7 Visa Classification

(CT:VISA-362; 05-04-2017)

- a. **(U)** You may issue an A-3, G-5, or NATO-7 visa to the personal employee of an alien of a foreign mission in the United States in the A-1 or A-2 category (A-3 visa), G-1 through G-4 category (G-5 visa), or NATO-1 through NATO-6 category (NATO-7 visa) if the applicant qualifies for the visa classification, the contract meets the requirements set out in paragraph 4 below, you ensure that the applicant is aware of his/her rights as set out in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA) pamphlet notifications (see paragraphs 2, 6, and 7 below), and each of the following are met:
- (1) **(U)** The diplomat or official employing the alien is in "A", "G", or "NATO" visa status, or received an A, G, or NATO visa;
 - (2) **(U)** The foreign mission or international organization pre-notified the Office of the Chief of Protocol (Protocol) *or the U.S. Mission to the United Nations (USUN) (for G-5 domestic workers employed by UN Permanent Mission or UN staff)* by submitting the necessary "Pre-Notification of a Domestic Worker" form to Protocol (DomesticWorkers@state.gov) *or USUN (UNdomesticworkers@state.gov)*, and the applicant has been entered into The Office of Foreign Missions Information System (TOMIS) and shows as "pending" (for new proposed employees), or "active" (for renewing A-3 or G-5 employees continuing to work for the same employer). All family members of the domestic employee accompanying or following to join the domestic employee

also must be pre-notified to Protocol *or USUN*, and if not included in the domestic employee's initial pre-notification request, need to be separately pre-notified to Protocol *or USUN* before visa issuance. The family members' names will be listed in TOMIS under the A-3 or G-5 principal's record once Protocol *or USUN* has received and accepted the family member's pre-notification. *Post must refuse all cases under INA 221(g) for domestic workers and immediate family members who are not listed in TOMIS as required.*

- (a) **(U)** TOMIS is available in the Consular Consolidated Database (CCD) under the "Other Agencies/Bureaus" menu. To find a record in TOMIS, you may search by surname and either given name, nationality, visa, or country/organization; or with an eight-digit personal identification number (PID), if available, which is issued to each person registered with Protocol.
- (b) **(U)** If the employer is listed in TOMIS as "active", but the personal employee is not listed under that employer's "private servants", you must refuse the case under INA 221(g) pending the employee's inclusion in TOMIS. Protocol *and USUN* will not notify post of a new "Pre-Notification of a Domestic Worker," so post must check periodically in TOMIS to see if the employee has been added.
- (c) **(U)** A "pending" entry indicates that Protocol *or USUN* has accepted and data-entered the pre-notification, and post may continue processing the case to conclusion. The record will be updated to "active" after the A-3 or G-5 visa holder enters the United States and Protocol/*USUN* is notified of his or her entry on duty by the diplomatic mission or international organization.
- (d) **(U)** You must wait until the pre-notification *has been submitted and the applicant is in TOMIS prior to visa issuance.* You may not issue A-3 and G-5 visas upon mere presentation of a diplomatic note (see TDY exceptions in NOTE below). You also may not issue B-1 visas to allow a diplomat's domestic employee to travel on an "emergency" basis. It generally takes Protocol *or USUN* several days to review and enter pre-notifications into TOMIS. If the employer or applicant advises that the diplomatic mission or international organization sent a pre-notification request more than a week earlier and it still is not showing in TOMIS, contact CA/VO/DO/DL (*diplomaticvisas@state.gov*). CA/VO/DO/DL will check with Protocol *or USUN* to see if there are technical problems or more serious problems which prevent Protocol *or USUN* from accepting the pre-notification, for example, complaints of abuse against the employer by previous A-3 or G-5 employees.

NOTE: **(U)** The requirements for pre-notification and a TOMIS record for an A-3 or G-5 applicant do not apply in instances where the *employer of the A-3 or G-5* is on a temporary assignment of less than 90 days or for NATO-7 applicants. In such cases, please see annotation instructions in [9 FAM 402.3-5\(B\)](#). However, if you receive an A-3 or NATO-7 application from a domestic employee planning to work 90 days or more for an A-2

foreign military or NATO visa holder, request guidance from CA/VO/L/A, and CA/VO/DO/DL before issuing the visa.

- b. **(U) Personal Employees of Permanent Residents Not Eligible:** An alien in A-2, G, or NATO status, who acquires or retains permanent resident status as provided in INA 247(b) or in 22 CFR 40.203 may not have in his or her employ a personal employee in the A-3, G-5, or NATO-7 visa classification. The employee of such an alien must qualify for and obtain an H-2B NIV or an IV for the purpose of working for the employer. (See also [9 FAM 402.3-4\(J\)\(7\).](#))

9 FAM 402.3-9(B)(2) (U) Qualifying for A-3, G-5, or NATO-7 Visas

(CT:VISA-362; 05-04-2017)

- a. **(U) Applicant will perform a specific job and is capable of performing the work required:** In order to benefit from A-3, G-5, or NATO-7 status, the alien must be coming to the United States to perform a specific job *as described in the employment contract*, and must be capable of doing so, regardless of whether the alien has ever performed such a job in the past. For example, an alien with a degree in computer science who is coming to work as a domestic employee may be issued an A-3, G-5, or NATO-7 visa if he or she clearly has the intent and ability to perform the job. However, if you believe that the applicant is presented as a domestic employee for an alien in A, G, or NATO status, but will actually work as a computer consultant for a private company, then the A-3, G-5, or NATO-7 visa should be denied under INA 214(b), as he or she has not established his or her eligibility in any NIV category. Such an applicant may also be subject to a finding of ineligibility under INA 212(a)(6)(C). Similarly, an A-3, G-5, or NATO-7 visa applicant who has recently resided illegally in the United States, or who may have previously sought another visa status and was refused under INA 214(b), and who appears to be using the A-3, G-5, or NATO-7 application to evade U.S. immigration requirements, must be carefully scrutinized to determine whether he or she actually intends to take up the stated employment. However, the previous illegal status and change to A-3, G-5, or NATO-7 status is not a basis in itself for refusal if you believe the applicant plans to take up the stated employment.
- b. **(U) Contract and Interview Required:** You may not issue or renew an A-3, G-5, or NATO-7 visa unless the visa applicant has executed a contract with the employer or prospective employer containing detailed provisions described below (See [9 FAM 402.3-9\(B\)\(4\)](#) below). You must conduct a personal interview with the applicant outside the presence of the employer or any recruitment agent.
- c. **(U) Wilberforce:** The WWTVPRA requires you to ensure that an individual applying for an A-3, G-5, or NATO-7 visa is made aware of his or her legal rights under U.S. federal immigration, labor, and employment laws. This includes information on the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States. At the time of the visa interview, you must confirm that a pamphlet (described in [9 FAM 402.3-9\(C\)\(1\)](#) below) has been received, read, and understood by the applicant. You are also required to review the contents of the mandatory employment

contract, as described in [9 FAM 402.3-9\(B\)\(4\)](#) below, with the applicant.

- d. **(U)** A-3, G-5, and NATO-7 applicants are subject to all ineligibilities under INA 212(a) as well as INA 222(g). Remember that A, G, and NATO visa applicants meet the requirements of INA 214(b) by establishing entitlement to such nonimmigrant status; they do not need to demonstrate that they:
- (1) **(U)** Are not intending immigrants;
 - (2) **(U)** Have a residence abroad they do not intend to abandon; or
 - (3) **(U)** Have compelling ties outside the United States.

9 FAM 402.3-9(B)(3) (U) Key Questions to be Addressed in A-3, G-5, and NATO-7 Applications

(CT:VISA-362; 05-04-2017)

- a. **(U) Several key questions should be addressed in cases involving A-3, G-5, and NATO-7 applicants:**
- (1) **(U)** Is the applicant capable of performing the work required?
 - (2) **(U)** Are the parties concerned entering into a true employee and/or employer relationship for a reasonable period of time? i.e., can it be reasonably assumed that the applicant's background, education skills, employment history, or relationship to the prospective employer will not preclude the parties from entering into a "true" employee and/or employer relationship? In particular, you should consider whether this requirement is met in cases where officials are employing family members.
 - (3) **(U)** Will the applicant receive *the required U.S.* wage? All full-time domestic employees must be paid the greater of the minimum wage per hour under U.S. Federal, state, or local law in the jurisdiction in which the domestic will be employed, for all hours on duty. Live-in domestics must receive free room and board in addition to their salary. No deductions are allowed from the domestic worker's salary for lodging, medical care, medical insurance, travel, or meals. Although the employer is not required to pay for medical insurance, the employer is responsible for ensuring that the employee does not become a public charge while in his or her employ.
 - (4) **(U)** Does the contract address all of the stipulated necessary minimum provisions outlined in [9 FAM 402.3-9\(B\)\(4\)](#) below?
 - (5) **(U)** Is the applicant otherwise fully qualified? (See [9 FAM 402.3-9\(B\)\(4\).](#))
- b. **(U)** Provided the answer to each question above is "yes," and the applicant is not inadmissible on independent grounds of the INA, an A-3, G-5, or NATO-7 visa should be issued. Otherwise, you should deny the visa under INA 214(b) and/or any other appropriate section of the INA. Additionally, if a particular A-3, G-5, or NATO-7 application raises fraud concerns, refer the case to the Department for further verification.

9 FAM 402.3-9(B)(4) (U) Salary, Contracts and Employer Obligations

(CT:VISA-362; 05-04-2017)

- a. **(U)** A-3, G-5, and NATO-7 employees are covered by the Fair Labor Standards Act (FLSA). In each case, an employee applying for an A-3, G-5, or NATO-7 visa must present a copy of the employment contract, in both English and (if the applicant does not understand English) a language understood by the applicant, that has been signed by both the applicant and the employer to demonstrate that the employee will *be paid the greater of the minimum wage per hour under U.S. Federal, state, or local law in the jurisdiction in which the domestic will be employed*, and that the employee understands his or her duties and rights regarding salary and working conditions. Post must scan the employment contract and attach the scanned document to the application record in NIV.
- b. **(U) Contract Requirements:** The contract must contain the following provisions:
- (1) **(U) Description of Duties:** The contract must describe the work to be performed (e.g., housekeeping, gardening, child care), and must include a statement that the domestic employee shall work only for the employer who signed the contract and will not accept any other employment while working for the employer.
 - (2) **(U) Hours of Work:** The contract must state the time of the normal working hours and the number of hours per week. It is generally expected that domestic workers will be required to work 35-40 hours per week. The contract must also state that the domestic employee will be provided a minimum of one full day off each week. The contract must indicate the number of paid holidays, sick days, and vacation days the domestic employee will be provided.
 - (3) **(U) Minimum Wage:** The contract must state the hourly wage to be paid to the domestic employee. The hourly wage must be the greater of the minimum wage under U.S. Federal, state, or local law.
- (U)** The contract must state that wages will be paid to the domestic employee either weekly or biweekly and also state what deductions are to be taken from the wages. No deductions are allowed for meals, lodging, medical care, medical insurance, or travel.

Updated As of *March 2017**

This chart is provided as a guide. Because minimum wage rates may change throughout the year, all rates should be verified at the time of visa issuance.

U.S. Federal Minimum Wage: \$7.25

District of Columbia Minimum Wage: \$*11.50*

New York State Minimum Wage: \$9.70
Maryland State Minimum Wage: \$8.75 Montgomery County: \$10.75 (if employing two or more domestic workers; apply state minimum wage if only one domestic worker) Prince George's County: \$10.75 (Baltimore County follows MD state minimum wage.)
Virginia State Minimum Wage: \$7.25
Illinois State Minimum Wage: \$8.25 Chicago: \$10.50
California State Minimum Wage: \$10.50 San Francisco: \$13.00 (Los Angeles follows CA state minimum wage.)
Texas State Minimum Wage: \$7.25 (Houston follows TX state minimum wage.)
Florida State Minimum Wage: \$8.10 (Miami follows FL state minimum wage.)

*Note: **(U)** The above chart only includes state and local areas where domestic workers registered with the Department most commonly reside. State minimum wages can be found on the Department of Labor's Minimum Wage Laws page or you can check with [CA/VO/DO/DL](#) or your VO/F desk officer.

- (4) **(U) Overtime Work:** The contract must state that any hours worked in excess of the normal number of hours worked per week are considered overtime hours, and that hours in which the employee is "on call" count as work hours. It also must state that such work must be paid as required by U.S. local laws.

NOTE: **(U)** Under Federal law, the rate of overtime pay need not exceed the regular hourly rate if the employee resides in the home of the employer, but State law governing overtime rates also applies and must be checked. If the employee does not reside with the employer, overtime for hours in excess of 40 hours per week must be paid at the rate of time and a half.

- (5) **(U) Payment:** *For employees accompanying an employer on a non-TDY*

assignment (90 days or more), the contract must state that after the first 90 days of employment, all wage payments must be made by check or by electronic transfer to the domestic worker's bank account. The bank account must be in the United States so that domestic workers may readily access and utilize their wages. Neither Mission members nor their family members should have access to domestic workers' bank accounts.

(U) In addition, the Department requires that the employer retain records of employment and payment for three years after the termination of the employment in order to address any complaints that may subsequently arise.

- (6) **(U) Transportation to and from the United States:** The contract must state that the domestic employee will be provided with transportation to and from the United States.
- (7) **(U) Other Required Terms of Employment:** The contract must state that the employer agrees to abide by all Federal, State, and local laws in the United States.

(U) The contract also must include a statement that the domestic worker's passport and visa will be in the sole possession of the domestic worker. In addition, the contract must state that a copy of the contract and other personal property of the domestic employee will not be withheld by the employer for any reason.

(U) The contract must include a statement that the domestic worker's presence in the employer's residence will not be required except during working hours.

- (8) **(U) Other Recommended Terms of Employment:** The contract may include additional agreed-upon terms of employment, if any, provided they are fully consistent with all U.S. Federal, State, and local laws.

Any modification to the contract must be in writing.

- c. **(U) Refusals:** You may encounter applications where the applicant does not submit a contract, the contract does not guarantee a fair wage or working conditions, or you have evidence that the employer will not comply with the conditions specified in the contract. In such cases, you should refuse the application under either INA 214(b), because the applicant has not shown entitlement to A, G, or NATO nonimmigrant status, or under INA 221(g), because the alien has failed to submit a required document. For example, if the agreed wage falls below the minimum wage you should refuse the application pursuant to INA 214(b) because the applicant has not shown entitlement to A-3, G-5 or NATO-7 nonimmigrant status, or under INA 221(g), pending submission of an updated contract. You may refuse visas for A-3, G-5, or NATO-7 applicants under any appropriate provision of law.
- d. **(U) Burden of Proof:** In accordance with INA 291, the burden of proof for A-3, G-5, or NATO-7 visa eligibility is on the applicant. You must assess the credibility of the applicant and the evidence submitted to determine qualification for an A-3, G-5, or NATO-7 visa. The applicant must *demonstrate to your satisfaction* that he or she

will credibly engage in A-3, G-5, or NATO-7 activity under the contractual agreement and thereby maintain lawful status.

- e. **(U) *Presumption that Applicant is Not Eligible; Employer's Ability to Pay/Comply with Working Conditions:*** Do not issue a visa unless you can reasonably conclude that the employer will in fact provide the employee with the required wages and working conditions. You *must* presume that the applicant is not eligible if the employer does not carry the diplomatic rank of Minister or higher, or a position equivalent to Minister or higher. To rebut this presumption, the employer must demonstrate that he or she will have sufficient funds to comply with the FLSA and Department standards, as reflected in the contract. You must deny the visa if you are not convinced the employer can in fact meet the terms of the contract. Consideration also must be given to the number of employees a particular employer may reasonably be able to pay. Note: this presumption applies in all cases in which the applicant's employer is an employee of an international organization classifiable as G-4, and it therefore will be necessary for the employer to demonstrate that he or she has sufficient funds to provide the required wages and working conditions, as such employer and position would never be of the rank of Minister or higher.
- f. **(U) *Previous Instances of Non-Compliance; Presumption that Applicant is Not Eligible:*** If an employer has had previous instances of non-compliance with contracts with A-3, G-5, or NATO-7 employees or has had credible abuse allegations, or if there has been a pattern of employee disappearance, you may presume that the applicant is not eligible for the visa and refuse the application (see paragraph d above). To rebut this presumption, the employer and the visa applicant would have to convince you that such an outcome is unlikely to reoccur; for example, by the employer establishing that he or she reasonably expected that previous employees would remain in A-3, G-5, or NATO-7 status, rather than suddenly cease working in the household and remain unlawfully in the United States; that the disappearances of the former employees were promptly reported; by presenting evidence establishing that the employer and the visa applicant intend to fulfill the provisions of the contract and enter into a bona fide employer-employee relationship; and that the applicant intends to maintain A-3, G-5, or NATO-7 visa status while in the United States. The burden of proof remains on the applicant and the employer to establish eligibility and future compliance with all requirements.

9 FAM 402.3-9(B)(5) (U) Refusals and Advisory Opinions

(CT:VISA-362; 05-04-2017)

- a. **(U)** Posts are not required to obtain an advisory opinion before refusing an A-3, G-5, or NATO-7 visa application under INA 214(b) in cases where the applicant does not intend to take up the position, or where a contract is not provided in accordance with *your* request. You may not, however, refuse an A-3, G-5, or NATO-7 visa applicant under INA 214(b) who meets the qualifications for A-3, G-5, or NATO-7 status, but whom you believe is an intending immigrant. Posts should

not hesitate to seek the Visa Office's advice in questions of eligibility. *Post should report to the Department* any denials in the A, G or NATO category which are likely to prompt inquiries or complaints from the applicant's host government.

- b. **(U) Mandatory Advisory Opinion for Principal Applicants Under the Age of 18:** You must obtain an AO from CA/VO/L/A before issuing an A-3, G-5, or NATO-7 visa to a domestic worker principal applicant under the age of 18.

9 FAM 402.3-9(B)(6) (U) Visa Validity for A-3, G-5, and NATO-7 Visas

(CT:VISA-78; 03-04-2016)

(U) As a matter of policy, the standard and customary practice is to issue A-3, G-5, and NATO-7 visas for a maximum period of 24 months, or less if so called for by the Reciprocity Schedule of the country concerned. The validity of an A-3, G-5, or NATO-7 visa may not exceed the validity of the visa held by the employer, who would be the bearer of an A-1 or A-2, G-1 through G-4, or NATO-1 through NATO-6 visa. (See [9 FAM 402.3-8\(I\)](#).)

9 FAM 402.3-9(C) (U) William Wilberforce Trafficking Victims Protection Reauthorization Act Requirements

9 FAM 402.3-9(C)(1) (U) Information Pamphlet on Legal Rights of A-3, G-5, NATO-7, H, J, and Domestic Employees

(CT:VISA-362; 05-04-2017)

- a. **(U)** The WWTVPRA requires the Secretary of State, in consultation with the Secretary of Homeland Security, the Attorney General, and the Secretary of Labor, to *develop and distribute* an information pamphlet on legal rights and available resources to aliens applying for A-3, G-5, H, or J visas, as well as to any personal or domestic servant (such as B-1 domestic or NATO-7) who is accompanying or following to join an employer.
- b. **(U)** The contents of the information pamphlet, "For Certain Employment or Education-Based Nonimmigrants," include a discussion of procedural issues, legal rights, and available legal resources concerning items such as:
- (1) **(U)** The nonimmigrant visa (NIV) application process, including information about the portability of employment;
 - (2) **(U)** The legal rights of employment- or education-based NIV holders under Federal immigration, labor, and employment laws;
 - (3) **(U)** The illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States;
 - (4) **(U)** The legal rights of immigrant victims of trafficking in persons and worker exploitation, including:

- (a) **(U)** The right of access to immigrant and labor rights groups;
 - (b) **(U)** The right to seek redress in United States courts;
 - (c) **(U)** The right to report abuse without retaliation;
 - (d) **(U)** The right of the nonimmigrant not to relinquish possession of his or her passport to his or her employer;
 - (e) **(U)** The requirement for an employment contract between the employer and the nonimmigrant; and
 - (f) **(U)** An explanation of the rights and protections included in the mandatory employment contract.
- (5) **(U)** Information about nongovernmental organizations that provide services for victims of trafficking in persons and worker exploitation, including:
- (a) **(U)** Anti-trafficking in persons telephone hotlines operated by the Federal Government;
 - (b) **(U)** The Operation Rescue and Restore hotline; and
 - (c) **(U)** A general description of the types of victims' services available for individuals subject to trafficking in persons or worker exploitation.
- c. **(U)** The pamphlet has been translated into certain foreign languages, based on the languages spoken by the greatest concentration of employment- and education-based NIV applicants. The pamphlet is posted on the Department of State's travel information Web site and must be posted, in English and any relevant local language that the pamphlet has been translated into, on the Web site of every consular post.

9 FAM 402.3-9(C)(2) (U) Your Responsibilities under the William Wilberforce Trafficking Victims Protection Act (WWTVPRA)

(CT:VISA-362; 05-04-2017)

- a. **(U)** The WWTVPRA requires you to ensure that aliens applying for A-3, G-5, NATO-7, H, or J visas or a personal or domestic servant accompanying or following to join an employer (such as B-1 domestic), are made aware of their legal rights under Federal immigration, labor, and employment laws. This includes information on the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States. At the time of the NIV interview:
- (1) **(U)** You must confirm that the *applicant* has received, read, and understood the contents of the information pamphlet and offer to answer any questions the *applicant* may have regarding the contents of the pamphlet; or
 - (2) **(U)** If the *applicant* has not received, read, or understood the pamphlet, provide a copy to the applicant and orally disclose its contents in a language that the applicant understands, and offer to answer any questions that the applicant may have regarding information contained in the pamphlet, as well

as information described below regarding legal rights, U.S. law, and victim services. Such an oral disclosure should include:

- (a) **(U)** The legal rights of employment-based nonimmigrants under Federal immigration, labor, and employment laws;
 - (b) **(U)** The illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States;
 - (c) **(U)** The legal rights of nonimmigrant victims of trafficking in persons, worker exploitation, and other related crimes, including:
 - (i) **(U)** The right of access to immigrant and labor rights groups;
 - (ii) **(U)** The right to seek redress in United States courts; and
 - (iii) **(U)** The right to report abuse without retaliation; and
 - (d) **(U)** The availability of services for victims of human trafficking and worker exploitation in the United States, including victim services complaint hotlines.
- b. **(U)** *You must add a mandatory case note in the NIV system stating that the pamphlet was provided and that the applicant indicated he or she understood its contents.*
- c. **(U)** *You are also required to review the contents of the mandatory employment contract, as described in [9 FAM 402.3-9\(B\)\(4\)](#), with the applicant.*
- d. **(U)** All applicants for A-3, G-5, or NATO-7 visas must be interviewed, regardless of whether the applicant has been issued a previous visa in the same classification to work for the same employer. The interview of an A-3, G-5, or NATO-7 applicant must be conducted outside the presence of the employer or recruitment agent.

Note: **(U)** No interview is required when the A-3, G-5 or NATO-7 applicant applies to extend his/her stay (I-94) domestically *to continue working for the same employer*. However, the employee must provide a copy of the *contract* with the application for extension of stay. The contract should be reviewed for compliance and scanned into the record.

9 FAM 402.3-9(C)(3) (U) Suspension of Processing of A-3 and G-5 Applications from Certain Foreign Missions and International Organizations

(CT:VISA-78; 03-04-2016)

- a. **(U)** The Secretary of State shall suspend, for such period as the Secretary determines necessary, the issuance of A-3 visas or G-5 visas to applicants seeking to work for officials of a diplomatic mission or an international organization, if the Secretary determines that there is credible evidence that one or more employees of such mission or international organization have abused or exploited one or more nonimmigrants holding an A-3 visa or a G-5 visa, and that the diplomatic mission or international organization tolerated such actions.

- b. **(U)** The Secretary may suspend the application of the limitation under paragraph (a) if the Secretary determines and reports to the appropriate Congressional committees that a mechanism is in place to ensure that such abuse or exploitation does not reoccur with respect to any alien employed by an employee of such mission or institution.
- c. **(U)** All visa processing posts will be advised when the Secretary has determined that A-3 or G-5 visa processing must be suspended for a specific diplomatic mission or international organization.

9 FAM 402.3-10 (U) NONIMMIGRANT VISA TYPES: REGULAR, DIPLOMATIC AND OFFICIAL

9 FAM 402.3-10(A) (U) Statutory and Regulatory Authority

(CT:VISA-78; 03-04-2016)

(U) 22 CFR 41.26; 22 CFR 41.27.

9 FAM 402.3-10(B) (U) Visa Type - In General

(CT:VISA-362; 05-04-2017)

(U) Visa type (diplomatic, official, and regular) is not the same as visa classification (e.g., A-1, A-2, G-1, G-4, etc.). *While purpose of travel is relevant for determining visa classification (except heads of state or heads of government and their immediate family members who are always classifiable A-1), an applicant's purpose of travel is irrelevant for determining qualification for a diplomatic type or official type visa. Instead, you must determine that an applicant holds an authorized rank/position (or qualifies as immediate family of an applicant who holds an authorized rank/position). For diplomatic type visa issuance, you must also ensure the applicant possesses a diplomatic passport or the equivalent of a diplomatic passport. You should issue a diplomatic type visa (see [9 FAM 402.3-10\(C\)](#)) rather than an official type visa (see [9 FAM 402.3-10\(D\)](#)) when possible.*

9 FAM 402.3-10(C) (U) Diplomatic Type Visas

(CT:VISA-362; 05-04-20178)

(U) *A diplomatic type visa is depicted on the visa foil under "Visa Type" with the letter "D", followed by the visa classification. Regardless of visa classification an applicant would qualify for a diplomatic type visa if he/she possesses a diplomatic passport or the equivalent of a diplomatic passport and is within one of the categories listed in 22 CFR 41.26(c).*

9 FAM 402.3-10(C)(1) (U) Qualifying for a Diplomatic Type Visa

Under 22 CFR 41.26

(CT:VISA-362; 05-04-2017)

- a. **(U)** In order to qualify for a diplomatic type visa (*regardless of visa classification*) under this section of the regulation, an applicant must be in possession of a diplomatic passport or the equivalent *of a diplomatic passport* and be in one of the *categories* listed in *22 CFR 41.26(c)*. Thus, possession of a diplomatic passport or the equivalent *of a diplomatic passport*, is not by itself sufficient to qualify for a diplomatic type visa under *22 CFR 41.26(c)*. However, a diplomatic passport or the equivalent *of a diplomatic passport* is required in order to issue a diplomatic type visa under *22 CFR 41.26(c)*.
- b. **(U) Diplomatic Passport:** *Diplomatic passport is defined in 22 CFR 41.26(a)(1) as "a national passport bearing that title and issued by a competent authority of a foreign government."*
- c. **(U) Equivalent of a diplomatic passport:** *Equivalent of a diplomatic passport is defined in 22 CFR 41.26(a)(3).*
- d. **(U) Categories Eligible to Receive Diplomatic Type Visas:** *In addition to possession of a diplomatic passport or equivalent of a diplomatic passport, an applicant must also be within one of the categories listed in 22 CFR 41.26(c).*
- e. **(U) Qualifying for a Diplomatic Type Visa Under 22 CFR 41.26(c)(1):** *The majority of diplomatic type visas are issued pursuant to 22 CFR 41.26(c)(1), which includes the following categories:*
 - (i) *Heads of states and their alternates;*
 - (ii) *Members of a reigning royal family;*
 - (iii) *Governors-general, governors, high commissioners, and similar high administrative or executive officers of territorial unit, and their alternates;*
 - (iv) *Cabinet ministers and their assistants holding executive or administrative positions not inferior to that of the head of a departmental division, and their alternates;*
 - (v) *Presiding officers of chambers of national legislative bodies;*
 - (vi) *Justices of the highest national court of a foreign country;*
 - (vii) *Ambassadors, public ministers, other officers of the diplomatic service and consular officers of career;*
 - (viii) *Military officers holding a rank not inferior to that of a brigadier general in the United States Army or Air Force and Naval officers holding a rank not inferior to that of a rear admiral in the United States Navy;*
 - (ix) *Military, naval, air and other attaché and assistant attaché assigned to a foreign diplomatic mission;*
 - (x) *Officers of foreign-government delegations to international organizations so designated by Executive Order;*
 - (xi) *Officers of foreign-government delegations to, and officers of, international bodies of an official nature, other than international organizations so designated by Executive Order;*
 - (xii) *Officers of a diplomatic mission of a temporary character proceeding to or through the United States in the performance of their official duties;*

(xiii) Officers of foreign-government delegations proceeding to or from a specific international conference of an official nature;

(xiv) Members of the immediate family of a principal alien who is within one of the classes described in paragraphs (c)(1)(i) to (c)(1)(xi) inclusive, of this section;

(xv) Members of the immediate family accompanying or following to join the principal alien who is within one of the classes described in paragraphs (c)(1)(xii) and (c)(1)(xiii) of this section;

(xvi) Diplomatic couriers proceeding to or through the United States in the performance of their official duties.

f. (U) Qualifying for a Diplomatic Type Visa Under 22 CFR 41.26(c)(2): Aliens *classifiable* G-4, if otherwise qualified, are eligible to receive a diplomatic type *G-4* visa if accompanying one of the specific United Nations officers listed *in 22 CFR 41.26(c)(2), which includes the following:*

(i) The Secretary General of the United Nations;

(ii) An Under Secretary General of the United Nations;

(iii) An Assistant Secretary General of the United Nations;

(iv) The Administrator or the Deputy Administrator of the United Nations Development Program;

(v) An Assistant Administrator of the United Nations Development Program;

(vi) The Executive Director of the:

(A) United Nation's Children's Fund;

(B) United Nations Institute for Training and Research;

(C) United Nations Industrial Development Organization;

(vii) The Executive Secretary of the:

(A) United Nations Economic Commission for Africa;

(B) United Nations Economic Commission for Asia and the Far East;

(C) United Nations Economic Commission for Latin America;

(D) United Nations Economic Commission for Europe;

(viii) The Secretary General of the United Nations Conference on Trade and Development;

(ix) The Director General of the Latin American Institute for Economic and Social Planning;

(x) The United Nations High Commissioner for Refugees;

(xi) The United Nations Commissioner for Technical Cooperation;

(xii) The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East;

(xiii) The spouse or child of any nonimmigrant alien listed in paragraphs (c)(2)(i) through (c)(2)(xii) of this section.

g. (U) Qualifying for a Diplomatic Type Visa Under 22 CFR 41.26(c)(3): 22 CFR 41.26(c)(3) permits the Department, the Chief of a U.S. Diplomatic Mission, the Deputy Chief of Mission (DCM), the Counselor for Consular Affairs or the principal officer of a consular post not under the jurisdiction of a diplomatic mission to authorize the issuance of a diplomatic type visa to any *individual* alien *or a class*

of aliens who is/are otherwise *eligible to receive a diplomatic type visa (has a diplomatic passport or the equivalent of a diplomatic passport)*. In practice, this authority is used very rarely, in exceptional cases. Officers are strongly encouraged to consult *CA/VO/DO/DL and CA/VO/F* before exercising their authority under this section of the regulation.

- h. **(U)** *Note that the purpose of travel, which usually determines visa classification (A, G, B-1/B-2, etc.), is generally irrelevant for purposes of qualifying for a diplomatic type visa under 22 CFR 41.26(c). For example, if the presiding officer of national legislature applied for a nonimmigrant visa to travel to the United States for pleasure using a diplomatic passport or the equivalent (see 22 CFR 41.26(c)(1)(v)), he or she would be issued a diplomatic type B-2 (or B-1/B-2) visa if otherwise qualified. However, if any other member of a national legislature applied under the same circumstances, he or she would be issued an official type, not diplomatic type, B-2 (or B-1/B-2) visa if otherwise qualified (see [9 FAM 402.3-10\(D\)\(1\)](#) below for official type visas).*
- i. **(U)** *You must also bear in mind that a diplomatic note is not required in order for an applicant to be issued a diplomatic type visa.*

9 FAM 402.3-10(C)(2) (U) Courtesies Attached to Diplomatic Type Visa

(CT:VISA-362; 05-04-2017)

- a. **(U)** Designating a visa as a diplomatic type visa does not accord diplomatic privileges and immunities to the visa holder. Rather, the Vienna Convention on Diplomatic Relations and other international agreements are the basis for assessing whether an alien enjoys diplomatic privileges and immunities. While neither visa classification nor visa type determines eligibility for privileges and immunities, in general, individuals falling within the A, C-3, G, and NATO classifications enjoy some level of privileges, exemptions and immunities, and any such privileges and immunities would attach regardless of whether the individual were issued a diplomatic *type*, official *type* or regular type visa.
- b. **(U)** You should process applications for diplomatic type visas as quickly as possible. In addition to the exemption from fees (see [9 FAM 402.3-10\(C\)\(4\)](#) below), there is also *a* waiver of personal appearance that you, at your discretion, may grant to diplomatic type visa applicants (see [9 FAM 402.3-10\(C\)\(5\)](#) below). *Note: Waiver of personal appearance does not mean that the applicant is also exempt from fingerprint requirements. The applicant must qualify for fingerprint exemption on some other basis (see [9 FAM 303.7-4\(B\)](#)).*
- c. **(U)** At the POE, the holder of a diplomatic type visa may receive expeditious examination but otherwise must qualify for admission like other nonimmigrants.

9 FAM 402.3-10(C)(3) (U) Diplomatic Relations Required for Diplomatic Type Visa

(CT:VISA-78; 03-04-2016)

(U) A consular officer must not issue a diplomatic type visa to any national of a country whose government does not have diplomatic relations with the United States unless the Department has provided authorization in reply to a request for an AO from post to CA/VO/L/A.

9 FAM 402.3-10(C)(4) (U) Exemption from Fees

(CT:VISA-362; 05-04-2017)

- a. **(U)** In accordance with [22 CFR 22.1](#) and 22 CFR 41.107(c)(1), all qualifying applicants for diplomatic type visas are exempt from both the application (MRV) and issuance (reciprocity) fees, regardless of visa classification. This includes applications submitted for either official or non-official travel. The word “qualifying” refers to an applicant who, if issued a visa, would receive a diplomatic type visa as defined in 22 CFR 41.26. In this context, the word “qualifying” is not related to whether the visa is actually issued or refused. Thus, if, for example, a foreign diplomat applied for a visa using a diplomatic passport or the equivalent (which would qualify him or her for a diplomatic type visa under 22 CFR 41.26(c)(vii)) in order to travel to the United States for pleasure (B visa classification), and you determine the applicant ineligible for a visa under, say, INA 214(b), the applicant would nevertheless be exempt from paying the MRV fee. If the visa were issued, it would be a diplomatic type B visa, and the applicant would be exempt from paying the MRV fee and any reciprocity fee.
- b. **(U)** In addition to the fee exemptions based on visa type in the preceding paragraph, there are also exemptions based on visa classification. Note that under 22 CFR 41.107(c)(1) there are no application (MRV) or issuance (reciprocity) fees for applicants classifiable under the visa *classification* symbols A, C-2, C-3, G, or NATO, regardless of whether such *applicants* qualify for diplomatic type *visas* under 22 CFR 41.26. These exemptions also apply to applicants in the A-3, G-5, or NATO-7 visa classifications. The MRV fee exemption based on visa classification is granted regardless of whether the visa is issued or refused. See [9 FAM 402.3-4\(F\)](#).

9 FAM 402.3-10(C)(5) (U) Exemption from Personal Appearance

(CT:VISA-362; 05-04-2017)

(U) At your discretion, personal appearance may be waived for a diplomatic type visa applicant. See [9 FAM 403.5-4\(A\)](#). *Note: Waiver of personal appearance does not mean that the applicant is exempt from fingerprint requirements. The applicant must qualify for fingerprint exemption on some other basis (see [9 FAM 303.7-4\(B\)](#)).*

9 FAM 402.3-10(D) (U) Official Type Visas

(CT:VISA-362; 05-04-2017)

(U) *An official type visa is depicted on the visa foil under “Visa Type” with the letter “O”, followed by the visa classification. Regardless of visa classification, an otherwise*

eligible applicant would qualify for an official type visa if within one of the *categories* listed in 22 CFR 41.27(c). *While the applicant is not required to have a diplomatic, official, service, or other passport which confirms their position or status with a foreign government or international organization to qualify for an official type visa, many applicants will have a passport reflecting their position with a foreign government or international organization when also applying for an A, C-3, G, or NATO visa and you should consider the lack of such passport when assessing the applicant's eligibility for the visa classification sought. An applicant may still qualify for an official type visa of any visa classification provided post can otherwise confirm the applicant is within one of the categories listed in 22 CFR 41.27(c).*

9 FAM 402.3-10(D)(1) (U) Qualifying for an Official Type Visa Under 22 CFR 41.27

(CT:VISA-362; 05-04-2017)

- a. **(U)** *In order to qualify for an official type visa (regardless of visa classification) under this section of the regulation, an applicant must be in one of the categories listed in 22 CFR 41.27(c), which includes, but is not limited to, an official who would normally qualify for a diplomatic type visa under 22 CFR 41.26(c)(2) or an official in the A or G (other than G-3) visa classification, but cannot be issued a diplomatic type visa because they do not possess a diplomatic passport or the equivalent of a diplomatic passport as required by 22 CFR 41.26 and [9 FAM 402.3-10\(C\)\(1\)](#) above.*
- b. **(U) Categories Eligible to Receive Official Type Visas:** *An applicant must be within one of the categories listed in 22 CFR 41.27(c).*
- c. **(U) Qualifying for an Official Type Visa Under 22 CFR 41.27(c)(1):** *An applicant who is not eligible for a diplomatic type visa, may qualify for an official type visa (regardless of visa classification) if the applicant is within one of the following categories:*
 - (i) Aliens within a class described in 22 CFR 41.26(c)(2) who are ineligible to receive a diplomatic visa because they are not in possession of a diplomatic passport or its equivalent;*
 - (ii) Aliens classifiable under INA 101(a)(15)(A);*
 - (iii) Aliens, other than those described in 22 CFR 41.26(c)(3) who are classifiable under INA 101(a)(15)(G), except those classifiable under INA 101(a)(15)(G)(iii) unless the government of which the alien is an accredited representative is recognized de jure by the United States;*
 - (iv) Aliens classifiable under INA 101(a)(15)(C) as nonimmigrants described in INA 212(d)(8);*
 - (v) Members and members-elect of national legislative bodies;*
 - (vi) Justices of the lesser national and the highest state courts of a foreign country;*
 - (vii) Officers and employees of national legislative bodies proceeding to or through the United States in the performance of their official duties;*
 - (viii) Clerical and custodial employees attached to foreign-government delegations to, and employees of, international bodies of an official nature, other than international organizations so designated by Executive Order, proceeding to or through the United States in the performance of their official duties;*

(ix) Clerical and custodial employees attached to a diplomatic mission of a temporary character proceeding to or through the United States in the performance of their official duties;

(x) Clerical and custodial employees attached to foreign-government delegations proceeding to or from a specific international conference of an official nature;

(xi) Officers and employees of foreign governments recognized de jure by the United States who are stationed in foreign contiguous territories or adjacent islands;

(xii) Members of the immediate family, attendants, servants and personal employees of, when accompanying or following to join, a principal alien who is within one of the classes referred to or described in paragraphs (c)(1)(i) through (c)(1)(xi) inclusive of this section;

(xiii) Attendants, servants and personal employees accompanying or following to join a principal alien who is within one of the classes referred to or described in paragraphs (c)(1)(i) through (c)(1)(xiii) inclusive of 22 CFR 41.26(c)(2).

d. (U) Qualifying for an Official Type Visa Under 22 CFR 41.27(c)(2): 22 CFR 41.27(c)(2) permits the Department, the Chief of a U.S. Diplomatic Mission, the Deputy Chief of Mission (DCM), the Counselor for Consular Affairs or the principal officer of a consular post not under the jurisdiction of a diplomatic mission to authorize the issuance of an official type visa to any individual alien or a class of aliens provided the applicant does not qualify for a diplomatic type visa. In practice, this authority is used very rarely, in exceptional cases. Officers are strongly encouraged to consult CA/VO/DO/DL and CA/VO/F before exercising their authority under this section of the regulation.

e. (U) For issuance of A or G visa classifications, you may place an official type A or G visa in an official passport or a regular passport. For example, if a member of the national legislature of a country that has diplomatic relations with the United States is traveling to the United States on official business, but only possesses an official or regular passport the member could be issued an A-2 official type visa. Regular and official passports must have 6 months of validity left on them at time of issuance (see [9 FAM 403.9-3\(B\)](#)).

f. (U) As with diplomatic type visas, you should submit to the Department visa cases of nationals of countries not having diplomatic relations with the United States. (See [9 FAM 402.3-10\(C\)\(3\)](#) above.)

9 FAM 402.3-10(D)(2) (U) No Exemption from Fees

(CT:VISA-362; 05-04-2017)

(U) The exemption from fees for diplomatic type visas in [9 FAM 402.3-10\(C\)\(4\)](#) above does not apply to official type visas, unless they qualify for a fee exemption on some other basis, such as receiving an A, G, or NATO visa. (See [22 CFR 22.1](#), [22 CFR 41.107\(C\)](#), and [9 FAM 402.3-4\(F\)](#).)

9 FAM 402.3-10(D)(3) (U) Exemption from Personal Appearance

(CT:VISA-362; 05-04-2017)

(U) At your discretion, personal appearance may be waived for an official type visa

applicant. See [9 FAM 403.5-4\(A\)](#). Note: Waiver of personal appearance does not mean that the applicant is exempt from fingerprint requirements. The applicant must qualify for fingerprint exemption on some other basis (see [9 FAM 303.7-4\(B\)](#)).

9 FAM 402.4

TRANSIT VISAS – C VISAS

(CT:VISA-305; 03-16-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 402.4-1 STATUTORY AND REGULATORY CITATIONS

9 FAM 402.4-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15)(C) (8 U.S.C. 1101(a)(15)(C)); INA 212(d)(4)(C) (8 U.S.C. 1182(d)(4)(C)); INA 233 (8 U.S.C. 1223); INA 248 (8 U.S.C. 1258).

9 FAM 402.4-1(B) Code of Federal Regulation

(CT:VISA-1; 11-18-2015)

22 CFR 41.71.

9 FAM 402.4-2 OVERVIEW

(CT:VISA-1; 11-18-2015)

Transit (C) visas are nonimmigrant visas for persons traveling in immediate and continuous transit through the United States en route to another country, with few exceptions.

9 FAM 402.4-3 CATEGORIES OF C VISAS

(CT:VISA-1; 11-18-2015)

22 CFR 41.12 identifies the following C visa classification symbols for aliens in transit through the United States in accordance with INA 101(a)(15)(C):

- C-1 –Alien in Transit
- C-1/D – Combined Transit and Crewmember visa
- C-2 – Aliens in Transit to United Nations Headquarters District under section 11.(3), (4), or (5) of the Headquarters Agreement
- C-3 – Foreign Government Official, Immediate Family, Attendant, Servant, or Personal Employee, in Transit.

9 FAM 402.4-4 QUALIFYING FOR C VISAS

(CT:VISA-305; 03-16-2017)

- a. An alien is classifiable as a nonimmigrant transit alien under INA 101(a)(15)(C) if you are satisfied that the alien:
 - (1) Intends to pass in immediate and continuous transit through the United States;
 - (2) Is in possession of a common carrier ticket or other evidence of transportation arrangements to the alien's destination;
 - (3) Is in possession of sufficient funds to carry out the purpose of the transit journey, or has sufficient funds otherwise available for that purpose; and
 - (4) Has permission to enter some country other than the United States following the transit through the United States, unless the alien submits satisfactory evidence that such advance permission is not required.
- b. As used in INA 101(a)(15)(C), the term "immediate" is defined as a reasonably expeditious departure of the alien in the normal course of travel as the elements permit and assumes a prearranged itinerary without any unreasonable layover privileges. (Page 43, House Report No. 1365 accompanying H.R. 5678, 82nd Congress, 2d Session.) If the alien seeks layover privileges for purposes other than for transit through the United States, such as to visit friends or engage in sightseeing, the alien will have to qualify for the type of visa required for that purpose. 8 CFR 214.2(c)(3) *provides* that the period of stay cannot exceed 29 days. Although the C-2 and C-3 visa classifications are exempt from most visa ineligibilities (see [9 FAM 402.4-7](#) and 402.4-8), the INA 214(b) and INA 212(a) ineligibilities do apply to both the C-1 and C-1/D visa classifications.

9 FAM 402.4-5 VISA FOR PASSENGER ON VESSEL ENTERING AT U.S. PORT

(CT:VISA-1; 11-18-2015)

An alien passenger embarking at a foreign port on a vessel which is proceeding to a foreign destination other than the United States and who has no intention of landing in the United States is nevertheless required to be in possession of a transit or other nonimmigrant visa if, during the course of the journey, the vessel makes port in the United States, since this constitutes an entry by the alien as contemplated in INA 101(a)(13).

9 FAM 402.4-6 C-1 VISAS FOR CREWMEN

(CT:VISA-1; 11-18-2015)

- a. **Crewmen joining vessel or aircraft:** See [9 FAM 402.8-6](#).
- b. **Coasting Officers:** See [9 FAM 402.8-5](#) for proper documentation of coasting

officers.

- c. **Transit Without Visa (TWOV) for Crewmen:** The Transit Without Visa (TWOV) program has been suspended indefinitely.

9 FAM 402.4-7 C-2 VISA FOR TRANSIT TO UNITED NATIONS HEADQUARTERS DISTRICT

(CT:VISA-1; 11-18-2015)

See [9 FAM 402.3-6](#) Officials in Transit – C-2 AND C-3 Visas.

9 FAM 402.4-8 C-3 VISAS FOR ACCREDITED FOREIGN OFFICIALS IN TRANSIT

(CT:VISA-1; 11-18-2015)

See [9 FAM 402.3-6](#) Officials in Transit – C-2 AND C-3 Visas.

9 FAM 402.5

(U) STUDENTS AND EXCHANGE VISITORS – F, M, AND J VISAS

*(CT:VISA-391; 06-26-2017)
(Office of Origin: CA/VO/L/R)*

9 FAM 402.5-1 (U) STATUTORY AND REGULATORY AUTHORITY

9 FAM 402.5-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 101(a)(15)(F) (8 U.S.C. 1101(a)(15)(F)); INA 101(a)(15)(J) (8 U.S.C. 1101(a)(15)(J)); INA 101(a)(15)(M) (8 U.S.C. 1101(a)(15)(M)); INA 212(a)(6)(C) (8 U.S.C. 1182(a)(6)(C)); INA 212(e) (8 U.S.C. 1182(e)); INA 212(j) (8 U.S.C. 1182(j)); INA 214(b) (8 U.S.C. 1184(b)); INA 214(l) (8 U.S.C. 1184(l)), INA 214(m) (8 U.S.C. 1184(m)).

9 FAM 402.5-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.61; 22 CFR 41.62; 22 CFR 41.63; 22 CFR Part 62.

9 FAM 402.5-2 (U) OVERVIEW

(CT:VISA-354; 04-26-2017)

(U) Except for incidental, short-term courses permitted under a B visa (see [9 FAM 402.5-5\(I\)\(3\)](#)), an alien must have a student visa to study in the United States. The course of study and type of school he/she plans to attend determines whether he/she needs an F-1 visa (academic) or an M-1 visa (nonacademic, vocational). Exchange visitor (J-1) visas are for individuals approved to participate in exchange visitor programs in the United States, which can range from research scholar to camp counselor to physician. Students and exchange visitors must be accepted by their schools or program sponsors before applying for visas.

9 FAM 402.5-3 (U) Categories of F, J, and M Visas

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.12 identifies the following F, J, and M visas classifications for aliens

engaged in study or participation in exchange programs:

F1	Student in an academic or language training program
F2	Spouse or Child of F1
F3	Canadian or Mexican national commuter student in an academic or language training program
J1	Exchange Visitor
J2	Spouse or Child of J1
M1	Vocational Student or Other Nonacademic Student
M2	Spouse or Child of M1
M3	Canadian or Mexican national commuter student (Vocational student or other nonacademic student)

9 FAM 402.5-4 (U) STUDENT AND EXCHANGE VISITOR PROGRAM (SEVP)

9 FAM 402.5-4(A) (U) Background on SEVP

(CT:VISA-354; 04-26-2017)

- a. **(U)** In response to a requirement in the Illegal Immigration Reform and Immigrant Responsibility Act, in 1997, the Department of Homeland Security (DHS) initiated a pilot program to monitor the academic progress, movement, etc. of foreign students and exchange visitors from entry into the United States to departure. This program was formerly known as Coordinated Interagency Partnership Regulating International Students (CIPRIS). As part of post-9/11 reforms, CIPRIS was renamed the Student and Exchange Visitor Identification System (SEVIS), and SEVP was established to manage SEVIS.
- b. **(U)** SEVP manages the Student and Exchange Visitor Information System (SEVIS) that monitors schools and programs, students, exchange visitors, and their dependents throughout the duration of approved participation within the U.S. education system. Posts can access the SEVIS record associated with the student through the Consular Consolidated Database (CCD) SEVIS report.
- c. **(U)** School and program administrators with inquiries about individual student and exchange visitor visa cases may contact the Department of State, National Visa Center, Nonimmigrant Visa Unit at 603-334-0888. Consular officers should contact the Education and Tourism Division CA/VO/F/ET with policy and procedural questions related to F, M, and J visas.

9 FAM 402.5-4(B) (U) Student and Exchange Visitor Information System (SEVIS) Record is Definitive Record

(CT:VISA-149; 07-20-2016)

- a. **(U)** While applicants must still present a paper Form I-20 (F or M visa) or Form

DS-2019 (J visa) in order to qualify for a visa, the SEVIS record is the definitive record of student status and visa eligibility. You must always check an applicant's SEVIS status before issuing an F, M, or J visa, for two reasons. First, you must verify that the SEVIS fee has been paid (see following paragraph). Second, while presentation of a valid Form I-20 or Form DS-2019 generally indicates that an individual is entitled to apply for a visa, the electronic SEVIS record in the CCD, not the paper form, is the definitive record. Posts must ensure that part of their interview procedure includes a routine check of SEVIS for all applicants.

- b. **(U)** The SEVIS record will indicate the applicant's current SEVIS status. Posts should issue F, M, or J visas only to visa applicants whose SEVIS record indicates a SEVIS status of "initial" or "active."
- c. **(U)** On occasion, you may encounter visa applicants who present a hard copy Form I-20 or Form DS-2019 but you are unable to locate the record in the CCD. This may occur because records were not "swept" into the CCD from the SEVIS database as usual. If the applicant is otherwise qualified, refuse the visa under Section 221(g) for administrative processing and alert the Visa Office F/M/J portfolio holder listed in the CAWeb "Who's Who" in VO for assistance in verifying the record.

9 FAM 402.5-4(C) (U) The Student and Exchange Visitor Information System (SEVIS) Fee

(CT:VISA-1; 11-18-2015)

(U) All students and exchange visitors, except those that are Government sponsored, must pay the Form I-901 fee and must use Form I-901, Fee Remittance for Certain F, J, and M Nonimmigrants, to pay the SEVIS fee. Form I-901 and filing instructions are available at the U.S. Immigration and Customs Enforcement Website. You must verify SEVIS fee payment through the SEVIS CCD report. If the applicant's CCD SEVIS record does not show the fee was paid but the applicant states it was, you can easily and accurately verify the SEVIS payment by entering the SEVIS number, the last name of the applicant, and the applicant's date of birth into the FMJfee.com website. Applicants who cannot demonstrate that they have paid the SEVIS fee should be refused under INA 221(g). Questions about SEVIS fee payment should be directed to the Visa Office F/M/J portfolio holder listed in the CAWeb "Who's Who" in VO, who will relay the inquiry to the action office. Additional details and FAQs on the SEVIS fee can be found on the U.S. Immigration and Customs Enforcement website and at the Study in the States website.

9 FAM 402.5-5 (U) STUDENTS: ACADEMIC AND NONACADEMIC – F AND M VISAS

9 FAM 402.5-5(A) (U) Related Statutory and Regulatory

Authorities

9 FAM 402.5-5(A)(1) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15)(F) (8 U.S.C. 1101(a)(15)(F)); INA 101(a)(15)(M) (8 U.S.C. 1101(a)(15)(M)); INA 212(a)(6)(C) (8 U.S.C. 1182(a)(6)(C)); INA 214(b) (8 U.S.C. 1184(b)); INA 214(l) (8 U.S.C. 1184(l)), INA 214(m) (8 U.S.C. 1184(m)).

9 FAM 402.5-5(A)(2) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 41.61.

9 FAM 402.5-5(B) (U) Overview

(CT:VISA-354; 04-26-2017)

- a. **(U)** An F or M visa is required for individuals to enter the United States to attend university or college, public or private secondary school, private elementary school, seminary, conservatory, other academic institution, including a language training program, or vocational or other recognized nonacademic institution, other than a language training program.
- b. **(U)** Citizens of Visa Waiver Program (VWP) participating countries who intend to study cannot travel on the VWP or on visitor (B) visas, except to undertake recreational study as part of a tourist visit. Study leading to a degree or certificate conferred by either a U.S. or foreign educational institution is also not permitted on a visitor (B) visa, even if it is for a short duration. For example, distance learning which requires a period of time on the institution's U.S. campus requires an F-1 visa.
- c. **(U)** B-2 visa appropriate for certain students: See [9 FAM 402.5-5\(R\)\(3\)](#) for information on appropriate issuance of B-2 visas to prospective students, [9 FAM 402.5-5\(I\)\(3\)](#) on students pursuing a short course of study, and [9 FAM 402.5-5\(J\)\(2\)](#), [9 FAM 402.1-3](#) paragraph a, and [9 FAM 402.1-5\(C\)](#) for derivative children applying for B-2 status.

9 FAM 402.5-5(C) (U) Qualifying for a Student Visa (F-1/M-1)

(CT:VISA-1; 11-18-2015)

- a. **(U)** An applicant applying for a student visa under INA 101(a)(15)(F) or INA 101(a)(15)(M) must meet the following requirements in order to qualify for a student visa:
 - (1) **(U)** Acceptance at a school as evidenced by a Form I-20 (see [9 FAM 402.5-4\(B\)](#) above and 402.5-5(D) below);

- (2) **(U)** Present intent to leave the United States at conclusion of approved activities (see [9 FAM 402.5-5\(E\)](#) below);
 - (3) **(U)** Possession of sufficient funds to meet the individual's financial needs (see [9 FAM 402.5-5\(G\)](#) below); and
 - (4) **(U)** Preparation for course of study (see [9 FAM 402.5-5\(H\)](#) below).
- b. **(U)** If an applicant fails to meet one or more of the above criteria, he or she must be refused a visa under INA 214(b).

9 FAM 402.5-5(D) (U) Form I-20 Certificate of Eligibility for Nonimmigrant (F-1) Student Status - For Academic and Language Students

9 FAM 402.5-5(D)(1) (U) Form I-20 Required

(CT:VISA-354; 04-26-2017)

- a. **(U)** A prospective nonimmigrant student must have a Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, issued by an SEVP-certified school in order to be issued an F-1 or M-1 student visa. Only an SEVP-certified school can issue a Form I-20 to students who have been accepted for enrollment. The Form I-20 constitutes proof of acceptance at an SEVP-certified school and allows the holder to apply for a visa or change of status and admission into the United States. The Form I-20 has the student's unique SEVIS identification (ID) number on the upper left hand side with the visa class printed on the top right hand side. New forms do not have a bar code. SEVIS ID numbers are an N followed by 9 digits. Old Forms I-20 with a bar code ceased to be issued as of June 26, 2015 and became invalid for visa issuance on July 1, 2016.
- b. **(U)** An F-1 or M-1 visa may be issued only to an applicant who presents a properly completed and valid Form I-20 from the institution the student will attend and who is otherwise eligible for a visa. These forms are issued only in the United States by approved institutions to students who will pursue a full course of study.
- c. **(U)** F/M/J visa applicants must present signed Form I-20 or Form DS-2019 prior to visa issuance. If there are minor errors on the form (e.g., a program start date that is off one day) you can process the case using that form. However, if the form indicates an unrealizable program start date, or has a typographic error in the biographic data, you must verify that the information is correct in SEVIS. The SEVIS record is the definitive record of student status and visa eligibility. In most cases, the electronic record can be corrected by the institution without requiring issuance of a new hard copy Form I-20 or Form DS 2019. You must verify that the SEVIS status is either "initial" or "active". Make a case note that the electronic record contains corrections and that the traveler will present the original Form I-20 at the port of entry. CBP accesses the electronic record using the SEVIS number.
- d. **(U)** A Form I-20 must bear the signature of the designated school official (DSO) certifying that:

- (1) **(U)** The student's application for admission has been fully reviewed and is approved;
 - (2) **(U)** The student is financially able to pursue the proposed course of study;
 - (3) **(U)** Page 1 of the Form I-20 was completed and verified to be accurate prior to signature; and
 - (4) **(U)** If the student will be attending a public high school on an F-1 visa, the school indicates that the student has paid the unsubsidized cost of the education (see INA 214(m)) and the amount submitted by the student for that purpose.
- e. **(U)** A Form I-20 issued by a school system must indicate the specific school within the system that the student will attend.
- f. **(U)** If the applicant submits a Form I-20 that does not contain all the required information, you must refuse the visa under section 221(g) and require that the missing information be submitted.

9 FAM 402.5-5(D)(2) (U) Student Must Present Form I-20 at Port of Entry (POE)

(CT:VISA-354; 04-26-2017)

- a. **(U)** At the time of admission to the United States, a student must present the entire Form I-20, properly and completely filled out and signed by the designated school official (DSO) and the student. Thus, after the visa interview or after an F-1 or M-1 visa has been issued, you must return the completed Form I-20, together with all supporting financial evidence, to the individual for presentation to the U.S. immigration officer at the port of entry (POE). Upon the student's arrival, the immigration officer will examine the documentation and return the financial evidence to the individual.
- b. **(U)** The student must retain the form at all times while in the United States. If the student loses it, he or she must obtain a replacement copy from the designated school official (DSO).

9 FAM 402.5-5(D)(3) (U) Suspension of Cases Involving Unrealizable Reporting Dates

(CT:VISA-354; 04-26-2017)

- a. **(U)** Action on the application must be suspended if the program start date specified in the applicant's Form I-20 or Form DS-2019 is already past or you believe that the applicant will be unable to meet that date. The officer must review the SEVIS record in the Consolidated Consular Database (CCD) to determine whether the designated school official (F,M visas) or responsible officer (J visas) has amended the SEVIS record to change the program start date. If this has not already been done, the applicant must request the official enter a new program begin date in SEVIS that the applicant can meet. You may then issue the visa based on the

electronic record. You should enter a case note that the electronic record contains a new program begin date and that the traveler will present the original Form I-20 at the port of entry. CBP accesses the electronic record using the SEVIS number.

- b. **(U)** You may issue an F or M visa to an applicant who is otherwise qualified, was previously admitted in F or M status, and is seeking to renew the visa to continue participation in a student program, as long as the status of the individual's SEVIS record is "active."
- c. **(U)** Do not renew F or M visas for individuals whose SEVIS status is in any other status, regardless of presentation of a hard copy Form I-20 that may appear to be valid on its face.

9 FAM 402.5-5(D)(4) (U) Fraud Related to Form I-20

(CT:VISA-1; 11-18-2015)

(U) Fraud, as it relates to F and M cases, often involves the submission of false records to institutions to secure a Form I-20. Posts may also observe unusual patterns of Form I-20 issuance from a particular institution. If any type of fraud is suspected, you should refuse the visa under section 221g and refer the case to post's Fraud Prevention Manager through ECAS and to CA/FPP. In addition, notify the F/M/J portfolio manager in CA/VO/F/ET. If a fraud investigation confirms fraud or misrepresentation of a material fact on the part of the applicant, you must consider the applicability of ineligibility under INA 212(a)(6)(C). Questions concerning an applicant's ineligibility under INA 212(a)(6)(C) must be addressed to the Advisory Opinions Division of the Visa Office (CA/VO/L/A).

9 FAM 402.5-5(D)(5) (U) F-1 Form I-20 Sample

(CT:VISA-354; 04-26-2017)

See Form I-20 Sample.

9 FAM 402.5-5(E) (U) Residence Abroad

9 FAM 402.5-5(E)(1) (U) Residence Abroad Required

(CT:VISA-354; 04-26-2017)

- a. **(U)** The INA requires that the applicant possess a residence in a foreign country he or she has no intention of abandoning. The regulations require that you are satisfied that the visa applicant intends to depart upon completion of the approved activity. Consequently, you must be satisfied that the applicant, at the time of visa application:
 - (1) **(U)** Has a residence abroad;
 - (2) **(U)** Has no immediate intention of abandoning that residence; and
 - (3) **(U)** Intends to depart from the United States upon completion of approved

activities.

- b. **(U)** The context of the residence abroad requirement for student visas inherently differs from the context for B visitor visas or other short-term visas (See [9 FAM 401.1-3\(F\)\(2\)](#)). The statute clearly presupposes that the natural circumstances and conditions of being a student do not disqualify that applicant from obtaining a student visa. It is natural that the student does not possess ties of property, employment, family obligation, and continuity of life typical of B visa applicants. These ties are typically weakly held by student applicants, as the student is often young, single, unemployed, without property, and is at the stage in life of deciding and developing his or her future plans. Student visa adjudication is made more complex by the fact that students typically stay in the United States longer than do many other nonimmigrant visitors.
- c. **(U)** The residence abroad requirement for a student should therefore not be exclusively connected to “ties.” You must focus on the student applicant's immediate intent, rather than trying to predict what the student may or may not do following completion of studies. Another aspect to consider: students’ typical youth often means they do not necessarily have a long-range plan, and hence are relatively less likely to have formed an intent to abandon their homes. Nonetheless, you must be satisfied at the time of application for a visa that the visa applicant possesses the present intent to depart the United States at the conclusion of his or her approved activities. That this intention is subject to change is not a sufficient reason to refuse a visa. Although students may apply to change or adjust status in the United States in the future, this is not a basis to refuse a visa application if the student's present intent is to depart at the conclusion of his or her studies.

9 FAM 402.5-5(E)(2) (U) Relationship of Education or Training Sought to Existence of Ties Abroad

(CT:VISA-1; 11-18-2015)

- a. **(U)** The fact that a student’s proposed education or training would not appear to be useful in the homeland is not, in itself, a basis for refusing an F-1 or M-1 visa. This remains true even if the applicant’s proposed course of study seems to be impractical. For example, if a person from a developing country wishes to study nuclear engineering simply because he enjoys it, he may no more be denied a visa because there is no market for a nuclear engineer’s skills in his homeland than he may be denied a visa for the study of philosophy or Greek simply because they do not lead to a specific vocation.
- b. **(U)** The fact that education or training similar to that which the applicant plans to undertake is apparently available in the home country is not in itself a basis for refusing a student visa. An applicant may legitimately seek to study in the United States for various reasons, including a higher standard of education or training. Furthermore, the desired education or training in the applicant's homeland may be only theoretically available; openings in local schools and institutions may be already filled or reserved for others.

9 FAM 402.5-5(E)(3) (U) Returning Students

(CT:VISA-354; 04-26-2017)

(U) Some students must apply for visa renewals if they go home or travel during their period of study. You should generally issue visas to returning students who are qualified, unless circumstances have changed significantly from the time of previous issuance. Students should be encouraged to travel home during their studies in order to maintain ties to their country of origin. If students feel that they will encounter difficulties in seeking a new student visa or that they will not be issued a visa to continue their studies, they may be less inclined to leave the United States during their studies and hence may distance themselves from their family and homeland. Posts should facilitate the reissuance of student visas so that these students can travel freely back and forth between their homeland and the United States and thereby maintain their ties.

9 FAM 402.5-5(F) (U) Knowledge of English

9 FAM 402.5-5(F)(1) (U) Notation on Form I-20

(CT:VISA-354; 04-26-2017)

(U) If the individual's Form I-20 indicates that proficiency in English is required for pursuing the selected course of study and that no arrangements have been made to overcome any English-language deficiency, you must determine whether the visa applicant has the necessary proficiency. To this end, the officer must conduct the visa interview in English and may require the applicant to read aloud from an English-language book, periodical, or newspaper, and to restate in English in the applicant's own words what was read. The applicant may also be asked to read aloud and explain several of the conditions set forth in the Form I-20. A student must demonstrate English language proficiency only if an admitting institution has made English language ability a requirement for the intended course of study.

- (1) **(U)** If a school has admitted an applicant on the basis of the applicant's TOEFL or other English language test scores, the officer must not reevaluate the school's admission decision, even if the applicant seems to know less English than the TOEFL score indicates, unless the officer suspects the applicant obtained the results through fraud. Many students do well on the TOEFL, but seem to forget their English when confronted with a face-to-face interview with a consular officer.
- (2) **(U)** If the school is aware of a student's lack of English proficiency and has made arrangements for the student to study English before enrolling in regular courses, then the lack of English skills is not relevant.

9 FAM 402.5-5(F)(2) (U) Courses for Students Taught in a Language Other than English in which the Student Is Proficient

(CT:VISA-1; 11-18-2015)

(U) Proficiency in English is not required of a student if the enrolling institution conducts the course in a language in which the visa applicant is proficient.

9 FAM 402.5-5(F)(3) (U) English as a Second Language (ESL)

(CT:VISA-1; 11-18-2015)

(U) The fact that an English as a Second Language (ESL) or other education program is available locally is not in itself grounds for refusing an applicant. Many students find language learning enhanced by living in the country where the language is spoken. Students who intend to study in ESL-only programs must present a valid Form I-20 and be found qualified for an F visa. Postsecondary institutions that require English proficiency in order for a student to matriculate use a variety of mechanisms, and such arrangements must be evident on the visa applicant's Form I-20. Contact the Visa Office F/M/J portfolio holder listed in the CAWeb "Who's Who" in VO for additional guidance, as required.

9 FAM 402.5-5(G) (U) Adequate Financial Resources

9 FAM 402.5-5(G)(1) (U) Determining Financial Status of F-1 and M-1 Students

(CT:VISA-1; 11-18-2015)

- a. **(U)** The sponsoring school is required to verify the availability of financial support before issuing the Form I-20. Schools may not be as well-versed in local documentation or cultural practices as posts may be; therefore, you must still ensure that the student has sufficient funds to successfully study in the United States without being forced to resort to unauthorized employment.
- b. **(U) F-1 Student:** The phrase "sufficient funds to cover expenses" referred to in 22 CFR 41.61(b)(1)(ii) means the applicant must have sufficient funds to successfully study in the United States without resorting to unauthorized U.S. employment for financial support. An applicant must provide documentary evidence that sufficient funds are, or will be, available to defray all expenses during the entire period of anticipated study. This does not mean that the applicant must have cash immediately available to cover the entire period of intended study, which may last several years. You must, however, establish, usually through credible documentary evidence, that the applicant has enough readily available funds to meet all expenses for the first year of study. You also must be satisfied that, barring unforeseen circumstances, adequate funds will be available for each subsequent year of study from the same source or from one or more other specifically identified and reliable financial sources.
- c. **(U) M-1 Student:** All applicants for M-1 visas must establish that they have immediately available to them funds or assurances of support necessary to pay all tuition and living costs for the entire period of intended stay.

9 FAM 402.5-5(G)(2) (U) Adequate Medical Insurance

(CT:VISA-1; 11-18-2015)

(U) F and M students and their dependents are not required to have U.S. medical or travel insurance in order to qualify for a visa.

9 FAM 402.5-5(G)(3) (U) Funds From Source(s) Outside the United States

(CT:VISA-1; 11-18-2015)

(U) When an applicant indicates financial support from a source outside the United States (for example, from parents living in the country of origin), you must determine whether there are restrictions on the transfer of funds from the country concerned. If so, you must require acceptable evidence that these restrictions will not prevent the funds from being made available during the period of the applicant's projected stay in the United States.

9 FAM 402.5-5(G)(4) (U) Affidavits of Support or Other Assurances by an Interested Party

(CT:VISA-1; 11-18-2015)

(U) Various factors are important in evaluating assurances of financial support by interested parties:

- (1) **(U)** Financial support to a student is not a mere formality to facilitate the applicant's entry into the United States, nor does it pertain only when the individual cannot otherwise provide adequate personal support. Rather, the sponsor must ensure that the applicant will not become a public charge nor be compelled to take unauthorized employment while studying in the United States. This obligation commences when the visa holder enters the United States and continues until the visa holder's completion of their program of study and departure.
- (2) **(U)** You must resolve any doubt that the financial status of the person giving the assurance is sufficient to substantiate the assertion that financial support is available to the applicant.
- (3) **(U)** You must also carefully evaluate the factors that would motivate a sponsor to honor a commitment of financial support. If the sponsor is a close relative of the applicant, there may be a greater probability that the commitment will be honored than if the sponsor is not a relative. Regardless of the relationship, you must be satisfied that the reasons prompting the offer of financial support make it likely the commitment will be fulfilled.

9 FAM 402.5-5(G)(5) (U) Funds from Fellowships and Scholarships for F-1 Student

(CT:VISA-1; 11-18-2015)

(U) A college or university may arrange for a nonimmigrant student to engage in research projects, give lectures, or perform other academic functions as part of a fellowship, scholarship, or assistantship grant, provided the institution certifies that the student will also pursue a full course of study.

9 FAM 402.5-5(G)(6) (U) Post-Doctoral Research Grants for F-1 Student

(CT:VISA-1; 11-18-2015)

(U) A visa applicant may be issued an F-1 visa for post-doctoral research even if the college or university provides compensation to the individual in the form of a grant.

9 FAM 402.5-5(H) (U) Educational Qualifications for F-1 and M-1 Students

9 FAM 402.5-5(H)(1) (U) Consular Role in Determining Educational Qualifications

(CT:VISA-354; 04-26-2017)

- a. **(U)** The Form I-20 and SEVIS record are evidence that a school has accepted the applicant as a student. You should normally not go behind the Form I-20 or SEVIS record to assess the applicant's qualifications as a student for that institution. If you have reason to believe that the applicant engaged in fraud or misrepresentation to garner acceptance into the school, then that information is an important factor to consider in determining if the applicant has a bona fide intent to engage in study in the United States.
- b. **(U)** You are not expected to assume the role of guidance counselor to determine whether an applicant for an F-1 or M-1 visa is qualified to pursue the desired course of study. You must, however, be alert to three specific factors when determining whether the applicant qualifies for a student visa:
 - (1) **(U)** The applicant has successfully completed a course of study equivalent to that normally required of a U.S. student seeking enrollment at the same level;
 - (2) **(U)** Cases in which an applicant has submitted forged or altered transcripts of previous or related study or training which the institution has accepted as valid; and
 - (3) **(U)** Cases in which an institution has accepted an applicant's alleged previous course of study or training as the equivalent of its normal requirements when, in fact, such is not the case.
- c. **(U)** Through its school certification process, SEVP evaluates the qualifications of a school to issue Forms I-20. This process includes a determination as to whether the school is a bona fide, established institution of learning which possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses of study. Evaluation also involves an on-site visit. If you have reason to

question the authenticity of a school or exchange program, please contact the (CA/VO/F/ET) F/M/J portfolio holder and the Office of Fraud Prevention Programs (CA/FPP) so inquiries to ECA or SEVP are appropriately coordinated through CA.

- d. **(U)** Many U.S. colleges and universities do not require foreign students to submit SAT scores or other standardized admission test scores, and not all schools require specific grade point averages (GPAs) for admission. As a result, you may not require that applicants provide admission test scores, or that applicants have a certain grade point average. Note that SEVP does not have a role dictating admissions practices to the schools they approve to issue Form I-20.

9 FAM 402.5-5(H)(2) (U) Choice of Academic Institution

(CT:VISA-1; 11-18-2015)

(U) Which school a student chooses is not nearly as important as why he or she chooses it. A plan that includes initial attendance at a community college or English language program, and then a transfer to a four-year college is becoming more common. Attendance at a lesser-known college or university is not, in itself, a ground of ineligibility and applicants cannot be refused a visa for this reason. There is no legal difference between SEVP-certified community colleges, English language schools, and four-year institutions in terms of their authorization to issue Form I-20.

9 FAM 402.5-5(I) (U) Full Course of Study

9 FAM 402.5-5(I)(1) (U) F-1 Academic Student

(CT:VISA-354; 04-26-2017)

- a. **(U)** Department of Homeland Security (DHS) regulations (8 CFR 214.2(f)(6)(i)) specify that "successful completion of the full course of study must lead to the attainment of a specific educational or professional objective. A "full course of study" as required by INA 101(a)(15)(F)(i) means:
- (1) **(U)** Postgraduate study or postdoctoral study at a college or university, or undergraduate or postgraduate study at a conservatory or religious seminary, certified by a designated school official (DSO) as a full course of study;
 - (2) **(U)** Undergraduate study at a college or university, certified by a school official to consist of at least 12 semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter hour systems, where all undergraduate students who are enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or are considered full-time for other administrative purposes, or its equivalent (as determined by the district director in the school approval process), except when the student needs a lesser course load to complete the course of study during the current term;
 - (3) **(U)** Study in a postsecondary language, liberal arts, fine arts, or other non-vocational program at a school which confers upon its graduates recognized

associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning which are either:

- (a) **(U)** A school (or school system) owned and operated as a public educational institution by the United States or a State or political subdivision thereof; or
 - (b) **(U)** A school accredited by a nationally recognized accrediting body and which has been certified by a designated school official to consist of at least twelve clock hours of instruction a week, or its equivalent as determined by the district director in the school approval process;
- (4) **(U)** Study in any other language, liberal arts, fine arts, or other non-vocational training program, certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or to consist of at least twenty-two clock hours a week if the dominant part of the course of study consists of laboratory work; or
 - (5) **(U)** Study in a curriculum at an approved private elementary or middle school or public or private academic high school which is certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation.
- b. **(U)** Notwithstanding paragraphs 8 CFR 214.2(f)(6)(i)(A) and 8 CFR 214.2 (f)(6)(i)(B) of this section, an alien who has been granted employment authorization pursuant to the terms of a document issued by USCIS under paragraphs 8 CFR 214.2(f)(9)(i) or 8 CFR 214.2(f)(9)(ii) of this section and published in the Federal Register shall be deemed to be engaged in a "full course of study" if he or she remains registered for no less than the number of semester or quarter hours of instruction per academic term specified by the Commissioner in the notice for the validity period of such employment authorization."
 - c. **(U) Institution of Higher Learning:** Under DHS regulations (8 CFR 214.2(f)(6)(ii)), "a college or university is an institution of higher learning which awards recognized associate, bachelor's, master's, doctorate, or professional degrees." DHS holds that schools that devote themselves exclusively or primarily to vocations or business are not included in the category of colleges or universities but are categorized as M-1 schools.
 - d. **(U) Reduced Course Load:** The designated school official (DSO) may advise an F-1 student to engage in less than a full course of study due to initial difficulties with the English language or reading requirements, unfamiliarity with U.S. teaching methods, or improper course level placement. An F-1 student authorized to reduce course load by the DSO in accordance with the provisions of this paragraph is considered to be maintaining status. On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study.

9 FAM 402.5-5(I)(2) (U) M-1 Nonacademic Student

(CT:VISA-1; 11-18-2015)

(U) DHS regulations (8 CFR 214.2(m)(9)) specify that “successful completion of the course of study must lead to the attainment of a specific educational or vocational objective. A “full course of study” as required by INA 101(a)(15)(M)(i) means:

- (1) **(U)** Study at a community college or junior college, certified by a school official to consist of at least twelve semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter-hour systems, where all students enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or considered full-time for other administrative purposes, or its equivalent (as determined by the district director) except when the student needs a lesser course load to complete the course of study during the current term;
- (2) **(U)** Study at a postsecondary vocational or business school, other than in a language training program except as provided in Sec. 214.3(a)(2)(iv), which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning which are either:
 - (a) **(U)** A school (or school system) owned and operated as a public educational institution by the United States or a State or political subdivision thereof; or
 - (b) **(U)** A school accredited by a nationally recognized accrediting body; and which has been certified by a designated school official to consist of at least twelve hours of instruction a week, or its equivalent as determined by the district director;
- (3) **(U)** Study in a vocational or other nonacademic curriculum, other than in a language training program except as provided in Sec. 214.3(a)(2)(iv), certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or at least twenty-two clock hours a week if the dominant part of the course of study consists of shop or laboratory work; or
- (4) **(U)** Study in a vocational or other nonacademic high school curriculum, certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation.

9 FAM 402.5-5(I)(3) (U) B-2 Visa for Visitor Who Will Engage in a Short Course of Study

(CT:VISA-354; 04-26-2017)

- a. **(U)** Individuals whose principal purpose of travel (see [9 FAM 402.1-3](#)) is tourism, but who plan to engage also in a short course of study, are properly classified for B-2 visas. You must determine whether the content of the course qualifies as a

short course of study. If the student will earn academic credit toward completion of an academic program engaging a short course of study while in the United States, then a B-2 is not the appropriate visa class. This guidance applies regardless of whether it is a U.S. or foreign educational institution that will grant academic credit for completion of the short course of study. You should not advise applicants to obtain an I-20, but should refuse the visa under INA section 214(b) as not approvable for the planned activities.

- b. **(U)** An individual enrolling in such a school may be classified B-2 if the purpose of attendance is recreational or avocational.
- c. **(U)** Individuals traveling to the United States to attend seminars or conferences that are required to earn a degree (i.e., the applicant cannot complete the requirements for the degree unless he or she completes the proposed seminar or conference in the United States) are not eligible for B visa classification. This category includes students engaged in an on-line course of study traveling to the United States for academic consultations or to take examinations. In the case of an alien traveling to the United States to attend seminars and conferences for credit toward a degree, the study is neither incidental to a tourist visit, avocational, nor recreational.
- d. **(U)** Individuals traveling to attend professional education, seminars, or conferences that do not result in academic credit may qualify for a B-1 per [9 FAM 402.2-5\(B\)](#).
- e. **(U)** It is common for U.S. colleges, universities, and private organizations to offer summer programs tailored for high school or college-aged students. Though these programs are academic enrichment and are marketed as “study,” and the participants attend “classes,” the activities do not meet the definition of “full” or “part-time” course of study and therefore do not qualify for issuance of an I-20. You may not advise applicants to obtain an I-20 for these programs. Because these programs are not classifiable as a “full course of academic study,” schools cannot issue I-20s for them. In most cases, the activity, which is more like a summer camp with an academic focus, can be undertaken in a B2 status. You should consult CA/VO/L/A for an advisory opinion on the appropriate visa classification.

9 FAM 402.5-5(I)(4) (U) F-1 or M-1 Visa for Visitor Who Will Engage in a Short Term Program

(CT:VISA-354; 04-26-2017)

- a. **(U)** Only applicants who present a valid Form I-20 should be adjudicated as F or M applicants. You should not advise applicants who do not present a Form I-20 to obtain one and return for further adjudication. Instead, applicants without a Form I-20 should be adjudicated in the most logical category that allows the proposed activities in the United States. In most cases, this will be a B visa. If it is unclear whether the activities proposed are permissible on a B visa, you should consult CA/VO/L/A for an advisory opinion.
- b. **(U)** An individual may be issued a Form I-20 by a school only if he or she will engage in a full course of study.

- c. **(U)** If a student is receiving academic credit for the program of study or the program of study is required for his/her degree, the student must qualify for an F-1 or M-1 visa. 8 CFR 214(b)(7) prohibits an individual from enrolling in a course of study on a B-1 or B-2 visa. See [9 FAM 402.5-5\(J\)\(2\)](#), [9 FAM 402.1-3](#) paragraph a, and [9 FAM 402.1-5\(C\)](#) for possible limited exceptions.
- d. **(U)** Students may enroll in online degree programs that allow them to reside overseas but that may require them to travel to the United States for short programs required for their degree. Such students should apply for F visas and should present a properly executed Form I-20 indicating appropriate program dates for this limited period of school attendance on their U.S. campus.

9 FAM 402.5-5(J) (U) Special Types of Students

9 FAM 402.5-5(J)(1) (U) Students Destined to Schools Which are Avocational or Recreational in Character

(CT:VISA-354; 04-26-2017)

(U) Department of Homeland Security (DHS) cannot approve schools which are avocational or recreational in character for issuance of Form I-20, Certificate of Eligibility for Nonimmigrant Student Status. Students coming to study in such schools may be classified B-2, if the purpose of attendance is recreational or avocational. When the nature of a school's program makes determining its character difficult, you should consult with VO/L/A for an advisory opinion on the appropriate visa classification.

9 FAM 402.5-5(J)(2) (U) Elementary School Students

(CT:VISA-354; 04-26-2017)

- a. **(U)** Only children qualified for a derivative nonimmigrant classification through a principal alien parent may attend a publicly funded elementary school. No public elementary schools or school systems are approved by SEVP to issue Form I-20 for attendance in F-1 status by children in kindergarten through grade eight. However, any student of school age (kindergarten-grade 12) who is otherwise qualified may receive an F-1 visa under INA 101(a)(15)(F)(i) to attend a private elementary school.
- b. **(U)** Occasionally, you may encounter situations in which an American citizen/LPR friend or relative, or an institution in the United States, may offer to accept guardianship of a child in order to provide an indeterminate period of free schooling at a public school. You may determine that a parent appears to be seeking a B visa for a child or children in order to facilitate this arrangement. Keep in mind that study is generally not allowed on a B visa and that even legal guardianship does not constitute a qualifying family relationship for residence in the United States. See [9 FAM 402.5-5\(K\)\(4\)](#). Separately, see [9 FAM 402.1-3](#) paragraph a and [9 FAM 402.1-5\(C\)](#) for situations in which a child applies for a B-2 visa to accompany a

parent who could be considered the principal applicant.

9 FAM 402.5-5(J)(3) (U) Candidates for Religious Orders

(CT:VISA-1; 11-18-2015)

(U) Individuals desiring to enter a convent or other institution for religious training of a temporary nature are classifiable as F-1 students under INA 101(a)(15)(F), if the institution has been approved as a place of study and the applicant will return abroad after concluding the course of study or training.

9 FAM 402.5-5(J)(4) (U) Student Destined to U.S. Military Training Facility

(CT:VISA-1; 11-18-2015)

(U) Civilians accepted by any of the U.S. military service academies may be classified as F-1 students. They are required to present Form I-20 and pay the SEVIS fee. Military personnel coming to the United States for education or training at any armed forces training facility are to be classified as foreign government officials and issued A-2 visas.

9 FAM 402.5-5(J)(5) (U) Alien Graduate of Foreign Medical School

(CT:VISA-1; 11-18-2015)

- a. **(U)** Foreign medical graduates seeking to enter temporarily in connection with their profession are not eligible for F-1 visas. Such applicants must apply and qualify for immigrant visas (IV) or for exchange visitor (J) or temporary worker (H) visas. (See [9 FAM 402.5-6\(B\)](#) and [9 FAM 402.10-4\(B\)](#).)
- b. **(U)** At least one school has been approved to issue Forms I-20 to foreign medical graduates for a review-type continuing education course of study in preparation for taking tests in the field of medicine. Foreign medical graduates seeking to enter the United States to take such a review-type course of study who present a Form I-20 from an approved school are classifiable as F-1 students.

9 FAM 402.5-5(J)(6) (U) Alien Entering the United States for Nursing Training

(CT:VISA-1; 11-18-2015)

(U) DHS has approved a number of hospital-affiliated nurses' training schools for attendance by nonimmigrant students. In cases where a school has been thus approved, the alien's application may be given consideration under INA 101(a)(15)(F).

9 FAM 402.5-5(J)(7) (U) Aviation Training

(CT:VISA-391; 06-26-2017)

- a. **(U)** All flight training for initial training or subsequent training that will result in a

certificate or rating must be undertaken on an F or M visa.

- b. **(U)** Recurrent or refresher training (training *related to* an aircraft for which the applicant has already received certification) may be undertaken on a B-1 *if the training involves only flight simulator training and self-study and no classroom instruction. This assumes that the applicant's employer is covering the simulator training costs, incidental costs, and that the applicant does not receive a salary or perform labor in the United States.*
- c. **(U)** Questions regarding visas for flight training should be directed to the F, M, J visa portfolio in CA/VO/F/ET, as listed in the Who's Who section on the CA website.

9 FAM 402.5-5(K) (U) Applying INA 214(M)

9 FAM 402.5-5(K)(1) (U) Public Primary School or a Publicly Funded Adult Education Program

(CT:VISA-1; 11-18-2015)

(U) Congress imposed limitations on aliens' attendance in publicly funded institutions in the 1996 immigration legislation. As of November 30, 1996, F-1 visas cannot be issued to persons seeking to enter the United States in order to attend a public primary school or a publicly funded adult education program (See INA 214(m)). This does not, however, bar a dependent of a nonimmigrant in any classification, including F-1, from attendance at a public primary school, an adult education program, or another public educational institution, as appropriate. For the purpose of INA 214(m), primary school means kindergarten through 8th grade.

9 FAM 402.5-5(K)(2) (U) Secondary School

(CT:VISA-1; 11-18-2015)

- a. **(U)** INA 214(m) restricts, but does not prohibit, the issuance of F-1 visas to students seeking to attend public high schools. Secondary school is deemed to be grades 9-12. As of November 30, 1996, two new additional criteria were imposed on intending F-1 students at public high schools:
 - (1) **(U)** They cannot attend such school for more than 12 months; and
 - (2) **(U)** They must repay the school system for the full, unsubsidized, per capita cost of providing the education to him or her.
- b. **(U)** You may not issue an F-1 visa for attendance at a public high school if the length of study indicated on the Form I-20 exceeds the 12-month cumulative period permitted under INA 214(m). F-1 visas issued to attend public secondary schools must be limited to 12 months.
- c. **(U)** It is important to remember that public secondary school attendance in a status other than F-1 (including unlawful status) does not count against the 12-month limit, nor does attendance in F-1 status prior to November 30, 1996.

9 FAM 402.5-5(K)(3) (U) Reimbursement

(CT:VISA-1; 11-18-2015)

- a. **(U)** A public school system issuing a Form I-20 for attendance at a secondary school must indicate on the Form I-20 that such payment has been made and the amount of such payment. School districts may not waive or otherwise ignore this requirement. If the Form I-20 does not include the requisite information, the student must have a notarized statement stating the payment has been made and the amount from the designated school official (DSO) who signed the Form I-20. If not, the visa must be refused, under INA 221(g), until the applicant provides the necessary documentation.
- b. **(U)** Although the per capita costs vary from one school district to another (and sometimes from one school to another within the same district), the averages across the country have ranged from about \$3,400 to more than \$10,000. They run somewhat less than that in Puerto Rico and U.S. territories. These figures are guidelines only, and must not be taken as absolutes. If, however, a Form I-20 indicates a repaid cost radically different (for example, something less than \$2,000), you should contact the F, M, J portfolio holder in CA/VO/F/ET and CA/VO/L/A to coordinate an inquiry through SEVP.

9 FAM 402.5-5(K)(4) (U) Aliens Under Legal Guardianship of American Citizen Relatives

(CT:VISA-1; 11-18-2015)

(U) Schools sometimes advise relatives to declare themselves as the alien's legal guardian. The school then admits the foreign student as a resident, wrongfully assuming that this would exempt the alien from the INA 214(m) requirements. The student's status as a resident of the school district is irrelevant. Likewise, the fact that the student's U.S. sponsor has paid local property/school taxes does not fulfill the reimbursement requirement of INA 214(m).

9 FAM 402.5-5(K)(5) (U) Student Visa Abusers

(CT:VISA-1; 11-18-2015)

(U) INA 212(a)(6)(G) provides sanctions against foreign students who fail to comply with the INA 214(m) requirements. An alien in F-1 status who violates the 214(m) provisions is excludable until he or she has been outside the United States for a continuous period of five years after the date of the violation (see [9 FAM 302.9-9](#)). Note that aliens who are not subject to INA 214(l) are not subject to INA 212(a)(6)(G).

9 FAM 402.5-5(L) (U) Period of Stay

9 FAM 402.5-5(L)(1) (U) For F-1 Applicants

(CT:VISA-1; 11-18-2015)

- a. **(U)** An individual entering as an F-1 student or granted a change to that status is admitted or given an extension of stay for the duration of status. Duration of status means the time during which the student is pursuing a full course of study and any additional periods of authorized practical training, plus 60 days following completion of the course or practical training within which to depart. Since November 30, 1996, however, the duration of status of an F-1 student in a publicly funded secondary school cannot exceed an aggregate of 12 months schooling (See [9 FAM 402.5-5\(K\)\(2\)](#) above).
- b. **(U)** An academic student is considered to be in status during the summer between terms, if eligible and intending to register for the next term. Moreover, a student compelled by illness or other medical condition to interrupt or reduce studies is considered to be in status until his or her recovery. The student is expected to resume a full course of study at that time.
- c. **(U)** The Department of Homeland Security (DHS) amended its regulations to permit the Secretary of the Department of Homeland Security to waive the usual limitations, including hours of coursework, on employment for students faced by unexpected severe economic circumstances. These might include such elements ranging from substantial fluctuations in exchange rates to loss of on-campus employment or other financial aid through no fault of the student, among others. Students granted such waivers are deemed to be in status until the economic emergency is over and the necessity for such reduced studies has passed.

9 FAM 402.5-5(L)(2) (U) For M-1 Applicants

(CT:VISA-1; 11-18-2015)

- a. **(U)** The period of stay for an M-1 student, whether from admission or through a change of nonimmigrant classification, is the time necessary to complete the course of study indicated on Form I-20 plus 30 days within which to depart, or 1 year, whichever is less.
- b. **(U)** An M-1 student may be granted an extension of stay if it is established that the student:
 - (1) **(U)** Is a bona fide nonimmigrant currently maintaining student status; and
 - (2) **(U)** Is able to, and in good faith intends to, continue to maintain that status for the period for which the extension is granted.

9 FAM 402.5-5(M) (U) Spouse and Child of F-1 or M-1 Student

9 FAM 402.5-5(M)(1) (U) Refusals of Spouse and Child of F-1 or M-1 Student

(CT:VISA-354; 04-26-2017)

- a. **(U)** Before issuing an F-2 or M-2 visa to a spouse or child of a principal F-1 or M-1 student, you must be satisfied that the relationship between the principal applicant and the spouse or child exists, and that the spouse or child can be expected to depart from the United States upon the termination of the student status of the principal applicant (see [9 FAM 402.5-5\(E\)](#) above). Keep in mind that coming to a different conclusion about family members entitled to a derivative nonimmigrant classification and the principal should be rare when the spouse and children are applying in company with the principal applicant (see [9 FAM 402.1-4\(A\)](#)). When the spouse and children are seeking to join the F-1 principal applicant already in the United States, a decision to refuse those applications must be based on specific, identifiable differences in the circumstances relating to the principal and the family member(s) (see [9 FAM 402.1-4\(C\)](#)).
- b. **(U)** Please note that if you doubt a F-1 or M-1 student's intent to return abroad, the student cannot satisfy your doubts by offering to leave a child, spouse, or other dependent abroad (see [9 FAM 402.2-2\(B\)](#) paragraph b).

9 FAM 402.5-5(M)(2) (U) Separate Form I-20 and SEVIS Registration Required for Accompanying Spouse and/or Minor, Unmarried Child of F-1 or M-1 Student

(CT:VISA-354; 04-26-2017)

(U) Each F-2 or M-2 dependent is required to have their own properly executed Form I-20 and their own unique SEVIS ID number. It is not possible to issue dependent F-2 or M-2 visas on the basis of the principals Form I-20. The F-2 or M-2 must present this evidence to both you and the immigration officer at the port of entry (POE). F-2 or M-2 dependents are not required to pay a separate SEVIS fee. Additional details on the SEVIS fee can be found on the SEVP at the U.S. Immigration and Customs Enforcement website.

9 FAM 402.5-5(M)(3) (U) Classification of Spouse or Child Who Will Attend School in the United States

(CT:VISA-354; 04-26-2017)

- a. **(U)** A spouse qualified for an F-2, M-2, or any other derivative nonimmigrant classification may only study if those studies are incidental to the primary purpose of travel: to accompany his or her spouse to the United States. A spouse in F-2 status, therefore, may only participate in avocational or recreational programs. A spouse of an F-1 visa holder may only enroll in a full-time course of study if he or she qualifies under INA 101(a)(15)(F)(i) as a nonimmigrant student.
- b. **(U)** A child qualified for an F-2, M-2, or any other derivative nonimmigrant classification is not required to qualify under INA 101(a)(15)(F)(i) as a nonimmigrant student even though the child will attend school while accompanying the principal alien (see [9 FAM 402.1-5\(C\)](#)). Moreover, such a child could not qualify for F-1 status for attendance at a public primary school and, if in F-1 status, would be limited to 12 months training at a public high school.

9 FAM 402.5-5(N) (U) Employment of F-1 and M-1 Student, Spouse, and Children

9 FAM 402.5-5(N)(1) (U) On-Campus Employment for F-1 Student

(CT:VISA-354; 04-26-2017)

(U) An F-1 student may accept on-campus employment with the approval of the designated school official (DSO) in an enterprise operated by or on behalf of the school. The work must take place either at the school or an educationally affiliated (associated with the school's established curriculum or part of a contractually funded research projects at the postgraduate level) off-campus location. Work that takes place at the school location could be for an on-campus commercial business, such as a bookstore or cafeteria, as long as the work directly provides services for students. Employment located on-campus that does not directly involve services to students (such as construction work) does not qualify as on-campus employment. Work with an employer that is contractually affiliated with the school is on-campus employment even if the work site is not located on the campus (such as a research lab affiliated with your school). Such on-campus employment must not displace an American citizen or LPR. The employment may not exceed 20 hours a week while school is in session but may be full time when school is not in session. The student must be maintaining status. An F-1 student who finishes a program, such as a bachelor's degree, and starts another program of study at the same campus may continue on-campus employment as long as the student plans to enroll in the new program of study for the next term.

9 FAM 402.5-5(N)(2) (U) Off-Campus Employment for F-1 Student

(CT:VISA-354; 04-26-2017)

- a. **(U)** An F-1 student may not accept off-campus employment without first applying to U.S. Citizenship and Immigration Services (USCIS) for employment authorization. An F-1 student may be eligible to apply for off-campus employment authorization after completing an academic year in F-1 status. A student who receives authorization from USCIS for off-campus employment may not work more than 20 hours a week when school is in session. Such employment authorization is automatically terminated if the student fails to maintain status. A designated school official (DSO) must request off-campus employment for an F-1 student in SEVIS in support of the Form I-765 which must be filed with USCIS, and the request will appear in the electronic SEVIS record. In order to request off-campus employment, the designated school official must certify that:
- (1) **(U)** The student has been in F-1 status for one full academic year;
 - (2) **(U)** The student is in good standing and carrying a full course of study;
 - (3) **(U)** The student has established that acceptance of employment will not interfere with the full course of study; and
 - (4) **(U)** The prospective employer has submitted a labor and wage attestation or

the student has established a severe economic necessity for employment due to unforeseen circumstances beyond the student's control.

- b. **(U)** A student who has received approval from USCIS for off-campus employment will have an employment authorization document (EAD) showing the duration of the employment authorization, which may be up to one year at a time. The student's electronic SEVIS record will also show approval for off-campus employment.
- c. **(U)** If a student who has been granted off-campus employment authorization temporarily leaves the country during the period of time when employment is authorized, such employment can be resumed upon return. The student must, however, be returning to the same school.

9 FAM 402.5-5(N)(3) (U) Employment as Part of Curricular or Alternate Work/Study Practical Training for F-1 Student

(CT:VISA-1; 11-18-2015)

(U) A student enrolled in a college or other academic institution having alternate work/study courses as part of the curriculum within the student's program of study may participate in and be compensated for such practical training when authorized for curricular practical training (CPT) by the designated school official (DSO). Students may not begin such training before endorsement of their electronic SEVIS record by the DSO with such authorization. Periods of actual off-campus employment in a work/study program are considered practical training. Students who have engaged in a full year of curricular practical training will not receive authorization to engage in optional practical training after completion of the course of study. However, for graduates of colleges, universities, and seminaries, the maximum aggregate of curricular practical training may not exceed the duration of the course of study.

9 FAM 402.5-5(N)(4) (U) Practical Training

(CT:VISA-354; 04-26-2017)

- a. **(U)** Students are eligible for practical training only after they have completed a full academic year in an approved college-level institution, with the exception of graduate students whose program requires them to participate immediately in curricular practical training. Optional Practical Training (OPT) is training that is directly related to an F-1 student's major area of study. It is intended to provide a student with practical experience in his or her field of study during or upon completion of a degree or certificate program and is authorized through the recommendation of the designated school official and the filing of Form I-765 with USCIS. Curricular Practical Training (CPT) is employment that is an integral part of a student's specified curriculum. In most cases, CPT involves internships and similar work experience specifically required by the student's program of study. The DSO must authorize CPT before the student begins work. See the SEVP website for more information on Practical Training.
- b. **(U)** Any authorization for employment for purposes of practical training is suspended in the event of a strike at the place of employment.

9 FAM 402.5-5(N)(5) (U) Optional Practical Training

(CT:VISA-354; 04-26-2017)

- a. **(U)** An F-1 student may otherwise apply for optional practical training (OPT) in a job related to his or her major area of study. OPT may be authorized pre- and post-completion and on a full-time or part-time basis. During school vacations, either part-time or full-time OPT is permissible. When school is in session, OPT may not exceed 20 hours per week. An F-1 student may request post-completion OPT after completion of all course requirements for graduation (not including thesis or equivalent), or after completion of all requirements. Post-completion OPT must be full-time. Such training must be completed within 12 months, though certain F-1 students may be eligible for an extension of post-completion optional practical training based on their major field of study or a pending change of status to H-1B. In addition to a designated school official's (DSO) request for OPT which will appear in the student's electronic SEVIS record, the student must apply to USCIS using Form I-765 for an Employment Authorization Document (EAD). If the student makes a brief trip abroad during a period of post-completion OPT, a valid F-1 visa, the unexpired EAD, the endorsed Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, and the electronic SEVIS record will be required for re-entry to complete the training. A letter of employment may also be required. F-1 students may also travel abroad during the period following the completion of their programs with a pending request for OPT, which will appear in their electronic SEVIS record.
- b. **(U)** Please note that OPT is different from curricular practical training (CPT), which is part of a student's degree curriculum and can only be authorized during a student's course of study. OPT, by contrast, can be authorized part-time or full-time during the student's degree program, as well as full-time after graduation.

9 FAM 402.5-5(N)(6) (U) Extension of OPT for Science, Technology, Engineering, or Mathematics (STEM) Students, and H-1B Beneficiaries ("Cap Gap")

(CT:VISA-354; 04-26-2017)

- a. **(U)** Effective May 10, 2008 until May 9, 2016, USCIS could grant an OPT extension of 17 months, for a maximum total period of 29 months, to an eligible F-1 student on post-completion OPT with a degree in a DHS-approved science, technology, engineering, or mathematics (STEM) field.
- b. **(U)** Effective May 10, 2016, an F-1 student with a bachelor's or higher degree in a DHS-approved STEM field who is already in a period of approved post-completion OPT may apply to USCIS to extend that period by 24 months, for a maximum total period of 36 months. Eligibility for this extension is based upon the Classification of Instruction Programs (CIP) code or degree program of the student's major as indicated on the Form I-20, on an official transcript, or as shown in SEVIS (including for eligibility based on a previously obtained degree) and whether that CIP code or degree program is included on the DHS-approved list of qualifying

degree program categories for the extension, found on the SEVP STEM OPT website. Students are also required to complete Form I-983, Training Plan for STEM OPT Students, with their employer and submit it to the DSO. See the SEVP website for more information on Form I-983. The DSO must verify the student's eligibility, including ensuring that Form I-983 has been properly completed and executed, recommend the extension through SEVIS, and provide the student with an I-20 annotated with the recommendation. Once the DSO recommends the extension, the student must submit a Form I-765, Application for Employment Authorization, and all appropriate fees to USCIS (additional filing information can be found at the USCIS website).

- c. **(U)** F-1 students on post-completion OPT must report all employment and periods of unemployment to their DSOs, who then report the information in SEVIS on the student's record. F-1 students participating in post-completion OPT are initially allowed an aggregate maximum period of unemployment of 90 days. Students on a 24-month STEM OPT extension are allowed an additional 60 days of unemployment, for a total of 150 days. This measure allows time for job searches or a break when switching employers. See the SEVP OPT Policy guidance on the SEVP website for more information on how unemployment is counted.
- d. **(U)** If the F-1 student has filed a Form I-765 for a 24-month extension in a timely manner before the end of regular post-completion OPT, then the student's OPT employment authorization is automatically extended up to 180 days until the USCIS adjudication occurs. USCIS adjudicates the Form I-765 and provides the student with an EAD reflecting the STEM OPT extension. If the petition is denied, the period of OPT ends.
- e. **(U)** As the STEM OPT extension is automatic for the first 180 days following regular post-completion OPT (when the student has properly filed Form I-765), the student may not necessarily have a renewed EAD. Therefore, any students having automatically authorized employment through the OPT extension may not be able to present a valid EAD when they apply to renew their visa. However, F-1 students in this situation can request an updated I-20 from the DSO, annotated for the STEM OPT extension, as well as proof that the I-765 petition was filed in a timely manner. You must confirm that the student's electronic SEVIS record contains the same information as the updated hard copy Form I-20 before issuing a visa.
- f. **(U)** The STEM Designated Degree Program List provides program categories approved for the 17-month extension and 24-month extension and significant additional information.
- g. **(U)** If an F-1 student is the intended beneficiary of a timely filed I-129 petition for a cap-subject H-1B to start on October 1, the F-1 status and any OPT authorization held on the eligibility date is automatically extended to dates determined by USCIS allowing for receipt or approval of the petition, up to September 30. The Cap Gap OPT Extension is automatic, and USCIS will not provide the student with a renewed EAD. However, F-1 students in this situation can request an updated Form I-20 from the DSO, annotated for the Cap Gap OPT Extension, as well as proof that the I-129 petition was filed in a timely manner. You must verify that the electronic

SEVIS record has also been updated before issuing a visa.

9 FAM 402.5-5(N)(7) (U) Practical Training for M-1 Student

(CT:VISA-354; 04-26-2017)

(U) Except for temporary employment for practical training as set forth herein, an M-1 student may not accept employment. Practical training may only be authorized at the completion of an M-1 course of study. An M-1 student who desires temporary employment for practical training must apply to USCIS on Form I-765. If approval is granted, DHS will endorse the student's Form I-20 with the dates the authorization for practical training/employment begins and ends. Since M-1 students are admitted until a certain date, an M-1 student may need to file Form I-539, Application to Extend/Change Nonimmigrant Status, as well, to apply for an extension of M-1 status in conjunction with the application for employment authorization. You must verify that the electronic SEVIS record has been updated before issuing a new visa.

9 FAM 402.5-5(N)(8) (U) Temporary Absence of F-1 or M-1 Student with Pending or Granted Practical Training

(CT:VISA-354; 04-26-2017)

(U) An F-1 or M-1 student authorized to accept employment for practical training who leaves the country temporarily may be readmitted for the remainder of the authorized period. The student must be returning solely to perform the authorized training. Additionally, a student may travel abroad and be readmitted while the request for practical training is pending with USCIS, but such travel should be undertaken with caution. USCIS may send a request for evidence to the U.S. address on the application while the applicant is away. Additionally, if USCIS approves the OPT application, the applicant will be expected to have the Employment Authorization Document (EAD) in hand to reenter the United States. Like a request for evidence, USCIS can only send the EAD to a U.S. address.

A valid F-1 or M-1 visa, the Form I-20, EAD (if issued), and an accurate electronic SEVIS record are required to reenter the United States for practical training purposes. A letter of employment may also be required. For individuals attempting to travel abroad and be readmitted while an application for the STEM OPT extension is pending, the Form I-20 should be endorsed for reentry by the DSO within the last six months.

9 FAM 402.5-5(N)(9) (U) Employment of F-2 and M-2 Spouse and Children

(CT:VISA-1; 11-18-2015)

(U) The F-2 spouse and children of an F-1 student may not accept employment. The M-2 spouse and children of an M-1 student may not accept employment.

9 FAM 402.5-5(O) (U) F-3 AND M-3 NONIMMIGRANT

VISA CLASSIFICATIONS

9 FAM 402.5-5(O)(1) (U) The Border Commuter Student Act of 2002

(CT:VISA-1; 11-18-2015)

- a. **(U)** The Border Commuter Student Act of 2002 (Public Law 107-274), which was signed into law on November 2, 2002, amended INA 101(a)(15)(F) and (J) to create the F-3 and M-3 nonimmigrant visa (NIV) categories for Canadian and Mexican citizens and residents who commute to the United States for the purpose of full-time or part-time study at a DHS-approved school. These students (classified F-3 and M-3) are permitted to study on either a full-time or part-time basis. However, the Department of Homeland Security (DHS) has not yet published implementing regulations. Therefore, until further notice, applicants applying to study in the U.S. who present a valid I-20, have an electronic SEVIS record in INITIAL or ACTIVE status, and will commute to school; i.e., not reside in the United States while attending classes, are to be processed as F-1/M-1 students, and the annotation "border commuter" placed on the visa foil.
- b. **(U)** The family members of border commuter students are not entitled to derivative F-2 or M-2 status, given that these students do not reside in the United States.

9 FAM 402.5-5(P) (U) Temporary Absence

9 FAM 402.5-5(P)(1) (U) Aliens Who Apply While Abroad for an F-1 or M-1 Visa

(CT:VISA-1; 11-18-2015)

(U) Except as provided below, a student making a short trip abroad during an authorized period of study, who needs to obtain a new visa during such absence, must present his or her Form I-20, properly executed and endorsed. You must verify that the SEVIS record of the applicant is in ACTIVE status. If otherwise qualified, the applicant may be issued the appropriate visa.

9 FAM 402.5-5(P)(2) (U) Temporary Absence of Aliens Applying Abroad for Attendance at School Other than Listed on the Visa

(CT:VISA-354; 04-26-2017)

(U) A student temporarily abroad who intends to return to study at a United States institution other than the one for which the original visa was issued may seek admission with the original visa, if still valid, and the Form I-20 from the new school. If the student wishes to apply for a new visa, however, he or she must present proof that the transfer has been affected and the student is in "initial" or "active" status at the new school. You must verify that the applicant has a valid SEVIS record showing the applicant is in INITIAL or ACTIVE status at the new institution and that the SEVIS

fee has been paid on the new record before issuing a new student visa.

9 FAM 402.5-5(P)(3) (U) Renewing F or M Visas for Returning Students

(CT:VISA-354; 04-26-2017)

(U) You generally should renew F or M visas to returning students who have remained in status and have not had any significant changes in either their academic program or their personal circumstances. When a foreign student engaged in study takes a short trip abroad and requires a visa to return to the United States, you are encouraged to issue visas, if the student is otherwise qualified, to allow the student to complete his or her study. You must verify that the student's SEVIS record is in ACTIVE status before issuing a new visa.

9 FAM 402.5-5(Q) (U) Processing F and M Visas

9 FAM 402.5-5(Q)(1) (U) Issue Full Validity Student Visas

(CT:VISA-354; 04-26-2017)

Unavailable.

9 FAM 402.5-5(Q)(2) (U) Maintenance of Status and Departure Bond

(CT:VISA-1; 11-18-2015)

(U) See [9 FAM 403.10-4](#).

9 FAM 402.5-5(Q)(3) (U) Automatic Extension of Validity of Visa

(CT:VISA-1; 11-18-2015)

(U) See [9 FAM 403.9-4\(D\)](#).

9 FAM 402.5-5(R) (U) Visa Annotations

9 FAM 402.5-5(R)(1) (U) Name of School and SEVIS ID

(CT:VISA-1; 11-18-2015)

(U) An F-1 or M-1 visa must be annotated with the SEVIS ID and the name of the institution that the student will initially attend. You must ensure that the SEVIS ID is correctly annotated on the visa foil. You must inform an applicant who has been accepted by more than one institution that the visa application will be considered only on the basis of the Form I-20 issued by the school which the applicant will attend. You must also advise the applicant that the immigration inspector at the port of entry (POE) can refuse admission if given a Form I-20 from a school other than the one

named on the visa, or if the student indicates an intention to attend a different institution.

9 FAM 402.5-5(R)(2) (U) Entry of Student Prior to Enrollment

(CT:VISA-1; 11-18-2015)

- a. **(U)** You must not issue a student visa to an applicant more than 120 days in advance of his or her studies and must notify the applicant that he or she cannot enter the United States more than 30 days in advance of the report date shown on the Form I-20.
- b. **(U)** A student who desires an earlier entry must qualify for, and obtain, a B-2 visitor visa.
- c. **(U)** At the time of issuance of the B-2 visa, you must explain to the applicant that, before beginning any studies, he or she must apply for and obtain a change of visa classification to that of student. The individual must follow standard procedures and fee requirements as set by DHS/USCIS for making an application to change status.

9 FAM 402.5-5(R)(3) (U) Entry When School Not Selected

(CT:VISA-1; 11-18-2015)

(U) A prospective student applicant who has neither been issued a Form I-20 nor made a final selection of a school may wish to enter for the primary purpose of selecting a school. If the applicant qualifies for a visitor visa, and would appear to qualify for a student visa, a B-2 visa may be issued.

9 FAM 402.5-5(R)(4) (U) Admitted Student Traveling Without Form I-20

(CT:VISA-1; 11-18-2015)

- a. **(U)** An original signed hard copy Form I-20 must be presented at the port of entry for a student to be admitted in F or M status.
- b. **(U)** When a student has documentary evidence that admission to a particular school has been granted, and when circumstances warrant visa issuance before the hard copy Form I-20 has been received, you may issue an F-1 visa based on the electronic SEVIS record. The electronic SEVIS record must show that the visa applicant is in INITIAL or ACTIVE student status and that the SEVIS I-901 fee has been paid. You must make a case note that you have reviewed the electronic SEVIS record and advised the student to carry the original signed hard copy Form I-20 when travelling.

9 FAM 402.5-6 (U) EXCHANGE VISITORS – J VISAS

9 FAM 402.5-6(A) (U) Statutory and Regulatory Authorities

9 FAM 402.5-6(A)(1) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 101(a)(15)(J) (8 U.S.C. 1101(a)(15)(J)); INA 212(e) (8 U.S.C. 1182(e)); INA 212(j) (8 U.S.C. 1182(j)); INA 214(b) (8 U.S.C. 1184(b)); INA 214(l) (8 U.S.C. 1184(l)).

9 FAM 402.5-6(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.62; 22 CFR 41.63; 22 CFR Part 62.

9 FAM 402.5-6(B) (U) The Exchange Visitor Program

9 FAM 402.5-6(B)(1) (U) Overview

(CT:VISA-1; 11-18-2015)

- a. **(U)** The purpose of the Exchange Visitor Program (J visa) is to further the foreign policy interest of the United States by increasing the mutual understanding between the people of the United States and the people of other countries by means of mutual educational and cultural exchanges. The ultimate goal is to meet this purpose while protecting the health, safety, and welfare of the foreign nationals participating in the Program as exchange visitors. Only organizations that have been designated by the Department's Office of Designation, Private Sector Exchange, Bureau of Educational and Cultural Affairs (ECA), may participate.
- b. **(U)** The Exchange Visitor Program (J visa) is administered under the oversight of the Deputy Assistant Secretary for Private Sector Exchange. The Office of Designation and the Office of Exchange Coordination and Compliance are located at:

Bureau of Educational and Cultural Affairs
Department of State
State Annex SA-5
2200 C Street, NW
Washington, DC 20522
- c. **(U)** Detailed guidance can be found on the Exchange Visitor Program at j1visa.state.gov.

9 FAM 402.5-6(B)(2) (U) Mandatory Exchange Visitor Classification in Certain Cases

(CT:VISA-1; 11-18-2015)

(U) Participants in exchange visitor programs sponsored by the Department of State or the Agency for International Development (USAID) (program serial numbers G-1 and G-2, respectively) are supported by U.S. Government funding. These participants must be documented as exchange visitors (J visa) rather than in another visa category (such as F-1 student), even if they qualify for that visa category. Participants in exchange visitor programs sponsored by other U.S. Government agencies (program serial number G-3) or participants in a federally-funded national research and development center program (program serial number G-7), must also be documented as exchange visitors if participation is directly financed in whole or in part by the sponsoring agency. The only exception is for an applicant who would otherwise qualify for an A (diplomatic) visa. Such applicants must always be issued A visas, rather than J visas, regardless of the funding of their travel. Contact CA/VO/F/ET for additional guidance, if required.

9 FAM 402.5-6(C) (U) Qualifying for an Exchange Visitor Visa (J-1)

(CT:VISA-354; 04-26-2017)

(U) An applicant applying for a visa under INA 101(a)(15)(J) must meet the following requirements in order to qualify for an exchange visitor visa:

- (1) **(U)** Acceptance to a designated exchange visitor program, as evidenced by presentation of Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status (see [9 FAM 402.5-6\(D\)](#) below);
- (2) **(U)** Sufficient funds, or adequate arrangements made by a host organization, to cover expenses (self-funded programs do not exist);
- (3) **(U)** Sufficient proficiency in the English language to participate in his or her program and compliance with the requirements of INA Section 212(j) (see [9 FAM 402.5-6\(G\)](#) below);
- (4) **(U)** Present intent to leave the United States at conclusion of program (see [9 FAM 402.5-6\(F\)](#) below);
- (5) **(U)** Possession of qualifications for the program offered (see [9 FAM 402.5-6\(E\)](#) below); and
- (6) **(U)** Compliance with INA 212(e) if applicable (see [9 FAM 302.13-2](#) and 22 CFR 41.63). Consular officers must annotate the Form DS-2019 (see [9 FAM 402.5-6\(I\)\(7\)](#) below).

9 FAM 402.5-6(D) (U) Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status

9 FAM 402.5-6(D)(1) (U) The Basic Form

(CT:VISA-149; 07-20-2016)

- a. **(U)** Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, is the document required to support an application for an exchange visitor visa (J-1). It is a 2-page document which can only be produced through the Student and Exchange Visitor Information System (SEVIS). SEVIS is the Department of Homeland Security (DHS) database developed to collect information on F, M, and J visa holders (see [9 FAM 402.5-4](#) and [9 FAM 402.5-6\(J\)](#)). The potential exchange visitor's signature on page one of the form is required. Page 2 of Form DS-2019 consists of instructions and certification language relating to participation. No blank SEVIS forms exist. Each Form DS-2019 is printed with a unique identifier known as a "SEVIS ID number" in the top right-hand corner, which consists of an "alpha" character (N) and 10 numerical characters (e.g., N0002123457).
- b. **(U)** The Department of State's Office of Designation in the Bureau of Education and Cultural Affairs (ECA/EC) designates U.S. organizations to conduct exchange visitor programs. These organizations are known as program sponsors. When designated, the organization is authorized access to SEVIS and is then able to produce Form DS-2019 from SEVIS. The program sponsor transmits completed forms to the potential exchange visitors and his or her spouse and minor children.
- c. **(U)** J visa applicants must present a signed Form DS-2019. If there are minor errors on the form (e.g., a program start date that is off one day) you can process the case using that form. You must verify the applicant's SEVIS record in the electronic SEVIS report in the CCD. If corrections are needed, they may be made electronically; there is no need to request a new hard copy of the Form DS-2019. Make a case note to alert CBP that the electronic record has been updated. Once the visa is issued, however, the SEVIS record cannot be updated until the participant's program is validated ("Active" in SEVIS). No corrections to the record can be made until that time. In addition, in the event a visa is needed for a spouse or dependent, the system will not permit a new Form DS-2019 to be created until after the primary's SEVIS record is validated.

9 FAM 402.5-6(D)(2) (U) Processing of Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status

(CT:VISA-1; 11-18-2015)

- a. **(U)** All exchange visitors, unless personal appearance has been waived under [9 FAM 403.5-4\(B\)](#), must read and sign the Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, at the time of visa issuance. The certificate indicates that the visa applicant understands all conditions of the stay in the United States in J status and understands also that a consular or immigration officer will make a preliminary determination as to whether the applicant is subject to the 2-year home country physical presence requirement. The applicant then must sign the bottom of page one of the Form DS-2019 confirming that he or she agrees to comply with that requirement if it is determined to be applicable.
- b. **(U)** A consular or immigration officer makes the preliminary determination regarding the applicability to the alien of the 2-year home country physical presence requirement after a personal interview with the alien. The consular or

immigration officer then signs page 1 of Form DS-2019 indicating the determination made by the officer. The Department of State's Waiver Review Division (CA/VO /DO/W) reserves the authority to make the final determination whether to issue a favorable recommendation to DHS to waive the 2-year requirement under INA 212(e).

9 FAM 402.5-6(D)(3) (U) Serial Numbers of Designated Exchange Visitor Programs

(CT:VISA-1; 11-18-2015)

(U) When the Office of Designation designates an organization or agency as a sponsor, it is enrolled in SEVIS and assigned a unique program serial number (referred to as the program number) that is used to identify the specific program. The sponsor number is assigned based upon the following series:

- (1) **(U)** G-1—Department of State;
- (2) **(U)** G-2—U.S. Agency for International Development (USAID);
- (3) **(U)** G-3—Other U.S. Federal agencies;
- (4) **(U)** G-4—International agencies or organizations in which the U.S. Government participates;
- (5) **(U)** G-5—Other national, State, or local government agencies;
- (6) **(U)** G-7—Federally funded national research and development center or a U.S. Federal laboratory;
- (7) **(U)** P-1—Educational institutions, e.g., schools, colleges, universities, seminaries, libraries, museums, and institutions devoted to scientific and technological research;
- (8) **(U)** P-2—Hospitals and related institutions;
- (9) **(U)** P-3—Nonprofit organizations, associations, foundations, and institutions (academic institutions conducting training programs can be classified as a P-3 as long as they are considered nonprofit); and
- (10) **(U)** P-4—For-profit organizations (business and industrial concerns).

9 FAM 402.5-6(D)(4) (U) Requirement for Form DS-2019 in Case of Spouse and/or Minor, Unmarried Children

(CT:VISA-1; 11-18-2015)

- a. **(U)** Each accompanying J-2 spouse or child of a principal J-1 is required to have a separate Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, issued by the program sponsor and will have their own unique SEVIS ID number. It is not possible to issue dependent J-2 visas on the basis of the principal alien's (J-1's) Form DS-2019.
- b. **(U)** A minor, unmarried child qualified for J-2 status is not required to qualify under

INA 101(a)(15)(F)(i) as a nonimmigrant student even though the child will attend school while accompanying the principal J-1 (see [9 FAM 402.1-5\(A\)](#)).

- c. **(U)** The J-2 must present his or her Form DS-2019 to both the consular officer at the time of the visa interview, and the United States Customs and Border Protection (CBP) officer at the port of entry (POE).
- d. **(U)** Participants in the Summer Work Travel, camp counselor, au pair, and high school exchange programs are not expected to be accompanied by dependents. If you receive a Form DS-2019 supporting a J-2 visa application from an individual claiming such status, contact CA/VO/F/ET for guidance.

9 FAM 402.5-6(D)(5) (U) Processing of Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, at Port of Entry (POE)

(CT:VISA-149; 07-20-2016)

- a. **(U)** After a J-1 visa has been issued, you must return the completed Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status to the exchange visitor. You must inform the exchange visitor that he or she must carry Form DS-2019 on his or her person for presentation to the United States Customs and Border Protection (CBP) officer at the U.S. port of entry (POE). At each time of admission to the United States, an exchange visitor must present the Form DS-2019 along with the visa to the CBP officer. Upon the exchange visitor's arrival in the United States, the CBP officer will examine the visa, the Form DS-2019, and any supporting documentation and return the documents to the exchange visitor.
- b. **(U)** If the exchange visitor is admitted, the Department of Homeland Security (DHS) will return the Form DS-2019 to the individual. The exchange visitor must safeguard the form at all times. If the exchange visitor loses the Form DS-2019, he or she must obtain a replacement copy from the designated sponsor.

9 FAM 402.5-6(D)(6) (U) Sample Form DS-2019

(CT:VISA-149; 07-20-2016)

- a. **(U) J-1 Principal Applicant Sample:**



U.S. Department of State

CERTIFICATE OF ELIGIBILITY FOR EXCHANGE VISITOR STATUS (J-NONIMMIGRANT)

OMB APPROVAL NO.1405-0119
 EXPIRES: 07-31-2014
 ESTIMATED BURDEN TIME: 45 min
 *See Page 2

1. Surname/Primary Name: Sample		Given Name: John		Gender: MALE	N0000147766
Date of Birth (mm-dd-yyyy): 12-09-1980	City of Birth: Anytown	Country of Birth: IRELAND	Citizenship Country Code: EI	Citizenship Country: IRELAND	J-1
Legal Permanent Residence Country Code: Legal Permanent Residence Country: EI IRELAND		Position Code: 215	Position: UNIVERSITY UNDERGRADUATE STUDENTS		
Primary Site of Activity: Exempt from Pre-placement					
2. Program Sponsor: Acme Trainee Program Number: P-4-16511					
Participating Program Official Description: TRAINEE					
Purpose of this form: Begin new program; accompanied by number (1) of immediate family members.					
3. Form Covers Period:		4. Exchange Visitor Category:			
From (mm-dd-yyyy): 06-02-2015		TRAINEE			
To (mm-dd-yyyy): 05-15-2016		Subject Field Code: 04.0902	Subject Field Code Remarks: None		
5. During the period covered by this form, the total estimated financial support (in U.S. \$) to be provided to the exchange visitor by:					
Current Program Sponsor funds : \$5,000.00					
Personal funds : \$3,000.00					
Total : \$8,000.00					
6. DEPARTMENT OF STATE AUTHORITY TO SIGNIFY (FOR TRANSFER OF PROGRAM) (SEE INSTRUCTIONS TO THE APPLICANT)					
RESPONSIBLE OFFICER OR ALTERNATE RESPONSIBLE OFFICER (NAME AND TITLE)		Name of Officer Preparing Form		Title	
TO THE U.S. DEPARTMENT OF STATE (DATE)		1000 Motor Vehicle Blvd. Detroit, MI 48201		701-555-5555	
		Address of Officer or Alternate Responsible Officer		Telephone Number	
				05-06-2015	
		Responsible Officer or Alternate Responsible Officer		Date (mm-dd-yyyy)	
8. Statement of Responsible Officer for Releasing Sponsor (FOR TRANSFER OF PROGRAM)					
Effective date (mm-dd-yyyy): _____ Transfer of this exchange visitor from program number _____ sponsored by _____ to the program specified in item 2 is necessary or highly desirable and is in conformity with the objectives of the Mutual Educational and Cultural Exchange Act of 1961, as amended.					
Signature of Responsible Officer or Alternate Responsible Officer			Date (mm-dd-yyyy) of Signature		
PRELIMINARY ENDORSEMENT OF CONSULAR OR IMMIGRATION OFFICER REGARDING SECTION 212(g) OF THE IMMIGRATION AND NATIONALITY ACT AND PL 94-40, AS AMENDED (see item 1 (a) of page 2).			TRAVEL VALIDATION BY RESPONSIBLE OFFICER (Maximum validation period is 1 year*)		
The Exchange Visitor in the above program:			*EXCEPT: Maximum validation period is up to 6 months for Short-term		

INSTRUCTIONS FOR AND CERTIFICATION BY THE ALIEN BENEFICIARY NAMED ON PAGE 1 OF THIS FORM:

Read this page and sign the Exchange Visitor Certification block on the bottom of page 1 and prior to presentation to a United States Consular or Immigration Official.

1. I understand that the following conditions are applicable to exchange visitors:

(a) TWO-YEAR HOME-COUNTRY PHYSICAL PRESENCE REQUIREMENT (SECTION 212(e) OF THE IMMIGRATION AND NATIONALITY ACT AND PL 94-454, AS AMENDED):

RULE: Exchange visitors whose programs are financed in whole or in part, directly or indirectly by either their government or by the U.S. Government, are required to reside in their home-country for 2 years following completion of their program before they are eligible for immigrant status, temporary worker (H) status, or intracompany transferee (L) status. Likewise, if exchange visitors are acquiring a skill that is in short supply in their home country (these skills appear on the "Exchange Visitor Skills List") they will be subject to the same two-year home-country residence requirement. The requirement also is applicable to alien physicians entering the United States to receive graduate medical education or training. The U.S. Department of State reserves the right to make the final determination regarding 212(e).

NOTE: MARRIAGE TO A U.S. CITIZEN OR LEGAL PERMANENT RESIDENT, OR BIRTH OF A CHILD IN THE UNITED STATES DOES NOT REMOVE THIS REQUIREMENT.

(b) Extension of Stay/Program Transfers: A completed Form DS-2019 is required in order to apply for a program extension or program transfer, and must be obtained from or with the assistance of the sponsor.

(c) Limitation of Stay: STUDENTS - as long as they pursue a full course of study towards a degree, or if engaged full-time in a non-degree program, up to 24 months. Students for whom the sponsor recommends academic training may be permitted to remain for an additional period of up to 18 months after receiving their degree or certificate; post-doctoral academic training may be approved by the sponsor for a period not to exceed 36 months; **SECONDARY STUDENTS** - up to 1 academic year; **TRAINEES** - 18 months; **TEACHERS** - 3 years; **PROFESSORS** and **RESEARCH SCHOLARS** - 5 years; **SHORT-TERM SCHOLARS** - 6 months; **SPECIALISTS** - 1 year; **INTERNATIONAL VISITORS** - 1 year; **ALIEN PHYSICIAN** - the time typically required to complete the medical specialty involved but limited to 7 years with the possibility of extension if approved by the U.S. Department of State; **GOVERNMENT VISITOR** - up to 18 months; **CAMP COUNSELOR** - up to 4 months; **SUMMER WORK/TRAVEL** - up to 4 months; **AU PAIR** - 1 year; **INTERN** - up to 12 months. For details, see 22 CFR Part 62.

(d) Documentation Required for Admission/Readmission as an Exchange Visitor: To be eligible for admission to the United States, an exchange visitor must present the following at the port of entry: (1) a valid nonimmigrant visa, unless exempt from nonimmigrant visa requirements; (2) a passport valid for 6 months beyond the anticipated period of admission, unless exempt from passport requirements; (3) a properly executed Form DS-2019 (with 2-D barcode), which must be retained by the exchange visitor for readmission within the period of previously authorized stay. Exchange visitors are permitted to travel abroad and maintain status (e.g., obtain a new visa) under duration of the program as indicated by the dates on this form (see item 3 on page 1 of this form).

(e) Change of Visa Status: Exchange visitors (and dependents) are expected to leave the United States upon completion of their program objective. Exchange visitors who are subject to the two-year home-country physical presence requirement are not eligible to change their status while in the United States to any other nonimmigrant category except, if applicable, that of official or employee of a foreign government(A) or an international organization(G) or member of the family or attendant of either of these types of officials or employees.

(f) Insurance: Exchange visitors are required to have medical insurance in effect for themselves and any accompanying spouse and minor children on J visas for the duration of their exchange program. At a minimum, insurance coverage shall include: (1) medical benefits of at least U.S. \$100,000 per person per accident or illness; (2) repatriation of remains in the amount of U.S. \$25,000; and (3) expenses associated with medical evacuation in the amount of U.S. \$50,000. A policy secured to fulfill the insurance requirements shall not have a deductible that exceeds U.S. \$500 per accident or illness, and must meet other standards specified in the Exchange Visitor Program regulations, 22 CFR Part 62.14. For details, consult your program's Responsible Officer or Alternate Responsible Officer (see item 7 on page 1 of this form).

2. EXCHANGE VISITOR CERTIFICATION: I have read and understand the foregoing, including the Two-Year Home-Country Physical Presence Requirement, and agree to comply with the Exchange Visitor Program regulations, as amended (22 CFR Part 62). I certify that all the information on the Form DS-2019 is true and correct to the best of my knowledge. I agree that I will maintain compliance with the insurance regulations as specified in 22 CFR 62.14, including maintaining health insurance coverage for myself and my J-2 spouse/dependents throughout my J-1 program. **I understand that it is my responsibility to maintain my exchange visitor status.** For the purposes of 20 U.S.C. 1232g and 22 CFR 62, I authorize the U.S. Department of State-designated sponsor and any educational institution named on the Form DS-2019 to release information to the U.S. Department of State relating to compliance with Exchange Visitor Program regulations. Signature of Applicant: The J-1 exchange visitor should sign the J-1 form under Signature of Applicant. The J-2 spouse/dependents should sign the J-2 form under Signature of Applicant unless the J-2 dependent is under the age of 14, in which case the J-1 exchange visitor, as the parent or legal guardian, must sign.

NOTICE TO ALL EXCHANGE VISITORS

To facilitate your readmission to the United States after a visit in another country other than a contiguous territory or adjacent islands, you should have the Responsible Officer or Alternate Responsible Officer of your sponsoring organization indicate on the TRAVEL VALIDATION BY RESPONSIBLE OFFICER or Alternate Responsible Officer section of the Form DS-2019 that you continue to be in good standing.

The signature of the Responsible Officer or the Alternate Responsible Officer on the Form DS-2019 is valid for up to one year* or until the end date in item 3 on page 1 of this Form, or to the validation date authorized by the Responsible Officer, whichever occurs sooner.

***EXCEPT:** Maximum validation period is up to 6 months for Short-term Scholars and 4 months for Camp Counselors and Summer Work/Travel.

* Under the Mutual Educational and Cultural Exchange Act of 1961, as amended, the U.S. Department of State has been delegated the authority to designate Exchange Visitor Programs for U.S. Government agencies, and for public and private educational and cultural exchange organizations. The information is used by Exchange Visitor Program sponsors to appropriately identify an individual seeking to enter the United States as an exchange visitor. The completed form is sent to the prospective exchange visitor abroad, who takes it to the U.S. Consulate (Embassy) to secure an exchange visitor (J-1, J-2) visa. Responses are mandatory. An Agency or organization may not conduct or sponsor, and the respondent is not required to respond to a collection of information unless it displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: U.S. Department of State, A/ISS/DIR, Washington, D.C. 20520.

b. (U) J-2 Dependent Sample:

INSTRUCTIONS FOR AND CERTIFICATION BY THE ALIEN BENEFICIARY NAMED ON PAGE 1 OF THIS FORM:

Read this page and sign the Exchange Visitor Certification block on the bottom of page 1 and prior to presentation to a United States Consular or Immigration Official.

1. I understand that the following conditions are applicable to exchange visitors:**(a) TWO-YEAR HOME-COUNTRY PHYSICAL PRESENCE REQUIREMENT (SECTION 212(e) OF THE IMMIGRATION AND NATIONALITY ACT AND PL 94-454, AS AMENDED):**

RULE: Exchange visitors whose programs are financed in whole or in part, directly or indirectly by either their government or by the U.S. Government, are required to reside in their home-country for 2 years following completion of their program before they are eligible for immigrant status, temporary worker (T) status, or intracompany transferee (L) status. Likewise, if exchange visitors are acquiring a skill that is in short supply in their home country (these skills appear on the "Exchange Visitor Skills List") they will be subject to the same two-year home-country residence requirement. The requirement also is applicable to alien physicians entering the United States to receive graduate medical education or training. The U.S. Department of State reserves the right to make the final determination regarding 212(e).

NOTE: MARRIAGE TO A U.S. CITIZEN OR LEGAL PERMANENT RESIDENT, OR BIRTH OF A CHILD IN THE UNITED STATES DOES NOT REMOVE THIS REQUIREMENT.

(b) Extension of Stay/Program Transfers: A completed Form DS-2019 is required in order to apply for a program extension or program transfer, and must be obtained from or with the assistance of the sponsor.**(c) Limitation of Stay: STUDENTS** - as long as they pursue a full course of study towards a degree, or if engaged full-time in a non-degree program, up to 24 months. Students for whom the sponsor recommends academic training may be permitted to remain for an additional period of up to 18 months after receiving their degree or certificate; post-doctoral academic training may be approved by the sponsor for a period not to exceed 36 months; **SECONDARY STUDENTS** - up to 1 academic year; **TRAINEES** - 18 months; **TEACHERS** - 3 years; **PROFESSORS** and **RESEARCH SCHOLARS** - 5 years; **SHORT-TERM SCHOLARS** - 6 months; **SPECIALISTS** - 1 year; **INTERNATIONAL VISITORS** - 1 year; **ALIEN PHYSICIAN** - the time typically required to complete the medical specialty involved but limited to 7 years with the possibility of extension if approved by the U.S. Department of State; **GOVERNMENT VISITOR** - up to 18 months; **CAMP COUNSELOR** - up to 4 months; **SUMMER WORK/TRAVEL** - up to 4 months; **AU PAIR** - 1 year; **INTERN** - up to 12 months. For details, see 22 CFR Part 62.**(d) Documentation Required for Admission/Readmission as an Exchange Visitor:** To be eligible for admission to the United States, an exchange visitor must present the following at the port of entry: (1) a valid nonimmigrant visa, unless exempt from nonimmigrant visa requirements; (2) a passport valid for 6 months beyond the anticipated period of admission, unless exempt from passport requirements; (3) a properly executed Form DS-2019 (with 2-D barcode), which must be retained by the exchange visitor for readmission within the period of previously authorized stay. Exchange visitors are permitted to travel abroad and maintain status (e.g., obtain a new visa) under duration of the program as indicated by the dates on this form (see item 3 on page 1 of this form).**(e) Change of Visa Status:** Exchange visitors (and dependents) are expected to leave the United States upon completion of their program objective. Exchange visitors who are subject to the two-year home-country physical presence requirement are not eligible to change their status while in the United States to any other nonimmigrant category except, if applicable, that of official or employee of a foreign government (A) or an international organization (G) or member of the family or attendant of either of these types of officials or employees.**(f) Insurance:** Exchange visitors are required to have medical insurance in effect for themselves and any accompanying spouse and minor children on J visas for the duration of their exchange program. At a minimum, insurance coverage shall include: (1) medical benefits of at least U.S. \$100,000 per person per accident or illness; (2) repatriation of remains in the amount of U.S. \$25,000; and (3) expenses associated with medical evacuation in the amount of U.S. \$50,000. A policy secured to fulfill the insurance requirements shall not have a deductible that exceeds U.S. \$500 per accident or illness, and must meet other standards specified in the Exchange Visitor Program regulations, 22 CFR Part 62.14. For details, consult your program's Responsible Officer or Alternate Responsible Officer (see item 7 on page 1 of this form).**2. EXCHANGE VISITOR CERTIFICATION:** I have read and understand the foregoing, including the Two-Year Home-Country Physical Presence Requirement, and agree to comply with the Exchange Visitor Program regulations, as amended (22 CFR Part 62). I certify that all the information on the Form DS-2019 is true and correct to the best of my knowledge. I agree that I will maintain compliance with the insurance regulations as specified in 22 CFR 62.14, including maintaining health insurance coverage for myself and my J-2 spouse/dependents throughout my J-1 program. **I understand that it is my responsibility to maintain my exchange visitor status.** For the purposes of 20 U.S.C. 1232g and 22 CFR 62, I authorize the U.S. Department of State-designated sponsor and any educational institution named on the Form DS-2019 to release information to the U.S. Department of State relating to compliance with Exchange Visitor Program regulations. Signature of Applicant: The J-1 exchange visitor should sign the J-1 form under Signature of Applicant. The J-2 spouse/dependents should sign the J-2 form under Signature of Applicant unless the J-2 dependent is under the age of 14, in which case the J-1 exchange visitor, as the parent or legal guardian, must sign.**NOTICE TO ALL EXCHANGE VISITORS**

To facilitate your readmission to the United States after a visit in another country other than a contiguous territory or adjacent islands, you should have the Responsible Officer or Alternate Responsible Officer of your sponsoring organization indicate on the TRAVEL VALIDATION BY RESPONSIBLE OFFICER or Alternate Responsible Officer section of the Form DS-2019 that you continue to be in good standing.

The signature of the Responsible Officer or the Alternate Responsible Officer on the Form DS-2019 is valid for up to one year* or until the end date in item 3 on page 1 of this Form, or to the validation date authorized by the Responsible Officer, whichever occurs sooner.

***EXCEPT:** Maximum validation period is up to 6 months for Short-term Scholars and 4 months for Camp Counselors and Summer Work/Travel.

* Under the Mutual Educational and Cultural Exchange Act of 1961, as amended, the U.S. Department of State has been delegated the authority to designate Exchange Visitor Programs for U.S. Government agencies, and for public and private educational and cultural exchange organizations. The information is used by Exchange Visitor Program sponsors to appropriately identify an individual seeking to enter the United States as an exchange visitor. The completed form is sent to the prospective exchange visitor abroad, who takes it to the U.S. Consulate (Embassy) to secure an exchange visitor (J-1, J-2) visa. Responses are mandatory. An Agency or organization may not conduct or sponsor, and the respondent is not required to respond to a collection of information unless it displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: U.S. Department of State, A/ISS/DIR, Washington, D.C. 20520.

(CT:VISA-1; 11-18-2015)

- a. **(U)** The Form DS-7002, Training/Internship Placement Plan, is designed to standardize applications in the Trainee, Intern, and Student Intern categories and to increase transparency and accountability and curb potential abuse by having all three concerned parties— the exchange visitor, the U.S. sponsor and the entity providing the training or internship —sign the Form DS-7002 acknowledging the program plan and their regulatory responsibilities.
- b. **(U)** You may wish to use the Form DS-7002 to help in formulating interview questions, but they are not required to verify the form.
- c. **(U)** Electronic signatures (including faxed signatures) are permissible on Form DS-7002, and posts should accept these as they adjudicate applications.
- d. **(U)** The form requires each participant to have U.S. contact information. As some participants may not have this information at the time of the visa interview, you may accept the contact details for the participant's host organization in the United States instead.

9 FAM 402.5-6(D)(8) (U) DS-7002

(CT:VISA-149; 07-20-2016)

(U) To see the Form DS-7002 please see E-Forms.

9 FAM 402.5-6(E) (U) Categories of Exchange Visitors

(CT:VISA-354; 04-26-2017)

- a. **(U)** At present, the Department has 15 exchange categories in which foreign nationals may participate. Participants may only engage in activities authorized for their program.
- b. **(U)** The following sections list these categories in alphabetical order with a brief description of key points for consular officers.
- c. **(U)** The presentation of a valid Form DS-2019 by the visa applicant constitutes evidence that the individual was determined by the designated U.S. program sponsor to be qualified to participate in the specific exchange program. You must verify the Form DS-2019 in the electronic SEVIS CCD report and determine that the applicant's record is in either INITIAL or ACTIVE status and that the SEVIS I-901 fee has been paid. You should also note the program end date as it appears in the electronic record and ensure that the J visa is issued with a validity that corresponds to the program end or to the reciprocity schedule for the country of the applicant's nationality, whichever is shorter.

9 FAM 402.5-6(E)(1) (U) Alien Physician

(CT:VISA-354; 04-26-2017)

- a. **(U)** Alien Physician (22 CFR 62.27): This category is for foreign national physicians

pursuing American medical board certification through graduate education and training at accredited U.S. schools of medicine, or other U.S. institutions through a clinical exchange program.

- b. **(U)** The Educational Commission for Foreign Medical Graduates (ECFMG) is the only program sponsor authorized to use this category. Foreign medical graduates under this category must successfully complete examinations administered by ECFMG that measure their command of English and the medical sciences.
- c. **(U)** All foreign medical graduates sponsored in the category of Alien Physician are subject to the 2-year home-country physical presence requirement (see [9 FAM 402.5-6\(M\)](#) below).
- d. **(U)** Exception to ECFMG sponsorship: A foreign physician may be sponsored by a designated sponsor other than ECFMG (e.g., a U.S. university, academic medical center, school of public health, or other public health institution) as a “research scholar” only if the dean of the accredited U.S. medical school or his or her designee certifies the following 5 points and such certification is appended to the Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, issued to the perspective exchange visitor Alien Physician:
- (1) **(U)** The program is predominantly involved with observation, consultation, teaching, or research;
 - (2) **(U)** Any incidental patient contact will be under the direct supervision of a U.S. citizen or resident-Alien Physician who is licensed to practice medicine in the State in which the activity is taking place;
 - (3) **(U)** The foreign national physician will not be given final responsibility for the diagnosis and treatment of patients;
 - (4) **(U)** Any activities will conform fully with the State licensing requirements and regulations for medical and health care professionals in the State in which the program is being pursued; and
 - (5) **(U)** Any experience gained will not be credited towards any clinical requirements for medical specialty board certification. In such cases, the program sponsor’s letter of designation will explicitly authorize the sponsor to issue Form DS-2019 using the Research Scholar category. The duration of participation as a Research Scholar is limited to 5 years, unless the Department approves a program extension for a G-7-sponsored exchange visitor.

9 FAM 402.5-6(E)(2) (U) Au Pair

(CT:VISA-149; 07-20-2016)

- a. **(U) Au Pair:** This category is for a foreign national age 18-26 entering the United States for a period of one year for the purpose of residing with an American host family, or the family of a lawful permanent resident, while directly participating in their home life and providing limited childcare services. Au pair applicants who are 26 years of age at the time of the program start date are eligible to participate in the au pair program. The Au Pair is also required to enroll and attend classes

offered by an accredited U.S. post-secondary institution for not less than 6 semester hours of academic credit, or the equivalent. As a condition of participation, host-families must agree to facilitate the enrollment and attendance of the Au Pair and to pay the cost of such academic course work in an amount not to exceed \$500. Au pairs may enroll in appropriate course work after they arrive on the program. Failure to adhere to the education component is grounds for termination from the program.

- b. **(U) EduCare:** The regulations governing the Au Pair Program were amended to create a subcategory called EduCare. This component is specifically designed for families with school-aged children requiring limited child care assistance. Au Pairs participating in the EduCare component may not be placed with families having pre-school aged children unless alternative arrangements are in place for these children. EduCare participants may not work more than 10 hours a day/30 hours a week. They must complete a minimum of 12 semester hours of academic credit, or its equivalent, during their program. Host families provide the first \$1,000 to the Au Pair toward the cost of the educational component. EduCare au pairs may enroll in appropriate course work after they arrive on the program.
- c. **(U) No Family Placement:** Au Pairs are not to be placed in the homes of family/relatives, irrespective of the distance in relations (e.g., third cousin, great aunt and/or uncle, etc.).
- d. **(U) Duration:** The duration of participation is limited to one year/one sponsor only unless specifically authorized by the Department of State (ECA/EC). Such authorization will be indicated by an active SEVIS status with the same SEVIS number as the applicant's initial Au Pair program, and an extended program end date.
- e. **(U) Extension of program:** Designated Au Pair sponsors may request that an Au Pair participant be granted an extension of program participation beyond the original twelve months. Au Pair program sponsors may request an Au Pair participant be granted an additional 6-, 9-, or 12-month extension of program participation. The applicant's age is not a barrier to program extension as long as he or she was 18-26 years of age at the time of the initial program start date.
- f. **(U) Repeat Participation:** A foreign national who successfully completed an Au Pair program is eligible to participate again as an Au Pair participant provided that he or she has resided outside the United States for at least two years following completion of his or her initial Au Pair program. The repeat participant must qualify as an Au Pair under the same rules as an initial participant.
- g. **(U) Exchange Visitor Program Regulation:** See 22 CFR 62.31.

9 FAM 402.5-6(E)(3) (U) Camp Counselor

(CT:VISA-1; 11-18-2015)

- a. **(U) Camp Counselor:** This category is for a foreign national selected to be a counselor in an accredited U.S. summer camp (during the U.S. summer months) who imparts skills to American campers and information about his or her country or

culture.

NOTE: While it is recognized that some non-counseling chores are an essential part of camp life for all counselors, this program is not intended to assist American camps in bringing in foreign nationals to serve as administrative personnel, cooks, nurses, physicians, or menial laborers, such as dishwashers or janitors.

- b. **(U) Duration:** The duration of participation must not exceed 4 months.
- c. **(U) Exchange Visitor Program Regulation:** See 22 CFR 62.30.

9 FAM 402.5-6(E)(4) (U) Government Visitor

(CT:VISA-1; 11-18-2015)

- a. **(U) Government Visitor:** This category is for a foreign national who is recognized as an influential or distinguished person in their own country, and who is selected by a Federal, State, or local government agency to participate in observation tours, discussions, consultations, professional meetings, conferences, workshops, and travel.
- b. **(U)** This category is for the “exclusive use” of United States Federal, State, and local government agencies.
- c. **(U) Duration:** The duration of participation must not exceed 18 months.
- d. **(U) Exchange Visitor Program Regulation:** See 22 CFR 62.29.

9 FAM 402.5-6(E)(5) (U) Intern

(CT:VISA-354; 04-26-2017)

- a. **(U) Intern:**
 - (1) **(U)** The Intern category aims to strengthen U.S. public diplomacy by expanding opportunities for substantive programming for foreign students and professionals; to enhance the skills and expertise of exchange visitors in their academic or occupational fields; improve participants’ knowledge of American techniques, methodologies, and technologies; and to increase participants’ understanding of American society and culture.
 - (2) **(U)** This category is for a foreign national who is either currently enrolled in and pursuing studies at a degree- or certificate-granting post-secondary academic institution outside the United States or who graduated from such an institution no more than 12 months prior to his or her exchange visitor program start date, and who enters the United States to participate in a structured and guided work-based internship in his or her specific academic field.
- c. **(U) Duration:** The duration of participation must not exceed twelve months.
- d. **(U) Program exclusions:** Sponsors must not:
 - (1) **(U)** Place Interns in unskilled or casual labor positions; in positions that require or involve child care or elder care; or in clinical or any other kind of

work that involves patient care or contact, including any work that would require them to provide therapy, medication, or other clinical or medical care (e.g., sports or physical therapy, psychological counseling, nursing, dentistry, veterinary medicine, social work, speech therapy, early childhood education, or as hairdressers or manicurists);

- (2) **(U)** Place Interns in positions, occupations, or businesses that could bring the Exchange Visitor Program or the Department into notoriety or disrepute;
 - (3) **(U)** Engage or otherwise cooperate or contract with a staffing/employment agency to recruit, screen, orient, place, evaluate, or train trainees or Interns, or in any other way involve such agencies in an Exchange Visitor Program training or internship program.
- e. **(U) Program requirements:** Sponsors must:
- (1) **(U)** Ensure that the duties of trainees or interns as outlined in the trainee/internship placement plans (T/IPP) Form DS 7002 will not involve more than 20 percent clerical work, and that all tasks assigned to trainees or Interns are necessary for the completion of training and internship program assignments; and
 - (2) **(U)** Ensure that all "hospitality and tourism" training and internship programs of 6 months or longer contain at least 3 departmental or functional rotations.
- f. **(U) Training/Internship Placement Plan (T/IPP):** Sponsors must complete and obtain requisite signatures for a Form DS-7002, Training/Internship Placement Plan, for each intern before issuing a Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status. Upon request, visa applicants must present their fully executed Form DS-7002 to a consular official during their visa interviews (see [9 FAM 402.5-6\(D\)\(7\)](#) above for information on the training/internship placement plan).
- g. **(U) Repeat Participation:**
- (1) **(U)** A foreign national can participate in additional internship programs that address the development of more advanced skills or a different field of expertise as long as they maintain student status or begin a new internship program within 12 months of graduation from an academic institution outside the United States.
 - (2) **(U)** Participants who have successfully completed an internship program and no longer meet the selection criteria for internship programs may participate in a training program after a 2-year period of residency outside the United States following their internship program.

9 FAM 402.5-6(E)(6) (U) International Visitor

(CT:VISA-354; 04-26-2017)

- a. **(U) International Visitor:** This category is for the exclusive use of the U.S. Department of State. It is for an individual who is a recognized or potential leader

in their own country and is selected by the Department of State to participate in observation tours, discussions, consultation, professional meetings, conferences, workshops, and travel.

- b. **(U) Duration:** The duration of participation must not exceed one year.

9 FAM 402.5-6(E)(7) (U) Professor

(CT:VISA-1; 11-18-2015)

- a. **(U) Professor:** This category is for an individual who is engaged primarily in teaching, lecturing, observing, or consulting at accredited post-secondary academic institutions, museums, libraries, or similar institutions. The Professor may also conduct research and participate in occasional lectures if authorized by the program sponsor.
- b. **(U)** The Professor's appointment to a position must be temporary, even if the position itself is permanent. The individual must not be a candidate for a tenure-tracked position.
- c. **(U)** Alien Short-Term Scholars and Physicians are governed by regulations set forth in 22 CFR 62.21 and 22 CFR 62.27, respectively.
- d. **(U) Duration:** The duration of participation must not exceed 5 years unless the participant is directly sponsored by a federally funded national research and development center or a U.S. Federal laboratory (Program Serial G-7).

9 FAM 402.5-6(E)(8) (U) Research Scholar

(CT:VISA-1; 11-18-2015)

- a. **(U) Research Scholar:** This category is for an individual whose primary purpose is to conduct research, observe, or consult in connection with a research project at research institutions, corporate research facilities, museums, libraries, post-secondary accredited academic institutions, or similar types of institutions. The Research Scholar may also teach or lecture, unless disallowed by the sponsor. The Research Scholar's appointment to a position must be temporary, even if the position itself is permanent. The individual must not be a candidate for a tenure-tracked position.
- b. **(U)** Short-Term Scholars and Alien Physicians are governed by regulations set forth in 22 CFR 62.21 and 22 CFR 62.27, respectively.
- c. **(U)** Minimum qualifications for this category are a bachelor's degree with appropriate experience in the field of in which research is to be conducted.
- d. **(U) Duration:** The duration of participation must not exceed 5 years unless the participant is directly sponsored by a Federally funded national research and development center or a U.S. Federal laboratory (program serial G-7).

9 FAM 402.5-6(E)(9) (U) Short-Term Scholar

(CT:VISA-1; 11-18-2015)

- a. **(U) Short-Term Scholar:** This category is for a foreign national who is a Professor, Research Scholar, or person with similar education or accomplishments coming to the United States on a short-term visit for the purpose of lecturing, observing, consulting, training, or demonstrating special skills at research institutions, museums, libraries, post-secondary accredited academic institutions, or similar type of institution.
- b. **(U) Exchange visitors** who have recently participated in an exchange program as a Professor or Research Scholar in the United States are not expected to attempt to reenter the United States as a Short-Term Scholar to rejoin their original sponsor as this would be considered to be a continuation of their original program objective.
- c. **(U) Duration:** The duration of participation must not exceed 6 months. No program extensions are permitted.

9 FAM 402.5-6(E)(10) (U) Specialist

(CT:VISA-149; 07-20-2016)

- a. **(U) Specialist:** This category is for a foreign national who is an expert in a field of specialized knowledge or skill coming to the United States for observing, consulting, or demonstrating their special skills except:
 - (1) **(U) Research Scholars and Professors**, who are governed by regulations set forth at 22 CFR 62.20;
 - (2) **(U) Short-Term Scholars**, who are governed by regulations set forth at 22 CFR 62.21; and
 - (3) **(U) Alien Physicians** in graduate medical education or training, who are governed by regulations set forth at 22 CFR 62.27.
- b. **(U) Duration:** The duration of participation must not exceed 1 year. Within the specialist category there are six program numbers with approved exceptions to this one year duration. They are for Japanese teachers and individuals affiliated with the Laurasian Institute (P-3-05588); Israeli specialists under the World Zionist Organization (P-3-04530); specialists under the U.S. Department of Energy (G-3-00348); specialists under the East-West Center (P-3-10434); specialists under the Institute of International Education (P-3-14039); and specialists under the Broadcasting Board of Governors (G-3-00366). For these six excepted program numbers, the duration of participation is three years and the visa should be issued for the full three years. Both the Form DS-2019 and the SEVIS record will have a notation that this program is a three-year duration. The visa should be set to expire two years after the listed program end date found in Box 3 on the Form DS-2019.

9 FAM 402.5-6(E)(11) (U) Students

(CT:VISA-149; 07-20-2016)

a. (U) Secondary School Student:

- (1) **(U)** This category affords foreign secondary school students an opportunity to study for an academic semester or an academic year in a U.S. accredited public or private secondary school while living with an American host family or residing at an accredited U.S. boarding school. Participants in this category must meet the following requirements:
 - (a) **(U)** Be a secondary school student in their home country who has not completed more than 11 years of primary and secondary study excluding kindergarten; or
 - (b) **(U)** Be at least the age of 15 but not more than 18-1/2 years of age as of the program start date; and
 - (c) **(U)** Has not previously participated in an academic year or semester secondary school student exchange program in the United States or attended school in the United States in either F-1 or J-1 visa status. Screening factors such as English language proficiency, maturity, character, and scholastic aptitude are critical.
- (2) **(U)** Sponsors are required to secure host-family placement prior to the student's departure from his or her home country, but are not required to have a placement before the visa interview. As a result, the student's Form DS-2019 may list the sponsor's contact information instead of the host family's contact information.
- (3) **(U) Duration:** The duration of participation is a minimum of one academic semester or a maximum of one academic year. Sponsors are permitted to issue a Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, for an academic semester or academic year. When a student is from a country whose school calendar is opposite that of the United States, a sponsor can issue a Form DS-2019 for a calendar-year cycle.

b. (U) College and University/Student:

- (1) In order to participate, a foreign individual must be someone who will:
 - (a) **(U)** Study in the United States; pursue a full course of study leading to or culminating in the award of a U.S. degree from a post-secondary accredited academic institution; or engage full-time in a prescribed course of study in a non-degree program of up to 24 months duration conducted by a post-secondary accredited academic institution; or
 - (b) **(U)** Engage in English language training at a post-secondary accredited academic institution, or an institute approved by or acceptable to the post-secondary accredited academic institution where the college or university student is to be enrolled upon completion of the language training. A Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, for language training can only be issued if the student is fully funded by funding from the student's home government.
- (2) **(U)** Exchange visitors participating in the college or university student category

must be supported substantially by funding from any source other than personal or family funds.

- (3) **(U) Duration:** Duration of participation is determined by whether the exchange visitor is a degree or non-degree student. An explanation of each is provided in paragraphs c and d below.
- c. **(U) Degree Students:** Exchange visitor students who are in degree programs may be authorized to participate in the Exchange Visitor Program as long as they are either:
- (1) **(U)** Studying at the post-secondary accredited academic institution listed on their Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, and are:
 - (a) **(U)** Pursuing a full course of study as set forth in 22 CFR 62.23(e); and
 - (b) **(U)** Maintaining satisfactory advancement towards the completion of their academic program; or
 - (2) **(U)** Participating in an authorized academic training program as permitted in 22 CFR 62.23(f).
- d. **(U) Nondegree Students:** Exchange visitors who are Nondegree Students may be authorized to participate in the Exchange Visitor Program for up to 24 months, if they are either:
- (1) **(U)** Studying at the post-secondary accredited academic institution listed on their Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, and are:
 - (a) **(U)** Participating full-time in a prescribed course of study; and
 - (b) **(U)** Maintaining satisfactory advancement towards the completion of their academic program; or
 - (2) **(U)** Participating in an authorized academic training program as permitted in 22 CFR 62.23(f).
- e. **(U) Student Intern Subcategory:**
- (1) **(U)** Department-designated U.S. colleges and universities can administer internship programs substantially similar to those detailed herein under their J-1 College/University Student designation.
 - (2) **(U)** A number of colleges and universities currently hold J-1 training designations and can be expected to issue Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, and Form DS-7002, Training/Internship Placement Plan, to applicants as trainees per the current rulemaking and the program guidelines described herein.
 - (3) **(U)** The category of Trainee will be reflected on the Form DS-2019 if the sponsor is authorized for this category.
- f. Exchange Visitor Program **Regulation:** See 22 CFR 62.23.

9 FAM 402.5-6(E)(12) (U) Summer Work Travel (SWT)

(CT:VISA-391; 06-26-2017)

- a. **(U) Qualifying for Summer Work Travel (SWT):** In this category, a participant is defined as a bona fide post-secondary student in the applicant's own or another foreign country if the applicant is currently enrolled and participating full time at an accredited post-secondary academic institution at the time of the application, or as that status is defined by the educational system of the country. On-line study, though it may be full time and may lead to a degree, does not qualify a student as a full time student for purposes of participation in the Summer Work Travel program. Final year students are eligible to take part in this program during the school's major academic break immediately following their graduation, as long as they apply to participate in the program prior to graduation.
- (1) **(U)** An applicant must have completed at least one semester, or the quarter or trimester equivalent, of postsecondary education to be eligible to participate in this program.
 - (2) **(U)** Participants must demonstrate sufficient proficiency in English to enable them to not only carry out their job duties but also to interact effectively with law enforcement authorities and medical personnel, read rental agreements, carry on non-work related conversations, etc. It is appropriate to conduct SWT visa interviews in English in order to assess the applicant's proficiency. U.S. sponsors may use video teleconferencing to conduct interviews with potential participants but assertions by the sponsor that an applicant meets the English language requirement are not alone sufficient to meet the burden of proof for this program requirement.
 - (3) **(U)** Unless they are final-year students, participants must demonstrate that they are bona fide students who are maintaining student status and are actively pursuing their degree per their local educational system. Participants must be actually attending classes, rather than pursuing an on-line degree program.
 - (4) **(U)** Unless the participant is a final-year student, they must demonstrate that they will resume activities as a student after participation in the SWT program.
 - (5) **(U)** It is not necessary for the student to be enrolled in the same institution both before and after participating in SWT in order to qualify. Students may participate if they are transferring from one school to another, if they have finished an academic program at one school and are going on to another full-time program, or if they are continuing on to graduate school. Documentation, satisfactory to you, that applicants have been accepted for and will commence studies upon their return may be accepted to establish status as a continuing student.
 - (6) **(U)** Students attending vocational schools are generally not eligible for participation in the Summer Work Travel program, unless they can demonstrate that study in the vocational school will ultimately lead to a degree from a full-time post-secondary academic institution.

- (7) **(U)** Students may participate in the program every year that they meet the definition of bona fide student but participation each year is limited to the shorter of four months or the length of the long break between academic years at the school they attend.
- (8) **(U)** In no case should there be more than one Summer Work Travel period per year identified in any country without the concurrence of both the Visa Office and ECA's Office of Private Programs.

b. (U) Summer Work Travel (SWT) Sponsor Obligations:

- (1) **(U)** Designated U.S. sponsors of Summer Work Travel exchange programs must not place program participants in jobs as described in 22 CFR 62.32(h).
- (2) **(U)** U. S. Sponsors must ensure that 100 percent of their non-Visa Waiver Program country participants have a confirmed, vetted job placement. Job placements may be secured directly by the U.S. sponsor or through self-placement by the participant.
- (3) **(U)** For SWT participants from VWP countries, for whom employment has not been prearranged, sponsors must:
 - (a) **(U)** Ensure that participants have sufficient financial resources to support themselves during their search for employment;
 - (b) **(U)** Provide participants with pre-departure information that explains how to seek employment and secure lodging in the United States;
 - (c) **(U)** Maintain and provide a roster of bona fide jobs that includes at least as many job listings as the number of participants entering the United States with pre-arranged and confirmed employment; and
 - (d) **(U)** Undertake reasonable efforts to secure suitable employment for participants unable to find jobs on their own after 2 weeks of commencing the job search.
 - (e) **(U)** Vet the job placement selected by the participant PRIOR to the commencement of employment;
- (4) **(U)** All SWT participants should be cautioned to comply with their responsibility to inform their U.S. sponsor of their arrival and commencement at work and keep the sponsor informed of their whereabouts, should they change locations. SWT participants who wish to change jobs or to accept an additional job must inform their U.S. sponsor of the desired job placement and wait for the sponsor to perform the same vetting and approval process as for the initial employment prior to beginning work.

c. (U) Duration of Summer Work Travel (SWT) Program:

- (1) **(U)** The duration of participation in the Summer Work Travel (SWT) program must not exceed four months. These four months must coincide with the exchange visitor's official academic school break between school years. Please note that while the program may not be longer than four months, you are permitted to issue visas valid prior to the program start date.

- (2) **(U)** SWT programs are only permitted once a year during the long break between academic years.

d. **(U) Summer Work Travel (SWT) Outreach and Fraud Prevention Measures:**

- (1) **(U)** Designated U.S. sponsors are responsible for conducting the Summer Work Travel program under the regulations contained in 22 CFR 62.32. The U.S. sponsors play a vital outreach role by explaining to host-country audiences the Summer Work Travel program's purpose, how it is structured, its economic imperatives, and the checks in place to safeguard the welfare of foreign youth while in the United States. You should seek to develop a good working relationship with U.S. sponsors, which will allow you to better reach local audiences and deal with any problems that come up later, after program participants have entered the United States, but ECA is responsible for managing the administrative relationship with the U.S. sponsors and, in turn, will officially notify U.S. sponsors of their compliance responsibilities.
- (2) **(U)** The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA) requires you to ensure that aliens applying for J visas are made aware of their legal rights under Federal immigration, labor, and employment laws. This includes information on the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States. At the time of the nonimmigrant visa interview, you must confirm that a pamphlet prepared by the Department detailing this information has been received, read, and understood by the applicant. Adjudicating officers must insert a case note to the effect that the applicant has acknowledged receipt and understanding of the pamphlet. See [9 FAM 402.3-9\(C\)\(1\)](#) for more information about WWTVPRA enforcement.
- (3) **(U)** It is important to ensure post's anti-fraud measures stay within the parameters established by regulations. Post must allow any applicant with a valid Form DS-2019 to apply for a visa. Each local SWT third-party contractor operating overseas must have executed a written agreement with the designated U.S. sponsor that explains their relationship and identifies their respective obligations. These agreements must include annually updated price lists for the services provided to the U.S. sponsors and confirm that they will not outsource any core programmatic functions or pay or provide other incentives to U.S. host employers. ECA has created a "Foreign Entity Report" SharePoint site by country listing the designated U.S. sponsors and their affiliated local, third party agents/ recruiters. Sponsors are required to maintain a current listing of all foreign agents or partners on the Foreign Entity Report. It must contain the names, addresses and contact information (i.e., telephone numbers and email addresses) of all foreign entities that assist the sponsors in fulfilling the provision of core program services. You must share information about misconduct by local third party entities with the CA/FPP and the F, M, J visa portfolio holder in CA/VO/F/ET, as listed in the CAWeb Who's Who, and they will in turn work with the ECA Office of Coordination and Compliance so that ECA can review and take appropriate action.

- (4) **(U)** When you receive applications from previous SWT participants who failed to return in time for the start of their university classes, this fact may call into question their eligibility (whether they are in fact "bona fide students") for future exchange program visas. That is the case even when the applicant departed the United States within 30 days of the completion of his/her exchange program and did not incur a U.S. immigration violation. Each of these cases must be evaluated on its own merits.

e. (U) Sample Handout for Summer Work Travel Participants:

Congratulations on your acceptance as an Exchange Visitor Program participant in a Summer Work Travel program. This program is a cultural exchange, and your eligibility for program participation is based on your status as a foreign college/university student. It is therefore very important that the program does not interfere with your studies and that you return to school in time for the first day of your classes. Please take a moment to read the following information to ensure that you are familiar with certain requirements of the program.

What do the program BEGIN and END dates on my Form DS-2019 mean?

The program begin and end dates indicate when you may begin work and when you must stop working. You may begin working at any point on or after the program start date, but you must end your work by the end date of the program. Working beyond the program end date will impact your ability to participate in the program in future years.

How long before the program begin date may I enter the United States?

You may enter the United States up to 30 days in advance of your program begin date, but may not begin working until the program begin date is reached. Please remember that participation in the program cannot prevent you from attending any scheduled classes or taking exams at your university. If you miss any classes due to participation in the program, you will greatly jeopardize your chances of participating in the program.

How long after the program end date may I stay in the United States?

You have 30 days following the end date of your program to travel and/or to arrange for your return home. You are not permitted to work during these 30 days, and if you leave the United States during this grace period, you will not be permitted to re-enter the United States on your J-1 visa because you will no longer be in J status. Please keep in mind that it is your responsibility to return home in time for the start of your scheduled classes, no matter what your program end date is.

Can I switch jobs once I am in the United States?

Please check with your sponsoring agency before making any changes in your employment. If you change employment without the permission of your sponsoring agency, your status in the program may be terminated.

If your program is terminated, you must leave the United States immediately.

Can I work more than one job in the United States?

The Exchange Visitor Program regulations do not prohibit a participant from accepting a second job. However, you must check with your sponsoring agency before accepting a second job. Your sponsoring agency must approve and vet all jobs.

What if I have a complaint about the sponsoring agency or my employer in the United States?

You may register complaints with the Department of State at jvisas@state.gov. However, your U.S. sponsoring organization has primary responsibility for your program. If you have a complaint about your employer, you should first contact your sponsor for assistance. Contact

information for your sponsor can be found in Box #7 of your Form DS-2019.

What if I have a difficult time finding a job placement once I arrive in the United States, or have concerns about the work conditions?

If you have questions or are experiencing difficulty in finding employment, or have concerns about the work conditions, you should first contact your sponsor for assistance. You also may contact the Department of State (jvisas@state.gov). You may also wish to contact your country's nearest Embassy or Consulate.

If you have other questions not answered here, please consult the following Web page:

J1visa.state.gov or write to the Department of State at jvisa@state.gov.

f. (U) Student Work Travel Pilot Programs for Citizens of Australia and New Zealand:

- (1) **(U)** In September 2007, the U.S. Government signed memorandums of understanding (MOUs) with Australia and New Zealand launching 12-month student work and travel pilot programs. The MOU with New Zealand became effective on September 10, 2007; the MOU with Australia became effective on October 31, 2007. The MOUs allow certain Australian, New Zealand, or U.S. citizens who are bona fide post-secondary students or recent graduates (within 12 months of graduation) from post-secondary schools to work and travel in Australia, New Zealand, or in the United States, respectively, for up to 12 months.
- (2) **(U)** The guidance for the Australia and New Zealand pilot programs differs from other J-1 SWT guidance (see paragraph a above) in the following respects: Participants are not required to return home in time for the school year to begin, and qualified post-secondary students can enter the United States at any time.
- (3) **(U) Duration:** The duration of participation in this category must not exceed 12 months. No extensions of program are permitted. No repeat participation is allowed under this pilot program.

9 FAM 402.5-6(E)(13) (U) Teacher

(CT:VISA-1; 11-18-2015)

(U) Teacher: This category is for an individual teaching full-time in a primary or secondary accredited academic institution. A foreign national must satisfy all of the following:

- (1) **(U)** Meet the qualifications for teaching in primary and secondary schools in his or her country of nationality or last legal residence;
- (2) **(U)** Satisfy the standards of the state in which he or she will teach in the United States;
- (3) **(U)** Be of good reputation and character;
- (4) **(U)** Seek to come to the United States for the purpose of full-time teaching at a primary or secondary accredited academic institution in the United States; and

(5) **(U)** Have a minimum of 3 years of teaching or related professional experience.

9 FAM 402.5-6(E)(14) (U) Trainee

(CT:VISA-1; 11-18-2015)

- a. **(U)** The intern and training programs are operating under an Interim Final Rule that went into effect on July 19, 2007. The Exchange Visitor Program's existing Trainee category was revised and a new Intern category created.
- b. **(U)** This category is for a foreign national who has either a degree or professional certificate from a post-secondary academic institution outside the United States and at least one year of prior related work experience in his or her occupational field acquired outside the United States; or five years of work experience outside the United States in his or her occupational field.
- c. **(U) Program exclusions:** Sponsors must not:
- (1) **(U)** Place trainees in unskilled or casual labor positions (cashiers, servers, kitchen help, custodial workers, etc.), in positions that require or involve child care or elder care, or in clinical or any other kind of work that involves patient care or contact, including any work that would require them to provide therapy, medication, or other clinical or medical care (e.g., sports or physical therapy, psychological counseling, nursing, dentistry, veterinary medicine, social work, speech therapy, early childhood education, or as hairdressers or manicurists);
 - (2) **(U)** Place trainees in positions, occupations, or businesses that could bring the Exchange Visitor Program or the Department into notoriety or disrepute;
 - (3) **(U)** Engage or otherwise cooperate or contract with a staffing/employment agency to recruit, screen, orient, place, evaluate, or train trainees, or in any other way involve such agencies in an Exchange Visitor Program training program;
 - (4) **(U)** Designated sponsors must ensure that the duties of trainees as outlined in the T/IPPs will not involve more than 20 percent clerical work, and that all tasks assigned to trainees are necessary for the completion of training program assignments;
 - (5) **(U)** Sponsor must also ensure that all "Hospitality and Tourism" training programs of six months or longer contain at least three departmental or functional rotations; or
 - (6) **(U)** Place trainees in the field of aviation.
- d. **(U) Form DS-7002, Training/Internship Placement Plan (T/IIP):** Sponsors must complete and obtain requisite signatures on this form for each trainee before issuing Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status. Upon request, visa applicants must present their fully executed Form DS-7002 to a consular official during their visa interview (see [9 FAM 402.5-6\(D\)\(7\)](#) above for information on the Training/Internship Placement Plan).

9 FAM 402.5-6(E)(15) (U) Exception for Management Training for Trainees and Interns

(CT:VISA-1; 11-18-2015)

- a. **(U)** The occupational category of Management, Business, Commerce, and Finance is up to 18 months for any type of management training, which may include restaurant management, turf management, office management, etc. The duration of a trainee's or intern's participation in a training or internship program must be established before a sponsor issues a Form DS-2019. Except as noted below, the maximum duration of a training program is 18 months, and the maximum duration of an internship program is 12 months.
- b. **(U)** For training programs in the "Hospitality and Tourism" occupational category, the maximum duration is 12 months. Training programs in the field of agriculture are permitted to last a total of 18 months, if in the development of the training plan, as documented in the T/IPP, the additional six months of the program consist of classroom participation and studies. Program extensions are permitted only within maximum durations as long as the need for an extended training and internship program is documented by the full completion and execution of a new Form DS-7002.
- c. **(U)** Typical rotational programs offered in hotels or restaurants in a variety of related functions leading to a final rotation in a single supervisory position, such as front desk supervisor or manager, floor supervisor, lead chief or room service manager, would fall under the "Hospitality and Tourism" occupational category and be limited to 12 months.
- d. **(U)** Non-management placements on farms or other production facilities fall under 'Agriculture' and are limited to 12 months, or 18 months providing that six months of the program consists of classroom participation and studies.

9 FAM 402.5-6(F) (U) Residence Abroad

(CT:VISA-354; 04-26-2017)

- a. **(U)** The INA requires that the applicant possess a residence in a foreign country he or she has no intention of abandoning. The regulations require that you be satisfied that the alien has present intent to depart the United States upon completion of their exchange visitor program. Consequently, you must be satisfied that the applicant, at the time of visa application:
 - (1) **(U)** Has a residence abroad;
 - (2) **(U)** Has no immediate intention of abandoning that residence; and
 - (3) **(U)** Intends to depart from the United States upon completion of the program.
- b. **(U)** The context of the residence abroad requirement for exchange visitor visas inherently differs from the context for B visitor visas or other short-term visas. The statute clearly presupposes that the natural circumstances and conditions of being an exchange visitor do not disqualify that applicant from obtaining a J visa. It is

natural that the exchange visitor proposes an extended absence from his homeland (see [9 FAM 401.1-3\(F\)](#)). Nonetheless, you must be satisfied at the time of the application for a visa that an applicant possesses the present intent to depart the United States at the conclusion of his or her program. That this intention is subject to change is not a sufficient reason to refuse a visa. Although exchange visitors may apply to change or adjust status in the United States in the future, this is not a basis to refuse a visa application if the exchange visitor's present intent is to depart at the conclusion of his or her program.

9 FAM 402.5-6(G) (U) Knowledge of English

(CT:VISA-201; 09-30-2016)

(U) A prospective exchange visitor must have sufficient proficiency in the English language to undertake the anticipated program successfully and to function on a day-to-day basis. To achieve these programs' goals of cultural exchange, participants must be able to interact with Americans both at their sites of activity as well as in the broader context of daily life. Of the 15 exchange visitor program categories, only the International Visitor category may permit use of a translator. If translators will be used in an International Visitor program, this will be noted on a participant's Form DS-2019. Participants may not avoid the English language requirement by claiming that their site of activity offers a work environment in their native language.

9 FAM 402.5-6(H) (U) Employment

9 FAM 402.5-6(H)(1) (U) Employment -General

(CT:VISA-1; 11-18-2015)

- a. **(U)** An exchange visitor may receive compensation for employment when such activities are part of the exchange visitor's program.
- b. **(U)** The U.S. Department of Homeland Security (DHS) is responsible for authorizing the employment of the spouse and any minor unmarried children (J-2 visa holders) of the exchange visitor (J-1 visa holder). The dependent must file Form I-765, Application for Employment Authorization, requesting permission to work from U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security.

9 FAM 402.5-6(H)(2) (U) College/University Student Employment

(CT:VISA-1; 11-18-2015)

- a. **(U)** There are two types of employment authorizations available for students with J status:
 - (1) **(U)** Student employment (see 22 CFR 62.23(g) for more information on student employment); or
 - (2) **(U)** Academic training (see 22 CFR 62.23(f) for more information on academic

training).

- b. **(U)** In both situations, the responsible officer must approve the exchange visitor's participation in the activity.
- c. **(U)** Exchange visitors who are participating as College/University Students (degree and non-degree) are permitted to work and are limited to twenty (20) hours per week, except during school breaks and annual vacation, unless authorized for economic necessity. Some examples of student employment are:
 - (1) **(U) Scholarship, fellowship, or assistantship:** If the employment is required because of a scholarship, fellowship, or an assistantship, such activity usually occurs on campus with the school as the employer. In certain circumstances, however, the work can be done elsewhere for a different employer. For example, an exchange visitor may work in a government or private research laboratory if the exchange visitor's major professor has a joint appointment at one of those locations and the employment is supervised and counts towards the exchange visitor's degree;
 - (2) **(U) On campus:** The Exchange Visitor Program regulations allow for jobs on-campus that are related and/or unrelated to study, which stipulates that the work can be done "on the premises" of the school; and
 - (3) **(U) Off campus:** Exchange visitors may be authorized off campus employment by the program's responsible officer (RO) when "necessary due to serious, urgent and unforeseen economic circumstances" that have arisen since the exchange visitor's sponsorship on the J visa.

9 FAM 402.5-6(H)(3) (U) Summer Employment for College/University Students Transferring from One J Visa Program Sponsor to Another

(CT:VISA-1; 11-18-2015)

(U) If a student in J status intends to transfer sponsors during the summer months but wants to remain at the current program to work during the summer, the current sponsor must delay the transfer procedure until after the period of employment. In order to permit the student to stay in the current program the period of employment must be included in the exchange visitor's program noted on the Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status.

9 FAM 402.5-6(I) (U) Visa Application Procedures and Conditions

9 FAM 402.5-6(I)(1) (U) Applicant Qualifications

(CT:VISA-1; 11-18-2015)

- a. **(U)** Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, is the basic document required to support an application for an exchange visitor visa and

for maintaining valid exchange visitor program participant status. The electronic SEVIS record in the CCD will indicate the applicant's current SEVIS status. The applicant's SEVIS record must be in either INITIAL or ACTIVE status.

- b. **(U)** On occasion, you will see applicants who claim they have followed the established procedure, but post cannot locate their SEVIS records in the CCD. When this occurs, contact the F, M, J portfolio holder in CA/VO/F/ET for assistance. It is important that CA/VO/F/ET and CA/VO/I be made aware of any failure of the records to replicate so that efforts to correct the problem are appropriately coordinated with DHS/ICE/SEVP.
- c. **(U)** You must ensure that the applicant's information is correct in the electronic SEVIS record (see [9 FAM 402.5-6\(J\)](#)) and that the SEVIS fee has been paid. You can also verify SEVIS fee payment at FMJfee.sevis@dhs.gov.
- d. **(U)** If you are uncertain as to whether the applicant's qualifications or planned activities fit within the Exchange Visitor Program, or have concerns that the sponsor is not in compliance with sponsor regulations, you should refuse the visa application under INA section 221g and notify the F, M, J portfolio holder in CA/VO/F/ET who will coordinate with ECA to provide guidance.

9 FAM 402.5-6(I)(2) (U) Program Number

(CT:VISA-1; 11-18-2015)

(U) A J-1 visa must be annotated to show the name and program number of the exchange program in which the visa applicant is participating, the start and end dates of the program, and the SEVIS number of the individual.

9 FAM 402.5-6(I)(3) (U) Cases Involving Unrealizable Reporting Dates

(CT:VISA-132; 05-16-2016)

(U) If the program start date specified in the applicant's Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, is already past or there is reason to believe the applicant will be unable to meet that date, you may assume the applicant may encounter difficulty at the port of entry (POE). You should determine whether the sponsor has amended the electronic SEVIS record to change the program start date, and make a case note to that effect to alert CBP. If this has not been done, you should direct the visa applicant to alert the designated U.S. program sponsor to the situation. The sponsor may choose to amend the electronic record or may choose other solutions. You should not intervene directly with designated U.S. sponsors on behalf of visa applicants.

9 FAM 402.5-6(I)(4) (U) Entry of Exchange Visitor Program Participants Prior to Program Start Date

(CT:VISA-1; 11-18-2015)

- a. **(U)** Posts may issue an exchange visitor visa to an applicant at any time as long as the Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, and SEVIS record are in INITIAL or ACTIVE status. However, the exchange visitor may not enter the United States earlier than 30 days before the initial program start date. Applicants continuing on an Exchange Visitor Program are not subject to this restriction.
- b. **(U)** An exchange visitor who desires an earlier entry must qualify for, and obtain, a B-2 visitor visa. However, if the applicant enters on a B visa, he or she must first obtain a change of visa classification (Change of Status) from the Department of Homeland Security (USCIS) from B status to J status in order to participate in the exchange program. The applicant must file Form I-539, Application to Extend/Change Nonimmigrant Status, with the requisite filing and SEVIS fee for this purpose. The applicant must also submit the annotated Form DS-2019 and any other required information to the USCIS office at which the application is made. The applicant is not allowed to begin the exchange visitor program until USCIS has completed the change of status. The process to change status may be lengthy and may impact the ability of the applicant to undertake the program as established.

9 FAM 402.5-6(I)(5) (U) Multiple or Consecutive Exchange Programs

(CT:VISA-1; 11-18-2015)

(U) An exchange visitor may participate in multiple or consecutive exchange programs unless otherwise limited or prohibited by the Exchange Visitor Regulations (see 22 CFR 41.63). Under no circumstances, however, issue an individual two separate J-1 visas for two different programs that will run back-to-back or simultaneously (e.g., Au Pair then Trainee; or Summer Work Travel then College University Student).

9 FAM 402.5-6(I)(6) (U) 30-Day Post-Completion Period

(CT:VISA-1; 11-18-2015)

- a. **(U)** Exchange visitors are no longer issued a paper Form I-94, Arrival and Departure Record, marked "D/S" (Duration of Status) upon entry into the United States. CBP now gathers travelers' arrival/departure information automatically from their electronic travel records. However, CBP will still issue a paper Form I-94 at land border ports of entry. (Visa holders may download a copy of their electronic I-94 at www.cbp.gov/I94.)
- b. **(U)** The initial admission of the exchange visitor will not exceed the period specified on the Form DS-2019 (the beginning and end dates), plus a period of 30 days "for the purpose of travel" (see 8 CFR 214.2(j)). The Department of Homeland Security (DHS) established this 30-day period. DHS has concluded that the 30-day post-completion period was intended to be a period following the successful completion of the exchange visitor's program and is to be used for domestic travel and/or to prepare for and depart from the United States, and for no other purpose. Foreign

nationals are under the jurisdiction of DHS during this period. A program extension and/or transfer cannot be done if an exchange visitor's record in SEVIS is not in active status during this period.

- c. **(U)** Any validation study of return rates for J travelers must take this authorized grace period into account.

9 FAM 402.5-6(I)(7) (U) Annotation and Visa Validity

(CT:VISA-354; 04-26-2017)

- a. **(U)** A J-1 or J-2 visa must be annotated to show the program number, program dates, and sponsor name of the alien's exchange program, as well as the SEVIS number of the individual. The J visa must also state whether the alien is subject to INA 212(e). Keep in mind that you are making a preliminary determination of the applicability of INA section 212(e). An exchange visitor must not use any single J visa for a program other than that specified on the annotation, even if that J visa has not yet expired.
- b. **(U)** J-1 visas must be issued for the program dates listed on the Form DS-2019, unless where excepted in [9 FAM 402.5-6\(E\)\(10\)](#) or [9 FAM 402.5-6\(I\)\(7\)](#) paragraph c, or unless visa reciprocity only allows for a shorter validity period. J-2 derivatives are subject to the same visa validity as the J-1 principal applicant, unless visa reciprocity only allows for a shorter validity period.
- c. **Unavailable.**
- d. **(U)** For those exceptions noted in [9 FAM 402.5-6\(E\)\(10\)](#), post is authorized to issue with a visa validity extending for three years. The visa should be set to expire two years after the listed program end date found in Box 3 on the Form DS-2019.

9 FAM 402.5-6(I)(8) (U) Renewing J Visas for Returning Exchange Visitors

(CT:VISA-354; 04-26-2017)

(U) You generally should renew J visas to returning exchange visitors who have remained in valid program status and have not had any significant changes in either their program or their personal circumstances. When an exchange visitor engaged in a program takes a short trip abroad and requires a visa to return to the United States, you are encouraged to issue visas, if the exchange visitor is otherwise qualified, to allow the individual to complete his or her program provided that the status of the electronic record in SEVIS is ACTIVE.

9 FAM 402.5-6(J) (U) The Student and Exchange Visitor Information System (SEVIS)

9 FAM 402.5-6(J)(1) (U) Student and Exchange Visitor Information System (SEVIS) - General

(CT:VISA-354; 04-26-2017)

- a. **(U)** For an overview of the Student and Exchange Visitor Program and the Student and Exchange Visitor Information System see [9 FAM 402.5-4](#).
- b. **(U)** The Student and Exchange Visitor Information System (SEVIS) is an internet-based database which tracks students and exchange visitors in F, M, and J visa status while in the United States. Using SEVIS, designated Exchange Visitor Program sponsors enter information into SEVIS, which is then printed on the Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status.
- c. **(U)** The Bureau of Educational and Cultural Affairs (ECA) authorizes designated U.S. sponsor officials referred to as Responsible Officers (RO) access to SEVIS so that they may create and update official records on exchange visitors and their dependents. SEVIS enables exchange program sponsors to transmit electronic information and event notifications, via the Internet, to the Department of State and Department of Homeland Security (DHS) throughout an exchange visitor's stay in the United States. The information in SEVIS is updated, as needed, and supersedes information on the printed Form DS-2019. The SEVIS record is the definitive record of exchange visitor eligibility and you must check it for each applicant.
- d. **(U)** Exchange Visitor Program sponsors designated by the Bureau of Educational and Cultural Affairs (ECA) must use SEVIS. Only a Form DS-2019 that has been issued through SEVIS, and contains a unique SEVIS identification number and bar code, may be accepted in support of an exchange visitor visa application. The Form DS-2019 must be signed in blue ink by a sponsor's designated official (responsible officer or alternate responsible officer). However, the definitive record for consular officers is the electronic SEVIS record in the CCD. CBP also accesses the electronic record at the port of entry.

9 FAM 402.5-6(J)(2) (U) Responsible and/or Alternate Responsible Officers

(CT:VISA-1; 11-18-2015)

- a. **(U)** Exchange Visitor Program sponsors designate individuals to perform the duties attendant to designation. The responsible officer (RO) is the primary person appointed as being responsible and thoroughly familiar with the Exchange Visitor Program regulations, policies, and SEVIS requirements. Alternate responsible officer(s) (AROs) are individuals appointed to assist the RO in administering the program.
- b. **(U)** The RO and AROs are required to ensure that the exchange visitor obtains sufficient advice and assistance to facilitate the successful completion of their exchange program. ROs and AROs are also responsible for the security of SEVIS. Only RO and AROs are authorized access to SEVIS to issue Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, or to change records in SEVIS.

9 FAM 402.5-6(K) (U) J Visa Fees

9 FAM 402.5-6(K)(1) (U) SEVIS I-901, Fee Remittance for Certain J Nonimmigrants, Fee

(CT:VISA-354; 04-26-2017)

- a. **(U)** The SEVIS I-901 fee is a one-time fee for persons applying for a J visa program. The fee covers the costs of administering the Student and Exchange Visitor Information System (SEVIS) and related enforcement efforts.
- b. **(U)** Most exchange visitors will pay the full fee; however, the fee is reduced for some, including those in Summer Work Travel, Camp Counselor, and Au Pair categories. See SEVIS fees for additional information.
- c. **(U)** Exchange visitors and their spouses and/or dependents sponsored by a government program (G-1, G-2, G-3, and G-7) are not required to pay a SEVIS fee.
- d. **(U)** You should clearly post on post's website the means by which an exchange visitor participating in one of these government-sponsored programs can reach the consular section to make a visa interview appointment without paying the SEVIS fee or the nonrefundable MRV fee ([9 FAM 402.5-6\(K\)\(3\)](#)).

9 FAM 402.5-6(K)(2) (U) SEVIS I-901, Fee Remittance for Certain F, J and M Nonimmigrants, Fee Payment

(CT:VISA-1; 11-18-2015)

- a. **(U)** Applicants must pay the SEVIS fee prior to visa application. Applicants may schedule interview appointments before paying the fee. Consular sections must verify through SEVIS that the SEVIS fee has been paid but are not responsible for collecting it. Payment may be made by any SEVIS I-901 fee payment method provided for by the Department of Homeland Security (DHS).
- b. **(U)** Consular sections must verify SEVIS I-901 fee payment verification through the CCD SEVIS report. You can also verify SEVIS I-901 fee payment at www.fmjfee.com, if the fee payment information has not yet replicated to the CCD.
- c. **(U)** Only principal J-1 aliens have to pay the SEVIS I-901 fee. Even though J-2 derivative applicants have a unique SEVIS ID number, they do not pay a fee.
- d. **(U)** You should direct visa applicants with questions about paying the SEVIS I-901 fee to the ICE website at <http://www.ice.gov/sevis/i901>.

9 FAM 402.5-6(K)(3) (U) Fee Waivers for Certain Exchange Visitors

(CT:VISA-1; 11-18-2015)

- a. **(U)** U.S. Government-funded exchange visitors and their spouses and/or dependents coming to the United States are eligible for machine readable visa

(MRV) fee waivers if they are participating in a Department of State, a U.S. Agency for International Development (USAID), or a federally funded educational and cultural exchange program. Exchange programs eligible for the MRV exemption have a program number that begins with the prefix G-1, G-2, G-3, or G-7 program serial number on the Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status. All other applicants with U.S. Government funding must pay the MRV processing fee. You must ensure that post's website provides clear guidance to these visa applicants on how to obtain a visa interview appointment without paying the MRV fee, because the fee, once paid, is not refundable.

- b. **(U)** Applicants participating in any U.S. Government-sponsored J program, and their spouses and/or dependents are exempt from any applicable visa reciprocity fee.

9 FAM 402.5-6(L) (U) INA 212(e)

(CT:VISA-1; 11-18-2015)

(U) INA 212(e) prohibits certain exchange visitors from applying for an immigrant visa or for adjustment of status to that of a legal permanent resident or from changing status or receiving a visa as a temporary worker (H1B), nonimmigrant fiancé (K) or intracompany transferee (L) until the applicant has established that he or she has resided and been physically present in the country of nationality or last permanent residence for an aggregate of at least two years following departure from the United States.

9 FAM 402.5-6(L)(1) (U) Aliens Subject to INA 212(e)

(CT:VISA-354; 04-26-2017)

- a. **(U)** An alien admitted as an exchange visitor under INA 101(a)(15)(J) or who acquires such status after admission if:
- (1) **(U)** The program in which the alien is participating was financed in whole or in part, directly or indirectly, by a U.S. Government Agency;
 - (2) **(U)** The program in which the alien is participating was financed in whole or in part, directly or indirectly, by the government of the country of the alien's nationality or last legal permanent residence;
 - (3) **(U)** The alien at the time of acquiring such status was a national or resident of a country designated as requiring the services of persons engaged in the field of specialized knowledge or skill as shown in the 2009 Exchange Visitor Skills List, 1984 Exchange Visitor Skills List, or 1972 Exchange Visitor Skills List; or
 - (4) **(U)** The alien entered the United States to receive graduate medical education or training.
- b. **(U)** Aliens participating in the Au Pair and Summer Work Travel exchange visitor program categories are not subject to INA 212(e).

9 FAM 402.5-6(L)(2) (U) Waiver of INA 212(e) Requirement

(CT:VISA-354; 04-26-2017)

(U) An alien may seek a waiver of the two-year, home-country physical presence requirement provided:

- (1) **(U)** The alien establishes exceptional hardship or probable persecution on account of race, religion or political opinion; (see also [9 FAM 302.13-2\(D\)\(3\)](#));
- (2) **(U)** The alien establishes active and substantial involvement in a program sponsored by or of interest to a U.S. Government Agency; (see [9 FAM 302.13-2\(D\)\(4\)](#));
- (3) **(U)** The alien has received a statement of "no objection" from his or her country of nationality or residence; (see [9 FAM 302.13-2\(D\)\(1\)](#)); or
- (4) **(U)** The alien is a graduate of a medical school for whom a request for a waiver has been granted to a State Department of public Health (see [9 FAM 302.13-2\(D\)\(5\)](#)).

You should refer former exchange visitors who wish to learn more about applying for a waiver of INA 212(e) to Waiver of the Exchange Visitor Two-Year Home-Country Physical Presence Requirement.

9 FAM 402.5-6(L)(3) (U) Department's Policy on Extension of Program Participation While a Waiver of the 2-Year Home-Residency Requirement Is Pending

(CT:VISA-391; 06-26-2017)

(U) When a responsible officer (RO) or alternative responsible officer (ARO) is notified by the Department that a favorable recommendation for a waiver of the 2-year home residency requirement has been sent to the Department of Homeland Security (DHS), the exchange visitor is no longer considered eligible for an extension of program beyond the end date shown on the current Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, even though he or she may not have completed the maximum duration of participation permitted for the category. However, if a waiver request is submitted and denied and the exchange visitor is still within the maximum duration of participation established by the regulations, an extension may be issued by the sponsor up to the maximum duration of time permitted for that category.

9 FAM 402.5-6(M) (U) Exchange Visitor Skills Lists

9 FAM 402.5-6(M)(1) (U) Exchange Visitor Skill List, 2009

(CT:VISA-132; 05-16-2016)

(U) Please see: The Skills List broken down by each country and a printable copy of the 2009 Exchange Visitor Skills List.

9 FAM 402.5-6(M)(2) (U) Exchange Visitor Skill List, 1997

(CT:VISA-1; 11-18-2015)

(U) Please see: 1997 Exchange Visitor Skills List.

9 FAM 402.5-6(M)(3) (U) Exchange Visitor Skill List, 1984

(CT:VISA-1; 11-18-2015)

(U) Please see: 1984 Exchange Visitor Skills List.

9 FAM 402.5-6(M)(4) (U) Exchange Visitor Skills List, 1972

(CT:VISA-1; 11-18-2015)

(U) Please see: 1972 Exchange Visitor Skills List.

9 FAM 402.6

(U) WITNESSES AND VICTIMS – S, T, AND U VISAS

(CT:VISA-324; 04-07-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 402.6-1 **(U) STATUTORY AND REGULATORY AUTHORITIES**

9 FAM 402.6-1(A) **(U) Immigration and Nationality Act**

(CT:VISA-324; 04-07-2017)

(U) INA 101(a)(15)(S) (8 U.S.C. 1101(a)(15)(S)); INA 101(a)(15)(T) (8 U.S.C. 1101(a)(15)(T)); INA 101(a)(15)(U) (8 U.S.C. 1101(a)(15)(U)); INA 212(d)(1) (8 U.S.C. 1182(d)(1)); INA 212(d)(13) (8 U.S.C. 1182(d)(13)); INA 212(d)(14) (8 U.S.C. 1182(d)(14)); INA 214(k) (8 U.S.C. 1184(k)); INA 214(n) (8 U.S.C. 1184(n)); INA 214(o) (8 U.S.C. 1184(o)); INA 214(p) (8 U.S.C. 1184(p)); INA 245 (8 U.S.C. 1255).

9 FAM 402.6-1(B) **(U) Code of Federal Regulations**

(CT:VISA-324; 04-07-2017)

(U) 22 CFR 41.83; 22 CFR 41.84; 8 CFR 214.11; 8 CFR 214.14.

9 FAM 402.6-1(C) **(U) United States Code**

(CT:VISA-1; 11-18-2015)

(U) 22 U.S.C. 7102.

9 FAM 402.6-2 **(U) OVERVIEW OF VISAS FOR WITNESSES AND VICTIMS**

(CT:VISA-324; 04-07-2017)

- a. **(U) S Visas:** S visas are for informants supplying critical information relating to a criminal organization (S-5) or informants supplying critical information relating to terrorism (S-6).
- b. **(U) T Visas:** This visa allows victims of human trafficking to remain in the United States to assist in investigations or prosecutions of human trafficking violators. Foreign citizens seeking T-1 nonimmigrant status must be physically present in the

United States due to human trafficking. Posts therefore do not issue T-1 visas, but may issue qualifying family members T derivative visas.

- c. **(U) U Visas:** Victims of certain criminal activities that either occurred in the United States or violated U.S. laws may be eligible to petition USCIS for U-1 nonimmigrant status. Victims must have suffered substantial mental or physical abuse due to the criminal activity and possess credible and reliable information concerning that criminal activity. In addition, law enforcement authorities must certify that the victim has been, is being, or is likely to be helpful in the investigation or prosecution of the criminal activity. The criminal activity must have occurred in the United States, including; Indian country, U.S. military installations, U.S. territories or possessions, or violated a U.S. federal law that provides for extraterritorial jurisdiction. In order to receive U-1 nonimmigrant status, an applicant must be eligible and must comply with the application requirements set forth by USCIS. USCIS approves U nonimmigrant petitions both for people who are in the United States and for those abroad. Individuals already present in the United States who have an approved petition are immediately granted U nonimmigrant status by USCIS. Individuals overseas who have approved U visa petitions, or who already have U nonimmigrant status and have traveled overseas, are required to apply for a U visa at post.

9 FAM 402.6-3 (U) CATEGORIES OF S, T AND U VISAS

(CT:VISA-324; 04-07-2017)

(U) 22 CFR 41.12 identifies the following S, T, and U visa classification symbols for aliens witness, informants, and victims in accordance with INA 101(a)(15)(S), (T), and (U):

S5	Certain Aliens Supplying Critical Information Relating to a Criminal Organization or Enterprise
S6	Certain Aliens Supplying Critical Information Relating to Terrorism
S7	Qualified Family Member of S5 or S6
T1	Victim of a severe form of trafficking in persons
T2	Spouse of T1
T3	Child of T1
T4	Parent of T1
T5	Unmarried Sibling under age 18 of T1
T6	<i>Adult or Minor Child of a Derivative Beneficiary of a T1</i>
U1	Victim of criminal activity
U2	Spouse of U1
U3	Child of U1
U4	Parent of U1 under 21 years of age
U5	Unmarried Sibling under age 18 of U1 under 21 years of age

9 FAM 402.6-4 (U) WITNESSES AND INFORMANTS – S VISAS

9 FAM 402.6-4(A) (U) Statutory and Regulatory Authorities

9 FAM 402.6-4(A)(1) (U) Immigration and Nationality Act

(CT:VISA-324; 04-07-2017)

(U) INA 101(a)(15)(S) (8 U.S.C. 101(a)(15)(S); INA 212(d)(1) (8 U.S.C. 1182(d)(1)); INA 214(k) (8 U.S.C. 1184(k)); INA 245 (8 U.S.C. 1255).

9 FAM 402.6-4(A)(2) (U) Code of Federal Regulations

(CT:VISA-324; 04-07-2017)

(U) 22 CFR 41.83.

9 FAM 402.6-4(B) (U) Background

(CT:VISA-324; 04-07-2017)

- a. (U) **History:** On September 13, 1994, the President signed into law the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322). Section 130001 of this Act amended the Immigration and Nationality Act (INA) by adding a new subparagraph (S) at INA 101(a)(15), establishing a new nonimmigrant (S) classification. This new subparagraph, which took effect immediately, provides for the admission of certain witnesses and other aliens who possess critical information relating to acts of terrorism and criminal behavior.
- b. (U) **Classification Codes:** "S-5" *classification relates to INA 101(a)(15)(i)* and "S-6" *relates to INA 101(a)(15)(ii)*. "S-7" *is used for derivatives of either S-5 or S-6*.
- c. (U) **Numerical Limitation:** INA 214(k) places an annual limitation on nonimmigrants who may be issued visas under INA 101(a)(15)(S)(i) and (ii) to 200 and 50 respectively.

9 FAM 402.6-4(C) (U) S-5 Classification Under INA 101(a)(15)(S)(i)

(CT:VISA-324; 04-07-2017)

(U) An alien may be classified as an S-5 nonimmigrant, if the Attorney General has determined that the:

- (1) (U) Alien is in possession of critical reliable information concerning a criminal organization or enterprise;

- (2) **(U)** Alien is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and
- (3) **(U)** Alien's presence in the United States has been determined by the Attorney General to be essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise.

9 FAM 402.6-4(D) (U) S-6 Classification Under INA 101(a)(15)(S)(ii)

(CT:VISA-324; 04-07-2017)

(U) An alien may be classified as an S-6 nonimmigrant, if the Secretary of State and the Attorney General jointly determine that the alien:

- (1) **(U)** Possesses critical, reliable information concerning a terrorist organization, enterprise, or operation;
- (2) **(U)** Is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;
- (3) **(U)** Will be or has been placed in danger as a result of providing such information; and
- (4) **(U)** Is eligible to receive a reward under 22 U.S.C. 2708.

9 FAM 402.6-4(E) (U) S-7 Accompanying or Following-to-Join Dependents

(CT:VISA-324; 04-07-2017)

(U) If determined appropriate by the Attorney General (or the Attorney General and the Secretary of State in the case of an alien classified under INA 101(a)(15)(S)(ii)), the accompanying or following-to-join spouse, married and unmarried sons and daughters, and the parents of an S-5 or S-6 alien may also be classified as S-7. A nonimmigrant in the S-7 visa classification will be subject to the same period of admission, limitations, and restrictions as the S-5 or S-6 alien and must be identified on the application Form I-854 in order to qualify for S nonimmigrant classification. Family members not identified on the Form I-854 application will not be eligible for S nonimmigrant classification (See [9 FAM 402.6-4\(F\)](#) below and 8 CFR 214.2(t)(3)).

9 FAM 402.6-4(F) (U) Determining Eligibility for S Nonimmigrant Classification

(CT:VISA-324; 04-07-2017)

(U) An interested Federal or State law enforcement authority (LEA) must initiate the process for an S visa by having a Form I-854 endorsed by the U.S. Attorney who has jurisdiction over the investigation or prosecution in question. The LEA must then file

the Form I-854 directly with the Assistant Attorney General who will review the information and, if he or she is able to certify the form, it will be forwarded to the Immigration and Customs Enforcement (ICE) commissioner. If the ICE commissioner approves the I-854, the request for S nonimmigrant visa classification will then be presented to the Secretary of State. Alternatively, DHS may simply parole a person into the United States without requiring issuance of an S visa by a consular officer (see 8 CFR 214.2(t)(4)).

9 FAM 402.6-4(G) (U) Waiver for Alien Ineligible Under 212(a)

(CT:VISA-324; 04-07-2017)

(U) An alien otherwise classifiable as a nonimmigrant under INA 101(a)(15)(S), who is found to be ineligible under INA 212(a) (other than paragraph (3)(E)), may, if the Attorney General considers it to be in the national interest, be granted a waiver under INA 212(d)(1).

9 FAM 402.6-4(H) (U) Conditions of Stay

(CT:VISA-324; 04-07-2017)

- a. **(U) Length of Stay:** The maximum period of admission in S visa status is three years. The Attorney General is not permitted to grant an extension of this period of time. During the alien's time in the United States, the LEA has annual reporting requirements to the Attorney General.
- b. **(U) No Change of Status:** An alien admitted to the United States under INA 101(a)(15)(S) is prohibited from changing status to another nonimmigrant classification. However, an alien who is already present in the United States may change status to the S classification.
- c. **(U) Employment in the United States:** An alien classified under INA 101(a)(15)(S) may, once in the United States, apply for employment authorization by using Form I-765, Application for Employment Authorization. An alien in S status may not take employment prior to the grant of the employment authorization.

9 FAM 402.6-4(I) (U) Adjustment of Status

(CT:VISA-324; 04-07-2017)

- a. **(U)** INA 245 provides for adjustment of status of aliens admitted as S-5 or S-6 to permanent resident status under certain circumstances.
- b. **(U)** An alien who entered the United States as an S-5 under INA 101(a)(15)(S)(i) may apply for adjustment to permanent resident if it is the Attorney General's opinion that:
 - (1) **(U)** The S-5 nonimmigrant has supplied critical, reliable information concerning a criminal organization or enterprise;

- (2) **(U)** Such information has substantially contributed to the success of an authorized criminal investigation or the prosecution of an individual involved in a criminal organization or enterprise; and
 - (3) **(U)** The alien is not ineligible under INA 212(a)(3)(E).
- c. **(U)** An alien who entered the United States as an S-6 under INA 101(a)(15)(S)(ii) may apply for adjustment to permanent resident if in the sole discretion of the Attorney General:
- (1) **(U)** The S-6 nonimmigrant has supplied critical, reliable information concerning a terrorist organization, enterprise or organization;
 - (2) **(U)** Such information has substantially contributed to:
 - (a) **(U)** The prevention or frustration of an act of terrorism against a U.S. person or U.S. property; or
 - (b) **(U)** The success of an authorized criminal investigation of, or prosecution, of an individual involved in such an act of terrorism; and
 - (3) **(U)** The nonimmigrant has received a reward under 22 U.S.C. 2708.

9 FAM 402.6-5 (U) VICTIMS OF TRAFFICKING IN PERSONS – T VISAS

9 FAM 402.6-5(A) (U) Statutory and Regulatory Authority

9 FAM 402.6-5(A)(1) (U) Immigration and Nationality Act

(CT:VISA-324; 04-07-2017)

(U) INA 101(a)(15)(T) (8 U.S.C. 101(a)(15)(T)); INA 212(d)(13) (8 U.S.C. 1182(d) (13)).

9 FAM 402.6-5(A)(2) (U) Code of Federal Regulations

(CT:VISA-324; 04-07-2017)

(U) 22 CFR 41.84.

9 FAM 402.6-5(B) (U) Background

(CT:VISA-324; 04-07-2017)

(U) Section 107 of Public Law 106-386, the Victims of Trafficking and Violence Protection Act (VTVPA) created a new nonimmigrant category (T) for aliens who are victims of a "severe form of trafficking in persons." The term has the meaning given in Section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102). Note that only the Department of Homeland Security (DHS) can place an alien, principals as well as derivatives, in this category. Consequently, you must not accept an application

for a nonimmigrant visa (NIV) in the T category unless you have received from the Department notification that DHS has approved that alien for T status. The category is limited to 5,000 principal aliens per year. The law was first amended by the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), Public Law 108-193, which provided age-out protection (see [9 FAM 402.6-5\(E\)\(4\)](#)) and public charge exemption (see [9 FAM 402.6-5\(F\)\(2\)](#)). It was also amended by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA), Public Law 110-457. VTPRA was amended again by the Violence Against Women Reauthorization Act of 2013, Public Law 113-4, to allow the Secretary of Homeland Security, the Secretary of State, and the Attorney General, in the discretion of either such Secretary or the Attorney General, to disclose information regarding applicants for or beneficiaries of T nonimmigrant status to national security officials to be used solely for a national security purpose in a manner that protects the confidentiality of such information.

9 FAM 402.6-5(C) (U) Defining “Severe Forms of Trafficking in Persons”

(CT:VISA-324; 04-07-2017)

(U) Severe forms of trafficking in persons is defined in 8 CFR 214.11(a) as “ sex trafficking in which a commercial sex act is induced by fraud, force, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”

9 FAM 402.6-5(D) (U) Qualifying for T Visa Status

(CT:VISA-324; 04-07-2017)

- a. **(U)** To qualify for status as a T-1 nonimmigrant, a person must:
- (1) **(U)** Be a victim of a severe form of trafficking in persons, as defined in section 7102 of title 22 of the U.S. Code (22 U.S.C. 7102);
 - (2) **(U)** Be physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;
 - (3) **(U)** Be likely to suffer extreme hardship involving unusual and severe harm upon removal; and
 - (4) **(U)** Have complied with any reasonable request for assistance by a law enforcement agency in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime.

(U) NOTE: If, in consultation with the Attorney General, a person is found to be unable to cooperate with a request described in (4) due to physical or psychological trauma; or if the person has not yet attained 18 years of age then the requirement described in (4) may be waived).

- (5) **(U)** An alien seeking T-1 status must file the Form I-914 at the DHS Vermont Service Center. If a waiver of ineligibility is needed, the applicant must also file the Form I-192.
- b. **(U)** Any alien seeking T-1 status would, by definition, be physically present in the United States already. Therefore, you may not issue a T-1 visa. Consular processing of T-2 and T-3 visas is discussed below.

9 FAM 402.6-5(E) (U) Derivatives of T Visa Holders

9 FAM 402.6-5(E)(1) (U) Consular Officer's Responsibilities

(CT:VISA-324; 04-07-2017)

- a. **(U)** Eligible immediate family members of a T-1 principal alien may receive derivative T-2 (spouse) or T-3 (child) status. Children born after their parent filed an application for T-1 status may be eligible for derivative status if the parent T-1 nonimmigrant proves that he or she became the parent of the child after the application was filed.
- b. **(U)** In cases where the T-1 alien is under the age of 21, eligible immediate family members of the principal alien may receive derivative T-2 (spouse), T-3 (child), or T-5 (siblings) may accompany or follow to join the principal alien. Siblings must be unmarried and under the age of 18 on the date on which the principal alien applies for T-1 status.
- c. **(U)** In cases in which the Secretary of Homeland Security has found that a parent, sibling, or any adult or minor children of a derivative beneficiary of a T-1 principal alien faces a present danger, eligible family members may receive T-4 (parent), (T-5) sibling, or T-6 (parent, unmarried sibling under age 18, adult or minor children of a derivative beneficiary) status. Siblings must be unmarried and under the age of 18 on the date on which the principal alien applies for T-1 status.
- d. **(U)** The Department of Homeland Security may *accord T status to* 5,000 principal T status holders per year. The annual numerical limitations do not apply to derivative visa applicants.
- e. **(U)** All applications for classification of a relative for derivative T status must be filed by the principal alien at the designated DHS center in the United States.
- f. **(U)** Consular processing of derivative T visas centers on verifying the identity of the applicants and the relationship between the T-1 principal alien and T beneficiaries. If the T-1 principal has adjusted status and become a Legal Permanent Resident (LPR), (check PCQS) no derivative T visa may issue as there is no longer a T-1 principal. It is the responsibility of the T visa beneficiaries to demonstrate their familial relationship with the T-1 principal to the best of their ability. You should be

sensitive to the fact that many of these families have been separated for many years as a result of an act of trafficking, and consequently may find it difficult to document their family relationship. You should use every avenue, including requesting correspondence, school records, and interviews with persons in a position to have direct knowledge of the relationship, as well as investigatory efforts, to verify the familial relationship. As for most other nonimmigrant visa (NIV) categories, no medical exam is normally required for derivative T applicants.

- g. **(U)** In cases where the parents of T-3 beneficiaries are divorced or separated and custody of the children is being maintained by the alien parent abroad, there is no requirement to verify custody by the T-1 parent in the United States when processing a visa application. If only one parent is present in the visa interview, a letter from the other parent expressing consent to the visa issuance may be necessary. The fact that the T-3 beneficiary children have received passports in order to travel can be taken as a sign of consent by the other parent as well. If there are questions or difficulties concerning the willingness of the parent abroad to permit the departure of such children, you must contact the Office of Field Operations (CA/VO/F) for guidance.
- h. **(U)** It should not be necessary for the T-1 parent to be present at the interview for visas for family members. Remember that T-1 beneficiaries do not have visas that would allow them to freely depart and return to the United States.

9 FAM 402.6-5(E)(2) (U) Length of T Status

(CT:VISA-324; 04-07-2017)

- a. **(U)** Qualifying family members will remain eligible for a visa only as long as the principal applicant is in T-1 status. A T-1 is given for a period of 4 years, *which can be extended in certain circumstances*. *Within* the 90 day period before the three-year anniversary of the grant of the T-1, the alien may apply for adjustment of status to that of a legal permanent resident (LPR). If the T-1 does not apply to adjust status, his or her T-1 is terminated.
- b. **(U)** INA 214(o)(7) limits the authorized period of T nonimmigrant status to not more than four years, but provides for extensions in the following circumstances:
 - (1) **(U)** A Federal, State, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting activity related to human trafficking certifies that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of such activity;
 - (2) **(U)** The alien is eligible for adjustment of status under INA 245(I) and is unable to obtain such relief because Federal regulations had not been issued to implement the adjustment of status provisions of INA 245(I);
 - (3) **(U)** The Secretary of Homeland Security is authorized on a discretionary basis to extend periods of nonimmigrant status if warranted in exceptional circumstances; and
 - (4) **(U)** T Nonimmigrant status must be extended during the pendency of an

application for adjustment of status under INA 245(i).

9 FAM 402.6-5(E)(3) (U) Visa Revocation

(CT:VISA-324; 04-07-2017)

(U) Department of Homeland Security (DHS) may revoke T status at any time. In the event that DHS revokes a principal applicant's T-1 status, all family members deriving T nonimmigrant status from the revoked T-1 nonimmigrant status must have their status revoked. In a case in which the T-2, T-3, T-4, T-5, or T-6 application is still awaiting adjudication, it must be denied.

9 FAM 402.6-5(E)(4) (U) Aging Out Protection

(CT:VISA-324; 04-07-2017)

(U) The Victims of Trafficking and Violence Protection Act (VTVPA) amended the INA to provide, in INA 214(o), that a child who attained the age of 21 while the principal alien's T-1 case was still pending received age-out protection, by which the derivative applicant maintains his or her status. Also, parents or siblings of an alien who applies for T-1 status but attains the age of 21 while the application is pending do not lose their T-4 or T-5 status because of the age of the T-1 principal applicant.

9 FAM 402.6-5(E)(5) (U) Employment Authorization

(CT:VISA-324; 04-07-2017)

(U) DHS will issue T-1 nonimmigrants employment authorization concurrently with the grant of status. T-2, T-3, T-4, T-5, and T-6 nonimmigrants may apply for employment authorization once in the United States by filing a Form I-765, Application for Employment Authorization. Employment authorization, if granted, will last for the length of the duration of the T-1 nonimmigrant status. Individuals under the age of 18 who have been determined to have been subjected to a severe form of trafficking in persons are eligible to receive benefits and services to the same extent that refugees are eligible for such benefits and services. Persons over the age of 18 with bona fide T applications may apply to the Department of Health and Human Services (HHS) to be certified to receive these benefits and services, including possible cash assistance.

9 FAM 402.6-5(F) (U) Issuing T Visas

9 FAM 402.6-5(F)(1) (U) Post's Role

(CT:VISA-324; 04-07-2017)

(U) When DHS approves an application for a qualifying immediate family member who is outside the United States, DHS will notify the principal T-1 alien of such approval via Form I-797, Notice of Action. DHS will send a copy of the approved Form I-914 Supplement A (form I-914-A), Application for Immediate Family Member of T-1 Recipient, to the Department's Kentucky Consular Center (KCC), which will then

transmit the form electronically through the Petition Information Management Service (PIMS) to the appropriate post. Upon receipt of the approved Form I-914, post must contact the beneficiary, advise her or him of documentary requirements, and schedule an interview.

9 FAM 402.6-5(F)(2) (U) Public Charge Ineligibility Inapplicable

(CT:VISA-324; 04-07-2017)

(U) The public charge ground of inadmissibility (INA 212(a)(4)) does not apply to applicants for T visas.

9 FAM 402.6-5(F)(3) (U) Aliens Ineligible for T Nonimmigrant Status

(CT:VISA-324; 04-07-2017)

(U) Public Law 106-386 also amended INA 214 by adding a new subsection (n) that prohibits a person who has engaged in a severe act of trafficking in persons from benefiting from the T nonimmigrant category.

9 FAM 402.6-5(F)(4) (U) Study Permitted

(CT:VISA-324; 04-07-2017)

(U) Family members who are issued T visas and will study in the United States are not required to provide Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student States – for Academic and Language Students, or apply for F-1 status.

9 FAM 402.6-5(F)(5) (U) Waiver of Grounds of Inadmissibility

(CT:VISA-324; 04-07-2017)

- a. **(U)** T visa applicants may be granted waivers of 212(a) ineligibilities under one of two waiver authorities: INA 212(d)(13) or INA 212(d)(3)(B).
- b. **(U)** INA 212(d)(13): USCIS may approve a waiver under the special waiver authority relating to T visa applicants provided for in INA 212(d)(13). See 8 CFR 212.16. Unlike the normal INA 212(d)(3)(A) waiver for nonimmigrants generally, which requires your or the Department's concurrence, the decision to grant a waiver under INA 212(d)(13) for T visa applicants is within the exclusive authority of the Secretary of Homeland Security; no consular or Department recommendation or input in the decision is necessary. Thus, you should advise T visa applicants to apply directly to USCIS for a waiver. Only certain ineligibilities may be waived under the special authority of INA 212(d)(13), and under specified criteria. Specifically, the Secretary of Homeland Security may in his or her discretion waive a T visa applicant's inadmissibility under INA 212(a)(1) or INA 212(a)(4) if he or she considers it to be in the national interest to do so. In addition, with the exception of INA 212(a)(3), INA 212(a)(10)(C), and INA 212(a)(10)(E), which are not waivable under INA 212(d)(13), the Secretary of Homeland Security may also

exercise his and/or her special authority under INA 212(d)(13) to waive other inadmissibility grounds besides INA 212(a)(1) and INA 212(a)(4), provided the particular inadmissibility to be waived was caused by an incident to the alien's victimization.

- c. **(U)** INA 212(d)(3)(B): In addition to the INA 212(d)(13) general waiver for T visa applicants, INA 212(d)(3)(B) states that some INA 212(a)(3) ineligibilities may be waived in some instances by the Secretary of the Department of Homeland Security.

9 FAM 402.6-5(F)(6) (U) Referring Approved T Application to DHS for Reconsideration

(CT:VISA-324; 04-07-2017)

- a. **(U)** You must consider all DHS-approved Form I-914 applications in light of this guidance, process with dispatch those cases which appear legitimate, and identify those which require local investigation or referral to the DHS Vermont Service Center. You should refer cases to DHS for reconsideration sparingly, to avoid inconveniencing bona fide applicants and beneficiaries and causing duplication of effort by DHS. You must have specific evidence of either misrepresentation in the application process or of previously unknown facts, which might alter DHS's finding, before requesting review of a Form I-914 approval.
- b. **(U)** When seeking reconsideration, you must, under cover of Form DS-3099, NIV Petition Revocation Request Cover Sheet – Kentucky Consular Center, forward the Form I-914 application, all pertinent documentation, and a written memorandum of the evidence supporting the request for reconsideration to the Kentucky Consular Center (KCC), which will then forward the request to the DHS Vermont Service Center. The KCC will maintain a copy of the request and all supporting documentation and will track all consular revocation requests. A copy of all material, including the approved Form I-914 and supporting documents, must be retained at post.

9 FAM 402.6-6 (U) VICTIMS OF CRIMINAL ACTIVITY – U VISAS

9 FAM 402.6-6(A) (U) Statutory and Regulatory Authorities

9 FAM 402.6-6(A)(1) (U) Immigration and Nationality Act

(CT:VISA-324; 04-07-2017)

(U) INA 101(a)(15)(U) (8 U.S.C. 101(a)(15)(U)); INA 101(a)(50) (8 U.S.C. 1101(a)(50)); INA 204(a)(1)(A)(iii) - (v) (8 U.S.C. 1154(a)(1)(A)(iii) - (v)); INA 204(a)(1)(B)(ii) - (iv) (8 U.S.C. 1154(a)(1)(B)(ii) - (iv)); INA 204(a)(1)(C) - (D) (8 U.S.C.

1184(a)(1)(C) - (D)).

9 FAM 402.6-6(A)(2) (U) United States Code

(CT:VISA-324; 04-07-2017)

(U) 8 U.S.C. 1367.

9 FAM 402.6-6(B) (U) Overview of U Visas

(CT:VISA-324; 04-07-2017)

- a. **(U)** The U nonimmigrant classification was created by Congress with the passage of the Victims of Trafficking and Violence Protection Act of 2000 to strengthen the ability of law enforcement agencies to investigate and prosecute certain qualifying crimes including but not limited to domestic violence, sexual assault, and trafficking in persons, while offering protection to alien crime victims in keeping with the humanitarian interests of the United States.
- b. **(U)** The U nonimmigrant classification is available to qualified alien victims of certain criminal activity, without regard to gender, who assist or are likely to be helpful to Federal, State, or local government officials (including judges, prosecutors, law enforcement officials, or authorities with criminal investigative authority) in investigating or prosecuting the qualifying criminal activity.
- c. **(U)** The Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS) can only grant U nonimmigrant status to 10,000 principal alien victims in each fiscal year. There is no numerical limit to the U derivative family member categories.
- d. **(U)** 8 U.S.C. 1367 previously prohibited DHS, the Department of State (DOS), and the Department of Justice (DOJ) from disclosing any information outside of DHS, DOS, and DOJ that relates to applicants for or beneficiaries of U nonimmigrant status. However, in 2013 8 U.S.C. 1367 was amended to allow the Secretary of Homeland Security, the Secretary of State, and the Attorney General, in the discretion of either such Secretary or the Attorney General, to disclose information to national security officials to be used solely for a national security purpose in a manner that protects the confidentiality of such information.

9 FAM 402.6-6(C) (U) Qualifications For U Nonimmigrant Classification

(CT:VISA-324; 04-07-2017)

- a. **(U)** In order to qualify for the U nonimmigrant classification:
 - (1) **(U)** The alien victim must have suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity. USCIS determines whether the harm suffered rises to the level of "substantial abuse;"
 - (2) **(U)** The alien victim must be in possession of credible and reliable information

about the criminal activity of which he or she has been a victim. If the victim is under the age of 16 or is incompetent or incapacitated, a parent, guardian, or next friend may possess the information about the crime on the victim's behalf;

- (3) **(U)** The alien victim must have been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting the qualifying criminal activity. If the victim is under the age of 16 or is incompetent or incapacitated, a parent, guardian, or next friend may assist law enforcement on the victim's behalf; and
 - (4) **(U)** The qualifying criminal activity must have occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or have violated a U.S. Federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court. (For a list of territories or possessions of the United States, see 8 CFR 214.14(a)(11)).
- b. **(U)** Qualifying criminal activity is defined by statute at INA 101(a)(15)(U)(iii) as an activity involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law:
- Rape;
 - torture;
 - trafficking;
 - incest;
 - domestic violence;
 - sexual assault;
 - abusive sexual contact;
 - prostitution;
 - sexual exploitation;
 - stalking;
 - female genital mutilation;
 - being held hostage;
 - peonage;
 - involuntary servitude;
 - slave trade;
 - kidnapping;
 - abduction;
 - unlawful criminal restraint;
 - false imprisonment;

- blackmail;
 - extortion;
 - manslaughter;
 - murder;
 - felonious assault;
 - witness tampering;
 - obstruction of justice;
 - perjury;
 - fraud in foreign labor contracting (as defined in 18 U.S.C. 1351);
or
 - attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.
- c. **(U)** The regulations at 8 CFR 214.14(a)(9) provide that the term "any similar activity" refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.
- d. **(U)** Where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or to be helpful in the investigation or prosecution of the criminal activity, the alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity. (See 8 CFR 214.14(a)(14)(i).)
- e. **(U)** USCIS will consider an alien victim to possess information concerning qualifying criminal activity of which he or she was a victim if he or she has knowledge of the details (i.e., specific facts) concerning the criminal activity that would assist in the investigation or prosecution of the criminal activity. If an alien victim is under the age of 16 or is unable to provide information due to being incapacitated or incompetent, a parent, guardian, or next friend may possess the information about the crime on the alien victim's behalf. (See 8 CFR 214.14(a)(7); (b)(3).)
- f. **(U)** "Helpful" means assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. This does not include alien victims who, after the initiation of cooperation, refuse to provide continuing assistance when reasonably requested. (See 8 CFR 214.14(b)(3).) The statute imposes an ongoing responsibility on the alien victim to provide assistance, assuming there is an ongoing need for the alien victim's assistance. This requirement applies to the alien victim while his/her petition is pending and, if approved, while he/she is in U nonimmigrant status. If an alien victim is under the age of 16 or is unable to provide information due to being incapacitated or incompetent, a parent, guardian, or next friend may provide the required assistance.

- g. **(U)** Alien victims of qualifying criminal activity may apply for U nonimmigrant status *with USCIS* from either inside or outside the United States. However, if the qualifying criminal activity did not occur in the United States (including in Indian country and on U.S. military installations) or the territories and possessions of the United States, the crime must have violated a law of the United States that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. Federal court.

9 FAM 402.6-6(D) (U) Filing the Petition to Request U Nonimmigrant Status

9 FAM 402.6-6(D)(1) (U) I-918 Petition

(CT:VISA-324; 04-07-2017)

(U) Alien victims must file Form I-918, Petition for U Nonimmigrant Status, concurrently with Form I-918 Supplement B, U Nonimmigrant Status Certification, to request U nonimmigrant status (see 8 CFR 214.14(c)(1)). The Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient, may be filed concurrently with the initial Form I-918 submission or at a later date while the principal continues to hold U-1 status. For information about qualifying members aging out, see [9 FAM 402.6-5\(E\)\(4\)](#). The U-1 principal must submit a separate Form I-918 Supplement A for each individual family member. All Form I-918 petitions are submitted directly to the USCIS Vermont Service Center, regardless of the whereabouts of the U-1 principal or his/her family members. You may not accept I-918 petitions overseas, even for immediate forwarding to USCIS. USCIS does not charge a filing fee for Form I-918 petitions or supplements.

9 FAM 402.6-6(D)(2) (U) Certification Required

(CT:VISA-324; 04-07-2017)

(U) An alien victim applying for U nonimmigrant status must provide a certification to USCIS from a Federal, State, or local law enforcement official, prosecutor, judge or other authority with the responsibility for the investigation or prosecution of the qualifying criminal activity, demonstrating that the applicant "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of the qualifying criminal activity. (See INA 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III).) This certification is only provided to USCIS and is required as part of the petition. You are not required to evaluate whether a petitioner is helpful in a law enforcement investigation or prosecution.

9 FAM 402.6-6(D)(3) (U) Collection of Ink and Paper Fingerprints at Embassies and Consulates in Support of U Petitions and T Applications

(CT:VISA-324; 04-07-2017)

- a. **(U)** USCIS cannot adjudicate a U nonimmigrant status petition or a T application without first receiving the alien's biometric information for an FBI criminal record check. All aliens seeking T and U nonimmigrant status who are overseas and between the ages of 14 and 79, receive a Notice of Action requesting fingerprints. T and U applicants may have their fingerprints taken at a DHS office overseas, a U.S. embassy or consulate, or a U.S. military installation.
- b. **(U)** If there is DHS counter service at post, the alien should be directed to that office for service.
- c. **(U)** At overseas posts with no DHS counter service, fingerprints must be taken with ink and card, using the FD-258 Fingerprint Card, in accordance with the instructions provided in [9 FAM 602.2-2\(A\)\(2\)\(b\)](#). You must not create a "dummy" case in the NIV system to transmit the fingerprints. You must issue a no-fee receipt indicating "No-fee biometrics collection for USCIS" in each case. There is no charge for the ink and card service.
- d. **(U)** Once the prints have been taken, you must retain the card, seal it in an envelope, stamp it with a consular officer's stamp across the seal of the envelope, sign across the seal of the envelope to prevent tampering, and mail it via registered unclassified pouch to the USCIS Vermont Service Center at:

Vermont Service Center

Attn: MRD

USCIS/DHS

75 Lower Welden St.

St. Albans, VT 05479-0001

USCIS will then continue with adjudication of the petition.

- e. **(U)** Overseas posts with no DHS counter service must provide instructions for T and U applicants needing an appointment for collection of biometrics via public web sites or appointment call centers. Biometrics are collected before petition approval and prior to the completion of a DS-160 application. Posts must not require aliens to pay any fees, or complete a DS-160, in order to schedule an appointment for biometrics collection. At this stage, you should only require applicants to present the USCIS Notice of Action and acceptable proof of identification. U-1 visa applicants should be able to provide a passport as a proof of identification. Derivative T- and U-applicants can present either a passport or birth certificate as proof of identification. If neither can be provided, contact your CA/VO/F analyst for further guidance.

9 FAM 402.6-6(D)(4) (U) USCIS has Sole Authority to Grant U Nonimmigrant Status

(CT:VISA-324; 04-07-2017)

- a. **(U)** *While consular officers may grant U visas to an applicant outside of the United States, the authority to grant U nonimmigrant status rests solely with USCIS.*

- b. **(U)** If USCIS finds that the petitioner has satisfied all eligibility requirements for U nonimmigrant status and that any family members are eligible for derivative status, it will grant U nonimmigrant status to the petitioner and derivative family members *who are in the United States*, unless the annual numerical limit applicable to principal petitioners has been reached. (See 8 CFR 214.14(c)(5)(i); 8 CFR 214.14(d); and 8 CFR 214.14(f)(6).)
- c. **(U)** All eligible U-1 petitioners who are not granted U-1 nonimmigrant status solely because of the 10,000 cap are placed on a waiting list and will be granted U nonimmigrant status when new U visas are available at the beginning of the next fiscal year. If U nonimmigrant status is available for the principal petitioner, USCIS will send a notice of approval on Form I-797, Notice of Action, to the principal petitioner and derivative family members for whom a petition has been filed. USCIS also sends copies of approved I-797 forms and I-918 petitions to the Kentucky Consular Center (KCC). KCC creates a record in the Petition Information Management Service (PIMS) and scans the documents into the system. Cases are not forwarded to particular posts. U cases can be processed at any NIV-issuing post worldwide. (See 8 CFR 214.14(c)(5)(i)(A) and (B); 8 CFR 214.14(f)(6)(i) and (ii).)
- d. **(U)** For those principal petitioners and derivative family members who are within the United States, a Form I-94, Arrival and Departure Record, indicating U nonimmigrant status will be attached to the approval notice and will constitute evidence that the petitioner has been granted U nonimmigrant status. (See 8 CFR 214.14(c)(5)(i)(A) and 8 CFR 214.14(f)(6)(i).)

9 FAM 402.6-6(E) (U) Admission of Qualifying Family Members

9 FAM 402.6-6(E)(1) (U) Qualifying Family Members

(CT:VISA-324; 04-07-2017)

- a. **(U)** If the alien victim is under 21 years of age, the victim's spouse, children, unmarried siblings under 18 years of age, and the victim's parents may qualify for derivative U nonimmigrant status. (See INA 101(a)(15)(U)(ii)(I).)
- b. **(U)** If the alien victim is 21 years of age or older, his or her spouse and unmarried children may qualify for derivative U nonimmigrant status. (See INA 101(a)(15)(U)(ii)(II).)
- c. **(U)** If the family member was the person who committed the crime against the alien victim, that family member is ineligible for derivative status. (See 8 CFR 214.14(f)(1).)

9 FAM 402.6-6(E)(2) (U) Classification of Family Members

(CT:VISA-324; 04-07-2017)

- a. **(U)** An alien victim who has petitioned for or has been granted U-1 nonimmigrant

status (i.e., principal alien) may petition for the admission of a qualifying family member in a U-2 (spouse), U-3 (child), U-4 (parent of a U-1 alien who is under 21 years of age), or U-5 (unmarried sibling under the age of 18 of a U-1 alien who is under 21 years of age) derivative status, if accompanying or following to join such principal alien.

- b. **(U)** To be eligible for U-2, U-3, U-4, or U-5 nonimmigrant status, it must be demonstrated that:
- (1) **(U)** The U-1 principal is still in U-1 status *or has adjusted status* and become a Legal Permanent Resident (LPR) (check PCQS), *and the qualifying family member had, prior to the U-1's adjustment of status to LPR, previously been accorded derivative U nonimmigrant status in the United States. No derivative U visa may be issued if the U-1 principal's status terminated or expired.*
 - (2) **(U)** The alien for whom U-2, U-3, U-4, or U-5 status is being sought is a qualifying family member (as defined in 8 CFR 214.14(a)(10));
 - (3) **(U)** The qualifying family member is admissible to the United States; and
 - (4) **(U)** U-3 derivative children applicants are unmarried at the time the visa is issued.

(U) 9 FAM 402.6-6(E)(3) (U) Age-out Protection

(CT:VISA-324; 04-07-2017)

- a. **(U)** Trafficking Victims Protection Reauthorization Act (TVPRA) 2013 provided age-out protections for U visa derivatives. Unmarried U visa applicants who filed their petitions before they turned 21 remain eligible for the visa after they turn 21.
- b. **(U)** Age-out protection is retroactive. Any beneficiary who filed their petition before they turned 21 and is now older than 21, and *was* only denied the visa because of their age are now eligible.
- c. **(U)** Derivatives who retain visa eligibility beyond their *18th or 21st* birthday must remain unmarried to be eligible for this visa. If the beneficiary marries before the visa is issued, they will no longer be eligible.

9 FAM 402.6-6(E)(4) (U) Parental Consent for Minors

(CT:VISA-324; 04-07-2017)

(U) You should not require the U-1 principal to appear at the derivative child's interview. You may approve a U visa for a child without evidence of consent by a non-appearing parent. You may consider the fact that the child has been issued a passport as evidence of consent from the non-appearing parent. *If you feel that consent is warranted, you* may consider a letter of consent from a non-appearing parent as evidence of consent. You are not required to verify custody by the petitioning parent *and should not require such documentation for visa issuance.* However, if consent from a parent is in doubt, contact CA/VO/F for guidance.

9 FAM 402.6-6(F) (U) Processing U Visa Applicants Overseas

9 FAM 402.6-6(F)(1) (U) General Procedures for U Visas

(CT:VISA-324; 04-07-2017)

- a. (U) Although U visas provide a path toward obtaining lawful permanent residence, they are still processed as petition-based nonimmigrant visas. Applicants must apply using the DS-160, selecting the "U" visa classification, and must be able to schedule interview appointments using the same website or call center as other petition-based nonimmigrant visas (to ensure uniform worldwide guidance). Posts may not perform any U visa processing using IVO software, as this creates inaccurate workload statistics and hinders case tracking in Consular Consolidated Database (CCD).
- b. (U) When adjudicating U Visa applications overseas, you must confirm that all of the following criteria are met:
 - (1) (U) *Posts must verify that the I-918 petition is approved and still valid, even if the applicant presents an original I-797 approval notice. Posts must use the electronic Petition Information Management Service (PIMS) record created by the Kentucky Consular Center (KCC) to verify petition approval. Posts are able to access the details of approved NIV petitions using the PIMS Petition Report in the Consular Consolidated Database (CCD), under the Nonimmigrant Visa tab. Posts should not require applicants to present the original I-797. If no record of the petition is found in PIMS, you may use the Person Centric Query Service (PCQS), via the CCD, to verify that the petition has been approved. If post finds a petition approval in PCQS that is not in PIMS, then post should send an email to PIMS@state.gov as follows: "Petition with Receipt Number <Insert Number> was found in PCQS but not in PIMS." KCC Fraud Prevention Unit (FPU) will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within two working days. Having a record in PIMS is the best practice. However, if there is sufficient justification for the applicant to travel before PIMS is updated, a visa can be issued based on a verification via PCQS. You may not authorize a petition-based NIV without verification of petition approval either through PIMS or through PCQS.*
 - (2) (U) Relationship exists. Unless the applicant is the U-1 principal, he/she must provide satisfactory evidence of his/her relationship to the U-1 principal. You must employ the same evidentiary standards in place for family-based immigration cases.
 - (3) (U) *Unless the applicant is the U-1 principal confirm* through PCQS that the U-1 principal is still in U-1 status *or has* adjusted to LPR status *and has not* had U status terminated *or expired*.
 - (4) (U) All inadmissibilities have been waived. See [9 FAM 402.6-6\(F\)\(3\)](#) below.

- c. **(U)** Remember that INA 101(a)(15)(U) does not require that an individual have a foreign residence which he or she has no intention of abandoning to qualify for a U visa. You therefore cannot refuse a U visa applicant under INA 214(b) for failure to demonstrate ties to a foreign residence.
- d. **(U)** USCIS approval of a U nonimmigrant status petition is prima facie evidence that the applicant meets the requirements for U classification. The applicant still must establish eligibility for the visa during the consular interview. *You must not re-adjudicate U nonimmigrant status granted by USCIS or request information of principal or derivative applicants regarding the victimhood of the U-1 beneficiary.* If information becomes available during the visa adjudication process (i.e., *material* evidence which was not available to USCIS) that indicates the applicant (principal or derivative) may not be entitled to U classification, you must refuse the applicant under INA 221(g) and submit a recommendation for revocation to the USCIS VAWA Unit, via KCC. The report must include specific evidence of misrepresentation in the petition process, lack of qualification, or other previously unknown facts that might alter USCIS' decision. If USCIS reaffirms the petition, you must proceed with the case. If USCIS agrees with your recommendation, they will send a Notice of Intent to Revoke to the petitioner (or U-1 principal), who will have 30 days to respond. If the revocation stands, *you must refuse under 221(g) for lack of proper petition and enter the appropriate refusal code for any other inadmissibility.* You do not need to send any documentation back to USCIS.
- e. **(U)** However, you must not re-adjudicate U nonimmigrant status granted by USCIS, or attempt to make a determination of whether the criminal activity involved amounts to qualifying criminal activity for the purposes of Form I-918 petition approval. If USCIS has approved the I-918 petition, you may not require applicants to provide the I-918 Supplement B and supporting evidence submitted to USCIS (these materials are also unavailable in PIMS). Previous immigration violations and criminal convictions on the part of the U-1 principal are only relevant if the principal is applying for the U-1 visa overseas, or if you have evidence that USCIS was unaware of when they approved the I-918 petition. You must not delay issuance of derivative U visas to qualifying family members by requiring proof that USCIS waived the principal's ineligibilities prior to petition approval when the U-1 principal's status was already granted in the United States and is not being applied for overseas.
- f. **(U)** You also must not interview the petitioner or beneficiary about the specific details of the criminal activity, the principal's victimhood, or the principal's helpfulness and cooperation with law enforcement, which formed the basis of the principal's qualification for U visa status. Likewise, a family member's unawareness and unfamiliarity with the criminal act of which the principal was a victim cannot form the basis of a recommendation to revoke. You must not disclose details about the principal's victimhood to family members because family members may not know about the crime and such awareness may jeopardize the victim's safety. For example, victims of rape in some cultures are shunned and blamed by husbands. Thus, the victim may have intentionally not disclosed the crime to her husband.

g. Unavailable

9 FAM 402.6-6(F)(2) (U) Evidence Forming Basis for U Visa Issuance

(CT:VISA-324; 04-07-2017)

- a. **(U)** Before issuing a visa, you must use the electronic Petition Information Management Service (PIMS) record created by the Kentucky Consular Center (KCC) to verify petition approval and validity. You are able to access the details of approved nonimmigrant visa (NIV) petitions through the Consular Consolidated Database (CCD), through the PIMS Petition Report.
- b. **(U)** You must not rely solely on a Form I-797, Notice of Action, presented by an applicant, for the purpose of U visa issuance. You must confirm the information contained in the Form I-797 through PIMS. If PIMS does not yet contain the record, send an e-mail to PIMS@state.gov. KCC's T & U Visa Unit will add petition details and upload a scanned copy of the approved petition into PIMS within two working days. You may not authorize a U visa (or any petition-based NIV) without verification of petition approval through PIMS.
- c. **(U)** A valid Form I-797 must include the date of the Notice, the name of the petitioner, the name of the beneficiary, the petition/receipt number, the expiration date of the petition, and the name, address, and telephone number of the approving DHS office. The paper Form I-797 is an unsigned computer-generated form.

9 FAM 402.6-6(F)(3) (U) Waiver of Inadmissibility

(CT:VISA-324; 04-07-2017)

- a. **(U)** If you discover any inadmissibilities, you must enter the appropriate refusal code(s), regardless of whether the inadmissibilities were subsequently waived. If unwaived inadmissibilities remain, you must inform the applicant whether a waiver is available, and also refuse the applicant under INA 221(g), pending the waiver. If a waiver is approved, you must overcome the INA 221(g), waive the appropriate refusals, and proceed with the case. If the waiver is still valid, you may not charge new application fees or require the applicant to re-apply. You may find the waiver validity dates on the last page of the I-192 in PIMS. If PIMS does not yet contain the record, send an email to PIMS@state.gov.
- b. **(U)** A petitioner must file Form I-192 directly with USCIS Vermont Service Center, to apply for a waiver of inadmissibility. All inadmissibilities must be explicitly waived by USCIS prior to issuing the visa. If an inadmissibility ground exists and has not been waived, the U petitioner will have to file a waiver with USCIS. Waivers of inadmissibility for U nonimmigrant visa applicants are not processed through the Admissibility Review Office (ARO). If the I-192 is approved, and the petitioner is otherwise eligible for a U visa, you must issue the visa for the duration stated on the last page of the I-192 in PIMS, or the I-797 approval notice. You must not submit CLOK Deletion requests for U visa applicants based on an approved

waiver of ineligibility (see [9 FAM 303.3-4\(D\)\(2\)](#) and [9 FAM 302.3-2\(D\)\(1\)](#)).

- c. **(U)** Under the Battered Immigrant Women Protection Act of 2000 (BIWPA), the Secretary of Homeland Security has the discretion to waive any ground of inadmissibility with respect to U nonimmigrant beneficiaries, except the ground applicable to participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings. (See INA section 212(d)(14).) However, the Secretary of Homeland Security first must determine that such a waiver would be in the public or national interest.
- d. **(U)** If a waiver is available, you must provide the applicant with procedural information. The authority to waive ineligibilities for U visa applicants rests solely with USCIS at the Vermont Service Center's VAWA Unit. Post cannot recommend or decline to recommend a waiver; however, the VAWA Unit may not be aware of all of the derogatory information related to a U visa applicant, and will consider any derogatory information post wishes to provide when processing waivers. You may provide this information to the USCIS Vermont Service Center by email: LawEnforcement_UTVAWA.VSC@uscis.dhs.gov USCIS considers all information *it has available* when making decisions on waivers, and takes into account serious criminal activity by U applicants that might create further victims if a waiver was granted.
- e. **(U)** If no waiver is available, you must enter the appropriate refusal code(s) and return the case with an explanatory memo to the USCIS VAWA Unit, via KCC.
- f. **(U) Exempt from Public Charge:** U visa applicants are exempt from INA Section 212(a)(4).
- g. **(U) Passport Waivers:** A U visa may be placed in a Form DS-232, Unrecognized Passport or Waiver Cases, only in very rare circumstances. (See [9 FAM 403.9-3\(D\)](#).) Passport waivers are most often sought for children whose biological parents are unavailable or unwilling to apply for a minor's passport. You should collect guidance from local passport issuing authorities and family courts about procedures required of guardians or custodians to obtain passports for such children, and provide this information to applicants who claim they cannot obtain passports.

9 FAM 402.6-6(G) (U) Validity, Fees, and Reciprocity

(CT:VISA-324; 04-07-2017)

- a. **(U)** U visa applicants are required to pay the MRV fee, as prescribed in the current Schedule of Fees, and any applicable reciprocity fees. You do not have authority to waive any fee established in the Schedule of Fees except to the extent that the Schedule itself authorizes the waiver. All exemptions are noted in the Schedule. There are no exceptions to the noted exemptions. Requests for MRV fee waivers, including requests from members of Congress or other government agencies, must be politely declined if the waiver is not clearly authorized by the Schedule of Fees.
- b. **(U)** U visas must be issued for multiple entries, with an expiration date

corresponding to the Reciprocity Table or the petition validity, as listed in PIMS, or the Form I-797, Notice of Action; whichever is less.

9 FAM 402.6-6(H) (U) Travel Outside the United States

(CT:VISA-324; 04-07-2017)

- a. (U) Aliens who were accorded U nonimmigrant status in the United States by USCIS are not required to obtain advance parole before traveling outside of the United States. However, in order to return to the United States in U nonimmigrant status, such aliens must obtain a U nonimmigrant visa for readmission to the United States.
- b. (U) They also should keep in mind that if they accrued more than 180 days of unlawful presence prior to obtaining U nonimmigrant status, they may trigger the unlawful presence bar upon departing from the United States and be found inadmissible upon their return to the United States. (There are exceptions to the unlawful presence bar. See INA 212(a)(9)(B).) If an alien accorded U nonimmigrant status is inadmissible under INA 212(a)(9)(B) or INA 212(a)(9)(C), he or she may apply to have the inadmissibility waived by filing Form I-192 with the USCIS Vermont Service Center. See [9 FAM 402.6-6\(F\)\(3\)](#) above. USCIS will only accept and adjudicate a Form I-192 based on inadmissibility due to unlawful presence if the alien has left the United States and is now seeking to return. USCIS will not accept and adjudicate Form I-192 from an alien who has not yet departed from the United States and therefore has not triggered INA 212(a)(9)(B) inadmissibility.
- c. (U) If a U derivative applies for a visa for readmission to the United States, and PCQS shows the U-1 principal is no longer in U-1 status *because their status has expired or was terminated*, no U derivative visa can be *issued* as there is no longer a U-1 principal.
- d. (U) *If the U derivative applies for a visa for return to the United States in U status and the U-1 principal has adjusted status and become a Legal Permanent Resident (LPR) as verified in PCQS, you may issue a renewal U visa. However, no derivative U visa may be issued for a qualifying family member who has never been accorded derivative U nonimmigrant status in the United States.*

9 FAM 402.6-6(I) (U) Maximum Stay in U Nonimmigrant Status

(CT:VISA-324; 04-07-2017)

- a. (U) INA 214(p)(6) limits the authorized period of U nonimmigrant status to not more than four years, but provides for extensions in the following instances:
 - (1) (U) A Federal, State, or local law enforcement official, prosecutor, judge or other authority investigating or prosecuting the qualifying criminal activity certifies that the alien's presence in the United States is required to assist in the investigation or prosecution of such criminal activity.

- (2) **(U)** The Secretary of Homeland Security determines that an extension of stay is warranted because of exceptional circumstances.
 - (3) **(U)** The alien is eligible for adjustment of status under INA 245(m) and is unable to obtain such relief because regulations have not been issued to implement the adjustment of status provisions at INA 245(m).
 - (4) **(U)** During the pendency of an application for adjustment of status under INA 245(m).
- b. **(U)** USCIS will grant a derivative family member in U nonimmigrant visa status for an initial period that does not exceed the expiration date of the U-1 principal alien's initial period of admission. Because the derivative U nonimmigrant must have three years of continuous physical presence in the United States and be in U nonimmigrant status at the time of filing for adjustment of status under INA 245(m), the derivative U nonimmigrant may need to request an extension of derivative status to accrue sufficient continuous physical presence in derivative U nonimmigrant status before applying for adjustment of status. USCIS may approve an extension of status for the derivative U nonimmigrant beyond the date of expiration of the U-1 nonimmigrant's status if processing of the derivative alien's visa application was delayed and, without an extension, the family member would be unable to meet the three year requirement under 245(m).

9 FAM 402.6-6(J) (U) Nonimmigrant Status to Permanent Resident Status

(CT:VISA-324; 04-07-2017)

(U) Section 1513(f) of the BIWPA, INA 245(m) provides DHS with discretion to adjust the temporary U nonimmigrant status to permanent resident status if:

- (1) **(U)** The alien is not inadmissible under INA 212(a)(3)(E);
- (2) **(U)** The alien has not unreasonably refused to provide assistance to a law enforcement agency investigating or prosecuting the qualifying criminal activity;
- (3) **(U)** The alien has been physically present in the United States for a continuous period of at least three years since the date of admission as a U nonimmigrant; and
- (4) **(U)** DHS determines that the "alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest."

9 FAM 402.6-6(K) (U) Form I-929, or "SU" Immigrant Visas

(CT:VISA-324; 04-07-2017)

- a. **(U)** You may not approve any U nonimmigrant visa *for a qualifying family member*

- after the U-1 principal adjusts to LPR status, unless the qualifying family member has previously held derivative U nonimmigrant status in the United States. (See 9 FAM 402.6-6(H).)* Instead, you must refuse the case under INA 214(b) (however, do not give the applicant a standard 214(b) refusal letter). You must add appropriate case notes, but you do not need to send any documentation back to USCIS.
- b. **(U)** If a U-1 principal wishes to file for follow-to-join derivatives *who have never held U nonimmigrant status in the United States* after adjusting to LPR status, he/she must file a Form I-929 petition. USCIS adjudicates the I-929 petitions and forwards them to the National Visa Center (NVC) for processing. After the SU beneficiaries become documentarily qualified, pay all appropriate IV fees, and schedule a visa interview, NVC will forward their petitions to posts' IV units for processing. The SU category is not numerically limited, so there is no wait time associated with it. If approved, these relatives will follow to join their LPR relative immediately.
 - c. **(U)** SU applicant interviews should be scheduled like other IV cases. Posts may not perform any SU visa processing using NIV software, as this creates inaccurate workload statistics and hinders case tracking in CCD.
 - d. **(U)** Unlike U-3 cases, there is no age-out protection for SU-3 (child) follow-to-joins. SU-3 beneficiaries must have his/her visa issued – and must enter the U.S. – prior to his/her 21st birthday. You must process SU-3 cases as quickly as possible when they are close to aging out.
 - e. **(U)** If an SU-3 ages out, you must refuse the case under INA 212(a)(5)(A) and add appropriate case notes. You do not need to send any documentation back to USCIS.
 - f. **(U)** All other IV requirements (medical, police certificate, etc.) must be met, except for the Form I-864, Affidavit of Support. INA 212(a)(4)(C) and (D) do not apply to these cases. Therefore, you must not require Form I-864 or Form I-864W.

9 FAM 402.6-6(L) (U) Revocation of U Nonimmigrant Status

(CT:VISA-324; 04-07-2017)

(U) USCIS has the authority to revoke its approval of Form I-918, "Petition for U Nonimmigrant Status," and Form I-918, Supplement A, "Petition for Immediate Family Member of U-1 Recipient," and any waivers of inadmissibility that were granted in conjunction with the petition. (See 8 CFR 214.14(h).)

9 FAM 402.7

FIANCÉ(E) AND OTHER NIV FAMILY MEMBERS PROCESSED AS IF IMMIGRANTS – K *AND* N VISAS

(CT:VISA-3; 11-18-2015)
(Office of Origin: CA/VO/L/R)

9 FAM 402.7-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 402.7-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15)(K) (8 U.S.C. 1101(a)(15)(K)); INA 101(a)(15)(N) (8 U.S.C. 1101(a)(15)(N)); INA 101(a)(27)(I) (8 U.S.C. 1101(a)(27)(I)); INA 101(a)(27)(L) (8 U.S.C. 1101(a)(27)(L)); INA 101(b)(1) (8 U.S.C. 1101(b)(1)); INA 203(a) (8 U.S.C. 1153(a)); INA 203(d) (8 U.S.C. 1153(d)); INA 204(a)(1) (8 U.S.C. 1154(a)(1)); INA 212(a) (8 U.S.C. 1182(a)); INA 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)); INA 214(b) (8 U.S.C. 1184(b)).

9 FAM 402.7-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 214.2(k); 8 CFR 214.2(n)(4); 22 CFR 41.81; 22 CFR 41.82; 22 CFR 41.86.

9 FAM 402.7-2 OVERVIEW OF K AND N VISAS

(CT:VISA-1; 11-18-2015)

K and N visas are nonimmigrant visa classifications but are processed similarly to immigrant visas. Information on these classifications is therefore found in the appropriate sections of [9 FAM 502](#).

9 FAM 402.7-3 FIANCÉ(E)/SPOUSE OF AMERICAN CITIZEN - K VISAS

(CT:VISA-1; 11-18-2015)

See [9 FAM 502.7-5](#).

9 FAM 402.7-4 PARENT OR CHILD OF SK OR SN SPECIAL IMMIGRANT - N VISAS

(CT:VISA-1; 11-18-2015)

See [9 FAM 502.7-7](#).

9 FAM 402.8

(U) CREW – D VISAS

(CT:VISA-309; 03-21-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 402.8-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 402.8-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(10) (8 U.S.C. 1101(a)(10)); INA 101(a)(15)(C) (8 U.S.C. 1101(a)(15)(C)); INA 101(a)(15)(D) (8 U.S.C. 1101(a)(15)(D)); INA 101(a)(38) (8 U.S.C. 1101(a)(38)).

9 FAM 402.8-1(B) (U) Code of Federal Regulations

(CT:VISA-309; 03-21-2017)

22 CFR 41.41.

9 FAM 402.8-2 (U) CLASSIFICATION CODES

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.12 identifies the following visa classification symbols for crewmembers in accordance with INA 101(a)(15)(D):

D	Crewmember (Sea or Air)
C1/D	Combined Transit and Crewmember Visa

9 FAM 402.8-3 (U) CLASSIFICATION AS CREWMAN UNDER INA 101(A)(15)(D)

(CT:VISA-309; 03-21-2017)

- a. **(U)** A crewman is an alien who is serving in a capacity that is required for normal operation and service on board a vessel. In determining whether the services of an alien are required for normal operation and service on board a vessel, the consular officer must take into account the alien's responsibilities and activities on the ship or aircraft.

(1) **(U)** For example, a beautician or a lifeguard employed on board a luxury liner,

an electrician employed on board a cable ship, or a chemist employed on board a whaling boat *would all be* classifiable *for a D visa*. Nonetheless, contractors working on a vessel en route to the United States who are performing work that is not required for the normal operation of a vessel *should be issued* a B-1 visa, *assuming the applicant is otherwise eligible*.

- (2) **(U)** Starting in 2005, many countries began issuing plastic credit-card sized Seafarer Identity Documents (SIDs) in lieu of seaman's books. While an SID or a seaman's book is not required for a visa application, it can be used on a case-by-case basis to establish that an applicant is a legitimate crewman.
- b. **(U)** To qualify for D status, crewmen must intend to depart from the United States with the vessel on which they arrived or some other vessel or conveyance within 29 days at any one time. In order to affect a departure in terms of the INA, a vessel must sail from the United States destined to a foreign port or place; travel to international waters is insufficient for the purpose of departure. An alien on board a vessel which sails to sea and returns without effecting a departure (i.e., without entering or clearing at a foreign port), and whose itinerary is thus coastwise in nature, remains in the United States subject to the 29-day limitation.
- (1) **(U)** Aliens entering the United States solely to work on board vessels that do not travel to a foreign port or place are unable to qualify under INA 101(a)(15)(D), because they cannot meet the departure requirement.
 - (2) **(U)** Per [9 FAM 402.2-5\(C\)\(5\)](#), crewmen of a private yacht who are able to establish that they have a residence abroad which they do not intend to abandon may be able to qualify for a B-1 visa provided that the yacht is to sail out of a foreign home port and will be cruising in U.S. waters for more than 29 days.
 - (3) **(U)** There is also an exception regarding fishing vessels based in the United States landing temporarily in Guam, (see [9 FAM 402.8-4](#) paragraph *f* below).
 - (4) **(U)** The fact that a crewman expects to spend a layover period in the United States does not preclude a D visa classification if the crewman does not plan to remain for more than 29 days at any one time.
- c. **(U)** Generally, the INA makes no distinction between U.S. and foreign flag vessels. Therefore, foreign crewmen may be accorded D visas notwithstanding the nationality of the vessel on which they are employed, provided all other requirements for D classification are met. Note, however, that INA 101(a)(15)(D) precludes the issuance of crew visas to aliens who seek to join fishing vessels having a home port or operating base in the United States, regardless of the nationality of the fishing vessel. (See [9 FAM 402.8-4](#) below.)
- d. **(U)** A crewman may be issued a D visa although not so employed at the time of application. The consular officer must inform the crewman that the visa may be used for entry only if the crewman is employed on the vessel or aircraft on which the crewman arrives.
- e. **(U)** Aliens entering the United States as crewman trainees can be classifiable as

nonimmigrant crewmen under INA 101(a)(15)(D).

- f. (U)** Since INA 101(a)(15)(D) applies to crewmen in service on board a vessel, it does not apply to workers coming to work on shore to effect repairs to the vessel while it is in dry-dock. Workers coming to do repair work under warranty may do so on a B-1 visa; otherwise, they should seek classification as temporary workers under INA 101(a)(15)(H).
- g. (U)** Contract workers who work on board a vessel, but do not meet the definition of "crewman" because the work they perform while on board the vessel is not required for the normal operation of the vessel, are considered passengers and may not qualify as a crewman eligible for a D visa. Such contract workers may be issued a B-1 visa.

(U) CBP will not admit these contract workers on board a vessel in possession of a C1/D visa but will expect them to be in possession of a B-1 visa for admission. These non-crewmembers are not part of the vessel's normal operations and are contracted by the shipping company to perform a function/service on the vessel en route to the United States.

- h. (U)** If an alien seeks admission to the United States under INA 101(a)(15)(D) for the purpose of performing service on board a vessel or aircraft at a time when there is a strike in the bargaining unit of the employer in which the alien intends to perform such service, the consular officer must seek the Office of Legislation, Regulations, and Advisory Opinions (CA/VO/L/A) advisory opinion before issuing a D visa.

(U) Such advisory opinion is not required if the alien was employed for at least one year before the date of the strike and seeks to continue to perform service as a crewman to the same extent and on the same routes as before the strike.

- i. (U)** Crewmen who fail to qualify for D status, including alien crew members seeking to enter the United States in the performance of duties on fishing vessels that have a U.S. home port of operating base (see [9 FAM 402.8-4](#) paragraph a below), will generally have to seek an approved petition from DHS in order to apply for a work or immigrant visa to the United States.

9 FAM 402.8-4 (U) CLASSIFICATION OF FISHING VESSEL CREW

(CT:VISA-1; 11-18-2015)

- a. (U)** If the home port or operating base of a fishing vessel is in a foreign country, alien members of the crew are classifiable under INA 101(a)(15)(D). A crewman on a fishing vessel having a home port or operating base in the United States is not entitled to a D visa and would normally require an immigrant visa.
- b. (U)** Since INA 101(a)(15)(D) does not differentiate between U.S. and foreign flag vessels, the prohibition against issuing D visas to crewmen of fishing vessels which have home ports or operating bases in the United States applies equally to fishing

vessels of all nationalities.

- c. **(U)** The term “operating base” is intended to cover places where the vessel takes on supplies regularly, where the cargo of the vessel is sold, or where the owner or master of the vessel engages in business transactions. It is not intended to cover those cases where fishing vessels occasionally come into ports in the United States for supplies.

(U) Generally speaking, a fishing vessel which transacts business on a regular (though not necessarily frequent) basis will be considered as having an operating base in the United States. A single fishing vessel will often have more than one operating base.

- d. **(U)** INA 101(a)(38) defines “United States” as the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands. Consequently, American Samoa is not considered part of the United States in determining whether a fishing vessel has a U.S. home port or operating base.

(U) However, crewmen on a fishing vessel with a home port in American Samoa will be precluded from D classification if the vessel has an operating base in a place which falls within the INA’s definition of United States.

- e. **(U)** INA 101(a)(15)(D)(ii) provides that an alien serving on board a fishing vessel having a home port or operating base in the United States may land temporarily in Guam or the Commonwealth of the Northern Mariana Islands on a D visa if the alien does so solely in pursuit of his or her calling as a crewman and departs from Guam or the Commonwealth of the Northern Mariana Islands on the vessel on which he or she arrived.

(U) Such an alien must be considered to have departed from Guam or the Commonwealth of the Northern Mariana Islands after leaving the territorial waters of Guam or the Commonwealth of the Northern Mariana Islands, without regard to whether the alien arrives in a foreign state before returning to Guam or the Commonwealth of the Northern Mariana Islands.

9 FAM 402.8-5 (U) COASTING OFFICERS

(CT:VISA-309; 03-21-2017)

- a. **(U)** An alien seeking to enter the United States as a coasting officer must be documented with a B-1 visa. Coasting officers are employed when an officer of a foreign vessel is granted home leave while the vessel is in U.S. ports. A replacement or coasting officer will substitute for an officer on leave during the period the vessel is in and out of various U.S. ports, provided the vessel does not remain in U.S. waters for more than 29 days and the original officer returns in time to depart with the vessel.
- b. **(U)** The coasting officer may then repeat the process with another vessel of the same foreign line.

- c. **(U)** Since a coasting officer is admitted for more than 30 days, a C-1 or D visa would not be appropriate and an H visa does not provide a reasonable alternative.

9 FAM 402.8-6 (U) C-1 VISA FOR CREWMAN TRAVELING TO JOIN A VESSEL OR AIRCRAFT IN UNITED STATES

(CT:VISA-309; 03-21-2017)

- a. **(U)** A crewman traveling to the United States as a passenger to join a vessel or aircraft is classifiable *as* C-1. You should normally require the applicant to present a verifying letter from the employer or the employer's agent. You should normally issue C-1 visas for the full validity possible under the appropriate reciprocity schedule.
- b. **(U)** The consular officer may issue a crewman a D visa concurrently with a C-1 visa for use in future applications for admission to the United States. (See [9 FAM 402.8-8](#) below.)
- (1) **(U)** Where the reciprocity schedule lists the same number of applications and period of validity for both C-1 and D visas, the consular officer may issue a single combination C-1/D visa in lieu of separate concurrent C-1 and D visas.
 - (2) **(U)** When the reciprocity schedules for C-1 and D visas differ with regard to the number of applications or period of validity permitted in each category, the consular officer must issue separate C-1 and D visas.

9 FAM 402.8-7 (U) NO DERIVATIVE VISA FOR DEPENDENT(S) OF CREWMAN

(CT:VISA-1; 11-18-2015)

(U) A spouse, child, or other alien who wishes to accompany a crewman entering the United States as a nonimmigrant under INA 101(a)(15)(D) must independently be able to qualify for another visa classification, such as B1/B2. Statutorily, there is no "dependent" visa classification for D visa aliens.

9 FAM 402.8-8 (U) D VISA VALIDITY AND RECIPROCITY

(CT:VISA-1; 11-18-2015)

- a. **(U)** You should normally issue a D visa for the full period of validity and the number of applications for admission indicated by the applicable reciprocity schedule. As per INA 214(b), any D visa applicant must be presumed to be an immigrant until he establishes to your satisfaction, at the time of application for a visa that he is entitled to a nonimmigrant status under INA 101(a)(15)(D).

b. (U) Posts Encouraged to Issue Full Validity, Combined C-1/D Visas:

- (1) **(U)** Posts are encouraged to issue a combined C-1/D visa whenever reciprocity allows, even if the C-1 visa is only for use in future applications for admission to the United States. Crewmen often travel by means other than their assigned vessel to their next assignment or home for vacation.

(U) When the reciprocity schedules for C-1 and D visas differ with regard to the number of applications or period of validity permitted in each category, you must issue separate C-1 and D visas and are encouraged to issue both for full validity. Two fees are required when printing separate C-1 and D visas.

- (2) **(U)** A full validity C-1/D visa should be issued whenever possible, including for first-time seafarers.

9 FAM 402.8-9 UNAVAILABLE

(CT:VISA-309; 03-21-2017)

a. Unavailable

b. Unavailable

9 FAM 402.9

TREATY TRADERS, INVESTORS, AND SPECIALTY OCCUPATIONS - E VISAS

(CT:VISA-390; 06-20-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 402.9-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 402.9-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15)(E) (8 U.S.C. 1101(a)(15)(E)); INA 101(a)(45) (8 U.S.C. 1101(a)(45));
INA 214(e)(6) (8 U.S.C. 1184(e)(6)); INA 214(g)(11) (8 U.S.C. 1184(g)(11)); INA
214(i)(1) (8 U.S.C. 1184(i)(1)); INA 214(j)(2) (8 U.S.C. 1184(j)).

9 FAM 402.9-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 41.51.

9 FAM 402.9-1(C) Public Law

(CT:VISA-1; 11-18-2015)

Public Law 107-124.

9 FAM 402.9-2 E VISAS - OVERVIEW

(CT:VISA-1; 11-18-2015)

- a. Treaty Trader (E-1) and Treaty Investor (E-2) visas are for citizens of countries with which the United States maintains treaties of commerce and navigation. The applicant must be coming to the United States to engage in substantial trade, including trade in services or technology, in qualifying activities, principally between the United States and the treaty country (E-1), or to develop and direct the operations of an enterprise in which the applicant has invested a substantial amount of capital (E-2).
- b. As the E visa is becoming ever more popular, you must remember that the basis of this classification lies in treaties which were entered into, at least in part, to enhance or facilitate economic and commercial interaction between the United

States and the treaty country. It is with this spirit in mind that cases under INA 101(a)(15)(E) should be adjudicated.

- c. Although this classification mandates compliance with a lengthy list of requirements, many of these standards are subject to the exercise of a great amount of judgment and discretion. Consular officers should seek to be flexible, fair, and uniform in adjudicating E visa applications.
- d. As in the case of any visa application, the burden of proof to establish status rests with the alien. If the alien's qualification for E-1 or E-2 classification is uncertain, you may request whatever documentation is needed to overcome that uncertainty.

9 FAM 402.9-3 CLASSIFICATION CODES

(CT:VISA-1; 11-18-2015)

22 CFR 41.12 identifies the following visa classification symbols for treaty trader, treaty investors or specialty occupation aliens accordance with INA 101(a)(15)(E):

E1	Treaty Trader, Spouse or Child
E2	Treaty Investor, Spouse or Child
E3	Australian Treaty Alien coming to the United States Solely to Perform Services in a Specialty Occupation
E3D	Spouse or Child of E3
E3R	Returning E3

9 FAM 402.9-4 GENERAL REQUIREMENTS FOR E-1 AND E-2 VISAS

9 FAM 402.9-4(A) Qualifying Treaty or Equivalent

(CT:VISA-105; 04-06-2016)

The Immigration and Nationality Act section 101(a)(15)(E) requires the existence of a qualifying treaty of commerce and navigation between the United States and a foreign State in order for E visa classification to be accorded to nationals of that foreign State. Such qualifying treaties may include treaties of Friendship, Commerce and Navigation and Bilateral Investment Treaties. Countries whose nationals may be accorded nonimmigrant classification under INA 101(a)(15)(E) pursuant to a qualifying treaty, or pursuant to legislation enacted to extend that same privilege, are listed in [9 FAM 402.9-10](#).

9 FAM 402.9-4(B) Nationality

(CT:VISA-374; 06-06-2017)

- a. The treaty trader or investor must, whether an individual or business, possess the nationality of the treaty country. The nationality of the individual is determined by

the authorities of the country of which the alien claims nationality. The nationality of a business is determined by the nationality of the individual owners of that business.

- b. **Place of Incorporation:** The country of incorporation is irrelevant to the nationality requirement for E visa purposes. In cases where a corporation is sold exclusively on a stock exchange in the country of incorporation, however, one can presume that the nationality of the corporation is that of the location of the exchange. The applicant should still provide the best evidence available to support such a presumption. In the case of a multinational corporation whose stock is exchanged in more than one country, then the applicant must satisfy you, by the best evidence available, that the business meets the nationality requirement. In view of the complex corporate structures in these cases, you should avail yourself of Departmental assistance by submitting an advisory opinion request to CA/VO/L/A when necessary.)
- c. **Fifty Percent Rule:** Pursuant to 22 CFR 41.51(b)(2)(ii), nationals of the treaty country must own at least 50 percent of the business in question when the investor is an organization and the applicant is an employee. In corporate structures one looks to the nationality of the owners of the stock. If a business in turn owns another business, then nationality of ownership must be traced to the point of reaching the 50 percent rule with respect to the parent organization. In most cases, this should pose no real problem but, in modern business structures and layered relationships, you will have to rely heavily on the evidence presented to adjudicate whether the business entity in question possesses the requisite nationality. Pursuant to 22 CFR 41.51(b)(11), if the applicant is the investor who is coming solely to develop and direct the enterprise, then the applicant must show that he or she controls or will control the enterprise. Normally such control is shown through at least 50 percent ownership by the applicant, but it can also be shown by possession of operational control (through a managerial position or other corporate device) or by other means. Note, however, that merely occupying a managerial position is not sufficient to meet this requirement if the applicant does not and will not control the enterprise.
- c. **Dual Nationality of Trader or Investor:** Except in the case in which an enterprise is owned and controlled equally (50/50) by nationals of two treaty countries, a business for which E visa status is sought may have only one qualifying nationality. In the case of dual national owner(s), a choice must be made by the owner(s) as to which nationality shall be used. The owner and all E visa employees of the company must possess the nationality of the single E visa qualifying country, and hold themselves as nationals of that country for all E visa purposes involving that company, regardless of whether they also possess the nationality of another E visa country. When a company is equally owned and controlled by nationals of two different treaty countries, employees of either nationality may obtain E visas to work for that company.
- d. **U.S. Lawful Permanent Resident (LPR) Status of Trader or Investor:** A trader or investor with the nationality of a treaty country but who holds U.S. LPR

status does not qualify to bring in employees under INA 101(a)(15)(E). Moreover, shares of a corporation or other business organization owned by permanent resident aliens cannot be considered in determining majority ownership by nationals of the treaty country to qualify the company for bringing in alien employees under INA 101(a)(15)(E).

9 FAM 402.9-4(C) Intent to Depart Upon Termination of Status

(CT:VISA-1; 11-18-2015)

An applicant for an E visa need not establish intent to proceed to the United States for a specific temporary period of time, nor does an applicant for an E visa need to have a residence in a foreign country which the applicant does not intend to abandon. The alien may sell his or her residence and move all household effects to the U.S. The alien's expression of an unequivocal intent to return when the E status ends is normally sufficient, in the absence of specific indications of evidence that the alien's intent is to the contrary. If there are such objective indications, inquiry is justified to assess the applicant's true intent. As discussed in [9 FAM 402.12-14](#), an applicant might be a beneficiary of an immigrant visa petition filed on his or her behalf. However, the alien might satisfy you that his and/or her intent is to depart the United States upon termination of status, and not stay in the United States to adjust status or otherwise remain in the United States regardless of legality of status.

9 FAM 402.9-5 REQUIREMENTS FOR E-1 TREATY TRADER VISAS

9 FAM 402.9-5(A) Evaluating E-1 *Treaty Trader* Applications

(CT:VISA-390; 06-20-2017)

In evaluating E-1 applications, you must determine whether the:

- (1) Requisite treaty exists (see [9 FAM 402.9-4\(A\)](#) and 402.9-10);
- (2) Individual and/or business possesses the nationality of the treaty country (see [9 FAM 402.9-4\(B\)](#));
- (3) Activities constitute trade within the meaning of INA 101(a)(15)(E) (see [9 FAM 402.9-5\(B\)](#));
- (4) Trade is substantial (see [9 FAM 402.9-5\(C\)](#));
- (5) Trade is principally between the United States and the treaty country (see [9 FAM 402.9-5\(D\)](#));
- (6) Applicant, if an employee, is destined to an executive/supervisory position or possesses skills essential to the firm's operations in the United States (see [9](#)

[FAM 402.9-7\(B\)](#) and (C)); and

- (7) Applicant intends to depart the United States when the E-1 status terminates (see [9 FAM 402.9-4\(C\)](#)).

Please note that for all E-1 trader and E-1 employee applicants Form DS-156-E must also be submitted together with Form DS-160. The DS-156-E must be scanned into the applicant's record. Derivatives of E-1 traders or employees do not need to submit a DS-156-E.

9 FAM 402.9-5(B) Trade for E-1 Purposes

(CT:VISA-1; 11-18-2015)

- a. **Elements of Trade:** Trade for E-1 purposes consists of three ingredients, each of which must be present in all E-1 cases. The three requirements are:
- (1) Trade must constitute an exchange;
 - (2) Trade must be international in scope; and
 - (3) Trade must involve qualifying activities.
- b. **Trade Entails Exchange:** There must be an actual exchange, in a meaningful sense, of qualifying commodities such as goods, moneys, or services to create transactions considered trade within the meaning of INA 101(a)(15)(E)(i). An exchange of a good or service for consideration must flow between the two treaty countries and must be traceable or identifiable. However, the fact that proceeds from services performed in the United States may be placed in a bank account in a treaty country does not necessarily indicate that meaningful exchange has occurred if the proceeds do not support any business activity in the treaty country. Title to the trade item must pass from one treaty party to the other.
- c. **Trade Must be International:** The purpose of these treaties is to develop international commercial trade between the two countries. Development of the domestic market without international exchange does not constitute trade in the E-1 visa context. Thus, engaging in purely domestic trade is not contemplated under this classification. The traceable exchange in goods or services must be between the United States and the other treaty country.
- d. **Trade Must be in Existence:** An alien cannot qualify for E-1 classification for the purpose of searching for a trading relationship. Trade between the treaty country and the United States must already be in progress on behalf of the individual or firm to entitle an alien to treaty trader classification. Existing trade includes successfully integrated contracts binding upon the parties that call for the immediate exchange of qualifying items of trade.
- e. In the rapidly changing business climate with an increasing trend toward service industries, many more services, whether listed below or not, might benefit from E-1 visa classification.
- f. To constitute trade in a service for E-1 purposes, the provision of that service by an enterprise must be the purpose of that business and, most importantly, must itself

be the saleable commodity which the enterprise sells to clients. The term "trade" as used in this statute has been interpreted to include international banking, insurance, transportation, tourism, communications, and newsgathering activities. (Aliens engaged in newsgathering activities, however, should usually be classified under INA 101(a)(15)(I).) These activities do not constitute an all-inclusive list but are merely examples of the types of services found to fall within the E-1 meaning of trade. Essentially, any service item commonly traded in international commerce would qualify.

9 FAM 402.9-5(C) Substantial Trade

(CT:VISA-1; 11-18-2015)

- a. The word "substantial" is intended to describe the flow of the goods or services that are being exchanged between the treaty countries. The trade must be a continuous flow that should involve numerous transactions over time. You should focus primarily on the volume of trade conducted but you may also consider the monetary value of the transactions as well. Although the number of transactions and the value of each transaction will vary, greater weight should be accorded to cases involving more numerous transactions of larger value.
- b. The smaller businessman should not be excluded if demonstrating a pattern of transactions of value. Thus, proof of numerous transactions, although each may be relatively small in value, might establish the requisite continuing course of international trade. Income derived from the international trade that is sufficient to support the treaty trader and family should be considered favorably when assessing the substantiality of trade in a particular case.

9 FAM 402.9-5(D) Trade Must Be Principally Between United States and Country of Alien's Nationality

(CT:VISA-185; 09-26-2016)

- a. The general rule requires that over 50 percent of the total volume of the international trade conducted by the treaty trader regardless of location must be between the United States and the treaty country of the alien's nationality. The remainder of the trade in which the alien is engaged may be international trade with other countries or domestic trade. The application of this rule requires a clear understanding of the distinctions in business entities described below.
- b. To measure the requisite trade one should look to the trade conducted by the legal "person" who is the treaty trader. Such a trader might be an individual, a partnership, a joint venture, a corporation (whether a parent or subsidiary corporation), etc. It is important to note that a branch is not considered to be a separate legal person or trader but part and parcel of another entity. In contrast, a subsidiary is a separate legal person/entity. Thus, to measure trade in the case of a branch, you must look to the trade conducted by the entity of which it is a part, usually a foreign-based business (individual, corporation, etc.).

- c. If the trader, whether foreign-based or U.S.-based, meets this 50 percentile requirement, the duties of an employee need not be similarly apportioned to qualify for an E-1 visa. For an example, if a U.S. subsidiary of a foreign firm is engaged principally in trade between the United States and the treaty country, it is not material that the E-1 employee is also engaged in third-country or intra-U.S. trade or that the parent firm's headquarters abroad is engaged primarily in trade with other countries. As noted above, this would not be true in the case of a branch of a foreign firm.

9 FAM 402.9-5(E) E-1 Classification for Taipei Economic and Cultural Representative Office (TECRO) Employees

(CT:VISA-1; 11-18-2015)

See [9 FAM 402.3-5\(I\)](#). Also, see the Visa Reciprocity and Country Documents Finder, Taiwan.

9 FAM 402.9-6 REQUIREMENTS FOR E-2 TREATY INVESTOR VISAS

9 FAM 402.9-6(A) Evaluating E-2 Treaty Investor Applications

(CT:VISA-390; 06-20-2017)

In evaluating E-2 applications, you must determine whether the:

- (1) Requisite treaty exists (see [9 FAM 402.9-4\(A\)](#) and 402.9-10);
- (2) Individual and/or business possess the nationality of the treaty country (see [9 FAM 402.9-4\(B\)](#));
- (3) Applicant has invested or is actively in the process of investing (see [9 FAM 402.9-6\(B\)](#));
- (4) Enterprise is a real and operating commercial enterprise (see [9 FAM 402.9-6\(D\)](#));
- (5) Applicant's investment is substantial (see [9 FAM 402.9-6\(E\)](#));
- (6) Investment is more than a marginal one solely for earning a living (see [9 FAM 402.9-6\(F\)](#));
- (7) Applicant is in a position to "develop and direct" the enterprise (see [9 FAM 402.9-6\(G\)](#));
- (8) Applicant, if an employee, is destined to an executive/supervisory position or possesses skills essential to the firm's operations in the United States (see [9 FAM 402.9-6\(B\)](#) and (C)); and
- (9) Applicant intends to depart the United States when the E-2 status terminates

(see [9 FAM 402.9-4\(C\)](#)).

Please note that all E-2 employees are required to submit a DS-156-E, together with the DS-160. The DS-156-E must be scanned into each applicant's record. E-2 investor applicants and E-2 derivatives do not need to submit a form DS-156-E.

9 FAM 402.9-6(B) E-2 Applicant Must Have Invested or Be in Process of Investing

(CT:VISA-1; 11-18-2015)

- a. **Concept of "Investment" and "In Process of Investing":** You must assess the nature of the investment transaction to determine whether a particular financial arrangement may be considered an "investment" within the meaning of INA 101(a)(15)(E)(ii). The core factors relevant to your analysis of whether the applicant actually has invested, or is in the process of investing in an enterprise are discussed below.
- b. **Possession and Control of Funds:** The alien must demonstrate possession and control of the capital assets, including funds invested. If the investor has received the funds by legitimate means, e.g., savings, gift, inheritance, contest, etc., and has control and possession over the funds, the proper employment of the funds may constitute an E-2 investment. (It should be noted, however, that inheritance of a business does not constitute an investment.) Furthermore, the statute does not require that the source of the funds be outside the United States.
- c. **Investment Connotes Risk:** The concept of investment connotes the placing of funds or other capital assets at risk, in the commercial sense, in the hope of generating a financial return. E-2 investor status must not, therefore, be extended to non-profit organizations. See [9 FAM 402.9-6\(D\)](#). If the funds are not subject to partial or total loss if business fortunes reverse, then it is not an "investment" in the sense intended by INA 101(a)(15)(E)(ii). If the funds' availability arises from indebtedness, these criteria must be followed:
 - (1) Indebtedness such as mortgage debt or commercial loans secured by the assets of the enterprise cannot count toward the investment, as there is no requisite element of risk. For example, if the business in which the alien is investing is used as collateral, funds from the resulting loan or mortgage are not at risk, even if some personal assets are also used as collateral.
 - (2) Only indebtedness collateralized by the alien's own personal assets, such as a second mortgage on a home or unsecured loans, such as a loan on the alien's personal signature may be included, since the alien risks the funds in the event of business failure.
- d. **Personal Assets Only:** In short, at risk funds in the E-2 context include only funds in which personal assets are involved, such as personal funds, other unencumbered assets, a mortgage with the alien's personal dwelling used as collateral, or some similar personal liability. A reasonable amount of cash, held in a business bank account or similar fund to be used for routine business operations,

may be counted as investment funds. (See paragraph e. below for contrast with uncommitted funds.)

e. Funds Must be Irrevocably Committed:

To be "in the process of investing" for E-2 purposes, the funds or assets to be invested must be committed to the investment, and the commitment must be real and irrevocable. As an example, a purchase or sale of a business that qualifies for E-2 status in every respect may be conditioned upon the issuance of the visa. Despite the condition, this would constitute a solid commitment if the assets to be used for the purchase are held in escrow for release or transfer only on the condition being met. The point of the example is that to be in the process of investing the investor must have reached an irrevocable point to qualify.

- f. Moreover, for the alien to be "in the process of investing", the alien must be close to the start of actual business operations, not simply in the stage of signing contracts (which may be broken) or scouting for suitable locations and property. Mere intent to invest, or possession of uncommitted funds in a bank account, or even prospective investment arrangements entailing no present commitment, will not suffice.
- g. **Payments for Leases or Rents as Investments:** Payments in the form of leases or rents for property or equipment may be calculated toward the investment in an amount limited to the funds devoted to that item in any one month. However, the market value of the leased equipment is not representative of the investment and neither is the annual rental cost (unless it has been paid in advance) as these rents are generally paid from the current earnings of the business.
- h. **Value of Goods or Equipment as Investment:** The amount spent for purchase of equipment and for inventory on hand may be calculated in the investment total. The value of goods or equipment transferred to the United States (such as factory machinery shipped to the United States to start or enlarge a plant) may be considered an investment. However, the alien must demonstrate that the goods or machinery will be or are currently being put to use in an ongoing commercial enterprise. The applicant must establish that the purchased goods or equipment are for investment and not personal purposes.
- i. **Intangible Property:** Rights to intangible or intellectual property may also be considered capital assets to the extent to which their value can reasonably be determined. Where no market value is available for a copyright or patent, the value of current publishing or manufacturing contracts generated by the asset may be used. If none exist, the opinions of experts in the particular field in question may be submitted for consideration and acceptance.

9 FAM 402.9-6(C) Commercial Enterprise Must Be Real and Active

(CT:VISA-374; 06-06-2017)

The enterprise must be a real and active commercial or entrepreneurial undertaking,

producing some service or commodity. If the investment relates to a new enterprise, then you must be convinced that it will be a real and active commercial or entrepreneurial undertaking that will produce some service or commodity if the visa is issued. It cannot be a paper organization or an idle speculative investment held for potential appreciation in value, such as undeveloped land or stocks held by an investor without the intent to direct the enterprise. The investment must be a commercial enterprise, thus it must be for profit, eliminating non-profit organizations from consideration.

9 FAM 402.9-6(D) Investment Must Be Substantial

(CT:VISA-374; 06-06-2017)

- a. **General:** The purpose of the requirement is to ensure to a reasonable extent that the business invested in is not speculative but is, or soon will be, a successful enterprise. The rules regarding the amount of funds committed to the commercial enterprise and the character of the funds, primarily personal or loans based on personal collateral, are intended to weed out risky undertakings and ensure that the investor is unquestionably committed to the success of the business. Consequently, you must view the proportionate amount of funds invested, as evidenced by the proportionality test, in light of the nature of the business and the projected success of the business.
- b. **Interpretations of "Substantial":** Investment of a substantial amount of capital for E-2 visa purposes constitutes an amount that is:
 - (1) Substantial in a proportional sense, (the application of the proportionality test) below: i.e., substantial in relationship to the total cost of either purchasing an established enterprise, or creating the type of enterprise under consideration;
 - (2) Sufficient to ensure the treaty investor's financial commitment to the successful operation of the enterprise; and
 - (3) Of a magnitude to support the likelihood that the treaty investor will successfully develop and direct the enterprise. No set dollar figure constitutes a minimum amount of investment to be considered "substantial" for E-2 visa purposes.
- c. This requirement is met by satisfying the "proportionality test" (below). The test is a comparison between two figures: (1) the amount of qualifying funds invested, and (2) the cost of an established business or, if a newly created business, the cost of establishing such a business.
 - (1) The amount of the funds or assets actually invested must be from qualifying funds and assets as explained in [9 FAM 402.9-6\(B\)](#) above.
 - (2) Generally, the cost of an established business is its purchase price, which is normally considered to be the fair market value.
 - (3) The cost of a newly created business is the actual cost needed to establish such a business to the point of being operational. The actual cost can usually be computed as the investor should have already purchased at least some of

the necessary assets and, thus, be able to provide cost figures for additional assets needed to run the business. For example, an indication of the nature and extent of commitment to a business venture may be provided by invoices or contracts for substantial purchases of equipment and inventory; appraisals of the market value of land, buildings, equipment, and machinery; accounting audits; and records required by various governmental authorities.

- d. If you question these figures, you may seek additional evidence to help establish what would be a reasonable amount. Such evidence may include letters from chambers of commerce or statistics from trade associations. Unverified and unaudited financial statements based exclusively on information supplied by an applicant normally are insufficient to establish the nature and status of an enterprise.
- e. **Value of Business Determined by Nature of Business:** The value (cost) of the business is clearly dependent on the nature of the enterprise. Any manufacturing business, such as an automobile manufacturer, might easily cost many millions of dollars to either purchase or establish and operate the business. At the extreme opposite pole, the cost to purchase an on-going commercial enterprise or to establish a service business, such as a consulting firm, may be relatively low. As long as all the other requirements for E-2 status are met (see [9 FAM 402.9-6](#)), the cost of the business per se is not independently relevant or determinative of qualification for E-2 status.
- f. **Proportionality Test:** The amount invested in the enterprise must be compared to the cost (value) of the business by assessing the percentage of the investment in relation to the cost of the business. If the two figures are the same, then the investor has invested 100 percent of the needed funds in the business; such an investment is substantial. The vast majority of cases involve lesser percentages. The proportionality test can best be understood as a sort of inverted sliding scale. The lower the cost of the business the higher a percentage of investment is required. On the other hand, a highly expensive business would require a lower percentage of qualifying investment. There are no bright line percentages that exist in order for an investment to be considered substantial. Thus, investments of 100 percent or a higher percentage would normally automatically qualify for a small business of \$100,000, for example. At the other extreme, an investment of \$10 million in a \$100 million business would likely qualify, based on the sheer magnitude of the investment itself.
- g. **Investor's Commitment:** An element of judgment to be factored into the requirement of substantial investment concerns an assessment of the extent of the investor's commitment to the successful operation of the project in view of the amount invested.

9 FAM 402.9-6(E) Enterprise Must Be More Than Marginal

(CT:VISA-1; 11-18-2015)

A marginal enterprise is an enterprise that does not have the present or future

capacity to generate more than enough income to provide a minimal living for the treaty investor and his or her family. An enterprise that does not have the capacity to generate such income but that has a present or future capacity to make a significant economic contribution is not a marginal enterprise. The projected future capacity should generally be realizable within five years from the date the alien commences normal business activity of the enterprise.

9 FAM 402.9-6(F) Applicant is in a Position to Develop and Direct the Enterprise

(CT:VISA-1; 11-18-2015)

- a. In all treaty investor cases, it must be shown that nationals of a treaty country own at least 50 percent of an enterprise. It must also be shown, in accordance with INA 101(a)(15)(E)(ii), that a national (or nationals) of the treaty country, through ownership or by other means, develops and directs the activities of the enterprise. The type of enterprise being sought will determine how this requirement is applied.
- b. **Controlling Interest:** An equal share of the investment in a joint venture or an equal partnership of two parties, generally does give controlling interest, if the joint venture and partner each retain full management rights and responsibilities.

This arrangement is often called "Negative Control." With each of the two parties possessing equal responsibilities, they each have the capacity of making decisions that are binding on the other party. The Department of State has determined that an equal partnership with more than two partners would not give any of the parties control based on ownership, as the element of control would be too remote even under the negative control theory.

- c. **Owner to Demonstrate Development and Direction of Enterprise:** In instances in which a sole proprietor or an individual who is a majority owner wishes to enter the United States as an "investor," or send an employee to the United States as his and/or her personal employee, or as an employee of the U.S. enterprise, the owner must demonstrate that he or she personally develops and directs the enterprise. Likewise, if a foreign corporation owns at least 50 percent of a U.S. enterprise and wishes for its employee to enter the United States as an employee of the parent corporation or as an employee of the U.S. business, the foreign corporation must demonstrate it develops and directs the U.S. enterprise.
- d. **Visa Holder to be Employee of U.S. Enterprise:** In instances in which treaty country ownership may be too diffuse to permit one individual or company to demonstrate the ability to direct and develop the U.S. enterprise, the owners of treaty country nationality must:
 - (1) Show that together they own 50 percent of the U.S. enterprise; and
 - (2) Demonstrate, that at least collectively, they have the ability to develop and direct the U.S. enterprise.
- e. In these cases an owner may not receive an 'E' visa as the "investor," nor may an employee be considered to be an employee of an owner for 'E' visa purposes.

Rather, all 'E' visa recipients must be shown to be an employee of the U.S. enterprise coming to the United States to fulfill the duties of an executive, supervisor, or essentially skilled employee.

- f. **Control by Management:** As indicated, a joint venture or an equal partnership involving two parties, could constitute control for E-2 purposes. However, modern business practices constantly introduce new business structures. Thus, it is difficult to list all the qualifying structures. If an investor (individual or business) has control of the business through managerial control, the requirement is met. The owner will have to satisfy you that the investor is developing and directing the business.

9 FAM 402.9-6(G) The Walsh/Pollard Case

(CT:VISA-1; 11-18-2015)

- a. This precedent decision by the Board of Immigration Appeals warrants separate discussion because it emphasizes established rules and has led to some confusion and misinterpretation.
- b. The thrust of the fact pattern involved the contractual arrangement between a foreign entity and a U.S. business to provide services.
- (1) The foreign company promised to provide certain engineering design services which the U.S. business did not have the capacity to perform.
 - (2) The design services were specific project-oriented services.
 - (3) The employees of the foreign company furnished under the contract were demonstrably highly qualified to provide the needed service.
 - (4) Pursuant to the contract, the foreign business created a subsidiary in the U.S. to ensure fulfillment of the contract and to service their employees. This subsidiary constituted their E-2 investment.
 - (5) The employees who came to the U.S. entity to perform these services on site came to fulfill certain responsibilities pursuant to that very specific design project. They did not come to the United States to fill employee vacancies of the U.S. business. It is, therefore, irrelevant that the design activities could have been performed either at the facility of the foreign entity abroad or in the United States at the job site of the U.S. business.
- c. This decision followed the Department of State's guidelines on E-2 visa classification. The prominent elements are:
- (1) When applying the substantiality test, one must focus on the nature of the business. Thus, as in this case, sometimes an investment of only a small amount of money might meet the requirement.
 - (2) The test of "develop and direct" applies only to the investor(s), not to the individual employees.
 - (3) The test of "essential skills" as set forth in [9 FAM 402.9-7\(C\)](#) won clear

acceptance.

- d. **Job Shop:** The greatest area of confusion surrounding Walsh/Pollard initially concerned the issue of the "job shop." A job shop usually involves the providing of workers needed by an employer to perform pre-designated duties. The employer often has position descriptions prepared for such workers. The positions to be filled by the workers are often positions which the employer cannot fill for a variety of reasons, such as unavailability of that type of worker, cost of locally hired workers, etc. For example, a manufacturer needs 100 tool and die workers to meet its production schedule. If they have only 50 on the rolls, they might engage a job shopper to fill the other positions.
- e. The fact pattern of this decision is not that of a job shop, nor does it in any way facilitate the creation of job shops under the E-2 visa classification. It is a pattern in direct contrast to a job shop, in which a business creating a new model required design-engineering services that the business neither had the capacity to perform nor had any positions to fill in that regard. It is expectable, in such circumstances, that the business might contract with another to provide the needed design for the model. The "contracted design" is a project-oriented commodity as contrasted to the filling of employment positions. The fact that the designing entity might prepare the design anywhere, even on the sites of contracting business, does not alter the nature of the transaction.
- f. Since the distinction might be clouded in some circumstances, you should exercise care in adjudicating such cases and not hesitate to submit any questionable cases for an advisory opinion.

9 FAM 402.9-7 EMPLOYEE ENTITLED TO E-1 OR E-2 VISA

9 FAM 402.9-7(A) Employer Qualifications

(CT:VISA-374; 06-06-2017)

In order to qualify to bring an employee into the United States under INA 101(a) (15)(E) the following criteria must be met:

- (1) Prospective employer must meet the nationality requirement, i.e., if an individual, the nationality of the treaty country or, if a corporation or other business organization, at least 50 percent of the ownership must have the nationality of the treaty country (see [9 FAM 402.9-4\(B\)](#)).
- (2) Employer and the employee must have the same nationality; and,
- (3) Employer, if not a resident abroad, must be maintaining "E" status in the United States.

9 FAM 402.9-7(B) Executive and Supervisory Employee

Responsibility

(CT:VISA-1; 11-18-2015)

In evaluating the executive and/or supervisory element, you should consider the following factors:

- (1) The title of the position to which the applicant is destined, its place in the firm's organizational structure, the duties of the position, the degree to which the applicant will have ultimate control and responsibility for the firm's overall operations or a major component thereof, the number and skill levels of the employees the applicant will supervise, the level of pay, and whether the applicant possesses qualifying executive or supervisory experience;
- (2) Whether the executive or supervisory element of the position is a principal and primary function and not an incidental or collateral function. For example, if the position principally requires management skills or entails key supervisory responsibility for a large portion of a firm's operations and only incidentally involves routine substantive staff work, an E classification would generally be appropriate. Conversely, if the position chiefly involves routine work and secondarily entails supervision of low-level employees, the position could not be termed executive or supervisory; and
- (3) The weight to be accorded a given factor, which may vary from case to case. For example, the position title of "vice president" or "manager" might be of use in assessing the supervisory nature of a position if the applicant were coming to a major operation having numerous employees. However, if the applicant were coming to a small two-person office, such a title in and of itself would be of little significance.

9 FAM 402.9-7(C) Essential Employees

(CT:VISA-1; 11-18-2015)

- a. The regulations provide E visa classification for employees who have special qualifications that make the service to be rendered essential to the efficient operation of the enterprise. The employee must, therefore, possess specialized skills and, similarly, such skills must be needed by the enterprise. The burden of proof to establish that the applicant has special qualifications essential to the effectiveness of the firm's United States operations is on the company and the applicant.
- b. The determination of whether an employee is an "essential employee" in this context requires the exercise of judgment. It cannot be decided by the mechanical application of a bright-line test. By its very nature, essentiality must be assessed on the particular facts in each case.
- c. **Duration of Essentiality:** The applicant bears the burden of establishing at the time of application not only the need for the skills that he or she offers but, also, the length of time that such skills will be needed. In general, E classification is intended for specialists and not for ordinary skilled workers. There are, however,

exceptions to this generalization. Some skills may be essential for as long as the business is operating. Others, however, may be necessary for a shorter time, such as in start-up cases.

d. Although there is a broad spectrum between the extremes set forth below, you may draw some perspective on this issue from these examples:

- (1) Long-term need - The employer may show a need for the skill(s) on an on-going basis when the employee(s) will be engaged in functions such as continuous development of product improvement, quality control, or provision of a service otherwise unavailable (as in Walsh & Pollard).
- (2) Short-term need - The employer may need the skills for only a relatively short (e.g., one or two years) period of time when the purpose of the employee(s) relate(s) to start-up operations (of either the business or a new activity by the business) or to training and supervision of technicians employed in manufacturing, maintenance and repair functions.

e. **General Factors to Be Considered:** Once the business has established the need for specialized skills, the experience and training necessary to achieve such skill(s) must be analyzed to recognize the special qualities of the skills in question. The question of duration of need will cause variances among the kinds of skills involved. The visa applicant must prove that he or she possesses these skills, by demonstrating the requisite training and/or experience.

f. In assessing the specialized skills and their essentiality, you must consider such factors as the:

- (1) The degree of proven expertise of the alien in the area of specialization;
- (2) The uniqueness of the specific skills;
- (3) The function of the job to which the alien is destined; and
- (4) The salary such special expertise can command.

In assessing the claimed duration of essentiality, you must look to the period of training needed to perform the contemplated duties and, in some cases, the length of experience and training with the firm.

- g. The availability of U.S. workers provides another factor in assessing the degree of specialization the applicant possesses and the essentiality of this skilled worker to the successful operation of the business. This consideration is not a labor certification test, but a measure of the degree of specialization of the skills in question and the need for such. For example, a TV technician coming to train U.S. workers in new TV technology not generally available in the U.S. market probably would qualify for an E visa.
- h. If the essential skills question cannot be resolved on the basis of initial documentation, you might ask the firm to provide statements from such sources as chambers of commerce, labor organizations, industry trade sources, or state employment services as to the unavailability of U.S. workers in the skill areas concerned.

- i. Using the criteria above, you can then make a judgment as to whether the employee is essential for the efficient operation of enterprise for an indefinite period or for a shorter period. It might be determined that some skills are essential for as long as the business is operating. There may be little problem in assessing the need for the employee in the United States in the short term, such as start-up cases. Long-term employment presents a different issue, in that what is highly specialized and unique today might not be in a few years. It is anticipated that such changes would more likely occur in industries of rapid development, such as any computer-related industry. Although this may not be fully determinable at the time of initial application, you must monitor this at the time of any application for reissuance. The alien at that time will bear the burden of establishing that his or her specialized skills are still needed and that the applicant still possesses such skills.
- j. **Concept of Training:** "Essential" employees possess skills which differentiate them from ordinarily skilled laborers. If an alien establishes that he or she has special qualifications and is essential for the efficient operation of the treaty enterprise for the long term, the training of United States workers (for) (as) replacement workers is not required.
- k. In some cases, ordinarily skilled workers can qualify as essential employees, and this almost always involves workers needed for start-up or training purposes. A new business or an established business expanding into a new field in the United States might need employees who are ordinarily skilled workers for a short period of time. Such employees derive their essentiality from their familiarity with the overseas operations rather than the nature of their skills. The specialization of skills lies in the knowledge of the peculiarities of the operation of the employer's enterprise rather than in the rote skill held by the applicant. To avoid problems with subsequent applications, you might find, at the time of the original application, that it is best to set a time frame within which the business must replace such foreign workers with locally hired employees. Some of the factors used in the preceding analysis would be drawn upon again to reach such an agreement.
- l. **Previous Employment With E Visa Firm:** There is no requirement that an "essential" employee have any previous employment with the enterprise in question. The only time when such previous employment is a factor is when the needed skills can only be obtained by that employment. The focus of essentiality is on the business needs for the essential skills and of the alien's possession of such. Firms may need skills to operate their business, even though they don't have employees with such skills currently on their employment rolls.

9 FAM 402.9-8 REQUIREMENTS FOR E-3 VISAS

9 FAM 402.9-8(A) Background

(CT:VISA-1; 11-18-2015)

- a. The E-3 visa classification ("treaty alien in a specialty occupation") was the result of

Public Law 109-13, entitled "The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005" (May 11, 2005). The new law added paragraph (iii) to INA 101(a)(15)(E), establishing a visa classification for Australians in specialty occupations.

- b. The law allows for the temporary entry of Australian professionals to perform services in a "specialty occupation" for a United States employer. The temporary entry of nonimmigrants in specialty occupations is provided for at Section 501 of Public Law 109-13. The law establishes a new category of temporary entry for nonimmigrant professionals, the E-3 category. Unlike the current E-1 and E-2 visas, the E-3 visa is not limited to employment that is directly related to international trade and investment. Subject to the requirements discussed herein, E-3 visa holders are eligible to work for any employer in the United States. Dependent spouses and children accompanying or following to join are also eligible for temporary entry.
- c. To qualify for an E-3 visa, an Australian must:
 - (1) Present to you an approved Labor Condition Application (LCA) issued by the Department of Labor (DOL);
 - (2) Demonstrate to you that the prospective employment meets the standard of being "specialty occupation employment" (see [9 FAM 402.9-8\(E\)](#) below);
 - (3) Show you that the necessary academic qualifications for the job have been met (see [9 FAM 402.9-8\(H\)](#));
 - (4) Convince you that the proposed stay in the United States will be temporary (see [9 FAM 402.9-4\(C\)](#); and
 - (5) Provide evidence of a license or other official permission to practice in the specialty occupation if required as a condition for the employment sought (see [9 FAM 402.9-8\(H\)](#)). In certain cases, where such license or other official permission is not required immediately, an alien must demonstrate that he or she will obtain such licensure or permission within a reasonable period of time following admission to the United States.
- d. A maximum of 10,500 E-3 visas can be issued annually.

9 FAM 402.9-8(B) What is Needed to Qualify for a Specialty Occupation Visa

(CT:VISA-390; 06-20-2017)

Principals: A treaty alien in a specialty occupation must meet the general academic and occupational requirements for the position pursuant to INA 214(i)(1). In addition to the nonimmigrant visa (NIV) application, the following documentary evidence must be submitted in connection with an application for an E-3 visa:

- (1) A completed Form ETA-9035-E, Labor Condition Application for Nonimmigrant Workers (formerly, Labor Condition Application for H-1B Nonimmigrants), certified by the Department of Labor (DOL).

- (2) Evidence of academic or other qualifying credentials as required under INA 214(i)(1) and a job offer letter or other documentation from the employer establishing that upon entry into the United States the applicant will be engaged in qualifying work in a specialty occupation and that the alien will be paid the actual or prevailing wage referred to in INA 212(t)(1). A certified copy of the foreign degree and evidence that it is equivalent to the required U.S. degree could be used to satisfy the "qualifying credentials" requirement. Likewise, a certified copy of a U.S. baccalaureate or higher degree, as required by the specialty occupation, would meet the minimum evidentiary standard.
- (3) In the absence of an academic or other qualifying credential(s), evidence of education and experience that is equivalent to the required U.S. degree.
- (4) Evidence establishing that the applicant's stay in the United States will be temporary. (See [9 FAM 402.9-4\(C\)](#) and [9 FAM 402.9-8\(G\)](#).)
- (5) A certified copy of any required license or other official permission to practice the occupation in the state of intended employment if so required or, where licensure is not necessary to commence immediately the intended specialty occupation employment upon admission, evidence that the alien will be obtaining the required license within a reasonable time after admission.
- (6) Evidence of payment of the Machine Readable Visa (MRV) fee.

9 FAM 402.9-8(C) Form ETA-9035 Labor Condition Application (LCA) from the Department of Labor (DOL) Required

(CT:VISA-185; 09-26-2016)

- a. **Filing Form ETA-9035-E:** For all prospective E-3 hires, employers must submit a Labor Condition Application (LCA) to the Department of Labor (DOL) containing attestations relating to wages and working conditions.
- b. LCAs for E-3 cases must be submitted electronically via the Department's iCERT Portal System. The iCERT Portal System is available at: <http://icert.doleta.gov>. The only two exceptions for electronic filing are physical disability and lack of internet access preventing the employer from filing electronically. Employers with physical disabilities or lack of internet access preventing them from filing electronic applications may submit a written request for special permission to file their LCAs via U.S. mail. Such requests **MUST** be made prior to submitting an application by mail and should be addressed to:

Administrator, Office of Foreign Labor Certification
Employment Training Administration
U.S. Department of Labor
Room C-4312
200 Constitution Avenue, NW
Washington, DC 20210
- c. The Form ETA-9035 used for requests by mail and Form ETA-9035E used for

electronic submissions are the same form. The current ETA-9035/9035E is six to seven pages long. Page 1 (numbered page 1 of 1) includes three attestations for the employer to complete in the electronic filing system. Pages 2-6 (numbered page 1 of 5 through page 5 of 5) contain Sections A through O, and the 7th page is optional for any Addendum to Section G to list additional worksite details.

- d. All E-3 LCAs will contain case numbers in the following format: I-203-xxxxx-xxxxxx. All LCAs that were submitted online will display the case number, case status and period of employment on the bottom of each page. Section K on page 4 should contain the signature of the employer. If there is no employer signature, the LCA is not valid for processing and consular staff should 221(g) the case until a signed copy of the LCA has been submitted. In section M of the LCA, the signature block will contain the validity dates of the certification, the Department of Labor's signature as "Certifying Officer" (not a specific official's name), the determination date, the case number, and the case status as "Certified." A mailed LCA likely would not have a computer-generated footer at the bottom of the form with the case number, case status, and period of employment. A mailed-in LCA would likely also be completed in a different computer font or contain handwritten information.
- e. **Acceptance of Form ETA-9035 by Posts:** For mailed-in applications, DOL faxes the LCA back to the employer after approval. Applications approved online are presented on-screen to the employer at the completion of the filing process in the form of a PDF/.pdf document. Consequently the applicant will be presenting either the initial faxed LCA, a printed PDF/.pdf document, or a copy of either of these; there will be no "original" document that will be presented. You must check to make sure the approval date of the LCA is later than September 2, 2005 (the effective date of the Department of State's E-3 regulatory publication).
- f. **Verifying Authenticity of the E-3 LCA:** Your acceptance of the LCA certification is discretionary. If you are not satisfied that the LCA being presented is authentic, you should suspend action on the case (INA 221(g)) and verify the LCA with the Department of Labor (DOL).
- g. DOL posts html versions of all certified E-3 LCAs on the Labor Certification Registry website. For additional questions concerning the authenticity of a particular LCA, you should send requests to the LCA Help Desk at LCA.Chicago@dol.gov., or by mail to U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, Chicago National Processing Center, 11 West Quincy Court, Chicago, IL 60604-2105.
- h. **Petition Filing with DHS Not Required:** An employer of an E-3 treaty alien in a specialty occupation is not required to file a petition with DHS. Instead, a prospective employee will present evidence for classification, including the approved Form ETA-9035-E, directly to you at the time of visa application.

9 FAM 402.9-8(D) Definition of Specialty Occupation

(CT:VISA-185; 09-26-2016)

The E-3 category provides for the issuance of visas solely to E-3 qualifying nationals

performing employment within a "specialty occupation." The definition of "specialty occupation" is one that requires:

- (1) A theoretical and practical application of a body of specialized knowledge; and
 - (2) The attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.
- Note: In determining whether an occupation qualifies as a "specialty occupation," follow the definition contained at INA 214(i)(1) for H-1B nonimmigrants and applicable standards and criteria determined by the Department of Homeland Security (DHS) and legacy Immigration and Naturalization Service (legacy INS). See [9 FAM 402.10-5\(E\)](#).

9 FAM 402.9-8(E) Determining "Specialty Occupation" Qualification

(CT:VISA-185; 09-26-2016)

Although the term "specialty occupation" is specifically defined at INA 214(i)(1), and further elaborated upon in DHS's regulations (8 CFR 214.2(h)(4)(iii)(A)), consular determinations of what qualifies as a "specialty occupation" will often come down to a judgment call by the adjudicating consular officer. You must determine whether the job itself falls within the definition of "specialty occupation," and also examine the alien's qualifications, including his or her education and experience. You should consider the available offer of employment and the information obtained during the interview, and then on the basis of this information, make a reasoned evaluation whether or not the offer of employment is for a "specialty occupation." Then you must be sure that the applicant has the required degree, or equivalency of experience and education, to adequately perform the stipulated job duties.

9 FAM 402.9-8(F) Referring Questionable Cases to CA/VO/L/A and/or the Kentucky Consular Center (KCC)

(CT:VISA-185; 09-26-2016)

- a. Request additional assistance/guidance from CA/VO/L/A if significant doubt remains regarding the E-3 alien's work experience, or if the proposed employment does not appear to meet the requirements for "specialty occupation" as described above in [9 FAM 402.9-8\(E\)](#). The Department of Homeland Security's Bureau of U.S. Customs and Immigration Services (USCIS) has significant experience in making "specialty occupation" determinations related to adjudicating H-1B cases, so the advisory opinions division will work closely with USCIS on issues you send in for opinion.
- b. If you have concerns about information regarding or provided by the employer (e.g., you doubt that the employer can pay the prevailing wage, or you do not believe the business is large enough to support additional employees), please email KCC at FPMKCC@state.gov with your concerns, providing as much factual detail as possible. KCC will review the information, investigate, and attempt to provide you with information to address those concerns.

9 FAM 402.9-8(G) Intent to Depart Upon Termination of Status

(CT:VISA-1; 11-18-2015)

- a. Temporary entry for treaty aliens in specialty occupations is the same standard used for treaty traders/investors.
- b. The alien's expression of an unequivocal intent to return when the E-3 status ends is normally sufficient, in the absence of specific evidence that the alien's intent is to the contrary.
- c. The applicant must satisfy you that he or she plans to depart the United States upon termination of status; however, he or she does not need to establish intent to proceed to the United States for a specific temporary period of time nor does an applicant for an E-3 visa need to have a residence in a foreign country that the applicant does not intend to abandon.
- d. The alien may sell his or her residence and move all household effects to the United States.
- e. An E-3 applicant may be a beneficiary of an immigrant visa (IV) petition filed on his or her behalf.

9 FAM 402.9-8(H) E-3 Licensing Requirements

(CT:VISA-1; 11-18-2015)

- a. An E-3 alien must meet academic and occupational requirements, including licensure where appropriate, for admission into the United States in a specialty occupation. If the job requires licensure or other official permission to perform the specialty occupation, the applicant must submit proof of the requisite license or permission before the E-3 visa may be granted. In certain cases, where such a license or other official permission is not immediately required to perform the duties described in the visa application, the alien must show that he or she will obtain such licensure within a reasonable period of time following admission to the United States. However, as illustrated in the example in paragraph b(4) below, in other instances, an alien will be required to present proof of actual licensure or permission to practice prior to visa issuance. In all cases, an alien must show that he or she meets the minimum eligibility requirements to obtain such licensure or sit for such licensure examination (e.g., he or she must have the requisite degree and/or experience). Even when not required to engage in the employment specified in the visa application, a visa applicant may provide proof of licensure to practice in a given profession in the United States together with a job offer letter, or other documentation, in support of an application for an E-3 visa.
- b. The following examples are illustrative:
 - (1) An alien is seeking an E-3 visa in order to work as a law clerk at a U.S.-based law firm. The alien may, if otherwise eligible, be granted an E-3 visa if it can be shown that the position of unlicensed law clerk is a specialty occupation,

even if he or she has not been admitted to the bar.

- (2) An alien has a job offer from a law firm promising him or her a position as an associate if the alien passes the bar exam. The application indicates that the position in question meets the definition of a specialty occupation. The alien may apply for an E-3 visa even if he or she will not be immediately employed in the position offered, but will be studying for the bar examination upon admission to the United States. You may issue the visa if you are satisfied that the alien will be taking steps to obtain bar admission within a reasonable period of time following admission to the United States. What constitutes a reasonable period of time will depend on the specific facts presented, such as licensure examination schedules and bar preparation course schedules.
- (3) An alien does not have a job offer, but wishes to study for the bar upon admission to the United States with the hope of finding a position at a United States-based law firm. The alien would not be eligible for E-3 classification, since he or she would not be coming to work in a specialty occupation. This person would be required to obtain another type of visa, such as a B-1, in order to study for the bar in this country.
- (4) An alien has an offer for employment with a law firm as a litigator, and is to begin working within two weeks of entry into the United States. The applicant must demonstrate that he or she has been admitted to the appropriate bar, or otherwise has obtained permission from the respective jurisdiction or jurisdictions where he or she intends to practice to make court appearances.

9 FAM 402.9-8(I) Numerical Limitation on E-3 Visas

(CT:VISA-185; 09-26-2016)

- a. Only E-3 principals who are initially being issued E-3 visas for the first time, or who are otherwise obtaining E-3 status (in the United States) for the first time, are subject to the 10,500 annual numerical limitation provisions of INA 214(g)(11)(B). Consequently, spouses and children of E-3 principals, as well as returning E-3 principals who are being issued new E-3 visas for continuing employment with the original employer, are exempt from the annual numerical limit (see b. and c. immediately below).
- b. An E-3 principal who is applying for a new visa following the expiration of the initial E-3 visa, or who is applying for a visa after initially obtaining E-3 status in the United States, is not subject to the annual E-3 numerical limit, provided it is established to your satisfaction that there has been uninterrupted continuity of employment. "Uninterrupted continuity of employment" means that the applicant has worked, and continues to work, for the U.S.-based employer who submitted the original Labor Condition Application (LCA) and offer of employment. To ensure that such applicants are not counted against any subsequent numerical limit, returning E-3 principals will be identified by the visa code "E-3R" (with "R" representing the status of "returning").
- c. To ensure that the spouse and children of E-3 principals are not counted against

the numerical limit, they will be identified by the visa code "E-3D" (with "D" representing the status of "dependent").

- d. At the end of each fiscal year, any unused E-3 numbers are forfeited; such visa numbers do not carry over to the next fiscal year.
- e. The Department of State will keep count of the number of E-3 visas issued, and of changes of status to E-3 in the United States as reported by the Department of Homeland Security (DHS). If it appears that the 10,500 annual numerical limits will be reached in any fiscal year, the Department of State will instruct posts to cease E-3 issuances for that fiscal year.

9 FAM 402.9-8(J) Part-Time Employment by E-3 Applicants

(CT:VISA-185; 09-26-2016)

An E-3 worker may work full or part-time and remain in status based upon the attestations made on the LCA. Section B.4 on the LCA provides the option to request part time employment and DOL approves LCAs for part-time employment. Although nothing is specifically stated in the law/regulation about full-time employment for E-3s, you will need to evaluate the public charge ramifications for any E-3 applicant planning on coming to the United States as a part-time employee.

9 FAM 402.9-8(K) Applicants with Multiple LCAs

(CT:VISA-374; 06-06-2017)

- a. If an applicant presents more than one valid LCA, consular officers should evaluate each LCA on its own merits. The applicant will have to qualify for each LCA separately, and each proposed employment situation must overcome public charge concerns on its own. Clearly indicate in the case remarks which LCAs and positions the applicant qualifies for.
- b. Multiple annotations: You should annotate the visa with the employer's name, LCA case number and LCA issuance date for each employer. You may need to use abbreviations in order to make more than one set of annotations fit onto the visa foil. If there is not enough room on the visa foils to add all of the required annotations contact VO/F for additional guidance regarding the possibility of providing a letter for employers.
- c. If an applicant presents multiple LCAs for E-3 and E-3R (returning E-3) positions at the same time, and is approved for multiple positions, only one visa should be issued. The visa should be issued for an E-3 position to ensure that the visa is counted towards the annual numerical limit. The visa should be annotated with the employer's name, LCA case number and LCA issuance date for each E-3 position AND the employer's name, LCA case number and LCA issuance date for each E-3R position. If there is not enough room on the visa foils to add all of the required annotations contact VO/F for additional guidance.

9 FAM 402.9-8(L) Considerations in Processing E-3 Visas

(CT:VISA-185; 09-26-2016)

- a. **Validity of Issued Visa:** The validity of the visa should not exceed the validity period of the LCA. The Department of State and DHS have agreed to a 24-month maximum validity period for E-3 visas.
- b. **Initial Authorized Period of Stay for E-3 Applicants:** E-3 applicants are admitted for a two-year period renewable indefinitely, provided the alien is able to demonstrate that he or she does not intend to remain or work permanently in the United States.
- c. **Fees:** Other than the normal visa-related Machine Readable Visa (MRV) fees, there is no other fee associated with the issuance of an E-3 visa.
- d. **Reports of Cancelled or Revoked E-3 Visas:** In the event an E-3 visa is cancelled or revoked prior to the applicant's entry into the United States, a report must be sent to CA/VO/DO/I explaining the circumstances attendant to the non-use of the E-3 number. In cases where the E-3 number has not been used, it will be added back into the remaining pool of unused E-3 visa numbers for that fiscal year.
- e. **Annotation of E-3 Visas:** Annotate E-3 visas of the principal applicant with the name of the employer, the ETA case number (found at the bottom of each page of the Form ETA-9035), and the LCA's issuance date (the "Determination Date" listed in part M. on page 5 of the Form ETA-9035.) Annotate E-3D visas for derivatives of the principal applicant with the name of the principal applicant, the name of the employer, the ETA case number and the LCA's issuance date.

9 FAM 402.9-8(M) Special Note about H-1B Petitions

(CT:VISA-374; 06-06-2017)

When the H-1B numerical cap is reached before the end of the fiscal year, it is likely that there will be numerous Australian H-1B applicants who will have approved Labor Condition Application's (LCA) but whose petitions for H-1B status are returned unapproved by the DHS for lack of an available H-1B visa number. Currently, you are not permitted to accept LCAs approved based upon H-1B-related offers of employment for E-3 applications. Rather, the United States employer must submit a new LCA request to DOL and receive a separate E-3-based LCA approval for any employee possessing a previously approved H-1B-based LCA.

9 FAM 402.9-9 SPOUSE AND CHILDREN OF E VISA ALIENS

(CT:VISA-374; 06-06-2017)

- a. **Entitled to Derivative Status:** The spouse and children of an E visa alien accompanying or following to join the principal alien are entitled to derivative status in the same classification as the principal alien. The nationality of the spouse and

children of an E visa applicant is not material. The spouse and children of an E visa alien receive the same visa validity and number of entries, and are required to pay the same reciprocity fee, if applicable, as the principal alien, as listed in the reciprocity schedule for the principal alien's country of nationality.

- b. **Spouses and Children:** To establish qualification for E classification as the spouse or child of an E alien, you may accept whatever reasonable evidence is persuasive to establish the required qualifying relationship. The presentation of a certified copy of a marriage or birth certificate is not mandatory if you are otherwise satisfied that the necessary relationship actually exists.
- c. **Spouse and Children of E-3 Aliens Not Subject to Numerical Limitation:** The spouse and children of E-3 principals are classifiable as E-3's, using the visa code E-3D. They are not counted against the 10,500 annual numerical limitation described at INA 214(g)(11)(B).
- d. **Employment by Spouse of E Visa Aliens:** INA 214(e)(6) permits the spouse (but not other dependents) of a principal E nonimmigrant to engage in employment in the United States. The spouse of a qualified E nonimmigrant may, upon admission to the United States, apply with the DHS for an employment authorization document, which an employer could use to verify the spouse's employment eligibility. Such spousal employment may be in a position other than a specialty occupation.

9 FAM 402.9-10 TREATIES AND LAWS CONTAINING TRADER AND INVESTOR PROVISIONS IN EFFECT BETWEEN THE UNITED STATES AND OTHER COUNTRIES

(CT:VISA-185; 09-26-2016)

COUNTRY	CLASSIFICATION	ENTERED INTO FORCE
Albania	E-2	01/04/1998
Argentina	E-1	12/20/1854
Argentina	E-2	12/20/1854
Armenia	E-2	03/29/1996
Australia	E-1	12/16/1991
Australia	E-2	12/27/1991
Australia ¹²	E-3	09/02/2005
Austria	E-1	05/27/1931
Austria	E-2	05/27/1931
Azerbaijan	E-2	08/02/2001
Bahrain	E-2	05/30/2001
Bangladesh	E-2	07/25/1989
Belgium	E-1	10/03/1963

Belgium	E-2	10/03/1963
Bolivia	E-1	11/09/1862
Bolivia ¹³	E-2	06/06/2001
Bosnia & Herzegovina ¹¹	E-1	11/15/1982
Bosnia & Herzegovina ¹¹	E-2	11/15/1982
Brunei	E-1	07/11/1853
Bulgaria	E-2	06/02/1954
Cameroon	E-2	04/06/1989
Canada	E-1	01/01/1994
Canada	E-2	01/01/1994
Chile	E-1	01/01/2004
Chile	E-2	01/01/2004
China (Taiwan) ¹	E-1	11/30/1948
China (Taiwan) ¹	E-2	11/30/1948
Colombia	E-1	06/10/1948
Colombia	E-2	06/10/1948
Congo (Brazzaville)	E-2	08/13/1994
Congo (Kinshasa)	E-2	07/28/1989
Costa Rica	E-1	05/26/1852
Costa Rica	E-2	05/26/1852
Croatia ¹¹	E-1	11/15/1982
Croatia ¹¹	E-2	11/15/1982
Czech Republic ²	E-2	01/01/1993
Denmark ³	E-1	07/30/1961
Denmark	E-2	12/10/2008
Ecuador	E-2	05/11/1997
Egypt	E-2	06/27/1992
Estonia	E-1	05/22/1926
Estonia	E-2	02/16/1997
Ethiopia	E-1	10/08/1953
Ethiopia	E-2	10/08/1953
Finland	E-1	08/10/1934
Finland	E-2	12/01/1992
France ⁴	E-1	12/21/1960
France ⁴	E-2	12/21/1960
Georgia	E-2	08/17/1997
Germany	E-1	07/14/1956
Germany	E-2	07/14/1956
Greece	E-1	10/13/1954

Grenada	E-2	03/03/1989
Honduras	E-1	07/19/1928
Honduras	E-2	07/19/1928
Iran	E-1	06/16/1957
Iran	E-2	06/16/1957
Ireland	E-1	09/14/1950
Ireland	E-2	11/18/1992
Israel	E-1	04/03/1954
Italy	E-1	07/26/1949
Italy	E-2	07/26/1949
Jamaica	E-2	03/07/1997
Japan ⁵	E-1	10/30/1953
Japan ⁵	E-2	10/30/1953
Jordan	E-1	12/17/2001
Jordan	E-2	12/17/2001
Kazakhstan	E-2	01/12/1994
Korea (South)	E-1	11/07/1957
Korea (South)	E-2	11/07/1957
Kosovo ¹¹	E-1	11/15/1882
Kosovo ¹¹	E-2	11/15/1882
Kyrgyzstan	E-2	01/12/1994
Latvia	E-1	07/25/1928
Latvia	E-2	12/26/1996
Liberia	E-1	11/21/1939
Liberia	E-2	11/21/1939
Lithuania	E-2	11/22/2001
Luxembourg	E-1	03/28/1963
Luxembourg	E-2	03/28/1963
Macedonia ¹¹	E-1	11/15/1982
Macedonia ¹¹	E-2	11/15/1982
Mexico	E-1	01/01/1994
Mexico	E-2	01/01/1994
Moldova	E-2	11/25/1994
Mongolia	E-2	01/01/1997
Montenegro ¹¹	E-1	11/15/1882
Montenegro ¹¹	E-2	11/15/1882
Morocco	E-2	05/29/1991
Netherlands ⁶	E-1	12/05/1957
Netherlands ⁶	E-2	12/05/1957
Norway ⁷	E-1	01/18/1928
Norway ⁷	E-2	01/18/1928

Oman	E-1	06/11/1960
Oman	E-2	06/11/1960
Pakistan	E-1	02/12/1961
Pakistan	E-2	02/12/1961
Panama	E-2	05/30/1991
Paraguay	E-1	03/07/1860
Paraguay	E-2	03/07/1860
Philippines	E-1	09/06/1955
Philippines	E-2	09/06/1955
Poland	E-1	08/06/1994
Poland	E-2	08/06/1994
Romania	E-2	01/15/1994
Senegal	E-2	10/25/1990
Serbia ¹¹	E-1	11/15/1882
Serbia ¹¹	E-2	11/15/1882
Singapore	E-1	01/01/2004
Singapore	E-2	01/01/2004
Slovak Rep ²	E-2	01/01/1993
Slovenia ¹¹	E-1	11/15/1982
Slovenia ¹¹	E-2	11/15/1982
Spain ⁸	E-1	04/14/1903
Spain ⁸	E-2	04/14/1903
Sri Lanka	E-2	05/01/1993
Suriname ⁹	E-1	02/10/1963
Suriname ⁹	E-2	02/10/1963
Sweden	E-1	02/20/1992
Sweden	E-2	02/20/1992
Switzerland	E-1	11/08/1855
Switzerland	E-2	11/08/1855
Thailand	E-1	06/08/1968
Thailand	E-2	06/08/1968
Togo	E-1	02/05/1967
Togo	E-2	02/05/1967
Trinidad & Tobago	E-2	12/26/1996
Tunisia	E-2	02/07/1993
Turkey	E-1	02/15/1933
Turkey	E-2	05/18/1990
Ukraine	E-2	11/16/1996
United Kingdom ¹⁰	E-1	07/03/1815
United Kingdom ¹⁰	E-2	07/03/1815
Yugoslavia ¹¹	E-1	11/15/1882

Yugoslavia¹¹

E-2

11/15/1882

FOOTNOTES

¹China (Taiwan). Pursuant to Section 6 of the Taiwan Relations Act, Public Law 96-8, 93 Stat, 14, this agreement, which was concluded with the Taiwan authorities prior to January 1, 1979, is administered on a nongovernmental basis by the American Institute in Taiwan, a nonprofit District of Columbia corporation, and constitutes neither recognition of the Taiwan authorities nor the continuation of any official relationship with Taiwan.

²Czech Republic and Slovak Republic. The Treaty with the Czech and Slovak Federal Republics entered into force on December 19, 1992; it entered into force for the Czech Republic and Slovak Republic as separate states on January 1, 1993.

³Denmark. The Convention of 1826 does not apply to the Faroe Islands of Greenland. The Treaty, which entered into force on July 30, 1961, does not apply to Greenland.

⁴France. The Treaty, which entered into force on December 21, 1960, applies to the departments of Martinique, Guadeloupe, French Guiana, and Reunion.

⁵Japan. The Treaty, which entered into force on October 30, 1953, was made applicable to the Bonin Islands on June 26, 1968, and to the Ryukyu Islands on May 15, 1972.

⁶Netherlands. The Treaty, which entered into force on December 5, 1957, is applicable to Aruba and Netherlands Antilles.

⁷Norway. The Treaty, which entered into force on September 13, 1932, does not apply to Svalbard (Spitzbergen and certain lesser islands).

⁸Spain. The Treaty, which entered into force on April 14, 1903, is applicable to all territories.

⁹Suriname. The Treaty with the Netherlands, which entered into force December 5, 1957, was made applicable to Suriname on February 10, 1963.

¹⁰United Kingdom. The Convention, which entered into force on July 3, 1815, applies only to British territory in Europe (the British Isles (except the Republic of Ireland), the Channel Islands, and Gibraltar) and to "inhabitants" of such territory. This term, as used in the Convention, means "one who resides actually and permanently in a given place, and has his domicile there." Also, in order to qualify for treaty trader or treaty investor status under this treaty, the alien must be a national of the United Kingdom. Individuals having the nationality of members of the Commonwealth other than the United Kingdom do not qualify for treaty trader or treaty investor status under this treaty.

¹¹Yugoslavia. The U.S. view is that the Socialist Federal Republic of Yugoslavia (SFRY) has dissolved and that the successors that formerly made up the SFRY - Bosnia and

Herzegovina, Croatia, Kosovo, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia, and Slovenia, continue to be bound by the treaty in force with the SFRY and the time of dissolution.

¹²The E-3 visa is for nationals of the Commonwealth of Australia who wish to enter the United States to perform services in a "specialty occupation." The term "specialty occupation" means an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. The definition is the same as the Immigration and Nationality Act definition of an H-1B specialty occupation.

¹³Bolivia. Bolivian nationals with qualifying investments in place in the United States by June 10, 2012 continue to be entitled to E-2 classification until June 10, 2022. The only nationals of Bolivia (other than those qualifying for derivative status based on a familial relationship to an E-2 principal alien) who may qualify for E-2 visas at this time are those applicants who are coming to the United States to engage in E-2 activity in furtherance of covered investments established or acquired prior to June 10, 2012.

9 FAM 402.9-11 SUBMITTING AN APPLICATION FOR AN E-1 OR E-2 VISA

9 FAM 402.9-11(A) Application Forms

(CT:VISA-131; 05-16-2016)

An applicant for an E-1 or E-2 visa must submit both completed Forms DS-160 for each family member and a Form DS-156-E, Nonimmigrant Treaty/Trader Investor Visa Application.

9 FAM 402.9-11(B) Suggested Document Checklist - for Applicants

(CT:VISA-374; 06-06-2017)

The following is a list of suggested documentation that may establish an alien's eligibility for an E-1 or E-2 visa. This is meant as a guide only and is not a list of required documentation. Other information and evidence may be submitted by the visa applicant to satisfy the consular officer that the alien meets the criteria described in [9 FAM 402.9-5\(A\)](#) or [9 FAM 402.9-6\(A\)](#).

Please tab and index your supporting documentation and note the corresponding tab number on this form. To facilitate and expedite adjudication of your case, please highlight corroborating figures in annual reports, financial statements, etc.

I. Proof of Nationality of Investor or Applicant

Tab No.

II. Ownership Documents: (either A, B or C)

A. Sole Proprietorship:	Tab No.
· Shares/stock certificates	—
· Shares register indicating total and outstanding shares issued	—
· Minutes of annual shareholders meeting	—
· Other Evidence	—
B. Partnership:	Tab No.
· Partnership or Joint Venture Agreement	—
· Shares/stock certificates indicating total shares issued and outstanding shares	—
· Other evidence	—
C. Corporation:	Tab No.
· Shares/stock certificates indicating distribution of ownership, i.e., shares held by each firm and shares held by individual owners corporate matrix	—
· If publicly traded on the principal stock exchange of a treaty country, enclose a sample of recently published stock quotations	—
· Public announcement of corporate acquisition corporate chart showing head office and	—

other subsidiary/branch
locations in the U.S. —

Other evidence of ownership

III. Trade:

	Tab No.
· Purchase orders	—
· Warehouse/custom declarations	—
· Bills of lading	—
· Sales contracts/contracts for services	—
· Letters of credit	—
· Carrier inventories	—
· Trade brochures	—
· Insurance papers documenting commodities imported into the U.S.	—
· Accounts receivable & accounts payable ledgers	—
· Client lists	—
· Other documents showing international trade is substantial and that 51% of the trade is between U.S. and the treaty country	—

IV. Investment:

	Tab No.
A. For an existing enterprise:	(show purchase price)

- Tax Valuation —
- Market Appraisal —

(show
estimated
start-up cost)

B. For a New Enterprise:

- Trade Association Statistics —
- Chamber of Commerce
Estimates —
- Market Surveys —

C. Source of Investment:

Tab No.

- Personal statement of net
worth prepared by a certified
accountant —
- Transactions showing payment
of sold property or business
(proof of property ownership
and promissory notes) and
rental income (lease
agreements) —
- Voided investment certificates
or internal bank vouchers and
appropriate bank statement
crediting proceeds —
- Debit and credit advices for
personal and/or business
account withdrawals —
- Audited financial statement —
- Annual report of parent
company —

- Net worth statements from certificate professional accountants —

D. Evidence of Investment:

1. Existing Enterprise:

Tab No.

- Escrow —
- Escrow account statement in the U.S. —
- Escrow receipt —
- Signed purchase agreement —
- Closing and settlement papers —
- Mortgage documents —
- Loan documents —
- Promissory notes —
- Financial reports —
- Tax returns —
- Security agreements —
- Assumption of lease agreement —
- Business account statement for routine operations —
- Other evidence —

2. New Enterprise:

Tab No.

- Inventory listing, shipment invoices of inventory, equipment or business related property —
- Receipts for inventory purchases —
- Canceled checks or official payment receipts for expenditures —
- Canceled check for first month's rent or full annual advance rent payment —
- Lease agreement —
- Purchase orders —
- Improvement expenses —
- Initial business account statements —
- Wire transfer receipts —

V. Marginality:

A. For Existing Business:

Tab No.

- U.S. corporate tax returns —
- Latest audited financial statement or non-review statements —
- Annual reports —
- Payroll register —
- W-2 and W-4 tax forms —
- Canceled checks for salaries paid and/or corresponding payroll account —

B. For New Business:

Tab No.

- Payroll register, records of salaries paid to employees (if any), employee data, including names, rates of pay, copies of W-2's —
- Financial projections for next 5 years, supported by a thorough business plan —
- Business income and corporate tax returns (proof of registration, ownership, audited financial and review engagements) —

VI. Real & Operating Commercial Enterprise:

Tab No.

- Occupational license —
- Business license/business permits —
- Sales tax receipt —
- Utility/telephone bills —
- Business transaction records —
- Current/commercial account statements —
- Letters of credit —
- Invoices from suppliers —
- Advertising leaflets —
- Business brochures/promotional literature —

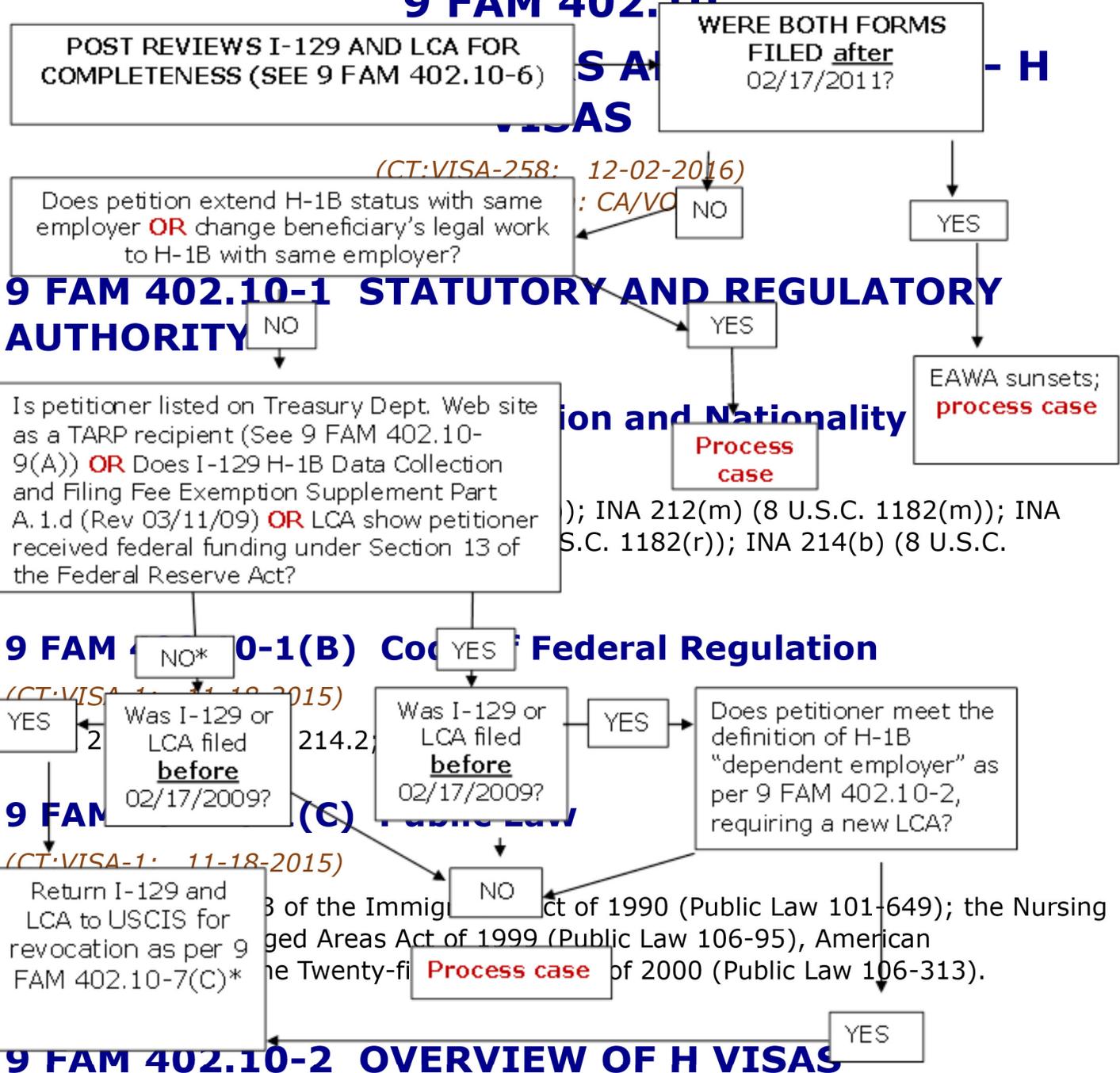
- Newspaper clippings —

VII. Executive/Managerial/Supervisory/Essential Skills:

Tab No.

- Letter from E-2 enterprise providing specific information on the applicant and the reasons for his/her assignment to the U.S. The letter must explain the employee's role in the U.S. company (job title and duties), the applicant's executive or supervisory responsibilities or, if not a supervisor, his/her specialist role, the level of education and knowledge required by the employee's position, his employment experience, progression of promotion or high level training or special qualifications and the reasons why a U.S. citizen or legal permanent resident cannot fill the position (if the position is not managerial or supervisory) —
- Letter from responsible official at U.S. company or office identifying the need for assigned employee. —
- Organizational chart showing current staffing pattern at U.S. company —
- Evidence of executive, supervisory or specialized knowledge, education, experience, skills or training, such as certificates, diplomas or transcripts. —

9 FAM 402.10



9 FAM 402.10-1 STATUTORY AND REGULATORY AUTHORITY

9 FAM 402.10-1(B) Code of Federal Regulation

9 FAM 402.10-2 OVERVIEW OF H VISAS

(CT:VISA-197; 09-30-2016)

The Immigration and Nationality Act of 1952 (Public Law 82-414 of June 27, 1952) created the H nonimmigrant visa classification in INA 101(a)(15)(H) for temporary workers and trainees. INA 101(a)(15)(H) has since been amended numerous times. The H nonimmigrant visa classification is for persons who want to enter the United States for employment lasting a fixed period of time, either as a professional in a specialty occupation, a fashion model of distinguished merit and ability, a temporary agricultural or non-agricultural worker, or a trainee or special education visitor. Each of these visas requires the prospective employer to first file a petition with the Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS).

9 FAM 402.10-3 CLASSIFICATION CODES

(CT:VISA-1; 11-18-2015)

22 CFR 41.12 identifies the following classification symbols for individuals engaged in temporary work or trainee in accordance with INA 101(a)(15)(H):

H1B	Alien in a Specialty Occupation (Profession)
H1B1	Chilean or Singaporean National to Work in a Specialty Occupation
H1C	Nurse in health professional shortage area
H2A	Temporary Worker Performing Agricultural Services Unavailable in the United States
H2B	Temporary Worker Performing Other Services Unavailable in the United States
H3	Trainee
H4	Spouse or Child of Alien Classified H1B/B1/C, H2A/B, or H-3

9 FAM 402.10-4 H CLASSIFICATIONS AND PREREQUISITES FOR FILING H PETITIONS

9 FAM 402.10-4(A) H-1A Nonimmigrants

(CT:VISA-1; 11-18-2015)

The H-1A visa classification was eliminated with repeal of INA 101(a)(15)(H)(i)(a) by Section 2(c) of the Nursing Relief for Disadvantaged Areas Act of 1999 (Public Law 106-95).

9 FAM 402.10-4(B) H-1B Nonimmigrants

(CT:VISA-197; 09-30-2016)

- a. The H-1B classification applies to an alien who is coming temporarily to the United States to perform services in one of the categories described below. (For information on H-1B1 classification for nationals of Chile and Singapore deriving from free trade agreements see [9 FAM 402.10-5](#) below.)
- (1) **Aliens in Specialty Occupations:** Aliens who are qualified to perform services in a specialty occupation as described in INA 214(i)(1) and (2) (other than agricultural workers, described in INA 101(a)(15)(H)(ii)(A) or aliens qualifying under INA 101(a)(15)(O) or (P)) are classifiable as H-1B nonimmigrants.
 - (a) A specialty occupation requires the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) for entry into the occupation. An alien seeking to work in a specialty occupation must have completed such a degree or have experience in the specialty equivalent to the completion of the degree (as determined by USCIS) and expertise in the specialty through progressively responsible positions relating to the specialty.
 - (b) The criteria for qualifying as an H-1B physician are found in subparagraph 3

below.

- (c) Prior to filing a petition with USCIS on behalf of an alien in a specialty occupation, the petitioner must have obtained a certification from DOL that it has filed a labor certification application (LCA) as specified in INA 212(n)(1). The filing of an LCA does not constitute a determination that the occupation in question is a specialty occupation. USCIS is responsible for determining whether the application involves a specialty occupation and whether the particular alien for whom H-1B status is sought qualifies to perform services in that occupation.
- (2) **Certain Fashion Models:** H-1B classification may be granted to an alien who is of distinguished merit and ability in the field of fashion modeling. "Distinguished merit and ability" is defined by USCIS as prominence; i.e., the attainment of a high level of achievement in the field of fashion modeling evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading or well-known in the field. Such an alien must also be coming to the United States to perform services which require a fashion model of prominence. The petitioner of a fashion model of distinguished merit and ability must file an LCA (see [9 FAM 402.10-7](#) below) with DOL prior to filing a petition for the alien.
- (3) **Alien Physicians:**
- (a) **Graduates of Foreign or U.S. Medical Schools:** An alien "graduate of a medical school," as defined in INA 101(a)(41), may enter the United States as an H-1B nonimmigrant to perform services as a member of the medical profession if he or she has a full and unrestricted license to practice medicine in a foreign state or if he or she has graduated from medical school in either the United States or in a foreign state. In addition, if he or she will provide direct patient care, he or she must generally have a valid medical license in the state of intended employment; however, USCIS may grant a limited-validity petition in order to allow the beneficiary time to obtain a professional license. An alien involved in a medical residency program, for example, may have an approved H-1B petition, even though he or she does not yet have a full and unrestricted U.S. medical license.
- (b) **Coming to Teach or Conduct Research:** An alien physician may also be classified as an H-1B nonimmigrant if he or she is coming to the United States primarily to teach or conduct research, or both, at or for a public or nonprofit private educational or research institution or agency. Such an alien may only engage in direct patient care that is incidental to his or her teaching and/or research.
- (c) **Note: Alien Physicians Not Eligible for H-2B or H-3 Classification:** Alien physicians who are coming to the United States to perform medical services or receive graduate medical training are statutorily ineligible to receive H-2B or H-3 status.
- (4) **Aliens in Department of Defense Cooperative Research and Development or Co-production Projects:** Aliens coming to the United States, pursuant to

Section 222 of the Immigration Act of 1990, to participate in a cooperative research and development project or a co-production project under a government-to-government agreement administered by the Department of Defense (DOD) are classifiable as H-1B nonimmigrants. Such aliens must perform services of an exceptional nature requiring exceptional merit and ability. For purposes of this classification, services of an exceptional nature must be those which require a bachelor's degree or higher (or its equivalent, as determined by USCIS) to perform the duties. The requirement for filing an LCA with DOL does not apply to petitions involving DOD cooperative research and development or co-production projects.

- b. **General Licensure Requirement:** The requirements for classification as an H-1B nonimmigrant professional may or may not include a license because states have different rules in this area. If a state permits aliens to enter the United States as a visitor to take a licensing exam, then USCIS will generally require a license before they will approve the H-1B petition. However, some states do not permit aliens to take licensing exams until they enter the United States in H-1B status and obtain a taxpayer identification number. Therefore, a visa must not be denied based solely on the fact that the applicant does not already hold a license to practice in the United States.

9 FAM 402.10-4(C) H-1C Nurse in Health Professional Shortage Area

(CT:VISA-1; 11-18-2015)

This classification expired December 20, 2009.

9 FAM 402.10-4(D) H-2A Nonimmigrants

(CT:VISA-197; 09-30-2016)

- a. The H-2A classification applies to aliens who are coming temporarily to the United States to perform agricultural work of a temporary or seasonal nature.
- b. The petitioner must file a temporary agricultural labor certification with Department of Labor (DOL) prior to filing a petition with USCIS to classify an alien as an H-2A nonimmigrant.
- c. Except as noted in 402.10-7(A), USCIS generally may only approve a Form I-129, Petition for a Nonimmigrant Worker, filed on behalf of an H-2A worker who is a national of a country designated as an H-2A program eligible country. However, USCIS may still approve H-2A petitions filed for nationals of countries not designated as participating countries, if such an approval is in the national interest, as noted in [9 FAM 402.10-8\(A\)](#).
- (1) The designated countries can be found on the USCIS H-2A website.
 - (2) Countries are designated as H-2A program participating countries based on:
 - (a) The country's cooperation with respect to the issuance of travel documents for citizens, subjects, nationals, and residents of that country who are

- subject to a final order of removal from the United States; and
- (b) The number of final and unexecuted orders of removal against citizens, subjects, nationals, and residents of that country; and
 - (c) The number of orders of removal executed against citizens, subjects, nationals, and residents of that country; and
 - (d) Such other factors as may serve U.S. interest.
- (3) Posts will be advised when there are changes to the list of participating countries as well as the effective dates for their formal participation in the program. Subsequent designations will be valid for one year from the date of publication of the list of eligible countries in the Federal Register. On a case-by-case basis, DHS may allow a worker from a country not on the participating country list to be eligible for the H-2A program if, among other considerations, such participation is in the interest of the United States.
- (4) Posts recommending that a country obtain, maintain, or lose status as an H-2A program participant should contact the responsible regional country desk officer and CA/VO/F/IE as early in the calendar year as possible.

9 FAM 402.10-4(E) H-2B Nonimmigrants

(CT:VISA-197; 09-30-2016)

- a. The H-2B classification applies to aliens who are coming temporarily to the United States to perform nonagricultural services or labor of a temporary or seasonal nature, other than graduates of medical schools coming to provide medical services, if qualified persons capable of performing such work cannot be found in the United States. USCIS defines temporary services or labor as those that will be needed by the employer for a limited period of time; i.e., where the job will end in the near, definable future. Such a period of time generally will be limited to one year or less, but a one-time event could last up to three years. The employer's need for services or labor must be on a one-time basis, seasonal, for a peak load, or intermittent basis.
- b. This classification requires a temporary labor certification issued by the Department of Labor (DOL) or the Government of Guam (in certain cases involving employment on Guam), prior to the filing of a petition with USCIS to classify an alien or aliens in the H-2B classification. Consular officers do not have the authority to attempt to interpret DOL regulations or question DOL's decision to approve a temporary labor certification.
- c. With limited exception, USCIS may only approve Form I-129, Petition for a Nonimmigrant Worker, filed on behalf of an H-2B worker to individuals who are nationals of a country designated as an H-2B program eligible country. Employers petitioning for nationals of a country not designated as a program eligible country must establish additional eligibility criteria (see [9 FAM 402.10-8\(A\)](#) paragraph c for more information on nationals of non-program eligible countries).
 - (1) The designated countries can be found on the USCIS H-2B website.

- (2) Countries were designated as H-2B program participating countries based on:
 - (a) The country's cooperation with respect to the issuance of travel documents to citizens, subjects, nationals, and residents of that country who are subject to a final order of removal from the United States;
 - (b) The number of final and unexecuted orders of removal against citizens, subjects, nationals, and residents of that country;
 - (c) The number of orders of removal executed against citizens, subjects, nationals, and residents of that country; and
 - (d) Such other factors as may serve U.S. interest.
 - (3) Posts will be advised when there are changes to the list of participating countries as well as the effective dates for formal participation in the program. Subsequent designations will be valid for one year from the date of publication of the list of eligible countries in the Federal Register. On a case-by-case basis, DHS may allow a worker from a country not on the participating country list to be eligible for the H-2B program if, among other considerations, such participation is in the interest of the United States.
 - (4) Posts recommending that a country obtain, maintain, or lose status as an H-2B program participant should contact the responsible country desk officer from the regional bureau and CA/VO/F/IE as early in the calendar year as possible.
- d. **Alien Coming to Train Others and/or Organize Business:** An alien seeking to enter the United States to train others or to organize a business operation may be considered to be coming to a temporary position and is classifiable as an H-2B, if otherwise qualified. For example, a cook coming to train other cooks or organize a kitchen may be classified as an H-2B, but a cook coming to assume a job of a permanent nature may not be accorded H-2B or any other nonimmigrant status and would have to qualify for an immigrant visa (IV).
- e. **Alien Employees of United States Exhibitors:** Alien employees of United States exhibitors or employers at international fairs or expositions held in the United States may be classifiable as H-1B or H-2B temporary workers if eligibility requirements are met.
- f. **Returning Workers:** The Consolidated Appropriations Act for Fiscal Year 2016 was passed on December 22, 2015. Under this Act, certain returning H-2B workers are exempt from the annual H-2B numerical limitation. Aliens who were counted toward the fiscal year numerical limitation during FY 2013, FY 2014, or FY 2015 (i.e., issued an H-2B visa), shall not again be counted toward such limitation during FY 2016. Such an alien shall be considered a returning worker. USCIS will provide the Department with electronic notification of those H-2B workers seeking classification as returning workers. This notification will be entered into PIMS at KCC. Before issuing an H-2B visa to an applicant identified by USCIS as a returning worker, you should verify whether the applicant was in fact issued an H-2B visa in fiscal years 2013, 2014, or 2015. If you are unable to confirm that a visa was issued to an applicant identified by USCIS as a returning worker, you should make a notation of this in the case file. Until notified by CA/VO/F that the H-2B cap for the current fiscal year has been reached, you should still issue an H-2B visa if the applicant otherwise

qualifies. For workers who qualify under the returning worker program, the interviewing officer must enter the case note: "Returning worker case." into the CCD. Qualifying returning workers will be issued H-2B visas under normal adjudication procedures.

9 FAM 402.10-4(F) H-3 Nonimmigrants

(CT:VISA-197; 09-30-2016)

- a. The H-3 classification applies to an alien who is a temporary worker who is invited by an individual, a business, or an organization for purposes of receiving instruction and training other than graduate medical education or training. The training program must be one that is not designed primarily to provide productive employment beyond that which is incidental and necessary to the training. The trainee must have a foreign residence to which he or she intends to return. See INA 101(a)(15)(H)(iii); 8 CFR 214.1 (h).
- b. **Alien Trainees:** The regulatory criteria for an H-3 petition approval are that the proposed training is not available in the alien's own home country, the beneficiary will not be placed in a position that is in the normal operation of the business in which U.S. citizen and legal permanent resident workers are regularly employed, that there will be no productive employment unless it is incidental and necessary to the training, and the training will benefit the beneficiary in pursuance of a career outside of the United States. See 8 CFR 214.2(h)(7)(ii)(A).
- c. **Alien Participants in Special Education Exchange Program:** A special education exchange program, described in section 223 of the Immigration Act of 1990, allows up to 50 aliens per year to come to the United States in H-3 visa status in order to receive practical training and experience in the education of children with physical, mental, or emotional disabilities. The length of stay in the United States is normally limited to 18 months. Alien participants in this program will either be nearing completion of a bachelor's level degree or higher degree in special education, or already have a degree, or they will have extensive prior training or experience in this field. (See 8 CFR 214.2(h)(7)(iv).)
- d. **Certain Nurses Eligible for H-3 Classification:** A petitioner may seek H-3 status for a nurse if it can be established that there is a genuine need for the nurse to receive a brief period of training that is unavailable in the alien's native country, and that such training is designed to benefit the nurse and the foreign employer upon the nurse's return to his or her country of origin. For a nurse to qualify for H-3 classification, certain criteria established by USCIS must be met. These include the alien having a full and unrestricted license to practice in the country where the alien obtained his/her nursing education (unless in the United States or Canada) and the petitioner's certification that, under the laws where the training will take place, the petitioner is authorized to give such training and the alien to receive it.
- e. **Medical Students Qualifying as H-3 Externs:** A hospital approved by the American Medical Association or the American Osteopathic Association for either an internship or residency program may petition to classify a student attending a medical school abroad as an H-3 trainee, if the alien will engage in employment as an extern

during his or her medical school vacation.

9 FAM 402.10-4(G) Nature of Position or Training for H Nonimmigrants

(CT:VISA-197; 09-30-2016)

- a. **H-1B Nonimmigrants:** An alien may be classified as an H-1B nonimmigrant whether the position to be temporarily occupied is permanent or temporary in nature. For example, a foreign professor coming to fill a position on the faculty of a U.S. university could be classified H-1B.
- b. **H-2A and H-2B Nonimmigrants:** An H-2A or H-2B nonimmigrant must be coming to fill a position that is temporary in nature. He or she may not be classified H-2A or H-2B for the purpose of occupying a position of permanent or indefinite duration; note, however, that in certain circumstances, shepherders which can be permanent or indefinite positions, may be eligible for H-2A classification.
- c. **H-3 Nonimmigrants:** An alien may not be classified H-3 if his or her training program is primarily designed to provide productive employment, beyond that which is incidental and necessary to the training, except in the case of a participant in a special education exchange program. (See [9 FAM 402.10-4\(F\)](#) above.)
- d. **Using B-1 in Lieu of H Classification:** For a discussion of whether or not a B-1 in lieu of H classification may be used, see [9 FAM 402.2-5\(F\)](#).

9 FAM 402.10-5 H-1B1 FREE TRADE AGREEMENT NONIMMIGRANT PROFESSIONALS

9 FAM 402.10-5(A) Overview of Free Trade Agreements

(CT:VISA-197; 09-30-2016)

- a. The President signed free trade agreements (FTAs) with Chile and Singapore on September 3, 2003. The FTAs with Chile and Singapore were authorized by Congress in Public Law 108-77 and Public Law 108-78, respectively. Both agreements became effective on January 1, 2004.
- b. The FTAs with Chile and Singapore include immigration provisions that allow for the temporary entry of certain professionals into the territory of the trading partners in order to facilitate free trade opportunities, as provided for in Chapter 14 of the U.S.-Chile Agreement and in Chapter 11 of the U.S.-Singapore Agreement. The temporary entry chapters in both agreements establish four categories of nonimmigrant entry for business purposes. Three of the categories, business visitors, traders and or investors, and intra-company transferees, qualify for visas under the existing B-1, E-1/E-2, and L-1/L-2 visa categories. The FTAs establish a new fourth category of temporary entry for nonimmigrant professionals, the H-1B1 category.

9 FAM 402.10-5(B) H-1B1 Applications Subject to

Numerical Limitations

(CT:VISA-197; 09-30-2016)

- a. Annual numerical limits are set for aliens who may obtain H-1B1 visas. 1,400 professionals from Chile and 5,400 professionals from Singapore are allowed to enter the United States annually. These numerical limits fall within and are registered against the existing annual numerical limit (currently 65,000) for H-1B aliens. Only principals are counted against each country's respective numerical limitation. Initial applications for H-1B1 classification, as well as the sixth and all subsequent extensions of stay, are counted against the H-1B1 annual numerical limitations.
- b. At the end of each fiscal year, unused H-1B1 numbers will be returned to that year's total H-1B global numerical limit and will be made available to H-1B aliens during the first 45 days of the new fiscal year.
- c. USCIS is required to keep a numerical count of the H-1B1 visas issued. The Office of Visa Services (CA/VO) monitors the number used based on workload data. On a periodic basis, CA/VO provides this information to USCIS.

9 FAM 402.10-5(C) No Petition Required

(CT:VISA-197; 09-30-2016)

An employer of an H-1B1 professional is not required to file a petition with USCIS. Instead, an employee will present evidence for classification directly to consular officers at the time of visa application.

9 FAM 402.10-5(D) Applicants Subject to Labor Condition

(CT:VISA-197; 09-30-2016)

Employers must submit a labor condition application (LCA) for foreign workers from Chile or Singapore under the H-1B1 program. If the employee makes an application for H-1B1 classification with a consular officer, rather than with USCIS, the law requires the Department of Labor (DOL) to certify to the Department of State that LCA, Form ETA-9035, Labor Condition Application for H-1B Nonimmigrants, has been filed with DOL. If certified, the employer transmits a copy of the signed, certified LCA to the alien together with a written offer of employment. At the time of visa application, the alien will present a certified copy of the LCA, clearly annotated by the employer as "H-1B1 Chile" or "H-1B1 Singapore," as proof of filing.

9 FAM 402.10-5(E) H-1B1 Professionals in Specialty Occupations

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N26.4 CT:VISA-2154; 07-30-2014)

- a. The H-1B1 category allows for the entry of nonimmigrant professionals in "specialty occupations." The definition of "specialty occupation" set forth in both FTAs is presently identical to the regulatory definition for H-1Bs; i.e., an occupation that

requires:

- (1) Theoretical and practical application of a body of specialized knowledge; and
 - (2) Attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States" (8 CFR 214.2). Consular officials should refer to this section for guidance in connection with an applicant's qualifications as an H-1B1 professional.
- b. Both agreements allow for alternative credentials for certain professions. The United States has agreed to accept alternative credentials for Chilean and Singaporean nationals in the occupations of Disaster Relief Claims Adjuster and Management Consultant and must have a degree, even if in an unrelated discipline. If the degree is in an unrelated discipline, they additionally must have 3 years of experience in a field or specialty related to the consulting agreement. For Chilean nationals only, Agricultural Managers and Physical Therapists can also qualify with a combination of a post-secondary certificate in the specialty and three years' experience in lieu of the standard degree requirements. You may accept specified documentary evidence of alternative credentials.

9 FAM 402.10-5(F) Temporary Entry of FTA Professionals

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N26.5 CT:VISA-2154; 07-30-2014)

- a. Both agreements provide for the temporary entry of professionals into the United States. Temporary entry is defined in both agreements as "an entry into the United States without the intent to establish permanent residence." You must be satisfied that the alien's proposed stay is temporary. A temporary period has a reasonable, finite end that does not equate to permanent residence. The circumstances surrounding an application should clearly and convincingly indicate that the alien's temporary work assignment in the United States will end predictably and that the alien will depart upon completion of the assignment. An intent to immigrate in the future, which is in no way connected to the proposed immediate trip, need not in itself result in a finding that the immediate trip is not temporary. An extended stay, even in terms of years, may be temporary, as long as there is no immediate intent to immigrate.
- b. H-1B1 nonimmigrant professionals are admitted for a one-year period renewable indefinitely, provided the alien is able to demonstrate that he or she does not intend to remain or work permanently in the United States.

9 FAM 402.10-5(G) Licensing Requirements

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N26.6 CT:VISA-1884; 09-14-2012)

For admission into the United States in a specialty occupation, an alien must meet the academic and occupational requirements. However, the requirements for classification as an H-1B1 nonimmigrant professional do not include licensure. Licensure to practice a given profession in the United States is a post-entry requirement subject to enforcement

by the appropriate state or other sub-federal authority. Proof of licensure to practice in a given profession in the United States may be offered along with a job offer letter, or other documentation in support of an application for an H-1B1 visa. However, admission and or classification must not be denied based solely on the fact that the applicant does not already hold a license to practice in the United States.

9 FAM 402.10-5(H) H-1B1 Visa Application Procedures

(CT:VISA-197; 09-30-2016)

- a. A national of Chile or Singapore must meet the general academic and occupational requirements for the position pursuant to the definition cited. Proof of alternative credentials may be submitted for certain professions as discussed in [9 FAM 402.10-5\(G\)](#) above.
- b. An applicant must submit evidence that his or her employer has filed an LCA with DOL covering the applicant's position. A certified form ETA-9035 clearly annotated as "H-1B1 Chile" or "H-1B1 Singapore" must be submitted as evidence of filing.
- c. An applicant must submit evidence that the employer has paid any applicable fee imposed.
- d. An applicant must submit evidence that his or her stay in the United States will be temporary (a letter or contract of employment should be evidence that the employment is being offered on a temporary basis).
- e. An applicant must pay the Machine Readable Visa (MRV) fee or provide proof of payment.

9 FAM 402.10-6 LABOR CONDITION APPLICATION FOR H-1B NONIMMIGRANTS

(CT:VISA-197; 09-30-2016)

- a. Prior to filing a Form I-129, Petition for a Nonimmigrant Worker, with USCIS for an H-1B nonimmigrant (other than an alien in a Department of Defense research and development or co-production project), the employer must file a labor condition application (LCA) with DOL. The labor condition application must state, among other things, that:
 - (1) The employer will pay the beneficiary a wage which is no less than the wage paid to U.S. workers with similar experience and qualifications for the specific employment position in question or the prevailing wage for the occupational classification in the geographic area of employment, whichever is greater;
 - (2) The employer will provide working conditions for the alien-beneficiary that will not adversely affect the working conditions of workers similarly employed; and
 - (3) There is no current strike or lockout as a result of a labor dispute in the occupational classification at the place of employment.
- b. Additional restrictions are placed on any employer that is an "H-1B dependent

employer,” as defined in INA 212(n)(3) (see [9 FAM 402.10-2](#) paragraph c). An “H-1B dependent employer” generally, must make the following additional attestations to the DOL when filing LCA:

- (1) It has taken good faith steps to recruit U.S. workers (defined as U.S. citizens or nationals, lawful permanent residents, refugees, asylees, or other immigrants authorized to be employed in the United States (i.e., workers other than nonimmigrant aliens)) using industry-wide standards and offering compensation that is at least as great as those offered to the H-1B nonimmigrant;
 - (2) It has offered the job to any U.S. worker who applies and is equally or better qualified for the job that is intended for the H-1B nonimmigrant;
 - (3) It has not “displaced” any U.S. worker employed within the period beginning 90 days prior to the filing of the H-1B petition and ending 90 days after its filing. A U.S. worker is displaced if the worker is laid off from a job that is essentially the equivalent of the job for which an H-1B nonimmigrant is sought; and
 - (4) It will not place an H-1B worker with another employer unless it has inquired into whether and has no knowledge that the other employer has displaced or intends to displace a U.S. worker within 90 days before or after the placement of the H-1B worker.
- c. Note that if an H1-B worker is changing places of employment, the employer must file a new LCA. For more information on petitioner and beneficiary requirements when there is a change of employment, see [9 FAM 402.10-8\(G\)](#).

9 FAM 402.10-7 SIGNIFICANCE OF APPROVED FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

9 FAM 402.10-7(A) DHS Responsible for Adjudicating H Petitions

(CT:VISA-197; 09-30-2016)

By mandating a preliminary petition process, Congress placed responsibility and authority with the Department of Homeland Security (DHS) to determine whether the foreign worker meets the required qualifications for “H” status. Because DHS regulations governing adjudication of H petitions are complex and petition adjudication is a DHS-mandated activity, you must rely on the expertise of DHS, specifically USCIS, in this area.

9 FAM 402.10-7(B) Approved Petition is Prima Facie Evidence of Entitlement to H Classification

(CT:VISA-258; 12-02-2016)

- a. An approved Form I-129, Petition for a Nonimmigrant Worker, seeking H nonimmigrant status on behalf of an alien beneficiary or alien beneficiaries, or evidence that the petition has been approved (see [9 FAM 402.10-9\(A\)](#) below), is in

itself, to be considered by you as prima facie evidence that the requirements for H classification which are examined in the petition process have been met. The large majority of approved H petitions are valid, and involve bona fide establishments, relationships, and individual qualifications that conform to the DHS regulations in effect at the time the petition was filed. You may only request reconsideration of an approval of a petition with specific evidence, unavailable to USCIS at the time of petition approval, that the beneficiary may not be entitled to status.

- b. The approval of a petition by USCIS does not relieve the alien-beneficiary of the burden of establishing visa eligibility during a visa interview. In the course of the visa interview questions may arise as to the beneficiaries' eligibility for H classification. If information develops during the visa interview (i.e., evidence which was not available to USCIS) that gives you reason to believe that the beneficiary may not be entitled to status, you may request any additional evidence which bears a reasonable relationship to this issue. Disagreement with USCIS interpretation of the law or the facts, however, is not sufficient reason to ask USCIS to reconsider its approval of the petition.
- c. **Prohibited Fees:** The USCIS may deny or revoke an approved H-2A or H-2B petition if it is discovered that the petitioner collected or entered into an agreement to collect a fee or other compensation (direct or indirect) from the beneficiary as a condition of the beneficiary obtaining or maintaining employment or if the petitioner knows or reasonably should have known at the time of filing the I-129 petition that the beneficiary has paid or agreed to pay any facilitator, recruiter, or similar employment service as a condition or requirement of obtaining employment. Prohibited job placement fees do not include the lower of the fair market value of, or actual costs for, transportation to the United States (if permitted by applicable laws) or the payment of any government-specified fees such as fees required by a foreign government for the issuance of a passport and the visa issuance fees. If you have reason to believe that the alien-beneficiary has paid a prohibited fee or agreed to pay such a fee and s/he has not been reimbursed or the agreement to pay the fee has not been terminated, you should return the petition to USCIS for reconsideration following current procedures outlined below in [9 FAM 402.10-7\(C\)](#) after consulting with your liaison in the Advisory Opinions Division of the Visa Office (CA/VO/L/A).

9 FAM 402.10-7(C) Referring Approved H Petition to USCIS for Reconsideration

(CT:VISA-197; 09-30-2016)

- a. You should consider all approved H petitions in light of these Notes, process those applications that appear to be legitimate, identify those applications which require local investigation, and identify those petitions that require referral to the approving U.S. Citizenship and Immigration Services (USCIS) office for reconsideration. Refer petitions to USCIS for reconsideration sparingly, to avoid inconveniencing bona fide petitioners and beneficiaries and causing duplication of effort by USCIS. You must have specific evidence of a requirement for automatic revocation, misrepresentation in the petition process, lack of qualification on the part of the beneficiary, or of other previously unknown facts, which are material to the petition eligibility criteria, and

might alter USCIS's finding before requesting review of an approved Form I-129, Petition for a Nonimmigrant Worker.

- b. When requesting reconsideration, you must, under cover of Form DS-3099, NIV Petition Revocation Request Cover Sheet-Kentucky Consular Center, forward the consular return memorandum and all of the supporting evidence that is relevant to the request for reconsideration to the Kentucky Consular Center (KCC), which will then forward the request to the approving USCIS office. The preferred method for submitting these documents to KCC is to scan and send a PDF document to the KCCI129Revocations@state.gov mailbox with a subject line reading "Revocation Request from (Post Name) for (Receipt Number)." KCC will also enter the request and all supporting documents into Petition Information Management System (PIMS), will maintain a copy of the request and all supporting documentation, and will track all consular revocation requests. You are no longer required to maintain a paper copy of all documents, although scanning the revocation request and supporting documents into the case file is strongly recommended.

9 FAM 402.10-7(D) Effect of Revocation of Department of Labor (DOL) Temporary Labor Certifications for H-2A Beneficiaries

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N2.4 CT:VISA-2154; 07-30-2014)

- a. The approval of an employer's H-2A petition is immediately and automatically revoked if the Department of Labor (DOL) revokes the underlying temporary labor certification upon which the petition is based.
- b. The alien beneficiary's stay is authorized for a 30-day period following the revocation for the purpose of departure or extension of stay based upon a subsequent offer of employment. The alien will not accrue any period of unlawful presence under INA 212(a)(9) during that 30-day period.
- c. The previously approved H-2A petition must be returned to the approving USCIS office through the Kentucky Consular Center (KCC) under cover of a Form DS-3099 with a written memorandum detailing the Department of Labor's action.

9 FAM 402.10-8 PETITION PROCEDURES

9 FAM 402.10-8(A) Using Form I-129, Petition for a Nonimmigrant Worker

(CT:VISA-197; 09-30-2016)

- a. An employer must file a Form I-129, Petition for a Nonimmigrant Worker, with USCIS to accord status as a temporary worker or trainee. Form I-129 is also used to request changes of status, extensions of petition validity and extensions of stay in H status. The form must be filed with the USCIS Service Center that has jurisdiction over the area where the alien will perform services or receive training.

- b. More than one beneficiary may be included in an H-2A, H-2B, or H-3 petition if the beneficiaries will be performing the same service, or receiving the same training, for the same period of time and in the same location.
- c. According to DHS H-2A and H-2B regulations, a national from a country not on the list of designated countries may be the beneficiary of an approved Form I-129 petition upon the request of the petitioner, if the Secretary of the DHS determines that it is in the U.S. interest for the petition to be approved. When making such a determination the Secretary of DHS will take into consideration a variety of factors, including but not limited to consideration of:
 - (1) Evidence that a worker with the required skills is not available within the U.S. workforce or from the pool of foreign workers who are nationals of H-2A or H2B program participating countries;
 - (2) Evidence that the beneficiary has been admitted to the United States in H-2A or H2B status on a previous occasion and has complied with the terms of that status;
 - (3) The potential for abuse, fraud, or other harm to the integrity of the H-2A or H-2B program through the potential admission of the beneficiary; and
 - (4) Such other factors as may serve the U.S. interest. You must not refuse a visa based on the nationality of the beneficiary, but may presume that DHS has approved this exception in the absence of any evidence to the contrary.
- d. USCIS recommends that petitions filed for beneficiaries who are nationals of countries participating in the H-2 program should be filed separately from those petitions filed for beneficiaries who are nationals of countries not participating in the H-2 program.
- e. There are specific USCIS requirements of petitioners for naming beneficiaries on all H-2A and H-2B petitions. An H-2A or H-2B petition must list the names of all beneficiaries who are currently in the United States, but the petitioner, generally, is not required to do so for those not currently in the United States. However, USCIS retains the authority to require, at its discretion, the naming of beneficiaries of H-2A and H-2B petitions if they are currently outside the United States. Moreover, beneficiaries from countries who are not on the list of eligible countries must be named. All H-2A and H-2B petitions must include the nationality of all beneficiaries whether named or unnamed.

9 FAM 402.10-8(B) Evidence Submitted in Support of H Petitions

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N4.6 CT:VISA-2154; 07-30-2014)

- a. **Evidence of Employment/Job Training:** For petitions with named beneficiaries, a petition must be filed with evidence that the beneficiary met the certification's minimum employment and job training requirements, if any are prescribed, as of the date of the filing of the labor certification application. For petitions with unnamed beneficiaries, such evidence must be submitted at the time of a visa application or, if a visa is not required, at the time the applicant seeks admission to the United States.

Evidence in support of H-2A petitions must be and evidence in support of H-2B petitions can be in the form of the past employer or employers' detailed statement(s) or actual employment documents, such as company payroll or tax records. Alternately, a petitioner must show that such evidence cannot be obtained, and submit affidavits from persons who worked with the beneficiary that demonstrate the claimed employment or job training.

- b. **Evidence of Education and Other Training:** For petitions with named beneficiaries, a petition must be filed with evidence that the beneficiary met all of the certification's post-secondary education and other formal training requirements, if any are prescribed in the labor certification application as of date of the filing of the labor certification application. For petitions with unnamed beneficiaries, such evidence must be submitted at the time of a visa application or, if a visa is not required, at the time the applicant seeks admission to the United States. Evidence in support of H-2A petitions must be and evidence in support of H-2B petitions can be in the form of documents, issued by the relevant institution(s) or organization(s) that show periods of attendance, majors and degrees or certificates accorded.

9 FAM 402.10-8(C) Notifying Petitioner of Petition Approval

(CT:VISA-197; 09-30-2016)

USCIS uses Form I-797, Notice of Action, to notify the petitioner that the H petition filed by the petitioner has been approved or that the extension of stay in H status for the employee has been granted. The petitioner may furnish Form I-797 to the employee for the purpose of making his or her H visa appointment or to facilitate the employee's entry into the United States in H status, either initially or after a temporary absence abroad during the employee's stay in H status. (See [9 FAM 402.5-8\(A\)](#) below.)

9 FAM 402.10-8(D) Validity of Approved Petitions

(CT:VISA-197; 09-30-2016)

- a. **Initial Period of Approval:** USCIS has established the following initial approval period of an H petitions; however, individual petitions may vary. You must always be sure to check the expiration date on the actual petition itself via PIMS or PCQS:
- (1) An H-1B petition for an alien in a specialty occupation may be approved for a period of up to three years but may not exceed the validity period of the labor condition application;
 - (2) An H-1B petition for a fashion model of distinguished merit and ability may be approved for a period of up to three years;
 - (3) An H-1B petition involving a participant in a Department of Defense (DOD) research and development or co-production project may be approved for a period of up to five years;
 - (4) An approved H-2A petition generally will be valid through the expiration of the related labor certification;

- (5) An approved H-2B petition generally will be valid through the expiration of the related labor certification;
 - (6) An H-3 petition for an alien trainee may be approved for a period of up to two years; and
 - (7) An H-3 petition for an alien participating in a special education exchange program may be approved for a period of up to 18 months.
- b. **Petition Extension:** A petitioner wishing to extend the validity of a petition must file a request for a petition extension to USCIS, using Form I-129, Petition for a Nonimmigrant Worker. Only DHS can extend the validity of a petition.
- c. **Validity of H-1B Petition When Company Restructures:** An H-1B petition remains valid if a company is involved in a corporate restructuring, including but not limited to, a merger, acquisition or consolidation if:
- (1) The new corporate entity succeeds to the interests and obligations of the original petitioning employer remain the same; and
 - (2) The terms and conditions of employment remain the same, but for the identity of the petitioner.

9 FAM 402.10-8(E) "NAFTA Professional" (TN) Status in Lieu of H-1B Petition for Canadian Citizens

(CT:VISA-197; 09-30-2016)

- a. No visa, prior petition, labor condition application, or prior approval is required for a Canadian citizen who is a business person seeking to enter the United States temporarily to engage at a professional level in one of the professional activities listed in Chapter 16 Appendix 1603.D.1 of the North American Free Trade Agreement (NAFTA). Engaging in a professional activity listed in this appendix would not necessarily result in qualification for H-1B status. The criteria used to develop Appendix 1603.D.1 differ from the statutory requirements for determining H-1B classification. To qualify for TN status, the alien-beneficiary may present supporting documentation to an immigration officer at the port of entry demonstrating that he or she seeks entry to engage in a listed profession at a professional level and meets the criteria to perform at that level. (See [9 FAM 402.17.](#))
- b. Mexican nationals applying for a TN visa do not/not require a petition approved by USCIS. (See [9 FAM 402.17-6\(c\)](#) and (d).

9 FAM 402.10-8(F) Filing H Petitions for Visa-Exempt Aliens

(CT:VISA-197; 09-30-2016)

Petitioners seeking to classify employees in H nonimmigrant status must file a petition in advance with USCIS, and the visa-exempt beneficiary must present a copy of Form I-797, Notice of Action, at a port of entry.

9 FAM 402.10-8(G) Effect on Petition if Beneficiary's Employment Changes

9 FAM 402.10-8(G)(1) When a New Petition is Required

(CT:VISA-197; 09-30-2016)

- a. The petitioner must file a new or amended H-1B petition if the H-1B employee is changing his or her place of employment to a new geographical area. The place of employment is defined as the worksite or physical location where the work is actually performed by the H-1B nonimmigrant. For petition validity purposes, geographical area means the area within normal commuting distance of the place of employment or within the same Metropolitan Statistical Area. Once a petitioner files the new or amended H-1B petition, the H-1B employee can immediately begin to work at the new place of employment. The petitioner does not have to wait for a final decision on the new or amended petition.
- b. A change in employment does not have an effect on an H-1B employee's currently valid visa. For information on the effect of the new petition on the applicant's unexpired visa, see [9 FAM 402.10-11\(C\)](#), Validity of H1-B Visa When Change of Employment Pending.

9 FAM 402.10-8(G)(2) When an Amended or New Petition is NOT Required

(CT:VISA-197; 09-30-2016)

If there are no other material changes in the terms and conditions of the H-1B worker's employment, petitioners are not required to file amended petitions for:

- (1) Movement of an employee's place of employment within the same geographical area;
- (2) Short-term placements of up to 30 days, or up to 60 days when the employee is still based at the "home" worksite, provided certain provisions of 20 CFR 655.735 are met; or
- (3) "Non-worksite" locations. A location is considered a non-worksite if the employee is attending training or a conference, the employee spends little time at any one location, or the job involves short periods of travel to other locations on a casual short term basis.

9 FAM 402.10-8(G)(3) Consular Officer Responsibilities

(CT:VISA-197; 09-30-2016)

- a. If you become aware of a change in an H-1B applicant's place of employment, you should verify the petitioner has taken the appropriate steps outlined above or give them an opportunity to do so. For example, if the beneficiary presents a cover letter from the petitioner stating that the beneficiary's place of employment is different than that stated on the approved H-1B petition, an additional line of inquiry may be necessary to determine the actual place of employment.

- b. If you determine that an applicant's place of employment has changed since the petition was submitted, you should refuse the visa application under INA Section 221(g) until the petitioner has provided a copy of a USCIS notice of receipt that an amended or new petition has been filed. The case should be processed to conclusion based on the receipt notice, even if the amended or new petition has not yet been approved. The PIMS record should use the original, approved petition number, and the visa should be annotated with: "New worksite - petition [new receipt number] filed [date]."

9 FAM 402.10-9 INTERVIEWING AND APPROVING H VISA APPLICANTS

9 FAM 402.10-9(A) Evidence Forming Basis for H Visa Issuance

(CT:VISA-197; 09-30-2016)

- a. Before issuing a visa, posts must verify that the petition has been approved. Posts must first use the electronic Petition Information Management Service (PIMS) record created by the Kentucky Consular Center (KCC) to verify petition approval (see [9 FAM 402.10-7\(B\)](#) above). Posts are able to access the details of approved NIV petitions using the PIMS Petition Report in the Consular Consolidated Database (CCD), under the Nonimmigrant Visa tab. If no record of the petition is found in PIMS, you may use the Person Centric Query Service (PCQS), via the CCD, to verify that the petition has been approved. If post finds a petition approval in PCQS that was is not in PIMS, then post should send an email to PIMS@state.gov as follows: Petition with Receipt Number <Insert Number> was found in PCQS but not in PIMS. KCC's Fraud Prevention Unit (FPU) will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within two working days. You may not authorize a petition-based NIV without verification of petition approval either through PIMS or through PCQS.
- b. When presented at post, an approved Form I-129, Petition for a Nonimmigrant Worker, and a Form I-797, Notice of Action, may be used as sufficient proof to schedule an appointment, but posts should not review these forms for purposes of H visa issuance. Only PIMS or PCQS must provide the evidence forming the basis for H visa issuance.

9 FAM 402.10-9(B) Approved Petition is Prima Facie Evidence of Entitlement to H Classification

(CT:VISA-197; 09-30-2016)

You should not require an approved Form I-129, Petition for a Nonimmigrant Worker, or an I-797 be presented by the applicant as evidence that the H petition has been approved. All petition approvals must be verified through the PIMS or through the PCQS. Once you have verified approval through PIMS or PCQS, consider this as prima

facie evidence that the requirements for H classification, which are examined in the petition process, have been met. You may not question the approval of H petitions without specific evidence, unavailable to USCIS at the time of petition approval, that the beneficiary may not be entitled to status. A large majority of approved H petitions are valid, and involve bona fide establishments, relationships, and individual qualifications that conform to the DHS regulations in effect at the time the H petition was filed.

9 FAM 402.10-9(C) INA 214(b) and H Visas

(CT:VISA-197; 09-30-2016)

- a. H-1B aliens are specifically excluded from the intending immigrant presumption of INA 214(b) and are not required to have a residence abroad which they have no intention of abandoning. In addition, INA 214(h) provides that H-1B nonimmigrant may have "dual intent," i.e., the fact that an H-1B nonimmigrant has sought permanent residence in the United States or will be seeking such status in the future does not constitute evidence of an intention to abandon his or her foreign residence (and unlawfully overstay his or her period of authorized stay) for purposes of obtaining an H-1B nonimmigrant visa or otherwise obtaining or maintaining that status. The alien may legitimately come to the United States as a nonimmigrant under the H-1B classification and depart voluntarily at the end of his or her authorized period of stay, and, at the same time, lawfully seek to become a permanent resident of the United States without jeopardizing his H-1B nonimmigrant status. Consequently, your evaluation of an applicant's eligibility for an H-1B visa must not focus on the issue of immigrant intent.
- b. Unlike H-1B nonimmigrants, H-1B1, H-2, and H-3 nonimmigrants are subject to the presumption of immigrant intent under INA 214(b) and are not accorded dual intent under INA 214(h). Under INA 101(a)(15)(H)(ii)-(iii), an applicant is not classifiable as an H-2A, H-2B, or H-3 nonimmigrant unless the alien has a residence abroad and no intention to abandon that residence. Thus, the fact that an H-2 or H-3 nonimmigrant has sought or plans to seek permanent residence may be considered evidence of the alien's intention to abandon his or her foreign residence.
- c. H-4 spouse and child derivatives of H-1B aliens are subject to INA 214(b) only if they have not been able to establish a bona fide relationship to the principal applicant. H-4 spouses and child derivatives of H-1B1, H-2, and H-3 aliens are subject to the foreign residence requirement.

9 FAM 402.10-9(D) Former Exchange Visitors Subject to Two-Year Foreign Residence Requirement

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N24 CT:VISA-1884; 09-14-2012)

For instructions regarding requests for waivers of the two-year foreign residence requirement by H visa applicants who are former exchange visitors and subject to the two-year residence abroad requirement of INA 212(e), see 22 CFR 40.202, and [9 FAM 302.10-7\(D\)](#).

9 FAM 402.10-9(E) Responsibility of Consular Officers to Inform Applicants of Legal Rights

(CT:VISA-197; 09-30-2016)

- a. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA) requires you to ensure that all individuals applying for H visas are made aware of their legal rights under federal immigration, labor, and employment laws. This includes information on the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States and the legal rights of immigrant victims of such crimes. A briefing on the material may be provided by any consular section employee or contractor prior to the interview. At the time of the nonimmigrant visa interview, you must confirm that a pamphlet ("Certain Employment or Education-Based Nonimmigrants") prepared by the Department detailing this information has been received, read, and understood by the applicant. See [9 FAM 402.3-6\(G\)](#) for information about WWTVPRA enforcement and consular officer responsibilities. Consular officers must enter a mandatory case note in the NIV system stating the pamphlet was provided and that the applicant indicated he or she understood its contents.
- b. If an H visa applicant is eligible for an in-person interview waiver and the applicant's previous visa was issued at a time when post was adhering to the WWTVPRA requirements, post may apply the fingerprint reuse/interview waiver policies and ensure a copy of the pamphlet is returned to every issued applicant along with his or her visa.

9 FAM 402.10-10 ISSUING H VISAS

9 FAM 402.10-10(A) Numerical Limitations on Certain H Nonimmigrants

(CT:VISA-197; 09-30-2016)

- a. Current fiscal year limitations on the total number of aliens who can be accorded H nonimmigrant visa classification in the categories indicated below is limited as follows:
 - (1) Aliens classified as H-1B nonimmigrants, excluding those participating in Department of Defense (DOD) research and development or co-production projects, may not exceed:
 - (a) 65,000 in each fiscal year;
 - (b) 20,000 additional aliens classified as H-1B nonimmigrants who have earned a master's or higher degree from a nonprofit U.S. institution of higher education are exempted from the limitation each fiscal year;
 - (c) Aliens classified as H-1B nonimmigrants to work in DOD research and development or co-production may not exceed 100 at any time;
 - (d) Aliens who are employed at (or have an offer of employment from) an

institution of higher education, a related or affiliated nonprofit entity, or a nonprofit or governmental research organization are not to be counted against these ceilings. Such aliens will be counted if they move from such a position to one which is within the ceiling applicability;

- (2) Aliens classified as H-2B nonimmigrants may not exceed 66,000 during any fiscal year and may not exceed 33,000 during the first 6 months of any fiscal year; and
 - (3) Aliens classified as H-3 participants in special education exchange programs may not exceed 50 in any given fiscal year.
- b. These numerical limitations are tracked by USCIS which allocates a number to each alien included in a new cap-subject petition when the petition is filed. Petitioners are required to notify the appropriate USCIS Service Center Director when numbers are not used, so that they may be reassigned. Consequently, the data provided above is solely for informational purposes. You should not be concerned about the availability of visa numbers for beneficiaries of approved petitions, nor should you inform USCIS when H visa applications in affected categories are abandoned or denied.
- c. The dependents of principal aliens in these categories must not be counted against the numerical limitations.

9 FAM 402.10-10(B) Multiple Beneficiaries

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N8.4 CT:VISA-2154; 07-30-2014)

More than one beneficiary may be included in an H-2A, H-2B, or H-3 petition if the beneficiaries will be performing the same service, or receiving the same training, for the same period of time and in the same location.

9 FAM 402.10-10(C) Beneficiaries with More than One Employer

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N8.5 CT:VISA-2154; 07-30-2014)

If a nonagricultural beneficiary is performing services for or receiving training from more than one employer, each employer must file a petition unless an agent, as described in DHS regulations, files the petition.

9 FAM 402.10-10(D) Substitution of Beneficiaries

(CT:VISA-197; 09-30-2016)

- a. Beneficiaries, in certain circumstances, may be substituted in H-2 petitions approved on behalf of a group or for unnamed or named beneficiaries, or on H-2 petitions approved for a job offer that does not require any education, training, and/or experience. (See DHS regulation at 8 CFR 214.2(h)(5)(ix) for H-2A and 8 CFR 214.2(h)(6)(viii) for H-2B).
- b. **Substitution Requests for Workers Already in the United States:** In order to be

eligible for substitution through consular processing, the original worker must not have been admitted into the United States on their issued H-2 visa. In cases where the petitioner wishes to substitute a worker who was already admitted into the United States, they must file an amended I-129 petition with USCIS.

- c. **Substitution Requests for Workers Who Have Not Entered the United States:** To substitute a worker who has not been admitted into the United States, the petitioner must provide written notification to the consular section. This notification must name both the worker who was originally issued the visa (or named on the petition) and the worker who will be replacing him or her. The petitioner must also submit evidence that the replacement worker meets any qualifications listed on the labor certification and/or petition. Replacement workers seeking substitution at the consulate must be a national of a country on the DHS H-2 H-2A or H-2B Eligible Countries list as defined in 8 CFR 214.2(h)(5)(i)(F) and 8 CFR 214.2(h)(6)(i)(E).
- d. If the request to substitute one H-2 worker for another is approved, the consular officer must both revoke the issued visa in the NIV system and physically cancel the visa foil of the substituted worker. This will ensure that the total number of beneficiaries issued under the approved I-129 will not exceed the maximum number approved by USCIS. Consular officers should be extremely diligent in cases where USCIS approved a petition for multiple unnamed beneficiaries and where the petition includes workers from different countries to ensure that substituted workers will not yield the petitioner more H-2 workers than were approved by USCIS.
- e. In cases where an H-2 worker who was issued a visa was subsequently denied admission into the United States, that worker may be substituted at the request of the petitioner per the guidance listed above (paragraphs b through d), provided that the replacement worker is not already in the United States.
- f. **Substitutions in H-2B "Returning Worker" Cases:** If a petitioner named a worker on the I-129 and certified that this individual was a returning worker eligible for H-2B cap exemption, that worker may not be substituted at post. This prohibition holds true even in cases where the proposed replacement worker held previous H2-B visas. The only way a petitioner may request substitution for returning workers is by filing an amended I-129 with USCIS.

9 FAM 402.10-11 VALIDITY OF H VISAS

(CT:VISA-197; 09-30-2016)

- a. The validity of an H visa may not exceed the period of validity of the petition approved by USCIS. If the period of reciprocity is less than the validity period of the approved petition, the period permitted by the reciprocity schedule must prevail. If the alien's prior petition has expired, the alien is not eligible to receive a new visa until a new petition has been approved.
- b. Posts are authorized to accept H visa petitions and issue visas to qualified applicants up to 90 days in advance of applicants' beginning of employment status. Post must inform applicants verbally that they can only use the visa to apply for admission to the United States starting one week prior for H-2A beneficiaries, and ten days prior to

the beginning of the approved status period for H-1B, H-2B, and H-3. In addition, such visas must be annotated, "Not valid until (ten days prior to the petition validity date)."

- c. When there is no gap in authorized status, an alien may obtain an H-1B visa that is valid during the time remaining on the first petition (and/or any extensions) and the validity of the second petition, and does not have to wait until 10 days before the start date of the second petition to reenter the United States.

9 FAM 402.10-11(A) Validity of H1-B Visas When Change of Employer Pending

(CT:VISA-197; 09-30-2016)

- a. Public Law 106-313 provides for "portability" for H1-B aliens, permitting them to change jobs while the petition filed by their new employer is still pending approval by USCIS. In order to change employers without penalty, H1-B aliens must meet the following conditions:
 - (1) The alien had been lawfully admitted into the United States;
 - (2) The new employer filed a non-frivolous petition for the alien prior to the expiration of his or her authorized stay; and
 - (3) The alien had not worked without authorization prior to the filing of that new petition.
- b. If the alien's prior visa and petition have expired prior to the filing of the new petition, the alien is not eligible to receive a new visa until the pending petition has been approved.

9 FAM 402.10-11(B) H1-B Aliens May Travel Abroad While Change of Employer Pending

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N8.3-2 CT:VISA-2154; 07-30-2014)

H1-B aliens traveling abroad during the period when their new employment petition is pending may use their old petition and visa for return to the United States provided the applicant:

- (1) Is otherwise admissible;
- (2) Has a valid passport and visa (whether new or the original visa with the prior employer's name), unless exempt under 8 CFR 212.1;
- (3) Is able to establish that he or she was previously admitted as an H-1B nonimmigrant or otherwise accorded H-1B status (can be verified via PCQS), prior Form I-94, Arrival and Departure Record (can be verified through ADIS); and
- (4) Has a dated filing receipt or other evidence that a new petition was filed timely.

9 FAM 402.10-11(C) Validity of H-1B When There is a Change of Employer

(CT:VISA-197; 09-30-2016)

- a. After changing H-1B employers in accordance with USCIS procedures for making such a change, an H-1B visa holder may continue to use his or her original H-1B visa for entry into the United States. Upon applying for entry, the visa holder must present the new Form I-797, Notice of Action, evidencing the approval of the change of employer in addition to the visa.
- b. An H-1B applicant can change employers while in the United States provided the following criteria were met:
 - (1) The alien was lawfully admitted to the United States;
 - (2) The new employer filed the petition for the alien prior to the expiration of his or her authorized stay; and
 - (3) The alien has not been employed in the United States without authorization subsequent to lawful admission but before filing such petition.
- c. After the filing of the new petition the H-1B is authorized to accept employment until the petition is adjudicated. If the new petition is denied, employment must cease. If the alien's prior visa and petition have expired, the alien is not eligible to receive a new visa until the pending petition has been approved.

9 FAM 402.10-11(D) Limiting Validity of H Visas

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N8.3-4 CT:VISA-2154; 07-30-2014)

- a. You may restrict visa validity in some cases to less than the period of validity of the approved petition (for example, on the basis of reciprocity or the terms of a waiver of a ground of ineligibility). In any such case, in addition to the other notations required on the H visa, posts must insert the following:

"PETITION VALID TO (date)"
- b. Posts should use appropriate operating instructions for annotating visas.

9 FAM 402.10-11(E) Job Flexibility for Long-Delayed Applicants for Adjustment of Status to Lawful Permanent Residence (LPR)

(CT:VISA-197; 09-30-2016)

INA 204(j) provides that if an H-1B alien, whose employer has filed for permanent residence status for him or her as an employment-based immigrant under INA 204(a) (1)(D), changes employers or jobs, the petition and the labor certification approved for the original employer will remain valid if:

- (1) The alien's adjustment of status application has remained unadjudicated for 180 days or more; and

- (2) The new job is in the same or a similar occupational classification as the job for which the petition was filed.

9 FAM 402.10-11(F) Reissuance of Limited H Visas

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N8.3-6 CT:VISA-2154; 07-30-2014)

When an H visa has been issued with a validity of less than the validity of the petition or authorized period of stay, you may reissue the visa any number of times within the period allowable. If a fee is prescribed in the reciprocity schedule, you must collect the fee for each reissuance of the H visa.

9 FAM 402.10-11(G) Issuing Single H Visa Based on More Than One Petition

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N8.3-7 CT:VISA-2154; 07-30-2014)

If an alien is the beneficiary of two or more H petitions and does not plan to depart from the United States between engagements, you may issue a single H visa valid until the expiration date of the last expiring petition, reciprocity permitting. In such a case, the required notations from all petitions must be placed below the visa.

9 FAM 402.10-12 LENGTH AND EXTENSION OF STAY

(CT:VISA-197; 09-30-2016)

- a. An H-1B, H-2B or H-3 petition beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to ten days before the validity period of the petition begins and ten days after it ends. An H-2A petition beneficiary may be admitted to the United States for the validity period of the petition, plus ten days before the beginning of the approved petition and 30 days following the expiration of the approved petition. The beneficiary generally may not work, except during the validity period of the petition.
- b. The petitioner must request the extension of a beneficiary's stay in the United States on the same Form I-129, Petition for a Nonimmigrant Worker, used to file for the extension of the beneficiary's petition. The effective dates of the petition extension and of the beneficiary's extension of stay must be the same. The beneficiary must be physically present in the United States at the time the extension of stay petition is filed. If the beneficiary is required to leave the United States for business or personal reasons while the extension requests are pending, the alien may apply at a consular section overseas for the visa. The approved extension of stay must be verified via PIMS or PCQS before the visa can be issued (see [9 FAM 402.10-8\(F\)](#) above). When the maximum allowable period of stay in an H classification has been reached (see paragraphs below), no further extensions may be granted.
- c. The petitioner may apply for the extension of a beneficiary's stay with USCIS in the United States up to the maximum total period of stay for each H category described

below. Total maximum period of stay for H-1B nonimmigrants will be calculated by determining, generally the actual total number of days an alien lawfully admitted in H-1B status is physically present in the United States in that status. NOTE: Time spent as an H-4 dependent does not count against the maximum allowable period of stay available to a principal H beneficiary (or vice-versa)

- d. **H-1B Nonimmigrants:** Generally H-1B visas should be issued for the validity of the petition or per the reciprocity schedule, whichever is less.
- (1) Most H-1B visa holders can work in the United States for a maximum of 6 years, but an alien participating in a Department of Defense (DOD) research and development or co-production project may work for a maximum of ten years. Note that petition validity is usually for a maximum of 3 and 5 years, respectively. Also, other factors, such as time recapture and American Competitiveness Act in the 21st Century extensions can affect the validity period of an H-1B petition.
 - (2) Under the American Competitiveness in the 21st Century Act ("AC21," Public Law 106-313), USCIS may approve an H-1B petition for an unlimited number of times beyond the 6 year minimum in 3-year increments if the alien is the beneficiary of an approved employment-based immigrant petition, but is unable to adjust status due to unavailability of immigrant visa numbers. Additionally, USCIS may approve the H-1B petition in 1-year increments beyond the initial 6-year maximum if 365 days or more have elapsed since the filing of a labor certification or an immigrant petition on the alien's behalf. The AC21 law also provides the ability for certain H-1B nonimmigrants to switch employers upon the new employer's filing of an H-1B petition on the alien's behalf, without waiting for the petition to be approved. See AC21 section 105.

(Previous Location: 9 FAM 41.53 N12.2 CT:VISA-2154; 07-30-2014)

- e. **H-2A and H-2B Nonimmigrants:** An extension of stay for the beneficiary of an H-2A or H-2B petition generally may be authorized for the validity of the labor certification or for a period of up to one year. The alien's total period of stay may not exceed three years, except that in the U.S. Virgin Islands, where the alien's total period of stay may not exceed 45 days.

(Previous Location: 9 FAM 41.53 N12.3 CT:VISA-2154; 07-30-2014)

- f. **H-3 Nonimmigrants:** An extension of stay may be authorized for the length of the training program or for a total period of stay not to exceed two years for an H-3 trainee, or for a total period of stay not to exceed 18 months for an H-3 participant in a special education exchange program.

9 FAM 402.10-13 READMISSION AFTER MAXIMUM TOTAL PERIOD OF STAY HAS BEEN REACHED

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N13 CT:VISA-2154; 07-30-2014)

- a. A nonimmigrant who has spent the maximum allowable period of stay in the United

States in H and/or L status may not be issued a visa or be readmitted to the United States under the H or L visa classification, nor may a new petition, extension, or change of status be approved for that alien under INA 101(a)(15)(H) or INA 101(a)(15)(L), unless the alien has resided and been physically present outside the United States, (except for brief trips for business or pleasure) for the time limit imposed on the particular H category.

- b. All time spent outside of the United States is, generally, subtracted and thus does not count towards the maximum allowable period of stay in H-1B or L visa status; however, it does not count toward fulfillment of the required time abroad. The required periods of residence abroad prior to readmission for H nonimmigrants who have reached their maximum period of stay are as follows. (See [9 FAM 402.10-13\(A\)](#) and (B) below.)

9 FAM 402.10-13(A) H-1B Nonimmigrants

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N13.1 CT:VISA-2154; 07-30-2014)

An H-1B alien who has reached his or her maximum allowable period of stay in H-1B visa status must have resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year in order to re-qualify.

9 FAM 402.10-13(B) H-2A, H-2B, and H-3 Nonimmigrants

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N13.2 CT:VISA-2154; 07-30-2014)

- a. An H-2A or H-2B applicant who has spent the maximum allowable period of time in the United States in H status must have resided and been physically present outside the United States for the immediate prior three months before he or she may be granted H-2A or H-2B status. Additionally, the amount of time that will serve to interrupt the accrual of the three-year limitation on H-2A or H-2B status is affected by any absence from the United States. If the accumulated length of stay in the United States is 18 months or less, then an absence of 45 days from the United States will be interruptive. If the accumulated length of stay is more than 18 months, then an absence of two months, but less than three months will be interruptive. Any time the H-2 worker is outside the United States for at least 3 months, his or her 3-year limit restarts from the beginning upon the worker's readmission to the United States in H-2 status.
- b. An H-3 applicant who has spent the maximum allowable period of time in the United States in H status must have resided and been physically present outside the United States for the immediate prior six months before he or she may be granted H-3 status again.

9 FAM 402.10-13(C) Exceptions to Limitations on Readmission

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N14 CT:VISA-2154; 07-30-2014)

The limitations described in [9 FAM 402.10-13\(B\)](#) above does not apply to H-1B, H-2B, and H-3 aliens who did not reside continually in the United States and whose employment in the United States is seasonal or intermittent, or is for an aggregate of six months or less per year, nor to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. These exceptions may not apply if the principal alien's dependents have been living continuously in the United States in H-4 status. The alien must provide clear and convincing proof (e.g., evidence such as arrival and departure records, copies of tax returns, records of employment abroad) that he or she qualifies for these exceptions.

9 FAM 402.10-13(D) Readmission of H-1B Following Acceptance of New Employment

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N15 CT:VISA-2154; 07-30-2014)

- a. It is quite likely that an H-1B may choose to travel during the period following acceptance of new employment. The Department of Homeland Security (DHS) considers them admissible without a new visa during the period of validity of the original petition plus ten days, provided the applicant:
 - (1) Is otherwise admissible; and
 - (2) Has a valid passport and visa (even if it is the original visa); and
 - (3) Establishes that he or she was previously admitted to the U.S. as an H-1B or otherwise accorded H-1B status.
- b. If both the prior visa and the prior petition have expired, the applicant would not be eligible for a new H-1B visa until the new petition has been approved.

9 FAM 402.10-14 SPOUSES AND CHILDREN OF H ALIENS

9 FAM 402.10-14(A) Derivative Classification and Validity

(CT:VISA-197; 09-30-2016)

- a. The spouse and children of a principal alien classified H-1B, H-1B1, H-2A, H-2B, or H-3, who are accompanying or following to join the beneficiary in the United States, are entitled to H-4 classification and are subject to the same visa validity, period of admission, or limitation of stay as the principal alien. It is not required that the spouse and children of H-1 nonimmigrants demonstrate that they have a residence abroad to which they intend to return. However, H-4 dependents of H-2 and H-3 aliens are subject to the residence abroad requirement in INA 101(a)(15)(H)(ii) and (iii).
- b. If the spouse and children are following to join the principal alien, there will be certain

circumstances when the principal does not have a valid visa (i.e. the principal adjusted status in the U.S., extended status without seeking a new visa, or is exempt from visa requirements). In these circumstances, you should confirm the principal's approved petition (via PIMS or PCQS), and utilize the petition validity or limitation of stay (via ADIS) to determine the visa validity and annotation for the derivative H-4.

- c. If an H-1B, H-2B, or H-3 alien did not reside continually in the United States, but has maintained his or her family in the United States in H-4 status, he or she might not qualify for one of the exceptions to the maximum allowable periods of stay described in [9 FAM 402.10-13\(C\)](#) above.

9 FAM 402.10-14(B) Verifying Principal Alien is Maintaining Status

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N17.2 CT:VISA-1755; 10-26-2011)

When an alien applies for an H-4 visa to follow to join a principal alien already in the United States, you must be satisfied that the principal alien is maintaining H status before issuing the visa. If you have any doubt about the principal alien's status, a PIMS record of petition approval or change of status must be obtained, or the information on the principal alien may be obtained through PCQS. In the event neither PCQS nor PIMS contains the record, send an email to PIMS@state.gov. KCC's Fraud Prevention Unit (FPU) will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within two working days.

9 FAM 402.10-14(C) Employment in United States by H-4 Dependent Aliens Prohibited

(CT:VISA-197; 09-30-2016)

Aliens in H-4 status are not authorized to accept employment while in the United States other than when authorized in pursuant in INA 106 (relating to battered spouses). The spouse and children of H nonimmigrants may not accept employment unless they qualify independently and are approved for a classification or a work authorization from USCIS in which employment is, or can be, authorized. You must take this into account in evaluating whether family members have furnished adequate evidence of their support while in the United States. H-4 aliens are permitted to study during their stay in the United States.

9 FAM 402.10-14(D) Using B-2 instead of H-4 Classification

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N17.4 CT:VISA-2154; 07-30-2014)

Although the H-4 classification is provided specifically for the spouse and children of H nonimmigrants, if their planned period of stay is to be brief, and if they overcome the presumption of immigrant intent under INA 214(b) and satisfy the requirements of INA 101(a)(15)(B)(including foreign residence requirement), such aliens could also travel as

temporary visitors using a B-1/B-2 visa. In addition, if the spouse or child already has a valid B-2 visa and it would be inconvenient or impossible for him or her to apply for an H-4 visa, you need not require the latter visa. As always, consular officers should be aware that it is possible for a person to qualify for more than one nonimmigrant visa classification at the same time.

9 FAM 402.10-15 DOMESTIC EMPLOYEES OF H NONIMMIGRANTS

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N18 CT:VISA-1406; 03-11-2010)

Personal or domestic servants seeking to accompany or follow to join H nonimmigrant employers may be issued B-1 visas, provided they meet the requirements of [9 FAM 402.2-3\(D\)\(3\)](#).

9 FAM 402.10-16 RETURN TRANSPORTATION IF H-1B OR H-2B ALIEN'S EMPLOYMENT TERMINATED INVOLUNTARILY

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N16 CT:VISA-2154; 07-30-2014)

If an H-1B or H-2B nonimmigrant is dismissed from employment before the end of his or her authorized admission by the employer who sought the alien's H-1B or H-2B status, the employer is responsible for providing the reasonable cost of transportation to the alien's last place of foreign residence. This requirement does not apply if the alien voluntarily terminates his or her employment.

9 FAM 402.10-17 LABOR VIOLATIONS BACKGROUND

(CT:VISA-197; 09-30-2016)

Your primary responsibility in visa adjudication is to carry out the requirements of U.S. immigration law. Occasionally, you may discover indications of possible violations of other U.S. laws, even if you issue a visa. This note outlines types of possible violations of U.S. labor law, and tells you how to report them to the Department of Labor (DOL). In most of these situations, you likely would still issue a visa. (See [9 FAM 402.10-7\(C\)](#) for information on when petitions must be returned to USCIS for possible revocation.)

9 FAM 402.10-17(A) What Should I Report?

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N27.1 CT:VISA-2154; 07-30-2014)

- a. Only report violations that occurred in the United States within the 12 months immediately prior to DOL's receipt of the report of violation. DOL is not authorized to

investigate other violations.

- b. For a violation to have occurred in the United States, H-1B workers who are allegedly not being employed correctly must already have been in the United States and employed by the petitioner/employer. It can be difficult to show that a violation occurred within the last 12 months. However, if the applicant provides tax documents for the preceding calendar year and these show evidence of significant underpayment of wages without explanation (illness, return to country of origin for a portion of the year, etc.), then DOL could file a labor complaint up until the end of the current calendar year.
- c. You also may provide evidence of an ongoing labor violation by a petitioner by reviewing the petitioner's quarterly employment tax documents in relation to the number of employees the employer states it has on the Form I-129, Part 5 and the number of petitions for that employer for which still valid visas have been issued. For example, the petitioner's quarterly tax documents may show that unemployment and social security taxes were paid for 10 employees, which is the same number the employer reports on the Form I-129. A CCD review may show 50 visa applications in the CCD for that petitioner, however, and that 30 of those visas are still valid. While there may be an explanation for this, such a large discrepancy implies there may be no employer/employee relationship between the petitioner and the petitioned-for aliens or that the aliens are not being appropriately compensated, a situation calling for a labor violation complaint.
- d. You must report a possible labor violation in any of the following circumstances:
 - (1) **Underpayment of the Required Wage:** The Required Wage is the higher of either the Prevailing Wage for the occupation in the geographic area of intended employment, and listed on a Labor Condition Application (LCA), or the Actual Wage paid to all other individuals, including United States workers, employed at the worksite with similar experience and qualifications for the specific employment in question. The Required Wage can include reasonable costs for housing and transportation as long as the employee agrees to this arrangement, voluntarily and in writing. In addition, these costs must be reported on the employer's payroll records as earnings for the employee and all appropriate taxes and fees must be paid. Evidence of underpayment might constitute a matter for enforcement follow-up by the DOL and should be referred.
 - (2) **Alien Required to Pay Fees and Travel Reimbursement:** DOL regulations provide that employers cannot require that a temporary worker pay for petition and/or fraud fees. Complete details can be found at Fact Sheet #62H on DOL's website. Consider referring such a case for consideration of an enforcement action.
 - (3) **Benching:** "Benching" is the common term to describe not paying workers when there is no specific job available. Benching is predominantly seen in IT-related professions. 20 CFR 655.731(c)(6)(ii) requires that a petitioner begin paying a H-1B nonimmigrant the required wage beginning 30 days after the date of the H-1B nonimmigrant's first admission to the United States in H-1B status, even if the alien has not yet entered into employment (i.e., making oneself available for work or otherwise coming under the control of the employer). If the alien is

already present in the United States on the date when the petition is approved, the employer is required to pay the required wage beginning 60 days after the date the alien becomes eligible to work for the employer (i.e., 60 days after the latter of the date of need stated on the H-1B petition or the date that USCIS changes the alien's status to H-1B). A complete explanation can be found at Fact Sheet #62I on DOL's website. If you have evidence that the employer failed to satisfy this requirement, you must report it. Some employees in a benching situation report wages on Form IRS-1099-C, Cancellation of Debt, identifying themselves as independent contractors, not on a W-2 as would be the case for a true employee.

- (4) Systematic LCA Violations, Including Off-Site Work: Labor Condition Applications (in H-1B cases) are made for a specific location, and temporary workers are supposed to be living and working in that location. DOL regulations permit short-term placement of a worker, for a period of no more than 30 or (if the alien maintains ties to the original and approved worksite, such as maintenance of a residence) 60 days within a one year period, as described in Fact Sheet #62K and Fact Sheet #62J on DOL's website. USCIS has issued guidance on work in more than one location for H-1B beneficiaries. A labor contractor or consultant petitioning for H-1B workers to work at multiple client sites must provide a detailed itinerary of those sites at the time the petition is filed. A Press Release on this subject is available at Public Notice, March 24, 2006. You may report an employer's systematic LCA violations.

9 FAM 402.10-17(B) How Do I Report Violations?

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N27.2 CT:VISA-2154; 07-30-2014)

- a. Email information to the Fraud Prevention Unit at the Kentucky Consular Center (KCC) at KCCFPM@state.gov.
- b. You must include the "Consular Report of Labor Violation" memo (exemplar available on the Fraud Prevention Program (FPP's) website or by asking your FPP desk officer) and must scan complaints and supporting documents into the CCD record and identify them as supporting evidence for a Labor Violation. KCC personnel will pull the supporting documentation from the CCD, and will track all labor violation complaints.

9 FAM 402.10-17(C) What Will Department of Labor (DOL) Do With a Complaint?

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N27.3 CT:VISA-1884; 09-14-2012)

If DOL finds that a labor violation has occurred, it may impose penalties in the form of back pay reimbursement to injured parties, fines to the company, and/or a ban on the filing of further Labor certifications by the company. In some cases, the DOL may apply the ban to any company associated with the violator.

9 FAM 402.10-17(D) Information Available From Department of Labor (DOL)

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.53 N27.4 CT:VISA-1986; 05-03-2013)

- a. DOL has printed business cards with information on legal protections for H-1B and H-2 workers. These cards are a simple and effective way to get the word out to each beneficiary. You may email Frederick.Emily@dol.gov to request cards. Specify the type of card (H-1B or H-2), the quantity of each type, and the mailing address at post.
- b. Administrative actions on labor violations may be found at OALJ on DOL's website. Individuals wishing to file labor violation complaints can find instructions at H-1B Nonimmigrant Information on DOL's website.
- c. DOL has helpful Fact Sheets on immigration related issues and particularly on H-1B issues. See DOL's website at [Topical Fact Sheet Index](#).

9 FAM 402.10-18 EMPLOY AMERICAN WORKERS ACT (EAWA) RESTRICTIONS ON H-1B PETITIONS

↓(CT:VISA-81; 03-04-2016)

(*Return I-129 for revocation if employer listed as federal funding recipient after petition filing date, but beneficiary has not commenced employment.)

9 FAM 402.11

INFORMATION MEDIA REPRESENTATIVES - I VISAS

(CT:VISA-1; 11-18-2015)
(Office of Origin: CA/VO/L/R)

9 FAM 402.11-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 402.11-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15)(I) (8 U.S.C. 1101(a)(15)(I)).

9 FAM 402.11-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 41.52.

9 FAM 402.11-2 I VISAS - OVERVIEW

(CT:VISA-1; 11-18-2015)

Media (I) visas are for representatives of the foreign media, including members of the press, radio, film, and print industries, traveling temporarily to the United States to work in their profession and engaged in informational or educational media activities, essential to the foreign media function. Activities in the United States while on a media (I) visa must be for a media organization having its home office in a foreign country. Activities in the United States must be informational in nature and generally associated with the news gathering process and reporting on current events.

9 FAM 402.11-3 DEFINITION OF THE TERM "INFORMATION MEDIA REPRESENTATIVE"

(CT:VISA-1; 11-18-2015)

a. An "Information Media Representative" is an alien who:

- (1) Is a bona fide representative of the foreign press, radio, film, or other foreign information media;

- (2) Has a home office in a foreign country, the government of which grants reciprocity for similar privileges to representatives of such a medium having home offices in the United States; and
 - (3) Who seeks to enter the United States solely to engage in such a vocation.
- b. An "Information Media Representative" also includes aliens whose activities are essential to the foreign information media function (e.g., media reporters, media film crews, video tape editors, and persons in similar occupations).
 - c. Others associated with such activities, but not directly involved, such as a proofreader, may qualify for another classification, such as under INA 101(a)(15)(P).

9 FAM 402.11-4 RESIDENCE ABROAD NOT REQUIRED

(CT:VISA-1; 11-18-2015)

There is no requirement in the INA that applicants for an I visa establish that they have a residence in a foreign country which they have no intention of abandoning.

9 FAM 402.11-5 SPOUSE AND CHILDREN OF I VISA ALIENS

(CT:VISA-1; 11-18-2015)

The spouse and children accompanying or following to join an alien qualified for an I visa may also receive I classification.

9 FAM 402.11-6 FILM/VIDEO WORK

(CT:VISA-1; 11-18-2015)

- a. **Informational Educational Film/Video:** Nonimmigrant aliens may be classified under INA 101(a)(15)(I) only when engaged in the production or distribution of film and/or video of informational or educational films or video tapes. Those intending to work on entertainment-oriented materials must be classified under INA 101(a)(15)(O) or INA 101(a)(15)(P).
- b. **Independent Production Companies:** I classification may be accorded not only to primary employees of foreign information media engaged in filming a news event or documentary, but also to the employees of independent production companies if the employees either:
 - (1) Hold a credential issued by a professional journalistic association; or
 - (2) If no such credential is available, i.e., the sending country has no credentialing authority or the credentialing authority in the sending country does not offer credentialing to the class of media representatives to which the employees belong, the employees satisfy the definition of "information media

representative" in [9 FAM 402.11-3](#) above.

9 FAM 402.11-7 OTHERS QUALIFYING FOR I VISAS

(CT:VISA-1; 11-18-2015)

- a. Employee of Foreign Government Tourist Bureau:** Duly accredited representatives of tourist bureaus, controlled, operated, or subsidized in whole or in part by a foreign government, who engage primarily in disseminating factual tourist information about that country are entitled to I classification under INA 101(a)(15)(I).
- b. Member of Foreign Government Trade Promotion Mission:** Since employees or accredited representatives in the United States of trade promotional missions of foreign governments are engaged primarily in commercial and/or economic activities, I classification would not be appropriate. Both groups described in this note might include some foreign government officials. Therefore, you should be guided by the requirement that aliens qualified for classification under INA 101(a)(15)(A) are to be classified in the A category even though they may also be eligible for another nonimmigrant classification. (See 22 CFR 41.22(b).)
- c. Employee of Organization Which Disseminates Technical Industrial Information:** I classification may be given to employees in the United States offices of organizations which distribute technical industrial information.
- d. Freelance Media Worker:** Aliens holding a credential issued by a professional journalistic organization, if working under contract on a product to be used abroad by an information or cultural media outlet to disseminate information or news not primarily intended for commercial entertainment or advertising, are classifiable under INA 101(a)(15)(I). However, you should not issue an I visa to any such alien who does not possess a valid contract of employment.

9 FAM 402.11-8 CLASSIFICATION OF CERTAIN ALIEN MEDIA REPRESENTATIVES PROCEEDING TO THE UNITED NATIONS

(CT:VISA-1; 11-18-2015)

See 22 CFR 41.71 and [9 FAM 402.3-6\(F\)](#).

9 FAM 402.11-9 FOREIGN GOVERNMENT LIMITATIONS ON EMPLOYMENT OF REPRESENTATIVES OF U.S. INFORMATION MEDIA

(CT:VISA-1; 11-18-2015)

The Department requests all posts report promptly to the Department any limitations

imposed by the foreign government concerned on the employment of representatives of U.S. information media. This information is required on a current basis so that the Department may ensure that the admission of aliens pursuant to INA 101(a)(15)(I) is "upon a basis of reciprocity."

9 FAM 402.12

INTRACOMPANY TRANSFEREES - L VISAS

(CT:VISA-322; 04-07-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 402.12-1 RELATED STATUTORY AND REGULATORY AUTHORITY

9 FAM 402.12-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15)(L) (8 U.S.C. 1101(a)(15)(L)); INA 101(a)(32) (8 U.S.C. 1101(a)(32)); INA 101(a)(44) (8 U.S.C. 1101(a)(44)); INA 214(b) (8 U.S.C. 1184(b)); INA 214(c) (8 U.S.C. 1184(c)); INA 214(h) (8 U.S.C. 1184(h)); INA 214(j) (8 U.S.C. 1184(j)).

9 FAM 402.12-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 41.54.

9 FAM 402.12-2 OVERVIEW

(CT:VISA-1; 11-18-2015)

- a. "Intracompany transferee" means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm, corporation, or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof, in a capacity that is managerial, executive, or involves specialized knowledge.
- b. Section 1(b) of Public Law 91-225 of April 7, 1970, created a nonimmigrant visa (NIV) classification at INA 101(a)(15)(L) for intracompany transferees. An individual or blanket petition, approved by U.S. Citizenship and Immigration Services (USCIS), is a prerequisite for L visa issuance.
- c. The L nonimmigrant classification was created to permit international companies to temporarily transfer qualified employees to the United States for the purpose of improving management effectiveness, expanding U.S. exports, and enhancing competitiveness in markets abroad. Prior to the enactment of Public Law 91-225, no nonimmigrant classification existed that fully met the needs of intracompany

transferees. Those who did not qualify as E nonimmigrants were forced to apply for immigrant visas (IV) to the United States, even if there was no intent to reside permanently.

- d. INA 101(a)(15)(L) was amended for the first time by the Immigration Act of 1990 (Public Law 101-649 of November 29, 1990) to provide that the required one-year period of continuous prior employment with the petitioner take place within three years, rather than immediately preceding the time of the alien's application for admission into the United States.

9 FAM 402.12-3 CLASSIFICATION CODES

(CT:VISA-1; 11-18-2015)

22 CFR 41.12 identifies the following visa classification symbols for intracompany transfers in accordance with INA 101(a)(L):

L1	Intracompany Transferee (Executive, Managerial, and Specialized Knowledge Personnel Continuing Employment with International Firm or Corporation)
L2	Spouse or Child of Intracompany Transferee

9 FAM 402.12-4 CLASSIFICATION CRITERIA FOR INTRACOMPANY TRANSFEREES

9 FAM 402.12-4(A) Individual Petitions

(CT:VISA-322; 04-07-2017)

The following elements must be considered in evaluating entitlement to L-1 classification in individual petition cases:

- (1) The petitioner is the same firm, corporation, or other legal entity, or parent, branch, affiliate, or subsidiary thereof, for whom the beneficiary has been employed abroad (see [9 FAM 402.12-9](#) below);
- (2) The beneficiary is a manager, executive, or an alien having specialized knowledge, and is destined to a managerial or executive position or a position requiring specialized knowledge (see [9 FAM 402.12-14](#) below);
- (3) The petitioner and beneficiary have the requisite employer-employee relationship (see [9 FAM 402.12-12](#) below);
- (4) The petitioner will continue to do business in the United States and at least one other country (see [9 FAM 402.12-10](#) below);
- (5) The beneficiary meets the requirement of having had one year of prior continuous qualifying experience within the previous three years (see [9 FAM 402.12-13](#) below);
- (6) If the beneficiary is coming to open, or be employed in, a new office, the

requirements described in [9 FAM 402.12-11](#) below are met;

- (7) Many L aliens are subject to time limits (see [9 FAM 402.12-16\(D\)](#) below), or the two-year foreign residence requirement for former exchange visitors (see [9 FAM 402.12-20](#) below); and
- (8) The beneficiary is not subject to INA 214(b) *and is not required to have a residence abroad which he or she has no intention of abandoning* (see [9 FAM 402.12-15](#) below).

9 FAM 402.12-4(B) Blanket Petitions

(CT:VISA-1; 11-18-2015)

In addition to those elements listed in [9 FAM 402.12-4\(A\)](#) above, the characteristics considered in evaluating entitlement to L-1 classification in blanket petition cases are specified below. (See [9 FAM 402.12-8](#) below for a full description of the qualifying requirements and processing procedures for blanket petition cases.)

- (1) The petitioner and its entities meet the requirements of size, structure, and scope of business activities for approval of L blanket petitions (see [9 FAM 402.12-8\(B\)](#) below);
- (2) The beneficiary is a manager, executive, or specialized knowledge professional and is destined to a position for a manager, executive, or specialized knowledge professional (see [9 FAM 402.12-8\(C\)](#) below);
- (3) The beneficiary is not coming to open or be employed in a new office (see [9 FAM 402.12-8\(C\)](#) below); and
- (4) The petitioner has not filed an individual L petition for the alien (see [9 FAM 402.12-8\(C\)](#) below).

9 FAM 402.12-5 SIGNIFICANCE OF APPROVED PETITION

9 FAM 402.12-5(A) DHS Responsible for Adjudicating L Petitions

(CT:VISA-1; 11-18-2015)

- a. By mandating a preliminary petition, Congress placed responsibility and authority with the Department of Homeland Security (DHS) to determine whether the requirements for L status, which are examined in the petition process, have been met. An approved Form I-129, Petition for a Nonimmigrant Worker, must be verified either through the Petition Information Management Service (PIMS) or through the Person Centric Query Service (PCQS), in the CCD under the Cross Applications tab, before a visa can be issued. The Form I-797, Notice of Action, is no longer required to be presented to you at the time of the applicant's interview.

You are to consider verification of the approved Form I-129 through PIMS or PCQS, in itself, as prima facie evidence that in the case of a(n):

- (1) Individual petition, the petitioner and alien beneficiary meet the requirements for L status; or
 - (2) Blanket petition ([9 FAM 402.12-8](#) below), the petitioner and its parent, branches, affiliates, or subsidiaries specified in the petition are qualifying organizations under INA 101(a)(15)(L).
- b. The large majority of approved L petitions are valid, and involve bona fide establishments, relationships, and individual qualifications which conform to the DHS regulations in effect at the time the L petition was filed.
- c. You generally must not request the Department to provide status reports on petitions filed with the Department of Homeland Security (DHS), nor must they contact DHS directly for such reports. As an alternative, you may suggest that the applicant communicate with his or her sponsor. Cases of public relations significance may be submitted to the Department (TAGS: CVIS). Justification for such action must be included with your request.

9 FAM 402.12-5(B) Approved Petition Prima Facie Evidence of Entitlement to L Classification

(CT:VISA-322; 04-07-2017)

- a. You should *not* require that an approved Form I-129, Petition for a Nonimmigrant Worker, or evidence that the L petition has been approved (i.e., a Form I-797, Notice of Action), be presented by an applicant seeking an L visa. All petition approvals must be verified either through the Petition Information Management Service (PIMS) or through the Person Centric Query Service (PCQS), in the CCD under the Cross Applications tab. Once you have verified approval through PIMS or PCQS, consider this as prima facie evidence that the requirements for L classification, which are examined in the petition process, have been met. You may not question the approval of L petitions without specific evidence, unavailable to DHS at the time of petition approval, that the beneficiary may not be entitled to status. The large majority of approved L petitions are valid, and involve bona fide establishments, relationships, and individual qualifications that conform to the DHS regulations in effect at the time the L petition was filed.
- b. On the other hand, the approval of a petition by DHS does not relieve the alien of the burden of establishing visa eligibility in the course of which questions may arise as to his or her eligibility to L classification. If you develop information during the visa interview (e.g., evidence which was not available to DHS) that gives you reason to believe that the beneficiary may not be entitled to status, you may request any additional evidence which bears a reasonable relationship to this issue. Disagreement with DHS interpretation of the law or the facts, however, is not sufficient reason to ask DHS to reconsider its approval of the petition.

9 FAM 402.12-5(C) Referring Approved L Petition for Reconsideration

(CT:VISA-1; 11-18-2015)

- a. You must consider all approved L petitions in light of this guidance process and dispatch those cases which appear legitimate, and identify those which require local investigation or referral to the approving U.S. Citizenship and Immigration Services (USCIS) office for reconsideration. You must refer cases to USCIS for reconsideration sparingly, to avoid inconveniencing bona fide petitioners and beneficiaries and causing duplication of effort by USCIS. You must have specific evidence of a requirement for automatic revocation, lack of qualification on the part of the beneficiary, misrepresentation in the petition process, or of previously unknown facts, which might alter USCIS' finding, before requesting approval of a review of the Form I-129, Petition for a Nonimmigrant Worker. When seeking reconsideration, you must forward, under cover of Form DS-3099, NIV Petition Revocation Request Cover Sheet-Kentucky Consular Center, the petition, all pertinent documentation, and a written memorandum of the evidence supporting the request for reconsideration to the Kentucky Consular Center (KCC), which will forward the request to the approving USCIS office.
- b. Send requests for petition revocations to the following address, using registered mail or express mail:

Attention: Fraud Prevention Manager
Kentucky Consular Center
3505 N. Hwy 25W
Williamsburg, KY 40769
- c. The KCC will maintain a copy of the request and all supporting documentation and will track all consular revocation requests. You are no longer required to maintain a copy of all documents, although scanning the revocation request and supporting documents into the case file is recommended.
- d. You must not send Blanket L Petitions back to the approving U.S. Citizenship and Immigration Services (USCIS) office for reconsideration. For the proper procedure on how to refuse a Blanket L-based visa and how to dispose of the petition, refer to [9 FAM 402.12-8\(G\)](#).

9 FAM 402.12-6 ADJUDICATING L VISA APPLICATIONS

9 FAM 402.12-6(A) Determining Visa Eligibility

(CT:VISA-1; 11-18-2015)

You do not have the authority to question the approval of L petitions without specific evidence, unavailable to DHS at the time of petition approval, that the requisites of INA 101(a)(15)(L) have not been met. On the other hand, the approval of a petition

by DHS does not relieve the alien of the burden of establishing visa eligibility. If you have reason to believe, based upon information developed during the visa interview or other evidence that was not available to DHS, that the petitioner or beneficiary may not be entitled to status, you may request any additional evidence which bears a reasonable relationship to this issue. Disagreement with DHS interpretation of the law or the facts, however, is not sufficient reason to ask DHS to reconsider its approval of the petition.

9 FAM 402.12-6(B) Approved Petitions

(CT:VISA-1; 11-18-2015)

- a. The approval of a petition by the Department of Homeland Security (DHS) does not establish that the alien is eligible to receive a nonimmigrant visa (NIV). You may not authorize a petition-based NIV without verification of petition approval through the Petition Information Management Service (PIMS).
- b. PIMS is the sole source of confirmation that a petition for a visa has been approved. Verification in PIMS is prima facie evidence of entitlement to L classification.
- c. If you know or have reason to believe that an alien applying for a visa under INA 101(a)(15)(L) is not entitled to the classification as approved, you must suspend action on an alien's application and submit a report to the approving DHS office.

9 FAM 402.12-6(C) Evidence Forming Basis for L Visa Issuance

(CT:VISA-1; 11-18-2015)

- a. The basis for L visa eligibility consists of an approved Form I-129, Petition for a Nonimmigrant Worker, that must be verified either through PIMS or through PCQS before issuing a visa. The Form I-797 is no longer required to be presented to you at the time of the applicant's interview.
- b. You must use either the electronic PIMS record created by the KCC or the record obtained through PCQS to verify petition approval. You can access the details of approved NIV petitions through the Consular Consolidated Database (CCD), through the Petition Information Management Service (PIMS) Petition Report, or through the Person Centric Query Service (PCQS) in the CCD under the Cross Applications tab.
- c. A valid Form I-797 must include the date of the Notice, the name of the petitioner, the name of the beneficiary, the petition/receipt number, the expiration date of the petition, and the name, address, and telephone number of the approving DHS office. The paper Form I-797 is an unsigned computer-generated form, which contains the receipt number, and can be used only to make an L visa appointment. In the event PIMS does not yet contain the record, you may send an email with the receipt number to PIMS@state.gov. KCC's Fraud Prevention Unit (FPU) will research approval of the petition and, if able to confirm its approval, will make the

details available through the CCD within two working days.

- d. If PIMS does not contain the petition approval, before sending an email to KCC, you have the option to look for petition approval in PCQS in the CCD under the Cross Applications tab. In PCQS, under Search Criteria, select Receipt Number; then enter the number from the Form I-797, e.g., EAC1234567890. First, search just CISCOR to find the petition, but if not found in CISCOR, you must also check CLAIMS 3. If you find a petition approval in PCQS that was not in PIMS, send an email to PIMS@state.gov as follows: Petition with Receipt Number EAC1234567890 was found in PCQS but not in PIMS. You may not authorize a petition-based NIV without verification of petition approval either through PIMS or PCQS.

9 FAM 402.12-6(D) Consular Consolidated Database (CCD) Access to Approved Nonimmigrant Visa (NIV) Petitions

(CT:VISA-1; 11-18-2015)

- a. PIMS provides confirmation that a petition for a visa has been approved. Verification in PIMS is prima facie evidence of entitlement to L classification.
- b. You must use the electronic PIMS record created by the KCC, or the petition record found through the PCQS, to verify petition approval. In regard to PIMS, it is listed in the CCD under a sub-category of the NIV menu called "NIV Petitions." PIMS allows all information on a petitioner, petition, and/or beneficiary to be linked through a centrally managed CCD service.
- c. The electronic PIMS record created by the KCC is used to determine petition approval and visa eligibility. The PIMS Petition Report contains a record of all petitioners recorded by the KCC as having approved petitions since 2004. In addition, the KCC FPU has provided informational memos on a large percentage of these petitioners. Each new, approved petition is linked to a base petitioner record, allowing superior tracking of NIV petitioner and petition information. As a result of this change, the KCC has ceased emailing scanned copies of approved NIV petitions to posts.
- d. If you are unable to immediately locate information on a specific petition, you may send an email to PIMS@state.gov. KCC's FPU will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within 2 working days. You may submit your request to KCC only within five (5) working days of the scheduled interview date and you must have checked PIMS before submitting to KCC. KCC will check the USCIS CLAIMS database, and will upload the CLAIMS report into PIMS so that you can proceed with the scheduled interview. KCC will not process PIMS requests submitted prior to the five day window. Please be sure to conduct a PIMS query before sending in these special requests, in order to reduce KCC's workload.
- e. You may use approved Form I-129 and Form I-797 presented at post as sufficient proof to schedule an appointment, or may schedule an appointment based on the

applicant's confirmation that the petition has been approved, but only verification of petition approval in PIMS or through PCQS is sufficient evidence for visa adjudication.

9 FAM 402.12-7 PROCESSING INDIVIDUAL L PETITIONS

9 FAM 402.12-7(A) Individual Petitions

(CT:VISA-322; 04-07-2017)

- a. An employer must file Form I-129, Petition for a Nonimmigrant Worker, with DHS to accord status as an intracompany transferee. Form I-129 is also used to request extensions of petition validity and extensions of stay in L status. The form must be filed with the *USCIS* Service Center *that* has jurisdiction over the *location* where the alien will perform services.
- b. Approved individual L petitions, except those involving new offices, are initially valid for the period of established need for the beneficiary's services, not to exceed three years. If the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year. (See [9 FAM 402.12-11\(D\)](#) below.)
- c. To extend the validity of an individual L petition, the petitioner must file Form I-129, Petition for a Nonimmigrant Worker, with the jurisdictional DHS Regional Service Center. A petition extension may be filed only if the validity of the original petition has not expired.

9 FAM 402.12-7(B) Notifying Petitioner of Petition Approval

(CT:VISA-1; 11-18-2015)

The DHS uses Form I-797, Notice of Action, to notify the petitioner that the L petition filed by the petitioner has been approved. DHS must notify the petitioner of the approval of an individual or blanket petition within 30 days after a completed petition has been filed. Form I-797 is also used to advise the petitioner that an extension of petition validity and extension of stay in L status for the employee has been granted. The petitioner may furnish Form I-797 to the employee for the purpose of making a visa appointment, or to facilitate the employee's entry into the United States, either initially or after a temporary absence abroad during the employee's stay in L status.

9 FAM 402.12-7(C) Individual Petitions for Canadian Citizens

(CT:VISA-322; 04-07-2017)

- a. A U.S. or foreign employer seeking to classify a citizen of Canada as an intracompany transferee may file an individual petition in duplicate on Form I-129, Petition for a Nonimmigrant Worker, *with CBP* in conjunction with the Canadian citizen's application for admission. A Canadian citizen may present Form I-129, along with supporting documentation, to an immigration officer at a Class A port of entry (POE) *located on the United States-Canada border* or a U.S. pre-clearance station *in Canada* at the time of applying for admission. The petitioning employer need not appear, but the Form I-129 must bear the authorized signature of the petitioner.
- b. The availability of the above procedure does not preclude the advance filing of an individual petition with DHS, in which case the beneficiary may present a copy of the approved Form I-797, Notice of Action, at a POE.

9 FAM 402.12-7(D) The Procedure for Issuing Individual Petition L Visas

(CT:VISA-1; 11-18-2015)

Issued visas must be annotated for the principal alien and for any derivative spouse or child. The annotation should also state the name of the company or qualifying entity that the applicant will be primarily working for as it is listed in the Petition Information Management Service (PIMS) or PCQS record.

(1) Example Individual L Annotations:

MUST PRESENT I-797 AT POE

PN-[PETITIONER NAME]

P#[PETITION RECEIPT NUMBER] PED-[PETITION EXPIRATION DATE]

(2) Individual L Derivatives Annotations:

P.A.: JOHN DOE

PN-[PETITIONER NAME]

P#[PETITION RECEIPT NUMBER] PED-[PETITION EXPIRATION DATE]

9 FAM 402.12-8 PROCESSING BLANKET L PETITIONS

9 FAM 402.12-8(A) Blanket Petitions

(CT:VISA-1; 11-18-2015)

- a. Certain petitioners seeking the classification of multiple aliens as intracompany transferees may file a single blanket petition with DHS. Qualified petitioners must use Form I-129 to file for approval of a blanket petition with the DHS Service Center having jurisdiction over the area where the petitioner is located. Form I-129 must also be filed in advance with the appropriate DHS Service Center for Canadian citizens who wish to enter the United States as L nonimmigrants under the blanket

petition provision (see [9 FAM 402.12-8\(E\)](#) below). The DHS Service Center is required to notify the petitioner of the approval of a blanket petition within 30 days after a completed petition has been filed.

- b. An approved L blanket petition is valid initially for a period of three years and may be extended indefinitely thereafter if the qualifying organizations have complied with the regulations governing the blanket petition provision. To request indefinite petition validity, the petitioner must file a new Form I-129, Petition for a Nonimmigrant Worker, along with a copy of the previous approval notice Form I-797, Notice of Action, and a report of admissions during the preceding three years. This report must include a list of the aliens admitted during the preceding three-year period, the positions held, the employing entity(ies), and the dates of initial admission and final departure of each alien. The petitioner must establish that it still meets the criteria for filing a blanket petition, and must document any changes in the business relationships listed on the original petition and any additional qualifying organizations it wishes to include.
- c. Once the initial three-year validity period of a blanket petition has expired, if the petitioner fails to request an indefinite validity blanket petition, or if the request for indefinite validity is denied, the petitioner and its other qualifying organizations must file individual petitions on behalf of its employees until another three years have elapsed. Thereafter, the petitioner may seek approval of a new blanket petition.

9 FAM 402.12-8(B) Requirements for Petitioners

(CT:VISA-1; 11-18-2015)

- a. A U.S. petitioner, which meets the following requirements, may file a blanket petition seeking continuing approval of itself and its specified parent, branches, subsidiaries, and affiliates as qualifying organizations under INA 101(a)(15)(L):
 - (1) The petitioner and each of the specified qualifying organizations are engaged in commercial trade or services;
 - (2) The petitioner has an office in the United States that has been doing business for one year or more;
 - (3) The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; and
 - (4) The petitioner and the other qualifying organizations:
 - (a) Have obtained approval of petitions for at least ten "L" managers, executives, or specialized knowledge professionals during the past 12 months; or
 - (b) Have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; or
 - (c) Have a U.S. work force of at least 1,000 employees.
- b. The blanket petition provision is meant to serve only relatively large, established

companies having multi-layered structures and numerous related business entities. Such companies usually have an established program for rotating personnel and, in general, are the type of companies for which the L classification was created. The criteria to qualify for blanket petitions are formulated to exclude small and nonprofit organizations. Such organizations must continue to file an individual petition for each beneficiary.

9 FAM 402.12-8(C) Requirements for Beneficiaries

(CT:VISA-322; 04-07-2017)

- a. The blanket petition provision is available only to managers, executives, and specialized knowledge professionals (see [9 FAM 402.12-14\(D\)](#) below) who are destined to work in an established office in the United States (i.e., aliens seeking to open or be employed in a "new" office (see [9 FAM 402.12-11](#) above) do not qualify). Aliens who possess specialized knowledge, but who are not specialized knowledge professionals, must obtain L-1 status through an individual petition. An alien may not apply for a visa under the blanket petition procedure if an individual petition has been filed on his or her behalf.
- b. Since the individual beneficiaries of blanket petitions are not named in the petition, their eligibility for L status is not examined by DHS. Consequently, you (or, in the case of visa-exempt aliens, an immigration officer) are responsible for verifying the qualifications of alien applicants for L classification in blanket petition cases. (See paragraph c of this section below.)
- c. You have the authority and responsibility for verifying the qualifications of individual managers, executives, and specialized knowledge professionals who are seeking L classification under the blanket petition provision, and who are outside the United States and require visas. In addition to presenting the required number of copies of Forms I-129S and Form I-797, (see [9 FAM 402.12-8\(D\)](#) and (E) below), the alien must establish that he or she is either a manager, executive, or specialized knowledge professional employed by a qualifying organization. You must determine that the position in the United States is with the organization named on the approved petition, that the job is for a manager, executive, or specialized knowledge professional, and that the applicant has the requisite employment with the organization abroad for twelve months within the previous three years.

NOTE: Section 413 of Public Law 108-477 changed the previous employment requirement for L-1 blanket petitions from six months to twelve months, effective June 6, 2005. However, this only applies to initial applicants for an L-1 nonimmigrant visa on the basis of a blanket petition filed with USCIS. Therefore, an alien who was classified as an L-1 nonimmigrant prior to June 6, 2005 on the basis of the blanket petition would continue to be subject to the six-month employment requirement.

9 FAM 402.12-8(D) Aliens Applying Under a Blanket

Petition

(CT:VISA-216; 10-18-2016)

- a. When a qualifying organization listed in an approved blanket petition wishes to transfer an alien abroad who requires a visa to another listed qualifying organization in the United States, that organization must complete a Form I-129S, Nonimmigrant Petition Based on Blanket L Petition. An original, photocopied, faxed, or scanned copy of the handwritten signature on the form is considered valid. The qualifying organization must retain one copy for its records and send three copies to the alien beneficiary. A copy of the Form I-797, Notice of Action, notifying the petitioner of the approval of the blanket petition (which will identify the organizations included in the petition) must be attached to each copy of Form I-129S.
- b. After receipt of Form I-797 and Form I-129S, a qualified employee who is being transferred to the United States may use these documents to apply at a consular office for visa issuance within six months of the date on Form I-129S.

9 FAM 402.12-8(E) Canadian Citizens Seeking L Classification Under Blanket Petitions

(CT:VISA-322; 04-07-2017)

Citizens of Canada seeking L *classification* under a blanket petition must present three copies of Form I-129S along with three copies of the Form I-797, to an immigration officer at a Class A port of entry (POE) *on the United States-Canada border* or a U.S. pre-clearance station *in Canada*. The availability of this procedure does not preclude the advance filing of Form I-129S with the *USCIS* Service Center where the blanket petition was approved.

9 FAM 402.12-8(F) Procedure for Issuing Blanket Petition L Visas

(CT:VISA-322; 04-07-2017)

- a. Consular officers may grant L classification only in clearly approvable applications. If the visa is issued, it should be annotated "Blanket L-1" for the principal alien and "Blanket L-2" for any derivative spouse or child. The annotation should also state the name of the company or qualifying entity that the applicant will be primarily working for that is on the Form I-129S, Nonimmigrant Petition Based on Blanket L Petition. This company should be listed in PIMS; either on the Blanket I-797 approval notice or in the Petitioner alias field in PIMS. The second annotation line should be retained for any necessary clearance or waiver information, or duration and purpose information when visa validity is limited, see [9 FAM 403.9-5](#).

(1) Template for Blanket L Annotations:

BLANKET L-1; MUST PRESENT I-129S AT POE

"Clearance received on (date)" or "212(D)(3)(A): <waiver information>"

PN-<PETITIONER NAME>

P#-<PETITION RECEIPT NUMBER> I-129S EXP: <EXP DATE>

(2) Template for Blanket L Derivatives Annotations:

BLANKET L-2; P.A.: JOHN DOE

"Clearance received on (date)" or "212(D)(3)(A): <waiver information>"

PN-<PETITIONER NAME>

P#-<PETITION RECEIPT NUMBER> I-129S EXP: <EXP DATE>

- b. The consular officer must also be sure to properly endorse all three copies of the alien's Form I-129S, Nonimmigrant Petition Based on Blanket L Petition, scan one copy into the case in NIV, and return two copies to the applicant for their recordkeeping. (NOTE: Once a copy of the Form I-129S is scanned into the case, there is no requirement to keep a physical copy of the form, which can be destroyed.) The image of I-129S below highlights which boxes you must complete to properly endorse the form. Proper endorsement includes noting the approval basis and adjudication date in the "approved as" box (shown in green below); listing the I-129S validity dates (in the red box below); and a post or officer stamp in addition to the adjudication officer's initials or signature in the "action block." At the time of the interview, advise the alien to hand-carry these forms with them to the U.S. Port of Entry (POE).



Nonimmigrant Petition Based on Blanket L Petition

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-129S
OMB No. 1615-0010
Expires 06/30/2018

For Government Use Only				
Received	Resubmitted	Fee Receipt	Action Block	
Relocated Sent	Relocated Received			
Validity Dates From: _____ To: _____		Beneficiary Interviewed on: _____ Approved as: <input type="checkbox"/> Manager/Executive <input type="checkbox"/> Specialized Knowledge Professional Approval Date: _____	Must contain post/officer stamp as well as officer's initials or signature	
Denial Reason				
To be completed by an attorney or accredited representative (if any).		<input type="checkbox"/> Select this box if Form G-28 is attached.	Attorney State Bar Number (if applicable)	Attorney or Accredited Representative USCIS Online Account Number (if any)

▶ **START HERE** - Type or print in black ink.

Part 1. Information About The Employer (Petitioner)

1. Name of the Petitioner

Petitioner's Mailing Address

2.a. In Care Of Name (if any)

2.b. Street Number and Name

2.c. Apt. Ste. Flr.

2.d. City or Town

2.e. State

2.f. ZIP Code

3. Is this mailing address the same as the physical location of the sponsoring company or organization?

Yes No

If you answered "No" to Item Number 3, provide the sponsoring company's or organization's physical address in Item Numbers 4.a. - 4.e.

Petitioner's Physical Address

4.a. Street Number and Name

4.b. Apt. Ste. Flr.

4.c. City or Town

4.d. State

4.e. ZIP Code

Petitioner's Contact Information

5. Daytime Telephone Number

6. Fax Number

7. Email Address (if any)

8. Web site Address (if any)

Petitioner's Employees in the United States

9. Does the petitioner employ 50 or more individuals in the United States?

Yes No

If you answered "Yes" to Item Number 9, complete Item Number 10.

10. Are more than 50 percent of the petitioner's employees in H-1B, L-1A, or L-1B nonimmigrant status?

Yes No

c. Determining Validity Dates of I-129S Petition:

- (1) The consular officer must determine the validity dates for the I-129S petition. For initial Blanket L applicants, *the validity end* date should either be three years *from the date of adjudication* or *the end date requested* on the "Dates of intended employment" in Part 2, question 2b of the Form I-129S by the petitioner, whichever is less.
- (2) For renewal Blanket L applicants, you must not only consider what the petitioner is requesting, but also determine the applicant's remaining time under the maximum period of stay as outlined in [9 FAM 402.12-16\(C\)](#). In order to assist U.S. Customs and Border Protection (CBP) with ensuring Blanket L visa applicants are not admitted beyond their maximum period of

stay, the consular officer must limit the approval dates of the I-129S when maximum period of stay will be reached prior to the dates requested by the petitioner. For example, if a Blanket L-1A Executive or Manager has already spent six years in L-1 status in the United States, you should limit the approval of the I-129S to one year to ensure they are not admitted in excess of the seven year maximum period of stay, even if the employer is asking for a longer period.

9 FAM 402.12-8(G) Procedure For Denying Blanket Petition-Based L Visa

(CT:VISA-322; 04-07-2017)

- a. If you determine that an alien has not established his or her eligibility for an L visa under a blanket petition, your decision will be final. You must record the reason for the decision on all copies of Form I-129S by writing "NCA" or "not clearly approvable" in the "Denial Reasons" box (shown in blue in the image above). Scan one copy into NIV and shred it, give one copy to the alien for their records, and send one copy of Form I-129S to the *USCIS* Regional Service Center which approved the blanket petition. Note that this is not a request to revoke a petition; it is merely notification of your final decision.
- b. The petitioner may continue to seek L classification for the alien by filing a Form I-129, individual petition on his or her behalf with the *USCIS* Service Center having jurisdiction over the area of intended employment. The petition must state the reason why the alien was denied an L visa under the blanket procedure and must specify the consular office, which made the determination and the date of the decision.

9 FAM 402.12-8(H) Filing Individual L Petition Instead of Using Blanket Petition Procedure

(CT:VISA-1; 11-18-2015)

Although an alien might qualify to be a beneficiary of an L blanket petition, the petitioner may file an individual L petition on behalf of that alien in lieu of using the blanket petition procedure. When exercising this option, the petitioner must certify that the alien will not apply for a blanket L visa. The petitioner and other qualifying organizations listed on a blanket petition may not seek L classification for the same alien under both procedures, unless a consular officer first denies eligibility under the blanket petition provision.

9 FAM 402.12-8(I) Reassigning L Blanket Petition Beneficiary

(CT:VISA-322; 04-07-2017)

An alien admitted under an approved L blanket petition may be reassigned to any

organization listed in the approved petition during his or her authorized stay without referral to DHS, if the alien will be performing virtually the same job duties. If the alien will be performing different duties, the petitioner must complete a new Certificate of Eligibility [Form I-129S, Nonimmigrant Petition Based on Blanket L Petition](#), and file it with the [USCIS](#) Regional Service Center, which approved the blanket petition.

9 FAM 402.12-8(J) Blanket L-1 Fees

(CT:VISA-24; 12-21-2015)

- a. INA 214(c)(12)(B) requires the collection of a Fraud Prevention and Detection fee in the amount of \$500 from applicants for L visas who are covered under a blanket petition for L status. You must collect the MRV fee whether or not a visa is issued, for all first-time blanket L applications under any Form I-129S, Nonimmigrant Petition Based on Blanket L Petition. If a subsequent L-1 visa application is based on a new Form I-129S, you must collect the Fraud Prevention and Detection fee again.
- b. Consular sections must collect the \$4,500 fee from any applicants for blanket L-1 visas whose employers are subject to the fee. Part 1A, "Data Collection," of Form I-129S, Nonimmigrant Petition Based on Blanket L Petition, asks two questions relative to 9-11 Response and Biometric Entry-Exit fee applicability:
 - (1) Does the petitioner employ 50 or more individuals in the United States?
 - (2) If yes, are more than 50 percent of those individuals in H-1B or L nonimmigrant status?
- c. If the petitioner answers "yes" to both questions, the Consolidated Appropriations Act fee for blanket L-1 applications applies. (Note: L-2 derivatives are not subject to the fee.) If the fee applies, direct the applicant to pay the additional fee on behalf of the petitioner to the consular cashier at the time of application. Use ACRS code 20 for this purpose. This fee for blanket L-1 visa applicants must be charged whether or not the visa is issued, and applies in all first-time blanket L applications under any I-129S petition. If the applicant loses his or her passport or has a limited validity and applies for a new visa prior to the expiration of the Form I-129S, do not collect the \$4,500 fee for the re-use of the Form I-129S. However, if the petitioner files a new Form I-129S (for example, to extend the applicant's petition after the initial three years) or if the L-1 application presented by the applicant is based on a Form I-129S from another petitioner, then a new fee would be required. The Consolidated Appropriations Act fee is to be paid in addition to the \$500 Fraud Prevention and Detection fee and the MRV fee.

9 FAM 402.12-8(K) Effect of Blanket L-1 Fees on Reciprocity Fees

(CT:VISA-130; 05-16-2016)

- a. You must collect from a blanket L-1 applicant the Fraud Prevention and Detection fee and, if applicable under the criteria in [9 FAM 402.12-8\(J\)](#) above, the

Consolidated Appropriations Act fee.

- b. In order to maintain reciprocal treatment regarding visas fees with the applicant's country of nationality, the Fraud fee and/or Consolidated Appropriations Act fees must be deducted from any applicable reciprocity fees. The reciprocity fee paid should be the remainder of the cost after other applicable fees have been deducted.
- c. For example, if an applicant has an \$800 reciprocity fee, but has paid the \$500 Fraud Prevention and Detection Fee, he or she would only be required to pay the remaining \$300 of the reciprocity fee at time of issuance. Conversely, if an applicant's reciprocity fee was \$400 and they paid the \$500 fee, they would have no further reciprocity fee obligation to pay at time of issuance.

9 FAM 402.12-9 ORGANIZATIONS QUALIFYING AS PETITIONERS

9 FAM 402.12-9(A) Nature of Petitioning Business Entity

(CT:VISA-1; 11-18-2015)

- a. For the purposes of the L classification, a petitioner is a qualifying organization desiring to bring an alien to the United States as an L-1 nonimmigrant. It must be a parent, branch, affiliate, or subsidiary of the same employer for whom the alien has been employed abroad prior to entry. The petitioner may be either a U.S. or foreign organization.
- b. The Department of Homeland Security (DHS) uses the following definitions and descriptions of business entities in adjudicating L petitions:
 - (1) **Qualifying Organization:** "Qualifying organization" means a U.S. or foreign firm, corporation, or other legal entity which:
 - (a) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate, or subsidiary;
 - (b) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country, directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
 - (c) Otherwise meets the requirements of INA 101(a)(15)(L).
 - (2) **Parent:** "Parent" means a firm, corporation, or other legal entity, which has subsidiaries. Any business entity, which has subsidiaries, is a parent. However, a subsidiary may own other subsidiaries and also be a parent, even though it has an ultimate parent.
 - (3) **Branch:** "Branch" means an operating division or office of the same organization housed in a different location. Any such office or operating

division, which is not established as a separate business entity, is considered a branch.

- (4) **Subsidiary:** "Subsidiary" means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly:
 - (a) More than half of the entity and controls the entity; or
 - (b) Half of the entity and controls the entity; or
 - (c) 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or
 - (d) Less than half of the entity, but in fact controls the entity.
- (5) The 50-50 joint venture can be owned and controlled by only two legal entities; all other combinations of a joint venture do not qualify as a subsidiary. A contractual joint venture does not qualify as a subsidiary. A parent may own less than half of the entity but have control because the other stock is widely dispersed among minor stockholders; for example, when an individual or company acquires sufficient shares of a publicly held company to be able to nominate and elect the board of directors.
- (6) **Affiliate:** "Affiliate" means:
 - (a) One of two subsidiaries, both of which are owned and controlled by the same parent or individual; or
 - (b) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity; or
 - (c) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services must be considered to be an affiliate of the U.S. partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the U.S. partnership is also a member.
- (7) Subsidiaries are affiliates of each other. The affiliate relationship arises from the common ownership and control of both subsidiaries by the same legal entity. Affiliation also exists between legal entities where an identical group of individuals owns and controls both businesses in basically the same proportions or percentages. Associations between companies based on factors such as ownership of a small amount of stock in another company, exchange of products or services, licensing or franchising agreements, membership on boards of directors, or the formation of consortiums or cartels do not create affiliate relationships between the entities for L purposes.

9 FAM 402.12-9(B) Relationship Between Petitioner and Other Business Entities

(CT:VISA-1; 11-18-2015)

For L classification purposes, ownership and control are the factors, which establish a qualifying relationship between a petitioner and other business entities. Both the U.S. and foreign businesses must be legal entities. In the United States, a business is usually in the form of a corporation, partnership, or proprietorship. "Ownership" means the legal right of possession with full power and authority to control. "Control" means the right and authority to direct the management and operations of the business entity.

9 FAM 402.12-9(C) Nonprofit Organizations

(CT:VISA-1; 11-18-2015)

An organized religious, charitable, service, or other nonprofit organization must demonstrate that it is "...a firm or corporation or other legal entity or an affiliate or subsidiary thereof..." just as commercial businesses must do to qualify for L status. Nonprofit organizations are eligible to file individual petitions but not blanket petitions. (See [9 FAM 402.12-8\(B\)](#) paragraph b above.)

9 FAM 402.12-9(D) Evidence Required by DHS in Determining Petitioner's Status

(CT:VISA-1; 11-18-2015)

The Department of Homeland Security (DHS) regulations do not ordinarily require submission of extensive evidence of the petitioning organization's corporate structure. In questionable cases, however, DHS may seek whatever evidence is deemed necessary, including certified audits, balance sheets, profit and loss statements, non-certified audits (reviews, compilations), annual reports, tax records, etc.

9 FAM 402.12-9(E) Size and Scope of Operation

(CT:VISA-1; 11-18-2015)

While the petitioner's size does not limit its use of the intracompany transferee category (except for access to the blanket petition provision), DHS regulations do require that the petitioning organization demonstrate its ongoing international nature by continuing to do business in the United States and abroad. (See [9 FAM 402.12-10](#) below.)

9 FAM 402.12-9(F) Corporation Separate Legal Entity From Owners

(CT:VISA-1; 11-18-2015)

A corporation is a separate legal entity from its owners or stockholders for the purpose of qualifying an alien beneficiary as an intracompany transferee under INA 101(a)(15)(L). A corporation may employ and petition for its owners, even a sole owner.

9 FAM 402.12-10 PETITIONER MUST BE DOING BUSINESS IN THE UNITED STATES AND AT LEAST ONE OTHER COUNTRY

9 FAM 402.12-10(A) "Doing Business"

(CT:VISA-1; 11-18-2015)

- a. A qualifying organization under INA 101(a)(15)(L) must, for the duration of the intracompany transferee's stay in the United States, be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country. (For employees coming to open or be employed in a new office in the United States, (see [9 FAM 402.12-11](#) below)). Company representatives and liaison offices which provide services in the United States, even if the services are to a company outside the United States, are included in the "doing business" definition and aliens who perform such services may qualify for L-1 status.
- b. "Doing business" means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

9 FAM 402.12-10(B) Transfer to United States of Employees Unattached to Foreign Entity

(CT:VISA-1; 11-18-2015)

A U.S. company, which is doing business as an employer in the United States and in at least one foreign country, can utilize the L classification to transfer to the United States employees abroad who are unattached to a foreign entity. The reverse of this situation, however, is not appropriate. A foreign organization must have, or be in the process of establishing, a legal entity in the United States which is, or will be, doing business as an employer in order to transfer an employee under INA 101(a)(15)(L).

9 FAM 402.12-10(C) Ongoing International Nature of Organization

(CT:VISA-1; 11-18-2015)

The DHS regulations require a qualifying organization to demonstrate its ongoing international nature. The L classification was not created for self-employed persons to

enter the United States to continue self-employment (unless they are otherwise qualified for L status), nor was the L classification intended to accommodate the complete relocation of foreign businesses to the United States.

9 FAM 402.12-11 OPENING OF NEW OFFICE

9 FAM 402.12-11(A) Qualified Employees of New Offices May Receive L Status

(CT:VISA-1; 11-18-2015)

- a. INA 101(a)(15)(L) does not require the beneficiary of an L petition to be coming for employment at a pre-existing, U.S.-based office of the employer. A petition may be approved for a beneficiary who is otherwise classifiable under INA 101(a)(15)(L) and who is coming to establish an office (i.e., commence business) in the United States for the petitioner. An alien in a managerial, executive, or specialized knowledge capacity may come to open or be employed in a new office.
- b. "New office" means an organization, which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

9 FAM 402.12-11(B) Managers and Executives Establishing or Joining New Office

(CT:VISA-1; 11-18-2015)

- a. A petitioner who seeks L status for a manager or executive coming to open or to be employed in a new office must submit evidence:
 - (1) That sufficient physical premises to house the new office have been secured;
 - (2) That the beneficiary was employed for one continuous year in the three-year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and
 - (3) That the intended U.S. operation, within one year of approval of the petition, will support an executive or managerial position.
- b. While it is expected that a manager or executive in a new office will be more than normally involved in day-to-day operations during the initial phases of the business, he or she must also have authority and plans to hire staff and have wide latitude in making decisions about the goals and management of the organization.

9 FAM 402.12-11(C) Aliens With Specialized Knowledge Establishing or Joining New Office

(CT:VISA-1; 11-18-2015)

A petitioner seeking the entry of an alien with specialized knowledge to open or be employed in a new office must demonstrate that:

- (1) Sufficient physical premises to house the new office have been secured;
- (2) The business entity in the United States is or will be a qualifying organization as described in [9 FAM 402.12-9\(A\)](#); and
- (3) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

9 FAM 402.12-11(D) Petition Validity for Employees of New Offices Limited to One Year

(CT:VISA-1; 11-18-2015)

A petition for a qualified employee of a new office will be approved for a period not to exceed one year, after which the petitioner must demonstrate that it is doing business as defined in [9 FAM 402.12-10](#) above in order for the petition and alien's stay to be extended beyond one year.

9 FAM 402.12-12 EMPLOYER-EMPLOYEE RELATIONSHIP

(CT:VISA-1; 11-18-2015)

- a. The essential element in determining the existence of an "employer-employee" relationship is the right of control; that is, the right of the employer to order and control the employee in the performance of his or her work. Possession of the authority to engage or the authority to discharge is very strong evidence of the existence of an employer-employee relationship.
- b. The source of the beneficiary's salary and benefits while in the United States (i.e., whether the beneficiary will be paid by the U.S. or foreign affiliate of the petitioning company) is not controlling in determining eligibility for L status. In addition, the employer-employee relationship encompasses a situation in which the beneficiary will not be paid directly by the petitioner, and such a beneficiary is not precluded from establishing eligibility for L classification.
- c. A beneficiary who will be employed in the United States directly by a foreign company and who will not be controlled in any way by (and thus, in fact, not have any employment relationship to) the foreign company's office in the United States does not qualify as an intracompany transferee. A beneficiary coming to the United States to serve as the chief executive of the U.S. branch of the company would only have to show that he or she receives general supervision or direction from higher level executives, the board of directors, or the stockholders of the organization.

9 FAM 402.12-13 QUALIFYING EXPERIENCE

REQUIREMENT

(CT:VISA-1; 11-18-2015)

- a. **Continuous for One Year:** INA 101(a)(15)(L) requires the beneficiary of an intracompany transferee petition to have been employed continuously by the petitioner, or by an affiliate or subsidiary thereof, for one year within the three years preceding the beneficiary's application for admission into the United States.
- b. **Full-Time Employment:** While not expressly stated in the INA or regulations, INA 101(a)(15)(L) contemplates that the beneficiary's qualifying experience with the petitioner must have been continuous full-time employment, and not continuous part-time employment. Several years of part-time employment equaling one year in aggregate cannot be viewed as meeting the requirement.
- c. Full-time services divided among affiliated companies, each using the employee on a part-time basis, however, constitute full-time employment if the aggregate time meets or exceeds the hours of a full-time position.
- d. **Employment Abroad:**
 - (1) The beneficiary's one year of qualifying experience with the petitioner must be wholly outside the United States. Time spent working for the petitioning firm in the United States does not qualify.
 - (2) Periods spent in the United States in any authorized capacity on behalf of the foreign employer or a parent, branch, affiliate, or subsidiary thereof, and brief trips to the United States for business or pleasure, do not interrupt the continuity of the one year of continuous employment abroad for L-1 status, but do not count toward fulfillment of that requirement. Such periods spent in the United States may follow the year of employment abroad and immediately precede application for L-1 status, so long as the required one-year of qualifying employment during the past three years has been served abroad.

9 FAM 402.12-14 DETERMINING NATURE OF SERVICES

9 FAM 402.12-14(A) Nature of Services Performed and to be Performed

(CT:VISA-1; 11-18-2015)

- a. In order to be classifiable under INA 101(a)(15)(L), the services performed by the alien abroad, and those to be performed in the United States, must involve either "managerial capacity", "executive capacity", or "specialized knowledge". The beneficiary of a blanket petition must meet the higher standard of being a "specialized knowledge professional", rather than merely possessing specialized knowledge.

- b. **Qualifying Positions:** The following definitions in this section are used by DHS in evaluating the positions to which L aliens are destined.

9 FAM 402.12-14(B) Managerial or Executive Capacity

(CT:VISA-1; 11-18-2015)

- a. **Managerial Capacity:** "Managerial capacity" means an assignment within an organization in which the employee primarily:
- (1) Manages the organization, or a department, subdivision, function, or component of the organization;
 - (2) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
 - (3) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised. If no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
 - (4) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional.
- b. **Executive Capacity:** "Executive capacity" means an assignment within an organization in which the employee primarily:
- (1) Directs the management of the organization or a major component or function of the organization;
 - (2) Establishes the goals and policies of the organization, component, or function;
 - (3) Exercises wide latitude in discretionary decision-making; and
 - (4) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.
- c. An executive or managerial capacity requires a high level of authority and a broad range of job responsibilities. Managers and executives plan, organize, direct, and control an organization's major functions and work through other employees to achieve the organization's goals. In determining whether an alien supervises others, independent contractors as well as company employees can be considered. The duties of a position must primarily be of an executive or managerial nature, and a majority of the executive's or manager's time must be spent on duties relating to policy or operational management. This does not mean that the executive or manager cannot regularly apply his or her professional expertise to a particular problem. The definitions do not exclude activities that are common to managerial or executive positions such as customer and public relations, lobbying, and contracting.

- d. An executive or manager may direct a function within an organization. In general, however, individuals who control and directly perform a function within an organization, but do not have subordinate staff (except perhaps a personal staff), are more appropriately considered specialized knowledge employees.
- e. If a small or medium-sized business supports a position wherein the duties are primarily executive or managerial, it can qualify under the L category. However, neither the title of a position nor ownership of the business is, by itself, an indicator of managerial or executive capacity. The sole employee of a company may qualify as an executive or manager, for L visa purposes, provided his or her primary function is to plan, organize, direct, and control an organization's major functions through other people.

9 FAM 402.12-14(C) Specialized Knowledge Capacity

(CT:VISA-1; 11-18-2015)

- a. "Specialized knowledge" means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.
- b. To serve in a specialized knowledge capacity, the alien's knowledge must be different from or surpass the ordinary or usual knowledge of an employee in the particular field and must have been gained through significant prior experience with the petitioning organization. A specialized knowledge employee must have an advanced level of expertise in his or her organization's processes and procedures or special knowledge of the organization, which is not readily available in the United States labor market.
- c. Some characteristics of an employee who has specialized knowledge are that he or she:
 - (1) Possesses knowledge that is valuable to the employer's competitiveness in the market place;
 - (2) Is uniquely qualified to contribute to the U.S. employer's knowledge of foreign operating conditions;
 - (3) Has been utilized as a key employee abroad and has been given significant assignments which have enhanced the employer's productivity, competitiveness, image, or financial position; and
 - (4) Possesses knowledge, which can be gained only through extensive prior experience with the employer.

9 FAM 402.12-14(D) Specialized Knowledge Professional Capacity

(CT:VISA-1; 11-18-2015)

- a. **Specialized Knowledge Professional:** “Specialized knowledge professional” means an individual who has specialized knowledge as defined above and is a member of the professions as specified in INA 101(a)(32).
- b. A specialized knowledge professional must possess the special or unusual knowledge specified in [9 FAM 402.12-14\(C\)](#) above, and be a member of a profession as described in INA 101(a)(32). To qualify under the blanket petition provision (see [9 FAM 402.12-8\(C\)](#) above), an alien must be a manager, executive, or specialized knowledge professional.

9 FAM 402.12-14(E) L Status Not Applicable to Skilled Workers

(CT:VISA-1; 11-18-2015)

Petitions to accord L status may be approved for persons with specialized knowledge, but not for persons who are merely skilled workers. Being a “skilled worker” (i.e., one whose skill and knowledge enable one to produce a product through physical or skilled labor) does not in itself qualify an alien for the “specialized knowledge” category. Specialized knowledge capability is based on the beneficiary’s special knowledge of a business firm’s product or service, management operations, decision-making process, or similar elements that are not readily available in the U.S. labor market rather than on his or her level of training or skill. INA 101(a)(15)(L) was not intended to alleviate or remedy a shortage of U.S. workers; the temporary worker provisions of INA 101(a)(15)(H) provide the appropriate means for the admission of workers who are in short supply in the United States.

9 FAM 402.12-14(F) Beneficiary Need Not Perform Same Work in the United States as Abroad

(CT:VISA-1; 11-18-2015)

To qualify for an L visa, the beneficiary must be assigned to a position in the United States in either the same category (i.e., managerial, executive, or involving specialized knowledge) as the position held abroad, or in one of the other qualifying categories. The beneficiary need not be coming to perform the same work that was performed abroad. Promotions within the qualifying categories are possible (e.g., from specialized knowledge employee to manager).

9 FAM 402.12-14(G) Full-time Service Required but Not Entirely in the United States

(CT:VISA-1; 11-18-2015)

In general, the intent of the L-1 classification is the intracompany transfer to the United States of full-time executive, management, or specialized knowledge personnel. However, while full-time employment by the beneficiary is anticipated, INA 101(a)(15)(L) does not require that the beneficiary perform full-time services within

the United States. An executive of a company with branch offices in Canada and the United States, for example, could divide normal work hours between those offices and still qualify for an L-1 visa. The alien's principal purpose while in the United States, however, must be consistent with L status. Therefore, if an alien lived in the United States and commuted to employment in Canada or Mexico, and only occasionally worked in the United States, the alien would normally not qualify for L-1 status since the principal purpose for being in the United States would not relate to L employment. An alien who lived in Canada and came to the United States occasionally to work as an executive for the U.S. branch operation, however, would normally qualify for L-1 status since that alien's principal purpose for coming to the United States would be consistent with L classification.

9 FAM 402.12-15 TEMPORARINESS OF STAY

(CT:VISA-322; 04-07-2017)

L aliens are excluded *by law* from INA 214(b). In addition, INA 214(h) provides the fact that an alien has sought or will seek permanent residence in the United States does not preclude him or her from obtaining *or maintaining* L nonimmigrant status. The alien may legitimately come to the United States as a nonimmigrant under the L classification and depart voluntarily at the end of his or her authorized stay, and, at the same time, lawfully seek to become a permanent resident of the United States. Consequently, your evaluation of an applicant's eligibility for an L visa must not focus on the issue of temporariness of stay or immigrant intent.

9 FAM 402.12-16 LENGTH OF STAY

9 FAM 402.12-16(A) Admission Only During Validity of Petition

(CT:VISA-322; 04-07-2017)

- a. A beneficiary may *be admitted to the United States for the validity period of the petition, plus a period of up to ten days before the validity period of the petition begins and ten days after it ends.*
- b. The beneficiary of a blanket petition may be admitted for up to three years even though the initial validity period of the blanket petition may expire before the end of the three-year period. If the blanket petition will expire before the end of the three-year period, the burden is on the petitioner to file to extend the validity of the blanket petition, or to file an individual petition on the alien's behalf to authorize an alien beneficiary's L status in the United States.
- c. The admission period for any alien under INA 101(a)(15)(L) must not exceed three years unless an extension of stay (see [9 FAM 402.12-16\(B\)](#) below) is granted.

9 FAM 402.12-16(B) Extensions of Stay

(CT:VISA-1; 11-18-2015)

- a. For the beneficiary of an individual L petition, the petitioner must request an extension of the alien's stay in the United States on Form I-129. The effective dates of the petition extension and the beneficiary's extension of stay, if authorized, must be the same.
- b. When the alien is a beneficiary under a blanket petition, the petitioner must file a new Form I-129-S, Nonimmigrant Petition Based on Blanket L Petition, accompanied by a copy of the previous Form I-129-S, and must concurrently request extension of the blanket petition with indefinite validity if such validity has not already been granted.
- c. Extensions of stay may be authorized in increments of up to two years for beneficiaries of individual and blanket petitions. The beneficiary must be physically present in the United States at the time the extension of stay petition is filed. If the alien is required to leave the United States for business or personal reasons while the extension requests are pending, the petitioner may ask DHS to cable notification of the petition extension to the consular office abroad where the alien will apply for another visa. When the maximum allowable period of stay in L classification has been reached (see [9 FAM 402.12-16\(C\)](#) below), no further extensions may be granted.

9 FAM 402.12-16(C) Limitations on Total Periods of Stay

(CT:VISA-1; 11-18-2015)

- a. The total period of stay for L aliens employed in a specialized knowledge capacity may not exceed five years. The maximum allowable period of stay for an alien employed in a managerial or executive capacity may not exceed seven years. No further extensions may be granted once these limits have been reached.
- b. The total maximum period of stay will be calculated by determining the actual total number of days the alien is lawfully admitted and physically present in the United States in L category status. Additionally, time spent in H status in the U.S. also accrues against the maximum authorized period of stay in L status (and vice versa). See 8 CFR 214.2(I)(12). Time spent as an L-2 dependent does not count against the maximum allowable period of stay available to a principal L-1 alien.
- c. When an alien was initially admitted in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months in order to be eligible for the total period of stay of seven years. The change to managerial or executive capacity must have been approved by DHS in an amended, new, or extended petition at the time that the change occurred or based on a new Blanket L I-129S petition adjudication.

9 FAM 402.12-16(D) Readmission After Maximum Total

Period of Stay Reached

(CT:VISA-1; 11-18-2015)

- a. When a nonimmigrant has spent the maximum allowable period of stay in the United States in L and/or H status, the alien may not be issued a visa or be readmitted to the United States under the L or H visa classification, nor may a new petition, extension, or change of status be approved for that alien under INA 101(a) (15)(L) or (H), unless the alien has resided and been physically present outside the United States for the immediate past year.
- b. Brief trips to the United States for business or pleasure do not interrupt the one-year period abroad, but do not count towards fulfillment of that requirement. Periods when the alien fails to maintain status will be counted towards the applicable limitation; an alien may not circumvent the limit by violating his or her status.

9 FAM 402.12-16(E) Exceptions to Limitations on Readmission

(CT:VISA-1; 11-18-2015)

The limitations on readmission described in [9 FAM 402.12-16\(D\)](#) above will not apply to aliens who did not reside continually in the United States, and, whose employment in the United States was seasonal or intermittent, or was for an aggregate of six months or less per year, nor to aliens who resided abroad and regularly commuted to the United States to engage in part-time employment. The alien must provide clear and convincing proof (e.g., evidence such as arrival and departure records, copies of tax returns, records of employment abroad) that he or she qualifies for these exceptions. The exceptions to limitations on readmission will not apply if the principal alien's dependents have been living continuously in the United States in L-2 status.

9 FAM 402.12-17 VALIDITY OF L VISAS

9 FAM 402.12-17(A) Maximum Validity of L Visa

(CT:VISA-1; 11-18-2015)

- a. The validity of an L visa may not exceed the period of validity shown in the Visa Reciprocity and Country Documents Finder. You should issue L visas with the maximum validity permitted based on reciprocity, even though the initial validity period of the petition may expire earlier than the visa. See [9 FAM 403.9-4\(B\)](#) for discussion of the Department's policy regarding issuance of full validity visas.
- b. The annotation field of each L visa for individual and blanket petition beneficiaries issued on or after March 15th, 2012 must include either the petition expiration date as verified in PIMS or PCQS for individual petitions, or the expiration of the approved Form I-129S for blanket petitions

- c. Posts are authorized to accept L visa applications and issue visas to qualified applicants up to 90 days in advance of applicants' beginning of employment status as noted on the Form I-797 or I-129S.

9 FAM 402.12-17(B) Limiting Validity of L Visas

(CT:VISA-1; 11-18-2015)

Consular officers may restrict visa validity in some cases to less than the period of validity of the approved petition or authorized period of stay (for example, on the basis of reciprocity or the terms of an order waiving a ground of ineligibility). In any such case, in addition to the other notations required on the L visa, please see the notations required per [9 FAM 403.9-5](#).

9 FAM 402.12-17(C) Reissuing Limited L Visas

(CT:VISA-1; 11-18-2015)

When an L visa has been issued with a validity of less than the validity of the petition or authorized period of stay, consular officers may reissue the visa any number of times within the validity period of the petition or the authorized period of stay. If a fee is prescribed in the Visa Reciprocity and Country Documents Finder, you must collect the visa application fee for each re-issuance of the L visa.

9 FAM 402.12-17(D) L Visa Renewals

(CT:VISA-1; 11-18-2015)

- a. When an applicant applies for a new L visa before the current L visa expires, a you must cancel the current visa and, if otherwise qualified, issue a new L visa for the maximum validity permitted based on reciprocity.
- b. When the applicant's current petition will expire shortly or the applicant has a new petition number with a validity date in the future, you must annotate the new visa with the current valid petition information only. U.S. Customs and Border Protection (CBP) will verify the existence of a valid petition upon entry at a Port of Entry regardless of the annotation on the visa.

9 FAM 402.12-18 SPOUSE AND CHILDREN OF L-1 ALIENS

9 FAM 402.12-18(A) Derivative Classification

(CT:VISA-1; 11-18-2015)

- a. The spouse and children of an L-1 nonimmigrant who are accompanying or following to join the principal alien in the United States are entitled to L-2 classification and are subject to the same visa validity, period of admission, and limitation of stay as

the L-1 alien. For a general discussion of the classification of the spouse and children of a nonimmigrant, (see [9 FAM 402.1-4](#) and [9 FAM 402.1-5](#)).

- b. A Canadian citizen spouse or child who is accompanying or following to join a Canadian citizen in L-1 status must be admitted as an L-2 nonimmigrant without requiring a visa. A non-Canadian citizen spouse or child must have an L-2 visa when applying for admission.
- c. If an L-1 nonimmigrant has maintained his or her family in the United States in L-2 status, he or she cannot qualify for exception from the five to seven-year limitation on total period of stay (see [9 FAM 402.12-16\(E\)](#) above).

9 FAM 402.12-18(B) Verifying Principal Alien is Maintaining Status

(CT:VISA-1; 11-18-2015)

When an alien applies for an L-2 visa to follow-to-join a principal alien already in the United States, you must be satisfied that the principal alien is maintaining L-1 status before issuing the visa. You must also refer to [9 FAM 402.12-6\(D\)](#) above which discusses checking the status of approved petitions in the Consular Consolidated Database (CCD).

9 FAM 402.12-18(C) Employment in the United States Authorized for L-2 Dependent Aliens

(CT:VISA-1; 11-18-2015)

Public Law 107-125 provides for work authorization for nonimmigrant spouses (L-2) of intracompany transferees (L-1). Therefore, in the case of an L-2 spouse who is accompanying or following to join the L-1 principal alien, the Attorney General must authorize the alien spouse to engage in employment in the United States and provide the spouse with an 'employment authorized' endorsement or other appropriate work permit.

9 FAM 402.12-19 SERVANTS OF L NONIMMIGRANTS

(CT:VISA-1; 11-18-2015)

Personal or domestic servants seeking to accompany or follow to join L nonimmigrant employers may be issued B-1 visas, provided they meet the requirements of [9 FAM 402.2-5\(D\)\(3\)](#).

9 FAM 402.12-20 FORMER EXCHANGE VISITORS SUBJECT TO TWO-YEAR FOREIGN RESIDENCE

REQUIREMENT

(CT:VISA-322; 04-07-2017)

See [9 FAM 302.13-2\(D\)](#) for instructions regarding requests for waivers of the two-year foreign residence requirement by L visa applicants who are former exchange visitors and subject to the two-year requirement of INA 212(e).

9 FAM 402.13

ALIENS OF EXTRAORDINARY ABILITY O VISAS

(CT:VISA-310; 03-21-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 402.13-1 STATUTORY AND REGULATORY AUTHORITY

9 FAM 402.13-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15)(O) (8 U.S.C. 1101(a)(15)(O)); INA 101(a)(46) (8 U.S.C. 1101(a)(46)); INA 214(a)(2)(A) (8 U.S.C. 1184(a)(2)(A)); INA 214(c) (8 U.S.C. 1184(c)).

9 FAM 402.13-1(B) Code of Federal Regulations

(CT:VISA-195; 09-28-2016)

22 CFR 41.55; 8 CFR 214.2.

9 FAM 402.13-2 OVERVIEW

(CT:VISA-195; 09-28-2016)

The O classification was created by the Immigration Act of 1990, Public Law 101-649 of November 29, 1990, to provide specifically for the admission of persons with extraordinary ability in the sciences, arts, education, business, and athletics, or extraordinary achievement in motion picture and television production, and their essential support personnel. Many such aliens were previously classified as H-1B nonimmigrants. Since the H-1B classification was not originally designed to address these classes of activities, Congress determined that they should be separated from that classification and treated independently. An O-1 or O-2 alien must be the beneficiary of a petition approved by the Department of Homeland Security (DHS) prior to visa issuance. USCIS regulations provide that the petitioner may be either an employer or agent. While O-1 beneficiaries may not self-petition, a separate legal entity owned by the O-1 beneficiary may be eligible to file a petition on behalf of the O-1 beneficiary.

9 FAM 402.13-3 CLASSIFICATION SYMBOLS

(CT:VISA-1; 11-18-2015)

22 CFR 41.12 identifies the following O visa classification symbols for aliens of extraordinary ability in accordance with INA 101(a)(15)(O):

O1	Alien with Extraordinary Ability in Sciences, Arts, Education, Business or Athletics
O2	Alien Accompanying and Assisting in the Artistic or Athletic Performance by O1
O3	Spouse or Child of O1 or O2

9 FAM 402.13-4 CLASSIFICATION STANDARDS FOR O NONIMMIGRANTS

9 FAM 402.13-4(A) O-1 Nonimmigrants

(CT:VISA-195; 09-28-2016)

a. **In General:** The O-1 category applies to any of the following:

- (1) An O-1A holder is an individual alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, and who is coming temporarily to the United States to continue work in the area of extraordinary ability; or
- (2) An O1-B holder is an alien who has a demonstrated record of extraordinary achievement in motion picture and/or television productions, and who is coming temporarily to the United States to continue work in the area of extraordinary achievement.

b. **Criteria for Position Requiring O-1 Alien:** The Department of Homeland Security interprets the statute to encompass "any field of endeavor" including craftsman and lecturers, as well as the culinary arts. The O-1 visa holder must seek to enter for the purpose of continuing the same type of work but there is no requirement that the position to be filled is one that would require a person of O-1 caliber.

c. **Defining Extraordinary Ability and Extraordinary Achievement:**

- (1) "Extraordinary ability" in science, education, business or athletics is defined as "a level of expertise indicating that the person is one of the small percentage who has arisen to the very top of the field of endeavor."
- (2) Extraordinary ability in the arts means "distinction." This category requires the petition to establish that "a person described as prominent is renowned, leading, or well-known in the field of arts."
- (3) Extraordinary achievement in the motion picture and television industry means a very high level of accomplishment as evidenced by a degree of skill and recognition significantly above that ordinarily encountered. The person must be "outstanding or notable."

9 FAM 402.13-4(B) O-2 Nonimmigrants

(CT:VISA-1; 11-18-2015)

The O-2 category applies to an accompanying alien who is coming temporarily to the United States solely to assist in the artistic or athletic performance of an O-1 nonimmigrant. An O-2 alien must be petitioned for in conjunction with the services of the O-1 alien to whom he or she provides support and is not entitled to work separate and apart from the O-1 alien. To qualify for status, O-2 aliens must:

- (1) Be an integral part of the actual performances or events and possess critical skills and experience with the O-1 alien that are not of a general nature and cannot be performed by others; or
- (2) In the case of a motion picture or television production, have skills and experience with the O-1 alien which are not of a general nature and which are critical, either based on a pre-existing and longstanding working relationship with the O-1 alien or, if in connection with a specific production only, because significant production (including pre- and post-production) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production.

9 FAM 402.13-4(C) O-3 Nonimmigrants

(CT:VISA-1; 11-18-2015)

The O-3 category applies to the spouse and children who are accompanying or following to join an alien classified O-1 or O-2.

9 FAM 402.13-5 SIGNIFICANCE OF APPROVED PETITION

9 FAM 402.13-5(A) Department of Homeland Security (DHS) Responsible for Adjudicating O Petitions

(CT:VISA-310; 03-21-2017)

- a. Every O-1 and O-2 alien must be the beneficiary of a petition, approved by DHS, and verified either through the Petition Information Management Service (PIMS) or through the Person Centric Query Service (PCQS), in the CCD under the Cross Applications tab, prior to visa issuance or, in the case of visa-exempt aliens, admission into the United States. By mandating a preliminary petition, Congress placed responsibility and authority with DHS to determine whether the requirements for O status, which are examined in the petition process, have been met.
- b. You should not request the Department to provide status reports on petitions filed with DHS, nor *should you* contact DHS directly for such reports. As an alternative, you may suggest that the applicant communicate with his or her sponsor. Cases of public relations significance may be submitted to the Department (TAGS: CVIS).

Justification for such action must be included with your request.

9 FAM 402.13-5(B) Approved Petition is Prima Facie Evidence of Entitlement to O Classification

(CT:VISA-310; 03-21-2017)

- a. You should *not* require an applicant seeking an O visa to present an approved Form I-129, Petition for a Nonimmigrant Worker, or evidence that the O petition has been approved (a Form I-797, Notice of Action). All petition approvals must be verified through PIMS or through the Person Centric Query Service (PCQS), in the CCD under the Cross Applications tab. Once you have verified approval through PIMS or PCQS, consider this as prima facie evidence that the requirements for O classification, which are examined in the petition process, have been met. Other than instances involving obvious errors, consular officers do not have the authority to question the approval of O petitions without specific evidence, unavailable to DHS at the time of petition approval, that the beneficiary may not be entitled to status. The large majority of approved O petitions are valid, and involve bona fide establishments, relationships, and individual qualifications that conform to the DHS regulations in effect at the time the O petition was filed.
- b. On the other hand, the approval of a petition by DHS does not relieve the alien of the burden of establishing visa eligibility in the course of which questions may arise as to his or her eligibility to O classification. If you develop information during the visa interview (e.g., evidence which was not available to DHS) that gives you reason to believe that the beneficiary may not be entitled to status, you may request any additional evidence which bears a reasonable relationship to this issue. Disagreement with DHS interpretation of the law or the facts, however, is not sufficient reason to ask DHS to reconsider its approval of the petition.
- c. *As a matter of policy, consular officers should refrain in most situations from requesting applicants to perform as a method to verify qualifications. A request for performance is warranted only in rare cases, as part of an anti-fraud investigation.*

9 FAM 402.13-5(C) Effect of Filing Immigrant Visa Petition

(CT:VISA-1; 11-18-2015)

DHS has determined that the approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying an O petition, a request to extend such a petition, or the alien's application for admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as an O nonimmigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States.

9 FAM 402.13-5(D) Consultation Requirement

(CT:VISA-1; 11-18-2015)

Consultations with an appropriate United States peer group (which could include a person or persons with expertise in the field), labor, and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for an O-1 or O-2 classification can be approved by the Department of Homeland Security. Consultations are normally in the form of a written advisory opinion. The advisory opinion is usually mandatory, although DHS may obtain or waive it under certain circumstances (for example, if no appropriate union exists). Consultations are advisory in nature and are not binding on DHS.

9 FAM 402.13-5(E) Effect of Labor Disputes

(CT:VISA-1; 11-18-2015)

- a. DHS will deny an O petition in the event that the Secretary of Labor certifies that a strike or labor dispute is in progress in the occupation at the place the alien will be employed, and the alien's employment would adversely affect the wages and working conditions of U.S. workers. If the petition has already been approved, but the alien has not yet entered the United States or commenced employment, the approval of the petition is automatically suspended and application for admission shall be denied.
- b. Should you receive notification from DHS, the Department, or another official source that a previously approved petition has been suspended because of a strike or other labor dispute, you must defer visa issuance and follow whatever instructions are given regarding the disposition of the suspended petition. If you have any questions regarding the validity of a particular petition, you must query the approving DHS office directly.

9 FAM 402.13-5(F) Department of Homeland Security (DHS) Notification to Petitioner of Petition Approval

(CT:VISA-1; 11-18-2015)

DHS uses Form I-797 Notice of Action to notify the petitioner that the O petition filed has been approved or that the extension of stay in O status for the employee has been granted. The approval notice shall include the alien beneficiary's name, classification, and the petition's period of validity. The petitioner may furnish Form I-797 to the employee for the purpose of applying for his or her O visa (although the petition must still be verifiable through PIMS) or to facilitate the employee's entry into the United States, either initially or after a temporary absence abroad during the employee's stay in O status.

9 FAM 402.13-5(G) Referring Approved O Petition to USCIS for Reconsideration

(CT:VISA-310; 03-21-2017)

You must consider all approved O petitions in light of this guidance, process with dispatch those cases which appear legitimate, and identify those which require local investigation or referral to the approving U.S. Citizenship and Immigration Services (USCIS) office for reconsideration. Refer cases to USCIS for reconsideration sparingly, to avoid inconveniencing bona fide petitioners and beneficiaries and causing duplication of effort by USCIS. You must have specific evidence of a requirement for automatic revocation, material misrepresentation in the petition process, or of previously unknown material facts, which might alter USCIS's finding before requesting review of a Form I-129, Petition for a Nonimmigrant Worker, approval. When seeking reconsideration, you must forward the Form I-129 application and all pertinent documentation, under cover of Form DS-3099, NIV Petition Revocation Request Cover Sheet – Kentucky Consular Center -and a written memorandum of the evidence supporting the request for reconsideration to the KCC, which will then forward the request to the *approving USCIS* Service Center. The KCC will maintain a copy of the request and all supporting documentation and will track all consular revocation requests. Retain at post a copy of all material, including the approved Form I-129 and supporting documents.

9 FAM 402.13-6 OTHER FILING SITUATIONS

(CT:VISA-1; 11-18-2015)

- a. **Services in More Than One Location:** A petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of the employment and must be filed with the DHS Service Center having jurisdiction in the area where the petitioner is located. The address which the petitioner specifies as its location on the petition shall be where the petitioner is considered to be located. If the petitioner is a foreign employer with no United States location, the petition will have been filed with the Service Center having jurisdiction over the area where the work will begin.
- b. **Services for More Than One Employer:** If the beneficiary will work concurrently for more than one employer within the same time period, each employer must file a separate petition with the DHS Service Center that has jurisdiction over the area where the alien will perform services, unless an established agent files the petition.
- c. **Change of Employer:** If an O-1 or O-2 alien in the United States seeks to change employers, the new employer must file a petition with the jurisdictional DHS Service Center. An O-2 alien may change employers only in conjunction with a change of employers by the principal O-1 alien. When an O-1 or O-2 petition is filed by an agent, an amended petition must be filed with evidence relating to the new employer. A request for an extension of stay must also be filed.
- d. **Amended Petition:** A petitioner shall file an amended petition on Form I-129, Petition for a Nonimmigrant Worker, with fee, with the DHS Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or the beneficiary's eligibility as specified in the original approved petition. In the case of a petition filed for an artist or entertainer, a

petitioner may add additional performances or engagements during the validity period of the petition without filing an amended petition.

- e. **Agents as Petitioners:** An established U.S. agent may file an O petition in cases involving an alien who is traditionally self-employed or who uses agents to arrange short-term employment on his or her behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. An agent may also file a petition on behalf of a foreign employer.

9 FAM 402.13-7 LISTING BENEFICIARIES ON FORM I-797, NOTICE OF ACTION

(CT:VISA-310; 03-21-2017)

- a. **Named Beneficiaries:** Form I-797, Notice of Action *and the record of petition approval in PIMS or PCQS will* contain the names of all approved beneficiaries.
- b. **Multiple Beneficiaries:** More than one O-2 accompanying alien may be included on a petition if they are assisting the same O-1 alien for the same event or performances, during the same period of time and in the same location.
- c. **Substituting Beneficiaries Not Permitted:** Since O-1 petitions relate to individual entertainers, substitutions in the case of O-1 beneficiaries will not be permitted. Thus, a new petition will be required in the case of a change of beneficiary. Substitutions of beneficiaries are not permitted on O-2 petition cases.

9 FAM 402.13-8 VALIDITY OF APPROVED O PETITIONS

(CT:VISA-1; 11-18-2015)

- a. An approved petition for an alien classified O-1 will be valid for a period of time determined by DHS to be necessary to accomplish the event or activity, not to exceed three years.
- b. An approved petition for an alien classified O-2 will be valid for a period of time determined to be necessary for the O-1 artist or athlete to accomplish the event or activity, not to exceed three years.
- c. You are authorized to accept and issue visas to qualified applicants up to 90 days in advance of applicants' beginning of status as noted on the Form I-797. You must inform applicants verbally and in writing that they can only use the visa to apply for entry to the United States starting ten days prior to the beginning of the approved status period noted on their Form I-797. (See [9 FAM 402.13-9](#) below.) In addition, such visas must be annotated:

“Not valid until (ten days prior to the petition validity date)”.

- d. **Petition Extension:** The petitioner must file a request to extend the validity of an O petition on Form I-129, Petition for a Nonimmigrant Worker, in order to continue

or complete the same activity or event specified in the original petition. Supporting documents are not required unless requested by DHS. A petition extension may be filed only if the validity of the original petition has not expired.

9 FAM 402.13-9 LENGTH OF STAY

(CT:VISA-1; 11-18-2015)

- a. An O-1 or O-2 nonimmigrant may be admitted to the United States for the validity period of the petition, plus a period of up to ten days before the validity period of the petition begins and ten days after it ends. The alien may not work except during the validity period of the petition. There is not an overall time limit as to how long one may be present in the United States in total in an O-1 status, such as there is for the H1B and L1 visa classifications.
- b. **Extension of Stay:** The petitioner must request the extension of an alien's stay in the United States on the same Form I-129, Petition for a Nonimmigrant Worker, used to file for the extension of the alien's petition. The effective dates of the petition extension and of the beneficiary's extension of stay shall be the same. The beneficiary must be physically present in the United States at the time the extension of stay petition is filed. If the alien is required to leave the United States for business or personal reasons while the extension requests are pending, the petitioner may ask DHS to cable notification of the petition extension to the consular office abroad where the alien will apply for a visa.
- c. **Extension Periods:** An extension of stay may be authorized in increments of up to one year for an O-1 or O-2 nonimmigrant to continue or complete the same event or activity for which he or she was admitted, plus an additional 10 days.

9 FAM 402.13-10 ISSUANCE OF O VISAS

9 FAM 402.13-10(A) Approved Petition

(CT:VISA-310; 03-21-2017)

- a. The approval of a petition by DHS is prima facie evidence of entitlement to O classification. *For additional information, see [9 FAM 402.13-5\(B\)](#).*

9 FAM 402.13-10(B) *Applying 214(b)*

(CT:VISA-310; 03-21-2017)

- a. *An O-1 applicant is presumed to be an immigrant until he or she establishes to your satisfaction that he or she is entitled to O-1 nonimmigrant status, and the standards for applying 214(b) described in [9 FAM 302.1-2\(B\)\(3\)](#) apply to O-1 applicants. Under 8 CFR 214.2(o)(13), a "temporary" intent to remain in the United States is a requirement for O-1 classification. However, an applicant for an O-1 visa does not have to have a residence abroad which he or she does not intend*

to abandon. *Further, as explained* in [9 FAM 402.13-5\(C\)](#) above, “dual intent” is permissible for O-1 visa holders.

- b. Unlike the O-1 nonimmigrant, the O-2 visa applicant must satisfy you that he or she has a residence abroad and no intent to abandon that residence.
- c. The standards regarding residence abroad and temporariness of stay that pertain to O-1 and O-2 nonimmigrants apply equally to their O-3 dependents.

9 FAM 402.13-10(C) Evidence Forming Basis for O Visa Issuance

(CT:VISA-310; 03-21-2017)

- a. The basis for O visa eligibility consists of an approved Form I-129, Petition for a Nonimmigrant Worker that must be verified either through PIMS or PCQS before issuing a visa. *The paper Form I-797 approval notice is an unsigned computer-generated form, which contains the receipt number.*
- b. You are able to access the details of approved NIV petitions through the Consular Consolidated Database (CCD), through the PIMS Petition Report or through PCQS. *The PIMS Petition Report is listed under a sub-category of the NIV menu called “NIV Petitions.” The PIMS Petition Report contains a record of all petitioners recorded by the KCC as having approved petitions since 2004. In addition, the KCC FPU has provided informational memos on a large percentage of these petitioners. Each new, approved petition is linked to a base petitioner record, allowing superior tracking of NIV petitioner and petition information.*
- c. If PIMS does not contain the petition approval, before sending an email to KCC, you have the option to *verify* petition approval in PCQS in the CCD under the Cross Applications tab. In PCQS, under Search Criteria, select Receipt Number; then enter the number from the Form I-797; e.g., EAC1234567890. First, search just CISCOR to find the petition, but if not found in CISCOR, you must also check CLAIMS 3. If you find a petition approval in PCQS that was not in PIMS, then you must send an email to PIMS@state.gov as follows: Petition with Receipt Number EAC1234567890 was found in PCQS but not in PIMS. You may not *issue* a petition-based NIV without verification of petition approval either through PIMS or PCQS.
- d. *If you are unable to locate information on a specific petition, you must send an email to PIMS@state.gov. KCC’s FPU will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within 2 working days. KCC will check the USCIS CLAIMS database, and will upload the CLAIMS report into PIMS so that you can proceed with the scheduled interview. KCC will not process PIMS requests submitted by you prior to the five day window. Please be sure to conduct a PIMS query before sending in these special requests, in order to reduce KCC’s workload.*

9 FAM 402.13-10(D) Validity of O Visas

(CT:VISA-310; 03-21-2017)

The validity of an O visa may not exceed the period of validity of a petition approved to accord O status. If the period of reciprocity shown in the reciprocity schedules is less than the validity period of the approved petition or extension of stay, the period of lesser validity prevails.

9 FAM 402.13-10(E) Annotating O Visas

(CT:VISA-310; 03-21-2017)

You must annotate the number of the alien's approved petition (or the number of the principal alien's petition in the case of O-3 dependents) on the visa, followed by the name and location of the alien's employer. Follow the standard operating instructions for annotating visas; *for more details see [9 FAM 403.9-5\(F\)](#).*

9 FAM 402.13-10(F) Issuing a Single O Visa Based on More Than One Petition

(CT:VISA-310; 03-21-2017)

If the alien is the beneficiary of two or more O petitions and does not plan to depart from the United States between engagements, you may issue a single O visa valid until the expiration date of the last expiring petition, reciprocity permitting. The required annotations (see [9 FAM 402.13-10\(E\)](#) above) from all petitions must be placed on the visa.

9 FAM 402.13-10(G) Limitation of O Visas

(CT:VISA-310; 03-21-2017)

You may restrict visa validity in some cases to less than the period of validity of the approved petition or authorized period of stay (for example, on the basis of reciprocity or the terms of an order waiving a ground of ineligibility). In any such case, in addition to the annotations described in [9 FAM 402.13-10\(E\)](#) above, insert the following:

"PETITION VALID TO (Date)".

9 FAM 402.13-10(H) Reissuing O Visas

(CT:VISA-310; 03-21-2017)

When an O visa is limited by reciprocity to a period of validity less than the validity of the petition or authorized period of stay, you may use the same, still-valid petition in order to issue the applicant a new visa any number of times within the allowable period. If a fee is prescribed by the reciprocity schedules, you must collect the fee for each reissuance of the O visa.

9 FAM 402.13-11 SPOUSE AND CHILDREN OF O-1

OR O-2 ALIENS

(CT:VISA-310; 03-21-2017)

- a. The spouse and children of an O-1 or O-2 alien, who are accompanying or following to join in the United States, are entitled to O-3 classification and are subject to the same visa validity, period of admission, and limitations as the O-1 or O-2 principal alien. For a general discussion of the classification of the spouse and children of a nonimmigrant, see [9 FAM 402.1-4](#) and [9 FAM 402.1-5](#).
- b. **Employment Prohibited:** Aliens in O-3 status are generally not authorized to accept employment. The spouse and children of an O principal alien may not accept employment unless they qualify independently for a classification in which employment is, or can be, authorized. You must take this into account in evaluating whether family members have furnished adequate evidence of their support while in the United States. O-3 aliens are permitted to study during their stay in the United States.
- c. **Verification that Principal Alien is Maintaining Status:** When an alien applies for an O-3 visa to follow to join a principal alien already in the United States, you must be satisfied that the principal alien is maintaining O status before issuing the visa. If there are no readily available means of verification, you may suggest to the applicant that the principal alien in the United States submit a copy of his or her Form I-94, Arrival and Departure Record, (*if the principal alien received a paper I-94, copies of both sides must be submitted*) and a copy of his or her current visa for presentation to you. You may also wish to check PIMS and ADIS *for arrival and departure information*, if available.

9 FAM 402.13-12 RETURN TRANSPORTATION WHEN EMPLOYMENT INVOLUNTARILY TERMINATED

(CT:VISA-1; 11-18-2015)

If an O nonimmigrant's employment terminates for reasons other than voluntary resignation, the employer and petitioner who sought the alien's O status are responsible for providing the reasonable cost of the alien's transportation to his or her last place of residence prior to entry into the United States.

9 FAM 402.14

ATHLETES, ARTISTS, AND ENTERTAINERS – P VISAS

(CT:VISA-358; 04-26-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 402.14-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 402.14-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15)(P) (8 U.S.C. 1101(a)(15)(P)); INA 214(a)(2)(B) (8 U.S.C. 1184(a)(2)(B)); INA 214(c) (8 U.S.C. 1184(c)).

9 FAM 402.14-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 41.56.

9 FAM 402.14-2 OVERVIEW

(CT:VISA-1; 11-18-2015)

The P nonimmigrant visa (NIV) classification was created by the Immigration Act of 1990, Public Law 101-649 of November 29, 1990, specifically to provide for certain athletes, entertainers, and artists who are coming to perform in the United States. Every P-1, P-2, or P-3 alien must be the beneficiary of a petition approved by the Department of Homeland Security (DHS) prior to visa issuance.

9 FAM 402.14-3 CLASSIFICATION SYMBOLS FOR P VISAS

(CT:VISA-1; 11-18-2015)

22 CFR 41.12 identifies the following P visa classification symbols for aliens of artists, entertainers, or athletes in accordance with INA 101(a)(15)(P):

P1	Internationally Recognized Athlete or Member of Internationally Recognized Entertainment Group
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P2	Artist or Entertainer in a Reciprocal Exchange Program
P3	Artist or Entertainer in a Culturally Unique Program
P4	Spouse or Child of P1, P2, or P3

9 FAM 402.14-4 DEFINITIONS

(CT:VISA-267; 12-12-2016)

The DHS uses the following definitions in adjudicating P petitions:

- (1) "Arts" includes fields of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts;
- (2) "Competition, event, or performance" is an activity such as an athletic competition or season, tournament, tour, exhibit, project, or entertainment event or engagement. Such activity may include short vacations, promotional appearances for the petitioning employer relating to the competition, event, or performance, and stopovers which are incidental and/or related to the activity. An athletic competition or entertainment event may include an entire season of performances. A group of related activities will also be considered an event. In the case of a P-2 petition, the event may be the duration of the reciprocal exchange agreement. In the case of a P-1 athlete, the event may be the duration of the alien's contract;
- (3) "Contract" means the written agreement between the petitioner and beneficiary(ies) that explains the terms and conditions of employment. The contract must describe the services to be performed, and specify the wages, hours of work, working conditions, and any fringe benefits;
- (4) "Culturally unique" means a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons;
- (5) "Essential support alien" is a highly-skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P-1, P-2, or P-3 alien. Such alien must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing support to the P-1, P-2, or P-3 alien;
- (6) "Group" means two or more persons established as one entity or unit to perform or to provide a service;
- (7) "Internationally recognized" means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country;
- (8) "Member of a group" means a person who is actually performing the

entertainment services;

- (9) "Sponsor" means an established organization in the United States which will not directly employ a P-1, P-2, or P-3 alien but will assume responsibility for the accuracy of the terms and conditions specified in the petition; and
- (10) "Team" means two or more persons organized to perform together as a competitive unit in a competitive event.

9 FAM 402.14-5 TYPES OF P NONIMMIGRANTS

(CT:VISA-1; 11-18-2015)

Under INA 101(a)(15)(P), an alien may be authorized to come to the United States to perform certain services as an artist, athlete, or entertainer for an employer or sponsor. The P classification is divided into four categories.

9 FAM 402.14-5(A) P-1 Nonimmigrants: Athletes and Group Entertainers

(CT:VISA-267; 12-12-2016)

The P-1 classification applies to the following aliens:

- (1) A P-1A petition is authorized in order for an alien to perform as an athlete, either individually or as part of a group or team at an "internationally recognized" level of performance (for the definition of "international recognition," see [9 FAM 402.14-4](#) above). You should note that an athletic team can be as few as two people. Additionally, the "international recognition" requirement may be waived by DHS in some cases.
- (2) A P-1B petition is authorized for an alien to be able to perform with, or serve as an integral and essential part of the performance of, an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time. Such alien ordinarily must have had a sustained and substantial relationship with the group for at least one year, providing functions integral to the performance of the group. The one-year relationship requirement does not apply to 25 percent of the performers of any group, nor to circus personnel, and may be waived by DHS in certain circumstances. An entertainment group may have as few as two (2) people. If an individual entertainer is performing separate and apart from the group, that entertainer should apply for an O-1 petition separately from the rest of the group.

9 FAM 402.14-5(B) P-2 Nonimmigrants: Reciprocal Exchange Programs

(CT:VISA-1; 11-18-2015)

The P-2 classification applies to artists or entertainers, individually or as a group, or

their essential support personnel, who will be performing under a reciprocal exchange program which is between at least one organization in the United States (including management organizations) and at least one organization in one or more foreign states which provides for the temporary exchange of artists and entertainers. The exchange of artists and entertainers shall be similar in terms of caliber of artists and entertainers, and in terms and conditions of employment.

9 FAM 402.14-5(C) P-3 Nonimmigrants: Culturally Unique Programs

(CT:VISA-1; 11-18-2015)

The P-3 Classification is for artists or entertainers, individually or as a group, or their essential support personnel, who wish to come to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical or artistic performance or presentation. The alien must be coming to the United States to participate in a cultural event(s) that will forward the understanding or development of the art form. The program may be of a commercial or noncommercial nature, and does not have to be sponsored by an educational, cultural or government agency. There is no requirement for P-3 aliens that the group have existed before their trip to the United States.

9 FAM 402.14-5(D) P-4 Nonimmigrants: Spouse and Children

(CT:VISA-1; 11-18-2015)

The P-4 classification applies to the spouse and children who are accompanying or following to join an alien classified P-1, P-2, or P-3 (see [9 FAM 402.14-11](#) below).

9 FAM 402.14-6 SIGNIFICANCE OF APPROVED PETITION

9 FAM 402.14-6(A) Department of Homeland Security (DHS) Responsible for Adjudicating P Petitions

(CT:VISA-267; 12-12-2016)

- a. Every P-1, P-2, and P-3 alien must be the beneficiary of a petition, approved by DHS, prior to visa issuance or, in the case of visa-exempt aliens, admission into the United States. By mandating a preliminary petition, Congress placed responsibility and authority with DHS to determine whether the requirements for P status which are examined in the petition process have been met.
- b. Posts generally should not request that the Department provide status reports on petitions filed with DHS, nor should they contact DHS directly for such reports. As an alternative, posts may suggest that the applicant communicate with his or her

sponsor. Cases of public relations significance may be submitted to the Department (TAGS: CVIS). Justification for such action must be included with post's request.

9 FAM 402.14-6(B) Consultation Requirement

(CT:VISA-267; 12-12-2016)

As part of the DHS petition approval process, consultation with an appropriate labor organization having expertise in the specific field involved is required before a petition for a P-1, P-2, or P-3 alien can be approved. This consultation shall be in the form of a written advisory opinion regarding the nature of the work to be done and the alien's qualifications. The advisory opinion from the union is usually obtained by the petitioner and filed with the I-129 visa petition, although DHS may obtain or waive it under certain circumstances. Consultations are advisory in nature and are not binding on DHS.

9 FAM 402.14-6(C) Effect of Labor Disputes

(CT:VISA-1; 11-18-2015)

- a. DHS will deny a P petition in the event that the Secretary of Labor certifies that a strike or labor dispute is in progress in the occupation at the place the alien will be employed, and the alien's employment would adversely affect the wages and working conditions of U.S. workers. If the petition has already been approved, but the alien has not yet entered the United States or commenced employment, the approval of the petition is automatically suspended and application for admission shall be denied.
- b. Should a consular office receive notification from DHS, the Department, or another official source that a previously approved petition has been suspended because of a strike or other labor dispute, it shall defer visa issuance and follow whatever instructions are given regarding the disposition of the suspended petition. If a post has any question regarding the validity of a particular petition, it should query the approving DHS office directly.

9 FAM 402.14-6(D) Transmission of Approved Petition to Post Via the Kentucky Consular Center (KCC)

(CT:VISA-358; 04-26-2017)

Within DHS, U.S. Citizenship and Immigration Services (USCIS) sends all approved NIV petitions to the Kentucky Consular Center (KCC) for transmittal to post. The KCC scans the petition and supporting documents into the Petition Information Management Service (PIMS), which posts can access through the Consular Consolidated Database (CCD). PIMS allows all information on a petitioner, petition, and/or beneficiary to be linked through a centrally managed CCD service. As a result of this change, the KCC has ceased emailing scanned copies of approved NIV petitions to posts. *For additional information on accessing the petition data, see [9 FAM 402.14-10\(B\)](#) below.*

9 FAM 402.14-6(E) Approved Petition is Prima Facie Evidence of Entitlement to P Classification

(CT:VISA-358; 04-26-2017)

- a. You should *not* require that an approved Form I-129, Petition for a Nonimmigrant Worker, or evidence that the P petition has been approved (a Form I-797, Notice of Action) be presented by an applicant seeking a P visa. All petition approvals must be verified either through the PIMS or through the Person Centric Query Service (PCQS), in the CCD under the Cross Applications tab. Once you have verified approval through PIMS or PCQS, consider this as prima facie evidence that the requirements for P classification, which are examined in the petition process, have been met. You may not question the approval of P petitions without specific evidence, unavailable to DHS at the time of petition approval, that the beneficiary may not be entitled to status. The large majority of approved P petitions are valid, and involve bona fide establishments, relationships, and individual qualifications that conform to the DHS regulations in effect at the time the P petition was filed.
- b. On the other hand, the approval of a petition by DHS does not relieve the alien of the burden of establishing visa eligibility in the course of which questions may arise as to his or her eligibility to P classification. If you develop information during the visa interview (e.g., evidence which was not available to DHS) that gives you reason to believe that the beneficiary may not be entitled to status, you may request any additional evidence that bears a reasonable relationship to this issue. Disagreement with DHS interpretation of the law or the facts, however, is not sufficient reason to ask DHS to reconsider its approval of the petition.

9 FAM 402.14-6(F) Referring Petition to DHS for Reconsideration

(CT:VISA-358; 04-26-2017)

- a. You must consider all approved P petitions in light of this guidance, process with dispatch those cases which appear legitimate, and identify those which require local investigation or referral to the approving DHS U.S. Citizenship and Immigration Services (USCIS) office for reconsideration. Posts should refer cases to DHS for reconsideration sparingly, to avoid inconveniencing bona fide petitioners and beneficiaries and causing duplication of effort by DHS. You must have specific evidence of a requirement for automatic revocation, misrepresentation in the petition process, or of previously unknown facts, which might alter DHS's finding, before requesting *reconsideration*. When seeking reconsideration, you must, under cover of Form DS-3099, NIV Petition Revocation Request Cover Sheet-Kentucky Consular Center, forward the petition, all pertinent documentation, and a written memorandum of the evidence supporting the request for reconsideration to the KCC, which will forward the request to the approving DHS office.
- b. Send requests for petition revocation to the following address, using registered mail or express mail:

Attention: Fraud Prevention Manager
Kentucky Consular Center
3505 N. Hwy 25W
Williamsburg, KY 40769

9 FAM 402.14-7 PETITION PROCEDURES

9 FAM 402.14-7(A) Using Form I-129, Petition for a Nonimmigrant Worker, to File Petition

(CT:VISA-1; 11-18-2015)

- a. A U.S. or foreign employer uses Form I-129, Petition for a Nonimmigrant Worker, to classify an athlete, a member of an athletic team, or a member of an entertainment group as a P-1 nonimmigrant. An employer or sponsoring organization in the United States uses Form I-129 to petition for a P-2 or P-3 artist or entertainer in a reciprocal exchange or culturally unique program. Essential support personnel may not be included on the petition filed for the principal alien, team, or group; rather, these aliens require a separate petition.
- b. Form I-129 must be filed only with the DHS Service Center having jurisdiction in the area where the alien will work. The petition may not be filed more than one year before the actual need for the alien's services. Form I-129 is also used to request extensions of petition validity and extensions of stay in P status. (See [9 FAM 402.14-9](#) below.)

9 FAM 402.14-7(B) Services in More Than One Location

(CT:VISA-1; 11-18-2015)

A petition which requires the alien to work in more than one location (i.e., a tour) must include an itinerary with the dates and locations of the employment, and must be filed with the petition to the DHS Service Center that has jurisdiction in the area where the petitioner is located.

9 FAM 402.14-7(C) Services for More Than One Employer

(CT:VISA-267; 12-12-2016)

If the beneficiary will work concurrently for more than one employer within the same time period, each employer must file a separate petition with its jurisdictional DHS Service Center, or one petitioner can petition for the entire itinerary. If the P alien is self-employed or there is a foreign employer, there must be a U.S. agent who acts as the petitioner (See [9 FAM 402.14-7\(E\)](#) below). If an agent is the petitioner, he or she must have an itinerary and the contract when filing the petition.

9 FAM 402.14-7(D) Change of Employer

(CT:VISA-267; 12-12-2016)

If a P-1, P-2, or P-3 alien in the United States seeks to change employers, the new employer must file a petition and a request to extend the alien's stay in the United States with DHS. The alien may not commence employment with the new employer or sponsor until the petition and request for extension of stay have been approved.

9 FAM 402.14-7(E) Agents as Petitioners

(CT:VISA-1; 11-18-2015)

An established U.S. agent may file a P petition for an alien who is traditionally self-employed or who uses agents to arrange short-term employment on his or her behalf with numerous employers. An agent may also file a petition on behalf of a foreign employer.

9 FAM 402.14-7(F) Beneficiaries

(CT:VISA-358; 04-26-2017)

- a. Petitions for P classification must include the name(s) of the beneficiary(ies) and other required information at the time of filing.
- b. **Multiple Beneficiaries:** More than one beneficiary may be included on a P petition if they are members of a group seeking classification based on the reputation of the group as an entity, or if they will provide essential support to P-1, P-2, or P-3 beneficiaries performing in the same location and in the same occupation.
- c. **Substituting Beneficiaries:** Beneficiaries may be substituted on P-1, P-2, and P-3 petitions for groups (except essential support personnel). It should be noted that all groups qualified for P status may benefit from the substitution procedures. The petitioner must submit a letter requesting the substitution, along with a copy of the petitioner's approval notice [Form I-797, Notice of Action](#), to the consular office where the alien will apply for a visa or the POE where the visa-exempt alien will apply for admission. The petitioner must state the alien's date of birth, country of nationality, and position, and must certify that the alien is qualified to fill the position described in the approved petition (See [9 FAM 402.14-10\(E\)](#) below) regarding responsibility for adjudicating visa applications for team and group members). You should note that essential support personnel cannot be substituted. In order to add different essential support personnel to an existing P visa petition, a new [Form I-129](#) must be filed at the appropriate DHS service center.

9 FAM 402.14-7(G) Department of Homeland Security (DHS) Notification to Petitioner of Petition Approval

(CT:VISA-1; 11-18-2015)

DHS uses Form I-797, Notice of Action, to notify the petitioner that the P petition filed by the petitioner has been approved or that the extension of stay in P status for the employee has been granted. The approval notice should include the alien beneficiary's

name and classification and the petition's period of validity. The petitioner may furnish Form I-797 to the employee for the purpose of making a visa appointment, or to facilitate the employee's entry into the United States, either initially or after a temporary absence abroad during the employee's stay in P status.

9 FAM 402.14-8 VALIDITY OF P PETITIONS

(CT:VISA-267; 12-12-2016)

a. The periods of validity for approved P petitions are as follows:

- (1) P-1 individual athlete - up to five years;
- (2) P-1 athletic team - period of time to be determined by DHS to be necessary to complete the competition or event, not to exceed one year;
- (3) P-1 entertainment group - period of time necessary to complete the performance or event, not to exceed one year;
- (4) P-2 or P-3 artist or entertainer - period of time necessary to complete the event or performance, not to exceed one year;
- (5) Essential support personnel to P-1, P-2, and P-3 aliens - period of time to complete the event, activity, or performance for which the P-1, P-2, or P-3 alien is admitted, not to exceed one year upon initial approval; however, petition validity may be extended for up to five years; and
- (6) P-4 spouse and unmarried minor children are subject to the same period of admission and time limitations as the alien beneficiary. They must be either accompanying or following-to-join the P-1, P-2, or P-3 alien.

b. **Petition Extension:** The petitioner should file a request to extend the validity of a P petition on Form I-129, Petition for a Nonimmigrant Worker, in order to continue or complete the same activity or event specified in the original petition. Supporting evidence is not required unless requested by DHS. A petition extension may be filed only if the validity of the original petition has not expired.

c. **Admission Before Petition Validity:** A P nonimmigrant may be admitted to the United States for the validity period of the petition, plus up to ten days before the validity period begins and ten days after it ends. The alien may not work except during the validity period of the petition. The length of stay is generally tied to the period of validity of the petition by DHS (See [9 FAM 402.14-10\(J\)](#) below) for a discussion of how to annotate P visas.).

9 FAM 402.14-9 EXTENSION OF STAY

(CT:VISA-358; 04-26-2017)

a. The petitioner must request the extension of an alien's stay in the United States to continue or complete the same event or activity by filing Form I-129, Petition for a Nonimmigrant Worker, accompanied by a statement explaining the reasons for the

extension. The extension dates must be the same for the petition and the beneficiary's stay. The beneficiary must be physically present in the United States at the time the extension petition is filed. If the alien is required to leave the United States for business or personal reasons while the extension requests are pending, the petitioner may ask DHS to cable notification of the petition extension to the consular office abroad where the alien will apply for a visa.

- b. **P-1 Individual Athletes:** An extension of stay for a P-1 individual athlete and his or her essential support personnel may be authorized for a period of up to five years for a total period of stay not to exceed ten years.
- c. **Other P-1 Aliens, P-2 and P-3 Nonimmigrants:** An extension of stay may be authorized in increments of one year for P-1 athletic teams and entertainment groups, P-2 aliens in reciprocal exchange programs, P-3 aliens in culturally unique programs, and their essential support personnel to continue or complete the same event or activity for which they were admitted.

9 FAM 402.14-10 ISSUING P VISAS

9 FAM 402.14-10(A) Approved Petition

(CT:VISA-267; 12-12-2016)

- a. The approval of a petition by DHS or by the Department of Labor (DOL) does not establish that the alien is eligible to receive a nonimmigrant visa (NIV). You may not authorize a petition-based NIV without verification of petition approval through the Petition Information Management Service (PIMS) or through the Person Centric Query Service (PCQS).
- b. PIMS and PCQS are the sources of confirmation for you that a petition for a visa has been approved. Verification in PIMS or PCQS is prima facie evidence of entitlement to P classification.
- c. You must suspend action on an alien's application and submit a report to the approving DHS office if you know or have reason to believe that an alien applying for a visa under INA 101(a)(15)(P) is not entitled to the classification as approved.

9 FAM 402.14-10(B) Consular Consolidated Database (CCD) Access to Approved Petitions

(CT:VISA-358; 04-26-2017)

- a. The PIMS or the Person Centric Query Service (PCQS) are the sources of confirmation for you that a petition for a visa has been approved. *Posts may use approved Form I-129 and Form I-797 presented at post as sufficient proof to schedule an appointment, or may schedule an appointment based on the applicant's confirmation that the petition has been approved, but only PIMS or PCQS is sufficient evidence for visa adjudication.*

- b. The PIMS Petition Report is listed *in the CCD* under a sub-category of the NIV menu called "NIV Petitions." The PIMS Petition Report contains a record of all petitioners recorded by the KCC as having approved petitions since 2004. In addition, the KCC FPU has provided informational memos on a large percentage of these petitioners. Each new, approved petition is linked to a base petitioner record, allowing superior tracking of NIV petitioner and petition information.
- c. *If PIMS does not contain the petition approval, before sending an email to KCC, post has the option to look for petition approval in PCQS in the CCD under the Cross Applications tab. In PCQS, under Search Criteria, select Receipt Number; then enter the number from the Form I-797; e.g., EAC1234567890. First, search CISCOR to find the petition, but if not found in CISCOR, you should also check CLAIMS 3. If post finds a petition approval in PCQS that was not in PIMS, the post should send an email to PIMS@state.gov as follows: Petition with Receipt Number EAC1234567890 was found in PCQS but not in PIMS. You may not authorize a petition-based NIV without verification of petition approval either through PIMS or PCQS.*
- d. If you are unable to immediately locate information on a specific petition either through PIMS or PCQS, you must send an email to PIMS@state.gov. KCC's FPU will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within 2 working days. You may submit your request to KCC only within five (5) working days of the scheduled interview date and you must have checked PIMS before submitting a request to KCC. KCC will check the USCIS CLAIMS database, and will upload the CLAIMS report into PIMS so that you can proceed with the scheduled interview. KCC will not process PIMS requests submitted by post prior to the five day window. Please be sure to conduct a PIMS query before sending in these special requests, in order to reduce KCC's workload.

9 FAM 402.14-10(C) Applying 214(b)

(CT:VISA-358; 04-26-2017)

- a. **214(b) Applies:** *A P visa applicant is presumed to be an immigrant until he or she establishes to your satisfaction that he or she is entitled to P nonimmigrant status, and the standards for applying 214(b) described in [9 FAM 302.1-2\(B\)\(3\)](#) apply to P applicants.*
- b. **Residence Abroad:** INA 101(a)(15)(P) imposes a residence abroad requirement. Consequently, every P visa applicant must satisfy you that he or she has a residence abroad which he or she has no intention of abandoning
- c. **Dual Intent:** DHS has determined that the approval of a permanent labor certification or the filing of an immigrant visa petition for an alien shall not be a basis for denying a P petition, or for DHS to deny a request to extend such a petition, or the alien's application for admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as a P nonimmigrant and depart voluntarily at the end of his or her authorized stay

and, at the same time, lawfully seek to become a permanent resident of the United States. However, this “dual intent” provision does not apply to essential support personnel.

9 FAM 402.14-10(D) Determining Qualifications of Team or Group Members

(CT:VISA-358; 04-26-2017)

- a. In adjudicating P petitions for athletic teams and entertainment groups, DHS evaluates whether the team or group as an entity meets the requirements of INA 101(a)(15)(P). Members of a team or group derive their status from their relationship with the team or group. DHS does not examine the individual qualifications of team or group members, other than verifying that 75 percent of the members have had a sustained and substantial relationship with the organization for at least one year. It is your responsibility to determine whether the team or group member applying for a P visa is qualified to fill the position described in the approved petition and is otherwise eligible for the visa.
- b. *As a matter of policy, consular officers should refrain in most situations from requesting applicants to perform as a method to verify qualifications. A request for performance is warranted only in rare cases, as part of an anti-fraud investigation.*

9 FAM 402.14-10(E) Validity of P Visas

(CT:VISA-358; 04-26-2017)

- a. The validity of a P visa may not exceed the period of validity of a petition approved to accord P status. If the period of reciprocity shown in the reciprocity schedules is less than the validity period of the approved petition or extension of stay, reciprocity shall prevail.
- b. Posts are authorized to accept and issue visas to qualified applicants up to 90 days in advance of applicants’ beginning of status as noted on the Form I-797. Post must inform applicants verbally and in writing that they can only use the visa to apply for reentry to the United States starting ten days prior to the beginning of the approved status period noted on their Form I-797. In addition, such visas must be annotated, “Not valid until (ten days prior to the petition validity date).”

9 FAM 402.14-10(F) Issuing a Single P Visa Based on More Than One Petition

(CT:VISA-358; 04-26-2017)

If the alien is the beneficiary of two or more P petitions and does not plan to depart from the United States between engagements, you may issue a single P visa valid until the expiration date of the last expiring petition, reciprocity permitting. The required annotation from all petitions shall be placed on the visa (see [9 FAM 402.14-10\(I\)](#) below).

9 FAM 402.14-10(G) Limiting P Visas

(CT:VISA-358; 04-26-2017)

You may restrict visa validity in some cases to less than the period of validity of the approved petition or authorized period of stay (for example, on the basis of reciprocity or the terms of an order waiving a ground of ineligibility). In any such case, in addition to the notations described in [9 FAM 402.14-10\(I\)](#) below, posts shall insert the following:

"PETITION VALID TO (date)."

9 FAM 402.14-10(H) Reissuing P Visas

(CT:VISA-358; 04-26-2017)

When a P visa is limited by reciprocity to a period of validity less than the validity of the petition or authorized period of stay, you may reissue the visa any number of times within the period allowable using the same still-valid petition. If an application or reciprocity fee is prescribed by the reciprocity schedule, posts must collect the fee for each reissuance of the P visa.

9 FAM 402.14-10(I) Annotating P Visas

(CT:VISA-358; 04-26-2017)

Posts shall enter the number of the alien's approved petition (or the number of the principal alien's petition in the case of P-4 dependents) immediately below the lower margin of the visa, followed by the name and location of the alien's employer (or principal alien's employer). Posts should follow appropriate operating instructions for annotating visas.

9 FAM 402.14-11 SPOUSE AND CHILDREN OF P-1, P-2, OR P-3 ALIENS

(CT:VISA-358; 04-26-2017)

- a. The spouse and children of a P-1, P-2, or P-3 alien, who are accompanying or following to join him or her in the United States, are entitled to P-4 classification and are subject to the same visa validity, period of admission, and limitations as the P-1, P-2, or P-3 principal alien. For a general discussion of the classification of the spouse and children of a nonimmigrant, see [9 FAM 402.1-4](#) and [9 FAM 402.1-5](#).
- b. **Verifying Principal Alien is Maintaining Status:** When an alien applies for a P-4 visa to follow to join a principal alien already in the United States, you must be satisfied that the principal alien is maintaining P status before issuing the visa. If there are no other readily available means of verification, you may suggest to the applicant that the principal alien in the United States submit a copy of his or her Form I-94, Arrival-Departure Record (*if the principal alien received a paper I-94, copies of both sides must be submitted*) and a copy of his or her current visa for

presentation to you. You may also wish to check ADIS *for arrival and departure information*.

- c. **Employment Prohibited:** Aliens in P-4 status are generally not authorized to accept employment. The spouse and children of a P-1, P-2, or P-3 principal alien may not accept employment unless they qualify independently for a classification in which employment is, or can be, authorized or unless that employment is authorized by DHS. You shall take this into account in evaluating whether family members have furnished adequate evidence of their support while in the United States.

9 FAM 402.14-12 RETURN TRANSPORTATION WHEN EMPLOYMENT INVOLUNTARILY TERMINATED

(CT:VISA-1; 11-18-2015)

If a P nonimmigrant's employment terminates for reasons other than voluntary resignation, the employer and petitioner who sought the alien's P status are responsible for providing the reasonable cost of the alien's transportation to his or her last place of residence prior to entry into the United States.

9 FAM 402.15

INTERNATIONAL CULTURAL EXCHANGE PARTICIPANTS – Q VISAS

(CT:VISA-1; 11-18-2015)
(Office of Origin: CA/VO/L/R)

9 FAM 402.15-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 402.15-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15)(Q) (8 U.S.C. 1101(a)(15)(Q)).

9 FAM 402.15-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 214.2(q); 22 CFR 41.57.

9 FAM 402.15-2 OVERVIEW

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N1 CT:VISA-1153; 02-13-2009)

The Q visa classification was created at INA 101(a)(15)(Q) by section 208 of the Immigration Act of 1990 (Public Law 101-649 of November 29, 1990) specifically for participants in international cultural exchange programs. The Attorney General was granted authority to approve cultural exchange programs for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the alien participant's country of nationality. A Q alien must be the beneficiary of a petition approved by the Department of Homeland Security (DHS) prior to visa issuance.

9 FAM 402.15-3 CLASSIFICATION SYMBOLS

(CT:VISA-1; 11-18-2015)

22 CFR 41.12 identifies the following Q visa classification symbols for international exchange visitors in accordance with INA 101(a)(15)(Q):

Q1	Participant in an International Cultural Exchange Program
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9 FAM 402.15-4 REQUIREMENTS FOR Q CLASSIFICATION

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N2 CT:VISA-1698; 09-20-2011)

The four main elements for qualifying for Q nonimmigrant status are an:

- (1) Eligible Petitioner (see [9 FAM 402.15-5](#) below);
- (2) Approved International Cultural Exchange Program (see [9 FAM 402.15-6](#) below);
- (3) Eligible participant (see [9 FAM 402.15-7](#) below); and
- (4) Approved petition (see [9 FAM 402.15-8](#) and [9 FAM 402.15-9](#) below).

9 FAM 402.15-5 ELIGIBILITY OF PETITIONER

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N3 CT:VISA-1698; 09-20-2011)

a. The petitioner must be either a qualified employer or its designated agent.

(Previous Location: 9 FAM 41.57 N3.1 CT:VISA-1698; 09-20-2011)

b. **Qualified employer:** A qualified employer is a U.S. or foreign firm, corporation, non-profit organization, or other legal entity including its U.S. branches, subsidiaries, affiliates, and franchises, which administers a designated international cultural exchange program. To establish eligibility as a qualified employer, an employer must:

- (1) Have the ability to maintain an established international cultural exchange program;
- (2) Have designated a qualified employee as a representative responsible for administering the program and serving as liaison with DHS;
- (3) Currently be doing business (i.e., the regular, systematic, and continuous provision of goods and/or services, including lectures, seminars, and other types of cultural programs) in the United States (the employer must therefore have employees and not merely be an agent or office.) See 8 CFR 214.2(q)(1);
- (4) Certify that the participant wages and working conditions are comparable to those accorded local domestic workers similarly employed; and
- (5) Must have the financial ability to remunerate the participant.

(Previous Location: 9 FAM 41.57 N3.2 CT:VISA-1698; 09-20-2011)

c. **Designated Agent:** In order to qualify as a petitioner, a designated agent of the qualified employer must be:

- (1) Employed by the qualified employer on a permanent basis in an executive or

managerial capacity; and

- (2) A U.S. citizen, an alien lawfully admitted for permanent residence, or an alien provided temporary residence under INA 210 or INA 245A. See 8 CFR 214.2(q)(1).

9 FAM 402.15-6 APPROVED INTERNATIONAL CULTURAL EXCHANGE PROGRAM

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N4 CT:VISA-1373; 11-09-2009)

The Department of Homeland Security (DHS) designates an international cultural exchange program through the Form I-129, Petition for a Nonimmigrant Worker, process. (See [9 FAM 402.15-9](#) below.) The program must meet the following requirements:

- (1) The culture sharing must take place in a school, museum, business, or other establishment where the public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program. Activities which take place in a private home or an isolated business setting to which the public does not have direct access do not qualify;
- (2) The program must have a cultural component which is an essential and integral part of the participant's employment or training. It must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, traditions, and/or other cultural attributes (arts, literature, language) of the alien's country of nationality. Structured instructional activities, such as courses or lecture series, addressing the above subjects, are deemed acceptable cultural components; and
- (3) The alien participant's employment or training in the United States may not be independent of the cultural component of the international cultural exchange program. It must serve as the vehicle to achieve the objectives of the cultural component of the program. The sharing of the culture of the Q nonimmigrant's country of nationality must result from his or her employment or training with the qualified employer in the United States.

9 FAM 402.15-7 ELIGIBILITY OF PARTICIPANTS

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N5.1 CT:VISA-1698; 09-20-2011)

- a. **Participant Requirements:** Participants in Q cultural exchange programs must meet the following requirements:
 - (1) The alien must be at least 18 years of age at the time the petition is filed;
 - (2) The alien must be qualified to perform the service or labor or receive the

training stated in the petition;

- (3) The alien must have the ability to communicate effectively about the cultural attributes of his or her country of nationality with the American public; and
- (4) If the alien has previously spent 15 months in the United States as a Q nonimmigrant, then he or she must have resided and been physically present outside the United States for the immediate prior year. (See [9 FAM 402.15-13](#) below.)

(Previous Location: 9 FAM 41.57 N5.2 TL:VISA-64; 08-07-1992)

- b. **Country of Alien's Nationality:** The country of nationality is the country of which the alien was a national at the time he or she applied for status as an international cultural exchange visitor.

9 FAM 402.15-8 SIGNIFICANCE OF APPROVED PETITION

9 FAM 402.15-8(A) Department of Homeland Security (DHS) Responsible for Adjudicating Q Petitions

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N6.1 CT:VISA-700; 02-15-2005)

Every Q alien must be the beneficiary of a petition, approved by DHS, prior to visa issuance or, in the case of visa-exempt aliens, admission into the United States. By mandating a preliminary petition, Congress placed responsibility and authority with DHS to determine whether the requirements for Q status which are examined in the petition process have been met.

9 FAM 402.15-8(B) Approved Petition is Prima Facie Evidence of Entitlement to Q Classification

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N6.2 CT:VISA-1698; 09-20-2011)

- a. An approved Form I-129, Petition for a Nonimmigrant Worker (which can be verified through PIMS) is, in itself, to be considered by you as prima facie evidence that the requirements for Q classification have been met. You do not have the authority to question the approval of Q petitions without specific evidence, unavailable to DHS at the time of petition approval, that the beneficiary may not be entitled to status. The large majority of petitions approved by DHS are valid, and involve bona fide establishments, relationships, and individual qualifications, which conform to regulations in effect at the time the petition was filed.
- b. On the other hand, the approval of a petition by DHS does not relieve the alien of the burden of establishing visa eligibility. If you have reason to believe, based upon information developed during the visa interview or other evidence which was not

available to DHS, that the beneficiary may not be entitled to status, you may request any additional evidence which bears a reasonable relationship to this issue. Disagreement with DHS interpretation of the law or the facts, however, is not sufficient reason to ask DHS to reconsider its approval of the petition.

9 FAM 402.15-8(C) Referring Approved Q Petition to U.S. Citizenship and Immigration Services (USCIS) for Reconsideration

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N6.3 CT:VISA-1698; 09-20-2011)

You must consider all approved Q petitions in light of these Notes, process with dispatch those cases which appear legitimate, and identify those which require local investigation or referral to the approving U.S. Citizenship and Immigration Services (USCIS) office for reconsideration. Refer cases to USCIS for reconsideration sparingly, to avoid inconveniencing bona fide petitioners and beneficiaries and causing duplication of effort by USCIS. You must have specific evidence of a requirement for automatic revocation, misrepresentation in the petition process, lack of qualification on the part of the beneficiary, or of previously unknown facts, which might alter USCIS's finding before requesting review of a Form I-129, Petition for a Nonimmigrant Worker, approval. When seeking reconsideration, you must forward the Form I-129 application and all pertinent documentation, under cover of Form DS-3099, NIV Petition Revocation Request Cover Sheet – Kentucky Consular Center - and a written memorandum of the evidence supporting the request for reconsideration to the Kentucky Consular Center (KCC), which will then forward the request to the approving USCIS office. The KCC will maintain a copy of the request and all supporting documentation and will track all consular revocation requests. Copies of all supporting documents must be scanned into the CCD record on each case submitted for revocation. The Petition Information Management Service (PIMS) record of the Form I-129 will be used for verification of the petition.

9 FAM 402.15-9 PETITION PROCEDURES

9 FAM 402.15-9(A) Same Petition Used for Approval of Program and for Participants

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N9.1 CT:VISA-1698; 09-20-2011)

A qualified employer or its designated agent must file a Form I-129, Petition for a Nonimmigrant Worker, either with the DHS Service Center having jurisdiction over the employer's headquarters, or the DHS Service Center having jurisdiction over the area where the alien will be employed or receive training. This petition is filed for the dual purpose of obtaining approval of an international cultural exchange program and for conferring Q status on the program's alien participants. The petition for Q

nonimmigrants will be considered only if the employer's concurrent petition for the approval of the international cultural exchange program is granted. Subsequent to the approval of the initial petition, the qualified employer must file a new petition each time the employer wishes to bring in additional international cultural exchange visitors.

9 FAM 402.15-9(B) Multiple Beneficiaries

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N9.2 CT:VISA-1698; 09-20-2011)

The petitioner may include more than one beneficiary on the petition. The petitioner must provide the date of birth, nationality, education, title and job description for each alien along with a certification that he or she can perform the work. See 8 CFR 212.2(q)(4). If an employer wishes to employ additional Q-1 aliens other than those specified on the original petition, a new petition must be filed.

9 FAM 402.15-9(C) Substituting Beneficiaries

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N9.3 CT:VISA-1698; 09-20-2011)

- a. A qualified employer may replace or substitute participants on a previously approved petition for the remainder of the program without filing a new Form I-129, Petition for a Nonimmigrant Worker. The substituting participant(s) must meet the qualification requirements described in [9 FAM 402.15-7](#) above.
- b. To request a substitution or replacement, the petitioner shall notify the consular office in writing at which post the alien will apply for a visa or, in the case of visa-exempt aliens, the port of entry (POE) where the alien will apply for admission. The petitioner must state the date of birth, country of nationality, level of education, and position title of each prospective participant and must certify that he or she is qualified to fill the position described in the approved petition. The petitioner must also indicate the alien's wages and certify that the alien is being offered prevailing wages and working conditions.

9 FAM 402.15-9(D) Services in More Than One Location

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N9.4 CT:VISA-1698; 09-20-2011)

The beneficiary may engage in employment or training in different locations for the same employer. In such a case, the petition must include an itinerary with the dates and locations of the services, labor, or training to be performed.

9 FAM 402.15-9(E) Services for More Than One Employer

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N9.5 CT:VISA-1698; 09-20-2011)

The employee may provide services or labor for, or receive training from, more than

one employer. Each employer must file a separate petition with the jurisdictional DHS Service Center. An alien may work or train part-time for multiple employers provided that each employer has an approved petition for the alien. For the issuance of a single visa to the beneficiary of more than one Q petition see [9 FAM 402.15-11\(E\)](#) below.

9 FAM 402.15-9(F) Change of Employers

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N9.6 CT:VISA-1698; 09-20-2011)

If a Q nonimmigrant in the United States seeks to change employers, the new employer must file a petition. The total period of time the Q nonimmigrant may stay in the United States remains limited to 15 months. (See [9 FAM 402.15-10](#) below.)

9 FAM 402.15-10 VALIDITY OF APPROVED PETITION AND LENGTH OF STAY

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N8.1 TL:VISA-64; 08-07-1992)

a. **Petition Validity:** An approved petition for an alien classified under INA 101(a)(15)(Q) is valid for the length of the approved program or for 15 months, whichever is shorter.

(Previous Location: 9 FAM 41.57 N8.2 CT:VISA-1698; 09-20-2011)

b. **Length of Stay:** A beneficiary may be admitted to the United States during the validity period of the petition. The alien's total period of stay in the United States in Q-1 visa status may not exceed 15 months.

(Previous Location: 9 FAM 41.57 N8.3 CT:VISA-1698; 09-20-2011)

c. **Extension of Stay:** The authorized stay of an alien in Q status may be extended by DHS, up to the 15-month limit. However, a new petition must be filed and approved for each extension.

9 FAM 402.15-11 ISSUING Q VISAS

9 FAM 402.15-11(A) Residence Abroad

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N5.3 CT:VISA-1698; 09-20-2011)

A Q nonimmigrant must establish to your satisfaction that he or she has a residence outside the United States which he or she has no intention of abandoning. Therefore, Q visa applicants are subject to INA 214(b).

9 FAM 402.15-11(B) Evidence Forming Basis for Q Visa

Issuance

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N7.1 CT:VISA-1698; 09-20-2011)

- a. The basis for Q visa eligibility consists of an approved Form I-129, Petition for a Nonimmigrant Worker, which must be verified through PIMS before issuing a visa. The Form I-797 is no longer required to be presented to you at the time of the applicant's interview.
- b. Before issuing a visa, posts must verify that the petition has been approved. Posts must first use the electronic PIMS record created by the KCC to verify petition approval. Posts are able to access the details of approved nonimmigrant visa (NIV) petitions using the PIMS Petition Report in the Consular Consolidated Database (CCD), under the Nonimmigrant Visa tab. If no record of the petition is found in PIMS, you may use the Person Centric Query Service (PCQS), via the CCD, to verify that the petition has been approved. If post finds a petition approval in PCQS that was is not in PIMS, then post should send an email to PIMS@state.gov as follows: Petition with Receipt Number <Insert Number> was found in PCQS but not in PIMS. KCC's Fraud Prevention Unit (FPU) will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within two working days.
- c. When presented at post, an approved Form I-129, Petition for a Nonimmigrant Worker, and a Form I-797, Notice of Action, may be used as sufficient proof to schedule an appointment, but posts should not review these forms for purposes of Q visa issuance. Only PIMS or PCQS must provide the evidence forming the basis for Q visa issuance.

9 FAM 402.15-11(C) Approved Petition

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N7.2 CT:VISA-1698; 09-20-2011)

- a. An approved Form I-129, Petition for a Nonimmigrant Worker, seeking Q nonimmigrant status on behalf of an alien beneficiary is prima facie evidence that the requirements for Q classification which are examined in the petition process have been met.
- b. You may not question the approval of Q petitions without specific evidence, unavailable to DHS at the time of petition approval, that the beneficiary may not be entitled to status. PIMS or PCQS are the sole sources of confirmation that a petition for a visa has been approved.
- c. The approval of a petition by DHS does not relieve the alien-beneficiary of the burden of establishing visa eligibility during a visa interview. In the course of the visa interview questions may arise as to the beneficiaries' eligibility for Q classification. If information develops during the visa interview (i.e., evidence which was not available to DHS) that gives you reason to believe that the beneficiary may not be entitled to status, you may request any additional evidence

which bears a reasonable relationship to this issue. Disagreement with DHS interpretation of the law or the facts, however, is not sufficient reason to ask DHS to reconsider its approval of the petition.

9 FAM 402.15-11(D) Validity of Q Visas

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N7.4 CT:VISA-1698; 09-20-2011)

- a. The validity of a Q visa may not exceed the validity period of the petition approved to accord or extend Q status. If the period of reciprocity shown in Visa Reciprocity and Country Documents Finder is less than the validity period of the approved petition or extension of stay, it shall prevail.
- b. You are authorized to accept applications and issue visas to qualified applicants up to 90 days in advance of applicants' beginning of employment status as noted on the approved petition. You must inform applicants verbally and in writing that they can only use the visa to apply for entry to the United States starting ten days prior to the beginning of the approved status period noted on their approved petition, In addition, such visas must be annotated, "Not valid until (ten days prior to the petition validity date.)"

9 FAM 402.15-11(E) Issuing Single Q Visa Based on More Than One Petition

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N7.6 CT:VISA-1698; 09-20-2011)

If the alien is the beneficiary of two or more Q petitions and does not plan to depart from the United States between engagements, you may issue a single Q visa valid until the expiration date of the last expiring petition, reciprocity permitting. The required annotations (see [9 FAM 402.15-11\(H\)](#) below) from all petitions must be placed on the visa.

9 FAM 402.15-11(F) Limitation of Q Visas

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N7.7 CT:VISA-1698; 09-20-2011)

You may restrict visa validity in some cases to less than the period of validity of the approved petition or authorized period of stay (for example, on the basis of reciprocity or the terms of an order waiving a ground of ineligibility). In any such case, in addition to the annotations described in [9 FAM 402.15-11\(H\)](#) below, you must insert the following:

"PETITION VALID/STAY AUTHORIZED (whichever is applicable) TO (date)"

9 FAM 402.15-11(G) Reissuing Q Visas

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N7.8 CT:VISA-1698; 09-20-2011)

When a Q visa is limited by reciprocity to a period of validity less than the validity of the petition or authorized period of stay, you may reissue the visa any number of times within the period allowable. If the Visa Reciprocity and Country Documents Finder prescribes a fee, you must collect the fee for each reissuance of the Q visa.

9 FAM 402.15-11(H) Annotating Q Visas

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N7.5 CT:VISA-1698; 09-20-2011)

You must annotate the number of the alien's approved petition on the visa, followed by the name and location of the alien's employer.

9 FAM 402.15-12 DEPENDENTS OF INTERNATIONAL CULTURAL EXCHANGE VISITORS ARE CLASSIFIABLE B-2

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N11 CT:VISA-1698; 09-20-2011)

INA 101(a)(15)(Q) does not provide derivative status for the spouse and children of international cultural exchange visitors. Therefore, a spouse, child, or other alien who wishes to accompany or follow to join a Q nonimmigrant must independently qualify for a different visa classification, such as B1/B2, if he or she is legally able to.

9 FAM 402.15-13 LIMITATION ON READMISSION

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N10 CT:VISA-1698; 09-20-2011)

An alien who has spent 15 months in the United States under INA 101(a)(15)(Q) may not be issued a visa or be readmitted under the Q classification, nor may a Q petition be approved for the alien, unless he or she has resided and been physically present outside the United States for the immediate prior year. Brief trips to the United States for business or pleasure during the immediate prior year do not break the continuity of the one-year foreign residence, but do not count toward the fulfillment of that requirement.

9 FAM 402.15-14 OTHER EMPLOYMENT RESTRICTED

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.57 N12 CT:VISA-1698; 09-20-2011)

Q aliens may be employed only by the petitioner or petitioners through which he or

she attained Q status. Employment outside the specific program described in the approved petition(s) is in violation of the alien's Q nonimmigrant status.

9 FAM 402.16

RELIGIOUS OCCUPATIONS – R VISAS

(CT:VISA-299; 03-14-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 402.16-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 402.16-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15)(R) (8 U.S.C. 1101(a)(15)(R)); INA 101(a)(27)(C)(ii) (8 U.S.C. 1101(a)(27)(C)(ii)).

9 FAM 402.16-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 214.2(r); 22 CFR 41.58.

9 FAM 402.16-2 OVERVIEW

(CT:VISA-1; 11-18-2015)

- a. Section 209 of the Immigration Act of 1990, Public Law 101-649, created for the first time a separate nonimmigrant visa (NIV) classification at INA 101(a)(15)(R) specifically for religious workers. Many nonimmigrant religious workers had previously sought admission to the United States as visitors for business, temporary workers, or exchange visitors. (For the continuing alternate use of B-1 classification for certain religious workers, see [9 FAM 402.2-5\(C\)\(1\)](#)).
- b. The Immigration Act of 1990 also amended INA 101(a)(27)(C), the special immigrant category for ministers of religion, from which the standards for the R classification are derived.
- c. On November 26, 2008, U.S. Citizenship and Immigration Services (USCIS) promulgated regulations requiring that sponsoring employers must file Form I-129, Petition for a Nonimmigrant Worker, for all aliens for whom R-1 nonimmigrant status is sought. As a result, no R-1 NIVs may be issued to an alien who is not the beneficiary of an approved Form I-129 petition.

9 FAM 402.16-3 CLASSIFICATION SYMBOLS

(CT:VISA-1; 11-18-2015)

22 CFR 41.12 identifies the following R visa classification symbols for aliens in religious occupations in accordance with INA 101(a)(15)(R):

R1	Alien in a Religious Occupation
R2	Spouse or Child of R1

9 FAM 402.16-4 SIGNIFICANCE OF APPROVED PETITION

(CT:VISA-299; 03-14-2017)

- a. **DHS Responsibility:** By establishing a preliminary petition process, the Department of Homeland Security (DHS) assumed responsibility for determining whether the alien meets the required qualifications for R status. The DHS regulations governing adjudication of R petitions are detailed, and you must normally rely on DHS determinations of entitlement to status.
- b. **Petition Prima Facie Evidence of Entitlement to R Classification:**
 - (1) An approved Form I-129, Petition for a Nonimmigrant Worker, is, in itself, prima facie evidence that the requirements for R classification examined in the petition process have been met. You do not have the authority to question the approval of R petitions without specific evidence, unavailable to DHS at the time of petition approval, that the beneficiary may not be entitled to status. A large majority of approved R petitions are valid and involve bona fide establishments, relationships, and individual qualifications that conform to the DHS regulations in effect at the time the R petition was filed.
 - (2) On the other hand, the approval of a petition by DHS does not relieve the alien of the burden of establishing visa eligibility, in the course of which questions may arise as to his or her eligibility to R classification. If information developed during the visa interview (e.g., evidence that was not available to DHS) gives you reason to believe that the beneficiary may not be entitled to status, you may request any additional evidence that bears a reasonable relationship to this issue. Disagreement with DHS interpretation of the law or the facts, however, is not sufficient reason to ask DHS to reconsider its approval of the petition.
- c. **Recommending Reconsideration:** You must consider all approved R petitions in light of this guidance, process with dispatch those cases which appear legitimate, and identify those which require local investigation or referral to the approving U.S. Citizenship and Immigration Services (USCIS) office for reconsideration. Refer cases to USCIS for reconsideration sparingly, to avoid inconveniencing bona fide petitioners and beneficiaries and causing duplication of effort by USCIS. You must have specific evidence of a requirement for automatic revocation, misrepresentation in the petition process, lack of qualification on the part of the beneficiary, or of previously unknown facts, which might alter USCIS's finding before requesting

review of a Form I-129, Petition for a Nonimmigrant Worker approval. When seeking reconsideration, you must, under cover of Form DS-3099, NIV Petition Revocation Request Cover Sheet – *Kentucky Consular Center*, forward the petition, all pertinent documentation, and a written memorandum of the evidence supporting the request for reconsideration to the Kentucky Consular Center (KCC), which will then forward the request to the approving USCIS office. The KCC will maintain a copy of the request and all supporting documentation, and will track all consular revocation requests. You are no longer required to maintain a copy of all documents, although scanning the revocation request and supporting documents into the case file is recommended.

9 FAM 402.16-5 VERIFY PETITION THROUGH PIMS

(CT:VISA-299; 03-14-2017)

- a. Before issuing an R visa, you must use the electronic Petition Information Management Service (PIMS) record created by the Kentucky Consular Center (KCC) to verify petition approval (see [9 FAM 402.16-4](#) paragraph b above). You are able to access the details of approved nonimmigrant visa (NIV) petitions through the Consular Consolidated Database (CCD), through the PIMS Report.
- b. If PIMS does not contain the petition approval, before sending an email to KCC, you have the option to verify petition approval in PCQS in the CCD under the Cross Applications tab. In PCQS, under Search Criteria, select Receipt Number; then enter the number from the Form I-797; e.g., EAC1234567890. First, search just CISCOR to find the petition, but if not found in CISCOR, you must also check CLAIMS 3. If you find a petition approval in PCQS that was not in PIMS, then you must send an email to PIMS@state.gov as follows: Petition with Receipt Number EAC1234567890 was found in PCQS but not in PIMS. You may not issue a petition-based NIV without verification of petition approval either through PIMS or PCQS.*
- c. When presented at post, an approved Form I-129, Petition for a Nonimmigrant Worker, and a Form I-797, Notice of Action/Approval, may be used as sufficient proof to schedule an appointment, but *are not sufficient* for purposes of R visa issuance. Only PIMS provides the evidence forming the basis for R visa issuance.
- d. A valid Form I-797 must include the date of the notice, the name of the petitioner, the name of the beneficiary, the petition/receipt number, the expiration date of the petition, and the name, address, and telephone number of the approving DHS office. The paper Form I-797 is an unsigned computer-generated form. Both confirmation of the information contained in the Form I-797 and initiation of adjudication process may be accomplished through PIMS. In the event PIMS does not yet contain the record, send an e-mail to PIMS@state.gov. KCC's Fraud Prevention Unit (FPU) will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within two working days. You may not authorize a petition-based NIV without verification of petition approval through PIMS.

9 FAM 402.16-6 214(B) REFUSALS AND R NONIMMIGRANTS

(CT:VISA-188; 09-28-2016)

- a. R visa applicants are not exempt from overcoming the presumption of immigrant intent under INA 214(b). However, you cannot apply 214(b) to an applicant because he or she lacks residence abroad, as there is no such requirement for this classification.
- b. A refusal under INA 214(b) is appropriate only in situations where you conclude that the applicant does not intend to depart the United States upon conclusion of R status, or if he or she fails to establish the qualifications necessary for the religious vocation in which he or she intends to engage in the United States.

9 FAM 402.16-7 CLASSIFICATION CRITERIA

(CT:VISA-1; 11-18-2015)

The criteria for classification of a nonimmigrant R religious worker are:

- (1) The alien is a member of a religious denomination having a bona fide nonprofit religious organization in the United States (see [9 FAM 402.16-8](#) below);
- (2) The religious denomination and its affiliate, if applicable, are exempt from taxation (see [9 FAM 402.16-8](#) below);
- (3) The alien has been a member of the organization for two years immediately preceding application for admission (see [9 FAM 402.16-9](#) below);
- (4) The alien is coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (5) The alien is entering the United States solely as a minister or to perform a religious vocation or occupation (in either a professional or nonprofessional capacity) (see [9 FAM 402.16-10](#) and [9 FAM 402.16-11](#) below);
- (6) The alien is coming to or remaining in the United States at the request of the petitioner to work for the petitioner;
- (7) The alien will not work in the United States in any capacity not approved in a DHS-approved petition;
- (8) For R-2 visas, the alien must be the spouse or child of an R-1 nonimmigrant who is accompanying or following-to-join the R-1 nonimmigrant (see [9 FAM 402.16-13](#) below); and
- (9) If the alien has previously spent five years in this classification, he or she must have resided and been physically present outside the United States for the immediate prior year, except for brief visits for business or pleasure (see [9 FAM 402.16-14\(B\)](#) below).

9 FAM 402.16-8 RELIGIOUS DENOMINATIONS, ORGANIZATIONS, AND AFFILIATED ORGANIZATIONS

(CT:VISA-1; 11-18-2015)

- a. An R-1 nonimmigrant must be coming to work for a bona fide nonprofit, religious organization or organization affiliated with a religious denomination in the United States. Such an organization:
 - (1) Is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment, or equivalent sections of prior enactments of the Internal Revenue Code; and
 - (2) Possesses a currently valid determination letter from the Internal Revenue Service (IRS) confirming tax exempt status.
- b. A bona fide organization which is affiliated with a religious denomination means an organization which is closely associated with the religious denomination and is exempt from taxation under 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment, or equivalent sections of prior enactments of the Internal Revenue Code.
- c. A religious denomination is a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and will generally be found to have one or more of the following elements or comparable indications of its bona fides:
 - (1) A recognized common creed or statement of faith shared among its members;
 - (2) A common form of worship;
 - (3) A common formal code of doctrine and discipline;
 - (4) Common religious services and ceremonies;
 - (5) Common established places of religious worship or religious congregations; or
 - (6) Comparable indicia of a bona fide religious denomination.

9 FAM 402.16-9 MEMBER OF RELIGIOUS DENOMINATION

(CT:VISA-188; 09-28-2016)

The alien must establish that for two years immediately preceding the time of application for admission, he or she has been a member of the same religious denomination as the U.S. religious organization where the alien will work.

9 FAM 402.16-10 MINISTERS OF RELIGION

(CT:VISA-1; 11-18-2015)

Only individuals authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that denomination may be classified as ministers of religion. The term does not include lay preachers or other persons not authorized to perform such duties. In all cases, there must be a rational connection between the activities performed and the religious calling of a minister. Ministers of religion must work solely as ministers in the United States, but may engage in administrative duties incidental to the duties of a minister.

9 FAM 402.16-11 OTHER RELIGIOUS WORKERS

(CT:VISA-188; 09-28-2016)

In addition to ministers, aliens coming to the United States to perform a religious vocation or occupation, in either a professional or nonprofessional capacity, may qualify as R-1 nonimmigrants.

9 FAM 402.16-11(A) Religious Vocations

(CT:VISA-1; 11-18-2015)

Religious vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of persons with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters. An alien who has taken vows and has made a lifelong commitment to a religion is presumed to be engaging in activities relating to a traditional religious function regardless of the nature of the activity. Persons with religious vocations may engage in any type of activity within their religious vocations, denomination, or its affiliate. For vocation-based R-1 applicants, the emphasis is therefore on what the applicant's status is within the religious organization, rather than on what the applicant will do in the United States.

9 FAM 402.16-11(B) Religious Occupations

(CT:VISA-1; 11-18-2015)

a. Religious occupation means an occupation that meets all of the following requirements:

- (1) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;
- (2) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;
- (3) The duties do not include positions that are primarily administrative or support

such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and

- (4) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status (see [9 FAM 402.16-11\(C\)](#) below).
- b. The activity of a lay-person who will be engaged in a religious occupation must relate to a traditional religious function. The very nature of such activity must, therefore, embody the tenets of the particular religion and have religious significance; i.e., the performance of the activity constitutes "practice" of that religion. Consequently, working within a religious facility does not, in itself, qualify a lay-person for R-1 classification. The alien must further establish that his or her prospective activity relates primarily, if not exclusively, to matters of the spirit as they apply to his or her religion. It is not necessary that the applicant be engaged in a religious occupation at the time of the visa application or have prior experience with religious work.

9 FAM 402.16-11(C) Religious Training

(CT:VISA-1; 11-18-2015)

Training does not constitute work and therefore does not qualify as a religious occupation. If training is involved, you must examine the case to determine whether the alien is coming to the United States for training or to perform in a religious occupation. However, an alien who has a religious vocation (as described in [9 FAM 402.16-11\(A\)](#) above) may qualify for R-1 status even if they are engaged in training.

9 FAM 402.16-12 B VISAS FOR CERTAIN RELIGIOUS ACTIVITY

(CT:VISA-1; 11-18-2015)

Certain religious work can be undertaken in B visa status; see [9 FAM 402.2-5\(C\)\(1\)](#). In addition, other religious activities (e.g., private worship, prayer, meditation, informal (avocational) religious study, and attendance at religious services or conferences) that do not constitute religious "work" would therefore not be appropriate for R classification unless the alien has a religious vocation. The applicant, however, may qualify for B-1 or B-2 visa status. Other than in the narrow contexts described in [9 FAM 402.2-5\(C\)\(1\)](#) religious workers cannot work on a B visa, and if the alien will be paid a salary from a U.S. source, B classification may not be used, and the alien must qualify for R-1 or some other work visa.

9 FAM 402.16-13 SPOUSE AND CHILDREN

(CT:VISA-1; 11-18-2015)

- a. **Derivative Classification:** The spouse and unmarried children under 21 years of age of a religious worker classified R-1 are entitled to derivative R-2 classification and to the same length and limitation of stay as the principal alien if they are accompanying or following-to-join him or her in the United States. R-2 nonimmigrants are not required to demonstrate a residence abroad which they have no intention of abandoning.
- b. **Employment Prohibited:** Aliens in R-2 status are not authorized to accept employment. You must take this into account in evaluating whether family members have furnished adequate evidence of their support while in the United States. R-2 nonimmigrants are permitted to study during their stay in the United States.

9 FAM 402.16-14 VALIDITY OF R VISAS

9 FAM 402.16-14(A) Visa Validity Determined by Petition

(CT:VISA-1; 11-18-2015)

- a. The validity of an R visa may not exceed the period of validity of a petition approved to accord R status or the period for which the alien's authorized stay in R status was extended (see 8 CFR 214.2(r)(4)(i) and [9 FAM 402.16-16](#) below). If the period of reciprocity is less than the validity period of the approved petition or extension of stay, the period permitted by the reciprocity schedule prevails. If the alien's prior visa and petition have expired, the alien is not eligible to receive a new visa until the pending petition has been approved.
- b. You are authorized to accept R visa petitions and issue visas to qualified applicants up to 90 days in advance of applicants' beginning of employment status as noted on the Form I-797, Notice of Action. You must inform applicants that they may enter the United States on or after the effective date of the R-1 approval notice and not before, and may wish to annotate the visa to reflect this.
- c. While there is no change of employers or gap in authorized status allowed for an alien in R-1 status, an alien may obtain an R-1 visa that is valid for the time remaining on the first petition (and/or any extensions) extending through the validity of the second petition, so long as there is no gap in the period of time covered by the two petitions.

9 FAM 402.16-14(B) Maximum Validity of R Status

(CT:VISA-1; 11-18-2015)

Generally, five years is the maximum allowable period of stay that will be granted to an R visa holder by DHS. After five years the alien must reside and be physically present outside of the United States for one year in order to be eligible for an R-1 visa again. This limitation does not apply, however, for R-1 nonimmigrants who did not

reside continually in the United States and whose employment in the United States was seasonable or intermittent or was for an aggregate of six months or less per year. In addition, this limitation does not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment.

9 FAM 402.16-15 ANNOTATING R VISAS

(CT:VISA-1; 11-18-2015)

You must annotate the name and location of the religious denomination or affiliate for which the alien will be providing services, as well as the petition number, on the visa. Follow the standard operating procedures for annotating visas. See [9 FAM 403.9-5\(F\)](#).

9 FAM 402.16-16 ADMISSION, EXTENSION OF STAY, AND READMISSION

(CT:VISA-1; 11-18-2015)

- a. R-1 aliens will normally be admitted for an initial period of 36 months. Any request for an extension of stay in R status must be made by submitting a Form I-129, Petition for a Nonimmigrant Worker, to the Department of Homeland Security (DHS). An R-1 alien may be granted an extension of R-1 stay or readmission in R-1 status for the validity period of the petition, provided the total period of time spent in the United States does not exceed a maximum of five years.
- b. An alien who has spent five years in the United States in R status may not be issued a visa or be readmitted to the United States as an R nonimmigrant unless he or she has resided and been physically present outside the United States for the immediate prior year, except for brief visits for business or pleasure. Such visits do not end the period during which an alien is considered to have resided and been physically present abroad, but time spent in the United States during such visits does not count towards fulfilling the one-year abroad requirement.

9 FAM 402.16-17 CHANGE OF EMPLOYERS

(CT:VISA-1; 11-18-2015)

A different or additional organizational unit of the religious denomination or affiliate seeking to employ or engage the services of a religious worker must file a new Form I-129, Petition for a Nonimmigrant Worker, with the jurisdictional DHS Service Center, along with evidence that the alien will continue to qualify as a religious worker.

9 FAM 402.17

NAFTA PROFESSIONALS – TN AND TD VISAS

(CT:VISA-350; 04-20-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 402.17-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 402.17-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 214(e) (8 U.S.C. 1184(e)); INA 214(j) (8 U.S.C. 1184(j)).

9 FAM 402.17-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 41.59.

9 FAM 402.17-1(C) Treaties and International Agreements

(CT:VISA-261; 12-05-2016)

North American Free Trade Agreement.

9 FAM 402.17-2 OVERVIEW

(CT:VISA-350; 04-20-2017)

The North American Free Trade Agreement (NAFTA) created special economic and trade relationships for the United States, Canada, and Mexico. The nonimmigrant NAFTA Professional (TN) visa allows citizens of Canada and Mexico, as NAFTA professionals, to work in the United States in prearranged, professional level, business activities for U.S. or foreign employers. Permanent residents of Canada and Mexico are not able to apply for TN visas to work as NAFTA professionals.

9 FAM 402.17-2(A) Background

(CT:VISA-350; 04-20-2017)

- a. On December 17, 1992, the Presidents of the United States and Mexico and the Prime Minister of Canada entered into the North American Free Trade Agreement

(NAFTA). The North American Free Trade Agreement Implementation Act (NAFTA Implementation Act), Public Law 103-182, implementing the agreement was signed into law on January 1, 1994. To comply with this Agreement, INA 214(e) was added in order to provide for the admission to the United States of Mexican and Canadian citizens who are coming to engage in professional activities.

- b. Chapter 16 of NAFTA, entitled "temporary entry for business persons" was designed to facilitate the movement of business persons among the United States, Canada, and Mexico. This chapter contains the visa-related provisions relating to the temporary entry of business persons. NAFTA allows investment, trade, and professional commerce services to take place, and thus affects four nonimmigrant visa (NIV) categories in the U.S. Immigration and Nationality Act: Temporary Visitors for business (B-1); Treaty Trader and Investors (E); Intra-company transferees (L), and NAFTA professionals (TN).
- c. The U.S.-Canada Free Trade Agreement (US-CFTA) created a class of professional nonimmigrants (TC) but did not provide authority for visa issuance. NAFTA has modified and adopted the TC professional category and treats this new admission category (TN) as if it were a nonimmigrant visa (NIV) classification under INA 101(a)(15), thus authorizing the issuance of visas to both Mexicans and Canadians. (TD visas are issued to spouse and minor children of TN principals.) The US-CFTA was suspended when NAFTA entered into force. The TN category must not be confused with the H-1B visa classification. It is a separate and distinct category. Similarities do exist, however, since this category was derived from the H-1B classification.

9 FAM 402.17-2(B) Countries that Benefit from NAFTA

(CT:VISA-1; 11-18-2015)

Only citizens of the North American Free Trade Agreement (NAFTA) parties (Canada, Mexico, and the United States) may benefit from the agreement. Permanent resident status in any NAFTA party country does not in itself confer any benefits under this chapter of the agreement.

9 FAM 402.17-3 CLASSIFICATION SYMBOLS

(CT:VISA-1; 11-18-2015)

22 CFR 41.12 identifies the following visa classification symbols for NAFTA professionals in accordance with INA 214(e):

TN	NAFTA Professional
TD	Spouse or Child of NAFTA Professional

9 FAM 402.17-4 PROFESSIONAL REQUIREMENTS

9 FAM 402.17-4(A) Member of a Profession

(CT:VISA-350; 04-20-2017)

- a. This category extends visa classification only to citizens of a NAFTA signatory country who are members of a profession listed in Appendix 1603.D.1 of NAFTA, chapter 16.
- b. The alien must meet the specific requirements, education, and/or experience, etc. listed in the annex related to that particular profession. While the list originally included professional activities included under the former H-1 standards as professions, it has been extended to include additional professions. However, with rare exception each profession requires a baccalaureate degree as an entry-level requirement. If a baccalaureate is indeed required, experience cannot be substituted for that degree. In some professions, alternative criteria to a bachelor's degree are listed, and sometimes experience and criteria are required in addition to the degree. The list is occasionally expanded upon agreement of all NAFTA parties.
- c. You should always review Appendix 1603.D.1 of NAFTA, Chapter 16 to make sure that the alien's job title is listed and that the alien possesses the education and/or experience level that is commensurate with that job title.

9 FAM 402.17-4(B) License Not Required

(CT:VISA-350; 04-20-2017)

- a. The list of professions reveals requirements for admission into the United States under immigration provisions. Such requirements for admission or classification as a NAFTA professional do not include licensure in the United States. Licensure to practice a given profession in the United States is a post-entry requirement subject to enforcement by the appropriate state or other non-Federal authority.
- b. Proof of licensure to practice a given profession in the United States may be offered along with a job offer letter or other documentation in support of an application for TN classification. But admission/classification must not be denied based solely on the fact that the applicant does not already hold a license to practice in the United States.

9 FAM 402.17-5 EMPLOYMENT REQUIRED

9 FAM 402.17-5(A) Employment

(CT:VISA-350; 04-20-2017)

The alien must engage in a prearranged business activity at a professional level for a U.S. or foreign employer.

- (1) **Employment Agency:** Working for a third party agency is not a basis for refusal, but the agency must be a U.S. company, and all the elements required as evidence of professional employment must be met. Thus, an agency cannot

hire a TN professional with the hopes of finding an appropriate job placement for him or her. To qualify for a TN visa, the TN professional with an employment agency must be coming to fill a specific, identified position.

- (2) **Part Time Employment:** An alien entering the United States in TN status may be employed on a part-time basis.
- (3) **Self-Employment:** An alien may not qualify for a TN visa on the basis of self-employment. If the alien seeks self-employment, the alien should pursue that business under the Treaty Trader (E-1) or Investor (E-2) visa classification, or another visa category.
- (4) **Fellows/Interns:** A TN visa can be issued for fellowships or internships only if the duties reflect a position that is truly at a professional level. If the applicant is seeking to work in a lesser capacity such as trainee or intern, in the sense of being a true novice, it is correct to refuse the applicant 214b. However, the application should not be refused solely because the title is intern if the duties may be at a professional level.
- (5) The TN visa is designed to allow for a citizen of a NAFTA-signatory country to engage in professional employment in the United States for a U.S. entity. A U.S. entity is any business entity located and legally operating in the United States, regardless of the nationality of ownership. As such, the primary place of employment must be in the United States. However, that entity must be a bona fide entity in that it must not serve to disguise the alien's self-employment in the United States. TN visa holders cannot primarily work in Mexico or Canada and visit the United States on occasion for a work trip. A B-1 classification would be the most appropriate for that sort of activity.
- (6) The same guidance would hold true for employees intending to telework. If there is a legitimate business need for the employee to telework from a location within the United States, this would be allowable in TN status. However, because eligibility for TN status is based on the primary location of the business, a TN visa applicant would not be able to reside in the United States and telework to a location in a foreign country for the convenience of the employee.
- (7) **Changing or Adding Employers or Status:**
 - (a) Aliens in TN status may change or add employers while in the United States by filing Form I-129, Petition for a Nonimmigrant Worker, with the appropriate service center of the U.S. Citizenship and Immigration Services (USCIS) as designated on the application itself. A new application is unnecessary where the TN's jobsite is changed but the employer remains the same.
 - (b) A Canadian citizen wishing to change or add employers may also depart the United States and apply for readmission with DHS at the port-of-entry (POE).
 - (c) A TN visa holder may work for multiple employers at the same time. A

qualified TN visa holder, may depart the United States and, via a new NIV application, request the addition of the new employer(s) to a TN visa.

More than one employer can be included on a single TN visa; each employer should be annotated on the visa.

(d) Alternatively, the TN visa holder wishing to add employers may also file a Form I-129 directly to the appropriate USCIS service center.

- (8) **Terminating Employment:** There is no requirement that the TN employer or worker notify the Department of the termination of the employment relationship. If the employer chooses to do so, these letters should not form the sole basis of a visa revocation. The TN visa is not employer-specific and, should his or her employment end, the TN worker may begin a position with a different employer, so long as that position constitutes business activities at a professional level as required for TN classification.

9 FAM 402.17-5(B) Evidence of Professional Employment

(CT:VISA-350; 04-20-2017)

- a. The applicant must present evidence sufficient to satisfy the immigration or consular officer of intent to engage in prearranged business activities for a U.S. employer(s) or entity(ies) at a professional level. This evidence may be in the form of an employment letter from a U.S. or foreign employer, or contract providing a detailed description of the business activities which the individual will be engaged in, and must state the following:
- (1) A detailed listing of the activities in which the alien will be engaged;
 - (2) Purpose of entry;
 - (3) Anticipated length of stay;
 - (4) Educational qualifications or appropriate credentials demonstrating professional status; and
 - (5) Arrangements for remuneration.
- b. Consular officers should verify that the information on all mandatory fields is accurate and the evidence (employment letter or contract) should be scanned into the NIV case record.

9 FAM 402.17-5(C) Education and/or Experience Requirement

(CT:VISA-350; 04-20-2017)

- a. **Education:** The applicant's employer must submit evidence that the applicant meets the minimum education requirements or has the alternative credentials set forth in Appendix 1603.D.1 of chapter 16 of NAFTA, which provides specific guidance on the professional qualifications required for entry into each profession.
- (1) For Mexican citizens, either a cedula professional (a professional credential

issued by the Public Education Secretariat [SEP]) or a título (a university diploma) with a SEP stamp can be presented as evidence of the completion of a degree program for categories which require the equivalent of a bachelor's degree ("licenciatura"). A carta de pasante does not provide sufficient evidence of the bearer's completion of a bachelor's degree equivalent as it only attests to the bearer's completion of the coursework required for a degree and not the full completion of all degree requirements for the licenciatura.

- (2) Note: Where Appendix 1603.D.1 requires a degree, the degree does not necessarily need to be in the specific field as long as there is significant overlap with the subject of the degree and the work to be performed. For example, a TD applicant who is to perform the work of a Biochemist in the U.S. and possesses a degree in chemistry may be as qualified to perform the duties of the position as an applicant with a biochemistry degree
- b. **Experience:** Evidence attesting to the applicant's experience should be in the form of letters from former employers. If the applicant is unable to provide letters from former employers, then post may consider if other satisfactory evidence can establish the applicant's work experience. However, the expectation is that most applicants will be able to provide letters from former employers. If the applicant was self-employed, business records must be submitted attesting to that self-employment.
 - c. **Degree:** Where a specific degree is required for TN classification a combination of education and experience may not be used as a substitute for the specific degree.

9 FAM 402.17-6 ENTRY DOCUMENTATION

(CT:VISA-350; 04-20-2017)

a. Canadian Citizens:

- (1) Since Canadian citizens, unlike Mexican citizens, are not obliged to be in possession of a nonimmigrant visa (NIV) to enter the United States (except in the E and K categories), the issuance of a TN or TD visa should be rare. You must remember, however, that although Canadians don't need visas, they may, and should, be issued to qualified applicants upon request.
- (2) In rare cases, you may need to issue a TN visa to a Canadian. For example, a Canadian without TN status, who resides in a third country with a non-Canadian spouse or family members, and who plans to enter the United States as a NAFTA professional simultaneously with the family member(s) will need a TN visa in order to confer derivative (TD) status on his or her dependents. In such cases, the Canadian could not wait to have his or her case adjudicated by DHS at a port-of-entry (POE), since the non-Canadian dependent would require a visa to board a flight and to apply for entry into the United States.

- b. **Mexican Citizens:** A Mexican citizen seeking TN status must apply for and be issued a visa. The validity of the visa must coincide with the reciprocity schedule.

c. **Required Documentation:** Both nationalities will have to submit the following documentation:

(1) **Proof of citizenship:** The NAFTA visa applicant must present a passport to prove the requisite evidence of citizenship.

Canadian citizens applying for admission at a port-of-entry (POE) may either present a passport, as visas are not required, or they may provide secondary evidence, such as a birth certificate. However, even Canadian citizens are required to present a valid passport at the POE.

(2) **Employment Letter:** Evidence of an offer of employment by submission of an employment letter. The employment letter must describe in detail the duties that are to be performed in order to show that the alien will be employed in one of the professional occupations listed in Appendix 1603.D.1 of NAFTA chapter 16 (see [9 FAM 402.17-4\(A\)](#) above), the anticipated length of stay, and arrangements for remuneration.

(a) Consular officers should note, however, that unlike H-1B visas, there is no prevailing wage requirement for TN visas. As such, consular officers should verify that the salary proposed is indicative of professional-level employment in the United States.

(b) While the job letter may include the NAFTA profession in which the applicant will be employed, the job title (i.e., the applicant's NAFTA profession) must be determined by the interviewing officer based on the duties inherent in the job position description. For example, an employment letter might offer the applicant the job title of "computer system analyst" but the totality of the information available to the consular officer leads to the officer finding that the applicant's job duties more closely align to that of data entry or computer programming—neither of which are specified NAFTA professions. In this example, the consular officer would correctly determine that, despite the job title specified in the employment letter, the applicant does not qualify for the TN visa.

(3) **Education or Work Experience:** Evidence that the applicant meets the minimum education and/or work experience requirements set forth in Appendix 1603.D.1 of NAFTA (see [9 FAM 402.17-5\(C\)](#) above). The educational requirements listed should correlate with the job title as determined by you.

9 FAM 402.17-7 TEMPORARY ENTRY

(CT:VISA-350; 04-20-2017)

The agreement encompasses only business persons coming to the United States temporarily. INA 214(b), therefore, is fully applicable to TN visa applicants. Chapter 16 provides the following definition: "Temporary entry means an entry into the United States without the intent to establish permanent residence." The department's regulation (22 CFR 41.59(c)) amplifies this definition to provide additional guidance. The essence of the requirement is that the alien is seeking "temporary" entry into the

United States. You must be satisfied that the alien's proposed stay is temporary. A temporary period has a reasonable, finite end that does not equate to permanent residence. The circumstances surrounding an application should reasonably and convincingly indicate that the alien's temporary work assignment in the United States will end predictably and that the alien will depart upon completion of the assignment. An intent to immigrate in the future that is in no way connected to the proposed immediate trip need not in itself result in a finding that the immediate trip is not temporary. Repeated renewal of a TN visa that leads to extended stay in the United States, may still be temporary, as long as there is no immediate intent to immigrate.

9 FAM 402.17-8 DENIAL OF TN STATUS IN CERTAIN LABOR DISPUTES

(CT:VISA-350; 04-20-2017)

- a. A citizen of Canada or Mexico may be denied TN status as described in INA 214(e) and annex 1603 of the NAFTA if:
 - (1) The Secretary of Labor certifies to, or otherwise informs the commissioner, that a strike or other labor dispute involving a work stoppage of workers in the alien's occupational classification is in progress at the place where the alien is, or intends to be, employed.
 - (2) Temporary entry of that alien may affect adversely either:
 - (a) The settlement of any labor dispute that is in progress at the place or intended place of employment; or
 - (b) The employment of any person who is involved in such dispute.
- b. If the alien has already commenced employment in the United States, and is participating in a strike or other labor dispute involving a work stoppage of workers, he or she is not considered to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers. This holds whether or not such strike or other labor dispute has been certified by the Secretary of Labor, or whether DHS has been otherwise informed that such a strike or labor dispute is in progress. The alien is subject to the following terms and conditions.
- c. If it is determined that an alien shall be denied a TN visa, or is denied entry to the United States, the applicant must be notified in writing of the reason(s) for the refusal. In addition, CA/VO/L/A must be immediately informed of any denial that is due to a labor dispute, so that a designated representative of the applicant's home country government may be promptly notified in writing of the reason for the refusal.

9 FAM 402.17-9 MAXIMUM PERIOD OF ADMISSION IN THE UNITED STATES

(CT:VISA-350; 04-20-2017)

You must treat a Canadian or Mexican citizen seeking admission as a TN professional as if seeking classification under INA 101(a)(15). Therefore, the INA 214(b) presumption of immigrant intent applies if he fails to meet all the requirements of the TN visa category.

- (1) Visas shall be issued in accordance with the reciprocity schedule. The maximum period of each admission, however, of a TN is three years.
- (2) The admission period of a dependent (TD) must coincide with the TN principal's. (See [9 FAM 402.17-7](#) for definition of "temporary.")
- (3) There is no statutory limitation on stay for those aliens in TN status such as there are for H-1B or L-1 visa holders.

9 FAM 402.17-10 SPOUSES AND MINOR CHILDREN – TD VISAS

(CT:VISA-350; 04-20-2017)

- a. Spouses and minor unmarried children, under age 21, who are accompanying or following-to-join TN professionals may be admitted to the United States in the TD classification. TD visa applicants, like TN visa applicants, are subject to INA 214(b). Dependents are not permitted to accept employment in the United States while in TD status unless they are otherwise authorized to do so by DHS. They are, however, permitted to attend school on a full-time basis. As with any derivative status, TD applicants must demonstrate a bona fide spousal or parent-child relationship to a TN status holder.
- b. Because TD visa holders may apply for employment authorization from DHS, posts should account for that fact when assessing a possible ineligibility under INA 212(a)(4) for public charge. If post has concerns related to a family's ability to provide for themselves in the United States, they may, in consultation with CA/VO/L/A, seek a finding of inadmissibility under INA 212(a)(4) (See [9 FAM 302.8-2](#)).
- c. There is no processing fee for classifying dependents of Canadian TNs. If the TN status holder is a Canadian who obtained TN status without the use of a visa, he or she should be able to show a valid Form I-94, Arrival and Departure Record, which demonstrates that DHS authorized his or her TN status. Aliens normally exempt from visa requirements need not obtain visas in order to support the dependent (TD) visa application.
- d. Family members applying for a TD visa who possess either Mexican or Canadian citizenship should be issued multiple entry visas valid for the maximum period authorized by reciprocity schedules or for the length of the principal alien's visa and/or authorized period of stay, whichever is less. (See reciprocity schedules for fees.)
- e. Non-Canadian or non-Mexican family members of TN status holders are entitled to

TD visas: the visas may be issued in non-Canadian or non-Mexican passports. However, only the Canadian and Mexican reciprocity schedules provide data for TN and TD visas. Therefore, number of entries, fees, and validity for non-Canadian or non-Mexican TD visa applicants must be based on the reciprocity schedule of the TN principal alien. For example, a Chinese national married to a Canadian would be issued a TD visa in his or her Chinese passport; based on the Canadian reciprocity schedule, the applicant would be the recipient of a visa valid for multiple entries, with no fee. There are three exceptions to this policy for family members holding Iranian, Iraqi, or Libyan nationality and have been granted refugee or permanent resident status in Canada or Mexico. In these cases, the family member may only be issued a visa for one entry over a period of 3 months. Libyan TD applicants must also pay a visa issuance fee.

9 FAM 402.17-11 DOMESTIC EMPLOYEE OF NAFTA PROFESSIONAL

(CT:VISA-350; 04-20-2017)

A domestic servant of a TN who meets the requirements set forth in [9 FAM 402.2-5\(D\)\(3\)](#) may be issued a B-1 visa.

9 FAM 402.17-12 NAFTA PROFESSIONALS NOT SUBJECT TO INA 212(E)

(CT:VISA-350; 04-20-2017)

The two-year home residency requirement for some former J-1 holders applies only to immigrant visa (IV) applicants, and to H and L nonimmigrant visa (NIV) applicants. Thus, TN applicants and their TD family members who are former exchange visitors subject to INA 212(e) are not prohibited from receiving visas and entering the United States as NAFTA professionals, even if their professional activities might be similar or identical to those of an H or L recipient.

9 FAM 402.17-13 DEFINING BUSINESS ACTIVITIES AT A PROFESSIONAL LEVEL

(CT:VISA-350; 04-20-2017)

- a. In 8 CFR 214.6(c), "business activity at a professional level" is defined as "those undertakings which require that, for successful completion, the individual has at least a baccalaureate degree or appropriate credentials demonstrating status as a professional in a profession set forth in Appendix 1603.D.1." Applying this language is very straightforward when the applicant is a professional who intends to do the basic work of a profession in the United States (e.g., an architect who goes to work as an architect).

- b. **Manager/Supervisor Positions:** Management and/or executive positions can meet the requirements outlined for classification as a NAFTA professional. However, the consular officer must confirm that the management or executive position requires professional-level knowledge in order to successfully meet the job requirements. For example, an architect whose primary job will be to supervise other architects may be approvable even though the TN worker will not directly be engaging in architectural design, but rather using their professional expertise to assess the work of other architects, which requires at least a B.A. or professional credential in architecture. If the supervisory position is more administrative in nature, e.g. ensuring compliance with company regulations and policies, this would likely not require the professional credentialing in order to be successful. As such, it may not meet the requirements for TN classification.
- c. **Knowledge of English:** There is no statutory requirement of English language ability for TN visa issuance. However, English language ability can be one of several factors to consider when determining if the applicant will be performing professional-level work in the TN category. For example, if an applicant is going to work in an office with English-speaking staff and he or she does not speak English, post must assess whether he or she will be able to perform the duties required of a TN professional. Ultimately, the consular officer must make a factual determination as to whether or not the proposed employment of the visa applicant meets the professional nature definition. If it does not, the application may be refused under INA 214(b).
- d. As stated in [9 FAM 402.17-7](#), TN visa applicants must demonstrate that their stay is temporary in nature. Applicants who cannot successfully demonstrate the temporary nature of their stay and their maintenance of a residence abroad should be appropriately refused under INA 214(b).
- e. There is no statutory limitation on time in TN status such as there is for H-1B or L-1 status.
- f. In cases where the TN applicant also holds a valid B1/B2 visa or Border Crossing Card (BCC), post should not cancel this visa upon issuance of a TN visa. These visas are valid for different travel purposes as a TN visa holder is unable to travel to the United States for the sole purpose of tourism. However, if the TN visa applicant holding a valid B1/B2 visa or BCC is found to no longer overcome the presumption of immigrant intent, the B1/B2 visa or BCC should be revoked under INA 214(b). See [9 FAM 403.11-3\(A\)](#). If the TN visa applicant who holds a valid B1/B2 visa or BCC is found ineligible on the basis that the applicant does not meet the professional qualifications for the visa but does demonstrate that they have a residence abroad that they do not intend to abandon, post should not cancel the B1/B2 visa or BCC.

9 FAM 402.17-14 TN VISA ANNOTATIONS

(CT:VISA-350; 04-20-2017)

Consular officers should annotate any approved TN visa according to the template

below. In cases where a TN worker has more than one employer, the second employer should be listed on line 2 of the annotation (under the first employer).

Employer Name

NAFTA Professional Category

9 FAM 402.18

NONIMMIGRANT VISAS SPECIFICALLY FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS – CW AND E-2C VISAS

(CT:VISA-173; 09-12-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 402.18-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 402.18-1(A) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 214.2(e)(23); 8 CFR 214.2(w).

9 FAM 402.18-1(B) United States Code

(CT:VISA-1; 11-18-2015)

48 U.S.C. 1806(d); 48 U.S.C. 1806(c).

9 FAM 402.18-2 OVERVIEW

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.34 N1 CT:VISA-2241; 01-12-2015)

- a. The Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110-229, extends U.S. immigration laws to the Commonwealth of the Northern Mariana Islands (CNMI), including transition provisions unique to the CNMI. These CNMI-only provisions are in effect during a transition period concluding December 31, 2019.
- b. **CW Visa Classification:**
 - (1) The CNRA authorizes the Department of Homeland Security (DHS) to classify an alien as a CNMI-only nonimmigrant transitional worker (CW). DHS regulations provide the eligibility requirements for CW status at 8 CFR 214.2(w).
 - (2) Individuals who qualify as CW transitional workers may apply for a CW-1 nonimmigrant visa.
 - (3) Any applicant for a CW-1 nonimmigrant visa must be the beneficiary of an

approved Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, filed with U.S. Citizenship and Immigration Services (USCIS).

(Previous Location: 9 FAM 41.34 N2(b) and (c) CT:VISA-2241; 01-12-2015)

c. E-2C Visa Classification:

- (1) The CNRA authorized the Department of Homeland Security (DHS) to classify an alien as an E-2 CNMI Investor (E-2C) under INA 101(a)(15)(E)(ii) (See 48 U.S.C. 1806(c).) DHS regulations that set forth the eligibility requirements for this status can be found at 8 CFR 214.2(e)(23). Those aliens qualified as E-2 CNMI Investors may apply for an E-2C nonimmigrant visa.
- (2) Any applicant for an E-2C nonimmigrant visa must be the beneficiary of an approved Form I-129, Petition for a Nonimmigrant Worker and Supplement E, filed with U.S. Citizenship and Immigration Services (USCIS) before January 18, 2013.

9 FAM 402.18-3 CW VISA FOR TRANSITIONAL WORKERS IN THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (CNMI)

9 FAM 402.18-3(A) Approved Petition is Prima Facie Evidence of Entitlement to CW Classification

(CT:VISA-173; 09-12-2016)

- a. Consider an approved Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, as prima facie evidence that a CW applicant meets the requirements for CW classification, examined in the petition process. To question an approved CW petition, you require specific evidence, unavailable to DHS at the time of petition approval, that the beneficiary may not be entitled to CW status.
- b. You must verify all petition approvals through the Petition Information Service (PIMS) in the Consular Consolidated Database (CCD), under the Nonimmigrant Visa tab. If no record of the petition is found in PIMS, use the Person Centric Query Service (PCQS), in the CCD under the Cross Applications tab, to verify that the petition has been approved. If you find a petition approval in PCQS that was not in PIMS, send an email to PIMS@state.gov as follows: Petition with Receipt Number EAC1234567890 was found in PCQS but not in PIMS.

9 FAM 402.18-3(B) Overview of Eligibility Requirements for the CW Nonimmigrant Visa

(CT:VISA-173; 09-12-2016)

- a. In addition to an approved Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, applicants must meet all requirements established below to

receive CW Transitional Worker Status. For the full list of requirements, see 8 CFR 214.2(w).

b. Transitional Workers Eligible for CW-1 status are Those Who:

- (1) Are the beneficiary of an approved Form I-129CW petition filed by a legitimate employer (see 8 CFR 214.2(w)(2)(ii));
 - (2) Will enter or remain in the CNMI to work in an occupational category designated as needing alien workers to supplement the resident workforce (see 8 CFR 214.2(w)(2)(i));
 - (3) Are either lawfully present in the CNMI or are not present in the United States (see 8 CFR 214.2(w)(2)(iii) and (iv));
 - (4) Are ineligible for any other employment-based nonimmigrant status under the INA (see 8 CFR 214.2(w)(2)(vi)); and
 - (5) Are otherwise admissible to the United States or have been granted a waiver of each applicable ground of inadmissibility (8 CFR 214.2(w)(2)(v)).
- c. An alien is lawfully present in the CNMI if, at the time the application for status is filed, s/he was lawfully admitted or paroled into the CNMI under the immigration laws on or after the transition program effective date, i.e., November 28, 2009 (other than an admission or parole as a visitor for business or pleasure) and remains in a lawful immigration status.

9 FAM 402.18-3(C) CW-1 Employment Restrictions

(CT:VISA-173; 09-12-2016)

- a. A CW-1 Transitional Worker may only work in the CNMI for the employer that is the basis for his or her approved Form I-129CW petition.
- b. An alien requires a new or amended petition if there are any material changes in the terms and conditions of employment.
- c. A change of employment to a new employer requires a new petition. The individual may start work for the new employer as soon as the new employer files a nonfrivolous petition before the date of expiration of his or her authorized period of stay, provided that he or she has not been employed without authorization in the United States (including the CNMI) subsequent to his or her lawful admission.
- d. A CW-1 applicant working for more than one employer must have an approved petition for each employer.
- e. If you find that a CW applicant has violated any of the employment authorization restrictions above, you must suspend action on the application and submit a report to the approving USCIS office.
- f. If employment terminates, the CW-1 holder will not be considered to be in violation of CW-1 status for a period of 30 days immediately following the date of termination, but only if a prospective employer files a nonfrivolous Form I-129CW petition and the CW-1 holder does not otherwise violate the terms and conditions of

his or her status during that 30-day period. Consistent with 8 CFR 214.2(w)(7)(i) and (ii), within that 30-day period, the CW-1 may commence employment with an employer that petitions on his or her behalf during that 30 day period.

9 FAM 402.18-3(D) Spouses and Children of CW-1 Beneficiaries

(CT:VISA-173; 09-12-2016)

- a. CW-2 nonimmigrant status is available to spouses and minor children of CW-1 beneficiaries (see 8 CFR 214.2(w)(3)). Spouses and minor children eligible for CW-2 status are those who meet the qualifications outlined in [9 FAM 402.8-4\(D\)](#) paragraphs c and d below.
- b. CW-2 status does not authorize employment but holders may apply for other INA nonimmigrant or immigrant visas under which employment is authorized.
- c. **A CW-2 Spouse Must be:**
 - (1) A spouse of a CW-1;
 - (2) Accompanying or following to join the CW-1 beneficiary;
 - (3) Not present in the United States other than in the CNMI;
 - (4) If present in the CMNI, lawfully present; and
 - (5) Otherwise admissible under the INA or granted a waiver of each applicable ground of inadmissibility.
- d. **A CW-2 Child Must be:**
 - (1) Under 18 years of age;
 - (2) Accompanying or following to join the CW-1 beneficiary;
 - (3) Not present in the United States other than in the CNMI;
 - (4) If present in the CNMI, lawfully present; and
 - (5) Otherwise admissible under the INA or granted a waiver of each applicable ground of inadmissibility.

9 FAM 402.18-3(E) CW Classification Valid Only for Travel to/Use in CNMI

(CT:VISA-173; 09-12-2016)

- a. Except as provided in [9 FAM 402.18-3\(E\)](#) paragraph b below, a CW visa is valid only for travel to the CNMI. An alien with CW status or traveling on a CW visa may neither travel to nor transit any other part of the United States.
- b. An alien who is a national of the Philippines traveling on a CW visa may travel from the Philippines through the Guam airport in direct transit to the CNMI on a direct itinerary with a stopover or connection in Guam (and no other place) lasting no longer than 8 hours. A Philippine national in CW status may similarly transit the

Guam airport en route to the Philippines.

9 FAM 402.18-3(F) Departing From and Returning to the CNMI

(CT:VISA-173; 09-12-2016)

A CW-1 or CW-2 nonimmigrant may leave the CNMI, but he or she must have the appropriate visa to re-enter the CNMI. If the CW worker was granted CW status in the CNMI or has a CW visa that will expire prior to returning to the CNMI, the CW worker must apply for a CW visa at a U.S. embassy or consulate abroad before seeking readmission to the CNMI. If the CW-1 or CW-2 status is obtained while in the CNMI, the nonimmigrant will be given a Form I-94, Arrival-Departure Record as documentation of CW status.

9 FAM 402.18-3(G) Validity of CW Visas

(CT:VISA-173; 09-12-2016)

- a. CW-1 status is valid for a period of up to one year. While the CW-1 nonimmigrant may be admitted for the period of petition validity and additionally up to 10 days before the validity period begins and 10 days after the validity period ends, the visa status only authorizes employment during the validity period of the petition.
- b. To request an extension of stay in CW-1 nonimmigrant status, the employer must file a new petition. If the alien's prior visa and petition have expired, the alien is not eligible to receive a new visa until the pending petition has been approved.
- c. CW-2 status expires on the same day as the principal's CW-1 status or (in the case of a minor child) on a minor child's 18th birthday. It may be extended when the principal's CW-1 status is extended.
- d. The CW classification will cease to exist at the conclusion of the CNRA-mandated transition period on December 31, 2019. Transitional workers who wish to remain in the CNMI lawfully beyond the end of the CW transitional worker program must obtain nonimmigrant or immigrant status under the INA before the expiration date of the program.

9 FAM 402.18-4 E-2C NONIMMIGRANT VISA FOR LONG-TERM INVESTORS IN THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (CNMI)

9 FAM 402.18-4(A) Approved Petition is Prima Facie Evidence of Entitlement to E-2C Classification

(CT:VISA-173; 09-12-2016)

- a. An approved Form I-129, Petition for a Nonimmigrant Worker and Supplement E, is

to be considered as prima facie evidence that the requirements for E-2C classification, examined in the petition process, are met.

- b. If an applicant meets the criteria for E-2C status, apply only the provisions contained in this section and not the E-2 Treaty Investor classification in [9 FAM 402.9](#).
- c. To question an approved E-2C petition, you require specific evidence, unavailable to DHS at the time of petition approval, that the beneficiary may not be entitled to status.
- d. You must verify all petition approvals through the Petition Information Service (PIMS) in the Consular Consolidated Database (CCD), under the Nonimmigrant Visa tab. If no record of the petition is found in PIMS, use the Person Centric Query Service (PCQS), in the CCD under the Cross Applications tab, to verify that the petition has been approved. If you find a petition approval in PCQS that was not in PIMS, send an email to PIMS@state.gov as follows: Petition with Receipt Number EAC1234567890 was found in PCQS but not in PIMS.
- e. You must suspend action on an alien's application and submit a report to the approving USCIS office if you know or have reason to believe that an alien applying for a visa under 48 U.S.C. 1806(c) is not entitled to the classification as approved.

9 FAM 402.18-4(B) Overview of Eligibility Requirements for the E-2C Nonimmigrant Visa

(CT:VISA-173; 09-12-2016)

- a. Although an approved Form I-129, Petition for a Nonimmigrant Worker and Supplement E, are prima facie evidence of entitlement to E-2C status (see [9 FAM 402.18-4\(A\)](#) above), the following is an overview of the CNMI-Only E-2 nonimmigrant investor status. For the full list of requirements, see 8 CFR 214.2(e)(23).
- b. **Investors Eligible for E-2C Status are Those Who:**
 - (1) Were lawfully admitted to the CNMI in long-term investor status under CNMI immigration laws before the beginning of the transition period on November 28, 2009;
 - (2) Have continuously maintained residence in the CNMI (see [9 FAM 402.18-4\(B\)](#) paragraph d below);
 - (3) Are otherwise admissible to the United States under the INA; and
 - (4) Maintain the investment(s) that formed the basis for the CNMI long-term investor status.
- c. **An Alien May Be Eligible for E-2C Status Through Three Categories:**
 - (1) **Long-Term Business Investor:** An alien who has an approved investment of at least \$50,000 in the CNMI, as evidenced by a CNMI Long-Term Business Certificate;

- (2) **Foreign Investor:** An alien in the CNMI who has invested either a minimum of \$100,000 in an aggregate approved investment in excess of \$2,000,000, or a minimum of \$250,000 in a single approved investment, as evidenced by a CNMI Foreign Investment Certificate;
 - (3) **Retiree Investor:** An alien in the CNMI who is over the age of 55 years; and
 - (a) Has invested a minimum of \$100,000 in an approved residence on the island of Saipan or \$75,000 on the islands of Tinian or Rota, proven with issuance of a foreign retiree investment certificate; or
 - (b) Has invested a minimum of \$150,000 in an approved residence to live in the CNMI, as evidenced by a Foreign Retiree Investment Certificate.
- d. An alien has continuously maintained residence in the CNMI if s/he has maintained his/her residence within the CNMI since being lawfully admitted as a long-term investor and has been physically present therein for periods totaling at least half of that time. Absence from the CNMI for any continuous period of more than six months but less than a year after a lawful admission breaks the continuity of such residence, unless the alien can establish to the satisfaction of USCIS that s/he did not in fact abandon residence in the CNMI during that period. Absence from the CNMI for any period one year or more during the period for which continuous residence is required breaks the continuity of residence.

9 FAM 402.18-4(C) Spouses and Children of E-2C Beneficiaries

(CT:VISA-173; 09-12-2016)

- a. The spouse and children of an E-2 CNMI Investor may receive E-2C classification if (1) otherwise admissible and (2) accompanying or following-to-join the principal alien.
- b. The spouse of an E-2 CNMI Investor, unless the principal E-2 CNMI Investor is a Retiree Investor (see [9 FAM 402.18-4\(B\)](#) above), is eligible to apply to DHS for employment authorization in the CNMI under 8 CFR 274a.12(c)(12).

9 FAM 402.18-4(D) Intent to Leave CNMI

(CT:VISA-173; 09-12-2016)

See [9 FAM 402.9-4\(C\)](#).

9 FAM 402.18-4(E) E-2C Classification Valid Only for Travel to/Use in CNMI

(CT:VISA-173; 09-12-2016)

An E-2C visa is valid only for travel to the CNMI. An alien traveling on an E-2C visa may neither travel to nor transit any other part of the United States.

9 FAM 402.18-4(F) E-2C Employment Restrictions

(CT:VISA-173; 09-12-2016)

- a. An E-2 CNMI Investor may only work in the CNMI for the enterprise that is the basis for his/her CNMI Foreign Investment Certificate or Long-Term Investment Certificate, to the extent that the certificate authorized the employment.
 - (1) An E-2 CNMI Investor whose status is based upon a CNMI Foreign Retiree Investor Certificate is not authorized to be employed in the CNMI.
 - (2) An unauthorized change of employment to a new employer constitutes a violation of status.
- b. If you find that an E-2C applicant has violated any of the employment authorization restrictions above, you must suspend action on the application and submit a report to the approving USCIS office.

9 FAM 402.18-4(G) Validity of E-2C Visas

(CT:VISA-173; 09-12-2016)

- a. E-2C status is initially valid for a period of not more than two years and may be extended in not more than two year increments. If the alien's prior visa and petition have expired, the alien is not eligible to receive a new visa until approval of a new petition.
- b. No E-2C visa will be valid past December 31, 2019, the conclusion of the CNRA-mandated transition period.

9 FAM 403 NONIMMIGRANT VISA PROCESSING

9 FAM 403.1 NIV PROCESSING OVERVIEW

(CT:VISA-1; 11-18-2015)
(Office of Origin: CA/VO/L/R)

9 FAM 403.1-1 OVERVIEW

(CT:VISA-1; 11-18-2015)

There are several steps in the nonimmigrant visa (NIV) process, each of which will be discussed in detail in [9 FAM 403.2](#) – 403.10. You must be sure that all steps in NIV processing are followed, from receipt of application, proper collection of biometrics and required fees, interview by a consular officer, requisite namechecking and other clearances, to case adjudication, issuance or refusal, and, in issuances, consideration of reciprocity, annotations, and the printing and placement of the visa foil. Lastly, [9 FAM 403.11](#) discusses visa revocation, when you may and may not revoke a visa, and the procedures involved.

9 FAM 403.2

NIV APPLICATION

(CT:VISA-345; 04-18-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 403.2-1 RELATED STATUTORY AND REGULATORY AUTHORITIES

9 FAM 403.2-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(33) (8 U.S.C. 1101(a)(33)); INA 221(b) (8 U.S.C. 1201(b)); INA 222(c) (8 U.S.C. 1202(c)); INA 222(e) (8 U.S.C. 1202(e)).

9 FAM 403.2-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 41.101; 22 CFR 41.103; 22 CFR 41.106.

9 FAM 403.2-2 NONIMMIGRANT VISA APPLICATION

(CT:VISA-1; 11-18-2015)

All necessary administrative steps to facilitate the processing of nonimmigrant visa (NIV) applications should be taken to encourage foreign travel to the United States. Consular officers should ensure that NIV procedures are kept simple and consistent with effective administration of existing laws and regulations. Posts should review their procedures at intervals and revise workflow to adapt to changing conditions. Every applicant is to be given prompt and courteous service.

9 FAM 403.2-3 DEFINITION OF "MAKING A VISA APPLICATION"

(CT:VISA-276; 01-05-2017)

- a. For a nonimmigrant visa (NIV) applicant, "making a visa application" requires completion of three components:
 - (1) Submit for formal adjudication by a consular officer a completed Form DS-160, signed electronically by clicking the box designated "Sign Application" in the

certification section of the application; and

- (2) Pay the required application fee (also known as the MRV application fee) or provide evidence of prior payment of the application processing fee, unless the applicant is exempt from paying the MRV fee (see [9 FAM 403.4-3](#)); and
 - (3) Provide any required biometric data. Biometric data has not been provided until a photograph has been provided and fingerprints, if required, have been collected. Fingerprints that have been collected by a locally employed staff member or collected off-site by a contractor meet this standard, even if they have not yet been verified by a cleared American.
- b. Applicants who have provided a photograph and who have ten fingerprints on file from a previous application have provided all required biometric data. Applicants who have two fingerprints on file from a previous application, and who have been ten-printed by a contractor for verification via IDENT, have provided the required biometric information.
 - c. Please note, per [9 FAM 302.1-8\(B\)](#) (22 CFR 40.201), when an applicant explicitly refuses to provide fingerprints, you must refuse the application under INA 221(g). This situation is not to be confused with a mere failure to appear, or "no show."
 - d. Do not pre-screen or perform other work on a visa case until after the required visa application fee has been paid unless entry of a lookout is appropriate per [9 FAM 303.3-4\(B\)](#). If the applicant has made an application as defined above, but fails to pay a reciprocity fee, you must refuse the application under INA 221(g) per [9 FAM 302.1-8\(B\)](#) (22 CFR 40.201).

9 FAM 403.2-4 PLACE OF APPLICATION

(CT:VISA-221; 10-20-2016)

- a. As described below, you must accept a nonimmigrant visa (NIV) application in either of two circumstances: the alien is a resident of the consular district, or the Department directs you to accept it. The latter case is very rare. You should also accept a NIV application from an applicant who is physically present in your consular district.
- b. Generally the alien should make an application for a nonimmigrant visa in the consular district in which he or she resides. (See [9 FAM 403.2-4\(B\)](#) below about applicants physically present but not residents of a consular district.)

9 FAM 403.2-4(A) Alien Who is Resident in a Consular District

(CT:VISA-221; 10-20-2016)

- a. 22 CFR 41.101 requires that you accept applications from visa applicants resident in post's consular district, even though the applicant may be absent from that district at the time of application. The regulatory language does not specifically require an

alien with a place of residence in the district to be physically present in the district nor does it restrict the applicant's presence to any particular location at the time of application.

- b. **Residence:** "Residence" is defined in INA 101(a)(33) as the alien's "place of general abode; the ... principal, actual dwelling place in fact, without regard to intent." In other words, it is the place where the alien in fact lives and under most common circumstances from which the alien conducts his or her life. It is not necessarily the place where the alien actually is at any given moment.
- c. **Clearances:** You are urged to accept and process visa applications made by residents of their districts, even though the office accepting the visa application is aware that the alien may depart that district prior to the issuance of the visa. In such cases, a clearance for the district accepting the visa application, together with clearances obtained from any other district, if pertinent, should be sent to the consular office which will take final action on the visa application.

9 FAM 403.2-4(B) Alien Who is Physically Present But Not Resident in a Consular District

(CT:VISA-276; 01-05-2017)

22 CFR 41.101(a) gives you the discretion to permit an alien who is physically present in your consular district to apply for a nonimmigrant visa (NIV) outside his or her resident district. While 22 CFR 41.101(a) gives consular officers discretionary authority to reject applications by persons who are physically present in but not residents of the consular district, the Department expects that such authority will seldom, if ever, be used.

9 FAM 403.2-4(B)(1) Physical Presence

(CT:VISA-1; 11-18-2015)

"Physical presence" constitutes the fact of being in a place at a given moment. This is a factual state or condition. "Physical presence" differs from "residence" in that "residence" is the particular location of a person's general abode whereas "physical presence" is the particular location of the person at the given time. Thus, although the alien's general abode may be located in one place, the alien may be physically present in another.

9 FAM 403.2-4(B)(2) Refusals of Out-of-District Applicants

(CT:VISA-276; 01-05-2017)

For refusals concerning out-of-district applicants, please see [9 FAM 403.10-2\(B\)\(3\)](#).

9 FAM 403.2-4(C) Alien Who is Neither Resident Nor Physically Present in a Consular District

(CT:VISA-1; 11-18-2015)

The provisions of 22 CFR 41.101(a) preclude acceptance or processing of a regular type NIV application when the alien is neither a resident of nor physically present in the consular district at the time of application. Under no circumstances whatsoever may a consular officer accept an application from, nor may an NIV be issued to such an alien. For guidance on A or G visas, or diplomatic and official type visas, which have different requirements regarding physical presence, please see [9 FAM 402.3](#).

9 FAM 403.2-4(D) Redesignating Consular Posts

(CT:VISA-1; 11-18-2015)

The Deputy Assistant Secretary for Visa Services may designate the geographical areas over which consular posts have jurisdiction to process nonimmigrant visas (NIV). This, however, does not affect an alien's ability to apply for a NIV at any issuing consular post within the country of the alien's residence. Department approval, however, is necessary before countries with multiple visa-issuing posts can make changes to NIV application policy. A cable, captioned for CA/VO/F, requesting approval of such authority and outlining the country-wide plan should be made by the supervisory consular officer in the country.

9 FAM 403.2-5 NONIMMIGRANT VISA APPLICATION FORMS

9 FAM 403.2-5(A) Nonimmigrant Visa Application Forms

(CT:VISA-221; 10-20-2016)

- a. Form DS-160, Online Nonimmigrant Visa Application, is the application form prescribed under INA 222. Form DS-160 is available to the general public at Consular Affairs' Consular Electronic Application Center (CEAC).
 - (1) The Form DS-160 is a completely electronic nonimmigrant application procedure that includes an electronic signature, replacing the paper Form DS-156.
 - (2) All information entered into Form DS-160 is available to you at the time of the interview.
 - (3) You must ensure that Form DS-160 is properly and promptly processed in accordance with the applicable regulations and instructions.
- b. If the Form DS-160 is unavailable and one of the following conditions has been met, you may accept alternate paper forms. In every case, you must scan in the paper forms into the NIV case:
 - (1) An applicant has urgent medical or humanitarian travel and you have explicit permission from the Visa Office; or

- (2) The applicant is a student or exchange visitor who must leave immediately in order to arrive on time for his/her course and you have explicit permission from the Visa Office; or
 - (3) The applicant is a diplomatic or official traveler with urgent government business and the DS-160 has been unavailable for more than four hours; or
 - (4) The DS-160 has been unavailable for more than three days and you have explicit permission/guidance from the Visa Office.
- c. If you accept a paper-based visa application form pursuant to paragraph (b) above, you must follow the instructions on the retention and disposition of nonimmigrant visa forms in [9 FAM 601.6-2](#).

9 FAM 403.2-5(B) Completion and Use of Application Forms

9 FAM 403.2-5(B)(1) Information to Include on Visa Application Forms

(CT:VISA-345; 04-18-2017)

- a. **Information to be Supplied by Applicant:** Form DS-160, Online Nonimmigrant Visa Application is the application form prescribed under INA 222(c). All items on Form DS-160, must be completed in English, unless otherwise noted on the form.
- b. **Applicant's Names:**
 - (1) An applicant's first, middle, and family names should be recorded throughout Form DS-160 exactly as they appear in the applicant's passport. In addition, the application should include any other names by which the alien has ever been known; for example, maiden, religious, or professional name, or aliases. The applicant's name must also be provided not only in English phonetics but also in the native linguistic characters; that is, Chinese, Arabic, etc., if required for clearances.
 - (2) In certain cultures, an applicant may not have a first name, but only a surname. In such cases refer to [9 FAM 403.9-2\(A\)](#).
- c. **Affixing Photograph to Nonimmigrant Visa Applications:** The applicant will either electronically upload a picture file into Form DS-160 or have his/her photo taken at the time when the applicant submits to biometric collection at an Applicant Service Center. In some cases, applicants who are unsuccessful in uploading a photo may have to submit a physical photo to the consular section.
- d. **Electronic Record:** In addition to information concerning the issuance or refusal of the visa, the electronic record of the visa application in the NIV or Immigrant Visa Overseas (IVO) system includes the following information:
 - (1) Record of clearances obtained, including the dates;
 - (2) Record of revocation and cancellation of visa;

- (3) Any further information which would be helpful in reaching a decision if the alien reapplies for a visa; and
 - (4) Record of re-issuance of visa (in the event a previous visa is spoiled or cancelled).
- e. Notwithstanding information that may be recorded on Form DS-160, you must enter electronic comments for each refusal, so that the database record contains an indication of the evidence that led you to refuse the visa. You are also strongly encouraged to enter case notes for issued visas to provide information about purpose of travel for ports of entry, public inquiries, fraud investigations, etc.
- f. Passports that do not list male or female: The sex reflected on any issued visa should match the sex reflected on the passport produced by an issuing authority. In those instances where a passport does not list a "male" or "female" field, the applicant must select either male or female for visa issuance.

9 FAM 403.2-5(B)(2) Alien Unable to Complete the Application

(CT:VISA-1; 11-18-2015)

- a. If the applicant is illiterate or unable to complete the application, the applicant must be assisted by a third party. The third party must be identified in the application. The third party can assist the applicant in completing the application, but must instruct the applicant on how to endorse the application on his/her behalf by clicking on the "submit application" link to complete the application.
- b. If the applicant is under the age of 16 or physically incapable of completing an application, the alien's parents or guardian may execute the application on his/her behalf. If the applicant has no parent or legal guardian, the application may be completed by any person having legal custody of, or a legitimate interest in, the applicant.

9 FAM 403.2-5(C) Translating Visa Forms

(CT:VISA-276; 01-05-2017)

- a. Form DS-160 is available to the general public at Consular Affairs' Consular Electronic Application Center and at CA's travel website and is translated into most common foreign languages, including Arabic, Simplified Character Chinese, Traditional Character Chinese, French, German, Hebrew, Hindi, Indonesian, Italian, Japanese, Korean, Montenegrin, Persian Farsi, Polish, Portuguese, Romanian, Russian, Spanish, Thai, Urdu, and Vietnamese.
- b. **Other Translations:** Posts may provide an information sheet in local language(s) to assist applicants in completing the DS-160. Information sheets must be accurate and the layout must look as much like the English version of the DS-160 as possible. Department approval is not required for translation; however, posts must forward a copy of the translation to the Office of Field Operations (CA/VO/F). If you believe that a tool-tip translation should be available you must submit a written request to CA/VO/F detailing the need for the translation. VO/F will review

this request in conjunction with other interested offices within Consular Affairs.

9 FAM-403.2-6 MANAGING APPLICATIONS FROM PREVIOUSLY REFUSED APPLICANTS

9 FAM 403.2-6(A) Limiting Applications From Previously Refused Applicants

(CT:VISA-345; 04-18-2017)

- a. You may not institute a procedure requiring those recently refused visas to submit new applications in writing. Such procedures interpose an unnecessary step in the visa process, which does not result in a visa adjudication and for which no fees are collected.
- b. Applicants who have previously been refused under INA 214(b) may reapply at any time. Applicants who are reapplying must follow the same steps as first-time applicants: paying the MRV fee; submitting a new visa application form and photo; having their biometric data taken; and being interviewed by a consular officer.
- c. *Consider* the following strategies to manage workload from previously refused applicants:
 - (1) Ensure that you are collecting MRV fees according to policy. An INA 214(b) refusal is a final adjudication. Using INA 221(g) to avoid decisions or hold open the possibility for reapplication invites abuse. You must require a new application and a new fee for reconsideration.
 - (2) Stress NIV classification statutory requirements and explain 214(b) during outreach, explaining in particular that U.S. immigration law uses the term "immigrant" to describe those not eligible for a "nonimmigrant status" described in INA 101(a)(15). That means that for the purposes of NIV adjudication, "immigrant" means convicted felon, narcotics trafficker, unauthorized employment, etc. as well as immigrant. Dispel the notion that there is an element of luck in visa processing and that applicants may be lucky the following week and be issued a visa. Emphasize the importance of facts. This may be a particularly useful tactic in countries aspiring to the Visa Waiver Program. Emphasize that repeat refusals contribute to the overall refusal rate in a country.
 - (3) Use the appointment system to triage previously denied applicants by limiting the number of slots for them.
 - (4) Alternatively, schedule previously refused applicants on only a few days a month or during traditionally lower-volume periods of the year (e.g., not during Summer Work-Travel season or pre-holiday peak seasons). (You must emphasize to line officers, however, the importance of making clear to applicants that they may reapply if they believe that they genuinely qualify since there is no formal appeal of an NIV refusal. Efforts to control previous

refusals must not unduly restrict applicants' ability to reapply that invite alternatives and interventions.)

- (5) Review line officers' interviewing techniques and emphasize the importance of clearly explaining 214(b) to refused applicants. The officer should state that the applicant has failed to convince the officer that he or she is eligible for the visa per U.S. immigration law, which requires visa applicants to demonstrate to the satisfaction of the consular officer that they are entitled to a nonimmigrant status. You may paraphrase in the manner you consider most effective, such as telling refused applicants that they may not work without authorization in the United States on a tourist visa.
- (6) Ensure every applicant refused under INA 214(b) receives the appropriate refusal letter (see exemplars in [9 FAM 403.10-3\(A\)\(3\)](#)). Train officers to emphasize the need for applicants to wait until there has been a significant change in circumstances before re-applying.
- (7) Leave re-application interviews until all the day's new cases are complete.
- (8) Possibly assign one experienced officer to all re-applications who can move through these promptly once new applications are complete.

9 FAM 403.2-7 DELETION OF NONIMMIGRANT VISAS (NIV) CASES

9 FAM 403.2-7(A) Efforts Made to Close Nonimmigrant Visas (NIV) Cases

(CT:VISA-276; 01-05-2017)

- a. You must follow instructions from [9 FAM 403.10](#) to issue or refuse cases at the time of application. This allows cases to be closed out and minimizes the chances of an inadvertent visa issuance or deletion.
- b. In no case should you delete a case that meets the criteria for having made a visa application as outlined in [9 FAM 403.2-3](#) or a refusal from the system. Even if the refusal is overturned, there must be a record of the original adjudication and subsequent decisions. You should use the overcome/waive functions in the NIV and IVO systems when appropriate (see [9 FAM 403.10-4\(B\)\(1\)](#) and [9 FAM 504.11-4\(A\)](#)). You should only delete cases from the system when no visa application has been made per [9 FAM 403.2-3](#), or when a case is clearly a duplicate entered in error. Some posts may still have test cases in the system entered during IVO or NIV system installations. You may delete those cases. Only consular officers may authorize the deletion of a case. The accountable consular officer (ACO) or appropriate consular manager must review end-of-day reports daily to monitor deletions, paying close attention to the reason for deletion in each case.

9 FAM 403.2-7(B) Deletion Does Not Purge Consular

Consolidated Database (CCD) Records

(CT:VISA-276; 01-05-2017)

Deletion of nonimmigrant visas (NIV) records is a tool to be carefully used at post to help ensure the accuracy of post records and the Consular Consolidated Database (CCD). Deleted cases will no longer be available in post's database, but they may be found in the CCD using the Deleted NIV Applicant Full report under the Non-Immigrant Visa tab in the CCD menu.

9 FAM 403.2-7(C) Procedures When Provisional Cases Are Created With Appointment Systems

(CT:VISA-345; 04-18-2017)

Some posts have implemented appointment systems in which they created cases when appointments were made. Posts should delete these cases only if an application has not been formally made (see [9 FAM 403.2-3](#)). If an application has been made, you must formally refuse the applicant under INA Section 221(g). You should never create cases for purposes of showing fee paid status or to begin clearance procedures prior to actual application.

9 FAM 403.2-7(D) Deletion of Duplicate Cases

(CT:VISA-276; 01-05-2017)

From time to time you may find that duplicate cases have been created, either because of human error or problems associated with the database locking out an earlier case. If a single application has been entered more than once, posts must delete any duplicate cases after entering a case note that reflects the reason for this action. Once a case has been printed on a visa foil, it cannot be deleted. A case in refused status cannot be deleted. In both instances, the automated visa processing system will not allow the deletion. You must take particular care to ensure that proper procedures are followed with overcoming previous refusals. If post discovers that a case has been "opened for overcome and/or waive" in error, you should refuse the case again under 221(g) with a case note reflecting the error. You should not delete the case.

9 FAM 403.3

(U) PRE-INTERVIEW PROCESSING

(CT:VISA-150; 08-05-2016)

(Office of Origin: CA/VO/L/R)

9 FAM 403.3-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 403.3-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 221(b) (8 U.S.C. 1201(b)); INA 222(e) (8 U.S.C. 1202(e)).

9 FAM 403.3-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.103; 22 CFR 41.105.

9 FAM 403.3-2 (U) SCHEDULING APPOINTMENTS

(CT:VISA-1; 11-18-2015)

- a. **(U)** Per [7 FAH-1 H-263.5](#), CA encourages all posts to use an NIV appointment system. An effective appointment system must be flexible and must accommodate the largest number of applicants consistent with effective interviewing and security processing. An appointment system must also provide for expedited handling for legitimate business travelers and students, possibly by setting aside dedicated blocks of time for those categories.
- b. **(U)** See the appointment systems page on CAWeb for a detailed discussion of how to devise an appointment system and manage it to improve efficiency and to provide better service to applicants. CA's standard is that a nonimmigrant visa applicant should be able to obtain an appointment within 21 days.

9 FAM 403.3-3 (U) PROCEDURES FOR SUBMITTING APPLICATIONS TO CONSULAR SECTIONS

(CT:VISA-150; 08-05-2016)

- a. **(U) Overview:** Visa application materials, passports, photos, evidence of payment of machine readable visa (MRV) fee, and appropriate supporting documents may be

submitted to the consular section for processing in a number of ways as described below. Regardless of the intake procedure, you must bear in mind the following:

- (1) **(U)** Intake procedures constitute an avenue for the transfer of physical documents and electronic data to the consular section for processing. They are essentially mechanical and do not reflect on the applicant's qualifications for a visa. In other words, any value added by a third party service provider must take the form of clerical or communication support (for example, in typing forms or hand-delivering documents to the visa section). You must avoid the appearance or implication of third party evaluation of visa applications.
 - (2) **(U)** You must carefully evaluate local operating needs and conditions to structure intake procedures that provide adequate oversight and internal controls. This is particularly important when involving control of issued visas.
 - (3) **(U)** Screening of electronic visa applications by LE staff should not encroach on adjudication. Screening by LE staff should only be for completeness of application and should not extend to interviewing or making notes within the application or in the case notes beyond the scope of the screener's function. For more information see [7 FAH-1 H-648.1-4](#).
 - (4) **(U)** Regardless of the method of intake used, you must ensure that you meet all regular processing requirements, including personal appearance instructions outlined in [9 FAM 403.5](#).
 - (5) **(U)** Form DS-160 provides for the advanced, unattended submission of the application form even for applicants who must be interviewed. This can allow you to more effectively complete initial processing requirements prior to interview. You must carefully consider workload and accountability implications of such a process, however.
- b. **(U) Walk-in Applicants:** Applicants will hand-carry the form DS-160 confirmation page when appearing at the consular section for an appointment and, in some cases, without an appointment. Posts should normally assign application screening responsibilities to a Locally Employed (LE) staff member, who will be responsible for reviewing applications for completeness. Consular managers must establish procedures to ensure that completed applications are accepted and that LE staff personnel do not inappropriately defer or refuse processing.
- c. **(U) On-Line Applications and Bar-Coding:** The DS-160 confirmation has a barcode which facilitate data entry. You may use this barcode to complement various intake procedures.
- d. **(U) Personal Appearance Waived:** Applicants for whom you may waive a personal appearance as discussed in [9 FAM 403.5-4\(A\)](#) may submit application materials through a bank or courier service which collects and delivers application materials to the consular section.
- e. **(U) Management Controls:** With any of the above procedures, consular managers must ensure that:
- (1) **(U)** Criteria for inclusion are clearly stated in writing and are in full compliance

with [9 FAM 403.5-4\(A\)](#);

- (2) **(U)** Post has developed explicit, written standard operating procedures for accounting for and controlling documents; and
 - (3) **(U)** Internal controls procedures *exist* to prevent manipulation of procedures by guards, courier service personnel, or other service provider.
- f. **(U) Working With Travel Agencies and Businesses:**
- (1) **(U)** Many applicants will choose to use a travel agent or bank courier service to facilitate the visa application process. This will take various forms, from providing information to assistance in completing Form DS-160. Consular managers must establish clear procedures in working with these companies to ensure that all processing requirements are met in the most efficient manner possible and that all appearance of impropriety is avoided. Outside agents provide post with an avenue for providing information to the public and for physically delivering application materials and passports to the visa section. They have no role in the visa review or adjudication process;
 - (2) **(U)** Consular sections may not enter into exclusive arrangements with travel agents for any purpose and may not allow travel agency advertising in the consular section or imply endorsement of a particular travel agency or group of agencies. Lists of preferred agencies are not appropriate;
 - (3) **(U)** Consular managers will generally find it useful to establish channels of communication to the business and travel industries, both to advise agents and airlines of changes in procedure and to provide periodic training as appropriate.
- g. **(U) Referrals:** Post must follow procedures outlined in [9 FAM 601.8](#) for cases submitted through the visa referral system.

9 FAM 403.3-4 (U) BIOMETRIC VISA PROGRAM

(CT:VISA-1; 11-18-2015)

(U) Section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107-173) has required, since October 26, 2004, that all visas issued by the Department must be machine-readable and tamper-resistant and use biometric identifiers. See [9 FAM 303.5](#) and 303.7 for information on the Biometric Visa Program.

9 FAM 403.3-4(A) (U) Photograph Requirements

(CT:VISA-1; 11-18-2015)

- a. **(U) Submission of Photo:** Applicants are permitted to submit photographs with their applications either electronically by uploading them into the online application form, or by submitting a hard-copy photograph.
- b. **(U)** See [9 FAM 303.6-2\(A\)\(1\)](#) for guidance on photo standards.

9 FAM 403.3-4(B) (U) Collecting Fingerprints

(CT:VISA-1; 11-18-2015)

a. Unavailable

- (1) Unavailable
- (2) Unavailable
- (3) Unavailable
- (4) Unavailable

b. Unavailable

9 FAM 403.3-5 (U) BIOMETRIC SIGNATURE AND AFFIRMATION OF DS-160 NIV APPLICATION

(CT:VISA-1; 11-18-2015)

a. **(U)** Posts must scan the applicants fingerprints immediately preceding the interview and not at the conclusion of the interview. You must clearly post the statement below at either:

- (1) **(U)** The point at which you verify an applicant's fingerprints; or
- (2) **(U)** The point at which you collect the ten-digit fingerprint scan.

(U) Text follows:

"By submitting my fingerprint, I am certifying under penalty of perjury that I have read and understood the questions in my visa application and that all statements that appear in my visa application have been made by me and are true and complete to the best of my knowledge and belief. Furthermore, I certify under penalty of perjury that I will tell the truth during my interview and that all statements made by me during my interview will be complete to the best of my ability."

b. **(U)** Posts must place the statement in the window above the fingerprint scanner or on the counter next to the scanner - whatever works best for post, as long as it is clearly visible to the applicant. Posts that have television monitors in their waiting areas may also wish to place the statement there, but must still display it in front of/or above the fingerprint scanner as well. At posts where officers interview in a language other than English, posts should display this text in English and a translation in the appropriate local language(s).

c. **(U)** Officers must make sure that each applicant is aware of what he or she is agreeing to by submitting his/her fingerprint for verification (or fingerprints in the case of posts with EFM collection workflows). You are not required to repeat the posted text word for word.

9 FAM 403.4

NIV FEES

(CT:VISA-301; 03-16-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 403.4-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 403.4-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 281 (8 U.S.C. 1351).

9 FAM 403.4-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 22.1; 22 CFR 41.107.

9 FAM 403.4-2 TYPES OF NONIMMIGRANT VISAS (NIV) FEES

(CT:VISA-1; 11-18-2015)

a. There are Two Types of Nonimmigrant Visa (NIV) Fees:

- (1) Application processing fee (also known as the MRV application fee); and
 - (2) Issuance fee (also known as the reciprocity fee).
- b. The application processing fee is not reciprocal and all applicants must pay it regardless of the type of passport held, except as noted [9 FAM 402.3-10\(C\)\(1\)](#), [9 FAM 402.3-4\(F\)](#), and [9 FAM 403.4-3\(A\)](#). You may not charge an additional MRV fee to applicants refused under INA 221(g) who re-apply within one year of that refusal, or to applicants who receive a replacement MRV because of a defective foil.

9 FAM 403.4-2(A) Machine Readable Visa (MRV) Processing/Application Fee

(CT:VISA-301; 03-16-2017)

- a. In addition to the fee listed in [9 FAM 403.4-2\(B\)](#) below, section 140 of Public Law 103-236 authorizes the Secretary of State to collect a surcharge for processing applications for machine-readable nonimmigrant visas (NIV) and machine-readable

- combined border-crossing cards (BCC). The fee is set forth by regulation at 22 CFR 22.1.
- b. For the current non-refundable application processing fee for an MRV, see 22 CFR 22.1. The fee is collected through GSS wherever possible, but varies from post to post otherwise; it must be paid separately from the visa reciprocity fee. The reciprocity fee is charged only after visa approval. To determine the visa reciprocity fee, if any, see the specific country information on the Visa Reciprocity Schedule posted on CAWeb.
 - c. Charge a single MRV fee for a B1/B2 or a C1/D visa. *Also*, charge a single MRV fee for applicants applying for both a B1/B2 and a C1/D visa at the same time; in this combination, mark the B1/B2 visa as "no fee" in the NIV system to ensure correct accounting for visa fees collected. In addition Cuban nationals applying for B-1 and B-2 visas at the same time are also only required to pay one fee. In this case the B-1 visa should be marked as "no fee." Please note that these are the only combinations of visa classes that do not require more than one fee. All other combinations require a fee for each category. For any other multiple visa combinations requiring two or more MRV foils for one applicant, you must collect two or more MRV fees, as appropriate. For example, an application for a B-2 and a F-1 visa at the same time requires payment of two MRV fees.
 - d. **Open Cases and Fee Payment:** While GSS provides off-site fee payment wherever possible, there are a variety of off-site fee payment procedures. (See [7 FAH-1 H-263.9](#).) All applicants, however, should be able to demonstrate that they have paid the required fee(s). Cases should not be kept open in the NIV database merely to flag a case as "fee paid" if the case is inactive.

9 FAM 403.4-2(B) Issuance Fees

(CT:VISA-301; 03-16-2017)

The reciprocity fee to be collected for the issuance of a nonimmigrant visa (NIV) is prescribed in the appropriate country-specific reciprocity schedule. To determine the visa reciprocity fee, if any, see the specific country information on the Visa Reciprocity Schedule posted on CAWeb. These schedules, required by INA 221(c) and INA 281, are based upon the treatment accorded U.S. citizens by the governments of the countries concerned and apply to nationals, permanent residents, refugees, and stateless residents of those countries.

See [9 FAM 403.9-4\(D\)](#) paragraph b(2) for situations in which double reciprocity fees are prescribed.

9 FAM 403.4-3 EXCEPTIONS TO VISA FEES

9 FAM 403.4-3(A) Exceptions to Machine Readable Visa (MRV) Processing Fee Requirement

(CT:VISA-1; 11-18-2015)

The following categories of visas are exempt from the MRV application processing fee (see [9 FAM 403.4-3\(B\)](#) below for waiver of visa issuance fees):

- (1) "A";
- (2) "G";
- (3) NATO;
- (4) C-3;
- (5) All diplomatic type visas;
- (6) Applicants for "J" visas participating in official U.S. Government-sponsored educational and cultural exchanges;
- (7) Replacement Machine-Readable Visa when the original visa was not properly affixed or needs to be reissued through no fault of the applicant;
- (8) Replacement Machine-Readable Visa to correct errors made by consular staff in the visa data, up to one year from the visa's original date of issuance and only for the remaining validity of the original visa. After one year, the applicant must apply for a new visa, submitting the appropriate fee and application, and scheduling a new interview (if required);
- (9) A parent, sibling, spouse, or child of a U.S. Government employee killed in the line of duty who is traveling to attend the employee's funeral and/or burial; or a parent, sibling, spouse, son, or daughter of a U.S. Government employee critically injured in the line of duty, for visitation during emergency treatment and convalescence;
- (10) **U.S. Government Employees Traveling on Official Business:** When post is issuing a nonimmigrant visa (NIV) to a locally employed staff member (LE staff) solely for official travel, MRV and reciprocity fees (if any) may be waived provided that the LE staff applicant is issued a limited-validity visa. The visa validity should be limited to encompass only the official travel required. For most official travel this will typically be a three-month, single-entry visa, but validity can be extended if the training is longer or there will be several trips in a relatively short amount of time (such as an LE staff who must travel several times in a six-month period for conferences or training). If the LE staff would like a full-validity visa, and is otherwise qualified, post must charge all MRV and reciprocity fees;
- (11) Applicants exempted by international agreement as determined by the Department, including members and staff of an observer mission to the United Nations Headquarters recognized by the UN General Assembly, and their immediate families; and
- (12) Applicants traveling to provide charitable services as determined by the Department. (See [9 FAM 403.4-3\(C\)](#) below for additional details.)

9 FAM 403.4-3(B) Exemptions From Visa Issuance Fees

(CT:VISA-1; 11-18-2015)

The regulations in 22 CFR 22.1 (Schedule of Fees) provide exemptions from MRV issuance fees in the following instances:

- (1) An official representative of a foreign government (A visa applicant) or an international or regional organization of which the United States is a member (G visa applicant); members and staff of an observer mission to United Nations (UN) Headquarters recognized by the U.N. General Assembly; and applicants for diplomatic visas as defined under item 22(a) on the Schedule of Fees (see 22 CFR 22.1) and their immediate families;
- (2) An applicant transiting to and from the U.N. Headquarters;
- (3) An applicant participating in a U.S. Government-sponsored program; and
- (4) An applicant traveling to participate in charitable services as determined by the Department.
- (5) An alien who would be entitled to a C-2 visa without a fee, and who is issued a visa under any other nonimmigrant classification, must pay the fee, if any, prescribed by the appropriate country specific reciprocity schedule.

9 FAM 403.4-3(C) Obtaining a Charitable Activities Exemption

(CT:VISA-1; 11-18-2015)

- a. A waiver of the NIV application and issuance fees may be obtained for an alien who will be engaged in charitable activities for a charitable organization upon the written request of that organization. The request must claim that the fees will impose a financial burden on the charitable organization. The consular officer must be satisfied that:
- (1) The organization seeking relief from the fees is, if based in the United States, tax-exempt as a charitable organization under the provisions of section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)). If the organization is based outside the United States, it must establish that it is recognized as a charitable institution by the government of the country in which it is based under criteria substantially similar to those of section 501(c)(3);
 - (2) The charitable activities in which the alien will be engaged in are specified and will be a part of, or will be related to and in support of, the organization's provision of services, including but not limited to health care, food and housing, job training, and similar direct services and assistance to the poor and needy;
 - (3) The request must include the location of the proposed activities and the number and identifying data of each of the alien(s) who will be applying for

visas; and

- (4) The proposed duration of the alien's temporary stay in the United States is to be reasonably consistent with the charitable purpose for which the alien(s) seek to enter the United States.

b. **Charitable Organization Information Sheet:** See the Information Sheet for Charitable Institution Seeking Visa Fee Waivers in PDF format.

9 FAM 403.5

(U) NIV INTERVIEW BY CONSULAR OFFICER

(CT:VISA-251; 11-22-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 403.5-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 403.5-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 222(h) (8 U.S.C. 1202(h)).

9 FAM 403.5-1(B) (U) Code of Federal Regulations

(CT:VISA-93; 03-17-2016)

(U) 22 CFR 41.101; 22 CFR 41.102.

9 FAM 403.5-2 (U) INTERVIEW REQUIREMENT

(CT:VISA-XXX; xx-xx-2016)

- a. (U) *Every* alien seeking an NIV must apply in person and be interviewed by a consular officer *unless a specific exception allows for waiver of the interview requirement. If you conclude that a nonimmigrant visa applicant presents no national security concerns and the applicant either meets an exception to the personal appearance requirement as set forth in [9 FAM 403.5-4\(A\)](#), or as otherwise is eligible for an interview waiver as instructed by the Secretary of State or Deputy Assistant Secretary for Visa Services*, then you may in your discretion waive personal appearance. Consular officers *must* take into account both the factors noted in [9 FAM 403.5-3](#) below and the limitations of waiver authority in 22 CFR 41.102 in determining whether a waiver of personal appearance is warranted.
- b. (U) You must determine an applicant's eligibility to receive a visa and the proper nonimmigrant classification of the visa applicant on the basis of the applicant's personal interview, and other relevant documentation. Generally, all applicants must be interviewed in person. There are certain circumstances in which you, the Chief of Mission (COM), or the Deputy Assistant Secretary (DAS) for Visa Services may waive the personal interview for a visa applicant. However, if admissibility issues or national security concerns arise in the visa application process after the interview requirement has been waived, you must conduct a personal interview of

the applicant.

- c. **(U)** Section 222(h) of the Immigration and Nationality Act and 22 CFR 41.102 require that any alien from the age of 14 through the age of 79 applying for a nonimmigrant visa (NIV) must submit to an in-person interview by a consular officer unless the in-person interview requirement is waived by the consular officer, the Secretary of State, or the DAS for Visa Services in specific limited situations. The COM has discretionary authority to waive certain interviews based on authority given to the COM by the Secretary of State.

9 FAM 403.5-3 (U) HOW TO CONDUCT VISA INTERVIEWS

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 41.102 N2.1; CT:VISA-2350; 10-08-2015)

(U) Applicant Should Have an Opportunity to Present Evidence: Provide the visa applicant with an opportunity to present evidence establishing the veracity of his or her application. Acceptable evidence may be either oral or written. Case notes are always required. In cases where decisions are difficult to make, are controversial, or may become the subject of controversy, create a detailed record of the interview in the case memo(s) feature of the NIV system so that the basis for the final action can be fully documented.

9 FAM 403.5-4 (U) WAIVERS OF INTERVIEW REQUIREMENT

(CT:VISA-XXX; xx-xx-2016)

- a. **(U)** Under 22 CFR 41.102, any alien applying for a nonimmigrant visa (NIV) must submit to an in-person interview unless:
- (U)** The consular officer waives the in-person interview requirement for an individual applicant who *presents no national security concerns and* satisfies the criteria listed in [9 FAM 403.5-4\(A\)](#);
 - (U)** The Deputy Assistant Secretary for Visa Services waives the interview requirement after determining that such waiver is necessary as a result of unusual or emergent circumstances (see [9 FAM 403.5-4\(B\)](#));
 - (U)** The Secretary of State waives the requirement after determining that such waiver is in the national interest of the United States or is necessary as a result of unusual or emergent circumstances; *or*
 - (U)** The chief of mission (COM) waives the personal appearance requirement for an applicant for whom the COM has waived the Biometric Visa Program fingerscan requirement under the limited circumstances described in [9 FAM 403.5-4\(C\)](#).

- b. **(U)** The waiver of the in-person interview requirement for an applicant does not change the requirements and standards of existing regulations and instructions with regard to security checks, visa classification, number of entries, and validity of visas.

9 FAM 403.5-4(A) (U) Waiver of Interview by Consular Officer

(CT:VISA-XXX; xx-xx-2016)

- a. **(U)** You may waive the in-person interview requirement for an applicant under certain circumstances. If none of the grounds mandating an in-person interview stated in [9 FAM 403.5-6](#) apply, you are authorized to waive the in-person interview requirement for *an* NIV applicant who is eligible for one of the following Interview Waiver Programs:
- (1) **(U)** Interview Waiver Based on Age as set forth in [9 FAM 403.5-4\(A\)\(1\)](#) below;
 - (2) **(U)** Interview Waiver for Diplomats or Officials as set forth in [9 FAM 403.5-4\(A\)\(2\)](#) below;
 - (3) **(U)** Interview Waiver for Renewals (within One Year) and (12-48 Months after Expiry) as set forth in [9 FAM 403.5-4\(A\)\(3\)](#) below; or
 - (4) **(U)** Interview Waiver for Argentines and Brazilians as set forth in [9 FAM 403.5-4\(A\)\(4\)](#) below.
- b. **(U)** Remember to exercise the interview waiver authority with judgment and care. You remain ultimately responsible for the final decision. You must request a personal interview and any needed additional information when there is any doubt regarding an applicant's qualifications for a nonimmigrant visa (NIV) prior to the issuance of a visa. Keep in mind that you always have the option to require an interview of any applicant if you doubt the alien's credibility or veracity. You must also be vigilant to ensure that personal appearance waiver procedures are not used to commit fraud.

9 FAM 403.5-4(A)(1) (U) Interview Waiver Based on Age

(CT:VISA-XXX; xx-xx-2016)

- a. **(U)** If none of the grounds mandating an in-person interview stated in [9 FAM 403.5-6](#) below apply, you may waive the interview of any applicant (first-time or renewal) who is applying in the consular district of their normal residence and is:
- (1) **(U)** Under 14 years of age; or
 - (2) **(U)** Over 79 years of age.
- b. **Unavailable.**

9 FAM 403.5-4(A)(2) (U) Interview Waiver for Diplomats or Officials

(CT:VISA-XXX; xx-xx-2016)

- a. **(U)** You may waive the interview of any visa applicant who falls under the following categories:
- (1) **(U)** Is within a class of nonimmigrants classifiable under the visa symbols A-1, A-2, C-3 (except attendants, servants, or personal employees of accredited officials), G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, or TECRO E-1 and who is seeking a visa in such classification; or
 - (2) **(U)** Is an applicant for a diplomatic or official visa as described in 22 CFR 41.26 or 22 CFR 41.27, respectively.
- b. **Unavailable.**
- c. **(U)** You may request to interview any applicant if *you require* additional clarification as to the nature of the applicant applying for such visa classification or has doubts to the veracity of the visa application (see [9 FAM 402.3-4\(E\)](#)). The restrictions set forth under [9 FAM 403.5-6](#) below do not require an interview *for diplomats or officials*, but you may decide to interview such applicant at your own discretion.

9 FAM 403.5-4(A)(3) (U) Interview Waiver for Renewals (Within One Year or 12-48 Months After Expiry)

(CT:VISA-XXX; xx-xx-2016)

- a. **(U) Interview Waiver for Renewals (Within One Year):** If none of the grounds mandating an in-person interview stated in [9 FAM 403.5-6](#) below *apply* and the applicant is applying for renewal of a visa that is still valid or expired less than a year ago, you may waive the interview of a visa applicant if:
- (1) **(U)** The applicant, not more than 12 months after the previous visa's expiration, is seeking renewal of the visa in the same classification as his or her prior nonimmigrant biometric visa (i.e., same visa class and same category (principal or derivative)).
 - (2) **(U)** *For example, a B1/B2, L, or R visa holder who is seeking to renew his/her visa in the same category within a year of his/her last visa's expiration date qualifies for Interview Waiver for Renewals (Within One Year);*
 - (3) **(U)** *On the other hand, and H-1B visa holder applying for an L-1 visa, an E-2 spouse applying for a visa as an E-2 principal, or an F-2 visa holder applying for an F-1 visa all would need to appear for an interview;*
 - (4) **(U)** *The applicant is applying in the consular district of his or her normal residence; and*
 - (5) **(U)** *The applicant has been subjected to all appropriate biometric visa requirements as set forth in [9 FAM 303.5](#).*
- b. **(U) Interview Waiver for Renewals (12-48 Months after Expiry):** If none of the grounds mandating an in-person interview stated in [9 FAM 403.5-6](#) below applies and the applicant is applying for renewal of a visa that expired between 12

and 48 months ago, a consular officer may waive the interview of a visa applicant in a visa class other than E, H, L, P, or R if:

- (1) **(U)** Seeking renewal of a visa in the same nonimmigrant visa classification between 12 and 48 months after the prior visa's expiration date;
- (2) **(U)** The applicant is *a national or resident of the country in which he or she is applying for such visa*, and
- (3) **(U)** The applicant has been subjected to all appropriate biometric visa requirements as set forth in [9 FAM 303.5](#).

c. **Unavailable.**

d. **(U)** Student and exchange visitor visa (i.e., F, M, and J) may be renewed under the conditions set forth in paragraphs a and b above subject to the requirements set forth in [9 FAM 403.5-4\(A\)\(5\)](#) below.

9 FAM 403.5-4(A)(4) (U) Interview Waiver for Argentines and Brazilians

(CT:VISA-XXX; xx-xx-2016)

- a. **(U)** If none of the grounds mandating an in-person interview stated in [9 FAM 403.5-6](#) below applies, you may waive the interview of a first-time Argentine or Brazilian visa applicant in a visa class other than E, H, L, P, or R (see paragraph (b) below) if:
- (1) **(U)** The applicant is a first-time Argentine or Brazilian nonimmigrant visa applicant who is younger than 16 or 66 *and older*, and
 - (2) **(U)** The applicant is applying in the consular district of their normal residence.

b. **Unavailable.**

c. **Unavailable.**

9 FAM 403.5-4(A)(5) (U) Interview Waivers for Eligible Student and Exchange Visitor Visa Applicants

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 41.102 N4 CT:VISA-2061; 01-13-2014)

- a. **(U)** Students (F and M applicants) are eligible for interview waiver under the Interview Waiver for Renewals (Within One Year) or the Interview Waiver for Renewals (12-48 Months After Expiry) (see [9 FAM 403.5-4\(A\)\(1\)](#) and [9 FAM 403.5-4\(A\)\(3\)](#) above), provided the applicant is renewing his or her visa either to:
- (a) continue participation in the same program even if at a different institution; or
 - (b) attend the same institution even if in a different program. Exchange visitor visas (i.e., J visas) may only be renewed under the Interview Waiver for Renewals (Within One Year) or the Interview Waiver for Renewals (12-48 Months after Expiry) if the Student and Exchange Visitor Information System (SEVIS) number has not changed at the time of issuance from the previously issued visa.

- b. **(U)** You must verify that the applicant is in status according to SEVIS, and should request a personal appearance should the officer identify any discrepancies between the current and previous visa applications, or wish to interview the applicant for any other reason.

9 FAM 403.5-4(A)(6) (U) Randomization of Interviews

(CT:VISA-XXX; xx-xx-2016)

a. **Unavailable.**

- (1) **Unavailable.**
- (2) **Unavailable.**
- (3) **Unavailable.**
- (4) **Unavailable.**

b. **Unavailable.**

9 FAM 403.5-4(B) (U) Waiver of Personal Appearance Due to Unusual or Emergent Circumstances by Deputy Assistant Secretary (DAS) for Visa Services

(CT:VISA-XXX; xx-xx-2016)

Unavailable.

9 FAM 403.5-4(B)(1) Unavailable

(CT:VISA-XXX; xx-xx-2016)

a. **Unavailable.**

b. **Unavailable.**

c. **Unavailable.**

- (1) **Unavailable.**
- (2) **Unavailable.**
- (3) **Unavailable.**

9 FAM 403.5-4(B)(2) Unavailable

(CT:VISA-XXX; xx-xx-2016)

a. **Unavailable.**

- (1) **Unavailable.**
- (2) **Unavailable.**
- (3) **Unavailable.**
- (4) **Unavailable.**

b. **Unavailable.**

9 FAM 403.5-5 UNAVAILABLE

(CT:VISA-XXX; xx-xx-2016)

a. **Unavailable.**

b. **Unavailable.**

c. **Unavailable.**

d. **Unavailable.**

9 FAM 403.5-5(A) Unavailable

(CT:VISA-126; 05-09-2016)

a. **Unavailable.**

b. **Unavailable.**

(1) **Unavailable.**

(2) **Unavailable.**

(3) **Unavailable.**

c. **Unavailable.**

9 FAM 403.5-5(B) Unavailable

(CT:VISA-XXX; xx-xx-2016)

a. **Unavailable.**

b. **Unavailable.**

9 FAM 403.5-5(C) Unavailable

(CT:VISA-126; 05-09-2016)

a. **Unavailable.**

(1) **Unavailable.**

(2) **Unavailable.**

(a) **Unavailable.**

(b) **Unavailable.**

(c) **Unavailable.**

(d) **Unavailable.**

b. **Unavailable.**

c. **Unavailable.**

9 FAM 403.5-5(D) Unavailable

(CT:VISA-126; 05-09-2016)

Unavailable.

9 FAM 403.5-5(D)(1) Unavailable

(CT:VISA-XXX; xx-xx-2016)

a. **Unavailable.**

b. **Unavailable.**

9 FAM 403.5-5(D)(2) Unavailable

(CT:VISA-128; 05-16-2016)

a. **Unavailable.**

b. **Unavailable.**

(1) **Unavailable.**

(2) **Unavailable.**

(3) **Unavailable.**

c. **Unavailable.**

d. **Unavailable.**

e. **Unavailable.**

f. **Unavailable.**

9 FAM 403.5-5(D)(3) Unavailable

(CT:VISA-XXX; xx-xx-2016)

a. **Unavailable.**

b. **Unavailable.**

(1) **Unavailable.**

(2) **Unavailable.**

(3) **Unavailable.**

c. **Unavailable.**

d. **Unavailable.**

e. **Unavailable.**

9 FAM 403.5-5(E) Unavailable

(CT:VISA-126; 05-09-2016)

Unavailable.

9 FAM 403.5-5(E)(1) Unavailable

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 41.102 PN7.1 (CT:VISA-2287; 05-18-2015)

- a. **Unavailable.**
- b. **Unavailable.**
- c. **Unavailable.**
- d. **Unavailable.**
- e. **Unavailable.**
- f. **Unavailable.**

9 FAM 403.5-5(E)(2) Unavailable

(CT:VISA-126; 05-09-2016)

Unavailable.

9 FAM 403.5-6 (U) CASES IN WHICH PERSONAL APPEARANCE MAY NOT BE WAIVED

(CT:VISA-XXX; xx-xx-2016)

- a. **(U)** Eligibility for interview waiver under any of the interview waiver programs does not automatically entitle any applicant to a waiver of personal appearance. You must interview any and all interview waiver-eligible applicants who you believe should be interviewed, have been randomly selected for interview under [9 FAM 403.5-4\(A\)\(6\)](#) or those that you are concerned may be from high-threat or high-fraud areas.
- b. **Unavailable.**
- c. **Unavailable.**
- d. **Unavailable.**
 - (1) **Unavailable.**
 - (2) **Unavailable.**
 - (3) **Unavailable.**
 - (4) **Unavailable.**
 - (5) **Unavailable.**
 - (6) **Unavailable.**
 - (7) **Unavailable.**

(a) **Unavailable.**

(b) **Unavailable.**

(c) **Unavailable.**

(8) **(U)** Any other case in which you believe for any reason that an interview is necessary to establish the applicant's eligibility.

e. **(U) Exceptions to Paragraph (d) Above:**

(1) **Unavailable.**

(2) **Unavailable.**

9 FAM 403.6 UNAVAILABLE

(CT:VISA-331; 04-11-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 403.6-1 UNAVAILABLE

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 403.6-2 UNAVAILABLE

(CT:VISA-331; 04-11-2017)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**
- (6) **Unavailable**
- (7) **Unavailable**

9 FAM 403.6-3 UNAVAILABLE

9 FAM 403.6-3(A) Unavailable

(CT:VISA-1; 11-18-2015)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 403.6-3(B) Unavailable

(CT:VISA-207; 10-06-2016)

- a. **Unavailable** (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**

- (4) **(U)** See [9 FAM 403.9-4\(B\)](#) for additional information on processing out-of-district cases.

b. Unavailable

9 FAM 403.6-3(C) Unavailable

(CT:VISA-207; 10-06-2016)

Unavailable

9 FAM 403.6-3(D) (U) Biometrics

(CT:VISA-331; 04-11-2017)

Unavailable

9 FAM 403.6-3(D)(1) (U) Fingerprinting

(CT:VISA-331; 04-11-2017)

a. Unavailable

b. Unavailable

9 FAM 403.6-3(D)(2) Unavailable

(CT:VISA-1; 11-18-2015)

a. Unavailable

b. Unavailable

9 FAM 403.6-3(E) Unavailable

(CT:VISA-331; 04-11-2017)

a. Unavailable

b. Unavailable

9 FAM 403.6-3(F) (U) Other Sources of Information

(CT:VISA-331; 04-11-2017)

a. Unavailable

b. Unavailable

c. Unavailable

d. Unavailable

e. Unavailable

9 FAM 403.7

(U) NIV ADJUDICATION

(CT:VISA-346; 04-18-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 403.7-1 (U) NIV ADJUDICATION

(CT:VISA-346; 04-18-2017)

Unavailable

9 FAM 403.7-2 (U) ADJUDICATING OFFICER RESPONSIBILITIES

(CT:VISA-90; 03-10-2016)

(U) Adjudicating officers have the responsibility to make the following determinations:

- (1) **(U) Is the Applicant Qualified Under INA Section 101(A)(15)?** With limited exceptions, all visa applicants are presumed to be immigrants (and thus not eligible for a nonimmigrant visa (NIV)) unless and until they satisfy you that they qualify for one of the NIV categories defined in INA Section 101(a)(15). When adjudicating NIV applications, you must be careful to recognize that the standards for qualifying for an NIV are found in the relevant subsections of 101(a)(15) and corresponding regulations and FAM guidance, not in 214(b) itself. (See [9 FAM 302.1](#) for information about 214(b) refusals.)
- (2) **(U) What is the Correct Classification?** You must determine the appropriate nonimmigrant classification for the applicant's primary purpose for coming to the United States, in accordance with INA 101(a)(15). For example, the consular officer should classify as F-1 or M-1 an alien seeking to enter the United States as a student who desires, prior to entering an approved school, to make a tourist trip of not more than 30 days within the United States. Also, when a family member's primary purpose to come to the United States is to accompany the principal, the classification of the accompanying family member is either of a derivative of the principal if the classification provides or as a B-2, if not. This is the case, even if the accompanying family member decides to attend school. (See [9 FAM 402.1](#))
- (3) **(U) Is the Applicant Credible?** You must assess the credibility of the applicant and the evidence submitted to determine qualifications under 101(a)(15). You must be satisfied that the applicant will credibly engage in the activities authorized under the particular NIV classification, that the alien will

abide by the conditions of that nonimmigrant category, and that the alien will thereby maintain lawful status.

- (4) **(U) Have All Necessary Clearances Been Conducted?** You must conduct as complete a clearance as is necessary to establish the eligibility of an applicant to receive a visa. (See [9 FAM 403.6](#).)
- (5) **Unavailable**
- (6) **Unavailable**
- (7) **(U) Is There a Waiver Available for an Ineligible Applicant?** There is no waiver available for refusals under INA 214(b) and INA 221(g). DHS has the authority to waive most IV and NIV ineligibilities. INA 212(d)(3)(A) waivers in NIV cases require an initial waiver recommendation from you or the Department. (See [9 FAM 305.4-2](#), for information on NIV waivers under INA 212(d)(3)(A), and [9 FAM 305.2](#) and 305.3 for IV and NIV waivers.)

9 FAM 403.7-3 (U) ADJUDICATION PROCEDURES

(CT:VISA-1; 11-18-2015)

(U) Once an application has been executed, you must either issue the visa or refuse it. You cannot temporarily refuse, suspend, or hold the visa for future action. If you refuse the visa, you must inform the applicant of the provisions of law on which the refusal is based, and of any statutory provision under which administrative relief is available. (See [9 FAM 403.10](#) for NIV refusal procedures and [9 FAM 305.3](#) for waiver relief.)

9 FAM 403.7-3(A) (U) Use of Application Forms

(CT:VISA-1; 11-18-2015)

- a. **(U)** Notwithstanding information that may be recorded on Forms DS-160 or 156, you are reminded that electronic comments must be entered for each refusal, so that the database record contains an indication of the evidence that led the adjudicating officer to refuse the visa. You are also strongly encouraged to enter case notes for issued visas.
- b. **(U)** When reviewing Form DS-160, your review of the application will be recorded electronically. Your electronically recorded review of the application will indicate which officer determined the eligibility and proper classification of the applicant.
- c. **(U)** If you have accepted paper-based nonimmigrant visa application forms pursuant to [9 FAM 403.2-5\(B\)\(1\)](#) you must initial all paper application forms. Your initials indicate that you have determined the eligibility and proper classification of the applicant, unless the visa is refused and a notation of the refusal is made on the application.
- d. **(U)** In addition to information concerning the issuance or refusal of the visa, the electronic record of the visa application in the NIV or Immigrant Visa Overseas

(IVO) system includes the following information:

- (1) **(U)** Record of clearances obtained, including the dates;
- (2) **(U)** Record of revocation and cancellation of visa;
- (3) **(U)** Any further information which would be helpful in reaching a decision if the alien reapplies for a visa (i.e., a case note that the applicant is well and favorably known to the consular officer might eliminate the need for requests for other evidence of eligibility); and
- (4) **(U)** Record of re-issuance of visa (in the event a previous visa is spoiled or cancelled).

9 FAM 403.7-3(B) (U) Requesting Additional Information

9 FAM 403.7-3(B)(1) (U) Supporting Documentation

(CT:VISA-35; 01-19-2016)

- a. **(U)** If additional data is needed to supplement the information contained on Form DS-160 so that you can determine the eligibility of an applicant, such data should be obtained by telephone, mail, or during the interview. Pertinent information should be recorded in the NIV system.
- b. **(U)** Unlike immigrant visa (IV) applicants, nonimmigrant visa (NIV) applicants are not required to submit extensive documentation in support of their cases. You should carefully consider whether to require them of applicants. If local documents are unreliable, easily and often forged, or otherwise implausible, you should consider the utility of requiring them of applicants as they add no value to the NIV adjudication. Remember that the burden of proof for establishing eligibility for the NIV classification lies with the applicant.
- c. **(U)** You should not use a request for additional documentation as a way to postpone your decision on a case, especially if the documentation you are requesting is not required for that visa category, or not reliable in that country. You should use refusals under INA 221(g) for additional documentation sparingly.
- d. **(U)** Posts should generally have a policy that officers review their own 221(g) cases to ensure consistency in adjudication. It is also a useful training tool, as officers often quickly learn that the additional documentation they request may not assist in making a determination of eligibility.
- e. **(U)** Pertinent information should be recorded in the case notes, and any pertinent documentary evidence submitted by the applicant should be scanned into the applicant's case.
- f. **(U)** You should avoid routinely retaining documents that are submitted in support of an NIV application but which do not directly serve to establish the applicant's eligibility. Documents that are directly applicable to the case should be scanned into the Consular Consolidated Database (CCD) record. These documents may be returned to the applicant or destroyed.

- g. **(U)** Minor errors that are discovered during intake of an applicant's DS-160 including but not limited to spelling mistakes, incorrect dates, etc., may be noted in the appropriate remarks sections of the DS-160 and should be updated by the consular officer with the correct information in the NIV system, if necessary. If a correction is made, a remark must also be added to the case notes explaining the revision, a remark may be added to the DS-160 but is not required. However, if the correction is considered material to adjudication or would result in additional unanswered questions, this is a major correction and you must 221(g) the case and have the applicant submit a new or revised application.

9 FAM 403.7-3(B)(2) (U) Medical Examinations for NIV Applicants

(CT:VISA-1; 11-18-2015)

(U) With the exceptions listed in [9 FAM 302.2](#), medical examinations generally are not required for nonimmigrant visa applicants. You may, however, require a nonimmigrant applicant to undergo a medical examination if you have reason to believe that the applicant may be ineligible for a visa under INA 212(a)(1). (See also [9 FAM 302.2](#) for further information on medical examinations.)

9 FAM 403.8

NONIMMIGRANT VISA RECIPROCITY

(CT:VISA-330; 04-10-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 403.8-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 403.8-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 221(c) (8 U.S.C. 1201(c)); INA 281 (8 U.S.C. 1351).

9 FAM 403.8-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 41.112.

9 FAM 403.8-2 NONIMMIGRANT VISA RECIPROCITY

(CT:VISA-1; 11-18-2015)

The goal of visa reciprocity is to obtain progressive visa regimes, consistent with U.S. national interests, laws and regulations, to encourage international travel that benefits U.S. travelers and business. Posts are encouraged to contact CA/VO/F with questions or suggestions about how to make the visa schedules for the host country simpler and more practicable.

9 FAM 403.8-3 ROLE OF THE CONSULAR OFFICER

(CT:VISA-330; 04-10-2017)

- a. You should ensure that the information about visa processing and document availability is up to date on the Reciprocity Schedule, which can be found on travel.state.gov. Send any updates of the reciprocity schedule to CA/VO/L/R.
- b. You have an important responsibility to ensure that the United States practices reciprocity "insofar as practicable" with host governments. Paragraph c, below describes your responsibility to keep the Department informed of any changes that would affect the period of validity of nonimmigrant visas, the number of admissions

allowed under the visa, or fees charged. You should maintain good contacts with the host government's Ministry of Foreign Affairs, along with other ministries that have a stake in visa issues. You should encourage the host government to adopt a visa regime that is progressive and mutually beneficial. Many developing countries seek greater business investment from abroad, as well as increased tourism revenue, and may prove receptive to liberalizing their visa regimes.

- c. **Dialogue With U.S. Travelers:** Informal discussions with U.S. travelers can shed light on how closely the host government follows its official reciprocity schedule. Some countries fail to observe their official schedules, either over-charging for visas or issuing visas of more limited validity than specified. If a pattern of non-compliance with the posted schedule is detected, you should approach appropriate representatives of the host government regarding the inconsistency. If you are unable to work out the problem with the host government, then the situation should be brought to the attention of CA/VO/F, suggesting that the reciprocity schedule for that country be changed to reflect actual practice.
- d. **Reports Required to Maintain Reciprocity Schedules:**
 - (1) Posts must maintain current information on the visa requirements for U.S. nationals entering foreign countries in their Country Specific Information pages. Email your CA/VO/F liaison whenever any significant change occurs that would affect the period of validity of nonimmigrant visas, the number of admissions permitted under the visa, or the fees charged.
 - (2) The collection of data on the fees charged by foreign governments for nonimmigrant visas issued to U.S. citizens, and the periods for which these visas are valid, must be updated on a continuing basis.

9 FAM 403.8-4 ACHIEVING RECIPROCITY

9 FAM 403.8-4(A) Practicable Reciprocity

(CT:VISA-1; 11-18-2015)

- a. The U.S. Government seeks conditions which accord with the U.S. national interest, consistent with U.S. laws and regulations, to govern the validity of nonimmigrant visas and the fees charged on a reciprocal basis as required by INA 221(c) and INA 281. To achieve reciprocity, the INA does not require that our visa schedules mirror those of the host countries exactly. Visa validity, numbers of entries, and fees should be reciprocal "insofar as practicable." This important qualification recognizes that many countries' visa regimes are so complex, arbitrary, or ill-considered that matching them item for item would be unwise. For example, certain countries maintain an extensive tiered fee schedule. Tiered fee schedules are difficult for posts to practice and maintain, and can cause confusion for both applicants and officers. In order to eliminate the maintenance of complicated schedules, post may need to look to the average fee cost and validity as the basis for establishing a single fee and validity.

- b. Department practice is to discount from our reciprocity fee calculations the amount of our machine-readable visa (MRV) fee from any fee charged by the host government. For example, if the host government charges U.S. citizens \$200 to apply for a tourist visa, our reciprocal issuance fee for nationals of that country would appropriately be set at \$40 (\$200 minus the \$160 MRV fee).

9 FAM 403.8-4(B) Requesting Changes to the Reciprocity Schedule

(CT:VISA-330; 04-10-2017)

- a. Posts should inform CA/VO/F of any plans to pursue changes to the reciprocity schedule. Posts are to work with host country authorities to develop suitable suggested visa validity periods for submission to the Department for clearance. Posts should clear any plans to discuss changes in visa reciprocity regimes with CA/VO/F prior to beginning negotiations with the host government. Negotiated changes must be cleared with the Department (L/CA, VO/L/R, and CA/VO/F) before being finalized. After determining what changes are appropriate, posts should send *an* email to CA/VO/F identifying the specific changes they are requesting, and corresponding background information and justification. CA/VO/F will consult with the appropriate Department offices and respond to the reciprocity change request. CA/VO will also consult with the Department of Homeland Security before establishing or increasing any validity period.
- b. **Formal Reciprocity Agreements Not Necessary:**
- (1) It is U.S. policy not to enter into formal reciprocity agreements. U.S. reciprocity schedules are based on what the host government imposes on U.S. travelers in practice and are therefore referred to as an "arrangement."
 - (2) Occasionally, a host government may insist on an exchange of notes or letters to formalize a change to the existing reciprocity schedule. In such cases, posts must clear the notes with CA/VO/F, CA/VO/L/R, and L/CA and ensure that the notes or letters:
 - (a) Do not create any binding legal obligations;
 - (b) Specify that the United States may limit the validity of the visa to certain applicants where warranted; and
 - (c) Make clear that the United States will continue to collect the application (MRV) fee, except from those individuals who are exempt from this requirement. (See 22 CFR 41.107(c).)
- c. On the basis of reciprocity, the maximum validity possible for a nonimmigrant B *visa* is 120 months (to eligible nationals of most foreign countries) without *fee* other than the required MRV processing fee. (See 22 CFR 22.1.) Most other categories of nonimmigrant visas may be issued with a maximum validity of 60 months and for multiple entries. (This 60-month validity, however, does not apply to the A-3, C-2, G-3, G-5, K-1, K-2, or Q visa categories.) For current country specific validity periods, refer to the Reciprocity Schedule via travel.state.gov.

9 FAM 403.8-5 SPECIAL CIRCUMSTANCES

(CT:VISA-1; 11-18-2015)

- a. **When Diplomatic Relations Have Been Severed:** In a case where the United States does not enjoy diplomatic relations with a particular country, our visa schedules should be established on the basis of reciprocity, and should match as nearly as practicable, the visa regimes that those countries apply to U.S. travelers.
- b. **Restrictions or Conditions Imposed on U.S. Government Officials:**
- (1) In accordance with INA 212(d)(8), upon the basis of reciprocity, accredited officials of foreign governments, their immediate families, attendants, servants, and personal employees may be admitted in immediate and continuous transit through the United States without regard to the provisions of INA 212(a), except paragraphs (3)(A), (B), (C), and (7)(B).
 - (2) The Department assumes that the reciprocity required by INA 212(d)(8) exists with respect to A visas unless a report is received to the contrary. Posts should submit such reports to CA/VO/F via email whenever a foreign government imposes restrictions or conditions on U.S. Government officials. These reports are in addition to those required by [9 FAM 403.8-2](#) and 403.8-3 above).
- c. **Instances Where Temporary Visa Schedule Is Used:** A temporary schedule should be used until a reciprocity schedule has been determined with respect to a particular country.

9 FAM 403.9

(U) NIV ISSUANCES

(CT:VISA-388; 06-20-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 403.9-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 403.9-1(A) (U) Immigration and Nationality Act

(CT:VISA-184; 09-22-2016)

INA 101(a)(30) (8 U.S.C. 1101(a)(30)); INA 212(d)(4) (8 U.S.C. 1182(d)(4)); INA 212(a)(7)(B); INA 221(a) (8 U.S.C. 1201(a)); INA 221(c) (8 U.S.C. 1201(c)).

9 FAM 403.9-1(B) (U) Code of Federal Regulations

(CT:VISA-184; 09-22-2016)

22 CFR 41.104; 22 CFR 41.111; 22 CFR 41.112; 22 CFR 41.113.

9 FAM 403.9-2 (U) NIV ISSUANCE PROCEDURES

9 FAM 403.9-2(A) (U) Data Entry

(CT:VISA-368; 05-30-2017)

a. (U) Entering Information in the Machine Readable Visa (MRV) Data Field:

- (1) (U) You must ensure entry of the following information in the MRV data field before you may issue a visa:
 - (a) (U) Full name of applicant;
 - (b) (U) Visa type;
 - (c) (U) Visa class;
 - (d) (U) Passport information, including passport number, passport issuance date, passport issuance city, passport country, and passport expiration date;
 - (e) (U) Sex;
 - (f) (U) Date of birth;
 - (g) (U) Nationality;

- (h) **(U)** Number of entries allowed;
- (i) **(U)** Date of visa issuance;
- (j) **(U)** Date of expiration;
- (k) **(U)** Applicant's local address and telephone information; and
- (l) **(U)** SEVIS ID for all F, M, and J visa applicants.

(U) Note: Absent any of this information, the system will not accept the visa application. Prior to entering this information in the system, the personal data on Form DS-160, Online Nonimmigrant Visa Application, should be checked against the personal data page in the passport to ensure accuracy.

- (2) **(U)** The name of the visa issuing post and the control number are automatically printed on the MRV.
 - (3) **(U)** The data fields do not accept special characters: comma, hyphen, asterisk, foreign-language diacritical marks, etc.
 - (4) **(U)** In certain countries where many nationals have only a surname, the applicant's first name should be entered as FNU. For example, "Smith, FNU", the "FNU" stands for "First Name Unknown."
- b. **(U) Entering Information in the Machine Readable Visa (MRV) Annotation Field:** You must place annotations on MRVs in the 88-character field beneath the word "Annotation." You may use abbreviations as necessary in the annotation field. (For example: P.A. vice Principal Applicant). Unlike the data field, you may employ various forms of punctuation (hyphen, period, etc.) in the annotation field, when appropriate.
- c. **(U) Use of Titles:** You may not enter titles such as "Dr.", "Sr.", "Mr.", "Mrs.", etc. in the data field on an MRV. However, you may use such titles in the annotation field, as appropriate.
- d. **(U) Altering Data on a Machine Readable Visa (MRV):** You may not enter handwritten annotations or alterations on an MRV. In the event of a data-entry error, you must re-enter information electronically in order to reissue the visa.

9 FAM 403.9-2(B) (U) Visa Issuance Case Notes

(CT:VISA-380; 06-12-2017)

- a. **(U)** You should enter case notes documenting all visa issuances. Even cases that appear to be routine (official travel, prior visas, history of good travel, etc.) may later develop certain aspects that invite further attention. Factual, brief case notes provide useful context. Officers should take particular care with any borderline, odd, or high profile cases.
- b. **(U)** You are not required to enter issuance notes in the comment field of the Form DS-160, Nonimmigrant Visa Application, and you should not duplicate your efforts by doing so.
- c. **(U)** As case notes are replicated in the Consular Consolidated Database (CCD),

issuance notes may assist travelers at the port of entry (POE). In the event the Department of Homeland Security/Customs and Border Protection (CBP) refers a traveler for secondary inspection, the issuance notes may provide CBP with an understanding of why the traveler was found to be eligible for a visa. Clear notes also assist the Visa Office's Public Outreach and Inquiries Division (CA/VO/F/OI) to assist with inquiries into cases that attract outside attention. Good case notes facilitate consular managers' online NIV adjudication review.

9 FAM 403.9-2(C) (U) Issuing More Than One Concurrently Valid Visa to an Applicant

(CT:VISA-368; 05-30-2017)

- a. **(U) Applicant Not to Possess More Than One Concurrently Valid Visa of the Same Type:** An applicant is not permitted to possess more than one valid visa of the same classification in the same type of passport (i.e., tourist, official, or diplomatic) at the same time. You should physically cancel such visas whenever you encounter them. You may defer to the applicant's choice of which visa you cancel when circumstances permit.
- b. **(U) Visas of Different Types For Applicants Proceedings to the United States for Different Purposes on Different Occasions:** If an applicant desires to travel to the United States on different occasions and the principal purpose of entry will not be the same each time, you should issue the applicant, if he or she is qualified, separate visas suitable to each purpose of entry. (For example, C-1 and D and B-2 and F.) Except in the case of a crewman as described in paragraph c, below, two visas may not be issued concurrently to an applicant who contemplates changing the principal activity after admission without departing from the United States and making a new entry for a different purpose.
- c. **(U) Issuing Concurrently Valid Visas of Different Types:** You should collect a separate Machine Readable Visa (MRV) fee for each visa issued, except when issuing any combination of nonimmigrant visas (NIVs) on one MRV foil (e.g., B-1/B-2 or C-1/D) or a B-1/B-2 and a C-1/D when issued simultaneously to facilitate the entry of crew members (NOTE: This includes crewmen of both sea and air vessels). You should place separate visas in the passport, and collect the prescribed reciprocity fee, if applicable, for each visa issued. (For reciprocity fees, see country concerned in the country specific Reciprocity Schedules.) If appropriate, you may place the visas in separate travel documents. For example, a crewman might desire, upon arrival, to apply for admission as a temporary visitor while on leave from the vessel, and not as a member of the crew requesting shore leave. In such a case, the crewman would receive a D visa as a member of the crew in his or her seaman's book, which would be valid only for use in connection with service on a vessel. To be admitted as a temporary visitor, the crewman would need to obtain another travel document in which you would place a B visa. One additional exception to charging separate MRV fees for each visa type issued is for Cuban nationals who apply for a B1 and a B2 visa at the same time. See [9 FAM 403.4](#) for more details on NIV fees)

- d. **(U) Dual Nationals:** A dual (or multiple) national who possesses a passport for each country of nationality is permitted to have a visa issued in each passport, provided the visas are of different classification. E-1 and E-2 visas must be issued in the passport of the treaty country. (For a list of countries with which the United States has E-1/E-2 treaty agreements, see [9 FAM 402.9](#)). Validity of "E" visas may be found in the reciprocity schedule under country concerned. In cases in which the United States has formalized a treaty agreement with another country and has not yet established a permanent reciprocity schedule, then you should use the temporary reciprocity schedule.

9 FAM 403.9-2(D) (U) Review of Visa Issuances by Supervisors

(CT:VISA-368; 05-30-2017)

- a. **(U)** Consular managers must review as many nonimmigrant visa (NIV) issuances as is practicable, but not fewer than 10 percent of NIVs issued. Systematic, regular review of approved NIV applications is a significant management and instructional tool to maintain the highest professional standards of adjudication. It also ensures uniform and correct application of applicable law and regulations. This review should be done with a view to enhancing U.S. border security and ensuring consistent adjudication standards (see [9 FAM 601.4-2](#)). The designated consular manager must review the case and either confirm or disagree with the issuance and, in the case of disagreement with the issuance, explain the decision clearly in a case note. (See [9 FAM 307.4](#), Supervisory Duties, for information regarding supervisory review and VLA violations.)
- b. **Unavailable**
- c. **(U)** Reviewing officers should pay particular attention to issuances of inexperienced officers. The less visa adjudication experience an officer has, the greater the percentage of issuances that the consular manager should review. You should review at least 50 percent of the cases issued by an officer with no previous NIV adjudication experience during his or her first month. As an officer gains experience and competence over time, the percentage of issuances reviewed should decline as deemed appropriate by the reviewing officer and ultimately conform to the norm outlined above.
- d. **(U)** The reviewing officer should be the issuing consular officer's direct supervisor, regardless of whether the reviewing officer has a consular commission and title. In all cases, the reviewing officer must be in the issuing officer's supervisory chain of command. While the reviewing officer may wish to see the complete paper documentation associated with the cases reviewed, he or she must indicate his or her decision in the NIV Adjudication Review report in the Consular Consolidated Database (CCD). The issuances must be reviewed without delay; that is, on the day of the issuance or as soon as is administratively possible.
- e. **(U)** If the chain of command rule of the previous paragraph results in a reviewing officer who does not have a consular commission and title (some Deputy Chiefs of

Mission, for example, may not be authorized to adjudicate visas), that officer must nevertheless review issuances. The review should focus on, but not necessarily be limited to, the visa recipient's likelihood to maintain lawful status in the United States and not engage in activities beyond the scope of the visa category, including his or her potential threat to people and property in the United States. Reviewing officers should be alert to patterns of issuances that appear to fall outside the general norms for a post, such as issuances to TCNs or applicants who appear only marginally eligible, or unexplained overcomes of hard refusals. While reviewing officers without consular experience cannot be expected to know the breadth and depth of visa statutes and regulations, they can add value to the issuance process by applying their knowledge of national security threat assessments, local conditions, and global trends. At posts with a single consular officer, the reviewer, adjudicating officer and Regional Consular Officer (RCO) must make issuances a regular topic of discussion during the RCO's visits.

- f. **(U)** If a reviewing officer as described in the above paragraph concurs with the issuance, he or she, like any other reviewing officer, must indicate his or her decision in the NIV Adjudication Review report in the CCD.
- g. **(U) Non-Concurrence With Issuance by Reviewing Officer:**
- (1) **(U)** If a reviewing officer with a consular commission and title does not concur with the issuance, he or she may assume responsibility and re-adjudicate the case. The reviewing officer must discuss the case fully with the original adjudicating officer before taking any action. The reviewing officer must not refuse an applicant under INA 214(b) without re-interviewing the applicant in person or by phone unless the disagreement involves a procedural error or a matter of law. If the reviewing officer reverses the issuance and the visa has not yet been printed, the applicant must be notified promptly. If the visa has been issued and printed it must be revoked per [9 FAM 403.11](#). The reviewing officer should enter a note in the NIV Adjudication Review in the CCD that explains the reason for overturning the issuance.
 - (2) **(U)** A reviewing officer without a consular commission and title may not issue or refuse a visa. Therefore, if such a reviewing officer does not concur with the issuance, printing of the case must be suspended, and the reviewing officer must:
 - (a) **(U)** Discuss the basis for the original issuance, especially elements of fact, with the adjudicating officer in a good faith attempt to arrive at a mutually acceptable final adjudication of the application.
 - (b) **(U)** If such a discussion cannot resolve the issue, the RCO, if the post is covered by an RCO, should be consulted for his or her insight with a view to coming to a mutually agreed-upon adjudication. If the discussion cannot occur in a timely fashion, the case should be removed from the print queue and entered as an INA 221(g) refusal pending the outcome of this larger review and discussion.
 - (c) **(U)** If the difference of opinion is based upon a legal or procedural issue

that cannot be resolved by consulting Departmental guidance at post (the INA, FAM, CMH, cable guidance, etc.), post should seek Visa Office guidance (legal questions should be referred to CA/VO/L/A and procedural questions to CA/VO/F).

(d) **Unavailable**

(e) **(U)** If, despite these efforts, no mutually agreed-upon adjudication can be achieved, the issuance stands. In any case, a note of the discrepancy must be made in the comment field of the Form DS-160, Online Nonimmigrant Visa Application and in the NIV Adjudication Review Report in the Consular Consolidated Database (CCD).

9 FAM 403.9-3 (U) PASSPORT REQUIREMENTS

9 FAM 403.9-3(A) (U) Passport Must be Issued by a Competent Authority

9 FAM 403.9-3(A)(1) (U) Interpreting "Competent Authority"

(CT:VISA-184; 09-22-2016)

- a. **(U)** The term "competent authority" as used in INA 101(a)(30) means an official who is duly authorized to issue passports by the government of the country of issuance. The term is not linked with the maintenance of diplomatic relations with, or recognition by, the United States. Accordingly, the Department will determine, on a case-by-case basis, whether a passport-issuing authority is a "competent authority" within the meaning of INA 101(a)(30).
- b. **(U)** World Service Authority Passports are **not** acceptable as "passports" for visa issuing purposes. The World Service Authority is a private organization and not a "competent authority" within the meaning of INA 101(a)(30). The document is a 40-page, passport-size document with a bright blue cover with gold lettering.
- c. **(U) Travel Documents Presented by Nationals of Entities Not Having Formal Diplomatic Relations With the United States:**
 - (1) **(U)** You may place nonimmigrant visas (NIVs) in travel documents issued by the following entities with which the United States does not have formal diplomatic relations, provided the travel documents otherwise meet the definition of the term "passport" as contained in INA 101(a)(30) and 22 CFR 41.104(a):
 - (a) **(U)** Bhutan;
 - (b) **(U)** Iran;
 - (c) **(U)** West Bank and Gaza; and
 - (d) **(U)** Taiwan (except diplomatic and official passports).

- (2) **(U)** You may not place nonimmigrant visas (NIVs) in travel documents issued by the Government of North Korea, with which the United States does not have formal diplomatic relations, unless specifically authorized by CA/VO/L/A.
- d. **(U)** Refer to the reciprocity schedules under the country of issuance, to this section and [9 FAM 403.9-3\(A\)\(2\)](#) below, for descriptions of certain documents which do not fulfill the requirements of a passport as defined in INA 101(a)(30).

9 FAM 403.9-3(A)(2) (U) Travel Documents Issued by International Organizations

(CT:VISA-368; 05-30-2017)

- a. **(U) United Nations Laissez-Passer:** See [9 FAM 402.3-7\(D\)\(6\)](#) for information about placing G-4 visas in a UN Laissez-Passer.
- b. **(U) Organization of American States Official Travel Document:** The official travel document of the Organization of American States (OAS) is issued to an employee of the OAS General Secretariat or other agency of the OAS. The purpose of the document is to identify the holder as an official or employee of an agency of the OAS and to facilitate travel compatible with the interests of the OAS. The document is not considered a "passport" as defined in INA 101(a)(30) therefore, visas must not be placed in this document.

9 FAM 403.9-3(A)(3) (U) Travel Documents Issued by the European Union

(CT:VISA-368; 05-30-2017)

(U) Only official type A-1, A-2, and G-3 visas may be placed in a European Union Laissez-Passer (EULP). See [9 FAM 402.3-4](#) for information about placing visas in an EULP.

9 FAM 403.9-3(B) (U) Passport Validity

9 FAM 403.9-3(B)(1) (U) Passport Must Be Valid Six Months Beyond Initial Period of Stay

(CT:VISA-184; 09-22-2016)

(U) A nonimmigrant visa is only to be issued in passports that are valid for at least six months beyond the initial period of contemplated stay in the United States, except in the following circumstances:

- (1) **(U)** The alien is within the purview of 22 CFR 41.21(b) exceptions from passport validity requirements for certain A, G, and NATO aliens;
- (2) **(U)** The passport requirement has been waived in the alien's case pursuant to INA 212(d)(4);
- (3) **(U)** The alien has F (student) classification and is granted admission for the

period required to complete the course of study indicated on Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status. Note that the student's passport should maintain a validity of at least six months beyond the anticipated departure date; or

- (4) **(U)** The alien's passport was issued by a country having entered into an agreement with the United States for the extension of the validity of their passports for a period of six months beyond the expiration date specified in the passport. The countries listed in [9 FAM 403.9-3\(B\)\(2\)](#) paragraph f below have an agreement with the United States whereby their passports are recognized as valid for return to the country concerned for a period of six months beyond the expiration date specified in the passport.

9 FAM 403.9-3(B)(2) (U) Countries That Extend Passport Validity for an Additional Six Months After Expiration

(CT:VISA-263; 12-07-2016)

- a. **(U)** Some countries have agreements with the United States whereby their passports are recognized as valid for return to the country concerned for a period of six months beyond the expiration date specified in the passport. The effect of these agreements is to extend the period of validity of the passport for six months beyond the expiration date appearing on the face of the document, for the purposes of INA 212(a)(7)(B)(i)(I).
- b. **(U)** As passports issued by the countries listed in paragraph f below meet the requirements of INA 212(a)(7)(B)(i)(I) until the date shown for expiration, the consular officer could issue a visa at any time prior to that date. However, such action might not be practical when only a very narrow margin of time remains.
- c. **(U)** The consular officer shall inform the visa recipient that admission into the United States will not be granted by the immigration authorities for a period extending beyond the actual expiration date shown in the passport, and that the alien's stay in the United States cannot be extended beyond that date until an extension of the validity of the passport has been obtained.
- d. **(U)** The consular officer shall not issue a visa on the basis of an expired passport unless the applicant is able to present to the consular officer collateral documentation, which together with the expired passport, meets the requirements of INA 101(a)(30) and INA 212(a)(7)(B)(i)(I).
- e. **(U) Negotiations Regarding Extended Passport Validity:** Diplomatic missions located in countries which place a time limitation on the validity of their passports and which have not entered into agreements of the type above should invite the governments to which they are accredited to give written assurances that bearers of their passports entering the United States as nonimmigrants will be readmitted to the countries of which they are nationals for a period of 6 months beyond the expiration date of their passports. Posts should explain to the government concerned the provisions of INA 212(a)(7)(B)(i)(I) which make such action desirable. Posts must scan and e-mail a copy of any assurances received to

CA/VO/L/R. Posts must then mail the original document containing the assurances to CA/VO/L/R.

- f. **(U) Countries That Extend Passport Validity for an Additional Six Months After Expiration:** U.S. citizens should make sure that they have at least six (6) months left on their passport prior to its expiration date or else they may not be permitted to board the airline. Some countries require that a traveler's passport be valid for at least six months beyond the dates of the trip. Travelers should contact the embassy of their foreign destination for more information. Foreign embassy and consulate contact information can also be found in the Country Specific Information pages at the Department of State's travel website.

Andorra

Angola

Antigua and Barbuda

Antilles

Argentina

Armenia

Aruba

Australia

Austria

Bahamas, The

Barbados

Belgium

Belize

Bermuda

Bolivia

Bosnia-Herzegovina

Brazil

Bulgaria *

Burma

Canada

Chile

Colombia

Costa Rica

Cote D'Ivoire

Croatia *

Cyprus

Czech Republic
Denmark
Dominica (DOMN)
Dominican Republic
Egypt
El Salvador
Estonia
Ethiopia
Federated States of Micronesia
Fiji
Finland
France
Gabon
Georgia
Germany
Greece
Grenada
Guatemala
Guinea
Guyana
Haiti
Holy See (Vatican City)
Hong Kong
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Kosovo *

Latvia
Lebanon
Libya
Liechtenstein
Lithuania
Luxembourg
Macau
Macedonia
Madagascar
Malaysia
Maldives
Malta
Mauritania
Mauritius
Mexico
Monaco
Mongolia
Montenegro
Mozambique
Nepal
Netherlands
New Zealand
Nicaragua
Nigeria (NRA)
Norway
Pakistan
Palau
Panama
Papua New Guinea (PNG)
Paraguay *
Peru
Philippines
Poland

Portugal
Qatar
Romania
Russia
San Marino
Saudi Arabia *
Serbia
Seychelles
Singapore **
Slovakia
Slovenia
South Africa
South Korea
Spain
Sri Lanka
St. Kitts and Nevis
St. Lucia
St. Vincent and The Grenadines
Suriname
Sweden
Switzerland
Taiwan
Thailand
Trinidad and Tobago
Tunisia
Turkey
Tuvalu
Ukraine
United Arab Emirates
United Kingdom
Uruguay *
Uzbekistan
Venezuela

Zimbabwe

(U) * These countries extend passport validity reciprocity to U.S. citizens.

(U) ** Extension of passport validity reciprocity to U.S. citizens does not apply to U.S. citizens entering Singapore; it only applies to U.S. citizens already in the country. Singapore will allow a U.S. citizen, already in Singapore, who holds a U.S. passport, which has expired within the six (6) months period beyond the expiry date, to return to the United States. This is on the assumption that the bearer of the passport is still a U.S. citizen.

9 FAM 403.9-3(B)(3) (U) Passport Validity Insufficient to Cover U.S. Visit

(CT:VISA-184; 09-22-2016)

(U) If an applicant presents a passport valid for more than six months but not sufficient to permit admission for the entire period of stay contemplated, the consular officer shall urge the applicant to have the passport extended, renewed, or replaced before visa issuance. In the event that this is not feasible until after the alien's arrival in the United States, the officer may issue the visa. The officer shall then advise the applicant that the initial period of stay will be limited because of the limited validity of the passport. The consular officer should also explain the procedures for seeking an extension of stay from the Department of Homeland Security (DHS). Except for aliens covered by the provisions of [9 FAM 403.9-3\(B\)\(2\)](#) above, the passport must be valid for more than six months, since an alien presenting a passport valid for six months or less would be inadmissible at a port of entry (POE).

9 FAM 403.9-3(B)(4) (U) Visa Valid in Expired Passport

(CT:VISA-184; 09-22-2016)

- a. **(U)** When a passport containing a valid visa expires, the expiration of the passport has no effect on the validity of that visa. The holder, however, shall be informed, at the time of application for admission, of the need for a new or renewed passport.
- b. **(U)** The passport should be valid for a minimum period of 6 months from the expiration date of the initial period of admission or contemplated period of stay in the United States. The passport may be either the one in which the visa stamp has been placed, or a new passport. Thus, an alien can present two passports; one which fulfills the visa requirement and the other the passport requirement. The alien's nationality, as indicated in the new passport, must be the same as that shown in the passport bearing the visa foil.

9 FAM 403.9-3(C) (U) Restrictions on Passports

(CT:VISA-184; 09-22-2016)

- a. **(U) Applying Within Country of Issuance:** If an applicant for a nonimmigrant visa (NIV) presents a valid passport in the country whose authorities have issued that passport, and if the passport contains an endorsement as not being valid for travel to the United States, the consular officer shall not issue a visa until the endorsement has been removed by the appropriate authorities. The reason for this is twofold:
- (1) **(U)** No useful purpose would be served in issuing a visa to an applicant who would, in effect, be forbidden to use that visa; and
 - (2) **(U)** Issuance of a visa in such circumstances could be regarded as an attempt to circumvent the laws or regulations of the country in which the post is located.
- b. **(U) Applying Outside Country of Issuance:** If an applicant is applying for a visa in a country other than the one which issued the passport containing a restriction on travel to the United States, but the passport is otherwise valid and the alien is otherwise eligible, the consular officer may issue a visa without regard to such restriction.
- c. **(U) No Effect on Validity of Nonimmigrant Visa:** Limitations on the validity of a passport do not affect the validity of the nonimmigrant visa. For example, the fact that a passport has been limited by the issuing authority to a single trip to the United States would not preclude issuance of a visa valid for unlimited applications for admission, if so prescribed in the appropriate reciprocity schedule.

9 FAM 403.9-3(D) (U) Using Form DS-232, Unrecognized Passport or Waiver Cases When Visa is Not Placed in Passport

(CT:VISA-184; 09-22-2016)

(U) All visa-issuing offices should use Form DS-232, Unrecognized Passport or Waiver Cases, in complying with the provisions of 22 CFR 41.113(b). In all cases, except those listed in 22 CFR 41.113(b)(1) through (3), you must obtain the Department's specific authorization (please contact CA/VO/L/A) before issuing an NIV on Form DS-232. See [9 FAM 403.9-6\(B\)](#) below for information about placing an MRV on a DS-232.

9 FAM 403.9-3(E) (U) Samples of Foreign Passports

(CT:VISA-368; 05-30-2017)

(U) The Department (as well as other Government agencies) requires up-to-date information regarding the types of passports issued by foreign governments for temporary travel purposes, the criteria for their issuance, the qualifications of the persons to whom they are issued, the period of validity of such passports, whether more than one person may be included in a single passport, and whether the photograph requirements of 22 CFR 41.105(a)(3) can be met. The Department also

requires information regarding other pertinent foreign passport regulations in order to determine, for example, whether a passport may be considered the "equivalent" of a diplomatic passport. Accordingly, the Department requests all posts dealing with a central government authority to report on the types of passports currently issued by the governments to which they are accredited and the classes of persons to whom such documents are issued, accompanied by two samples of new passports and other similar or equivalent documents which may have been issued since the previous report on the subject (provided the regulations of the government concerned permit this).

9 FAM 403.9-4 (U) VALIDITY OF NONIMMIGRANT VISAS

9 FAM 403.9-4(A) (U) Visa Validity Versus Period of Admission

(CT:VISA-184; 09-22-2016)

- a. **(U)** A visa is not the same as immigration status. Many travelers confuse the two. A visa does not entitle the bearer to enter or remain in the United States.
- b. **(U)** The validity of a visa refers to the time in which an applicant may make application to an immigration officer at a port of entry for admittance into the United States. It has no bearing on the length of time for which the alien may be admitted. For example, an alien whose B-1 visa may expire a month after entry into the United States, could be admitted by a Department of Homeland Security (DHS) officer at a port of entry (POE) for a stay of up to one year. On the other hand, an alien whose B-1 visa has a validity of one year may be granted a stay of only one month, as may be determined by a DHS official at a port of entry.
- c. **(U) Expired Nonimmigrant Visa:** An "expired nonimmigrant visa" means a visa which is no longer valid due to the passage of time or because the maximum number of entries for which the visa is valid has been reached.

9 FAM 403.9-4(B) (U) Validity of Nonimmigrant Visas

(CT:VISA-184; 09-22-2016)

- a. **(U) Maximum Period of Validity:** The maximum validity of any nonimmigrant visa (NIV) is 10 years, but may be limited to less than 10 years on the basis of reciprocity. (See [9 FAM 403.8](#) and Visa Reciprocity and Country Documents Finder.) Reciprocity schedules apply to nationals, permanent residents, refugees, and stateless residents of the countries concerned.
- b. **(U) Posts Encouraged to Issue Full-Validity Visas:** Posts are encouraged to issue full-validity visas. The routine issuance of limited validity visas runs contrary to that policy. Although 22 CFR 41.112(c) gives you the discretion to limit visa validity, this authority should be used very sparingly, preferably under the guidance of an experienced consular manager, in cases where the applicant's current

circumstances meet the requirements for visa issuance but may not continue to do so in the long term.

- c. **(U) Visa Validity and Clearances in Out of District Cases:** You are encouraged to issue full validity visas to aliens who qualify for a nonimmigrant visa, even when the application is made away from the alien's normal place of residence. Pre-clearances with another post on out-of-district applicants need be done only when required by the Department's regulations or instructions, or when you consider it necessary in order to establish the applicant's eligibility. Such a clearance is not required, for example, in the case of an alien from a traditionally low-risk country whose bona fides are evident to the officer. Post-checks (after visa issuance) are of limited use and may be dispensed with, unless specifically required by regulations or instructions.
- d. **(U) Reasons Behind Issuing Full-Validity Visas:** The validity of and authorized number of entries in a U.S. visa are based on the principle of reciprocity. (See [9 FAM 403.8](#).) Visas are issued to nationals of another country based on the visa policy of the government of that country towards U.S. citizens. In addition, if you determine an applicant is qualified under the law for a visa that decision should apply to future trips as well. If you are not convinced the applicant would fulfill the terms of his or her visa in the future, you should refuse the visa under INA 214(b).
- e. **(U) Ramifications of Limiting Validity of Visas:** The practice of limiting visa validity of a country's applicants may lead the host government to raise an objection that the United States is not according reciprocal treatment to its nationals. This could create the unfortunate situation where the host government may retaliate against our restrictive issuances by imposing more stringent visa validities and numbers of entries on U.S. travelers to that country. Therefore, limitation of visa validity should not be undertaken without good reason, nor should it become standard practice toward all nationals of a given country.

9 FAM 403.9-4(C) (U) Limitations on Visa Validity

(CT:VISA-380; 06-12-2017)

- a. **(U) When Visa Validity May be Limited:** Visa validity may only be limited in accordance with 22 CFR 41.112(c), which allows a consular officer, if warranted in an individual case, to issue a nonimmigrant visa for:
 - (1) **(U)** a period of validity that is less than that prescribed on a basis of reciprocity;
 - (2) **(U)** a number of applications for admission within the period of the validity of the visa that is less than prescribed on a basis of reciprocity;
 - (3) **(U)** application for admission at a specified port or at specified ports of entry;
or
 - (4) **(U)** use on and after a given date subsequent to the date of issuance.
- b. **(U) Limitations Should be Used Judiciously:** You must exercise with caution the discretionary authority accorded by 22 CFR 41.112(c)(1) and (2) when limiting

the validity of visas. The routine practice of limiting visa validity may lead to complaints by the host government that consular officers are biased and the United States has failed to accord reciprocal treatment to the host government's nationals. Such a practice may also result in an unnecessary increase in workload. The reapplication rate of aliens with limited visas is relatively high at many posts. Therefore, the period of time and the number of applications for admission for which a nonimmigrant visa is valid must not be restricted without due cause to less than that permitted by the reciprocity schedules. Limiting visa validity may also impact the equities of other parts of the United States government.

c. (U) Validity/Entries Limitations:

- (1) **(U)** You can restrict a visa to less than full validity only if you believe the applicant qualifies as a nonimmigrant for a limited period of time or a limited number of visits.
- (2) **(U)** You cannot limit visas when you have doubts of the applicant's bona fides or believe that issuing a less than full validity visa would better facilitate travel, unless otherwise allow by law, regulation, or FAM guidance or are directed by the Department.

(U) Note: When an applicant's bona fides are in question, such applications should rightly be refused under INA 214(b).

- (3) **(U)** Limitations of visa validity are most appropriate when the applicant's bona fides in the immediate near term are not in question, but the stability of the applicant's longer-term ties to his or her residence abroad are in doubt. At most posts, such cases should constitute only a small percentage of the nonimmigrant visa caseload. (See [9 FAM 403.9-5](#) below for procedures on annotating visas when limiting validity in accordance with this guidance.)

(4) (U) Validity of A-3 and G-5, and NATO-7 Visas:

(a) **(U)** As a matter of policy, the standard and customary practice is to issue A-3, G-5, and NATO-7 visas for a maximum period provided for in the Reciprocity Schedule of the country concerned.

(b) **(U)** The validity of an A-3, G-5, or NATO-7 visa may not exceed the validity of the visa held by the employer, who would be the bearer of an A-1, A-2, G-1 through G-4, or NATO-1 through NATO-6 visa.

(c) **(U)** The validity of NATO-7 visas for personal employees from non-member NATO countries is based on the A-3 data provided in the reciprocity schedule of the respective country of the NATO-7 alien (see [9 FAM 402.3-9\(B\)\(6\)](#)).

- (5) **(U) Validity of B-1 Visa Issued to Personal Servant or Employee:** The validity of a B-1 visa issued to a personal employee who is accompanying a nonimmigrant employer must not exceed the validity of the visa issued to the employer. (See [9 FAM 402.2-5\(D\)](#) for cases in which the B-1 classification is authorized for personal employees of nonimmigrant employers.)

d. Unavailable

e. **(U) Limitations on Visas Requiring Posting of Bond:**

(U) Limitation for One Entry and Six Months: In cases where a bond has been required and posted, you must limit the visa to one entry, valid for six months. This will enable DHS to cancel bonds upon request without communicating with the visa-issuing post.

f. **(U) Validity of G-4 Visa Issued in U.N. Laissez-Passer:** See [9 FAM 402.3-7\(D\)\(6\)](#). The Secretary General, all under secretaries, and all assistant secretaries general of the United Nations may be issued G-4 diplomatic visas valid for 60 months with multiple entries. The visas, however, must be placed in the national passport rather than in the Laissez-Passer. For all others at the United Nations or United Nations Secretariat, refer to the reciprocity schedule of the country concerned.

9 FAM 403.9-4(D) (U) Single-Entry Versus Multiple-Entry Visas

(CT:VISA-184; 09-22-2016)

- a. **(U)** Posts may not routinely issue single-entry visas when the Reciprocity Schedule allows the issuance of multiple-entry visas. Such a practice increases workload for posts and could cause problems for travelers and ports of entry; for example, Caribbean cruise ships often stop at several foreign and U.S. ports (including the U.S. Virgin Islands and Puerto Rico) during a single trip, requiring multiple-entry visas. Passengers with single entry visas may be denied boarding by a cruise line that may be subject to a fine for carrying non-admissible passengers. However, consular managers have the discretion to issue single-entry visas when the alien's itinerary indicates that only a single entry is needed and unusual circumstances surrounding the application argue for such a restriction.
- b. **(U) Issuance of Two-Entry Visa in Lieu of Reciprocal Single-Entry Visa:**
- (1) **(U) Same Purpose Required for Each Entry in Two-Entry Visa:**
 - (a) **(U)** An alien who wishes to make more than one application for admission during the course of a single journey may be issued a two-entry visa, even though the appropriate Reciprocity Schedule limits the validity of the visa to a single application. The alien must, on each occasion, be seeking admission for the same principal purpose, and the visa may not be valid for more than two applications for admission. This provision is applicable to all categories of nonimmigrant visas, except K visas.
 - (b) **(U)** A single journey means the applicant will not travel back to his/her country of residence before making a new application for admission to the United States. The applicant's travel plans will require him or her to enter the United States twice before returning home.
 - (2) **(U) Double Reciprocity Fee Prescribed:** When a reciprocity fee is prescribed in the Reciprocity Schedule for a single-entry visa, then that fee must be doubled when a visa is issued for two applications for admission. In

addition to the reciprocity fee prescribed in the Reciprocity Schedule, the machine-readable visa (MRV) fee listed in the Schedule of Fees in 22 CFR 22.1 must also be paid, but the MRV fee is not to be doubled. Only one machine readable visa (MRV) fee listed in the Schedule of Fees in 22 CFR 22.1 is collected even when a visa is issued for two applications for admission.

9 FAM 403.9-4(E) (U) Automatic Revalidation of a Nonimmigrant Visa

(CT:VISA-184; 09-22-2016)

- a. **(U)** According to 22 CFR 41.112(d), the validity of an expired nonimmigrant visa may be considered to be automatically extended to the date of application for readmission for a nonimmigrant alien who:
- (1) **(U)** Is in possession of a Form I-94, Arrival-Departure Record, endorsed by DHS to show an unexpired period of initial admission or extension of stay, or, in the case of a qualified F or J student or exchange visitor or the accompanying spouse or child of such an alien, is in possession of a valid Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status - for Academic and Language Students, or Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status;
 - (2) **(U)** Is applying for readmission after an absence not exceeding 30 days solely in contiguous territory, or, in the case of a student or exchange visitor or accompanying spouse or child, after an absence not exceeding 30 days in contiguous territory or adjacent islands;
 - (3) **(U)** Has maintained and intends to resume nonimmigrant status;
 - (4) **(U)** Is applying for readmission within the authorized period of initial admission or extension of stay;
 - (5) **(U)** Has a valid passport;
 - (6) **(U)** Does not require a waiver of ineligibility under INA 212(d)(3); and
 - (7) **(U)** Has not applied for a new visa while abroad.
- b. **(U) Eligibility for Automatic Revalidation After Change of Status:** Automatic Revalidation is available to aliens who have changed status in the United States and seek to use an expired nonimmigrant visa (in addition to a valid nonimmigrant visa).
- c. **(U) Certain Aliens Excluded From Use of Automatic Revalidation:** The Department has excluded aliens who apply for new visas during short visits to contiguous territory or adjacent islands and aliens who are nationals of countries identified as state sponsors of terrorism from the benefits of automatic revalidation of an expired NIV. The regulation also excludes nationals of countries identified as supporting terrorism: Iran, Sudan, and Syria

9 FAM 403.9-4(F) (U) Maximum Initial Periods of

Admission and Extension of Stay

(CT:VISA-368; 05-30-2017)

(U) Department of Homeland Security (DHS) regulations and Operations Instructions permit a maximum initial period of admission for nonimmigrants as follows:

CATEGORY	MAXIMUM INITIAL PERIOD OF ADMISSION	EXTENSION OF STAY
A-1	Duration of Status	Renewal of accreditation by the Department of State pursuant to a request from a foreign government. No fee.
A-2	Duration of Status	Renewal of accreditation by the Department of State pursuant to a request from a foreign government. No fee.
A-3	3 Years	An extension is granted in increments of two years. Form I-566, Interagency Record of Request - A, G or NATO Dependent Employment Authorization or Change/Adjustment to/from A, G or NATO Status to the Department of State. Form I-539, Application to Extend/Change Nonimmigrant Status Fee: \$300.
B-1	1 Year	Extensions granted for up to 6 months. For application of a religious denomination, up to 1 year. Form I-539, Fee: \$300.
B-2	1 Year (minimum = 6 months)	Extensions granted in increments of up to 6 months, dependents of Canadian TCs, up to 1 year. Form I-539, Fee: \$300.
Visa Waiver	90 days	Not entitled to extension.
Guam Visa	15 days	Not entitled to extension.
C-1	29 days	Not entitled to Extension.
C-2	Duration of Status at U.N.	Not entitled to extension unless otherwise indicated in consular notification, INA 212(d)(3) authorization or Department Of Homeland Security (DHS)/CO instruction.
C-3	29 days	Not entitled to extension.
D	29 days	Not entitled to extension.
E-1	2 years	Submit Form I-129, Petition for a Nonimmigrant Worker Free: \$320, Petition for Nonimmigrant Worker, along with E supplement and Form I-539, Fee: \$300, Application to Extend or Change Status, for accompanying relatives.

E-2	2 years	Submit Form I-129 for Nonimmigrant Worker, along with E Supplement, Fee: \$320, and submit Form I-539 or accompanying relatives. Fee: \$300.
F-1	Duration of status	Your Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status - for Academic and Language Students can be extended by the designated school official. Form I-20 extension should be filed along with your passport, Form I-94, Arrival-Departure document, a letter stating the reason for your extension.
F-2	Duration of status of F-1	As long as the principal F-1 maintains status as a student the F-2 is not required to seek extension of stay.
G-1	Duration of status	Not applicable.
G-2	Duration of status	Not applicable.
G-3	Duration of status	Not applicable.
G-4	Duration of status	Not applicable.
G-5	3 Years	Extensions granted in increments of up to 2 years. No Fee.
H-1B	Validity period of petition not to exceed 3 years, plus up to 10 days before and after validity period	Can be extended for a total stay of 6 years. Form I-129, Fee: \$320. Family members must file Form I-539, Fee: \$300.
H-2A	Validity of petition, plus up to one week before and 10 days after the validity period	The employer may apply for re-certification for an additional two years with one year extensions, but on each new application, the employer must justify the reason for the renewal request. Form I-129 Fee: \$320.
H-2B	Validity period of petition (date to which labor certification is valid or 1 year), plus up to 10 days before and after the validity period	The employer may apply for re-certification for an additional two years with one year extensions, but on each new application, the employer must justify the reason for the renewal request. Form I-129 Fee: \$320.
H-3	Validity of petition not to exceed 2 years plus up to 10 days before and after the validity	You may not apply for extension of stay on H-3 visa. Upon the completion of the period of stay you are must leave the U.S. as there is no extension facility for this visa.

	period	
H-4	Duration of status of H-1, H-2, H-3	Extension may be granted as long as the principal H visa holder maintains status. Form I-539, Fee: \$300.
I	Duration of Employment	Extensions of stay, in one year increments, may be granted as long as you continue in the same position or activity for which you were originally granted I status. Form I-539, Fee: \$300.
J-1	Period specified in Form DS-2019, plus 30 days	Extensions may be granted as long as it is necessary to complete the program. J-1 visitors must contact the responsible officer of their program for information on extensions.
J-2	Duration of status of J-1	Extension of stay depends on the principal J-1 visa extension.
K-1	90 days	Not entitled to extension, must get married within 90 days.
K-2	90 days	Not entitled to extension, if parent does not get married within 90 days, must depart within 30 days.
L-1	As authorized in petition, but not to exceed 3 years	Extensions of two years at a time may be allowed until you have been in the U.S. for a total of seven years if you are a manager or executive. Form I-129 and L Supplement, Fee: \$320
M-1	Period to complete course of study on I-20 M plus 30 days, or 1 year, whichever is less	You may apply for extension of stay on M-1 visa after the completion of your studies to pursue practical training. If approved, you will be allowed to have one month of practical training for every four months of study you have completed. You will be limited to six months total practical training time. Form I-539, Fee: \$300.
M-2	Duration of status of M-1	Form I-539, Fee: \$300.
N-8	3 Years	Form I-539, Fee: \$300.
N-9	3 years	Extensions granted in increments of up to 3 years, Form I-539, Fee: \$500.
NATO-1	Duration of status	Not applicable.
NATO-2	Duration of status	Not applicable.
NATO-3	Duration of status	Not applicable.
NATO-4	Duration of status	Not applicable.
NATO-5	Duration of employment in U.S. with NATO	Not applicable.

	member	
NATO-6	Duration of employment in U.S. with NATO member	Not applicable.
NATO-7	Duration of status if employed by NATO-1 through 4; 2 years if employed by NATO-5 or 6	None (If employed by NATO-5 or 6, extensions granted in increments of not more than one year).
TD	1 year	Form I-539, Fee: \$300.
TN	3 years	Extensions granted for up to one year. Form I-129, Fee: \$320.

9 FAM 403.9-5 (U) ANNOTATIONS

9 FAM 403.9-5(A) (U) Annotating Visas

(CT:VISA-368; 05-30-2017)

- a. **(U)** Annotating visas is a useful tool that can help both the visa holder and immigration inspectors at ports of entry (POE). In many circumstances, the Foreign Affairs Manual (FAM) requires you to annotate visas. Annotations also provide CA and others (through the Consular Consolidated Database (CCD)) with information, both current and historical, and may be the only manner in which certain information is collected in an electronic format. Understanding when to annotate and when not to annotate a visa, and what information should or must be included, is important in making annotations effective.
- b. **(U)** A visa annotation is a simple and useful method to convey information about a visa applicant and the circumstances under which a visa was issued, explain the circumstances or assumptions on which the visa decision was based, or clarify key factors which were considered at the time of adjudication. The information contained in a visa annotation should help facilitate an immigration inspector's decision on whether or not to admit the visa holder to the United States, and, if to admit, for how long. See [9 FAM 402.3-4\(H\)](#).
- c. **(U)** Annotations should be concise and should be understandable to persons outside the Department. Abbreviations may be used, but they must be clear and self-evident. You should not use jargon or shorthand. Annotations should always be constructive and informative. You should carefully review annotations to avoid conveying a negative tone.
- d. **(U) There are Five Principal Instances When You Must Annotate Visas:**
 - (1) **(U)** For certain classes of visas as required by regulation. See the individual visa classifications in [9 FAM 402](#) for guidance on how to annotate these visas;

- (2) **(U)** For B-1 visas issued for certain employment-like purposes. See [9 FAM 402.2](#) for annotation guidance;
- (3) **Unavailable**
- (4) **(U)** When you have decided to grant either a single-entry or less-than-full validity visa when a longer-term or multiple entry visa is available under visa reciprocity.
- (5) **(U)** EVUS-subject visas pursuant to current guidance.

9 FAM 403.9-5(B) (U) Annotating B-1 Visas

(CT:VISA-380; 06-12-2017)

- a. **(U) Employees of Foreign Airlines:** When issuing a B-1 visa to an employee of a foreign airline who is precluded from E-1 classification pursuant to [9 FAM 402.2-5\(E\)\(2\)](#), you must place the following notation in the annotation field of the MRV:

EMPLOYEE OF (Name of Airline)

- b. **(U) Domestic Employees:** When issuing a B-1 visa to a domestic employee of a nonimmigrant alien or of a U.S. citizen pursuant to [9 FAM 402.2-5\(D\)](#), you must place the following notation in the annotation field of the MRV:

PERSONAL OR DOMESTIC EMPLOYEE OF NONIMMIGRANT APPLICANT (EMPLOYER'S NAME)

or

PERSONAL OR DOMESTIC EMPLOYEE OF U.S. CITIZEN
(EMPLOYER'S NAME)

- c. **(U) Visiting Ministers Engaged in Evangelical Tour:** When issuing a B-1 visa to a minister proceeding to the United States to engage in an evangelical tour who does not plan to take an appointment with any one church, and who will be supported by offerings contributed at each evangelical meeting pursuant to [9 FAM 402.2-5\(C\)\(1\)](#), you must place the following notation in the annotation field of the MRV:

MINISTER OF RELIGION ON EVANGELICAL TOUR

- d. **(U) Peace Corps:** Posts must insert the designation "PEACE CORPS" in the annotation field of the MRV issued to an applicant who is proceeding to the United States under the Peace Corps Act (75 Statute 612).
- e. **(U) Persons Who Present a Letter Indicating They Need a Transportation Worker Identification Credential (TWIC):**

- (1) **(U)** You must annotate the visas of persons who present letters indicating they require Transportation Worker Identification Credentials (TWIC) with "TWIC letter received" to assist the Transportation Security Administration (TSA) to adjudicate TWIC applications. This annotation allows the bearer to apply for a TWIC in the United States, but it does not have any bearing on whether TSA will provide the applicant a TWIC. TSA conducts a full security threat assessment on each individual applicant, adjudicates the results, and makes an

informed decision to grant or deny a TWIC based on a comprehensive enrollment. Additionally, once presented with a TWIC, Maritime Transportation Security Act-regulated ports and facilities determine all access. You should scan the TWIC letter into the CCD as part of the case record. (See [9 FAM 403.9-5\(B\)](#) paragraph e(2) below.)

(2) **(U)** Transportation Worker Identification Credential (TWIC) Request Letter:

[Company Letter Head]

[Date]

United States Consulate

[Address]

RE: Transportation Worker Identification Credential (TWIC) Annotated B-1 Visa

Dear Sir or Madam:

This letter is to confirm that [First & Last Name] is currently employed by [Company Name]. [His/Her] employment with us began on [Month, Day, Year]. [He/She] holds the position of [Position Name]. [Mr./Mrs./Ms.] [Last Name] is a citizen of [name of country].

[Mr./Mrs./Ms.] [Last Name] intends to perform service in secure port areas and is requesting a B-1 visa. [His/Her] job involves tasks that require access to secure areas of a Maritime Transportation Security Act (MTSA) regulated vessel, facility, or outer continental shelf facility. The duration of this work assignment is expected to be [number of days/weeks /months]. The specific port areas and/or vessels at which Mr./Mrs./Ms. [Last Name] will be working are [name of facility(ies)/vessel(s), City(ies), and State(s)]. Therefore, a "TWIC LETTER RECEIVED" annotated B-1 visa is requested.

Please contact me at [Phone Number] directly should your office require any further information.

Sincerely,

[Name]

[Company Name]

[Signature]

9 FAM 403.9-5(C) (U) Annotating Academic ("F") and Nonacademic ("M") Student Visas

(CT:VISA-368; 05-30-2017)

- a. **(U) School Not Yet Selected:** If an applicant is undecided about which school he or she will attend (see [9 FAM 402.5-5\(R\)\(3\)](#)), you must issue a B-2 visa with a notation reading:

PROSPECTIVE STUDENT
SCHOOL NOT YET SELECTED

- b. **(U) Admission for School Entrance Examination or Interview:** If a prospective student is entering the United States for an admission interview or entrance examination (see [9 FAM 402.5-5\(R\)\(3\)](#)), you must issue a B-2 visa with an annotation reading:

PROSPECTIVE STUDENT

ADMISSION INTERVIEW
or
PROSPECTIVE STUDENT
SCHOOL ENTRANCE EXAMINATION

c. (U) Tourists Engaging in Short Study Course:

- (1) **(U)** For applicants whose primary purpose of travel is tourism, who, during their visits will incidentally engage in a short course of study, you must annotate the visa to read:

STUDY INCIDENTAL TO VISIT Form I-20,
Certificate of Eligibility for Nonimmigrant (F-1) Student Status for Academic and Language
Students NOT REQUIRED

- (2) **(U)** You must limit the number of entries to those required for participation in the specific tour-study program. (See [9 FAM 402.2-4\(A\)](#) paragraph (6).)

9 FAM 403.9-5(D) (U) Annotating "J" Visas-Exchange Visitors

(CT:VISA-368; 05-30-2017)

- a. **(U) Agency for International Development (AID) Grantees:** On every visa issued under AID Program G-2-0263, including the visas of family members of the principal applicant, you must place the following notation in the annotation field of the MRV:

SPONSORED BY AGENCY FOR INTERNATIONAL DEVELOPMENT (AID),
DEPARTMENT OF STATE

b. (U) Annotation Regarding Foreign Residence Requirement:

- (1) **(U)** Posts must place the following notation on each "J" visa issued:

BEARER IS SUBJECT TO SECTION 212(e).
TWO YEAR RULE DOES APPLY (Name of country)

or

BEARER IS NOT SUBJECT TO SECTION 212(e).
TWO YEAR RULE DOES NOT APPLY (Name of country)

- (2) **(U)** After the word "apply," you must annotate the name of the country that would satisfy the two-year residence and physical presence requirement if applicable. The country will in most instances be that which issued the applicant's passport.

9 FAM 403.9-5(E) (U) Annotations of Visas Requiring Petitions

(CT:VISA-368; 05-30-2017)

- a. **(U)** For visas which require petitions (except K visas - see [9 FAM 402.7](#) for information on annotating K visas), posts must enter the following in the petition screen:

- (1) **(U)** Petitioner's name;
 - (2) **(U)** Approved petition number;
 - (3) **(U)** Visa classification; and
 - (4) **(U)** Expiration date of the petition.
- b. **(U)** The name of the principal applicant should appear in the annotation field on the visa of each family member who is deriving status from the principal. For example:
- P.A.: JOHN DOE
 PET. NAME: HEALTHY LIFE, INC. PET. NO. LIN9517750446
 PET. EXP. DATE: 04 MAY 1996
- c. **(U)** For the annotation requirements for Individual L visas please see [9 FAM 402.12-7\(D\)](#) and [9 FAM 402.12-8\(F\)](#) for Blanket L visas.
- d. **(U)** If you limit the validity of an H, L, O, P, or Q visa to less than the period of validity on the petition or authorized extension of stay, you must also enter the following in the annotation field:
- (PETITION VALID/STAY AUTHORIZED) (as applicable)
 TO: DATE
- (See [9 FAM 402.12-17\(B\)](#) and [9 FAM 402.13-10\(G\).](#))

9 FAM 403.9-5(F) (U) Annotations Related to Grounds of Ineligibility Overcome and Waivers of Ineligibility

(CT:VISA-368; 05-30-2017)

a. (U) Overcoming a Ground of Ineligibility:

- (1) **(U)** When issuing a visa to an applicant who has overcome a refusal or quasi-refusal under an INA 212(a) ground of ineligibility, you must enter the following notation in the annotation field:

CLASS (code for specific ground of refusal) OVERCOME;
 Clearance received (date): Reference CCD Notes

- (2) **(U)** You should make the notation even if you have requested a deletion from CLASS or the Department has notified you that it will make a CLASS deletion. (See [9 FAM 303.3-4\(D\).](#))

b. (U) 222(G) Exemption: You should annotate nonimmigrant visas (NIVs) issued to aliens exempted from INA 222(g):

"INA Section 222(g) overcome under extraordinary circumstances".

c. (U) Annotation in INA 212(d)(3)(A) Waiver Cases:

- (1) **(U)** You must annotate visas to reflect instances in which applicants have had grounds of ineligibility either overcome or waived. Your failure to annotate the visa properly can cause extreme hardship for the alien traveler.
- (2) **(U)** When the Department of Homeland Security (DHS) waives a ground of exclusion under INA 212(d)(3)(A), you must enter the notation "212(d)(3)(A)"

in the annotation field followed by the number of the paragraph of INA 212(a) that has been waived. You should annotate the duration of stay authorized, the POE (if applicable), and an indication of the purpose of the visit, as follows:

212(D)(3)(A): (6)(C) 4 WEEKS-N.Y., N.Y.
CONFERENCE: HAPPY MOTORING COMPANY

- (3) **(U)** If DHS grants a waiver for multiple entries, a notation of the initial POE is sufficient, if specified in the waiver order. In addition, you must ensure that the visa's period of validity does not exceed that of the waiver.

d. (U) Permission Required by Department of Homeland Security (DHS) Washington District Office for Itinerary Changes or Extension of Stay:

If DHS or the Department notifies you that the Washington District Office must grant permission for any change in itinerary or extension of stay, you must insert the abbreviation "WAS" in the annotation field on the machine readable visa (MRV) regarding the INA 212(d)(3)(A) authorization. For example:

212(3)(A):(9)(6)(C) WAS-4 MONTHS NEW YORK, N.Y.
CONFERENCE HAPPY MOTORING COMPANY

- e. (U) Number of Entities and/or Period of Validity Authorized by Waiver Exceeds Reciprocity:** If DHS grants a waiver for more entries or a longer period than the appropriate visa reciprocity schedule specifies, posts must issue the visa only up to full validity, the number of entries and validity period listed in the reciprocity schedule on CAWeb. You may issue subsequent visas in such cases until the waiver period has expired.
- f. (U) Alien Previously Deported or Removed:** If DHS has granted consent to reapply for admission after the exclusion or deportation of an alien, you must insert the following notations in the annotation field:

INA 212(a)(9)(A) or INA 212(a)(9)(B)

as applicable, and

PERMISSION TO REAPPLY FOR ADMISSION GRANTED.

g. (U) Annotating Visas for Medical Reasons:

- (1) **(U) For All Nonimmigrant Visas (NIV) Except V Visas:** In the following cases, you should annotate the nonimmigrant visa (NIV) as indicated when the medical examination discloses a:

- (a) **(U)** Class A tubercular or other condition and a INA 212(d)(3)(A) waiver has been granted:

"MED: Class A: 212(d)(3)(A)"; or

- (b) **(U)** Class B tubercular conditions or Class B leprosy, non-infectious:

"MED: Class B".

- (2) **(U) For Nonimmigrant V Visas - Tubercular Cases:** In the following cases, you should annotate the nonimmigrant visa (NIV) as indicated when the medical examination discloses a:

- (a) **(U)** Class A tubercular or other condition and a INA 212(d)(3)(A) waiver has been granted:

"MED: Class A: DD-MM-YY (date of visa issuance)

212(d)(3)(A): (a)(1)(A)(i)

_____ (port of entry)"; or

- (b) **(U)** Class B tubercular conditions (but not for any other Class B conditions):

"MED: Class B (TB): DD-MM-YY (date of visa issuance)"

9 FAM 403.9-5(G) (U) Annotations Related to Consular Lookout and Support System (CLASS) Hits and Grounds of Ineligibility Overcome

(CT:VISA-368; 05-30-2017)

- a. **(U) Consular Lookout and Support System (CLASS) Hits:** You may annotate visas for persons whom the Department has cleared of exact matches for a CLASS hit, "NOT SAME AS CLASS ENTRY – see case notes." This annotation is optional and is based on your judgment. You need not specify the CLASS lookout code. You should enter any notes that would help clarify the annotation into the CCD.
- b. **(U) Overcoming a Ground of Ineligibility:**
- (1) **(U)** When issuing a visa to an applicant who has overcome a refusal or quasi-refusal under an INA 212(a) ground of ineligibility, you must enter the following notation in the annotation field:
 CLASS (code for specific ground of refusal) OVERCOME;
 Clearance received (date): Reference CCD Notes
 - (2) **(U)** You should make the notation even if you have requested a deletion from CLASS or the Department has notified you that it will make a CLASS deletion. (See [9 FAM 604.1](#), Automated Visa Systems.)
- c. **(U) Purpose and Duration of Stay When Validity is Limited:**
- (1) **(U)** In general, you should issue maximum-validity visas. (See [9 FAM 403.9-4\(B\)](#).)
 - (2) **(U)** When the validity of a visa is limited, you must annotate the visa indicating the applicant's purpose of travel and period of intended stay in the United States. For example:
 VISIT UNCLE IN SAN FRANCISCO - 3 WEEKS
 - (3) **(U)** A visa may be annotated in any case when you determine that the applicant is only nonimmigrant for the purpose of the particular visit for which the visa is issued. You may limit the visa validity in accordance with the guidelines in [9 FAM 403.9-4\(C\)](#) above. Such notations will materially assist DHS inspectors at POEs as well as at the domestic offices of DHS and are encouraged. However, you may not enter negative notations such as:

“NO ADJUSTMENT OF STATUS or EXTENSION OF STAY RECOMMENDED.”

which questions the visa recipient’s veracity and/or tend to tell DHS what to do or what not to do in a given case. Under no circumstances should an annotation prohibit activity in the United States which would be permitted under the visa category, or prohibit the alien from seeking an extension or adjustment of status. These questions are appropriately the responsibility of immigration inspectors and the DHS.

- d. **(U) Nationals of Certain Countries Restricted to Designated Ports of Entry (POEs):** If a visa recipient is restricted to a designated port or ports of entry and/or exit, you should indicate the port(s) in the 88-character field under the “Annotation section” on the MRV. If there is insufficient space to list the number of ports, you should annotate the visa to reflect the page on the reciprocity schedule that lists the ports of entry and/or exit for that country. (For port(s) of entry and/or exit, see the listing for the country concerned on the Visa Reciprocity Schedule on CAWeb.)

9 FAM 403.9-6 (U) THE MACHINE READABLE VISA (MRV)

9 FAM 403.9-6(A) (U) Information About the Machine Readable Visa (MRV)

(CT:VISA-184; 09-22-2016)

- a. **(U) The information on the MRV is printed on an adhesive foil and consists of five sections that:**
- (1) **(U)** Reflect the applicant’s biographic data;
 - (2) **(U)** Contain information about the visa itself (visa type, number of entries, date of issuance, and date of expiration);
 - (3) **(U)** Show the 88-character field used for annotating additional information about the recipient, when necessary; (e.g., annotation of a petition number, SEVIS number, etc.);
 - (4) **(U)** Display a digitized photo of the visa recipient; and
 - (5) **(U)** Contain a machine-readable zone (MRZ) consisting of two lines of highly sensitive coded data. Scanners connected to authorized computer networks can read the data located in the MRZ and instantly recall records associated with the MRV. Damage to either line may prevent the scanner from reading the data, requiring manual data-entry before processing, which could lead to delays at ports of entry. You should instruct MRV recipients to take care with their MRVs, avoiding folding the foil, and preventing contact between the foil and objects that could damage it, such as paper clips, staples, etc.
- b. **(U) Separate Machine Readable Visa (MRV) for Each Applicant:** You must

issue a separate MRV to each qualified applicant, even when the same passport includes multiple applicants. Therefore, a passport must contain at least one unmarked page for each visa issued. When possible, the page opposite the visa-ed page should also remain unmarked. This will provide space for the Customs and Border Protection (CBP) officer at the POE to annotate and/or stamp the applicant's passport at the time CBP admits the applicant into the United States.

c. (U) Example of Machine Readable Visa:

Lincoln Machine Readable Visa

The new visa has an entirely new design, and features three images: the statue of President Abraham Lincoln from the Lincoln Memorial, the dome of the U.S. Capitol building, and a column and cornice from a wing of the Capitol. In addition, interspersed into the background design, is the Preamble to the U.S. Constitution.

The new foils are printed on security paper, in contrast to the synthetic plastic material used for the "Teslin" visa issued since 1994. The photograph and biographic data will be added to the new visa using an ink-jet printer instead of a laser printer. These changes will provide far more security in preventing alteration of the data or photograph.

The formatting of the machine readable zone, personal data and photo has not changed. The new visa continues to use the MRV 2000 formatting enhancements.

The left margin is cut irregularly.

The Preamble uses 12 different type fonts.

The background in the machine readable zone is printed with the split fountain process (rainbow printing).

The intaglio portion contains microprinting in several areas. The lower margin of the blue and red border reads, repeatedly, "The United States of America." In addition, the region behind the heading "VISA" also repeats the same phrase numerous times using small letters.

The upper blue, red and gold portion is printed using the intaglio method. The metallic gold ink is optically variable, changing color to some extent when the viewing angle is changed.

The offset-printed portion of the visa uses several different inks, some of which are designed to react to chemical solvents.

The red serial number is printed in letterpress.

The very bottom and part of the right margin are not printed and appear white.

In the gold-colored intaglio border, a latent image, the word "VISA", becomes visible when viewed at the proper angle.

9 FAM 403.9-6(B) (U) Placement of a Machine Readable Visa (MRV) in a Passport or on a DS-232

(CT:VISA-184; 09-22-2016)

- a. **(U) Placement of a Machine Readable Visa (MRV) in a Passport:** You must place an MRV as close as possible to the bottom and left sides of the passport page to optimize MRV reader performance.
- b. **(U) Placing a Machine Readable Visa (MRV) on Form DS-232: Unrecognized Passport or Waiver Cases:**
 - (1) **(U)** You must place the MRV on Form DS-232 in those instances in which the applicant does not possess and cannot readily obtain a valid passport.
 - (2) **(U)** The bottom part of the MRV should be placed as close as possible to the lower right corner on the Form DS-232, Unrecognized Passport or Waiver Cases

(see [9 FAM 403.9-3\(D\)](#) above). Placing the MRV at this location will help optimize MRV reader performance. You should carefully fold the Form DS-232 before you insert it into a passport, in order to prevent the MRV itself from being creased or folded.

- (3) **(U)** Since the MRV contains a photograph of the visa recipient, you do not have to place an additional photo of the applicant on Form DS-232.

c. **(U) Sample Form DS-232:**

U.S. Department of State
UNRECOGNIZED PASSPORT OR WAIVER CASES

The below named traveler has a passport that is not recognized by the U.S. Department of State or has had the passport requirement waived. This visa is being issued per 22 CFR 41.113(b).

06-232
12-2006

d. **(U) Scanning the Machine Readable Visa (MRV):**

- (1) **(U)** After the MRV has been placed in the travel document, you should perform quality assurance (QA) on the visa to ensure that the coded data are error-free. You should take the following steps in scanning an MRV:
- (a) **(U)** You should place the visa-ed page face down on the left side of the QA reader with the coded data lined up against the border guide;
 - (b) **(U)** You should then pass only the page containing the visa through the reader; and
 - (c) **(U)** You should then swipe the passport manually toward the reader's opening, from left to right.
- (2) **(U)** The QA reader will feed the passport through the reader while you hold the passport. If the coded data are error-free, the reader will display a green

light. If a red light appears, this indicates an error in the visa that you must correct before returning the passport to its owner.

9 FAM 403.9-7 (U) REPORTING ISSUED VISAS AS LOST OR STOLEN

(CT:VISA-388; 06-20-2017)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**
- e. **Unavailable**
- f. **Unavailable**
- g. **Unavailable**
- h. **Unavailable**
- i. **Unavailable**
- k. **(U)** Refer to [9 FAM 504.10-5\(A\)](#) for additional information on reporting LASP immigrant visas and boarding foils.

9 FAM 403.9-8 (U) MAINTENANCE OF STATUS AND DEPARTURE BOND

(CT:VISA-368; 05-30-2017)

(U) The second proviso to INA 221(g) provides for the posting of the maintenance of status and departure bond only in cases of applicants for B or F visas. The posting of such a bond should be required of an applicant only if the consular officer is not fully satisfied that the applicant will maintain visitor or student status in the United States and depart as required. Under no circumstances should a consular officer rely on such a bond as a substitute for a reasoned judgment with respect to the applicant's eligibility for a visa.

9 FAM 403.9-8(A) (U) Bonds Should Rarely Be Used

(CT:VISA-368; 05-30-2017)

- a. **(U)** Although 22 CFR 41.11(b)(2) permits consular officers, in certain cases, to require a maintenance of status and departure bond, it is Department policy that such bonds will rarely, if ever, be used. The mechanics of posting, processing and discharging a bond are cumbersome, and many Department of Homeland Security (DHS) offices are reluctant to accept them. In addition, the nature of the bond can often lead to misunderstanding and confusion, especially in countries where surety

bonds are uncommon. The result can be a public misperception that the consular officer has actually requested a bribe in order to issue the visa.

- b. **(U)** Bonds are not effective guarantees of departure. In an era when some potential migrants are willing to pay thousands of dollars for false documents or smugglers' services, possible forfeiture of a bond is little deterrence, and sometimes might be cheaper than other means of illegal entry. If an applicant is likely to violate status or fail to return to his or her residence abroad, the officer should refuse the visa under INA 214(b).
- c. **(U) Department Approval Required:** You must obtain approval from the Department (CA/VO/F) before requesting that an applicant post a maintenance of status and departure bond.

9 FAM 403.9-8(B) (U) Procedures Relating to Bonds

(CT:VISA-368; 05-30-2017)

(U) The maintenance of status and departure bond is to be posted with the DHS district director having jurisdiction over the area of the United States in which the applicant proposes to visit or pursue a course of study. After acceptance by the DHS, the bond is valid for 1 year. Bonds are normally required in amounts ranging from a minimum of \$1,000 to a maximum of \$5,000 in increments of \$500. In considering applications by a family group, the consular officer may require the posting of a bond by all, some, or only one of the applicants.

- (1) **(U) Notification to Applicant:** When a bond is to be required of an applicant for a B or F visa, the consular officer must notify the applicant in writing of the requirement, and specify both the classification of the visa under consideration and the exact amount of the bond required. This notification must also include the applicant's full name, nationality, date of birth, and country of birth. If a bond is to be required of more than one member of a family group, the consular officer's notification must include all of the foregoing information for each person for whom a bond is to be required. The amount of the bond for each person is to be specified. The applicant, (or the applicant's representative in the United States), is to be instructed to submit the original, or a copy of the consular officer's written notification to the DHS as explained below.
- (2) **(U) Form of Collateral:** A bond may be posted in the form of cash (U.S. currency only), U.S. Treasury Bonds or Notes, or an international or domestic postal money order made payable to the "Department of Homeland Security" (DHS) in U.S. dollars. U.S. Savings Bonds are not acceptable for this purpose.
- (3) **(U) Posting of Bond by Applicant:** An applicant who wishes to post the bond personally may write directly to the appropriate DHS district director, enclosing the notification from the consular officer.
 - (a) **(U)** Upon receipt of such a request, the district director prepares Form I-352, Immigration Bond, in duplicate, and transmits it to the applicant for signature. The applicant should sign the form at the consular office in the

presence of two national employees as witnesses. The applicant must also execute the block captioned "PLEDGE AND POWER OF ATTORNEY FOR USE WHEN CASH IS DEPOSITED AS SECURITY." The consular officer must witness the execution of this block and affix the consular seal. The consular officer must then return Form I-352 to the appropriate DHS district director.

- (b) **(U)** If the applicant will post the bond personally, but does not have, or does not desire to obligate the full amount required, he or she may also consult a foreign insurance or indemnity company to have the bond posted by an approved surety company in the United States. In this case, the consular officer's notification is to be sent to the surety company for presentation to the appropriate DHS district director. A representative of the surety company will complete Form I-352.
- (4) **(U) Posting of Bond by Interested Person in the United States:** If the applicant has a friend, relative, or other interested person in the United States who is prepared to post the bond, the applicant should send the consular officer's notification to that person for presentation to the DHS district director.
- (5) **(U) Bond Posted and Accepted Prior to Visa Issuance:** After requiring the posting of a bond, the consular officer may not issue a visa to the applicant prior to the receipt of notification from the appropriate DHS district director that the bond has been posted and accepted.
- (6) **(U) Limitation on Visa Validity:** You must limit visas for which a bond has been required and posted to one entry and 6 months validity. This will enable the Department of Homeland Security (DHS) to cancel bonds upon request without communicating with the visa-issuing post. See [9 FAM 403.9-4\(C\)](#) regarding the limitation on visa validity when a bond has been posted, and 22 CFR 41.61(c) relating to F visas.
- (7) **(U) Notations to be Placed in Visa Issued to Applicant for Whom Bond Posted:** In cases where a maintenance of status and departure bond has been posted, place the following in the annotation field of the MRV:
INA 221(g) BOND, A-(NUMBER ASSIGNED BY Department of Homeland Security (DHS)
(LOCATION OF Department of Homeland Security (DHS) OFFICE ACCEPTING BOND)
- (8) **(U) Cancellation of Bond After Issuance of Visa:**
- (a) (U) If an interested person in the United States has posted a bond on behalf of an applicant and subsequently seeks to withdraw or cancel the bond before the applicant departs for the United States, the DHS district director will direct the interested person to have the applicant visit the consular office for cancellation of his or her visa. Upon cancellation of the visa, the consular officer should inform the district director of the visa cancellation so that the bond may be canceled and the collateral returned to the interested person.
- (b) **(U) Notify DHS When Visa Cancelled:** In some cases the sponsor may request, prior to the alien's departure, that the alien's visa be canceled in

order to withdraw the bond. The consular officer, after physically canceling the visa, should notify by email the DHS office at which the bond was posted so that the bond may be canceled and the money released. The email should contain the applicant's full name, date and place of birth, nationality, the amount of the bond, the applicant's "A" serial number (shown on DHS notification of bond posting), and the date on which the visa was actually canceled. The consular officer should make an appropriate notation in the nonimmigrant visa (NIV) record to show that the visa was canceled.

- (9) **(U) Cancellation of Bond After Applicant's Departure from the United States:** In some cases in which DHS has no record of the departure of an applicant for whom a bond was posted, the district director may request that the applicant appear before a consular officer abroad to verify that he or she has, in fact, returned to a foreign country. In these cases, the officer should confirm to the district director that the applicant has departed the United States, and should furnish the date of departure as stated by the applicant, and indicate any confirming data that would serve to verify that date.
- (10) **(U) Forfeiture of Bond:** The maintenance of status and departure bond is not forfeited unless the alien violates status in the United States. A change of nonimmigrant status pursuant to INA 248 or adjustment of status pursuant to INA 245 does not result in forfeiture so long as the alien complies with the terms and conditions of the status in which the alien was admitted or to which the alien later changed or adjusted.

9 FAM 403.10

(U) NIV REFUSALS

(CT:VISA-380; 06-12-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 403.10-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 403.10-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 214(b) (8 U.S.C. 1184(b)); INA 221(g) (8 U.S.C. 1201(g)).

9 FAM 403.10-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.121.

9 FAM 403.10-2 (U) IN GENERAL

(CT:VISA-276; 01-05-2017)

(U) The determination of a nonimmigrant applicant's classification and eligibility to receive a visa is your statutory responsibility and may not be delegated to any other officer (except as provided in 22 CFR 41.111(b)) or to a member of the clerical staff.

9 FAM 403.10-2(A) (U) Visa to be Issued or Refused

(CT:VISA-380; 06-12-2017)

- a. **(U)** A nonimmigrant visa (NIV) must be issued or refused in all cases once an application is executed, except when the Secretary has ordered you to discontinue issuing visas under INA 243(d). See [9 FAM 403.2-3](#) for the definition of "making a visa application." The visa refusals must be based on legal grounds; that is, on the provisions of INA 212(a), INA 212(e), INA 212(f), INA 214(b), INA 214(l), INA 221(g), INA 222(g), or some other specific legal provision. A quasi-refusal (e.g., P6C, P6E, etc.) may not be used as the sole ground for a refusal. See [9 FAM 302](#) for grounds of *ineligibility*. See [9 FAM 601.12](#) for a discussion of INA 243(d).
- b. **(U)** You should only make a formal finding of *ineligibility* in the context of a visa application or revocation of an existing visa. A "hard" refusal code entry should only be placed in the Consular Lookout and Support System (CLASS) if you are

denying or revoking a visa.

9 FAM 403.10-2(B) (U) Grounds for Refusal

9 FAM 403.10-2(B)(1) (U) Applying Grounds for Refusals and Ineligibilities

(CT:VISA-380; 06-12-2017)

a. (U) Establishing Eligibility for Nonimmigrant Status:

- (1) **(U)** INA 214(b) provides that every visa applicant is presumed to be an immigrant until he or she establishes eligibility for to nonimmigrant status under INA 101(a)(15) . A finding that an applicant does not meet the eligibility requirements for the classification sought and is therefore not a nonimmigrant under INA 101(a)(15) cannot be waived.
- (2) **(U)** However, INA 214(b) is not a permanent ineligibility. The fact that a visa applicant was unable to establish nonimmigrant status at one time does not preclude such an applicant from subsequently qualifying for a visa by showing a change in circumstances.
- (3) **(U)** For more information on applying INA 214(b) see [9 FAM 302.1-2](#), Presumption of Immigrant Status- INA 214(b).

b. (U) Grounds of *Ineligibility*:

- (1) **(U) Grounds of *Ineligibility* Not Applicable to Nonimmigrants:** Certain grounds of ineligibility do not apply to some nonimmigrants. For example, some nonimmigrants are exempt from the provisions of INA 212(a)(3)(D) (membership in a totalitarian party), INA 212(a)(5)(A) (labor certification requirements), INA 212(a)(5)(B) (unqualified physicians), INA 212(a)(5)(C) (uncertified health care workers), INA 212(a)(8)(A) (ineligible for citizenship), and INA 212(a)(10)(A) (practicing polygamists).
- (2) **(U) Grounds of *Ineligibility* Not Applicable to A and G Applicants:** INA 102 provides broad exemptions from grounds of inadmissibility for "A" and "G" applicants, except domestics and personal employees. Upon a basis of reciprocity, INA 212(d)(8) also provides broad exemptions for foreign government officials in transit. These are not in the nature of waivers or other discretionary acts; they provide statutory immunity from ineligibility under the special provisions. INA 212(d)(8) does not provide exemption for INA 212(a) (3)(A), INA(a)(3)(B), INA(a)(3)(C), or INA(a) (7)(B).
- (3) **(U) Recommending Waivers:** For aliens found ineligible under non-exempted provisions of INA 212(a), you have discretionary authority under INA 212(d) (3)(A) to recommend to the Department of Homeland Security (DHS) a waiver of the specific ground of ineligibility.

c. (U) Failure to Appear, Withdrawal, or Abandonment:

- (1) **(U) Applicant Who Fails to Appear for Interview at Post:**

- (a) **(U) No Show Cases:** If an applicant has failed to make a visa application as delineated in [9 FAM 403.2-3](#), enter as a case remark: "No Show case: Application was never made per [9 FAM 403.2-3](#)" and delete the case from the NIV system. The case must not be refused. Deleted cases will no longer be available in post's database, but they may be found in the CCD using the Deleted NIV Applicant Full report under the Non-Immigrant Visa tab in the CCD menu.
- (b) **(U) Executed Application Cases:** If an applicant who is not eligible for interview waiver fails to appear for an interview but has met the requirements for making an application per [9 FAM 403.2-3](#), refuse the case under INA 221(g) with case notes explaining that the applicant met the requirements for making an application but failed to appear for an interview.
- (2) **(U) Applicants Refused If Application Withdrawn:** If an applicant withdraws a visa application while it is pending adjudication, you must refuse the case under INA 221(g) with case notes indicating why the action was taken. The case must not be deleted.
- (3) **(U) Applicants Refused If Visa Abandoned:** If the case has been adjudicated (print authorized), but not printed, and the applicant subsequently changes his or her mind, deciding not to travel, you must refuse the case under INA 221(g) with case notes indicating why the action was taken. The case must not be deleted.
- (4) **(U) Reactivating Cases:** Please see [9 FAM 403.10-4\(A\)](#) paragraph c for information on reactivating cases refused under INA 221(g).

9 FAM 403.10-2(B)(2) (U) Refusals Based on Entries in Lookout Systems by Other Agencies

(CT:VISA-380; 06-12-2017)

a. (U) Effect of Definitive DHS Inadmissibility Findings:

- (1) **(U)** DHS findings of inadmissibility generally are entered into TECS and these entries pass electronically into the Department's CLASS lookout system.
- (2) **(U)** If you determine that an alien is identifiable with the subject of a DHS-generated lookout entry indicating a definitive determination of inadmissibility, excluding INA 212(a)(3) inadmissibilities, you may assume that the finding was correct and may refuse the application under the particular INA section indicated by the DHS lookout entry, unless the inadmissibility is non-permanent and can be overcome through changed circumstances (e.g., medical or public charge inadmissibility) or the entry relates to an inadmissibility that only applies at the port of entry (POE) and is not a basis for a visa refusal (e.g., INA 212(a)(7)(A)).
- (3) **(U)** Except in cases involving a non-permanent inadmissibility and in cases of 212(a)(3) grounds other than 212(a)(3)(A)(2), you should not look behind a

definitive DHS finding or re-adjudicate the alien's eligibility with respect to the provision of inadmissibility described in the DHS lookout entry.

(4) **Unavailable**

b. **(U) Other Agency Notes:**

- (1) **(U)** U.S. Customs and Border Protection (CBP) officers sometimes make notes regarding a finding of inadmissibility or derogatory information regarding an alien on Form I-275, Application for Withdrawal of Application/Consular Notification), or in records contained in the DHS IDENT fingerprint system. A typical example of such notes is "Subject is inadmissible under INA 212(a)(6)(C)(i)" (or some other ground). Such notes, unless they are supported by the corresponding definitive DHS CLASS entry (i.e., not "quasi" – see [9 FAM 403.10-3\(C\)\(2\)](#) below for procedures if there is a corresponding quasi-refusal), do not have a binding effect on you. In such cases, you must review the information in the Form I-275 and make a determination on visa eligibility, supported by corresponding case notes. If there is a corresponding definitive CLASS entry, you must proceed as directed in paragraph a above.
- (2) **(U)** The factual summary that may be included in a Form I-275 (for example, the applicant's answers to the CBP officer's questions), sometimes will permit you to make a visa refusal or to pursue a finding of *ineligibility* for a visa under the 30/60-day rule (see [9 FAM 302.9-4\(B\)\(4\)](#) for more information on the 30/60-day rule).
- (3) **(U)** The above policy that there must be a corresponding definitive DHS CLASS entry for there to be a binding effect also applies to notes in records contained in the FBI NGI fingerprint system (e.g., "CHARGE 1-ATTEMPTED ENTRY BY FRAUD 8 USC 1182 (A)(6)(C)(I)").

c. **Unavailable**

9 FAM 403.10-2(B)(3) (U) Refusals of Out-of-District Applicants

(CT:VISA-276; 01-05-2017)

- a. (U) 221(g) Refusals: You must adjudicate all applications rather than refusing them under INA 221(g) solely because the applicants are out-of-district. Refusing an applicant simply because he is out of district is a missed opportunity and a waste of post and applicants' time.
- b. (U) 214(b) Refusals of Out-of-District Applicants:
 - (1) (U) Refusing an applicant under INA 214(b) solely for out-of-district reasons is not appropriate. Section 214(b) requires that the applicant demonstrate both entitlement for a specific visa classification and absence of immigrant intent (see [9 FAM 401.1-3\(E\)](#)). Consular officers can still determine whether the alien qualifies for a particular visa class, and whether there is immigrant intent on the part an out-of-district applicant.
 - (2) (U) Certainly, an out-of-district applicant may alert you to possible fraud or, at

the least, forum shopping. In addition, it may be more difficult for an out-of-district applicant to overcome the burden of proof. However, you should not refuse an applicant solely because he or she is applying outside of the consular district where he or she resides.

- (3) (U) In addition, most NIV applicants must establish that they have a residence abroad that they do not intend to abandon. That residence need not be in the country where they are applying. It is incorrect to refuse an out-of-district applicant solely because his or her ties are to a different country abroad. However, if the applicant is applying for a visa category that requires that he or she demonstrate a residence abroad that he or she does not intend to abandon, and the applicant is unable to do so, you should refuse the case under 214(b) because the applicant has not demonstrated that he or she qualifies for the visa for which he or she applied.
- (4) (U) Some nationalities described as "homeless", residents of countries where no U.S. consular services are available, have specific posts designated for their applications with appropriate language-trained officers. When officers are concerned about document, language and translation barriers, posts should let the public and prospective applicants know that lack of a common language could negatively affect an application. Posts may want to use this language on their websites: "Applicants from outside this office's consular district may apply for visas. However, you should be aware that language difficulties and interviewing officers' unfamiliarity with local conditions in other countries may make it more difficult to demonstrate your qualifications for a visa here than in your home district or at a post designated for your application."

9 FAM 403.10-3 (U) REFUSAL PROCEDURES

9 FAM 403.10-3(A) (U) Refusal Cases

(CT:VISA-1; 11-18-2015)

(U) When an alien is found ineligible to receive a visa, you must take the steps listed in notes [9 FAM 403.10-3\(A\)](#) through 403.10-3(D).

9 FAM 403.10-3(A)(1) (U) Inform Alien Orally and Return Certain Documents

(CT:VISA-380; 06-12-2017)

a. Unavailable

- b. **(U)** You must return to the applicant all documents not pertinent to the refusal or indicative of possible ineligibility. Letters and other documents addressed to an officer or the post should be retained and either filed or destroyed.
- c. **(U)** The manner in which visa applicants are refused can be very important in relations between the post and the host country, as well as to the United States'

image to the applicant and the broader population. You should be courteous at all times and must be careful not to appear insensitive.

- d. **(U)** Explanations of why a visa could not be issued need not be lengthy. You should explain the law and the refusal politely and in clear terms, providing a citation of the legal section relied upon. Use of jargon or obscure terms can create confusion, frustration and, often, additional work in the form of congressional and public inquiries. An example: In a case involving a refusal under INA 214(b) *for insufficient ties*, it is essential that you tell the applicant that the reason for the refusal is that he or she has not persuaded you that he or she will return to his or her country. Fitting a certain demographic profile ("young", "single", etc.) is not grounds for a visa refusal. In a 214(b) refusal, the denial must always be based on a finding that the applicant's specific circumstances failed to overcome the intending immigrant presumption. Written 214(b) and 221(g) refusal letters are more than mere formalities; they can be an effective method of conveying information to the applicant.
- e. **(U)** You must not discourage the visa applicant from reapplying, even if you believe that eventual issuance of a visa is unlikely. You should make clear to applicants that they may reapply if they believe they genuinely qualify since there is no formal appeal of an NIV refusal. Efforts to control reapplications must not unduly restrict applicants' ability to reapply, although they may be warned that applicants who have not yet had the opportunity to apply may be scheduled before they are rescheduled.
- f. **(U)** Exceptions to Notice Requirement: INA 212(b), which requires you to provide the applicant with a timely written notice in most cases involving a 212(a) refusal, also provides for a waiver of this requirement. However, only the Department may grant a waiver of the written notice requirement. Furthermore, although 212(b) also exempts findings of ineligibility under INA 212(a)(2) and (3) from the written notice requirement, we expect that such notices will be provided to the alien in all 212(a)(2) and (3) cases unless:
- (1) **(U)** We instruct you not to provide notice;
 - (2) **(U)** We instruct you to provide a limited legal citation (i.e., restricting the legal grounds of refusal to 212(a)); or
 - (3) **(U)** In response to a request, you receive permission from us not to provide notice.

9 FAM 403.10-3(A)(2) (U) Inform Applicant and Attorney in Writing

(CT:VISA-380; 06-12-2017)

(U) In any NIV case involving a refusal under any provision of the law, you must provide the applicant and any attorney of record a written refusal.

- (1) **(U) 214(b) Refusal Letter:** In the case of an NIV refusal based on 214(b), posts are required to provide applicants with the Department-approved letter

appropriate for the applicant's circumstances. The prescribed refusal letters are found at [9 FAM 403.10-3\(A\)\(3\)](#). [9 FAM 403.10-3\(A\)\(3\)](#) paragraph a below contains the refusal letter appropriate for those applicants being denied for lack of a residence abroad. [9 FAM 403.10-3\(A\)\(3\)](#) paragraph b below contains the refusal letter appropriate for those visa classes subject to 214(b), but not the residence abroad requirement.

- (2) **(U) 221(g) Refusal Letter:** For *an* INA 221(g) NIV refusal, posts may draft the refusal letter in the manner they deem appropriate and without Departmental approval. However, the letter must:
 - (a) **(U)** Explicitly state the provision of the law under which the visa is refused;
 - (b) **(U)** Not state that the denial is "pending", "temporary", or "interim" or that the case is suspended, although it may reference further administrative processing of the case;
 - (c) **(U)** Neither encourage nor discourage the applicant from reapplying; and
 - (d) **(U)** Include the following language:

Please be advised that for U.S. visa purposes, including ESTA (the ESTA website), this decision constitutes a denial of a visa.
- (3) **(U) 212(a) NIV refusals:** Posts may draft the refusal letter in the manner they deem appropriate and without Departmental approval. However, the letter must:
 - (a) **(U)** Explicitly state the provision of the law under which the visa is refused, unless instructed or authorized to do otherwise by the Department;
 - (b) **(U)** Neither encourage nor discourage the applicant from reapplying; and
 - (c) **(U)** Inform the applicant whether a waiver is available.
- (4) **(U)** Alternatively, for INA 221(g) and INA 212(a) refusals, posts may elect to use the optional refusal letter found at [9 FAM 403.10-3\(A\)\(3\)](#) paragraph c below, or they may choose to modify the letter as necessary. If posts use a modified version, the letter must meet the criteria listed in paragraph a of this note.

9 FAM 403.10-3(A)(3) (U) Refusal Letters in 214(b), 221(g) and Other Cases

(CT:VISA-18; 12-14-2015)

a. Refusal Letter for Denials Under INA 214(b) for Applicants Who Fail to Establish Ties:

You may use the Failure to Establish Ties Letter to inform an applicant of the refusal under INA 214(b). A sample of the Failure to Establish Ties Letter is provided is provided below.

Dear Applicant:

This is to inform you that you have been found ineligible for a nonimmigrant visa under Section 214(b) of the U.S. Immigration and Nationality Act. A denial under Section 214(b) means that you were not able to demonstrate that your intended activities in the United States would be consistent with the classification of the nonimmigrant visa for which you applied.

While nonimmigrant visa classifications each have their own unique requirements, one requirement shared by many of the nonimmigrant visa categories is for the applicant to demonstrate that he/she has a residence in a foreign country which he/she has no intention of abandoning. Applicants usually meet this requirement by demonstrating that they have strong ties overseas that indicate that they will return to a foreign country after a temporary visit to the United States. Such ties include professional, work, school, family, or social links to a foreign country. You have not demonstrated that you have the ties that will compel you to return to your home country after your travel to the United States.

Today's decision cannot be appealed. However, you may reapply at any time. If you decide to reapply, you must submit a new application form and photo, pay the visa application fee again, and make a new appointment to be interviewed by a consular officer. If you choose to reapply, you should be prepared to provide information that was not presented in your original application, or to demonstrate that your circumstances have changed since that application.

Sincerely,

Consular Officer

- b. **(U) Refusal Letter for Denials Under INA 214(b) for Applicants Who Fail to Qualify For Reasons Other Than Failure to Show Ties:** You may use the **Other INA 214(b) Refusal Reasons Letter** for an applicant who you are denying under INA 214(b) for reasons other than failure to show ties. The following is a sample of the Other INA 214(b) Refusal Reasons Letter:

Dear Applicant:

This is to inform you that you have been found ineligible for a nonimmigrant visa under Section 214(b) of the U.S. Immigration and Nationality Act. A denial under Section 214(b) means that you did not meet the requirements of the classification of the nonimmigrant visa for which you applied.

Today's decision cannot be appealed. However, you may reapply at any time. If you decide to reapply, you must submit a new application form and photo, pay the visa application fee again, as applicable, and be interviewed by a consular officer. If you choose to reapply, you should be prepared to provide information that was not presented in your original application, or to demonstrate that your circumstances have changed since that application.

Sincerely,

Consular Officer

- c. **(U) Optional Refusal Letter:** You may use the Optional Refusal Letter to inform an applicant of the refusal. The following is sample text of the Optional Refusal Letter:

This office regrets to inform you that your visa application is refused because you have been found ineligible to receive a visa under the following section(s) of the Immigration and Nationality Act. The information contained in the paragraphs marked with "X" pertains to your visa application. Please disregard the unmarked paragraphs.

___ Section 212(a)(1) health-related grounds.

___ Section 212(a)(4) which prohibits the issuance of a visa to anyone likely to become a

public charge.

Section 212(a)(2) which prohibits the issuance of a visa to anyone who has committed a crime involving moral turpitude.

Other _____

Waiver

You are eligible to seek a waiver of the grounds of ineligibility.

No waiver is available for the grounds of ineligibility.

9 FAM 403.10-3(A)(4) (U) Enter Refusal Data into NIV System

(CT:VISA-380; 06-12-2017)

a. **Unavailable**

b. **Unavailable**

c. **Unavailable**

d. **(U)** Remarks attached to a case reside in the CCD and are accessible to posts worldwide, as well as to certain partner agencies, such as CBP at POE. Your notes must be written in a professional manner: clearly and legally valid. Avoid using post-specific notations, non-English words, and making irrelevant remarks. If the refusal seems counterintuitive, you should comment on the factors that led to the *refusal*.

9 FAM 403.10-3(A)(5) (U) Explore Possibility of Relief

(CT:VISA-380; 06-12-2017)

(U) Waivers are not available for INA 214(b) ineligibilities, but the applicant is free to re-apply for a visa. INA 221(g) refusals require the applicant to wait for the results of additional administrative processing or comply with a request for additional documentation or information within one year of the visa interview. If the case involves a Category I refusal, you must explain whether or not administrative relief (a waiver or other means, such as parole) is available. [9 FAM 303.3-3\(B\)\(1\)](#) contains a list of lookout codes and states whether the codes are Category I or Category II.

9 FAM 403.10-3(A)(6) (U) Additional Procedure When Refusing Applicants Who Possess a Valid Form I-94, Arrival and Departure Record

(CT:VISA-380; 06-12-2017)

a. **(U)** In addition to recording the refusal electronically, officers, especially officers at posts in Canada and Mexico, should take additional steps in certain cases involving aliens who might seek to take advantage of the automatic visa revalidation provisions of 22 CFR 41.112(d) but who are not eligible to do so due to their unsuccessful visa application.

b. Unavailable

- c. **(U)** You may only revoke an unexpired visa if the grounds set forth in 22 CFR 41.122(a) and [9 FAM 403.11](#) are present.

9 FAM 403.10-3(A)(7) (U) Indicating Nonimmigrant Visa Refusals in Passports

(CT:VISA-380; 06-12-2017)

(U) Do not place a stamp indicating “application received,” or any other marking in an applicant’s passport in connection with a visa application. With issuance and refusal data now available to all posts through the Consular Consolidated Database (CCD), there is no longer a need to alert interviewing officers to previous refusals by making a marking in an applicant’s passport. In addition, CCD information is now available at secondary in ports of entries (POEs) and at other DHS offices. Officers at posts in Canada and Mexico should ensure they follow the procedures in [9 FAM 403.10-3\(A\)\(6\)](#) above for refusing applicants who may have been eligible for automatic visa revalidation at POEs.

9 FAM 403.10-3(B) (U) Procedures in Cases Refused for Advisory Opinions or for Other Reasons

(CT:VISA-211; 10-06-2016)

a. (U) Advisory Opinion Requested:

- (1) **(U)** If the Department’s opinion has been requested, a visa may not be issued until the opinion has been officially rendered and communicated to the requesting post.
 - (2) **Unavailable**
 - (3) **(U)** The post should use a tickler system as a reminder to send the Department a follow-up request for a response after a reasonable period of time has elapsed. If you determine on the basis of the Department’s advisory opinion that the alien is ineligible under a provision of INA 212(a), 212(e), 214(b), or some other specific legal provision, you must formally refuse the alien under the pertinent section of the law. Under no circumstances may a final resolution of the question of eligibility be made before the Department’s advisory opinion is received. (See [9 FAM 403.10-3\(C\)\(1\)](#) below and [9 FAM 403.10-3\(B\)](#) paragraph a(1), above.)
- b. **(U) Other Reasons:** You should also refuse the visa under INA 221(g) and make clear case notes in other situations where the alien has formally applied, but a final determination of admissibility is deferred for additional evidence, further clearance, a namecheck, or some other reason.

9 FAM 403.10-3(C) (U) Quasi-Refusal Cases

(CT:VISA-18; 12-14-2015)

(U) Applicants in quasi-refusal case should be dealt with as described in [9 FAM 403.10-3\(A\)\(1\)](#) and [9 FAM 403.10-3\(A\)\(2\)](#) above.

9 FAM 403.10-3(C)(1) (U) Entering a Quasi-Refusal

(CT:VISA-49; 02-19-2016)

- a. **(U)** A quasi-refusal, by definition, is not a refusal. It is not a determination of eligibility. You cannot conclude a case by simply entering a quasi-refusal; you must enter a “hard” refusal or issue the visa. You may not deny or revoke a visa based solely on “quasi-ineligibility.” If an alien applies for a visa, the alien’s eligibility must be definitively resolved.
- b. **(U)** If you obtain derogatory information outside the context of an application or revocation, you should enter the alien’s name in the CLASS lookout system under the appropriate “P” (“quasi-refusal”) code corresponding to the suspected or presumed inadmissibility. The alien’s eligibility should then be resolved if and when the alien applies for a visa.
- c. **(U) You May Enter a Quasi-Refusal in Only Two General Cases:**
 - (1) **(U)** If you obtain derogatory information outside the context of an application or revocation (see [9 FAM 403.11-4\(B\)\(1\)](#)); or
 - (2) **Unavailable**
- d. **(U)** Not entering a hard refusal also affects posts’ workload statistics since those cases will not be reported as adjudicated.
- e. **Unavailable**
- f. **(U)** On occasion, an alien may learn informally of a possible ineligibility. If, after being informed of apparent ineligibility, the alien decides not to make a formal application, then that particular situation does not constitute a formal refusal, and it must not be reported as such by the post. A quasi-refusal entry, however, may be appropriate. If so, the post must enter the name of the alien into Consular Lookout and Support System (CLASS) as indicated in [9 FAM 303.3](#).

9 FAM 403.10-3(C)(2) Unavailable

(CT:VISA-380; 06-12-2017)

- a. **Unavailable**
- b. **Unavailable**
- c. **Unavailable**
- d. **Unavailable**

9 FAM 403.10-3(D) (U) Supervisory Review of NIV Refusals

9 FAM 403.10-3(D)(1) (U) NIV Refusal Review Procedures

(CT:VISA-380; 06-12-2017)

- a. **(U)** Consular *mangers* must review as many nonimmigrant visa (NIV) refusals as is practical, but not fewer than 20% of refusals. Such a review is a significant management and instructional tool and is useful in maintaining the highest professional standards of adjudication. It helps ensure uniform and correct application of the law and regulations.
- b. **(U)** Reviewing officers should pay particular attention to refusals of less experienced officers. The less visa adjudication experience an officer has, the greater the percentage of refusals *the reviewing officer* should *review*. As an officer gains experience and competence over time, the percentage of *refusals* reviewed can decline as *the reviewing officer deems* appropriate.
- c. **(U)** The reviewing officer should be the adjudicating consular officer's direct supervisor, even if that supervisor does not have a consular commission and title. The *reviewing officer* must review the case and either confirm or disagree with the refusal. To evaluate performance, the supervisor needs to see a regular and representative sampling of the adjudicating officer's work. The review should focus on, but is not limited to, understanding the requirements of INA 214(b) and ensuring consistent adjudications among officers, the potential overuse of 221(g) refusals when 214(b) should be applied, the clear articulation of 214(b) refusals, and verification that 212(a) refusals satisfy applicable law and regulations. While reviewing officers without recent consular experience cannot be expected to know the breadth and depth of visa statutes and regulations, the adjudicating officer should be able to cite Departmental guidance (the INA, FAM, ALDACs, etc.) in support of the refusal. The reviewing officer must indicate his or her decision for all refusals reviewed by marking the appropriate box in the NIV Adjudication Review report in the Consular Consolidated Database (CCD). 22 CFR 41.121(c) specifies that a refusal must be reviewed without delay; that is, on the day of the refusal or as soon as is possible. See also [9 FAM 306.2-2\(A\)](#) paragraph b(2).
- d. **(U)** The Regional Consular Officer (RCO) for posts with a single consular officer should review all Category I refusals. This review can be completed via the NIV Adjudication Review report in the CCD. The RCO must also review a random sample of at least 20 percent of the refusals adjudicated during the RCO's visit to post, and the RCO must include the quality of adjudication as a regular topic of discussion. The RCO must meet with the adjudicating officer and his or her supervisor and review with them a sampling of refused NIV cases.

9 FAM 403.10-3(D)(2) (U) Reviewing Officer Non-Concurrence with Refusal

(CT:VISA-380; 06-12-2017)

- a. **(U)** If a reviewing officer with a consular commission and title does not concur with the refusal, he or she may assume responsibility and re-adjudicate the case. The reviewing officer must discuss the case fully with the original adjudicating officer

before taking any action. The reviewing officer must not reverse a 214(b) refusal without re-interviewing the applicant in person or by phone, as information gained during the interview may be an essential component of any 214(b) decision. If the disagreement involves a matter of law, the reviewing officer may assume personal responsibility for the case and reverse the decision without speaking with the applicant, after discussing with the original adjudicating officer. The reviewing officer should enter a note in the NIV Adjudication Review in the CCD that explains the reason for overturning the refusal.

- b. **(U)** A reviewing officer without a consular commission and title may not issue or refuse a visa. Therefore, if such a reviewing officer does not concur with the refusal, he or she must:
- (1) **(U)** Discuss the basis for the original refusal with the adjudicating officer in a good faith attempt to arrive at a mutually acceptable final adjudication of the application.
 - (2) **(U)** If such a discussion cannot resolve the *issue and post is part of the RCO program*, the RCO should be consulted for his or her insight with a view to coming to a mutually agreed upon adjudication.
 - (3) **(U)** If the difference of opinion turns on a legal or procedural issue that cannot be resolved by consulting Departmental guidance at post (the INA, FAM, *Consular Management Handbook*, cable guidance, etc.), post should seek Visa Office guidance (legal questions should be referred to the Advisory Opinions Division (CA/VO/L/A) and procedural questions to the Office of Field Operations (CA/VO/F)).
 - (4) **(U)** If, despite these efforts, no mutually agreed upon adjudication can be achieved, the refusal stands. *If this occurs, , the reviewing officer should add* a note of discrepancy in *the* case notes and in the NIV Adjudication Review *report* in the CCD.

9 FAM 403.10-4 (U) OVERCOMING OR WAIVING REFUSALS

(CT:VISA-1; 11-18-2015)

(U) INA 291 places the burden of proof upon the applicant to establish eligibility to receive a visa. However, the applicant is entitled to have full consideration given to any evidence presented to overcome a presumption or finding of ineligibility. It is the policy of the U.S. Government to give the applicant every reasonable opportunity to establish eligibility to receive a visa. This policy is the basis for the review of refusals at consular offices and by the Department. It is in keeping with the spirit of American justice and fairness. With regard to cases involving classified information, the cooperation accorded the applicant must, of course, be consistent with security considerations, within the reasonable, non-arbitrary, exercise of discretion in the subjective judgments required under INA 214(b) and 221(g).

9 FAM 403.10-4(A) (U) Reapplication Procedures

(CT:VISA-380; 06-12-2017)

- a. **(U)** Previously refused visa applicants may reapply any time, using the same procedures as first-time applicants. *See [9 FAM 403.2-6\(A\)](#) for more information on managing applications from previously refused applicants.*
- b. **(U) Reactivation of Case Refused Under INA 221(g):** An applicant who has been refused under INA 221(g) need not complete a new NIV application form, or pay the machine readable visa (MRV) fee again, if less than one year has elapsed since the latest refusal. When the requested information is submitted by the applicant or the necessary clearances received, you should retrieve the original Form DS-160 from post's files, note the new information or results of the clearance process, and issue or refuse the visa. If one year or more has elapsed since the latest refusal, the applicant must submit a new Form DS-160 and pay the MRV fee again in order for the case to proceed. If the cause of the delay leading to the 221(g) refusal is a lack of U.S. Government action, or U.S. Government error, the period of reapplication is extended indefinitely. Hence, the MRV fee is not charged again when the application is pursued.

9 FAM 403.10-4(B) (U) Overcoming a Refusal

9 FAM 403.10-4(B)(1) (U) Overcoming Post Refusals

(CT:VISA-49; 02-19-2016)

- a. **(U)** You should find that an applicant has overcome an nonimmigrant visa (NIV) refusal under INA 221(g) in two instances: when the applicant has presented additional evidence, allowing you to re-open and re-adjudicate the case, or when the case required additional administrative processing, which has been completed. An NIV applicant missing a Form I-20 when applying for an F1, for instance, should be refused INA 221(g) pending that certificate (see [9 FAM 403.10-3\(A\)](#) for guidance on INA 221g refusals). When the applicant returns with the document, you should overcome the previous refusal, allowing the case to be adjudicated.
- b. **(U)** Similarly, if an applicant refused under INA 212(a)(4), subsequently presents sufficient evidence to overcome the public charge inadmissibility, you should process the case to completion.
- c. **Unavailable**
- d. **(U)** In general, you should not find that an applicant has overcome a refusal under INA 214(b). Most INA 214(b) cases are refused because the applicant has not convinced the officer of his or her intent to return abroad after his or her stay in the United States, as required under INA 101(a)(15)(B) (see [9 FAM 402.2-2\(C\)](#) and [9 FAM 302.1-2\(B\)](#)). As such, the only way to reassess the applicant's eligibility would be for the applicant to reapply. In this situation, you should create a new case in the system.

- e. **(U)** However, Overcome/Waive (O/W) may be appropriate for INA 214(b) cases when a supervisor believes the INA 214(b) refusal was in error; for example, if you did not believe the applicant fit the standards of the particular NIV classification for which he or she had applied (see [9 FAM 302.1-2\(B\)\(1\)](#)). If a supervisor overcomes such a case he or she should discuss it with the refusing officer and take personal responsibility for the case. See [9 FAM 403.10-3\(D\)](#) for adjudication review procedures.

9 FAM 403.10-4(B)(2) (U) Overcoming a Refusal Based on a DHS Finding

(CT:VISA-1; 11-18-2015)

(U) If you refuse an application based on a definitive DHS lookout entry and DHS subsequently determines that the finding was erroneous and deletes its entry, then you may process the case to conclusion and should send in a Visas CLOK cable requesting deletion of any post-originated CLASS entry which may have been made as a result of the DHS entry. If, notwithstanding DHS' removal of the entry, you believe that the facts on which DHS entry were based justify a finding of inadmissibility, you should refer the case to the Department for an advisory opinion (AO).

9 FAM 403.10-4(C) Waiving a Nonimmigrant Visa Inadmissibility

(CT:VISA-1; 11-18-2015)

(U) There is no waiver available for refusals under INA 214(b) and INA 221(g). DHS has the authority to waive most IV and NIV ineligibilities. INA 212(d)(3)(A) waivers in NIV cases require an initial waiver recommendation from you or the Department. (See [9 FAM 305](#) for IV and NIV waivers.)

9 FAM 403.11

(U) NIV REVOCATION

(CT:VISA-50; 02-22-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 403.11-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 403.11-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 221(i) (8 U.S.C. 1201(i)).

9 FAM 403.11-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.122.

9 FAM 403.11-2 (U) NIV REVOCATION

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.112 N10; CT:VISA-1533; 09-23-2010)

(U) Regulations no longer distinguish between invalidation and revocation in cases when it is determined that the bearer of a visa is ineligible. The visa should be revoked in accordance with INA 221(i), 22 CFR 41.122 and this subchapter.

9 FAM 403.11-3 (U) WHEN TO REVOKE A VISA

9 FAM 403.11-3(A) (U) When Consular Officers Must Revoke Visas

(CT:VISA-50; 02-22-2016)

(U) There are five circumstances under which you may revoke a visa:

- (1) **Unavailable**
- (2) **(U)** The alien is not eligible for the particular visa classification (this includes ineligibility under INA 214(b));
- (3) **(U)** The alien has been issued an immigrant visa (IV);

- (4) **(U)** The visa has been physically removed from the passport in which it was issued; or
- (5) **(U)** The alien is subject to a Watchlist Promote Hit for an arrest or conviction of driving under the influence, driving while intoxicated, or similar arrests/convictions (DUI) that occurred within the previous five years, pursuant to [9 FAM 403.11-5\(B\)](#) paragraph (c) below.

9 FAM 403.11-3(B) (U) When Consular Officers May Not Revoke Visa

(CT:VISA-10; 12-08-2015)

- a. **(U)** A consular officer does not have the authority to revoke a visa based on a suspected ineligibility, or based on derogatory information that is insufficient to support an ineligibility finding, other than a revocation based on driving under the influence (DUI). A consular revocation must be based on an actual finding that the alien is ineligible for the visa.
- b. **(U)** Under no circumstances should a consular officer abroad revoke a visa when the alien is in the United States, or after the alien has commenced an uninterrupted journey to the United States, other than a revocation based on driving under the influence (DUI). Outside of the DUI exception, revocations of aliens in, or en route to, the United States may only be done by the Departments Visa Office of Screening, Analysis and Coordination (CA/VO/SAC).

9 FAM 403.11-4 (U) REVOCATION PROCEDURES

9 FAM 403.11-4(A) (U) Visa Revocations by Consular Officers

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.122 N2; CT:VISA-799; 04-17-2006)

(U) Although the decision to revoke a visa is a discretionary one, you should not use this authority arbitrarily. In accordance with 22 CFR 41.122(b), when practicable, you must:

- (1) **(U)** Notify the alien of the intention to revoke the visa;
- (2) **(U)** Allow the alien the opportunity to show why the visa should not be revoked; and
- (3) **(U)** Request the alien to present the travel document in which the visa was issued.

9 FAM 403.11-4(A)(1) (U) Required Procedures

(CT:VISA-1; 11-18-2015)

a. (U) Informing Alien of Intent to Revoke Visa:

(Previous Location: 9 FAM 41.122 PN4.1; CT:VISA-2017; 08-27-2013)

- (1) **(U)** 22 CFR 41.122(b) requires you to notify the alien of the intent to revoke a visa, if such notification is practicable. The notice of intent to revoke a visa affords the alien the opportunity to demonstrate why the visa should not be revoked. An after-the-fact notice that the visa has already been revoked would not be sufficient, unless prior notice of intent to revoke was found not to be practicable in the particular case.

(Previous Location: 9 FAM 41.122 PN4.2; CT:VISA-2017; 08-27-2013)

- (2) **(U)** A prior notification of intent to revoke a visa would not be practicable if, for instance, the post did not know the whereabouts of the alien, or if the alien's departure is believed to be imminent. In cases where the alien can be contacted and travel is not imminent, prior notice of intent to revoke the visa would normally be required, unless the consular officer has reason to believe that a notice of this type would prompt the alien to attempt immediate travel to the United States.

(Previous Location: 9 FAM 41.122 PN5; CT:VISA-2017; 08-27-2013)

- b. (U) Physical Cancellation of Visa:** If a decision to revoke the visa is reached after the case has been reviewed, you must print or stamp the word "REVOKED" in large block letters across the face of the visa. You must also date and sign this action and enter any new ineligibilities or derogatory information into the Consular Lookout and Support System (CLASS). Timely entry into CLASS is essential. If located at a post other than the one at which the visa was issued, the title and location of the post should be written below the signature.

(Previous Location: 9 FAM 41.122 PN8.4; CT:VISA-2031; 10-03-2013)

- c. (U) If Alien in Possession of Another Valid U.S. Visa:** When you have taken action to revoke a visa, you should determine whether the alien holds another current U.S. visa in the same or another passport. You should proceed to revoke that visa as well, provided the grounds for revoking the first visa apply to any other visa the alien may hold, or if independent grounds for revocation apply. In the latter case, you are also required by 22 CFR 41.122 to give the alien, if practicable, an opportunity to rebut or overcome that ground(s) of ineligibility.

(Previous Locations: 9 FAM 41.122 PN13; CT:VISA-2101; 05-06-2014; 9 FAM 41.122 PN1.2; CT:VISA-2017; 08-27-2013)

d. Unavailable

- (1) **Unavailable**

(Previous Location: 9 FAM 41.122 PN13; CT:VISA-2101; 05-06-2014)

- (2) **(U)** The revoking office should enter the alien's name into the Consular Lookout and Support System (CLASS) in accordance with [9 FAM 303.3-4](#). The original of the Form DS-4047, as well as a copy of the post's letter to transportation companies listing all the addresses, is to be made a part of the

Category I file. The issuing post should annotate Form DS-160, Online Nonimmigrant Visa Application, in the comment field, regarding the revocation and date.

(Previous Location: 9 FAM 41.122 PN10; CT:VISA-2031; 10-03-2013)

e. **(U) When Alien Unlikely to Surrender Passport for Revocation:** If you have reason to believe that an alien whose visa is subject to be revoked will fail to present the visa, and if the alien has not yet commenced travel, the DHS office at the port of entry (POE) and all appropriate transportation companies should immediately be notified that the visa has been revoked. You should notify transportation companies by letter of this action and deliver it to them by the most expeditious and secure means. A telegraphic report as described in [9 FAM 403.11-4\(B\)\(2\)](#) below and an entry into CLASS must also be made.

(Previous Location: 9 FAM 41.122 PN9; CT:VISA-2345; 09-24-2015)

f. **(U) If Travel Has Commenced:** If the revoking officer has learned that the alien is stopping at a city en route to the United States in which a consular office is located, the revoking post should request the stopover post to attempt to contact the alien and physically cancel the visa. The revoking post should immediately notify the Department (CA/VO/SAC), inform the Department of Homeland Security (DHS) and the stopover post as described in [9 FAM 403.11-4\(B\)\(2\)](#) below, and update CLASS, as appropriate.

(Previous Location: 9 FAM 41.122 PN9.1; CT:VISA-2345; 09-24-2015)

- (1) **(U)** If the stopover post physically cancels the visa, it should notify the revoking post and the Department (CA/VO/SAC).
- (2) **(U)** The revoking post should update CLASS and notify the Department (CA/VO/SAC), as well as the stopover post and DHS to update the report.

(Previous Location: 9 FAM 41.122 PN9.1-1; CT:VISA-2345; 09-24-2015)

- (3) **(U)** If the stopover post is unable to cancel the visa physically, it must notify the revoking post and the Department (CA/VO/SAC), provide any additional information, and must also notify all appropriate transportation companies by letter that the visa has been revoked. The letter should be used to notify transportation companies of this action and be delivered to them by the most expeditious and secure means. These instructions are predicated on the premise that the alien has commenced an uninterrupted journey to, or is already in the United States. The revoking post should immediately notify the Department (CA/VO/SAC), the stopover post, and DHS, to update or file a report as described in [9 FAM 403.11-4\(B\)\(2\)](#) below, and to update CLASS as necessary.

(Previous Location: 9 FAM 41.122 PN9.2; CT:VISA-2345; 09-24-2015)

g. **(U) Visa Erroneously Issued by Other Post:** If you determine that another post has erroneously issued a visa, that post should be informed in detail of your findings. Such a report could form the basis for revoking the visa, initiated by the issuing post or by the reporting post, with the concurrence of the issuing post. If a

difference of opinion ensues between posts, the case should be submitted to the Department (CA/VO/L/A for non-security related revocations or CA/VO/SAC for security, foreign policy, or human rights related revocations) for an advisory opinion (AO) before visa issuance. If the visa has been issued, then posts should contact the revocations unit VO Visa Revocations Unit (VO-Revocations@state.gov) for guidance.

(Previous Location: 9 FAM 41.112 N9.2; CT:VISA-2093; 04-29-2014)

h. (U) Sponsor's Request for Cancellation of Visa in Order to Withdraw Bond:

- (1) **(U)** In some cases, the sponsor may request cancellation of the alien's visa in order to withdraw the bond. After physically canceling the visa, (see 22 CFR 41.122(c)), you must notify the DHS office concerned by letter or interested party telegram that the bond may be canceled and the money released.
- (2) **(U)** The communication must contain the applicant's full name, date and place of birth, nationality, the amount of the bond, the applicant's "A" serial number (which will have been shown on DHS notification that the bond was posted), and the date on which the visa was canceled. You must annotate Form DS-160, Online Non-Immigrant Visa Application, which should reflect the amount of the bond, the alien's "A" serial number and the date on which the visa was canceled.

9 FAM 403.11-4(A)(2) (U) Sample Letter of Notification of Revocation to Airline and Certificate of Revocation

(CT:VISA-50; 02-22-2016)

a. (U) Sample Letter of Notification to Airline:

(1) Sample Text:

(Embassy or Consulate Letterhead)

(Date)

Dear Sir / Madam / Company:

Pursuant to the authority contained in Department of State regulations 22 CFR 41.122, this letter serves as official notification by the United States Embassy / Consulate in (post) that the nonimmigrant visa of the below named individual has been revoked, and is no longer valid for application for entry into the United States.

- Name of visa holder
- Date and place of birth
- Visa classification (symbol)
- Date and place of visa issuance
- Other pertinent information

The Embassy/Consulate has informed/attempted to inform the visa holder of this revocation, and has instructed the bearer to surrender the visa to this office for physical cancellation. However, the visa holder may not comply with this request, and attempt to travel on the appearance that the visa is still valid. If the holder should attempt to travel after your receipt of this notice, and your company permits the holder to embark in spite of this notification,

your company may be liable to a fine of up to \$1,000.00 for having transported to the United States a person who is not in possession of a valid visa.

If the above individual contacts your company, I request that you direct him/her to contact the US Embassy/Consulate as soon as possible. I greatly appreciate your attention to this matter.

Sincerely,

[Name]

(2) **Editable Version:** Letter of Notification of Revocation to Airline.

b. (U) Certificate of Revocation:

(1) **Sample Text:**

Certificate of Revocation

This is to certify that I, the undersigned Deputy Assistant Secretary of State for Visa Services, acting pursuant to the authority conferred on the Secretary of State by section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)), which has been delegated to the Assistant Secretary of State for Consular Affairs and to me by Delegation of Authority no. 367 and Redlegation of Authority no. 367-1, hereby revoke any and all visas issued to (applicant, date and place of birth), including but not limited to the (classification of) nonimmigrant visa issued at the Embassy of the United States in (post) on (date).

This action is based on the fact that subsequent to visa issuance, evidence came to light that the alien may be inadmissible to the United States and ineligible for visa issuance pursuant to Section (...) of the Immigration and Nationality Act.

This revocation shall become effective immediately on the date on which this certificate is signed unless the alien is present in the United States at that time, in which case it will become effective immediately upon the alien's departure from the United States.

Date

Deputy Assistant Secretary

For Visa Services

(2) **Editable Version:** Certificate of Revocation.

9 FAM 403.11-4(A)(3) (U) When to Notify Department Regarding Revocation

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.122 PN6; CT:VISA-2345; 09-24-2015)

- a. **(U)** If a visa is physically cancelled prior to the alien's departure to the United States, then there is no need to report the revocation to the Department, except in cases involving A, G, C-2, C-3, or North American Treaty Organization (NATO) visas.
- b. **(U)** As required by 22 CFR 41.122(e), the Department (the Advisory Opinions Division (CA/VO/L/A), the Diplomatic Liaison Division (CA/VO/DO/DL), the Chief of Protocol (S/CPR), and the appropriate country desk), as well as Department of Homeland Security (DHS), Washington, DC should be promptly notified whenever any diplomatic or official visa, or any visa in the A, G, C-2, C-3, or NATO classification is formally revoked.

- c. **(U)** As required by 22 CFR 41.122(d) and 22 CFR 41.122(e), in any case in which a visa is revoked but the consular officer is unable to physically cancel the visa, the consular officer must notify the Department's Office of Screening, Analysis and Coordination (CA/VO/SAC), local carriers, and the appropriate DHS port(s) of entry. The notice to the Department should be in the format prescribed in [9 FAM 403.11-4\(B\)\(2\)](#) below.
- d. **(U)** See [9 FAM 403.11-4\(C\)\(1\)](#) below for more information about notifying the Department of visa revocations that may have political, public relations, or law enforcement consequences.

9 FAM 403.11-4(B) Unavailable

9 FAM 403.11-4(B)(1) (U) Procedures

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.122 PN2; CT:VISA-2017; 08-27-2013)

a. Unavailable

(Previous Location: 9 FAM 41.122 PN3; CT:VISA-2017; 08-27-2013)

- b. **(U)** When reviewing a visa for revocation as a result of information which may come to light after issuance of a visa, and the subject is either in the United States or on uninterrupted travel to the United States, you must seek and obtain Department guidance by contacting the VO Visa Revocations Unit (VO-Revocations@state.gov). This applies, for example, to findings of ineligibility under INA 212(a)(6)(C)(i), "misrepresentation"; INA 212(a)(3)(B) "terrorist activity"; or INA 212(a)(3)(C) "foreign policy."

(Previous Location: 9 FAM 41.122 PN13.1; CT:VISA-2031; 10-03-2013)

- c. **(U)** See [9 FAM 402.8-9](#), Procedures to be Followed When Derogatory Information Received.

9 FAM 403.11-4(B)(2) (U) Report of Derogatory Information Received After Issuance of Visa

(CT:VISA-50; 02-22-2016)

- a. **(U)** Posts are no longer required to submit a report to the Department on nonimmigrant visa (NIV) revocations done at post, provided that the visa has been physically canceled prior to the alien's departure for the United States. Exceptions to this procedure are in cases involving A, G, C-2, C-3, North American Treaty Organization (NATO), diplomatic, or official visas, when a report would be required.

b. Unavailable

- (1) **(U)** Full name of alien, including aliases;
- (2) **(U)** Date and place of birth;
- (3) **(U)** Country of nationality and residence;

- (4) **(U)** Date of issuance or transfer of visa, date of expiration of visa, number of applications for admission, and visa symbol;
- (5) **(U)** Place of visa issuance or transfer;
- (6) **(U)** Type, number, and date and place of issuance of passport;
- (7) **(U)** All sections of law under which the alien is ineligible or is thought to be ineligible;
- (8) **(U)** A full report of the information upon which the finding of ineligibility is based and the consular officer's comments, together with a statement as to whether the information may be furnished DHS and used as a basis for questioning the alien. Considerations of national security, foreign policy, protection of sources, and the like may warrant not advising the alien of certain information;
- (9) **(U)** If available, the means of transportation, prospective date and port of arrival, and the alien's address in the United States;
- (10) **(U)** Posts should indicate that the subject has been entered into CLASS; and
- (11) **(U)** Any other pertinent information, including consular officer's recommendations or suggested course of action to be followed by the Department and DHS.

9 FAM 403.11-4(C) (U) Revoking Visas in Sensitive Cases

9 FAM 403.11-4(C)(1) (U) Keeping Department Informed in High Profile Cases

(CT:VISA-50; 02-22-2016)

(U) You should be alert to the political, public relations, and law enforcement consequences that can follow a visa revocation, and should work with the Department to ensure that all legally available options are fully and properly assessed. The revocation of the visa of a public official or prominent local or international person can have immediate and long-term repercussions on our political relationships with foreign powers and on our public diplomacy goals in a foreign state. The visa laws must be applied to such persons like any others, recognizing that certain visa categories, particularly A's and G's, are not subject to the same standards of inadmissibility as others. Precipitant action must nevertheless be avoided in such high profile visa cases and post should seek the Department's guidance prior to any visa revocation unless unusual and exigent circumstances prevent such a consultation. Consultation both within the mission and with the Department may result in a decision that the Department, rather than the consular officer, should undertake the revocation, since Department revocations pursuant to the Secretary's revocation authority provide more flexibility in managing the relevant issues.

(1) (U) When To Consult With the Department:

- (a) **(U)** You are responsible for keeping the Department (CA/VO/SAC) and the

appropriate country desk) informed of visa actions that may affect our relations with foreign states or our public diplomacy, or that may affect or impede ongoing or potential investigations and prosecutions by U.S. and other cooperating foreign law enforcement agencies.

- (b) **(U)** This is particularly true when you use the power granted them under INA 221(i) as implemented in 22 CFR 41.122 and this section, to revoke the visas of officials of foreign governments, prominent public figures, and objects or potential objects of U.S. and foreign criminal investigations.
- (c) **(U)** In such cases, you should seek the Department's guidance prior to any visa revocation unless unusual and exigent circumstances prevent such a consultation. In the rare cases in which advance consultation is not possible, you should inform the Department as soon as possible after the revocation. Direct such cables to CA/VO/SAC, and the appropriate country desk.

(2) **Unavailable**

9 FAM 403.11-4(C)(2) (U) Diplomatic and Official Visas

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.122 N4.1; CT:VISA-799; 04-17-2006)

(U) You must keep in mind that most A, G, C-2, C-3, and North Atlantic Treaty Organization (NATO) visa categories are exempt from most INA 212(a) ineligibility provisions per 22 CFR 41.21(d). Precipitant action must be avoided in cases involving foreign government officials and other prominent public figures. Consultations at post and with the Department might result in the decision that the Department, rather than the consular officer, should undertake the revocation. The Department's revocation authority provides more flexibility in managing relevant issues. For example, Department revocations may be undertaken prudentially, rather than on the basis of a specific finding of ineligibility, and are not subject to the 22 CFR 41.122 requirement with respect to notification to the alien.

9 FAM 403.11-4(C)(3) (U) When Revocation Subject is Subject of Criminal Investigation

(CT:VISA-1; 11-18-2015)

(Previous Locations: 9 FAM 41.122 PN8.3; CT:VISA-2345; 09-24-2015; 9 FAM 41.122 N4.2; CT:VISA-2017; 08-27-2013)

- a. **(U)** In cases in which the alien whose visa is revocable is also the subject of a criminal investigation involving U.S. law enforcement agencies, action by a consular officer without prior Department consultation and coordination could:
 - (1) **(U)** Jeopardize an ongoing investigation;
 - (2) **(U)** Prejudice an intended prosecution;
 - (3) **(U)** Preclude apprehension of the subject in the United States;

- (4) **(U)** Put informants at risk; or
 - (5) **(U)** Damage cooperative law enforcement relationships with foreign police agencies.
- b. **(U)** When you suspect that the visa revocation may involve U.S. law enforcement interests, you should consult with the law enforcement agencies at post and inform the Department (CA/VO/SAC) as applicable, of the case and of post's proposed action, to permit consultations with potentially interested entities before a revocation is made.
 - c. **(U)** In deciding what cases to report in advance to the Department, posts should err on the side of prudence. It is always better to report cases requiring no Department action rather than having to inform the Department after the fact in a case that has adverse consequences for U.S. law enforcement or diplomatic interests. Posts should contact CA/VO/SAC. Posts may wish to notify other functional bureaus, as appropriate.

9 FAM 403.11-5 (U) REVOCATION OF VISAS BY THE DEPARTMENT

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.122 PN7; CT:VISA-2031; 10-03-2013)

- a. **(U)** When the Department revokes a visa, a front channel cable will be sent to post notifying them of the revocation when possible and furnishing a point of contact in the Visa Office.
- b. **(U)** Although the Department is not required to notify the alien of a revocation done pursuant to the Secretary's discretionary authority, unless instructed otherwise, posts should do so, especially in cases where the revoked visa was issued to a government official. Posts should then send a front channel cable to the Department's point of contact and provide information on any action taken.

9 FAM 403.11-5(A) (U) Notice to Department of Alien in United States

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.122 PN11.1; CT:VISA-2345; 09-24-2015)

- a. **(U)** Whenever you believe that an alien, whose visa is subject to revocation, has commenced an uninterrupted journey to, or, is already in the United States and physical cancellation of the visa is not possible, the officer should immediately inform the Department (CA/VO/SAC) of the grounds of ineligibility or other adverse factors, and furnish the information called for by [9 FAM 403.11-4\(B\)\(2\)](#) above. New ineligibilities and other pertinent derogatory information should be entered into CLASS. In addition, if you are aware of reasons making it desirable to permit the alien to complete the temporary stay, the officer should report them to the Department (CA/VO/SAC). In no case should you communicate the findings to the

alien concerned. You should not prepare a Form DS-4047, unless instructed to do so by the Department.

(Previous Location: 9 FAM 41.122 PN11.2; CT:VISA-2031; 10-03-2013)

- b. **(U)** Upon receipt of your report, the Department will decide whether the visa should be revoked and, if so, ask DHS to cancel it physically immediately or at such time as the alien may again present the visa at a POE. The Deputy Assistant Secretary (DAS) for Visa Services makes the decision to revoke a visa. Alternatively, the Department may inform DHS of the data submitted and give DHS an opportunity to initiate proceedings under the pertinent provisions of INA 237 (Classes of Deportable Aliens). If the latter course is followed, the Department will request that DHS advise the Department of the alien's date of departure and destination, so that, after the alien's departure from the United States, the visa may be physically canceled.

9 FAM 403.11-5(B) (U) Prudential Revocations

(CT:VISA-50; 02-22-2016)

- a. **(U)** Although consular officers generally may revoke a visa only if the alien is ineligible under INA 212(a) or is no longer entitled to the visa classification, the Department may revoke a visa if an ineligibility or lack of entitlement is suspected, or for virtually any other reason. This is known as a "prudential revocation." In addition to the conditions described in [9 FAM 403.11-5\(A\)](#) above, the Department may revoke a visa when it receives derogatory information directly from another U.S. Government agency, including a member of the intelligence or law enforcement community. The process is initiated when CA/VO/SAC receives derogatory information, usually through the Bureau of Intelligence and Research (INR) or from the Department of Homeland Security often in connection with a request for visa revocation. These requests are reviewed by the Visa Office's Revocations Team in CA/VO/SAC/RC, which forwards an electronic memo requesting revocation to a duly authorized official in the Visa Office, along with a summary of the available intelligence and/or background information and any other relevant documentation. When approval for revocation has been given, the subject's name is entered into CLASS and the revocation is communicated within the Department and to other agencies by the following means:
- (1) **(U)** The file is reviewed by the revocations team lead to ensure that the subject has been entered into CLASS under the appropriate code. For a prudential revocation, the "VRVK" code will be entered as well as any applicable quasi-ineligibility ("P") code that corresponds to the suspected ineligibility. In the case of a prudential revocations based on derogatory information forwarded to VO the applicable "P" code will be entered as well as "VRVK."
 - (2) **(U)** A Departmental request to post to attempt to notify the visa holder of the revocation is sent to the issuing post, DHS, and, when the revocation relates to INA 212(a)(3)(A) or (B) and originates from either the Terrorist Screening

Center (TSC) or a Joint Terrorism Task Force (JTTF), notification should be sent to those entities as well.

- (3) **(U) Silent Revocation:** If law enforcement interests require that the subject remain unaware of U.S. Government interest, post will be informed of the revocation but instructed not to notify the subject, through a "silent revocation".

b. Unavailable

- c. (U) Prudential Revocation for Driving Under the Influence:** Either Post or the Department has the authority to prudentially revoke a visa on the basis of a potential INA 212(a)(1)(A) ineligibility when a Watchlist Promote Hit appears for an arrest or conviction of driving under the influence, driving while intoxicated, or similar arrests/convictions (DUI) that occurred within the previous five years. This does not apply when the arrest has already been addressed within the context of a visa application; i.e., the individual has been through the panel physician's assessment due to the arrest. This does not apply to other alcohol related arrests such as public intoxication that do not involve the operation of a vehicle. Unlike other prudential revocations, consular officers do not need to refer the case to the Department, but can prudentially revoke on their own authority. Post should process the revocation from the Spoil tab NIV and add P1A3 and VRVK lookouts from the Refusal window.

9 FAM 403.11-6 (U) RECONSIDERATION OF REVOCATIONS

9 FAM 403.11-6(A) (U) Recommendations for Waivers in Revocation Cases

(CT:VISA-50; 02-22-2016)

a. Unavailable

- b. (U)** Waiver procedures are described here on the premise that action to revoke a visa has not been made. If a visa has been revoked then reinstatement procedures (see [9 FAM 403.11-6\(B\)](#) below) are needed to undo a revocation. If a waiver is obtained, you must enter the notation on the visa as required by [9 FAM 403.11-6\(B\)](#) paragraph (3). A waiver for an ineligibility under section 212(a)(3)(B) of the INA must be requested by the Department. If the waiver limits the number of applications for entry, this information should be included in the notation; for example, "single entry" or "two entries." The alien is to be informed that the visa will be valid only for the period and number of applications for admission authorized by the waiver.

9 FAM 403.11-6(B) (U) Reinstatement Following Revocation

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.122 PN14; CT:VISA-2031; 10-03-2013)

(U) If a visa has been revoked and you subsequently determine that the reason for revocation has been overcome and the alien is no longer ineligible, and that the visa has not been physically cancelled, then the visa should be reinstated in accordance with the appropriate procedure as indicated below, and, in all applicable cases, the procedures listed below should be taken promptly. Posts should submit CLOK removal requests for any revocation-related entries (or contact the Department for entries with DPT refusal sites), and contact the CA Service Desk for removal of the red REVOKED banner from any applicable NIV records.

(Previous Location: 9 FAM 41.122 PN14.1; CT:VISA-2031; 10-03-2013)

- (1) **(U) If Visa Has Been Revoked But No Further Action Taken:** If a Form DS-4047, Certificate of Revocation of Visa by Consular Officer, has been prepared in accordance with [9 FAM 403.11-3\(A\)](#) above, but a copy has not been sent to the Department, if the visa has not been physically canceled, and if notices of revocation have not been sent, a brief summary of the pertinent facts is to be entered on the Form DS-4047, indicating that the revocation was withdrawn.. If post had already notified the Department or other posts of the revocation, post should notify the Department (and any relevant posts) of the reinstatement by telegram as follows:

"CVIS; ADVISORY OPINIONS, VISAS, BASIS FOR REVOCATION, NIV, JOHN DOE, OVERCOME, REINSTATED THIS DATE."

(Previous Location: 9 FAM 41.122 PN14.2; CT:VISA-2031; 10-03-2013)

- (2) **(U) If Visa Has Been Revoked and Notices of Revocation Sent:**

- (a) **(U)** If the visa has not been physically canceled, but notices of revocation have been sent and the alien has departed, or if the alien's departure cannot be determined, the Department is to be promptly notified by telegram as follows:

"CVIS: ADVISORY OPINIONS, VISAS, BASIS FOR REVOCATION, NIV, JOHN DOE, OVERCOME, REINSTATED THIS DATE."

- (b) **(U)** Any other post involved in the revocation action should be made an INFO addressee of this cable. Notices of reinstatement should be sent by the most expeditious secure means to all parties notified of the revocation.

(Previous Location: 9 FAM 41.122 PN14.3; CT:VISA-2031; 10-03-2013)

- (3) **(U) If Visa Has Been Revoked and Physically Canceled:** If a visa has been revoked, notices of revocation sent, the telegraphic report described in [9 FAM 403.11-4\(A\)\(3\)](#) above has been made, and the revoked visa physically canceled, the alien may apply for a new visa; however, they may not travel on the physically cancelled visa.

(Previous Location: 9 FAM 41.122 PN9.1-2; CT:VISA-2345; 09-24-2015)

- (4) **(U) If at Stopover Location Revocation Appears Overcome:** Upon

interviewing the alien, should the stopover post conclude that the basis for revocation has been overcome, the alien is no longer ineligible, and the visa has not been physically cancelled, reinstatement of the visa in accordance with [9 FAM 403.11-6\(A\)](#) above may be warranted. The stopover post should inform the revoking post in detail of its findings, addressing an info copy to the Department (CA/VO/SAC). Such a report could form the basis for reinstatement of the visa initiated by the revoking post or the stopover post, provided that it had the concurrence of the revoking post. If posts have a difference of opinion, the case should be submitted to the Department (CA/VO/L/A for non-security related revocations or CA/VO/SAC for security, foreign policy, or human rights related revocations) for determination. Should a determination to reinstate the visa be made, the revoking post, which may be presumed to hold the bulk of pertinent data on the case, would have the responsibility to take the reinstatement actions described above, and update and revise entries in CLASS.

9 FAM 403.11-7 (U) ACTIONS BY DHS

9 FAM 403.11-7(A) (U) Cancellation of Visas by Immigration Officers Under 22 CFR 41.122(h)

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.122 PN15.1; CT:VISA-2031; 10-03-2013)

a. **(U) When a visa is canceled by a DHS officer, one of the following notations will normally be entered in the alien's passport:**

- (1) **(U)** Canceled. Adjusted;
- (2) **(U)** Canceled. Excluded. DHS (Office) (Date);
- (3) **(U)** Canceled. Application withdrawn. DHS (Office) (Date);
- (4) **(U)** Canceled. Final order of deportation/voluntary departure entered DHS (Office) (Date) Canceled. Departure required. DHS (Office) (Date);
- (5) **(U)** Canceled. Waiver revoked. DHS (Office) (Date); and
- (6) **(U)** Canceled. Presented by impostor. DHS (Office) (Date).

(Previous Locations: 9 FAM 41.122 PN15.2; CT:VISA-2031; 10-03-2013; 9 FAM 41.122 PN16; CT:VISA-2031; 10-03-2013)

- b. **(U)** Except when a visa is canceled after the alien's status has been adjusted to that of a permanent resident, DHS will directly inform the consular office which issued the visa of the cancellation action. Form I-275, Withdrawal of Application/Consular Notification, will be used to inform consular officers at the issuing office of the cancellation action. Form I-275 and any other attached forms should not be released to aliens or their representatives.

9 FAM 403.11-7(B) (U) Voidance of Counterfeit Visas

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.122 PN17; CT:VISA-2031; 10-03-2013)

(U) When DHS has determined through examination that a visa has been altered or is counterfeit, it will void the visa by entering one of the following notations on the visa page, together with the action officer's signature, title, and office location:

- (1) **(U)** Counterfeit visa per testimony of alien (file number); or
- (2) **(U)** Counterfeit visa per telecon, letter, telegram, e-mail from U.S. Embassy (U.S. Consul).

9 FAM 500 IMMIGRANT VISAS

9 FAM 501 IMMIGRANT VISA OVERVIEW

9 FAM 501.1 INTRODUCTION TO IMMIGRANT VISAS

(CT:VISA-1; 11-18-2015)
(Office of Origin: CA/VO/L/R)

9 FAM 501.1-1 RELATED STATUTORY AND REGULATORY AUTHORITIES

9 FAM 501.1-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 211(a) (8 U.S.C. 1181(a)); INA 211(b) (8 U.S.C. 1181(b)); INA 212(a)(7); INA 212(d)(7) (8 U.S.C. 1182(d)(7)).

9 FAM 501.1-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.1; 8 CFR 211.1(b).

9 FAM 501.1-2 REQUIREMENT TO HAVE IMMIGRANT VISA

(CT:VISA-1; 11-18-2015)

- a. An unexpired immigrant visa (IV), reentry permit, or other valid entry document is generally required of an immigrant under INA 212(a)(7). The regulations of the Department of Homeland Security contained in 8 CFR 211.1(b) relating to waivers of documentary requirements for immigrants provide for admission of certain aliens without visas. See [9 FAM 201.2](#) for details on travel without an immigrant visa.

- b. A foreign citizen seeking to immigrate generally must be sponsored by a U.S. citizen or lawful permanent resident immediate relative(s), or prospective U.S. employer, and have an approved petition before applying for an immigrant visa.

9 FAM 501.2

IMMIGRANT VISA PROCESS

(CT:VISA-1; 11-18-2015)
(Office of Origin: CA/VO/L/R)

9 FAM 501.2-1 STATUTORY AND REGULATORY AUTHORITIES

(CT:VISA-1; 11-18-2015)

INA 212(a)(7) (8 U.S.C. 1182(a)(7)).

9 FAM 501.2-2 IMMIGRANT VISA CLASSIFICATIONS AND PROCESSING (OVERVIEW)

(CT:VISA-1; 11-18-2015)

Most immigrants receive visas in the family or employment based visa categories. To be eligible to apply for an immigrant visa (IV), a foreign citizen must be sponsored by a U.S. citizen relative, U.S. lawful permanent resident, or a prospective employer, with a few exceptions. The sponsor begins the immigration process by filing a petition on the foreign citizen's behalf with U.S. Citizenship and Immigration Services (USCIS).

After petition approval, the National Visa Center (NVC) handles processing for certain kinds of documents, sending them onward to post. Post then reviews the visa application and supporting documents, conducts an interview to determine visa eligibility, and completes processing.

9 FAM 501.2-3 IMMIGRANT VISA DOCUMENT AND TRAVEL (OVERVIEW)

(CT:VISA-1; 11-18-2015)

As noted in [9 FAM 302.1-3\(A\)](#), to comply with INA 212(a)(7)(A), an immigrant must possess a valid, unexpired U.S. immigrant visa (IV) and valid, unexpired travel document at the time of admission into the United States. In order to demonstrate that there are no legal impediments to obtaining an IV, applicants must submit police records, court or military records if applicable, and evidence of financial support.

Consular officers must also review results of applicants' medical exams, namechecks and special clearance results when evaluating applicants' eligibility for the IV. If a specific document is unobtainable, consular officers must require substitute documentation or secondary evidence.

9 FAM 502

IMMIGRANT VISA CLASSIFICATIONS

9 FAM 502.1

IV CLASSIFICATIONS OVERVIEW

(CT:VISA-190; 09-28-2016)

(Office of Origin: CA/VO/L/R)

9 FAM 502.1-1 IV CATEGORIES, BENEFICIARIES

9 FAM 502.1-1(A) Related Statutory and Regulatory Authorities

9 FAM 502.1-1(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(27)(C) (8 U.S.C. 1101(a)(27)(C)); INA 101(b)(1)(E) (8 U.S.C. 1101(b)(1)(E)); INA 203(a)-(d) (8 U.S.C. 1153(a)-(d)); INA 203(g) (8 U.S.C. 1153(g)).

9 FAM 502.1-1(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 40.1(a)(1); 22 CFR 42.11.

9 FAM 502.1-1(A)(3) Public Law

(CT:VISA-1; 11-18-2015)

Child Status Protection Act, Public Law 107-208.

9 FAM 502.1-1(B) IV Categories, Beneficiaries - Overview

(CT:VISA-190; 09-28-2016)

As previously noted, to be eligible to apply for an immigrant visa, a foreign citizen must be sponsored by a U.S. citizen relative, U.S. lawful permanent resident, or a prospective employer, with a few exceptions. The sponsor begins the immigration process by filing a petition on the foreign citizen beneficiary's behalf with USCIS. There are several categories of immigrant visas, including family-based, employment-based, special immigrant visas that cover special types of workers or special

circumstances, the yearly Diversity Visa program, and others. See a list of IV classifications and corresponding symbols in [9 FAM 502.1-3](#).

9 FAM 502.1-1(C) Principal and Derivative Beneficiaries

9 FAM 502.1-1(C)(1) Principal Applicants/Beneficiaries

(CT:VISA-1; 11-18-2015)

A principal applicant, or beneficiary, is the alien on whose behalf a petition can be filed directly.

9 FAM 502.1-1(C)(2) Derivative Applicants/Beneficiaries

(CT:VISA-190; 09-28-2016)

- a. **Derivatives – Overview:** A spouse or child acquired prior to the principal alien's admission to the United States or the alien's adjustment of status to that of a Lawful Permanent Resident (LPR), or a child born of a marriage which existed prior to the principal alien's admission to the United States as an immigrant or adjustment of status, who is following to join the principal alien, should be accorded derivative status under INA 203(d).
- b. **Accompanying and Following-to-Join Derivatives:**
 - (1) **Accompanying:**
 - (a) The term accompanying or accompanied by means not only an alien in the physical company of a principal alien but also an alien who is issued an immigrant visa within 6 months of:
 - (i) The date of issuance of a visa to the principal alien;
 - (ii) The date of adjustment of status in the United States of the principal alien; or
 - (iii) The date on which the principal alien personally appears and registers before a consular officer abroad to confer alternate foreign state chargeability or immigrant status upon a spouse or child.
 - (b) An "accompanying" relative may not precede the principal alien to the United States.
 - (2) **Following-to-Join:**
 - (a) **Basis for Following-to-Join:** The term "following to join," as used in INA 101(a)(27)(C) and INA 203(d), permits an alien to obtain *an* NIV or IV and the priority date of the principal alien as long as the alien following to join has the required relationship with the principal alien. There is no statutory time period during which the following-to-join alien must apply for a visa and seek admission into the United States. However, if the principal has died or lost status, or the relationship between the principal and derivative has been terminated, there is no longer a basis to following to join. As an

example, a person would no longer qualify as a child following to join upon reaching the age of 21 years (unless they qualify for the benefits of the Child Status Protection Act, see [9 FAM 502.1-1\(D\)](#)) or by entering into a marriage. There is no requirement that the following-to-join alien must take up residence with the principal alien in order to qualify for the visa. (See [9 FAM 502.1-1\(C\)\(2\)](#).) The term "following to join" also applies to a spouse or child following to join a principal alien who has adjusted status in the United States.

- (b) **Spouse or Child Acquired Prior to Admission of Principal Alien:** A spouse or child acquired prior to a principal alien's admission to the United States is entitled to derivative status and the priority date of the principal alien, regardless of the period of time which may elapse between the issuance of a visa to or admission into the United States of the principal alien and the issuance of a visa to the spouse or child of such alien and regardless of whether the spouse or child had been named in the IV application of the principal alien.
 - (c) **Child Born After Admission of Principal Alien:** A child born of a marriage which existed at the time of the principal alien's admission to the United States is considered to have been acquired prior to the principal alien's admission and is entitled to the principal alien's priority date.
 - (d) **Spouse or Child Acquired Subsequent to Admission of Principal Alien:** A spouse or child acquired through a marriage which occurs after the admission of the principal alien under INA 101(a)(27)(C) or INA 203(a) through INA 203(c) is not derivatively entitled to the status accorded by those provisions.
 - (e) **Adopted Child:** A child who qualified as a "child" under the provisions of INA 101(b)(1)(E) subsequent to the principal alien's admission, but was adopted and was a member of the principal alien's household prior to the adoptive parent's admission to the United States, is considered to have been acquired prior to the principal alien's admission.
 - (f) **Effect of Principal Alien's Naturalization on Derivative Status:** A "following-to-join" derivative must immigrate to the United States prior to any naturalization as a U.S. citizen. If the alien fails to immigrate prior to any naturalization the citizen must file an immediate relative petition for the family members.
- c. **Determining Derivative Status:** The principal alien has the primary responsibility for establishing his or her legal resident status. Paragraphs (1) and (2) below address use of post records and other documentation to determine the principal alien's status, and paragraph (3) focuses on evidence of adjustment in particular. See [9 FAM 202.2-5](#) for additional information on verification of LPR status, and [9 FAM 202.2-6](#) for additional information on LPR documentation.
- (1) **When Post Records Exist:**
 - (a) When the post issues the principal applicant a visa, it should maintain

complete records regarding the principal alien's issuance, classification, chargeability, and priority date to facilitate the processing of following-to-join beneficiaries. Posts must follow proper procedures in the automated immigrant visa processing system to ensure that following-to-join case records are maintained accurately. Posts should not create new cases for following-to-join applicants if the principal was issued a visa at that post.

- (b) In cases where the principal alien has been issued a visa at post, the post should establish a file for the following-to-join applicants which should include the following:
 - (i) Copy of the original petition;
 - (ii) Copy of the principal alien's IV application;
 - (iii) Copies of civil documents for each derivative beneficiary; and
 - (iv) Memorandum confirming biodata for derivative beneficiaries and tentative travel plans.
- (c) In cases where the principal applicant plans to precede the family to the United States, posts may wish to arrange an informal examination of the other members at the time of the principal's application. This will allow post to ascertain whether any of the family members has a possible mental, physical, or other ground of ineligibility which may prohibit the issuance of a visa, and thus would prevent or delay them in joining the principal. (See [9 FAM 504.9-5](#).)

(2) **When Post Record Does Not Exist:**

- (a) If no post record exists, posts should make every effort to verify the principal alien's visa category, chargeability, priority date, and admission into the United States based on available documentation such as:
 - (i) **The Principal Alien's Form I-551, Permanent Resident Card:** Apart from a complete file at post, the principal alien's Form I-551, Permanent Resident Card, is probably the best evidence of lawful permanent resident status. The Form I-551 indicates the visa category and date of entry into the United States. Posts are advised, however, that a resident alien does not receive a Form I-551 immediately. The demand on DHS card *printing* facilities to produce an increasing variety and number of cards has significantly increased the waiting period for the Permanent Resident Cards. The wait for a card can be up to a year, and, in some cases, even longer. Posts are therefore cautioned not to require the Form I-551 as a prerequisite for all following-to-join cases. See [9 FAM 202.2-5 paragraph a](#) for additional information on LPRs with Permanent Resident cards (I-551s);
 - (ii) **Form I-895, Form I-181 or Form I-824:** Form I-895, Attestation of Alien and Memorandum of Creation of Record of Lawful Permanent Residence; Form I-181, Memorandum of Creation of Record of

Lawful Permanent Residence; or Form I-824, Application for Action on an Approved Application or Petition (requested by the principal alien) may document the principal alien's status;

- (iii) **Person Centric Query Service (PCQS):** Post can look up the Principal Alien's record in PCQS if other documentation is not available. PCQS includes all information available on a Form I-551; or
- (iv) **Principal Alien's ADIT Stamp Showing Entry as an Immigrant:** When an immigrant enters the United States, DHS endorses his or her passport with an ADIT stamp. The ADIT stamp shows the date of entry into the United States, visa category, and employment authorization. This is the only evidence that the resident alien will carry until the Form I-551, Permanent Resident Card, is received. ADIT stamps have, however, proven to be highly susceptible to fraud and thus should be cautiously accepted as primary evidence of following-to-join status. *The information can be verified by PCQS.* However, an ADIT stamp can be very useful secondary evidence, indicating that the individual may have a claim to derivative status and/or as a source of necessary data that may be missing from a file. See [9 FAM 202.2-5 paragraph b](#) for additional information on LPRs with valid ADIT stamps.

(3) When Principal Adjusts:

- (a) In cases where the principal alien who adjusted status in the United States presents Form I-551, Permanent Resident Card, with the visa application of a relative entitled to derivative classification and priority date (see [9 FAM 503.3-2\(D\)](#)), the consular officer should create a case record for the derivative applicants. At a minimum, this record should include:
 - (i) Name, date and place of birth of the visa applicant;
 - (ii) Name of the permanent resident and relationship to the applicant;
 - (iii) Date *LPR status verified*; and
 - (iv) Resident alien's registration number, date of admission for permanent residence, and visa classification.
- (b) When the principal alien in a preference status who acquires permanent resident status by adjustment under INA 245 indicates that he or she has family who will follow to join, DHS generally sends the Form I-895, Attestation of Alien and Memorandum of Creation of Record of Lawful Permanent Residence, to the consular office at the time of the principal alien's adjustment. If, however, the Form I-895 has not been received, *the consular officer may verify the status of the principal alien in PCQS.* See [9 FAM 302.8-2\(B\)\(4\)](#) for the Form I-864, Affidavit of Support under INA 213A, requirement in such cases.

d. Processing Derivative IV Cases:

- (1) Processing derivative IV cases is essentially the same as that of principal applicant processing, once you have established the follow-to-join family member's relationship to the principal applicant and that the applicant is therefore entitled to derivative status.
 - (2) Derivative beneficiaries should be namechecked in the Consular Lookout and Support System (CLASS). The fingerprints of applicants 14 years of age or older must be scanned. (See [9 FAM 303.7](#) for more information on biometrics.)
- e. **Fraud and Following-to-Join Cases:** Since visa processing in follow-to-join cases is based primarily on documents presented by the applicant, a potential for fraud exists. Internal controls, document checks, and record verification are all means of guarding against fraud. However, consular officers should establish clear, consistent procedures for handling following-to-join cases based on the level of fraud which exists in the country and the security of local civil documents. Where the post has issued a visa to the principal alien, post should retain as much pertinent information as possible on derivative beneficiaries who may apply later. In cases where the post receives DHS notification of the principal alien's adjustment, confirmation of derivative beneficiaries' identities and claimed relationship is essential.

9 FAM 502.1-1(D) Child Status Protection Act

9 FAM 502.1-1(D)(1) The Child Status Protection Act (CSPA) – Background

(CT:VISA-91; 03-16-2016)

- a. The Child Status Protection Act (CSPA), Public Law 107-208, permits an applicant for certain immigration benefits to retain classification as a child under the INA, even if he or she has reached the age of 21. If an alien qualifies for CSPA benefits, the alien's age is frozen at the age calculation provided for in the CSPA. Under certain conditions, an alien whose CSPA age is determined to be younger than 21 and is unmarried will continue to be treated as a child for immigration purposes throughout the processing of the case. See [9 FAM 502.1-1\(D\)\(4\)](#) and [9 FAM 502.1-1\(D\)\(5\)](#).
- b. The CSPA potentially applies to virtually all immigrant visa cases including: immediate relatives, family and employment-based visa classifications, derivatives in Diversity Visa (DV) cases, derivatives in Special Immigrant Visa (SIV) cases, beneficiaries under the Violence Against Women Act (VAWA), and derivatives in asylee and refugee cases (for classes not covered by CSPA, see [9 FAM 502.1-1\(D\)\(3\)](#)).

9 FAM 502.1-1(D)(2) Applicability of the CSPA

(CT:VISA-91; 03-16-2016)

- a. The CSPA was enacted into law on August 6, 2002 and applies to any alien who had an approved immigrant visa (IV) petition prior to the enactment of the CSPA, but had not yet applied for permanent residence (either an IV application or an application for adjustment of status). It also applies to aliens whose IV petitions were approved after August 6, 2002.
- b. In immediate relative (IR) cases and immediate beneficiary (IB) cases under the Violence Against Women Act, if the alien was under the age of 21 at the time a petition was filed by his or her parent for classification as an IR or IB, the alien will not age out provided the alien did not have a final decision prior to August 6, 2002 on an application for permanent residence or an immigrant visa application.
- c. The CSPA also applies to an alien whose visa became available on or after August 7, 2001 and who did not apply for permanent residence within one year of the visa availability, but would have qualified for CSPA coverage had he or she applied but for prior guidance from USCIS concerning the CSPA effective date. In such cases, an IV applicant for a family or employment preference category who would not have qualified under prior guidance from USCIS is not required to demonstrate that he or she sought to acquire lawful permanent resident status within one year of a visa becoming available to benefit from the CSPA.

9 FAM 502.1-1(D)(3) Inapplicability of the CSPA

(CT:VISA-1; 11-18-2015)

- a. Notwithstanding the visa classifications for which the CSPA does apply (see [9 FAM 502.1-1\(D\)\(2\)](#)), the CSPA does not apply to any alien:
 - (1) Who, prior to August 6, 2002, the date the CSPA was enacted, had a final decision on an IV application or adjustment of status application based on an IV petition in which the applicant claimed to be a child; and
 - (2) Who aged out (i.e., had reached the age of 21) before August 6, 2002.
- b. The CSPA applies only to IV classifications expressly specified in the statute. The CSPA does not provide child age protection for nonimmigrant visas (NIVs) (e.g. K or V). Additionally, beneficiaries of petitions and their derivatives under the following programs are not specifically provided for in the CSPA:
 - (1) Nicaraguan Adjustment and Central American Relief Act (NACARA, see [9 FAM 502.6-2](#))
 - (2) Haitian Refugee Immigrant Fairness Act (HRIFA)
 - (3) Family Unity (see [9 FAM 302.9-14\(B\)\(4\)](#) paragraph b)
 - (4) Cuban Adjustment Act
 - (5) Chinese Student Protection Act
 - (6) Special Immigrant Juvenile (see [9 FAM 502.5-7](#))

9 FAM 502.1-1(D)(4) Calculation of CSPA Age for Preference

Categories and Derivative Petitions

(CT:VISA-190; 09-28-2016)

- a. For preference category and derivative petitions, the "CSPA age" is determined on the date that the visa, or in the case of derivative beneficiaries, the principal alien's visa became available (i.e., the date on which the priority date became current in the Application Final Action Dates and the petition was approved, whichever came later). The CSPA age is the result of subtracting the number of days that the IV petition was pending with USCIS (from date of receipt to date of approval, including any period of administrative review) from the actual age of the applicant on the date that the visa became available. Administrative review includes any period of time during which USCIS is reviewing a previously approved petition. The administrative review period may include the time it takes for USCIS to review a previously approved petition returned to USCIS by a consular officer for review and revocation. The CSPA age adjustment period would run from the date of petition filing until the date USCIS takes final action on the petition. You should note that in some cases, such as employment preference cases based on the filing of a labor certification, the priority date is not the same as the petition filing date. The petition filing and petition approval dates are the only relevant dates. Time waiting for a labor certification to be approved or for a priority date to become current is not taken into account.
- b. For DV cases, the time period during which the "petition is pending" is necessarily different. That time period is calculated using the first day of the DV application period for the program year in which the principal alien qualified and the date on which notifications that entrants had been selected become available. That time difference will be subtracted from the derivative alien's age on "the date the visa becomes available" to the principal alien. The date a visa becomes available for a DV case is the first day on which the principal alien's rank selection number is current for visa processing.
- c. For SIV cases (other than special immigrants from Iraq and Afghanistan who will have a petition approved by USCIS), the time *a* petition is pending is the *period* between the *applicant's submission* and the consular *officer's approval of* the DS-1884. *The applicant's priority date is the date he or she submitted the DS-1884 to the consular section.* The date a visa becomes available for an SIV case is the date on which the *applicant's priority date becomes current in the employment-based fourth preference category.*
 - (1) *For most countries, the fourth-preference employment based category is current, so the visa will be available to the applicant as soon as the DS-1884 is approved by the consular officer. In these cases, any children under 21 when the DS-1884 is approved will lock in that age for CSPA purposes so long as they seek to acquire LPR status within a year of visa availability.*
 - (2) *For some countries, the employment-based fourth preference category may be oversubscribed. In these countries, the applicant's visa will become available when his or her priority date is earlier than the Application Final Action Date published in the visa bulletin (as would be the case for any other preference*

visa category). In calculating the age of any derivatives under CSPA, officers should subtract the time that the DS-1884 was pending with the consular section from the derivative's actual age on the date that the visa became available. Please see [9 FAM 502.5-3\(C\)\(1\) paragraph \(3\)\(d\)](#) for further guidance on adjudicating non-current DS-1884 petitions.

- d. If posts need to determine the date on which a particular priority date first fell within the Application Final Action Dates (which were referred to as cut-off dates in Visa Bulletins prior to the October 2015 Bulletin) for purposes of determining what the alien's age was on the date the case became current, posts should refer to their monthly Visa Bulletin files. Alternatively, officers may access this information through the CCD:
- (1) Go to the Consular Consolidated Database Web site, then go to the "Public" tab and scroll down to the "IV Cutoff Dates by Visa Class." Here, enter a post code and a time period.
 - (2) If post's records or this online site do not have the necessary information, posts may contact CA/VO/DO/I for further assistance on historical movements of the Application Final Action Dates (i.e., cutoff dates). Posts should note that in following-to-join cases the date of first visa availability is not the date when the principal alien adjusted status in the United States. Adjustment of status often does not take place until long after a visa is first available to the principal alien.
- e. If an alien benefits from both the 45-day provision of the USA PATRIOT Act (see [9 FAM 502.7-4\(D\)](#)) and the age-out protection in the CSPA, posts should apply both statutes to the advantage of the alien beneficiary. (See [9 FAM 502.1-1\(D\)\(8\)](#).)
- f. While the CSPA may prevent the alien's age from changing, the alien must still meet the other criteria for "child" status, including being unmarried. Therefore, if the alien marries, the alien will lose "child" status (even though the alien's age, for immigration purposes, may be under 21 as a result of the CSPA). A subsequent divorce that occurs after the child's 21st birthday and after the visa becomes available will not restore "child" status because the alien was married at the time of visa availability. However, if the alien divorces before the visa becomes available to the alien as either the principal applicant or the derivative beneficiary, then the divorce may restore the alien to "child" status if the alien's CSPA age is under 21.

9 FAM 502.1-1(D)(5) Conversion of Petition Status

(CT:VISA-91; 03-16-2016)

CSPA coverage may vary depending on the changed circumstances affecting visa petitions, as noted in some of the examples below. This is true for both immediate relative and preference beneficiaries.

(1) Visa Classification Under an IR Category:

- (a) For IR and IB cases, if the alien beneficiary is under the age of 21 on the date of the petition filing, mathematically the alien cannot age out. The

alien beneficiary will qualify as a child as long as he or she does not marry. There is no requirement to seek to acquire lawful permanent residence within one year for IR and IB cases.

- (b) For petitions filed for an alien beneficiary as the child of an LPR where the petition was subsequently changed to an immediate relative petition due to the naturalization of the parent while the alien beneficiary was younger than 21, then mathematically the alien cannot age out. As above, the alien beneficiary will qualify as a child as long as he or she does not marry. If the alien beneficiary's true age was over 21 on the date the petitioner naturalized, then the petition will not convert to the immediate relative category and will remain under a family preference category.

(2) **Visa Classification Under a Preference Category:**

- (a) If it is determined that the child of the beneficiary of a second preference petition is over the age of 21 for CSPA purposes, and the petitioner naturalizes, the petition is automatically converted to either first or third preference (provided the marriage occurred after the naturalization of the petitioner). In such instances the beneficiary will retain the priority date.
- (b) Beneficiaries of family second preference petitions filed as F2B that were automatically converted to family first preference (F1) upon the petitioning parent's naturalization may exercise the right to "opt out" of the conversion. This also applies even if the petition in question was originally filed in the F2A category but has now been converted to F2B. Such automatic conversion from second to first preference status could disadvantage an applicant if the F1 Application Final Action Date is less favorable.
- (c) Currently, only USCIS can approve "opt-out" requests. Petitioners, beneficiaries, and their legal representatives should be advised that they must file a request in writing with the USCIS District Office having jurisdiction over the beneficiary's place of residence (see [9 FAM 602.2-2\(E\)](#)). The District Office should notify the appropriate visa issuing office if the request has been approved.
- (d) For a derivative beneficiary in family and employment based cases, DV cases, and SIV cases, if the derivative beneficiary's "CSPA age" is under 21, the alien must seek to acquire lawful permanent resident (LPR) status within one year of visa availability in order for CSPA coverage to continue (see [9 FAM 502.1-1\(D\)\(6\)](#)). Be aware, however, that retrogression of visa numbers that affects visa availability during that year may extend possible CSPA coverage (see [9 FAM 502.1-1\(D\)\(7\)](#), Retrogression of Visa Numbers).

9 FAM 502.1-1(D)(6) Sought to Acquire LPR Status Provision

(CT:VISA-91; 03-16-2016)

- a. In family and employment-based preference, DV, and SIV cases the alien must seek

to acquire LPR status within one year of visa availability. The one-year requirement does not apply in IR or IB cases.

- (1) The one-year requirement generally means that the applicant must have submitted the completed Form DS-260, Part I within one year of a visa becoming available. However, if the principal applicant adjusted to LPR status in the United States and the derivative seeks a visa to follow to join, then the law requires generally that the principal has filed a Form I-824 within one year of a visa becoming available. The submission of a Form DS-260 that covers only the principal applicant will not serve to meet the requirement for the alien child.
 - (2) You should be aware that because the Form I-824 did not have a field specifically to list derivative beneficiaries, there is no requirement that the principal applicant attempt to amend the form to reflect the names of derivative applicants. Therefore, the timely filing of the Form I-824 by the principal applicant in the United States will meet the CSPA requirement to seek to acquire LPR status within one year of visa availability.
 - (3) The filing of a Form I-485, Application to Adjust Status, by the principal alien in the United States does not satisfy the "sought to acquire" provision on behalf of a following to join derivative. However, a beneficiary can satisfy the "sought to acquire" requirement by paying IV fees, filing a Form I-864, Affidavit of Support (only if the applicant is listed on the Affidavit of Support), or paying the Form I-864 filing fee to NVC (only if the applicant is listed on the Affidavit of Support). For questions about individual, fact-specific circumstances that may meet the "sought to acquire" requirement, submit an advisory opinion request to CA/VO/L/A.
- b. INA 203(h) requires that an alien beneficiary seek to acquire LPR status within one year, not that the alien actually acquire such status within one year. Therefore, if the alien files a Form DS-260 but has his or her IV refused but the ground of refusal can be overcome, or if the alien is the beneficiary of an Form I-824 that is rejected for a procedural reason, the act of filing the Form DS-260 or Form I-824 may still satisfy the statute.

9 FAM 502.1-1(D)(7) Retrogression of Application Final Action Dates

(CT:VISA-91; 03-16-2016)

- a. In order to seek to acquire lawful permanent residence, an alien beneficiary must actually have one full year of visa availability. If an Application Final Action Date retrogresses (e.g., employment-based third preference numbers are unavailable) or the preference category changes (e.g., F1 converts to F3) within one year of visa availability and the visa applicant has not yet sought to acquire LPR status, then once a visa number becomes available again the one year period starts over. The alien beneficiary's age under the CSPA is re-determined using the subsequent Application Final Action Date.

- b. If a visa availability date retrogresses before the visa had been available for one full year, any actions taken within one year of the visa becoming available and that satisfy the "sought to acquire" requirement (see [9 FAM 502.1-1\(D\)\(6\)](#)) will be sufficient to lock in the applicant's CSPA age as of the first day the visa became available during this time period.

EXAMPLE: If a visa became available on June 1, 2015, the visa availability date retrogressed on July 1, 2015 and the applicant sought to acquire a visa on August 1, 2015 by paying IV fees, the applicant's CSPA age would be locked in as of June 1, 2015 based on seeking to acquire within one year of visa availability. The next time the visa becomes available, the consular officer would calculate the CSPA age as of June 1, 2015.

9 FAM 502.1-1(D)(8) Applicants Qualifying Under Section 424 of the USA PATRIOT ACT or the CSPA

(CT:VISA-1; 11-18-2015)

- a. In all cases in which an applicant qualifies under section 424 of the USA PATRIOT Act for visa validity for 45 days beyond the applicant's 21st birthday, the visa should be issued for the additional 45 days. The USA PATRIOT Act applies to petitions filed on or before September 11, 2001 for which the applicant aged out after September 11, 2001.
- b. Posts must override the age 21 cutoff date in the IV software in order to apply the extra days. Some cases will qualify under the 45 days of the USA PATRIOT Act and the CSPA. In those cases the 45 days of the USA PATRIOT Act should be included in calculation of the alien's age under the CSPA (see [9 FAM 502.1-1\(D\)\(4\)](#) paragraph e).
- c. Any post that is not able to process either a USA PATRIOT Act case or a CSPA case to conclusion using the IV system should request assistance from the CA Support Desk or by e-mail at CAServiceDesk@state.gov.
- d. For more information on processing applicants qualifying under the USA PATRIOT Act, see [9 FAM 502.7-4](#).

9 FAM 502.1-1(D)(9) Consular Processing in CSPA Cases – Advisory Opinions

(CT:VISA-91; 03-16-2016)

- a. The Department recognizes the complexity of the CSPA legislation. Advisory opinions should be submitted to the Department (CA/VO/L/A) in two specific instances:
- (1) If the alien applied before August 6, 2002 and was refused under 221(g) or on some other ground besides "aging out," but that other refusal ground has been overcome/waived; or
 - (2) If the officer encounters a case involving a derivative following to join a legally

admitted immigrant or adjusted principal who has not filed Form I-824, Application for Action on an Approved Application or Petition, on the derivative's behalf within the required time frame, but the consular officer determined that the derivative has taken some other concrete step to obtain LPR status within the required one-year time frame.

- b. If post has any questions about the applicability of the CSPA in a particular case, an advisory opinion request may be submitted to the Department (CA/VO/L/A). Any such requests should include the following information:
- (1) The alien's date of birth;
 - (2) The IV category;
 - (3) Whether the alien is a principal or derivative;
 - (4) Whether the petitioner naturalized and, if so, the date of naturalization;
 - (5) The alien's marital status and, if ever married, the dates of marriage and dates of divorces;
 - (6) The priority date of the petition;
 - (7) The date the petition was filed;
 - (8) The date the petition was approved;
 - (9) The date the priority date became current in the Application Final Action Dates;
 - (10) The alien's age on the date that a visa became available (i.e., age on date of petition approval or on date priority date became current in the Application Final Action Dates, whichever is later);
 - (11) The date the alien submitted the Form DS-260 or the date the principal filed the Form I-824;
 - (12) The date(s) the principal and relevant derivative alien applied for the IV; and
 - (13) If any IV application(s) were made prior to the effective date of the CSPA, the outcome of the prior application(s).

9 FAM 502.1-2 ELIGIBILITY FOR IV CLASSIFICATION

9 FAM 502.1-2(A) Related Statutory and Regulatory Authorities

9 FAM 502.1-2(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 201(b) (8 U.S.C. 1151(b)); INA 203(a) (8 U.S.C. 1153(a)); INA 203(g) (8 U.S.C. 1153(g)); INA 204 (8 U.S.C. 1154).

9 FAM 502.1-2(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 103.2; 8 CFR 204.2(h); 8 CFR 204.5.

9 FAM 502.1-2(A)(3) Public Law

(CT:VISA-1; 11-18-2015)

Violent Crime Control Act, Public Law 103-322, sec. 40701 (also known as the Violence Against Women Act of 1994 (VAWA)); USA PATRIOT ACT, Public Law 107-56, sec. 421(b)(1)(B)(i); Department of Homeland Appropriations Act, 2010, Public Law 111-83, sec. 568(c).

9 FAM 502.1-2(B) General IV Classification Guidelines

(CT:VISA-1; 11-18-2015)

An alien shall be entitled to immigrant classification if the alien: is the beneficiary of an approved petition according immediate relative or preference status; or, has satisfied the consular officer that the alien is entitled to special immigrant status under INA(101)(a)(27) (A) or (B); or, is entitled to status as a Vietnam Amerasian under section 584(b)(1) of section 101(e) of Public Law 100-202 as amended by Public Law 101-167 and Public Law 101-513; or, is entitled to status as a diversity immigrant under INA 203(c). See all IV classifications below.

9 FAM 502.1-2(C) Petitions and IV Classifications

(CT:VISA-1; 11-18-2015)

- a. **Petitions and Entitlement to IV Status:** A consular officer must not issue an immigrant visa without receipt from the Department of Homeland Security (DHS) of an approved immigrant petition. The approval of a petition under INA 204 is considered to establish prima facie entitlement to status. The validity of the relationship between the petitioner and the alien beneficiary, familial or employer and/or employee, is presumed to exist. See [9 FAM 504.2](#) for additional information on immigrant visa petitions.
- b. **Petition Validity and Termination of Relationship:**
 - (1) **Family-Based IV Classifications:** Unless an application is terminated pursuant to INA 203(g) (see [9 FAM 504.13](#)) or revoked pursuant to 8 CFR 205.1, the approval of a petition to classify an alien as an immediate relative under INA 201(b) or a preference applicant under INA 203(a)(1), (2), (3), or (4) must remain valid for the duration of the relationship to the petitioner, and of the petitioner's status, as established in the petition. A petition filed by a battered or abused spouse or child under INA 204(a)(1)(A)(iii)(I) or INA 204(a)(1)(B)(iii), however, may not be revoked solely due to termination of the relationship.

- (2) **Employment-Based IV Classifications:** Unless an application is terminated pursuant to INA 203(g) (see [9 FAM 504.13-2\(A\)\(1\)](#) and [9 FAM 504.13-4\(A\)](#)) or is revoked under 8 CFR 205.1, the approval of an employment preference petition based on an approved labor certification is valid indefinitely until the alien immigrates or adjusts status.
- (3) See [9 FAM 502.1-2\(D\)](#) for information on the effects of changes to family, employment and petitioner circumstances on IV classifications and petitions.

c. Filing IV Petitions to Demonstrate IV Status:

- (1) In most cases, it is the prospective immigrant's family member or future employer who will file the appropriate petition to start the IV case. However, there are a few groups of individuals who can self-petition:
 - (a) E1 Aliens of extraordinary ability (see [9 FAM 502.4-2](#));
 - (b) E2 Aliens of exceptional ability (see [9 FAM 502.4-3](#));
 - (c) C5, T5 Investors (see [9 FAM 502.4-5](#));
 - (d) DV applicants (self-submitted entry functions like a petition – see [9 FAM 502.6](#));
 - (e) Widow/Widower of U.S. citizen (see [9 FAM 502.1-2\(C\)](#) paragraph c(2));
 - (f) Battered and/or Abused Spouses or Children of U.S. Citizen or Legal Permanent Resident (see [9 FAM 502.1-2\(C\)](#) paragraph c(3)); and
 - (g) Spouse, child or adult son or daughter of an LPR killed in the September 11 attacks (see [9 FAM 502.7-4](#)).

(2) Widow/Widower of U.S. Citizen:

- (a) The spouse of a deceased U.S. citizen may file a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, for classification as an immediate relative under INA 201(b) provided the spouse:
 - (i) Was the U.S. citizen's legal spouse;
 - (ii) Was not legally separated at the time of the spouse's death;
 - (iii) Has not remarried; and
 - (iv) Either files a petition under INA 204(a)(1)(A)(ii) within two years of the spouse's death; or
 - (v) Is the beneficiary of a Form I-130, Petition for Alien Relative, filed on the widow(er)'s behalf by the U.S. citizen spouse prior to his or her death. Such petitions will automatically convert to a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, so long as, on the date of the U.S. citizen spouse's death, the beneficiary qualified as an immediate relative under the INA.
- (b) Widow(er)s married less than two years may also self-petition. The child of a qualifying widow or widower is also entitled to status as a derivative if accompanying or following to join the principal beneficiary. See [9 FAM](#)

[502.2-2\(B\)](#)d.(3) and e. for more on IV classification for widow(er)s and their derivative children.

- (3) **Battered and/or Abused Spouse or Child of U.S. Citizen or LPR:** Section 40701 of the Violent Crime Control Act (Public Law 103-322), also known as the Violence Against Women Act of 1994 (VAWA), signed into law on September 13, 1994, amended INA 204 to allow certain spouses and children of U.S. citizens and permanent resident aliens to self-petition for immediate relative (IR) and family second preference classification. Although it is anticipated that most applicants will seek adjustment of status, some aliens may apply for visas. (See paragraph (b) below.)
- (a) **Requirements for Battered/Abused Spouse or Child to Self-Petition:** The alien spouse or child who has been battered by, or subjected to extreme cruelty committed by, a U.S. citizen or permanent resident spouse or parent may file a petition for IR or family second preference classification if the:
- (i) Alien is residing in the United States with the spouse or parent;
 - (ii) Alien is of good moral character;
 - (iii) Alien may be classified as a spouse or child under INA 201(b)(2)(A)(i) or INA 203(a)(2)(A);
 - (iv) Marriage was entered into in good faith;
 - (v) Alien or the alien's child has been battered by, or has been the subject of extreme cruelty perpetrated by, the alien's spouse; and,
 - (vi) Alien's deportation would result in extreme hardship to the alien or the alien's child.
- (b) **Filing VAWA Self-Petitions:** A self-petition cannot be filed or accepted at a U.S. embassy or consulate abroad. A self-petition also cannot be filed at a DHS Service office abroad; it must be filed at the DHS Vermont Service Center. The Vermont Service Center has been designated to handle all petitions filed by self-petitioning battered aliens. The Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, should be mailed to:
- DHS Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479-0001
ATTN: Family Service Product Line (VAWA)
- (c) **Priority Date of Self-Petition:** The priority date of a self-petition is the date on which the petition is properly filed, provided it is properly signed and executed, the required fee is attached, and it otherwise complies with 8 CFR 103.2. If the alien is the beneficiary of an earlier-filed family-based visa petition by the abuser to accord the self-petitioner immigrant classification as his or her spouse or child, the earlier priority date may be

assigned.

- (d) **Effect on Other Approved Petitions:** The approval of a self-petition has no effect on a relative petition. A spouse or child may be both the beneficiary of a self-petition and the beneficiary of a relative visa petition filed by the abuser. Qualified persons may seek immigrant visas based on either petition, whichever is most advantageous.
- (e) **Spousal Self-Petitions Based on Abuse of Child:** A spouse may file a self-petition based on abuse committed against the spouse's child born in wedlock, a stepchild, a legitimate child, a child born out of wedlock, or an adopted child.

9 FAM 502.1-2(D) Changes to IV Classifications, Petitions

(CT:VISA-1; 11-18-2015)

a. **Changes in Family or Relationship Status:** See [9 FAM 502.2-3\(D\)](#) for additional information on automatic conversion of family preference petitions and [9 FAM 502.2](#) for additional information on family-based IV classifications.

(1) **Petitioner's Naturalization (Family Second Preference Petition):**

- (a) In the event of the petitioner's naturalization after approval of a family second petition but before visa issuance, in accordance with Department of Homeland Security regulations (8 CFR 204.2(i)(3)), the petition is automatically converted as of the date of the petitioner's naturalization to accord immediate relative (IR) status under INA 201(b) for the spouse (automatically converted from F21 to IR1) or child (automatically converted from F22 to IR2), or first preference status under INA 203(a)(1) for an unmarried son or daughter (automatically converted from F24 to F11).
- (b) Proof of naturalization must be submitted to you when you consider the visa application and you must include it in the issued visa. The petition need not be returned to USCIS for re-approval. If notification of the naturalization has been received from USCIS in the form of a letter, you must attach it to the petition.
- (c) Automatic conversion of a petition is not authorized for an alien who is a derivative beneficiary (F23 or FX3) of a petition filed by a Lawful Permanent Resident (LPR) who subsequently becomes a U.S. citizen. The principal beneficiary must file (and obtain USCIS approval of) a Form I-130, Petition for Alien Relative (family second preference) upon the principal's admission to the United States before the derivative alien may be granted a visa.

(2) **Petitioner's Death (Widow(er)):**

- (a) USCIS regulations allow for the automatic conversion of a Petition for Alien Relative, Form I-130, to a Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360, upon the petitioner's death in the case of an

immediate relative spouse (now widow(er)) of a U.S. citizen. No further action is required on the part of USCIS to automatically convert the petition, nor does any revocation and reinstatement need to be performed. See 8 CFR 204.2(i)(1)(iv).

- (b) Widow(er)s married less than two years may also self-petition, and are included in the auto conversion regulation. Children of the widow(er) are also included on the widow(er)'s Form I-130/Form I-360 converted petition without the need for a separate I-360 or I-130 petition (see the 2010 FY DHS Appropriations Act, Public Law No 111-83, Section 568(c)). See [9 FAM 502.1-2\(C\)](#) for additional information on self-petitioning for widow(er)s, and [9 FAM 502.2-2\(B\)](#) paragraph e. for more on the widow(er) classification.

- (3) **Petitioner Killed in September 11, 2001 Terrorist Attack:** Under section 421(b)(1)(B)(i) of the USA PATRIOT Act, a petition approved for the spouse or child, son, or daughter of an alien killed in the September 11, 2001 terrorist attacks must remain valid indefinitely and continues as if the petitioner had not died. The beneficiary may retain his or her priority date. See [9 FAM 502.7-4](#) for additional information on September 11-related provisions.

(4) **Battered/Abused Petition Conversion:**

- (a) A self-petition on behalf of a battered or abused child will be automatically converted and the priority date will be preserved in the following instances:

- (i) The approved self-petition for IR classification for a child of a U.S. citizen must be automatically converted to a first or third preference petition when the self-petitioner either reaches 21 years of age or marries; and
- (ii) The approved self-petition for second preference status for a child of a lawful permanent resident (LPR) must be automatically converted to a petition for classification as the unmarried son or daughter of a LPR when the unmarried self-petitioner reaches 21 years of age.

- (b) There is, however, no automatic upgrade of the second preference petition to IR classification if the abuser becomes a U.S. citizen, although the abused child can file a new self-petition for IR classification. Renunciation of citizenship or abandonment of LPR status by the abuser will not affect the validity of an approved petition. See [9 FAM 502.1-2\(C\)](#) for additional information on filing VAWA self-petitions.

- b. **Changes in Employment Status:** See also [9 FAM 502.4](#) for additional information on employment-based IV classifications.

- (1) **Change in Job Location:** Except for a Schedule A labor certification, which is valid anywhere in the United States, a labor certification is valid only for the area within normal commuting distance of the site of the original offer of employment. (Any location within a Metropolitan Statistical Area is deemed to

be within normal commuting distance.) If there is a change in job location, the consular officer must return the petition to the DHS jurisdiction office for action, and the petitioner must file a new petition with the DHS Service Center having jurisdiction over the intended place of employment.

- (2) **Change of Employer:** If the beneficiary of an approved petition changes employers, the consular officer should send the petition to the DHS jurisdictional office. DHS will reaffirm the validity of a previously approved petition only when there is a successorship in interest (i.e., when the business is merged, acquired, or purchased by another business). In addition, the new employer must offer the same wages and working conditions, offer the beneficiary the same job as stated on the original labor certification, and must continue to operate the same type of business as the original employer.
- (3) **Company Name Change:** A situation may arise whereby a petitioning business will have changed its name between the time a petition is approved and the date of the beneficiary's visa issuance. In such instances, DHS does not need to review the petition or issue any further documentation if the only change is the change in the name of the company. If the consular officer is satisfied that the evidence presented makes clear that only the company name has changed, as opposed to a change of ownership or company location, DHS need not be consulted. The visa must be annotated; e.g., "abc, inc. formerly xyz, inc."

c. **Conversion of Older Family-Based IV Petitions Based on Legislative Changes:**

- (1) **Family-Sponsored Petitions Approved Prior to 1965 Amendments:** Form I-130, Petition for Alien Relative, petitions approved in accordance with the Immigration and Nationality Act of 1952 prior to the 1965 amendments were automatically converted to the new preference or immediate relative status in 1965.
- (2) **Family-Sponsored Petitions Approved Prior to October 1, 1991:** Family-sponsored petitions approved under the Immigration and Nationality Act prior to October 1, 1991, automatically convert to the corresponding new family preference category.
- (3) See [9 FAM 502.2](#) for general information on family-based IV classifications.

d. **Abandonment of LPR Status:** There is no legal restriction preventing a lawful permanent resident (LPR) from obtaining another immigrant visa in a different preference status in order to confer derivative status on a spouse or child. There is also no requirement that the alien resident abandon their LPR status.

9 FAM 502.1-3 IV CLASSIFICATION SYMBOLS

(CT:VISA-190; 09-28-2016)

A visa issued to an immigrant alien within one of the classes described below must

bear an appropriate visa symbol to show the classification of the alien.

SYMBOL	CLASS	SECTION OF LAW
Immediate Relatives		
IR1	Spouse of U.S. Citizen	INA 201(b).
IR2	Child of U.S. Citizen	INA 201(b).
IR3	Orphan Adopted Abroad by U.S. Citizen	INA 201(b) & INA 101(b)(1)(F).
IH3	Child from Hague Convention Country Adopted Abroad by U.S. Citizen	INA 201(b) & INA 101(b)(1)(G).
IR4	Orphan to be Adopted in U.S. by U.S. Citizen	INA 201(b) & INA 101(b)(1)(F).
IH4	Child from Hague Convention Country to be Adopted in U.S. by U.S. Citizen	INA 201(b) & INA 101(b)(1)(G).
IR5	Parent of U.S. Citizen at Least 21 Years of Age	INA 201(b).
CR1	Spouse of U.S. Citizen (Conditional Status)	INA 201(b) & 216.
CR2	<i>Stepchild</i> of U.S. Citizen (Conditional Status)	INA 201(b) & 216.
IW1	Certain Spouses of Deceased U.S. Citizens	INA 201(b).
IW2	Child of IW1	INA 201(b).
IB1	Self-petition Spouse of U.S. Citizen	INA 204(a)(1)(A)(iii).
IB2	Self-petition child of U.S. Citizen	INA 204(a)(1)(A)(iv).
IB3	Child of IB1	INA 204(a)(1)(A)(iii).
VI5	Parent of U.S. Citizen Who Acquired Permanent Resident Status Under the Virgin Islands Nonimmigrant Alien Adjustment Act	INA 201(b) & §2 of the Virgin Islands Nonimmigrant Alien Adjustment Act, (Pub. L. 97-271).
Vietnam Amerasian Immigrants		
AM1	Vietnam Amerasian Principal	Section 584(b)(1)(A) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law

		100-202) as amended.
AM2	Spouse or Child of AM1	Section 584(b)(1)(A) and 584(b)(1)(B) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100-202) as amended.
AM3	Natural Mother of AM1 (and Spouse or Child of Such Mother) or Person Who has Acted in Effect as the Mother, Father, or Next-of-Kin of AM1 (and Spouse or Child of Such Person)	Section 584(b)(1)(A) and 584(b)(1)(C) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100-202) as amended.
Special Immigrants		
SB1	Returning Resident	INA 101(a)(27)(A).
SC1	Person Who Lost U.S. Citizenship by Marriage	INA 101(a)(27)(B) & 324(a).
SC2	Person Who Lost U.S. Citizenship by Serving in Foreign Armed Forces	INA 101(a)(27)(B) & 327.
SI1	Certain Aliens Employed by the U.S. Government in Iraq or Afghanistan as Translators or Interpreters	Section 1059 of Public Law 109-163 as amended by Public Law 110-36.
SI2	Spouse of SI1	Section 1059 of Public Law 109-163 as amended by Public Law 110-36.
SI3	Child of SI1	Section 1059 of Public Law 109-163 as amended by Public Law 110-36.
SM1	Alien Recruited Outside the United States Who Has Served or is Enlisted to Serve in the U.S. Armed Forces for 12 Years	INA 101(a)(27)(K).
SM2	Spouse of SM1	INA 101(a)(27)(K).
SM3	Child of SM1	INA 101(a)(27)(K).

SQ1	Certain Iraqis or Afghans Employed by or on Behalf of the U.S. Government	Section 602(b), Division F, Title VI, Omnibus Appropriations Act of 2009, Public Law 111-8 and Section 1244 of Public Law 110-181.
SQ2	Spouse of SQ1	Section 602(b), Division F, Title VI, Omnibus Appropriations Act of 2009, Public Law 111-8 and Section 1244 of Public Law 110-181.
SQ3	Child of SQ1	Section 602(b), Division F, Title VI, Omnibus Appropriations Act of 2009, Public Law 111-8 and Section 1244 of Public Law 110-181.
SU2	Spouse of U1	INA 245(m)(3) & INA 101(a)(15)(U)(ii).
SU3	Child of U1	INA 245(m)(3) & INA 101(a)(15)(U)(ii).
SU5	Parent of U1	INA 245(m)(3) & INA 101(a)(15)(U)(ii).
Family-Sponsored Preferences		
Family 1st Preference		
F11	Unmarried Son or Daughter of U.S. Citizen	INA 203(a)(1).
F12	Child of F11	INA 203(d) & 203(a)(1).
B11	Self-petition Unmarried Son or Daughter of U.S. Citizen	INA 204(a)(1)(A)(iv) & INA 203(a)(1).
B12	Child of B11	INA 203(d), INA 204(a)(1)(A)(iv) & INA 203(a)(1).
Family 2nd Preference (Subject to Country Limitations)		
F21	Spouse of Lawful Permanent Resident	INA 203(a)(2)(A).
F22	Child of Lawful Permanent Resident	INA 203(a)(2)(A).

F23	Child of F21 or F22	INA 203(d) & INA 203(a)(2)(A).
F24	Unmarried Son or Daughter of Lawful Permanent Resident	INA 203(a)(2)(B).
F25	Child of F24	INA 203(d) & INA 203(a)(2)(B).
C21	Spouse of Lawful Permanent Resident (Conditional)	INA 203(a)(2)(A) & INA 216.
C22	<i>Stepchild</i> of Alien Resident (Conditional)	INA 203(a)(2)(A) & INA 216.
C23	Child of C21 or C22 (Conditional)	INA 203(d), INA 203(a)(2)(A) & INA 216.
C24	Unmarried Son or Daughter of Lawful Permanent Resident (Conditional)	INA 203(a)(2)(B) & INA 216.
C25	Child of F24 (Conditional)	INA 203(d), INA 203(a)(2)(B) & INA 216.
B21	Self-petition Spouse of Lawful Permanent Resident	INA 204(a)(1)(B)(ii).
B22	Self-petition Child of Lawful Permanent Resident	INA 204(a)(1)(B)(iii).
B23	Child of B21 or B22	INA 203(d) & INA 204(a)(1)(B)(ii).
B24	Self-petition Unmarried Son or Daughter of Lawful Permanent Resident	INA 204(a)(1)(B)(iii).
B25	Child of B24	INA 203(d) & INA 204(a)(1)(B)(iii).
Family 2nd Preference (Exempt from Country Limitations)		
FX1	Spouse of Lawful Permanent Resident	INA 202(a)(4)(A) & INA 203(a)(2)(A).
FX2	Child of Lawful Permanent Resident	INA 202(a)(4)(A) & INA 203(a)(2)(A).
FX3	Child of FX1 or FX2	INA 202(a)(4)(A), INA 203(a)(2)(A) & INA 203(d).
CX1	Spouse of Lawful Permanent Resident (Conditional)	INA 202(a)(4)(A), INA 203(a)(2)(A) & INA 216.

CX2	<i>Stepchild</i> of Lawful Permanent Resident (Conditional)	INA 202(a)(4)(A), INA 203(a)(2)(A) & INA 216.
CX3	Child of CX1 or CX2 (Conditional)	INA 202(a)(4)(A), INA 203(a)(2)(A), INA 203(d) & INA 216.
BX1	Self-petition Spouse of Lawful Permanent Resident	INA 204(a)(1)(B)(ii).
BX2	Self-petition Child of Lawful Permanent Resident	INA 204(a)(1)(B)(iii).
BX3	Child of BX1 or BX2	INA 204(a)(1)(B)(ii) & 203(d).
Family 3rd Preference		
F31	Married Son or Daughter of U.S. Citizen	INA 203(a)(3).
F32	Spouse of F31	INA 203(d) & INA 203(a)(3).
F33	Child of F31	INA 203(d) & INA 203(a)(3).
C31	Married Son or Daughter of U.S. Citizen (Conditional)	INA 203(a)(3) & INA 216.
C32	Spouse of C31 (Conditional)	INA 203(d), INA 203(a)(3) & INA 216.
C33	Child of C31 (Conditional)	INA 203(d), INA 203(a)(3) & INA 216.
B31	Self-petition Married Son or Daughter of U.S. Citizen	INA 204(a)(1)(A)(iv) & INA 203(a)(3).
B32	Spouse of B31	INA 203(d), INA 204(a)(1)(A)(iv) & INA 203(a)(3).
B33	Child of B31	INA 203(d), INA 204(a)(1)(A)(iv) & INA 203(a)(3).
Family 4th Preference		
F41	Brother or Sister of U.S. Citizen at Least 21 Years of Age	INA 203(a)(4).
F42	Spouse of F41	INA 203(d) & INA 203(a)(4).
F43	Child of F41	INA 203(d) & INA 203(a)(4).
Employment-Based Preferences		
Employment 1st Preference (Priority Workers)		

E11	Alien with Extraordinary Ability	INA 203(b)(1)(A).
E12	Outstanding Professor or Researcher	INA 203(b)(1)(B).
E13	Multinational Executive or Manager	INA 203(b)(1)(C).
E14	Spouse of E11, E12, or E13	INA 203(d), INA 203(b)(1)(A), INA 203(b)(1)(B) & INA 203(b)(1)(C).
E15	Child of E11, E12, or E13	INA 203(d), INA 203(b)(1)(A), INA 203(b)(1)(B) & INA 203(b)(1)(C).
Employment 2nd Preference (Professionals Holding Advanced Degrees or Persons of Exceptional Ability)		
E21	Professional Holding Advanced Degree or Alien of Exceptional Ability	INA 203(b)(2).
E22	Spouse of E21	INA 203(d) & INA 203(b)(2).
E23	Child of E21	INA 203(d) & INA 203(b)(2).
Employment 3rd Preference (Skilled Workers, Professionals, and Other Workers)		
E31	Skilled Worker	INA 203(b)(3)(A)(i).
E32	Professional Holding Baccalaureate Degree	INA 203(b)(3)(A)(ii).
E34	Spouse of E31 or E32	INA 203(d), INA 203(b)(3)(A)(i), INA 203(b)(3)(A)(ii).
E35	Child of E31 or E32	INA 203(d), INA 203(b)(3)(A)(i) & INA 203(b)(3)(A)(ii).
EW3	Other Worker (Subgroup Numerical Limit)	INA 203(b)(3)(A)(iii).
EW4	Spouse of EW3	INA 203(d) & INA 203(b)(3)(A)(iii).
EW5	Child of EW3	INA 203(d) & INA 203(b)(3)(A)(iii).
Employment 4th Preference (Certain Special Immigrants)		
BC1	Broadcaster in the U.S. employed by the International Broadcasting Bureau of the Broadcasting Board of Governors or a grantee of such	INA 101(a)(27)(M) & INA 203(b)(4).

	organization	
BC2	Accompanying spouse of BC1	INA 101(a)(27)(M) & INA 203(b)(4).
BC3	Accompanying child of BC1	INA 101(a)(27)(M) & INA 203(b)(4).
SD1	Minister of Religion	INA 101(a)(27)(C)(ii)(I) & INA 203(b)(4).
SD2	Spouse of SD1	INA 101(a)(27)(C)(ii)(I) & INA 203(b)(4).
SD3	Child of SD1	INA 101(a)(27)(C)(ii)(I) & INA 203(b)(4).
SE1	Certain Employees or Former Employees of the U.S. Government Abroad	INA 101(a)(27)(D) & INA 203(b)(4).
SE2	Spouse of SE1	INA 101(a)(27)(D) & INA 203(b)(4).
SE3	Child of SE1	INA 101(a)(27)(D) & INA 203(b)(4).
SF1	Certain Former Employees of the Panama Canal Company or Canal Zone Government	INA 101(a)(27)(E) & INA 203(b)(4).
SF2	Spouse or Child of SF1	INA 101(a)(27)(E) & INA 203(b)(4).
SG1	Certain Former Employees of the U.S. Government in the Panama Canal Zone	INA 101(a)(27)(F) & INA 203(b)(4).
SG2	Spouse or Child of SG1	INA 101(a)(27)(F) & INA 203(b)(4).
SH1	Certain Former Employees of the Panama Canal Company or Canal Zone Government on April 1, 1979	INA 101(a)(27)(G) & INA 203(b)(4).
SH2	Spouse or Child of SH1	INA 101(a)(27)(G) & INA 203(b)(4).
SJ1	Certain Foreign Medical Graduates (Adjustments Only)	INA 101(a)(27)(H).
SJ2	Accompanying Spouse or Child of SJ1	INA 101(a)(27)(H) & INA 203(b)(4).

SK1	Certain Retired International Organization employees	INA 101(a)(27)(I)(iii) & INA 203(b)(4).
SK2	Spouse of SK1	INA 101(a)(27)(I)(iv) & INA 203(b)(4).
SK3	Certain Unmarried Sons or Daughters of an International Organization Employee	INA 101(a)(27)(I)(i) & INA 203(b)(4).
SK4	Certain Surviving Spouses of a deceased International Organization Employee	INA 101(a)(27)(I)(ii) & INA 203(b)(4).
SL1	Juvenile Court Dependent (Adjustment Only)	INA 101(a)(27)(J) & INA 203(b)(4).
SN1	Certain retired NATO6 civilians	INA 101(a)(27)(L) & INA 203(b)(4).
SN2	Spouse of SN1	INA 101(a)(27)(L) & INA 203(b)(4).
SN3	Certain unmarried sons or daughters of NATO6 civilian employees	INA 101(a)(27)(L) & INA 203(b)(4).
SN4	Certain surviving spouses of deceased NATO6 civilian employees	INA 101(a)(27)(L) & INA 203(b)(4).
SP	Alien Beneficiary of a petition or labor certification application filed prior to September 11, 2001, if the petition or application was rendered void due to a terrorist act of September 11, 2001. Spouse, child of such alien, or the grandparent of a child orphaned by a terrorist act of September 11, 2001	Section 421 of Public Law 107-56.
SR1	Certain Religious Workers	INA 101(a)(27)(C)(ii)(II) & (III) as amended & INA 203(b)(4).
SR2	Spouse of SR1	INA 101(a)(27)(C)(ii)(II) & (III) as amended & INA 203(b)(4).
SR3	Child of SR1	INA 101(a)(27)(C)(ii)(II) & (III) as amended & INA 203(b)(4).

Employment 5th Preference (Employment Creation Conditional Status)		
C51	Employment Creation OUTSIDE Targeted Areas	INA 203(b)(5)(A).
C52	Spouse of C51	INA 203(d) & INA 203(b)(5)(A).
C53	Child of C51	INA 203(d) & INA 203(b)(5)(A).
T51	Employment Creation IN Targeted Rural/High Unemployment Area	INA 203(b)(5)(B).
T52	Spouse of T51	INA 203(d) & INA 203(b)(5)(B).
T53	Child of T51	INA 203(d) & INA 203(b)(5)(B).
R51	Investor Pilot Program, Not in Targeted Area	INA 203(b)(5) & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Public Law 102-395), as amended.
R52	Spouse of R51	INA 203(d), INA 203(b)(5) & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Public Law 102-395), as amended.
R53	Child of R51	INA 203(d), INA 203(b)(5) & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Public Law 102-395), as amended.
I51	Investor Pilot Program, in Targeted Area	INA 203(b)(5) & Sec. 610 of the Departments of Commerce, Justice, and

		State, the Judiciary and Related Agencies Appropriations Act, 1993 (Public Law 102-395), as amended.
I52	Spouse of I51	INA 203(d), INA 203(b)(5) & Section 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Public Law 102-395), as amended.
I53	Child of I51	INA 203(d), INA 203(b)(5) & Section 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Public Law 102-395), as amended.
Other Numerically Limited Categories		
Diversity Immigrants		
DV1	Diversity Immigrant	INA 203(c).
DV2	Spouse of DV1	INA 203(d) & INA 203(c).
DV3	Child of DV1	INA 203(d) & INA 203(c).

[Source: 22 CFR 42.11]

9 FAM 502.2

FAMILY-BASED IV CLASSIFICATIONS

(CT:VISA-385; 06-15-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 502.2-1 FAMILY-BASED IV CLASSIFICATIONS OVERVIEW

9 FAM 502.2-1(A) Related Statutory and Regulatory Authorities

9 FAM 502.2-1(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(b) (8 U.S.C. 1101(b)); INA 101(a)(35) (8 U.S.C. 1101(a)(35)).

9 FAM 502.2-1(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.31; 8 CFR 204.2(a).

9 FAM 502.2-1(B) Family Classifications Overview

(CT:VISA-1; 11-18-2015)

Two groups of family-based immigrant visa categories, including immediate relatives and family preference categories, are provided under the provisions of United States immigration law. Immediate Relative (IR) immigrant visas are based on a close family relationship with a U.S. citizen. The number of immigrants in these categories is not limited each fiscal year (see [9 FAM 502.2-2](#)). Family Preference immigrant visas are for specific, more distant, family relationships with a U.S. citizen and some specified relationships with a Lawful Permanent Resident (LPR). There are fiscal year numerical limitations on family preference immigrants. There are also special immigration benefits for certain Amerasian children.

9 FAM 502.2-1(C) Conferring Immigration Benefits to Family Members

(CT:VISA-385; 06-15-2017)

a. **Immigration Benefits from Adult Children Only:** Only U.S. citizens aged at

least 21 years may confer immigration benefits on a parent or parents.

b. Parents or Siblings of Adopted Child:

- (1) **Biological Parents or Siblings:** An adopted child (as defined in INA 101(b)(1)(E), (F) or (G)) may not confer immigration benefits upon a natural parent or sibling unless such adoption has been legally terminated. This is true even where the child never received an immigration benefit based on the adoption.
- (2) **When Adoption Has Been Terminated:** A natural parent or child or sibling relationship can be recognized for immigration purposes following the termination of an adoption, if the petitioner can demonstrate that:
 - (a) No immigration benefit was obtained or conferred as a result of the adoptive relationship on the adoptive parent(s);
 - (b) A natural parent or child relationship meeting the requirements of INA 101(b) once existed;
 - (c) Any adoption that satisfied the requirements of INA 101(b)(1)(E) has been lawfully terminated; and
 - (d) The petitioner's natural relationship with the beneficiary has been reestablished, either through operation of law or through other legal process.

c. Immigration Benefit Conferred from Child to Father: USCIS has determined that an illegitimate child may confer immigration benefits to a father if:

- (1) The father has established that he is the natural parent; and
- (2) A bona fide parent or child relationship has been in existence prior to the child's 21st birthday. (See [9 FAM 102.8-2\(D\)](#) definition of "child born out of wedlock.")

9 FAM 502.2-1(D) Proxy Marriages

(CT:VISA-191; 09-28-2016)

- a. **Consummated Proxy Marriage:** If the consular officer is satisfied that the marriage has been consummated, he or she may proceed with processing the visa application based on the premise that a consummated proxy marriage relates back to the date of the proxy ceremony.
- b. **Unconsummated Proxy Marriage:** If the marriage has not been consummated, the consular officer must return the petition to DHS. (See [9 FAM 504.2-8.](#)) If the marriage is subsequently consummated, and DHS approves a petition for the same preference classification, the new petition approval can be regarded as a reaffirmation of the validity of the original petition and the original priority date is retained.

9 FAM 502.2-2 IMMEDIATE RELATIVE (IR)

CLASSIFICATIONS

9 FAM 502.2-2(A) Related Statutory and Regulatory Authorities

9 FAM 502.2-2(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(b)(1)(E)-(G) (8 U.S.C. 1101(b)(1)(E)-(G)); INA 101(c)(1) (8 U.S.C. 1101(c)(1)); INA 201(b) (8 U.S.C. 1151(b)); INA 203(a)(1) (8 U.S.C. 1153(a)(1)); INA 203(d) (8 U.S.C. 1153(d)); INA 216 (8 U.S.C. 1186a).

9 FAM 502.2-2(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 204.2(a)-(b); 8 CFR 204.2(d); 8 CFR 204.2(f); 22 CFR 42.21(a); 22 CFR 42.41.

9 FAM 502.2-2(A)(3) Public Law

(CT:VISA-1; 11-18-2015)

Immigration Marriage Fraud Amendments Act of 1986, Public Law 99-639, sec. 2; Immigration and Nationality Technical Corrections Act of 1994, Public Law 103-416, sec. 219(b)(1); Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, sec. 40701; Immigration Act of 1990, Public Law 101-649, sec. 101(a).

9 FAM 502.2-2(B) Immediate Relative Defined

(CT:VISA-385; 06-15-2017)

- a. The Immigration and Nationality Act (INA) defines "immediate relative" to include the following:
- (1) Spouse of a U.S. citizen (see "Marriage" in [9 FAM 102.8-1](#) Definitions);
 - (2) Certain spouses (and the accompanying or following-to-join children) of deceased U.S. citizens (see "Widow" in [9 FAM 502.1-2\(C\)](#) Definitions);
 - (3) Child of a U.S. citizen (see "Child" in [9 FAM 102.8-2\(A\)](#) Definitions);
 - (4) Adopted child of a U.S. citizen (see "Adopted child" in [9 FAM 102.8-2\(G\)](#) (Definitions) and [9 FAM 502.3-2\(B\)](#) (Adoption-Based Classification));
 - (5) Orphan adopted or to be adopted by a U.S. citizen residing in the United States (see "Orphan" in [9 FAM 102.8-2\(H\)](#) (Definitions) and [9 FAM 502.3-3](#) (Adoption-Based Classification));
 - (6) Parent of an adult U.S. citizen (see "Parent" in [9 FAM 102.8-2\(J\)](#) Definitions);
and
 - (7) Child under 16 adopted or to be adopted under the terms of the Hague

Convention (see "Convention adoptee" in [9 FAM 102.8-2\(I\)](#) (Definitions) and [9 FAM 502.3-4\(B\)](#) and [9 FAM 502.3-4\(C\)\(1\)](#), Convention Adoptee Classification Summary)).

- b. See [9 FAM 102.8-1](#) for definitions of all family relationship terms.
- c. An alien is entitled to status as an Immediate Relative if you have received a properly approved petition from the Department of Homeland Security and you are satisfied that the claimed relationship exists.
- d. **Derivative Immediate Relative Status for Spouses or Children:**
- (1) The INA does not generally accord derivative status for family members of immediate relatives as it does for preference applicants. (INA 203(d) does not apply to the classes described in INA 201(b)). A U.S. citizen must file separate immediate relative petitions for the spouse, each child, and each parent.
 - (2) "Parents" of U.S. citizens are accorded immediate relative (IR5) status only upon U.S. Citizenship and Immigration Services approval of a Form I-130, Petition for Alien Relative, establishing that the appropriate child-parent relationship exists. In certain circumstances, a U.S. citizen may be entitled to petition for only one parent, such as when the beneficiary's spouse does not meet the definition of "parent" as set forth at INA 101(b)(2). For example, an alien who becomes a stepparent of an 18 year old is not considered to be the "parent" of that child for immigration purposes (see INA 101(b)(1)(B)). Consequently, should that stepchild become a U.S. citizen, USCIS would be unable to approve a Form I-130, Petition for Alien Relative (for IR5 status) for that stepparent. Further, spouses and children of IR5s cannot benefit from derivative status through the principal alien. Spouses who cannot qualify in their own right for IR-5 status, and any children of an IR5, would require the filing of a separate Form I-130 petition (family-based second preference classification) upon the principal's admission to the United States as a permanent resident.
 - (3) Section 219(b)(1) of Public Law 103-416 makes an exception to the general rule by providing derivative status for the accompanying or following-to-join children of spouses of deceased U.S. citizens.
- e. **"Spouse and Child of Deceased U.S. Citizen" Defined:**
- (1) INA 201(b)(2)(A)(i), as amended by section 101(a) of Public Law 101-649, changed the definition of "immediate relatives" to include the spouse of a deceased U.S. citizen, provided the spouse:
 - (a) Was married to the U.S. citizen for at least two years prior to the U.S. citizen's death;
 - (b) Was not legally separated at the time of the spouse's death;
 - (c) Has not remarried; and
 - (d) Files a petition under INA 204(a)(1)(A)(ii) within two years after the death of the spouse.

- (2) Section 219(b)(1) of Public Law 103-416 further amended the definition to include the child(ren) of the spouse of the deceased U.S. citizen. Such children, however, may not petition in their own behalf, but are derivatives of the principal beneficiary. Consequently, they can obtain status only as derivatives by accompanying or following to join the principal beneficiary. Derivative status does not extend to unmarried sons or daughters of widows or widowers. See [9 FAM 502.7-4](#) for additional information on the effects of September 11, 2001 terrorist act-inspired legislation on immediate relative classification and petition procedures.

9 FAM 502.2-2(C) Immediate Relative Classification – Special Cases

(CT:VISA-1; 11-18-2015)

a. Refusal to File Immediate Relative (IR) Petition:

- (1) In general, the spouse, child, or parent of a U.S. citizen who is entitled to classification as an immediate relative (IR) should be processed as an IR. However, if you are fully satisfied that the U.S. citizen relative has refused to file a petition on behalf of the spouse, child, or parent, for reasons other than financial consideration or inconvenience, you may consider the applicant for any other type of immigrant visa for which he or she is qualified.
- (2) If an alien is classifiable both as an IR and a preference immigrant, and the alien's spouse refuses to file an IR petition to avoid conditional status, you may process the alien case as that of a preference immigrant. (See [9 FAM 502.2-2\(D\)](#).)
- (3) Abusers generally refuse to file relative petitions because they find it easier to control relatives who do not have lawful immigration status. Section 40701 of Public Law 103-322 contains provisions that allow the qualified spouse or child of an abusive U.S. citizen or LPR to self-petition for immigrant classification.

b. Alien Classifiable as Immediate Relative (IR) and Special Immigrant: An alien classifiable as an immediate relative who is also classifiable as a special immigrant under INA 101(a)(27)(A) or INA 101(a)(27)(B) may establish entitlement to classification under either category, depending upon which of the two may be more easily established. Since special immigrants under INA 101(a)(27)(A) and (B) are not subject to numerical limitations, this procedure is in accord with the original intent of Congress in enacting INA 201(b), namely, to prevent the use of immigrant visa numbers by aliens who are able to immigrate in a visa category not subject to numerical limitations.

c. Immediate Relative Classification Following Petitioner's Naturalization in Family Second Preference Petition Cases: See [9 FAM 502.1-2\(D\)](#) for additional information on conversion of F2 petition to accord IR status.

d. Petition Procedures: See also [9 FAM 504.2-3](#) for information on petition procedures for U.S. citizens abroad.

9 FAM 502.2-2(D) Conditional Status for Certain Immediate Relatives

(CT:VISA-191; 09-28-2016)

- a. The Immigration Marriage Fraud Amendments Act of 1986 (Public Law 99-639) amended the Immigration and Nationality Act by adding section 216 (8 U.S.C. 1186a) which provides conditional permanent resident status for certain immediate relative categories at the time of admission.
- b. You classify the spouse of a U.S. citizen or the stepchild of a U.S. citizen as a conditional immigrant at the time of visa issuance if the basis for immigration is a marriage that was entered into less than two years prior to the date of visa issuance.

9 FAM 502.2-3 FAMILY PREFERENCE CLASSIFICATIONS

9 FAM 502.2-3(A) Related Statutory and Regulatory Authorities

9 FAM 502.2-3(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(27)(A) (8 U.S.C. 1101(a)(27)(A)); INA 203(a) (8 U.S.C. 1153(a)).

9 FAM 502.2-3(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.31.

9 FAM 502.2-3(A)(3) Public Law

(CT:VISA-1; 11-18-2015)

Child Status Protection Act, Public Law 107-208.

9 FAM 502.2-3(B) Entitlement to Family Preference IV Classification

(CT:VISA-385; 06-15-2017)

- a. A U.S. citizen or a permanent resident alien may file an immigrant visa petition under INA 203(a) on behalf of a family member if the alien meets one of the relationship categories listed below:
 - (1) **First Preference:** Unmarried sons and daughters of U.S. citizens;

- (2) **Second Preference:** Spouses and unmarried sons and daughters of lawful permanent resident aliens;
 - (3) **Third Preference:** Married sons and daughters of U.S. citizens; and
 - (4) **Fourth Preference:** Brothers and sisters of U.S. citizens.
- b. The alien must be the beneficiary of a Department of Homeland Security-approved petition and must meet all other requirements for the issuance of an immigrant visa.
- c. See [9 FAM 102.8](#) for Definitions or descriptions of relationship terms. For application of the Child Status Protection Act (CSPA) to family preference cases, see [9 FAM 502.1-1\(D\)](#).

9 FAM 502.2-3(C) Derivative Status for Spouse and Children (Family Preference Classification)

(CT:VISA-191; 09-28-2016)

- a. The spouse and unmarried children of an alien beneficiary are entitled to the same preference status, and the same priority date, as the principal alien.
- b. **Offspring of Derivative Child:**
- (1) A derivative beneficiary of an approved immigrant visa petition cannot bestow upon someone else the immigration status they, themselves, have derived from the principal beneficiary.
 - (2) For example, if an LPR files a second preference petition for his wife, she is the principal beneficiary of the status accorded by the petition. Any children (as defined by INA 101(b)(1)) of the principal beneficiary (the wife) would derive from their mother the same immigration status that she has been granted. However, the law does not provide an avenue for derivative beneficiaries to pass their derived immigration status on to any children of their own (or to anyone else for that matter).
 - (3) Under such circumstances, however, the petitioner could elect to file a separate petition for any of his children who have children of their own. With a separately approved petition, the petitioner's child would then become the principal beneficiary of the petition and, accordingly, the child's children would qualify for derivative immigration status through the principal beneficiary parent.
- c. **Filing Petitions for Derivative Aliens:** Careful attention should be paid to cases where a derivative beneficiary's immigration status is likely to change.
- (1) For instance, when a child turns 21, he or she is no longer considered a "child" under the INA. The Child Status Protection Act (CSPA) may protect the derivative from "aging out" and losing the ability to derive status from the principal beneficiary of the petition. (See [9 FAM 502.1-1\(D\)](#) for guidance on CSPA calculations.)

- (2) Likewise, if the petitioner intends to become a U.S. citizen before his wife and children have immigrated to the United States, he should file separate immigrant visa petitions for any children who are currently deriving their immigration status through the mother. That way, when the petitioner is naturalized, the petition according second preference status (F21) to his wife, as well as those petitions according second preference status (F22) to any children, will be converted automatically to accord the beneficiaries immediate relative status (IR1 or IR2). If, however, the petitioner does not file separate petitions for his children before his naturalization, the children will lose their derivative status upon the father's naturalization, since the mother's status will automatically convert to IR1 and there is no derivative status for immediate relatives. The father will then have to file new petitions on their behalf to accord them IR2 status.
- d. **Filing Separate Petitions for F2 Derivatives:** Although the spouse or child of an LPR is entitled to derivative status, a recession of the cut-off date in the derivative category resulting in the unavailability of a number in the derivative category might encourage the filing of a second preference petition. However, there is normally a substantial amount of time involved before the petition could be approved, and the second preference might also be delayed. The decision to file or not to file a second preference petition must be the petitioner's. Consular officers must neither encourage nor discourage the filing of a second preference petition but may provide copies of recent Visa Office bulletins, which indicate the movement of priority dates. In unusual circumstances, it is possible that slow movement in the beneficiary's derivative class might indicate that the filing of a second preference petition may be beneficial.

9 FAM 502.2-3(D) Automatic Conversion of Petitions (Family Preference Classifications)

(CT:VISA-385; 06-15-2017)

- a. **Immediate Relative Converts to First or Third Preference:** If the child of a U.S. citizen is the beneficiary of an immediate relative petition, the petition automatically converts to a first preference petition if the child reaches the age of 21 and remains unmarried (see also [9 FAM 502.1-1\(D\)](#) for details on the Child Status Protection Act (CSPA)). If the child should marry, the immediate relative petition converts to third preference petition. The priority date of the first preference petition is the filing date of the immediate relative petition.
- b. **First Preference Converts to Third Preference:** If the unmarried son or daughter of a U.S. citizen marries before the visa is issued, the beneficiary's first preference petition automatically converts to a family third preference petition. Any child(ren) of the beneficiary would then be entitled to derivative third preference status. The priority remains the same.
- c. **Second Preference Converts to Immediate Relative:** A second preference petition for the spouse of a lawful permanent resident (LPR) automatically converts

to an immediate relative petition if the petitioner becomes a U.S. citizen. However, derivative second preference status for the beneficiary's child(ren) does not convert, since there is no derivative status for immediate relative petitions. The petitioner must file a separate petition for the child, if the child meets the definition of "child" as defined in [9 FAM 102.8-2\(A\)](#). The priority remains the same.

- d. **Second Preference Converts to First Preference:** A second preference petition for the unmarried son or daughter of a lawful permanent resident automatically converts to a first preference petition if the petitioner becomes a U.S. citizen (see also [9 FAM 502.1-1\(D\)](#) for details on the CSPA). The accompanying or following-to-join child(ren) would also be entitled to derivative first preference status. The priority remains the same.
- e. **Third Preference Converts to First Preference:**
- (1) A third preference petition approved for a married son or daughter of a U.S. citizen who has since become widowed or divorced automatically converts to accord first preference status (or immediate relative status if the beneficiary is under the age of 21). If the petition converts to first preference, the accompanying or following-to-join child(ren) may be granted derivative first preference status. The priority remains the same.
 - (2) There is no derivative status for the child(ren), if the beneficiary becomes entitled to immediate relative status.

9 FAM 502.2-3(E) Second Preference Petitioner Residing Abroad (Family Preference Classifications)

(CT:VISA-385; 06-15-2017)

- a. **Second Preference Petition Filed Abroad by Returning Resident Alien:** An alien who qualifies as a special immigrant returning resident under the terms of INA 101(a)(27)(A) is by definition an alien "lawfully admitted for permanent residence." The alien may be considered to have the same status under the identical language of INA 203(a)(2). Therefore, an alien issued a special immigrant visa as a returning permanent resident, an alien returning with a valid reentry permit, or an alien holding a Form I-551, Permanent Resident Card, may file a petition while abroad for a spouse or an unmarried son or daughter.
- b. **When Legal Permanent Resident (LPR) Status is Doubtful:**
- (1) INA 101(a)(20) reads as follows: "The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed."
 - (2) If a consular officer has reason to believe the petitioner may no longer be entitled to permanent resident status, the consular officer must return the petition to the appropriate DHS office pursuant to 22 CFR 42.43(a). If the petitioner has filed a petition abroad, the consular officer should forward the petition for DHS adjudication as a case "not clearly approvable." (See [9 FAM](#)

[504.2-8.](#))

9 FAM 502.2-3(F) Related Family Preference Classification Provisions

(CT:VISA-385; 06-15-2017)

- a. See [9 FAM 503.3-3\(A\)](#) related to new petition approval being equivalent to revalidation if filed by same petitioner on behalf of same beneficiary.
- b. See [9 FAM 504.10-2\(E\)\(2\)](#) related to statement signed by alien issued visa as unmarried son or daughter.
- c. See [9 FAM 102.8-1](#) definition of "marriage" regarding family-sponsored preference petitions in cases of marriage between relatives.
- d. See [9 FAM 504.2-3\(B\)](#) related to special petition procedures for U.S. citizens and resident aliens abroad.
- e. **Spouse, Child, Son, or Daughter of LPR Killed in September 11, 2001 Terrorist Attacks:** The spouse, child, son, or daughter of an alien killed in a September 11, 2001 terrorist attack, may self-petition for status using the Form I-130, Petition for Alien Relative. They will be processed as if the petitioner had not been killed in the attack. The beneficiary must demonstrate that he or she was present in the United States on September 11, 2001, that the spouse or parent had lawful permanent resident (LPR) status on September 11, 2001, and that the spouse or parent was killed as a direct result of the terrorist attacks.

9 FAM 502.2-4 AMERASIAN FAMILY-BASED CLASSIFICATION

9 FAM 502.2-4(A) Related Statutory and Regulatory Authorities

9 FAM 502.2-4(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 204(f) (8 U.S.C. 1154(f)).

9 FAM 502.2-4(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 204.4; 8 CFR 205.1(a)(3)(ii).

9 FAM 502.2-4(A)(3) Public Laws

(CT:VISA-1; 11-18-2015)

Public Law 97-359; Public Law 100-202, sec. 584; Foreign Operations, and Export Financing and Related Programs Appropriations Act, 1990, Public Law 101-167, Title II; Foreign Operations, and Export Financing and Related Programs Appropriations Act, 1991, Public Law 101-513, Title II; Immigration Act of 1990, Public Law 101-649, sec. 603(a)(20)).

9 FAM 502.2-4(B) Amerasian Classification under INA 204(f)(1)

(CT:VISA-1; 11-18-2015)

- a. Public Law 97-359 of October 22, 1982, added section 204(g) (now INA 204(f)(2)) to the INA to provide preferential treatment in the immigration of certain illegitimate Amerasian children of U.S. citizen fathers who are unable to immigrate under any other section of the INA. Prior to enactment of Public Law 97-359, these children were unable to gain any benefits from their relationship to their father. The provisions of INA 204(f)(1) enable them to do so without requiring their father to file a petition on their behalf.
- b. To qualify for benefits under INA 204(f)(1) the beneficiary must have been:
 - (1) Born in Korea, Vietnam, Laos, Cambodia, or Thailand after December 31, 1950, and before October 22, 1982; and
 - (2) Fathered by a U.S. citizen.
- c. Beneficiaries under age 21 and unmarried are entitled to classification as immediate relatives; unmarried sons and daughters over the age of 21 to classification as family first preference; and married sons and daughters to family third preference.
- d. **Petition Procedures for Amerasian Child (P.L. 97-359):**
 - (1) Any alien claiming to be eligible for benefits as an Amerasian under Public Law 97-359, or any person on the alien's behalf, may file a petition, Form I-360, Petition for Amerasian, Widow, or Special Immigrant. Any person filing the petition must either be eighteen years of age or older or be an emancipated minor. In addition, a corporation incorporated in the United States may file the petition on the alien's behalf.
 - (2) You may not approve petitions for Amerasian children who are beneficiaries under Public Law 97-359. See 8 CFR 204.4 for information on DHS processing and screening of Public Law 97-359 Amerasian children cases.
 - (3) **Revocation of Petition for Amerasian Child:** Department of Homeland Security regulations for the revocation of petitions for Amerasian beneficiaries under Public Law 97-359 are provided in 8 CFR 205.1(a)(ii).

9 FAM 502.2-4(C) Amerasian Classification Under Public Law 100-202

(CT:VISA-1; 11-18-2015)

a. Amerasian Classification under Public Law 100-202, as amended, states:

“(a)(1) Notwithstanding any numerical limitations specified in the Immigration and Nationality Act, the Attorney General may admit aliens described in subsection (b) to the United States as immigrants if--

- (A) they are admissible (except as otherwise provided in paragraph (2)) as immigrants, and
- (B) they are issued an immigrant visa and depart from Vietnam on or after March 22, 1988.

(2) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) of the Immigration and Nationality Act shall not be applicable to any alien seeking admission to the United States under this section, and the Attorney General on the recommendation of a consular officer may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Attorney General shall be in writing and shall be granted only on an individual basis following an investigation by a consular officer.

(3) Notwithstanding section 221(c) of the Immigration and Nationality Act, immigrant visas issued to aliens under this section shall be valid for a period of one year.

(b)(1) An alien described in this section is an alien who, as of the enactment of this Act, is residing in Vietnam and who establishes to the satisfaction of a consular officer or an officer of the Immigration and Naturalization Service after a face-to-face interview, that the alien—

- (A) (i) was born in Vietnam after January 1, 1962, and before January 1, 1976, and (ii) was fathered by a citizen of the United States (such an alien in this section referred to as a "principal alien");
- (B) is the spouse or child of a principal alien and is accompanying, or following to join, the principal alien; or
- (C) subject to paragraph (2), either (i) is the principal alien's natural mother (or is the spouse or child of such mother), or (ii) has acted in effect as the principal alien's mother, father, or next-of-kin (or is the spouse or child of such an alien), and is accompanying, or following to join, the principal alien.

(2) An immigrant visa may not be issued to an alien under paragraph (1)(C) unless the officer referred to in paragraph (1) has determined, in the officer's discretion, that (A) such an alien has a bona fide relationship with the principal alien similar to that which exists between close family members and (B) the admission of such an alien is necessary for humanitarian purposes or to assure family unity. If an alien described in

paragraph (1)(C)(ii) is admitted to the United States, the natural mother of the principal alien involved shall not, thereafter, be accorded any right, privilege, or status under the Immigration and Nationality Act by virtue of such parentage.

- (3) For purposes of this section, the term "child" has the meaning given such term in section 101(b)(1) (A), (B), (C), (D), and (E) of the Immigration and Nationality Act.
- (c) Any alien admitted (or awaiting admission) to the United States under this section shall be eligible for benefits under chapter 2 of title IV of the Immigration and Nationality Act to the same extent as individuals admitted (or awaiting admission) to the United States under section 207 of such Act are eligible for benefits under such chapter.
- (d) [A requirement to report on implementation, which applied for only the first three years after enactment.]
- (e) Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section and nothing contained in this section shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible."
- b. No petition is required for Vietnamese Amerasian children under Public Law 100-102.

9 FAM 502.2-4(D) Alternative Amerasian Classification

(CT:VISA-1; 11-18-2015)

An Amerasian child may immigrate under another provision of the INA, if so qualified. For example, an alien may be classified as an orphan under INA 101(b)(1)(F) (see [9 FAM 502.2-4\(C\)](#)).

9 FAM 502.3

ADOPTION-BASED CLASSIFICATIONS AND PROCESSING

(CT:VISA-1; 11-18-2015)
(Office of Origin: CA/VO/L/R)

9 FAM 502.3-1 ADOPTION-BASED CLASSIFICATIONS AND PROCESSING – OVERVIEW

9 FAM 502.3-1(A) Related Statutory and Regulatory Authorities

(CT:VISA-1; 11-18-2015)

INA 101(b)(1) (8 U.S.C. 1101(b)(1)).

9 FAM 502.3-1(B) Documentation of Adopted Children (Overview)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N11 d (first sentence); 9 FAM 42.21 N13.1 b (first sentence); CT:VISA-1178; 04-03-2009)

- a. Properly documenting adopted children is important, and particularly given the fairly complicated nature of orphan and Convention adoptee processing, parents and consular officers should carefully consider the nature of the intended travel prior to beginning case processing.

(Previous location: 9 FAM 42.21 N11 d (second sentence); 9 FAM 42.21 N13.1 b (second sentence); CT:VISA-1178; 04-03-2009)

- b. Depending on the purpose of the travel and circumstances of the case, one of four immigrant visa options would be most appropriate (see [9 FAM 502.3-1\(C\)](#)).

9 FAM 502.3-1(C) Other Adoption-Related Travel Provisions

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N11 d(2)[reference only] and 9 FAM 42.21 N11 d(3)-(4), N13.1(b) next to last sentence; CT:VISA-1178; 04-03-2009)

- a. **NIVs for Adoptees:** See [9 FAM 402.2-4\(B\)\(7\)](#) for information on NIV classifications for adoption cases. You should not issue an NIV to an adopted child

who is immigrating to the United States as a result of this trip to reside with his or her adoptive parents.

- b. **Parole for Adoptees:** In rare cases where there are significant humanitarian concerns (i.e., natural disaster, civil disorder/war, etc.), adoptive parents may seek humanitarian parole for an adoptive child who will be legally able to adjust status in the United States based on an immigrant classification (see [9 FAM 202.4-4](#)).
- c. **No Classification:** You should also recognize that you may also very occasionally encounter cases of adopted children who are not eligible for any immigrant or NIV classification, usually due to their advanced age or the circumstances of the adoption.

9 FAM 502.3-1(D) Immigrant Visa Classification for Adoptions - Overview

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N11 d(1); CT:VISA-2324; 09-08-2015)

- a. **Adopted Child (IR2):** INA 101(b)(1)(E) allows a U.S. citizen to petition for an unmarried, under age-21 "child" who was adopted while under the age of 16 and has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years (For more information on IR2s, see [9 FAM 502.3-2](#)). NOTE: The two-year requirement does not apply in certain cases involving child abuse.
- b. **Orphan:** INA 101(b)(1)(F) permits a U.S. citizen to petition for an under age-16 "orphan" if the parents have been found suitable to adopt and meet age and citizenship requirements, if the child has no parents or a sole or surviving parent who is unable to care for him or her and has irrevocably released the child for emigration and adoption, and if the child is unmarried and under age 21 at the time of immigration (For more information on IR3s or IR4s, see [9 FAM 502.3-3](#)).
- c. **Convention Adoptee:** The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption entered into force for the United States on April 1, 2008. Adopted children in Hague countries generally need to demonstrate that they meet the qualifications established in INA 101(b)(1)(G) for Hague children. (See [9 FAM 502.3-4](#), including guidance on transition cases.)
- d. **IR2 Adult Sibling of Convention Adoptee:** An adult (over the age of 18) biological sibling of a Convention adoptee who is adopted abroad or is coming to the United States for adoption may be eligible for IR2 classification under certain circumstances. See [9 FAM 502.3-5](#) for additional information on such cases.

9 FAM 502.3-1(E) Processing Adoption Cases - Overview

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N11 a-c and N13.1 a(2); CT:VISA-1178; 04-03-2009)

- a. The Bureau of Consular Affairs (CA) considers adoption cases to be of the highest priority. Consular sections should provide helpful, courteous, and expeditious assistance to U.S. citizens and maintain sound visa-issuance policies. All adoption cases must be treated with considerable sensitivity and processed as quickly as is reasonably possible to avoid hardship for the child or adopting parents.
- b. Consular sections should be responsive to inquiries, schedule interviews quickly, and make prompt decisions. An adoption involves both the adopting parents and the child. Even if the final resolution is that the child is ineligible for immigration, you best serve all parties by making this determination as quickly as possible. Any required field investigations or record checks in an adoption case must be given priority over other immigrant and nonimmigrant visa cases, and must be completed expeditiously so that the case may be resolved in a timely manner. If you determine that a petition is not "clearly approvable" or that a USCIS-approved petition may have been approved in error, you should forward it to the appropriate USCIS office without delay together with a cover memo detailing the reasons for the return.
- c. Correspondence on orphan and adoption issues should be shared with other concerned offices outside the Visa Office (CA/VO), in particular the Office of Children's Issues (CA/OCS/CI) and, when appropriate, the Office of Fraud Prevention Programs (CA/FPP). Posts should use CVIS, CASC, KOCI, and KFRD tags respectively, on adoption-related correspondence, to ensure timely distribution of cables to these offices. Posts should keep the Department and USCIS informed of general adoption issues, especially changes in local documentation or legal and/or procedural requirements.

9 FAM 502.3-1(F) Effect of Foreign Laws and Customs on Immigrant Petitions for Adopted Children

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N11 e; CT:VISA-1178; 04-03-2009)

- a. Some foreign states have no statutory provisions governing adoption, and in some of these states the concept of adoption is not legally recognized. Legal adoption for the purpose of immigration does not exist in foreign states that apply Islamic law in matters involving family status.
- b. Accordingly, Department of Homeland Security (DHS) and the Department hold that relationships through claimed adoptions in such countries cannot be established for visa petition purposes. DHS and the Department also hold that an adoptive relationship claimed to have been effected in a country which has no statutory provisions governing adoption cannot be recognized for visa classification purposes unless the relationship is sanctioned by local custom or religious practice, judicially recognized in the country, and the relationship embraces all the usual attributes of adoption, including the same irrevocable rights accorded a natural born child.

9 FAM 502.3-1(G) State Level Adoption Contacts

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 Exhibit V; CT:VISA-979; 07-11-2008)

See the National Foster Care and Adoption Directory.

9 FAM 502.3-2 ADOPTED CHILD (INA 101(b)(1)(E)) – IR2

9 FAM 502.3-2(A) Related Statutory and Regulatory Authorities

(CT:VISA-1; 11-18-2015)

INA 101(b)(1)(E) (8 U.S.C. 1101(b)(1)(E)); INA 101(b)(1)(F) (8 U.S.C. 1101(b)(1)(F)).

9 FAM 502.3-2(B) Adopted Child (101(b)(1)(E)) Classification

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N12.1; CT:VISA-878 04-25-2007 and 9 FAM 40.1 N2.4-1 a and d; CT:VISA-1000 09-03-2008)

a. Adopted Child (IR2) Definition:

- (1) Under INA 101(b)(1)(E), an alien is defined as a child and is classified IR2, if the child:
 - (a) Was legally adopted while under the age of 16 (or under the age of 18, if this is the sibling of a child adopted under 16 who meets the requirements of INA 101(b)(1)(E)); and
 - (b) Has been in the legal custody of, and has resided with, the adopting parent(s) for at least two years.
- (2) A child adopted under the provisions of INA 101(b)(1)(E) is precluded from bestowing any benefit or privilege or status to the natural parents because of such parentage. No natural parent of any adopted child may, by virtue of such parentage, be accorded any right, privilege or status.
- (3) A child who satisfies all the requirements of INA 101(b)(1)(E) with respect to an U.S. citizen adoptive parent/petitioner may be the beneficiary of a Form I-130, Petition for Alien Relative, and classifiable as an IR2. A child who satisfies the requirements of this subsection with respect to an alien may seek any immigration benefit appropriate to a legitimate child of that alien.

(Previous location: 9 FAM 42.21 N12.2; CT:VISA-878 04-25-2007 and 9 FAM 40.1 N2.4-2; CT:VISA:566 08-04-2003)

b. Adoption Requirement (IR2 Adopted Child):

- (1) The adoption must have been both final and legal in the jurisdiction in which it occurred. A "simple" or "limited" adoption (an adoption which does not create a permanent parent-child relationship or give the adopted child the same rights as a child legitimately born to the adoptive parent; i.e., inheritance) does not constitute an adoption for immigration purposes. Similarly, some foreign states have no statutory provisions governing adoption or legal mechanism for adoptions to exist (see [9 FAM 502.3-2\(C\)](#) for additional details).
- (2) **Adopted Child of Single Person:** A child legally adopted by a single person may be considered a "child" within the meaning of INA 101(b)(1)(E), provided all the requirements of that section have been met.

(Previous location: 9 FAM 42.21 N12.3; TL:VISA-372 03-18-2002 and 9 FAM 40.1 N2.4-1 b; CT:VISA-1000 09-03-2008)

c. Legal Custody Requirement (IR2 Adopted Child):

- (1) "Legal custody" means the assumption of responsibility for a minor by an adult under the laws of the state and under the order or approval of a court of law or other appropriate government entity. This provision requires that a legal process involving the courts or other recognized government entity take place. An informal custodial or guardianship document, such as a sworn affidavit signed before a notary public, is insufficient for this purpose.
- (2) The legal custody requirement may be fulfilled either prior to or after the child's adoption. If the adopting parent was granted legal custody by the court or recognized governmental entity prior to the adoption, that period may be counted toward fulfillment of the two-year legal custody requirement. However, if custody was not granted prior to the adoption, the adoption decree shall be deemed to mark the commencement of legal custody.

(Previous location: 9 FAM 42.21 N12.4 and N12.5; TL:VISA-372 03-18-2002 and 9 FAM 40.1 N2.4-1 c; CT:VISA-1000 09-03-2008)

d. Residence Requirement (IR2 Adopted Child):

- (1) The period of residence for which the adoptive parents and child have lived together must be:
 - (a) At least two years, prior to or after the adoption; the time frame in which the two years are accrued need not be continuous;
 - (b) The petitioning adoptive parents must have exercised primary parental control during the period in which they seek to establish compliance with the statutory two-year residence requirement:
 - (i) The adoptive parents must have evidence of control, especially in cases where the adopted child resided or continues to reside in the same household with the natural parents; and
 - (ii) The evidence may include competent, objective evidence that the adoptive parents have provided or are providing financial support and day-to-day care, and have assumed the responsibility for

important decisions in the child's life.

- (2) Generally, such documentation must establish that the petitioner and the beneficiary resided together in a parent-child relationship. The evidence must clearly indicate the physical living arrangements of the adopted child, the adoptive parent(s), and the natural parent(s) for the period of time during which the adoptive parent claims to have met the residence requirement. When the adopted child continued to reside in the same household as the natural parent(s) during the period in which the adoptive parent/petitioner seeks to establish his or her compliance with this requirement, the petitioner has the burden of establishing that he or she exercised primary parental control during that period of residence. Evidence of parental control may include, but is not limited to, evidence that the adoptive parent provided financial support and day-to-day supervision of the child, and owned or maintained the property where the child resided.
- (3) **Applying Two-Year Custody and Residence Requirement:** The two years the child was in the legal custody of the adoptive parent do not have to be the same two years the child resided with the adoptive parent. The requisite two-year custody and two-year residence may take place either prior to or after the adoption, but both must be completed before the child will be eligible for benefits under INA 101(b)(1)(E). Both legal custody and residence are counted in aggregate time. A break in legal custody or residence, therefore, will not affect the time already fulfilled.

(Previous location: 9 FAM 42.21 N12.7; CT:VISA-878 04-25-2007)

- e. **IR2 Adopted Children Do Not Have to be Orphans:** Adopted children may be properly documented as children, orphans, or as Hague children, and in some cases should receive nonimmigrant visas (see [9 FAM 502.3-1](#)). A child immigrating to the United States who satisfies the requirements of INA 101(b)(1)(E) does not also have to qualify as an orphan under INA 101(b)(1)(F), nor does he or she have to have been an orphan prior to the adoption. If a child qualifies under INA 101(b)(1)(E), adopting parents should not be encouraged to pursue orphan processing for the child.

(Previous location: 9 FAM 42.21 N12.8; CT:VISA-878 04-25-2007)

- f. **Adoptive Stepchildren (IR2 Adopted Child):** A child can be considered the stepchild of his or her adoptive parent's spouse only if he or she qualified as the child of the adoptive parent under INA 101(b)(1) at some point when both a legal marriage existed between the adoptive parent and spouse and the child was still under age 18. For example, if an alien woman adopts a small child, fulfills the two-year custody and joint residence requirements per INA 101(b)(1)(E), and then marries a U.S. citizen while her adoptive child is still under age 18, the child qualifies as the stepchild of the U.S. citizen. If she marries the U.S. citizen before fulfilling the two-year custody and joint residence requirements, then the child does not become a stepchild of the American citizen for immigration purposes until those requirements are fulfilled, provided she is still legally married to the U.S. citizen and the child is still under age 18.

(Previous location: 9 FAM 42.21 N12.9; TL:VISA-372 03-18-2002)

- g. Relating INA 101(b)(1)(E) to Adult or Married Sons or Daughters:** An alien may subsequently be considered the son or daughter of an adoptive parent provided he or she had satisfied the requirements of INA 101(b)(1)(E) with respect to that adoptive parent while still unmarried and under the age of 21. An alien who never satisfied the requirements of that subsection with respect to an adoptive parent, however, may not petition for or be the beneficiary of a petition filed by a previous parent, regardless of whether or not any benefit has been sought based on the adoptive relationship.

9 FAM 502.3-2(C) Processing Immigrant Visas for IR-2 Adopted Children

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N12.6; CT:VISA-878 04-25-2007)

- a. Demonstrating Eligibility for IR-2 Adopted Children Classification:** An adopted child who has satisfied all of the requirements of INA 101(b)(1)(E) while still unmarried and under the age of 21 qualifies as a child of the adoptive parent. An immigrant visa (IV) for such a child is processed in much the same way as an IV would be for a legitimate biological child of the same parent. In support of the Form I-130, Petition for Alien Relative, the adoptive parent and/or petitioner must provide:
- (1) A certified copy of the adoption decree;
 - (2) The legal custody decree; if custody occurred before the adoption;
 - (3) A statement showing dates and places where child resided with the parents; and
 - (4) If the child was adopted while aged 16 or 17 years, evidence that the child was adopted together with, or subsequent to the adoption of, a natural sibling under age 16 by the same adoptive parent(s).

(Previous location: 9 FAM 42.21 N12.10; CT:VISA-946 04-11-2008)

- b. Child Citizenship Act (IR2 Adopted Child):** Many adoptive parents have questions related to the Child Citizenship Act and its impact on their child. They can be referred to the USCIS website or State website for additional information and important details on the legislation's impact on adopted children. In general, IR2 adopted children under the age of 18 at the time of admission to the United States are granted automatic citizenship upon admission. Adoptive parents must file a Form N-600, Application for Certificate of Citizenship request with USCIS or request a U.S. passport to obtain proof of citizenship.

9 FAM 502.3-3 ORPHANS ADOPTED UNDER INA 101(b)(1)(F) – IR3 AND IR4

9 FAM 502.3-3(A) Related Statutory and Regulatory Authorities

9 FAM 502.3-3(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(b)(1) (8 U.S.C. 1101(b)(1)).

9 FAM 502.3-3(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 204.3; 22 CFR 42.21.

9 FAM 502.3-3(A)(3) Public Law

(CT:VISA-1; 11-18-2015)

Child Citizenship Act of 2000, Public Law 106-395.

9 FAM 502.3-3(B) Orphan (101(b)(1)(F)) Classification

9 FAM 502.3-3(B)(1) Key Elements of Orphan Classification

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N13.2-1; CT:VISA-1178 04-03-2009)

a. There are Three Key Elements in the Orphan Classification:

- (1) The child is under the age of 16 at the time a petition is filed on his or her behalf (or under the age of 18 if adopted or to be adopted together with a natural sibling under the age of 16) and is unmarried and under the age of 21 at the time of petition and visa adjudication (see [9 FAM 502.3-3\(B\)\(2\)](#));
 - (2) The child has been or will be adopted by a married U.S. citizen and spouse, or by an unmarried U.S. citizen at least 25 years of age (see [9 FAM 502.3-3\(B\)\(2\)](#) and (3)); and
 - (3) **The Child is an Orphan Because Either:**
 - (a) The child has no parents because of the death or disappearance, abandonment or desertion by, or separation from or loss of both parents (see [9 FAM 502.3-3\(B\)\(4\)](#) paragraph b); or
 - (b) The child's sole or surviving parent is incapable of providing proper care and has, in writing, irrevocably released the child for emigration and adoption (see [9 FAM 502.3-3\(B\)\(4\)](#) paragraph c).
- b. In addition, you must be satisfied that the petitioner (and spouse, if applicable) intends to enter into a bona fide parent-child relationship with that orphan (see [9 FAM 502.3-3\(B\)\(5\)](#)), and that there is no credible evidence of child-buying, fraud,

or misrepresentation associated with the case (see [9 FAM 502.3-3\(B\)\(6\)](#)).

- c. Children who are determined to be orphans may be classified as an IR3 or IR4. Proper classification is very important given passage of the Child Citizenship Act of 2000, and is addressed in [9 FAM 502.3-3\(B\)\(7\)](#).

9 FAM 502.3-3(B)(2) Age and Citizenship Requirements (Orphan)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N13.2-2; CT:VISA-1983 05-02-2013)

- a. To be considered an orphan, the adopted child must have a Form I-600, Petition to Classify Orphan as an Immediate Relative filed on his or her behalf before the child's 16th birthday, or, in the case of natural siblings, before the child's 18th birthday.
- (1) Form I-600 must be filed, but does not have to be approved, before the beneficiary's 16th (or 18th for natural siblings) birthday.
 - (2) Because an "orphan" must meet the general definition of a child in INA 101(b)(1), the beneficiary must be unmarried and under the age of 21 at all stages of petition adjudication, visa processing, and travel to the United States.
 - (3) Under INA 201(f)(1) whether the beneficiary of an immediate relative petition filed for a citizen's child is "under twenty-one years of age" is determined based on the beneficiary's age when the petition was filed. Since any Form I-600 must always be filed by the beneficiary's 16th birthday (or 18th for natural siblings), the beneficiary of a properly filed petition will always be considered "under twenty-one years of age," for purposes of visa issuance and admission, regardless of the beneficiary's actual age. So long as the beneficiary remains unmarried at all stages of petition adjudication, visa processing, and travel to the United States, the beneficiary will remain eligible for classification and admission as an IR-3 or IR-4 immigrant.

NOTE: Section 201(f) of the Act preserves the beneficiary's age as the age on the date the petition is filed only for purposes of visa issuance. It does not have this effect for purposes of acquisition of citizenship under section 320 or 322 of the Act. The beneficiary must actually be under the age of 18 when the conditions of section 320 or 322 are met in order to benefit from those provisions.

- (4) Public Law 106-139 of 1999 amended INA 101(b)(1)(E) was enacted to prevent the separation of natural siblings through adoption where the circumstances of the older child are essentially those of the younger child except that the older child is age 16 or 17. Therefore, 16- or 17-year olds traveling with or after younger siblings travel may also benefit from a Form I-600 as long as the petition is filed prior to their 18th birthday.
- (5) See [9 FAM 502.3-3\(C\)\(2\)](#) on other case-specific age-related requirements that may have to be met at the time of petition filing based on USCIS' approval of individual parents' suitability to adopt overseas.

b. Only a U.S. Citizen May File a Form I-600 for an Orphan:

- (1) If the petitioner is legally married, the spouse does not have to be a U.S. citizen. However, if not a U.S. citizen, the spouse must be in lawful immigrant status. There are no age requirements for a married petitioner and spouse. Regardless of any legal separation or separation agreement, the spouse must sign the Form I-600.
- (2) If the petitioner is unmarried, he or she must be at least 24 years old at the time he or she submits a Form I-600-A, Application for Advance Processing of Orphan Petition (see [9 FAM 502.3-3\(C\)\(2\)](#)), and at least 25 years old at the time he or she files the Form I-600.

9 FAM 502.3-3(B)(3) Adoption or Intent to Adopt (Orphans)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N13.2-3; CT:VISA-2137 07-02-2014)

The petitioner(s) for orphan applicants must have adopted or intend to adopt the orphan, as demonstrated by either paragraph 1 or paragraph 2 below:

- (1) Evidence of a full and final adoption under the laws of the foreign sending country. For adoptions abroad where the adoptive parent(s) did not personally see the orphan prior to or during the adoption proceeding abroad or, if petitioners are married, where the adoption is not done in the name of both parties, the petitioner(s) must also have evidence that the state of the orphan's proposed residence allows re-adoption or provides for judicial recognition of the adoption abroad.
 - (a) Evidence of a full and final adoption would usually be in the form of an adoption decree, giving the adopted child the same rights and privileges which are accorded to a natural legitimate child (such as inheritance rights, etc.). Simple, conditional, or limited adoptions, such as those conducted under Islamic Family Law in some countries, are more accurately described as guardianship and are not considered valid adoptions for U.S. immigration purposes (see [9 FAM 502.3-1\(E\)](#)). If married, both petitioners must be party to the adoption.
 - (b) A foreign adoption, even if documented with a valid local adoption decree, is not valid for purposes of demonstrating a full and final adoption unless an adoptive parent actually sees the child in person at some point before or during the foreign adoption procedures. If the petitioner is married, at least one of the adoptive parents must have personally seen and observed the child before or during the adoption proceedings. If neither of the two adoptive parents actually saw the child in person, the foreign adoption cannot be considered full and final, although it should adequately prove legal custody of the child for purposes of emigration and adoption (see [9 FAM 502.3-3\(B\)\(3\)](#) paragraph (1)(b)). In such a case, if the petitioners can demonstrate that their state of residence allows re-adoption, provides for judicial recognition of the adoption abroad, or that pre-adoption

requirements have been met, the petitioner should be considered to have adequately shown evidence of the intent to adopt.

NOTE: For proxy adoptions where neither adopting parent has seen the child, the Form I-600 will need to be filed with a USCIS office in the United States since the petitioner will not be physically present overseas. (See [9 FAM 502.3-3\(C\)\(3\).](#))

- (2) An irrevocable release of the orphan for emigration and adoption from the person, organization, or competent authority which had the immediately previous legal custody or control over the orphan. The petitioner (and spouse, if applicable) must intend to, and be legally able, to adopt the child in the United States; petitioners must present evidence showing that any state pre-adoption requirements noted in the approval of their suitability to adopt (Form I-600-A approval notice) have been met (unless they cannot be complied with prior to the orphan's arrival in the United States).
 - (a) Evidence of custody of the child for purposes of emigration and adoption will vary greatly depending on local laws and regulations governing child custody. Generally, this evidence will consist of documentation from a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage legally authorized to release the child for emigration and adoption according to local law or regulation. The evidence does not have to include specific reference to the custody being granted for purposes of emigration and adoption, but should not prohibit the child's ability to leave the country or otherwise limit the custody arrangements of the parents (i.e., guardianship for academic purposes, temporary custody, etc.). Generally speaking, grants of guardianship under Islamic sharia provisions do not meet custody requirements.
 - (b) Petitioners who have custody of the child for purposes of emigration and adoption must also demonstrate that they have met or will meet the pre-adoption requirements of the state of the child's proposed residence. The Form I-600-A approval notice should note any pre-adoption state requirements that must be met. Adoptive parents must provide you with evidence that all such identified pre-adoption requirements (except those that cannot be complied with prior to the child's arrival in the United States) have been met. Officers should be as flexible as possible in evaluating such evidence, opting for the minimum level of proof acceptable in each case. If questions arise regarding pre-adoption requirements, you can consult with CA/OCS/CI and CA/VO/F.
- (3) You need to be well versed in the host country's adoption, custody and guardianship laws and procedures, and should rely on competent local authorities to make responsible decisions about the facts surrounding child custody and final adoptions, not second-guessing whether such authorities are correctly implementing their own laws or regulations. At the same time, you must keep in mind that terms used by such local authorities (such as "abandonment") may not always be equivalent to definitions for such terms in U.S. immigration law. In all cases, the requirements of U.S. immigration law

must be met. If you have evidence of a trend involving inappropriate application of local laws or local officials' decisions contributing to child-buying, fraud or misrepresentation in adoption cases, details of post's findings should be reported to CA/VO/F and CA/OCS/CI.

9 FAM 502.3-3(B)(4) Status of Natural Parents (Orphans)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N13.2-4; CT:VISA-1178 04-03-2009)

a. Introduction:

- (1) A child may be considered an orphan if he or she has no parents because of the death or disappearance, abandonment or desertion by, or separation from or loss of both parents (see [9 FAM 502.3-3\(B\)\(4\)](#) paragraph b). A child may also be considered an orphan if they have a sole or surviving parent unable to care for the child who irrevocably releases the child for emigration or adoption (see [9 FAM 502.3-3\(B\)\(4\)](#) paragraph c).
- (2) These two sets of criteria are distinct and separate, and only one set of requirements must be met for the child to be considered an orphan. For example, a child whose sole parent is unable to provide proper care does not have to have been abandoned by both parents in order to qualify as an orphan. Similarly, if one of the child's parents has died and local courts have legally separated the child from the remaining parent, there is no need under U.S. immigration law for the separated parent to irrevocably release the child for emigration and adoption.
- (3) Department of Homeland Security (DHS) regulations establish very specific meanings for terms describing an orphan's natural parents, and specific documentation is required in each case, as outlined in [9 FAM 102.3-1](#) Definitions. Questions related to whether the circumstances of and evidence submitted for a particular case are sufficient for orphan status should be directed to CA/VO/F and CA/VO/L/A. If primary evidence is not available but posts feels the case may still merit orphan classification, you should consult with CA/VO/F and CA/VO/L/A.

(Previous location: 9 FAM 42.21 N13.2-5 first paragraph only; CT:VISA-878 04-25-2007)

- b. Orphan With No Parents:** An orphan may have no parents due to any combination of the following six reasons: death, disappearance, abandonment, desertion, separation, or loss. For example, if one parent disappeared and the second parent was legally separated from the child, the child may qualify as an orphan. A parent-child relationship is terminated by any one of these conditions: a child "separated" from a parent, for example, does not also have to have been "abandoned" by that parent. See [9 FAM 102.3-1](#) Definitions for further information on the terms "death," "disappearance," "abandonment," "desertion," "separation," and "loss."

(Previous location: 9 FAM 42.21 N13.2-6 first paragraph only; CT:VISA-1937)

10-23-2012)

c. Orphan With Sole or Surviving Parent:

- (1) If a child is not an orphan by nature of having no parents, he or she may still be considered an orphan if the child has a sole or surviving parent who is unable to provide proper care and who has, in writing, irrevocably released the child for emigration and adoption. This is the only circumstance where a child released directly to the adoptive parent(s) can qualify as an orphan.

(Previous location: 9 FAM 42.21 N13.2-6 (3-5); CT:VISA-1937 10-23-2012)

(2) Irrevocable Release (Orphan):

- (a) The sole or surviving parent's irrevocable release for emigration and adoption must be in writing, in a language that the parent is capable of reading and signed by the parent. The release must be irrevocable and without stipulations or conditions which would cause custody of the child to revert to the birth parent. The release may, however, identify the person(s) to whom the parent is releasing the child, even if that person is the prospective adoptive parent. If the parent is illiterate, but in an interview satisfies you that he or she had full knowledge of the contents of the document and understood the irrevocable nature of the release, the officer may also treat the document as evidence of the release required for the orphan classification.
- (b) There is no requirement that the irrevocable release be completed in the presence of a consular officer or notary, and in most cases the natural parent's presence should not be required to process an orphan case. However, when post has serious concerns with a particular case regarding the natural parent's intent or understanding of the release, you may request an interview of the natural parent. If there are concerns that purported natural parents may not be the biological parents of the child, DNA tests may be used to affirm that the true natural parent is releasing the child for emigration and adoption.

- (3) **Orphan Status if Sole or Surviving Parent Remarries:** Generally, to qualify as a stepchild under the INA, the marriage creating the stepchild status must have occurred before the stepchild's 18th birthday. USCIS, however, has adopted a narrow interpretation of "stepchild" under INA 101(b)(1)(B) solely for determining whether a child is an "orphan" as the child of a sole or surviving parent. Under this interpretation, a sole or surviving parent's new spouse must have a legal parent-child relationship with the child in order for the child no longer to be considered the child of a sole or surviving parent.

- (a) A sole or surviving parent who has married will still be considered, in determining whether a child is an orphan, the child's sole or surviving parent if the petitioner establishes that the sole or surviving parent's new spouse has no legal parent-child relationship to the child under the law of the foreign sending country.

- (b) **To Establish a Legal Parent-Child Relationship:**
- (i) The stepparent must have adopted the child; or
 - (ii) The stepparent must have obtained legal custody of the child; or
 - (iii) Under the law of the foreign sending country, the marriage between the parent and stepparent must have created a parent-child relationship between the stepparent and the child.
- (c) If you are unsure of the legal status of the relationship between a stepparent and a child, contact CA/VO/L/A.

9 FAM 502.3-3(B)(5) Bona Fide Parent-Child Relationship, Severing of Previous Relationship (Orphans)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N13.2-7; CT:VISA-946 04-11-2008)

- a. Petitioners seeking to bring an orphan to the United States must intend to enter into a bona fide parent-child relationship with that orphan. A bona fide parent-child relationship implies the provision of care, support and direction to the orphan, without the intent to profit financially or otherwise from the presence of the child.
- b. An adoption is intended to sever previous parental ties. Therefore, a caretaker relationship in which the adopting parents intend to return the child to their natural parents or former guardians in the future would generally not constitute a bona fide parent-child relationship. Also, as provided in INA 101(b)(1)(F), no natural parent or prior adoptive parent of an orphan may obtain any immigration benefit as a result of their relationship with an orphan.

9 FAM 502.3-3(B)(6) Child-Buying, Fraud, Misrepresentation (Orphans)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N13.2-8; CT:VISA-1178 04-03-2009)

Orphan classification is not appropriate for cases involving clear and documented evidence (or an admission) of child-buying, fraud, or misrepresentation.

(1) Child-Buying:

- (a) A child should not be considered an orphan if the adoptive parent(s), or a person or entity working on their behalf, have given or will give money or other consideration either directly or indirectly to the child's natural parent(s), agent, or other individual as payment for the child or as an inducement to release the child. You must seriously review allegations of child-buying, and carefully weigh the evidence available to substantiate such charges.
- (b) However, the prohibition on payments does not preclude reasonable payment for necessary activities such as administrative, court, legal,

translation, or medical services related to the adoption proceedings. Foreign adoption services are sometimes expensive and their costs can often seem disproportionately high in comparison with other social services. Further, in many countries there is a network of adoption facilitators, each playing a role in processing an individual case and thus reasonably expecting to be paid for their services. In most adoption cases the expenses incurred can be explained in terms of "reasonable payments." Even cash given directly to a biological mother may be justifiable if it relates directly to expenses such as pre-natal or neo-natal care, transportation, lodging, or living expenses. Investigations of child buying, therefore, should focus on concrete evidence or an admission of guilt.

(2) Fraud or Misrepresentation:

- (a) A child should not be considered an orphan if there is evidence of fraud or misrepresentation with the purpose of using deception to obtain visas for children who do not qualify. In many cases, both the U.S. citizen adoptive parents and adoptive children may be unwitting victims of a fraud which was actually perpetrated upon them by unscrupulous agents misrepresenting important facts about these children. If the fraud involves stolen or kidnapped children, biological parents may also be victims. In some cases, biological parents may also have been misled about the permanent nature of their separation from the child.
- (b) You must carefully scrutinize documentation presented in support of orphan cases. In some cases, it may be necessary to conduct field investigations, DNA tests, or additional interviews in order to investigate possible adoption fraud. Because adoption cases are multi-faceted, a successful anti-fraud program should engage the entire adoption community, including agents, lawyers, orphanages, foster care providers, medical personnel, judges, local officials, and law enforcement personnel.
- (c) You should keep in mind, however, that the responsibility for enforcing local laws and for protecting the rights of children and biological parents rests primarily with local authorities. Also, anti-fraud efforts must be balanced with the mandate to provide service to U.S. citizens and the need to be sensitive to the victims of fraud. Whenever possible, posts should use anti-fraud techniques which do not unnecessarily delay processing or create further hardship for fraud victims.

9 FAM 502.3-3(B)(7) Immediate Relative (IR3 vs. IR4) Orphan Classifications and the Child Citizenship Act

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N13.2-9; CT:VISA-2137 07-02-2014)

- a. **Orphans May Be Classified as Either IR3 or IR4:** The correct classification of immigrant visas issued to orphans is particularly important due to the passage of

the Child Citizenship Act of 2000 (Public Law 106-395). As a result of that Act, orphans properly admitted to the United States based on the IR3 classification while under the age of 18 will automatically acquire U.S. citizenship, while those admitted as a result of an IR4 classification will not immediately acquire citizenship (see [9 FAM 502.3-3\(B\)\(7\)](#) paragraphs e and f for additional details). You should take particular care to classify orphan petitions and visas correctly and to inform prospective parents of the significance of the immigrant visa classification their child receives. (See [9 FAM 502.3-1\(C\)](#) on adopted children who should be issued other types of visas.)

- b. Although proper classifications should be noted on Form I-600, Petition to Classify Orphan as an Immediate Relative or petition approval notices, the final determination of proper classification for the visa rests with the adjudicating consular officer. Travel plans and circumstances change, such that parents expecting to apply for an IR3 visa for their adopted child may not be eligible to apply for an IR3 visa because they were not able to complete the adoption abroad and/or at least one parent has not personally seen and observed the child. If the child cannot be classified as an IR3, you may approve the case based IR4 classification if the IR4 criteria noted below have been met.
- c. **The IR3 Classification is Appropriate for Orphans Who Meet the Following Criteria:**
 - (1) The orphan was the subject of a full, final, and legal adoption abroad by the petitioner (or spouse, if married) prior to visa issuance; and
 - (2) An adoptive parent personally saw and observed the child before or during the foreign adoption proceedings. If the petitioner is married, at least one of the adoptive parents must have personally seen and observed the child before or during the adoption proceedings.
- d. **The IR4 Classification is Appropriate for Orphans Who Meet the Following Criteria:**
 - (1) The orphan will be adopted by the petitioner (or spouse, if applicable) after being admitted to the United States (requires both petitioner intent and satisfaction of any applicable pre-adoption requirements of the home state); and
 - (2) The petitioner (or someone working on his and/or her behalf) must have secured custody of the orphan under the laws of the foreign sending country sufficient to allow the child to be taken from the foreign sending country and adopted elsewhere.
- e. Upon being legally admitted into the United States, and assuming the IR3 classification was appropriate and the child is under the age of 18, the child will automatically acquire U.S. citizenship as of the date of admission to the United States. The USCIS Buffalo office processes newly entering IR3 visa packets, automatically sending Certificates of Citizenship to eligible children without requiring additional forms or fees. Adoptive parents may also request a U.S. passport for the child.

- f. IR4 visa recipients become Lawful Permanent Residents (LPR) upon admission to the United States, but do not automatically acquire U.S. citizenship. A child who enters the United States on an IR4 visa acquires U.S. citizenship as of the date of a full and final adoption decree in the United States (assuming the child is under age 18 at the time of adoption). While citizenship is acquired as of the date of the adoption in such cases, beneficiaries will need to file Form N-600, Application for Certificate of Citizenship and submit it to the local USCIS District Office or Sub-Office that holds jurisdiction over their permanent residence to receive a Certificate of Citizenship. Alternatively, adoptive parents may request a U.S. passport for the child as evidence of citizenship.
- g. Many adoptive parents have questions related to the Child Citizenship Act. They can be referred to the USCIS website or State website for additional information and important details on the legislation's impact on adopted children.
- h. **B2 Visas:** U.S. citizen parents of children adopted overseas who reside overseas and do not intend to reside in the United States may apply for naturalization on behalf of the child by filing Form N-600-K, Application for Citizenship and Issuance of Certificate under INA 322 at any USCIS District Office or Sub-Office in the United States. The naturalization process for such a child cannot take place overseas. The child will need to be in the United States temporarily pursuant to a lawful admission and maintaining such lawful status to complete naturalization processing and take the oath of allegiance. You may therefore receive applications for B-2 nonimmigrant visas (NIVs) to attend Section 322 naturalization hearings (see [9 FAM 402.2-4\(B\)\(7\)](#)). You are encouraged to give positive consideration to such cases whenever possible, and should not force or encourage such parents and children to undergo the immigrant visa process if they do not intend to reside in the United States.

9 FAM 502.3-3(C) Processing Orphan Visas

9 FAM 502.3-3(C)(1) Orphan Case Processing – Introduction

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N13.1(d); CT:VISA-1178 04-03-2009)

- a. Because processing of orphan cases varies somewhat from standard IV processing, the following section examines each of the stages for processing these cases. Questions related to processing of such cases should be directed to CA/VO/F; classification questions should be directed to CA/VO/L/A (with a copy to CA/VO/F); and reporting on countries' adoption practices should be directed to CA/OCS/CI, with a copy to CA/VO/F.

(Previous location: 42.21 N13.1 c; CT:VISA-1178 04-03-2009)

b. **Processing an Orphan Case Requires the Following Steps:**

- (1) Prospective adopting parents establish their suitability and ability to provide a proper home environment for the adopted child, usually through an approved Form I-600-A, Application for Advance Processing of Orphan Petition (see [9](#)

[FAM 502.3-3\(C\)\(2\)](#));

- (2) Prospective adopting parents establish that a particular child may be classified as an orphan, as demonstrated by an approved Form I-600, Petition to Classify Orphan as an Immediate Relative and confirmed through the Form I-604, Determination on Child for Adoption (see [9 FAM 502.3-3\(C\)\(3\)-\(4\)](#)); and
- (3) A visa application is filed on behalf of the child, providing all necessary documentation for production of the visa and demonstrating that no ineligibilities apply; the application is adjudicated by you, and, the visa, if issued, serves as the basis for their request for admission into the United States and acquisition of citizenship (see [9 FAM 502.3-3\(C\)\(5\)](#)).

(Previous location: 9 FAM 42.41 PN1.2; CT:VISA-2155 07-31-2014)

- c. Where required or when requested, U.S. Immigration and Citizenship Services (USCIS) alert post or the USCIS officer abroad via email to information on immigrant petitions for orphans and approval of Form I-600-A, Application for Advance Processing of Orphan Petition. Upon receipt of this email, you will notify the petitioner of the steps to be taken for further processing of the case.

9 FAM 502.3-3(C)(2) Establishing Adoptive Parent(s)' Suitability and Ability to Provide a Proper Home Environment (Form I-600-A, Application for Advance Processing of Orphan Petition)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N13.3, N13.3-1; CT:VISA-878 04-25-2007)

a. I-600A Introduction, Purpose:

- (1) USCIS has responsibility for determining that adopting parents are suitable and able to provide a proper home environment for adopted children. You may assist in this process by providing information or necessary forms to prospective petitioners, or taking fingerprints or forwarding paperwork on behalf of such individuals under certain limited circumstances. You will also need to refer to USCIS suitability approvals in order to adjudicate orphan petitions or visa applications (see [9 FAM 502.3-3\(C\)\(2\)](#) paragraph d).
- (2) INA 101(b)(1)(F) requires that USCIS be satisfied that proper care will be furnished to a child if admitted to the United States as an "orphan." Form I-600-A allows the adopting parent(s) to demonstrate that they are financially, logistically, and otherwise prepared to adopt a child internationally. Form I-600-A is not designed to evaluate a particular child's classification as an orphan. Because Form I-600-A reviews suitability, rather than a specific beneficiary's orphan status, a single Form I-600-A may result in approval for parents to adopt multiple children. Adopting parents are often encouraged to begin the overseas adoption process early by filing Form I-600-A before identifying a particular child to adopt.
- (3) You will sometimes adjudicate visas for orphan cases where the suitability/ability to provide proper home decision has been made based on an

Form I-600 filed with a USCIS office – such cases are discussed in [9 FAM 502.3-3\(C\)\(2\)](#) paragraph f.

(Previous location: 9 FAM 42.21 Exhibit III; CT:VISA-979 07-11-2008)

(4) See a copy of Form I-600-A at the USCIS Forms website.

(Previous location: 42.21 N13.3-2; CT:VISA-1178 04-03-2009)

b. Filing the Form I-600-A, Application for Advance Processing of Orphan Petition:

- (1) The U.S. citizen prospective adoptive parent files the Form I-600-A with the U.S. Citizenship and Immigration Services (USCIS) office having jurisdiction over his or her place of residence. For U.S. citizens currently residing overseas, Form I-600-A may be filed with either the USCIS regional office having jurisdiction over their proposed place of residence in the United States or with the USCIS office overseas having jurisdiction over their current place of residence.
- (2) You may not adjudicate a Form I-600-A. However, with the concurrence of the regional USCIS office having jurisdiction over the consular district, you may accept a completed Form I-600-A and fees from a U.S. citizen resident of the consular district for transmittal to the regional USCIS office. In such a case, the U.S. citizen should be advised to communicate directly with the regional USCIS office regarding requirements and status of the adjudication of the Form I-600-A.
- (3) Form I-600-A is available on USCIS's website. Form I-600-A must be signed by the petitioner and their spouse (if the petitioner is married). The application must be submitted with the following documentation:
 - (a) Proof of U.S. citizenship of the adoptive parent;
 - (b) Proof of marriage of petitioner and spouse (if married);
 - (c) Home study (see [9 FAM 502.3-3\(C\)\(2\)](#) paragraph b(4));
 - (d) Proof of compliance with state pre-adoption requirements; and
 - (e) Fees.
- (4) The home study is used to evaluate prospective parent(s)' financial ability to rear and educate the child, describe the living accommodations where the prospective parent(s) resides and where the child will reside, and to provide a factual evaluation of the physical, mental, and moral capabilities of the prospective parent(s) to rear and educate the child. The home study must include a statement recommending or approving the parents for adoption.
 - (a) 8 CFR 204.3(e) provides specific guidance on who can perform home studies and provide the statement recommending or approving adoption. Generally, any individual or agency may do the actual home study and interview, but the statement can only be made by an official of the state agency or by an agency licensed in the particular state where the child will reside.

- (b) The home study must contain specific approval of the prospective adoptive parents for adoption. The preparer of the home study is required to note the number of orphans which the prospective adoptive parents may adopt, as well as whether there are any specific restrictions to the adoption such as nationality, age or gender of the orphan. If the home study preparer has approved the prospective parents for a handicapped or special needs adoption, this fact must also be clearly stated.
- (5) As part of Form I-600-A suitability application, the petitioner, their spouse (if married), and each additional adult member of the prospective adoptive parent(s)' household must be fingerprinted.
- (a) For petitioners residing in the United States, Form I-600-A is filed and then USCIS notifies each person in writing of the time and location where they must go to be fingerprinted (usually done electronically.) Any required updates for these individuals (see [9 FAM 502.3-3\(C\)\(2\)](#) paragraph b(5)) would be handled at the same location.
- (b) For petitioners residing overseas, USCIS officers, or in countries without a USCIS presence, you will need to complete fingerprint cards Form FD-258, Applicant Fingerprint Card and collect fingerprinting fees for each individual. Any required updates for these individuals (see [9 FAM 502.3-3\(C\)\(2\)](#) paragraph b(5)(c)) should be handled by either the USCIS officer at post, or in countries without a USCIS presence, by sending a new Form FD-258 by courier to the appropriate officer in CA/VO/F (see paragraph (c) below).
- (c) For petitioners whose 15-month fingerprint clearances have expired and who appear in person at posts overseas with invalid fingerprint clearances, CA/VO/F can assist with expediting fingerprint clearances. Post should send a completed Form FD-258 by courier to the appropriate officer in CA/VO/F. An email response to the clearance request will be forwarded back to post from the Federal Bureau of Investigation (FBI) via CA/VO/F. If the FBI record shows no adverse information, you can attach the CA/VO/F response to the visas thirty-seven cable or approved Form I-600-A (see [9 FAM 502.3-3\(C\)\(2\)](#) paragraph c) and process the case to conclusion. Should the FBI response contain an IDENT record, then post must stop processing the case and immediately forward Form I-600-A to the originating USCIS office.

(Previous location: 9 FAM 42.21 N13.3-3; CT:VISA-1743 10-19-2011)

c. Approval of Form I-600-A, Application for Advance Processing of Orphan Petition:

- (1) USCIS approval of Form I-600-A will be noted on the original Form I-600-A, as well as in a Form I-171-H, Notice of Favorable Determination Concerning Application For Advance Processing of Orphan Petition or Form I-797-C, Notice of Action, sent to the petitioner and a visas 37 cable sent to the IV-issuing post with jurisdiction over any country where the petitioner intends to file a Form

I-600 for the particular adopted child (if a country is indicated). You may not accept Form I-171-H/I-797-C as proof of Form I-600-A approval, but may accept the original approved Form I-600-A, a visas 37 cable, or faxed or e-mail notice of an approved Form I-600-A if transmitted directly from USCIS or the Department. Upon request by the adopting parents, posts may transfer Form I-600-A approval notices to other immigrant visa-issuing posts by cable, fax, or email. Information on approval of home study updates or updated fingerprint clearances will be provided by USCIS or the Department by cable, fax, or e-mail. Posts should not require applicants to present home studies, background information, or the original Form I-600-A in order to process orphan cases.

- (2) Because USCIS adjudicators consider other factors besides the home study in reviewing Form I-600-A applications, a Form I-600-A approval notice may show different criteria for the children who may be adopted than those listed in the home study originally prepared on the parents. In such cases it is Form I-600-A approval criteria which govern. If no criteria are listed, and if no pre-adoption requirements are noted, you should assume that there are no age- or gender-related restrictions on which children may be adopted, and that no pre-adoption requirements exist. If the Form I-600-A approval notice does not specifically mention approval to adopt a special needs or disabled child, you should assume that the parents were not approved for such an adoption. If posts encounter cases where two different approval notices for the same case provide differing information (for example, the physical Form I-600-A with its approval stamp does not note restrictions on the age or gender of the adopted child, but the visas 37 cable does), contact CA/VO/F for assistance.
- (3) Form I-600-A approval is valid for 18 months from the date of its approval, and adoptive parents filing a petition for a child to be classified as an orphan must file Form I-600 within the 18-month validity period. If Form I-600 is not filed within that period, Form I-600-A is considered to have been abandoned. You may not extend the validity of Form I-600-A approval. If the prospective parent(s) wishes to file an orphan petition after their Form I-600-A expires, they must file a new Form I-600-A and submit required documentation to the appropriate USCIS office (or include additional information with the Form I-600 filed with a USCIS office, see [9 FAM 502.3-3\(C\)\(2\)](#) paragraph f. Further action on the case must be put on hold until the new Form I-600-A is approved.
- (4) Separately, the fingerprint clearance obtained during the Form I-600-A process has a 15-month validity period. Dates of fingerprint clearances should be provided in the Form I-600-A approval documentation (if they are not, request assistance from CA/VO/F). If an orphan petition is not approved within the 15-month clearance period, adoptive parents must request updated fingerprint clearance per procedures outlined in [9 FAM 502.3-3\(C\)\(2\)](#) paragraph b(5). You may not extend the validity of the fingerprint clearance, and must wait for updated clearance information, either by notice from the appropriate USCIS office or by email from CA/VO/F.

- (5) Adopting parents are urged to contact USCIS if there are major changes in their circumstances subsequent to the Form I-600-A approval. Such changes include significant changes in the petitioner's household (birth of a child, divorce of the petitioner, etc.), a change in jurisdiction (petitioner moves across state or country border, etc.), or a change in financial circumstances (petitioner loses his or her job, etc.). USCIS will generally then request an updated home study if necessary, and send notice of an updated Form I-600-A approval. You have no authority to review updated home studies. If you learn of changes in the petitioner(s)' circumstance and the petitioner has not requested and obtained an updated Form I-600-A approval, then you should consult with the original approving USCIS office regarding the case (see [9 FAM 502.3-3\(C\)\(2\)](#) paragraph e on fraud or misrepresentation issues with the Form I-600-A).

(Previous location: 9 FAM 42.21 N13.3-4; CT:VISA-878 04-25-2007)

- d. **Consular Officer Use of Form I-600-A, Application for Advance Processing of Orphan Petition Information:** Since suitability issues are solely the responsibility of USCIS, you are not involved in Form I-600-A adjudication and have no authority to review USCIS' determinations regarding adoptive parent(s)' suitability or ability to provide a proper home environment. However, you will need to review Form I-600-A approvals for the following:

- (1) **Form I-600 Filing:** As noted in [9 FAM 502.3-3\(C\)\(3\)](#), you are only permitted to accept Form I-600 petitions if they have acceptable evidence of a valid Form I-600-A approval (and fingerprint clearance) for the petitioner(s).
- (2) **Form I-600 and Visa Adjudication:** You may only approve Form I-600 petitions and/or visas for children who meet the conditions noted in the Form I-600-A approval. For example, if the Form I-600-A approval was only for one child under the age of two, or was made without noting special approval to adopt a special needs child, you could not approve an Form I-600 petition or visa for a 10-year old or a special needs child respectively. Similarly, if state pre-adoption requirements were identified and have not been met, you cannot approve the Form I-600 petition or visa for the child in question.
- (3) **Fraud Concerns:** You may encounter fraud in orphan cases, and information from the Form I-600-A may occasionally be used to corroborate requests for DHS review or revocation of orphan petitions. (See [9 FAM 502.3-3\(C\)\(3\)](#) paragraph c and [9 FAM 502.3-3\(C\)\(5\)](#) paragraph b for additional information on dealing with such cases.)

(Previous location: 9 FAM 42.21 N13.3-5; CT:VISA-1178 04-03-2009)

- e. **Fraud or Misrepresentation in the Form I-600-A, Application for Advance Processing of Orphan Petition:** In cases where you have a well-founded and substantive reason to believe that Form I-600-A approval was obtained on the basis of fraud or misrepresentation, or have knowledge of a change in material fact subsequent to the approval of Form I-600-A, you should consult with its regional USCIS office on disposition of the case.

(Previous location: 9 FAM 42.21 N13.3-6; CT:VISA-878 04-25-2007)

f. Using the Form I-600, Petition to Classify Orphan as an Immediate Relative, to Demonstrate Suitability:

- (1) Adoptive parents who already know which child they intend to adopt and who intend to file their paperwork with a USCIS office in the United States may submit proof of their suitability to adopt (per guidelines in [9 FAM 502.3-3\(C\)\(2\)](#) paragraph b) at the same time that they file Form I-600 petition for orphan classification for the child. In such cases, notice of USCIS approval of Form I-600 petition should be considered as approval of the parents' suitability to adopt.
- (2) Parents are not obligated to use the Form I-600 petition in such cases. Under current USCIS regulations, parents can choose to demonstrate their suitability to adopt overseas by filing the Form I-600-A "preclearance" application (and then subsequently filing Form I-600), or by filing the Form I-600 alone. While filing both suitability- and classification-related documentation on an already identified child using Form I-600 alone may be more convenient for some adoptive parents, many prospective adoptive parents may find that doing so would unnecessarily delay or even prevent processing on their case. In particular, if the parents intend to file Form I-600 overseas, overseas USCIS officers and consular officers will be unable to accept Form I-600 petition unless Form I-600-A has already been approved. Also, for parents who have not yet identified their adoptive child, filing Form I-600-A application first will result in faster processing of an immigrant visa for their child once identified.

9 FAM 502.3-3(C)(3) The Orphan Petition (Form I-600, Petition to Classify Orphan as an Immediate Relative)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N13.4-1; CT:VISA-1178 04-03-2009)

- a. Form I-600 is used to document a particular child's classification as an orphan under INA 101(b)(1)(F). A separate Form I-600 must be filed for each child, even though the associated Form I-600-A approval may have been for multiple children. An orphan can only be issued an immigrant visa if he or she is the beneficiary of an approved Form I-600.

(Previous location: 9 FAM 42.21 N13.4-2; CT:VISA-1743; 10-19-2011 and, for paragraph b(3)(e) content, 9 FAM 42.21 Exhibit VI; CT:VISA-1773; 11-16-2011)

b. Filing the Form I-600, Petition to Classify Orphan as an Immediate Relative:

- (1) Prospective adoptive parents may file Form I-600 on behalf of the adoptive child with the USCIS office having jurisdiction over their place of residence, or with a USCIS or consular officer overseas, per the guidelines noted below:
 - (a) Prospective adoptive parents residing in the United States should file Form I-600 with the USCIS District or Sub-Office with jurisdiction over their place of residence. Adoptive parents involved in proxy adoptions (see [9](#)

[FAM 502.3-3\(B\)\(3\)](#) paragraph 1(b) will need to file petitions in this way;

- (b) Prospective adoptive parents currently residing overseas should file Form I-600 petitions with the USCIS office in that country, or, in countries without a USCIS presence, with consular officers covering that consular district. NOTE: However, adoptive parents who intend to continue residing overseas should generally not be pursuing IV processing for the child.
 - (c) Petitioners not resident in the consular district should verify local USCIS or consular offices practices regarding Form I-600 filing overseas. In general, both USCIS and consular officers may at their discretion accept Form I-600 from a physically present nonresident petitioner in humanitarian or emergent circumstances if a Form I-600-A has already been approved for the petitioners. For consular officers, it is anticipated that petitions for orphan cases should generally be considered humanitarian cases, and therefore accepted (see [9 FAM 504.2-4](#)); and
 - (d) Prospective adoptive parents adopting children who will soon turn 16 may wish to file Form I-600 petitions on behalf of the children with USCIS offices in the United States or overseas, since USCIS will accept and consider as properly filed Form I-600 without all of the documents listed in [9 FAM 502.3-3\(C\)\(3\)](#) paragraph b(3)(e) (although the documents will ultimately be required for petition approval.) You, however, should not accept (or consider to have been properly filed) petitions submitted without all required documentation as listed in [9 FAM 502.3-3\(C\)\(3\)](#) paragraph b(3)(e).
- (2) **You May Only Accept Form I-600 (Permit it to be Filed) Under the Following Circumstances:**
- (a) Post has notice of a Form I-600-A approval and both the approval and fingerprint clearances are still valid (see [9 FAM 502.3-3\(C\)\(2\)](#) paragraph c(3) and (4));
 - (b) There is no USCIS petition-adjudicating office in-country;
 - (c) The U.S. citizen petitioner does not already have a Form I-600 pending for the same beneficiary; and
 - (d) The U.S. citizen petitioner is physically present before you, presents required documents and fees, and swears to (or affirms) the truth of the information presented.
- (3) **If the Required Circumstances are Present for You to Accept a Form I-600:**
- (a) **Oath:** You must administer an oath (or affirmation) to the U.S. citizen petitioner, asking them to swear (or affirm) that all of the information presented is true and correct to the best of their belief and knowledge.
 - (b) **Completing and Signing the Petition:** You must ensure that the Form I-600 has been completely filled out, and signed by the petitioner (and

spouse, if applicable) after having been completed. A third party may not sign or file the petition on behalf of the petitioner and/or spouse, even with a power of attorney. Because the petitioner must be physically present before you, petitions may not be submitted to you by mail or other indirect means.

- (c) **Spouses:** If the petitioner is married, his or her spouse must sign the petition, although he or she does not have to sign before you. In the event that only one spouse travels abroad to file Form I-600 at post, you should verify that the non-traveling spouse did not sign the petition before all of the information relating to the child had been entered onto the form. If the Form I-600-A has been approved for a married couple, either spouse may sign Form I-600 as the "prospective petitioner" with the other signing as the "spouse" (unless the married couple consists of one U.S. citizen and one alien, in which case the U.S. citizen must be the "prospective petitioner" on both documents.)
- (d) **Fees:** A prospective adoptive parent who filed their Form I-600-A with USCIS may file a Form I-600 for one child without any additional fee. If more than one Form I-600 is being filed based on a Form I-600-A, the petitioner must pay a Form I-600 filing fee for each child beyond the first unless the children involved are siblings (in which case no additional fees would be collected).
- (e) **Documents:** The petitioner must present the following documents with the Form I-600 in order for the petition to be considered to have been properly filed:
 - (i) Child's original birth certificate, or if such certificate is not available, a written explanation together with secondary evidence of identity and age (example: a re-issued birth certificate showing adoptive parents);
 - (ii) Evidence that the child either has no parents or a sole/surviving parent unable to provide proper care who has irrevocably released the child for emigration and adoption, per guidelines in [9 FAM 502.3-3\(B\)\(4\)](#) paragraphs (b) and (c); and
 - (iii) Evidence of adoption or intent to adopt, per guidelines in [9 FAM 502.3-3\(C\)\(3\)](#).
- (f) Any foreign language documents submitted with the Form I-600 petition must be accompanied by a full English translation, which the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate the foreign language into English.
- (g) For any Form I-600 filed with consular officers, originals of required documents must be submitted for review with Form I-600. You should make copies of relevant documents for the immigrant visa packet, noting that originals were seen and returned in the case notes field in the Immigrant Visa Overseas system.

NOTE: USCIS permits petitioners to submit copies of some documents when accepting a Form I-600; petitioners should be directed to the Form I-600 instructions for rules regarding copies of required documents when filing the petition with USCIS.

- (h) 8 CFR 204.3 states that documents used in the filing of an orphan petition must have been obtained in accordance with the laws of the foreign-sending country. A foreign-sending country is defined as the country of the orphan's citizenship, or, if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to or in conjunction with his or her adoption and/or immigration to the United States.
- (4) You should be particularly sensitive to legal requirements that the Form I-600 be filed before an orphan reaches the age of 16. Posts should ensure that prospective parents are aware of age-related concerns and, whenever possible and subject to the guidelines above, should provide a reasonable opportunity for parents to file the Form I-600 and accompanying documentation prior to the child's 16th birthday.

(Previous location: 9 FAM 42.21 N13.4-3; CT:VISA-1178 04-03-2009)

c. Consular Officer Adjudication of Form I-600, Petition to Classify Orphan as an Immediate Relative:

- (1) Once Form I-600 has been properly filed, you should review Form I-600 and accompanying documentation. Based on that review and completion of the Form I-604, Determination on Child for Adoption (see [9 FAM 502.3-3\(C\)\(4\)](#)), you will determine whether the child is eligible for immigrant classification as an orphan.
- (2) Consular officers have been given authority to approve Form I-600s that are found to be clearly approvable. Clearly approvable in this context means that:
- (a) To your satisfaction Form I-600 and accompanying documentation, as well as the review of Form I-604 (see [9 FAM 502.3-3\(C\)\(4\)](#)), clearly establish that the child in question is an orphan according to INA 101(b)(1)(F) per criteria outlined in [9 FAM 502.3-3\(B\)\(1\)](#);
- (b) No unresolved issues of fraud, child-buying, or other inappropriate practices are associated with the case (see [9 FAM 502.3-3\(B\)\(6\)](#)); and
- (c) The child fits all criteria identified in the Form I-600-A approval (i.e., age, gender, special needs, etc., if any), and any state pre-adoption requirements have been met.
- (3) If you find Form I-600 clearly approvable, you must document the approval in the top block on the first page of Form I-600. The approval annotation should include the "approved" notation, classification of the petition and section of law under which petition was approved (see [9 FAM 502.3-3\(B\)\(7\)](#)), petition filing date, petition approval date, and the signature and title (including post) of the

approving officer.

- (4) If a petition does not appear to be “clearly approvable”, you should give the petitioner the opportunity to respond to questions or issues that can be quickly or easily resolved. In cases involving Form I-600 or visa application where state pre-adoption requirements have not yet been met, prospective adoptive parents should be given the opportunity to demonstrate that they have satisfied any unmet requirements. If the problem with the case is that evidence presented varies from or contradicts that originally submitted with the petition, but does not contradict the fact that the child qualifies under INA 101(b)(1)(F), the case should be processed to conclusion. For example, a late registered birth certificate may be irregular, but if other evidence clearly shows that the child should be considered an orphan, the petition should be approved.
- (5) In some cases, further investigation may be merited due to doubts related to the documents (or absence of documents) presented, contradictory information, or indications of child-buying, fraud, and other inappropriate practices. You should work with post’s anti-fraud unit, regional security officer (RSO), and, if appropriate, local officials and contacts to further investigate if necessary. Investigation procedures vary from post to post, since the best means of collecting necessary information regarding the child’s status and history often depend on local conditions. Some possible elements of an investigation could include interviews with the child (if of sufficient age), social workers, orphanage representatives, the prospective adopting parents, or biological parent(s). When fraud is detected or indicated, a full field investigation may be warranted. Fraud investigations should be conducted as expeditiously as possible.
- (6) If further response from the petitioner or post investigation does not lead to a determination that the petition is clearly approvable, Form I-600 and accompanying documentation (including Form I-604) should be expeditiously forwarded to the regional USCIS office for adjudication (for overseas offices, see the USCIS Overseas Office locator) with an explanation of the facts of the case and actions taken to try to resolve any outstanding issues. In addition, you should notify the petitioner in writing of this action, including a brief explanation of the decision and the name and address of the USCIS office to which the petition has been forwarded. You do not have the authority to deny a Form I-600 under any circumstances.

(Previous location: 9 FAM 42.21 N13.4-4; CT:VISA-878 04-25-2007)

d. Approval of Form I-600, Petition to Classify Orphan as an Immediate Relative:

- (1) Depending on where Form I-600 was filed and adjudicated, you will encounter various types of proof that Form I-600 was approved. Any of the following should be considered sufficient evidence of Form I-600 approval:
 - (a) Original Form I-600 with approval notations from a USCIS or consular officer;

- (b) Faxed or e-mail notification from USCIS or the Department of petition approval; or
 - (c) Visas 38 or 39 cable from USCIS (visas 38 indicates IR3 classification approval, visas 39 indicates IR4 classification approval)
- (2) You may not issue an IR3 or IR4 visa unless they have evidence of Form I-600 approval. As with other visa-related petitions, you should consider a USCIS or consular officer notice of petition approval as prima facie evidence of the child's entitlement to classification as an orphan.

9 FAM 502.3-3(C)(4) Overseas Orphan Investigations

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N13.5-1; CT:VISA-878 04-25-2007)

a. Purpose of Form I-604, Determination on Child for Adoption:

- (1) Form I-604 is primarily used to document consular officer or overseas USCIS officer determinations that a child should be properly classified as an orphan. The form was created as a checklist for officers to ensure that key criteria for the orphan classification have been reviewed, as elaborated in [9 FAM 502.3-3\(B\)\(1\)](#). A copy of Form I-604 is [9 FAM 502.3-3\(C\)\(4\)](#) paragraph d.
- (2) In rare cases, Form I-604 may also be used by domestic USCIS offices to request that posts conduct an inquiry or investigation into a case prior to USCIS adjudication of an orphan petition. In such cases, the USCIS office should provide posts with a copy of all pertinent documents in the case and a memorandum explaining the reason for requesting the inquiry.

(Previous location: 9 FAM 42.21 N13.5-2; CT:VISA-946 04-11-2008)

b. Responsibility for Completion of Form I-604:

- (1) Form I-604, Determination on Child for Adoption, must be completed for all orphan cases. Responsibility for completion of the Form I-604 varies depending on how the Form I-600 is filed:
 - (a) If Form I-600 is filed and approved in the United States, Form I-604 should be completed by you prior to approval of the visa application.
 - (b) If Form I-600 is filed overseas in a country with a USCIS presence, USCIS officers should complete Form I-604 prior to petition approval.
 - (c) If Form I-600 is filed overseas in a country with no USCIS presence, Form I-604 is completed by you prior to petition approval.
 - (d) When used by USCIS offices to request that posts verify orphan status of an individual prior to domestic adjudication of the orphan petition, Form I-604 should be completed by USCIS officers if there is a USCIS presence in-country, or by you in a country with no USCIS presence.
- (2) In its current form, Form I-604 is designed as an internal worksheet to ensure proper processing of orphan cases. The form is not available to the public on

the USCIS website, and adopting parents and other entities should not be requested to directly assist in completion of the form.

(Previous location: 9 FAM 42.21 N13.5-3; CT:VISA-878 04-25-2007)

c. Completion and Disposition of Form I-604 by Consular Officers:

- (1) Consular officers completing Form I-604 based on Form I-600 approved in the United States or on Form I-600 filed overseas (see [9 FAM 502.3-3\(C\)\(4\)](#) paragraph b(1)(a) and (c)) should complete all sections of Form I-604 except question 2. The completed Form I-604 should then be attached to Form I-600, and remain with the petition regardless of the outcome of the case.
- (2) Consular officers completing Form I-604 based on the request for an inquiry by a domestic USCIS office prior to their adjudication of the petition (see [9 FAM 502.3-3\(C\)\(4\)](#) paragraph b(1)(d)) should complete items 1 and 5 through 15 of Form I-604, as applicable. If any item does not apply at the time of the inquiry, you should note in block 15 why it is inapplicable. You should sign and date, page 4, under "Officer Performing Inquiry." The completed Form I-604 should be returned with any relevant documentary evidence directly to the requesting USCIS office.
- (3) Approval of Form I-600 or orphan visa requires a favorable Form I-604 determination that the child should be properly classified as an orphan. Negative responses on most worksheet items clearly indicate cases in which the orphan classification is not appropriate. In such cases you should follow guidance in [9 FAM 502.3-3\(C\)\(3\)](#) paragraph c(4)-(6), [9 FAM 502.3-3\(C\)\(5\)](#) paragraph b, and [9 FAM 504.2-8](#) for returning petitions to USCIS as not clearly approvable or for possible revocation.
- (4) Completion of Form I-604 should not be the basis for delays in processing cases. Form I-604 from itself does not trigger a requirement that investigations or field visits be done on each case, although it provides a mechanism for documenting any such reviews deemed necessary by the adjudicating officer to address potential classification of fraud issues.

(Previous location: 9 FAM 42.21 Exhibit I; CT:VISA-1794 01-05-2012)

- d. (SBU) Form I-604 Determination on Child for Adoption (Example):** A fillable I-604, is available on CAWeb

9 FAM 502.3-3(C)(5) Orphan Visa Applications

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N13.6-1; CT:VISA-2145 07-22-2014)

a. Submitting Orphan Immigrant Visa Applications:

- (1) Immigrant visa (IV) applications on behalf of orphans may be submitted to IV-issuing posts once Form I-600 has been approved and post has received notification of such approval per [9 FAM 502.3-3\(C\)\(3\)](#) paragraph d. Whenever possible, petitioners should be permitted to file visa applications for orphans

the same day that their Form I-600 is filed at post. However, in such cases orphan visa applications should only be accepted once the Form I-600 is approved. Also, parents should be given realistic expectations as to when the visa will be available if approved (same-day issuance is not the norm).

- (2) Orphan IV applications should include Form DS-260, Application for Immigrant Visa and Alien Registration, evidence of orphan classification (see [9 FAM 502.3-3\(B\)\(1\)](#)), and all standard IV supporting documentation (see [9 FAM 504.4-4](#), [9 FAM 504.4-7](#), and [9 FAM 302.8-2\(B\)\(12\)](#)):
 - (a) Birth certificate;
 - (b) Passport or other appropriate travel document;
 - (c) Photographs (three full frontal photographs);
 - (d) Police, military, or prison records, if required (rare);
 - (e) Either a Form I-864-W, Intending Immigrant's Form I-864 Exemption, of a Form I-864 Affidavit of Support (see [9 FAM 502.3-4\(C\)\(5\)](#) paragraph d(4)); and
 - (f) Medical exams (see [9 FAM 502.3-3\(C\)\(5\)](#) paragraph c(2)).
- (3) You must also ensure that the IV processing fee has been collected prior to adjudicating the visa application.

(Previous location: 42.21 N13.6-2; CT:VISA-878 04-25-2007)

b. Reviewing Orphan IV Documentation and Classification:

- (1) When reviewing orphan visa applications you must confirm that the applicant may be considered an "orphan." Approval of Form I-600 should be considered prima facie evidence of orphan status, but you must briefly review Form I-600, completed Form I-604 and originals of documentation supporting orphan status to confirm that the classification is appropriate. This is particularly important in cases where Form I-600 was adjudicated in the United States, without the possible benefit of physically seeing the parties involved and having more in-depth knowledge of the documents and fraud patterns in the local country.
- (2) If the petition appears to have been approved in error, or if you develop substantive evidence of fraud or misrepresentation in Form I-600, then the petition should be returned to the approving office with a request for revocation, per instructions in [9 FAM 504.2-8](#). However, if the evidence is at variance with that originally submitted with the petition, but does not contradict the fact that the child qualifies under INA 101(b)(1)(F), the case should be processed to conclusion.

(Previous location: 9 FAM 42.21 N13.6-3; CT:VISA-1743 10-19-2011)

c. Reviewing Orphan Ineligibilities:

- (1) **Ineligibilities for Orphan Cases – Introduction:** Orphan visa applicants are subject to all of the standard INA 212(a) ineligibilities, although in practice almost all adopted (or to-be-adopted) children will not be affected by criminal,

security, immigration violation and other ineligibilities due to their age. The two areas where orphans are treated somewhat differently deal with medical issues (in particular, INA 212(a)(1)(A)(ii) as amended on vaccination requirements), and INA 212(a)(4) (public charge), both discussed below.

(2) **Orphan Medical Issues:**

(a) As with any other IV case, if a child is found to have a Class A medical condition, the child will be ineligible for a visa under INA 212(a)(1) until and/or unless that condition is waived or otherwise overcome. The two key medical issues that are treated somewhat differently with orphan cases are vaccinations and evidence of significant medical conditions revealed in the panel physician's medical exam.

(b) **Vaccinations:**

- (i) IR3 and IR4 applicants under 10 years of age are exempt from INA 212(a)(1)(A)(ii) vaccination requirements provided that the adoptive parent(s) signs an affidavit attesting that the child will receive the required vaccination within 30 days of the child's admission to the United States or at the earliest time that is medically appropriate. The affidavit is Form DS-1981, and once completed, it should be attached to the medical exam form and included in the IV packet.
- (ii) Only children whose adoptive parents have signed such an affidavit will be exempt from the vaccination requirement. In situations where the adopting parent(s) objects to the child receiving vaccinations on religious or moral grounds, the applicant will still require an individual INA 212(g)(2)(C) waiver from USCIS (see [9 FAM 302.2-4](#)).

(c) **Significant Medical Conditions:**

- (i) You should ensure that adoptive parents understand that the orphan petition and visa application are not meant to provide comprehensive evaluations of an adoptive child's health. Parents should be encouraged to arrange private evaluations by qualified medical professionals, preferably ones versed in childhood development if they have health-related concerns about the child. However, if a significant medical condition is revealed through the panel physician's medical exam, you must furnish the adoptive parents with available information concerning the affliction or disability. This is especially important in cases where the parents have not physically observed the child.
- (ii) If a serious medical condition is discovered, and in particular one which is a physical, mental, or emotional condition that would affect the child's normal development, processing should be suspended until you receive a notarized statement from the adoptive parent, or parents if married, indicating awareness of the child's affliction and willingness to proceed with orphan processing. An abstract of a

home investigation made by a social service agency, countersigned by the adoptive parent(s), is acceptable if it notes the parent(s) are aware of the child's condition and nevertheless willing to adopt the child. An appropriate entry in item 20 of the Form I-600 initialed by the adoptive parent(s) is also acceptable. If the adoptive parents choose not to pursue the petition, you should forward it, along with an explanation and all other pertinent information, to the appropriate USCIS overseas office.

- (iii) Note also that a child with a serious medical condition or disability may sometimes be considered a special needs child, and therefore subject to the requirement that the adoptive parents' Form I-600-A approval includes reference to parents' ability to adopt a special needs child. In cases where a child is later determined to be a special needs child and parents' suitability approvals do not note approval to adopt a special needs child, the petition and related documentation should be forwarded to the regional USCIS office overseas for possible revocation or reconsideration of suitability determinations. You should notify the prospective parents of the action.

- (3) **Public Charge:** USCIS has determined that Form I-864, Affidavit of Support under INA 213(a), is not required for IR3 applicants who will automatically acquire U.S. citizenship upon admission to the United States as legal permanent residents. However, IR4 applicants (as well as IR3 applicants not eligible for U.S. citizenship, e.g., those over age 18 at the time of admission, etc.) must have a properly completed and signed Form I-864 with all required supporting documents submitted on their behalf by the petitioner. In general, the adoptive parents' ability to care for a child is evaluated during Form I-600-A adjudication, such that an IR3 or IR4 applicant is unlikely to become a public charge. Except where Form I-864 is required, the Form I-600-A serves as proof that the underlying requirements of INA 212(a)(4) have been met. Additional financial evidence should only be required if the child has an illness or defect not addressed by the approved Form I-600-A which would entail significant financial outlay or if other unusual circumstances prevail.
- (4) **Waivers:** Should you determine that an ineligibility exists for an orphan and that the petitioner wishes to apply for an available waiver of ineligibility, you should expedite submission of a waiver application to USCIS.

(Previous location: 9 FAM 42.21 N13.6-4; CT:VISA-1178 04-03-2009)

d. Adjudication of Orphan Visa Application, Issuance of the Visa:

- (1) If you confirm that the child may be classified as an orphan, that all required documentation to produce the immigrant visa have been submitted, and that no ineligibilities exist (or those that exist have been waived), you should approve the visa application. If the application cannot be approved, you must explain orally and in writing the reason for the refusal and any possible remedies available.

- (2) If the application is approved, the immigrant visa (IV) should be produced per standard IV procedures (see [9 FAM 504.10](#)). Form I-604 should be included as part of the IV package, immediately following Form I-600 in the packet. Particular care should be paid to ensuring proper classification of the visa as an IR3 or IR4 (see [9 FAM 502.3-3\(B\)\(7\)](#)).
- (3) In accordance with [9 FAM 504.10-2\(A\)](#), IVs for orphans should generally be issued with a six-month validity period. However, a child legally adopted by a U.S. citizen and spouse while they are serving abroad in the U.S. armed forces, employed abroad by the U.S. Government, or temporarily abroad on business, may be issued an IV for a longer period (not to exceed three years) to accommodate adoptive parents' intended return to the United States upon completion of the military service, employment, or business.
- (4) Upon receipt of the issued visa, adopting parents (or those traveling with the child) should be informed of Child Citizenship Act implications of the type of visa issued (see [9 FAM 502.3-3\(B\)\(7\)](#)) and refer to Department and USCIS websites for additional information.

9 FAM 502.3-4 CONVENTION ADOPTEES ADOPTED UNDER INA 101(b)(1)(G) – IH3 AND IH4

9 FAM 502.3-4(A) Related Statutory and Regulatory Authorities

9 FAM 502.3-4(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(b)(1)(E)-(G) (8 U.S.C. 1101(b)(1)(E)-(G)); INA 101(c)(1) (8 U.S.C. 1101(c)(1)); INA 201(b)(2)(A) (8 U.S.C. 1151(b)(2)(A)); INA 201(f) (8 U.S.C. 1151(f)); INA 204 (8 U.S.C. 1154); INA 322 (8 U.S.C. 1433).

9 FAM 502.3-4(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 204.309(a), 8 CFR 204.309(b)(1); 8 CFR 204.309(b)(3); 8 CFR 204.313(c)(2)-(3); 8 CFR 322.2; 8 CFR 322.3; 22 CFR 42.21; 22 CFR Part 96.

9 FAM 502.3-4(A)(3) Public Law

(CT:VISA-1; 11-18-2015)

Intercountry Adoption Act of 2000, Public Law 106-279; Child Citizenship Act of 2000, Public Law 106-395.

9 FAM 502.3-4(B) Convention Adoptee Overview

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.1; CT:VISA-2145; 07-22-2014)

a. Convention Adoptee – Introduction:

- (1) The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention) is a multilateral treaty that establishes international legal standards for the adoption of children habitually resident in one country party to the Convention by persons habitually resident in another party to the Convention. It establishes procedures to be followed in such adoption cases and imposes safeguards to protect the best interests of the children at issue. It also provides for international recognition of adoptions that occur in accordance with the Convention. In the United States, the implementing legislation for the Convention is the Intercountry Adoption Act of 2000 (IAA). To implement the Convention, the IAA made two significant changes to the Immigration and Nationality Act (INA):
 - (a) It created a new definition of “child,” found at INA 101(b)(1)(G), applicable only to children being adopted from Convention countries. (Note that the definition of “child” in INA 101(b)(1)(F) continues to apply to orphans being adopted from any country that is not a party to the Convention; (see [9 FAM 502.3-4\(B\)](#) paragraph c regarding the applicability of INA 101(b)(1)(F) to children from Convention countries in cases in which the Form I-600-A or Form I-600 was filed before the Convention effective date of April 1, 2008); and
 - (b) It incorporated Convention procedures into the immigration process for children covered by INA 101(b)(1)(G), most directly by precluding approval of an immigration petition under this classification until the Department has certified that the child was adopted or legal custody of the child was granted in accordance with the Convention and the IAA. Separately, pursuant to the IAA, adoptions or grants of custody that have been so certified by the Department are to be recognized as such for purposes of all Federal, State, and local laws in the United States. For more background information on the Convention, the IAA, and U.S. obligations under the Convention, consult [7 FAM 1796](#).
- (2) In accordance with the United States’ Convention obligations, you must treat Convention adoptee cases with considerable sensitivity and process them as quickly as is reasonably possible to avoid hardship for the child or prospective adoptive parents (PAPs).
- (3) In order to adjudicate Convention adoptee cases, it is essential that you are thoroughly familiar with the Convention adoptee classification. For a detailed explanation of the Convention adoptee classification, see [9 FAM 502.3-4\(C\)](#).
- (4) **Things to Keep in Mind to Ensure Correct Adoption-Related Visa Classification:**

- (a) Depending upon whether the country of habitual residence has a treaty relationship with the United States under the Convention and the circumstances of the case, adopted children could receive immigrant visas (IVs) based on the Convention adoptee (IH3 or IH4, per INA 101(b)(1)(G)), orphan (IR3 or IR4, per INA 101(b)(1)(F)—see [9 FAM 502.3-3](#)), or adopted child (IR2, per INA 101(b)(1)(E)—see [9 FAM 502.3-2](#)) classifications. Adult siblings of Convention adoptees may in some cases also be eligible for IR2 classification (see [9 FAM 502.3-5](#)). For purposes of this document, a “Convention country” is a country that has a treaty relationship with the United States under the Convention.
- (b) An adopted child immigrating to the United States and habitually resident in a Convention country cannot be classified as an orphan under INA 101(b)(1)(F), unless the PAP(s) filed an Form I-600 or Form I-600-A before the date of the Convention’s entry into force for the United States, April 1, 2008, provided that the Form I-600-A has not expired. (Such cases are not Convention cases and should be processed under the orphan classification based on [9 FAM 502.3-3\(B\)](#) guidelines – see [9 FAM 502.3-4\(B\)](#) paragraph c).
- (c) An adopted child immigrating to the United States and habitually resident in a non-Convention country cannot be classified as a Convention adoptee under INA 101(b)(1)(G).
- (d) Adopted children who meet the requirements of INA 101(b)(1)(E) may, under certain circumstances, be classified as IR2 children, even if they are habitually resident in a Convention country (see [9 FAM 502.3-2](#)).
- (e) An adopted child whose parents do not intend to return immediately to the United States may qualify for NIV issuance in order to come to the United States for naturalization under INA 322. Under 8 CFR 322.3(b)(1)(xii), a Form I-800 Petition to Classify Convention Adoptee as an Immediate Relative must be approved for the child in order for the child to seek naturalization under INA 322. (See [9 FAM 402.2-3\(B\)\(7\)](#) and 8 CFR 322.2.)
- (f) In rare cases, some adopted children qualify for NIVs family members of other NIV holders (see [9 FAM 502.3-1](#)), or as short-term tourists or participants in a naturalization hearing under INA 322 (see [9 FAM 402.2-3\(B\)\(4\)](#) and [9 FAM 402.2-3\(B\)\(7\)](#)). However, you should not issue a nonimmigrant visa to an adopted child who is immigrating to the United States to reside there with his or her adoptive parents as a result of this trip or to a child who will be adopted in the United States. Moreover, if a petitioner is a United States citizen who is domiciled in the United States but posted abroad temporarily under official orders as a member of the Uniformed Services, as defined in 5 U.S.C. 2101, or as a civilian officer or employee of the United States Government, you must deem the child to be coming to the United States to reside there with that petitioner and therefore not to be entitled to a NIV. (See [9 FAM 502.3-1](#) for additional

details on appropriate options for documenting adopted children.)

b. Entities Performing Convention Adoption Functions:

- (1) Under the Convention, the IAA, and the implementing regulations, only certain entities may perform particular functions in Convention adoptions. For further information, consult [7 FAM 1796](#) and 22 CFR Part 96.
- (2) The Department is the United States Central Authority under the Convention. Within the Department, CA/OCS/CI has the lead in coordinating the day-to-day work of the Central Authority. In accordance with the IAA and the Convention, some of the Central Authority's case-specific Convention responsibilities have been delegated to Adoption Service Providers (ASPs) accredited or approved by Department-designated Accrediting Entities. Other Central Authority duties will be performed by other government bodies. In each case, there will be a "primary provider" who has overall responsibility for the case.
- (3) Either public bodies or authorized ASPs must be used for the following Convention adoptee visa processing-related activities:
 - (a) Completion and approval of home study (accredited or temporarily accredited ASPs only) (Note, however, that approved, exempted, or supervised ASPs may complete a home study, provided the study is approved by an accredited or temporarily accredited ASP—see 22 CFR Part 96);
 - (b) Transmission of report on parents (i.e., home study, USCIS approval notice, and other evidence) to Convention country Central Authority (see [9 FAM 502.3-4\(D\)\(3\)](#));
 - (c) Receipt of Convention country's Central Authority report on the child for transmission to the PAP(s) (see [9 FAM 502.3-4\(D\)\(3\)](#) paragraph c);
- (4) Like the United States, other Convention countries may also delegate their Central Authority functions to accredited or approved ASPs or other government entities. Other Convention countries may also choose to work with only certain U.S. accredited or approved ASPs, or they may require U.S. ASPs to be accredited under the laws and standards of that country. (See [7 FAM 1796.3](#) for information on U.S. accreditation/approval requirements, relationships between accredited/approved ASPs and other providers, and U.S. regulatory requirements for ASPs.)
- (5) You can verify accredited or approved status of U.S. ASPs by checking the list on CA/OCS/CI's website at the State Department website. Take note, also, that the primary ASP should already be entered into the "Adoption Service Provider" field of the IVO system before the case comes to Post. Questions or concerns related to an adoption service provider's accreditation or approval status should be directed to CA/OCS/CI.

(Previous location: 9 FAM 42.21 N14.1-1; CT:VISA-946; 04-11-2008)

c. Inapplicability of Convention Adoptee Provisions to Cases Pending Prior to April 1, 2008: If, prior to April 1, 2008, the date the Convention enters into force

for the United States, the PAP(s) filed on behalf of a child habitually resident in a Convention country either a Form I-600 Petition to Classify Orphan as an Immediate Relative or a Form I-600-A Application for Advance Processing of Orphan Petition, then the child's case is not processed as a Convention case—provided the Form I-600-A remains valid at the time the Form I-600 is filed. Instead, such a case must be processed to completion as a non-Convention (orphan) case (see [9 FAM 502.3-3](#)). As stated in [9 FAM 502.3-3\(C\)\(3\)](#) paragraph b(2)(a), you may not accept the Form I-600 for filing if the Form I-600-A is no longer valid.

(Previous location: 9 FAM 42.21 N14.2 first paragraph; CT:VISA-1178 04-03-2009)

- d. **Convention Adoptee Definitions:** Definitions used throughout [9 FAM 502.3-4](#) for Convention adoptee processing, DHS and State definitions used for "adoption" and "custody," definitions for use in evaluating parents' status ("abandonment," "sole parent," etc.), and a definition of "adoption record" are included in [9 FAM 102.3-1](#). Some useful definitions of terms found in 22 CFR, particularly 22 CFR Part 96, are also included in [9 FAM 102.3-1](#) for ease of use, in some cases with explanations particular to these notes. In addition, see [7 FAM 1796.3](#) for a full discussion of adoption service providers. Direct any questions related to definitions to CA/VO/L/A and CA/OCS/CI, with a copy to CA/VO/F.

9 FAM 502.3-4(C) Convention Adoptee (101(b)(1)(G)) Classification

9 FAM 502.3-4(C)(1) Convention Adoptee Classification Summary

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.13-1; CT:VISA-2137 07-02-2014)

- a. There are five key elements to the Convention adoptee classification. All of the following must be true for a child to be eligible for the Convention adoptee classification:
- (1) The child is under the age of 16 at the time a petition is filed on his or her behalf (taking into account special rules on filing dates for children aged 15-16), is unmarried, and is habitually resident in a country that has a treaty relationship with the United States under the Convention (see [9 FAM 502.3-4\(C\)\(2\)](#) paragraph a);
NOTE: A person must be under the age of 21 to be considered a "child." INA 201(f), as amended by the Child Status Protection Act, provides, however, that a child who is over 21 will be deemed to be under 21, if certain requirements are met (see [9 FAM 502.1-1\(D\)](#)). Since a Form I-800 must be filed before the child's 16th birthday, a Convention adoptee will almost always meet the requirements of INA 201(f) and so will generally be eligible to immigrate even if over 21.
 - (2) The child has been adopted or will be adopted by a married U.S. citizen and spouse jointly, or by an unmarried U.S. citizen at least 25 years of age,

habitually resident in the United States, whom USCIS has found suitable and eligible to adopt, with the intent of creating a legal parent-child relationship (see [9 FAM 502.3-4\(C\)\(2\)](#) paragraph b, [9 FAM 502.3-4\(C\)\(3\)](#) and [9 FAM 502.3-4\(C\)\(4\)](#)). Note, however, that at the provisional approval stage, the child must not have been adopted yet, unless that adoption has been voided by the country of origin (see 8 CFR 204.309(b)(1));

- (3) The child's birth parents (or parent if the child has a sole or surviving parent), or other legal custodian, individuals, or entities whose consent is necessary for adoption, freely gave their written irrevocable consent to the termination of their legal relationship with the child and to the child's emigration and adoption (see [9 FAM 502.3-4\(C\)\(5\)](#));

NOTE: Unlike in orphan cases, there is no requirement that an adoptive parent personally sees and observes the child before or during the adoption proceedings.

- (4) If the child has two living birthparents who were the last legal custodian who signed the irrevocable consent to adoption, they are determined to be incapable of providing proper care for the child (see [9 FAM 502.3-4\(C\)\(6\)](#));
 - (5) The child has been adopted or will be adopted in the United States or in the Convention country in accordance with the rules and procedures elaborated in the Hague Convention and the Intercountry Adoption Act of 2000, including that accredited or approved adoption service providers were used where required, and there is no indication of improper inducement, fraud or misrepresentation, or prohibited contact associated with the case (see [9 FAM 502.3-4\(C\)\(7\)](#) and [9 FAM 502.3-4\(C\)\(8\)](#)). Again, at the provisional approval stage, the child must not have been adopted yet, unless that adoption has been voided by the country of origin (see 8 CFR 204.309(b)(1)).
- b. A child who is determined to be a Convention adoptee must be classified as an IH3 or IH4. Proper classification is very important—the Child Citizenship Act of 2000 confers citizenship on children adopted abroad who meet certain requirements, and the child's immigrant classification is an important factor in determining whether, as a result of the Act, a child will be eligible for U.S. citizenship immediately upon immigration. [9 FAM 502.3-4\(C\)\(9\)](#) provides guidance on proper classification as a Convention adoptee.

9 FAM 502.3-4(C)(2) Age, Citizenship and Residency Requirements (Convention Adoptee)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.13-2; CT:VISA-1178 04-03-2009)

a. Requirements for Child:

(1) Age-Related Requirements:

- (a) To be considered a Convention adoptee, the child must generally have a Form I-800 petition filed on his or her behalf before his or her 16th

birthday; the Form I-800 petition does not, however, have to be approved before the beneficiary's 16th birthday.

- (b) The USCIS regulation, at 8 CFR 204.313(c)(2) and (3), provides two special rules for determining whether this filing deadline has been met, in cases involving children who are between the ages of 15 and 16:
- (i) **First:** If the Central Authority matches the child with the PAP(s) more than 6 months after the child's 15th birthday but before the child's 16th birthday, and the evidence required for Form I-800 petition filing in [9 FAM 502.3-4\(D\)\(4\)](#) paragraph b(5) is not yet available, the PAP must still file the I-800 before the child's 16th birthday. If the Central Authority report and accompanying documents are not available at that time, the PAP(s) may, instead of that evidence, submit a statement from the primary provider, signed under penalty of perjury under U.S. law, confirming that the Central Authority has, in fact, made the adoption placement on the date specified. The Form I-800 petition in such cases cannot be adjudicated until the required documents are submitted.
 - (ii) **Second:** If the Form I-800-A was filed after the child's 15th birthday, but before the child's 16th birthday, AND the Form I-800 is filed no more than 180 days after approval of the Form I-800-A, then the filing date for the Form I-800-A will be deemed also to be the filing date for the Form I-800.
- (c) Because a Convention adoptee must meet the general definition of a child in INA 101(b)(1), the beneficiary must be unmarried and must be under the age of 21 (or deemed by INA 201(f) to be under 21) at all stages of petition adjudication, visa processing, and travel to the United States.
- (d) For adult siblings of Convention adoptees, classification as an IR-2 child may be possible (see [9 FAM 502.3-5](#)).
- (2) The child must meet all criteria specified in the Form I-800-A approval (age, gender, special needs, if any) (see [9 FAM 502.3-4\(D\)\(2\)](#) paragraph a(5)).
- (3) A child must be habitually resident in a Convention country to be considered a Convention adoptee. USCIS has determined that a Convention adoptee is "habitually resident" in the country of the child's citizenship, or in the country in which the child actually resides if the Central Authority (or another competent authority of the country in which the child has his or her actual residence) has determined that the child's status in that country is sufficiently stable for that country properly to exercise jurisdiction over the child's adoption or custody. This determination must be made by the Central Authority itself, or by another competent authority of the country of the child's habitual residence, but may not be made by a nongovernmental individual or entity authorized by delegation to perform Central Authority functions.

b. Requirements for PAPs:

- (1) PAPs' ability to meet age- and citizenship-related requirements is generally evaluated as part of USCIS's suitability determination.
 - (a) Only a U.S. citizen may file a Form I-800 petition for a Convention adoptee.
 - (b) If the petitioner is legally married, the spouse does not have to be a U.S. citizen, but, if the spouse is not a U.S. citizen, s/he must be a non-citizen U.S. national, or, if an alien, must be in lawful immigration status if residing in the United States. There are no age requirements for a married petitioner and spouse. The spouse must sign the Form I-800 petition and be party to the adoption or grant of legal custody even if a legal separation agreement exists.
 - (c) If the petitioner is unmarried, he or she must be at least 24 years old at the time he or she submits a Form I-800-A, and at least 25 years old at the time he or she files the Form I-800 petition.
 - (d) Some countries of origin also have age or other restrictions for adoptive parents. Although these and other foreign country requirements must be addressed in the home study, USCIS will not deny a Form I-800-A based solely on the country of origin's requirements.
- (2) PAPs must be habitually resident in the United States to adopt a Convention adoptee using these procedures. A U.S. citizen will be deemed to be "habitually resident" in the United States if the individual has his or her domicile in the United States (even if living abroad temporarily), will have established such a domicile in the United States on or before the Convention adoptee is admitted to the United States or the citizen indicates on the Form I-800 that the citizen intends to bring the child to the United States after adopting the child abroad, and before the child's 18th birthday, to apply for naturalization under INA 322.

9 FAM 502.3-4(C)(3) Adoption or Custody for Purposes of Emigration and Adoption (Convention Adoptee)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.13-3; CT:VISA-946 04-11-2008)

- a. The petitioner(s) must adopt the Convention adoptee abroad or intend to adopt the Convention adoptee in the United States, as provided in the notes below. (Note, however, that at the provisional approval stage, the child must not have been adopted yet, unless that adoption has been voided by the country of origin (see 8 CFR 204.309(b)(1)). The petitioner(s) must not have actually adopted or obtained custody of the child yet when the Form I-800 is filed, unless that adoption has been voided by the country of origin. Final adoption is required at the time of petition approval for IH3 and B-2 cases.

- (1) **Definitions of Adoption and Custody for Purposes of Emigration and Adoption:**

- (a) Adoption is defined as a judicial or administrative act that establishes a permanent legal parent-child relationship between a minor and an adult who is not already the legal parent, and which terminates any prior legal parent-child relationship with any former parents. Generally speaking, to qualify as an adoption for immigration purposes, the adopted child should have the same rights and privileges which are accorded to a birth child (such as inheritance rights, etc.). Simple, conditional, or limited adoptions, such as those conducted under Islamic Family Law in some countries, are more accurately described as guardianship and are not considered adoptions for U.S. immigration purposes.
- (b) Custody for purposes of emigration and adoption exists when the competent authority of the country of origin has by judicial or administrative act (which may be either the act granting custody of the child or a separate judicial or administrative act), expressly authorized the petitioner, or an individual or entity acting on the petitioner's behalf, to take the child out of the country of the child's habitual residence and to bring the child to the United States for adoption in the United States. If the custody order was given to an individual or entity acting on the petitioner's behalf, the custody order must indicate that the child is to be adopted in the United States by the petitioner.

NOTE: A foreign judicial or administrative act that is called an adoption but that does not terminate the legal parent-child relationship between the former parent(s) and the adopted child and create a permanent legal parent-child relationship between the petitioner and the adopted child is considered a grant of legal custody if the act expressly authorizes the custodian to take the child out of the country of the child's habitual residence and to bring the child to the United States for adoption in the United States by the petitioner.

(2) **Evidence of Adoption and Custody of the Child for Purposes of Emigration and Adoption:**

- (a) **Adoption:** Evidence of a full and final adoption would usually be in the form of an adoption decree or administrative order granted by a Convention country's competent authority. If the petitioners are married, the adoption decree or order must show that both parties adopted the child. (If both spouses are not included in the decree or order, see [9 FAM 502.3-4\(D\)\(8\)](#) paragraph e and [9 FAM 502.3-4\(C\)\(3\)](#) paragraph a(2)(b)(i).) The adoption decree must be accompanied by or include a certification from the Central Authority of the Convention country stating that the adoption was done in accordance with the Convention. The certification must include the names of the parties from the Convention country's Central Authority and the receiving country's Central Authority that agreed that the adoption could proceed, and the date that such agreements were made.
- (b) **Custody of the Child for Purposes of Emigration and Adoption:**

- (i) Proof of custody of the child for purposes of emigration and adoption will vary depending on local laws and regulations governing child custody. Generally, this evidence will consist of a judicial or administrative act expressly authorizing the PAP(s) or those acting on their behalf to take the child out of the country and bring the child to the United States for adoption in the United States by the PAP(s). For married petitioners whose adoption decree is in the name of only one of the spouses, that decree or order is sufficient to show release and custody to bring the child to the United States for adoption by the other spouse. Under these circumstances, a child will have a Hague Adoption Certificate annotated to show that the child will have to be adopted by the other spouse before meeting the definition of adopted child under INA 101(b)(1)(G) for purposes of naturalization under section 320 or 322 (see [9 FAM 502.3-4\(D\)](#) paragraph (8)(e)).
 - (ii) Petitioners who have custody of the child for purposes of emigration and adoption must also demonstrate that they have met or will meet any pre-adoption requirements of the state of the child's proposed residence. Some of these may have been met at the Form I-800-A stage, and some may not be capable of being met until the child is in the United States. The PAP(s) should provide a written statement describing the pre-adoption requirements, specifying which have already been met, and indicating the plan for meeting remaining requirements, if any. You should be as flexible as possible in evaluating evidence presented by parents to satisfy such requirements, opting for the minimum level of proof acceptable in each case and keeping in mind that compliance with only those requirements that can be met before the child's arrival in the United States need be proven. If questions arise regarding pre-adoption requirements, you can consult with CA/OCS/CI and CA/VO/F.
- b. You need to be well versed in the host country's adoption, custody, and guardianship laws and procedures, but you should rely on competent local authorities to make responsible decisions about the facts surrounding child custody and adoptions, not second-guessing whether such authorities are correctly implementing their own laws or regulations or whether the adoption is in the best interests of the child. At the same time, you must keep in mind that terms used by such local authorities (such as "adoption") may not always be equivalent to definitions for such terms in U.S. immigration law. In all Convention adoptee cases, the requirements of U.S. immigration law must be met.

9 FAM 502.3-4(C)(4) Legal Parent-Child Relationship (Convention Adoptee)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.13-4; CT:VISA-946 04-11-2008)

- a. Petitioners seeking to bring a Convention adoptee to the United States must intend to enter into a legal parent-child relationship with that Convention adoptee. The intent to create a legal parent-child relationship requires the intent to raise the child as their own child, with the same mutual rights and obligations that exist between a birth parent and birth child. Intent in this case implies the provision of care, support, and direction to the Convention adoptee, without the intent to profit financially or otherwise from the presence of the child. The adoptive parents must seek to adopt the child not solely to facilitate the child's immigration to the United States.
- b. An adoption is intended to sever previous parental ties. Therefore, a caretaker relationship in which the PAP(s) intend to return the child (or legal custody of the child) to their birth parents or former guardians in the future would not constitute a legal parent-child relationship.
- c. As provided in INA 101(b)(1)(G), no birth parent or prior adoptive parent of an Convention adoptee may obtain any immigration benefit as a result of his or her previous relationship with the Convention adoptee.

9 FAM 502.3-4(C)(5) Consent to Adoption (Convention Adoptee)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.13-5 a, b, g, k; CT:VISA-1178 04-03-2009)

- a. For a child to be eligible for the Convention adoptee classification, a Convention adoptee's legal custodian and any other individual or entity who must consent to the child's adoption must have freely given his or her written irrevocable consent to the adoption.
- b. It is important to note that consent issues, and in particular the terms used related to legal custodians and their definitions, are treated differently in Convention adoptee and orphan cases. Department of Homeland Security (DHS) regulations establish very specific meanings for each of the terms related to a legal custodian's consent in a Convention Adoption. For Convention adoptee cases, the guidance and definitions listed for Convention adoptees in [9 FAM 102.3-1](#) Definitions must be used.

NOTE: Because the report required under Article 16 should include information about the child's identity, adoptability, background, social environment, family history, medical history (including that of the child's family), and any special needs, and be accompanied by proof that the necessary consents have been obtained, the report should provide information regarding the abandonment, desertion, or disappearance.

c. Written Irrevocable Consent:

- (1) A written irrevocable consent is a document in which the legal custodian freely consents to the termination of the legal custodian's legal relationship with the child. If more than one individual or entity is the child's legal custodian, the consent of each legal custodian may be recorded in one document, or in an additional document, but all documents, taken together, must show that each legal custodian has given the necessary irrevocable consent.

- (2) To be valid, the written irrevocable consent must indicate the place and date the document was signed by a child's legal custodian. The document must specify whether the legal custodian is able to read and understand the language in which the consent is written. If the legal custodian is not able to read or understand the language in which the document is written, then the document does not qualify as an irrevocable consent unless it is accompanied by a declaration, signed by an identified individual, establishing that that individual is competent to translate the language in the irrevocable consent into a language that the legal custodian understands, and that the individual, on the date and at the place specified in the declaration, did in fact read and explain the consent to the legal custodian in a language that the legal custodian understands. The declaration must also indicate the language used to provide the explanation.
- (3) If the Central Authority specifies in its report (see [9 FAM 502.3-4\(D\)\(3\)](#)) that all necessary consents have been obtained, that should normally be considered sufficient to establish that both the consent to the child's adoption and the consent to the child's emigration have been obtained from the relevant custodian, regardless of whether the consent document specifically refers to consent to the child's emigration.
- (4) **Timing of Consent:** A consent signed by the birth mother or any legal custodian other than the birth father may not be given before the child's birth.
- (5) **Evidence of Consent:** A copy of the irrevocable consent(s) signed by the legal custodian(s) and any other individual or entity who must consent to the child's adoption will generally be required with the filing of the Form I-800 petition. However, an exception to this requirement is permitted if the law of the country of the child's habitual residence provides that their identities may not be disclosed, so long as the Central Authority of the country of the child's habitual residence certifies in its report that the required documents exist and that they establish the child's age and availability for adoption.

NOTE: If the host country prohibits disclosure of identity of birth parents, post should work with Central Authority to ensure that the Central Authority uses a certification of this nature to meet its Article 16 obligation of proving that necessary consents have been obtained. Because the Convention does not explicitly refer to a "certification," it may be necessary for posts to raise this issue with the host country Central Authority so that a document meeting this DHS requirement can be produced in United States cases.

9 FAM 502.3-4(C)(6) Inability to Provide Proper Care (Convention Adoptee)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.13-6; CT:VISA-946 04-11-2008)

- a. In the case of a child placed for adoption by both of his or her birth parents, for the child to be eligible for the Convention adoptee classification, the factual basis for

determining that they are incapable of providing proper care for the child must be submitted with the Form I-800. This requirement does not apply to cases involving the consent of a sole or surviving parent. Nor does it apply if the irrevocable consent for the child's adoption is given by a legal custodian other than the two birth parents, such as an institution or other non-birth parent.

- b. Incapable of providing proper care means that, in light of all the relevant circumstances including but not limited to economic or financial concerns, extreme poverty, medical, mental, or emotional difficulties, or long term incarceration, the child's two living birth parents are not able to provide for the child's basic needs, consistent with the local standards of the Convention country.

9 FAM 502.3-4(C)(7) Compliance With Convention Requirements (Convention Adoptee)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.13-7; CT:VISA-946 04-11-2008)

- a. An adoption or grant of legal custody for purposes of adoption of a Convention adoptee must be done in accordance with the provisions of the Convention and IAA. Most of the visa processing provisions detailed in [9 FAM 502.3-4\(D\)](#) are designed to ensure compliance with such provisions. You may assume that if procedures and guidelines outlined in [9 FAM 502.3-4\(C\)\(1\)](#) and [9 FAM 502.3-4\(D\)\(1\)](#) and discussed throughout [9 FAM 502.3-4](#) are followed, the case will be in compliance with Convention requirements.
- b. As background, several of the key Convention requirements can be summarized by the following:
 - (1) As the receiving country, the United States is required to notify a Convention country's Central Authority of its determination that PAP(s) are eligible and suitable to adopt, that they have been counseled as necessary regarding the intercountry adoption, that, if adopted, the child would be eligible to enter and reside in the United States, and that the United States agrees that the adoption should proceed. The United States is required to provide to the Convention country a detailed report on the PAP(s) eligibility and suitability to adopt.
 - (2) The Central Authority of the Convention country where the child is habitually resident is required to notify the U.S. Central Authority of its determination that the child is adoptable, that the adoption would be in the child's best interests, that appropriate counseling has been done in the case, that appropriate consents have been obtained, and that the Convention country agrees that the adoption should proceed. The Central Authority of the Convention country is required to provide to the U.S. Central Authority a report on the background of the child being adopted. The Central Authorities of both countries must agree in advance that the adoption may proceed.
 - (3) Both the United States and other Convention country Central Authorities are required to ensure that Convention cases do not involve improper financial gain

or prohibited contact between the parties, and that the transfer of the child and any possible post-placement monitoring and disruptions be handled as spelled out in the Convention. Convention countries are required to certify that adoptions take place in accordance with the Convention, and to recognize the effects of such adoptions so certified. Convention countries also agree to cooperate on achieving the objectives of the Convention and keeping each other informed of local adoption laws and practices and Convention implementation.

- (4) The Convention also establishes the concept of accredited and approved ASPs and permits them to perform certain Central Authority tasks.
- c. The IAA establishes the system for accrediting and approving ASPs in the United States. Among the requirements of the IAA is that ASPs must be authorized to provide adoption services as set forth in 22 CFR 96.12 through 22 CFR 96.17. (See [9 FAM 502.3-4\(B\)](#) paragraph b and [7 FAM 1796.3](#).) Any questions regarding an ASP's authorization to act should be addressed at the time the Form I-800 is filed (see [9 FAM 502.3-4\(B\)](#) paragraph b(5)).

9 FAM 502.3-4(C)(8) Improper Inducement, Prohibited Contact, Fraud and Misrepresentation (Convention Adoptee)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.13-8; CT:VISA-946; 04-11-2008)

- a. The Convention prohibits improper financial or other gain in an intercountry adoption; under Article 32 of the Convention, only costs and expenses may be charged or paid. The Convention also prohibits certain contact with the child. The Convention adoptee classification is not available for intercountry adoption cases involving improper inducement, prohibited contacts between PAP(s) or members of their household and the child's parents and legal custodian(s), or fraud or misrepresentation.
- b. **Improper Inducement:**
 - (1) PAPs are required to disclose in Part 4 of the Form I-800 petition all payments, including in kind contributions, made in relation to the adoption of the child. Such payments include all fees, expenses, in kind contributions, and other compensation that the PAP(s) made, either directly or indirectly, to any individual, agency, entity, governmental authority, or other payee or recipient.
 - (2) A child should not be considered a Convention adoptee if the PAP(s), or any person or entity working on their behalf, including their ASP, paid, gave, or offered to pay or give money or other consideration (including in-kind gifts of items) either directly or indirectly to the child's birth parent(s), agent, or other individual as payment for the child, or as an inducement to give consent, to relinquish the child for adoption, or to have the child's birthparents perform any act that would make the child a Convention adoptee.
 - (3) However, the prohibition on such payments does not preclude payment of

reasonable costs incurred for the services listed below. A payment for the following services would not be considered improper inducement if the payment is not prohibited under the law of the country in which the payment is made and the amount involved is commensurate with reasonable costs for such services in the country in which the service is provided.

- (a) Services of an adoption service provider in connection with an adoption;
 - (b) Expenses incurred in locating a child for adoption;
 - (c) Medical, hospital, nursing, pharmaceutical, travel, or other similar expenses incurred by a mother or her child in connection with the birth or any illness of the child;
 - (d) Counseling services for a parent or a child for a reasonable time before and after the child's placement for adoption;
 - (e) Expenses commensurate with the living standards of the Convention country for the care of the birth mother while pregnant and immediately following the birth of the child;
 - (f) Expenses incurred in obtaining the home study;
 - (g) Expenses incurred in obtaining the report and other information on the child to comply with Form I-800 evidence requirements;
 - (h) Legal services, court costs, and travel or other administrative expenses connected with an adoption, including any legal services performed for a parent who consents to the adoption of a child or relinquishes the child to an agency;
 - (i) Other services which a USCIS or consular officer reviewing the case finds reasonably necessary; and
 - (j) Costs for such services must be disclosed on Form I-800.
- (4) Allegations of improper inducement must be carefully reviewed, analyzing the evidence available to substantiate such claims. Investigations into such allegations should generally focus on concrete evidence or an admission of guilt. As noted in [9 FAM 502.3-4\(D\)\(4\)](#) paragraph b(5)(c)(vi), a Convention country's Central Authority is required to ensure that no payment or inducement of any kind has been given to obtain the consents necessary for the adoption to be completed. Statements regarding whether there was any payment or inducement, as well as any other concrete evidence or discussion from the PAP(s) or ASPs, should be used to assist in determination of whether improper inducement occurred in the case.

c. Limitations on Contact:

- (1) Except as noted in [9 FAM 502.3-4\(C\)\(8\)](#) paragraph c(2) below, PAP(s) and/or any additional adult member of their household must not meet or have any other form of contact with the child's birthparent(s), legal custodian(s), or other individual or entity who is responsible for the child's care. If prohibited contact has occurred, the child cannot be considered a Convention adoptee and

the Form I-800 must be denied. Note that an authorized ASP's sharing of general information about a possible adoption placement is not considered "contact."

(2) Contact is Permitted Only If:

- (a) The first such contact took place only after USCIS had approved the Form I-800-A and after the competent authority of the Convention country had determined that the child was eligible for intercountry adoption and that the required consents had been given;
- (b) The competent authority of the Convention country permitted earlier contact, either in the particular instance or through laws or rules of general application, and the contact occurred only in compliance with the particular authorization or generally applicable laws or rules. If the PAP(s) first adopted the child without complying with the Convention, the competent authority's decision to permit the adoption to be vacated and to allow the PAP(s) to adopt the child again after complying with the Convention will also constitute approval of any prior contact; or
- (c) The PAP(s) were already related to the child's birthparent(s), which means that the petitioner was, before the adoption, the father, mother, son, daughter, brother, sister, uncle, aunt, first cousin (i.e., the petitioner, or either spouse, in the case of a married petitioner had at least one grandparent in common with the child's parent), second cousin (i.e., the petitioner, or either spouse, in the case of a married petitioner, had at least one great-grandparent in common with the child's parent) nephew, niece, husband, former husband, wife, former wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister of the child's birthparent(s).

d. Fraud or Misrepresentation:

- (1) A child should not be considered a Convention adoptee if there is evidence of fraud or misrepresentation with the purpose of using deception to obtain visas for children who do not qualify. In particular, material misrepresentation in the Form I-800 petition or its supporting documents (see [9 FAM 502.3-4\(D\)\(4\)](#) paragraph b(5)) would result in denial of Convention adoptee classification. (See also discussion of other grounds for possible USCIS denial of Form I-800 petitions in [9 FAM 502.3-4\(D\)\(4\)](#) paragraph b(3), [9 FAM 502.3-4\(D\)\(4\)](#) paragraph c(2), and [9 FAM 502.3-4\(D\)\(2\)](#) paragraph b notes on fraud and misrepresentation issues with the Form I-800-A and home study.)
- (2) In such cases, U.S. citizen PAP(s) and adoptive children may all be unwitting victims of a fraud which was actually perpetrated upon them by unscrupulous agents misrepresenting important facts about these children. If the fraud involves stolen or kidnapped children, birth parents may also be victims. In some cases, birth parents may also have been misled about the permanent nature of their separation from the child.

- (3) The Convention and its provisions were created to help prevent such abuses. However, documentation presented in support of a Convention adoptee case must still be carefully scrutinized. Occasionally, it may be necessary to conduct field investigations, DNA tests, or additional interviews in order to investigate possible adoption fraud. Because adoption cases are multi-faceted, a successful anti-fraud program should engage the entire adoption community, including agents, lawyers, orphanages, foster care providers, medical personnel, judges, local officials, and law enforcement personnel.
- (4) You should keep in mind, however, that the responsibility for enforcing local laws and for protecting the rights of children and birth parents rests primarily with the country of origin Central Authority and other local authorities. Also, anti-fraud efforts must be balanced with the mandate to provide service to U.S. citizens and the need to be sensitive to the victims of fraud. Whenever possible, posts should use anti-fraud techniques that do not unnecessarily delay processing or create further hardship for fraud victims.

9 FAM 502.3-4(C)(9) IH3, IH4 or B-2 Classifications and the Child Citizenship Act (Convention Adoptee)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.13-9; CT:VISA-2145 07-22-2014)

- a. A Convention adoptee may be classified as either an IH3 or IH4 immigrant or, in the case of a child who will reside abroad with the prospective adoptive parent(s) (PAP(s)) after the adoption but will travel to the United States for the purpose of acquiring U.S. citizenship based on an application under INA 322, a B-2 nonimmigrant. The correct classification of a visa issued to a Convention adoptee is particularly important due to the passage of the Child Citizenship Act of 2000 (Public Law 106-395). As a result of that Act, a Convention adoptee properly admitted to the United States in the IH3 classification while under the age of 18, who resides in the United States with the parent, will automatically acquire U.S. citizenship, while those admitted as a result of an IH4 IV or a B-2 NIV classification will not immediately acquire citizenship (see [9 FAM 502.3-4\(C\)\(9\)](#) paragraph d). You should take particular care to classify Convention adoptee petitions and visas correctly and to inform prospective parents of the significance of the visa classification their child receives. (See also [9 FAM 502.3-1](#) paragraph c on adopted children who should be issued other types of visas.)
- b. Although proper classifications should be noted on Form I-800 petitions or petition approval notices, the final determination of proper classification for the visa rests with the adjudicating consular officer.
- c. **Classification Criteria:**
 - (1) The IH3 classification is appropriate for a Convention adoptee who was the subject of a full, final, and legal adoption abroad by the petitioner (and spouse, if married) and who will reside in the United States with the PAP(s). (Note that, unlike for orphan cases, there is no requirement that an adoptive parent

personally see and observe the child before or during the adoption proceedings in order for the IH3 classification to be appropriate.)

- (2) The IH4 classification is appropriate for a Convention adoptee who will be adopted by the petitioner (and spouse, if applicable) after being admitted to the United States (requires both petitioner intent to adopt and satisfaction of any applicable pre-adoption requirements of the home state). The petitioner must have legal custody of the Convention adoptee and authorization for the emigration and adoption of the child. (Note that adoption by one spouse in a married couple is not considered sufficient to obtain IH3 status, even though the petitioner will be issued an IHAC (with annotation). This should be treated as a custody case for purposes of visa issuance, and an IH4 is appropriate.)
- (3) The B-2 NIV classification is appropriate for a Convention adoptee who was the subject of a full, final, and legal adoption abroad by the PAP(s) and the PAP(s) and the child will continue to live abroad immediately following the adoption, but the child seeks a nonimmigrant visa in order to travel to the United States to obtain naturalization under INA 322 and 8 CFR 322 (see [9 FAM 402.2-3\(B\)\(7\)](#)). Note that, for a child seeking B-2 classification for this purpose, Steps 4 and 9, respectively, would involve the review and adjudication of a Form DS-160 Nonimmigrant Visa Application, rather than a Form DS-260, Immigrant Visa Electronic Application and that, as an NIV applicant, such a child would not require a medical examination unless you have reason to believe that the applicant may be ineligible for a visa under INA 212(a)(1) (see [9 FAM 302.2-2\(B\)](#)).
- (4) **Transition Cases:** If the PAP(s) filed an Form I-600 or Form I-600- A before April 1, 2008, the date the Convention entered into force for the United States, and the Form I-600-A is still valid at the time of Form I-600 filing, then the case must be processed as a non-Hague (orphan) case pursuant to [9 FAM 502.3-3](#) (see [9 FAM 502.3-4\(B\)](#) paragraph c).

d. Citizenship Determination Based on Proper Classification of the Convention Adoptee:

- (1) **IH3:** Upon residing in the United States with the citizen parent, after having been lawfully admitted into the United States for permanent residence, and assuming the IH3 classification was appropriate and the Convention adoptee is under the age of 18, the child will automatically acquire U.S. citizenship as of the date of admission to the United States. The USCIS Buffalo office processes newly entering IH3 visa packets, automatically sending Certificates of Citizenship to eligible children without requiring additional forms or fees. Adoptive parents may also request a U.S. passport for the child.
- (2) **IH4:** IH4 Convention adoptees become Lawful Permanent Residents upon admission to the United States, but do not automatically acquire U.S. citizenship. A Convention adoptee who enters the United States on an IH4 visa acquires U.S. citizenship as of the date of a full and final adoption decree in the United States as long as the child is under age 18 at the time of adoption and is residing in the United States with the citizen parent. While citizenship is

acquired as of the date of the adoption in such cases, beneficiaries will need to file Form N-600, Application for Certificate of Citizenship and submit it to the local USCIS District Office or Sub-Office that holds jurisdiction over their permanent residence to receive a Certificate of Citizenship. Alternatively, adoptive parents may request U.S. passports for the child as evidence of citizenship.

- (3) **B-2:** A child temporarily residing abroad with the PAP(s), who seeks to enter the United States for the acquisition of U.S. citizenship under INA 322 may be entitled to B-2 nonimmigrant classification, provided the child demonstrates an intent to return abroad after a temporary stay in the United States, the child has filed Form N-600-K, Application for Citizenship and Issuance of Certificate Under Section 322 with USCIS, and has been scheduled for an interview on the Form N-600-K. (As discussed in [9 FAM 502.7-2\(B\)](#) paragraph d, a child under the age of 16 is not considered to possess a will or intent separate from that of the parents with regard to residence in the United States or abroad.) U.S. citizen parents of children adopted overseas who reside overseas and do not intend to reside in the United States in the immediate future may apply for naturalization on behalf of the child by filing Form N-600-K, at any USCIS District Office or Sub-Office in the United States. The naturalization process for such a child cannot take place overseas. The child would need to be in the United States temporarily pursuant to a lawful admission and maintaining such lawful status to complete naturalization processing and take the oath of allegiance. You are encouraged to give positive consideration to such cases whenever possible.
- e. Many adoptive parents have questions related to the Child Citizenship Act. They can be referred to the State Department website or USCIS website for additional information and important details on the legislation's impact on adopted children.

9 FAM 502.3-4(D) Convention Adoptee Processing

9 FAM 502.3-4(D)(1) Summary of the Convention Adoption Process

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.3; CT:VISA-2145 07-22-2014)

- a. The Convention adoptee visa process differs from standard IV or orphan processing primarily in that the PAP(s) must work with an accredited or approved Adoption Service Provider (ASP) (see [9 FAM 502.3-4\(B\)](#) paragraph b) and in that a Convention adoptee's eligibility for the visa classification and visa must be reviewed before the adoption or grant of legal custody takes place. Final approval of the petition and visa application only takes place after the adoption or grant of legal custody is complete and a Hague Convention Certificate indicating the adoption's or grant of legal custody's compliance with the Convention and IAA has been issued.
- b. A summary of the Convention adoption process is provided below. For ease of

navigation through this FAM Note, each point is linked to an expanded and more detailed section.

- (1) **Form I-800-A, Application for Determination of Suitability to Adopt a Child From a Convention Country:** The PAP(s) must file the Form I-800-A with USCIS, which determines whether the PAP(s) satisfy criteria for eligibility and suitability to adopt. If USCIS approves the Form I-800-A, the PAP(s) may arrange for the relevant accredited, approved, temporarily accredited, or supervised ASP to submit the approval notice, the accompanying home study, and other supporting evidence to the Central Authority in the Convention country in which the PAP(s) plan to adopt. See [9 FAM 502.3-4\(D\)\(2\)](#) for additional details on the I-800-A.
- (2) **Convention Country Matches PAP(s) With Child:** Working through an accredited, approved, temporarily accredited, or supervised ASP and in accordance with procedures established by the Convention country, PAP(s) obtain from the Convention country's Central Authority an Article 16 report on a child with the Central Authority's determination that the child is adoptable, proof that necessary consents have been obtained, and its reasons why the envisaged placement is in the best interests of the child. PAP(s) agree to adopt the child. See [9 FAM 502.3-4\(D\)\(3\)](#) for additional details on PAP and child matches.
- (3) **Provisional Adjudication of I-800:** Petition to Classify Convention Adoptee as an Immediate Relative: PAP(s) file a Form I-800 petition with USCIS per USCIS instructions, including the Article 16 report on the child. The Form I-800 is used to determine whether the child will qualify as a Convention adoptee. This step must occur before the PAPs have adopted or obtained legal custody of the child. (If the PAPs have already adopted the child, that adoption will have to be voided and the process redone in accordance with the Convention in order for the child to immigrate as a Convention adoptee.) (See 8 CFR 204.309(b)(1).) At this stage, the adjudicating USCIS officer will determine whether to provisionally approve the Form I-800 petition in accordance with USCIS regulations. This includes USCIS adjudication of any waiver applications filed with the Form I-800 petition to cover any known or suspected ineligibilities. See [9 FAM 502.3-4\(D\)\(4\)](#) for additional details on provisional adjudication of the I-800 petition.
- (4) **Convention Adoptee Visa Application:** After the petition has been provisionally approved by USCIS, the PAP(s) (in person only if practicable) or an ASP then file a Form DS-230, Immigrant Visa Application (or, in certain cases, a Form DS-160, Online Nonimmigrant Visa Application, with a consular officer (see [9 FAM 502.3-4\(C\)\(9\)](#)). The consular officer reviews the application and determines whether the child appears to meet the criteria for visa eligibility based on the evidence available. If the consular officer decides that there are no ineligibilities and that the child appears eligible to receive a visa, the officer will annotate the application to reflect this conclusion. This stage includes the first of two ineligibility reviews for the child. (See [9 FAM](#)

[502.3-4\(D\)\(5\)](#) for additional details on Convention adoption visa applications.

- (5) **Article 5 Letter:** Provisional approval of the petition and favorable annotation of the visa application result in the consular officer's issuance of an Article 5 Letter to the Convention country's Central Authority stating that the PAP(s) have been counseled (including child-specific counseling) and found suitable for the adoption, and that the child will be authorized to enter and reside in the United States; PAP(s) then adopt the child or obtain legal custody of the child for purposes of emigration and adoption. [9 FAM 502.3-4\(D\)\(6\)](#) for additional information on the Article 5 letter.
 - (6) **Appropriate Notification from Country of Origin:** In the case of an adoption, the Central Authority of the Convention country will issue an Article 23 Certificate certifying that the adoption has occurred in accordance with the Convention. In the case of a grant of legal custody, posts should work with host country to determine whether, in the particular country, a document comparable to the Article 23 Certificate exists with respect to custody cases (i.e., a document certifying Convention compliance) and, if so, should request this document. If such a document does not exist, proof that the grant of legal custody occurred, as described in [9 FAM 502.3-4\(C\)\(3\)](#) paragraph a(2)(b), will in these cases be sufficient to constitute appropriate notification. See [9 FAM 502.3-4\(D\)\(7\)](#) for additional details on Country of Origin notifications.
 - (7) **Hague Convention Certificate (Hague Adoption Certificate or Hague Custody Certificate):** After verifying compliance with the Convention and IAA, consular officers provide either (1) a Hague Adoption Certificate to the adoptive parent(s), certifying that the requirements of the Convention and the IAA have been met with respect to the adoption, or (2) a Hague Custody Certificate to the PAP(s), certifying that the requirements of the Convention and the IAA have been met with respect to the grant of legal custody. See [9 FAM 502.3-4\(D\)\(8\)](#) for additional details on Hague Certificates.
 - (8) **Form I-800 Final Adjudication:** USCIS has delegated to consular officers the authority to grant final approval of the Form I-800. You may not, however, deny a Form I-800. If the Form I-800 is not clearly approvable, forward the Form I-800 and accompanying evidence to the appropriate USCIS office for adjudication. See [9 FAM 502.3-4\(D\)\(9\)](#) for additional information on final adjudication of the I-800 petition.
 - (9) **Convention Adoptee Visa Issuance:** Consular officers adjudicate the visa application and, if there are no ineligibilities found upon this second review, issue the visa. See [9 FAM 502.3-4\(D\)\(10\)](#) for additional information on adjudication of the visa application.
- c. Direct questions related to processing of Convention adoptee cases to CA/VO/F and classification questions to CA/VO/L/A, with a copy to CA/VO/F. Direct reporting on countries' adoption practices to CA/OCS/CI, with a copy to CA/VO/F.

9 FAM 502.3-4(D)(2) Consular Officer Use of Form I-800-A

Information (Convention Adoptee - Step 1 of 9)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.4; CT:VISA-1178; 04-03-2009 and 9 FAM 42.21 N14.4-1; CT:VISA-2145 07-22-2014)

a. Use of Form I-800-A:

- (1) The Department of Homeland Security's Citizenship and Immigration Services (USCIS) has responsibility for determining eligibility and suitability of PAP(s). The Form I-800-A application allows the PAP(s) to demonstrate that they are both eligible to adopt and capable of providing proper care to a Convention adoptee.
- (2) You may grant final approval of Form I-800 petitions only if you have acceptable evidence of a valid Form I-800-A approval for the petitioner(s) and of provisional approval of the Form I-800.
- (3) The Form I-800-A approval and the fingerprint clearances obtained during the Form I-800-A process have a 15-month validity period from the date the fingerprints were cleared (although the Form I-800-A can be extended—see below). Validity dates will be clearly indicated on the Form I-800-A approval. PAP(s) filing a petition for a child to be classified as a Convention adoptee must file the Form I-800 petition within the validity period of the Form I-800-A. If the Form I-800 isn't filed within the validity period, the Form I-800-A approval has expired and will no longer support the filing of the Form I-800.
- (4) Before the Form I-800-A expires, PAP(s) may request an extension of the Form I-800-A validity period by filing a Form I-800-A Supplement 3 Request for Action on Approved Form I-800-A with USCIS. Only USCIS can extend the validity of the Form I-800-A approval. If the PAP(s) wish to file a Convention adoptee petition after the Form I-800-A expires, they must file a new Form I-800-A and submit required documentation to the appropriate USCIS office. Further action on the case must be put on hold until the new Form I-800-A is approved.
- (5) You may approve Form I-800 petitions and/or Convention adoptee visas only for children who meet the conditions noted in the Form I-800-A approval. For example, if the Form I-800-A approval was for only a child under the age of two or did not note special approval to adopt a special needs child, you may not approve a Form I-800 petition or a visa for a 10-year old or a special needs child, respectively. Similarly, if state pre-adoption requirements were identified in the Form I-800-A and have not yet been met, you cannot approve the Form I-800 petition or visa for the child in question, unless those requirements cannot be met until the PAPs acquire legal custody of the child or the child is physically in the United States (see [9 FAM 502.3-4\(D\)\(9\)](#) paragraph b(2)).
- (6) Although you are not involved in Form I-800-A adjudication and have no authority to review USCIS' determinations regarding PAP(s)' ability to provide a proper home environment, you may assist in the suitability determination process by providing information or necessary forms to prospective petitioners,

taking their fingerscans, and/or forwarding paperwork on behalf of such individuals under certain limited circumstances, where authorized by USCIS.

- (7) The PAP(s) must file the Form I-800-A with USCIS in accordance with instructions associated with the Form I-800-A form.
- (8) You cannot adjudicate Form I-800-A applications and may only accept a Form I-800-A on behalf of USCIS upon instructions from USCIS or CA/VO.

(Previous location: 9 FAM 42.21 N14.4-2; CT:VISA-1178 04-03-2009)

b. Fraud or Misrepresentation in the Form I-800-A:

- (1) You may encounter fraud in Convention adoptee cases, and information from the Form I-800-A may occasionally be used to corroborate requests for USCIS review or revocation of Form I-800-A applications, as well as of Form I-800 petitions. [9 FAM 502.3-4\(D\)\(4\)](#) paragraph c(2) and [9 FAM 502.3-4\(D\)\(5\)](#) paragraph c(2) provide additional information on dealing with such cases.
- (2) In cases where you have a well-founded and substantive reason to believe that the Form I-800-A approval was obtained on the basis of fraud or misrepresentation, or have knowledge of a change in material fact subsequent to the approval of the Form I-800-A, consult with the appropriate USCIS office on disposition of the case.
- (3) For further information, see [9 FAM 502.3-4\(D\)\(1\)](#), Summary of the Convention Adoption Process.

9 FAM 502.3-4(D)(3) Country of Origin Identification of a Convention Adoptee for Adoption (Step 2 of 9)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.5; CT:VISA-1178 04-03-2009)

- a. Once USCIS has approved the Form I-800-A, the accredited, approved, temporarily accredited, or supervised ASP must transmit the USCIS determination to the Central Authority of the Convention country where the PAP(s) wish to adopt a Convention adoptee. The documentation on the parents (i.e., the home study and other supporting evidence) provided to the Convention country Central Authority must be identical to that submitted to and approved by USCIS.
- b. In accordance with Articles 4 and 16 of the Convention, the Central Authority of the Convention country then identifies a child as a prospective match for the parents. The Central Authority of the Convention country must fulfill several Convention obligations at this point, including preparing a report on the child.
- c. The Central Authority of the Convention country must transmit its report on the child, including proof that the necessary consents have been obtained and the reasons for its determination on the placement directly to the authorized ASP, which has been delegated authority to receive such a report. Formats for this report will vary; send questions related to the report to CA/VO/F and CA/OCS/CI.
- d. For further information, see [9 FAM 502.3-4\(D\)\(1\)](#), Summary of the Convention

Adoption Process.

**9 FAM 502.3-4(D)(4) Form I-800 Provisional Adjudication
(Convention Adoptee - Step 3 of 9)**

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.6; CT:VISA-1178 04-03-2009)

- a. Most of the analysis of the child's eligibility for the Convention adoptee classification will take place at the provisional adjudication stage; the final adjudication of the petition will be based on a rebuttable presumption that the child is eligible for the Convention adoptee classification. The section below discusses USCIS's review, provisional adjudication, and approval of a Convention adoptee petition. (See [9 FAM 502.3-4\(D\)\(9\)](#) for instructions related to final approval of the petition.)

(Previous location: 9 FAM 42.21 N14.6-1; CT:VISA-946 04-11-2008)

b. Purpose of the Form I-800 Convention Adoptee Petition:

- (1) The Form I-800 petition form is used to document a child's classification under INA 101(b)(1)(G) and eligibility to immigrate as a Convention adoptee. Separate Form I-800 petitions must be filed for each child, even though the associated Form I-800-A approval may have been for multiple children. A Convention adoptee can be issued an immigrant visa only if he or she is the beneficiary of an approved Form I-800 petition.
- (2) In rare cases, the Form I-800 petition may also be used to demonstrate Convention adoptee classification for a child who will continue to live abroad with his or her PAP(s) in the near term, but whose parents plan to seek naturalization under INA 322. In such cases, approval of the petition will become the basis for a USCIS appointment for a naturalization hearing in the United States, and a request for a nonimmigrant visa to attend that hearing. (See [9 FAM 502.3-4\(B\)](#) paragraph a(4)(e) for additional details.)

(Previous location: 9 FAM 42.21 N14.6-2; CT:VISA-2145 07-22-2014)

c. Filing the Form I-800 Convention Adoptee Petition:

- (1) Once U.S. citizen PAP(s) have accepted the referral of a child from the Central Authority of the country of origin, the PAP(s) file the Form I-800 petition. The petition must be filed in accordance with instructions associated with the Form I-800. Consular officers should consult Form I-800 and the instructions to familiarize themselves with current filing requirements; although USCIS officers will provisionally approve Form I-800s, consular officers will be responsible for final approval and will have to verify Convention and IAA compliance based in large measure on the Form I-800. A description of key requirements for filing follows in this note.
- (2) **Where PAPs Must File:** PAP(s) must file the Form I-800 petitions with the USCIS office that approved, or granted the most recent extension of, the PAP(s) Form I-800-A.

- (3) **Who Can File:** In order to file a Form I-800 petition, the petitioner must meet the following requirements:
- (a) The PAP is habitually resident in the United States, as defined in applicable DHS regulations (see [9 FAM 502.3-4\(C\)\(2\)](#) paragraph b(2));
 - (b) The PAP is an unmarried U.S. citizen who is at least 25 years old or a married U.S. citizen whose spouse will also adopt the child the citizen seeks to adopt. (The spouse must be either a U.S. citizen, a non-citizen U.S. national, or an alien who, if living in the United States, holds a lawful status under U.S. immigration law);
 - (c) The PAP has an approved and unexpired Form I-800-A; and
 - (d) Within the last year, USCIS has not denied the PAP's:
 - Form I-800-A under 8 CFR 204.309(a)
 - Form I-600-A under 8 CFR 204.3(h)(4)
 - Form I-800 under 8 CFR 204.309(b)(3)
 - Form I-600 under 8 CFR 204.3(i)

NOTE: These 8 CFR provisions relate to failure to disclose a history of abuse and/or violence, failure to disclose a criminal history, failure to disclose prior adoption home studies, failure to cooperate in checking child abuse registries, and child-buying.

- (4) **When to File:** PAP(s) must generally file the Form I-800 before the child's 16th birthday. (See [9 FAM 502.3-4\(B\)\(2\)](#) paragraph a(1)(b) for special rules concerning children between the ages of 15 and 16.)
- (5) **What to File With the Form I-800:** PAP(s) generally must present the following with the Form I-800 petition. (See [9 FAM 502.3-4\(C\)\(2\)](#) paragraph a(1)(b) regarding an exception to documentary filing requirements for children approaching the age of 16):
- (a) The Form I-800-A approval notice and, if applicable, proof that the approval period has been extended (if the approval notice is not included, it would be necessary to request it only if post does not have a copy; cases in which post is not in possession of the USCIS approval for the Form I-800-A will be rare);
 - (b) A statement from the primary provider signed under penalty of perjury under U.S. law, indicating that all of the pre-placement preparation and training provided for in the accreditation standards (22 CFR 96.48) has been completed;
 - (c) The report required under Article 16 of the Convention, specifying the child's name and date of birth, the reasons for making the adoption placement, and establishing that the competent authority has, as required under Article 4 of the Convention:
 - (i) Established that the child is eligible for adoption;
 - (ii) Determined, after having given due consideration to the possibility of

- placing the child for adoption within the Convention country, that intercountry adoption is in the child's best interests;
- (iii) Ensured that the legal custodian, after having been counseled as required concerning the effect of the child's adoption on the legal custodian's relationship to the child and on the child's legal relationship to his or her family of origin, has freely consented in writing to the child's adoption, in the required legal form;
 - (iv) Ensured that if any individual or entity other than the legal custodian must consent to the child's adoption, this individual or entity, after having been counseled as required concerning the effect of the child's adoption, has freely consented in writing, in the required legal form, to the child's adoption;
 - (v) Ensured that the child, after having been counseled as appropriate concerning the effects of the adoption, has freely consented in writing, in the required legal form, to the adoption, if the child is of an age that, under the law of the country of the child's habitual residence, makes the child's consent necessary, and that consideration was given to the child's wishes and opinions; and
 - (vi) Ensured that no payment or inducement of any kind has been given to obtain the consents necessary for the adoption to be completed.
- (d) The report referenced in [9 FAM 502.3-4\(D\)\(4\)](#) paragraph c(5)(c) must be accompanied by:
- (i) A copy of the child's birth certificate, or secondary evidence of the child's age;
 - (ii) A copy of the irrevocable consent(s) signed by the legal custodian(s) and any other individual or entity who must consent to the child's adoption unless, as permitted under Article 16 of the Convention, the law of the country of the child's habitual residence provides that their identities may not be disclosed, so long as the Central Authority of the country of the child's habitual residence certifies in its report that the required documents exist and that they establish the child's age and availability for adoption. (See [9 FAM 502.3-4\(C\)\(5\)](#) paragraph c(5) on obtaining such a certification);
 - (iii) A statement, signed under penalty of perjury by the primary provider (or an authorized representative if the primary provider is an agency or other juridical person), certifying that the report is a true, correct, and complete copy of the report obtained from the Central Authority of the Convention country;
 - (iv) A summary of the information provided to the PAP under 22 CFR 96.49(d) and 22 CFR 96.49(f) concerning the child's medical and social history. This summary, or a separate document, must include:
 - A statement concerning whether, from any examination as

- described in 22 CFR 96.49(e) or for any other reason, there is reason to believe that the child has any medical condition that makes the child inadmissible; if the medical information that is available at the provisional approval stage is not sufficient to assess whether the child may be inadmissible under INA 212(a)(1), the submission of this information may be deferred until the PAP seeks final approval of the Form I-800;
- If both of the child's birth parents were the child's legal custodians and signed the irrevocable consent, the factual basis for determining that they are incapable of providing proper care for the child;
 - Information about the circumstances of the other birth parent's death, if applicable, supported by a copy of the death certificate, unless the Central Authority has made the certification referenced in [9 FAM 502.3-4\(C\)\(4\)](#) paragraph b(5)(d)(ii);
 - If a sole birth parent was the legal custodian, the circumstances leading to the determination that the other parent abandoned or deserted the child, or disappeared from the child's life; and
 - If the legal custodian was the child's prior adoptive parent(s) or any individual or entity other than the child's birth parent(s), the circumstances leading to the custodian's acquisition of custody of the child and the legal basis of that custody.
- (v) If the child will be adopted in the United States, the primary provider's written report, signed under penalty of perjury by the primary provider (or an authorized representative if the primary provider is an agency or other juridical person) detailing the primary adoption service provider's plan for post-placement duties, as specified in 22 CFR 96.50; and
- (e) If the child may be inadmissible under any provision of INA 212(a) for which a waiver is available, a properly completed waiver application for each such ground;
- (f) Either a Form I-864-W, Intending Immigrant's Form I-864 Exemption, or a Form I-864, Affidavit of Support (see [9 FAM 502.3-4\(C\)\(5\)](#) paragraph d(4));
- (g) Any other information required by Form I-800 (for example, a statement of expenses paid in connection with the adoption and evidence of compliance with pre-adoption requirements); and
- (h) **Required Fees:** Note that a PAP who filed a Form I-800-A with USCIS may file a Form I-800 petition for one Convention adoptee without any additional fee. If more than one Form I-800 petition is being filed based on the Form I-800-A, the PAP must pay a Form I-800 filing fee for each Convention adoptee beyond the first, unless the children involved are

already siblings before the proposed adoption (in which case no additional fees would be collected). USCIS Form I-800 filing fees are established in 8 CFR 103.7(b)(1).

- (6) See [9 FAM 502.3-4\(C\)\(2\)](#) paragraph a(1)(b) for special rules regarding determining the Form I-800 filing date for children between the ages of 15 and 16.
- (7) Any foreign language documents submitted with the Form I-800 petition must be accompanied by a full English translation, which the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate the foreign language into English. If questions arise regarding the adequacy of the submitted statements or certifications outlined in [9 FAM 502.3-4\(D\)\(4\)](#) paragraph c(5), consult with USCIS officer at post or, if USCIS is not at post, contact CA/VO/F, CA/OCS/CI, and CA/VO/L/A for assistance.

(Previous location: 9 FAM 42.21 N14.6-3; CT:VISA-1178 04-03-2009)

d. Post Investigation During USCIS Review of the Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative:

- (1) USCIS review of the Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative, and accompanying documentation will generally focus on the following:
 - (a) Whether the Form I-800 petition and accompanying documents clearly establish that the child meets the criteria outlined in [9 FAM 502.3-4\(C\)\(1\)](#). Note that parents will not have completed the adoption or acquired legal custody of the child at this point, and therefore proof of adoption or legal custody is not required for provisional adjudication of the Form I-800 petition.
 - (b) Whether the child fits all criteria identified in the Form I-800-A approval (e.g., age, gender, special needs, if any).
 - (c) If the child will be adopted in the United States, rather than abroad, whether all applicable state pre-adoption requirements have been met (except those that cannot legally be met without the child's presence in the United States).
- (2) If the USCIS officer reviewing the Form I-800 petition finds that the Form I-800 petition and accompanying documentation raise questions about whether the child is a Convention adoptee or concerns about possible improper inducement, prohibited contact, or fraud or misrepresentation, the USCIS officer may request post assistance with investigating the case prior to provisional adjudication of the petition.
 - (a) Upon receipt of a request for an investigation and the accompanying documentation (copies of the filed petition and supporting documents), you should work with post's anti-fraud unit, the RSO, and local officials and contacts to investigate the issues identified by the USCIS officer and

return the documentation and a written report of the results of your investigation to the USCIS office. Investigation procedures vary from post to post, since the best means of collecting necessary information regarding the child's status and history often depends on local conditions.

- (b) In the vast majority of Convention adoption cases that raise concerns of this nature, liaison with the Central Authority and competent authorities will be required. In some cases, interviews with the petitioner and/or caregiver will be helpful.
 - (c) An investigation can also include document or phone checks, or interviews with the child (if of sufficient age), social workers, orphanage representatives, or birth parent(s), if available. In some cases, a full field investigation, DNA tests or other measures may be warranted (see [9 FAM 502.3-4\(C\)\(8\)](#) paragraph d).
- (3) For further information, see [9 FAM 502.3-4\(D\)\(1\)](#), Summary of the Convention Adoption Process.

9 FAM 502.3-4(D)(5) Convention Adoptee Visa Application (Step 4 of 9)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.7; CT:VISA-2145 07-22-2014)

a. Convention Adoptee Visa Application - Introduction:

- (1) Once the Form I-800 petition has been provisionally approved, USCIS will send notification to the National Visa Center (NVC), which will notify post of the provisional approval and inform the PAP(s) that they, or an ASP acting on their behalf, should submit a visa application to post for the child.
- (2) Your consideration of a Convention adoptee Form DS-260 (or Form DS-160, see below) will take place in two stages. Based on the information initially available on the child and not including evidence on the completed adoption or grant of legal custody, an initial review takes place upon filing of the Form DS-260. Later, once the adoption is complete or custody is granted, the formal adjudication of the visa application is done.
- (3) Generally speaking, most of the analysis of the child's eligibility for a visa will take place at the initial review stage; the adjudication of the application will generally consider additional information obtained after the initial review. The section below provides instructions for the initial review of the Convention adoptee visa application. (See [9 FAM 502.3-4\(D\)\(10\)](#) for instructions related to formal adjudication of the visa application.)
- (4) Note that a Form DS-160 Nonimmigrant Visa Application would be filed for a child who seeks a nonimmigrant visa to travel to the United States to obtain naturalization under INA 322 (see [9 FAM 502.3-4\(C\)\(9\)](#)). The review process, however, is the same except where noted below.

(Previous location: 9 FAM 42.21 N14.7-1; CT:VISA-2145 07-22-2014)

b. Submitting Convention Adoptee Visa Applications:

- (1) Visa applications on behalf of Convention adoptees may be submitted to an IV-issuing post once post has received notification of USCIS' provisional approval.
- (2) For Convention adoptee visa applications, the application packet must include:
 - (a) A completed DS-260 (for IV cases) or DS-160 (for NIV cases);
 - (b) Birth certificate;
 - (c) Photographs (three full frontal photographs);
 - (d) Police, military, or prison records, if required (very rare); and
 - (e) If necessary, visa processing fees (some fees are collected by NVC, but others will be paid at post—see [9 FAM 504.6-3](#)).
- (3) In addition, to the extent practicable, the visa application packet must also include the following documents. Submission of these documents is not absolutely required at this stage of the process, although they will be required by the time of adjudication of the visa application.
 - (a) Passport of the Convention adoptee; and
 - (b) Results of panel physician's medical exam (required in NIV cases only if you suspect a medical ineligibility).
- (4) The following are also required, to the extent practicable, at the time of application for a visa:
 - (a) The personal presence of the Convention adoptee. (If personal appearance is impracticable, visa applications may be submitted by PAP(s) or authorized ASPs on behalf of the child); and
 - (b) Biovisa fingerscanning (applicants age 14 and over).

(Previous location: 9 FAM 42.21 N14.7-2; CT:VISA-1937 10-23-2012)

c. Visa Application – Reviewing Convention Adoptee Classification:

- (1) You must confirm that the applicant may be considered a Convention adoptee. Provisional approval of the Form I-800 petition should be considered prima facie evidence of Convention adoptee status, but you must briefly review the Form I-800 and documentation supporting Convention adoptee status to confirm that the classification is appropriate. The documentation may include IVO scans of the documents submitted to USCIS to obtain provisional approval, but may also include the actual paper record submitted to USCIS. Keep in mind that the Form I-800 was provisionally adjudicated in the United States without the benefit of physically seeing the parties involved and having more in-depth knowledge of the documents and fraud patterns in the local country.
- (2) If, during the provisional visa eligibility review, you come to know or have reason to believe that the petition is not clearly approvable, expeditiously forward the Form I-800 petition and accompanying documentation to the appropriate USCIS office having jurisdiction over the place of the child's

habitual residence for action (see [9 FAM 504.2-8](#) and [9 FAM 602.2-1\(F\)](#)) with an explanation of the facts of the case. You are not authorized to deny petitions. Also provide written notification to the ASP and/or PAPs of this action, including a brief explanation of the decision and the name and address of the USCIS office to which the petition has been forwarded. If the petition's provisional approval is subsequently upheld, resume processing of the Convention adoptee case.

(Previous location: 9 FAM 42.21 N14.7-3; CT:VISA-1983 05-02-2013)

d. Visa Application – Reviewing Convention Adoptee Ineligibilities:

- (1) Based on the information available at the time the application is submitted, review the visa application to identify any possible ineligibilities which might affect final approval of the visa. Convention adoptee visa applicants are subject to all of the standard INA 212 ineligibilities, although in practice almost no adoptive children will be affected by criminal, security, immigration violation and other ineligibilities due to their age. Instructions for handling possible ineligibilities at the initial visa application review stage of Convention adoptee processing are provided in [9 FAM 502.3-4\(D\)\(5\)](#) paragraph e(6).
- (2) Unique to Convention adoptee cases, ineligibility-related information may be a factor in the approvability of a Form I-800 petition. While Form I-800 provisional adjudication does not include a review of ineligibilities, PAP(s) are permitted to apply, at the time of the Form I-800 filing, for a waiver of any known or suspected ineligibilities of the child (see [9 FAM 502.3-4\(D\)\(4\)](#) paragraph c(5)(e)). Those potential ineligibilities, if identified by the PAP(s), are addressed during the Form I-800 provisional adjudication stage through the filing, and USCIS review, of a request for a waiver of ineligibilities. Provisional approval of the Form I-800 in such cases will include approval of the waiver. (In the event that the Form I-800 is finally denied, or the IV or NIV application is refused on grounds other than INA 221(g), after the granting of a waiver of an ineligibility, the waiver will be void.) During both the initial review and the final adjudication of the visa application, however, you still must carefully review the visa application and supporting documents for evidence of any other ineligibilities.
- (3) **Convention Adoptee-Specific 212(a) Medical Issues:** It is likely that the panel physician's medical exam results will not be part of the Convention adoptee visa application packet at this provisional stage of processing. However, based on any available exam results and the summary of medical information provided on the child with the Form I-800, including vaccination records, you should identify any possible medical ineligibilities in the case.
 - (a) **Vaccinations:** Keep in mind that, unlike orphan IR3 and IR4 applicants, Convention adoptee are not exempt from INA 212(a)(1)(A)(ii) vaccination requirements.
 - (b) **Significant Medical Conditions:**
 - (i) If the results of the panel physician's medical exam are available

during this initial review of the visa application and a significant medical condition is revealed in them that was not revealed in the Convention country's report on the child ([9 FAM 502.3-4\(D\)\(3\)](#)) paragraph c, you must ensure that the adoptive parents are aware of the condition identified. Processing should be suspended until you receive a notarized statement from the adoptive parent(s) or PAP(s) indicating awareness of the child's medical condition and willingness to proceed with case processing. If the adoptive parents choose not to pursue the petition, forward it, along with an explanation and all other pertinent information, to the appropriate USCIS office. Inform CA/OCS/CI and CA/VO/F of the circumstances of the case, such that any necessary notification to the Convention country's Central Authority may be arranged.

- (ii) Note also that a child with a serious medical condition or disability may sometimes be considered a special needs child, and therefore be subject to the requirement that the adoptive parents' or PAP(s)' Form I-800-A approval include a reference to parents' ability to adopt a special needs child. In cases where a child is later determined to be a special needs child and the parents' Form I-800-A suitability approvals do not note approval to adopt a special needs child, you should consult with the appropriate USCIS office overseas on whether processing on the case should continue.
 - (iii) You should ensure that adoptive parent(s) or PAP(s) understand that the medical exam that is part of the visa application process is not meant to provide a comprehensive evaluation of an adoptive child's health. Encourage parents to arrange private evaluations by qualified medical professionals, preferably ones versed in childhood development and who specialize in adoption medicine and have experience reviewing Convention country medical information.
- (4) **Convention Adoptees and Public Charge:** In general, the adoptive parents' ability to care for a child is evaluated during the Form I-800-A adjudication, such that an IH3 or IH4 applicant is unlikely to become a public charge. Although Form I-864 forms are filed with the Form I-800 petition, briefly review them as part of the Convention adoptee visa application review. The following forms should be used:
- (a) For IH3 applicants eligible for citizenship upon admission to the United States (see [9 FAM 502.3-4\(C\)\(9\)](#) paragraph d(1) and [9 FAM 302.8-2\(B\)](#)), and for IH4 applicants whose PAP(s) have at least 40 quarters of coverage under the Social Security Act (see [9 FAM 502.3-4\(C\)\(9\)](#) paragraph d(2) and [9 FAM 302.8-2\(B\)](#)), review the Form I-864-W that was submitted with the Form I-800 petition.
 - (b) For all other Convention adoptee visa applicants, including those applying for B-2 NIV classification as children adopted abroad who seek to enter the United States for the acquisition of U.S. citizenship under INA 322 (see [9](#)

[FAM 502.3-4\(C\)\(9\)](#) paragraph d(3) and [9 FAM 302.8-2\(B\)](#)), review the Form I-864 or Form I-864-EZ that was submitted with the Form I-800.

- (c) If, in a given case, the adoptive parents did not submit the Form I-864, Form I-864-EZ, or Form I-864-W with the Form I-800 petition, they must submit the appropriate form with the visa application.
 - (d) In a rare case where the child has an illness or medical condition not addressed by the approved Form I-800-A that would entail significant financial outlay, or where other unusual circumstances prevail, you should consult with the appropriate USCIS overseas regional office before determining whether the case requires an updated Form I-800-A.
- (5) **Watchlist Checks:** At the initial visa application review stage, in accordance with standard guidance for handling visa cases, you must review and properly adjudicate CLASS and FR hits possibly matching Convention adoptee applicants' data. Adjudication of IDENT results is required only in the rare cases where the child is personally present at the time of the initial visa application filing (see [9 FAM 502.3-4\(D\)\(5\)](#) paragraph c(4)). You will need to check or re-check CLASS, IDENT, and/or FR results at final visa adjudication as well (see [9 FAM 502.3-4\(D\)\(10\)](#)).
- (6) If a possible ineligibility is found during the initial review of the Convention adoptee visa application and that ineligibility has not already been resolved through the issuance of a waiver:
- (a) **INA 212(a)(1):** You should ensure that the PAP(s) are aware of the issue and determine whether the parents will seek treatment and/or a waiver of the ineligibility. If the PAP(s) indicate that they do intend to seek treatment and/or a waiver on behalf of the Convention adoptee, inform them that post cannot provide an Article 5 Letter (see [9 FAM 502.3-4\(D\)\(6\)](#)) unless USCIS approves the waiver request and/or the medical condition is successfully treated and there appear to be no other grounds of ineligibility (unless these are overcome or waived). The Department and USCIS anticipate that approval of waivers and treatment of medical conditions will be successful in the vast majority of cases in resolving INA 212(a)(1) ineligibilities, such that a 212(a)(1) finding will not generally be a permanent obstacle to admission and residence in the United States. Posts with questions on handling INA 212(a)(1) ineligibilities may request assistance from CA/VO/L/A and CA/VO/F.
 - (b) **Other INA 212(a) or INA 212(f) Ineligibilities Where a Waiver Is Available:** Submit an advisory opinion request on the case to CA/VO/L/A, with a copy to CA/VO/F and CA/OCS/CI. We will consult with USCIS on the ineligibility and the likelihood of approval of the waiver, and provide appropriate instructions to post.
 - (c) **Other INA 212(a) Ineligibilities Where No Waiver Is Available (Very Rare):** After consultation with CA/OCS/CI, CA/VO/L/A, and CA/VO/F, refuse the visa application in accordance with [9 FAM 504.11](#) and

inform the applicant, adoption service provider (ASP), and/or prospective adoptive parents (PAPs) of the bases for the refusal. In accordance with CA instructions, post should then inform the Central Authority of the Convention country of the inability to determine that the child would be authorized to enter and reside permanently in the United States.

(Previous location: 9 FAM 42.21 N14.7-4; CT:VISA-1178 04-03-2009)

e. Documenting Results of Initial Convention Adoptee Visa Application Review:

- (1) If you confirm that the adoptive child is eligible for Convention adoptee classification, and you either identify no potential ineligibilities in the case based on available information, or any such potential ineligibilities have been waived or overcome (per [9 FAM 502.3-4\(D\)\(5\)](#) paragraph e), annotate the visa application to reflect a positive initial review. You should annotate the case in IVO or (in B-2 cases) the NIV system, noting that no obstacles were identified to the applicant's admission or residence in the United States.
- (2) Inform the ASP and/or PAP(s) that, based on the currently available information, the United States will notify the Central Authority of the Convention country that the Convention adoptee will be authorized to enter and reside permanently in the United States, and that, once that notification is provided, the Convention provides that the adoption or grant of legal custody may proceed. Caution PAP(s), however, that if derogatory information develops prior to final processing of the case, it may delay or, in extremely rare cases, prevent visa processing.
- (3) In the rare cases covered by [9 FAM 502.3-4\(D\)\(5\)](#) paragraph e(6)(c) or where instructed by CA/VO for cases under [9 FAM 502.3-4\(D\)\(5\)](#) paragraph e(6)(b), you should refuse the visa application in the IVO or NIV system, as applicable, under the relevant legal ground. For cases covered by [9 FAM 502.3-4\(D\)\(5\)](#) paragraph e(6)(a) or where instructed by CA/VO for cases under [9 FAM 502.3-4\(D\)\(5\)](#) paragraph e(6)(b), note the potential ineligibility in the IVO or NIV case notes, but favorably annotate the case once USCIS has granted the waiver.
- (4) For further information, see [9 FAM 502.3-4\(D\)\(1\)](#), Summary of the Convention Adoption Process.

9 FAM 502.3-4(D)(6) Article 5 Letter (Convention Adoptee - Step 5 of 9)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.8-1; CT:VISA-1743 10-19-2011)

a. Processing Article 5 Letter:

- (1) The Convention requires that in order for an adoption or grant of legal custody to be completed, the receiving country's Central Authority must determine that the PAP(s) are eligible and suitable to adopt, ensure that the PAP(s) have been

counseled as necessary, determine that the child is or will be authorized to enter and reside permanently in the receiving country (here, the United States), and agree that the adoption or grant of legal custody may proceed. Confirmation that these steps have been taken is conveyed to the country of origin's Central Authority via an "Article 5 letter" (the name refers to the relevant article of the Convention). This letter will also constitute our agreement, under Article 17 of the Convention, for the adoption to proceed.

- (2) Provisional approval of the Form I-800 petition and a favorable initial review of the visa application are the critical factors in determining whether the child will be eligible to enter and reside in United States, and that the adoption or grant of legal custody may proceed.
- (3) Once post enters both Form I-800 provisional approval and visa application annotation into the IVO system, the Article 5 Letter will be generated by the IVO system for sending to the Convention country's Central Authority. A copy of the text of the letter is provided in [9 FAM 502.3-4\(D\)\(6\)](#) paragraph b. Post should scan the signed Article 5 Letter into IVO. There is no standard means of delivering Article 5 Letters to the Central Authorities. Posts handling Convention adoptee cases will need to contact the Central Authority in their respective countries to determine the best way to forward the Article 5 Letter to the Central Authority. Transmission through an authorized ASP may be a possibility. For any questions concerning Article 5 Letter forwarding, post should contact CA/OCS/CI and CA/VO/F.
- (4) Once the Convention country's Central Authority receives the Article 5 Letter, the adoption or grant of legal custody may proceed. If issues arise with the Central Authority of the Convention country regarding the Article 5 Letter, post should consult with CA/OCS/CI and CA/VO/F.
- (5) For further information, see [9 FAM 502.3-4\(D\)\(1\)](#), Summary of the Convention Adoption Process.

(Previous location: 9 FAM 42.21 Exhibit VIII; CT:VISA-1773 11-16-2011)

b. Example of "Article 5" Letter for Convention Adoptions:

"Article 5" Letter

[date]

[Central Authority of Country of Origin, Address ...]

To [name of COO CA]:

Subject: [Name of Child], born [Date and place of Birth of Child], to be adopted by [Name of prospective adoptive parents]

The United States Central Authority is pleased to confirm that, in accordance with Article 5 of The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention), and, based on information currently available, U.S. competent authorities have determined that [prospective adoptive parent(s)' names] are eligible and suited to adopt; have ensured that they have been counseled as may be necessary; and have determined that [child's name] will be authorized to enter and reside permanently in the United States following [adoption by/the grant of legal custody to] [prospective adoptive parents names] and their presentation of required documentation.

Pursuant to Article 17 of the Convention, the United States Central Authority hereby agrees that [the adoption of [child's name] by [PAP(s)' name(s)] may proceed] OR [the grant of legal custody of [child's name] to [PAP(s)' name(s)] may proceed.]

(seal)

Signature

Name

Title

(Previous location: 9 FAM 42.21 N14.8-2; CT:VISA-2145 07-22-2014)

c. Adoption or Custody Order Issued Before Issuance of Article 5/17 Letter:

- (1) If it becomes apparent to you that, prior to your sending an Article 5/17 Letter (see [9 FAM 502.3-4\(D\)\(6\)](#) paragraph a), but after provisional approval of the Form I-800 petition, the PAP(s) adopted the child or obtained custody for purposes of emigration and adoption, then you should notify CA/OCS/CI and CA/VO/F of the case and present the options outlined below to the now adoptive parent(s) and/or custody holder(s) (AP(s)). If the AP(s) are unwilling or unable to take one of the corrective measures identified, you may request an advisory opinion from CA/VO/L/A. Keep CA/OCS/CI and CA/VO/F informed of your request and subsequent developments.
- (a) **Option 1:** The AP(s) may return to the local court and void, vacate, annul, or otherwise terminate the existing adoption or grant of custody for the purpose of adoption. Following one of the above listed actions and upon receipt of a new court order as evidence of the court's action, post may continue to process the case. If your review of the provisionally approved Form I-800 Petition and initial review of the visa application are favorable, and all other Convention requirements have been met, post may proceed with the IVO entries that will generate the Article 5/17 Letter (see [9 FAM 502.3-4\(D\)\(6\)](#) paragraph a(3)).
- (b) **Option 2:** Some countries' laws, regulations, customs, or practices may not allow a local court to void, vacate, annul, or otherwise terminate an adoption or grant of custody. In this situation, post should consult CA/VO/F and CA/OCS/CI, and, if warranted, request an advisory opinion from CA/VO/L/A. If the reviews of the provisionally approved Form I-800 Petition and initial review of the visa application are favorable, and post has established that local laws, customs, or practice prevent an adoptive family from pursuing Option 1, then post may proceed with the IVO entries that will generate the Article 5/17 Letter (see [9 FAM 502.3-4\(D\)\(6\)](#) paragraph a(3)). A statement from a judge or competent administrative body should be kept on file with Post explaining that a family may not successfully void, vacate, annul, or terminate the adoption and then re-adopt the child. This statement should be scanned into applicable IVO cases and should be considered sufficient for post to establish that local

laws, customs, or practice prevent a family from pursuing Option 1.

(2) Exception to These Procedures:

- (a) For situations where a U.S. service member has been living overseas in one Convention country and completed an adoption from a second Convention country, if a service member intends to pursue the immediate relative process under INA 101(b)(1)(E) for the adopted child to immigrate to the United States, but the Department of Defense orders the family to return to the United States prior to the two years being completed, then post should consult with CA/VO/F and CA/OCS/CI. In general these cases may then be processed as Form I-800 cases in the service member's country of residence.
- (b) If an adoption was finalized prior to April 1, 2008, the adoptive family does not need to void, vacate, annul or otherwise terminate the adoption because 8 CFR 204.309(b)(1) was not in effect before April 1, 2008. Instead, if the adoption was finalized prior to April 1, 2008, the adoptive family may pursue the Form I-600A/600 process. 8 CFR 204.309(b)(1) does, however, apply if an adoption was finalized prior to provisional approval of the Form I-800 but after April 1, 2008. In this instance, the adoptive family would need to pursue Option 1 or 2 outlined above.

9 FAM 502.3-4(D)(7) Appropriate Notification from the Country of Origin (Convention Adoptee – Step 6 of 9)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.9; CT:VISA-1178 04-03-2009)

- a. The next step in the process for PAP(s) and the child is the adoption or grant of legal custody by the child's Convention country. The adoption or grant of legal custody for the Convention adoptee must be completed based on the laws and regulations of the Convention country and in accordance with the Convention.
- b. The Intercountry Adoption Act of 2000 (IAA) requires that the Department certify that the adoption or grant of legal custody has been done in accordance with the Convention and IAA provisions.
 - (1) PAP(s) and/or the ASP must provide you with valid proof that the adoption or grant of legal custody for purposes of emigration and adoption has been completed (see [9 FAM 502.3-4\(C\)\(3\)](#) paragraph a(2)).
 - (2) In cases involving an adoption in the country of origin (as opposed to grant of legal custody), the competent authority of the Convention country must certify that the adoption was done in accordance with the Convention. This certificate, known as the Article 23 Certificate, should be included in or affixed to the Convention country's final adoption decree. Upon receiving the Article 23 Certificate, you must scan the Certificate into the IVO system as well as noting it in the proper field in the IVO system. The Article 23 Certificate will identify the Central Authority and the date it agreed to the adoption.

- (3) In cases involving only a grant of legal custody for purposes of emigration and adoption, the Convention does not require competent authorities of the country of origin to certify to compliance with the Convention. Proof that the grant of legal custody occurred, as described in [9 FAM 502.3-4\(C\)\(3\)](#) paragraph a(2), will in these cases be sufficient to constitute appropriate notification. Generally, this will be evidenced by a judicial or administrative act expressly authorizing the PAP(s) or those acting on their behalf to take the child out of the country and bring the child to the United States for adoption in the United States by the PAP(s).
- (a) Post may consider any credible record in the case that shows that the country of origin Central Authority agrees that the granting of custody was for this purpose. However, post should work with host country to determine whether, in the particular country, a document comparable to the Article 23 Certificate exists with respect to custody cases (i.e., a document certifying to Convention compliance) and, if so, should request this document.
- (b) In addition, post should note in the IVO system the foreign Central Authority that agreed to allow the adoption to go forward and the date of that agreement. (Consistent with the definition of Central Authority for purposes of these notes, this agreement may be made by any entity to whom authority to perform this function has been delegated by the designated Central Authority in accordance with the Convention and local law.) Post may need to coordinate with country of origin authorities to determine how to obtain this information.
- c. For further information, see [9 FAM 502.3-4\(D\)\(1\)](#), Summary of the Convention Adoption Process.

9 FAM 502.3-4(D)(8) Issuance of Hague Adoption Certificate or Hague Custody Certificate (Convention Adoptee – Step 7 of 9)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.10; CT:VISA-1178 04-03-2009)

- a. Before issuing the Certificate you must verify that the adoption or grant of legal custody was done in accordance with the Convention and IAA. Issuance of the Article 5 letter constitutes prima facie evidence that the adoption or grant of legal custody was done in accordance with the Convention and IAA. Verification entails taking the following steps:
- (1) Verify that the notification from the country of origin meets the conditions set forth in [9 FAM 502.3-4\(D\)\(7\)](#) paragraph b; and
 - (2) Verify that there is no new derogatory information since issuance of the Article 5 letter that brings into question either the applicant's Convention adoptee classification (see [9 FAM 502.3-4\(C\)\(1\)](#) for factors associated with classification) or compliance with Convention adoption procedures (particularly Convention adoptee processing guidelines summarized in [9 FAM](#)

[502.3-4\(D\)\(1\)](#).

- b. In rare cases where new information arises after the issuance of the Article 5 Letter (e.g., post investigation based on poison pen letter provides credible evidence of fraud or misrepresentation, etc.), immediately notify and consult with CA/VO/L/A, CA/VO/F, and CA/OCS/CI regarding the circumstances of the case. Quick action in such cases is essential, especially when the foreign adoption proceeding has not yet occurred and the information may be relevant to the foreign court.
- (1) If CA/VO concurs, you should expeditiously forward the Form I-800 petition and accompanying documentation to the appropriate USCIS office for action (see [9 FAM 504.2-8](#) and [9 FAM 602.2-1\(F\)](#)) with an explanation of the facts of the case and detailing the suspected non-compliance. Although you may decline to issue a Hague Adoption Certificate (IHAC) or Hague Custody Certificate (IHCC), you are not authorized to deny Form I-800 petitions. In such cases, you should notify the PAP(s) in writing of the return of the petition to USCIS, including a brief explanation of the decision and the name and address of the USCIS office to which the petition has been forwarded.
 - (2) Except in cases in which post believes it to be contrary to the interests of the United States or the parties involved to do so, when new adverse information is discovered after the putative adoption or grant of custody has taken place, and CA/VO has concurred that the new information may warrant denial of the IHAC or IHCC, post should consult with the Central Authority of the country of origin concerning whether the Central Authority is willing to rescind the Article 23 certification (for adoption cases) or other notice (for custody cases). Even if the Central Authority is not willing to do so, post may still decline to issue the IHAC or IHCC, if, with CA/VO concurrence, post concludes that the adoption or grant of custody does not comply with the Convention and the IAA.
 - (3) Post should notify USCIS if the suspected non-compliance is overcome after the forwarding of the Form I-800 petition. If on further review the derogatory information is resolved such that you are able to issue the IHAC or IHCC, you should inform USCIS that the petition now appears clearly approvable and should therefore be returned to post, and you should continue processing the Convention adoptee case.
- c. If you are able to verify Convention and IAA compliance as described [9 FAM 502.3-4\(D\)\(8\)](#) paragraph a, you should then produce a Hague Adoption Certificate (IHAC) or Hague Custody Certificate (IHCC), as appropriate.
- d. Care must be taken to ensure that the appropriate document is issued. If the adoption occurred in the convention country, you will issue a Hague Adoption Certificate (IHAC). If there was a grant of legal custody for purposes of emigration and adoption, you should issue a Hague Custody Certificate (IHCC). Both certificates will be generated by the IVO system only after receipt of appropriate notification from the country of origin. A copy of these documents is provided in [9 FAM 502.3-5\(D\)\(8\)](#) paragraph i.
- e. In the rare case when the child has been adopted in the Convention country by only

one spouse of a married couple, you should produce an IHAC but you must include the following annotation: "One spouse of a married couple adopted the child named above. This child must be adopted by both spouses before he or she will be considered to be an adopted child under 101(b)(1)(G) of the Immigration and Nationality Act, for purposes of naturalization under sections 320 or 322 of that Act." As provided in the DHS rule, the adoption decree or order is sufficient to show release and custody to bring the child to the United States for adoption by the other spouse. Therefore, since you have issued the special IHAC that notes the child does not yet qualify as an adopted child under INA 101(b)(1)(G), the case should otherwise be treated as a custody case, and proper visa classification would be IH4.

- f. After reviewing the printed IHAC or IHCC for accuracy, you should sign and dry seal the document. Then you should attach the IHAC or IHCC to the original adoption decree or custody document, as appropriate. The signed IHAC or IHCC must be scanned into the IVO system, and a copy of IHAC or IHCC and adoption decree or custody document should be made for the visa package.
- g. Adoptive parents and their ASP(s) may request and receive several copies of the IHAC or IHCC, as the document may be required for many administrative tasks in the United States. For any questions concerning the issuance of copies of the Hague Certificate, contact CA/OCS/CI and CA/VO/F.
- h. For cases in which the Convention country granted the adoptive parent(s) legal custody for the purposes of emigration and adoption, the adoptive parent(s) will have to present the Hague Custody Certificate to the State court in the U.S. to obtain a final adoption decree in the United States. Once the adoption in the U.S. is completed, the adoptive parent(s) may request a certification from the Secretary of State that the adoption was completed in accordance with the Convention and the IAA if they need it to obtain recognition of the adoption in other Convention states. Adoptive parents may request this certification by following the instructions on the State Department website (see 22 CFR 97.5 for additional details on this process). It is not anticipated, however, that there will be any need for this certification in most cases, since the state court adoption certificate will be recognized throughout the United States and the Department has no specific information to indicate that United States adoption orders are not normally recognized abroad.

(Previous location: 9 FAM 42.21 Exhibit IX; CT:VISA-1773 11-16-2011)

i. Examples of Hague Certificates:

(1) Hague Adoption Certificate (IHAC):

UNITED STATES DEPARTMENT OF STATE OFFICE OF THE CENTRAL AUTHORITY		
HAGUE ADOPTION CERTIFICATE IMMIGRATING CHILD		
<p><i>The Secretary of State, through the</i></p> <p>_____ <small>Secretary — Chairperson — Consulate</small></p> <p><i>of the United States of America in</i></p> <p>_____ <small>CITY — COUNTRY</small></p> <p><i>certifies that the adoption of</i></p> <p>_____ <small>CHILD'S NAME</small></p> <p><i>has been granted pursuant to the Hague Convention on Protection of Children and Co-operation In Respect of Intercountry Adoption and the Intercountry Adoption Act of 2000 (the IAA). This adoption shall be recognized as a final valid adoption for purposes of all Federal, State, and local laws of the United States.</i></p> <p>_____ <small>Printed Name/Title</small> _____ <small>Signature</small></p> <p>_____ <small>Event Name Adoption Certificate Issued</small></p>		<p>CHILD'S GENDER: FEMALE <input type="checkbox"/> MALE <input type="checkbox"/></p> <p>DATE AND PLACE OF BIRTH:</p> <p>_____ <small>Month — Day — Year</small></p> <p>_____ <small>CITY — STATE — COUNTRY</small></p> <p>_____ <small>ADOPTIVE HABIT</small></p> <p>_____ <small>ADOPTIVE HABIT</small></p> <p>DATE AND PLACE OF ADOPTION:</p> <p>_____ <small>Month — Day — Year</small></p> <p>_____ <small>CITY — STATE — COUNTRY</small></p> <p>_____ <small>ISS.</small></p>
<small>EXHIBIT # _____ THE RECORDS UNDERLYING THIS CERTIFICATE ARE RETAINED FOR 75 YEARS AND THE INFORMATION MAY BE VIEWED BY CONTACTING THE U.S. DEPARTMENT OF STATE. THIS IS NOT A CUSTOMER DOCUMENT</small>		

(2) **Hague Custody Certificate (IHCC):**

UNITED STATES DEPARTMENT OF STATE OFFICE OF THE CENTRAL AUTHORITY		
HAGUE CUSTODY CERTIFICATE IMMIGRATING CHILD		
<p><i>The Secretary of State, through the</i></p> <p>_____ <small>Secretary — Chairperson — Consulate</small></p> <p><i>of the United States of America in</i></p> <p>_____ <small>CITY — COUNTRY</small></p> <p><i>certifies that legal custody for the purposes of emigration and adoption of</i></p> <p>_____ <small>CHILD'S NAME</small></p> <p><i>has been granted pursuant to the Hague Convention on Protection of Children and Co-operation In Respect of Intercountry Adoption and the Intercountry Adoption Act of 2000 (the IAA). A U.S. State court must be provided with this certificate before entering an order declaring the adoption final.</i></p> <p>_____ <small>Printed Name/Title</small> _____ <small>Signature</small></p> <p>_____ <small>Event Name Custody Certificate Issued</small></p>		<p>CHILD'S GENDER: FEMALE <input type="checkbox"/> MALE <input type="checkbox"/></p> <p>DATE AND PLACE OF BIRTH:</p> <p>_____ <small>Month — Day — Year</small></p> <p>_____ <small>CITY — STATE — COUNTRY</small></p> <p>_____ <small>PREVIOUS ADOPTIVE HABIT</small></p> <p>_____ <small>PREVIOUS ADOPTIVE HABIT</small></p> <p>DATE AND PLACE OF CUSTODY:</p> <p>_____ <small>Month — Day — Year</small></p> <p>_____ <small>COUNTRY</small></p> <p>_____ <small>ISS.</small></p>
<small>EXHIBIT # _____ THE RECORDS UNDERLYING THIS CERTIFICATE ARE RETAINED FOR 75 YEARS AND THE INFORMATION MAY BE VIEWED BY CONTACTING THE U.S. DEPARTMENT OF STATE. THIS IS NOT A CUSTOMER DOCUMENT</small>		

j. For further information, see [9 FAM 502.3-4\(D\)\(1\)](#), Summary of the Convention

Adoption Process.

9 FAM 502.3-4(D)(9) Final Adjudication of Form I-800 Petition (Convention Adoptee – Step 8 of 9)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.11; CT:VISA-946 04-11-2008)

- a. Before adjudication of the visa application, you must complete final adjudication of the Form I-800 petition. Note that consular officers will always do final approval of Form I-800 petitions handled overseas; only if the Form I-800 is found to be not clearly approvable would the petition be returned to USCIS for action.
- b. Final adjudication of the Form I-800 cannot take place until the adoptive parent(s) or guardian(s) of the child have complied with all remaining Form I-800 petition requirements. A copy of the adoption or custody decree must be submitted. In addition, if the child will be adopted in the United States, the PAP(s) must submit the following, if not already provided before the provisional approval (because, for example, the PAP(s) thought the child would be adopted abroad, but that plan has changed so that the child will now be adopted in the United States):
 - (1) A statement from the primary provider, signed under penalty of perjury under U.S. law, summarizing the plan under 22 CFR 96.50 for monitoring of the placement until the adoption is finalized in the United States; and
 - (2) A written description of the pre-adoption requirements that apply to adoptions in the State of the child's proposed residence, evidence of compliance with those requirements that can be met before the child arrives in the United States, and a description of when and how the PAP(s) intend to complete the child's adoption, including a citation to the relevant State statutes or regulations and the details of how the PAP(s) intend to comply with any pre-adoption requirements that can be satisfied only after the child arrives in the United States.
- c. Since issuance of the Hague Adoption Certificate (IHAC) or Hague Custody Certificate (IHCC) entails verification and certification of compliance with the IAA, and, correspondingly, its amendments to the INA 101(b)(1)(G) and the Convention, no further review of Convention adoptee classification is required before granting final approval of the Form I-800. Annotate approved Form I-800 petitions at this final stage "Final approval," with the date and your name, title, and post.
- d. In the rare instances where you could not issue a Hague Convention Certificate due to previously unknown reasons—e.g., fraud, invalid consent, illicit payment—discovered after issuance of the Article 5 letter, you must send the petition to USCIS as not clearly approvable. In so doing, you should base this decision on the underlying flaw in the adoption (i.e., invalid consent), instead of the lack of a Hague Convention Certificate.

9 FAM 502.3-4(D)(10) Adjudication of Convention Adoptee Visa

Application (Step 9 of 9)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.12; CT:VISA-2145 07-22-2014)

- a. **Visa Application:** Adjudication of the Convention adoptee Form DS-260, Immigrant Visa Electronic Application, or Form DS-160, Online Nonimmigrant Visa Application, for a child who is the beneficiary of a Form I-800 petition may not take place until final approval of the Form I-800 petition has occurred and CLASS and biometric checks have been completed.
- b. Before the adjudication of the visa, the adoptive parents or guardians of the child must comply with all remaining visa application requirements:
 - (1) If not previously provided, the Convention adoptee's passport and results of the medical exam with a panel physician must be presented to the consular officer (a medical exam is not required in NIV cases unless the consular officer has reason to believe the child has a medical ineligibility); and
 - (2) The Convention adoptee must appear in person before a consular officer, and, if applicable, have biovisa fingerscanning done.
- c. As soon as all visa application materials and information outlined above in [9 FAM 502.3-4\(D\)\(10\)](#) paragraphs a and b have been provided, final adjudication of the Convention adoptee petition and adjudication of the visa application should be completed. Approval of the Convention adoptee visa application and issuance of the visa should take place if:
 - (1) Namecheck and biovisa results reveal no ineligibilities;
 - (2) Any ineligibilities that were identified in the initial review of the visa application have been overcome; and
 - (3) No new derogatory information with regard to ineligibilities has developed since the Article 5 Letter was done.
- d. If you find that the Convention adoptee is ineligible for a visa, the case should be handled according to the following:
 - (1) If the ineligibility was identified when the Form I-800 petition was filed or during the provisional adjudication of the visa application, and a waiver request was submitted to USCIS and subsequently approved (see [9 FAM 502.3-4\(D\)\(5\)](#) paragraph d(6)), refuse the case under the appropriate ground of ineligibility and then note the waiver in IVO (or NIV, as appropriate). Issue a visa that contains an annotation indicating the waiver.
 - (2) If the ineligibility is identified during final adjudication of the visa application, you should refuse the case under INA 221(g) and seek an advisory opinion from CA/VO/L/A, which will consult with CA/OCS/CI and L/CA. If, after receiving the advisory opinion, you refuse the case on substantive ineligibility grounds, you must explain to the applicant, adoptive parent(s), or guardian(s) orally and in writing the reason for the refusal and possible remedies. Post should immediately consult with and notify CA/VO/F and CA/OCS/CI about

such cases in order to ensure appropriate follow-up on the case (coordination with USCIS, notification of the Central Authority, etc.).

- (3) In cases described in [9 FAM 502.3-4\(D\)\(10\)](#) paragraph d(2) where a waiver is possible, the adoptive parent(s) or guardian(s) should be instructed to submit a waiver request to USCIS. If the waiver is subsequently granted, issue a visa that contains an annotation indicating the waiver.

e. Visa Issuance:

- (1) Post should produce the Convention adoptee immigrant visa per standard procedures (see [9 FAM 504.10](#)). Include a copy of the Hague Adoption Certificate (IHAC) or Hague Custody Certificate (IHCC), and a copy of the adoption decree or custody order as part of the packet, immediately following the Form I-800 petition. Per [9 FAM 502.3-4\(D\)\(11\)](#) paragraph b, copy and retain packet documents until scanned into IVO. If the adopted child will be traveling to the United States in B-2 NIV classification (see [9 FAM 502.3-4\(C\)\(9\)](#) paragraph d(3)), post should similarly provide such documents with the visa. Particular care should be paid to ensuring proper classification of the visa as an IH3, IH4, or B-2, per [9 FAM 502.3-4\(C\)\(9\)](#).
 - (2) Per standard IV validity guidelines in [9 FAM 504.10-2\(A\)](#), you should generally issue IVs for Convention adoptees with a six-month validity period. However, you may issue an IV for a longer period (not to exceed three years) to a child legally adopted by a U.S. citizen and spouse while they are serving abroad in the U.S. armed forces or employed abroad by the U.S. Government to accommodate adoptive parents' intended return to the United States upon completion of the military service or employment.
 - (3) When issuing a visa to adoptive parent(s) (or those traveling with the child), inform them of Child Citizenship Act implications of the type of visa issued per [9 FAM 502.3-4\(C\)\(9\)](#) paragraph d and refer them to the Department and USCIS websites for additional information.
- f. For further information, see [9 FAM 502.3-4\(D\)\(1\)](#), Summary of the Convention Adoption Process.

9 FAM 502.3-4(D)(11) Disposition of Convention Adoptee Case Documents

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N14.14; CT:VISA-1743 10-19-2011)

- a. **Convention Adoptee Recordkeeping:** In accordance with the IAA, the Department or DHS must preserve for 75 years all Convention adoptee visa documents or data that are Convention records. As a result, instructions for proper handling of supporting documents in Convention adoptee cases vary somewhat from standard IV case file procedures. [9 FAM 102.3-1](#) provides definitions related to recordkeeping requirements, and [9 FAM 502.3-4\(D\)\(11\)](#) paragraph b provides instructions for handling Convention adoptee issued and refused case files.

Handling inquiries and requests for access to Convention adoptee records is addressed in [9 FAM 502.3-4\(D\)\(11\)](#) paragraph c.

b. Handling Convention Adoptee Case Files:

- (1) **Issued Case Files:** In the great majority of issued Convention adoptee cases, Convention records generated or received by consular officers or the Department that are not already in electronic form will all be scanned into IVO or NIV, as appropriate. The Department will need to retain these electronic Convention adoptee case files for 75 years. Examples of such case file contents could include emails with case-related guidance, or case-specific cables. Any classified documents would be retained separate from IVO records, in paper or electronic form. In general, posts should retain any paper classified files at post; posts with limited space may contact CA/VO/F regarding alternative storage options.
- (2) **Refused Case Files:** The same retention requirements apply to refused case files as to issued case files, for no less than 75 years since the first record in the file was obtained or created; posts with limited space may contact CA/VO/F regarding alternative storage options.
 - (a) In very rare cases where the grounds for refusal would require a non-Convention adoptee IV Visa Refusal File to be kept for more than 75 years (refusal grounds 1A1, 1A3, 1A4, 2, 3, 6C, 6E, 6F, 8, 9A if the individual was convicted of an aggravated felony, 9C, 10D, 10E, 222g, 212f if the presidential proclamation is not rescinded before 75 years pass, or Title IV of the Helms-Burton Act—see Record Disposition Schedule), retain the Convention adoptee case file for the period specified in the Record Disposition Schedule.
 - (b) For example, if a Convention adoptee case were refused under 212(a)(3) grounds, the file would be retained until the applicant reaches 100 years of age; a Convention adoptee case refused under 221(g) grounds would be retained until 75 years have passed since the first record in the file was obtained or created.
- (3) **Automated Systems:** IVO, NIV and ATS records on Convention adoptee cases will automatically be retained for 75 years; no consular officer action is required to preserve these Convention records once any paper documents have been scanned into IVO or NIV.

c. Requests for Convention Adoptee Records: These disposition instructions for Convention records are not intended to change procedures for accessing such records. As with other records retained by the Department or DHS, access to Convention records is governed by the Freedom of Information Act and the Privacy Act (see [9 FAM 601.6](#) for additional information). State laws continue to govern access to adoption records held by adoption service providers or state government entities.

d. For further information, see [9 FAM 502.3-4\(D\)\(1\)](#), Summary of the Convention Adoption Process.

9 FAM 502.3-5 ADULT SIBLING OF CONVENTION ADOPTEE

9 FAM 502.3-5(A) Related Statutory and Regulatory Authorities

9 FAM 502.3-5(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(b)(1)(G) (8 U.S.C. 1101(b)(1)(G)); INA 320 (8 U.S.C. 1431); INA 322 (8 U.S.C. 1433).

9 FAM 502.3-5(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.24(n).

9 FAM 502.3-5(A)(3) Public Law

(CT:VISA-1; 11-18-2015)

International Adoption Simplification Act of 2010, Public Law 111-287; Child Citizenship Act of 2000, Public Law 106-395.

9 FAM 502.3-5(B) IR2 Classification for Adult Siblings of Convention Adoptee

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N15.1 a (partial)); CT:VISA-2005 06-26-2013)

- a. **Adult Sibling Exception Defined:** The International Adoption Simplification Act of 2010 (Public Law 111-287) amended INA 101(b)(1)(G) to allow the biological sibling of a child from a country party to the Hague Adoption Convention who is adopted abroad or coming to the United States for adoption to be classifiable as an IR2 child if the following conditions are met:
- (1) The beneficiary turned 18 on or after April 1, 2008;
 - (2) The petitioning parents have an approved, valid Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country at time of filing Form I-800; and
 - (3) DHS has approved a Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative, that is filed with USCIS no later than November 30, 2012. See [9 FAM 502.3-5\(C\)](#) paragraph a for additional information on the I-800 petition and required supporting documents for Adult Sibling Exception beneficiary cases.

(Previous location: 9 FAM 42.21 N15.2; CT:VISA-2005 06-26-2013)

b. "Competent Authority" Defined for Adult Sibling Exception Beneficiaries Not Issued Final Adoption:

- (1) INA 101(b)(1)(G)(i)(V)(aa) requires that, in situations where a full and final adoption has not been granted at the time of petition approval, the competent authority of the Convention country of origin must approve the child's emigration to the United States for the purpose of adoption by the petitioning prospective adoptive parent(s). Though beneficiaries of the Adult Sibling Exception are neither children nor Convention Adoptees, the International Adoption Simplification Act does not exempt Adult Sibling Exception beneficiaries from satisfying this requirement.
- (2) In many Convention countries, it may not be legally possible to conclude a legal adoption or obtain a guardianship order for an adoptee age 18 or older. Furthermore, Central Authorities may not be willing or able to issue a statement approving such an adoptee's adoption overseas.
- (3) In such situations, 22 CFR 42.24(n)(2) designates as a competent authority the passport-issuing authority of the country of origin. An Adult Sibling Exception beneficiary in possession of a passport that meets the requirements of INA 101(a)(30) may be considered to have satisfied INA 101(b)(1)(G)(i)(V)(aa).

c. Classification of Adult Sibling Exception Beneficiaries:

(Previous location: 9 FAM 42.21 N15.4; CT:VISA-2005 06-26-2013)

- (1) Although the Adult Sibling Exception falls under INA 101(b)(1)(G), which covers Hague Convention Adoptees, a beneficiary of the provision is age 18 or older and therefore does not legally qualify as a Convention Adoptee. For this reason an Adult Sibling Exception beneficiary is classifiable as an IR2 child.

(Previous location: 9 FAM 42.21 N15.5; CT:VISA-2224 11-24-2014)

- (2) The Child Citizenship Act of 2000 (Public Law 106-395), which amended INA 320, does not apply to beneficiaries of the Adult Sibling Exception, since such individuals are age 18 or older. Consequently such beneficiaries will not automatically obtain U.S. citizenship upon their admission to the United States and therefore must provide Form I-864, Affidavit of Support.

9 FAM 502.3-5(C) Processing Procedures for Adult Sibling Exception Cases

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.21 N15.6; CT:VISA-2005 06-26-2013)

a. Processing Overview:

- (1) Petitioners file Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative, with USCIS;

- (2) Form I-800 is fully adjudicated by USCIS's National Benefits Center, and if approved, is marked as "IR2 IASA Adult Sibling Exception to 101(b)(1)(G)(iii)(III)" in the Provisional Action Block and forwarded to the National Visa Center;
- (3) The National Visa Center forwards the case to post;
- (4) Post verifies the beneficiary's claim to classification under the Adult Sibling Exception; and
- (5) Post annotates the visa foil "IASA sibling exception to 101(b)(1)(G)(iii)(III)."

(Previous location: 9 FAM 42.21 N15.3; CT:VISA-2005 06-26-2013; 9 FAM 42.21 N15.1 (3a, b and c)); CT:VISA-2005 06-26-2013)

b. Petitions:

- (1) **USCIS Retains Full Petition Adjudication Authority:** Unlike petitions for Convention Adoptees, the State Department has no role in adjudicating Form I-800 petitions for beneficiaries of the Adult Sibling Exception. Such petitions will not be provisionally approved by USCIS and sent to post for final approval, but will instead either be forwarded to post as approved or denied by USCIS and therefore not forwarded to post.
- (2) **I-800 Petition Supporting Documents:** Supporting evidence would include:
 - (a) A full and final adoption is issued by a competent authority to the petitioning U.S. citizen parent(s); or
 - (b) The prospective adoptive parent(s) demonstrate they are able to complete the adoption of the beneficiary in the United States by providing evidence that the pre-adoption requirements under the law of the state where they will complete the adoption permit adoption of a person age 18 or older; and
 - (c) Evidence that the beneficiary can lawfully travel from the country of origin for adoption to the United States. This evidence could consist of one or more of the following documents:
 - (i) A passport issued to the beneficiary by the passport issuing authority of the country of origin(see [9 FAM 502.3-5\(B\)](#) paragraph b); or
 - (ii) A court order of legal guardianship is issued in the country of origin of the beneficiary to the petitioning U.S. citizen prospective adoptive parent(s) permitting the beneficiary to travel overseas for the purpose of completing a legal adoption; or
 - (iii) A statement by the Central Authority of the country of origin approving the beneficiary's adoption overseas.

9 FAM 502.4

EMPLOYMENT-BASED IV CLASSIFICATIONS

(CT:VISA-291; 03-06-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 502.4-1 EMPLOYMENT-BASED IV CLASSIFICATIONS OVERVIEW

(CT:VISA-192; 09-28-2016)

Every fiscal year, at least 140,000 employment-based immigrant visas are made available to qualified applicants under the provisions of U.S. immigration law. Employment-based IVs are divided into five preference categories. Certain spouses and children may accompany or follow-to-join employment-based immigrants. See [9 FAM 502.5](#) for Fourth Preference IV Classification.

9 FAM 502.4-2 EMPLOYMENT FIRST PREFERENCE (PRIORITY WORKER) IV CLASSIFICATION

9 FAM 502.4-2(A) Related Statutory and Regulatory Authority

9 FAM 502.4-2(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(44) (8 U.S.C. 1101(a)(44)); INA 203(b) (8 U.S.C. 1153(b)).

9 FAM 502.4-2(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 204.5(h)(2)-(3); 22 CFR 42.32(a).

9 FAM 502.4-2(A)(3) Public Law

(CT:VISA-1; 11-18-2015)

Visa Waiver Permanent Program Act, Public Law 106-396, Sec. 302.

9 FAM 502.4-2(B) Priority Workers – Introduction (Employment First Preference IV Classification)

(CT:VISA-192; 09-28-2016)

- a. **Defining Priority Workers:** The statute designates the following aliens as “priority workers” who may be entitled to status as employment-based first preference applicants:
- (1) Aliens with extraordinary ability (see [9 FAM 502.4-2\(C\)](#) below);
 - (2) Outstanding professors and researchers (see [9 FAM 502.4-2\(D\)](#) below); and
 - (3) Certain multinational executives and managers (see [9 FAM 502.4-2\(E\)](#) below).
- b. **Petitions for Priority Workers:**
- (1) DHS must approve petitions in all of the above categories.
 - (2) Aliens of extraordinary ability may file petitions with DHS on their own behalf. Employer-sponsored immigrants must be beneficiaries of approved petitions filed by the employer.
 - (3) An approved petition is prima facie evidence that the alien qualifies for priority worker status. Your review of the applicant's qualifications in one of the categories above should focus on confirming the truthfulness of the information contained in the petition and identifying potential fraud, not on re-adjudicating the petition. For additional guidance on when to return a petition to DHS for potential revocation, contact your country desk officer in VO/F.
- c. **Spouse and Children of Priority Workers:** The spouse or the child of a marriage which existed at the time of the principal alien’s admission into the United States is entitled to derivative status and may accompany or follow to join the principal applicant. A spouse or child acquired subsequent to the principal alien’s admission is not entitled to derivative status. Further information regarding following-to-join eligibility of derivative spouse and children is available at [9 FAM 502.1-1\(C\)\(2\)](#).

9 FAM 502.4-2(C) Aliens With Extraordinary Ability (Employment First Preference IV Classification)

(CT:VISA-192; 09-28-2016)

- a. **Defining “Extraordinary Ability”:**
- (1) To be considered as an alien with extraordinary ability, the alien must have sustained national or international acclaim. The alien’s accomplishments in the field of science, art, education, business, or athletics must be recognized in the form of extensive documentation. The alien must be seeking to enter the United States to continue work in the field, and the entry of such alien must substantially benefit prospectively the United States.
 - (2) 8 CFR 204.5(h)(2) defines “extraordinary ability” as follows: “Extraordinary ability means a level of expertise indicating that the individual is one of that small percentage who have risen to the top of the field of endeavor.”
- b. **Evidence of Extraordinary Ability:**

- (1) DHS regulations (8 CFR 204.5(h)(3)) state the documentary evidence that is to be submitted along with the petition. Such evidence must include:
 - (a) Evidence of a one-time achievement (that is a major, internationally recognized award); or
 - (b) At least three of the following:
 - (i) Evidence of receipt of a lesser nationally or internationally recognized prize or award for excellence in the field of endeavor;
 - (ii) Evidence of membership in associations which require outstanding achievements of their members, as judged by recognized experts;
 - (iii) Published material in professional or major trade publications or major media about the alien's work;
 - (iv) Evidence of participation on a panel, or individually, as a judge of the work of others in the field;
 - (v) Evidence of original scientific, scholarly, artistic, or business-related contributions of major significance;
 - (vi) Evidence of authorship of scholarly articles in professional journals or other major media;
 - (vii) Evidence of the display of the alien's work in exhibitions or showcases;
 - (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments having a distinguished reputation;
 - (ix) Evidence of high salary or high remuneration in relation to others in the field; or
 - (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.
 - (2) If the above standards do not readily apply, the petitioner may submit comparable evidence to establish eligibility.
- c. **Labor Certification/Job Offer (Aliens of Extraordinary Ability):** Although no offer of employment (including a labor certification) is required, the alien must include with the petition convincing evidence that he or she is coming to continue work in the area of expertise. Evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments, such as contracts, or a statement from the beneficiary detailing plans for continuing work in the United States.

9 FAM 502.4-2(D) Outstanding Professors and Researchers (Employment First Preference IV Classification)

(CT:VISA-97; 03-21-2016)

- a. **Defining "Outstanding Professors and Researchers":** An alien may qualify as a priority worker outstanding professor or researcher if the alien:
- (1) Is recognized internationally as outstanding in a specific academic area;
 - (2) Has at least three years of experience in teaching or research in the academic area; and
 - (3) Has the required offer of employment (see [9 FAM 502.4-2\(D\)](#) paragraph c below).
- b. **Evidence of Outstanding Achievement:** The Department of Homeland Security regulations (8 CFR 204.5(i)(3)) indicate the evidence required in submitting a petition for classification as an outstanding professor or researcher. Such evidence must include evidence of international recognition as outstanding in the specific academic area.
- (1) Generally, this evidence must consist of at least two of the following:
 - (a) Documentation of receipt of major international prizes or awards for outstanding achievement in the academic area;
 - (b) Documentation of the alien's membership in associations in the academic field, which require outstanding achievements of their members;
 - (c) Published material in professional publications written by others about the alien's work;
 - (d) Evidence of participation on a panel, or individually, as the judge of the work of others in the same, or an allied, academic field;
 - (e) Evidence of original scientific or scholarly research contributions; or
 - (f) Evidence of authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.
 - (2) If the above standards do not readily apply, the petitioner may submit comparable evidence to establish eligibility.
- c. **Labor Certification/Job Offer (Outstanding Professors and Researchers):** Aliens coming to the United States as outstanding researchers or professors do not require labor certification. However, such aliens must have a letter from a(n):
- (1) U.S. university or institution of higher learning offering the alien a tenured or tenure-track teaching or research position in the academic field; or
 - (2) Department, division, or institute of a private or non-profit employer offering the alien a comparable research position in the academic field. The department must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in the academic field.

9 FAM 502.4-2(E) Certain Multinational Executives and

Managers (Employment First Preference IV Classification)

(CT:VISA-1; 11-18-2015)

- a. **Defining "Multinational Executives and Managers"**: An alien may qualify as a priority worker multinational executive or manager if, during the three year period preceding the time of the alien's application for classification and admission into the United States:
- (1) The alien has been employed for at least one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof; or
 - (2) The alien has been an employee of INTELSTAT or any successor or separated entity of INTELSTAT and has maintained lawful nonimmigrant status as a G-4 for at least one year; and
 - (3) The alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.
- b. **Defining Other Terms Related to Multinational Executives and Managers:**
- (1) **Defining "Affiliate"**: The term "affiliate" as used in this section means:
 - (a) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
 - (b) One of two legal entities entirely owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity; or
 - (c) In the case of a partnership that is organized in the United States to provide accounting services, along with managerial and/or consulting services, and markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services is considered to be an affiliate of the U.S. partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the U.S. partnership is also a member.
 - (2) **Defining "Doing Business"**: "Doing business" means the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office.
 - (3) **Defining "Executive Capacity"**: The term "executive capacity" as defined in INA 101(a)(44)(B) of the Immigration and Nationality Act means an assignment within an organization in which the employee primarily:
 - (a) Directs the management of the organization or a major component or function of the organization;

- (b) Establishes the goals and policies of the organization, component, or function;
 - (c) Exercises wide latitude in discretionary decision-making; and
 - (d) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.
- (4) **Defining "Managerial Capacity":**
- (a) "Managerial capacity" as defined in INA 101(a)(44)(A) means an assignment within an organization in which the employee primarily:
 - (i) Manages the organization, or a department, subdivision, function, or component of the organization;
 - (ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
 - (iii) If another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organization hierarchy or with respect to the function managed; and
 - (iv) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.
 - (b) A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of supervisory responsibilities unless the employees supervised are professional.
- (5) **Defining "Multinational":** "Multinational" means that the qualifying entity, or its affiliate or subsidiary, conducts business in two or more countries, one of which is the United States.
- (6) **Defining "Subsidiary":** "Subsidiary" is defined as a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- c. **Labor Certification/Job Offer (Multinational Executives and Managers):** No labor certification is required for aliens in this classification. However, the prospective U.S. employer must furnish a job offer in the form of a statement which indicates that the alien will be employed in the United States in a managerial or executive capacity. The letter must clearly describe the duties to be performed.

9 FAM 502.4-3 EMPLOYMENT SECOND PREFERENCE IV CLASSIFICATION

9 FAM 502.4-3(A) Related Statutory and Regulatory Authorities

9 FAM 502.4-3(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 203(b) (8 U.S.C. 1153(b)); INA 203(d) (8 U.S.C. 1152(d)).

9 FAM 502.4-3(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.32(b).

9 FAM 502.4-3(A)(3) Public Law

(CT:VISA-1; 11-18-2015)

Nursing Relief Act, Public Law 106-95, sec. 5.

9 FAM 502.4-3(B) Professionals Holding Advanced Degrees (Employment Second Preference IV Classification)

(CT:VISA-1; 11-18-2015)

- a. **Qualification for Classification:** An alien may qualify as an employment-based second preference immigrant if the alien is a member of the professions holding an advanced degree or the equivalent. The alien must be the beneficiary of a petition approved by the Department of Homeland Security. (See [9 FAM 502.4-3\(C\)](#).) See [9 FAM 102.3-1](#) for definitions of "advanced degree," "master's degree equivalent," "doctorate degree equivalent," and "profession."
- b. **Evidence of Professional Status, Advanced Degrees:** Evidence to establish an alien as a member of the professions holding an advanced degree should be in the form of the following:
 - (1) An official academic record showing possession of an advanced degree (or foreign equivalent); or
 - (2) An official academic record showing possession of a baccalaureate degree (or foreign equivalent); and
 - (3) A letter from current or former employer(s) showing at least five years of progressive post-baccalaureate experience in the specialty.

9 FAM 502.4-3(C) Aliens of Exceptional Ability (Employment Second Preference IV Classification)

(CT:VISA-1; 11-18-2015)

a. Defining Exceptional Ability:

- (1) An alien may qualify as an employment-based second preference immigrant if the alien has exceptional ability in the sciences, arts, or business, which will substantially benefit prospectively the national economy, cultural, or educational interests, or welfare of the United States. The alien's services in the sciences, arts, or business must be sought by an employer in the United States.
- (2) "Exceptional ability" has been defined as something more than what is usual, ordinary, or common, and requires some rare or unusual talent, or unique or extraordinary ability in a calling which, of itself, requires that talent or skill. Individuals must have attained a status in their field wherein contemporaries recognize exceptional ability.

b. Evidence of Exceptional Ability:

- (1) The possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning or a license to practice, or certification for a particular profession or occupation, should not, by itself, be considered sufficient evidence of such exceptional ability.
- (2) To establish evidence of exceptional ability, the petition must be accompanied by at least three of the following:
 - (a) An official academic record showing a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
 - (b) Letter(s) from current or former employer(s) showing evidence the alien has at least ten years of full-time experience in the occupation;
 - (c) A license to practice the profession or certification for a particular profession or occupation;
 - (d) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
 - (e) Evidence of membership in professional associations;
 - (f) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations; or
 - (g) Comparable evidence to establish the beneficiary's eligibility.

9 FAM 502.4-3(D) Petitions (Employment Second Preference IV Classification)

(CT:VISA-1; 11-18-2015)

- a. **E2 Petitions - Who May File:** Any U.S. employer may file a petition for classification of an alien under INA 203(b)(2) as an alien who is a member of the professions holding an advanced degree or an alien of exceptional ability in the

sciences, arts, or business. If an alien is claiming exceptional ability and seeking an exemption from the job offer requirement under INA 203(b)(2)(B), then the alien, or anyone on the alien's behalf, may file the petition.

- b. **E2 Petitions - Where to File:** Petitions must be filed with the appropriate DHS service center in accordance with USCIS instructions for the Form I-140, Immigrant Petition for Alien Worker.
- c. **E2 Petitions – Disposition of Petition:** If the beneficiary is outside of the United States, or in the United States but will apply abroad, DHS will forward the approved petition to the National Visa Center.

9 FAM 502.4-3(E) Labor Certification/Job Offer (Employment Second Preference IV Classification)

(CT:VISA-1; 11-18-2015)

- a. **General Requirement:** Although a labor certification is generally required for the second preference category, a job offer from a U.S. employer, and thus a labor certification, may be waived if it has been determined that such waiver is in the national interest.
- b. **National Interest Waivers of Labor Certification/Job Offer:**
 - (1) **National Interest:** A waiver is considered to be in the national interest if the petitioner can establish, based on Matter of In Re: New York State Department of Transportation, 22 I&N Dec. 215 (Comm. 1998) that:
 - (a) The alien must seek employment in an area that has substantial intrinsic merit;
 - (b) The waiver request is not based solely on local labor shortage, but rather the proposed benefit to be provided will be national in scope; and
 - (c) It must be demonstrated that the national interest would be adversely affected if the employer is required to proceed with the labor certification process.
 - (2) **Certain Physicians:** Section 5 of Public Law 106-95, the Nursing Relief Act, establishes special rules for national interest waivers filed by or on behalf of physicians who are willing to work in an area of the United States designated by the Secretary of Health and Human Services (HHS) as having a shortage of health care professionals or at facilities operated by the Department of Veterans Affairs (VA). While it is unlikely that an alien applying abroad will have completed the necessary licensing and certification requirements, a physician living abroad who has met the necessary requirements may seek a national interest waiver of the job offer requirement. The legislation directs the Secretary of the Department of Homeland Security to grant a national interest waiver of the job offer requirement to any alien physician who:
 - (a) Agrees to work full-time in a clinical practice for the period fixed by the statute (generally five years; three if the petition was filed prior to

November 1, 1998);

- (b) Will provide service in HHS Medically Underserved Areas, Primary Medical Health Professional Shortage Areas, or Mental Health Professional Shortage Areas; or a VA facility; and
- (c) Provides a determination from HHS, VA, or another federal agency having knowledge of the physician's qualifications that the physician's work is in the public interest.

9 FAM 502.4-3(F) Spouse and Children (Employment Second Preference IV Classification)

(CT:VISA-1; 11-18-2015)

The spouse or the child of a marriage which existed at the time of the principal alien's admission into the United States is entitled to derivative status and may accompany or follow to join the principal applicant. A spouse or child acquired subsequent to the principal alien's admission is not entitled to derivative status. Further information regarding following-to-join eligibility of derivative spouse and children is available at [9 FAM 502.1-1\(C\)\(2\)](#).

9 FAM 502.4-4 EMPLOYMENT THIRD PREFERENCE IV CLASSIFICATION

9 FAM 502.4-4(A) Related Statutory and Regulatory Authority

9 FAM 502.4-4(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(32) (8 U.S.C. 1101(a)(32)); INA 203(b)(3) (8 U.S.C. 1153(b)(3)); INA 203(d) (8 U.S.C. 1153(d)); INA 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)).

9 FAM 502.4-4(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.32(c); 8 CFR 204.5(l)(2).

9 FAM 502.4-4(A)(3) Public Law

(CT:VISA-1; 11-18-2015)

District of Columbia Appropriations, Fiscal Year 1998, Public Law 105-100, sec. 203(e)(1).

9 FAM 502.4-4(B) Employment Third Preference IV Classifications

(CT:VISA-192; 09-28-2016)

- a. **Defining "Skilled Worker":** DHS regulations 8 CFR 204.5(l)(2) define a "skilled worker" as one who, at the time of petitioning, is capable of performing skilled labor (requiring at least two years training or experience) not of a temporary or seasonal nature, and for which qualified workers are not available in the United States. Relevant post-secondary education may be considered as training for the purposes of this provision. (See INA 203(b)(3)(A)(i).)
- b. **Defining "Profession":** INA 101(a)(32) defines "profession" as including, "but not limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." DHS has also held that an occupation may generally be considered to be a "profession" within the meaning of INA 101(a)(32) if the attainment of a baccalaureate degree is usually the minimum requirement for entry into that occupation.
- c. **Defining "Other Worker":** DHS regulations define "other worker" to mean a qualified alien capable, at the time of petitioning, of performing unskilled labor, requiring less than two years training, not of a temporary or seasonal nature, and for which there are no qualified workers available in the United States.

9 FAM 502.4-4(C) Employment Third Preference Labor Certifications, Petitions

(CT:VISA-1; 11-18-2015)

- a. **Labor Certification/Petition Requirement:** You must not issue an immigrant visa to any third preference employment-based immigrant until you are in receipt of an approved petition accompanied by a labor certification granted by the Department of Labor (see the Foreign Labor Certification Web Site), evidence that the alien's occupation is on the Department of Labor's Schedule A (see 20 CFR 656.15), or evidence to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program.
- b. **Significance of Approved Preference Petition:** A certification under INA 212(a)(5)(A) is included in the approval of the preference petition. The Department of Homeland Security is responsible for determining the eligibility of an alien for preference immigrant status. You should not re-adjudicate the petition, but rather should review the petition to determine whether:
 - (1) The supporting evidence is consistent with the approval;
 - (2) There was any misrepresentation of a material fact; and
 - (3) The alien meets the requirements of the employment offered.

9 FAM 502.4-4(D) Spouse and Children of Employment

Third Preference Cases

(CT:VISA-1; 11-18-2015)

The spouse, or the child of a marriage which existed at the time of the principal alien's admission into the United States, is entitled to derivative status and may accompany or follow to join the principal applicant. A spouse or child acquired subsequent to the principal alien's admission is not entitled to derivative status. Further information regarding following-to-join eligibility of derivative spouse and children is available at [9 FAM 502.1-1\(C\)\(2\)](#).

9 FAM 502.4-5 EMPLOYMENT FIFTH PREFERENCE IV CLASSIFICATION (INVESTORS, EMPLOYMENT CREATION)

9 FAM 502.4-5(A) Related Statutory and Regulatory Authorities

9 FAM 502.4-5(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 203(b)(5) (8 U.S.C. 1154(b)(5)); INA 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)).

9 FAM 502.4-5(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 204.6(e); 22 CFR 42.32(e).

9 FAM 502.4-5(A)(3) Public Law

(CT:VISA-1; 11-18-2015)

Public Law 102-395, sec. 610; Public Law 111-83, sec. 548; Public Law 112-176, sec. 1.

9 FAM 502.4-5(B) Entitlement to Employment Fifth Preference Status (Investors, Employment Creation)

(CT:VISA-1; 11-18-2015)

- a. **Investor, Employment Creation Status:** An alien may qualify as an employment creation immigrant and may be entitled to employment-based fifth preference status if the:
- (1) Alien seeks to enter the United States to create a new commercial enterprise;
 - (2) Commercial enterprise was established by the alien;

- (3) Alien made the investment after November 29, 1990, or the alien is actively in the process of investing;
- (4) Capital invested is at least \$1,000,000 (or \$500,000 in targeted employment areas) (see [9 FAM 502.4-5\(B\)](#) paragraph e below); and
- (5) Enterprise benefits the U.S. economy and creates full-time employment for not fewer than 10 U.S. citizens or aliens lawfully authorized to be employed in the United States (excluding the investor and the investor's spouse or children).

b. Defining Terms Related to Employment Fifth Preference Status:

- (1) **Defining "Capital":** DHS regulations define "capital" as cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided that the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. All capital must be valued at fair market value in U.S. dollars. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) are not considered capital.
- (2) **Defining "Commercial Enterprise":**
 - (a) DHS regulations define "commercial enterprise" as any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to, a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned.
 - (b) This definition includes a commercial enterprise consisting of a holding company and its wholly owned subsidiaries, provided that each such subsidiary is engaged in a "for profit" activity formed for the ongoing conduct of a lawful business. This definition does not include noncommercial activities such as owning and operating a personal residence.
- (3) **Defining "Regional Center":** DHS regulations (8 CFR 204.6(e)) define "regional center" as any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased capital investment. This can include entities ranging from a state government agency to a consortium of exporters, specifically an entity benefiting a particular geographic region of the United States. If the new commercial enterprise is engaged indirectly or directly in lending money to job-creating businesses, such job-creating businesses must be located within the geographic limits of the regional center to help improve regional productivity. In addition, to be eligible for the reduced minimal capital requirement, such a money-lending enterprise may only lend money to businesses located within targeted areas.
- (4) **Defining "Rural Area":** The INA defines "rural area" as any area other than an area within a metropolitan statistical area or within the outer boundary of

any city or town having a population of 20,000 or more (based on the most recent U.S. decennial census).

- (5) **Defining "Targeted Employment Area":** The INA defines "targeted employment area" as an area that at the time of the investment was a rural area or an area that has experienced high unemployment (of at least 150 percent of the national average rate).
- c. **Establishing Commercial Enterprise:** Criteria for establishing a new commercial enterprise are as follows:
- (1) Creation of an original business;
 - (2) Purchase of an existing business and simultaneous or subsequent restructuring or reorganization such that a new commercial enterprise results; or
 - (3) Expansion of an existing business through the investment of the required amount, so that a substantial change in the net worth or number of employees or both results from the investment of capital.
 - (a) In general, substantial change means a 40 percent increase in the net worth, or the number of employees (but not less than 20), so that the new net worth, or number of employees, amounts to at least 140 percent of the pre-expansion net worth or number of employees or both.
 - (b) If the new commercial enterprise is a holding company, the full requisite amount of capital must be made available to the businesses most closely responsible for creating the employment on which the petition is based.
 - (c) In order for a petitioner to be considered to have established a new commercial enterprise, the petitioner must have had a hand in its actual creation. For example, signing on as a new partner, subsequent to an organization's creation, neither makes such partner responsible for the original creation of the commercial enterprise nor does that automatically constitute substantial change in the enterprise, unless the other requirements are met as well.
- d. **Targeted Employment Areas:** Of the 10,000 numbers allotted annually for employment-based fifth preference applicants, not less than 3,000 of the visas made available may be reserved for qualified immigrants whose investment will create employment in a "targeted employment area." See [9 FAM 502.4-5\(B\)](#) paragraph b(5) above for a definition of "targeted employment area" and "rural area."
- e. **Capital Required:** In general, the capital required for an alien investor must be \$1,000,000. However, the Secretary of the Department of Homeland Security, in consultation with the Secretaries of State and Labor, may, from time to time, prescribe regulations increasing this amount.
- (1) **Adjustment for High Employment Areas:** The Secretary of the Department of Homeland Security may specify an amount of capital required which is greater than the specified \$1,000,000 (but not greater than \$3,000,000) if the investment made is in a part of a metropolitan statistical area that at the time

of the investment is:

- (a) Not a targeted employment area; and
 - (b) An area with an unemployment rate significantly below the national average unemployment rate.
- (2) **Adjustment for Targeted Employment Areas:** In the case of an alien investing in a targeted area, the Secretary of the Department of Homeland Security may specify an amount of capital required which is less than the specified \$1,000,000 (but not less than \$500,000).
- (3) **Current Requirement:** DHS has set the required investment at \$1,000,000 for high employment areas and at \$500,000 for targeted employment areas.
- (4) **Placing the Capital at Risk:** To qualify toward the amount of capital needed under the statutory requirements, money or assets must be placed at risk and made available to the business most directly responsible for the creation of the employment opportunities. For example, money or assets used as reserve funds, as a means to facilitate a debt arrangement, or as promissory notes not due in substantial part within the two-year conditional period (see [9 FAM 502.4-5\(D\)](#) paragraph b) do not constitute a qualifying contribution of capital toward the amount required for an alien investor. Promissory notes, however, may constitute evidence of capital if they are due in substantial part prior to the end of the period. Until such time as an alien completes payments on such a promissory note, they may not enter into a redemption agreement with the new commercial enterprise. Further, if the new commercial enterprise is a holding company, the capital must be available to the business(es) most closely responsible for creating the employment upon which the petition is placed.
- f. **Meeting the Job Creation Requirement:** Aliens meet the requirement of job creation by establishing "reasonable methodologies" for determining the number of jobs created, including such jobs created indirectly through revenues generated from increased exports resulting from the investment. Such methodologies may include:
- (1) Multiplier tables;
 - (2) Feasibility studies;
 - (3) Analyses of foreign and domestic markets for goods or services exported; or
 - (4) Economically or statistically valid forecasting devices which indicate the likelihood that the business will result in increased employment.
- g. **Spouse and Children:** The spouse, or the child of a marriage which existed at the time of the principal alien's admission into the United States, is entitled to derivative status and may accompany or follow to join the principal applicant. A spouse or child acquired subsequent to the principal alien's admission is not entitled to derivative status. Further information regarding following-to-join eligibility of derivative spouse and children is available at [9 FAM 502.1-1\(C\)\(2\)](#).

9 FAM 502.4-5(C) Immigrant Investor Pilot Program

(CT:VISA-291; 03-06-2017)

- a. **Pilot Program:** The Immigrant Investor Pilot Program sets aside up to 3,000 immigrant visas annually for aliens who make qualifying investments in commercial enterprises located in “regional centers” in the United States. These regional centers will promote economic growth, including increased sales, improved regional productivity, job creation, and increased domestic capital investment. Under current law, you must cease issuing visas under this program after close of business on *April 28, 2017*. See [9 FAM 502.4-5\(B\)](#) for a definition of “regional center.”
- b. **Petition Requirements for Investor Visa Pilot Program:** Aliens petitioning as investors under the Investor Visa Pilot Program must demonstrate the following:
- (1) The investment is within a DHS-approved regional center;
 - (2) The investment will create 10 or more jobs;
 - (3) There is an actual commitment of the required capital in the commercial enterprise;
 - (4) The capital invested was lawfully gained;
 - (5) The investment is bona fide; and
 - (6) He or she will play an active role in the day-to-day managerial control or in the job policy formulation.

NOTE: If the enterprise is a limited partnership, USCIS has determined that investment in a limited partnership will meet the active investment requirement of the regulations without the need for further involvement as long as the partnership agreement permits active involvement by the limited partners.

9 FAM 502.4-5(D) IV Processing for Employment Fifth Preference Cases (Investors, Employment Creation)

(CT:VISA-192; 09-28-2016)

- a. **Labor Certification, Petition Requirements:** Investors are not subject to the labor certification requirements of INA 212(a)(5)(A). The alien must, however, be the beneficiary of an approved employment-based fifth preference petition filed with the DHS. Alien entrepreneurs must submit petitions to the DHS Service Center having jurisdiction over the area in which the commercial enterprise is doing business, not in the area where the enterprise is established.
- b. **Conditional Resident Status:** Alien investors and derivative family members will be admitted to the United States in conditional immigrant status for two years. After two years, the investor and his family must petition for the removal of the condition within a 90-day period before the second anniversary of the granting of conditional permanent residence. DHS will then determine whether the enterprise was established and in continuous operation during the applicable period. If so, the

alien will be granted permanent residence.

9 FAM 502.5

SPECIAL IMMIGRANTS

(CT:VISA-383; 06-15-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 502.5-1 FOURTH PREFERENCE IMMIGRANT CLASSIFICATION - SPECIAL IMMIGRANTS - OVERVIEW

(CT:VISA-1; 11-18-2015)

A Fourth Preference applicant must be the beneficiary of an approved Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360, with the exception of Certain Employees or Former Employees of the U.S. Government Abroad (see [9 FAM 502.5-3](#)). A labor certification is not required for any of the Certain Special Immigrants subgroups. Special Immigrants receive 7.1 percent of the yearly worldwide limit of employment-based immigrant visas. There are many subgroups within this category.

9 FAM 502.5-2 FOURTH PREFERENCE SPECIAL IMMIGRANTS – RELIGIOUS WORKERS

9 FAM 502.5-2(A) Related Statutory and Regulatory Authorities

9 FAM 502.5-2(A)(1) Immigration and Nationality Act

(CT:VISA-95; 03-18-2016)

INA 101(a)(27)(C) (8 U.S.C. 1101(a)(27)(C); INA 203(b)(4) (8 U.S.C. 1153(b)(4)).

9 FAM 502.5-2(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 204.5(m)(5); 22 CFR 42.32(d)(1).

9 FAM 502.5-2(B) Classification Codes - Religious Worker Classifications

(CT:VISA-95; 03-18-2016)

Symbol	Class
SD1	Minister of Religion
SD2	Spouse of SD1
SD3	Child of SD1
SR1	Certain Religious Worker
SR2	Spouse of SR1
SR3	Child of SR1

9 FAM 502.5-2(C) In General

(CT:VISA-95; 03-18-2016)

An individual may be granted an immigrant visa as a special immigrant religious worker pursuant to INA 101(a)(27)(c) and INA 203(b)(4) if:

- (1) For at least the two years immediately preceding filing of a petition with DHS the individual has been a member of a religion denomination having a bona fide non-profit religious organization in the United States; and
- (2) The individual is coming to the United States to work for a bona fide non-profit religious organization or bona fide organization affiliated with a religious denomination, full time in a compensated position in one of the following occupations:
 - (a) Solely in the vocation of a minister of that religious denomination;
 - (b) A religious vocation either in a professional or nonprofessional capacity; or
 - (c) A religious occupation either in a professional or nonprofessional capacity.

9 FAM 502.5-2(D) Affiliation With Denomination Having a Bona Fide Organization in United States (Religious Workers)

(CT:VISA-95; 03-18-2016)

a. Religious Denomination, Bona Fide Organization:

- (1) DHS regulations require evidence of the bona fides in the United States of the employing organization in support of the petition, including proof of the denomination's tax exempt status. DHS may also require evidence of the organization's assets and methods of operations and the organization's papers of incorporation under applicable state law in appropriate cases. Approval of the petition will therefore constitute proof of the bona fides of the U.S. organization.

- (2) DHS defines a religious denomination as having the following characteristics:
- (a) Some form of ecclesiastical government;
 - (b) A recognized creed and form of worship;
 - (c) A formal code of doctrine and discipline;
 - (d) Religious services and ceremonies;
 - (e) Established places of religious worship; and
 - (f) Religious congregations; or
 - (g) Comparable indicia of a bona fide religious denomination.
- (3) **Salvation Army:** The Salvation Army is a religious denomination having an organization in the United States within the meaning of the INA 101(a)(27)(C). Its commissioned officers are ministers of a religious denomination within the meaning of that section.
- (4) **Practitioners and Nurses of Christian Science Church:** Practitioners and nurses of the Christian Science Church (Church of Christ, Scientist) may properly be considered as ministers of religion under INA 101(a)(27)(C). Readers and lecturers do not qualify as ministers, but could qualify as an alien seeking to come in a religious vocation or occupation. The Christian Science Church is considered a religious denomination with an organization in the United States.
- b. **Two-Year Member of Religious Organization:** An alien seeking entry under INA 101(a)(27)(C) must have been a member of the religious denomination having a bona fide non-profit organization in the United States for at least two years immediately preceding the time of application for admission.
- c. **Two Years Carrying on Vocation or Religious Work:** DHS will be relying on the evidence submitted by the petitioner regarding the alien's qualifications as well as those of the organization. If the consular officer learns that the alien's activities in the immediately preceding two years were not related to religious functions, he or she should review the activities for the two years immediately prior to visa application to evaluate whether or not the alien has been continuously carrying on the vocation of a minister or other professional or religious worker. For example, a minister whose activities are such as to indicate engagement in activities which contribute to furtherance of the ministerial vocation, and which are not in any way inconsistent with that vocation, may be considered to have met the requirement of continuous practice as a minister. Activities considered acceptable for fulfilling the two-year requirement include: seminary study, teaching at a religious academy, spiritual/pastoral counseling, etc.

9 FAM 502.5-2(E) Intended Service in the United States (Religious Workers)

(CT:VISA-95; 03-18-2016)

- a. **Alien's Services Needed by Religious Denomination:** Aliens applying for special immigrant status under INA 101(a)(27)(C) must demonstrate that their services are needed by a religious denomination in the United States. The following factors are relevant to whether a bona fide need for such services exists:
- (1) The number of ministers and staff currently serving the particular church (i.e., has the number diminished or increased?);
 - (2) The size of the congregation (i.e., has the congregation significantly increased?);
 - (3) The specific duties which the alien will be undertaking (i.e., has the church grown or diversified to the extent that additional staff is needed?);
 - (4) Prior experience of the alien relating to the specific duties to be undertaken (i.e., if the petitioning church needs a youth minister, administrator, etc., does the alien have the required background?); and
 - (5) Whether or not the church previously had the services of a minister or staff to perform the duties which the alien is to be undertaking, and if not, what circumstances have created a "need" for the alien's services (i.e., an increase in the size of the congregation or additional responsibilities placed upon the current minister or staff).
- b. **Alien Entering United States Solely to Carry Out Ministerial Vocation or Other Religious Work:** Aliens seeking special immigrant classification under INA 101(a)(27)(C) must demonstrate that they will be entering the United States to perform duties associated with a religious occupation or vocation.
- (1) **Ministers of Religion:** Ordination of ministers chiefly involves the investment of the individual with ministerial or sacerdotal functions, or the conferral of holy orders upon the individual. If the religion does not have formal ordination procedures, there must be other evidence that the individual has authorization to conduct religious worship and perform other services usually performed by members of the clergy. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.
 - (2) **Deacon May Qualify:** A deacon of any recognized religious sect or denomination may be considered to be a minister of religion within the meaning of INA 101(a)(27)(C) when the following conditions are present:
 - (a) Ordination or equivalent form of authorization has taken place which distinguishes the clerics from the laity;
 - (b) Ordination or equivalent form of authorization has conferred the power of leading a congregation and preaching;
 - (c) Ordination or equivalent form of authorization has conferred the power to administer the sacraments, baptism, and communion or their equivalents; and
 - (d) Ordination or equivalent form of authorization has conferred the power of

giving benediction.

(3) Ordained Buddhist Monk:

- (a) Since the term "ordained minister" does not adequately translate into Buddhist terminology, the use of "ordained minister" within the Buddhist doctrine frequently will be found to have different meanings depending on the context in which it is used. The term also may apply to different levels of responsibility and participation within the faith. The ceremony conferring monkhood status in the Buddhist religion is generally recognized as the equivalent of ordination.
- (b) Useful documentation for establishing entitlement to status might include determinations by directors and senior monks of monasteries which verify that the applicant has knowledge and skills which enable him to perform Buddhist rituals and explain Buddhist beliefs independently, and that the applicant has a demonstrated work record or established reputation as an active Buddhist monk. In reviewing letters which purport to confirm an individual's credentials, consular officers should take into consideration the endorsing temple's or monastery's size and significance. The number of senior officials, directors, monks, and the size of the congregation are ancillary elements to be weighed in establishing a Buddhist monk's entitlement to special immigrant status under INA 101(a)(27)(C).

(4) Professional Religious Workers:

- (a) With respect to religious workers, DHS regulation 8 CFR 204.5(m) says: "Religious worker means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister."
- (b) House Report No. 101-723 defines Category II religious workers as those in "occupations such as teachers."
- (c) DHS regulation 8 CFR 204.5(m) defines religious vocation and religious occupations as follows:
 - (i) "Religious vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religions. Examples of individuals practicing religious vocations include, but are not limited to nuns, monks, and religious brothers and sisters."
 - (ii) "Religious occupation means an occupation that meets all of the following requirements:
 - The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
 - The duties must be primarily related to, and must clearly involve,

inculcating or carrying out the religious creed and beliefs of the denomination.

- The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.
- Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incidental to status."

c. **Petitioning Church Capable of Compensating Alien Ensuring Supplemental Employment Not Likely:** To assure that an applicant will enter the United States solely for the purpose of carrying on a religious vocation, particularly in smaller churches, DHS requires evidence such as the following:

- (1) Bank letters;
- (2) Recent audits;
- (3) Church membership figures; and/or
- (4) The number of ministers and staff currently receiving compensation, etc.

9 FAM 502.5-2(F) Spouse or Child of Religious Worker

(CT:VISA-383; 06-15-2017)

a. **Accompanying or Following-to-Join Spouses and Children:**

Accompanying or following-to-join spouses and children of a fourth preference alien who has the status of special immigrant as a minister of religion or religious worker may be granted derivative status. A spouse or child acquired subsequent to visa issuance but prior to entering the United States, or a child born of a marriage which existed at the time of the principal alien's admission to the United States, is entitled to employment-based fourth preference status.

b. **Defining "Spouse" and "Child":** See [9 FAM 102.8](#), *Family-Based Relationships Definitions*.

9 FAM 502.5-2(G) Nonministers

(CT:VISA-383; 06-15-2017)

IVs for individuals in a religious vocation or occupation described in [9 FAM 502.5-2\(C\)](#) paragraph (2)(b) or (c) (and their accompanying or following-to-join spouse and children) must be issued and used before midnight on *September 29*, 2017. You may not issue an IV in the SR1, SR2, or SR3 classification beyond this date. Before issuing an IV to an individual in one of these classifications, you should advise them of the deadline and ensure that they have travel plans to enter the United States before

midnight on *September 29*, 2017. This restriction does not impact ministers described in [9 FAM 502.5-2\(C\)](#) paragraph (2)(a) and accompanying relatives.

9 FAM 502.5-3 FOURTH PREFERENCE SPECIAL IMMIGRANTS - CERTAIN U.S. GOVERNMENT EMPLOYEES

9 FAM 502.5-3(A) Related Statutory and Regulatory Authorities

9 FAM 502.5-3(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(27)(D) (8 U.S.C. 1101(a)(27)(D)); INA 101(a)(38) (8 U.S.C. 1101(a)(38)); INA 203(b)(4) (8 U.S.C. 1153(b)(4)); INA 203(d) (8 U.S.C. 1153(d)).

9 FAM 502.5-3(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.32(d)(2)(i); 22 CFR 42.32(d)(2)(vii); 5 CFR 8.3.

9 FAM 502.5-3(A)(3) United States Code

(CT:VISA-1; 11-18-2015)

22 U.S.C. 3943; 22 U.S.C. 2669(c), 22 U.S.C. 2669(n).

9 FAM 502.5-3(A)(4) Public Laws

(CT:VISA-1; 11-18-2015)

Foreign Service Act, Public Law 96-465, sec. 303; Immigration and Nationality Technical Corrections Act of 1994, Public Law 103-416, sec. 201); Immigration Act of 1990, Public Law 101-649, sec. 201.

9 FAM 502.5-3(B) Determining U.S. Government Service Abroad

9 FAM 502.5-3(B)(1) Defining "Employee" (U.S. Government Employee Special Immigrant)

(CT:VISA-383; 06-15-2017)

- a. **Employees:** To qualify as a special immigrant U.S. government employee under INA 101(a)(27)(D), the employee must generally be hired under:

- (1) A direct-hire appointment (Section 303 of the Foreign Service Act, 22 U.S.C. 3943; 5 CFR 8.3);
 - (2) A Department of State personal services agreement (PSA) or personal services contract (PSC) authorities (22 U.S.C. 2669(c) and (n)); or
 - (3) An employing agency's specific PSC or PSA authority, if that agency recognizes individuals hired under its authority as employees. (See [3 FAM 7000.](#)) An alien who is the employee of and hired through a foreign government also may qualify for special immigrant status, provided that the alien is or was in a bona fide employer-employee relationship with a U.S. government department or agency. (See [9 FAM 502.5-3\(C\)\(3\).](#))
- b. **Employee Service in Other Agencies:** If part of an employee's service has been for a department or agency of the U.S. government other than the Department of State, this service must be established from the official records of the agency.
- c. **Peace Corps Personal Services Contract (PSC):** As of November 21, 2011, the date that the Kate Puzey Peace Corps Volunteer Protection Act of 2011, Public Law 112-57, was enacted, Peace Corps PSC employees are considered U.S. government employees for purposes of SE-1 special immigrant status. Time worked as a Peace Corps PSC prior to November 21, 2011 does not count toward such status.
- d. **U.S. Armed Forces Service:** An alien serving in the U.S. Armed Forces abroad is considered to be "an employee of the U.S. government abroad."
- e. **Employment As or With Private Contractor; Foreign Government Employees:**
- (1) **Personal Services Agreement or Contract:** Employees under a personal services agreement or personal services contract with the U.S. government qualify as U.S. government employees for purposes of a special immigrant visa. The distinguishing feature of a personal services agreement or contract is that the employee contracts directly with an agency or department of the U.S. government as opposed to being hired by and paid through a contractor whose job is to provide a service or supply a specified number of employees to a U.S. agency or department. Therefore, if an employee is hired by and paid through a contractor or an independent grantee or licensee providing services to or on behalf of the U.S. government, he or she generally does not qualify as a U.S. government employee within the meaning of INA 101(a)(27)(D). If employed directly by the U.S. government, the applicant would qualify for a special immigrant "SE-1" recommendation. Note that applicants to the Iraq and Afghan Special Immigrant Visa programs must meet different requirements, discussed in [9 FAM 502.5-12.](#)
 - (2) **Purchase Orders:** The Department makes no distinction between those persons hired under purchase orders and those persons employed under personal services agreements/contracts. Both must be paid by U.S. government funds, and not paid indirectly by a company to perform services for the U.S. government.

- (3) **Employee of Foreign Government:** Where a foreign government requires that it or one of its agencies be the technical employer of some or all of its nationals who work for the U.S. government in that country, an alien may qualify for special immigrant status, provided that the alien was in a bona fide employer-employee relationship with a U.S. government department or agency. In assessing whether an employer-employee relationship existed, factors such as the following will be considered: the department's or agency's right to control the manner and means by which the alien did the work; the source of the equipment and other materials needed for the alien to accomplish the work; the location of the work; the duration of the relationship between the alien and the department or agency; whether the department had the right to assign additional projects to the alien; the extent of the department's or agency's discretion over when and how long the alien worked; the method of payment; and whether the work was part of the regular work of the department or agency.
- f. **Employees of U.S. Employee Recreation Associations:** Employees of a U.S. employee recreation association, like all SIV applicants under this subsection, must meet the definition of "employee" described in [9 FAM 502.5-3\(B\)\(1\) paragraph a above](#). Employment under a contract with the employee association and not directly with the U.S. government will not be counted towards the 15-year statutory minimum length of service for SIV purposes, pursuant to INA 101(a)(27)(D). In evaluating the service of an SIV applicant who worked with an employee association, relevant employment contracts must be reviewed carefully. Seek guidance from CA/VO/L as needed. All relevant employment information must be included in the AO request narrative. Note that applicants to the Iraq and Afghan Special Immigrant Visa programs must meet different requirements, discussed in [9 FAM 502.5-12](#).
- g. **Domestic Staff:** Domestic staff who are compensated under official residence expense (ORE) funds and other domestic staff for U.S. government employees assigned to missions overseas are neither federal employees nor employees of the U.S. mission. They are employees of the individual(s) in whose home they work. The fact that they may be compensated under ORE funds does not change the fact that they are employed by the individual and not the U.S. government. Such employees do not qualify for special immigrant status.

9 FAM 502.5-3(B)(2) U.S. Government Service Abroad (U.S. Government Employee Special Immigrant)

(CT:VISA-159; 08-18-2016)

- a. **Abroad:** The term "abroad" as defined in INA 101(a)(38) refers to any part of the world outside the United States.
- b. **Employment in Canal Zone:** An employee of the former administration of the Canal Zone may be considered for the benefits of INA 101(a)(27)(D) since the Canal Zone is not defined as part of the United States.

- c. **Special Immigrant Status for American Institute in Taiwan Employees:**
Section 201 of Public Law 103-416 amended INA 101(a)(27)(D) to permit both present and former employees of the American Institute in Taiwan (AIT) to apply for special immigrant status. An employee's service before and after the founding of AIT is counted toward the minimum 15 years of service requirement.

9 FAM 502.5-3(B)(3) Spouses and Children (U.S. Government Employee Special Immigrant)

(CT:VISA-159; 08-18-2016)

Although INA 101(a)(27)(D) refers to an employee or former employee and "accompanying" spouses and children, INA 203(d), relating to immediate family members of all preference immigrants, grants derivative status and priority dates to spouses and children who are "accompanying or following-to-join." Spouses and children of U.S. government employees accorded fourth preference status are, therefore, no longer required to be accompanying but also may follow-to-join the principal alien.

9 FAM 502.5-3(C) Acquisition of U.S. Government Employee Special Immigrant Status – Process

9 FAM 502.5-3(C)(1) Two-Step Acquisition of U.S. Government Employee Special Immigrant Status

(CT:VISA-383; 06-15-2017)

As a result of the Immigration Act of 1990, this class, like most other special immigrant classes described in INA 101(a)(27), is classified under the employment-based fourth preference. Unlike the other such classes, however, the acquisition of special immigrant status under INA 101(a)(27)(D) and fourth preference classification requires two sequential steps, prior to visa issuance, rather than the one-step process associated with other categories.

(1) Step One – Status as U.S. Government Employee Special Immigrant:

The first step is acquiring special immigrant status. The basic statutory requirements for special immigrant status under INA 101(a)(27)(D) are set forth in [9 FAM 502.5-3\(B\)](#).

- (a) **Principal Officer's Recommendation:** For an applicant to acquire SE-1 special immigrant status, his or her principal officer must recommend the granting of special immigrant status to the employee or former employee based on exceptional circumstances, and the Secretary of State must find it in the national interest to approve the recommendation. There is no specified form for such recommendation but the recommendation must include the elements itemized in [9 FAM 502.5-3\(C\)\(3\)](#) paragraph b.
- (b) **Supporting Evidence:** CA/VO/L determines each case upon its individual merits. In determining whether an alien meets the "exceptional

circumstances" requirement, CA/VO/L uses the standards cited in [9 FAM 502.5-3\(C\)\(2\)](#) paragraph d. Consequently, post must identify and document specific circumstances of an alien's case that establish entitlement to status. While a recommendation letter from a supervisor may be helpful in establishing "exceptional circumstances," it is not required, and applicants who cannot secure such a letter may still demonstrate eligibility with other evidence. It also is not required that the principal officer or SIV committee have personal knowledge of the applicant; depending on the circumstances of the case, a positive recommendation could be made solely from information in the applicant's HR file. Based on the evidence available, post must submit a detailed and specific AO request narrative that clearly relates to the factors cited in [9 FAM 502.5-3\(C\)\(2\)](#), and should avoid general descriptions of the alien's service history. Supporting evidence is not to be submitted with the initial AO request, but must be well documented and readily available if requested.

- (c) **Department Decision:** If the evidence fulfills the requirements of the law and CA/VO/L determines that granting special immigrant status is in the national interest, CA/VO/L will notify post of the approval of the recommendation by AO via the IVO system.

(2) **Step Two – Classification Under INA 203(b)(4) (U.S. Government Employee Special Immigrant)**

- (a) The second step is acquiring status under INA 203(b)(4). Classification as an employment-based fourth preference immigrant requires the filing of a petition to accord such status. Unlike aliens in the other special immigrant classes, whose petitions must be filed with DHS, U.S. government employee special immigrants under INA 101(a)(27)(D) must file Form DS-1884, Petition to Classify Special Immigrant Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad, at a consular office (see [9 FAM 502.5-3\(C\)\(1\)](#) paragraph (3) *below*).
- (b) The applicant may not file such a petition, however, until he or she has been notified that the Secretary of State approved special immigrant status for him or her. (See [9 FAM 502.5-3\(C\)\(1\)](#) paragraph (1)(c) *above*.)

(3) **Petitions (U.S. Government Employee Special Immigrant):**

- (a) **Fees:** Although the Secretary of State is authorized to establish a fee for the filing of a petition for special immigrant status as a U.S. government employee, no fee has been established. The fee for adjudicating a special immigrant visa application as a U.S. government employee is found in the Schedule of Fees (22 CFR 22.1) under sections 32(c) and 32(d).
- (b) **Establishing Priority Date:** The priority date of a petition filed by a special immigrant government employee is the date his or her Form DS-1884, Petition to Classify Special Immigrant Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad, is properly

filed with the consular officer.

(c) **Delegated Authority to Approve Petitions:**

- (i) Authority to approve petitions for INA 203(b)(4) classification on behalf of the Secretary of State has been delegated to consular officers under 22 CFR 42.32(d)(2)(vii). The bases for approval are that the alien has:
 - Been accorded status as a special immigrant under INA 101(a)(27)(D) prior to filing the petition; and
 - Filed the petition within one year of acquiring such status.
- (ii) If all of the above factors are present, the consular officer has no basis for denial of the petition and may not do so. If any of those factors is not present (e.g., the petition was not filed in a timely fashion), the consular officer must submit an AO request to CA/VO/L. (See [9 FAM 502.5-3\(C\)\(2\)](#) paragraph e(3) regarding extensions of validity.)

(d) **CA/VO/L Function in U.S. Government Employee Special Immigrant Cases:**

- (i) Any inquiry of a general nature regarding special immigrant classification should be directed to CA/VO/L as a request for an AO.
- (ii) CA/VO/L acts on behalf of the Secretary of State in approving the principal officer's recommendation that an alien be granted status as a special immigrant and determining that it is in the national interest to grant such status.

9 FAM 502.5-3(C)(2) Approval Standards for U.S. Government Employee Special Immigrant Status under INA 101(a)(27)(D)

(CT:VISA-383; 06-15-2017)

- a. **Defining "Honorably Retired":** A former employee of the U.S. government abroad seeking classification under INA 101(a)(27)(D) must establish that he or she is "honorably retired" as the term is used in the statute. An employee, whose termination is a result of reduction-in-force, separation due to age, voluntary retirement, or resignation for personal reasons, can be considered "honorably retired". Separation not within the meaning of "honorably retired" would involve forced or requested removal for cause or a resignation aimed at forestalling such removal.
- b. **Defining "Faithful Service":** An alien seeking classification under INA 101(a)(27)(D) must have performed faithfully in the position held. The principal officer has primary responsibility for determining whether the alien's service meets this requirement. A record of disciplinary actions that have been taken against the employee does not automatically disqualify the employee. The principal officer is to assess the importance of any such disciplinary actions in light of:

- (1) The gravity of the reasons for the disciplinary action; and
 - (2) Whether the record as a whole, notwithstanding existing disciplinary actions, is one of faithful service.
- c. **Years of U.S. Government Service:** An alien must have been employed for a total of at least 15 full-time years in the service of the U.S. government abroad.
- (1) **Full-Time Service:** Although the total employment period must equal at least 15 years of full-time service, the employee need not have worked full-time throughout the period. For example, if the employee worked full-time for 10 years and half-time for at least 10 more, that equivalent of 15 years of full-time employment would qualify the employee for consideration.
 - (2) **Continuity:** The employee's period of service need not have been continuous. For example, if an alien was employed for nine years, left for a period of time, and later returned to U.S. government service for six or more years, this would meet the 15-year requirement.
 - (3) **Where and for Whom Worked Irrelevant:** The location of the employment does not matter as long as it meets the definition of abroad. Similarly, it does not matter if the employment was with different agencies, provided that it all meets the definition of U.S. government employment.
- d. **"Exceptional Circumstances" Requirement:**
- (1) The principal officer's recommendation that an alien be granted special immigrant status under INA 101(a)(27)(D) must be made in "exceptional circumstances." The legislative history of this provision does not indicate specifically what such "exceptional circumstances" might be. However, Congress clearly did not intend that an alien be granted the benefits of INA 101(a)(27)(D) simply as recognition for the requisite years of service.
 - (2) The following categories represent longstanding criteria used to determine whether there were "exceptional circumstances" present in an employee's case. In preparing recommendations to the Department, posts must describe in the AO request text exceptional circumstances that met the below criteria. Recommendations containing only general statements or anecdotes that do not detail clearly the specifics of how the employee meets one or more of the following criteria will not normally satisfy the "exceptional circumstances" requirement and will be returned to post for further consideration. It is important that the AO request narrative strongly indicates that there were "exceptional circumstances" present in an employee's case and describes the circumstances in full detail.
 - (3) **Categories of "Exceptional Circumstances":** "Exceptional circumstances" fall broadly within the three categories below. Cases falling under the first category (a) likely will be more of an objective nature than categories (b) and (c). Category (b) will be more objectively oriented than category (c).
 - (a) **"Exceptional Circumstances" of a Prima Facie Nature:** The following factors are illustrative of situations in which an employee's service with the

U.S. government generally will be deemed to have "exceptional circumstances." Note that employees in the following situations also must meet the other requirements for SIV status, including the qualifying employment relationship and the 15-year statutory minimum length of "faithful service":

- (i) Relations between the alien employee's country of nationality and the United States have been severed;
- (ii) The country in which the alien employee was employed and the United States have severed diplomatic relations;
- (iii) The country in which the alien employee was employed and the United States have strained relations and in which the employee may be subjected to persecution by the local government merely because of association with the U.S. government, or where the circumstances are such that the employee may be pressured to divulge information available to him or her which would be contrary to U.S. national interests; and/or
- (iv) The alien was hired as an employee at the Consulate General at Hong Kong on or before July 1, 1999. (See also 99 State 124186.)

(b) **Cases that Strongly Merit Consideration of a Finding of "Exceptional Circumstance":** In some cases, an employee has in the course of "faithful service" fulfilled responsibilities or rendered service so far beyond the call of duty that some form of recognition is merited. If circumstances such as those mentioned below are present in a case, the AO request must address the circumstances in detail. Circumstances such as the following definitely would meet the "exceptional circumstances" requirement:

- (i) The employee has performed faithful and excellent service to the U.S. government, and it is believed that continued service to the U.S. government might endanger the life of the employee; or
- (ii) The employee has, in the course of faithful service, fulfilled responsibilities or given service in a manner that approaches the heroic. Obvious examples are prevention of a physical attack on a U.S. official or citizen at the risk of an employee's own life; cumulative TDY service of at least six months in Iraq or Afghanistan; or protection of U.S. property in time of war, uprising, natural disaster, or other grave local disturbance. All LE staff TDY time served in Afghanistan and Iraq may be considered as part of "exceptional circumstances" required for an SIV.

(c) **Other "Exceptional Circumstances" Cases:** Exceptional circumstances can encompass less spectacular activities than those referred to in [9 FAM 502.5-3\(C\)\(2\)](#) paragraph d(3)(b) above. It is not necessary for such an employee to have risked his or her life in the line of duty or to have worked for more than 15 years to qualify for consideration under this

section. The following factors may, individually or in combination, support a determination of "exceptional circumstances":

- (i) Employees who have performed faithful and excellent service to the U.S. government for a period substantially exceeding the 15-year statutory minimum. Particular consideration will be given to cases involving the excellent service of an employee with 20 or more years of employment with the U.S. government.;
- (ii) The employee has been recognized with multiple individual awards listed in [3 FAM 4820](#) or 4830; however, a single award in those categories in recognition of particularly exceptional service could support a finding of exceptional circumstances. Awards may be a helpful way to identify and document that an employee's service to the U.S. government has been particularly valuable and worthy of an SIV. Bear in mind that the quality of service reflected by the award, rather than the award itself, is what is relevant. A nomination that relies upon any awards to show "exceptional circumstances" must include a detailed description in the AO request text of the circumstances leading to the employee's nomination for the award, as well as the award's citation. Recognition Awards listed in [3 FAM 4840](#) provide only limited evidence of "exceptional circumstances," although the significance of such awards is increased if it is apparent that there is a pattern of sustained high performance. Awards granted on a group basis generally will be given little weight, because such awards have limited utility in establishing whether the recipients were exceptional individually. If an award is not listed in [3 FAM 4820](#) or [3 FAM 4830](#), including another agency's award, either post's Human Resources Office or the Department's Bureau of Human Resources must determine whether the award is equivalent to the Department's Honor or Annual awards;
- (iii) The employee has (or has had) high visibility in a sensitive position, and the employee's performance as a representative of the U.S. government in contacts with host government entities and other organizations has brought great credit to the agency by which employed;
- (iv) The employee's position with the U.S. government requires control over key aspects of the operations or overall functioning of a Foreign Service post. As an example, control over the finances of a post would be a favorable consideration. We will give particular consideration to an employee whose performance has resulted in substantial monetary savings for the U.S. Government or has yielded other significant benefits;
- (v) The employee has, apart from performance of official duties, rendered valuable services and assistance to the U.S. community at post, including activities undertaken after termination of the

employee's official employment relationship with the U.S. government;

- (vi) The employee has provided faithful and excellent service for an extended time in a responsible position in a country foreign to that employee, has thereby lost economic and social ties in the home country, and thus, might find it extremely difficult to be at ease in either the country of service or the home country after retiring, or virtually impossible to find suitable employment if desired.
- (4) The principal officer's recommendation that the employee or retired employee be granted special immigrant status under exceptional circumstances must be based on:
- (a) Official records to establish the period of time served with the U.S. government;
 - (b) Documented evidence of "exceptional circumstances"; and
 - (c) Assessment of the overall picture of the employee's performance as illustrated in the personnel file by such items as evaluation reports, reprimands, awards, etc. It is not required that the principal officer or SIV committee have personal knowledge of the applicant; depending on the circumstances of the case, a positive recommendation could be made solely from information in the applicant's personnel file.

e. Requiring Immediate Intent to Immigrate:

- (1) Special immigrant status was not designed for use as an "insurance policy" to protect an alien against the possibility of political or economic vicissitudes in the future. Nor was it the intent of Congress that the principal alien obtain special immigrant status solely to facilitate the entry of dependents into the United States when it is the principal alien's intent to return overseas to resume employment with the U.S. government. For these reasons, the regulations in 22 CFR 42.32(d)(2)(i)(A) limit the validity of special immigrant status to one year and that of the petition to six months. Generally, a post should refrain from submitting a recommendation for special immigrant status to the Department until such a time as the employee has:
 - (a) Established an intention to resign the position being held; and
 - (b) Demonstrated an intention to immigrate to the United States within a designated period of time.
- (2) **Certification of Active Intent to Pursue Immigrant Visa Application:** In the text of the AO request, the principal officer must certify that:
 - (a) The employee being recommended is prepared to pursue an immigrant visa application within one year of the Department's notification to the post of approval of special immigrant status; and
 - (b) The employee intends permanent separation from U.S. government employment abroad no later than the date of departure for the United

States following issuance of an immigrant visa.

- (3) **Unanticipated Delays in Departure:** We recognize that there may be situations in which personal circumstances or local conditions at some posts may necessitate a delay in the alien's departure in compliance with the regulations and above guidance. If the principal officer concludes that circumstances in a particular case are such that an extension of the validity of SIV status or of the petition would be in the national interest, he or she is to state this in a new AO request and recommend an extension. In reviewing an extension request for a previously approved case, keep in mind that this employee's immigration to the United States already has been determined to be in the national interest.
- (4) **Effect of Numerical Limits:**
- We also recognize that the imposition of a numerical limit on fourth preference special immigrants might prompt concerns about acquiring as early a priority date as possible, despite the regulations and the employee's travel plans. With respect to applicants from oversubscribed countries, the time limit on petition validity does not commence until a visa number becomes available. Principal officers may take this into account in submitting their recommendations.
- (5) **Employees of Hong Kong Consulate General on or Before July 1, 1999:**
- (a) A special immigrant employee of the Consulate General at Hong Kong, hired on or before July 1, 1999, is not required to establish immediate intent to immigrate. Employees of the Hong Kong Consulate General who received or were approved for special immigrant status before July 1, 1999, also may continue employment.
- (b) Special immigrants exempted from the "immediate intent to immigrate" requirement, however, must be re-checked and re-approved for status before the special immigrant visa can be issued.

9 FAM 502.5-3(C)(3) Principal Officer's Recommendation (U.S. Government Employee Special Immigrant)

(CT:VISA-341; 04-13-2017)

- a. **Principal Officer:** The "principal officer of a Foreign Service establishment" must make the recommendation to the Secretary of State for favorable action under INA 101(a)(27)(D). This term embraces not only principal officers or acting principal officers of consular posts and chiefs or acting chiefs of diplomatic missions but also heads of field offices of other U.S. government departments or agencies abroad.
- b. **Form of Submission:** The post must submit the recommendation and a summary of the evidence to support the recommendation to CA/VO/L via an AO request sent through the IVO system. Note that posts will have to create a case in the IVO system in order to submit the AO request. The principal officer must sign the recommendation and it must include:
- (1) The name and date and place of birth of the principal alien and any immediate

family accompanying or following to join;

- (2) The length of time the alien has been employed by the U.S. government abroad and the agency or agencies concerned, with appropriate employment dates and places;
- (3) The present employment status of the alien and, if not employed, the reasons and circumstances surrounding the alien's departure from the last U.S. government position;
- (4) Certification of the employee's intent to pursue an immigrant visa application within one year of the Department's notification to the post of approval of special immigrant status; and that the employee intends permanent separation from U.S. Government employment abroad no later than the date of departure for the United States following issuance of an immigrant visa; and
- (5) The principal officer's recommendation.

9 FAM 502.5-3(C)(4) Pre-Screening Panels (U.S. Government Employee Special Immigrant)

(CT:VISA-159; 08-18-2016)

- a. **Establishing Pre-Screening Panels:** Various posts instituted interagency pre-screening panels to consider cases of employees desiring special immigrant status under INA 101(a)(27)(D). These panels pre-screen cases prior to submission to the principal officer for a decision whether to recommend to the Department that special immigrant status be authorized. The Department endorses this approach for posts that find them useful, particularly large posts where various U.S. government agencies employ foreign nationals. However, a pre-screening panel is not required.
- b. **Functions of Pre-Screening Panels:** Participation by representatives of various agencies in the deliberations of the pre-screening panels ensures that their views are given weight. An advantage for posts using pre-screening panels is the uniformity of approach that is afforded by panel assessment of the statutorily required "exceptional circumstances" dimension in cases of all employees seeking immigrant status under INA 101(a)(27)(D). A pre-screening panel's preliminary determination that such circumstances exist in an employee's case, along with the panel's verification that the other requirements discussed in the preceding interpretive note also have been met, can be of great assistance to a principal officer in deciding whether to recommend that the employee be granted special immigrant status. While the principal officer retains ultimate authority to make recommendations to the Department for special immigrant status and therefore cannot be bound by the decision of a pre-screening panel, these recommendations would normally carry great weight. This ensures that employees of all agencies are treated equally.
- c. **Notation of Review by Pre-Screening Panels:** Any post wishing to institute a pre-screening panel system may do so without prior Departmental approval. However, a post seeking Departmental authorization of special immigrant status for

an employee whose case has been reviewed by a pre-screening panel must so indicate in its recommendation and must specify whether the pre-screening panel recommended for or against submission.

9 FAM 502.5-4 FOURTH PREFERENCE SPECIAL IMMIGRANTS - PANAMA CANAL EMPLOYEES

9 FAM 502.5-4(A) Related Statutory and Regulatory Authorities

9 FAM 502.5-4(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(27)(E)-(G) (8 U.S.C. 1101(a)(27)(E)-(G)).

9 FAM 502.5-4(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.32(d)(3).

9 FAM 502.5-4(A)(3) Public Law

(CT:VISA-1; 11-18-2015)

Panama Canal Act of 1979, Public Law 96-70, sec. 3201.

9 FAM 502.5-4(B) Panama Canal Employees

(CT:VISA-1; 11-18-2015)

a. **Eligibility for Qualification as Special Immigrant:** INA 101(a)(27)(E), INA 101(a)(27)(F), and INA 101(a)(27)(G) state that the following classes of individuals may be entitled to special immigrant status:

- (1) **INA 101(a)(27)(E):** An immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3 (a)(1) of the Panama Canal Act of 1979) enters into force, who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty, and who has performed faithful service as such an employee for one year or more;
- (2) **INA 101(a)(27)(F):** An immigrant, and his accompanying spouse and children, who is a Panamanian national and:
 - (a) Who, before the date on which such Panama Canal Treaty of 1977 enters into force, has been honorably retired from United States Government

employment in the Canal Zone with a total of 15 years or more of faithful service, or

- (b) Who, on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment or continues to be employed by the United States Government in an area of the former Canal Zone;
- (3) INA 101(a)(27)(G): An immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977, who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment.
- b. Panama **Canal Treaty Special Immigrants May Also Qualify under** INA 101(a)(27)(D): An alien applying for status under INA 101(a)(27)(E), (F), or (G) may also qualify as a special immigrant under INA 101(a)(27)(D). See [9 FAM 502.5-3\(B\)\(2\)](#).
- c. **Employment of "Special Nature"**: Although not specifically stated in the Panama Canal Act of 1979, the words "special nature of any of that employment" in INA 101(a)(27)(G) are intended to pertain to aliens employed as police, firemen, or security guards by the Canal Company or the Canal Zone Government.
- d. **Posts Outside Panama to Obtain Opinion of Department and Embassy Before Final Processing**: In view of the possible difficulties in verifying the periods and nature of employment and residence, posts other than Embassy Panama receiving applications from aliens seeking benefits under INA 101(a)(27)(E), (F), or (G) should obtain the opinion of the Embassy at Panama City and the Department of State, Advisory Opinions Division (CA/VO/L/A) before taking final action.

9 FAM 502.5-5 FOURTH PREFERENCE SPECIAL IMMIGRANTS – CERTAIN FOREIGN MEDICAL GRADUATES

9 FAM 502.5-5(A) Related Statutory and Regulatory Authorities

9 FAM 502.5-5(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(27)(H) (8 U.S.C. 1101(a)(27)(H)).

9 FAM 502.5-5(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 40.1(a); 22 CFR 42.31(d)(4).

9 FAM 502.5-5(B) Foreign Medical Graduates in the United States

(CT:VISA-159; 08-18-2016)

INA 101(a)(27)(H) permits certain alien physicians and the accompanying spouse and children to adjust status as special immigrants without regard to labor certification requirements or the restrictions of INA 245(c) concerning previous unauthorized employment, provided the alien physicians were fully and permanently licensed to practice medicine in a State and practicing medicine in a State on January 9, 1978, had entered the United States as nonimmigrant temporary workers or exchange visitors before January 10, 1978, and have been thereafter continuously in the United States in the practice or study of medicine.

9 FAM 502.5-5(C) Spouse and Child

(CT:VISA-159; 08-18-2016)

- a. **In General:** Most, if not all eligible physician beneficiaries have already taken advantage of this provision. There may, however, still be a few spouses and children who have not yet accompanied the principal to the United States and may still wish to do so.
- b. **Processing:** The spouse or child of such an adjustee cannot be issued a derivative special immigrant visa but must be the beneficiary of a petition to accord status under INA 101(a)(27)(H) as an "accompanying" spouse or child. Thus, it will be necessary for the resident alien spouse or child to follow the procedure in 22 CFR 40.1(a) to confer such status. The petition may be filed by either the principal resident alien or the beneficiary.
- c. **Accompanying Spouse and Children:** The definition of "accompanying" in 22 CFR 40.1(a) includes a requirement for the issuance of an immigrant visa within six months of the adjustment, or registration, of the principal alien. The Department deems this requirement to have been met if the petition is filed during that six-month period.

9 FAM 502.5-6 FOURTH PREFERENCE SPECIAL IMMIGRANTS – CERTAIN INTERNATIONAL ORGANIZATION AND NATO CIVILIAN EMPLOYEES

9 FAM 502.5-6(A) Related Statutory and Regulatory

Authorities

9 FAM 502.5-6(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(27)(I) (8 U.S.C. 1101(a)(27)(I)); INA 101(a)(27)(L) (8 U.S.C. 1101(a)(27)(L)); INA 101(a)(33) (8 U.S.C. 1101(a)(33)).

9 FAM 502.5-6(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.32(d)(5).

9 FAM 502.5-6(A)(3) Public Laws

(CT:VISA-1; 11-18-2015)

Visa Waiver Permanent Program Act, Public Law 106-396, sec. 301.

9 FAM 502.5-6(B) Certain International Organization and NATO Civilian Employees

(CT:VISA-383; 06-15-2017)

a. Qualifying for Special Immigrant Status as Employee of Certain International Organizations or NATO:

- (1) **Specific Criteria to Establish Entitlement to Special Immigrant Status under INA(a)(27)(I) or (L):** The Department of Homeland Security (DHS) requires evidence that the petition beneficiary (who may also be the petitioner) is entitled to special immigrant status under INA 101(a)(27)(I) or INA 101(a)(27)(L) in connection with adjudicating the employment-based fourth preference petition. The specific criteria DHS will assess include:
 - (a) Employment with, or relationship to an employee of, an international organization or NATO;
 - (b) Length of residence (as defined in INA 101(a)(33)) in the United States;
 - (c) Length of physical presence in the United States;
 - (d) Maintenance of G-4, N or NATO status; and
 - (e) **Timing of Application:** Because the beneficiary class includes only aliens who are or have been in the United States, DHS records can constitute the most compelling evidence for entitlement to status.
- (2) **Unmarried Sons or Daughters of Certain Present or Former Officers or Employees of an International Organization or NATO:**
 - (a) **Residence and Physical Presence Requirements:** The applicant, while maintaining nonimmigrant G, N or NATO status, must have resided and

been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status, AND for a period or periods aggregating at least seven years between the ages of five and 21 years.

- (b) **Application Requirements:** The applicant must apply for a visa or adjustment of status no later than his or her twenty-fifth birthday.
- (3) **Surviving Spouse of Deceased Officer or Employee of an International Organization or NATO:**
- (a) **Residence and Physical Presence Requirements:** The applicant, while maintaining nonimmigrant G, N or NATO status, must have resided and been physically present in the United States for periods totaling at least one half of the seven years before the date of application for a visa or for adjustment of status AND for a period or periods aggregating at least 15 years before the date of death of the international organization employee.
- (b) **Application Requirements:** The applicant must apply for a visa or adjustment of status no later than six months after the death of an officer or employee of an international organization.
- (4) **Certain Retired Officers or Employees of an International Organization or NATO:**
- (a) **Residence and Physical Presence Requirements:** The applicant, while maintaining nonimmigrant G, N or NATO status, must have resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status AND for a period or periods aggregating at least 15 years before the date of the international employee's retirement.
- (b) **Application Requirements:** The applicant must apply for a visa or adjustment of status no later than six months after the date of retirement. The Department of Homeland Security has determined that although petitions must be filed no later than six months after the alien retires; visas may be issued after that date.
- (5) **Spouses of Certain Retired Officers or Employees of an International Organization or NATO:** The applicant must be "accompanying" or "following-to-join" the retired officer or employee who meets the qualification outlined under [9 FAM 502.5-6\(B\) paragraph a\(4\)](#) above.
- (6) **No Derivative Status:** Except for aliens entitled to status under INA 101(a)(27)(I)(iv), there is no derivative status provided under INA 101(a)(27)(I) or INA 101(a)(27)(L).
- (7) **INTELSAT Employees:** For the purpose of INA 101(a)(27)(I), INTELSAT should be considered an International Organization. (See section 301 of Public Law 106-396.)
- b. **Processing Cases for Special Immigrant Status for Employee of Certain International Organizations or NATO:**

- (1) **Petition:** An applicant eligible for status as a special immigrant under INA 101(a)(27)(I) or INA 101(a)(27)(L) must also be the beneficiary of an approved employment-based fourth preference petition. For a statutory description of qualifications for special immigrant status under INA 101(a)(27)(I) and (L), see [9 FAM 502.5-6\(B\)](#) paragraph a *above*.
- (2) **Timeliness of Application:** Department of State regulation 22 CFR 42.32(d)(5)(ii) requires that an alien who qualifies under INA 101(a)(27)(I) or INA 101(a)(27)(L) be issued an immigrant visa within six months of establishing entitlement to status.

9 FAM 502.5-7 FOURTH PREFERENCE SPECIAL IMMIGRANTS – CERTAIN JUVENILE COURT DEPENDENTS

9 FAM 502.5-7(A) Related Statutory and Regulatory Authorities

9 FAM 502.5-7(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(27)(J) (8 U.S.C. 1101(a)(27)(J)); INA 203(b)(4) (8 U.S.C. 1153(b)(4)).

9 FAM 502.5-7(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.32(d)(6).

9 FAM 502.5-7(B) Certain Juvenile Court Dependents

(CT:VISA-1; 11-18-2015)

- a. Under INA 101(a)(27)(J), special immigrant status is granted an immigrant who is present in the United States:
 - (1) Who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
 - (2) For whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

- (3) In whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that:
- (a) No juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and
 - (b) No natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph may thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.
- b. It is likely that most, if not all, juvenile court dependents classifiable under INA 203(b)(4) as aliens described in INA 101(a)(27)(J) will seek and be entitled to adjustment of status, rather than applying for visas abroad. Consular officers should note, however, that, while the Immigration Act of 1990 provided for the waiver of certain bases for deportation for such aliens, it did not waive the bars to adjustment in INA 245(c), nor to grounds of ineligibility under INA 212. It is therefore possible, absent other legislation, that some beneficiaries of this provision might have to apply for a visa abroad.

9 FAM 502.5-8 FOURTH PREFERENCE SPECIAL IMMIGRANTS – MEMBERS OF U.S. ARMED FORCES RECRUITED ABROAD

9 FAM 502.5-8(A) Related Statutory and Regulatory Authorities

9 FAM 502.5-8(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(27)(K).

9 FAM 502.5-8(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.32(d)(7).

9 FAM 502.5-8(A)(3) Public Law

(CT:VISA-1; 11-18-2015)

Armed Forces Immigration Adjustment Act of 1991, Public Law 102-110, sec. 2.

9 FAM 502.5-8(B) Members of U.S. Armed Forces

Recruited Abroad

(CT:VISA-1; 11-18-2015)

a. Eligibility for Special Immigrant Status as Member of U.S. Armed Forces Recruited Abroad:

- (1) An alien may be eligible for classification under INA 101(a)(27)(K) if the:
 - (a) Alien is a veteran who served honorably in the U.S. Armed Forces on active duty for a period of 12 years after October 15, 1978;
 - (b) Alien is currently enlisted in the U.S. Armed Forces, has served at least six years, and has reenlisted for a total active duty service obligation of at least 12 years;
 - (c) Alien's original enlistment was outside the United States under a treaty or agreement in effect October 1, 1991 (the United States has special agreements with the Philippines, Micronesia, and the Marshall Islands to allow natives of those countries to serve in our Armed Forces); and
 - (d) Executive department under which the alien has served or is serving has recommended the granting of special immigrant status.
- (2) **Derivative Status:** The accompanying or following-to-join spouse or child of an alien granted special immigrant status under INA 101(a)(27)(K) may also be accorded the same special immigrant classification. This may occur whether or not the spouse or child is named in the petition and without the approval of a separate petition. The relationship of spouse or child, however, must have existed at the time the principal alien's special immigrant application was approved. If the spouse or child is in the United States but was not included in the principal alien's application, the spouse or child must file Form I-485, Application for Permanent Residence, with the DHS. If the spouse or child is outside the United States, the principal alien must file Form I-824, Application for Action on an Approved Application or Petition.

b. Processing Cases Related to Special Immigrant Status as Member of U.S. Armed Forces Recruited Abroad:

- (1) **Applicability to Visa Issuance:** The Armed Forces Immigration Adjustment Act of 1991, Public Law 102-110, was enacted on October 1, 1991. Section 2 of this Act provided for special immigrant status under INA 101(a)(27)(K) for certain foreign nationals who served honorably in the U.S. Armed Forces, or will serve, for a period of 12 years. These enlistees/veterans and their spouses and children may apply to become permanent resident aliens of the United States and also become immediately eligible to apply for naturalization as U.S. citizens. Although the title of this Act implies that the beneficiaries of this classification will apply for adjustment of status, it is possible that some beneficiaries and/or their spouses or children will apply for immigrant visas.
- (2) **Petition Requirement:** To be classified as a special immigrant under INA 101(a)(27)(K) an alien must be the beneficiary of an approved Form I-360,

Petition for Amerasian, Widow(er) or Special Immigrant. The petition must be filed with the Department of Homeland Security (DHS) having jurisdiction over the place of the alien's current or intended place of residence in the United States, or with the overseas DHS office having jurisdiction over the alien's residence abroad.

- (3) **Documentation:** The following documents must be submitted in support of the petition:
- (a) Certified proof of enlistment (after 6 years of active duty service) or certification of past active duty status of 12 years, issued by the authorizing official of the executive department in which the applicant serves or has served, certifying that the applicant has the required honorable service and recommending special immigrant status; and
 - (b) Birth certificate, or other acceptable documentary proof, establishing that the applicant is a national of an independent state maintaining a treaty or agreement allowing nationals of that state to enlist in the U.S. Armed Forces.
- (4) **Visa Number Allocation Not Required:** A visa number for an applicant classified under INA 101(a)(27)(K) is not required in advance of visa issuance. When the case is ready for final action, the post should schedule a visa interview appointment and bring the case to a conclusion without a request for or allocation of a visa number.
- (5) **Reporting Visa Issuances:** Posts should report visa issuances under INA 101(a)(27)(K) to the Department in their monthly workload reports.

9 FAM 502.5-9 FOURTH PREFERENCE SPECIAL IMMIGRANTS – CERTAIN INTERNATIONAL BROADCASTING EMPLOYEES

9 FAM 502.5-9(A) Related Statutory and Regulatory Authorities

9 FAM 502.5-9(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(27)(M) (8 U.S.C. 1101(a)(27)(M)).

9 FAM 502.5-9(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 40.1(a)(1); 22 CFR 42.31(d)(8).

9 FAM 502.5-9(A)(3) Public Law

(CT:VISA-1; 11-18-2015)

Public Law 106-536.

9 FAM 502.5-9(B) Certain International Broadcasting Employees

(CT:VISA-1; 11-18-2015)

a. Special Immigrant Classification As International Broadcasting Employee:

- (1) **Background:** Public Law 106-536 amended the INA by adding a new special immigrant classification (BC) for international broadcasting employees who are seeking visas to enter the United States to work as:
 - (a) A broadcaster in the United States for the International Broadcasting Bureau of the Broadcasting Board of Governors (BBG); or
 - (b) For a grantee of the BBG.
- (2) **Defining Broadcaster:** For the purposes of this visa, the Department of Homeland Security defines "broadcaster" as an alien intending to work in the United States for the BBG or a BBG grantee as a:
 - (a) Reporter;
 - (b) Writer;
 - (c) Translator;
 - (d) Editor;
 - (e) Producer or announcer for news broadcasts;
 - (f) Host for news broadcasts, news analysis, editorial and other broadcasts features; or
 - (g) News analysis specialist.

The definition does not include aliens seeking purely technical or support positions with the BBG or BBG grantee.
- (3) **Defining BBG Grantee:** For the purposes of this section BBG grantee means:
 - (a) Radio Free Asia, Inc (RFA); and
 - (b) Radio Free Europe/Radio Liberty, Inc. (RFE/RL).
- (4) **Accompanying Spouse and Children:** Spouses and children, if accompanying the principal alien, may be granted derivative status. (See 22 CFR 40.1(a)(1) for the definition of accompanying.)

b. Qualifying under INA 101(a)(27)(M):

- (1) To qualify as a special immigrant under INA 101(a)(27)(M), an applicant must:
 - (a) Be the beneficiary of an approved fourth preference petition Form I- 360,

Petition for Amerasian, Widow(er), or Special Immigrant;

- (b) Provide a signed and dated attestation from the BBG or its grantee which reflects:
- (i) The job title and a full description of the job to be performed;
 - (ii) The experience held by the alien broadcaster;
 - (iii) The number of years the alien has been performing duties that related to the prospective position;
 - (iv) That hiring the alien broadcaster is in compliance with other laws governing employment and discrimination prevention; and
 - (v) The terms of the job are not contrary to any Federal, State, or local law.
- (2) **Petition:** If the BBG or a BBG grantee wishes to employ an alien who seeks to enter the United States under INA 101(a)(27)(M), they must file the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant with the DHS Vermont Service Center.
- (3) **Determining a Priority Date:** The priority date of a petition for classification under INA 101(a)(27)(M) is the date the completed application, including all supporting documentation and the designated fee, is signed and properly filed with the Vermont Service Center.
- (4) **Numerical Limitation:** The law limits the number of broadcasters to no more than 100 in any fiscal year. This excludes spouses and children, who are not limited in number.

9 FAM 502.5-10 FOURTH PREFERENCE SPECIAL IMMIGRANTS – VICTIMS OF TERRORISM

9 FAM 502.5-10(A) Related Statutory and Regulatory Authorities

9 FAM 502.5-10(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(27) (8 U.S.C. 1101(a)(27)); INA 203(b)(4) (8 U.S.C. 1153(b)(4)).

9 FAM 502.5-10(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.32(d)(9).

9 FAM 502.5-10(A)(3) Public Law

(CT:VISA-1; 11-18-2015)

USA PATRIOT Act, Public Law 107-56, sec. 421.

9 FAM 502.5-10(B) Victims of Terrorism

(CT:VISA-383; 06-15-2017)

See [9 FAM 502.7-4](#) for an overview of the effects of USA PATRIOT Act provisions on immigrant visa status for victims of the September 11 terrorist attacks. This section only describes entitlement to and processing of special immigrant cases related to the September 11 attacks.

(1) Entitlement to Special Immigrant Status:

- (a) **Section 421 of the USA PATRIOT Act:** Section 421 of the USA Patriot Act (Public Law 107-56) provides special immigrant status subject to numerical limitations under INA 101(a)(27) for certain aliens who can demonstrate:
- (i) They are victims of the terrorist attacks of September 11, 2001 (evidentiary requirements as determined by the Secretary of the Department of Homeland Security); and
 - (ii) They are beneficiaries of petitions or labor certification applications filed on or before September 11, 2001, revoked, terminated, or rendered null because the petitioner was killed, disabled, or the business was ruined as the result of such terrorist activity.
- (b) **Entitlement to Special Immigrant Status Under Section 421 of the USA Patriot Act for Surviving Spouse, Child or Fiancé of a U.S. Citizen for Whom Petition Filed:** The surviving spouse, child, or fiancé of a U.S. citizen killed in the September 11 attacks may self-petition for special immigrant status as if the principal alien had not died. The petition must have been filed before September 11, 2001. The relationship of a derivative spouse or child to the principal alien must have existed on September 10, 2001. The alien must demonstrate that the death of the principal alien was a direct result of the terrorist attack of September 11, 2001. The derivative child must enter the United States by September 11, 2003.
- (c) **Accompanying and Following-To-Join Dependents:**
- (i) **Spouse and Child:** The spouse and children of an alien who qualifies under section 421 of the USA Patriot Act as a special immigrant may also be granted special immigrant status provided:
 - The relationship to the principal alien existed on September 10, 2001; and
 - The alien is accompanying or following-to-join the principal alien no later than September 11, 2003.

(ii) **Child Over Age 21:** The child of an alien who is granted special immigrant status under section 421 of the USA Patriot Act who was a "child" on September 10, 2001, may still benefit from the special immigrant provisions even after reaching the age of 21.

(iii) **Grandparents:**

- The grandparent of an alien who qualifies under section 421 of the USA Patriot Act may be granted special immigrant status if both parents of the grandchild died as a result of the September 11 attacks and if one of the parents was a U.S. citizen, U.S. national or a lawful permanent resident alien on September 10, 2001. The spouse or child of the grandparent who qualifies under this section may accompany or follow-to-join the principal applicant.
- **Applying for Special Immigrant Status:** The grandparent who qualifies under section 421(c) of the USA Patriot Act, must self-petition using Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The grandparent must demonstrate that he or she is coming to the United States to assume legal custody of a child both of whose parents were killed in the September 11, 2001 terrorist attack. (See [9 FAM 502.7-4.](#))
- **Processing Special Immigrants under Section 421(c) of the USA Patriot Act:** Upon receipt of an approved Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, consular officers should process the case as any other immigrant case. However, no Form I-864, Affidavit of Support Under Section 213A of the Act, may be required and the applicant is exempt of INA 212(a)(4). The applicant should be issued a visa annotated: "SP - beneficiary of section 421, USA PATRIOT ACT."

(d) **Beneficiary of USA Patriot Act With Approved Labor Certification:**

- (i) Under section 421(b)(1)(A)(ii) of the USA Patriot Act, a principal alien beneficiary of an approved labor certification that is revoked due to the disabling of the principal alien or the loss of his or her employment due to physical damage caused by the terrorist attacks of September 11 is eligible for special immigrant status, as are his or her derivative spouse and children. If the principal alien was killed in the attacks of September 11, a surviving spouse or child is eligible for special immigrant status. The labor certification must have been filed on or before September 11, 2001. The relationship of a derivative spouse or child to the principal alien must have existed on September 10, 2001. (See [9 FAM 502.7-4.](#))
- (ii) **Applying for Status:** The alien classified as an SP alien under the USA Patriot Act must file Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant with DHS at the service center that

has jurisdiction over the intended place of residence.

- (iii) **Processing an Alien under 421(b)(1)(A)(ii) of the USA Patriot Act:** You must follow standard immigrant visa processing once the approved petition is received from NVC. However, no Form I-864, Affidavit of Support Under Section 213A of the Act, may be required and the applicant is exempt from INA 212(a)(4) ineligibility. Issue as follows: "SP - beneficiary of section 421, USA PATRIOT ACT".

(2) **Applying for Special Immigrant Status:**

- (a) **Special Immigrant Status Under Provisions of the USA Patriot Act:** Applicants must submit Department of Homeland Security Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant including evidence of entitlement to special immigrant status, to the DHS service center that has jurisdiction over the alien's place of residence. Consular officers should be advised to contact the DHS for detailed application procedures and requirements. Consular officers must wait for the approved petition before visa processing can begin.
- (b) **Priority Date:** Under section 421 of the USA Patriot Act, an alien's priority date under INA 203(b)(4) is generally the date that the alien files the petition for classification as a special immigrant. However, if an alien already has established a priority date based on the initial petition, the alien can maintain the earlier priority date.
- (c) **Processing Applications Under Section 421 of the USA Patriot Act:** Posts will be notified of Form I-140, Immigrant Petition for Alien Worker, approval via National Visa Center. Posts should then proceed with regular IV processing by sending Instruction and Appointment packages to the applicant. Applicants must comply with the usual security checks, demonstrate evidence of relationships, and undergo the standard medical exam. However, no Form I-864, Affidavit of Support Under Section 213A of the Act, may be required. The Patriot Act specifically exempts applicants from the public charge ground of inadmissibility under INA 212(a)(4). Qualified applicants should be issued: "SP - beneficiary of section 421, USA PATRIOT ACT."
- (d) INA 212(a)(4): The public charge provisions of INA 212(a)(4) are not applicable to aliens granted special immigrant status under section 421 of the USA Patriot Act. All other grounds of ineligibility apply.

9 FAM 502.5-11 FOURTH PREFERENCE SPECIAL IMMIGRANTS – CERTAIN SPECIAL IMMIGRANT TRANSLATORS

9 FAM 502.5-11(A) Related Statutory and Regulatory

Authorities

9 FAM 502.5-11(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(27) (8 U.S.C. 1101(a)(27)).

9 FAM 502.5-11(A)(2) Public Law

(CT:VISA-1; 11-18-2015)

National Defense Authorization Act for Fiscal Year 2006, Public Law 109-163, sec. 1059; U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110-28, sec. 3812(b); Consolidated Appropriations Act, 2008, Public Law 110-161, division J, sec. 699J; Public Law 110-242, sec. 2; National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181, sec. 1244; Omnibus Appropriations Act, 2009, Public Law 111-8, division F, sec. 602.

9 FAM 502.5-11(B) Certain Special Immigrant Translators

(CT:VISA-383; 06-15-2017)

a. Special Immigrant Translator Status:

(1) **Eligibility for Special Immigrant Translator or Interpreter Status under INA 101(a)(27) (Section 1059 of Public Law 109-163):**

- (a) **Criteria for Status:** Applicants filing a petition for special immigrant translator or interpreter (SI1) status must meet the following criteria:
- (i) Must be a national of Iraq or Afghanistan;
 - (ii) Must have worked directly with the United States Armed Forces, or under Chief of Mission (COM) authority, as a translator or interpreter for a period of at least 12 months;
 - (iii) Must have provided faithful and valuable service to the United States Armed Forces or the COM, which is documented in a favorable written recommendation from a general or flag officer in the chain of command of the United States Armed Forces unit that was supported by the alien or, if the applicant claims status based on work under COM authority, a favorable written recommendation from the COM;
 - (iv) Must have cleared a background check and screening as determined by a general or flag officer in the chain of command of the United States Armed Forces unit that was supported by the alien or by the COM; and
 - (v) Is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility, the grounds for inadmissibility

specified in INA 212(a)(4) relating to "public charge" do not apply.

- (b) **Additional Interview Requirements:** An applicant for special immigrant translator or interpreter status must provide for his or her interview a written description of his or her position and responsibilities for translation or interpretation. Principal applicants must be interviewed in English only. Descriptions of the positions of translators and interpreters are provided on the Visa Section of Consular Affairs' website. In addition, the officer should ask the applicant about any prior applications for Chief of Mission approval under the SQ SIV program as well as the result of those applications.

(2) **Spouses and Children:**

- (a) The derivative spouse and minor, unmarried children of the principal applicant may be included in the case and do not count against the fiscal year cap for interpreters and translators. They may accompany the principal applicant or follow-to-join the principal.
- (b) A surviving spouse or child is also entitled to special immigrant status if the principal alien had a petition approved by the Secretary of Homeland Security, but the petition was revoked or terminated after its approval due to the death of the petitioning alien. (Section 1244(b)(3) of Public Law 110-181 and Section 602(b)(2)(C) of Division F of Public Law 111-8.) In such an instance, the approved SI petition would be converted to an approved SQ petition for special immigrant status under section 1244 of Public Law 110-181 (for the surviving spouse or child of an Iraqi national) or section 602(b) of Public Law 111-8 (for the surviving spouse or child of an Afghan national). Post may continue to process the application without affirmative action by USCIS to reinstate the petition, so long as the derivatives were included on the petition approved by USCIS.
- (c) *In issuing a visa to an eligible surviving spouse or child, the consular officer must annotate the visa appropriately. For the surviving spouse/child of an Afghan principal applicant, annotate with "Issued as a surviving spouse/child pursuant to section 602(b)(3) of Public Law 111-8." For the surviving spouse/child of an Iraqi principal applicant, annotate with "Issued as a surviving spouse/child pursuant to section 1244(b)(3) of Public Law 110-181."*

b. **Processing Special Immigrant Translator Cases:**

(1) **Numerical Limitations:**

- (a) Except as provided in paragraph b, the total number of principal aliens who may be provided special immigrant translator or interpreter status during any fiscal year must not exceed 50.
- (b) If the numerical limitation is not reached during a given fiscal year, the numerical limitation for the following fiscal year will be increased by the amount of numbers that were unused.

- (c) If the numerical limitation for SI1 status has been reached during a given fiscal year and the petition was filed before October 1, 2008, an approved petition for SI1 status may be converted to an approved petition for special immigrant status under section 1244 of Public Law 110-181 (SQ1), notwithstanding the qualification criteria for SQ1 status (see [9 FAM 502.5-11\(B\)](#) paragraph b(4) below).
- (2) **Petitions:** Aliens outside the United States file the petition with the U.S. Citizenship and Immigration Services by sending the petition directly to the Nebraska Service Center for adjudication. Posts have no authority to adjudicate these translator or interpreter petitions. Posts will provide a translator or interpreter under COM authority for at least 12 months who has provided the requisite faithful and valuable service to the COM and cleared the background check or screening with a favorable written recommendation or evaluation from the COM. The U.S. Armed Forces unit, not the Department of State, is the advocate on behalf of the translator or interpreter (petitioner) with the U.S. Armed Forces and his or her immediate family and will assist them with the required documentation. The Nebraska Service Center will send an approved Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant through the National Visa Center (NVC) to designated posts for adjudication.
- (3) **Approval of Petition under INA 204:** The approval of a petition under INA 204 is considered to establish prima facie entitlement to status, and the qualifications of the alien beneficiary are presumed to exist. Unless you have specific, substantial evidence of either misrepresentation in the petition process (including questions of identity in verifying the employee's signature on Form I-360 per [9 FAM 502.5-12\(B\)](#) paragraph b(2)(c)), derogatory information that may call into question the faithful and valuable service of the applicant, or other facts unknown to USCIS at the time of approval, you generally would have no reason to return the petition to USCIS. If posts have further questions, contact the Office of Field Operations (CA/VO/F).
- (4) **Cases Converted from SI1 to SQ1:**
- (a) You may encounter a visa application for a principal alien whose approved petition for SI1 status under section 1059 of Public Law 109-163, as amended, has been converted to an approved petition for SQ1 status under section 1244 of Public Law 110-181, as amended. In authorizing the conversion of these petitions when a visa is not immediately available with respect to SI1 status, Congress exempted the self-petitioning alien from the qualification requirements for SQ1 status other than the numerical limitations.
- (b) In reviewing the qualifications of a principal alien whose petition has been converted from SI1 to SQ1, you must consider the criteria outlined in [9 FAM 502.5-11\(B\)](#) paragraph a(2) above, not/not those found in [9 FAM 502.5-12\(B\)](#) paragraph b(1), to the extent that they differ. Unless you have specific, substantial evidence of either misrepresentation in the petition process or facts unknown to USCIS at the time of petition approval

indicating that the alien does not meet the criteria for SI1 status listed in [9 FAM 502.5-11\(B\)](#) paragraph a(2) above, you generally would have no reason to return the petition to USCIS.

- (c) Note that, in the case of a national of Afghanistan whose petition has been converted from SI1 to SQ1 status, you may not return the petition to USCIS based on a lack of Iraqi nationality or citizenship since Afghan nationality is a qualification ground listed in [9 FAM 502.5-11\(B\)](#) paragraph a(2) above.
- (d) The conversion provision did not authorize a fee waiver. An individual whose case is converted from SI1 to SQ1 must pay all required fees.

9 FAM 502.5-12 FOURTH PREFERENCE SPECIAL IMMIGRANTS – CERTAIN IRAQI AND AFGHAN NATIONALS EMPLOYED BY OR ON BEHALF OF THE U.S. GOVERNMENT IN IRAQ OR AFGHANISTAN, AND CERTAIN AFGHAN NATIONALS EMPLOYED BY THE INTERNATIONAL SECURITY ASSISTANCE FORCE OR A SUCCESSOR MISSION

9 FAM 502.5-12(A) Related Statutory and Regulatory Authorities

9 FAM 502.5-12(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(27) (8 U.S.C. 1101(a)(27)); INA 204 (8 U.S.C. 1154).

9 FAM 502.5-12(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.2(g).

9 FAM 502.5-12(A)(3) Public Law

(CT:VISA-341; 04-13-2017)

- a. **Afghan Program:** Afghan Allies Protection Act, Public Law 111-8, sec. 602(b); Consolidated Appropriations Act of 2014, Public Law 113-76, sec. 7034(o); National Defense Authorization Act of 2014, Public Law 113-66, sec. 1219; Emergency Afghan Allies Extension Act, Public Law 113-160, sec. 1; National Defense Authorization Act of 2015, Public Law 113-291, sec. 1227; National Defense Authorization Act of 2016, Public Law 114-92, sec. 1216; National Defense

Authorization Act for FY 2017, Public Law 114-328, sec. 1214.

- b. **Iraqi Program: National Defense Authorization Act of Fiscal Year 2008, Public Law 110-181, sec. 1244; Public Law 110-242, sec. 2; Public Law 113-42, sec. 1; National Defense Authorization Act of 2014, Public Law 113-66, sec. 1218.**

9 FAM 502.5-12(B) Certain Iraqi and Afghan Nationals Employed by or on Behalf of the U.S. Government in Iraq or Afghanistan, and Certain Afghan Nationals Employed by the International Security Assistance Force or a Successor Mission

(CT:VISA-383; 06-15-2017)

- a. **Eligibility for Special Immigrant Status for Iraqi and Afghan Nationals Employed by or on Behalf of the U.S. Government, and Afghan Nationals Employed by the International Security Assistance Force or a Successor Mission:**

(1) **Who is Eligible for Special Immigrant Status (SQ1) Under Section 1244 or Section 602(b)?**

To obtain U.S. Citizenship and Immigration Services' approval of a petition for special immigrant status (SQ1) under section 1244 of Public Law 110-181 or section 602(b) of Division F, Title VI, of Public Law 111-8, a self-petitioning alien must establish that he or she:

- (a) Is a national of Iraq or Afghanistan;
- (b) Has the required period of qualifying employment, specifically:
 - (i) In the case of a national of Iraq: has been employed by, or on behalf of the U.S. government in Iraq, on or after March 20, 2003 and prior to September 30, 2013, for a period of not less than one year and who applied for Chief of Mission (COM) approval by September 30, 2014;
 - (ii) in the case of a national of Afghanistan:
 - For COM applications submitted before December 19, 2014, the applicant must have been employed by, or on behalf of the U.S. Government in Afghanistan, on or after October 7, 2001 for a period of not less than one year. The one year period of employment must have been completed by December 31, 2014. For COM applications submitted between December 19, 2014 and September 30, 2015, the applicant must have been employed by or on behalf of the U.S. Government, or by the International Security Assistance Force (ISAF) or a successor mission, in Afghanistan on or after October 7, 2001 for a period of not less than one year. The one year period of employment must have been completed by September 30, 2015.

- For COM applications submitted between September 30, 2015 and December 22, 2016, the applicant must have been employed by or on behalf of the U.S. Government, or by the International Security Assistance Force (ISAF) or a successor mission, in Afghanistan on or after October 7, 2001 for a period of not less than two years. The two year period of employment must have been completed by December 31, 2016.
 - For COM applications submitted on or after December 23, 2016, the applicant must have been employed by or on behalf of the U.S. Government, or by ISAF or a successor mission, in Afghanistan on or after October 7, 2001 for a period of not less than two years. The two year period of employment must be completed by December 31, 2020. The applicant's employment must have required him or her to: serve as an interpreter or translator for personnel of the Department of State or USAID, particularly while traveling away from the U.S. embassy or consulates; serve as an interpreter or translator for U.S. military personnel, particularly while traveling off base with such personnel; or to perform sensitive and trusted activities for the U.S. government in Afghanistan.
- (iii) For nationals of Afghanistan qualifying on the basis of employment by ISAF, or a successor mission, that employment must be for the required period as listed above and must have been in a capacity that required the applicant to serve as an interpreter or translator for U.S. military personnel while traveling off-base with U.S. military personnel stationed at ISAF, or a successor mission, or to perform sensitive and trusted activities for U.S. military personnel stationed at ISAF, or a successor mission. Employment by ISAF, or a successor mission, also includes employment by NATO and governments participating in ISAF, or any successor missions.
- (c) Has been determined by the COM in Embassy Baghdad or Embassy Kabul, as applicable, or the COM's designee, to have provided faithful and valuable service to an entity or organization described in [9 FAM 502.5-12\(B\)](#) paragraph a(1)(b) *above*, which is documented in a positive recommendation from the alien's supervisor as defined in [9 FAM 502.5-12\(B\)](#) paragraph b(3) *below* and a human resources letter from the entity or organization described in [9 FAM 502.5-12\(B\)](#) paragraph a(1)(b);
- (d) Has been determined by the chief of mission in Embassy Baghdad or Embassy Kabul, as applicable, or the COM's designee, to have experienced, or to be experiencing, an ongoing serious threat, as defined in [9 FAM 502.5-12\(B\)](#) paragraph a(4) *below*, as a consequence of the employment by or on behalf of the U.S. government;
- (e) Has cleared a background check and appropriate screening as determined by the Secretary of Homeland Security; and

- (f) Is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except that, in the determination of such admissibility, the grounds for inadmissibility specified in INA 212(a)(4) relating to "public charge" do not apply.

(2) **What Does "Faithful and Valuable Service" Mean?**

- (a) The COM, or his or her designee, has primary responsibility for determining whether the alien's service has been "faithful and valuable." This is done through an independent review and verification of records maintained by the U.S. government or hiring organization or entity. This is separate from the supervisor's recommendation discussed in [9 FAM 502.5-12\(B\)](#) paragraph a(3) *below*, although the supervisor's recommendation is an important document to assist in making this determination.
- (b) [9 FAM 502.5-3\(C\)\(2\)](#) paragraph b, which discusses "faithful service" in the context of special immigrant classification under INA 101(a)(27)(D), notes that a record of disciplinary actions that have been taken against an employee does not automatically disqualify the employee. The COM, or his or her designee, must assess the gravity of the reasons for the disciplinary action and whether the record as a whole, notwithstanding the disciplinary actions, is one of faithful service. Meeting the minimum requirements to qualify as an SQ1 does not automatically constitute faithful and valuable service.

(3) **Who Qualifies as a Supervisor?**

- (a) The supervisor should normally be the U.S. citizen who directly supervises the alien, or supervises the company for which the alien is employed. In all cases, before offering a recommendation for the employee for purposes of obtaining a special immigrant visa for the employee, the supervisor must have met the employee and must certify, in writing, that the referred applicant is personally known to the supervisor and, to the best of the supervisor's knowledge, presents no threat to the national security or safety of the United States.
- (b) If it is not possible for a contract or subcontract employee to obtain this certification from a U.S. citizen supervisor, then post may accept a letter from a non-U.S. citizen supervisor, provided the U.S. citizen responsible for the contract or subcontract co-signs the letter and indicates that based on his or her relationship with the contract or subcontract supervisor, he or she is confident that the information provided is correct and also certifies that to the best of his or her knowledge, the employee presents no threat to the national security or safety of the United States.
- (c) The recommendation must also contain the supervisor's personal and work email address, and if the supervisor is not a U.S. citizen, the U.S. citizen's cosigner's personal and work email address so he or she may be contacted if additional information is needed.

(4) What Does "Has Experienced or is Experiencing an Ongoing Serious Threat" Mean?

- (a) To qualify for an SIV in the SQ1 classification, an alien must have experienced, or be experiencing, an ongoing serious threat as a consequence of his or her employment by, or on behalf of, the U.S. government. This determination must be made by the COM, Embassy Baghdad or Embassy Kabul, as applicable, or the COM's designee (see [9 FAM 502.5-12\(B\)](#) paragraph a(1)(d) *above*). Applicants must submit information relative to their particular circumstances to demonstrate that they are experiencing an ongoing serious threat, which may include statements from their employer, personal statements, or statements from community leaders. Conditions within the country itself may be indicative of a threat environment to which current or former employees are subjected. The National Defense Authorization Act for FY 2014, signed on December 26, 2013, amended the statutory requirements for evidence of a serious threat by requiring consideration of a credible sworn statement depicting dangerous country conditions, together with official evidence of such country conditions from the U.S. government, as a factor in determinations of whether an alien has experienced, or is experiencing, an ongoing serious threat as a consequence of employment by, or on behalf of, the U.S. government.
- (b) The COM, or the COM's designee, is responsible for making the determination of whether an alien meets the statutory threat requirement. This determination should not be reassessed at the time of visa interview unless there is specific, substantial evidence that the alien misrepresented facts relative to the existence of a threat at the time of COM approval, in which case the consular officer should refer the case to the COM or COM designee for reconsideration of COM approval.

(5) Are Spouses and Children Qualified?

- (a) The derivative spouse and minor, unmarried children of the principal applicant may be included in the case and do not count against the cap of special immigrant visas (SQ1s) for that nationality each fiscal year. They may accompany the principal applicant or follow-to-join the principal.
- (b) A spouse or child is also eligible if the principal alien had a petition approved by the Secretary of Homeland Security, but the petition was automatically revoked or terminated after its approval due to the death of the petitioning alien. In the case of a surviving derivative spouse or minor who is otherwise qualified to receive a visa, post may continue to process the application without affirmative action by USCIS to reinstate the petition, so long as the derivatives were included on the petition approved by USCIS.
- (c) In issuing a visa to an eligible surviving spouse or child, the consular officer must annotate the visa appropriately. For the surviving spouse/child of an Afghan principal applicant, annotate with "Issued as a*

surviving spouse/child pursuant to section 602(b)(3) of Public Law 111-8." For the surviving spouse/child of an Iraqi principal applicant, annotate with "Issued as a surviving spouse/child pursuant to section 1244(b)(3) of Public Law 110-181."

b. IV Processing for Special Immigrant Iraqi and Afghan Nationals Employed by or on behalf of the U.S. Government, and Afghan Nationals Employed by the International Security Assistance Force or a Successor Mission:

(1) Are There Numerical Limitations on Visa Issuance?

- (a) The total number of principal aliens of Iraqi nationality who could be provided special immigrant status (SQ1) under section 1244 was limited to 5,000 per year for FYs 2008 through 2012. Unused numbers from FY 2012 were allocated to FY 2013. Section 1 of Public Law 113-42 amended section 1244 by authorizing the issuance of SQ1 visas through December 31, 2013 in the amount of the total number of applications for SIV status by Iraqi principal applicants pending as of September 30, 2013 and for up to 2,000 additional visas for Iraqis who applied for status as principal applicants subsequent to that date. Section 1218 of the National Defense Authorization Act for FY 2014, Public Law 113-66, again amended section 1244 by authorizing the issuance of 2,500 SQ1 visas to Iraqi principal applicants beginning on January 1, 2014.
- (b) The total number of principal aliens of Afghan nationality who could be provided SQ1 under section 602(b) was limited to 1,500 per year for FYs 2009 through 2013. Section 7034(o) of Division K, Title VII of Public Law 113-76 amended section 602(b) by authorizing the issuance of 3,000 visas to Afghan principal applicants in FY 2014 and allowing that any unissued visas from FY 2014 be allocated to FY 2015. Section 1 of Public Law 113-160, signed on August 8, 2014, further amended section 602(b) by authorizing the issuance of 1,000 additional visas to Afghan principal applicants by December 31, 2014. All visas allocated in Public Laws 113-76 and 113-160 were issued as of December 14, 2014. Section 1227 of Public Law 113-291, signed on December 19, 2014, authorized the issuance of 4,000 visas to Afghan principal applicants by March 31, 2017. Section 602(b) was subsequently amended by section 1216 of Public Law 114-92, signed on November 25, 2015, which authorized the issuance of 3,000 visas to Afghan principal applicants, in addition to the 4,000 authorized in Public Law 113-291. Public Law 114-328, enacted December 23, 2016, amended this to permit the issuance of an additional 1,500 visas to Afghan principal applicants. There is no specified date by which these 8,500 total visas must be issued.

(2) How are Petitions Filed?

- (a) The elements below must be established by approval of the COM, Embassy Baghdad or Embassy Kabul, as applicable, or the COM's designee before the petition can be forwarded to USCIS:

- (i) Assessment of the alien establishing that the alien has experienced, or is experiencing, an ongoing serious threat as a consequence of his or her employment by or on behalf of the U.S. government (see [9 FAM 502.5-12\(B\)](#) paragraph a(4)); and
 - (ii) An independent review and verification of records maintained by the U.S. government or the hiring organization or entity that confirms the alien's employment and faithful and valuable service to the U.S. government.
 - (b) Applicants must file the petition directly with the USCIS Nebraska Service Center for adjudication along with all required evidence. USCIS will contact the applicant directly should any questions or need for further documentation be required. Posts have no authority to adjudicate these petitions. The approved Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, will be sent through the National Visa Center (NVC) to designated posts for visa processing.
 - (c) Form I-360 petitions under section 1244 of Public Law 110-181 and section 602(b) of Public Law 111-8 may be filed by applicants via email and provisionally approved by USCIS. The applicant is instructed by USCIS in the approval notice for the petitioner to bring the signed original Form I-360 to the visa interview. The Bureau of Consular Affairs and USCIS signed a Memorandum of Understanding in January 2012 that consular officers would verify that petitioners have satisfied I-360 filing requirements at their visa interviews. At the visa interview, the consular officer must review the original signed I-360, confirm that the signature is valid, and verify the petitioner's identity. If the applicant's signature and identity are verified, no further action is required by the consular officer. If the signature is not valid, or the consular officer questions the validity of the petition for other reasons, the consular officer will return the file to USCIS via NVC for review and possible revocation of the I-360.
- (3) **Approval of Petition Under INA 204:** The approval of a petition under INA 204 is considered to establish prima facie entitlement to status, and the qualifications of the alien beneficiary are presumed to exist. Unless you have specific, substantial evidence of either misrepresentation in the petition process or facts unknown to USCIS (including questions of identity in verifying the employee's signature on Form I-360 per [9 FAM 502.5-12\(B\)](#) paragraph b(2)(c) *above*) at the time of petition approval or to the COM, Embassy Baghdad or Embassy Kabul, as applicable, at the time of the approval described [9 FAM 502.12\(B\)](#) paragraph b(2)(a), you generally would have no reason to return the petition to USCIS. If posts have further questions, contact the Office of Field Operations (CA/VO/F).
- (4) **Immediate Intent to Immigrate:**
- (a) Special immigrant status (SQ1) was not designed for use as an "insurance policy" to protect an alien against the possibility of political or economic vicissitudes in the future. Nor was it the intent of Congress that the

principal alien obtain SQ1 status solely to facilitate the entry of dependents into the United States when it is the principal alien's intent to return abroad to resume employment with the U.S. government. SQ visas should have a maximum validity period of six months.

- (b) Before issuing a visa, you must require that the applicant submit a letter indicating that he or she plans to resign the position he or she holds, plans to permanently separate from her or his position abroad, and intends to immigrate to the United States within the six month validity of the immigrant visa. If the applicant does not intend to permanently resign his or her position and immigrate to the United States to reside, you should notify the COM or COM designee and request reconsideration of the COM approval. An applicant's failure to depart within the validity of the SIV is not inconsistent with the requirement that the applicant has experienced an ongoing serious threat, nor is it necessarily indicative of misrepresentation to the COM. However, an officer interviewing an SQ applicant with a previously issued and unused SIV must closely examine the applicant's current intent to immigrate.
- (5) **Fees:** Section 1244(d) of Public Law 110-181 and section 602(b)(4) of Division F, Title VI, of Public Law 111-8 provide that neither the Secretary of State nor the Secretary of Homeland Security may charge an alien who meets the criteria in [9 FAM 502.5-12\(B\)](#) paragraph a(1) any U.S. government fee in connection with an application for, or issuance of, an SIV. Note that an alien whose SIV status is based on conversion of a petition from SI1 to SQ1 status (see [9 FAM 502.5-12\(B\)](#) paragraph b(7)(c)) must pay such fees.
- (6) **Passports:** Section 1244(d) and section 602(b)(4) further provide that the Secretary of State must make a reasonable effort to ensure that aliens who are issued SIVs under either section 1244 or section 602(b) are provided with the appropriate series Iraqi or Afghan passport, as applicable, necessary to enter the United States. Posts are reminded of the waiver provisions of 22 CFR 42.2(g), and are encouraged to contact CA/VO/F if it is not practical for an applicant to await passport issuance.
- (7) **Cases Converted From Special Immigrant Translator or Interpreter (SI1) to Special Immigrant Status (SQ1):**
- (a) You may encounter a visa application for a principal alien whose approved petition for SI1 status under section 1059 of Public Law 109-163, as amended, has been converted to an approved petition for SQ1 status under section 1244 of Public Law 110-181, as amended. In authorizing the conversion of these petitions when a visa is not immediately available with respect to SI1 status, Congress exempted the self-petitioning alien from the qualification requirements for SQ1 status other than the numerical limitations.
- (b) In reviewing the qualifications of a principal alien whose petition has been converted from SI1 to SQ1, you must consider the criteria outlined in [9 FAM 502.5-11\(B\)](#) paragraph a(1), not those found in [9 FAM 502.5-12\(B\)](#)

paragraph a(1), to the extent that they differ. Unless you have specific, substantial evidence of either misrepresentation in the petition process or facts unknown to USCIS at the time of petition approval indicating that the alien does not meet the criteria for SI1 status listed in [9 FAM 502.5-11\(B\)](#) paragraph a(1), you generally would have no reason to return the petition to USCIS. Note that, in the case of a national of Afghanistan whose petition has been converted from SI1 to SQ1 status, you may not return the petition to USCIS based only on a lack of Iraqi nationality or citizenship since Afghan nationality is a qualification ground listed in [9 FAM 502.5-11\(B\)](#) paragraph a(1).

- (c) The conversion provision did not authorize a fee waiver. An individual whose case is converted from 1059 to 1244 must pay all required fees. SQ1 visas issued in converted cases are to be valid for a maximum of six months.

(8) Representation:

- (a) The National Defense Authorization Act for FY 2014, signed on December 26, 2013, altered the Iraqi and Afghan SIV programs by allowing representation. Section 1244 of Public Law 110-181, the National Defense Authorization Act for Fiscal Year 2008, as amended, and section 602(b) of Division F, Title VI, of the Omnibus Appropriations Act, 2009, as amended, Public Law 111-8, authorize Iraqi and Afghan SQ applicants to have attorneys or other accredited representatives present during all interviews and examinations throughout the SIV process, including the COM application process. Any such representation is not to be at U.S. government expense.
- (b) Posts should establish policies for allowing attorneys/representatives of SQ applicants access to waiting rooms to be present during interviews, taking into consideration such factors as a particular post's physical layout and any space limitations or special security concerns. Posts should not accede to requests for remote representation by attorneys or representatives via video or teleconferencing.
- (c) During visa interviews, an attorney's or representative's presence does not have any impact on the applicant's obligation to respond to questions. The applicant, not the attorney/representative, must answer all of the questions. The attorney/representative can ask the consular officer to clarify a confusing question prior to the applicant answering the question, but the consular officer has discretion to rephrase a question or to ask the applicant to answer the original question. The attorney/representative should not instruct the applicant not to answer a question, except on the narrow ground of protecting attorney-client privilege if the applicant is represented by an attorney. The consular officer should not ask the applicant what he/she discussed with his/her attorney prior to coming to the interview. Failure to provide requested information could warrant a 221(g) refusal. Consular officers need not allow applicants to consult with

the attorney/representative before answering a question during the interview, except where the attorney wishes to advise his client on a point of law. After providing an initial and full answer to the best of his/her knowledge, the applicant may then consult with his/her representative and provide follow up information or clarification. The applicant and his/her representative do not need to be given a private location to consult. If the information provided after a consultation with the attorney/representative contradicts the information provided in the initial response, the consular officer should exercise his/her best judgment in weighing the credibility of the response as he/she would in other situations.

- (d) When handling correspondence, as with any visa case where the applicant has elected to use an attorney or other accredited representative, you must be satisfied that an attorney-client relationship exists or that there is a comparable relationship with a non-attorney representative as outlined in [9 FAM 603.2-9](#). For COM applications where the applicant has elected to use an attorney or other representative, the NVC will ensure that form G-28 or other documentary evidence of the attorney-client relationship or comparable relationship with a non-attorney representative is included in its transmittals to Embassies Baghdad and Kabul.

9 FAM 502.6

DIVERSITY IMMIGRANT VISAS

(CT:VISA-175; 09-13-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 502.6-1 RELATED STATUTORY AND REGULATORY AUTHORITIES

9 FAM 502.6-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 202(b) (8 U.S.C. 1152(b)); INA 203 (8 U.S.C. 1153); INA 204(a)(1)(I)(ii) (8 U.S.C. 1154(a)(1)(I)(ii)); INA 212(a)(5) (8 U.S.C. 1182(a)(5)); INA 212(a)(6)(C) (8 U.S.C. 1182(a)(6)(C)); INA 212(e) (8 U.S.C. 1182(e)); INA 213(a) (8 U.S.C. 1183(a)); INA 221(g) (8 U.S.C. 1201).

9 FAM 502.6-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 40.205; 22 CFR 42.33.

9 FAM 502.6-1(C) Public Law

(CT:VISA-1; 11-18-2015)

Section 131 of the Immigration Act of 1990 (Public Law 101-649); the Nicaraguan Adjustment and Central American Relief Act (NACARA - Public Law 105-100); Section 1 of Public Law 105-360; Section 636 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208); the Assistance for International Malaria Control Act (Public Law 106-570); USA PATRIOT Act (Public Law 107-56).

9 FAM 502.6-2 DIVERSITY IMMIGRANTS OVERVIEW

(CT:VISA-175; 09-13-2016)

- a. Section 131 of the Immigration Act of 1990 (Public Law 101-649) amended INA 203 to provide for a new class of immigrants known as "diversity immigrants" (DV immigrants). The amendment established an annual numerical limitation of 55,000 DV immigrants effective for fiscal year 1995 and thereafter. Aliens who are natives

of countries determined by the Attorney General (now Secretary of Homeland Security) through application of a mathematical formula specified in INA 203(c)(1)(A) to be "low admission" countries may *qualify* for immigration under this limitation. INA 203(c)(1) requires a separate *entry for each participating alien* for each fiscal year.

- b. INA 203(c)(1)(A) requires the Secretary of Homeland Security to determine the actual number of immigrant admissions from each foreign country for the previous five year period. The formula identifies both high and low admission regions and high and low admission foreign states. A greater share of the available visa numbers goes to low admission regions. High admission states are excluded from the program.
- c. In November 1997, Congress passed Public Law 105-100, the Nicaraguan Adjustment and Central American Relief Act (NACARA). With NACARA, Congress stipulated that beginning with the 1999 Diversity Immigrant Visa Program, and as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas can be made available for use under the NACARA program.

9 FAM 502.6-3 DIVERSITY VISA ELIGIBILITY

(CT:VISA-175; 09-13-2016)

- a. **Requirements for Diversity Immigrant Program:** To qualify under INA 203(c) as a diversity immigrant, the following requirements must be met:
 - (1) The alien must be a native of, or *be* chargeable to, a *country eligible for that year's DV program* (see [9 FAM 502.6-3](#) paragraph b); and
 - (2) The alien must have at least a high school education or equivalent (see [9 FAM 502.6-3](#) paragraph c); or
 - (3) The alien must have, within five years of the date of application for a diversity immigrant visa under INA 203(c), at least two years of work experience in an occupation *that* requires at least two years of training or experience (see [9 FAM 502.6-3](#) paragraph d).
- b. **Qualifying Diversity Visa Countries**
 - (1) **Formula for Identifying Qualifying Diversity Countries:**
 - (a) The Secretary of Homeland Security is required to determine total admissions of preference and immediate relative (IR) immigrants over the most recent five-year period for which statistics are available, worldwide total, by region, and by individual foreign state. Using these figures, the Secretary of Homeland Security is to identify both high admission regions and high admission foreign states. A high admissions region is a region whose admission total is greater than one-sixth of the worldwide total. A foreign state whose admissions total is greater than 50,000 is a high admission foreign state.
 - (b) Using available estimates, the Secretary of Homeland Security must then

determine the population of each of the six regions (excluding the population of any high admission foreign state) and use those totals to determine the apportionment of the 55,000 worldwide DV limitations. Quotas for the six regions will be established. Natives of these regions compete for that portion of the total established for that region. Any unused portion of a regional quota is distributed proportionally among the other regions. High admission states are excluded entirely from the apportionment. No one country's nationals may receive more than 7% of the available visas in any one year.

- (2) **Qualifying Countries:** *Natives of high admission counties are not eligible to register for the DV program unless they qualify based on chargeability to a DV program country.* The Department of Homeland Security will determine annually the list of ineligible countries. The list is subject to change annually.
- (3) **Native:** *Native means a person born in a DV program county. An individual may be able to participate in the DV program because of specific family ties or personal situations by "charging" to another country. See [9 FAM 502.6-4 paragraph a\(2\)](#) for additional information on chargeability.*

c. High School Education or Equivalent:

- (1) You must adjudicate the applicant's qualifications under this requirement. In order to *enter or apply* for the DV program, the alien need not prove that this requirement is met. The applicant must, however, meet this requirement by the end of the fiscal year in which selected and present evidence of completion to be found eligible for a visa. If the applicant does not meet the requirement at the time of the interview, you should refuse the case 5A. If the applicant presents evidence of completion of high school before the end of the fiscal year, and visas are still available for the region, you may overcome the refusal and issue the visa.
- (2) **The Department's Interpretation of the Term "at Least a High School Education or its Equivalent" Means Successful Completion of at least a:**
 - (a) Twelve-year course of elementary and secondary study in the United States; or
 - (b) Formal course of elementary and secondary education comparable to completion of 12 years elementary or secondary education in the United States. Because a United States high school education is sufficient in itself to qualify a student to apply for college admission, in order for a foreign education to be equivalent to a United States education, it should be sufficient to allow a student to apply for college admission without further education. Vocational degrees that are not considered a basis for further academic study will not be considered equivalent to United States high school education.
- (3) **Education Requirements:** We interpret the phrase "at least a high school education or its equivalent" to apply only to formal courses of study. Equivalency certificates (such as the G.E.D.) are not acceptable. To qualify, an

alien must have completed a 12-year course of elementary and secondary education in the United States or a comparable course of study in another country. Evidence might consist of a certificate of completion equivalent to a United States diploma, school transcripts, or other evidence issued by the person or organization responsible for maintaining such records, which specify the completed course of study.

(4) **Education Evaluation:**

- (a) Each post needs to determine what course of study is equivalent to a high school education or its equivalent in the host country. Previously, posts were provided with a guidebook that provided information on high school equivalency country by country. That guidebook ("Foreign Education Credentials Required") is no longer in print and is not available in updated format. You should not rely on it for your evaluation of high school credentials. You should make use of the resources found in your Public Diplomacy (PD) section to determine comparable courses of study in the host country that would meet the definition of a high school education or its equivalent. Contacts in the host country's Ministry of Education may also be of help. If you have questions about certificates and diplomas, you should consult with your public diplomacy section, including Education USA advisors and locally engaged staff, as they are valuable resources in evaluating local education systems. PD personnel advise prospective students and evaluate their educational backgrounds and have experience with and knowledge of local schools. To determine the authenticity of any particular document, you will need to work with your Fraud Prevention staff to develop expertise in making that determination. Interviewing officers may wish to consult with other posts when in doubt about the authenticity of educational certificates from countries outside their consular district.
- (b) A DV refusal must be based on evidence that the alien did not in fact obtain the required degree and not on your assessment of the alien's knowledge level. You may not administer an exam, either oral or written, to test an applicant's basic knowledge in order to determine whether they have the equivalent of a U.S. high school education. You may not refuse a DV applicant solely on the basis of your analysis of the applicant's basic knowledge. Doubts about the applicant's claimed educational level raised by your interview, however, may lead you to investigate the authenticity of the educational credentials claimed by the DV applicant.

d. **Work Experience:**

- (1) **No Labor Certification:** The labor certification requirement of INA 212(a)(5) does not apply to applicants applying as DV immigrants. Applicants, however, who do not meet the education requirement, must meet the work experience requirement of two years of experience in an occupation which requires at least two years training or experience within the five-year period immediately prior to application, or be able to meet the requirement prior to the end of the fiscal

year in which the applicant was selected. If the applicant does not meet this requirement at the time of the interview, you should refuse the case 5A. If the requirement is met before the end of the fiscal year and visas are still available for the region, you may overcome the refusal and issue the visa.

- (2) **Work Experience Evaluation:** If an applicant does not have the equivalent of a high school education, you must evaluate their work experience. You must use the Department of Labor's O*Net OnLine database to determine qualifying work experience (see paragraph (3) below.) All applicants qualifying for a DV on the basis of their work experience must, within the past five years, have two years of experience in an occupation that is classified in a Specific Vocational Preparation (SVP) range of 7.0 or higher.
- (3) **Using O*Net Online to Determine Work Experience:**
 - (a) **Instructions for Determining the Applicant's Specific Vocational Preparation (SVP) Rating:**
 - (i) Log on to the Department of Labor's O*Net OnLine website;
 - (ii) Click on the "Find Occupations" link;
 - (iii) On the "Find Occupations" screen, enter occupational title, such as, "mason," "painter," "hairdresser," etc., and click on the "Go" button. A search results page appears with a list of various occupation titles that relate to whatever job title was entered. Click on the link in the "Occupation" column for the title that seems appropriate for the DV *applicant's* job experience;
 - (iv) A brief description for the job title will appear followed by more detailed data covering the following areas: tasks, knowledge, skills, abilities, work activities, work context, job zone, interests, work values, related occupations, and wages and employment.
 - (b) **What SVP Range Qualifies an *Applicant's* Job Experience for the DV Program?** The O*Net Online database groups job experience into five "job zones." Zone 4 includes all occupations for which more than two years experience on the job is required. An occupation *in* Job Zone 4 has an SVP range of 7.0 to < 8.0 (7.0 to less than 8.0) and will qualify an applicant for the DV program. Thus, all applicants qualifying for a DV on the basis of their work experience must, within the past five years, have two years of experience in an occupation that is classified in a SVP range of 7.0 or higher (*i.e., an occupation in Job Zone 4*).
- e. **Principal Registrants Under Age 18:** Although there is no minimum age for submission of an *entry*, the requirement for a high school education or work experience will effectively disqualify most persons under age 18.

9 FAM 502.6-4 DIVERSITY VISA PROCESSING

(CT:VISA-175; 09-13-2016)

a. Diversity Visa Chargeability, Numerical Control:

- (1) **DV Numerical Control:** The Department will have centralized control of the DV numerical limitation. (See [9 FAM 503.4](#).)
- (2) **DV Chargeability:** As stated in the regulatory definition, the normal rules of chargeability apply to INA 203(c) immigrants. Many applicants may seek beneficial treatment from the rules of cross chargeability, as in the following examples:
 - (a) A spouse or child born in a country *that* is not among those for which *DVs* are available (*a non-qualifying country*) may use the principal registrant's chargeability when they are accompanying or following-to-join;
 - (b) A child born in a non-qualifying country in which neither parent was born nor resident at the time of the child's birth, may claim the birthplace of either parent;
 - (c) A principal registrant born in a *non-qualifying country* and the spouse who was born in a qualifying country may be issued *DVs*, provided the relationship was established prior to submitting the entry. In such instances, however, both applicants are considered principal applicants for the purpose of cross-chargeability and must be issued visas and apply for admission to the United States simultaneously.
 - (d) A principal registrant born in a country *that* is among those for which *DVs* are available may derive a more favorable foreign state of chargeability from an accompanying alien spouse. For example, a principal applicant from a DV eligible country from a high-admission region may claim a more favorable chargeability from a spouse, who is from a DV eligible country from a low-admission region, provided the relationship was established prior to submitting the DV entry. In such instances, however, both applicants are considered principal applicants for the purpose of cross-chargeability and must be issued visas and apply for admission to the United States simultaneously.
- (3) **Errors in Choice of Country of Chargeability:** If the entrant chooses the wrong country of chargeability at the time of the initial entry, the error will generally be disqualifying. However, if a DV applicant chooses a country of chargeability *on the DV entry form* that is within the same geographic region (one of the six) as the correct country of chargeability, and you determine that the applicant gained no benefit from his or her error, and there are no fraud concerns, you may continue processing the application using the correct country of chargeability in IVO. Post may need to obtain additional DV number(s) for the correct country of chargeability from the Immigrant Visa Control and Reporting Division (CA/VO/DO/I), as necessary, via a VISAS FROG message (see [9 FAM 604.2-1](#)).

b. Diversity Visa *Entries and Applications*:

- (1) **Diversity Visa Entries – Overview:**

(a) **General Instructions for DV Entries:**

- (i) Each year, the Department of State will publish rules for the next fiscal year's DV program in the Federal Register. Rules for a DV program in any fiscal year stipulate what information must be included on the DV electronic entry form, such as name, photo requirement, etc., as well as other requirements for the program and the DV lottery registration website. *This electronic entry form is considered the petition required by 22 CFR 42.33 and INA 203(c).*
- (ii) We will establish a period for the submission of DV entries of at least 30 days each fiscal year in which the lottery will be conducted. To ensure wide dissemination of the information both abroad and in the United States, we will provide timely notice of the program's rules and the exact dates of the registration period through publication in the Federal Register and by other methods.

(b) **Number of DV Entries:**

- (i) Only one entry by or for each person is allowed during each registration period. Submission of more than one entry disqualifies the applicant from *selection*. *Registrants* may be disqualified at any time if more than one entry is discovered. *Registrants* may prepare and submit their own entries, or have someone submit the entry for them.
- (ii) Spouses, if *both are* qualified, may each submit one *entry*. If either is *selected*, the other is entitled to derivative status.

- (c) **Meeting DV Submission Requirements:** Only those entries which meet the eligibility requirements specified in 22 CFR 42.33(a)(1) *and the petition requirements specified in 22 CFR 42.33(b)(1-2)*, and which are received during the time period specified by the Department for each fiscal year, will be considered for *selection* for immigrant visa *processing* under INA 203(c). Entries lacking the required information or photos will be rejected by the registration website or disqualified at a later date during processing by *KCC* or at post.

(2) **Submitting DV Entries:**

- (a) **Place of Registration:** To be accepted for DV *selection*, entries must be submitted electronically during the specified registration period at the Department's designated website.
- (b) **Photos:** Photo specifications are detailed in the annual DV Bulletin and also posted at the Department's "travel.state.gov" website. The Department will disqualify entries lacking the required photos or including invalid photos. You must review the entry photo at the time of adjudication. If you determine that the photo on the entry is not that of the applicant, you may pursue a refusal under INA 212(a)(6)(C). The entry photograph may be viewed through the CCD under the "Immigrant &

Diversity” section, “DVIS Applicant” report or on the eDV button on the *IVO* system.

(c) **Derivatives:**

- (i) Except as specified in paragraph ii below, entries must include the name, photograph, date and place of birth of the applicant’s spouse and all natural children, as well as all legally-adopted and stepchildren, who are unmarried and under the age of 21 as of the date of the initial entry. *All derivatives must be included* even if *the registrant is* no longer legally married to the child’s parent, and even if the spouse or child does not currently reside with the *registrant* and/or will not immigrate with such applicant. Married children and children 21 years or older cannot qualify for the diversity visa on the basis of *a parent’s* application. Entries lacking all of the required information may be disqualified at any time prior to selection, after selection, or during the visa application process. Visa applications lacking all required information will be refused.
- (ii) By regulation, *registrants* are not required to include spouses and children who are already U.S. citizens or Lawful Permanent Residents (LPRs) on the *entry*. A failure to include on the *entry* spouses and children who are in fact U.S. citizens or LPRs cannot be used as grounds for denial.
- (iii) You must deny the applications of *applicants who failed to list on their initial entries a spouse or all children who were required to be listed. This does not include a spouse or child who* was acquired subsequent to submission of qualifying DV entry. The spouse of a principal alien, if acquired after *the initial entry* and prior to the principal alien’s admission, or the child of a principal alien, if the child was born after *entry* or is the issue of a marriage which took place after *entry* and prior to the principal alien’s admission to the United States, although not named on an application, is entitled to derivative DV status.
- (iv) If post believes a case merits issuance despite apparent failure to comply with this instruction, post can submit the case for an advisory opinion to the Advisory Opinions Division (CA/VO/L/A).

(3) **Diversity Visa Application Validity:**

- (a) Under INA 204(a)(1)(I)(ii)(II), persons *selected* as DV immigrants are entitled to apply for visa issuance only during the fiscal year for which the *entry* was submitted. The *application* is valid until midnight of the last day of the fiscal year for which the petition was submitted. There is no carry-over of benefit into another year for persons who do not receive a visa during the fiscal year for which they registered. Following-to-join derivative visas must be issued during the same fiscal year as that of the principal beneficiary.

- (b) **Death of Principal *Registrant*:** The death of the principal *registrant* must result in the automatic revocation of the application. Thereafter, derivative beneficiaries are no longer entitled to the DV classification.

c. KCC and DV Ranking:

(1) KCC Role:

- (a) Selected DV entries are processed at KCC. KCC *processes* approximately 125,000 *registrants* (both principals and dependents) each year. KCC will notify posts of the number of *registrants* from their DV-processing area who were selected, broken down by country of residence. The Department will maintain a computer-generated master list of *selected registrants*. The list is not publicly released.
- (b) KCC will hold the case until those *selected* are entitled to make a formal application for visa issuance at a U.S. consular office abroad, or an adjustment of status with *DHS* in the United States.

(2) DV *Selection and Ranking*:

- (a) Entries received during the designated registration period for the DV program will be separated into one of six geographic regions. At the end of the registration period, a computer will randomly select numbers. All entries successfully received during the registration period will have an equal chance of selection within the respective region.
- (b) The selected entries for each region will have a rank order number consisting of two letters followed by eight digits, i.e., AF00000925. *Within each region, the first entry randomly selected will have a rank order number 00000001, the second entry selected will be 00000002, etc.* The letter codes are:

AF	Africa
AS	Asia
OC	Oceania
EU	Europe
NA	North America
SA	South America, Central America and the Caribbean

- (c) Each month visa numbers will be allocated to applicants who are within the applicable rank cut-off for that month *and have been reported documentarily qualified*. Applicants are considered documentarily qualified when *KCC confirms that* the *applicant* has properly completed and submitted the *DS-260*.

d. Processing Diversity Visa Cases:

(1) Instruction Package for Immigrant Visa Applicants:

- (a) If a case is selected for additional processing, the entrant will be notified electronically via Entrant Status Check, and instructed to complete Form

DS-260, Online Application for Immigrant Visa and Alien Registration.

- (b) Each visa applicant must follow the electronic instructions and electronically submit Form DS-260 to KCC. As soon as KCC has reviewed the DS-260 and made any required updates to the electronic DVIS record, the applicant will be considered documentarily qualified. In order to avoid potential delay in the scheduling of DV applicants, KCC does not collect any additional information or forms. KCC may ask applicants to update Form DS-260 if information is missing but will not delay scheduling if waiting for a response.
- (2) **Immigrant Visa Appointment Package:** KCC will schedule an appointment for a documentarily qualified applicant when his or her regional lottery rank number is about to become current. KCC will notify scheduled applicants by e-mail that they should log into the Entrant Status Check website to obtain their appointment letters and further instructions. When scheduled applicants log into the ESC, they will be referred to the pre-interview instructions on the Diversity Visa Process website. On that website, applicants will be able to review post-specific instructions, and any additional required forms.
- (3) **Creation of Immigrant Visa File:** KCC will review each DS-260 submission as they are received, and will update the electronic record in DVIS as required. In cases where a potentially disqualifying factor has been identified at KCC during case creation, a remark will be entered at the top of the DS-260 for the interviewing consular officer's information. KCC has no adjudicatory role, and so cannot determine an applicant's eligibility or qualification for the visa. Remarks are intended as additional information for officers to review as part of the adjudication process.
- e. **Diversity Visa Fee:** There is no fee for submitting the initial entry for the DV program. However, those *registrants* who are selected and apply for DV immigrant visas will be required to pay a DV Lottery Fee at the time of the formal interview.
- (1) **Collection of Fee:** Section 636 of Public Law 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, authorized the Department to collect a fee for the processing of DV immigrant visas. The DV Lottery Fee incorporates the standard IV processing fees, including the IV Application Fee and the IV Security Surcharge, and is specified in the Schedule of Fees for Consular Services. Posts must collect the DV Lottery Fee at the time of the applicant's formal interview.
- (2) **Processing Cases to Conclusion:** We can appreciate posts' efforts to prescreen applications allowing unqualified applicants to withdraw their applications to avoid paying the required fees. Nevertheless, *like all other visa applications*, it is important to process such cases to conclusion and not to simply allow the candidate to withdraw the application. Instances have arisen where DV winners who were advised not to make an application at a post abroad have then entered the United States and requested adjustment of status processing at *DHS*.

f. Diversity Visa Ineligibility Grounds:

- (1) Applicants who establish that they qualify for DV immigrant visa classification are subject to all grounds of ineligibility specified in the Immigration and Nationality Act other than *the labor certification requirements*. There are no special provisions for a waiver of any ground of visa ineligibility other than those ordinarily provided in the INA.
- (2) **Refusals for Unqualified Applicants:** Any applicant for a DV visa who fails to establish that they possess the requisite qualifications, including a valid entry for participation in the DV program, is ineligible under INA 212(a)(5)(A)(i). It is not appropriate to refuse a DV applicant under INA 212(a)(5)(A)(i) when a fraud investigation is needed before determining whether an applicant is qualified for a DV (e.g., if you suspect that the DV applicant does not possess the requisite education or work experience or if you suspect that the DV derivative applicant does not possess the requisite relationship to the DV principal applicant). In those cases, you must refuse the application under INA 221(g) pending the outcome of a fraud investigation.
- (3) INA 221(g) **Refusals:**
 - (a) Interviewing officers should verbally stress the importance of submitting the requested information, preferably within the same month. When applicable, officers should advise applicants that failure to return promptly may mean that visa numbers will no longer be available and the applicant may miss the opportunity to obtain a visa.
 - (b) Posts must prepare a stamp to be placed on refusal letters to DV applicants refused under 221(g), with the following message:

Attention: Under no circumstances can a visa be issued or an adjustment of status occur in your case after September 30, ____.

Very important: Because of the limited number of visas that may be issued under this program, visas may cease to be available even before this date. This is especially true the closer to September 30 an application or re-application is made.
 - (c) Cases that are in INA 221(g) refusal status at the end of the fiscal year may be left in that status. You do not need to enter an additional refusal (such as INA 212(a)(5)(A)(i)) to close the case.
- (4) **Public Charge:** While many categories of immigrants must submit the legally binding Form I-864, Affidavit of Support Under Section 213A of the Act, the DV category is not one of them. You can consult [9 FAM 302.8-2\(B\)\(12\)-\(14\)](#) for standards of processing public charge issues in immigrant visa cases that do not involve the I-864, Affidavit of Support Under Section 213A of the Act.
- (5) **Waivers:** Unlike applicants eligible for immigrant visas under other programs involving random selection, there are no special provisions for a waiver of any ineligibility grounds for *DV* applicants. The regular ineligibility waiver provisions of the INA, including INA 212(e), still apply.

g. Following-to-Join Applicants: DV applicants are informed in the electronic notification of how to adjust status to lawful permanent residence in the United

States. A principal applicant who has adjusted status may file Form I-824, Application for Action on an Approved Application or Petition with USCIS requesting DHS send the Form I-824, upon its adjudication, to consular posts as verification of his or her LPR status. Upon receipt of this information, posts must send any derivative family members instructions for accessing the Form DS-260, Online Application for Immigrant Visa and Alien Registration, and the Packets for Immigrant Visa Processing (see [9 FAM 504.4-2\(A\)\(2\)](#)) for completion. Post must notify the KCC of the adjustment of the principal applicant so that the electronic case can be modified and transmitted to post to allow visa issuance to the derivative family members. Proof of the principal applicant's adjustment of status must be provided to the KCC. Posts can then process these cases to conclusion, obtaining additional DV numbers from the Immigrant Visa Control and Reporting Division (CA/VO/DO/I,) as necessary, via VISAS FROG messages (see [9 FAM 601.7-6](#)). Spouses and children who derive status from a DV *application* can only obtain visas in the DV category during the *same* Fiscal Year *in which the principal applicant was admitted or adjusted status*. Applicants cannot follow-to-join after the end of the Fiscal Year.

h. Transfer of DV Cases:

- (1) Posts are to follow normal IV case transfer procedures when a DV applicant asks that his or her case be transferred to a different post for processing. (See [9 FAM 504.4-9](#).)
- (2) DV cases should not be returned to KCC for forwarding to another post as this delay may disadvantage the applicant, resulting in loss of opportunity for the visa interview and visa issuance if there is retrogression in the rank-order number.

9 FAM 502.7

OTHER IV AND QUASI-IV CLASSIFICATIONS

(CT:VISA-387; 06-20-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 502.7-1 OTHER IV AND QUASI-IV CLASSIFICATIONS – OVERVIEW

(CT:VISA-163; 08-25-2016)

- a. While most cases processed as IVs are based on family, employment, the diversity visa program, or special immigrant status, there are other bases for immigration. These include, among others:
- (1) Returning residents (see [9 FAM 502.7-2](#));
 - (2) Former U.S. citizens (see [9 FAM 502.7-3](#));
 - (3) Some spouses or fiancé(e)s of U.S. citizens and their children (see [9 FAM 502.7-5](#));
 - (4) Parents and children of some special immigrants (see [9 FAM 502.7-6](#)); and
 - (5) Beneficiaries of private immigration bills (see [9 FAM 502.7-7](#)).
- b. There are also some changes to bases for immigration based on the U.S. PATRIOT Act, covered in [9 FAM 502.7-4](#).

9 FAM 502.7-2 RETURNING RESIDENTS

9 FAM 502.7-2(A) Related Statutory and Regulatory Authorities

9 FAM 502.7-2(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(27)(A) (8 U.S.C. 1101(a)(27)(A)); INA 222(b) (8 U.S.C. 1202(b)); INA 316(b) and (c) (8 U.S.C. 1427(b) and (c)); INA 317 (8 U.S.C. 1428).

9 FAM 502.7-2(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.22.

9 FAM 502.7-2(B) Returning Resident Status

(CT:VISA-348; 04-19-2017)

- a. **LPRs Who are Returning Residents:** A Lawful Permanent Resident (LPR) who has remained outside the United States for more than one year may be eligible for returning resident status if you are satisfied that:
- (1) The alien departed the United States with the intention of returning to an unrelinquished residence; and
 - (2) The alien's stay abroad was for reasons beyond the alien's control and for which the alien was not responsible.
- b. **Evidence of Intent to Return to Unrelinquished Residence in the United States:**
- (1) To qualify as a returning resident alien, an individual must present evidence that he or she:
 - (a) Was a lawfully admitted permanent resident of the United States at the time of departure;
 - (b) At the time of departure, had the intention of returning to the United States;
 - (c) While residing abroad, did not abandon the intention to return to the United States; and
 - (d) Is returning from a temporary residence abroad; or if the stay was protracted, this was caused by reasons beyond the alien's control.
 - (2) **Defining "Lawfully Admitted":** The INA defines "lawfully admitted for permanent residence" to mean "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed."
 - (3) **Documentary Evidence of Continued U.S. Residence:** Documentary evidence of an alien's intent to maintain a U.S. residence may consist of, but is not limited to, the following:
 - (a) A driver's license issued within the past year and reflecting the same address as that recorded on the Form I-94, Arrival and Departure Record;
 - (b) The name and address of the U.S. employer and evidence that a salary has been paid within a reasonable period of time;
 - (c) Evidence of children's enrollment in a U.S. school;
 - (d) Evidence that extended visit abroad was caused by unforeseen circumstances;
 - (e) Evidence of a predetermined termination date; i.e., graduation, employment contract expiration, etc.;
 - (f) Evidence of having filed U.S. income tax return(s) for the past year(s); or

- (g) Evidence of property ownership, whether real or personal, in the United States.
- (4) **Evidence Indicating Abandonment of Residence:** You should also take into account evidence that indicates abandonment of residence in the United States. Such evidence might consist of the following:
- (a) Extended or frequent absences from the United States;
 - (b) Disposition of property or business affiliations in the United States;
 - (c) Family, property, or business ties abroad;
 - (d) Conduct while outside the United States such as, employment by a foreign employer, voting in foreign elections, running for political office in a foreign country, etc.; or
 - (e) Failure to file U.S. income tax returns.
- (5) **Defining Temporary:** The term “temporary” cannot be defined in terms of elapsed time alone. The intent of the alien, when it can be determined, will control. In the Matter of Kane, the Board of Immigration Appeals has described some of the elements to be examined:
- (a) **Reason for Absence:** Traveler should have a definite reason for traveling abroad temporarily;
 - (b) **Termination Date:** The visit abroad should be expected to terminate within a relatively short period, fixed by some early event; and
 - (c) **Place of Home or Employment:** The applicant must expect to return to the United States as an actual home or place of employment. He or she must possess the requisite intent to do so at the time of their departure, and maintain it during the course of their sojourn.
- (6) **Visitor Visa Issuance Not Relinquishment of Resident Status:**
- (a) An alien is not ineligible for classification as a returning resident alien solely because the alien was previously issued a visitor visa during a stay abroad as a matter of convenience when time did not permit the alien to obtain a returning resident visa. (See [9 FAM 402.2-4\(B\)\(10\).](#))
 - (b) For example, a permanent resident alien is temporarily assigned abroad but employed by a U.S. corporation. The alien has been outside the United States for more than one year and thus may not return to the United States using the Form I-551, Permanent Resident Card. The alien has never relinquished permanent residence in the United States; has continued to pay U.S. income taxes; and perhaps even maintains a home in the United States. The fact that the alien was issued a nonimmigrant visa for the purpose of making an urgent business trip would not reflect negatively on the retention of resident status.
 - (c) Visa applicants are not required to relinquish the Form I-551, as a condition to immigrant or nonimmigrant visa issuance.

c. Special Cases Qualifying for Returning Resident Status:

- (1) **Former U.S. Citizen:** If a naturalized citizen of the United States loses citizenship while in the United States, the status of a returning resident is appropriate if the alien:
 - (a) Was a permanent resident of the United States prior to naturalization;
 - (b) Has taken no action causing loss of permanent resident status;
 - (c) Departed the United States after losing citizenship; and
 - (d) Is returning to the United States after a temporary visit abroad.
- (2) **Alien Employed Abroad by U.S. Employer:** In certain cases, and in the absence of contrary evidence, an alien employed outside the United States by a U.S. employer might not be considered to have abandoned U.S. residence (see [9 FAM 502.7-2\(B\)](#) paragraph c(6) below for more details on Continuity of Residence). Nevertheless, an alien who lives and works in a foreign country and merely returns to the United States for brief visits periodically may still be found to have abandoned LPR status. Annual visits to the United States are no guarantee that LPR status will be preserved.
- (3) **Religious Missionaries Abroad:** When dealing with extended absences from the United States, you must be aware that the DHS has determined that performance of missionary work abroad for a "recognized" U.S. religious denomination does not interrupt LPR status.
- (4) **LPR Students Studying Abroad:** Several decisions by the DHS Administrative Appeals Office (AAO) relate to LPR students studying abroad. Students who wish to retain LPR status should present evidence of a definitive graduation date. Even prolonged absences from the United States may be considered temporary if the LPR can present evidence of a receipt of a degree within a definitive time. You should take into account whether students return to the United States at the end of each academic term, or whether they have family still living in the United States. Evidence of property ownership, or a bank account in the United States, may indicate the student intends to return to the United States upon completion of studies.
- (5) **Beneficiary of Private Law:** Beneficiaries of private legislation granting permanent resident status are considered eligible for special immigrant status as returning resident aliens under the provisions of INA 101(a)(27)(A) even though they may have been abroad at the time the legislation was enacted. The spouse and children of such aliens may also benefit. See [9 FAM 502.7-7](#) for additional information on private law cases.
- (6) **Continuity of Residency - Applying INA 316 and 317:** INA 316(b), INA 316(c), and INA 317 provide that in certain cases, as described below, continuous absence from the United States does not break the continuity of residence for naturalization purposes. It would be inconsistent to permit time spent abroad in such circumstances to be applied for residence for naturalization purposes but to interpret that same time abroad as interruptive

for the purpose of retaining LPR status. Thus, an alien's qualification for the benefits of INA 316(b), INA 316(c) and INA 317 may be considered prima facie evidence that the alien is entitled to the status of a returning resident alien as contemplated in INA 101(a)(27)(A). The cases are:

- (a) An employee under contract with the U.S. Government or a U.S. institution of research recognized by the Secretary of Homeland Security (see 8 CFR 316.20);
- (b) An employee of a U.S. firm or corporation engaged in the development of foreign trade and commerce of the United States or a subsidiary thereof, more than 50 percent of whose stock is owned by an U.S. firm or corporation;
- (c) An employee of a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence;
- (d) Any person authorized to perform the ministerial or priestly function of a religious denomination having a bona fide organization within the United States; or
- (e) Any person engaged solely by a religious denomination or interdenominational mission organization having a bona fide organization within the United States as a missionary, brother, nun, or sister.

d. Child Under the Age of 16 Years:

- (1) An alien child under the age of 16 years is not considered to possess a will or intent separate from that of the parents with regard to a protracted stay abroad. Accordingly, the residence of a child under 16 follows that of the parent(s) unless you conclude that the parents have a separate intention for the child to return to the United States for residence.
- (2) In a particular illustrative case of protracted stay abroad by a child, an alien, born in Bermuda in 1941, was formally adopted at the age of six months. The adoptive mother and child were admitted for permanent residence in 1949 but approximately 10 months later the child was returned to Bermuda because the adoptive mother reportedly was unable to care for the child properly and work at the same time. The child remained in Bermuda for six years, most of the time in the custody of a guardian. The adoptive mother in the United States contributed regularly to the child's support but never visited the child. When nearly 14 years of age, the child applied for a special immigrant visa as a returning resident alien under INA 101(a)(27)(A). The Department determined that the child's protracted stay abroad was for reasons beyond the alien's control (see 22 CFR 42.22(a)(3)) and, therefore, had not affected the child's status as an alien lawfully admitted for permanent residence.
- (3) In the case of LPR children who you believe spend more than one year outside the United States as a result of an abduction by a non-custodial parent, please contact Overseas Citizen's Services, Office of Children's Issues (CA/OCS/CI)

and the Immigration and Employment Division (CA/VO/F/IE) to determine the proper course of action. While a returning resident visa is the preferred way for the child to return to the United States and be admitted in the proper status, a non-custodial parent may not be willing to cooperate in order to complete the returning resident visa process. CA/OCS/CI, CA/VO/F/IE, and CA/VO/L/A can advise you on options in coordination with DHS to allow the child to travel back to the United States.

- (4) See [9 FAM 202.2-2](#) paragraph b(2) for information on a child born in the U.S. to diplomatic parents. See also [9 FAM 201.2-3](#) paragraph (3) for information on the child of a Lawful Permanent Resident born during the mother's temporary visit abroad.
- e. **Derogatory Information Concerning SB-1 Applicant:** If you have any adverse information, forward it to your local or regional CBP, USCIS, or ICE office for guidance. You may also request that DHS USCIS enter a TECS lookout on the subject. Determinations regarding the relevance of such information to admissibility will be made by DHS Customs and Border Protection during inspection.

9 FAM 502.7-2(C) Processing Returning Resident Cases

(CT:VISA-348; 04-19-2017)

a. Application for Returning Resident (SB) Status:

- (1) LPR aliens who are unable to return to the United States within the travel validity of their Form I-551, Permanent Resident Card, or Reentry Permit, may apply at a U.S. Embassy or Consulate for a special immigrant Returning Resident (SB-1) visa.
- (2) An applicant seeking an SB-1 visa must complete Form DS-117, Application to Determine Returning Resident Status.
- (3) The applicant should file Form DS-117 and supporting documentation at the post in the consular district in which he or she currently resides. You may not deny an applicant processing at post solely because your post does not process immigrant visas. However, mission consular management may develop specific processing policies where circumstances would prevent effective evaluation and adjudication of the application at certain posts in country, in which case you may direct the applicant to another post in country that can handle the application. (See [9 FAM 504.4-8](#).)
- (4) **Documentation Required under INA 222(b):** Under the provisions of 22 CFR 42.22(b), a returning resident alien is required to present records and documents required by INA 222(b) only for the period of temporary residence outside the United States. You should not require a police certificate or other documents for periods of less than six months.

b. Consular Adjudication of Returning Resident (SB) Status:

- (1) You must conduct a personal interview with the applicant to determine whether the application for Returning Resident status is approvable. A consular

manager must review your adjudication and indicate their concurrence or non-concurrence on Form DS-117.

- (2) If you determine that the applicant has provided sufficient justification and evidence in accordance with [9 FAM 502.7-2\(B\)](#), mark Form DS-117 as approved, open a case in IVO, and scan in the approved Form DS-117 and supporting documents.
- (3) If you adjudicated the application at a post where immigrant visas are not processed, you must send approved Form DS-117 and the supporting documents to the IV-processing post for case creation and scanning.
- (4) If the application is denied, enter an "L" Lookout in INK containing scanned copies of Form DS-117 and all supporting documents, and also enter notes supporting the denial decision.
- (5) Paper copies of the denied Form DS-117 and all supporting documents may be destroyed after adjudication and scanning.
- (6) Approved applicants will proceed with an application for an SB-1 IV. SB-1 interview appointment scheduling will vary based on post's intake procedures. Each post should develop standard operating and intake procedures in order to handle SB-1 cases efficiently. SB-1 applicants are subject to the same application processing fees and security surcharges, documentary requirements, medical examination, and administrative processing that apply to all IV cases. An SB-1 applicant does not need to provide a new I-864.

9 FAM 502.7-3 CERTAIN FORMER U.S. CITIZENS

9 FAM 502.7-3(A) Related Statutory and Regulatory Authorities

9 FAM 502.7-3(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(27)(B) (8 U.S.C. 1101(a)(27)(B)); INA 317 (8 U.S.C. 1428); INA 324(a) (8 U.S.C. 1435(a)); INA 327 (8 U.S.C. 1438).

9 FAM 502.7-3(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.23.

9 FAM 502.7-3(B) Former U.S. Citizen Provisions

(CT:VISA-1; 11-18-2015)

Certain former U.S. citizens are eligible for special immigrant status.

(1) **Women Expatriates:**

- (a) An alien woman, regardless of marital status, may be classified as a special immigrant under INA 101(a)(27)(B) if it is established by appropriate evidence that she was formerly a U.S. citizen and that she meets the requirements of INA 324(a).
- (b) INA 324(a) allows for the naturalization of any person formerly a citizen of the United States who:
 - (i) Prior to September 22, 1922, lost United States citizenship by marriage to an alien, or by the loss of United States citizenship of such person's spouse, or
 - (ii) On or after September 22, 1922, lost United States citizenship by marriage to an alien ineligible to citizenship, if no other nationality was acquired by an affirmative act of such person other than by marriage.
- (c) No period of residence or physical presence is required, and the applicant need not intend to permanently reside in the United States. As with all persons who are naturalized in accordance with INA 317(a)), the citizenship is not retroactive.
- (d) Nothing in INA 324(a) or any other provision of law confers citizenship retroactively upon such person, or any person who was naturalized under section 317(a) of the Nationality Act of 1940, during any period in which the person was not a citizen.

(2) **Military Expatriates:**

- (a) An alien may be classified as a special immigrant under INA 101(a)(27)(B) if you are satisfied by appropriate evidence that the alien was formerly a U.S. citizen and that the alien lost citizenship under the circumstances set forth in INA 327.
- (b) **INA 327 Allows for the Naturalization of Any Person Who:**
 - (i) During World War II and while a citizen of the United States, served in the military, air, or naval forces of any country at war with a country that the United States was at war with in World War II; and
 - (ii) Has lost United States citizenship by reason of entering or serving in such forces. The citizenship is not retroactive.
- (c) For the purposes of this section, World War II began on September 1, 1939 and ended on September 2, 1945.
- (d) This section does not apply to any person who, during World War II, served in the armed forces of a country while such country was at war with the United States.

9 FAM 502.7-4 USA PATRIOT ACT SEPTEMBER 11

PROVISIONS

9 FAM 502.7-4(A) Related Statutory and Regulatory Authorities

9 FAM 502.7-4(A)(1) Public Law

(CT:VISA-1; 11-18-2015)

USA PATRIOT Act, Public Law 107-56.

9 FAM 502.7-4(B) USA PATRIOT Act's September 11 Provisions – General Information

(CT:VISA-387; 06-20-2017)

- a. **Visa Annotations:** Annotate visas issued under the USA PATRIOT Act as follows:
"Beneficiary of USA PATRIOT Act Section 423"
- b. **Definitions:** DHS/USCIS has established definitions for the purpose of adjudicating applications under the USA Patriot Act (Public Law 107-56). September 11-related definitions for "specified terrorist attack," "death," "disability," "loss of employment," and "circumstances preventing timely action in applying for or using visas" are provided in [9 FAM 102.3](#), Definitions.
- c. **Other September 11 Provisions:** See also information on new NIV F3 and M3 classifications ([9 FAM 402.5-5\(O\)\(1\)](#)) and changes to INA 212(a)(3) ineligibility ([9 FAM 302.6-2\(B\)\(2\)](#)) in response to the September 11 attacks.

9 FAM 502.7-4(C) Effects of USA PATRIOT Act on IV Cases for Spouses and Children of U.S. Citizens

(CT:VISA-163; 08-25-2016)

- a. **Relief for Spouses, Children and Fiancés of U.S. Citizens Killed in September 11 Attacks for Whom IV Petitions Were Filed (Section 421):**
The surviving spouse, child, or fiancé of a U.S. citizen killed in the September 11 attacks may self-petition for special immigrant status as if the principal alien had not died. The original IV petition must have been filed before September 11, 2001. The relationship of a derivative spouse or child to the principal alien must have existed on September 10, 2001. The alien must demonstrate that the death of the principal alien was a direct result of the terrorist attack of September 11, 2001. The derivative child must have entered the United States by September 11, 2003. See additional information on this special immigrant classification and processing in [9 FAM 502.5-10](#).
- b. **Relief for Spouses and Children of U.S. Citizens Killed in September 11 Attacks for Whom No Petitions Were Filed (Section 423):**

(1) **Eligibility for Classification:**

- (a) Section 423(a)(1) of Public Law 107-56 (the "USA PATRIOT Act") extended the self-petitioning right to the spouses (widows/widowers) of U.S. citizen victims of one of the terrorist acts of September 11, 2001, with no requirement that the marriage has existed a specific minimum period. The other requirements placed on spouses of deceased U.S. citizens do apply, however. (See [9 FAM 502.2-2\(B\)](#) paragraph d.) The children of such spouses may be included in the petition of the parent.
- (b) Section 423(a)(2) of the USA Patriot Act provides that the child of a deceased U.S. citizen victim may retain immediate relative "child" status, regardless of changes of age or marital status, if the child files a petition for such status within two years of the parent's death.

- (2) **Applying for Status Under Section 423 (the USA Patriot Act):** Under section 423 of the USA Patriot Act, the surviving spouse or child must file a Form I-130, Petition For Alien Relative, with either the U.S. Citizenship and Immigration Services office that has jurisdiction over the place of residence, or with the consular post abroad in which district the beneficiaries reside. Applicants must provide evidence that the U.S. citizen spouse or parent was killed in the attacks of September 11, as well as relationship.

- (3) **Consular Processing:** Applicants will be processed as Immediate Relative (IR1/IR2), even if the IR2 is 21 years or older. The usual national crime information center (NCIC), security checks, medical exam, as well as birth, death, divorce, and/or marriage certificates are required. No Form I-864, Affidavit of Support Under Section 213A of the Act, may be required. Applicants are exempt from the public charge inadmissibility of INA 212(a)(4). You should issue an IR1 to a spouse who qualifies under section 423 of the USA Patriot Act and issue an IR2 to the alien child, son, or daughter who qualifies under this section regardless of age or marital status. Annotate the visa: "Beneficiary of USA PATRIOT Act Section 423."

9 FAM 502.7-4(D) USA PATRIOT Act Effect on LPR Family Members

(CT:VISA-387; 06-20-2017)

a. Relief for Spouses, Children, Sons, and Daughters of LPRs Killed in September 11 Attacks for Whom IV Petitions Were Filed:

(1) **Section 421(b) Provisions:**

- (a) Section 421(b) of the USA PATRIOT Act preserves immigration benefits for certain surviving family members of a LPR who died as a result of the September 11, 2001 terrorist attacks for whom petitions had been filed on or before September 11, 2001. Under Section 421 of the Act, the spouse or child may self-petition for special immigrant status. (See [9 FAM 502.5-10.](#)) The derivative child of such applicant must follow-to-join the

principal applicant by September 11, 2003.

- (b) **Applying for Status Under the USA PATRIOT Act:** Under Section 421, applicants must file a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, with the Department of Homeland Security service center that has jurisdiction over their place of residence. A new petition is not required to retain the priority date already granted.
- (c) **Consular Processing:** Immigrant visa processing under section 421 of the USA PATRIOT Act is standard once the approved Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, is received from DHS via National Visa Center, except no Form I-864, Affidavit of Support Under Section 213A of the Act, is required, and INA 212(a)(4) does not apply.
- (d) IV processing is standard once the priority date becomes current and post receives from the NVC Form I-130, Petition for Alien Relative, filed by the LPR on or before his or her death on September 11, 2001, except no Form I-864, Affidavit of Support Under Section 213A of the Act, is required and INA 212(a)(4) does not apply. Applicants will be issued IR-1 visas. As such petitions remain valid for years and are already in the "pipeline," there will be no notation on the petition that beneficiaries continue to qualify under the USA PATRIOT Act despite the death of the petitioner. This information would likely only come to your attention during document collection and the IV interview.

- (2) **Section 423(b) Provisions:** Under section 423(b) of the Act, the petition for the spouse, child or unmarried son or daughter of an LPR alien remains valid indefinitely and the applicant may continue to be processed as if the LPR petitioner had not died. The beneficiary may retain his or her priority date.

b. Relief for Spouses, Children, Sons, and Daughters of LPRs Killed in September 11 Attacks for Whom No Petitions Were Filed (Section 423(a)):

- (1) Under section 423(a) of the PATRIOT Act, when no family-based petition has been filed, the spouse, child, son, or daughter of an LPR killed in the September 11, 2001 terrorist attack, may self-petition for status using the Form I-130, Petition for Alien Relative. They will be processed as if the petitioner had not been killed in the attack. In addition to the usual documentary requirements, the beneficiary must demonstrate that he or she was present in the United States on September 11, 2001, that the spouse or parent had LPR status on September 11, 2001, and that the spouse or parent was killed as a direct result of the terrorist attacks (see [9 FAM 102.3](#), Definitions).
- (2) **How to Apply:** The applicant must file a Form I-130, Petition for Alien Relative, with the DHS service center that has jurisdiction over the applicant's place of residence. It is, however, likely that any eligible beneficiaries are in the United States and will file at a DHS office.
- (3) **Consular Processing:** Immigrant visa processing is standard once an approved petition is received. Under section 213A of the Act, no Form I-864,

Affidavit of Support Under Section 213A of the Act, may be required and applicants are exempt from INA 212(a)(4) ineligibility. The class of admission codes should be as if a normal second preference visa.

9 FAM 502.7-4(E) Other Effects of September 11 Provisions on Immigrant Children

(CT:VISA-1; 11-18-2015)

a. Petition and Visa Validity:

- (1) Under section 424 of the Act, any alien who is the beneficiary of a petition filed on or before September 11, 2001, and whose 21st birthday occurs after September 30, 2001, must be considered to be a child for 45 days after the alien's 21st birthday.
- (2) In all cases in which an applicant qualifies under section 424 of the USA PATRIOT Act for visa validity for 45 days beyond the applicant's 21st birthday, the visa should be issued for the additional 45 days. Posts must override the age 21 cutoff date in the immigrant visa software in order to apply the extra days.

b. CSPA, Age-Outs, and September 11 Cases:

- (1) In all cases in which an applicant qualifies under section 424 of the USA PATRIOT Act for visa validity for 45 days beyond the applicant's 21st birthday, the visa should be issued for the additional 45 days. The USA PATRIOT Act applies to petitions filed on or before September 11, 2001 for which the applicant aged out after September 11, 2001.
- (2) Posts must override the age 21 cutoff date in the IV software in order to apply the extra days. Some cases will qualify under the 45 days of the USA PATRIOT Act and the Child Status Protection Act (CSPA). In those cases the 45 days of the USA PATRIOT Act should be included in calculation of the alien's age under the CSPA (see [9 FAM 502.1-1\(D\)](#)).
- (3) Any post that is not able to process either a USA PATRIOT Act case or a CSPA case to conclusion using the IV system should request assistance from the CA support Desk or by e-mail at CAServiceDesk@state.gov. See additional information on CSPA in [9 FAM 502.1-1\(D\)](#).

9 FAM 502.7-4(F) Additional Effects of USA PATRIOT Act

(CT:VISA-1; 11-18-2015)

a. Grandparents of Orphans of U.S. Citizens or LPRs Killed in September 11

Attacks (Section 421(b)): The grandparent of an alien who qualifies under section 421 of the USA PATRIOT Act may be granted special immigrant status if both parents of the grandchild died as a result of the September 11 attacks and if one of the parents was a U.S. citizen, U.S. national or a Lawful Permanent Resident alien on September 10, 2001. The spouse or child of the grandparent who qualifies

under this section may accompany or follow-to-join the principal applicant. See additional information in [9 FAM 502.5-10\(B\)](#).

b. USA PATRIOT Act Effect on Labor Certification Cases (Section 421(b)):

Under section 421(b)(1)(A)(ii), a principal alien beneficiary of an approved labor certification that is revoked due to the disabling of the principal alien or the loss of his or her employment due to physical damage caused by the terrorist attacks of September 11 is eligible for special immigrant status, as are his or her derivative spouse and children. If the principal alien was killed in the attacks of September 11, a surviving spouse or child is eligible for special immigrant status. See additional information in [9 FAM 502.5-10\(B\)](#).

9 FAM 502.7-5 K VISAS – SPOUSE OR FIANCÉ (E) OF U.S. CITIZEN (AND THEIR CHILDREN)

9 FAM 502.7-5(A) Related Statutory and Regulatory Authorities

9 FAM 502.7-5(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15)(K) (8 U.S.C. 1101(a)(15)(K)); INA 101(b)(1) (8 U.S.C. 1101(b)(1)); INA 203(a) (8 U.S.C. 1153(a)); INA 204(a)(1) (8 U.S.C. 1154(a)(1)).

9 FAM 502.7-5(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 41.81; 8 CFR 214.2(k).

9 FAM 502.7-5(A)(3) Public Laws

(CT:VISA-163; 08-25-2016)

Legal Immigration Family Equality Act (LIFE Act), Public Law 106-553; District of Columbia Appropriations Act, 1999, Public Law 106-113, sec. 237; International Marriage Broker Regulation Act of 2005 (IMBRA), Public Law 109-162, sec.831-834; Adam Walsh Child Protection and Safety Act of 2006 ("Adam Walsh Act"), Public Law 109-248, sec. 402.

9 FAM 502.7-5(A)(4) United States Code

(CT:VISA-1; 11-18-2015)

18 U.S.C. 1801.

9 FAM 502.7-5(B) Overview of K Visa Classifications

(CT:VISA-387; 06-20-2017)

- a. The fiancé(e) K-1 nonimmigrant visa is for the foreign-citizen fiancé(e) of a U.S. citizen. The K-1 visa permits the foreign-citizen fiancé(e) to travel to the United States and marry his or her U.S. citizen sponsor within 90 days of arrival. Eligible children of K-1 visa applicants receive K-2 visas.
- b. The K-3 nonimmigrant visa is for the foreign-citizen spouse of a U.S. citizen. This visa category is intended to shorten the time the foreign-citizen and U.S. citizen spouses must be separated by providing the option to obtain a nonimmigrant visa overseas and enter the United States to await approval of the immigrant visa petition. Eligible children of K-3 visa applicants receive K-4 visas.
- c. **Classification under INA 101(a)(15)(K):**
 - (1) **Classification under INA 101(a)(15)(K)(i) (Fiancé(e) of U.S. Citizen – K-1):**
 - (a) **Fiancé(e):** An alien may be classified as a K-1 if he or she is the beneficiary of an approved Form I-129F, Petition for Alien Fiancé(e), for issuance of a nonimmigrant visa. If you are satisfied that the alien is qualified to receive such a visa, the alien may be admitted to the United States for the purpose of concluding a marriage to the petitioner within a 90-day period.
 - (b) **Alternative Classification:** The inclusion of INA 101(a)(15)(K) in the nonimmigrant classifications is not intended to prohibit an alien fiancé(e) of a U.S. citizen from applying for and obtaining an immigrant visa or a nonimmigrant visa under another classification, if the alien can qualify for an alternative classification. For example, an alien proceeding to the United States to marry a U.S. citizen may be classified B-2, if it is established that following the marriage the alien will depart from the United States. (See [9 FAM 402.2-4\(B\)\(1\).](#))
 - (2) **Classification under INA 101(a)(15)(K)(ii) (Spouse of U.S. Citizen – K-3):** Public Law 106-553 established a new category of nonimmigrant visa for the spouses of U.S. citizens who await approval of a Form I-130, Petition for Alien Relative, to enter the United States as nonimmigrants. The symbol for the beneficiaries of this category is K-3.
 - (3) **Classification under INA 101(a)(15)(K)(iii) (Child of K-1 – K-2, and Child of K-3 – K-4):**
 - (a) This provision is for the children of either a K-1 or a K-3. An accompanying or following-to-join child (as defined in INA 101(b)(1)) of a K-1 is entitled to K-2 derivative status. The child of a K-3 who is accompanying or following-to-join a K-3 principal alien is entitled to K-4 derivative status.
 - (b) **Time Limit for Child of K-1 Fiancé(e):** USCIS and the Department have agreed that the child of a K-1 principal alien may be accorded K-2 status if following to join the principal alien in the United States even after the principal alien has married the U.S. citizen fiancé(e), and acquired

Lawful Permanent Resident (LPR) status. However, the cutoff date for issuance of a K-2 visa is one year from the date of the issuance of the K-1 visa to the principal alien. After one year, and provided that the alien qualifies, the filing of an immediate relative or second preference petition would be required. No extensions are possible, regardless of the circumstances.

- (c) **Time Limit for Child of K-3:** USCIS and the Department have agreed that the child of a K-3 principal alien may be accorded K-4 status if following to join the principal alien in the United States even after the principal alien has acquired LPR status. However, the cutoff date for issuance of a K-4 visa is one year from the date of the issuance of the K-3 visa to the principal alien. After one year, and provided that the alien qualifies, the filing of an immediate relative or second preference petition would be required. No extensions are possible, regardless of circumstances.

d. **K Visa Petitions:**

(1) **Filing Form I-129F, Petition for Alien Fiancé(e) (K1):**

- (a) **Fiancé(e) Petition:** Form I-129F, Petition for Alien Fiancé(e), may not be filed with, or approved or denied by, a consular officer or an immigration officer stationed abroad. All K visa petitions must be filed with USCIS district office having jurisdiction over the petitioner's current or intended residence in the United States. If the citizen fiancé(e) is abroad at the time the K visa petition is filed, you should advise the petitioner to send the completed petition, supporting documents, and appropriate fee to the DHS USCIS service center with jurisdiction over his or her state of intended residence after marriage. The USCIS website has complete information on service center jurisdiction. After the petition is approved, USCIS will transmit it to NVC, which will alert the appropriate post.
- (b) **Validity of a K-1 Petition:** An approved K-1 visa petition is valid for a period of four months from the date of USCIS action. However, the consular officer may revalidate the petition any number of times for additional periods of four months from the date of revalidation, provided the officer concludes that the petitioner and the beneficiary remain legally free to marry and continue to intend to marry each other within 90 days after the beneficiary's admission into the United States. However, the longer the period of time since the filing of the petition, the greater the concern about the intentions of the couple, particularly the intentions of the petitioner in the United States. If the officer is not convinced that the U.S. citizen petitioner continues to intend to marry the beneficiary, including instances where no action has been taken on the application for a year (while refused under INA 221(g)), the petition should be returned to the approving office of USCIS with an explanatory memorandum. (See [9 FAM 502.7-5\(B\)](#) paragraph *d(5) below* for revalidation procedure.)

(2) **Petition for Classification under INA 101(a)(15)(K)(ii) (K3):**

- (a)** An alien seeking admission under INA 101(a)(15)(K)(ii) must be the beneficiary of a K-3 petition filed by a U.S. citizen in the United States. USCIS is using the usual Form I-129F, Petition for Alien Fiancé(e), for this purpose. As noted in [9 FAM 502.7-5\(C\)\(1\)](#) paragraph **c**, if the couple married outside the United States, the visa must be issued by a consular officer in the foreign state in which the marriage was effected.
- (b)** In order to file an I-129F petition for a K-3 visa, the petitioner must first file an I-130 Petition for an Alien Relative with USCIS. USCIS will send the petitioner an I-797 receipt confirming that the I-130 petition has been received. Only then can the petitioner proceed to file the I-129F petition for the K-3. When an I-130 and an I-129F for the same petitioner and beneficiary are filed with the same USCIS service center, USCIS will only proceed with the adjudication of the I-130 petition.
- (3) **No Petition for Child of K-1 or K-3:** The unmarried child of a K-1 or K-3 applicant does not require a petition. The applicant needs only to demonstrate that he or she is the “child” (as defined in INA 101(b)(1)) of an alien classified K-1 or K-3. K-2 or K-4 applicants are required to sign a form apprising them that entering into a marriage prior to obtaining adjustment of status will render them ineligible for adjustment in the IR-2 or CR-2 category.
- (4) **Termination of K Visa Petition Approval:** USCIS regulations (8 CFR 214.2(k)) provide that the death of a petitioner or written withdrawal of the petition prior to the arrival of the beneficiary in the United States automatically terminates the approval of the petition. You should return the petition to the approving USCIS office with an appropriate memorandum via the NVC.
- (5) **Revalidation of Fiancé(e) Petition:** When a K visa petition is revalidated as described in [9 FAM 502.7-5\(B\)](#) paragraph d(1)(b), the notation “Revalidated to (date)” should be placed in the “Remarks” block of the petition over the signature and title of the consular officer. The date when the revalidation was processed should also be shown.

9 FAM 502.7-5(C) K Visa Processing

9 FAM 502.7-5(C)(1) Acceptance of K Visa Applications

(CT:VISA-366; 05-25-2017)

- a. K-1 and K-2 visas must be processed and issued only at immigrant visa issuing posts. If a nonimmigrant visa issuing post receives a K-1 visa petition, it should forward the petition to the IV issuing post which covers the consular district, unless the post has been specifically authorized to process K visas.
- b. Subject to paragraph c below, applicants for K-3 or K-4 visas should also be processed at IV posts, as K-1s are, but in some cases they may have to be processed at a consular post that normally issues only NIVs because there is no IV post in the country.

- c. The statute requires that a K-3 visa for an applicant who married a U.S. citizen outside the United States be issued a visa by a consular officer in the foreign state in which the marriage was concluded. If that country has no IV issuing post and only a nonimmigrant visa issuing post, then the application may be accepted and processed by the nonimmigrant visa issuing post. If no visa issuing post is located in that country, the K-3 applicant should apply at the consular post designated to handle "homeless" IV cases for that country. A K-4 visa applicant, also, may be issued a visa at any IV issuing post, or, in the circumstances noted above, at a nonimmigrant post if there is no IV issuing post in the country.

9 FAM 502.7-5(C)(2) K Visa Pre-Interview Processing

(CT:VISA-348; 04-19-2017)

a. Timely Visa Processing:

- (1) The interview with the consular officer is the most significant part of the visa issuing process. It is particularly important from the point of view of full and correct application of the law. Section 237 of Public Law 106-113 requires that the Department establish a policy under which fiancé(e) visas be processed within 30 days of receipt of the necessary information from the applicant and the Department of Homeland Security. The Department expects all posts to strive to meet the 30/60 day requirements.
- (2) Since the underlying purpose of the Legal Immigration Family Equity (LIFE) Act is to reunite families, it is important that posts process these cases as quickly as possible. Posts should first process immigrant visas cases that are current for processing and for which visa numbers are available. The second priority should be V-1 and K-3 applicants and their children.

- b. **Action When K-1 Petition Received:** Upon the receipt of an approved I-129F petition for a K-1 applicant, the post should send a letter to the beneficiary outlining the steps to be taken to apply for a visa. If the initial four-month validity of a petition has expired without a response to the post's letter, you should send a follow-up letter to the beneficiary, with a copy to the petitioner, and request a reply within 60 days. If the 60-day period passes without a response from either party, or, if the response indicates that the couple no longer plans marriage, the case is to be considered abandoned; the petition is to be retained at the post for a period of one year and then destroyed.

- c. **Action When K-3 Petition Received:** Upon receipt of an approved I-129F petition for a K-3 applicant, consular staff should check the Person Centric Query Service (PCQS) to determine if the associated I-130 petition has already been approved. If the I-130 has been approved, the I-129F for the K-3 visa application should be refused under section 5A, and the I-129F should be kept in the file with the corresponding I-130 petition when it is received by post. The petitioner and beneficiary should be advised that post will notify them when the approved I-130 petition is received at post. If the I-130 petition has not yet been approved, then the I-129F is still valid and post may continue processing the K-3 visa application. If

the I-130 has been denied, then the I-129F for the K-3 is no longer valid (validity is contingent upon having a pending or approved I-130), and post should return the I-129F to USCIS for termination.

- d. **Applicant Informed of Requirement for Visa:** Upon the receipt of a K visa petition approved by U.S. Citizenship and Immigration Services, post should promptly send to the applicant:
- (1) Instructions for accessing Form DS-160, Online Nonimmigrant Visa Application;
 - (2) One copy of the petitioner's approved Form I-129F, together with any criminal background information (including information on protection orders) that USCIS has gathered on the petitioner and any information that USCIS has provided regarding prior Form I-129F filings by the petitioner (see [9 FAM 502.7-5\(D\)\(1\)](#) for more specifics);
 - (3) One copy of USCIS's pamphlet (in paper or electronic form), "Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa."

9 FAM 502.7-5(C)(3) K Visa Documentary and Clearance Requirements

(CT:VISA-348; 04-19-2017)

- a. **Standard Requirements:** The following records and documents are required for presentation at the time of K visa application:
- (1) Form DS-160, Online Nonimmigrant Visa Application;
 - (2) Valid passport (except for a person coming under 22 CFR 41.2 paragraphs (a), (b), (h));
 - (3) Birth certificate;
 - (4) Police certificates (in addition to supplying a police certificate from the present place of residence, the applicant must also present police certificates from any place or places of residence for six months or more since attaining the age of 16);
 - (6) The applicant must present proof of relationship to the petitioner at the time of the interview;
 - (7) Evidence of termination of any prior marriage of beneficiary (if the petition does not indicate that such evidence was previously submitted); and
 - (8) Form DS-2054, Medical Examination for Immigrant and Refugee Applicant and associated worksheets DS-3025, DS-3026, and DS-3030. Please see 302.2 for additional information on the medical examination requirements for K visa applicants.
- b. **Accompanying Child:** If the applicant is to be accompanied by a minor child or children, Form DS-160, Online Nonimmigrant Visa Application, is required for each child. The accompanying child also requires a valid passport (or may be included in

the parent's passport), a birth certificate, and a medical examination. No chest X-ray or serologic tests are required if the child is under 15 years of age. If a child is 16 years of age or over, police certificates are required.

c. Public Charge, Evidence of Support:

- (1) A K visa applicant and any accompanying children must meet the public charge requirement of INA 212(a)(4) like any other visa applicant. Evidence of support is usually requested by the consular officer. There is, however, no absolute requirement that an affidavit of support or other public charge documentation be presented. It is only necessary that you are able to conclude that the alien is not likely to become a public charge. It would not be unusual, therefore, for a healthy alien of working age, applying alone, to be able to establish eligibility during the visa interview without the need for substantiating documentation.
- (2) Form I-864, Affidavit of Support Under Section 213A of the Act, cannot be required. Applicants may submit a letter from the petitioner's employer or evidence that they will be self-supporting. Form I-134, Affidavit of Support, may be requested when you deem it useful.

d. Medical Exam: As noted above, the applicant must undergo the standard immigrant visa medical examination by a panel physician, and submit appropriated documentation as required including Form DS-2054, Medical Examination for Immigrant and Refugee Applicant, and associated worksheets DS-3025, DS-3026, and DS-3030. See [9 FAM 302.2-3\(A\)](#) paragraph c for more information on medical exams and vaccination requirements for K visa applicants.

e. Clearances:

- (1) A National Crime Information Center name check must be done by the National Visa Center for each applicant.
 - (2) Upon receipt of the completed Form DS-160, you should initiate clearance procedures. If the applicant, since attaining the age of 16, has resided for one year or more in a country other than the one of visa application, the security clearance procedures used in immigrant visa cases are to be followed.
- f. Fees:** There is no additional processing fee for K visas. Applicants will pay only the standard Machine Readable Visa (MRV) fee. There are no separate reciprocity fees.

9 FAM 502.7-5(C)(4) K Visa Interview

(CT:VISA-163; 08-25-2016)

a. The Alien is to be Invited for an Interview When:

- (1) The alien has reported that all of the necessary documents have been collected; and
- (2) The medical examination has been completed and the report is or will be available before the interview.

b. You must direct the interview to determine eligibility as if the alien were applying

for an immigrant visa in the immediate relative category. You must also:

- (1) Inform the K-1 or K-3 visa applicant of any protection orders or criminal background information regarding the petitioner that U.S. Citizenship and Immigration Services has reported with an approved K petition. After informing the applicant, give the applicant time to decide whether he or she wishes to proceed with the K visa application, and, in the case of an applicant for a K-1 visa, whether he or she still intends to marry the petitioner within 90 days of entering the United States. Enter appropriate case notes into the IVO system to indicate that the applicant received notice of the petitioner's criminal background information (see [9 FAM 502.7-5\(D\)\(1\)](#) for more specifics);
- (2) Inform the K-1 or K-3 visa applicant of any previously approved Form I-129F petitions filed by the petitioner. You will find this information on the approved Form I-129F as USCIS annotates approved Form I-129F petitions to indicate multiple filings. (Note: Under IMBRA, if a U.S. citizen already has had two fiancé(e) or spousal petitions approved less than ten years prior to the filing of a subsequent petition, the K-1 or K-3 applicant who is the beneficiary of the subsequent petition is to be notified. Absent an IMBRA waiver, USCIS may not approve a petition filed by an individual who (1) has filed two or more previous fiancé(e) or spousal petitions; or (2) has had such a petition that was filed within the previous two years approved. USCIS indicates these waivers by noting "IMBRA waiver approved" in the approved petition's Remarks block. Aside from informing the beneficiary of the previous petitions, no additional steps are required of you.) Make appropriate case notes in IVO;
- (3) Ask the applicant whether an international marriage broker (IMB) facilitated the relationship with the petitioner and if so, identify the IMB, and then ask if the IMB complied with the International Marriage Broker Regulation Act of 2005 (IMBRA) by providing the applicant with the required disclosures and information (see [9 FAM 502.7-5\(D\)\(1\)](#)). If the IMB did not provide the required disclosures and information, make case notes in IVO on the failure of the IMB to comply with IMBRA and provide that information to CA/VO/F/IE by email. Proceed with case processing; do not wait for clearance to proceed;
- (4) Provide to each K-1 or K-3 visa applicant another copy of the USCIS pamphlet, "Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa," which they already should have received when the instruction packet was first mailed to them (see [9 FAM 502.7-5\(C\)\(2\)](#) paragraph c), in English or another appropriate language;
- (5) Orally review with the applicant, in his or her primary language, if feasible, or otherwise in either the language spoken in the country of application or English, the synopsis of the points contained in the pamphlet (found at [9 FAM 502.7-5\(E\)](#));
- (6) Add case notes in IVO that the pamphlet was received, read, and understood by the applicant; and

- (7) In K-1 cases, obtain the applicant's oath and biometric signature within IVO – this certifies the applicant's legal capacity and intent to marry.

9 FAM 502.7-5(C)(5) K-1 and K-2 Visa Adjudication

(CT:VISA-366; 05-25-2017)

a. Adjudication Factors:

- (1) Petitioner and Beneficiary Must Have Met:** USCIS regulations (8 CFR 214.2(k)(2)) require that the petitioner and the K-1 beneficiary have met in person within two years immediately preceding the filing of the petition. At the USCIS director's discretion, this requirement can be waived if it is established that compliance would result in extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the beneficiary's foreign culture.
- (2) Petitioner and Beneficiary Must Be Legally Free to Marry:**
- (a) For a K-1 petition to remain valid, the petitioner and the beneficiary must:
- Have been legally free to marry at the time the petition was filed;
 - Have remained so thereafter; and
 - Continue to have the intent to marry within 90 days after the beneficiary's admission into the United States.
- (b) A K-1 petition filed when the petitioner and/or the applicant was still legally married shall not serve as the basis for visa issuance, even though that marriage was terminated and applicant/petitioner became free to marry within 90 days of arrival in the United States. If you find that the petitioner and/or applicant is/was not legally free to marry, you must return the K-1 petition to NVC under cover of memorandum detailing the specific, objective facts giving rise to the officer's determination.
- (3) Multiple Petitions Approved for Same K-1 Beneficiary:** In instances where more than one U.S. citizen fiancé(e) has filed visa petitions on behalf of the same alien and more than one K-1 visa petition has been approved for the same beneficiary, you must suspend action and return all petitions with a covering memorandum to USCIS district director who approved the last petition so that the petition approvals may be reviewed.
- (4) Marriage for Purpose of Evading Immigration Laws (INA 204(c)):** See [9 FAM 504.2-5\(C\)\(2\)](#) paragraph d.
- (5) Additional Factors That May Raise Questions in K-1 Cases:**
- (a) There are several possible discrepancies between the facts stated on the petition and the actual circumstances of the K-1 beneficiary which might lead you to question whether the relationship is bona fide or which might cause the petitioner to choose not to go forward with the marriage. These include having one or more children not named in the petition, a prior undisclosed marriage (even if it has been annulled or ended by divorce or

death), or, in the case of a fiancée, a current pregnancy.

- (b) Discovery of a ground of ineligibility of the K-1 applicant raises another issue of the petitioner's awareness of all of the factors associated with the fiancé(e).
- (c) You should use your discretion in determining whether to return the K-1 petition to USCIS in such cases. You should, however, first solicit from the petitioner information as to whether he or she was aware of the particular circumstance(s) and whether, in light thereof, he or she still wishes to proceed with the proposed marriage. If satisfied in this regard, you need not return the petition. If you have further questions about whether a petition should be returned to USCIS, contact VO/F and FPP.

b. K-1 Relationship Not Satisfactorily Bona Fide:

- (1) You should return the K-1 petition to DHS for reconsideration if not satisfied with respect to the bona fides of the relationship or if the petitioner indicates that he or she no longer intends to go forward with the marriage.
- (2) If you find that the fiancé(e) or marital relationship is not bona fide but is a sham entered into solely for immigration benefits, you should return the K-1 or K-3 petition to NVC with a recommendation for revocation under cover of a memorandum detailing the specific, objective facts giving rise to post's conclusion. VO/F and FPP can answer questions and provide assistance in writing effective revocation memos. All immigrant and K-1/K-3 visa revocation cases are to be returned to the following address:

National Visa Center
32 Rochester Avenue
Portsmouth, NH 03801
Attn: Fraud Prevention Manager

9 FAM 502.7-5(C)(6) K Visa Ineligibilities, Waivers

(CT:VISA-348; 04-19-2017)

- a. **Former Exchange Visitor:** Before a K visa may be issued to an applicant who is a former exchange visitor and subject to the provisions of INA 212(e), the applicant must establish that the requirements of INA 212(e) have been fulfilled or that a waiver has been obtained. (See 22 CFR 40.202(b) and [9 FAM 302.13-2.](#))
- b. **Vaccination Requirements for K Visa Applicants:** See [9 FAM 302.2-6\(B\)\(3\).](#)
- c. **Waiver Availability for Applicants Ineligible under INA 212(a):** A K visa is a nonimmigrant visa, and, therefore, K nonimmigrants are generally eligible for INA 212(d)(3)(A) waivers. However, processing an INA 212(d)(3)(A) waiver would not be appropriate unless an immigrant waiver is also available when the K visa holder applies to adjust status to lawful permanent resident. To determine whether a waiver is available for a K applicant, you must, therefore, first examine whether the particular INA 212(a) ineligibility is waivable for immigrant spouses of U.S. citizens,

under either INA 212(g), INA 212(h), INA 212(i), INA 212(a)(9)(B)(v), INA 212(d)(11) or INA 212(d)(12) or similar provisions. (For a more complete list, see [9 FAM 302](#) and [9 FAM 305](#).)

- d. **No Waiver Possible:** If the K visa applicant is ineligible for a visa on an INA 212(a) ground for which no immigrant waiver is or would be possible after marriage to the petitioner, then the case should not be recommended for an INA 212(d)(3)(A) waiver and no waiver request should be submitted to USCIS. (See 22 CFR 40.301.)
- e. INA 212(d)(3)(A) **Waiver for K-1 Fiancé(e) Who Would Qualify for Waiver If Married, or for K-3 Spouse:**
- (1) If it is determined that the K visa applicant is ineligible to receive a visa under INA 212(a), but that the ineligibility could be waived after (or as a result of the) marriage to the petitioner, instruct the applicant to file Form I-601, Application for Waiver of Ground of Inadmissibility, with USCIS per USCIS instructions.
 - (2) If the case involves a K-1 fiancé(e), you should be satisfied (before beginning that waiver process) that the petitioner is aware of the ineligibility and still wishes to pursue the marriage. If not, the petition should be returned to USCIS and the waiver process should be terminated.
 - (3) You should follow this same general procedure whether the ineligibility is on medical or nonmedical bases, while taking into account any variant procedure required in certain medical cases as set forth in [9 FAM 302.2](#).

9 FAM 502.7-5(C)(7) K Visa Issuance, Travel

(CT:VISA-366; 05-25-2017)

- a. **K Visa Validity:** K-1 and K-2 visas should be valid for six months for one entry. K-3 and K-4 visas should be valid for multiple entries for 24 months, unless constrained by security clearance requirement or waivers, which are valid for a year or less. Unmarried aliens entering the United States as a K-4 should be admitted for a period of 24 months or until that alien's 21st birthday, whichever is shorter (see 8 CFR 214.2(k)(8) and 8 CFR 214.2(k)(11)(v)).
- b. **K Visa Annotations:** The K visa should be annotated in the following cases:
- (1) K-1 and K-3 visas should be annotated with the name of the petitioner and the petition number.

PETR.: DOE, JOHN
PET. NO.: EAC0123456789
 - (2) **Medical Cases:**
 - (a) When the medical examination has revealed a Class A tuberculosis or another Class A medical condition, and an INA 212(d)(3)(A) waiver has been granted, the visa should be annotated: "MED: 212(d)(3)(A)."
 - (b) When the medical examination has revealed a Class B tuberculosis

condition or Class B leprosy, non-infectious, the visa should be annotated: "MED: Class B."

- (3) **Child of a K-1 or K-3:** The children's MRVs should be annotated with the principal alien's name and date of visa issuance. For example, "P/A: Mary Brown, K-1/K-3 issued 15-AUG-2007."

c. K Visa Travel Packet:

- (1) **Supporting Documents Placed in Envelope and Hand-Carried by Applicant:** The following supporting documents should be carried by the applicant in a sealed envelope for presentation at the port of entry:

- (a) The K visa petition; and
- (b) Form DS-2054, Medical Examination for Immigrant or Refugee Applicant, and all related worksheets.
- (c) Supporting documents: Supporting documents include copies of all civil documents that are pertinent to the relationship between the petitioner and the beneficiary. You should be careful NOT to include any criminal information on the petitioner that may have been included in the case file, or any documents that are law enforcement sensitive.

- (2) **K2 and K4 Children:** In the case of children following-to-join the principal alien who are entitled to K2 or K4 classification, the required documents are to be placed in an envelope together with a copy of the approved K visa petition.

- d. **Social Security Registration:** Even though a fiancé(e) is treated in most respects like an immigrant, posts do not give a fiancé(e) the information regarding Social Security registration. DHS will do this at the time of the alien's adjustment of status.
- e. **Issuance of subsequent K-1 Visa:** If a K-1 visa, valid for a single entry and a 6-month period, has already been used for admission into the United States and the alien fiancé(e) returns abroad prior to the marriage, you may issue a new K visa, provided that the period of validity does not exceed the 90th day after the date of initial admission of the alien on the original K visa to the United States, and provided that the petitioner and beneficiary still intend and are free to marry. The alien's return to the United States and marriage to the petitioner must take place within 90 days from the date of the original admission into the United States in K status. To issue this subsequent visa the applicant must pay a new MRV fee and provide a new DS-160. Using the information in the original petition and the new DS-160 create a new case in NIV, and adjust the validity date to fall within the original 90-day time period.

9 FAM 502.7-5(D) K Visa Petitioner Provisions

9 FAM 502.7-5(D)(1) International Marriage Broker Regulation Act (IMBRA) – Disclosure of Petitioner Criminal Conviction History,

Protection Orders, or Restraining Orders

(CT:VISA-1; 11-18-2015)

- a. The International Marriage Broker Regulation Act of 2005 (IMBRA) requires, with respect to each I-129F petitions for K status, that USCIS provide to the Department, and the Department in turn to disclose to the K-1 or K-3 applicant, all criminal background information submitted to USCIS by the petitioner and any related criminal conviction information that USCIS discovered in Government records or databases during its routine background check regarding any of the following crimes:
 - (1) Crimes involving domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, stalking, and any attempt to commit such crimes;
 - (2) Crimes involving homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of these crimes;
 - (3) Crimes relating to a controlled substance or alcohol where the petitioner has been convicted on at least three occasions and where such crimes did not arise from a single act; and
 - (4) Information on any permanent protection or restraining order issued against the petitioner related to any specified crime.
- b. The disclosure of any criminal background information regarding the petitioner that USCIS has reported with an approved K petition, including any information on protection orders or criminal convictions, is mandatory. IMBRA requires that the Department must share, with the K-1 or K-3 nonimmigrant visa applicant who is the beneficiary of the petition, any such criminal background information that USCIS has reported after its check of Government records or databases, while informing the applicant that such criminal background information is based on available records and may not be complete. This must take place on two occasions: first, when post sends the applicant the instructions regarding the visa application process; and second, at the time of the visa interview, when you must disclose the information to the K-1 or K-3 visa applicant, in the applicant's primary language. In making this disclosure, you are not authorized to provide the name or contact information of any person who was granted a protection order or restraining order against the petitioner or was a victim of a crime of violence perpetrated by the petitioner, but are to disclose to the applicant the person's relationship to the petitioner. Because each petitioner for K visa status must have signed a statement in the I-129F expressing their understanding that any criminal background information pertaining to them will be disclosed to petition beneficiaries, you are not required to send a petitioner notification that such disclosure has occurred.
- c. During the visa interview, after informing the applicant of any protection orders or criminal background information received from USCIS regarding the petitioner, give the applicant time to decide whether he or she wishes to proceed with the K visa

application, and, in the case of an applicant for a K-1 visa, whether he or she still intends to marry the petitioner within 90 days of entering the United States. Enter case notes into the IVO system to indicate that the applicant received notice of the petitioner's criminal history. If you have questions, contact your liaison in CA/VO/L/A or CA/VO/F/IE for additional guidance.

9 FAM 502.7-5(D)(2) Adam Walsh Child Protection and Safety Act of 2006 ("Adam Walsh Act") – Returning I-129F Petitions Based on Adam Walsh Act Requirements

(CT:VISA-387; 06-20-2017)

- a. Section 402 of the Adam Walsh Child Protection and Safety Act of 2006 ("Adam Walsh Act"), which became law on July 27, 2006, amended INA 204(a)(1) and INA 101(a)(15)(K), rendering ineligible to file a petition for immigrant status under INA 203(a) or nonimmigrant K status, any petitioner who has been convicted of a "specified offense against a minor," defined in section 111 of the Adam Walsh Act as an offense involving any of the following:
 - (1) An offense (unless committed by a parent or guardian) involving kidnapping;
 - (2) An offense (unless committed by a parent or guardian) involving false imprisonment;
 - (3) Solicitation to engage in sexual conduct;
 - (4) Use in a sexual performance;
 - (5) Solicitation to practice prostitution;
 - (6) Video voyeurism as described in 18 U.S.C. 1801;
 - (7) Possession, production, or distribution of child pornography;
 - (8) Criminal sexual conduct involving a minor or the use of the Internet to facilitate or attempt such conduct;
 - (9) Any conduct that by its nature is a sex offense against a minor.
- b. Section 402 further provides that the bar against filing a petition because of such a conviction will not apply if the Secretary of Homeland Security, in his or her sole and unreviewable discretion, determines that the petitioner poses no risk to the beneficiary.
- c. Because of the Adam Walsh Act, you must return to the USCIS domestic service center that approved it, via NVC, any approved I-129F petition filed by a U.S. citizen identified as having been convicted of one of the offenses against a minor listed in [9 FAM 502.7-5\(D\)\(2\)](#) paragraph *a above*, for reconsideration, unless USCIS has reported that the Secretary of Homeland Security has made the necessary "no risk" determination. Additionally, USCIS has asked that you return to the approving domestic service center (via NVC) for possible revocation any I-129F petition approved before July 27, 2006 if you are aware of any conviction for a specified sexual or kidnapping criminal offense against a minor that does not appear to have

been known at the time of petition approval. Do not disclose conviction information to the visa applicant in cases in which the petition is being returned.

- d. The Adam Walsh Act's bar against the filing of a petition for family-based immigrant or K nonimmigrant visa status by an individual who has been convicted of a specified offense against a minor does not apply if the Secretary of Homeland Security exercises his sole and unreviewable discretionary authority and determines that the individual poses no risk to a beneficiary. You may encounter cases in which the criminal history information reported to post by USCIS relates to a conviction for a crime that is one of the specified offenses against a minor listed in [9 FAM 502.7-5\(D\)\(2\)](#) paragraph *a above*. Provided that the petition reflects that there has been a no-risk determination by the Secretary of Homeland Security and you intend to approve the visa application, you should not forward the petition to USCIS based on the conviction in that instance, but instead consider it to have been properly filed under the Adam Walsh Act, while nonetheless informing the K visa applicant, during the interview, of any conviction listed in [9 FAM 502.7-5\(D\)\(2\)](#) paragraph *a above* that has been reported by USCIS pursuant to IMBRA.

9 FAM 502.7-5(E) Synopsis of USCIS Pamphlet for Applicants for K Nonimmigrant Visas and Family-Based Immigrant Visas

(CT:VISA-1; 11-18-2015)

Why are we providing the pamphlet?

The International Marriage Broker Regulation Act (IMBRA) requires that the United States government provide, to an immigrating fiancé(e) or spouse of a citizen or resident of the United States, an information pamphlet on legal rights and resources for immigrant victims of domestic violence. Immigrants are often afraid to report acts of domestic violence to the police or to seek other forms of assistance. Such fear causes many immigrants to remain in abusive relationships.

IMBRA also provides for the United States government to provide, to an immigrating fiancé(e) or spouse of a U.S. citizen who has a history of criminal or domestic violence, a copy of the citizen's criminal background information.

One of IMBRA's goals is to provide applicants with accurate information about the immigration process and how to access help if a relationship becomes abusive.

What is domestic violence?

The pamphlet provides detailed explanations of the term "domestic violence" and two related offenses, sexual assault and child abuse.

Domestic violence involving current or former partners is a pattern of behavior where one intimate partner or spouse threatens or abuses the other partner or spouse. Abuse may include physical harm, forced sexual relations, emotional manipulation (including isolation or intimidation), and economic and/or immigration-related threats.

Under all circumstances, domestic violence, sexual assault, and child abuse are illegal in the United States. All people in the United States are guaranteed protection from abuse under the law. Any victim of domestic violence can seek help. An immigrant victim of domestic violence may be eligible for immigration protections.

The pamphlet is intended to help you understand U.S. laws regarding domestic violence and

how to get help if you need it.

What are the legal rights for victims of domestic violence in the United States?

All people in the United States, regardless of immigration or citizenship status, are guaranteed basic protections under both civil and criminal law. Laws governing families provide you with:

The right to obtain a protection order for you and your child(ren).

The right to legal separation or divorce without the consent of your spouse.

The right to share certain marital property. In cases of divorce, the court will divide any property or financial assets you and your spouse have together.

The right to ask for custody of your child(ren) and financial support. Parents of children under the age of 21 often are required to pay child support for any child not living with them.

What services are available to victims of domestic violence and sexual assault in the United States?

In the United States, victims of these crimes can access help provided by government or nongovernmental agencies, which may include counseling, interpreters, emergency housing, and even monetary assistance.

The telephone numbers or "hotlines" listed in the pamphlet have operators trained to help victims 24 hours a day free of charge. Interpreters are available, and these numbers can connect you with other free services for victims in your local area, including emergency housing, medical care, counseling, and legal advice. If you cannot afford to pay a lawyer, you may qualify for a free or low-cost legal aid program for immigrant crime or domestic violence victims.

What immigration options may be available to a victim of domestic violence, sexual assault, or other crime?

The pamphlet outlines three ways immigrants who become victims of domestic violence, sexual assault, and some other specific crimes may apply for legal immigration status for themselves and their child(ren): (1) self-petitions for legal status under the Violence Against Women Act (VAWA); (2) cancellation of removal under VAWA; or (3) U nonimmigrant status. Because a victim's application is confidential, no one - including an abuser, crime perpetrator, or family member - will be told that the victim applied. A victim of domestic violence should consult an immigration lawyer who works with other victims to discuss immigration options that may be available.

How does the U.S. Government regulate "international marriage brokers"?

Under IMBRA, "international marriage brokers" are required to give the foreign national client background information on the U.S. client who wants to contact the foreign national client, including information contained in Federal and State sex offender public registries, and to get the foreign national client's written permission before giving the U.S. client the foreign national client's contact information. If you are a foreign national client, the agency is required to give you a copy of the pamphlet. It is prohibited from doing business with individuals who are under 18 years of age.

Can a K nonimmigrant visa applicant rely on criminal background information that USCIS has compiled on a U.S. citizen fiancé(e) or spouse?

IMBRA requires the U.S. Government to share any criminal background information on a K nonimmigrant petitioner with the fiancé(e) or spouse who is applying for a K visa as the beneficiary of such a petition. The criminal background information compiled by USCIS comes from various public sources, as well as information provided by the U.S. citizen clients on immigration applications. USCIS does not have access to all criminal history databases in the United States. The U.S. citizen sponsor may not tell the truth in the sponsorship application.

It is also possible the U.S. citizen has a history of abusive behavior but was never arrested or convicted. Therefore, the criminal background information an applicant receives may not be complete. The intent of the law is to provide available information and resources to immigrating fiancé(e)s and spouses. Ultimately, you are responsible for deciding whether you feel safe in the relationship.

Can foreign fiancé(e)s or spouses who are victims of domestic violence also be victims of human trafficking?

Other forms of exploitation, including human trafficking, can sometimes occur alongside domestic violence, when the exploitation involves compelled or coerced labor, services, or commercial sex acts. The pamphlet contains information on how to obtain help regarding human trafficking.

9 FAM 502.7-6 CERTAIN PARENTS AND CHILDREN OF INA 101(A)(27)(I) AND (L) SPECIAL IMMIGRANTS (N VISAS)

9 FAM 502.7-6(A) Related Statutory and Regulatory Authorities

9 FAM 502.7-6(A)(1) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(15)(N) (8 U.S.C. 1101(a)(15)(N)); INA 101(a)(27)(I) (8 U.S.C. 1101(a)(27)(I)); INA 101(a)(27)(L) (8 U.S.C. 1101(a)(27)(L)); INA 101(b)(1) (8 U.S.C. 1101(b)(1)).

9 FAM 502.7-6(A)(2) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 41.82; 8 CFR 214.2(n)(4).

9 FAM 502.7-6(B) N Visa Provisions

(CT:VISA-348; 04-19-2017)

a. **Classification Under INA 101(a)(15)(N):** INA 101(a)(15)(N) creates a nonimmigrant classification to minimize any family separations caused by ineligibility for special immigrant status of certain parents and children of persons accorded status under INA 101(a)(27)(I) or INA 101(a)(27)(L). Nonimmigrant N status may be accorded to the following aliens:

- (1) The parent of an alien accorded status as a special immigrant under INA 101(a)(27)(I) or INA 101(a)(27)(L), as long as such alien remains a "child" (i.e., unmarried and under 21); and
- (2) A child of such parent or of an alien accorded status as a special immigrant

under INA 101(a)(27)(I) or INA 101(a)(27)(L).

- b. **Criteria to Establish Entitlement to Nonimmigrant Status Under INA 101(a)(15)(N):** The N classification involves the applicant's relationship to a person who obtained permanent resident status through INA 101(a)(27)(I) or INA 101(a)(27)(L). You must verify that a qualifying relationship exists, and that the relationship is with an alien who obtained permanent resident status through INA 101(a)(27)(I) or INA 101(a)(27)(L).
- (1) **Verifying Relationship to SK or SN Special Immigrant:** The requisite relationship to the SK or SN special immigrant must be substantiated by the submission of verifiable civil documents (such as birth certificates) as appropriate.
 - (2) **Verifying SK Status of Relative:**
 - (a) If the relative in SK or SN status accompanies the N visa applicant to the visa interview, the relative's SK or SN status may be verified from his or her Form I-551, Permanent Resident Card, or passport bearing DHS endorsement reflecting lawful admission for permanent residence.
 - (b) If the relative in SK or SN status does not accompany the N visa applicant, the applicant shall provide the relative's name, date and place of birth, and/or A-number. Check PCQS to verify the relative's SK or SN status. If you are unable to determine that the relative is in current SK or SN status, request verification from the USCIS office in your region. The verification request should explain that the alien has requested processing for a returning resident visa, but lacks proof of LPR status.
 - (3) **Visa Applicant Deriving Status from an N Principal Alien:** If the N visa applicant derives status from an N principal alien, the principal alien's N status shall be verified through routine procedures; for example:
 - (a) Issuance of the principal alien's N visa may be verified with the issuing post;
 - (b) The principal N alien may accompany the applicant; or
 - (c) The applicant may present a copy of the principal alien's passport and N visa.
- c. **Validity for N Visas:** Validity for N-8 and N-9 visas is the same as the validity for G-4 visas specified in the appropriate reciprocity schedule. Relationship and age factors may limit the period of validity.
- d. **Special Requirements for Admission, Extension, and Maintenance of Status:** A nonimmigrant granted N status may be admitted for a period not to exceed three years, with extensions in increments up to but not exceeding three years. N nonimmigrant status terminates on the date the child (either the special immigrant on whom the parent's N status is based or the child accorded N status on the basis of the parent's special immigrant status) no longer qualifies as a "child" as defined in INA 101(b)(1).

- e. **Employment Authorization for N Nonimmigrants:** DHS regulations at 8 CFR 214.2(n)(4) state that a nonimmigrant admitted in or granted N status is authorized employment incident to N status without restrictions as to location or type of employment and need not request such authorization.

9 FAM 502.7-7 PRIVATE IMMIGRATION BILLS

9 FAM 502.7-7(A) Related Statutory and Regulatory Authorities

(CT:VISA-1; 11-18-2015)

INA 101(b)(1)(F) (8 U.S.C. 1101(b)(1)(F)); INA 101(b)(1)(G) (8 U.S.C. 1101(b)(1)(G)); INA 201(b)(2) (8 U.S.C. 1151(b)(2)).

9 FAM 502.7-7(B) General Information on Private Bills

(CT:VISA-387; 06-20-2017)

a. General Background:

- (1) Private immigration legislation is an effort to provide extraordinary relief after all administrative remedies under the INA have been exhausted. Based on the information submitted, the Congressional Committees must decide whether such circumstances merit passage of a private law, which, in effect, would exempt the beneficiary from a provision of the law applicable to all other visa applicants or would confer a benefit to which the alien would not otherwise be entitled. It is the Department's experience that Members of Congress, when making an exception to the general immigration laws, examine each private bill very carefully to determine whether there is sufficient equity in the merits of the case. A fully documented background investigation, documented in a post's private bill report, would not only alert these Members to any relevant facts which might otherwise surface subsequent to the bill proceedings being completed but could also substantiate the necessity of passing the private bill. Since most beneficiaries of private bills are in the United States, and frequently have been for some time, it is rare that posts will be asked to provide a bill report. Instructions are being provided, however, in case a post is asked to prepare one (see [9 FAM 502.7-7\(C\)](#)). This section also provides information on processing cases based on private immigration legislation which has passed (see [9 FAM 502.7-7\(D\)](#)).
 - (2) For further information on Congress' expectations for and receptions to private bills, see the U.S. House of Representatives Judiciary Committee's "Rules of Procedure and Statement of Policy for Private Immigration Bills" provided below in [9 FAM 502.7-7\(E\)](#).
- b. **Children:** See also [9 FAM 102.8-2](#) definition of "child" for information on private legislation granting immigrant status as a child under INA 201(b)(2).

9 FAM 502.7-7(C) Private Bill Reports

9 FAM 502.7-7(C)(1) Processing Private Bill Report Requests

(CT:VISA-1; 11-18-2015)

- a. **Purpose of Private Bill Report, General Content Guidelines:** A report from the post concerning a private bill case should provide the Senate and House Judiciary Committees with all available information relating to the beneficiary of the private legislation. The report should not only verify the reasons for which a visa was denied (or could otherwise not be issued) in an individual case, but should also touch on matters that relate to the merits of the case and should contain any other pertinent information which may be of help to the Committees in weighing the equities of the private bill. However, while the Committees expect the report to provide detailed facts relevant to their final determination on the private legislation, you should make no recommendation or observation on the merits of the private bill as such. If the files contain information of which the Committees should be made aware, but which does not belong in the official report, you should forward such information in a separate communication to CA/VO/L/R.
- b. **Quick Turn-Around Required:** When the Department is requested to provide a private bill report, it is generally on very short notice. Often the bill is coming before the Committee in the next day or two. Thus, when a Departmental request for a private bill report is received, you must promptly determine whether the visa files contain the necessary information to prepare a report as outlined in this section. In some cases, it will be necessary to interview the beneficiary of the private bill to obtain the pertinent data. If the alien's address is not available, you must so inform the Department for follow-up through the sponsor of the bill in obtaining the information. When preparing the report, reexamine the validity of any previous visa refusal to determine whether subsequently enacted legislation would provide the same relief as passage of the private bill.
- c. **Full, Interim Responses:** Prompt submission of private bill reports is important, as the period during which the Congress is in session and in which it can complete action on private legislation is very limited. A response to the Department's request must be made immediately. If a full report cannot be made, you must advise CA/VO/L/R of the reason(s) for the delay and when a full report might be expected.
- d. **Transmission of Report:** Transmit the private bill report promptly to CA/VO/L/R with a cc to CA/VO/F/OI (the Outreach and Inquiries Division) by e-mail.

9 FAM 502.7-7(C)(2) Information to Include in Private Bill Reports

(CT:VISA-1; 11-18-2015)

- a. **General Guidelines for Content of Private Bill Reports:** Provide as much information about the beneficiary and any visa application the beneficiary has

made. The report should include:

- (1) The private bill (Senate or House of Representative) number;
 - (2) Biographical data regarding the beneficiary (see paragraph b below);
 - (3) Any known relationship to a U.S. citizen or Lawful Permanent Resident (LPR), in the U.S. or abroad;
 - (4) A complete report regarding any nonimmigrant or immigrant visa application made by the beneficiary, including previous actions taken on the application, claimed purposes of entry into the United States and intended stay, and any circumstances which led to refusal of a visa (see paragraph c below);
 - (5) Results of clearance requests, including local police and other agencies' name checks, whether negative or not (see paragraph d below);
 - (6) Any known grounds of ineligibility applicable to the beneficiary, including their general health conditions, and the date and results of their medical examination (see paragraph e below);
 - (7) Any relief that might be available to the beneficiary that would permit the issuance of a visa, either now or in the future; and
 - (8) Any information regarding possible hardships for the beneficiary, should the private legislation not be passed.
 - (9) See also paragraph f below for instructions related to adoption cases.
- b. **Biographical Data:** Biographical data concerning a beneficiary of a private bill should contain:
- (1) The beneficiary's name (including aliases, maiden, professional, or religious name, or variant spellings);
 - (2) Date and place of birth;
 - (3) Place of residence;
 - (4) Marital status and, if divorced, duration of marriage or previous marriage(s);
 - (5) Children, if any, and their date(s) and place(s) of birth and present residence; and
 - (6) Background data (including, but not limited to, schooling, professional or vocational training or experience, military service, standing in the community).
- c. **Previous Visa Applications:**
- (1) **General Information on Previous Applications:** The private bill report should include actions taken on any previous visa application, including, as applicable, any ground(s) for refusal and the circumstances related to any ineligibilities (see also paragraph e below on reporting on ineligibilities).
 - (2) **NIV Applications:** In most instances, the beneficiary of a private bill is in the United States. In cases where the beneficiary entered the United States in a nonimmigrant status, the report must provide the purpose of entry, length of stay, and any statement as to the necessity to return abroad after a visit to the

United States as these appear on the visa application. The members of the Senate and House Judiciary Committees place great importance on this information in determining whether the beneficiary had intended all along to obtain immigrant status by circumventing standard immigrant visa procedures.

- d. **Clearance Checks:** Clearance procedures for private bill cases are identical to those for any immigrant visa case and must include checks with other posts, as appropriate.
- (1) Whether or not a record of the beneficiary exists in the post's file, you must conduct a check of the local police and clearance sources and submit the results, negative or not, to the Department in the private bill report.
 - (2) If additional time is required to complete clearance procedures, and to avoid delay in submitting a report because of an incomplete investigation, an interim report should be sent, including a statement to the effect that the results of the investigation will be forwarded at a later date. When the investigation is completed, forward the report by e-mail to CA/VO/L/R with a cc to CA/VO/F/OI to transmit to the appropriate Committee.
- e. **Ineligibility Reviews:** When a private bill provides relief from a ground of ineligibility, the private bill report should state whether the pending private bill would remedy all known disqualifications for which the beneficiary might be refused a visa and, if not, the other grounds for which ineligibility exists. In this connection, you must make every effort to ascertain whether other grounds of ineligibility may exist. It is important to avoid embarrassment that could result if additional grounds of ineligibility were to come to light after enactment of the bill.
- (1) **Drug or Criminal Convictions:**
 - (a) When submitting a report on a bill waiving a drug or criminal conviction, you must furnish:
 - (i) Complete transcripts of the conviction's related court proceedings;
 - (ii) Any other record relating to the offense(s), including state and local police records;
 - (iii) An affidavit from the beneficiary describing any criminal record in full; and
 - (iv) Any other information available at the post.
 - (b) In the case of a bill that would provide relief from grounds of a drug conviction, you must also submit the court transcript indicating the exact amount of drug possession at the time of arrest. If such information is not available to you because the beneficiary is not residing abroad or because the courts will not disclose such information, the report must include a statement to that effect and indicate whether the documents may be made available through direct request from the beneficiary. You must submit a certified copy of all documents and their translation to the Department.
 - (c) In cases in which the beneficiary of a private bill has been convicted of a

criminal offense, you must submit a copy of the conviction, with translation if necessary, together with the charges brought against the alien, the applicable provisions of the law, and the judgment of the court.

(2) Health-Related Considerations, Medical Examination:

- (a) A beneficiary of a private bill is required to undergo a medical examination. If the beneficiary refuses to comply, you must indicate this fact in the report.
- (b) Submitting copies of negative medical findings is not necessary, but the report must include a statement to the effect that no diseases or defects were disclosed.
- (c) Submit a copy of the medical report, and its translation if in a language other than English, only if the report shows a medical ground of ineligibility. In such a case, the report by the examining physician must include:
 - (i) Whether the condition affects the alien's employability;
 - (ii) Type(s) and results of treatments, if applicable;
 - (iii) How the alien gets along with others; and
 - (iv) Any other observations that have a bearing on the prognosis of the particular condition.
- (d) In cases involving mental grounds of ineligibility, the report must also include the date of the last known attack or other manifestation of mental affliction and a statement of the prognosis of the case.
- (e) In cases where the beneficiary's medical condition would prevent the alien from earning a living, you must provide information as to whether arrangements have been made by relatives to provide for the beneficiary's room, board, adequate medical insurance, and any other necessities in connection with the medical impairment after arrival in the United States, and whether the relatives have provided for the alien in the past in the form of monetary contributions, etc.
- (f) If it appears that arrangements for the medical examination will delay submission of the report, you must submit a preliminary report covering all other aspects of the case, with a statement that the results of the examination will be transmitted at a later date.

f. Adoption Cases:

- (1) When a private bill would accord the beneficiary the status of "child" based on an adoption, the report should also include:
 - (a) A specific statement regarding the adoption proceedings (instituted, pending, or completed);
 - (b) The applicable adoption law in the beneficiary's country; and
 - (c) Whether the adoptive parent(s) and the child have met and the two-year

period of legal custody and residence with adoptive parent(s) has been fulfilled (see INA 101(b)(1)(E)), or, alternately, whether the requirements of INA 101(b)(1)(F) or INA 101(b)(1)(G) (orphan and Convention adoptee cases, respectively), whichever applies, have been met. (See [9 FAM 502.3-3](#) and [9 FAM 502.3-4\(B\)](#).)

- (2) Three certified copies of the foreign adoption decree and translation, if applicable, must be furnished. Evidence of support for the beneficiary, in the form of canceled checks, letters, and clothing, if any, should also be noted as it could favorably affect Congressional determination.
- (3) Furthermore, in cases where the results of the medical examination show an affliction or disability, the report must indicate that all pertinent details relating to the affliction or disability have been provided to the adoptive parents and that they have elected to pursue the processing of the visa application to completion.

9 FAM 502.7-7(D) Processing Beneficiaries of Private Legislation

(CT:VISA-1; 11-18-2015)

- a. The Department's notification to post of enactment of a private bill permitting issuance of a visa should form the basis for issuing the visa, provided a confirmation of a petition approval (unless such requirement has been waived by the private legislation) has also been received from DHS.
- b. Upon receipt of the notification, you must immediately request the beneficiary to appear at the consular office for final interview and issuance of the visa. Unless the bill provides otherwise, the beneficiary must apply for and be issued a visa within two years from enactment of the bill or lose the relief provided by the private law. You must ensure that the beneficiary is aware of this requirement at the time of the scheduling of the visa interview.
- c. You must inform CA/VO/L/R, via email, that the visa has been issued and clearly indicate the number of the private bill or law and the name of the beneficiary. Copy CA/VO/F/OI on that email. CA/VO/L/R will then inform interested Members of Congress.

9 FAM 502.7-7(E) House of Representative Rules of Procedure and Statement of Policy for Private Immigration Bills

(CT:VISA-1; 11-18-2015)

Every Congressional session the Subcommittee on Immigration and Border Security of the Committee on the Judiciary publishes Rules of Procedure and Statement of Policy for Private Immigration Bills. The Rules of Procedure and Statement of Policy for Private Immigration Bills summarizes the legislative intent, rules of procedures, and

policy statement of the U.S. Congress in considering private immigration bills.

9 FAM 503 NUMERICAL LIMITATIONS

9 FAM 503.1 NUMERICAL LIMITATIONS OVERVIEW

(CT:VISA-298; 03-13-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 503.1-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 503.1-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(27)(A)-(B) (8 U.S.C. 1101(a)(27)(A)-(B)); INA 201 (8 U.S.C. 1151); INA 202 (8 U.S.C. 1152); INA 203 (8 U.S.C. 1153); INA 206 (8 U.S.C. 1156); INA 222(b) (8 U.S.C. 1202).

9 FAM 503.1-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.12; 22 CFR 42.22; 22 CFR 42.51; 22 CFR 42.53; 22 CFR 42.54.

9 FAM 503.1-1(C) Public Law

(CT:VISA-1; 11-18-2015)

International Security and Development Cooperation Act of 1981, Public Law 97-113, sec. 714; Immigration Act of 1990, Public Law 101-649, sec. 103.

9 FAM 503.1-2 ALLOCATION OF NUMBERS

9 FAM 503.1-2(A) Overview

(CT:VISA-162; 08-25-2016)

- a. Immigration legislation establishes annual limits on the number of family-sponsored preference, employment-based preference and diversity immigrants who may be issued immigrant visas or otherwise obtain LPR status based on those classifications

- (no limits exist for immediate relatives or certain special immigrants). Each classification has its own numerical limit, and for many of the classifications the numerical limits will vary slightly from year to year. Every individual (whether a principal beneficiary or derivative) who is issued an immigrant visa or who adjusts status to LPR in a particular classification counts against its numerical limit.
- b. Preference classifications in which there is more demand for immigrant numbers than can be accommodated under the numerical limits are said to be "oversubscribed." Individuals seeking an immigrant visa or adjustment to LPR status based on an oversubscribed classification must wait until a visa number becomes available in subsequent months or years. Applicants and petitioners should never be discouraged from filing petitions based on oversubscribed classifications – applicants essentially compete on a "first-come, first-served" basis for available visa numbers, and a delay in filing a petition will generally result in a longer wait for visa numbers. See [9 FAM 503.1-2\(B\)](#) below for information about priority dates.
 - c. Besides numerical limits for each preference classification, there are also numerical limits on the number of immigrants from any single country in a fiscal year. No more than 7% of the total numerically-limited immigrants may be from a single country. Those countries in which demand for immigrant visa numbers exceeds the annual 7% per-country limit are deemed "oversubscribed" and natives of those countries may face a longer wait for a visa than applicants from other countries.
 - d. For diversity visas (DV), the Secretary of Homeland Security identifies "high-admission" and "low-admission" countries over the most recent 5-year period. DV numbers are apportioned among six geographic regions. Only natives of "low-admission" countries may compete for the DV numbers allotted to their region; natives of "high-admission" countries are ineligible. No one country may receive more than 7% of the annually available DV numbers. Entitlement to immigrant status in the DV category lasts only through the end of the fiscal year for which the applicant is selected. (See [9 FAM 502.6.](#))
 - e. The Department allocates immigrant visa numbers monthly through the Immigrant Visa Allocation Management System (IVAMS) on the basis of Reports 20, Monthly Report of Documentarily Qualified Applicants. (See [9 FAM 503.4-4\(A\)](#), [9 FAM 504.3-2\(A\)\(1\)](#) and [9 FAM 601.4-4\(B\)\(1\).](#))

9 FAM 503.1-2(B) Priority Dates

(CT:VISA-268; 12-12-2016)

- a. For most preference visas, the applicant's place on the waiting list is determined by the priority date of the petition. The priority date of the petition is the date on which the completed, signed petition is properly filed. A petition will be considered properly filed when the completed, signed petition, including all initial evidence and the correct fee, is filed with the DHS or (if permissible) at a U.S. consular office abroad. For certain employment visas, however, the priority date is determined by other means. See [9 FAM 503.3](#) for additional information about priority dates.

- b. A diversity visa applicant's place on the DV waiting list is determined by the regional rank order number assigned to the applicant at the time the random selection is made. See [9 FAM 502.6](#) for additional information about diversity visas.

9 FAM 503.1-2(C) Order of Consideration

(CT:VISA-298; 03-13-2017)

NVC will request applicants to take the steps necessary to meet the requirements of INA 222(b) in order to apply formally for a visa as follows:

- (1) In the chronological order of the priority dates of all applicants within each of the immigrant classifications specified in INA 203(a) and *INA 203*(b) (family-sponsored preference, employment-based preference); and
- (2) In the random order established by the Secretary of State for each region for the fiscal year for applicants entitled to status under INA 203(c) (diversity immigrants).

9 FAM 503.1-2(D) Chargeability

(CT:VISA-298; 03-13-2017)

- a. In order to determine the number of potential immigrants from each country, each immigrant is assigned a chargeability (sometimes referred to as a foreign state chargeability or foreign state area limitation) – that is, the country or foreign state against whose limit the applicant will be counted when the visa is issued or status adjusted. This chargeability, along with the visa or adjustment symbol (composed of classification and primary/derivative beneficiary identifiers), is used to track the allocation and use of visa numbers.
- b. The numerical limitations prescribed in INA 201, *INA 202*, and *INA 203* apply to the foreign states and dependent areas. (See [9 FAM 503.2-5\(A\)](#) and [9 FAM 503.2-5\(B\)](#).) An immigrant visa applicant subject to these numerical limitations is generally chargeable to the numerical limitation applicable to the applicant's place of birth. An immigrant visa applicant born in a dependent area is chargeable to the dependent area (to ensure compliance with the dependent-area limitation imposed in INA 202), as well as to the mother country. See [9 FAM 503.2-4](#) for exceptions to this rule.

9 FAM 503.1-3 VISA CLASSES NOT SUBJECT TO NUMERICAL LIMITATIONS

9 FAM 503.1-3(A) Immediate Relatives

(CT:VISA-162; 08-25-2016)

Immediate relative immigrant visas are not numerically limited. Immediate relative visa classes include spouses of U.S. citizens, children (unmarried and under 21 years

of age) of U.S. citizens, orphans and Hague Convention adoptees adopted abroad or to be adopted in the United States by U.S. citizens, parents of U.S. citizens if such citizens are at least 21 years old, and certain widow(er)s of U.S. citizens and their children. See [9 FAM 502.2-2](#) and [9 FAM 502.3](#) for more information about these visa categories.

9 FAM 503.1-3(B) Returning Residents

(CT:VISA-162; 08-25-2016)

LPR aliens who are unable to return to the United States within the travel validity of their Form I-551, Permanent Resident Card, or Reentry permit may apply at a U.S. Embassy or Consulate for a special immigrant Returning Resident (SB-1) visa under INA 101(a)(27)(A). See [9 FAM 502.7-2\(B\)](#) for information about visas for returning residents.

9 FAM 503.1-3(C) Certain Former U.S. Citizens

(CT:VISA-1; 11-18-2015)

Certain U.S. citizens who lost United States citizenship by marriage to an alien and certain military expatriates may be classified as a special immigrant under INA 101(a)(27)(B). See [9 FAM 502.7-3\(B\)](#) for additional information about these visa categories.

9 FAM 503.1-3(D) Beneficiaries of Private Laws

(CT:VISA-229; 10-25-2016)

Beneficiaries of private legislation granting permanent resident status are considered eligible for special immigrant status as returning resident aliens under the provisions of INA 101(a)(27)(A) even though they may have been abroad at the time the legislation was enacted. The spouse and children of such aliens may also benefit. See [9 FAM 502.7-7\(B\)](#) and [9 FAM 502.7-7\(C\)](#) for information about private bills.

9 FAM 503.1-4 VISA CLASSES SUBJECT TO NUMERICAL LIMITATIONS

9 FAM 503.1-4(A) Family-Sponsored Preference Immigrant Visas

(CT:VISA-1; 11-18-2015)

These visa classes are for specific family relationships to a U.S. citizen or LPR, and are subject to annual numerical limitations as enumerated in INA 203(a). The family-sponsored preferences are: unmarried sons and daughters of U.S. citizens; spouses and children, and unmarried sons and daughters, of LPRs; married sons and daughters of U.S. citizens; brothers and sisters of U.S. citizens if such citizens are at least 21

years of age. See [9 FAM 502.2-3](#) for information about these categories of visas and [9 FAM 503.4](#) for information about allocation of numbers to these categories.

9 FAM 503.1-4(B) Employment-Based Preference Immigrant Visas

(CT:VISA-162; 08-25-2016)

These visa classes are for specific categories of workers, and are subject to annual numerical limitations as enumerated in INA 203(b). The employment-based preferences are: priority workers (including persons with extraordinary ability, outstanding professors and researchers and multinational managers or executives); professionals holding advanced degrees and persons of exceptional ability; skilled workers, professionals, and unskilled workers (other workers); certain special immigrants (see [9 FAM 502.5](#) for a complete list of the subgroups in this category); and immigrant investors. See [9 FAM 502.4](#) and [9 FAM 502.5](#) for information about these categories of visas and [9 FAM 503.4](#) for information about allocation of numbers to these categories.

9 FAM 503.1-4(C) Diversity Visas

(CT:VISA-162; 08-25-2016)

DV immigrants are subject to numerical limitations. An alien who seeks to participate in the DV lottery must register once each year and if selected, must complete the immigrant visa process by the end of the DV program year. See [9 FAM 502.6](#) for additional information about diversity visas.

9 FAM 503.2

CHARGEABILITY

(CT:VISA-384; 06-15-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 503.2-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 503.2-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 201(b) (8 U.S.C. 1151(b)); INA 101(a)(27)(A)-(B) (8 U.S.C. 1101(a)(27)(A)-(B)); INA 202 (8 U.S.C. 1152).

9 FAM 503.2-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.12.

9 FAM 503.2-1(C) Public Law

(CT:VISA-1; 11-18-2015)

International Security and Development Cooperation Act of 1981, Public Law 97-113, sec. 714; Immigration Act of 1990, Public Law 101-649, sec. 103, 112, 124, 132, and 134.

9 FAM 503.2-2 GENERAL RULE OF CHARGEABILITY

(CT:VISA-1; 11-18-2015)

The numerical limitations prescribed in INA 201, 202, and 203 apply to the foreign states and dependent areas. (See [9 FAM 503.2-5](#) below.) An immigrant visa applicant subject to these numerical limitations is generally chargeable to the numerical limitation applicable to the applicant's place of birth. An immigrant visa applicant born in a dependent area is chargeable to the dependent area (to ensure compliance with the dependent-area limitation imposed in INA 202), as well as to the mother country.

- (1) **Changes in territorial limits:** If an alien's place of birth has undergone changes in political jurisdiction since the time of his or her birth, the alien is subject to the foreign state limitation of the state which has jurisdiction over that place of birth at the time of visa application.
- (2) **Exceptions:** See [9 FAM 503.2-4](#) below for exceptions to the general

chargeability rule.

9 FAM 503.2-3 DEFINITIONS

9 FAM 503.2-3(A) "Foreign State" Defined

(CT:VISA-1; 11-18-2015)

- a. For the purposes of INA 201, 202, or 203, the term "foreign state" includes:
- (1) Any independent country;
 - (2) Any self-governing dominion;
 - (3) Any mandated territory; and
 - (4) Any territory under the international trusteeship of the United Nations.
- b. Section 103 of Public Law 101-649 made Hong Kong the equivalent of a foreign state beginning in FY 1991.
- c. Title II of Public Law 106-570 provides that, notwithstanding any change in the exercise of sovereignty over Macau, the laws of the United States continue to apply to Macau in the same manner as before December 20, 1999.

9 FAM 503.2-3(B) "Dependent Area" Defined

(CT:VISA-1; 11-18-2015)

For the purposes of INA 201, 202 and 203, the term "dependent area" must include any colony, component, or dependent area of a foreign state.

9 FAM 503.2-3(C) "Accompanying" Defined

(CT:VISA-1; 11-18-2015)

The INA defines "accompanying" to include not only an alien in the physical company of the principal alien, but also a spouse or child issued a visa within six months of:

- (1) The principal alien's admission into the United States;
- (2) The principal alien's adjustment to lawful permanent resident status; or
- (3) The principal alien's personal appearance and registration at any Foreign Service post for the purpose of conferring alternate chargeability. (See [9 FAM 503.2-4\(A\)](#) below.)

9 FAM 503.2-4 EXCEPTIONS TO GENERAL CHARGEABILITY RULE

(CT:VISA-1; 11-18-2015)

Exceptions to the general rule of chargeability are set forth in 22 CFR 42.12(b), (c),

(d), and (e). These exceptions are as follows:

- (1) An accompanying or following-to-join spouse or child for whom a visa would not otherwise be available (see [9 FAM 503.2-4\(A\)](#) below);
- (2) An alien born in the United States (see [9 FAM 503.2-4\(B\)](#) below); or
- (3) An alien born in a foreign state in which neither parent was born or had residence at the alien's time of birth (see [9 FAM 503.2-4\(C\)](#) below).

9 FAM 503.2-4(A) Derivative Chargeability

(CT:VISA-384; 06-15-2017)

a. **Alternate Chargeability to Prevent Separation of Families:** An immigrant visa (IV) applicant may derive a more favorable foreign state of chargeability from an accompanying alien spouse under INA 202(b)(2). For instance, the beneficiary of a fourth preference petition who was born in Mexico for which no fourth preference numbers are available and who is accompanied to the United States by the spouse who was born in a third country, may be issued a fourth preference visa chargeable to the spouse's country of chargeability if fourth preference numbers are readily available for that country. In such cases, both partners, in a sense, are principal aliens. The petition beneficiary is the principal alien for the purpose of conferring a preference status and the spouse is the principal alien for the purpose of conferring a more favorable foreign state chargeability.

- (1) In order to prevent the separation of families, a spouse or child may be charged to the foreign state/dependent area of the principal alien provided:
 - A visa would not be immediately available if the spouse or child were charged to his or her country of birth; and
 - The spouse or child is accompanying or following-to-join the parent or spouse.
- (2) If either of these elements is missing, alternate chargeability may not be used.
- (3) For cases in which one spouse confers preference status and the other confers derivative chargeability, see paragraph h below.
- (4) You must issue the visas simultaneously to the couples since neither party is allowed to precede the other spouse and both spouses must apply together for admission into the United States.

b. **If Principal Alien Not Charged to Foreign State:** For the purposes of derivative chargeability under INA 202(b) (1) and (2), the parent or spouse need not actually have been charged to a foreign state or dependent area in order to confer that chargeability on a child or spouse. It is sufficient that the alien would be chargeable to that foreign state. For example, a parent or spouse entitled to immediate relative or special immigrant status may confer derivative foreign state chargeability if the child or spouse, as defined in the INA (see [9 FAM 102.8](#)), is accompanying or following-to-join the parent or spouse.

c. If Spouse or Child Acquired Prior to Admission:

- (1) A spouse or child acquired prior to the admission of the principal alien may be considered to be "following-to-join," regardless of the time which may have elapsed since the principal alien's admission to the United States. The principal alien need not travel abroad to confer derivative foreign state chargeability.
- (2) A child born of a marriage that existed at the time of the principal alien's admission is considered to have been "acquired" prior to the principal alien's admission.

d. If Spouse or Child Acquired Subsequent to Admission: A spouse or child acquired subsequent to the principal alien's admission to the United States may benefit from derivative chargeability only when "accompanying" the principal alien.

e. Derivative Foreign State Chargeability if Principal Alien Benefited From Alternate Chargeability: An alien who benefited from alternate chargeability retains that chargeability for all time and all purposes, and thus may confer that alternate chargeability to a spouse or child if it is more favorable. For example, an F-21 applicant born in China-mainland whose spouse was also born in China-mainland but was granted Hong Kong chargeability at the time of immigration may be granted Hong Kong chargeability when accompanying or following-to-join the principal applicant.

f. Effect of Principal Alien's Naturalization: The lack of a time limit on when a following-to-join derivative may immigrate may result in a case where the principal alien becomes a naturalized citizen. In such a case, the principal alien should file a relative petition for the family member. (See 22 CFR 42.21(a) and [9 FAM 502.2-2\(C\)](#).)

g. Traveling abroad to confer derivative chargeability: It is not necessary for an alien traveling abroad to confer alternate chargeability to travel to the post where the visa will be issued. If an alien travels to another post for the purpose of conferring alternate chargeability, the post of registration must send the issuing post an email or cable informing them of the alien's appearance and registration. Inasmuch as the law permits a child or spouse to follow to join in lieu of accompanying, this procedure will rarely be necessary. It would, however, be required in the case of an after-acquired spouse otherwise chargeable to an over-subscribed foreign state (e.g., a family-based second preference applicant born in India for whom numbers are not available may derive the legal permanent resident (LPR) spouse's U.K. chargeability when "accompanying" the LPR to the United States). (See paragraph d. above).

h. If Foreign State Chargeability Obtained from Derivative: An immigrant visa (IV) applicant may derive a more favorable foreign state chargeability from an accompanying spouse under INA 202(b)(2). For example, if the beneficiary of an Employment Second Preference petition was born in India and the accompanying spouse in France, the principal applicant born in India may be charged to his or her spouse's country of chargeability (France) if the priority date is not current for India but is current for France. (See [9 FAM 504.3-3\(B\)](#).)

- (1) When one spouse can confer a more favorable preference status at the same time the other spouse can confer a more favorable foreign state chargeability, both immigrant visa applicants may be considered principal aliens. The beneficiary is the principal alien for the purpose of conferring a preference status and the accompanying spouse is the principal alien for the purpose of conferring a more favorable foreign state chargeability. In such cases, both applicants must be admitted to the United States simultaneously and neither party is allowed to precede the other. The consular officer, therefore, must issue visas to both applicants simultaneously.
 - (2) The principles described in the paragraph above may apply in the case where one spouse benefits from the provisions of INA 212(g), while the other spouse may benefit, through the afflicted alien, from a more favorable foreign state chargeability, or special immigrant or preference immigrant status.
- i. **No Derivative Chargeability for Parents:** Although a child may derive alternate chargeability through a parent, a parent may not derive alternate chargeability from a child.

9 FAM 503.2-4(B) Applicant Born in the United States

(CT:VISA-1; 11-18-2015)

- a. INA 202(b)(3) applies to persons who, although born in the United States, are:
 - (1) Aliens by virtue of not having been subject to the jurisdiction of the United States at the time of birth (for example, children born to diplomats); or
 - (2) Former U.S. citizens who have lost their U.S. citizenship through expatriation.
- b. Under the provisions of INA 202(b)(3), an immigrant visa applicant born in the United States shall be chargeable to:
 - (1) The country of which he or she is a citizen or subject; or
 - (2) The country of the alien's last place of residence, if the alien is not a citizen or subject of any country.
- c. The consular officer must resolve any doubts regarding an immigrant visa applicant's U.S. citizenship status before final action is taken on the visa application. (See [9 FAM 202.1-2](#) and [9 FAM 504.9-7](#).)

9 FAM 503.2-4(C) Applicant's Place of Birth is Not Parents' Country of Birth or Residence

(CT:VISA-1; 11-18-2015)

If the consular officer has determined that, at the time of the child's birth, the parent or parents were stationed in such country under orders or instructions of an employer, principal or superior authority whose business or profession was foreign to that foreign state, the applicant may be charged to the foreign state of either parent. The provisions of INA 202(b)(4) also apply to an alien born on the high seas.

9 FAM 503.2-5 FOREIGN STATES AND DEPENDENT AREAS

9 FAM 503.2-5(A) Foreign States Subject to Annual Limitation Pursuant to Section 202(A) of Immigration and Nationality Act*

(CT:VISA-228; 10-25-2016)

Foreign State	**Symbol
Afghanistan	AFGH
Albania	ALB
Algeria	ALGR
Andorra	ANDO
Angola	ANGL
Antigua and Barbuda	ANTI
Argentina	ARG
Armenia	ARM
Australia ¹	ASTL
Austria	AUST
Azerbaijan	AZR
Bahamas, The	BAMA
Bahrain	BAHR
Bangladesh	BANG
Barbados	BRDO
Belarus	BYS
Belgium	BELG
Belize	BLZ
Benin	BENN
Bhutan	BHU
Bolivia	BOL
Bosnia and Herzegovina	BIH
Botswana	BOT
Brazil	BRZL
Brunei	BRNI
Bulgaria	BULG
Burkina Faso	BURK
Burma	BURM
Burundi	BRND
Cabo Verde	CAVI
Cambodia	CBDA
Cameroon	CMRN
Canada	CAN

Central African Republic	CAFR
Chad	CHAD
Chile	CHIL
China ²	
*mainland born	CHIN
*Taiwan born	TWAN
Colombia	COL
Comoros	COMO
Congo, Republic of the (Congo Brazzaville)	CONB
Congo, Democratic Republic of the (Congo Kinshasa)	COD
Costa Rica	CSTR
Cote d'Ivoire (Ivory Coast)	IVCO
Croatia	HRV
Cuba	CUBA
Cyprus	CYPR
Czech Republic	CZEC
Denmark ¹	DEN
Djibouti	DJI
Dominica	DOMN
Dominican Republic	DOMR
Ecuador	ECUA
Egypt ³	EGYP
El Salvador	ELSL
Equatorial Guinea	EGN
Eritrea	ERI
Estonia	EST
Ethiopia	ETH
Fiji	FIJI
Finland	FIN
France ^{1, 11}	FRAN
Gabon	GABN
Gambia, The	GAM
Georgia	GEO
Germany	GER
Ghana	GHAN
Great Britain and Northern Ireland (United Kingdom) ^{1, 4}	GRBR
Greece	GRC
Grenada	GREN
Guatemala	GUAT
Guinea	GNEA
Guinea-Bissau	GUIB

Guyana	GUY
Haiti	HAT
Honduras	HOND
Hong Kong S.A.R. ⁵	HNK
Hungary	HUNG
Iceland	ICLD
India ⁶	IND
Indonesia	IDSA
Iran	IRAN
Iraq	IRAQ
Ireland	IRE
Israel ³	ISRL
Italy	ITLY
Jamaica	JAM
Japan ⁷	JPN
Jordan ³	JORD
Kazakhstan	KAZ
Kenya	KENY
Kiribati	KIRI
Korea, North	PRK
Korea, South	KOR
Kosovo	KSV
Kuwait	KUWT
Kyrgyzstan	KGZ
Laos	LAOS
Latvia	LATV
Lebanon	LEBN
Lesotho	LES
Liberia	LIBR
Libya	LBYA
Liechtenstein	LCHT
Lithuania	LITH
Luxembourg	LXM
Macedonia	MKD
Madagascar	MADG
Malawi	MALW
Malaysia	MLAS
Maldives	MLDV
Mali	MALI
Malta	MLTA
Marshall Islands	RMI
Mauritania	MAUR
Mauritius	MRTS

Mexico	MEX
Micronesia, Federated States of	FSM
Moldova	MLD
Monaco	MON
Mongolia	MONG
Montenegro	MTG
Morocco ¹²	MORO
Mozambique	MOZ
Namibia	NAMB
Nauru	NAU
Nepal	NEP
Netherlands ^{1, 13}	NETH
New Zealand ¹	NZLD
Nicaragua	NIC
Niger	NIR
Nigeria	NRA
Norway ¹	NORW
Oman	OMAN
Pakistan ⁶	PKST
Palau	PALA
Panama	PAN
Papua New Guinea	PNG
Paraguay	PARA
Peru	PERU
Philippines	PHIL
Poland	POL
Portugal ^{1, 8, 10}	PORT
Qatar	QTAR
Romania	ROM
Russia (Russian Federation)	RUS
Rwanda	RWND
Saint Kitts and Nevis	STCN
Saint Lucia	SLCA
Saint Vincent and the Grenadines	STVN
Samoa	WSAM
San Marino	SMAR
Sao Tome and Principe	STPR
Saudi Arabia	SARB
Senegal	SENG
Serbia	SBA
Seychelles	SEYC
Sierra Leone	SLEO

Singapore	SING
Slovakia	SVK
Slovenia	SVN
Solomon Islands	SLMN
Somalia	SOMA
South Africa	SAFR
South Sudan	SSDN
Spain ⁹	SPN
Sri Lanka	SRL
Sudan	SUDA
Suriname	SURM
Swaziland	SZLD
Sweden	SWDN
Switzerland	SWTZ
Syria ³	SYR
Tajikistan	TJK
Tanzania	TAZN
Thailand	THAI
Timor-Leste	TMOR
Togo	TOGO
Tonga	TONG
Trinidad and Tobago	TRIN
Tunisia	TNSA
Turkey	TRKY
Turkmenistan	TKM
Tuvalu	TUV
Uganda	UGAN
Ukraine	UKR
United Arab Emirates	UAE
Uruguay	URU
Uzbekistan	UZB
Vanuatu	VANU
Vatican City	VAT
Venezuela	VENZ
Vietnam	VTNM
Yemen	YEM
Zambia	ZAMB
Zimbabwe	ZIMB

*The Immigration Act of 1990 (Public Law 101-649) amended section 202(a) of the Immigration and Nationality Act to increase the annual foreign state limitation. The annual foreign state limitation shall not exceed seven percent of the total annual limitation. This amendment was effective October 1, 1991.

**Symbol for statistical reporting.

¹Foreign states which have dependent areas.

²Persons born in Manchuria, Inner Mongolia, Sinkiang, and Tibet are chargeable to the limitation for China-mainland.

³Persons born in the areas administered prior to June 1967 by Israel, Jordan, Egypt and Syria are chargeable, respectively, to the foreign state limitation for Israel, Jordan, Egypt, and Syria.

⁴For the purpose of the Diversity Immigrant category only, Northern Ireland is treated as a separate visa chargeability per INA 203(c); the symbol for Northern Ireland is NIRE.

⁵Treated as a separate chargeability area per section 103 of the Immigration Act of 1990.

⁶Persons born in Junagadh and that portion of Jammu and Kashmir controlled by India are chargeable to the foreign state limitation for India. Persons born in that portion of Jammu and Kashmir controlled by Pakistan are chargeable to the foreign state limitation for Pakistan.

⁷Persons born in the Habomai Islands, Shikotan, Kunashiri, Etorofu, and Southern Sakhalin are chargeable to the foreign state limitation for Japan.

⁸Madeira and the Azores are included as integral parts of Portugal.

⁹The Balearic Islands, the Canary Islands, and the following areas of Spanish sovereignty in North Africa - Ceuta, Islas Chafarinas, Melilla, Penon de Alhucemas and Penon de Velez de la Gomera - are considered as integral parts of Spain.

¹⁰The Macau Policy Act (incorporated and enacted as Title II of Public Law 106-570) provides that the laws of the United States shall apply to Macau in the same manner as before December 20, 1999. Consequently, Macau immigrant visa numbers are chargeable to Portugal.

¹¹French Guiana, Guadeloupe, Martinique, Reunion, and Mayotte are considered integral parts of France.

¹²See below regarding the status of Western Sahara.

¹³ Bonaire, Saba, and Sint Eustatius are integral parts of the Netherlands and thus should be charged to the Netherlands.

9 FAM 503.2-5(B) Dependent Areas Subject to Annual Limitation Pursuant to Section 202(A) of Immigration and Nationality Act*

(CT:VISA-1; 11-18-2015)

Governing Country and Dependent Areas Symbol**

AUSTRALIA:

Christmas Island	CHRI
Cocos (Keeling) Islands	COCI
Norfolk Island	NFK

DENMARK:

Faroe Islands	FRO
Greenland	GRLD

FRANCE:

French Polynesia	FPOL
French Southern and Antarctic Lands	FSAT
New Caledonia	NCAL
Saint Barthelemy	STBR
Saint Martin ¹	MAF
Saint Pierre and Miquelon	SPMI
Wallis and Futuna	WAFT

MOROCCO:

Western Sahara ²	SSAH
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NETHERLANDS:

Aruba	ARB
Curacao	CUR
Sint Maarten ¹	STM

NEW ZEALAND:

Cook Islands	CKIS
Niue	NIUE
Tokelau	TKL

NORWAY:

Svalbard	SJM
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PORTUGAL:

Macau ³	MAC
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UNITED KINGDOM:

Anguilla	ANGU
Bermuda	BERM
British Indian Ocean Territory (Diego Garcia)	IOT
British Virgin Islands	BRVI
Cayman Islands	CAYI
Falkland Islands	FKLI
Gibraltar	GIB
Montserrat	MONT
Pitcairn Islands	PITC
South Georgia and the South Sandwich Islands	SGS
St. Helena ⁴	SHEL

Turks and Caicos Islands

TCIS

*The Immigration Act of 1990 (Public Law 101-649) amended section 202(a) of the Immigration and Nationality Act to increase the annual dependent area limitation. The annual dependent area limitation shall not exceed 2 percent of the total annual limitation. This amendment was effective October 1, 1991.

**Symbol for statistical reporting.

¹Persons born in the portion of St. Martin controlled by France are chargeable to St. Martin; those born in the Netherlands-controlled portion are chargeable to Sint Maarten.

²Disputed Territory. See United Nations Mission for the Referendum on Western Sahara and Security Council Resolution 1720 of October 31, 2006. Morocco virtually annexed the northern two-thirds of Western Sahara (formerly Spanish Sahara) in 1976, and the rest of the territory in 1979, following Mauritania's withdrawal. A guerrilla war with the Polisario Front contesting Rabat's sovereignty ended in a 1991 UN-brokered cease-fire; a UN-organized referendum on final status has been repeatedly postponed.

³Effective December 20, 1999, Macau was returned to Chinese administration and was designated as the Special Administrative Region of Macau. Title II (United States-Macau Policy Act of 2000) of Public Law 106-570 enacted December 27, 2000 provides that, notwithstanding any change in the exercise of sovereignty over Macau, the laws of the United States shall continue to apply with respect to Macau in the same manner as before December 20, 1999.

⁴The Tristan da Cunha Group and Ascension Island are part of St. Helena.

9 FAM 503.3

PRIORITY DATES

(CT:VISA-300; 03-14-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 503.3-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 503.3-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 203(a)-(b) (8 U.S.C. 1153(a)-(b)); INA 203(d) (8 U.S.C. 1153(d)); INA 203(e) (8 U.S.C. 1153(e)); INA 203(g) (8 U.S.C. 1153(g)).

9 FAM 503.3-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.43, 22 CFR 42.53, 22 CFR 42.54.

9 FAM 503.3-2 DETERMINING PRIORITY DATES

9 FAM 503.3-2(A) Definition of "Properly Filed"

(CT:VISA-1; 11-18-2015)

A petition will be considered properly filed when the completed, signed petition, including all initial evidence and the correct fee, is filed with the Department of Homeland Security (DHS).

9 FAM 503.3-2(B) Family-Sponsored Preference Petitions

(CT:VISA-2; 11-18-2015)

- a. **Petitions Filed With the Department of Homeland Security (DHS):** The priority date of the petition is the date on which the completed, signed petition is properly filed.
- b. **Petitions Filed With and Approved by Consular Officer:** If you accept and approve a family-sponsored petition, the petition filing date is the date on which the petition is received and date-stamped in the consular office, provided the fee has been paid, proper evidence is provided, and the petition has been signed. (See [9 FAM 504.2-4.](#))

- c. **Petitions Received by Consular Officer but Forwarded to the Department of Homeland Security (DHS) for Adjudication:** If you accept a petition with the required supporting documents, collect the fee, and forward the petition to a DHS office for adjudication, the petition is considered to have been filed. Thus, a priority date is established when the petition is received and date-stamped in the consular section.

9 FAM 503.3-2(C) Employment-Based Preference Petitions

(CT:VISA-1; 11-18-2015)

- a. **First Preference:** Aliens applying for employment-based first preference are not subject to a job offer requirement, and therefore do not require labor certification. The priority date accorded by an employment-based first preference petition is the date the petition is properly filed with DHS.
- b. **Second and Third Preference:** The priority date accorded by an employment-based second or third preference petition based upon an individual labor certification is the date on which the labor certification was accepted for processing by an employment service office in the Department of Labor. The priority date in a case which either does not require a job offer or meets the labor certification requirement under Schedule A or the Department of Labor's Pilot Program is the date on which the petition was properly filed with DHS. (See [9 FAM 503.3-3\(C\)](#) below.)
- c. **Fourth Preference:** The priority date accorded by an employment-based fourth preference petition is the date the petition was properly filed at the appropriate office of DHS or, in the case of a special immigrant described in INA 101(a)(27)(D) (an employee or former employee of the U.S. Government abroad), at a U.S. consular office abroad.
- (1) **Special Immigrant Status Established Prior to October 1, 1991, but Visa Not Issued:** If an alien had established entitlement to special immigrant status but had not obtained a visa prior to October 1, 1991, the alien must file a petition with DHS (or in the case of an SE applicant, at a consular office abroad) for classification under INA 203(b)(4). Such petitions have as a priority date the date the alien submitted the application for immigrant status under prior law.
 - (2) **Derivative Special Immigrant Visas Not Issued Prior to October 1, 1991:** DHS and the Visa Office have agreed that the spouse and/or child of a special immigrant who immigrated to the United States may be deemed entitled to status derivatively under INA 203(b)(4). No separate petition is required. The applicant will be accorded as a priority date the date the principal alien was issued the special immigrant visa. If that information is not available, the priority date will be the date the special immigrant was admitted to the United States. This information is reflected in the principal's passport and/or on the Form I-551, Permanent Resident Card, or can be obtained from

DHS.

- d. **Fifth Preference:** The priority date accorded by an employment-based fifth preference petition for an alien entrepreneur is the date the petition was properly filed with DHS. It should be noted that such date may be earlier than October 1, 1991, because DHS permitted filing of Form I-526, Immigrant Petition by Alien Entrepreneur, for priority date purposes (although no adjudication could take place) before the effective date of the DHS regulations pertaining to this class.

9 FAM 503.3-2(D) Priority Date for Derivative Spouse/Child

(CT:VISA-300; 03-14-2017)

a. Spouse/Child Acquired Prior to Principal's Admission:

- (1) The spouse or child of a principal alien acquired prior to the principal alien's admission to the United States, if not otherwise entitled to immigrant status and immediate issuance of a visa, is entitled to the same status and thus the same priority date as the principal alien if "accompanying" or "following-to-join." (See [9 FAM 102.3](#) and [9 FAM 502.1-1\(C\)\(2\)](#) paragraph b.)
- (2) A preference applicant's priority date is linked to the underlying petition and qualifications for that particular status. A derivative spouse or child's loss of entitlement to status (through principal alien's demise, attaining the age of 21 years, etc.) results in the loss of a priority date.

- b. **Child of a Marriage Existing Prior to Principal's Admission:** The child of a marriage which existed prior to the principal alien's admission into the United States is considered to have been previously acquired and thus is entitled to the same status and priority date as the "accompanying" or "following-to-join" parent.

- c. **Spouse/Child Acquired After Principal's Admission:** A spouse or child acquired after the principal alien's admission to the United States, except a child of a marriage existing at the time of the principal alien's admission into the United States, is not accorded derivative status, and thus is not entitled to the priority date of the principal alien. The principal alien must file a second preference petition for such spouse or child.

- d. **Spouse/Child Acquired After Visa Issuance but Prior to Principal's Admission:** Although 22 CFR 42.53 provides that a spouse or child acquired after visa issuance but prior to the principal alien's admission into the United States is entitled to derivative status and the priority date of the principal alien, the determination of that priority date is often time-consuming and difficult since no record of the name of the spouse or child would exist at post. Therefore, if the principal applicant's date of admission for permanent residence is earlier than the Application Final Action Date (referred to as the cutoff date in Visa Bulletins prior to October 2015) for the numerical limitation applicable to the spouse and children, you may use that date and need not attempt to determine the principal applicant's actual priority date. However, if the principal applicant's date of admission is later

than the applicable Application Final Action Date, you must take the necessary steps to determine the principal applicant's priority date and use that date as the priority date for the spouse and children. (See [9 FAM 502.1-1\(C\)\(2\).](#))

- (1) **Use of Admission Date Not Authorized in Certain Circumstances:** The use of the principal alien's date of admission for permanent residence as the priority date for the spouse or child is not authorized when, under special legislation or regulatory provisions, the principal alien's date of admission is a date preceding the actual date on which DHS acted to accord the principal alien permanent resident status.
 - (2) **Alien Commuter's Relatives Not Eligible for Benefits:** Pursuant to DHS regulations 8 CFR 211.5(c), an alien commuter cannot confer any immigration benefits on behalf of relatives before taking up residence in the United States.
- e. **No Derivative Priority Date for Parents:** 22 CFR 42.53(c) regulations (see [9 FAM 503.3-1](#)) provide for a derivative priority date only for the spouse and children of a principal alien. There is no derivative priority date provided by statute or regulation for the parents of an intending immigrant.
- f. **No Derivative Priority Date for Offspring of Derivative Child:** There is no derivative priority date provided by statute or regulation for the offspring of derivative children; e.g., a child of an F12 or F43 teenager.

9 FAM 503.3-2(E) Consular Officer's Role With Respect to Priority Date

(CT:VISA-1; 11-18-2015)

- a. If a petition is approved by DHS, the DHS adjudicator will indicate the proper priority date in the appropriate box on the face of the petition. You should assume that the adjudicator has appropriately applied the DHS regulation in assigning that date.
- b. If, however, the alien or the alien's representative claims that the date has been incorrectly determined, you will send an e-mail containing a copy of the petition and supporting documents with a full report of the facts to the National Visa Center (NVC) for verification and/or for forwarding to the appropriate DHS office for reconsideration and determination of the correct priority date. Only if it is conclusive that the date is wrong (for instance, if the priority date is later than the approval date on which the officer is reviewing it) may you make a change in the priority date without referral to DHS.

9 FAM 503.3-3 RETENTION OF A PRIORITY DATE

9 FAM 503.3-3(A) General

(CT:VISA-1; 11-18-2015)

- a. **Petition Filed by Same Petitioner for Same Beneficiary Under Same Preference:** When a visa petition has been approved, and subsequently a new petition by the same petitioner is approved for the same preference classification on behalf of the same beneficiary, regard the latter approval as a reaffirmation or reinstatement of the validity of the original petition. This is not the case, however, when the original petition has been terminated pursuant to section 203(g) of the Act, or revoked pursuant to 8 CFR 205 or when an immigrant visa has been issued to the beneficiary as a result of the petition approval. (See [9 FAM 504.13-1.](#))
- b. **Priority Date Validity After Visa Issuance:**
- (1) **After Visa Issuance but Before Admission to United States:** An alien issued an immigrant visa (IV) who fails to enter the United States would be entitled to the priority date previously established by the petition. However, since the visa has expired, the alien must apply for a new visa. If all the circumstances remain the same, you may proceed with issuing the visa. If, however, the same circumstances do not exist, you should refer the case to the Department's Office of *Legal Affairs*, Advisory Opinions Division (CA/VO/L/A) for an advisory opinion (AO). (See [9 FAM 504.10-1.](#))
 - (2) **After Admission to United States:** An alien cannot reuse a priority date which was used for the issuance of an immigrant visa (IV) which the alien in turn used to gain lawful admission into the United States.

9 FAM 503.3-3(B) Family-Sponsored Preference Petitions

9 FAM 503.3-3(B)(1) Family Petition Valid for Purposes of That Petition Only

(CT:VISA-1; 11-18-2015)

A priority date established by an approved petition for any of the family-sponsored preference classes is valid only for the purpose of that petition. If the petition is revoked under INA 203(g) or 8 CFR 205, or if a new petition is filed by a different petitioner for the same beneficiary, the priority date of the initial petition is not transferable to the new petition. If, however, the petition has not been revoked under INA 203(g) or 8 CFR 205, and a new petition is filed by the same petitioner for the same beneficiary in the same classification, DHS deems the approval of the new petition to be a reaffirmation of the initial petition and reinstatement of the priority date of that original petition.

9 FAM 503.3-3(B)(2) Retention of Priority Date Despite Conversion to Another Status

(CT:VISA-1; 11-18-2015)

An applicant's petition automatically converts and retains the original priority date when the applicant's status changes under certain circumstances.

- (1) **When Marital Status Changes:**

- (a) An approved first preference petition for an unmarried son or daughter automatically converts to third preference when the applicant marries. The applicant retains the priority date of the original petition, which at the time of filing accorded first preference status.
- (b) If a child beneficiary of an immediate relative petition marries, the petition automatically converts to third preference. The applicant's priority date is the filing date of the petition, which originally accorded IR-2 status.
- (c) An approved third preference petition converts to a first preference (or IR-2 if under 21) if the applicant is widowed or divorced. The applicant retains the priority date of the original petition, which at the time of filing accorded third preference status.

(2) **When a Child Reaches Majority:**

- (a) When the child beneficiary of an approved IR-2 petition turns 21 years of age, the petition automatically converts to first preference. The priority date is the filing date of the petition, which at the time of filing accorded IR-2 status.
- (b) A child in the 2A group who reaches 21 years of age is no longer entitled to 2A status. If such child is the beneficiary of an approved petition, the petition automatically provides the basis for 2B status as of the beneficiary's 21st birthday. No further action by DHS, the petitioner, or the beneficiary is necessary. (The situation is similar to that of an IR-2 applicant who turns 21 prior to visa issuance; that petition automatically converts to provide first preference status.)
- (c) A child accorded 2A status derivatively loses entitlement to such status upon reaching the age of 21. Under DHS regulations, the petitioner must file a new petition on behalf of the alien to accord 2B status. The new petition will be accorded the priority date of the initial petition.

(3) **When the Petitioner Becomes Naturalized:**

- (a) Upon the naturalization of the petitioner, the approved second preference petition for the spouse automatically converts to status as an immediate relative.
- (b) Upon the naturalization of a petitioning parent, an approved second preference petition for a child beneficiary automatically converts to status as an immediate relative. A child who has second preference status derivatively does not benefit from the parent's naturalization, because the child is not the beneficiary of an approved petition and there is no derivative entitlement under the immediate relative provision. Such a child loses second preference status and acquires no other until such time as a petition naming the child as the beneficiary is filed and approved.
- (c) If the son and/or daughter who is the named beneficiary of a second preference petition is age 21 or older and the petitioner becomes naturalized, the status accorded by the petition converts to first

preference. The applicant retains the priority date of the petition which at the time of filing accorded second preference status.

9 FAM 503.3-3(B)(3) Priority Date of Revoked Petition Not Retained

(CT:VISA-1; 11-18-2015)

a. The Beneficiary of a New Family Preference Petition May Not Retain the Priority Date of a Revoked Petition If:

- (1) The new petition accords a different preference status;
- (2) The new petition is filed by a different petitioner; or
- (3) The old petition was revoked under INA 203(g).

b. The preference priority date in such a case is the filing date of the new petition.

9 FAM 503.3-3(B)(4) Death of Petitioner

(CT:VISA-1; 11-18-2015)

a. **U.S. Citizen Spouse:** See [9 FAM 502.1-2\(C\)](#) .

b. **Other than U.S. Citizen Spouse:** The death of a petitioner prior to the beneficiary's travel to the United States results in the automatic revocation of the petition and the loss of the alien's priority date. However, if you believe that special humanitarian reasons exist which would warrant consideration by DHS of the reinstatement of the petition, you may prepare a memorandum requesting such consideration and forward it with the petition to DHS. (See [9 FAM 502.1-2\(C\)](#).)

9 FAM 503.3-3(B)(5) Death of Principal Beneficiary

(CT:VISA-1; 11-18-2015)

In the case of the death of the principal beneficiary prior to admission to the United States, neither the petition nor the priority date would remain valid for a derivative beneficiary.

9 FAM 503.3-3(C) Retention of a Priority Date - Employment-Based Preference Petitions

(CT:VISA-300; 03-14-2017)

a. **Employment Preference Petition Filed by Different Petitioner or According Different Preference:** A petition approved for an alien under INA 203(b)(1), *INA 203(b)(2)*, or *INA 203(b)(3)* accords the alien the priority date of the approved petition for any subsequently filed petition under INA 203(b)(1), *INA 203(b)(2)*, or *INA 203(b)(3)*. This priority date is maintained even if the petitioner is different from the original petitioner. A petition revoked under INA 203(g), *INA 204(e)*, or *INA 205* will not confer a priority date.

b. Subsequent Petition in Employment-Based Classifications:

- (1) Unless revoked pursuant to 8 CFR 205.2 for fraud or misrepresentation, a priority date accorded by approval of an employment-based first, second, or third preference petition is retained by the beneficiary for any other first, second, or third preference petition approved subsequently for the same beneficiary. In all cases, the beneficiary of multiple petitions is entitled to the earliest of the filing dates of the various petitions.
- (2) Subsequent petitions need not be from the same petitioner or for the same type of employment. However, where the applicant is no longer proceeding to work for the first petitioner, it would be reasonable to make inquiries to determine whether the first petition had been revoked. (See 8 CFR 204.5(e).)
- (3) A priority date established in the employment-based first, second, or third preference category is not transferable to employment-based fourth or fifth preference petitions or to a family-sponsored petition.

c. Substitution of Alien Beneficiary: Prior to July 16, 2007, an employer was permitted to substitute another employee after a labor certification had been approved. However, Department of Labor (DOL) regulations prohibited substitution of beneficiaries of labor certifications effective July 16, 2007; USCIS has not accepted substitutions to support an immigrant preference petition since that date. In the event that you encounter an application for a beneficiary who was substituted after the labor certification was approved by DOL but before July 16, 2007, keep in mind that the priority date for a petition that is supported by a labor certification substitution is the earliest date the certification was accepted for processing by DOL.

9 FAM 503.3-4 FORMER WESTERN HEMISPHERE PRIORITY DATES

(CT:VISA-1; 11-18-2015)

- a. Until 1976, aliens born in independent countries of the Western Hemisphere and the Canal Zone were identified as "Western Hemisphere immigrants" upon establishment of status by obtaining a labor certification or being exempt therefrom as the parent, spouse, or child of a U.S. citizen or lawful permanent resident (LPR) alien.
- b. A native of the Western Hemisphere who established a priority date with a consular officer prior to January 1, 1977 and who was found to be entitled to an exemption from the labor certification requirement of INA 212(a)(5)(A) as the parent, spouse, or child of a U.S. citizen or lawful permanent resident (LPR) alien will continue to be exempt from that requirement, and will retain the priority date for so long as the relationship upon which the exemption is based continues to exist.

9 FAM 503.3-4(A) Retention of Western Hemisphere

Priority Dates

(CT:VISA-1; 11-18-2015)

Under section 9 of the INA Amendments of 1976 (Public Law 94-571), an alien who was registered as a Western Hemisphere immigrant with a priority date prior to January 1, 1977 retains the priority date and may use that priority date for the purpose of any preference petition subsequently approved in his or her behalf.

9 FAM 503.3-4(B) Establishing Entitlement to Western Hemisphere Priority Dates

(CT:VISA-1; 11-18-2015)

An alien may establish entitlement to a Western Hemisphere priority date in several ways:

- (1) The applicant may present documents received from a consular office indicating that the applicant was registered as a Western Hemisphere immigrant with a priority date prior to January 1, 1977;
- (2) The consular office may still have records reflecting the applicant's pre-1977 registration as a Western Hemisphere applicant;
- (3) The applicant may present proof of the principal alien's priority date and proof that the required relationship existed at the time; or
- (4) The applicant establishes proof of the principal alien's priority date and evidence that he or she is the child of a marriage which existed prior to the principal alien's admission to the United States.
- (5) We have traditionally promulgated regulations and instructions regarding Western Hemisphere priority dates. Consequently, if you decide that a Western Hemisphere priority date applies in a case, you should make the adjustment without referral to DHS.

9 FAM 503.3-4(C) No Cross-Chargeability for Western Hemisphere Priority Dates

(CT:VISA-1; 11-18-2015)

There is no cross-chargeability for Western Hemisphere priority dates. Thus, a derivative spouse who is entitled to a Western Hemisphere priority date cannot transfer entitlement to the principal alien. If the principal alien, however, married the spouse prior to January 1, 1977, then the principal alien may have acquired a priority date as the derivative beneficiary of the spouse who held the Western Hemisphere priority date.

9 FAM 503.4

ALLOCATION OF IMMIGRANT VISA NUMBERS

(CT:VISA-300; 03-14-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 503.4-1 RELATED STATUTORY AND REGULATORY AUTHORITIES

9 FAM 503.4-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 201 (8 U.S.C. 1151); INA 202(a) (8 U.S.C. 1152(a)); INA 202(b) (8 U.S.C. 1152(b)); INA 202(e) (8 U.S.C. 1152(e)); INA 203(a) (8 U.S.C. 1153(a)); INA 203(b); INA 203(d) (8 U.S.C. 1153(d)); INA 203(e) (8 U.S.C. 1153(e)); INA 203(g) (8 U.S.C. 1153(g)); INA 206 (8 U.S.C. 1156).

9 FAM 503.4-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.31; 22 CFR 42.32; 22 CFR 42.51; 22 CFR 42.55.

9 FAM 503.4-2 ALLOCATION OF NUMBERS TO THE PREFERENCE CATEGORIES

9 FAM 503.4-2(A) Family-Sponsored Immigrants-Text of INA 203(a)

(CT:VISA-300; 03-14-2017)

Preference Allocation for Family-Sponsored Immigrants: Aliens subject to the worldwide level specified in section 201(c) for family-sponsored immigrants shall be allotted visas as follows:

- (1) **Unmarried Sons and Daughters of Citizens:** Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the class specified in paragraph (4).
- (2) **Spouses and Unmarried Sons and Unmarried Daughters of Permanent Resident Aliens:** Qualified immigrants –

- (a) Who are the spouses or children of an alien lawfully admitted for permanent residence, or
 - (b) Who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence, shall be allocated visas in a number not to exceed 114,200, plus the number (if any) by which such worldwide level exceeds 226,000, plus any visas not required for the class specified in paragraph (1); except that not less than 77 percent of such visa numbers shall be allocated to aliens described in subparagraph (a).
- (3) **Married Sons and Married Daughters of Citizens:** Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the classes specified in paragraphs (1) and (2).
- (4) **Brothers and Sisters of Citizens:** Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 65,000, plus any visas not required for the classes specified in paragraphs (1) through (3).

9 FAM 503.4-2(B) Employment-Based Immigrants-Partial Text of INA 203(b)

(CT:VISA-1; 11-18-2015)

Preference Allocation for Employment-Based Immigrants: Aliens subject to the worldwide level specified in section 201(d) for employment-based immigrants in a fiscal year shall be allotted visas as follows:

- (1) **Priority Workers:** Visas shall first be made available in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (4) and (5), to qualified immigrants who are . . . (A) Aliens with extraordinary ability . . . ; (B) Outstanding professors and researchers . . . ; (C) Certain multinational executives and managers. . . .
- (2) **Aliens Who are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability:** Visas shall be made available, in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
- (3) **Skilled Workers, Professionals, and Other Workers:** Visas shall be made available, in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) and (2), to

the following classes of aliens who are not described in paragraph (2): (A) In general: (i) Skilled workers . . . ; (ii) Professionals; (iii) Other workers. (B) Limitation on other workers: Not more than 10,000 of the visas made available under this paragraph in any fiscal year may be available for qualified immigrants described in subparagraph (A)(iii).

- (4) **Certain Special Immigrants:** Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified special immigrants described in section 101(a)(27) (other than those described in subparagraph (A) or (B) thereof), of which not more than 5,000 may be made available in any fiscal year to special immigrants described in subclause (II) or (III) of section 101(a)(27)(C)(ii) and not more than 100 may be made available in any fiscal year to special immigrants, excluding spouses and children, who are described in section 101(a)(27)(M).
- (5) **Employment Creation:** (A) In general: Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise (including a limited partnership). . . .

9 FAM 503.4-2(C) Entitlement to Derivative Status - Text of INA 203(d)

(CT:VISA-1; 11-18-2015)

Treatment of family members: A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101 (b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c) of this section, be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, the spouse or parent.

9 FAM 503.4-3 NUMERICAL CONTROL

(CT:VISA-300; 03-14-2017)

Visa number allocation is handled by the Visa Office (VO) through the Immigrant Visa Allocation Management System (IVAMS), which helps administer the complex series of annual numerical limitations on immigrants set forth in the Immigration and Nationality Act. Each month a determination is made regarding the number of visas that can be made available on a worldwide basis for final action on applications. These numbers are used by applicants processing their cases both abroad at Foreign Service posts and in the United States at U.S. Citizenship and Immigration *Services* (USCIS) offices. Numbers are made available in the chronological order of the applicants' priority dates. The monthly Application Final Action Dates (referred to as cutoff dates in Visa Bulletins prior to October 2015), which are used to determine whether an applicant's case is eligible for final interview, are published in the Visa Bulletin available at www.travel.state.gov.

9 FAM 503.4-3(A) Monthly Allotment of Immigrant Visa Numbers

(CT:VISA-300; 03-14-2017)

The documentarily qualified figures submitted monthly (see 22 CFR 42.55 and [9 FAM 504.4-5\(A\)\(3\)](#)) provide the Department the known total (by priority date, chargeability, classification, and post) of visa applicants who are awaiting only visa numbers to apply formally for a visa. After collation of these data, the Department makes monthly allotments to the extent available visa numbers permit. (See 22 CFR 42.51.) If demand exceeds the supply of available numbers, the priority date of the first applicant for whom a number is not available becomes the Application Final Action Date (referred to as the cutoff date in Visa Bulletins prior to October 2015) for the categories and foreign states concerned. The documentarily qualified totals are used for setting the Application Final Action Dates. It is therefore essential that the following general guidelines *further* described in [9 FAM 504.3-2\(A\)](#) be strictly observed in preparing the monthly reports of documentarily qualified applicants.

9 FAM 503.4-3(A)(1) Monthly Report of Documentarily Qualified Applicants, Report 20

(CT:VISA-300; 03-14-2017)

The Department allocates immigrant visa numbers monthly through the Immigrant Visa Allocation Management System on the basis of Reports 20, Monthly Report of Documentarily Qualified Applicants. (See [9 FAM 503.4-4\(A\)](#) below and [9 FAM 601.4-4.](#))

9 FAM 503.4-3(A)(2) "Documentarily Qualified" Applicants

(CT:VISA-300; 03-14-2017)

"Documentarily qualified" means that the alien has returned Form DS-2001, Notification of Applicant Readiness, or has otherwise informed post or NVC that all required documents have been obtained, and that all clearance procedures have been completed. Under some circumstances, you may establish other screening mechanisms to verify that an applicant is documentarily qualified (see [9 FAM 504.4-5\(C\)\(2\)](#)). When you are notified during the reporting period that an applicant is documentarily qualified, update IVO as soon as possible. (See [9 FAM 503.4-3\(A\)](#) above.)

9 FAM 503.4-3(A)(3) Dates for Filing Application

(CT:VISA-2; 11-18-2015)

"Dates for Filing Application" (formerly referred to as "Qualifying dates") are established by the Department to indicate when immigrant visa applicants should be notified to assemble and submit required documentation to the National Visa Center (NVC). The dates reflect a timeframe justifying immediate action in the application

process. The Dates for Filing Application are published in the monthly Visa Bulletin starting in October 2015. Post or National Visa Center (NVC) will not officially and proactively notify applicants of additional processing requirements until the Date for Filing Application encompasses the alien's priority date. Otherwise, it is likely that some documents would be out-of-date by the time a visa number is available and delay in final action would result. Nevertheless, should an applicant or agent request information concerning additional processing requirements, this information may be provided at any time with a warning that some documents may expire if obtained too early in the process. The Dates for Filing Application may also be used for filing for adjustment of status when USCIS determines that there are more immigrant visas available for the fiscal year than there are known applicants for such visas. Applicants for adjustment of status may refer to USCIS for additional information by visiting the USCIS website.

9 FAM 503.4-3(B) Effect of INA 101(a)(27)(K) Visa Issuances and Adjustments in Following Fiscal Year

9 FAM 503.4-3(B)(1) Informing Department of Issuances Under INA 101(a)(27)(K)

(CT:VISA-1; 11-18-2015)

Under INA 203(b)(6)(A), there are no numerical limitations for any aliens who qualify for special immigrant status under INA 101(a)(27)(K). However, since under INA 203(b)(6)(B) visa issuances and adjustments of status in this class are counted against the Employment-Based numerical limits in the following fiscal year, the Department must be kept informed of such issuances.

9 FAM 503.4-3(B)(2) Worldwide Employment-Based Numerical Limits

(CT:VISA-1; 11-18-2015)

Although numerical limits do not apply in the year of issuance or adjustment under INA 101(a)(27)(K), such visa issuances or adjustments impact visa number availability under INA 202 and 203 in the following fiscal year. Total admissions of immigrants whose status was based on qualification under INA 101(a)(27)(K), including spouses and children of Armed Forces personnel, will be divided by three; one-third of the total will be subtracted from the visa numbers available to each of the classes described in INA 203(b)(1), (2), and (3).

9 FAM 503.4-3(B)(3) Per-Country Ceiling

(CT:VISA-1; 11-18-2015)

In addition, the per-country numerical limitation under INA 202(a) will be reduced by the number of such admissions attributable to natives of such country in the following year. For countries subject to the prorating provisions of INA 202(e), there will also be

a reduction of one-third of the total of such admissions attributable to that country in the pro rata amount of visas available in each of the Employment-Based First through Third preferences.

9 FAM 503.4-4 COMMUNICATING ABOUT VISA NUMBERS

9 FAM 503.4-4(A) Monthly Request for Immigrant Visa (IV) Numbers

(CT:VISA-1; 11-18-2015)

- a. As noted in [9 FAM 503.4-3\(A\)](#) above, the Department allocates visa numbers on the basis of monthly reports of documentarily qualified visa applicants submitted by the posts, the National Visa Center (NVC), and the Kentucky Consular Center (KCC). Issuing offices abroad must prepare and submit Report 20, Monthly Report of Documentarily Qualified Immigrant Visa Demand, so that it reaches the Immigrant Visa Control and Reporting Division (CA/VO/DO/I) by the first of the month. Posts authorized to issue immigrant visas (IV) but having no reportable applicants in a given month need not submit Report 20.
- b. The monthly allotment of IV numbers is close to the maximum permissible. Therefore, only a few IV numbers remain for allocation in response to individual requests from posts. For this reason, posts should not request allocation of IV numbers for applicants who become documentarily qualified after the submission of the report unless special circumstances exist in an individual case necessitating immediate issuance of a visa. A post with unused numbers in a particular category/chargeability which would otherwise be returned to CA/VO/DO/I at the end of the month should use such numbers before requesting additional allocations in the same category/chargeability. During the last month of a fiscal year, there are generally fewer IV numbers available for individual allocation than in any other month, and only requests for the most compelling cases can be honored during that time.

9 FAM 503.4-4(B) Returning Unused Visa Numbers

(CT:VISA-1; 11-18-2015)

Posts must return unused visa numbers allocated for a specific month to the Department (CA/VO/DO/I) by Report 22, Monthly Returns. Report 22, Monthly Returns must be sent within five calendar days after the end of each month. (See [9 FAM 504.3-2\(D\)](#).)

9 FAM 503.4-4(C) Recaptured Visas

(CT:VISA-1; 11-18-2015)

A recaptured visa is a visa that is known to have not been used (e.g., the bearer died or was unable to travel during the validity period). Such visas should be recaptured and the visa number returned to the Department unless the same applicant wants to replace his or her visa during the same fiscal year. (See [9 FAM 504.3-2\(D\)](#) paragraph c and [9 FAM 504.10-5](#).)

9 FAM 504 PROCESSING

9 FAM 504.1 IMMIGRANT VISA PROCESS OVERVIEW

(CT:VISA-286; 02-07-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 504.1-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 504.1-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(16) (8 U.S.C. 1101(a)(16)); INA 201 (8 U.S.C. 1151); INA 202(b) (8 U.S.C. 1152(b)); INA 203(e) (8 U.S.C. 1153(e)); INA 203(f) (8 U.S.C. 1153(f)); INA 203(g) (8 U.S.C. 1153(g)); INA 204 (8 U.S.C. 1154); INA 221(a) (8 U.S.C. 1201(a)); INA 221(g) (8 U.S.C. 1201(g)); INA 222(a) (8 U.S.C. 1202(a)); INA 222(b) (8 U.S.C. 1202(b)); INA 222(e) (8 U.S.C. 1202(e)); INA 224 (8 U.S.C. 1204).

9 FAM 504.1-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 40.6; 22 CFR 42.41; 22 CFR 42.51; 22 CFR 42.52; 22 CFR 42.55; 22 CFR 42.62; 22 CFR 42.63; 22 CFR 42.65(b); 22 CFR 42.67; 22 CFR 42.81.

9 FAM 504.1-2 PRE-APPLICATION PROCESSING

(CT:VISA-286; 02-07-2017)

a. Sending Instruction Package:

- (1) **NVC:** Upon receipt of an approved petition granting an alien immediate relative or preference status, the National Visa Center (NVC) must send the alien beneficiary *the Instruction Package (formerly Packet 3) or "Notice of Registration as an Intending Immigrant" letter (formerly Packet 3A)* notifying the beneficiary of receipt of the petition and advising the alien what steps, if any, to take in applying for a visa. (See [9 FAM 504.4-2\(A\)](#).)
- (2) **For Petitions Filed at Post:** You must send the instruction package for IV

applicants immediately to applicants who have provided evidence of entitlement to immigrant classification. You should verify that the applicant's priority date (if subject to a numerical limitation) is earlier than the Date for Filing Applications established by the Department. You should also provide the Instruction Package to immigrant visa applicants and others upon request, regardless of whether the inquirer is entitled to immigrant classification, stressing that they should take no action unless directed by the NVC, a visa processing post, or their agent.

- b. **Documentarily Qualified:** Once the beneficiary of an approved petition is considered documentarily qualified, an IV number can be allotted (if necessary) and an appointment scheduled.
- (1) For petitions filed at post, an applicant is considered to be documentarily qualified after completing the two following steps:
 - (a) The alien has returned Form DS-2001, Notification of Applicant Readiness, and declared that he or she has obtained all of the required documents, or has otherwise notified post that he or she is prepared for interview; and
 - (b) The post has completed all required clearance procedures, or has reason to believe that they will be completed before a visa number will be available for the applicant. (See [9 FAM 504.4-6](#) regarding the reporting of documentarily-qualified applicants.)
 - (2) For petitions processed through NVC, an applicant is considered to be documentarily qualified after completing the four following steps:
 - (a) Paid all required fees;
 - (b) Completed Form DS-260, Online Application for Immigrant Visa and Alien Registration, for each traveling applicant;
 - (c) Completed and returned a properly completed Form I-864, Affidavit of Support Under Section 213A of the Act, and supporting documents (see [9 FAM 302.8-2\(B\)\(2\)](#) paragraph b) for cases in which INA 212(a)(4) applies; and
 - (d) Returned all required police certificates for each traveling applicant as required by 22 CFR 42.65(c) or available based on the reciprocity table (see [9 FAM 504.4-4\(B\)](#)).
- c. **Immigrant Visa Numbers:** The documentarily qualified figures submitted monthly (see [9 FAM 601.4-5](#)) provide the Department the known total (by priority date, chargeability, classification, and post) of visa applicants who are awaiting only visa numbers to apply formally for a visa. After collation of these data, the Department makes monthly allotments to the extent available visa numbers permit. (See [9 FAM 503.4](#).) If demand exceeds the supply of available numbers, the priority date of the first applicant for whom a number is not available becomes the issuance cutoff date for the categories and foreign states concerned. The documentarily qualified totals are used for setting the cutoff dates. It is therefore essential that the following general guidelines set forth in [9 FAM 504.3-2\(A\)](#) be

strictly observed in preparing the monthly reports of documentarily qualified applicants.

d. Scheduling Appointments:

- (1) NVC provides the IV (non-DV) scheduling functions for the majority of posts worldwide. Appointments are generally scheduled in the chronological order of the documentarily qualified applicants. Posts provide NVC with their appointment capacity and the percentage of cases/applicants post desires for Immediate Relative and Preference categories. Other considerations, such as possible mailing delays or travel time by applicants to post, may be taken into consideration in scheduling appointments. Once the scheduling is completed by NVC, post will receive visa numbers for the numerically controlled immigrant visa applicants from CA/VO/DO/I. The case files and electronic data will be received from NVC. When visa numbers and the electronic data files are received, posts should ensure that these items are properly recorded in the automated immigrant visa processing system (IVO). NVC will send all appointment letters for cases scheduled through NVC. Post will use IVO to send any appointment letters scheduled at post.
- (2) When an appointment date is scheduled (either by NVC or post) for an alien not subject to numerical limitations, the post should enter the appointment date into IVO. For appointments scheduled through NVC, the case files and electronic data will be received from NVC.

9 FAM 504.1-3 IV APPLICATION PROCESSING

(CT:VISA-223; 10-20-2016)

a. Prior to Appointment:

- (1) When appearing at the appointed time for the formal visa appointment, an applicant is entitled to receive prompt attention. The post should pull and review the appointment list and case files prior to the appointment date.
- (2) The consular officer must send unclassified material to the document checker for review. The consular officer must review classified material.

b. Document Checking: When the applicant presents the documents, the post must check the documents for completeness and legibility. The document checker should ensure each question on Form DS-260 has been answered. Post should use the "Add Remarks" function associated with a section of the application that needs correction or amplification. If Form DS-260 is incomplete, the document checker must reopen the application via the "Reopen DS-260" button at the top of the online IV application report and direct the applicant to log back onto the Consular Electronic Application Center (CEAC) and complete the missing information. If necessary, the document checker may assist the applicant in completing the application.

c. Verification of Documents by Consular Officer:

- (1) When an alien presents a photocopy of any of the required documents listed under 22 CFR 42.65(b), it is important that the original document be inspected by consular section personnel. After inspection, the consular section must endorse the copy with a rubber stamp that imprints the name of the post and the fact that the original has been seen and compared. When copies of these required documents have been uploaded electronically into a consular system, the consular section personnel will check the box in the system that indicates original seen and compared. This procedure does not constitute a certification within the meaning of Item 47 of the Tariff of Fees, since neither the full signature of a consular officer nor the official seal of the post is used or required. This service is performed without fee, whether on public documents required under INA 222(b) or on documents submitted in support of Form ETA-750, Application for Alien Employment Certification.
- (2) The DHS procedures differ from those described in the above paragraph in that it does not routinely require the submission of original documents or certified copies with the filing of petitions. As a result, you must ensure that photocopies of documents submitted in support of petitions are compared with original documents at the time of immigrant visa (IV) application. Original documents connected with petition filing, but not required for IV issuance, should not be routinely required unless there is reason to doubt their authenticity. However, the consular officer, at his or her discretion, may require submission of any original document in order to compare it with a photocopy upon which a petition was approved.

d. **Collecting Fees:**

- (1) A single fee is charged combining the costs of processing and issuance of the immigrant visa. An individual registered for immigrant visa processing at a post designated for this purpose by the Deputy Assistant Secretary for Visa Services must pay the processing fee. The fee must be paid when the individual is notified that a visa is expected to become available in the near future and he or she is requested to obtain the supporting documentation needed to apply formally for a visa.
- (2) **NVC Collection of Immigrant Visa Fees:** Most cases are processed through the NVC and the processing fee will have already been collected in the United States before the case was forwarded to post. The NVC's Post Supplement Report, included in the file of cases scheduled by the NVC, will indicate whether the fee has been paid. If the Post Supplement Report is unavailable, post can determine if the fee has been paid using the IVIS Beneficiary Report in the CCD. If there are any questions about whether a fee was paid while a case was at the NVC, post should email NVCPost@state.gov.
- (3) **Paying Processing Fee at Post:** For cases processed through the NVC, this fee will be collected during initial processing by NVC. Posts will collect the visa processing fee only for those cases in which the petition is filed at post or in which the visa file otherwise indicates that the fee has not yet been collected. In cases where the applicant has submitted Form DS-260, once the medical

forms and other documents have been placed in logical order and Form DS-260 is complete, the alien must proceed to the cashier and pay the processing fee. The alien must pay before the interview. In situations described in [9 FAM 504.6-5\(B\)](#), the cashier must not collect a new processing fee. After the fee has been paid, the document checker must give the documents, the medical forms, applicable printouts from the automated system, and any papers from the A-Z file, to the consular officer who will interview the applicant. Note: The document checker should not print out the online IV application report associated with the submitted Form DS-260.

- e. **Interview:** Decisions to issue or refuse an immigrant visa application must be based on a personal interview, during which the consular officer must ensure that all required documentation has been provided, that there is a legal basis for the applicant to immigrate, and that there are no ineligibilities that would affect visa issuance.
- (1) Consular officers must make every effort to conduct visa interviews fairly and professionally. Any semblance of aggressive cross-examination, assumption of bad faith, or entrapment must be avoided. Applicants should be given sufficient time to answer questions without interruption. In cases where the consular officer's determinations are difficult to make or which are or may become the subject of controversy, the officer must make a thorough and carefully written record of the interview so that the basis for the final action can be fully documented. (See [9 FAM 504.11](#).)
 - (2) Interviewing visa applicants is one of the consular officer's most demanding jobs, requiring the officer's composure, judgment, and diplomatic skills. Techniques for good interviewing, including the critical skill of how to ask the right questions, deserve careful attention. Training materials on effective interviewing and fraud interviews are available through the Fraud Prevention Program's Consular Affairs Web page.
- f. **Adjudications:** Once an application has been executed, the consular officer must either issue the visa or refuse it. A consular officer cannot temporarily refuse, suspend, or hold the visa for future action. If the consular officer refuses the visa, he or she must inform the applicant of the provisions of law on which the refusal is based, and of any statutory provision under which administrative relief is available. (See [9 FAM 504.11](#) for the refusal procedure and [9 FAM 301.5](#) for waiver relief.)
- g. **Issuances:** The machine-readable immigrant visa (MRIV) is printed on the same adhesive foils used for NIVs and includes the following information:
- (1) Biographic data about the immigrant visa applicant;
 - (2) Information about the immigrant visa itself (issuing post, visa type, case number, date of issuance and date of expiration);
 - (3) The registration number (A-number) assigned to the immigrant;
 - (4) Any annotations entered to reflect waivers or other information useful for the port of entry (POE) upon the applicant's admission to the United States;

- (5) A digitized photo of the visa recipient; and
- (6) Two lines of machine-readable data which will be scanned by the immigration officer at the POE.

h. Refusals:

- (1) There are no exceptions to the rule that once a visa application has been properly completed and executed before a consular officer, a visa must be either issued or refused. For statistical and comparison purposes, all posts should follow the identical refusal procedures and report refusals the same way in their required reports of visas issued and refused. (See [9 FAM 601.4-5](#).) Accordingly, any alien to whom a visa is not issued by the end of the working day on which the application is made, or by the end of the next working day if it is normal post procedure to issue visas to some or all applicants the following day, must be found ineligible under one or more provisions of INA 212(a), 212(e), or 221(g). (INA 221(g) is not to be used when a provision of INA 212(a) is applicable.) This requirement to find an applicant ineligible when a visa is not issued applies even when:

- (a) A case is medically deferred;
- (b) The post requests an advisory opinion from the Department;
- (c) The post decides to make additional local inquiries or conduct a full investigation; or
- (d) The only deficiency is a clearance from another post.

There is no such thing as an informal refusal or a pending case once a formal application has been made.

- (2) **Manner in Refusing Applicants:**

- (a) You should convey visa refusals in a sympathetic but firm manner. The manner in which visa applications are refused can be very important in relations between the post and the population of the host country. You must be careful not to appear insensitive.
- (b) You should aim for a measured, sympathetic but firm style which will convince the ineligible applicant that the treatment accorded was fair. You should refer to pertinent statements of the applicant, written or oral, or to a conviction, medical report, false document, previous refusal, or the like, as the basis of the refusal. You should then explain the law simply and clearly.

9 FAM 504.1-4 SPECIAL PROCEDURES

9 FAM 504.1-4(A) Revocations

9 FAM 504.1-4(A)(1) When May a Visa be Revoked?

(CT:VISA-1; 11-18-2015)

You are authorized to revoke an immigrant visa (IV) under the following rare circumstances:

- (1) You know, or after investigation are satisfied, that the visa was procured by fraud, a willfully false or misleading representation, the willful concealment of a material fact, or other unlawful means;
- (2) You obtain information establishing that the alien was otherwise ineligible to receive the particular visa at the time it was issued; or
- (3) You obtain information establishing that, subsequent to the issuance of the visa, a ground of ineligibility has arisen in the alien's case. Note that some ineligibilities require an advisory opinion (AO) or security advisory opinion (SAO) before a finding is made.

9 FAM 504.1-4(A)(2) Reconsideration of Revocation

(CT:VISA-1; 11-18-2015)

- a. The alien may ask that you reconsider the revocation of his/her immigrant visa (IV). You should consider any evidence submitted by the alien or the alien's attorney or representative in connection with any request for reconsideration.
- b. If you find that the evidence is sufficient to overcome the basis for revocation, you should issue the alien a new IV.
 - (1) Be certain to make the appropriate notations of the action taken and the reasons therefore in the case files.
 - (2) If you have already sent notice to carriers, the Department, and/or the issuing office per the above guidance, send the appropriate notifications that you have issued a new IV.
- c. Per [9 FAM 504.6-4](#), you may not collect a fee in connection with the application for, or issuance of, a reinstated visa.

9 FAM 504.1-4(B) Termination of Registration

(CT:VISA-223; 10-20-2016)

- a. **When a Case is Considered "Inactive"**: An application becomes subject to possible termination of registration under INA 203(g) if the applicant:
 - (1) Has not made an application within one year of receiving the Immigrant Visa appointment letter. The beneficiary has one year to make a timely application for a visa, beginning on the date you mail the Immigrant Visa appointment letter to the beneficiary.
 - (2) Does not respond to the appointment notice included with the Immigrant Visa Appointment Package, meaning that the applicant fails to appear for final visa application interview on the scheduled appointment date and fails to take further action on the case within one year of the scheduled interview;

- (3) Is refused at the interview under INA 221(g), and fails to provide you with evidence to overcome the refusal within one year; [Note: The one year period is extended each time an applicant presents evidence reasonably purporting to overcome the INA 221(g) ineligibility.] or
 - (4) Fails to comply with the Follow-up Instruction Package for Immigrant Visa Applicants within one year.
- b. **Applicants Whose Cases are Subject to Termination Under 203(g):** INA 203(g) procedures apply to applicants who are immediate relatives, family-sponsored immigrants, and employment-based immigrants who have received notification of the availability of a visa (i.e., who have been sent Packet 4 or Packet 4(a)). (See [9 FAM 504.4-5\(C\)\(1\).](#))

9 FAM 504.2

IMMIGRANT VISA PETITIONS

(CT:VISA-353; 04-26-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 504.2-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 504.2-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(27)(A) (8 U.S.C. 1101(a)(27)(A)); INA 101(a)(27)(B) (8 U.S.C. 1101(a)(27)(B)); INA 101(a)(27)(D) (8 U.S.C. 1101(a)(27)(D)); INA 201(b)(2)(A)(i) (8 U.S.C. 1151(b)(2)(A)(i)); INA 203(a) (8 U.S.C. 1153(a)); INA 203(b) (8 U.S.C. 1153(b)); INA 203(c) (8 U.S.C. 1153(c)); INA 203(d) (8 U.S.C. 1153(d)); INA 203(f) (8 U.S.C. 1153(f)); INA 203(g) (8 U.S.C. 1153(g)).

9 FAM 504.2-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 103.7; 8 CFR 205; 22 CFR 42.41; 22 CFR 42.42; 22 CFR 42.43.

9 FAM 504.2-1(C) Public Law

(CT:VISA-1; 11-18-2015)

Marriage Fraud Amendments Act of 1986, Public Law 99-639, sec. 5; The Adam Walsh Child Protection and Safety Act (Adam Walsh Act), Public Law 109-248, sec. 402; Immigration Act of 1990, Public Law 101-649, sec. 702; Public Law 100-202, sec. 584; Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, Public Law 101-167, title II; Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, Public Law 101-513, title II; Immigration Act of 1990 (Public Law 101-649); Public Law 102-232, sec. 302.

9 FAM 504.2-2 IV PETITION OVERVIEW

9 FAM 504.2-2(A) Notice of Petition Approval

(CT:VISA-353; 04-26-2017)

a. A consular officer must not issue an immigrant visa (IV) without receipt from the

Department of Homeland Security (DHS) of an approved immigrant visa petition:

- (1) Form I-130, Petition for Alien Relative;
 - (2) Form I-600, Petition to Classify Orphan as an Immediate Relative;
 - (3) Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative;
 - (4) Form I-140, Immigrant Petition for Alien Worker;
 - (5) Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant; *or*
 - (6) *Form I-526, Petition for Alien Entrepreneur*
- b. In emergency situations only, consular officers may issue a visa based on the following:
- (1) Cable notification of such approval;
 - (2) Official notification Form I-797, Notice of Action, of such approval;
 - (3) An electronic case record provided by the National Visa Center (NVC); or
 - (4) Faxed notice of approval of Form I-600 received directly from the approving DHS office.

9 FAM 504.2-2(B) Establishing Relationship Between Petitioner and Alien Beneficiary

(CT:VISA-353; 04-26-2017)

The approval of a petition under INA 204 is considered to establish prima facie entitlement to status. The validity of the relationship between the petitioner and the alien beneficiary, familial or employer and/or employee, is presumed to exist. Unless you have specific, substantial evidence of either misrepresentation in the petition process or have facts unknown to DHS at the time of approval, you generally would have no reason to return the petition to DHS. (See [9 FAM 504.2-1](#) and 22 CFR 42.43.) Unless a petition has been automatically revoked under INA 203(g), a properly approved petition remains valid indefinitely provided the familial or employer and/or employee relationship exists.

9 FAM 504.2-2(C) Importance of Filing Petitions For Preference Status

(CT:VISA-1; 11-18-2015)

Immigrant visa applicants compete on a first-come, first-served basis for the visa numbers available. Since the filing date of an approved petition may establish the priority of certain preference applicants, you should encourage the filing of a petition on behalf of any alien eligible for preference status, and should not discourage the filing of a petition because the preference category or foreign state limitation is oversubscribed.

9 FAM 504.2-2(D) Filing IV Petitions

9 FAM 504.2-2(D)(1) Proper Filing

(CT:VISA-353; 04-26-2017)

A properly filed petition must be:

- (1) Signed by the petitioner; and
- (2) Accompanied by the appropriate DHS fee. (See 8 CFR 103.7.)

9 FAM 504.2-2(D)(2) Petition Forms

(CT:VISA-353; 04-26-2017)

- a. Form I-130, Petition for Alien Relative, is used to classify the following as immediate relatives INA 203(c)(8 U.S.C. 1153(c)) or INA 101(a)(27)(D) (8 U.S.C. 1101(a)(27)(D)).
 - (1) Spouse of a U.S. citizen;
 - (2) Child of a U.S. citizen;
 - (3) Parent of an adult (over age 21) U.S. citizen;
 - (4) Unmarried son or daughter of a U.S. citizen;
 - (5) Spouse, child, son, or daughter of a permanent resident alien;
 - (6) Married son or daughter of a U.S. citizen; and
 - (7) Brother or sister of an adult (over age 21) U.S. citizen.
- b. Form I-600, Petition to Classify Orphan as an Immediate Relative, is used to classify the following as an immediate relative under INA 201(b):
 - (1) Child to be adopted in the United States by a U.S. citizen; and
 - (2) Orphan adopted overseas by a U.S. citizen.
- c. Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative, is used to classify a Child in Hague Convention Country to be adopted in the United States by a U.S. citizen as an immediate relative under INA 201 (b). (See [9 FAM 502.3-4\(D\)\(1\).](#))
- d. Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, is used to classify the following as an immediate relative under Public Law 97-359 or under INA 201(b), or as a special immigrant under INA 203(b)(4) (8 U.S.C. 1153(b)(4)):
 - (1) Amerasian child, son, or daughter of a U.S. citizen eligible under Public Law 97-359 (see [9 FAM 502.2-4\(C\)](#));
 - (2) Widow(er) of a U.S. citizen;
 - (3) Special immigrant under INA 203(b)(4); and
 - (4) Spouse or child of abusive citizen or legal permanent resident (see [9 FAM 502.7-4\(D\)](#)).

- e. Form I-140, Immigrant Petition for Alien Worker, is used to classify an alien as a preference immigrant under INA 203(b)(1), (2) or (3) (see [9 FAM 502.4-4](#)):
 - (1) Priority workers;
 - (2) Professional holding advanced degree or person of exceptional ability; and
 - (3) Skilled worker; professional or other worker.
- f. Form DS-1884, Petition to Classify Special Immigrant Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad, is used to classify an alien for status as a special immigrant as described in INA 101(a)(27)(D). (See [9 FAM 502.5-3](#)).
- g. Form I-526, Immigrant Petition by Alien Entrepreneur, is used to classify an alien as a preference immigrant under INA 203(b)(5). (See [9 FAM 502.4-5](#)).
- h. No petition is required for the following aliens:
 - (1) Returning residents classified under INA 101(a)(27)(A) (see [9 FAM 502.7-2](#));
 - (2) Certain former U.S. citizens classified under INA 101(a)(27)(B) (see also [9 FAM 502.7-3](#)); and
 - (3) Amerasians eligible under section 584(b)(1)(A) of Public Law 100-202 as amended by Public Law 101-167 and Public Law 101-513. (See [9 FAM 502.2-4\(C\)](#).)

9 FAM 504.2-2(D)(3) Supporting Documents and Fees

(CT:VISA-353; 04-26-2017)

- a. The supporting documents and fees required by DHS in connection with the filing of a petition are given under the instructions portion of each petition. See 8 CFR 103.7 for a listing of DHS fees and see [ww.uscis.gov](#) for additional information on supporting documents and fees. Also see [9 FAM 502.3-3\(C\)\(2\)](#) for discussion of documents required for Form I-600, Petition to Classify Orphan as an Immediate Relative. Also see [9 FAM 502.3-4\(D\)\(4\)](#) for a discussion of documents required for Form I-800 Petition to Classify Convention Adoptee as an Immediate Relative.
- b. **Photocopies of Supporting Documents:**
 - (1) DHS regulations require legible, true copies of original documents, including copies of naturalization certificates and Permanent Resident Cards which are acceptable if filing petitions with DHS adjudicators. A copy of a certified copy from a state bureau of vital statistics which is certified by a notary public is NOT acceptable unless accompanied by the copy containing the state seal.
 - (2) DHS has determined, however, that the authority delegated to consular officers to approve petitions will include only those cases in which the originals of the required supporting documents are submitted. All documentation submitted in support of visa petitions approved by consular officers must be original, *except the Form I-864*. (See [9 FAM 302.8-2\(B\)\(12\)](#).) If the petitioner submits copies of required supporting documents and is unwilling to submit the originals, the

consular officer must consider the petition not clearly approvable and refer the petition to DHS.

9 FAM 504.2-2(E) Role of the National Visa Center (NVC)

(CT:VISA-353; 04-26-2017)

- a. The National Visa Center (NVC) receives all IV petitions that were:
 - (1) Approved by *USCIS*, and where
 - (2) The principal applicant will apply overseas at a U.S. Embassy or other diplomatic post.
- b. NVC takes the following steps upon receiving a petition (see [9 FAM 504.4-2\(A\)](#)):
 - (1) NVC enters the petition data into the Immigrant Visa Information System (IVIS);
 - (2) If the *approved* petition is *for an immediate relative or has a priority date and falls* within the dates *for filing visa applications* set by CA/VO/DO/I, NVC sends a *"Welcome Letter" to the applicant and petitioner (or to the Attorney of Record if USCIS forwarded a Form G-28 to NVC). The "Welcome Letter" provides the applicant and petitioner (or attorney) with their NVC Case and Invoice ID numbers and instructs them to go to https://nvc.state.gov and complete the following six steps:*
 - (a) *Step 1: Choose an agent (online Form DS-261)*
 - (b) *Step 2: Pay fees*
 - (c) *Step 3: Submit visa application form (online Form DS-260)*
 - (d) *Step 4: Collect financial documents*
 - (e) *Step 5: Collect supporting documents*
 - (f) *Step 6: Submit documents to the NVC*
 - (3) If the *approved* petition is *for an* oversubscribed *category* with noncurrent priority dates, NVC will send the applicants *a notice of their noncurrent status. This notice informs the petitioner that NVC received his or her petition from USCIS and that the petition will be eligible for further processing when the priority date is earlier than the cut-off date for the case's visa category. The letter provides the petitioner with the following information:*
 - (a) *NVC Case Number*
 - (b) *Country of Chargeability*
 - (c) *Priority Date*

NOTE: If an email address is available, NVC sends all communications via email instead of a physical letter being mailed. This is true for all informational packets and checklist letters during document collection. *The letter confirms receipt of the petition at NVC and explains further processing steps, as appropriate.*

- (a) *Instructions to pay fees online at ceac.state.gov;*
- (b) *Instructions for accessing Form DS-260;*
- (c) *Instructions for completing Form I-864 (see [9 FAM 302.8-2\(B\)\(4\)](#));*
- (d) *Instructions to obtain supporting document; and*
- (e) *Instructions on how to send documents to NVC.*

9 FAM 504.2-3 FILING IV PETITIONS WITH USCIS

9 FAM 504.2-3(A) Petitions Executed in the United States

(CT:VISA-353; 04-26-2017)

- a. Petition Form I-130, Petition for Alien Relative, Form I-140, Immigrant Petition for Alien Worker, and Form I-526, Immigrant Petition by Alien Entrepreneur, are executed in single copy. A separate petition and fee are required for each beneficiary. Petitioners should file petitions with the Regional Service Center having jurisdiction over their place of residence. Separate petitions are not required for spouses and children entitled to derivative preference status under INA 203(d) (8 U.S.C 1153(d)). For all petitions received at the *USCIS* offices both in the United States and overseas, the petitions bear a USCIS receipt number. USCIS maintains records of the approval of each petition by beneficiary or receipt number. Upon approval, USCIS will forward the petition by first-class U.S. mail or express delivery service to the NVC. However, when the petition is filed in conjunction with the application for adjustment of status, the petition may be filed with the USCIS district office having jurisdiction over the *beneficiaries'* place of residence.
- b. Petition Form I-600, Petition to Classify Orphan as an Immediate Relative, is executed in single copy. The fee paid by the prospective adopting parents for the Form I-600-A, Application for Advanced Processing of Orphan Petition, covers the application for the first child and applications for any siblings. A separate fee is required for petitions filed for unrelated children up to the number authorized by the Form I-600-A approval. Petitioners may file the Form I-600 with the USCIS National Benefits Center or at the immigrant visa-issuing post (or USCIS office abroad) having jurisdiction over the child.
- c. Petition Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative, is executed in single copy. The fee paid by the prospective adopting parents for the Form I-800-A, covers the application for the first child and applications for any siblings. A separate fee is required for petitions filed for unrelated children up to the number authorized by the Form I-800-A approval. Form I-800-A Supplement 1 must also be provided for each adult member of the household, excluding the applicant and applicant's spouse. Petitioner must always file Form I-800 with the USCIS National Benefits Center. A prospective adoptive applicant residing outside the United States should generally file Form I-800-A with the USCIS office abroad having jurisdiction over the applicant's place of foreign

residence or with the USCIS office in the United States with jurisdiction over the proposed place of the child's residence in the United States.

9 FAM 504.2-3(B) Petitions Executed by U.S. Citizenship and Immigration Services (USCIS) Abroad

(CT:VISA-1; 11-18-2015)

- a. USCIS officers abroad are authorized to approve Form I-130, Petition for Alien Relative, for immediate relative status, if the petitioner is a resident of the country where the USCIS office is located. Petitioners who are not residents must file petitions with the Domestic Service Center which has jurisdiction over their place of residence. If a USCIS office is located in a country with consulates and if that USCIS office will accept petitions by mail, the petitioner may pay the Form I-130 filing fees at a consulate. The petitioner should forward the petition, fee receipt, and required documentation directly to the overseas USCIS office in his country of residence.
- b. USCIS officers abroad are authorized to adjudicate Form I-600, Petition to Classify Orphan as an Immediate Relative, overseas regardless of whether the United States citizen petitioner is a resident of the country where the USCIS office is located provided certain conditions are met.
- c. USCIS officers abroad may approve Form I-360, Petition for Amerasian, Widower(er), or Special Immigrant, if the alien is a resident of that country.
- d. For a current list of USCIS offices abroad and their respective areas of adjudication, see the USCIS website. USCIS may accept and adjudicate a petition for a petitioner not resident abroad if it is in the national interest or it is established that humanitarian or emergent circumstances exist.

9 FAM 504.2-3(C) Disposition of Petitions Filed With Department Of Homeland Security (DHS)

(CT:VISA-353; 04-26-2017)

- a. DHS will endeavor to send approved petitions to the NVC on a daily basis via first-class mail or express delivery. If, due to unanticipated difficulty, the DHS Service Center is unable to ship petitions within 72 hours after approval, DHS will so notify the NVC. DHS will include a computer-generated manifest, arranged in ascending numerical order of DHS receipt numbers, in each box of petitions shipped. White bar-code labels will be placed on the right-hand corner of the petitions. No staples will be affixed through the labels. Where required or requested, DHS will *communicate* directly to the post or DHS office abroad, information on immigrant petitions for orphans and approval of Forms I-600, Petition to Classify Orphan as an Immediate Relative, advance processing applications for orphans. When the petition indicates that the beneficiary intends to adjust status, but no immigrant visa number is immediately available, DHS will retain the petition until such time as a number becomes available.

b. Acknowledging Receipt of Noncurrent Petition:

- (1) When the NVC receives an approved petition in a category for which IV numbers are unavailable, the NVC must send the Notice of Registration as Intending Immigrant (formerly Packet 3a), to the applicant confirming receipt of the petition and explaining further processing steps, as appropriate.
- (2) Under the centralized IV process, posts will not receive petitions from the NVC that do not have a visa available.
- (3) In the case of any applicant in an oversubscribed category, the NVC must check the petition to determine whether the applicant may benefit from the foreign-state chargeability of the spouse under INA 202(b). *NVC checks the petition to see if there is an option of using the derivative spouse's FSC, but the case will remain noncurrent in the absence of information on the spouse's place of birth, unless the petitioner contacts NVC to inform the NVC of the beneficiary's derivative spouse's FSC.*

9 FAM 504.2-3(D) Petitions Where Department of Homeland Security (DHS) Memorandum is Attached

(CT:VISA-1; 11-18-2015)

- a. In rare instances, the consular officer may receive a petition from DHS accompanied by a memorandum containing information which may relate to the alien's entitlement to status or visa eligibility. In those instances, where the information relates to a minor question of fact which the consular officer is able to resolve in the alien's favor, endorse the memorandum with a brief statement indicating why the visa was issued. Place the memorandum and petition in an envelope and attach it to the sealed envelope for the visa.
- b. If the alien is clearly not entitled to status, return the petition to the DHS adjudicating office in accordance with the instructions in [9 FAM 504.2-8\(B\)\(1\)](#).
- c. If the information contained in the DHS memorandum raises questions regarding the alien's eligibility or contains classified information, or if a statement regarding the countervailing evidence would require a security or administrative classification, you must submit the case to the Department's Advisory Opinions Division (CA/VO/L/A) for an advisory opinion. The advisory opinion request must provide:
 - (1) A copy of the information furnished by DHS;
 - (2) The evidence developed by the consular officer; and
 - (3) The consular officer's recommendation regarding the alien's entitlement to status or eligibility.

9 FAM 504.2-3(E) Inquiring About the Status of Petitions

(CT:VISA-353; 04-26-2017)

Posts normally should not *communicate with* the Department or directly *with* DHS

inquiring about the status of petitions. As an alternative, the consular officer should advise an alien seeking such assistance to ask the petitioner to obtain the information on the pending visa petition directly from DHS. Petitioners should direct such information inquiries to the DHS Service Center with which the petition was filed. Posts may submit to the Department cases which have public relations significance, however, stating the reasons for such action in the post's telegram.

9 FAM 504.2-4 PETITIONS FILED AT CONSULAR OFFICES ABROAD

(CT:VISA-1; 11-18-2015)

- a. **In General:** Consular officers at posts without a USCIS public counter presence are authorized to adjudicate certain "clearly approvable" cases.
- b. You must refer the petition and supporting documents to the USCIS Officer-in-Charge at the USCIS office with jurisdiction over the post for adjudication if the:
 - (1) Primary evidence submitted does not satisfy you that the petitioner is a U.S. citizen or that the relationship to the beneficiary claimed in the petition exists; or
 - (2) Petitioner cannot present primary evidence relating to such matters; or
 - (3) USCIS has so instructed post because the Adam Walsh Act check raises questions which need further review.

9 FAM 504.2-4(A) Which Petitions Can Be Filed at Post

(CT:VISA-1; 11-18-2015)

The Department of Homeland Security (DHS) has delegated authority to accept and approve petitions for certain immigration benefits to consular officers assigned to visa-issuing posts abroad where there is no U.S. Citizenship and Immigration Services (USCIS) public counter presence. The Bureau of Consular Affairs (CA) has agreed to continue accepting filings of:

- (1) Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, when filed by a widow or widower;
 - (2) Form I-600, Petition to Classify Orphan as an Immediate Relative, when accompanied by an approved Form I-600-A, Application for Advance Processing of Orphan Petition to accord immediate relative status under INA 201(b) or family preference status under INA 203(a);
 - (3) Form I-130, Petition for Alien Relative (in limited exceptional circumstances consistent with [9 FAM 504.2-4\(B\)\(1\)](#) below); and
 - (4) Form I-130, Petition for Alien Relative (filed by U.S. military service members consistent with [9 FAM 504.2-4\(B\)\(1\)](#) paragraph c below).
- d. Although USCIS officers will provisionally approve Form I-800s, consular officers will

be responsible for final approval and will have to verify Convention and IAA compliance based in large measure on the Form I-800.

9 FAM 504.2-4(B) Required Conditions for Filing Petitions at Post

9 FAM 504.2-4(B)(1) I-360, I-600 Petitions, or Certain I-130 Petitions

(CT:VISA-1; 11-18-2015)

a. **Physical Presence and Residence Requirements:** You may only adjudicate the above petitions if:

(1) **In General:** You may only adjudicate the above petitions (consistent with additional requirement imposed below) is the petitioner and the beneficiary meet specific physical presence and residence requirements.

(a) **Physical Presence:**

- (i) The petitioner and the beneficiary are physically present in the district.
- (ii) The beneficiary is able to remain in the country for the time it normally takes to process the visa.

(b) **Residence:**

(i) **Petitioner:**

- The petitioner must be a resident of the consular district.
- A widow(er) of a U.S. citizen self-petitioning under Form I-360 must be a resident of the consular district.

(ii) **Proof:** You must require appropriate evidence that the petitioner has permission to reside in the consular district, or if he/she is member of the U.S. military stationed in the country, a copy of the petitioner's orders.

(iii) **Beneficiary:** The beneficiary need not be a resident of the consular district.

(2) **Exception for National Interest or Emergent/Humanitarian Situations:**

(a) In emergent or humanitarian cases or in cases of national interest, you (as well as USCIS officers at overseas USCIS offices) may accept and adjudicate a petition filed by a petitioner who does not reside within your jurisdiction. Such cases should be quite rare and limited to true emergency circumstances such as a beneficiary who is a very young child who has unexpectedly lost his or her caretaker or military or U.S. Government employees facing transfer.

(b) You generally should not accept petitions in cases which neither the

petitioner nor beneficiary is a resident in the consular district. If you believe that such a case qualifies for processing based on humanitarian, emergent, or national interest grounds, post should seek concurrence from the Public Liaison Division (CA/VO/F) before accepting the petition.

b. Adjudicating Exceptional Circumstance I-130 Cases:

- (1) **Posts With USCIS Public Counter Presence:** Consular officers assigned to posts with USCIS public counter presence cannot accept filing or adjudicate the Form I-130, Petition for Alien Relative, and must refer petitioners instead to USCIS.
- (2) **Posts Without USCIS Public Counter Presence:** If a consular section without a USCIS public counter presence encounters an exceptional circumstance case, then the Consular Chief, or another designated officer, must receive authorization from the regional USCIS Field Office Director (or his/her designee) prior to accepting and adjudicating the filing. Post should contact the appropriate USCIS field office by phone or e-mail, providing the specifics of the reason for the exception request. USCIS will have discretion to determine which cases can be processed using the exceptional circumstances procedures and which petitioners should be directed to file by mail with the USCIS lockbox in the United States. USCIS may authorize post to accept the case over the telephone in particularly emergent circumstances but will always communicate his or her decision via email to the post within 1-3 business days of receipt of the request for record-keeping purposes.
- (3) **Exceptional Circumstances:** The following are examples of the types of exceptional circumstances where consular officers should request exceptional authorization from USCIS to accept I-130 immediate relative petitions:
 - (a) **U.S. Military deployment or transfer:** A U.S. service member overseas, assigned to non-military bases or on temporary duty orders, becomes aware of a new deployment or transfer with very little notice. This should be an exception to the regular relocation process for most service members.
 - (b) **Medical emergencies:** A petitioner or beneficiary is facing an urgent medical emergency that requires immediate travel. This includes if the petitioner or beneficiary is pregnant and delaying travel may create a medical risk or extreme hardship for the mother or child.
 - (c) **Threats to personal safety:** A petitioner or beneficiary is facing an imminent threat to personal safety.
 - (d) **Cases close to aging out:** A beneficiary is within a few months of aging out of eligibility.
 - (e) **Cases where the petitioner has recently naturalized:** The petitioner and family have traveled for the immigrant visa interview but the petitioner has naturalized and the family member(s) require a new, stand-alone petition.

- (f) **Adoption of a child:** A petitioner who has adopted a child locally and has an imminent need to depart the country. This exception should only be considered if the child has been in the petitioner's legal and physical custody for at least two years and the petitioner has a full and final adoption decree on behalf of the child.
 - (g) **Short notice of position relocation:** A U.S. Citizen petitioner, living and working abroad, who receives a job relocation within the same company or subsidiary to the United States, or an offer of a new job in the United States with very little notice.
 - (h) **Other:** Other emergency situations, as determined by the Consular Section.
- (4) **Large-scale disrupting event:** An event such as a natural disaster or widespread civil unrest that affects large numbers of people and creates a humanitarian emergency for U.S. citizens or residents living abroad that would call for a blanket authorization for posts to accept and process I-130 petitions. In these circumstances, only the Chief or Deputy Chief of the USCIS International Operations Division may give blanket authorization to accept filing and adjudicate Form I-130 petitions for a specified period of time.
- c. **Adjudication of I-130 Cases for U.S. Military Service Member Stationed Overseas:**
- (1) **Posts With USCIS Public Counter Presence:** Consular officers assigned to posts with USCIS public counter presence cannot accept filing or adjudicate the Form I-130, Petition for Alien Relative, filed by a U.S. military service member stationed overseas and must refer petitioners instead to USCIS.
 - (2) **Posts Without USCIS Public Counter Presence:** Consular officers can accept filing or and adjudicate a Form I-130, Petition for Alien Relative, filed by a U.S. military service member stationed overseas in countries without a USCIS presence for any immediate relative. You do not need to seek permission of USCIS to accept an I-130 filed under these circumstances. This blanket authorization does not apply to service members assigned to non-military bases, such as Embassies or civilian institutions, or to service members on temporary duty orders.
- d. **Not Clearly Approvable:** If you conclude after reviewing the petition that it is not "clearly approvable," consular officers do not have the authority to deny the petition. Forward the petition, with all supporting documents, to the appropriate USCIS office with jurisdiction over that location. (See [9 FAM 504.2-8](#).)

9 FAM 504.2-4(B)(2) I-800 Petitions

(CT:VISA-1; 11-18-2015)

Once U.S. citizen prospective adoptive parent(s) (PAP(s)) have accepted the referral of a child from the Central Authority of the country of origin, the PAP(s) file the Form I-800, Petition to Classify a Convention Adoptee as an Immediate Relative. (See [9](#)

[FAM 502.3-4\(C\)\(4\).](#)) The petition must be filed in accordance with instructions associated with the Form I-800. Consular officers should consult Form I-800 and the instructions to familiarize themselves with current filing requirements; although USCIS officers will provisionally approve Form I-800s, consular officers will be responsible for final approval and will have to verify Convention and IAA compliance based in large measure on the Form I-800. For a description of key requirements for filing requirements please (see [9 FAM 502.3-4\(D\)\(4\)](#)).

9 FAM 504.2-5 ESTABLISHING PETITIONER STATUS

9 FAM 504.2-5(A) Proof of U.S. Citizenship/Lawful Permanent Resident (LPR) Status

9 FAM 504.2-5(A)(1) Proof of U.S. Citizenship

(CT:VISA-1; 11-18-2015)

See [9 FAM 202.1-3](#) for a discussion of acceptable evidence of U.S. citizenship.

9 FAM 504.2-5(A)(2) Establishing Lawful Permanent Resident (LPR) Status

(CT:VISA-1; 11-18-2015)

A U.S. citizen petitioner abroad may establish U.S. citizenship by presentation of an unexpired U.S. passport issued initially for the full period of validity to the petitioner as a citizen of the United States, not as a non-citizen national. If the petitioner intends to mail the application to an DHS office, or is not carrying the passport when seeking to file the petition at a consular office, citizenship may be established by a statement by the consular officer that the petitioner has presented such a passport on some occasion or that post records show the petitioner to be a U.S. citizen who is the bearer of such a passport. This statement may be written on or attached to the Form I-130, Petition for Alien Relative, Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, or Form I-600, Petition to Classify Orphan as an Immediate Relative. If the petition is filed at a consular office and the consular officer is not fully satisfied that the petitioner is a U.S. citizen rather than a national, the petition should be considered "not clearly approvable". (See [9 FAM 504.2-4\(B\)\(1\)](#).)

9 FAM 504.2-5(B) Petitioner Age and Competency

(CT:VISA-353; 04-26-2017)

- a. Under INA 201(b) (8 U.S.C. 1151(b)) a U.S. citizen petitioner must be at least 21 years of age to accord immediate relative status to an alien parent. Under INA 203(a)(4) (8 U.S.C. 1153(a)(4)) petitioners must be at least 21 years of age to

accord family-sponsored fourth preference status to a brother or sister. Although it is unlikely that any person under age 14 will have reason to file a petition, it is possible that such a person could be a "spouse" or "parent" and therefore be in a position to file a petition on behalf of their spouse or child. Should this occur, a parent, guardian, or other adult having a legitimate interest in a person who is under 14 years of age may file a petition on that person's behalf, and the guardian of a mentally incompetent person may file a petition on that person's behalf. (See paragraph b below for information about marriage of persons under the age of 18.)

The INA does not establish an age requirement for the petitioner for any of the other immigrant classifications.

b. Marriage of Persons Under the Age of 18:

- (1) Many states impose conditions such as a parental consent, a court order, and/or pregnancy before the state will recognize a marriage in which one or both intending spouses are under the age of 18. Where the consular officer is faced with determining the validity of such a marriage for consular approval of a petition, the case must be considered "not clearly approvable" and submitted to DHS for approval. (See [9 FAM 202.1-3](#).)
- (2) In cases where the DHS has approved a petition involving such a marriage, and the consular officer questions its validity but does not believe it necessary to return the petition directly to DHS pursuant to 22 CFR and [9 FAM 504.2](#), refer any questions concerning the validity of the petition to the Office of Legislation, Regulations, and Advisory Opinions Division (CA/VO/L/A) for an advisory opinion.
- (3) See [9 FAM 302.8-2\(B\)\(4\)](#) for the public charge aspects of an immigrant visa case where the petitioner is under age 18.

9 FAM 504.2-5(C) Petitioner's Entitlement to Status

9 FAM 504.2-5(C)(1) Effect of Marriage Fraud Amendments Act of 1986, Public Law 99-639

(CT:VISA-353; 04-26-2017)

- a. The Marriage Fraud Amendments Act of 1986 prohibits DHS approval of petitions in certain instances where the spouse of an alien obtained immigrant status on the basis of marriage which took place while administrative or judicial proceedings were pending. (See [9 FAM 504.2-5\(C\)\(2\)](#) below.) If the petition is approved by DHS in error, consular officers must return the petition to the DHS adjudicating office. If such a petition is presented to a consular officer for approval, the consular officer must consider the petition not clearly approvable and forward the petition to DHS.
- b. The Immigration Act of 1990, however, provides for an exemption if the petitioner provides clear and convincing evidence that:
 - (1) The marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place;

- (2) The marriage was not entered into for the purpose of procuring the alien's entry as an immigrant; and
- (3) No fee or other consideration was given for the filing of the petition.

9 FAM 504.2-5(C)(2) Restrictions on Certain Petitioners

(CT:VISA-353; 04-26-2017)

a. Certain Second Preference Petitions by Aliens Attaining Lawful Permanent Resident (LPR) Status on Basis of Previous Marriage:

- (1) **Required Conditions:** The following conditions must be met before a second preference petition can be approved for the spouse of an alien who obtained lawful permanent resident (LPR) status through an earlier marriage:
 - (a) Petitioner has been a permanent resident for at least five years; or
 - (b) Petitioner's prior marriage on the basis of which the alien obtained LPR was terminated through the death of the spouse; or
 - (c) Petitioner establishes by clear and convincing evidence that the prior marriage was not entered into for the purpose of evading immigration laws.
- (2) If a consular officer is presented a petition for approval and is satisfied that the petitioner has been a permanent resident for at least five years, or that the previous marriage was terminated through the death of the spouse, the consular officer may approve such petitions. However, consular officers must consider all other petitions filed by a petitioner who attained LPR status on the basis of a previous marriage, "not clearly approvable" and should send them, along with the supporting documents, to DHS.
- (3) **Petitions Approved by Department of Homeland Security (DHS):** If the consular officer receives a DHS-approved petition and upon review determines that the petitioner's previous marriage, which served as the basis for attaining LPR status, appears to have been entered into solely to evade the immigration law, the consular officer *may choose to investigate further and submit a memo to ICE, through VO/L/A, recommending investigation and possible deportation or rescission of LPR status. The consular officer should not suspend processing of the current petition without clear direction from CA/VO/L/A.* (See [9 FAM 504.2-8\(A\)\(2\)](#)).

b. Petitions Based on Marriage Occurring While Alien is in Exclusion or Deportation Proceedings or Related Judicial Proceedings:

- (1) **Background:**
 - (a) The Marriage Fraud Amendment Act of 1986 (Public Law 99-639), prohibits the approval of petitions for aliens seeking to receive an immigrant visa (IV) on the basis of a marriage which was entered into after November 10, 1986, and while administrative or judicial proceedings were pending regarding the alien's right to enter or remain in the United States until the

alien has resided outside the United States for a two-year period beginning after the date of the marriage.

- (b) Section 702 of the Immigration Act of 1990 (Public Law 101-649), amended INA 204 and INA 245, to provide for an exception to the prohibition if there is clear and convincing evidence that the marriage was entered into in good faith.

(2) **Two-Year Residency Outside United States:**

- (a) A petition may not be approved to grant an alien immediate relative (IR) status or preference status by reason of a marriage which was entered into during administrative or judicial proceedings regarding the alien's right to be admitted or remain in the United States until the alien has resided outside the United States for a two-year period commencing after the date of the marriage.
 - (b) An exception to the above may be made if there is clear and convincing evidence that the marriage was entered into in good faith.
- c. Consular officers receiving a petition which appears to fall within the category described in paragraph a(2) above must consider the petition not clearly approvable and must send the petition, along with the supporting documents to DHS for reaffirmation or revocation.
- d. **Aliens Attempting or Conspiring to Enter into Marriage to Evade Immigration Laws:**
- (1) Section 204(c) of the Marriage Fraud Amendment Act of 1986 prohibits the approval of a visa petition filed on behalf of an alien who has been accorded, or sought to be accorded, an IR or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or if the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The petition should be denied regardless of whether the alien received a benefit through the attempt or conspiracy. Although it is not necessary for the alien to have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence must be documented in the alien's file.
 - (2) **Petitions Filed at Consular Offices Abroad:** If the consular officer is presented with such a petition for approval, the petition should be considered "not clearly approvable" and should be sent, along with the supporting documents, to the appropriate DHS regional office.
 - (3) **Petitions Filed With Department of Homeland Security (DHS):** If the consular officer receives a DHS-approved petition and upon review determines that the marriage was entered into for the purpose of evading the immigration laws, the consular officer must return the petition to the National Visa Center (NVC), which will forward to DHS for review and possible revocation. (See [9](#)

[FAM 504.2-8\(B\)\(1\)](#).

9 FAM 504.2-6 CONSULAR PROCEDURES FOR ACCEPTING IV PETITIONS

9 FAM 504.2-6(A) Overview

(CT:VISA-353; 04-26-2017)

- a. You may accept jurisdiction for processing an immigrant visa petition if the petitioner meets the residency requirements (or emergent, humanitarian, or national interest requirements discussed in [9 FAM 504.2-4\(B\)\(1\)](#)) and the visa applicant is physically present in your district and is likely to be able to remain in the country for the time it normally takes to process a visa. The beneficiary need not be a resident of the consular district. You may exercise such authority with regard only to the approval of the petitions, not to the denial thereof. You must ensure that the petition meets the appropriate requirements listed below before approving the petition.
- b. You must forward petitions which are not clearly approvable together with all supporting documents, for adjudication to your regional USCIS field Office with jurisdiction over your post. (See USCIS website for the list of overseas offices and the countries in their jurisdictions.)
- c. You may not approve a Form I-130, Petition for Alien Relative, until after receiving clearance on a background check ("Adam Walsh Act check"), confirming that the petitioner is eligible to file a petition under INA 204(a)(1)(A)(viii) or 204(a)(1)(B)(i). Otherwise, the Form I-130 is not clearly approvable. To obtain the Adam Walsh Act check, send the petitioners' biodata to USCIS through the National Visa Center (NVC) (see [9 FAM 504.2-6\(D\)\(2\)](#).)

9 FAM 504.2-6(B) Fee Collection

(CT:VISA-1; 11-18-2015)

Fee payments must be made at the time the petition is filed with the consular officer and are collected in accordance with standard procedures in [7 FAH-1 H-700](#). When collecting such fees, the consular officer annotates the petition with the amount of the fee collected and the date. The fees may be collected by the consular cashier for the petitions taken by the USCIS office at the same post, if that office does not otherwise have the facility to collect fees. Fees may also be collected by constituent posts that have a USCIS office in that country that will accept petitions by mail. However, the responsibility is the petitioner's to forward the petition, fee receipt, and documents to USCIS. While you may take the fee, you should not review the petition or documents. Post should not collect fees for petitions that will be sent to domestic offices for adjudication.

9 FAM 504.2-6(C) Consular Officer Action Shown on Petition Form

(CT:VISA-1; 11-18-2015)

- a. You must indicate approval of a visa petition by completing the appropriate spaces in the block captioned "FOR USCIS OFFICE ONLY." Complete the following spaces:
 - (1) Petition filing date;
 - (2) Box checked "personal interview;"
 - (3) Section of the law under which the petition was approved;
 - (4) In "Action Stamp" box, add the following information:
 - (a) For Form I-130, note that evidence is scanned into the Immigrant Visa Overseas (IVO) case and attached to the petition that USCIS has cleared the petitioner under the Adam Walsh Act;
 - (b) Signature of the approving consular officer;
 - (c) Title and location of the consular officer; and
 - (d) Date of approval.
- b. The post must charge the prescribed fee for filing Form I-130, Form I-360, or Form I-600. When the fee is collected, a notation of "\$XX fee received" must be entered in the fee stamp box. (See 8 CFR 103.7 and the USCIS website).

9 FAM 504.2-6(D) Adam Walsh Check of the Petitioner

(CT:VISA-353; 04-26-2017)

- a. Section 402 of the Adam Walsh Child Protection and Safety Act ("Adam Walsh Act"), Public Law No. 109-248, amended section 204 of the Immigration and Nationality Act to provide that an individual who has been convicted of a specified sexual or kidnapping criminal offense against a minor may not file a petition for a family-sponsored immigrant visa without a determination by the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, that the petitioner poses no risk to the beneficiary. The Adam Walsh Act was made effective on July 27, 2006.
- b. Under INA 204(a)(1)(A)(viii) or 204(a)(1)(B)(i), a petitioner is not eligible to file such a petition if convicted of such an offense without a determination by the Secretary of Homeland Security, in his sole and unreviewable discretion, that the petitioner poses no risk to the beneficiary. Because you do not have access to petitioners' criminal history records, which must be reviewed to establish eligibility under the Adam Walsh Act before a family-based petition for immigrant status (Form I-360, I-600 or I-130) can be approved it is necessary for USCIS to conduct this review and report whether processing of the petition may proceed. Although you may accept a petition in certain circumstances, you may not approve a petition until USCIS has conducted the required check and confirmed that the petitioner is eligible to file the Form I-360, I-600 or I-130 under INA 204(a)(1)(A)(viii) or

204(a)(1)(B)(i). Any petition that had been approved by a consular officer on or after July 27, 2006 without USCIS confirmation of such eligibility to file is not valid unless and until USCIS performs an Adam Walsh Act check and notifies post of the petitioner's eligibility.

- c. When you accept a petition overseas you should first adjudicate the relationship and then send the petitioner's biodata to the National Visa Center (NVC) following the procedural specifications in [9 FAM 504.2-6\(D\)\(2\)](#). NVC will transmit the request to USCIS and will communicate the USCIS response to post. If the USCIS Adam Walsh Act check reveals any question regarding the petitioner's eligibility under INA 204(a)(1)(A)(viii) or 204(a)(1)(B)(i), post will be instructed to forward the petition to the appropriate USCIS office overseas as "not clearly approvable." (See [9 FAM 504.2-6\(D\)\(2\)](#) below.)

9 FAM 504.2-6(D)(1) Convictions Information and the Adam Walsh Act

(CT:VISA-353; 04-26-2017)

- a. Section 402 of the Adam Walsh Child Protection and Safety Act of 2006 ("Adam Walsh Act"), amended INA 204(a)(1) and 101(a)(15)(K), rendering ineligible to file a petition for immigrant status under INA 203(a) or nonimmigrant K status, any petitioner who has been convicted of a "specific offense against a minor," defined in section 111 of the Adam Walsh Act as a offense involving any of the following:
- (1) An offense (unless committed by a parent or guardian) involving kidnapping;
 - (2) An offense (unless committed by a parent or guardian) involving false imprisonment;
 - (3) Solicitation to engage in sexual contact;
 - (4) Use in a sexual performance;
 - (5) Solicitation to practice prostitution;
 - (6) Video voyeurism as described in section 1801 of title 18, United States Code (18 U.S.C. 1801);
 - (7) Possession, production, or distribution of child pornography;
 - (8) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct; or
 - (9) Any conduct that by its nature is a sex offense against a minor.

Section 402 further provides that the bar against filing a petition because of such a conviction will not apply if the Secretary of Homeland Security, in sole and unreviewable discretion, determines that the petitioner poses no risk to the beneficiary.

b. USCIS Approved Petitions:

- (1) Because of the Adam Walsh Act, if you know or have reason to believe, at any time prior to visa issuance, that a petitioner who files an approved petition has

been convicted of an offense against a minor listed in [9 FAM 504.2-6\(D\)\(1\)](#) paragraph (a) and that USCIS has not considered the conviction for purposes of determining the petitioner's eligibility to file, you must send the approved petition to USCIS for a determination of its validity. In the case of a petition that was approved at post following the necessary USCIS criminal history record search, you must consider the petition not "clearly approvable," and forward it, with all supporting documents, to the appropriate USCIS office abroad with jurisdiction over that location. If Form I-130, Petition for Alien Relative, approval occurred at a USCIS regional office abroad, you should return the petition directly to that office for possible revocation. Otherwise, petitions approved by USCIS should be returned through the NVC for possible revocation. The basis for the return would be that information indicating that the petitioner was ineligible to file apparently was not known at the time the petition was approved. You would not disclose the conviction information to the visa applicant in cases in which the petition was returned because of the Adam Walsh Act.

- (2) The Adam Walsh Act's ban against the filing of a petition for family-based immigrant and K-nonimmigrant visa status by an individual who has been convicted of a specified offense against a minor does not apply if the Secretary of Homeland Security exercises his or her sole and unreviewable discretionary authority and determines that the individual poses no risk to a beneficiary. You may encounter cases in which the criminal history information reported to post by USCIS relates to a conviction for a crime that is one of the specified offenses against a minor listed in paragraph a of this section. Provided that the petition reflects that there has been a no-risk determination by the Secretary of Homeland Security and you intend to approve the visa application, you should not forward the petition to USCIS based on the conviction in that instance, but instead consider it to have been properly filed under the Adam Walsh Act, while nonetheless informing the visa applicant of the conviction during the interview if compelling circumstances affecting the health and safety of a beneficiary (see [9 FAM 504.9-8](#)), exists.

(Previous location: 9 FAM 42.63 Exhibit I; CT:VISA-945; 04-10-2008)

(3) Sample Notification to Petitioner:

[Date]

[Petitioner name]

[Last known address]

Dear _____:

I am writing to notify you that, during a visa interview on [date], we disclosed the following information to _____, a beneficiary of the petition for [indicate type] status which you filed on [date]:

[List the information that was disclosed to the beneficiary.]

[Only if applicable] We also provided a copy of the attached documents at that time.

This disclosure of information took place on the basis of [health and safety considerations for beneficiaries in light of the information referenced above].

Sincerely,

[Name]

[Title]

9 FAM 504.2-6D)(2) Adam Walsh Clearance Request Petition Approval Procedures

(CT:VISA-353; 04-26-2017)

After accepting a properly filed petition with the fee, you must review the petition to verify the relationship between the petitioner and the beneficiary. If the relationship appears valid, you must send the petitioner's biodata to the National Visa Center (NVC) to be forwarded to USCIS for a check under provisions of the Adam Walsh Act before approving the petition.

- (1) **Provisional Immigrant Visa (IV) Case Should be Opened in Immigrant Visa Overseas (IVO):** A provisional immigrant visa (IV) case must be opened in Immigrant Visa Overseas (IVO) when the petition has been filed and the fee paid. This is done so that a unique case number can be generated. The case should remain in provisional status until NVC has returned the results of the Adam Walsh Act check from USCIS.
- (2) **Petitioner's Biodata Transmitted to National Visa Center (NVC):**
 - (a) Until the process can be done electronically through the IVO system, post must e-mail the biodata of the petitioner in an Excel spreadsheet to NVC to forward to USCIS for the Adam Walsh Act check. Each petitioner's last, first, and middle name must be listed on a single row, and any aliases or versions of the name must be listed in separate rows on the spreadsheet. All entries must be in capital letters. The petitioner's name and the aliases will share the same unique identifier that is the post case number. The following columns must be used in this order:
 - (i) Post 13 character case number
 - (ii) LAST NAME
 - (iii) FIRST NAME
 - (iv) MIDDLE NAME
 - (v) Date of birth (MM/DD/YR)

DO NOT deviate from this format. Do not include any other information or columns. DO NOT include social security number, country of birth, beneficiaries' names, or background information. Do not use prefixes like Rev.

or Dr. and suffixes like Jr. or Sr. Do not use apostrophes, accent marks, or other special characters including characters in foreign alphabets. Spaces may be used in last, first, and middle names. Hyphenated names should be entered first with the hyphen and then on another row as an alias with a space, replacing the hyphen. Names with apostrophes should be entered first without the apostrophe and no space, then as an alias with a space replacing the apostrophe.

- (b) The spreadsheet must match the sample form below, although the columns may be adjusted in size to contain the complete last, first, and middle names. No names should be truncated in the spreadsheet. If the petitioner does not have a first or middle name, those columns should be left blank. Do not use notes like FNU or NMN.

Post Number	Last Name	First Name	Middle Name	DOB (MM/DD/YEAR)
XYZ2007002001	O BRIAN	JOHN	HENRY	01/03/1971
XYZ2007002001	O BRIAN	JOHN	HENRY	01/03/1971
XYZ2007002001	JONES	PAUL		03/01/1971
XYZ2007002003	ROJAS-DIAZ	MARIA	ANA	02/04/1976
XYZ2007002003	ROJAS DIAZ	MARIA	ANA	02/04/1976
XYZ2007002003	ROJAS	MARIA	ANA	02/04/1976
XYZ2007002003	DIAZ	MARIA	ANA	02/04/1976

- (c) The spreadsheet must be e-mailed as an attachment to NVCAWA@state.gov. The subject of the e-mail should be in the following format: XYZAWA02-27-07A for the first list of the day and any subsequent lists of petitioners' biodata should be XYZAWA02-27-07B, etc.

(3) Post Processing of Adam Walsh Act Namecheck Status:

- (a) National Visa Center (NVC) will forward to post the clearance response from USCIS. Each petitioner must have a response indicating clearly that the case, identified by the post case number, has cleared or did not clear the Adam Walsh Act process. The approved results memo for each petition transmitted to post by NVC should be scanned into the case and a copy attached to the petition. Only information for the petitioner for that individual case should be connected with a single case. For privacy purposes, Adam Walsh Act clearance response results for a different petitioner should not be included in a case.
- (b) If the results memo returned from NVC for an individual petitioner reports that the case identified by post case number has "cleared" the USCIS check, you may approve the petition and begin processing the immigrant

visa case.

- (c) If the status returned for an individual petitioner identified by post case number is "not cleared" because of possible prior conviction of one or more of the cited crimes under the Adam Walsh Act or due to system limitations, post should invite the petitioner to the consular section for fingerprinting with the ink and card process. Mail the fingerprint card, the petition, and other relevant documents to the USCIS overseas office having jurisdiction over the post.
- (d) If the petitioner ultimately clears the USCIS review under the Adam Walsh Act, the petition and documents will be returned to post for visa processing. If the petition is found not to be approvable, the USCIS office will notify post, and post should close the provisional case in the IVO system.

9 FAM 504.2-7 ADJUDICATING PETITIONS

9 FAM 504.2-7(A) Categories of Petitions

9 FAM 504.2-7(A)(1) Petition Submitted on Behalf of a Spouse

(CT:VISA-1; 11-18-2015)

a. A Petition Submitted on Behalf of a Spouse Must be Accompanied by:

- (1) A certificate of marriage between the petitioner and the beneficiary;
- (2) Proof of the legal termination of any previous marriage(s) of either party;
- (3) Completed and signed Form G-325, Biographic Information, for both the petitioner and the spouse; and
- (4) A passport-style color photo of the petitioner and a passport-style color photo of the spouse that were taken within 30 days of the date of application.

b. Petition Submitted by a Widow or Widower:

- (1) The widow(er) of a United States citizen may self-petition for immediate relative status on Form I-360. The Form I-360 must be filed within two years of the citizen spouse's death.
- (2) A petition for immediate relative status filed by a widow(er) of a United States citizen must, in addition to the usual evidence for a spousal petition, be accompanied by evidence of the U.S. citizenship and of the death (within the two preceding years) of the deceased marital partner. The widow(er) may file such a petition only if the marriage to the U.S. citizen was still in effect at the time of the death. A child of the widow(er) may be included in the petition as a derivative beneficiary.

- (3) Note that, before October 28, 2009, the widow(er) of a citizen could file a Form I-360 only if the widow(er) and deceased citizen had been married for at least two years when the citizen spouse died. Congress repealed this requirement through the enactment of section 568(c) of Public Law 111-83. For a widow(er) whose spouse died before October 28, 2009, and before the second anniversary of the marriage, section 568(c)(2)(B) of Public Law 111-83 provided a two-year period during which the widow(er) could file a Form I-360. October 28, 2011 was the last day to file a petition, if the citizen died before October 28, 2009, and before the second wedding anniversary. Although the time to file the petition has expired, immigrant visas remain available to otherwise eligible widow(er)s in whose cases USCIS approved timely petitions under section 568(c)(2)(B).

9 FAM 504.2-7(A)(2) Petition on Behalf of a Child

(CT:VISA-1; 11-18-2015)

- a. A parent filing a petition on behalf of a child must present evidence of his or her own citizen status, as well as of the relationship.
- b. A petition submitted by a mother on behalf of a child must be supported by the child's birth certificate showing the current name of the mother. If the mother's present name differs from that at the time of the child's birth, the mother's marriage certificate and evidence of the legal termination of any prior marriage(s) must be submitted. If the change of name did not result from the marriage of the mother, other appropriate evidence of the name change must be submitted.
- c. If a petition is submitted by a father on behalf of a legitimate child or is filed by a stepparent, the following documents must accompany the petition:
 - (1) A certificate of marriage of the parents;
 - (2) Proof of the legal termination of any prior marriage(s) of the parent(s); and
 - (3) The birth certificate of the beneficiary.
- d. If a petition is submitted by the father of a legitimated child, the petitioner must submit:
 - (1) Evidence of the child's legitimation, which must have taken place before the child reached the age of 18;
 - (2) Proof of legal termination of any prior marriage(s) if the legitimation was the result of the marriage of the natural parents to each other; and
 - (3) The birth certificate of the child.
- e. If a petition is submitted by the alleged natural father of a child, born out-of-wedlock, the petitioner must establish that:
 - (1) He is the natural father of the offspring; and
 - (2) A bona fide parent-child relationship exists or has existed while the child was under the age of 21.

(Such a relationship exists or has existed when the father displays clearly or has displayed clearly an active concern for the child's support, instruction, and welfare. Documents to manifest this concern may include (but are not limited to) the child's birth certificate, local civil records, affidavits from knowledgeable persons, and evidence of financial support. DHS may require blood tests from the petitioner, beneficiary, and the beneficiary's mother.)

9 FAM 504.2-7(A)(3) Petition on Behalf of a Parent

(CT:VISA-1; 11-18-2015)

- a. A petition submitted on behalf of a mother must be accompanied by a copy of the petitioner's birth certificate which shows the current name of the mother. If the mother's name differs from that on the petitioner's birth certificate, evidence showing the name of the mother at the time of the child's birth (for example, a marriage certificate of the mother having the name shown on the petitioner's birth certificate) must be submitted.
- b. If a petition is submitted on behalf of a father of a legitimate child or on behalf of a stepparent, the petitioner's birth certificate, the marriage certificate of the parents, and proof of the legal termination of any prior marriage(s) of either parent must accompany the petition.
- c. If a petition is submitted on behalf of a father of a legitimated child, the petitioner's birth certificate, evidence that legitimation took place before the petitioner reached age 18, and, if legitimation occurred through marriage of the natural parents to each other, evidence of the legal termination of any prior marriage(s) of either parent must accompany the petition.
- d. If a petitioner born out of wedlock submits a petition on behalf of his or her father, evidence to show that the beneficiary is the natural father of the petitioner and that a parent-child relationship exists or has existed must accompany the petition. (See [9 FAM 504.2-7\(A\)\(2\)](#) above.)

9 FAM 504.2-7(A)(4) Petition on Behalf of an Orphan

(CT:VISA-353; 04-26-2017)

- a. You are authorized to approve orphan petitions when the DHS district director at a stateside office has made a favorable determination concerning an advance processing application. This will be reflected by receipt of the approved Form I-600-A, Application for Advance Processing of Orphan Petition, *which NVC will upload to IVO via eDP*. The occasion will arise when the prospective petitioner (or married petitioner and spouse) has traveled abroad to:
 - (1) Adopt a known child (after both the petitioner and spouse, if any, have personally seen and observed the child);
 - (2) Facilitate the adoption in the United States of a known child; or
 - (3) Locate and adopt a child.

- b. Your adjudication of the petition must include all aspects of eligibility for classification as an orphan under INA 101(b)(1)(F)), other than the ability of the prospective parent(s) to furnish proper care for the beneficiary orphan. (See [9 FAM 502.3-3\(C\)\(3\).](#)) You must forward for adjudication by the USCIS office having jurisdiction over the child's area of residence any petition which is not clearly approvable. (See [9 FAM 202.1-3.](#))

9 FAM 504.2-7(A)(5) Petition on Behalf of a Convention Adoptee as an Immediate Relative

(CT:VISA-1; 11-18-2015)

Once U.S. citizen Prospective Adoptive Parent(s) (PAP(s)) have accepted the referral of a child from the Central Authority of the country of origin, the PAP(s) file the Form I-800, Petition to Classify a Convention Adoptee as an Immediate Relative. (See [9 FAM 502.3-4.](#)) The petition must be filed in accordance with instructions associated with the Form I-800. Consular officers should consult Form I-800 and the instructions to familiarize themselves with current filing requirements; although USCIS officers will provisionally approve Form I-800s, consular officers will be responsible for final approval and will have to verify Convention and IAA compliance based in large measure on the Form I-800. For a description of key requirements for filing requirements please (see [9 FAM 502.3-4\(D\)\(4\).](#))

9 FAM 504.2-7(B) Additional Information

(CT:VISA-1; 11-18-2015)

- a. **Immediate Relative, Orphan, Amerasian, or Widow(er):** For additional information on classification as an immediate relative under INA 201(b)(2)(A)(i), an orphan as defined in INA 101(b)(1)(F), a widow or widower of a U.S. citizen eligible under INA 201(b)(2)(A)(i), or an Amerasian eligible under Public Law 97-359, see [9 FAM 502.3-1.](#)
- b. **Classification as Family-Preference Immigrant:** For information on classification as a family-preference immigrant under INA 203(a)(1) - (4), see [9 FAM 502.2.](#)
- c. **Married Woman as Petitioner or Beneficiary:** If the petitioner or the beneficiary is a married woman, her marriage certificate usually must be submitted with the petition. However, when the petitioner and beneficiary are mother and child, regardless of the child's age, the mother's marriage certificate need not be submitted if the mother's present name appears on the child's birth certificate.
- d. **Evidence of Legal Termination of a Marriage:** Primary evidence to establish legal termination of a marriage consists of the divorce decree, the annulment document, or the death certificate of a prior spouse.
- e. **Alien Entitled to More than One Classification:** If an applicant becomes entitled to more than one immigrant classification, a separate case should be created in the automated system for each classification. The two cases should be

physically filed in the same folder.

9 FAM 504.2-8 REVOCATION AND REVALIDATION OF IMMIGRATION VISA PETITIONS

9 FAM 504.2-8(A) Suspending Action and Returning Petitions

(CT:VISA-1; 11-18-2015)

- a. The Department of Homeland Security (DHS) possesses exclusive authority over the approval and denial of immigrant visa petitions (except for those filed for aliens classifiable under INA 203(c) or INA 101(a)(27)(D)). You should bear in mind that the Department considers the approval of a visa petition prima facie evidence of the relationship between the petitioner and the beneficiary.
- b. Therefore, it is your responsibility to review, not to readjudicate petitions. However, in the course of that review, if you obtain sufficient facts so that you know or have reason to believe that the beneficiary is not entitled to the status approved in the petition you will return the petition to the U.S. Citizenship & Immigration Services (USCIS) through the National Visa Center (NVC). DHS regulations governing the revocation of petitions are provided in [9 FAM 504.2-1](#) above.

9 FAM 504.2-8(A)(1) Termination of Action

(CT:VISA-1; 11-18-2015)

- a. **You Must Terminate Action on a Visa Petition:**
 - (1) Upon receipt of notification from USCIS that the petition has been revoked under 8 CFR 205.1;
 - (2) If the petition is automatically revoked under 8 CFR 205.1; or
 - (3) If the petition is automatically revoked under INA 203(g). (See paragraphs b and c below.)
- b. **When a Registration is Terminated Under INA 203(g), Posts Shall Take the Following Action:**
 - (1) Send the applicant Final Notice of Cancellation of Registration, under Section 203(g). (See [9 FAM 504.13](#)); and
 - (2) Destroy the petition.

9 FAM 504.2-8(A)(2) When to Suspend Action and Return Petitions

(CT:VISA-1; 11-18-2015)

You will suspend action and return the petition to USCIS (see [9 FAM 504.2-8\(B\)\(1\)](#)

below through NVC if:

- (1) The petitioner requests suspension of action;
- (2) You know, or have reason to believe the petition approval was obtained by fraud, misrepresentation, or other unlawful means; or
- (3) You know or have reason to believe that, despite the absence of fraud, due to changed circumstances or clear error in approving the petition the beneficiary is not entitled to the approved status.
- (4) **"Reason to Believe"**: In general, knowledge and reason to believe must be based upon evidence that USCIS did not have available at the time of adjudication and a determination that such evidence, if available, would have resulted in the petition being denied. This evidence often arises as a result of or during the interview of the beneficiary. Reason to believe must be more than mere conjecture or speculation—there must exist the probability, supported by evidence, that the alien is not entitled to status.
- (5) **Cases of Sham Marriages**: USCIS has minimum evidentiary standards that must be established before revocation proceedings in a case based upon a marital relationship may begin. These minimum evidentiary standards are:
 - (a) A written statement from one or both of the parties to the marriage that the marriage was entered into primarily for immigration purposes;
 - (b) Documentary evidence that money changed hands under circumstances such that a reasonable person would conclude the marriage was a paid arrangement for immigration purposes; or
 - (c) Extensive factual evidence developed by the consular officer that would convince a reasonable person that the marriage was a sham marriage entered into to evade immigration laws.

9 FAM 504.2-8(B) Returning Petitions

9 FAM 504.2-8(B)(1) Actions to Take Upon Suspension

(CT:VISA-353; 04-26-2017)

- a. Prepare a memorandum which constitutes a comprehensive report to USCIS explaining in detail the reasons why the beneficiary appears not to be entitled to status (see [9 FAM 504.2-8\(B\)\(2\)](#) below);
- b. Send the petition along with *the memorandum*, directly to:

National Visa Center
31 Rochester Ave.
Portsmouth, NH 03801
Attn: Fraud Prevention Manager
- c. If fraud is suspected, send a copy of the memorandum to the Department (CA/FPP);

- d. Retain a copy of the petition, the supporting documents and the memorandum. All immigrant visa petitions being returned for revocation must contain the original petition along with the revocation request. If the original petition has been lost or misplaced, please indicate this in your revocation request memorandum; and
- e. It is mandatory to scan all revocation requests into the Consular Consolidated Database (CCD), along with at least a minimal amount of supporting documentation.

9 FAM 504.2-8(B)(2) Returning Petitions for Possible Revocation

(CT:VISA-353; 04-26-2017)

- a. If U.S. Citizenship and Immigration Services (USCIS) requests the return of a visa petition, or if you know or have reason to believe, that the alien beneficiary of an approved petition is not entitled to the accorded status, you will return the petition to USCIS through the National Visa Center (NVC). (See [9 FAM 504.2-8\(B\)\(1\)](#).) No petition revocation requests should be sent directly to USCIS in the United States. All cases that are immigrant visa (IV), and K, V, asylee and refugee petitions being returned for revocation should be sent to NVC for processing.
 - (1) The only exception to this will be that when Form I-130, Petition for Alien Relative filed and approved overseas, or found "not clearly approvable" by you, will be sent directly to the appropriate overseas USCIS regional office. That office will make the determination on the request. Do not send petitions initially filed at posts abroad to NVC. (See [9 FAM 504.2-3\(B\)](#) and [9 FAM 504.2-4\(A\)](#) and [9 FAM 504.2-6\(A\)](#).)
 - (2) The original petition *will be returned*, along with all supporting documents and a memorandum supporting the recommendation for revocation. The report must be comprehensive, clearly showing factual and concrete reasons for revocation. The report must be well reasoned and analytical rather than conclusory. Observations made by you cannot be conclusive, speculative, equivocal or irrelevant.
- b. When returning petitions for revocation, include as much information as possible. Provide documentation, including relevant translations, memoranda of interviews, etc. USCIS must have the back-up documentation; just saying something is so will not meet the evidentiary standards required of USCIS to permit or sustain a revocation. If a case is being returned because the petitioner and applicant failed a Deoxyribonucleic Acid (DNA) test, be sure to include the DNA test results. When possible, take sworn statements, especially when an applicant and/or petitioner admits during the interview that the primary purpose of the relationship is to circumvent U.S. immigration laws. Signed statements are of greater value than second hand reports. When a statement is prepared in English by a non-native English speaker, it should be proofread carefully. Posts can consult with CA/VO/L/A on cases where there are questions or concerns over the sufficiency of evidence cited in the memo supporting a petition return.
- c. If returning a petition for revocation based on a local custom/law or religious

doctrine, be sure to include documentation of the custom/law/doctrine together with an English translation. For example, if you are returning a petition because a religious text that states a woman must wait a certain period of time after divorcing in order to remarry, include a copy of the relevant passage for the USCIS adjudicator to review. In most cases, USCIS will not have the ability to look up local customs/laws or religious doctrines, so it is important for posts to provide as much information as possible.

- d. When post determines that a petition should be returned with a request for revocation, the procedures set out in the revocation guide available on the CA/FPP website should be followed. Additional assistance in writing revocation memoranda can be found on the "Fraud Prevention Resources" page of the Consular Affairs Intranet site which has sample revocation letters for a variety of petition types.

9 FAM 504.2-8(B)(3) Investigation Requests

(CT:VISA-1; 11-18-2015)

- a. In some cases you may determine that there is sufficient evidence to justify requesting a USCIS investigation in order to combine USCIS' findings with the facts developed at post to make a case for revocation. You should submit such a case to USCIS as an investigation request. (See paragraph b below.)
- b. It is essential in preparing this type of case to specify exactly what aspects of the case should be pursued in the United States. For USCIS to make a case for revocation, they must have all the facts developed overseas as well as those facts developed in the course of their investigation. You should carefully set forth all the facts that can reasonably be developed to be included in the memo requesting the investigation. You should include the originals of all documents that have a bearing on the case as evidence.

9 FAM 504.2-8(B)(4) Disclosing Information From Visa Files to U.S. Citizenship and Immigration Services (USCIS) in Petition Revocation Cases

(CT:VISA-1; 11-18-2015)

- a. Because petitioners have a right to know why their petitions are denied, or approval is being revoked, all information provided to USCIS in revocation proceedings which is not classified is subject to release by USCIS. In this regard, information coming from sources which the post feels should be held confidential and not released to the petitioner should be presented to USCIS in a form which protects the identity of the source. All classified information should be clearly identified as classified and not releasable to prevent accidental release by USCIS.
- b. As the final statutory responsibility for evaluating the factual evidence and drawing legal conclusions rests with USCIS, posts should take care to present the factual record developed pertaining to the provability of the petition and avoid unnecessary evaluative or conclusive comments and the inclusion of information not directly

relevant to the issue. Posts should also refrain from including derogatory characterizations and emotionally charged or imprecise phrases in reports to USCIS. These remarks have little evidentiary value, and may prove embarrassing when they end up in the hands of the petitioner. (For release of information directly by you, to the petitioner see [9 FAM 603.2](#).)

9 FAM 504.2-8(B)(5) Receiving Requests From Petitioner, Applicant, or Representative

(CT:VISA-1; 11-18-2015)

If post receives a request from the petitioner, applicant, or attorney/representative on the status of a petition that has been returned to USCIS for revocation, post should refer the requestor to the USCIS office that adjudicated the petition, not to NVC. Petitions sent to NVC are only retained for a short time before they are sent to USCIS. It may be helpful for post to remember that processing and investigations at NVC are internal and non-adjudicatory, meaning that NVC's results and conclusions are advisory only for posts and USCIS but have no legal effect. Therefore, it is important that petitioners, applicants, and attorney/representatives not be referred to NVC.

9 FAM 504.2-8(C) Reaffirmation/Reinstatement of Visa Petitions

9 FAM 504.2-8(C)(1) Reaffirmation by USCIS

(CT:VISA-1; 11-18-2015)

If USCIS reaffirms a petition which has been returned, and you have no additional factual evidence to submit to support the belief that an alien is not entitled to status, except in the rare cases discussed in paragraph a below, you must process the case to conclusion.

(1) When Consul Disagrees With Reaffirmation but Has No Evidence:

- (a) In the rare case where you may irreconcilably disagree with the USCIS decision to uphold the validity of the petition, if you have no new evidence to present which was not previously considered by USCIS, you must send the entire case to the Department (CA/VO/L/A) for review and discussion with USCIS/HQ. Such referrals should be rare, however, since the burden of proof still rests with USCIS and protracted delay without sufficient reason is unfair to the visa applicant.
- (b) It should be remembered that USCIS bears a high burden of proof (good and sufficient cause) in revocation proceedings. Although you may believe that the evidence leads a reasonable person to believe that the alien is not entitled to status, the evidence of record may not be sufficient to meet the higher standard of proof required in these proceedings.

(2) Consul Disagrees With Reaffirmation and Has New Evidence to

Present: Despite the fact that USCIS reaffirms the petition, if you discover substantial new evidence not considered by USCIS in its decision to reaffirm, you may return the petition to USCIS through NVC without referring the case to the Department (CA/VO/L/A).

9 FAM 504.2-8(C)(2) Extending Petition Following Petitioner's Death

(CT:VISA-353; 04-26-2017)

A petition automatically revoked, due to the death of the petitioner, may be reinstated by USCIS if you believe that special humanitarian consideration warrants reinstatement. *If the beneficiary is related to the deceased petitioner in any other way other than by marriage, the petition should be returned to USCIS with a notation regarding a recommendation for humanitarian reinstatement clearly stated on the return memo. The determination for reinstatement is made by USCIS.* See [9 FAM 502.1-2\(D\)](#) for information on automatic conversion of a Petition for Alien Relative, Form I-130, to a Petition for Amerasian Widow(er), or Special Immigrant, Form I-360, upon the petitioner's death in the case of an immediate relative spouse (now widow(er) of a U.S. citizen).

9 FAM 504.2-8(C)(3) Reconstructing Erroneously Suspended EW3 Petitions

(CT:VISA-1; 11-18-2015)

- a. If upon review, you determine that an EW3 petition suspension was erroneously suspended and returned to USCIS was not justified by the evidence or was based on a misreading of the law, you should consider the petition to be readjudicated. In accordance with [9 FAM 504.2-8\(B\)\(1\)](#), posts should retain a copy of a petition, along with the supporting documents, which is returned to USCIS. When applicants reapply for a visa based on these petitions, you will strike the cancellation mark for those labor certifications marked canceled. The labor certification should now be treated as valid and marked in the upper right hand corner:

"OVERCOME: LABOR CERTIFICATION CANCELLATION REVERSED"

NOTE: The date, post and consular officer's signature should appear over the post stamp.

- b. If the post has not maintained a copy of part, or all, of the petition including the labor certification, post is authorized to accept as valid a certified copy of the petition or part of the petition, if there is no reason to believe that such copy is materially different from the original. The post may also obtain documents from the USCIS service center to which they originally returned the petition, although USCIS may not have retained a copy.
- c. If the post issues a visa based on the reconstructed petition, post should package the petition under normal procedures with an additional official notation to USCIS at the port-of-entry indicating that the petition has been reconstructed by the

consular officer, and has been cleared by USCIS/HQ and should be accepted as valid. The official notification to the USCIS port-of-entry should include the standard language - "Reconstructed Petition Approved" the date, post and consular officer's signature over the post stamp on the first page of the petition.

9 FAM 504.2-8(C)(4) Recommending Reinstatement of Petition

(CT:VISA-1; 11-18-2015)

- a. If the consular officer believes that a petition revoked under 8 CFR 205.1(a)(3) warrants DHS consideration for humanitarian reasons, the consular officer should prepare a memorandum requesting such consideration and forward it with the petition to DHS. In evaluating requests for reinstatement of a petition under such circumstances, DHS has considered the following factors:
 - (1) Disruption of an established family unit;
 - (2) Hardship to U.S. citizens or lawful permanent residents;
 - (3) If beneficiary is elderly or in poor health;
 - (4) If beneficiary has had lengthy residence in the United States;
 - (5) If beneficiary has no home to go to;
 - (6) Undue delay by DHS or consular officer in processing petition and visa; and
 - (7) If beneficiary has strong family ties in the United States.
- b. In the case of a petition approved by a stateside Department of Homeland Security (DHS) office, the consular officer must send the memorandum and petition through the National Visa Center (NVC) (see [9 FAM 504.2-8\(B\)\(1\)](#)) to the DHS District Director having jurisdiction over the petitioner's place of residence in the United States. If the petition was approved either by a DHS officer abroad or by a consular officer, the consular officer must send the petition and memorandum to the DHS District Director having jurisdiction over the DHS office or the consular post abroad.
- c. If the consular officer does not believe that the humanitarian reasons are sufficient to warrant DHS action, but the alien beneficiary or other interested party inquires about such action, the consular officer should instruct the individual concerned to communicate with the approving DHS office.

9 FAM 504.2-9 RETENTION OF PETITIONS WITH UNDELIVERABLE CORRESPONDENCE

(CT:VISA-1; 11-18-2015)

- a. Immigrant visa (IV) petitions related to undeliverable correspondence must be kept in the file until the post receives information which would reflect the status of petition and/or the beneficiary:
 - (1) This is particularly important in cases in which instruction packages for IV

applicants cannot be delivered; and

- (2) You should add a comment in the IVO system documenting the fact that correspondence was returned "undeliverable."
- b. At NVC, the electronic case record will be updated to document the fact that:
- (1) Physical correspondence was returned "undeliverable," but the physical letter will be destroyed after the update;
 - (2) If the Postal Service provides an updated address on the returned mail, NVC will update the address in IVIS and resend the letter; and
 - (3) An email was "undeliverable," then the letter will be resent via postal service.

9 FAM 504.3

(U) MANAGING IMMIGRANT VISA NUMBERS

(CT:VISA-325; 04-07-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 504.3-1 (U) RELATED STATUTORY AND REGULATORY AUTHORITIES

9 FAM 504.3-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 201 (8 U.S.C. 1151); INA 202 (8 U.S.C. 1152); INA 203 (8 U.S.C. 1153); INA 204 (8 U.S.C. 1154); INA 222(b) (8 U.S.C. 1202(b)).

9 FAM 504.3-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 40.1(h); 22 CFR 42.51; 22 CFR 42.52; 22 CFR 42.54; 22 CFR 42.55.

9 FAM 504.3-2 (U) COMMUNICATING ABOUT VISA NUMBERS

(CT:VISA-171; 09-06-2016)

(U) See the IVO application users' manual for instructions for preparing and submitting Reports 20, 28, and 22 described in [9 FAM 504.3-2\(A\)](#), (C), and (D) below.

9 FAM 504.3-2(A) (U) Monthly Reports of Qualified Applicants

(CT:VISA-325; 04-07-2017)

- a. **(U)** The documentarily qualified figures submitted monthly (see [22 CFR 42.52](#) and [9 FAM 504.4-5\(A\)\(3\)](#)) provide the Department the known total (by priority date, chargeability, classification, and post) of visa applicants who are awaiting only visa numbers to apply formally for a visa. After collation of these data, the Department makes monthly allotments to the extent available visa numbers permit. (See 22 CFR 42.51 *and* [9 FAM 503.4](#).) If demand exceeds the supply of available numbers, the priority date of the first applicant for whom a number is not available becomes the Application Final Action Date (referred to as the cutoff date in Visa Bulletins prior to October 2015) for the categories and foreign states concerned. The

documentarily qualified totals are used for setting the Application Final Action Dates. It is therefore essential that the following general guidelines be strictly observed in preparing the monthly reports of documentarily qualified applicants:

- (1) **(U)** All IV processing posts having documentarily qualified demand to report, as well as NVC, must prepare Report 20, Monthly Report of Documentarily Qualified Immigrant Visa Demand, and submit it so that it arrives in the Department (CA/VO/DO/I) before the first working day of the month. The automated IV processing system is used to generate this report and submit it via email. (See 22 CFR 40.1(h) and [9 FAM 504.3-2\(A\)\(1\)](#) below.) A Sample Report 20 is shown paragraph b below.
- (2) **(U)** Data entry must be kept up to date so that all applicants who have become documentarily qualified during the reporting period are included.
- (3) **(U)** No applicant's priority date should be reported twice unless an allocation was made on the basis of a previous documentarily qualified report and the applicant either failed to keep the appointment or was not qualified for a visa at that time and has subsequently returned.

b. **(U) Sample Report 20:**



**Report 20 - Monthly Report Of Qualified Visa Applicants (FS469)
For Month Of SEP 2008**

Post: SAMPLE

Requested By: MFSO

Date/Time Prepared: 16-SEP-2008 17:26

FSC	Visa Class	Priority Date	Number of Applicants
BANG	E1	31-JUL-2007	1
		Total	1
CAN	E1	03-MAY-2000	1
CAN	E1	27-SEP-2005	2
		Total	3
CAN	F1	20-JUN-2001	1
CAN	F1	28-JUN-2001	1
		Total	2
CAN	F2B	06-JAN-1995	1
		Total	1
CAN	F3	02-JUL-1997	3
CAN	F3	04-JAN-1999	3
CAN	F3	01-NOV-1999	4
CAN	F3	15-MAY-2000	1
		Total	11
CAN	F4	28-DEC-1989	1
CAN	F4	14-MAR-1996	1
CAN	F4	13-NOV-1996	1
CAN	F4	01-MAY-1997	2
CAN	F4	06-JUN-1997	1
		Total	6
CHIN	E1	28-MAY-2004	1
		Total	1
CHIN	E2	27-DEC-1999	1
CHIN	E2	26-APR-2004	2
		Total	3
CHIN	E3	19-APR-2000	1
		Total	1
COL	F1	09-SEP-2005	1
		Total	1

** This Report Contains Only IV Data. **

Page 1 Of 2



Report 20 - Monthly Report Of Qualified Visa Applicants (1-5469)
For Month Of SEP 2008

POST: SAMPLE

Requested By: MFSO

Date/Time Prepared: 16-SEP-2008 17:25

FSC	Visa Class	Priority Date	Number of Applicants
FIJI	F4	26-DEC-1989	2
FIJI	F4	09-NOV-1992	2
		Total	4
GUY	F4	13-NOV-1996	1
		Total	1
HAT	F3	02-JUL-1997	2
		Total	2
HNK	F4	03-AUG-1995	3
HNK	F4	14-MAR-1996	2
HNK	F4	16-DEC-1996	2
		Total	7
IND	F3	04-JAN-1999	1
		Total	1
IND	F4	21-AUG-1995	1
IND	F4	01-MAY-1997	1
		Total	2
IRAN	F4	07-AUG-1995	1
IRAN	F4	06-JUN-1997	2
		Total	3
IRAQ	F4	27-NOV-1992	5
		Total	5
PHIL	F4	23-MAR-1984	1
PHIL	F4	09-AUG-1984	2
PHIL	F4	09-NOV-1984	1
		Total	4
PKST	F3	04-JAN-1999	1
PKST	F3	06-JUL-1999	5
		Total	6
POL	F3	15-MAY-2000	2
		Total	2
SAFR	F1	24-JAN-2007	1
		Total	1
THAI	E1	06-JUN-2005	1
		Total	1
TRIN	F2B	06-JAN-1995	3
		Total	3
UGAN	F4	01-MAY-1997	1
		Total	1

** This Report Contains Only IV Data. **

Page 2 Of 2

9 FAM 504.3-2(A)(1) (U) Preparation of the "Documentarily Qualified" Report

(CT:VISA-325; 04-07-2017)

- a. **(U) "Documentarily Qualified" Defined:** Documentarily qualified" means that the alien has returned Form DS-2001, Notification of Applicant Readiness, indicating that all the required documents have been obtained (or has otherwise so informed the post), and that the post has completed its clearance procedures.
- b. **(U) Preference Applicants to be Reported by Priority Date:** All preference applicants must be reported by priority dates, irrespective of the status of the numerical limitations to which they are subject.
- c. **(U) Foreign State and Post Symbols to be Used:** The foreign state/dependent area alphabetical code must appear in lieu of the name of each chargeability area on the report. (See [9 FAM 503.2-5\(A\)](#) and [9 FAM 503.2-5\(B\)](#) for these codes.) The visa-issuing office symbol will automatically appear on the Report 20.
- d. **(U) Relationship to Post's Workload Capacity:** The report must include all applicants who have become documentarily qualified in that monthly period by priority date, irrespective of the post's capability to process that number of cases. If the total exceeds the post's capacity to interview (and issue if appropriate), post must notify the Visa Office (NVC and CA/VO/DO/I) by cable or e-mail of its capacity for any month in which such a capacity limitation is applicable, together with the reason(s) for the limitation. (See [9 FAM 504.3-2\(D\)](#) below.)
- e. **(U) Duplicative Reporting to be Avoided:** The Department records reported demand for which visa numbers are not immediately available (oversubscribed categories), or which is in excess of the post's stated capacity, for consideration for later allotments. The post should not repeat previously reported pending demand in subsequent reports.
- f. **(U) Aliens Entitled to Two or More Classifications:** If a documentarily qualified applicant is entitled to two or more classifications, post should report the applicant under the classification which will allow the most expeditious processing or report the applicant under both categories.
- g. **(U) Negative Reports Not Required:** Immigrant visa-issuing posts that have no reportable applicants for a given month need not submit a negative Report 20.

9 FAM 504.3-2(A)(2) (U) Grouping of Priority Dates by the Department

(CT:VISA-1; 11-18-2015)

(U) When posts submit Report 20 in electronic form, the reported priority dates will be grouped in the Department under the first day of the month and every 7 days thereafter. The weekly periods always begin on the 1st, 8th, 15th, and 22nd of the month. The priority dates will be grouped under the reportable date at the beginning of the applicable week. For example, priority dates from March 1 through March 7, 2007 will be grouped under 01MAR2007.

9 FAM 504.3-2(A)(3) (U) Diversity (DV) Applicants

(CT:VISA-171; 09-06-2016)

(U) The monthly reports of documentarily qualified DV applicants are prepared and submitted to the Department by KCC. Posts must not include DV applicants on their Report 20. Any additional DV numbers needed by a post should be requested by a VISAS FROG message.

9 FAM 504.3-2(B) (U) Requesting Supplemental Numbers – Visas Frog

(CT:VISA-325; 04-07-2017)

Unavailable

- (1) **Unavailable**
- (2) **Unavailable**
- (3) **Unavailable**
- (4) **Unavailable**
- (5) **Unavailable**
- (6) **Unavailable**

9 FAM 504.3-2(C) (U) Immigrant Visa Workload Monthly Reports

(CT:VISA-325; 04-07-2017)

- (1) **(U) Monthly Report of IVs Issued:** At the end of each month, all posts authorized to issue IVs must prepare and transmit the Immigrant Visa Workload Monthly Report (Report 28 in the automated IV processing system) to the Visa Office (CA/VO/DO/I), Attn: IVAMS. This report will reflect all *IVs and DVs* issued during the month, *as well as refusal data*. (See paragraph (3) below.) The report must be submitted within 5 days after the close of each reporting period.
- (2) **(U) Reports Requiring Adjustment:** Posts whose Report 28 requires adjustments to the workload data must specify by memorandum the adjustments that are needed.
- (3) **(U) Sample Report 28:**



Report 28 - Monthly Immigrant Visa Workload For MAY 2008

Date/Time Prepared: 06-JUN-2008 09:28

Post: HRE

Requested By: MFSO

Immigrant Visas Issued By FSC And Visa Symb

FSC: COD	Count
IR1	1
Total	1

FSC: MOZ	Count
IR5	1
Total	1

FSC: ZIMB	Count
CR1	1
IR5	3
Total	4

Total Non-numerically Controlled: 6

FSC: IND	Count
F41	1
F42	1
Total	2

FSC: ZIMB	Count
F41	1
F43	1
Total	2

Total Numerically Controlled: 4

Immigrant Visas Refused By Grounds Of Ineligibility Under The Immigration And Nationality Act

Refusal Code	Count	Number of Applicants Refused by Refusal code
5A	3	3
G	8	8

Total Number Of Individual Applicants Refused: 11

Total Number Grounds of Refusals: 11

Total Number of Aggregate Refusals: 11

Quasi Refusals and Lookout Actions
for post use only not included in workload totals

Refusal Code	Count	Number of Applicants Refused by Refusal code
Total Number Of Applicants Refused:	0	0

Total Number of Refusals: 0

Immigrant Visas Issued To Applicants Previously Refused By Grounds Of Ineligibility Overcome

Refusal Code	Count
1A1	1
G	1
Total Number of Individual Applicants Issued	2
Total Number of Aggregate Refusals:	2

Immigrant Visa Workload Total Number Of Immigrant Visas Issued: 10

*Total Number Of Aggregate Refusals: 11

Total Number Of Immigrant Visas Replaced: 0

*Aggregate Refusal Count includes multiple refusal dates for individual applicants.

9 FAM 504.3-2(D) (U) Additional Reporting

(CT:VISA-325; 04-07-2017)

- a. **(U) Deletion of Priority Dates:** Reported demand which has been encompassed in an allotment of visa numbers is automatically removed from the Department's records. It is not necessary for the post to request that the Department delete such demand. However, if a previously reported applicant who has not been reached for an allocation dies or abandons the intent to immigrate, then the priority date, chargeability, category, and number of applicants should be reported with a request to delete the case from the allocation waiting list.
- b. **(U) Return of Unused Numbers:**
- (1) (U) Posts must return promptly to the Department any visa allocations (both preference and DV) that have not been used during the authorized month.

Preference and diversity numbers may be returned on the same Report 22. The Report 22 must be dispatched no later than the fifth calendar day of each month. (See paragraph c below regarding return of numbers used for issuance of visas that were not subsequently used for admission to the United States.)

(2) **(U) Sample Report 22 - Monthly Returns of Unused Visa Numbers:**



Report 22 - Returned Visa Authorizations
For Authorization Month: MAY 2008

Post: NPL
Requested By: IVFS0

Date/Time Prepared: 10-JUL-2008 16:33

Chargeable Foreign State	Pref. Class	Number of Authorizations
ALB	DV	1
COL	F2B	1
ECUA	F1	1
ERI	DV	2
ETH	F2B	1
	F4	1
GHAN	F4	2
GRBR	E3	1
IND	F4	5
IRAN	E3	3
	F1	1
	F2B	4
	F3	6
	F4	37
	FX	1
ITLY	DV	27
	E3	4
	F1	3
	F2B	2
	F4	10
MLTA	DV	8
NRA	E3	2
PHIL	E3	1
PKST	F4	1
ROM	DV	2
	E3	2
SBA	DV	2
SENG	DV	2
UZB	DV	2
Total:		135

- c. **(U) Recaptured Visas:** A recaptured visa is a visa that is known to have not been used (e.g., the bearer died or was unable to travel during the validity period). Such visas should be recaptured and the visa number returned to the Department unless the same applicant wants to replace his or her visa during the same fiscal year. (See [9 FAM 504.10-5](#).)

- (1) **(U) Importance of Prompt Return:** Posts must return recaptured numbers to the Department (CA/VO/DO/I) as soon as they have been recaptured. A visa number returned during the fiscal year of original issuance may be reallocated by the Department during the same fiscal year. It is essential that

visa numbers recaptured near the end of a fiscal year be returned as promptly as possible so that they may be used elsewhere before the end of the fiscal year.

- (2) **(U) "VISAS GIRAFFE" Format:** Posts must return recaptured visa numbers by email using the subject line: "GIRAFFE - *Recaptured Visa Numbers*." This is designed to preclude any possible confusion of these returns with returns of other unused visa numbers. The issuance date (month and year), foreign state or dependent area of chargeability, preference category, and quantity of the allotted number being returned should also be indicated. (See [9 FAM 604.2-3\(B\)](#) for "VISAS GIRAFFE" format.) Posts should make a notation of the recapture and return in their records.
- (3) **(U) "Recaptured" Immediate Relative Visa:** Immediate relative visas are not subject to numerical limit, and therefore no visa numbers are allocated or used for immediate relative visa issuances. Under the terms of the INA as revised by the Immigration Act of 1990, however, each year's total of immediate relatives must be considered when the Department calculates the family preference numerical limit for the following year. Thus, it is important for the Department to know when immediate relative visas are unused by the recipients so that such visas will not be counted in determining the family preference limit. Posts are asked to report such "recaptured" immediate relative visas to CA/VO/DO/I in the same manner as recaptured visa numbers; they should be identified as "Recaptured Immediate Relative Visa(s)," and the month and year of visa issuance should be indicated.
- d. **(U) Significant Factors Affecting Visa Work:** Posts should explain by memorandum any significant factors or unusual circumstances that affect the visa operation, such as changes in the volume or characteristics of demand, and must describe the nature and extent of any backlogs, the reasons for this, actions taken by the post to correct known deficiencies, and any other information the Department might find useful or the post believes needs to be amplified.
- e. **(U) Annual Report of IV Applicants Subject to Numerical Limitations:** The Annual Report of Immigrant Visa Applicants Subject to Numerical Limitations (Report 29 in the automated system) is no longer required unless specifically requested by the Department, in which case instructions will be provided.

9 FAM 504.3-3 (U) CHANGE OF FOREIGN-STATE CHARGEABILITY

9 FAM 504.3-3(A) (U) When Post Action is Required

(CT:VISA-325; 04-07-2017)

(U) NVC checks every petition to determine whether the applicant may benefit from the foreign-state chargeability of the spouse under INA 202(b) (see [9 FAM 503.2-4\(A\)](#)). In some cases, however, such as when the applicant provides new

information to post during the application process, it may be necessary to correct foreign-state chargeability, update IVO records as well as the DS-230, and request new IV numbers. (See [9 FAM 503.2-4](#) for a description of the exceptions to the rule of chargeability.)

9 FAM 504.3-3(B) (U) Change of Foreign-State Chargeability (FSC) Process

(CT:VISA-171; 09-06-2016)

a. (U) Update IVO:

- (1) **(U) Case Record:** The applicant's case record in IVO will need to be updated to reflect the applicant's new FSC. This includes changing the FSC on the "applicant tab" as well as updating the "visa info" under "annotations" to reflect the basis for the change.
- (2) **(U) Visa Number Allocation:**
 - (a) **(U)** In the event that post has sufficient numbers in the relevant category and FSC, a number can be allocated to the applicant.
 - (b) **(U)** If a visa number has not been allocated, a "VISAS FROG" message requesting a number will need to be sent if you intend to issue within that month. (See [9 FAM 504.3-2\(B\)](#) for directions on how to prepare a "VISAS FROG.")
- (3) **(U) Annotate Visa:** If the applicant's case record is updated correctly as described above, the visa will be annotated automatically to indicate the bases for the change of FSC. In the circumstances described in paragraph b below, however, in which the principal applicant derives a more favorable FSC from their spouse, the visas must be annotated to also state that the visa is valid only if accompanied by the spouse.

- b. (U) When Simultaneous Issuance of Visas is Required:** When one IV applicant can confer a more favorable preference status upon another at the same time the other IV applicant can confer a more favorable foreign state chargeability, both applicants may be considered principal aliens. In such cases, both applicants must be admitted to the United States simultaneously. Therefore, you must issue the visas simultaneously to both applicants since neither party is allowed to precede the other spouse and both spouses must apply together for admission into the United States. For example, if the principal applicant was born in India and the accompanying spouse in France, the principal applicant born in India may be charged to his spouse's country of chargeability (France) if the priority date is not current for India. (See [9 FAM 503.2-4\(A\)](#).)

9 FAM 504.4

(U) PRE-APPOINTMENT PROCESSING

(CT:VISA-359; 05-02-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 504.4-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 504.4-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 101(a)(33) (8 U.S.C. 1101(a)(33)); INA 201 (8 U.S.C. 1151), INA 202(a) (8 U.S.C. 1152(b)); INA 202(b) (8 U.S.C. 1152(b)); INA 203(e) (8 U.S.C. 1153(e)); INA 203(f) (8 U.S.C. 1153(f)); INA 204 (8 U.S.C. 1154); INA 221(d) (8 U.S.C. 1201(d)); INA 222(a) (8 U.S.C. 1202(a)); INA 222(b) (8 U.S.C. 1202(b)).

9 FAM 504.4-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 42.41; 22 CFR 42.52; 22 CFR 42.55; 22 CFR 42.61; 22 CFR 42.63; 22 CFR 42.64; 22 CFR 42.65; 22 CFR 42.66.

9 FAM 504.4-1(C) (U) Public Law

(CT:VISA-1; 11-18-2015)

(U) Omnibus Consolidated Appropriations Act, 1997, Public Law 104-208.

9 FAM 504.4-2 (U) INSTRUCTION PACKAGE FOR IMMIGRANT VISA APPLICANTS

9 FAM 504.4-2(A) (U) The Packet System

9 FAM 504.4-2(A)(1) (U) Importance of Standard Procedures

(CT:VISA-359; 05-02-2017)

- a. **(U)** Consistency and standardization are important to the immigrant visa (IV) process. In the past, the Department used standardized mailings in the IV process, known as the packet system. More recently, electronic resources have provided the

ability to address a wider range of questions.

- b. **(U)** Remember that the IV process remains confusing to many applicants, especially those who do not have regular access to the Internet.
- c. **(U)** Upon receipt of an approved petition granting an alien immediate relative or preference status, the National Visa Center (NVC) must send the alien beneficiary the *NVC Welcome Letter* (formerly Packet 3) or "Notice of Registration as an Intending Immigrant" letter (formerly Packet 3A) notifying the beneficiary of receipt of the petition and advising the alien what steps, if any, to take in applying for a visa. (See [9 FAM 504.4-2\(B\)](#)).

9 FAM 504.4-2(A)(2) (U) General Guidelines

(CT:VISA-359; 05-02-2017)

a. (U) Inquiries Regarding Immigration:

- (1) **(U)** The following standardized mailings are no longer used:
 - (a) **(U)** Packet 1;
 - (b) **(U)** Packet 2; and
 - (c) **(U)** Packet 2a
- (2) **(U)** Respond to general inquiries regarding immigration by sending the appropriate information sheets. This includes questions about:
 - (a) **(U)** General immigration to the United States;
 - (b) **(U)** Specific family-based immigration programs; and
 - (c) **(U)** Specific employment-based immigration programs.
- (3) **(U)** Do not retain any record of incoming inquiries on these topics in post correspondence files; and
- (4) **(U)** Do not retain any record of response to these topics in post correspondence files.

b. (U) Packets for Immigrant Visa Processing: There are three standard IV instruction packets:

- (1) **(U)** *NVC Welcome Letter* (previously known as Packet 3). The *NVC Welcome Letter* that NVC provides (generated by the Immigrant Visa Information System (IVIS)) informs the agent to go to the Internet for additional information on what actions are needed next;
- (2) **(U)** Appointment Package for Immigrant Visa Applicants (previously known as Packet 4); and
- (3) **(U)** Follow-Up Instruction Package for Immigrant Visa Applicants (previously known as Packet 4a).

c. (U) Combining Packets:

- (1) **(U)** When combining packets, you must strictly observe the regulations

defining:

- (a) **(U)** entitled to immigrant classification;
 - (b) **(U)** documentarily qualified; and
 - (c) **(U)** priority date.
- (2) **(U)** Use common sense when considering special situations. [9 FAM 504.4-2\(B\)](#) and (C) below as well as [9 FAM 503.3-2](#) contain additional guidance.

(U) For example, if you know that the intending immigrant is the spouse of a U.S. citizen. In this case, you should provide any information requested by the applicant or his or her agent(s). In this situation, you must be careful to remind inquirers of the importance of pursuing the IV process in a timely manner to avoid expired documentation.

9 FAM 504.4-2(B) (U) Instruction Package for Immigrant Visa Applicants From NVC

(CT:VISA-359; 05-02-2017)

- a. **(U)** Upon receipt of an approved petition granting an alien immediate relative or preference status, the National Visa Center (NVC) must send the alien beneficiary the *NVC Welcome Letter* (formerly Packet 3) or "Notice of Registration as an Intending Immigrant" letter (formerly Packet 3A) notifying the beneficiary of receipt of the petition and advising the alien what steps, if any, to take in applying for a visa. (See paragraph f below.)
- b. **(U) Beneficiaries of Orphan Petitions:** USCIS will *send approved* immigrant petitions for orphans and approval of Form I-600-A, Application for Advance Processing of Orphan Petition. *to NVC. NVC will scan the approved petitions and forward them electronically to the receiving IV post.* (See [9 FAM 502.3-3\(C\)](#)) for additional information on processing orphan visas.)
- c. **(U)** Once an agent has been designated or when the *Form DS-261* is not required (see [9 FAM 504.4-3\(A\)\(1\)](#) below), *NVC populates* the IV application fee bill for each applicant to the designated agent.
 - (1) **(U)** The IV fee bill letter instructs the applicant how and where to pay the IV fee bill.
 - (2) **(U)** If the IV fee is paid by mail, NVC will mail the Instruction Package for Immigrant Visa Applicants to the designated agent.
 - (3) **(U)** If the IV fee(s) are paid online, the agent will be provided with information online once the fee payment has been confirmed. No mailing is necessary.
 - (4) **(U)** Both the physical and online instructions inform the agent to complete Form DS-260, Online Application for Immigrant Visa and Alien Registration.
- d. **(U)** NVC is responsible for the dispatch of virtually all instruction packets. *The NVC Welcome Letter* (formerly known as Packet 3) is described below.

- e. **(U)** It is vitally important to promptly mail or otherwise provide the instruction package for immigrant visa applicants to applicants who are:
 - (1) **(U)** Entitled to immigrant status; and
 - (2) **(U)** Whose priority dates are within the Dates for Filing Applications established by the Department.
 - (3) **(U)** Whenever it is not possible to provide the instruction package in a timely manner, the post or NVC must submit a report, by memorandum, to the Department outlining the reasons it is unable to do so.
- f. **(U)** The process taken at NVC for qualifying a case and scheduling an interview is described in [9 FAM 504.4-5\(B\)\(1\)](#).
- g. **(U)** When an alien's priority date is earlier than the Dates for Filing Applications established by the Department and published in the monthly Visa Bulletin (see [9 FAM 503.4-3\(A\)\(3\)](#)), and if it is not necessary to have a labor certification revalidated, the automated system will generate a cover letter to be mailed to the applicant or his or her agent with the appropriate information sheets and forms for further processing. It is important that posts actually mail the information package as soon as possible after printing. If the applicant is classifiable in more than one category, only the record for each classification in which the applicant's priority date is earlier than the Dates for Filing Applications can be annotated in the automated system. Ensure that the comments feature in any other cases is updated to reflect actions taken.

9 FAM 504.4-2(C) (U) Instruction Package for Immigrant Visa Applicants From Post

(CT:VISA-359; 05-02-2017)

- a. **(U) The Instruction Package for Immigrant Visa (IV) Applicants From Post Consists of:**
 - (1) **(U)** The cover letter for the instruction package (generated by the IVO system);
 - (2) **(U)** Form DS-2001, Notification of Applicant Readiness;
 - (3) **(U)** Form I-864, Affidavit of Support Under Section 213A of the Act, and instructions, or Form I-134, Affidavit of Support, as appropriate;
 - (4) **(U)** Instructions for accessing Form DS-260, Online Application for Immigrant Visa and Alien Registration; and
 - (5) **(U)** Supplemental information sheets, as appropriate, on police certificate and civil document availability by country.
- b. **(U)** You may also include a local nonstandard form covering other post-specific matters not covered by material above.
- c. **(U)** For petitions filed at post, you must send the instruction package for IV applicants immediately to applicants, including immediate relatives, who have

provided evidence of entitlement to immigrant classification. Verify that the applicant's priority date (if subject to a numerical limitation) is within the Dates for Filing Applications established by the Department. Evidence of entitlement to immigrant classification includes:

- (1) **(U)** Form I-797, Notice of Action;
 - (2) **(U)** A petition approved at post;
 - (3) **(U)** Proof of derivative status; or
 - (4) **(U)** Proof of entitlement to returning resident status.
- d. **(U)** Provide the Instruction Package to immigrant visa applicants and others upon request, regardless of whether the inquirer is entitled to immigrant classification, stressing that they should take no action unless directed by NVC, a visa processing post, or their agent.
- e. **(U)** An applicant is registered for immigration to the United States upon the execution of the Form DS-260, Online Application for Immigrant Visa and Alien Registration, and the payment of the prescribed fee.
- f. **(U) Upon Electronic Submission of Form DS-260, Online Application for Immigrant Visa and Alien Registration:**
- (1) **(U)** Initiate all appropriate clearances called for in [9 FAM 303](#) and [9 FAM 304](#);
 - (2) **(U)** Send additional instructions for accessing Form DS-260 to any derivative applicants along with the interview appointment letter and medical forms. (See [9 FAM 504.4-3\(A\)\(2\)](#)); and
 - (3) **(U)** Also, see [9 FAM 504.4-5\(A\)\(1\)](#) for additional discussion of determination that an applicant is documentarily qualified.

9 FAM 504.4-2(D) (U) Immigrant Visa (IV) Appointment Package

(CT:VISA-1; 11-18-2015)

- a. **(U)** The Immigrant Visa Appointment Package provides instructions for IV applicants to make formal application for an immigrant visa:
- (1) **(U)** This letter is generated automatically by IVO or by IVIS; and
 - (2) **(U)** The instructions in this letter and the links that it provides advise applicants about preparations for the medical examination, obtaining original documentation, providing photographs, and reviewing visa guidelines.
- b. **(U)** Post or NVC must send the Immigrant Visa Appointment Letter to aliens who are documentarily qualified and for whom an appointment has been scheduled. Do not schedule appointments for applicants chargeable to a numerical limitation prior to receipt of allocations of visa numbers from the Department.

9 FAM 504.4-2(E) (U) Records Updated to Reflect

Information Provided

(CT:VISA-359; 05-02-2017)

- a. **(U)** If provided by post, the automated Immigrant Visa Overseas (IVO) system will automatically record the date that post prints the Instruction Package for Immigrant Visa Applicants cover letter:
 - (1) **(U)** Provide this letter and attachments as soon as possible after printing; and
 - (2) **(U)** If you provide later copies of the Instruction Package for Immigrant Visa Applicants to the applicant, make a record in the comments field of IVO to reflect this fact.
- b. **(U)** The IVIS system used at NVC will also record the date the Instruction Package for Immigrant Visa Applicants is printed or downloaded from the Internet after the IV fees are paid (see [9 FAM 504.4-2\(A\)](#) and [9 FAM 504.6-5\(B\)](#)).

9 FAM 504.4-3 (U) STANDARD AND NONSTANDARD FORMS

9 FAM 504.4-3(A) (U) Standard Forms

9 FAM 504.4-3(A)(1) (U) Form DS-261, Online Choice of Address and Agent for Immigrant Visa Applicants

(CT:VISA-359; 05-02-2017)

- a. **(U)** This form *allows* the principal applicant to designate an agent for his or her case.
- b. **(U)** "Agent" means the person who will receive mailings from NVC:
 - (1) **(U)** The agent may be the petitioner, an attorney, a friend, or a nongovernmental or community-based organization;
 - (2) **(U)** The agent cannot sign documents on behalf of the applicant;
 - (3) **(U)** The agent can assist with fee payments and document collection; and
 - (4) **(U)** The principal applicant may choose to designate him or herself as the agent.
- c. **(U)** NVC holds the file until the principal applicant signs and submits Form DS-261. If there is no contact with NVC within one year and a visa number is available, the NVC will begin the case termination process. (See [9 FAM 504.13-2\(D\)](#) for further details.)
- d. **(U)** No Form DS-261, Online Choice of Address and Agent, is required if:
 - (1) **(U)** The alien is self-petitioning; or
 - (2) **(U)** An alien is a child and is being adopted.

- (3) **(U)** NVC receives the petition from USCIS with a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, on file
- e. **(U)** When NVC sends instructions for accessing Form DS-261, Online Choice of Address and Agent, to the applicant, NVC also will send an Affidavit of Support (AOS) fee bill to the petitioner for some visa classifications. When cases become active, the initial *NVC Welcome Letter* (see [9 FAM 504.2-2\(E\)](#)) includes the following additional items:
- (1) **(U)** The AOS fee bill;
 - (2) **(U)** Instructions describing how and where to pay the fee; and
 - (3) **(U)** Instructions for accessing Form DS-261.
- f. **(U)** NVC also notifies the petitioner that no further action can be taken until the fee is paid. Upon payment of the fee, the petitioner is instructed to complete the AOS form and return it to NVC.
- (1) **(U)** If the AOS fee is paid by mail, NVC mails the Petitioner Packet instructions to the petitioner, which directs them to the online processing instructions.
 - (2) **(U)** If the AOS fee is paid online, the agent is provided with this information online once the fee payment has been confirmed. No mailing is necessary.
 - (3) **(U)** The information provided in either case instructs the petitioner to complete one of the Affidavit of Support (AOS) Forms (I-864 Affidavit of Support Under Section 213A of the Act, I-864EZ, Affidavit of Support Under Section 213A of the Act or I-864W, Intending Immigrant's Affidavit of Support Exemption) and return it to NVC.

9 FAM 504.4-3(A)(2) (U) Application Forms

(CT:VISA-1; 11-18-2015)

- a. **(U)** The only questionnaire-type form that may be used under standard procedures is Form DS-260, Online Application for Immigrant Visa and Alien Registration. Any nonstandard form, letter, or information sheet that a post believes is necessary because of an unusual local situation must be submitted to the appropriate post liaison officer in the Immigration and Employment Division (CA/VO/F/IE), for consideration, and may not be used without advance approval. (See [9 FAM 504.4-3\(B\)](#).) The Paperwork Reduction Act requires Office of Management and Budget (OMB) approval before a U.S. Government agency may employ a new form to collect information. This requirement includes forms for local use by overseas consular sections. This form cannot be submitted in any language other than English.
- b. **(U) Importance of U.S. Address:** Department of Homeland Security (DHS) uses the address stated on Form DS-260, Online Application for Immigrant Visa and Alien Registration, as the alien's final destination to mail the Form I-551, Permanent Resident Card (machine-readable green card), to the visa recipient. It is important, therefore, that the alien furnish as complete an address as possible,

including ZIP code. The alien may use the address of a prospective employer if there are no friends or relatives to whom Form I-551 may be forwarded.

9 FAM 504.4-3(A)(3) (U) Medical Screening Forms

(CT:VISA-359; 05-02-2017)

(U) The required medical screening forms listed in [9 FAM 302.2-3\(F\)\(2\)](#) are available in e-Forms. Make hard copies of the forms locally using post funds.

9 FAM 504.4-3(B) (U) Post-Specific Information Sheets and Forms

(CT:VISA-359; 05-02-2017)

- a. **(U)** You may prepare an additional information sheet containing post-specific information. Keep this information sheet as short as possible and make it available through post's Internet site and in hard copy. Provide an electronic copy of all post-specific information sheets to the Immigration and Employment Division (CA/VO/F/IE). Although you are not required to seek advanced approval for nonstandard information sheets, note that the Visa Office NVC may require coordination and consolidation of information sheets in the interest of management efficiency.
- b. **(U)** Do not translate forms used in the immigrant visa process into the local language. You may prepare a local language information sheet explaining the forms.

9 FAM 504.4-4 (U) SUPPORTING DOCUMENTS

9 FAM 504.4-4(A) (U) Basic Document Requirements

(CT:VISA-359; 05-02-2017)

- a. **(U)** INA 222(b) requires that an applicant applying for an immigrant visa (IV) submit the following documentation, if available:
 - (1) **(U)** A valid unexpired passport or other suitable travel document (see 22 CFR 42.2 for the detailed listing of categories of immigrants not required to present a passport in applying for an immigrant visa (IV). See [9 FAM 201.2](#) for information on waiver of the IV passport requirement.)
 - (2) **(U)** A copy of the police certificate for the country of nationality and country of the alien's residence at the time of visa application if the applicant has resided there for six months or more;
 - (3) **(U)** A copy of police certificates for any other country in which the applicant has resided for one year or more;
 - (4) **(U)** Certified copies of prison records, if applicable;

- (5) **(U)** Certified copies of military records; if applicable;
 - (6) **(U)** A certified copy of the birth record;
 - (7) **(U)** Other documents establishing relationship to spouse or children, if applicable; and
 - (8) **(U)** Records or documents pertinent to the applicant's identity or visa classification with respect to visa eligibility.
- b. **(U) Availability of Supporting Documents:** For information regarding the availability of documents, (see Visa Reciprocity and Country Documents Finder for the country concerned).
- c. **(U) Validity of Supporting Documents and Form DS-260, Electronic Application for Immigrant Visa and Alien Registration:** Supporting documents that are subject to change are valid for one year. This time limitation applies to Form DS-260, Online Application for Immigrant Visa and Alien Registration, which is valid for one year from the date of the biometric oath. It also applies to medical examinations, and police certificates from any country visited or inhabited subsequent to the previous clearances. It does not apply to a birth certificate or a third country clearance or police certificates from an area to which the alien has not returned since its issuance. The affidavit of support (AOS) remains valid indefinitely. However, because the AOS is based on the Federal Poverty Guidelines in effect at the time of the visa issuance, *you have the discretion to ask for updated tax information, but should only do so if you have concerns the sponsor no longer meets the poverty guidelines. See also 8 CFR 213a.2(a)(1)(v)(B).*

9 FAM 504.4-4(B) (U) Police Certificates

(CT:VISA-359; 05-02-2017)

- a. **(U) Police Certificate From Country of Current Residence or Country of Nationality:** An applicant 16 or older must present a police certificate, if obtainable, from his or her country of current residence, if residence exceeds six months. Such an applicant must also present a police certificate, if obtainable, from his or her country of nationality, if different from the country of current residence and if residence in the country of nationality exceeds six months. (See Visa Reciprocity and Country Documents Finder for availability of police certificates for individual countries.)
- b. **(U) Police Certificate From Country of Previous Residence:** Police certificates are required from any countries of previous residence in which an applicant has lived for one year or more since attaining the age of 16. If an applicant has presented a comprehensive police certificate fully meeting the requirements of 22 CFR 42.65(c) from the applicant's country of principal residence, you need not require a police certificate from other places of former residence, provided the applicant presents other satisfactory evidence of good conduct. For example, it has

been held that proof of membership in or affiliation with a reputable religious organization in a religious capacity during periods of foreign residence may be accepted as such evidence. However, if you have reason to believe that a police or criminal record which would render the alien ineligible to receive a visa might exist in the foreign country you must require the alien to obtain the police certificate. If the police certificate is not obtainable from the local authorities, the alien must present other convincing evidence that he is not ineligible to receive a visa. (*See Visa Reciprocity and Country Documents Finder for availability of police certificates for individual countries.*)

- c. **(U) Police Certificates From Countries Where the Applicant Has Been Arrested:** If the applicant has ever been arrested, a police certificate from the country where the arrest took place should be provided, if obtainable.
- d. **Unavailable**
- e. **(U) Reporting Availability of Police Certificates to the Department:** Consular officers should periodically discuss with the host government the availability and quality of police clearance information, as well as the procedures to be followed for visa applicants to obtain clearances both within and outside the country. Posts should provide information concerning the degree of automation and centralization of records, as well as any purge procedures followed by the host country. Posts should also determine how criminal records are indexed in their nation. The use of a unique national identification number as opposed to nonstandard spellings of names is also significant. Posts should provide background to the Department's Immigration and Employment Division (CA/VO/F/IE), as well as draft language for inclusion in the Reciprocity Schedule. Posts should clear information among all Department of State consular operations within their country and with the regional security officers (RSOs) and coordinate with like-minded foreign embassies as appropriate.

9 FAM 504.4-4(C) (U) Military Record

(CT:VISA-1; 11-18-2015)

(U) Military records must contain a complete record of the applicant's service and conduct while in the service. The record must show any convictions of crime before military tribunals. (See Visa Reciprocity and Country Documents Finder to determine availability of military records.)

- (1) **(U) Member of Armed Forces Applying Outside Own Country:** In any case involving a member of the armed forces of a foreign country who applies for an immigrant visa (IV) outside his or her own country, consider the alien's military record unobtainable under 22 CFR 42.65(d) if the applicant's government refuses to furnish certified copies.
- (2) **(U) Member of Armed Forces Applying in Own Country:** When a member of the armed forces of a foreign country applies for an IV in his or her own country and the government refuses to furnish the applicant's military records, you will defer final action on the application in view of the possible foreign

relations implications. Direct an informal inquiry to the local authorities to determine their position. Depending on the response of the local authorities and actions they may take, you will decide whether to proceed with the consideration of the visa application. If, within a reasonable time after notification, the local authorities do not take appropriate action to prevent the alien's departure, you will proceed with the consideration of the visa application. However, if political sensitivities become evident, you will consult with individuals at appropriate levels of the consular post or embassy concerning the matter. Consult the Department as necessary.

9 FAM 504.4-4(D) (U) Documents Required for Spouse or Children Not Accompanying Alien

(CT:VISA-1; 11-18-2015)

(U) In addition to the personal documentation required of an applicant, a principal alien is also required to submit documentation establishing the relationship between such principal, the spouse, and all children, including those who will not accompany the principal applicant. If a male principal applicant has an illegitimate offspring who meets the definition of child in INA 101(b)(1)(D) (8 U.S.C. 1101(b)(1)(D)), as amended, require documentation for that child.

9 FAM 504.4-4(E) (U) Affidavits of Support

(CT:VISA-1; 11-18-2015)

- a. **(U)** For cases in which INA 213A applies, all applicants must submit a properly completed Form I-864, Affidavit of Support Under Section 213A of the Act, and supporting documents (see [9 FAM 302.8-2\(B\)\(2\)](#)).
- b. **(U)** For cases in which INA 213A does not apply (for example, nonimmigrant visas such as K-1 fiancé(e) visas), applicants may submit Form I-134, Affidavit of Support, or may submit alternative forms of evidence to overcome the public charge provisions of the law.

9 FAM 504.4-4(F) (U) Unobtainable/Unreliable Documents

(CT:VISA-1; 11-18-2015)

a. (U) Unobtainable Documents:

- (1) **(U)** If a required document cannot be procured without causing the applicant or a family member actual hardship, other than normal delay or inconvenience, you may consider it unobtainable, and permit the applicant to submit other satisfactory evidence in lieu of such document or record, per 22 CFR 42.65(d). Use this authority sparingly.
- (2) **(U)** If you find that a required document is unobtainable, you must complete and sign Form FS-552, Certificate Regarding Documents Required by 22 CFR

42.65(b) Which Are Unobtainable, and attach to the Form FS-552 secondary evidence and/or a certificate from the appropriate authority, if obtainable, showing that in this particular case the missing document was never properly recorded.

- b. **(U) Unreliable Documents:** We recognize that some documents may be obtainable, but may also be unreliable either because of local corruption, or the ease with which such documents can be altered or counterfeited. It is, nevertheless, a legal requirement that the applicant present supporting civil and other documents specified in the application procedures if such documents are available. In some instances, you might detect an altered document that might trigger a revealing line of inquiry on the applicant's criminal record. For example, if you find the presentation of a fraudulent document was an effort to conceal a line of inquiry, which might have resulted in a proper denial of the visa, submit an advisory opinion (AO). On the other hand, if you can establish that presentation of the document clearly involved misrepresentation of an independent ground of ineligibility, the application should be immediately refused under INA 212(a)(6)(C)(i) (8 U.S.C. 1182(a)(6)(C)(i)). In this latter case do not submit an AO.
- c. **(U) Secondary Evidence in Lieu of Supporting Document:** INA 222(b) (8 U.S.C. 1202(b)) prescribes the documentation required of applicants. It will be rare that a document listed as available in Visa Reciprocity and Country Documents Finder is unobtainable. If, however, you are satisfied that a document is unobtainable, you must require substitute documentation or secondary evidence. 22 CFR 42.65(d)(2) requires the consular officer to affix a signed statement describing in detail the reasons for considering the record or document unobtainable and for accepting the particular secondary evidence attached to the visa. (See 22 CFR 42.65(d).) In these cases, the applicant must submit proof of the unavailability of the missing document; for example, a statement from the local authorities that records for the year in question were destroyed by fire, or proof of the attempts made to obtain the document. When accepting substitute documentation or secondary evidence, complete Form FS-552, Certificate Regarding Documents Required by 22 CFR 42.65(b) Which Are Unobtainable, upon which the officer will make the statement required by 22 CFR 42.65(d)(2) and attach the Form FS-552 to the visa.

9 FAM 504.4-5 (U) DOCUMENTARILY QUALIFIED

9 FAM 504.4-5(A) (U) Determining Alien Documentarily Qualified

9 FAM 504.4-5(A)(1) (U) Definition of Documentarily Qualified

(CT:VISA-359; 05-02-2017)

- a. **(U)** For petitions filed at post, an applicant is considered to be documentarily

qualified after completing the two following steps:

- (1) **(U)** The alien has returned Form DS-2001, Notification of Applicant Readiness, and declared that he or she has obtained all of the required documents, or has otherwise notified post that he or she is prepared for interview; and
 - (2) **(U)** Post has completed all required clearance procedures, or has reason to believe that they will be completed before a visa number will be available for the applicant. (See [9 FAM 504.4-5\(A\)\(3\)](#) below regarding the reporting of documentarily-qualified applicants.)
 - (3) **(U)** When you are notified during the reporting period that an applicant is documentarily qualified, update IVO as soon as possible. (See [9 FAM 503.4-3\(A\)](#).)
- b. **(U)** For petitions processed through NVC, *the requirements for an applicant to be considered documentarily qualified differ between minimally and fully qualified posts. See [9 FAM 504.4-5\(B\)\(2\)](#) for minimally and fully qualified post requirements.*

9 FAM 504.4-5(A)(2) (U) Use of Form DS-2001, Notification of Applicant Readiness, Optional

(CT:VISA-1; 11-18-2015)

- a. **(U)** The use of Form DS-2001, Notification of Applicant Readiness, by the applicant is optional:
- (1) **(U)** This form is provided as a simple way for applicants to communicate with post by mail or fax;
 - (2) **(U)** Accept any reasonable notification from the applicant, signed or unsigned, in determining qualification for further processing;
 - (3) **(U)** Electronic means of notification are equally acceptable; and
 - (4) **(U)** Consider cases received from NVC that are not classified as expedited cases to have received notice of the applicant's readiness.
- b. **(U)** NVC does not collect or use Form DS-2001, Notification of Applicant Readiness, as part of the qualification process. Please refer to [9 FAM 504.4-5\(B\)\(1\)](#) below for more information.

9 FAM 504.4-5(A)(3) (U) When an Alien Has Required Documents

(CT:VISA-1; 11-18-2015)

- a. **(U)** When an applicant notifies you that he or she is prepared to present the required documents, enter the date into IVO to indicate that the applicant is documentarily qualified (see [9 FAM 504.4-5\(A\)\(1\)](#) above for discussion of the concept of "documentarily qualified").

- b. **(U)** Include the priority dates of all applicants who have become documentarily qualified since the previous report in the post's monthly report of documentarily qualified demand. (See [9 FAM 504.3-2\(A\)](#).) This is automatically done when post generates Report 20, Monthly Report of Documentarily Qualified Immigrant Visa Demand, in IVO.

9 FAM 504.4-5(B) (U) National Visa Center (NVC) Document Review, Support and Scheduling

9 FAM 504.4-5(B)(1) (U) Pre-Appointment Processing

(CT:VISA-359; 05-02-2017)

- a. **(U)** NVC *collects and* reviews *required* documents and schedules IV appointments, it will instruct the agent or applicant to return completed forms after paying the processing fees for visa application.
- (1) **(U)** This process is called "appointment post processing."
 - (2) **(U)** When the file is complete, NVC will schedule an appointment *at an overseas* consular *post* and send the IV appointment letter to every valid email address associated with the case record; (physical letters are only sent *if* a valid email address has not been provided). NVC will then forward the case file and electronic record to the post. NVC will work directly with posts to ensure that posts' scheduling preferences are implemented.
 - (3) **(U)** NVC performs the appointment post processing for all IV issuing posts (for *immigrant visas* being processed in *Baghdad, Iraq*; NVC will collect all the documents but not schedule the visa interview).
- b. **(U) NVC Will Review the Following Forms (When Applicable) for Each Case File:**
- (1) **(U)** Form DS-261, Online Choice of Address and Agent;
 - (2) (U)** Form DS-260, Online Application for Immigrant Visa and Alien Registration;
 - (3) **(U)** Form I-864, Affidavit of Support Under Section 213A of the Act; and
 - (4) **(U)** Civil documents, *financial supporting documents*, and police certificates.
- c. **(U) Depending on the Post, NVC Will Follow One of Two Possible Paths:**
- (1) **(U)** Collect photocopied versions of paper documents and forms by mail, *including* Affidavit of Support forms, which petitioners will still submit to NVC for initial evaluation; or
 - (2) **(U) Collect Documents and Forms Electronically:**
 - (a) **(U)** In electronic (paperless) processing, the petitioner and agent email scanned images of the forms and documents to a designated email box at NVC;

- (b) **(U)** NVC will scan the original petition and documentation provided by USCIS;
- (c) **(U)** NVC will review the documentation for accuracy and attach the images provided by the petitioner and agent to the scanned file;
- (d) **(U)** The appointment letter contains explicit instructions explaining that the applicant must bring *original* documents and forms to the visa interview; and
- (e) **(U)** Post will have access to the information once the case has been scheduled for a visa interview. The electronic record will also be made available for downloading into IVO.

9 FAM 504.4-5(B)(2) (U) Incomplete Cases or Cases Lacking Documentation

(CT:VISA-359; 05-02-2017)

- a. **(U)** If the case file is incomplete or lacks proper documentation, NVC will send a checklist to the petitioner or agent indicating what changes are needed. The petitioner or agent will be told to return the required information to NVC.
- b. **(U)** After two reviews by NVC, the file will be scheduled for an interview, even if it still contains errors or omissions, provided that at a minimum:
 - (1) **(U)** *All required fees are paid;*
 - (2) **(U)** The petitioner has submitted a signed Form I-864, Affidavit of Support Under Section 213A of the Act;
 - (3) **(U)** All traveling applicants have completed Form DS-260, Online Application for Immigrant Visa and Alien Registration; and
 - (4) **(U)** All required police certificates have been provided.

Note: If *a Form I-864W is required and the form is not submitted to NVC to perform an initial review for clerical completeness. NVC will send an assessment letter, instructing the visa applicant to present a signed Form I-864W to the consular officer during the visa interview. The assessment letter is included in the case file for the consular officer's awareness, and the case will be scheduled for an interview.*

- c. **(U)** *If Form I-864 has non-critical errors, omissions, or the case lacks supporting financial documentation, NVC will send an Assessment Letter to the petitioner or agent with a list of potential errors, instructing the visa applicant to present a revised Form I-864 and the required information to the consular officer during the visa interview. The assessment letter is included in the case file for the consular officer's awareness.*
- d. **(U)** If the petitioner or agent does not return the documents within one year and a visa is available, NVC will initiate the administrative process for post to begin case termination.

- e. **(U)** Under specific circumstances approved by VO, NVC will not schedule a visa interview until all requested documentation has been provided. NVC refers to this as the Fully Qualified process.
- f. **(U)** A case that is required to be Fully Qualified will be reviewed for the following:
 - (1) **(U)** All required fees are paid;
 - (2) **(U)** All AOS forms are submitted and void of critical errors;
 - (3) **(U)** All Immigrant Visa Application forms are received and void of critical errors;
 - (4) **(U)** All civil documents are received and meet the guidelines in the Visa Reciprocity and Country Documents Finder;
 - (5) **(U)** Any required supporting financial evidence from all sponsors is received; and
 - (6) **(U)** The only exception to these rules is if an applicant informs NVC they are unable to obtain certain civil documents.
- g. **(U)** For cases that are required to be Fully Qualified, there is no limit to the number of requests for information that are sent. NVC will continue to send requests for information until all necessary fees, forms, and documents are received and accurate.

9 FAM 504.4-5(C) (U) Post Document Review, Support, and Scheduling

9 FAM 504.4-5(C)(1) (U) Need for Standard Operating Procedures (SOP)

(CT:VISA-1; 11-18-2015)

- a. **(U) Standard Procedures and Forms Have Been Developed and Installed at All Posts to:**
 - (1) **(U)** Ensure uniformity in explaining the requirements of the law to visa applicants;
 - (2) **(U)** Reduce individual correspondence and possible misunderstandings arising there from; and
 - (3) **(U)** Eliminate needless files and record-keeping by requiring applicants to retain their personal documents until the final step in the processing of the case is reached.
- b. **(U) Document Review Systems Ask Applicants to Obtain Documents Required for Immigrant Visa (IV) Interview and Then Submit Them by Mail, Courier, or Drop Box to Post for Review:**
 - (1) **(U)** If at all possible, applicants should not appear in person with these documents until actually scheduled for interview; and

- (2) **(U)** Under such a procedure, applicants are considered "documentarily qualified" only when they have demonstrated that they have in their possession all of the documents required.
- c. **(U)** It is important in such a prescreening procedure that detailed standard operating procedures (SOPs) provide guidance to Locally Employed Staff (LE Staff) screeners to limit misunderstandings and accusations of impropriety. Specifically, the SOP must provide:
- (1) **(U)** Written standards for documents submitted;
 - (2) **(U)** Escalation procedures in cases when, despite repeated appearances at the consular section, the applicant remains unprepared;
 - (3) **(U)** Procedures for handling multiple secondary documents submitted in lieu of requested primary documents;
 - (4) **(U)** Procedures for documenting contacts with applicants or their agents as the documents are submitted and reviewed. These logging procedures should be as terse as meaningfully possible and should utilize the comments feature in the IVO system; and
 - (5) **(U)** Provisions for regular officer oversight of the process, including regular detailed audits of individual cases and questions to applicants at time of interview concerning their experience with the prescreening process.

9 FAM 504.4-5(C)(2) (U) Flexibility in Determining Whether Applicant Is Documentarily Qualified

(CT:VISA-359; 05-02-2017)

- a. **(U) Means of Establishing Whether Applicant Is "Documentarily Qualified" for Cases Where Petitions Were Filed at Post:** The concept of documentarily qualified is important in IV processing, particularly in numerically controlled visa categories. Documentarily qualified means that the alien has returned Form DS-2001, Notification of Applicant Readiness, or has otherwise informed post or NVC that all required documents have been obtained, and that all clearance procedures have been completed. Different operating environments may call for flexibility in processes used to determine whether an applicant meets this standard, but any process used to determine that an applicant is documentarily qualified must:
- (1) **(U)** Be used consistently throughout the IV processing district;
 - (2) **(U)** Have the prior approval of the Visa Office (VO) if prescreening procedures will be used; and
 - (3) **(U)** Be rigorously monitored for compliance with the goals of fairness, efficiency and adequate internal controls.
- b. **(U) Individual Declaration Versus Prescreening for Cases Where Petitions Were Filed at Post:**
- (1) **(U)** In many countries, you may determine that self-attestation by visa

applicants is adequate evidence of being documentarily qualified for cases where the petitions were filed at post. In other words, by returning Form DS-2001, Notification of Applicant Readiness, its electronic equivalent, or other communication with post, the applicant may declare that he or she is documentarily qualified and prepared for interview. When you are notified during the reporting period that an applicant is documentarily qualified, update IVO as soon as possible.

- (2) **(U)** In other countries, you may determine that a prescreening mechanism of some sort is appropriate to verify that an applicant is documentarily qualified. In considering the implementation of a prescreening mechanism, consular managers should address the following questions:
- (a) **(U)** How high is the overall INA 221(g) refusal rate in immigrant visa (IV) processing? To what extent could this rate be reduced by more rigorous prior review of the documents submitted in connection with the application to ensure that the applicant really is "documentarily qualified"?
 - (b) **(U)** Will implementation of a prescreening mechanism reduce the number of times the applicants enter the consular section, thus improving both customer service and security?
 - (c) **(U)** Prescreening will add time at the beginning of the immigrant visa (IV) process prior to formal application and interview. How does the length of this additional prescreening time compare to the average amount of time and effort expended to resolve INA 221(g) and other refusals? (Note that the fact that prescreening takes more time than resolving a refusal is not necessarily an argument against implementing this type of strategy. Added time taken up with mailing documents back and forth is arguably less burdensome on both post and the applicant than time spent waiting in line and in waiting rooms, often in a city other than the place of normal residence.)
 - (d) **(U)** If you have processing backlogs, does time spent processing unqualified applicants delay processing for qualified cases?
 - (e) **(U)** At lower-volume posts, does the small number of cases makes it difficult to realize economies of scale? Would pre-screening streamline the process?
 - (f) **(U)** In the immigrant visa process, the burden of preparing for interview rests primarily upon the applicant. Would a prescreening process ensure that post does not do work on behalf of the applicant?
 - (g) **(U)** What is the real cost to the U.S. Government of any additional screening process?

c. **(U) Prescreening Strategies:**

- (1) **(U)** When IV prescreening appears justified, you should employ one of three mechanisms:
- (a) **(U)** Document review and interview scheduling by NVC;

- (b) **(U)** Document review by post prior to interview for cases in which petitions were filed at post; or
 - (c) **(U)** Document review/case preparation through a travel agency or voluntary agency program for cases in which petitions were filed at post.
- (2) **(U)** Regardless of *how* you *choose to prescreen IV cases*, you must coordinate prescreening programs with the Visa Office (CA/VO) and should not begin without prior authorization:
- (a) **(U)** Among other things, CA/VO will require a written Standard Operating Procedure with details on internal controls and exceptions handling and the opportunity to review any new forms or information sheets that you plan to utilize; and
 - (b) **(U)** Bear in mind regulations concerning use and approval of nonstandard forms as described in [9 FAM 504.4-3\(A\)\(2\)](#).

9 FAM 504.4-5(C)(3) (U) Travel or Voluntary Agency Programs

(CT:VISA-359; 05-02-2017)

- a. **(U)** NVC handles scheduling, preprocessing, and document review for almost all IV-issuing posts. Some posts, however, may still receive IV case preparation assistance through formal programs with voluntary agencies or travel agents. Voluntary agencies with experience working in the area of refugee resettlement have particular expertise in this area; and
- b. **(U)** Because of the great importance of the IV process, and the involvement in most cases of U.S. citizen family members or employers, oversight and control is extremely important. In overseeing such a program, you must keep several points in mind:
 - (1) **(U)** Make it very clear to applicants and their agents that we do not endorse or require participation in any private-screening program;
 - (2) **(U)** Ensure that applications received through travel or voluntary agencies do not receive preferential treatment, either in terms of expedited processing or degree of scrutiny exercised;
 - (3) **(U)** You may provide an information sheet describing the availability of such services:
 - (a) **(U)** This information sheet must include a statement stressing that seeking such services is entirely voluntary and reiterating the fact that the Department of State does not endorse a particular program; and
 - (b) **(U)** This information sheet must be submitted to CA/VO for approval prior to initiating such a program.
 - (4) **(U)** Do not provide a particular service provider with preferential treatment:
 - (a) **(U)** Give any service provider, whether non- or for-profit, which requests to participate in such a program, identical access to the potential customer

pool, subject to review by posts fraud prevention manager; and

- (b) **(U)** Offer any training, monitoring, or feedback provided to all service providers equally.

9 FAM 504.4-6 (U) SCHEDULING APPOINTMENTS

(CT:VISA-359; 05-02-2017)

- a. **(U)** NVC schedules the non-DV IV appointments for the majority of posts worldwide. *Upon visa availability*, NVC generally schedules appointments in the chronological order of the documentarily qualified applicants. Posts provide NVC with their appointment capacity and the percentage of cases/applicants post desires for Immediate Relative and Preference categories. Post and NVC may take other considerations, such as possible mailing delays or travel time by applicants to post, into consideration in scheduling appointments. Once NVC completes the scheduling, post will receive visa numbers for the numerically controlled immigrant visa applicants from CA/VO/DO/I. NVC will send the case files and electronic records to post. Posts should ensure that these items are properly recorded in IVO
- b. **(U) Appointment for Alien Not Subject to Numerical Limitations:** When NVC or post schedules an appointment date for an alien not subject to numerical limitations, the post should enter the appointment date into IVO. NVC will send case files and electronic records for appointments scheduled through NVC.
- c. **(U) Appointment Letters:** NVC will send all Appointment Letters for cases scheduled through NVC. Post will use IVO to send any appointment letters scheduled at post.

9 FAM 504.4-7 (U) MEDICAL EXAMINATIONS

(CT:VISA-1; 11-18-2015)

- a. **(U)** INA 221(d) (8 U.S.C.1201(d)) requires all applicants applying for immigrant visas (IV) to undergo a physical and mental examination. The results of this statutorily required medical examination are used to determine the alien's eligibility for such a visa. The medical finding by the panel physician or the Department of Health and Human Services/ Public Health Service/Centers for Disease Control and Prevention (HHS/PHS/CDC), if referred to that agency, is binding on you. (See [9 FAM 302.2.](#))
- b. **(U)** Visa medical examinations may not be conducted in the United States. Inform an alien pursuing a visa application abroad, while physically present in the United States, that the medical examination must be conducted by a panel physician who has been designated by the visa-issuing post to conduct medical examination of aliens in the country in which the alien applies for a visa.

9 FAM 504.4-8 (U) PLACE OF APPLICATION

(CT:VISA-1; 11-18-2015)

(U) You may accept jurisdiction for processing an immigrant visa petition if the petitioner meets the residency requirements (or emergent, humanitarian, or national interest requirements discussed in [9 FAM 504.2-4\(B\)\(1\)](#) and both the petitioner and the visa applicant are physically present in your district and the beneficiary is likely to be able to remain in the country for the time it normally takes to process a visa. The beneficiary need not be a resident of the consular district.

9 FAM 504.4-8(A) (U) Determining Place of Application by Residence, Not Country of Nationality

(CT:VISA-1; 11-18-2015)

- a. **(U) Background:** Department regulations designate the alien's residence as the determining factor for the place of application under normal circumstances. This is based on the view that a consular officer assigned to the country of the alien's residence is in the best position to resolve questions relating to visa eligibility. It is easier for an officer familiar with the culture, language, and legal and political framework of the country in which the alien lives to interpret local documents and evaluate claims made by the alien. A fraudulent claim or document that might quickly be spotted in the country of the alien's residence could go undetected at a post in another part of the world. An alien fearing visa refusal may wish to apply away from home in order to keep possible grounds of ineligibility from being discovered. Accordingly, officers should refer to the guidelines in the following notes when dealing with the case of any immigrant wishing to pursue an application outside the alien's place of residence.
- b. **(U) Defining Residence:** INA 101(a)(33) states, in part: The term residence means the place of general abode; the place of general abode of a person means his or her principal, actual dwelling place in fact, without regard to intent. If an alien can show that his or her principal, actual dwelling place is or was in a specified country, the fact that the alien does/did not have, or intend to have, the status of a lawful permanent resident or any other legal status in that country is not relevant.

9 FAM 504.4-8(B) (U) Usual Place of Application

(CT:VISA-1; 11-18-2015)

- a. **(U)** As a general rule, an applicant in the United States should apply for a visa at the post in the consular district of the applicant's last foreign residence. That is the only post required to accept the case for processing, although some other post might do so as a matter of discretion.
- b. **(U)** However, you must accept, when so directed by the Department, the immigrant visa (IV) case of any alien who is a citizen or a national of the consular district, regardless of the alien's last residence abroad.
- c. **(U)** The assignment of an IV petition to a post by the IV processing center in the

United States will constitute such a direction by the Department.

9 FAM 504.4-8(C) (U) Third Country Processing for Aliens Abroad

(CT:VISA-359; 05-02-2017)

- a. **(U) Application of Nonresident Alien Physically Present in District:**
Department regulations provide that a post must accept an application from an alien physically present in the consular district even though not a resident in that district, provided the alien expects to remain in the consular district throughout the several months that it normally takes to process an application and is legally able to do so.
- b. **(U) Application in Third Country by Aliens Abroad:** Unless physically present in the consular district as described above (see paragraph a above) an alien in whose country of residence IVs are routinely processed should not normally be accepted for processing by a post in a third country. Should a post wish to accept such a case in exceptional circumstances, it must first obtain Department (CA/VO/F) approval by email, making sure to include the post of primary jurisdiction.
- c. **(U) Possible Delays in Processing Out-Of-District Applications:** Processing posts must exercise particular care to ensure that documentation and other elements of an out-of-district application are in order. It may be necessary to consult with the post of primary jurisdiction for background information or document verification. This may cause delays, possibly after the formal visa interview has taken place. The applicant should be informed of this possibility at the time of acceptance of the case for processing.
- d. **(U) Residence of Alien With No Fixed Address:** For the purpose of 22 CFR 42.61(see [9 FAM 504.4-1](#)), the residence of an alien with no fixed address, such as a member of a crew, may be determined as follows:
 - (1) **(U)** The residence of the alien's spouse and/or children, if any, can be applied to the alien;
 - (2) **(U)** If paragraph (1) above does not apply, the home port of a vessel may be used, or the location of the company employing the alien; or
 - (3) **(U)** If neither of the above paragraphs applies, the country in which the alien has resided the longest as an adult or the country of the alien's nationality applies.
- e. **(U) Spouses With Different Residences:** It would be unusual if one spouse resided in different consular districts than the other one, but they both applied for visas together. In such an event, it would be preferable for the couple to apply where the principal alien resides, although the residence of the other spouse may be used if more convenient.
- f. **(U) Petitions Received for Aliens Outside Consular District:**

- (1) **(U)** If you receive a petition for an alien not residing in its consular district and you choose not to process the application under your discretionary authority (see paragraph b above), you have two options:
 - (a) **(U)** Transfer the petition to the post having jurisdiction, usually the applicant's last place of residence abroad (see [9 FAM 504.4-9](#), paragraph e above); or
 - (b) **(U)** Keep the petition, if the city or country having jurisdiction is not designated to handle immigrant visa applications. Post should not return immigrant visa petitions to Department of Homeland Security (DHS).
- (2) **(U) Notifying Beneficiary:** Notify the beneficiary of the receipt and disposition of the petition. (See [9 FAM 504.4-2\(B\)](#).) Should you retain the petition at post, he or she must make clear to the applicant that the petition will be kept on file until such time as another post *accepts the* transfer.
- (3) **(U) Locating Post to Accept Jurisdiction:** Make it clear that it is the applicant's responsibility to locate a post willing to accept the case and to ask the receiving post to request transfer of the petition on their behalf. (For further instructions regarding transferring files, see [9 FAM 504.4-9](#).)

9 FAM 504.4-8(D) (U) Discretionary Cases for Hardship Reasons

(CT:VISA-1; 11-18-2015)

a. **(U) The Department Strongly Encourages Posts to Consider Discretionary Acceptance of the Case of an Alien Residing in the United States if:**

- (1) **(U)** The alien demonstrates that it would be a hardship if they were required to return to the country of last foreign residence; and
- (2) **(U)** The additional workload is acceptable.

b. **(U) Posts Encouraged to Accept Cases Clearly Involving Hardship:** The Department urges posts to accept legitimate hardship cases (see paragraphs c and d below) when the workload permits. The Department also encourages posts to be flexible in accepting cases which guidance below indicates should ordinarily be processed at another post in the same country.

c. **(U) Determining Hardship:**

- (1) **(U)** Hardship would not usually be considered to exist when an alien does not wish to return to the place of last foreign residence only because of inconvenience or expense.
- (2) **(U)** A brief, temporary absence from work would not generally be considered a hardship.
- (3) **(U)** Inability of an alien to travel long distances because of physical infirmity or advanced age would be considered to entail hardship.
- (4) **(U)** The presence of war, widespread civil disturbance, revolution, or other

similar phenomena in an alien's country of last foreign residence would be evidence that it would be a hardship if the alien were required to return to that country. If the post is inclined to accept a case but has doubts about the alien's claim regarding a disturbance of some kind in the alien's last country of residence, the Department's advice may be sought by contacting CA/VO/F.

- (5) **(U)** Aliens from countries with no visa-issuing post could possibly entail hardship.
- d. **(U) Department and Post of Jurisdiction Informed When Discretionary Case Accepted:** Posts accepting a discretionary case must inform both the Department's Office of Field Operations (CA/VO/F) and the post with jurisdiction over the alien's place of residence. Reports of acceptance must be made in each individual case, except when the alien is a member of a group or class of aliens routinely accepted by the post and the Department has already been informed of the policy, or when a group or class of aliens has been the subject of instructions from the Department.

9 FAM 504.4-8(E) (U) Homeless Cases

9 FAM 504.4-8(E)(1) (U) Definition of Homeless Cases

(CT:VISA-359; 05-02-2017)

- a. **(U)** Generally, a homeless visa applicant is one who is a national of a country in which the United States has no consular representation or in which the political or security situation is tenuous or uncertain enough that the limited consular staff is not authorized to process IV applications. Countries whose nationals are considered homeless are listed in paragraph b below.

b. **(U) List of Homeless Nationalities:**

HOMELESS NATIONALITIES	SELECTED IV PROCESSING POSTS
Eritreans	Addis Ababa and Nairobi
Iranians	Abu Dhabi, Ankara, and Yerevan
Libyans	Casablanca, <i>Amman</i>
Somalis	Nairobi
South Sudanese	Nairobi
Syrians	Amman
<i>Yemenis</i>	<i>Djibouti, Kuala Lumpur for DVs</i>

9 FAM 504.4-8(E)(2) (U) Location of Homeless Applicant

(CT:VISA-1; 11-18-2015)

- a. **(U) Homeless Physically Present in the United States:** Applicants residing in the United States may elect to apply for adjustment of status with Department of Homeland Security (DHS) under the provisions of INA 245(i), and thus rarely require visa processing abroad.

- b. **(U) Homeless Physically Present in a Third Country:** Homeless applicants residing in a third country are processed at the same IV processing post as are nationals of that country. Posts must accept for processing any IV applicant who is physically present in their consular district, provided the applicant has the permission of the host government to remain there legally for a period sufficient to complete processing of the application. This does not include persons who have been determined not to be refugees, and who are subject to return to their country of origin.
- c. **(U) Homeless Physically Present in Home Country:** The visa office (VO) has designated specific posts to process IV applications from these homeless applicants. (See [9 FAM 504.4-8\(E\)\(1\)](#) above for a list of nationalities considered homeless and the posts selected to process such cases.)

9 FAM 504.4-8(E)(3) (U) Processing Homeless Cases

(CT:VISA-1; 11-18-2015)

(U) The National Visa Center (NVC) will screen and assign all petitions for homeless beneficiaries to the appropriate post for processing.

9 FAM 504.4-9 (U) TRANSFERRING FILES

(CT:VISA-359; 05-02-2017)

- a. **(U) Locating Post to Accept Jurisdiction:** Make it clear that it is the applicant's responsibility to locate a post willing to accept the case and to ask the receiving post to request transfer of the petition on their behalf.
- b. **(U) Request to Receiving Post:** The IV applicant (beneficiary) must request in writing that the intended receiving post accept the case. There is no prescribed form or format for such a request, and the applicant may make the request by letter, fax or e-mail. The applicant must send the request, along with a justification for the request, to the intended receiving post.
- c. **(U) Role of the National Visa Center (NVC) in Post Assignment and Request to Change Post:**
- (1) **(U)** Upon receipt of petitions from USCIS, NVC will assign the post code based on the applicant's current country of residence. If the applicant lives in the United States, the post assigned is based on the applicant's place of last foreign residence. If there is insufficient information to determine a post, the applicant will be assigned based on their country of nationality.
 - (2) **(U)** NVC often receives requests from applicants to change their processing post while their petitions are already in process at NVC. In the event NVC receives a request to change an applicant's processing post, NVC attempts to collect proof of residency as well as an address in the new country requested. If the current or prior residency of an applicant remains in question, NVC will request post concurrence before reassigning a case.

- (3) **(U)** Some posts require specific eligibility documentation to allow applicants to process at their post. Post will send exemplars of acceptable documents to show proof of residency to NVC (scanned images (exemplars) that are used as reference tools at NVC). NVC will collect the appropriate documentation from applicants prior to scheduling interviews for post.
- d. **(U) Action by Receiving Post:** Upon receiving the applicant's request for a transfer of the case, you must decide whether you will (or must) accept the case for processing. If you accept the case, request the transferring post to transfer the electronic record and paper case. (See [9 FAM 504.4-8](#) for information concerning place of application.)
- e. **(U) Record of Transfer by Transferring Post:** Once the receiving post informs you that it will accept the transfer, you must prepare a record of the transfer of a pending or refused visa case by making the appropriate entry in IVO. All cases must be transferred using the procedures contained in IVO. In no case should a paper file be transferred without following proper procedures in the automated system.
- f. **(U)** When a case is transferred to another post, posts must follow procedures for case transfer provided in the automated immigrant visa processing system. In no case may an IV case be physically transferred without following proper electronic transfer procedures.

9 FAM 504.5

PRE-INTERVIEW PROCESSING

(CT:VISA-235; 10-27-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 504.5-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 504.5-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 222(b) (8 U.S.C. 1202(b)); INA 222(e) (8 U.S.C. 1202(e)).

9 FAM 504.5-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.62; 22 CFR 42.6.

9 FAM 504.5-1(C) Public Law

(CT:VISA-1; 11-18-2015)

Public Law 106-113, sec. 237.

9 FAM 504.5-2 OVERVIEW - PREPARING FOR APPOINTMENT WITH APPLICANT

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.62 PN1; CT:VISA-2126; 06-16-2014 in part)

- a. When appearing at the appointed time for the formal visa appointment, an applicant is entitled to receive prompt attention. The post should pull and review the appointment list and case files prior to the appointment date.
- b. Send unclassified material to the document checker for review. The consular officer must review classified material.

9 FAM 504.5-3 PRESCREENING BY LOCALLY ENGAGED STAFF (LE STAFF)

9 FAM 504.5-3(A) Initial Duties of Document Checker

(CT:VISA-36; 01-19-2016)

- a. When the applicant presents the documents, post must check the documents for completeness and legibility. The document checker should ensure each question on Form DS-260, Online Application for Immigrant Visa and Alien Registration, has been answered. If Form DS-260 is incomplete, the document checker must reopen the application via the "Reopen DS-260" button at the top of the online IV application report and direct the applicant to log back in to the Consular Electronic Application Center and complete the missing information. If necessary, the document checker may assist the applicant in completing the application.
- b. If any answers on Form DS-260 need correction or amplification, the consular officer is able to make the corrections using the "Add Remarks" function associated with the section of the application that needs correction. Post may correct minor errors (including minor discrepancies in name spellings, as long as NIV and IVO are correct) in the DS-260 by making a remark directly in CEAC. IV applications are made under oath therefore the interviewing officer must verbally point out errors, explain any modifications consular staff made via remarks, and ask the applicant to swear to the entire DS-260, (or DS-160 in the case of a K visa), including those modifications. However, for any major changes, an officer or LE staff must reopen the DS-260 so the applicant can make necessary corrections. Fields that are material to adjudication are considered major and must be completed by the applicant. This includes Fields informing an SAO MANTIS decision and fields that could trigger additional questions. For example, incomplete or erroneous information in the Education or Work Experience sections is material to an employment-based IV or diversity visa case, and is a major error which the applicant must correct. Conversely, those same fields are largely irrelevant to most family-based IV adjudications and may be corrected at post.

9 FAM 504.5-3(B) Photograph Requirements

(CT:VISA-36; 01-19-2016)

- a. **Need for Good Quality Photographs:** One of the most common problems the Department of Homeland Security (DHS) encounters with IV packets is a poor quality photograph. The IV photograph is a crucial item—ultimately it will become the image on the bearer's "green card." Posts should ensure that photographs are in accordance with these instructions, as well as the instructions on photographs found in [9 FAM 504.5-3\(B\)](#) paragraph b below.
- b. In the rush to process cases quickly, you may be tempted to accept substandard photos rather than refusing the applicants until they bring in new ones. However, in the long run, those applicants will be better served if posts require them to retake poor quality photos. The applicants will ultimately be spared the time and trouble of having to repeat the process in DHS secondary inspection at the port of entry (POE), or having their Form I-551, Permanent Resident Card, questioned at some future point because of the poor quality photo.

- c. See [9 FAM 303.6-2\(A\)\(1\)](#) for guidance on photo standards.

9 FAM 504.5-3(C) Paying Processing Fee

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.62 PN4.2; CT:VISA-2126; 06-16-2014 in part)

- a. Once the medical forms and other documents have been placed in logical order and Form DS-260 is complete, ensure that the applicant has paid the processing fee. The alien must pay before the interview. In situations described in [9 FAM 504.6-5\(B\)](#), the cashier must not collect a new processing fee. After the fee has been paid, the document checker must give the documents, the medical forms, applicable printouts from the automated system, and any papers from the A-Z file, to the consular officer who will interview the applicant. Note: The document checker should not print out the online IV application report associated with the submitted Form DS-260.
- b. Note that most cases are processed through the National Visa Center (NVC) and the processing fee will have already been collected in the United States before the case was forwarded to post. The NVC's Post Supplement Report, included in the file of cases scheduled by the NVC, will indicate whether the fee has been paid. If the Post Supplement Report is unavailable, post can determine if the fee has been paid using the IVIS Beneficiary Report in the CCD. If there are any questions about whether a fee was paid while a case was at the NVC, post should email NVCPost@state.gov.

9 FAM 504.5-4 INSPECTION OF ORIGINAL DOCUMENT AND ENDORSEMENT OF CERTIFIED OR MECHANICALLY REPRODUCED COPIES

(CT:VISA-235; 10-27-2016)

When an alien presents a mechanically reproduced copy of any of the required documents listed under 22 CFR 42.65(b), it is important that consular section personnel inspect the original document. After inspection, the consular section must endorse the copy with a rubber stamp that imprints the name of the post and the fact that the original has been seen and compared. When copies of these required documents have been uploaded electronically into a consular system, the consular section personnel will check the box in the system that indicates that the original was seen and compared. This procedure does not constitute a certification within the meaning of Item 47 of the Tariff of Fees, since neither the full signature of a consular officer nor the official seal of the post is used or required. This service is performed without fee, whether on public documents required under INA 222(b) or on documents submitted in support of Form ETA-750, Application for Alien Employment Certification.

9 FAM 504.6

(U) COLLECTION OF IMMIGRANT VISA FEES

(CT:VISA-323; 04-07-2017)

(Office of Origin: CA/VO/L/R)

9 FAM 504.6-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 504.6-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 101(a)(16) (8 U.S.C. 1101(a)(16)); INA 221(a) (8 U.S.C. 1201(a)).

9 FAM 504.6-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 3 CFR 382; 22 CFR 22.1, 22 CFR 42.71, 22 CFR 42.74, 22 CFR 42.81(e).

9 FAM 504.6-2 (U) SCHEDULE OF FEES

(CT:VISA-1; 11-18-2015)

(U) The Secretary of State has prescribed a fee for the processing and issuance of the immigrant visa. An additional application fee is charged for persons selected for the Diversity Program. The fees are specified in 22 CFR 22.1 and [9 FAM 502.6-4](#).

9 FAM 504.6-3 (U) COLLECTING THE PROCESSING FEE

(CT:VISA-323; 04-07-2017)

- a. (U) A single fee is charged combining the costs of processing and issuance of the immigrant visa. An individual registered for immigrant visa processing at a post designated for this purpose by the Deputy Assistant Secretary for Visa Services must pay the processing fee. The fee must be paid when the individual is notified that a visa is expected to become available in the near future and *when* he or she is requested to obtain the supporting documentation needed to apply formally for a visa.
- b. (U) For cases processed through NVC, this fee will be collected during initial processing by NVC. Posts will collect the visa processing fee only for those cases in

which the petition is filed at post or in which the visa file otherwise indicates that the fee has not yet been collected.

9 FAM 504.6-4 (U) NVC COLLECTION OF IMMIGRANT VISA FEES

9 FAM 504.6-4(A) (U) Paying Processing Fee Domestically

(CT:VISA-230; 10-25-2016)

(U) Most cases are processed through NVC and the processing fee will have already been collected in the United States before the case was forwarded to post. NVC's Post Supplement Report, included in the file of cases scheduled by NVC, will indicate whether the fee has been paid. If the Post Supplement Report is unavailable, post can determine if the fee has been paid using the IVIS Beneficiary Report in the CCD. If there are any questions about whether a fee was paid while a case was at NVC, post should email NVCPost@state.gov before requiring the applicant to repay the cashier at post.

9 FAM 504.6-4(B) (U) Sending Instructions for Immigrant Visa Applicants

(CT:VISA-323; 04-07-2017)

- a. **(U)** Once an agent has been designated or when the Form DS-261, Online Choice of Address and Agent, is not required (see [9 FAM 504.4-3\(A\)\(1\)](#)), NVC sends the IV application fee bill for each applicant to the designated agent.
- b. **(U)** The IV fee bill letter instructs the applicant how and where to pay the IV fee bill.
- c. **(U)** If the IV fee is paid by mail, NVC will mail the Instruction Package for Immigrant Visa Applicants to the designated agent.
- d. **(U)** If the IV fee(s) *is* paid online, the agent will be provided with information online once the fee payment has been confirmed. No mailing is sent.
- e. **(U)** Both the physical and online instructions inform the agent to complete Form DS-260, Online Application for Immigrant Visa and Alien Registration.

9 FAM 504.6-4(C) (U) Records Updated to Reflect Information Provided

(CT:VISA-230; 10-25-2016)

- a. **(U)** If provided by post, the automated Immigrant Visa Overseas (IVO) system will automatically record the date that post prints the Instruction Package for

Immigrant Visa Applicants cover letter:

- (1) **(U)** Posts must ensure that this letter and attachments are mailed as soon as possible after printing; and
 - (2) **(U)** If you provide later copies of the Instruction Package for Immigrant Visa Applicants to the applicant, make a record in the comments field of the IV application to reflect this fact.
- b. **(U)** The IVIS system used at NVC will also record the date the Instruction Package for Immigrant Visa Applicants is printed or available for viewing in the Consular Electronic Application Center (CEAC) after the IV fees are paid (see [9 FAM 504.6-4\(B\)](#) above).

9 FAM 504.6-5 (U) POST COLLECTION OF IMMIGRANT VISA FEES

9 FAM 504.6-5(A) (U) Paying Processing Fee at Post

(CT:VISA-230; 10-25-2016)

(U) For cases processed through NVC, this fee will be collected during initial processing by NVC. Posts will collect the visa processing fee only for those cases in which the petition is filed at post or in which the visa file otherwise indicates that the fee has not yet been collected. A determination of whether the fee has been paid should be part of the document checking process prior to interview, and if not previously paid, the alien must proceed to the cashier and pay the processing fee. The alien must pay before the interview.

9 FAM 504.6-5(B) (U) No Second Processing Fee

(CT:VISA-1; 11-18-2015)

a. (U) Do Not Collect a Second Processing Fee if the:

- (1) **(U)** Previously refused alien is issued a visa on the basis of the relief provided in INA 212(g), (h) or (i), or any similar provision of law or if evidence is presented to overcome the refusal within one year of the date of refusal;
- (2) **(U)** Alien requests a reopening of the case within one year from the date the visa was originally refused (see 22 CFR 42.81(e));
- (3) **(U)** Visa was previously refused because the medical examination disclosed that the alien might be ineligible under INA 212(a)(1) and the examining physician requested that the applicant undergo follow-up examinations or tests prior to making a final decision;
- (4) **(U)** Visa was previously refused solely for the absence of a document which is available only from a U.S. Government agency, and if it is apparent that the failure of the alien to present the document was due to the U.S. Government

agency's delay in providing it;

- (5) **(U)** Final decision on the application is delayed pending the receipt of an advisory opinion from the Department or the completion of investigations initiated by the Department or the post; or
- (6) **(U)** Original refusal was based on a consular error.

9 FAM 504.6-6 (U) ADDITIONAL FEES/REFUNDS

9 FAM 504.6-6(A) (U) Issuing Replacement Visa During Validity of Original Visa

(CT:VISA-1; 11-18-2015)

- a. **(U)** If you are satisfied that an applicant will be or was unable to use an immigrant visa (IV) during its validity period because of reasons beyond the applicant's control and for which the applicant is not responsible then you may issue a replacement visa with the originally allocated visa number within the same fiscal year even though the visa has not yet expired. You should recall and cancel the originally-issued visa and collect once again the appropriate IV application processing fee (including the Diversity Visa Lottery Fee for a DV applicant), unless the applicant was unable to use the visa as a result of action by the U.S. Government over which the alien had no control and for which the alien was not responsible.
- b. **(U)** An applicant who will be or was unable to use an IV during its validity period because of reasons within the applicant's control can submit a new visa application if the petition has not been revoked and if the basis for immigration still exists (i.e., familial relationship).

9 FAM 504.6-6(B) (U) Fingerprinting Applicants

(CT:VISA-230; 10-25-2016)

- a. **Unavailable**
- b. **Unavailable**

9 FAM 504.6-6(C) (U) Refund of Immigrant Visa Processing Fee

(CT:VISA-1; 11-18-2015)

(U) A fee collected for the processing of an immigrant visa application is refundable only if the principal officer of a post or the officer in charge of a consular section determines that the application was not adjudicated as a result of action by the U.S. Government over which the alien had no control and for which the alien was not responsible, that precluded the applicant from benefiting from the processing.

9 FAM 504.7

INTERVIEW BY CONSULAR OFFICER

(CT:VISA-210; 10-06-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 504.7-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 504.7-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(16) (8 U.S.C. 1101(a)(16)); INA 221(a) (8 U.S.C. 1201(a)); INA 222(e) (8 U.S.C. 1202(e)).

9 FAM 504.7-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

22 CFR 42.62; 22 CFR 42.67; 22 CFR 42.71.

9 FAM 504.7-1(C) Executive Order

(CT:VISA-1; 11-18-2015)

E.O. 10718.

9 FAM 504.7-2 REQUIREMENT FOR AN INTERVIEW

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.62 N2; CT:VISA-1093; 10-31-2008)

- a. **Personal Appearance:** Although the regulation permits the waiver of the personal appearance for a child under the age of 14, the principal beneficiary, regardless of age, of any immigrant visa (IV) petition must appear in person.

(Previous Locations: 9 FAM 42.62 PN5; CT:VISA-584; 10-14-2003: 9 FAM 42.71 PN1; CT:VISA-801; 04-21-2006)

- b. **Timeliness of Interview:** The interview with the consular officer is the most significant part of the visa issuing process. It is particularly important from the point of view of full and correct application of the law. Section 237 of Public Law 106-113 and subsequent legislation requires that the Department establish a policy under which immediate relative (and fiancé(e)) visas be processed within 30 days of receipt of the necessary information from the applicant and the Department of

Homeland Security (DHS); all other family-based immigrant visas (IV) must be processed within 60 days. The Department expects all posts to strive to meet the 30/60-day requirements.

(Previous Location: 9 FAM 42.62 PN6; CT:VISA-584; 10-14-2003)

c. Interview Even if Documentation is Missing:

- (1) In addition to the inconvenience and expense caused to the alien (particularly an alien applying with family members), it is generally inefficient for the post if an application is not taken and the interview not conducted on the appointment date. In a busy post, the number of daily interviews is set to maximize the use of space and personnel. A canceled interview results in a gap in that day's productivity without gain, since the interview must be rescheduled for another day. In addition, there is no guarantee that the alien will be found eligible the second time around. Rescheduling causes administrative backlogs, which, in turn, result in lost time answering correspondence and responding to telephone inquiries.
- (2) As a general rule, therefore, consular officers should accept applications from and interview all applicants appearing on the appointed date. If an applicant fails to present all of the required documentation, the applicant should nevertheless pay the processing fee and be interviewed by the consular officer who must then refuse the application under INA 221(g). The consular officer should tell the applicant or a member of the family to mail or bring in the missing documentation, and also the issuance fee, and make clear that the visa(s) will be issued immediately if the documentation is found acceptable.

9 FAM 504.7-3 CONDUCTING AN INTERVIEW

9 FAM 504.7-3(A) Personal Interview of Visa Applicants by Consular Officer

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.62 N1; CT:VISA-1701; 09-21-2011)

- a. Consular officers must make every effort to conduct visa interviews fairly and professionally. Any semblance of aggressive cross-examination, assumption of bad faith, or entrapment must be avoided. Applicants should be given sufficient time to answer questions without interruption. In cases where the consular officer's determinations are difficult to make or which are or may become the subject of controversy, the officer must make a thorough and carefully written record of the interview so that the basis for the final action can be fully documented. (See [9 FAM 504.11.](#))
- b. Interviewing visa applicants is one of the consular officer's most demanding jobs, requiring the officer's composure, judgment, and diplomatic skills. Techniques for good interviewing, including the critical skill of how to ask the right questions, deserve careful attention. Training materials on effective interviewing and fraud

interviews are available through the Fraud Prevention Program's Consular Affairs web page.

(Previous Location: 9 FAM 42.62 PN8.6 CT:VISA-1464; 08-09-2010)

c. **Consular Officer's Responsibility in Labor Certification Cases:** If the applicant is applying for a visa on the basis of a job offer, labor certification, or a Schedule-A case not previously evaluated by a consular officer, you must determine that the applicant has the professional or occupational qualifications on which certification is based.

(Previous Location: 9 FAM 42.62 PN8.5; CT:VISA-1464; 08-09-2010)

d. **Sources of Background Investigation Information Not Revealed:** Ensure that interviews are conducted so as to persuade the applicant to make full and frank disclosure of all information bearing on the application without disclosure by the officer of the actual sources of information obtained during the course of background investigations.

9 FAM 504.7-3(B) Action Fee Receipts

(CT:VISA-1; 11-18-2015)

(Previous Locations: 9 FAM 42.62 PN8.1; CT:VISA-2126; 06-16-2014; 9 FAM 42.71 N2.1 (last sentence of b); CT:VISA-1857; 08-14-2012)

Posts will collect the visa processing fee only for those cases in which the petition is filed at post or in which the visa file otherwise indicates that the fee has not yet been collected. For fees paid at post, request the two fee receipts printed through the Automated Cash Register System (ACRS) and issued by the cashier for the processing fee. Initial both receipt copies, return the customer copy to the applicant, and retain the Department-of-State copy. (See [9 FAM 504.6-6\(A\)](#).)

9 FAM 504.7-4 OATH AND EXECUTION OF APPLICATION

9 FAM 504.7-4(A) Explaining Significance of Oath to Applicant

(CT:VISA-210; 10-06-2016)

At the outset of the interview, inform the applicant that the interview will be based on answers given to the questions on Form DS-260, Online Application for Immigrant Visa and Alien Registration, and any others that might arise from examination of the supporting documents. Clarify that the applicant will be required to swear or affirm that all statements made during the interview and on the form are true. Also inform the applicant of the significance of such oath or affirmation. You may, in this connection, refer to 18 U.S.C. 1001, which provides a penalty for making a false statement or using a false document in any matter within the jurisdiction of any

department or agency of the U.S. Government.

9 FAM 504.7-4(B) Establishing that Alien Understands Contents of Form DS-230/DS-260

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.62 PN8.3; CT:VISA-2126; 06-16-2014)

Establish that it was the applicant who furnished the answers to the questions on Form DS-260, Online Application for Immigrant Visa and Alien Registration, or, if assisted by someone else, that the applicant nevertheless is fully aware of the nature of the application and the answers given, and has no questions about the application. In most cases, you can accomplish this by asking the applicant a few of the questions on the form and comparing the oral responses with the written replies. Should the applicant appear to have inadequate knowledge of the contents of the application, you must go over orally all questions having a bearing on the applicant's eligibility to receive a visa. To discourage professional intermediaries from coaching applicants, avoid establishing a set pattern in questioning applicants.

9 FAM 504.7-4(C) Oath and Signature

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.67 N2.1; CT:VISA-2172; 09-11-2014)

- a. You must be satisfied that the applicant has read the completed form, or, if the applicant is unable to read, he or she must be informed of the contents therein. You must ask the applicant to subscribe to information therein. If the alien is unwilling to subscribe to the information unless changes are made, the required changes must be made. You must inform the applicant that all changes will become a part of the official record associated with his or her application. The application must be subscribed to or affirmed and signed by or on behalf of the applicant before a consular officer.

(Previous Location: 9 FAM 42.67 N2.2; CT:VISA-2176; 09-19-2014)

- b. **Collecting the signature:** You must collect the biometric signature from the applicant contemporaneously with the administration of the oath.
 - (1) All applicants over the age of 14 who are legally competent and physically capable must biometrically sign their application under oath by providing a fingerprint. You must use the IVO Oath Administration box to collect the biometric and record the administration of the oath. The fields in the IVO Oath Administration box will be pre-populated with the applicant's information; you must administer the oath, collect the biometric signature, and certify that the oath has been administered.
 - (a) You may encounter an applicant who, while legally competent to attest to the application, is physically unable to provide a biometric signature. Generally speaking, you will only encounter this situation in cases in which the fingerprints were waived. However, not all individuals who have had

their fingerprints waived are exempt from the biometric signature requirement. A full set of fingerprints is not required for the biometric signature, only 1 fingerprint is required. The quality of the fingerprint does not need to meet the standard for the ten-print collection you should attempt to collect a biometric signature from all individuals except those without fingers. In situations in which the applicant is physically incapable of providing the biometric signature, you must select "PHYSICALLY UNABLE TO PROVIDE FINGERPRINT AS AN ELECTRONIC SIGNATURE" in the Oath Taker field and annotate the Oath Remarks field with the reason for the lack of biometric signature. For example, if the applicant has no fingers, you should remark "THE APPLICANT DOES NOT HAVE FINGERS, PHYSICAL SIGNATURE OBTAINED." Unless subject to the exceptions below, you must collect the applicant's physical signature or mark. The signature may be collected either on the form set forth in Exhibit I or on a separate piece of paper. This page must be scanned into the case and retained as part of the visa record. You must include on the paper form with the applicant's signature, the case number (located on the left hand side of the confirmation page), and the applicant's full name.

- (b) If the applicant is unable to provide a biometric signature and is illiterate, or is otherwise unable to sign the application but has been informed of the contents and is willing to attest, you must witness the applicant placing his or her signature or mark in the space provided for signature on the paper form.
 - (c) A self-attesting applicant may not refuse to provide a biometric signature. For information on refusal to provide biometric signature by a proxy please see below.
 - (d) If the application is not adjudicated within one year of the original administration of the oath, the applicant is required to complete a new DS-260, be placed under oath again, and to biometrically sign the new application.
- (2) If the applicant is under the age of 14, a proxy must take the oath and biometrically sign the application on behalf of the minor, regardless of whether or not that minor was fingerprinted. A parent, a legal guardian, or an individual having legal custody of, or a legitimate interest in the applicant may act as the applicant's proxy for the purpose of attesting to and biometrically signing the application. When administering and recording the attestation and biometric signature for a minor you must indicate in the IVO Oath Administration box that the applicant is not self-attesting by selection "NO" to the question "The Applicant is self-attesting to the Oath." You must select "Minor (younger than age 14)" from the REASON drop down in the IVO Oath Administration box.
- (a) If there are other applicants associated with the case, the IVO Oath Administration will automatically default to the principal applicant as the oath taker and pre-populate that individual's information. You can select

an alternative adult associated with the case using the "Other Applicant – ID" drop down. You should administer the oath and collect the biometric signature as appropriate.

- (b) If no other adult associated with the case is available, an individual not associated with the case may attest and biometrically sign on behalf of the minor, in which case you must select the option for "Other Non-Applicant" and then select the appropriate relationship from the "Relation to Applicant" dropdown. The options on this drop down include Parent, Legal Guardian, Adoptive/Prospective Parent, Attorney, and Other. If you select "Other" you must explain the relationship in the Oath Remark field, then administer the oath and collect the biometric signature as appropriate.
 - (c) A proxy who is associated with the case who has been fingerprinted cannot refuse to provide a biometric signature. Only a non-associated proxy may refuse to provide a biometric signature. If the proxy refuses to provide a biometric signature, you must indicate in the IVO Oath Administration box that the proxy was "Unwilling to provide a fingerprint as an electronic signature" and collect a physical signature from the proxy on either the form set forth in Exhibit II or a separate printed sheet of paper. This page must be scanned into the case and retained as a part of the visa record. If you do not use the confirmation page as the signature page, you must include the case number (located on the left hand side of the confirmation page), the applicant's full name, and the full name of the proxy.
- (3) If the applicant is over the age of 14 but legally or mentally incapacitated, a proxy must take the oath and biometrically sign the application on behalf of the applicant. A parent, a legal guardian, or an individual having legal custody of, or a legitimate interest in the applicant may act as the applicant's proxy for purposes of attesting to and biometrically signing the application. When administering and recording the attestation and biometric signature for an incapacitated adult, you must indicate in the IVO Oath Administration box that the applicant is not self-attesting by selecting "NO" to the question "The Applicant is self-attesting to the Oath." You must select "Legally/Mentally Incapacitated Adult" from the REASON drop down in the IVO Oath Administration box.
- (a) If there are other applicants associated with the case, the IVO Oath Administration will automatically default to the principal applicant as the oath taker and pre-populate that individual's information. You can select an alternative adult associated with the case using the "Other Applicant – ID" drop down. You should administer the oath and collect the biometric signature as appropriate.
 - (b) If no other adult associated with the case is available an individual not associated with the case may attest and biometrically sign on behalf applicant, in which case you must select the option for "Other Non-Applicant" and then select the appropriate relationship from the "Relation to Applicant" dropdown. The options on this drop down include Parent,

Legal Guardian, Adoptive/Prospective Parent, Attorney, and Other. If you select "Other" you must explain the relationship in the Oath Remark field. You then administer the oath and collect the biometric signature as appropriate.

- (c) A proxy who is associated with the case who has been fingerprinted cannot refuse to provide a biometric signature. Only a non-associated proxy may refuse to provide a biometric signature. If the proxy refuses to provide a biometric signature you must collect a physical signature from the proxy on either the applicant's DS-260 confirmation page or a separate printed sheet of paper. This page must be scanned into the case and retained as a part of the visa record. If you do not use the confirmation page as the signature page, you must include the case number (located on the left hand side of the confirmation page), the applicant's full name, the full name of the proxy, and the proxy's relationship to the applicant.

c. Administering the Oath/Affirmation:

- (1) **You Must State the Following Words:** "Do you affirm that the statements made by you in this application and interview are true and correct to the best of your knowledge?" The applicant must affirm, "I do", or if unable to speak give a physical indication of his or her affirmation.
- (2) **Posting Statement Near Fingerprint Scanner:** Posts must display the following language in the window above the fingerprint scanner, or on the counter next to the scanner, whichever works best for post, as long as it is clearly visible to the applicant. "By submitting my fingerprint, I am affirming under penalty of perjury that I have read and understood the questions in my immigrant visa application and that all statements that appear in my immigrant visa application have been made by me and are true and complete to the best of my knowledge and belief. Furthermore, I affirm under penalty of perjury that all statements that I have made, or will make, during my interview are true and complete to the best of my knowledge and belief." Posts that have television monitors in the waiting areas, may also want to place the statement near the monitors, but must still display it in front of or above the fingerprint scanner. At posts where officers interview in a language other than English, post should display this text in English and in the appropriation local language(s).

- d. Consular Officer Signature:** Your signature and consular title will be automatically recorded in the IVO system at the time of adjudication.

*(CT:VISA-1; 11-18-2015) (Previous Location: 9 FAM 42.67 Exhibit I
CT:VISA-2175; 09-18-2014)*

e. Biometric Signature Exemption:

SIGNATURE AND AFFIRMATION FOR A IMMIGRANT VISA APPLICANT EXEMPT FROM BIOMETRIC SIGNATURE REQUIREMENT

I, _____, understand that if I am issued a visa, I am required to display

and surrender my visa to the United States Immigration Officer at the port of entry where I apply to enter the United States and that possession of a visa does not entitle me to enter the United States if, at the time, I am found inadmissible under the immigration law.

I understand that any willfully false or misleading statement or willful concealment of material facts made by me in my Online Application for an Immigrant Visa and Alien Registration, or during my immigrant visa interview may subject me to permanent exclusion from the United States or may subject me to criminal prosecution and/or deportation.

I affirm, under penalty of perjury, that I have read and understood the questions in my immigrant visa application and that all statements that appear in my immigrant visa application have been made by me and are accurate and complete to the best of my knowledge and belief. Furthermore, I affirm under penalty of perjury that all statements that I have made in the course of my visa interview are accurate and complete to the best of my knowledge and belief.

I do affirm, that if admitted to the United States, I will not engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States; in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activities subversive to the national security; in any activity the purpose of which is the opposition or the control or overthrow of, the Government of the United States, by force, violence, or other unconstitutional means.

I understand that if I am issued an immigrant visa and I am a male between the ages of 18 and 25, I am required by law to register with the Selective Service System in accordance with the Military Service Act.

I understand all of the foregoing statements, having asked for and obtained an explanation on every point which was not clear to me.

(Signature of Applicant)

(Date)

(Case Number)

Subscribed and affirmed before me this _____ day of _____, _____ at _____.

(Consular Officer)

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.67 Exhibit II CT:VISA-2175; 09-18-2014)

f. Proxy Signature:

SIGNATURE AND AFFIRMATION FOR A PROXY EXECUTING AN IMMIGRANT VISA APPLICATION ON BEHALF OF AN APPLICANT

I, _____, am executing an immigrant visa application on behalf of _____ . I know the applicant personally and have first-hand knowledge about the facts underlining the statements on the DS-260, Online Application for an Immigrant Visa and Alien Registration. I have agreed to sign this form instead of providing a biometric signature.

I understand that if (name), is issued a visa, he/she will be required to display and surrender his/her this visa to the United States Immigration Officer at the port of entry where he/she applies to enter the United States. I further understand that possession of a visa does not entitled him/her to enter the United States if, at the time, he/she is found inadmissible under the immigration law. If I do not accompany (name) to the port of entry, I will ensure that this information is communicated to the individual accompanying (name).

I understand that any willfully false or misleading statement or willful concealment of a material fact made on the (name) application, or during the visa interview may subject me to criminal prosecution.

I affirm, under penalty of perjury, that I have read and understand the statements made in the immigrant visa application and that all statements are accurate and complete to the best of my knowledge and belief. Furthermore, I affirm, under penalty of perjury that all statements that I have made in the course of the visa interview are accurate and complete to the best of my knowledge and belief.

I understand that if the applicant is issued an immigrant visa and is a male between the ages of 18 and 25, he is required by law to register with the Selective Service System in accordance with the Military Service Act.

I understand all of the foregoing statements, having asked for and obtained an explanation on every point which was not clear to me.

 (Signature of Proxy) (Date)

 (Case Number)

Subscribed and affirmed before me this _____ day of _____, _____ at _____.

 (Consular Officer)

9 FAM 504.7-5 USCIS VICTIMS OF DOMESTIC VIOLENCE PAMPHLET

9 FAM 504.7-5(A) Review of USCIS Victims of Domestic Violence Pamphlet During Interview

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.62 PN5.1 CT:VISA-1940; 11-14-2012)

During Interview of Each Spouse Applying for an IR1, CR1 or F2A (F21, C21, FX1, or CX1) Immigrant Visa, You Must:

- (1) Provide a copy of the USCIS pamphlet, "Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa," in English or another appropriate language.
- (2) Orally review with the applicant, in his or her primary language, if feasible, or otherwise in either the language spoken in the country of application or English, the synopsis of the points contained in the pamphlet (synopsis provided below in [9 FAM 504.7-5\(B\)](#)).
- (3) Add case notes in IVO that the pamphlet was received, read, and understood by the applicant.

9 FAM 504.7-5(B) Synopsis of USCIS Pamphlet for Applicants for K Nonimmigrant Visas and Family-Based Immigrant Visas

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 41.81 Exhibit I: CT:VISA-1940; 11-14-2012)

a. Why Are We Providing the Pamphlet?

- (1) The International Marriage Broker Regulation Act (IMBRA) requires that the United States government provide, to an immigrating fiancé(e) or spouse of a citizen or resident of the United States, an information pamphlet on legal rights and resources for immigrant victims of domestic violence. Immigrants are often afraid to report acts of domestic violence to the police or to seek other forms of assistance. Such fear causes many immigrants to remain in abusive relationships.
- (2) IMBRA also provides for the United States government to provide, to an immigrating fiancé(e) or spouse of a U.S. citizen who has a history of criminal or domestic violence, a copy of the citizen's criminal background information.
- (3) One of IMBRA's goals is to provide applicants with accurate information about the immigration process and how to access help if a relationship becomes abusive.

b. What is Domestic Violence?

- (1) The pamphlet provides detailed explanations of the term “domestic violence” and two related offenses, sexual assault and child abuse.
- (2) Domestic violence involving current or former partners is a pattern of behavior where one intimate partner or spouse threatens or abuses the other partner or spouse. Abuse may include physical harm, forced sexual relations, emotional manipulation (including isolation or intimidation), and economic and/or immigration-related threats.
- (2) Under all circumstances, domestic violence, sexual assault, and child abuse are illegal in the United States. All people in the United States are guaranteed protection from abuse under the law. Any victim of domestic violence can seek help. An immigrant victim of domestic violence may be eligible for immigration protections.
- (3) The pamphlet is intended to help you understand U.S. laws regarding domestic violence and how to get help if you need it.

c. What are the Legal Rights for Victims of Domestic Violence in the United States?

All people in the United States, regardless of immigration or citizenship status, are guaranteed basic protections under both civil and criminal law. Laws governing families provide you with:

- The right to obtain a protection order for you and your child(ren).
- The right to legal separation or divorce without the consent of your spouse.
- The right to share certain marital property. In cases of divorce, the court will divide any property or financial assets you and your spouse have together.
- The right to ask for custody of your child(ren) and financial support. Parents of children under the age of 21 often are required to pay child support for any child not living with them.

d. What Services are Available to Victims of Domestic Violence and Sexual Assault in the United States?

- (1) In the United States, victims of these crimes can access help provided by government or nongovernmental agencies, which may include counseling, interpreters, emergency housing, and even monetary assistance.
- (2) The telephone numbers or “hotlines” listed in the pamphlet have operators trained to help victims 24 hours a day free of charge. Interpreters are available, and these numbers can connect you with other free services for victims in your local area, including emergency housing, medical care, counseling, and legal advice. If you cannot afford to pay a lawyer, you may qualify for a free or low-cost legal aid program for immigrant crime or domestic violence victims.

e. What Immigration Options May Be Available to a Victim of Domestic Violence, Sexual Assault, or Other Crime?

The pamphlet outlines three ways immigrants who become victims of domestic violence, sexual assault, and some other specific crimes may apply for legal immigration status for themselves and their child(ren): (1) self-petitions for legal status under the Violence Against Women Act (VAWA); (2) cancellation of removal under VAWA; or (3) U nonimmigrant status. Because a victim's application is confidential, no one - including an abuser, crime perpetrator, or family member - will be told that the victim applied. A victim of domestic violence should consult an immigration lawyer who works with other victims to discuss immigration options that may be available.

f. How Does the U.S. Government Regulate "International Marriage Brokers"?

Under IMBRA, "international marriage brokers" are required to give the foreign national client background information on the U.S. client who wants to contact the foreign national client, including information contained in Federal and State sex offender public registries, and to get the foreign national client's written permission before giving the U.S. client the foreign national client's contact information. If you are a foreign national client, the agency is required to give you a copy of the pamphlet. It is prohibited from doing business with individuals who are under 18 years of age.

g. Can a K Nonimmigrant Visa Applicant Rely on Criminal Background Information that USCIS has Compiled on a U.S. Citizen Fiancé(e) or Spouse?

IMBRA requires the U.S. Government to share any criminal background information on a K nonimmigrant petitioner with the fiancé(e) or spouse who is applying for a K visa as the beneficiary of such a petition. The criminal background information compiled by USCIS comes from various public sources, as well as information provided by the U.S. citizen clients on immigration applications. USCIS does not have access to all criminal history databases in the United States. The U.S. citizen sponsor may not tell the truth in the sponsorship application. It is also possible the U.S. citizen has a history of abusive behavior but was never arrested or convicted. Therefore, the criminal background information an applicant receives may not be complete. The intent of the law is to provide available information and resources to immigrating fiancé(e)s and spouses. Ultimately, you are responsible for deciding whether you feel safe in the relationship.

h. Can Foreign Fiancé(e)s or Spouses Who are Victims of Domestic Violence Also be Victims of Human Trafficking?

Other forms of exploitation, including human trafficking, can sometimes occur alongside domestic violence, when the exploitation involves compelled or coerced labor, services, or commercial sex acts. The pamphlet contains information on how to obtain help regarding human trafficking.

9 FAM 504.8

UNAVAILABLE

(CT:VISA-302; 03-16-2017)
(Office of Origin: CA/VO/L/R)

9 FAM 504.8-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 504.8-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 105(b) (8 U.S.C. 1105(b)); INA 222(a) (8 U.S.C. 1202(a)); INA 222(e) (8 U.S.C. 1202(e)).

9 FAM 504.8-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 42.62; 22 CFR 42.63; 22 CFR 42.67.

9 FAM 504.8-2 UNAVAILABLE

(CT:VISA-1; 11-18-2015)

Unavailable

9 FAM 504.8-3 (U) CLEARING IMMIGRANT VISA APPLICANTS

(CT:VISA-1; 11-18-2015)

a. **(U) Upon Electronic Submission of Form DS-260, Online Application for Immigrant Visa and Alien Registration:**

- (1) **(U)** You must initiate all appropriate clearances called for in [9 FAM 303](#);
- (2) **(U)** You must send instructions for accessing Form DS-260 to derivative applicants along with the interview appointment letter and medical forms. (See [9 FAM 504.4-2\(C\)](#) paragraph c.); and
- (3) **(U)** Also, see [9 FAM 504.4-5](#) for additional discussion of determination that an applicant is documentarily qualified.

b. **(U)** Visa Lookout Accountability (VLA) responsibility applies to immigrant and

nonimmigrant visas. The adjudicating officer (the officer who approves the visa for issuance in the system) is responsible for conducting as complete a clearance as is necessary to establish the eligibility of an applicant to receive a visa. See [9 FAM 307](#) for additional information on VLA issues.

9 FAM 504.8-3(A) (U) CLASS Namechecks for Immigrant Visa Applicants

(CT:VISA-1; 11-18-2015)

(U) The post must namecheck all immigrant visa applicants on the Consular Lookout and Support System (CLASS). This check is conducted automatically by the automated immigrant visa (IVO) processing system. Although the National Visa Center (NVC) performs a preliminary CLASS check on applicants for whom the NVC schedules appointments before sending files to posts abroad, the consular officer must update this clearance by performing a final CLASS check immediately prior to the applicant's interview.

9 FAM 504.8-3(B) (U) Post-to-Post Clearance Requests

(CT:VISA-20 12-18-2015)

- a. **(U)** The Department has eliminated routine post-to-post (Visas Alpha) clearance requests for most situations. However, it still requires clearance requests when:
 - (1) **(U)** A Consular Lookout and Support System (CLASS) check indicates derogatory information is on file at post; or
 - (2) **(U)** [9 FAM 304.5](#), Special Clearance and Issuance Procedures, specifically requires a clearance of applicants from that country.
- b. **(U)** In every case, you must make an entry in the IVO system to show the date and type of background check initiated and the date and result of completion.

9 FAM 504.8-3(C) Unavailable

9 FAM 504.8-3(C)(1) Unavailable

(CT:VISA-48; 02-19-2016)

Unavailable

9 FAM 504.8-3(C)(2) (U) Fingerprint Requirement

(CT:VISA-48; 02-19-2016)

(U) See [9 FAM 303.7](#) for fingerprinting requirements.

9 FAM 504.8-3(D) (U) U.S. Criminal Records Checks

(CT:VISA-1; 11-18-2015)

Unavailable**(1) Unavailable**

- (2) (U) Validity of FBI Fingerprint Checks:** There is no fixed expiration date on an NGI (which replaced IAFIS) check once it has been completed. If the applicant has never been to the United States, the check need never be done again. Officers should exercise judgment on any clearance that is more than 1 year old. If the officer has reason to believe the applicant was in the United States since the clearance, the officer should update the clearance. Officers should use discretion and any available evidence at hand in determining whether to resubmit the fingerprints to NGI before visa issuance.

9 FAM 504.8-3(E) Unavailable

(CT:VISA-48; 02-19-2016)

Unavailable**9 FAM 504.8-4 UNAVAILABLE**

(CT:VISA-302; 03-16-2017)

a. Unavailable**b. Unavailable**

9 FAM 504.9

(U) IMMIGRANT VISA ADJUDICATIONS

(CT:VISA-209; 10-06-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 504.9-1 (U) RELATED STATUTORY AND REGULATORY AUTHORITIES

9 FAM 504.9-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 101(a)(16) (8 U.S.C. 1101(a)(16)); INA 104 (8 U.S.C. 1104); INA 221(a) (8 U.S.C. 1201(a)); INA 222(b) (8 U.S.C. 222(b)).

9 FAM 504.9-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 42.64; 22 CFR 42.68; 22 CFR 42.71.

9 FAM 504.9-1(C) (U) United States Code

(CT:VISA-1; 11-18-2015)

(U) 5 U.S.C. 552a.

9 FAM 504.9-2 (U) ISSUING OR REFUSING VISAS

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.67 N5.1; CT:VISA-2172; 09-11-2014)

(U) Once an application has been executed, you must either issue the visa or refuse it. You cannot temporarily refuse, suspend, or hold the visa for future action. If you refuse the visa, you must inform the applicant of the provisions of law on which the refusal is based, and of any statutory provision under which administrative relief is available. (See [9 FAM 504.11](#) for the refusal procedure and [9 FAM 305](#) for waiver relief.)

9 FAM 504.9-3 UNAVAILABLE

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM Appendix G, 101.1-3; CT:VISA-1934; 10-10-2012)

Unavailable**9 FAM 504.9-4 (U) RESTRICTIONS ON USE OF PASSPORTS**

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.64 N2.1; CT:VISA-1072; 10-15-2008)

- a. **(U) Application Made Within Country of Passport Issuance:** If an applicant for an immigrant visa (IV) presents a valid passport in the country where it was issued, and it is endorsed as not being valid for travel to the United States, or an endorsement is needed to authorize such travel and this endorsement is lacking, the consular officer shall not issue a visa until the restricting endorsement has been removed from, or approving endorsement has been placed on, the passport by the appropriate authorities or unless the passport requirement has been waived under 22 CFR 42.2. The reason for this is two-fold:
- (1) **(U)** No useful purpose would be served in issuing a visa to an applicant who would, in effect, be forbidden to depart for the purpose of using that visa; and
 - (2) **(U)** Issuance of a visa in such circumstances could be regarded as an attempt to circumvent the laws or regulations of the country in which the post is located.

(Previous Location: 9 FAM 42.64 N2.2; CT:VISA-1730; 10-05-2011)

- b. **(U) Application Made Outside Country of Passport Issuance:** If an alien with a passport containing a restriction on travel to the United States applies for a visa in a country other than the one which issued the passport, if the passport is otherwise valid and the alien is otherwise eligible, a visa may be issued without regard to the restriction.

9 FAM 504.9-5 (U) INFORMAL EVALUATION OF FAMILY MEMBERS IF PRINCIPAL APPLICANT PRECEDES THEM

(CT:VISA-209; 10-06-2016)

- a. **(U) Preliminary Determination of Visa Eligibility:** If a principal applicant proposes to precede the family members to the United States, the consular officer may arrange for an informal examination of the other members of the principal applicant's family in order to determine whether there exists at that time any mental, physical, or other ground of ineligibility on their part to receive a visa. If an informal examination of a member of a family is arranged as provided for in 22 CFR 42.68, the consular officer should obtain clearances from other posts and any background checks necessary to determine visa eligibility.
- b. **(U) When Family Member *is* Ineligible:**

- (1) **(U)** In the event any member of the family is found to be potentially ineligible to receive an immigrant visa, the principal applicant is to be so informed. A principal applicant wishing to pursue the application **MUST** provide an acknowledgement of notification of the family member's potential ineligibility for an immigrant visa. The acknowledgment of notification of family member's potential ineligibility for an immigrant visa is to be filed under the name of the ineligible family member for reference purposes in the event the family member should subsequently submit a visa application. The statement should be stamped for destruction at the end of five years.
 - (2) **(U)** If the potentially ineligible family member might benefit under the provisions of INA 212(g), (h), or (i), the principal applicant should be so informed and advised that the authority to invoke these sections is discretionary with the Department of Homeland Security (DHS) and that no advance assurance can be given that the admission of the principal applicant's spouse or child will be authorized by DHS.
- c. **(U) No Guarantee of Future Eligibility:** A determination in connection with an informal examination that an alien appears to be eligible for a visa carries no assurance that the alien will be issued an immigrant visa in the future. The principal applicant shall be so informed and required to acknowledge receipt of this information in writing. The question of visa eligibility can be determined definitively only at the time the family member applies for a visa.

9 FAM 504.9-6 (U) PROCEDURE IF CHILD ACCOMPANIED BY ONLY ONE PARENT OR IF ALIEN SUSPECTED OF ABANDONING FAMILY

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.68 PN2; CT:VISA-3; 08-30-1987)

(U) If a child is immigrating to the United States with one parent and the other parent is remaining abroad, the consular officer should ask the accompanying parent whether any legal impediment might exist preventing the departure of the child. If the response is inconclusive the consular officer should defer final action on the application and direct an informal inquiry to the local authorities in an effort to learn whether a violation of local law might be involved. If so, the local authorities would probably take action to prevent the child's departure by lifting the child's travel document or by other measures. If the local authorities do not take such action within a reasonable time, the officer should proceed with the consideration of the visa application. The same procedure should be followed if the officer has reason to believe that the family of an applicant is being abandoned.

9 FAM 504.9-7 (U) APPLICANT WITH POSSIBLE CLAIM TO U.S. CITIZENSHIP

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.71 N5; CT:VISA-1944; 11-16-2012)

(U) Under 22 CFR 40.2(a), a U.S. citizen is not eligible to receive an immigrant visa. If an immigrant visa applicant has a possible claim to U.S. citizenship, the visa officer should refer the applicant to the post's citizenship and passport officer for a resolution of the citizenship issue. If the matter cannot be resolved that same day, the visa officer should deny the immigrant visa application under INA 221(g) pending resolution of the citizenship issue. Any doubts regarding the applicant's U.S. citizenship status must be resolved before the visa officer may take final action on the visa application. (See [9 FAM 503.2-4\(B\)](#) and [9 FAM 202.1-2](#) paragraph a(1).)

9 FAM 504.9-8 (U) RELEASE OF INFORMATION REGARDING PETITIONER'S CRIMINAL CONVICTIONS

(CT:VISA-209; 10-06-2016)

- a. **(U)** Under 5 U.S.C. 552a, you cannot disclose any record pertaining to a citizen or lawful permanent resident (LPR) of the United States to any person or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record falls under one of the Privacy Act's enumerated exceptions. The Department, in consultation with OMB, has determined that you may release information regarding certain criminal convictions of a visa petitioner under the health and safety provision of the Privacy Act, 5 U.S.C. 552a(b)(8), when you find "compelling circumstances" affecting the health and safety of a beneficiary, such as when:
- (1) **(U)** The petitioner's conviction relates to a criminal offense against a minor or a sexually violent offense; and
 - (2) **(U)** Among the beneficiaries of the petition there is a visa applicant who will be a member of the petitioner's household. Disclosure may be made only if you intend to approve the visa application. Before releasing the information, you must verify that the information is accurate by conducting a search in the National Sex Offender Public Registry or a comparable U.S. or State public criminal registry, by entering the petitioner's name, country and/or city/town, and zip code, and comparing the information for the individual listed in the registry with the available information regarding the petitioner. By searching for information in such a registry, you will be undertaking reasonable efforts to determine whether the information is accurate and to confirm that the conviction has not been expunged from the petitioner's record. If the search produces verification of the current existence in the registry of information concerning such a conviction that has not been expunged, you may disclose the information to the visa applicant or to a minor applicant's parent or guardian. Disclosure must be limited to information concerning the petitioner's sex-crime conviction (and not any other criminal arrest or conviction) that can

be verified through a U.S. public criminal registry. Appropriate case notes should be entered into Immigrant Visa Overseas (IVO) to indicate that the applicant received notice of the petitioner's criminal history. After informing the applicant, give the applicant time to decide whether he or she wishes to proceed with the visa application. Also, after the disclosure is made, you must notify the petitioner in writing that you have released information by sending notification to his or her last known address. Sample text is found in paragraph c below. (You must obtain, through an advisory opinion from the Advisory Opinions Division (CA/VO/L/A), Department approval of the text of the notification before sending it to the petitioner.)

b. **(U)** Please contact CA/VO/L/A before making any visa-related disclosures under the "health and safety" exception to the Privacy Act aside from the disclosures outlined above.

c. **(U) Sample Notification to Petitioner:**

[Date]

[Petitioner name]

[Last known address]

Dear _____:

I am writing to notify you that, during a visa interview on [date], we disclosed the following information to _____, a beneficiary of the petition for [indicate type] status which you filed on [date]:

[List the information that was disclosed to the beneficiary.]

[Only if applicable] We also provided a copy of the attached documents at that time.

This disclosure of information took place on the basis of [health and safety considerations for beneficiaries in light of the information referenced above].

Sincerely,

[Name]

[Title]

- d. **(U)** The guidance in this note does not apply for K-visa cases involving petitions filed on or after March 6, 2006. Those cases are governed by the International Marriage Brokers Regulation Act of 2005 (IMBRA), Subtitle D of Public Law 109-162, Violence Against Women and Department of Justice Reauthorization Act of 2005. You should disclose to a K-visa applicant during the visa interview such information regarding the petitioner's conviction information provided by U.S. Citizenship and Immigration Services (USCIS) in accordance with instructions provided by USCIS in the individual cases.
- e. **(U)** See [9 FAM 504.2-4\(B\)](#) for information about convictions information and the Adam Walsh Act.

9 FAM 504.10

IMMIGRANT VISA ISSUANCE

(CT:VISA-233; 10-25-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 504.10-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 504.10-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 101(a)(16) (8 U.S.C. 1101(a)(16)); INA 206 (8 U.S.C. 1156); INA 221(a) (8 U.S.C. 1201(a)); INA 221(c) (8 U.S.C. 1201(c)); INA 222(b) (8 U.S.C. 1202(b)); INA 224 (8 U.S.C. 1204).

9 FAM 504.10-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 211.1(b)(1); 8 CFR 211.3; 22 CFR 42.64(b); 22 CFR 42.71; 22 CFR 42.72; 22 CFR 42.73; 22 CFR 42.74.

9 FAM 504.10-1(C) Public Law

(CT:VISA-1; 11-18-2015)

Public Law 97-359.

9 FAM 504.10-1(D) Executive Orders

(CT:VISA-1; 11-18-2015)

E.O. 10718.

9 FAM 504.10-2 STANDARD PROCEDURES IN ISSUING VISAS

9 FAM 504.10-2(A) Immigrant Visa Validity

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.72 Related Statutory Provisions; CT:VISA-986; 07-31-2008)

Per INA 221(c), an immigrant visa is normally valid for a maximum of six months except for certain visas issued to a child lawfully adopted by a United States citizen and spouse while such citizen is serving abroad in the United States Armed Forces, or is employed abroad by the United States Government, or is temporarily abroad on business. (See INA 221(c), in part.)

(Previous Location: 9 FAM 42.64 PN2; CT:VISA-1730; 10-05-2011)

- (1) **Limitation of Visa Validity to Meet Passport Validity Requirement:** If an immigrant is required to present a valid passport, you must note whether the alien's passport is valid for at least 60 days beyond the period of validity of the visa, as required in 22 CFR 42.64(b). Officers may limit the validity of the visa to less than six months if the passport is valid for 60 days plus a period sufficient to enable the alien travel to the United States. If the alien is excepted from the 60-day validity requirement under 22 CFR 42.64(b), officers may limit the validity of the visa to less than six months to coincide with the validity of the passport, provided the period of time will be sufficient for the alien to travel to the United States.

(Previous Location: 9 FAM 42.72 N1 CT:VISA-2322; 09-04-2015)

- (2) **Special Validity Considerations Regarding Children:** 8 CFR 211.1(b)(1) provides for the entry, without a visa, of a child born subsequent to the issuance of a visa to the parent. (See [9 FAM 501.1-1\(A\)](#), Related Statutory and Regulatory Authorities.)

(Previous Location: 9 FAM 42.72 N2; CT:VISA-1175; 04-02-2009)

- (3) **Ineligibility Under Public Law 104-208:** An alien applying for redetermination of admissibility must meet the additional grounds of ineligibility under Public Law 104-208.

(Previous Location: 9 FAM 42.72 N3 ; CT:VISA-1175; 04-02-2009)

- (4) **Arrival in United States After Visa Expiration:** DHS regulation, 8 CFR 211.3, provides that an immigrant visa, reentry permit, refugee travel document, or Form I-551, Permanent Resident Card, should be regarded as unexpired if the rightful holder:
 - (a) Embarked or enplaned before the expiration of the immigrant visa, reentry permit, or refugee travel document or, with respect to the Form I-551, before the first anniversary of the date of departure from the United States; and
 - (b) The vessel or aircraft arrives in the United States or foreign contiguous territory on a continuous voyage.

(Previous Location: 9 FAM 42.72 N4; CT:VISA-1175; 04-02-2009)

- (5) **Defining "Continuous Voyage":** The continuity of the voyage should not be deemed to have been interrupted if the alien:
 - (a) Makes scheduled or emergency stops en route to the United States or foreign contiguous territory;

- (b) Lays over in foreign contiguous territory for the sole purpose of effecting a transportation connection to the United States; or
- (c) Transfers to another conveyance in foreign contiguous territory solely for the purpose of effecting a transportation connection to the United States.

9 FAM 504.10-2(B) Machine Readable Immigrant Visas (MRIV)

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN1 CT:VISA-1470; 08-13-2010)

The machine-readable immigrant visa (MRIV) is printed on the same adhesive foils used for nonimmigrant visas (NIV) and includes the following information:

- (1) Biographic data about the immigrant visa applicant;
- (2) Information about the immigrant visa itself, (issuing post, visa type, case number, date of issuance and date of expiration);
- (3) The registration number (A-number) assigned to the immigrant;
- (4) Any annotations entered to reflect waivers or other information useful for the port of entry (POE) upon the applicant's admission to the United States;
- (5) A digitized photo of the visa recipient; and
- (6) Two lines of machine-readable data scanned by the immigration officer at the POE.

9 FAM 504.10-2(C) Information to Include on the Immigrant Visa (MRIV)

9 FAM 504.10-2(C)(1) Visa Recipient Name

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN2.2-1; CT:VISA-2094; 04-29-2014)

a. Consistent Spelling of Aliens' Names on Visas and Passports:

- (1) In order to avoid difficulty in identifying and processing aliens coming into the United States, DHS requires that an alien's name be spelled on Form I-94, Arrival and Departure Record, exactly as the name appears on the alien's passport. You must assist DHS by ensuring that the names of visa applicants are spelled the same on their visa applications Form DS-260, Online Application for Immigrant Visa and Alien Registration, immigrant visas, and passports. If an alien's name has been misspelled on the passport, the alien must have the passport amended to show the correct spelling. All other documents must also show the same correct spelling.
- (2) A female alien who marries subsequent to the filing of the petition Form I-130, Petition For Alien Relative, or Form I-140, Immigrant Petition For Alien Worker,

but prior to visa issuance, must indicate this on Form DS-260, Online Application for Immigrant Visa and Alien Registration, by answering yes to "Have you ever used another name (i.e., maiden, religious, professional, alias, etc.)?" and listing her maiden name in the "Other Surnames Used (maiden, religious professional, alias, etc.)" field. If Form DS-260 has already been submitted, the alien must advise the consular officer of the marriage to ensure that Form DS-260 is amended. Posts must enter the maiden name into IVO as an alias. It is not necessary for an alien falling within the purview of this note to obtain a new or amended passport unless local regulations so require.

(Previous Location: 9 FAM 42.73 PN2.2-2; CT:VISA-1647; 05-06-2011)

b. Alias Information Shown on Immigrant Data Summary Cover Sheet:

- (1) Posts must enter alias information into IVO as part of applicant entry. Alias information is listed on the Immigrant Data Summary page printed by IVO after the Machine-Readable Immigrant Visa (MRIV) is printed and checked for quality assurance (QAed), and placed as a cover sheet on the immigrant visa envelope.
- (2) Posts must limit alias information to names that identify the individual. Posts must include maiden names, anglicized names, which may have been used in the United States, and other distinct names used by the alien. Posts must not, however, include nicknames derived from the real names.

(Previous Location: 9 FAM 42.73 PN2.2-3; CT:VISA-1647; 05-06-2011)

- c. Spanish Name Indexing:** Posts must enter Spanish names into IVO in strict compliance with the instructions in [9 FAM 303.2-14](#). These instructions accord with the DHS indexing system, and must be followed. Posts must enter Spanish names in the same sequence on visa applications, visas, and passports.

9 FAM 504.10-2(C)(2) "City and Country of Birth" and "City and Country of Last Residence"

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN2.3; CT:VISA-1647; 05-06-2011)

- a. Posts must enter the city and country of birth into IVO. If applicable, enter the region of birth as well. "CITY AND COUNTRY OF LAST RESIDENCE" refers to the last residence outside the United States. Do not enter a U.S. address into this data field.
- b. **Exception for Tibetans:** Applicants of Tibetan origin who are properly chargeable to China have occasionally vehemently protested the policy of showing China on their immigrant visa (IV) as their country of chargeability and/or place of birth. In such instances, the general policy of showing the country of chargeability and the fact that Tibet is part of China for visa chargeability purposes must be explained to the applicant. You may make exceptions to showing China as the country of chargeability in individual cases upon consideration of all the circumstances, provided that the internal records of the Department clearly permit the visa to be

tracked to China for chargeability purposes. This may be done by entering the code "CCCC" into the computer program that generates Form OF-155-B, Immigrant Visa and Alien Registration, which will result in "unassigned" appearing in the relevant places on the visa.

9 FAM 504.10-2(C)(3) "Mother's First Name" and "Father's First Name"

(CT:VISA-1; 11-18-2015)

(Previous Locations: 9 FAM 42.73 PN2.4; CT:VISA-1647; 05-06-2011)

Posts must ensure that only the first (given) name of each parent is entered in the IVO data fields. Only in the case of a hyphenated name should more than a single name be included. Additional names or the full name should not be included.

9 FAM 504.10-2(C)(4) "Final Address in the United States"

(CT:VISA-1; 11-18-2015)

(Previous Locations: 9 FAM 42.73 PN2.5 CT:VISA-1647; 05-06-2011)

Posts must ensure that the final address in the United States is complete and accurate, including a ZIP code when it can be determined. This is the address that DHS will use to mail the applicant the "green card." Posts must enter the State in the form of the official two-letter U.S. postal code. Post must specify "care of" (c/o) to the principal resident at the U.S. address entered into the relevant IVO data fields and printed on the Immigrant Data Summary cover sheet. Failure to indicate the "c/o" designation may result in the return of the green card to the DHS.

9 FAM 504.10-2(C)(5) Amerasian Notation Under Public Law 97-359

(CT:VISA-1; 11-18-2015)

(Previous Locations: 9 FAM 42.73 PN2.5-1; CT:VISA-1174; 03-31-2009)

Public Law 97-359 requires DHS to report statistics on Amerasians and their dependents who receive immigrant visas (IV) under the terms of that law. So that DHS inspectors at ports of entry (POE) may be able to identify these cases, use the appropriate immigrant visa codes listed in IVO; they begin with the letter "A."

9 FAM 504.10-2(D) Importance of Proper Assembly of Immigrant Visas and Supporting Documents

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN4 ; CT:VISA-1647; 05-06-2011)

Consular officers must ensure that visas are prepared strictly in accordance with the prescribed procedure. This is not only to reduce the possibility of fraud, but also to prevent the visas from becoming separated from the proper photographs and related and supporting documents, while in the hands of travel agents, pursers, government

officials, the courts, and persons operating the Department of Homeland Security (DHS) files over many years.

9 FAM 504.10-2(D)(1) Assembling Immigrant Visa Application Materials and Relevant Notations

(CT:VISA-233; 10-25-2016)

In cases where the applicant has submitted Form DS-260, Online Application for Immigrant Visa and Alien Registration, you should attach all the *supporting* documents together, except medical documents in Class A or B tuberculosis cases and X-ray film. Supporting documents include copies of all civil documents that are pertinent to the relationship between Petitioner and Beneficiary and the Affidavit of Support. You should be careful NOT to include any criminal information on the Petitioner that may have been included in case file or any documents that are law enforcement sensitive. (See [9 FAM 504.10-2\(D\)](#) above.)

9 FAM 504.10-2(D)(2) Petitions

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN3.1; CT:VISA-2094; 04-29-2014)

a. In Cases Where the Applicant has Submitted Form DS-260, Online Application for Immigrant Visa and Alien Registration:

- (1) If an approved petition has been received, you must attach all supporting documents received from the applicant under the petition and any documents affixed to the petition. (Do not detach the documents from the petition.) If blood tests were required as supporting evidence of the relationship, you must attach the report of such tests, or a certified copy thereof, to the petition. If the alien is a beneficiary of more than one petition, you must attach all petitions.
- (2) If the spouse or children of the beneficiary of an approved petition will benefit from the same status, you must include the petition in the principal applicant's document envelope. You must insert a notation in the CCD Web Application Report associated with the Form DS-260, using either the general notation function or the notation function associated with the spouse, children and/or parent sections. Notations should be entered in the CCD Application Web Report association with Form DS-260 executed by each alien.

b. Posts may issue immigrant visas (IVs) based on official notifications from the Department of Homeland Security (DHS), or in emergency situations, on the basis of an originally approved Form I-797, Notice of Action. DHS will send official notifications to post through the National Visa Center (NVC). NVC then forwards the notifications to posts. In the case of family-based petitions, all original documentation establishing the claimed relationship should be presented. In the case of employment-based petitions, where documentation is necessary in order to determine job requirements and qualifications of the alien, posts may issue an IV on the basis of Form I-797, if accompanied by a certified copy of the original Form

I-140, Immigrant Petition For Alien Worker, and supporting documentation which were originally submitted to DHS.

- c. If the post issues the immigrant visa on the basis of an official notification from DHS, include a copy of the notification in the immigrant visa envelope if the visa is issued before the petition is received. In such a case, when the petition is received, posts must return it to the DHS approving office with a memorandum indicating:
- Date visa issued;
 - Kind of visa and number, if assigned;
 - Name of person to whom visa was issued;
 - Port and date of arrival of beneficiary in the United States, if known; and
 - Intended place of residence of beneficiary in the United States as stated in the visa.

9 FAM 504.10-2(D)(3) Document Arrangement

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN4.1; CT:VISA-2094; 04-29-2014)

You must attach all supporting documents, with the exception of medical documents in Class A or B tuberculosis cases and X-ray film and support documentation for the Affidavit of Support, face up and attached to each to each other by staple or round-head brass paper fastener in the top center. You must place the extra photograph (with the alien's name, and the "A" number if known, written on the back) in an envelope. You must attach it below the other supporting documents by staple in the upper right corner, to permit easy removal by DHS. (Staples must not touch the photo.) NOTE: You should not print out the DS-260, Online Application for Immigrant Visa and Alien Registration, or the associated Online IV Application Report, and neither document should be placed in the packet.

9 FAM 504.10-2(D)(4) Medical Documents

(CT:VISA-118; 04-20-2016)

- a. Post's disposition of the medical documents will vary depending on whether or not a class A or B medical condition exists. See [9 FAM 302.2](#) for specific information on disposition of medical documents after visa issuance to applicants with and without class A or B medical conditions. See [9 FAM 302.2-3\(C\)](#) for information about validity periods of medical examination.
- b. **Aliens Exempt From Vaccination Requirement:** The adoptive or prospective adoptive parent(s) must provide an original copy of the signed affidavit to a consular officer either prior to or at the time of the visa interview for inclusion in the case file. This copy must be attached to the Form DS-2054, Medical Examination for Immigrant or Refugee Applicant, and included with the supporting documents attached to the issued IR-3 or IR-4 visa.

9 FAM 504.10-2(D)(5) Affidavit of Support and Other Supporting Documents

(CT:VISA-121; 05-03-2016)

- a. The Form I-864, Affidavit of Support Under Section 213A of the Act, must be included in the stapled visa packet along with the support documents.
- b. Supporting documents should be included in the visa packet but should not be stapled or grommeted to the Form I-864 or other documents attached to the visa package. Supporting documents consist of the following:
 - (1) The most recent Federal income tax return filed prior to the time of Form I-864 signing; and
 - (2) Evidence of assets and liabilities (if applicable).

9 FAM 504.10-2(D)(6) Documents for Dependents

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN4.5-1; CT:VISA-1470; 08-13-2010)

- a. **Documents for Accompanying Dependents:** Each applicant must submit a signed Form I-864, Affidavit of Support Under Section 213A of the Act, (and Form I-864-A, Contract Between Sponsor and Household Member, if needed). If, however, the principal applicant and dependents will travel together, only one complete set of supporting documents is required. The supporting documents should be included in the principal applicant's visa packet and the principal applicant's alien registration number should be recorded on each accompanying dependent's Form I-864 in the "FOR AGENCY USE ONLY" box on page 1.

(Previous Location: 9 FAM 42.73 PN4.5-2; CT:VISA-1470; 08-13-2010)

- b. **Documents for Following-to-Join Dependents:** Each applicant must submit a signed Form I-864, Affidavit of Support Under Section 213A of the Act, (and Form I-864-A, Contract Between Sponsor and Household Member, if needed). If all following-to-join applicants will travel together, only one complete set of supporting documents is required. The documents should be included in one applicant's visa packet and his or her alien registration number should be recorded on each accompanying dependent's Form I-864 in the "FOR AGENCY USE ONLY" box on page 1 for all following-to-join immigrants.

(Previous Location: 9 FAM 42.73 PN4.5-3; CT:VISA-1367; 10-29-2009)

- c. **Documents for Family Members With Separate Petitions:** If separate petitions have been filed for family members, even accompanying or following-to-join relatives, a complete set of supporting documents is required for each principal applicant.

9 FAM 504.10-2(D)(7) Assembling a Visa

(CT:VISA-118; 04-20-2016)

You must place the Immigrant Data Summary page which is printed after the immigrant visa is printed and Q&A on top of the envelope containing the supporting documents, aligning the upper left corner of the Summary pages and the supporting documents protruding through the envelope. If applicable, posts should place these on top of the envelope containing Form DS-2054, Medical Examination for Immigrant or Refugee Applicant; Form DS-3030, Tuberculosis Worksheet; Form DS-3025, Vaccination Documentation Worksheet; and Form DS-3026, Medical History and Physical Examination Worksheet. Posts must attach the Summary Page, supporting documents, and Form DS-2054 envelope (if applicable) with two heavy-duty staples in the upper left corner of Summary Page, well above the space for the alien's name so as not to obscure the name. When attaching an envelope containing medical forms, you should ensure that staples do not go through the documents inside the envelope. Posts must assemble individually the visas of members of a family group; they must not be attached together with staples.

9 FAM 504.10-2(D)(8) Document Placement in Envelope

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN4.2; CT:VISA-2094; 04-29-2014)

- a. You must put all supporting documents into a 9-1/2" x 12" Kraft envelope with gummed flap and "Foreign Service of the United States of America" and "Official Business" printed thereon, from which the bottom left corner has been cut. You must make the cut by starting 3" from the bottom of the envelope and continuing on an angle of approximately 50 degrees to a point 2 inches from the left side of the envelope. The envelope must bear the following wording in large type:

IMPORTANT NOTICE:

TO BE OPENED ONLY BY A U.S. IMMIGRATION OR PUBLIC HEALTH SERVICE OFFICER. THIS IS YOUR VISA. IT MUST BE SURRENDERED TO THE U.S. IMMIGRATION OFFICER AT A PORT OF ENTRY INTO THE UNITED STATES. DO NOT PACK IT; IT MUST BE HAND-CARRIED.

You must place all supporting documents in the envelope so that the upper left corner of the packet protrudes through the missing corner of the envelope.

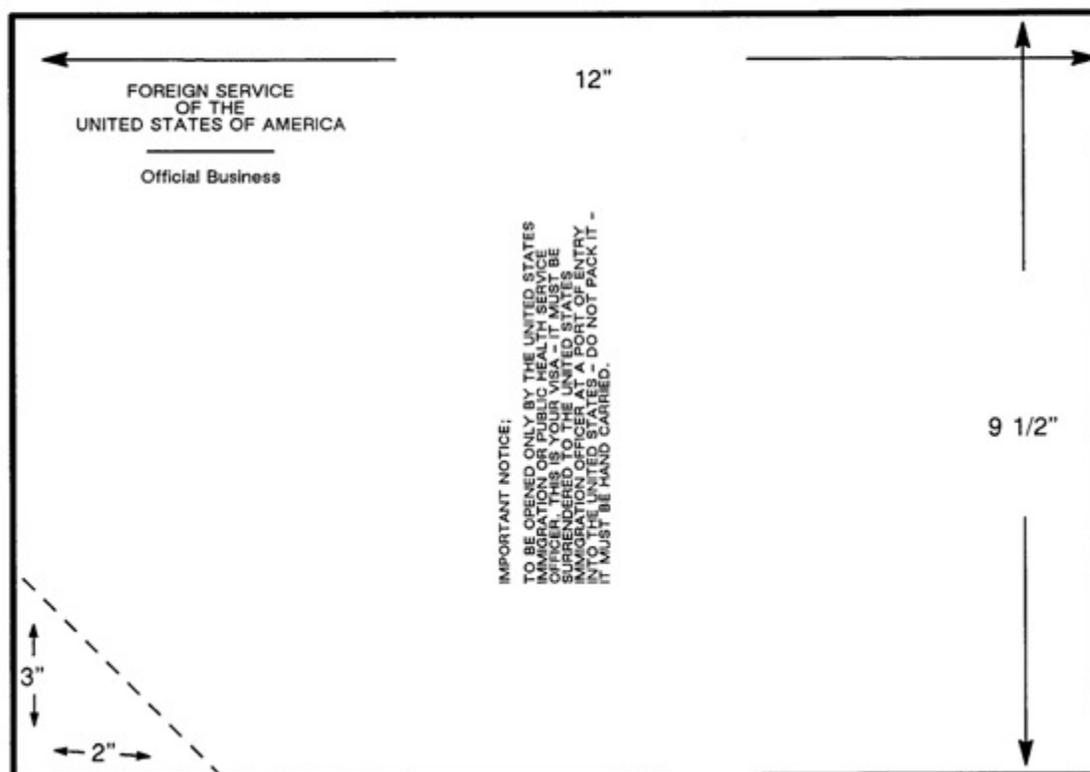
(Previous Location: 9 FAM 42.73 PN4.6; CT:VISA-1781; 12-02-2011)

- b. **Using Rubber Stamp Seal and Initials When Sealing Envelopes:** Posts must seal all envelopes containing the visa documentation by imprinting the rubber stamp seal one time in the center where the flap is glued to the body of the envelope.

(Previous location: 9 FAM 42.73 Exhibit II; CT:VISA-1780; 11-30-2011)

- c. **Illustration of Immigrant Visa Envelope:**

42.73 EXHIBIT II ILLUSTRATION OF IMMIGRANT VISA ENVELOPE



9 FAM 504.10-2(E) Other Required Steps

9 FAM 504.10-2(E)(1) Cancelling Nonimmigrant Visa When Immigrant Visa Issued

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 N1; CT:VISA-1094; 10-31-2008)

If an applicant for an immigrant visa (IV) holds a valid nonimmigrant visa (NIV), the nonimmigrant visa must be canceled when the immigrant visa is issued. No certificate of invalidation or other report is required. If an IV is issued to the bearer of a valid border crossing identification card, the card must be canceled or destroyed. No record is to be made of such cancellation or destruction.

9 FAM 504.10-2(E)(2) Statement Signed by Alien of Marriageable Age Issued Visa as Child

(CT:VISA-1; 11-18-2015)

(Previous Locations: 9 FAM 42.72 PN1; CT:VISA-1767; 10-31-2011: 9 FAM 42.73 PN7; CT:VISA-1174; 03-31-2009)

The post must require an alien of marriageable age, issued a special immigrant, immediate relative, or preference immigrant visa or charged to the foreign state of an accompanying parent by reason of status as a "child" or as an "unmarried son or daughter," to sign Form DS-237, Statement of Marriageable Age Applicant. The post must attach Form DS-237 to the immigrant visa (IV).

9 FAM 504.10-2(E)(3) Attaching Statement to Visa Issued Under Numerical Limitation

(CT:VISA-1; 11-18-2015)

(Previous Locations: 9 FAM 42.72 PN2; CT:VISA-1767; 10-31-2011: 9 FAM 42.73 PN8 CT:VISA-1174; 03-31-2009)

When a visa is issued under the provisions of INA 203(a) or (b) the post must provide the following statement along with the immigrant visa (IV):

"If, for any reason, you are unable to use your visa, you are requested to return it to this office. Failure to return your unused visa may result in an unnecessary delay in the issuance of a visa to some other qualified applicant. Your cooperation in this regard will enable this office to issue a visa to another applicant promptly. Should you, within the near future, desire to reapply for an immigrant visa, every possible consideration will be given to granting you the benefit of your original priority date on the waiting list."

9 FAM 504.10-2(E)(4) Social Security Registration

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN9; CT:VISA-2094; 04-29-2014)

- a. The Social Security Act requires that every new immigrant, regardless of age, be issued a Social Security number (SSN) at the time of admission to the United States for lawful permanent residence (LPR). Non-citizens applying to enter the United States may apply for their SSN on Form DS-260, Online Application for Immigrant Visa and Alien Registration, Social Security Number Information Page, if they will be 18 years of age or older upon their arrival. Those who do so can expect to receive their SSN card at their new U.S. address within three weeks of arriving. See paragraph c below for further explanation.
- b. Those who cannot or do not apply for their SSN cards on their visa application must visit their local Social Security office to apply once they have a permanent address in the United States. Applicants must bring their passport with their MRIV or Form I-551, Permanent Resident Card, if they have it; and their birth certificate and a birth certificate for each member of their family applying for a Social Security number.

(Previous location: 9 FAM 42.73 Exhibit III; CT: VISA-1840; 06-12-2012)

- c. Letter to All immigrants and Refugees Regarding Social Security Numbers:

LETTER TO ALL IMMIGRANTS AND REFUGEES

REGARDING SOCIAL SECURITY NUMBERS

TO: All Immigrants and Refugees

FROM: Social Security Administration

SUBJECT: Social Security Numbers for All Family Members

We are pleased to welcome you to the United States. By law, each immigrant or refugee admitted to the U.S.A. must obtain a Social Security number. You will need a Social Security number to work in the United States, to open a bank account, to pay taxes, and for many other purposes.

If you have already requested a Social Security number on your Form DS-260, you can expect to receive your Social Security card at your new address. If you do not receive a card at your U.S. address within three weeks of being admitted into the United States, have not already requested a Social Security Number, or are arriving as a refugee, please call the nearest Social Security office. The telephone number is listed at www.ssa.gov/locator and in the local telephone directory under "United States Government."

Take the passport or travel document, "Alien Registration Receipt Card" (Form I-551) if any, and the birth certificate (if you have one) for each family member to the Social Security office. A Social Security representative will help you complete the Social Security number application form. (A Social Security card will be mailed to your home approximately 2 weeks after the Social Security Office has everything it needs. If the Social Security Office needs to verify documents with the issuing agency, it may take longer.)

- d. The letter in paragraph c above should be reproduced locally and provided to all persons issued immigrant visas or refugee documentation. Where appropriate, posts may arrange for translation and printing in the local language on the reverse of the English version. Department approval of translations is not required.

9 FAM 504.10-2(E)(5) Selective Service Registration

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN10; CT:VISA-1647; 05-06-2011)

- a. Under the provisions of the Military Selective Service Act and the Presidential Proclamation dated July 2, 1980, registration is required for males who have attained their 18th birthday but not reached their 26th birthday. Such aliens must present themselves to a U.S. Post Office designated for registration within 30 days after entering the United States.
- b. All such aliens must sign Form DS-1810, Notice of Duty to Register with U.S. Selective Service System (see paragraph c below), at the time of the immigrant visa (IV) interview. Posts must enclose the signed Form DS-1810 with the other documents in the issued IV packet. Posts should also give to the alien a duplicate copy, printed in both English and the language of the host country.

(Previous location: 9 FAM 42.73 Exhibit IV; CT:VISA-962; 05-23-2008)

- c. Notice of Duty to Register With U.S. Selective Service System:



U. S. Department of State

**NOTICE OF DUTY TO REGISTER WITH U.S.
SELECTIVE SERVICE SYSTEM**

ATTENTION

If you are a man and are between 18 and 26 years old when you enter the United States, you must register with the U.S. Selective Service System within 30 days after you enter the United States. If you are required to register, do so promptly. You cannot register after you reach age 26. Registration is for conscription into military service in an emergency mobilization of the armed forces. There is no conscription at this time.

To register, go to the nearest United States Post Office, obtain a registration form, fill in the information requested and hand the completed form to the postal clerk. Within 90 days you should receive a Registration Acknowledgement postcard from Selective Service. If you do not hear from Selective Service within this period, it is important that you contact Selective Service to verify your registration status. You may use the telephone number listed below for this purpose.

Failure to register with the Selective Service System is a serious crime in the United States, punishable by imprisonment for up to 5 years and a fine of not more than \$250,000. In addition, you may be denied employment with the Federal Government and you may be denied financial aid for college education, and job training benefits. You may also be denied U.S. citizenship if you later apply for naturalization.

For more information about Selective Service registration after you enter the United States call 709-688-6888.

Your signature below acknowledges receipt of this notice, which is evidence that you were notified of your duty to register with Selective Service, and that you understand the seriousness of a failure to register according to the law.

ACKNOWLEDGEMENT

I hereby state that I received a copy of this notice, that I have read and understand what is required, and I understand that failure to comply with its requirements is a criminal act punishable by imprisonment and/or a fine.

_____	_____
Print Name	Witnessed by (Print Name)
_____	_____
Signature	Witness Signature

	Title
	Date (mm-dd-yyyy)

This form should be printed on the reverse side in the vernacular of the country from which the alien is leaving. Place the original in the alien's INS file. Give a copy to the alien.

DS-1810
12-2005

9 FAM 504.10-2(E)(6) Attaching Pertinent Provisions of Foreign Law to the Visa of an Alien Convicted of Certain Offenses

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.65 PN3; CT:VISA-1132; 12-19-2008)

When the police record does not clearly show that an offense of which an alien was convicted does not involve moral turpitude within the meaning of INA 212(a)(2)(A)(i)(I), attach a copy of the pertinent foreign statute, together with its translation, to the police record. Attaching the text of the foreign statute will facilitate the examination of the alien at the Port of Entry (POE).

9 FAM 504.10-3 SPECIAL PROCEDURES IN

ISSUING IMMIGRANT VISAS

9 FAM 504.10-3(A) Conditional Residents

9 FAM 504.10-3(A)(1) Applicants Classified as Conditional Immigrants

(CT:VISA-121; 05-03-2016)

- a. The administration of the Immigration Marriage Fraud Amendments of 1986 falls mostly on the DHS.
- b. The primary responsibility of consular officers is to identify, at the time of visa issuance, marriages of less than two years which have been the basis of petition approval. If an applicant's basis for immigration is a marriage to a petitioner which was entered into less than two years prior to the date of visa issuance, the consul must classify the applicant as a "conditional immigrant" using the appropriate symbol listed below:
 - (1) CR1-Spouse of a U.S. citizen;
 - (2) CR2-Child of a CR1 applicant (step-child of petitioner);
 - (3) C21-Spouse of alien resident (subject to country limitation);
 - (4) C22-Child of alien resident (subject to country limitation);
 - (5) C23-Child of C21 or C22;
 - (6) CX1-Spouse of alien resident (exempt from limitations);
 - (7) CX2-Child of alien resident (exempt from limitations);
 - (8) CX3-Child of CX1 or CX2;
 - (9) C24-Unmarried son/daughter of alien resident;
 - (10) C25-Child of C24;
 - (11) C31-Married son/daughter of U.S. citizen;
 - (12) C32-Spouse of C31; or
 - (13) C33-Child of C31.
- c. The Immigration Act of 1990 creates a conditional status for employment-based 5th preference employment-creation visas. The appropriate symbols are listed below:
 - (1) C51-Employment-creation outside targeted area;
 - (2) C52-Spouse of C51;
 - (3) C53-Child of C51;
 - (4) T51-Employment-creation in targeted area;
 - (5) T52-Spouse of T51; and

(6) T53-Child of T51.

9 FAM 504.10-3(A)(2) Notice Of "Conditional Status"

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.63 PN6; CT:VISA-2236; 12-17-2014)

a. Aliens normally entitled to IR-1, IR-2, F21, F22, F23, F24, F25, F31, F32, or F33 classification will be granted "conditional status" (C21, C22, CX1, CX2, CX3, C24, or C25, respectively) at the time of visa issuance if:

- (1) The basis for immigration is a marriage to a petitioner, which was
- (2) Entered into less than 2 years prior to the applicant's admission to the United States as an immigrant. (See [9 FAM 504.10-3\(A\)\(1\)](#) above.)

b. All information packages for applicants or information online in ImmigrantVisas.state.gov in these categories must include a notice of conditional status. The text of the notice is to be followed verbatim:

"If, at the time of admission to the United States you will not have celebrated the second anniversary of your marriage, which is the basis of your immigrant status, you are subject to the provisions of section 216 of the Immigration and Nationality Act. Under the provision, you will be granted conditional permanent residence by an officer of the U.S. Citizenship and Immigration Services (USCIS) at the time of your admission to the United States. As a result, you and your spouse must file a joint petition with the Immigration and Naturalization Service to have the conditional status removed. The petition must be filed within the 90-day period immediately preceding the second anniversary of the date you were granted conditional permanent resident status. If a petition to remove the conditional basis of your status is not filed within this period, your conditional permanent residence status will be terminated automatically and you will be subject to removal from the United States."

9 FAM 504.10-3(B) Annotations

9 FAM 504.10-3(B)(1) Annotations - Overview

(CT:VISA-1; 11-18-2015)

(Previous Locations: 9 FAM 42.73 PN2.1; CT:VISA-1950; 12-11-2012: 9 FAM 42.73 PN5; CT:VISA-1470; 08-13-2010)

- a. You should annotate the immigrant visa with information that is helpful to the immigration officer at the port of entry upon the applicant's admission to the United States. The Immigrant Visa Overseas (IVO) system includes most common annotations in a drop down list, or annotations can be manually entered using up to 44 characters per line.
- b. Indicate any waivers approved by USCIS by annotating the visa. IVO includes drop-down annotations for most waivers that you may use and edit, if necessary.
- c. Because a beneficiary may not precede the principal applicant in entering the United States, indicate if the applicant is a beneficiary accompanying or following to join the principal applicant. You should use the IVO drop-down annotation: "Valid only if Acc/FTJ Father/Mother/Spouse." Annotate the MRIV for derivative

beneficiaries to inform both the applicant and the port of entry that they cannot precede the principal applicant in entering the United States and their visa is valid only if they accompany or follow-to-join the principal applicant.

9 FAM 504.10-3(B)(2) Passport Waivers

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.64 PN1; CT:VISA-1071; 10-15-2008)

- a. If the passport requirement for an immigrant is waived under 22 CFR 42.2, you should annotate the IV MRV foil to indicate the waiver. This will help the carriers and the port of entry (POE) determine if an immigrant without a valid passport is properly documented. For example, if the passport is waived in the case of an immigrant who is the spouse of a U.S. citizen, the annotation should read:

"PASSPORT NOT REQUIRED PER 22 CFR 42.2(a)."

- b. If a passport is not required under an individual waiver, the annotation should contain a reference to 22 CFR 42.2(g) as well as to the date and number of the specific instruction from the Department. In such a case the notation on the visa should read:

"PASSPORT WAIVED PER 22 CFR 42.2(g) BY DHS and STATE DEPT: YY STATE [MRN NUMBER] DATED MM/DD/YY."

- c. The IV MRV should be placed on Form DS-232, Unrecognized Passport or Waiver Cases (this form is used in lieu of a passport). If the immigrant has a travel document (expired or unrecognized passport, for example), you should attach it to the travel document as described in [9 FAM 403.9-6\(B\)](#), which contains detailed instructions on using Form DS-232.

9 FAM 504.10-3(B)(3) Annotation for Waivers Under 212(E), (G), (H), OR (I)

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN3.3; CT:VISA-2094; 04-29-2014)

If an applicant has been accorded the benefits of INA 212(e), (g), (h), or (i), annotate the MRIV, add appropriate case notes to IVO and scan relevant documents into IVO. Make a note on the Online IV Application Report associated with the applicant's submitted Form DS-260, Online Application for Immigrant Visa and Alien Registration, using the general notation function, regarding the INA section invoked.

9 FAM 504.10-3(B)(4) Annotation to Reapply for Admission

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN3.3-1; CT:VISA-2094; 04-29-2014)

DHS may grant permission to reapply for admission to the United States to an immigrant otherwise ineligible under INA 212(a)(9)(A). However, such permission to reapply does not remove the grounds which led to the alien's denial of admission to or removal from the United States. The reason for such denial of admission or removal

may lead to another ground of ineligibility. If consent to reapply for admission has been granted to an applicant, annotate the MRIV "212(a)(9)(A): consent to reapply granted by DHS," make appropriate case notes, scan relevant documents into IVO, and make a note on the Online IV Application Report associated with the applicant's submitted DS-260, Online Application for Immigrant Visa and Alien Registration, using the general notation function.

9 FAM 504.10-3(B)(5) Notation if Public Charge Bond Posted

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN3.3-2; CT:VISA-2094; 04-29-2014)

If a public charge bond has been posted on behalf of an applicant, posts must insert an endorsement on the Online IV Application Report associated with the applicant's submitted DS-260, Online Application for Immigrant Visa and Alien Registration, using the general notation function, showing the amount of the bond and the date and place of posting. Make appropriate case notes and scan relevant documents into IVO.

9 FAM 504.10-3(B)(6) Notation for Vaccination Waiver

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN3.3-3; CT:VISA-1647; 05-06-2011)

- a. If a vaccination requirement has been waived, posts must annotate the immigrant visa to indicate the appropriate waiver grounds in the annotation field, either "212(g)(2)(A), (B), or (C)," as appropriate.
- b. Posts should indicate INA 212(a)(1)(A)(ii) refusals using the code "12V," to avoid confusion with the previous code for ineligibility due to mental and/or physical disorders, and to ensure accurate data sharing with DHS lookouts. Posts should only enter this code for those cases that are not overcome by a waiver.

9 FAM 504.10-3(B)(7) Applicants Who are the Subject of Private Legislation

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN3.2; CT:VISA-2094; 04-29-2014)

If an applicant is the beneficiary of a private law, posts must make a notation on the Online IV Application Report associated with the applicant's submitted Form DS-260, Online Application for Immigrant Visa and Alien Registration, using the general notation function, showing the number of the private law and the provision of law which has been waived or from which relief has been, otherwise, granted by the Congress. When possible, posts should also include a copy of the private law in the supporting documents. If the post is notified by telegram of the enactment of a private law, posts should include the telegram or a certified copy with the other documents.

9 FAM 504.10-3(C) Lawful Permanent Residents

9 FAM 504.10-3(C)(1) Issuing Immigrant Visa to Lawful Permanent Resident (LPR)

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 N2; CT:VISA-1856; 08-14-2012)

DHS and the Department have agreed that a lawful permanent resident (LPR) alien is entitled to apply for and, if qualified, may be issued an immigrant visa in any other visa classification. For example, an immigrant who is admitted as a conditional immigrant may at some future date qualify for a visa in an employment-based category and thus be admitted in a non-conditional status. Do not require the alien to relinquish Form I-551, Permanent Resident Card, as a condition for issuance of another immigrant visa.

9 FAM 504.10-3(C)(2) Recipients of Returning Resident (SB-1) Visas

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN6.1; CT:VISA-1647; 05-06-2011)

- a. A recipient of a returning resident (SB-1) visa will normally possess a previously issued Form I-551, Permanent Resident Card. If for some reason the alien no longer possesses the form, posts should instruct the alien to apply for a replacement on Form I-90, Application to Replace Permanent Resident Card.

(Previous Location: 9 FAM 42.73 PN6.2; CT:VISA-1647; 05-06-2011)

- b. Posts must include in the immigrant visa (IV) any previously issued Form I-551, Permanent Resident Card, possessed by the alien, including returning resident (SB-1) aliens, in the same envelope as the extra photograph.

9 FAM 504.10-4 REQUIRED NOTIFICATIONS

9 FAM 504.10-4(A) Female Genital Mutilation (FGM) Notification Requirement

(CT:VISA-121; 05-03-2016)

Section 644 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Public Law 104-208 (8 U.S.C. 1374), requires the Department of Homeland Security (DHS), with the cooperation from the Department of State, to notify visa recipients of the severe harm to physical and psychological health caused by Female Genital Mutilation (FGM). The DHS regulations require that written notice be given to immigrants in countries where FGM is a common practice.

9 FAM 504.10-4(A)(1) All Posts Required to Post FGM Notice

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN11.1; CT:VISA-2275; 04-10-2015; 9 FAM 40.11

N15(b)in part.; CT:VISA-2319; 08-27-2015 in part)

All posts must display the Fact Sheet on Genital Mutilation in the Nonimmigrant Visas (NIV) and/or IV waiting room. The Fact Sheet should be displayed in the the local language so that applicants from countries where FGM is practiced will have notice that this practice is illegal in the United States. See [9 FAM 504.10-4\(A\)\(3\)](#) below for information on translating and reproducing the notice.

9 FAM 504.10-4(A)(2) Requirement to Provide Copy of FGM Notice

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN11.2; CT:VISA-2319; 08-27-2015)

IIRIRA 664 (8 U.S.C. 1374) allows DHS and the Department to target visa recipients from countries where FGM is a common problem. Posts should provide a copy of the notice to IV recipients in the countries listed below. At the time of interview, consular officers at posts listed below should provide one copy of the notice to each family receiving an immigrant visa.

List of Countries Where FGM is Prevalent:

Benin	Burkina Faso	Cameroon	Central African Republic
Chad	Cote d'Ivoire	Democratic Republic of the Congo	Djibouti
Egypt	Eritrea	Ethiopia	Gambia
Ghana	Guinea	Guinea-Bissau	Iraq
Kenya	Liberia	Mali	Mauritania
Niger	Nigeria	Senegal	Sierra Leone
Somalia	Sudan	Tanzania	Togo
Uganda	Yemen		

List of Posts to Provide Applicant With Fact Sheet on Genital Mutilation:

Abidjan	Accra	Addis Ababa	Asmara
Baghdad	Cairo	Cotonou	Dakar
Dar es Salaam	Djibouti	Freetown	Kinshasa
Lagos	Lome	Monrovia	Nairobi
Niamey	Ouagadougou	Sana'a	Yaounde

9 FAM 504.10-4(A)(3) Downloading FGM Notice From the Website

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.73 PN11.3; CT:VISA-2319; 08-27-2015t: 9 FAM 40.11 N15(b&c)in part.; CT:VISA-2319; 08-27-2015)

- a. Amharic, Arabic, English, French, Swahili, and Somalian versions of the Fact Sheet on Genital Mutilation are available on travel.state.gov. Posts should print out a

copy of the notice and reproduce it locally. Posts are authorized to use their MRV allotment or fund site if needed to cover local reproduction costs.

- b. If the appropriate local translation is not available, posts may also create their own notices in the dialects of the country that they serve. These additional translations may be posted upon request.

9 FAM 504.10-4(B) Public and Host Government Reaction to FGM Notification Requirement

(CT:VISA-121; 05-03-2016)

The social and political sensitivities surrounding FGM in many countries may prompt public or host government reaction to the FGM notice. Posts should draw on the following talking points when responding to any complaints or comments:

- (1) The United States law makes it illegal to perform or allow others to perform FGM in the United States on persons under the age of 18 for other than medical reasons. The law also requires that persons receiving visas be advised of this fact, and of the medical and psychological damage caused by FGM.
- (2) Providing this advice could prevent individuals from doing something in the United States that could result in their becoming subject to criminal prosecution. This is particularly important because people who have grown up in societies where FGM is deeply rooted may erroneously assume that they can follow their customs in the United States.
- (3) We realize that in countries where the practice is common, FGM is deeply rooted in social traditions and culture. We nevertheless believe that FGM is a serious violation of a woman's rights and should be eradicated through education efforts and legislation making the practice of FGM illegal.
- (4) The United States is committed to working with other governments and local community organizations, both in the United States and other countries, to educate people about the serious damage FGM inflicts on women and girls. The practice of FGM is now illegal in the United States, and we believe strongly that persons immigrating to the United States or visiting from countries where FGM is prevalent should be aware of this fact.

9 FAM 504.10-4(C) Foreign Agents Registration Act

(CT:VISA-121; 05-03-2016)

The Foreign Agents Registration Act (22 U.S.C. 611 through 613) requires persons within the United States acting as agents of a foreign principal to register with the Department of Justice. The purpose of this Act is "to protect the national defense, internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the Government and the people of the United States may be informed of the

identity of such persons and may appraise their statements and actions in the light of their associations and activities.” Such registration places no restrictions on the lawful activities which may be engaged in by an agent of a foreign principal nor any stigma on anyone so registering. It may be assumed that registrants have nothing to fear from public disclosure of their activities. If statements obtained from an alien in connection with a visa application suggest that the applicant may be subject to the registration requirement of the Act, the consular officer should so inform the alien and advise that registration forms may be obtained, after arrival in the United States, from the Department of Justice, Washington, DC.

9 FAM 504.10-5 ISSUANCE OF NEW OR REPLACEMENT VISAS

9 FAM 504.10-5(A) Issuing Replacement Visa During Validity of Original Visa

(CT:VISA-30; 12-29-2015)

- a. If you are satisfied that an applicant will be or was unable to use an immigrant visa (IV) during its validity period because of reasons beyond the applicant’s control and for which the applicant is not responsible then you may issue a replacement visa with the originally allocated visa number within the same fiscal year even though the visa has not yet expired. You should recall and cancel the originally-issued visa and collect once again the appropriate IV application processing fee (including the Diversity Visa Lottery Fee for a DV applicant), unless the applicant was unable to use the visa as a result of action by the U.S. Government over which the alien had no control and for which the alien was not responsible.
- b. An applicant who will be or was unable to use an IV during its validity period because of reasons within the applicant's control can submit a new visa application if the petition has not been revoked and if the basis for immigration still exists (i.e., familial relationship). This also applies for new IV applications outside of the original IV's fiscal year of issuance.
- c. In the event an immigrant visa or boarding foil is reported lost or stolen, you should first check the ADIS database in the CCD to determine if the visa has already been used for entry into the United States. If, after careful search in ADIS of either the passport number or the name/DOB, you determine that the visa has not yet been used, follow the procedures for reporting issued visas as lost or stolen set forth in [9 FAM 403.9-7](#). If there are fraud indicators, the case should also be referred to the FPU. In the event the immigrant visa was used by the applicant see [9 FAM 202.2-5\(C\)](#) for facilitating the applicant’s return to the United States.

9 FAM 504.10-5(B) Returning Visa Numbers for Issued Unused Visas

(CT:VISA-1; 11-18-2015)

(Previous Location: 9 FAM 42.74 N2.1; CT:VISA-1721; 09-30-2011)

a. If a visa recipient, for whatever reason, including death, does not use a visa, you should request the return of the visa. Post should cancel and return the visa to the sender and return the visa number to the Department for reallocation to another beneficiary. Unless the alien was unable to use the visa as a result of action by the U.S. Government over which the alien had no control and for which the alien was not responsible, you may not refund the fee collected for an issued visa even though the unused visa is returned and the number returned for reallocation. (See [9 FAM 503.4-4](#), 22 CFR 42.71(b), and [9 FAM 504.10-2\(E\)\(3\)](#) above.)

(Previous Location: 9 FAM 42.74 N2.2; CT:VISA-1565; 10-01-2010)

b. The guidance contained in paragraph a above is not intended to curtail or otherwise affect your authority under INA 221(c) to issue a replacement immigrant visa.

9 FAM 504.10-5(C) Issuing New or Replacement Visa to Alien Previously Granted INA 212(g) Waiver

(CT:VISA-30; 12-29-2015)

You may issue a new or replacement visa to an alien who was previously granted a waiver under INA 212(g) if the conditions in [9 FAM 302.2-5\(D\)\(1\)](#) are met.

9 FAM 504.11

(U) IMMIGRANT VISA REFUSALS

(CT:VISA-265; 12-12-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 504.11-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 504.11-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 212(a) (8 U.S.C. 1182(a)); INA 212(b) (8 U.S.C. 1182(b)); INA 212(e) (8 U.S.C. 1182(e)); INA 221(g) (8 U.S.C. 1201(g)).

9 FAM 504.11-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 40.6; 22 CFR 42.81; 22 CFR 42.83.

9 FAM 504.11-2 (U) REFUSAL POLICY

9 FAM 504.11-2(A) (U) Visa Issued or Refused if Application Properly Completed and Executed

(CT:VISA-1; 11-18-2015)

- a. **(U)** There are no exceptions to the rule that once a visa application has been properly completed and executed before a consular officer, a visa must be either issued or refused. (See [9 FAM 504.9-2](#).) For statistical and comparison purposes, all posts should follow the identical refusal procedures and report refusals the same way in their required reports of visas issued and refused. (See [9 FAM 504.3-2](#).) Accordingly, any alien to whom a visa is not issued by the end of the working day on which the application is made, or by the end of the next working day if it is normal post procedure to issue visas to some or all applicants the following day, must be found ineligible under one or more provisions of INA 212(a), 212(e), or 221(g). (INA 221(g) is not to be used when a provision of INA 212(a) is applicable.) This requirement to find an applicant ineligible when a visa is not issued applies even when:
- (1) **(U)** A case is medically deferred;

- (2) **(U)** The post requests an advisory opinion from the Department;
 - (3) **(U)** The post decides to make additional local inquiries or conduct a full investigation; or
 - (4) **(U)** The only deficiency is a clearance from another post.
- b. **(U)** There is no such thing as an informal refusal or a pending case once a formal application has been made.

9 FAM 504.11-2(B) (U) Guidelines on Grounds for Refusals

(CT:VISA-89; 03-09-2016)

(U) You should refer to relevant sections of [9 FAM 502](#) for guidance on qualifications for specific categories of visas and [9 FAM 302](#) for detailed explanations of grounds of ineligibility. Guidelines for determining the applicable INA provisions as grounds of refusal in varying circumstances follow:

- (1) **(U)** When a spouse or child of the principal alien is ineligible for a visa and the principal alien and remainder of the family decide to wait until the ineligible person has overcome the ineligibility, the spouse or child should be refused under the pertinent section(s) of INA 212(a), 212(e), or 221(g). The remainder of the family should be refused under INA 221(g).
- (2) **(U)** When the principal alien only is ineligible, the principal alien should be refused under the pertinent grounds of INA 212(a), 212(e), or 221(g). Other family members should be refused under INA 221(g).
- (3) **(U)** When an applicant is delayed for suspected tuberculosis, the applicant and family members who wish to wait and travel with the applicant should be refused under INA 221(g). If further tests indicate ineligibility under INA 212(a)(1)(A)(i), a new refusal under that section should be made for the afflicted applicant only.
- (4) **Unavailable.**
- (5) **Unavailable.**

9 FAM 504.11-3 (U) REFUSAL PROCEDURES

(CT:VISA-1; 11-18-2015)

(U) If you determine that the applicant is not eligible for a visa, the following procedures should be followed.

9 FAM 504.11-3(A) (U) Refusal Cases

9 FAM 504.11-3(A)(1) (U) Inform the Alien Orally and in Writing

(CT:VISA-1; 11-18-2015)

a. (U) Manner in Refusing Applicants:

- (1) **(U)** You should convey visa refusals in a sympathetic but firm manner. The manner in which visa applications are refused can be very important in relations between the post and the population of the host country. You must be careful not to appear insensitive.
- (2) **(U)** You should aim for a measured, sympathetic but firm style which will convince the ineligible applicant that the treatment accorded was fair. You should refer to pertinent statements of the applicant, written or oral, or to a conviction, medical report, false document, previous refusal, or the like, as the basis of the refusal. You should then explain the law simply and clearly.

b. (U) INA 212(b) requires officers to provide timely written notice that the alien is inadmissible. The written notification should provide the alien (and the attorney of record) with:

- (1) **(U)** The provision(s) of law on which the refusal is based;
- (2) **(U)** The factual basis for the refusal (unless such information is classified) please also see "Exceptions to Notice Requirements" below;
- (3) **(U)** Any missing documents or other evidence required;
- (4) **(U)** What procedural steps must be taken by you or Department; and
- (5) **(U)** Any relief available to overcome the refusal. See [9 FAM 302](#) for information about the availability of waivers of ineligibility.

c. (U) 212(a) Refusal Letter:

- (1) **(U)** For a 212(a) IV refusal, posts may draft the refusal letter in the manner they deem appropriate and without Departmental approval. However, the letter must:
 - (a) **(U)** Explicitly state the provision of the law under which the visa is refused, unless advised otherwise by the Department;
 - (b) **(U)** Neither encourage nor discourage the applicant from reapplying; and
 - (c) **(U)** Inform the applicant whether a waiver is available.
- (2) **(U)** Alternatively, posts may elect to use the optional refusal letter found at [9 FAM 403.10-3\(A\)\(3\)](#), or they may choose to modify the letter as necessary. If posts use a modified version, the letter must meet the criteria listed in paragraph 1 above.

d. (U) 221(g) Refusal Letter:

- (1) **(U)** For a 221(g) IV refusal, posts may draft the refusal letter in the manner they deem appropriate and without Departmental approval. However, the letter must:
 - (a) **(U)** Explicitly state the provision of the law under which the visa is refused;

(b) **(U)** Neither encourage nor discourage the applicant from reapplying; and

(c) **(U) Include the following language:**

(i) **(U)** Please be advised that for U.S. visa purposes, including ESTA (see the ESTA website), this decision constitutes a denial of a visa.

(ii) **(U)** This language should be included for denials of applicants for petition-based visas only:

If you fail to take the action requested within one year following visa denial under Section 221(g) of the Immigration and Nationality Act then your petition will be permanently terminated under INA Section 203(g).

(2) **(U)** Alternatively, posts may elect to use the optional refusal letter found at [9 FAM 403.10-3\(A\)\(3\)](#) or they may choose to modify the letter as necessary. If posts use a modified version, the letter must meet the criteria listed in paragraph a of this note.

e. **(U) Exceptions to Notice Requirement:** INA 212(b), which requires you to provide the applicant with a timely written notice in most cases involving a 212(a) refusal, also provides for a waiver of this requirement. However, only the Department may grant a waiver of the written notice requirement. Furthermore, although 212(b) also exempts findings of ineligibility under INA 212(a)(2) and (3) from the written notice requirement, we expect that such notices will be provided to the alien in all 212(a)(2) and (3) cases unless:

(1) **(U)** We instruct you not to provide notice;

(2) **(U)** We instruct you to provide a limited legal citation (i.e., restricting the legal grounds of refusal to 212(a)); or

(3) **(U)** In response to a request, you receive permission from us not to provide notice.

9 FAM 504.11-3(A)(2) (U) Submit Case for Supervisory Review

(CT:VISA-265; 12-12-2016)

a. **(U)** The adjudicating officer must send the file to the designated supervisory officer. The supervisory officer must:

(1) **(U)** Review the case; and

(2) **(U)** Confirm or disagree with the refusal. *The supervisor should use the adjudication review tool in the CCD to review all IV refusals that cannot be overcome by the presentation of additional evidence per 22 CFR 42.81(c). Supervisors should review adjudications in the CCD so there is a record of the review available outside of the local IVO system. The CFR does not mandate reviewing issuances or 221(g) refusals, but CA considers that to be a prudent practice and leaves to supervisors' discretion which IV issuances warrant review. Depending on applicant pool, fraud environment, officer experience, etc., supervisors may elect to review more or fewer of these cases.*

- b. **(U)** The Department's regulation at 22 CFR 42.81(c) specifies that the *supervisor* must review the refusal on the day of the refusal or as soon thereafter as is administratively possible (no later than 30 days after the refusal, in any event). When the basis for the refusal is not entirely straightforward, the *supervisor* should review the case immediately. If the reviewing officer does not concur in the refusal, that *supervisor* must either refer the case to the Department for an advisory opinion or assume personal responsibility for the case. If the *supervisor* reverses the refusal decision, the applicant should be promptly notified. The original refusing officer should be advised before the applicant is notified. (See [9 FAM 504.11-3\(A\)\(3\)](#) below.)

9 FAM 504.11-3(A)(3) (U) Discussion by Reviewing Officer

(CT:VISA-1; 11-18-2015)

- a. **(U)** The regulations indicate only two possible actions for a reviewing officer who disagrees with a refusal:
- (1) **(U)** Submission of the case to the Department; or
 - (2) **(U)** Personal assumption of responsibility by reversing the refusal.
- b. **(U)** The reviewing officer should discuss the case fully with the refusing officer before taking either action. The principles of good management require that the entry level officer be involved in any action possibly bearing on the entry -level officer's judgment and performance. Also, in the course of discussion the reviewing officer may become aware of additional facts which the refusing officer did not make clear in the refusal worksheet. Most important, the entry level officer will learn more about the visa function and the application of some of the more complicated laws and regulations in visa work. Ideally, any differences will be worked out in the discussion and the refusing officer, not the reviewing officer, will take whatever action is necessary. Only if there is no resolution should the reviewing officer take the actions specified in 22 CFR 42.81(c), and then only after the refusing officer has been informed what the action will be and why.

9 FAM 504.11-3(A)(4) (U) Entering Refusals

(CT:VISA-39; 01-27-2016)

- a. **Unavailable.**
- b. **(U)** Refusals entered into the automated system are automatically updated to the Consular Lookout and Support System (CLASS) with the exception of 221(g) refusals. (See [9 FAM 303.3](#).)
- c. **Unavailable.**
- d. **Unavailable.**
- e. **(U)** See [9 FAM 504.3-2](#) for information about the required reports of immigrant visas issued and refused (report 28).

9 FAM 504.11-3(A)(5) (U) The Refusal File

(CT:VISA-1; 11-18-2015)

(U) The Refusal File Consists of the Following:

- (1) **(U)** One copy of each document presented by the applicant; and
- (2) **(U)** Any document(s) pertaining to the alien's ineligibility in the Category I or Category II refusal files, as applicable. (Category I includes cases under INA 212(a)(1), (2), (3), (6), and (8). Category II encompasses all other refusal categories.)

9 FAM 504.11-3(B) (U) Quasi-Refusal Cases

9 FAM 504.11-3(B)(1) (U) Informing Alien of Apparent Ineligibility

(CT:VISA-1; 11-18-2015)

a. (U) The Decision to Issue or Refuse a Visa Can Be Made Only After an Applicant has:

- (1) **(U)** Executed an application for a visa;
- (2) **(U)** Presented all the documentation required by law; and
- (3) **(U)** Paid the prescribed fee.

b. **(U)** If an alien who has not filed a formal application inquires about eligibility for a visa, and it appears from statements made or evidence presented that the alien would be ineligible to receive a visa and that no exemption applies, you should point out the pertinent section of the law to the alien. The alien should be informed that the evidence and general circumstances described might bring the case under the cited INA provision.

c. **(U) Entering Quasi-Refusal into CLASS:** If, after being informed of the apparent ineligibility, the alien decides not to submit a formal application, the situation does not constitute a formal refusal and it should not be reported as such by the post. A lookout entry, however, may be appropriate. If so, the name should be entered into CLASS. (See CLASS Refusal/Lookout Codes and Historical CLASS Refusal/Lookout Codes.)

9 FAM 504.11-3(B)(2) (U) If an Advisory Opinion (AO) is Required

(CT:VISA-1; 11-18-2015)

a. **(U) Procedures in cases deferred for advisory opinions or other reasons:** If, after interviewing the applicant, you decide that an advisory opinion is necessary, you must first refuse the alien under INA 221(g). The record copy of the request for advisory opinion should be attached to the documents retained and filed in the post's A-Z file. Documents should not be returned to the applicant until final action

is taken. The post must use a tickler system as a reminder to send a follow-up request for a response after a reasonable period of time has elapsed. If it is later determined on the basis of the Department's advisory opinion that the alien is ineligible under a provision of INA 212(a) or INA 212(e), the alien should then be refused under the pertinent section. Under no circumstances should a final resolution of the question of eligibility be made before the department's advisory opinion is received. The same procedure is to be followed if the medical examiner is unable to make a determination under INA 212(a)(1) for want of further x-rays, tests, etc., and defers the case for a given time. This procedure is also to be followed in other situations where the alien has formally applied, but a final determination is deferred for additional evidence, further clearance, name check, or some other similar reason.

- b. **(U) Cases Involving Classified Information Reported to Department:** See 9 FAM Appendix A for required reports.

9 FAM 504.11-4 (U) OVERCOMING OR WAIVING A REFUSAL

9 FAM 504.11-4(A) (U) Overcoming a Refusal

(CT:VISA-89; 03-09-2016)

- a. **(U)** You should find that an applicant has overcome an immigrant visa (IV) under INA 221(g) in two instances: when the applicant has presented additional evidence, allowing you to re-open and re-adjudicate the case, or when the case required additional administrative processing, which has been completed. An IV applicant missing a birth certificate, for instance, should be refused INA 221(g) pending that certificate (see [9 FAM 403.10-3\(A\)](#) for guidance on INA 221g refusals). When the applicant returns with the document, you should overcome the previous refusal, allowing the case to be adjudicated.
- b. **(U)** Similarly, if an applicant refused under INA 212(a)(4) subsequently presents sufficient evidence to overcome the public charge inadmissibility, you should process the case to completion. 22 CFR 42.81(e) "limits the period of review of an IV refusal to one year from the date of refusal." [9 FAM 302.8-2\(B\)\(11\)](#) provides guidance on when to use INA 221(g) and when INA 212(a)(4) would be more appropriate.
- c. **Unavailable.**

9 FAM 504.11-4(B) (U) Waiving an Immigrant Visa (IV) Inadmissibility

(CT:VISA-1; 11-18-2015)

(U) There is no waiver available for refusals under INA 221(g). DHS has the authority to waive most IV ineligibilities. (See [9 FAM 305.2](#) for information about the

availability of IV waivers.)

9 FAM 504.11-4(C) (U) Fees

(CT:VISA-1; 11-18-2015)

- a. **(U) Applicant has One Year to Overcome Refusal to Avoid New Fee:** Under 22 CFR 42.81(e) a refused alien need pay no new application fee if evidence is presented overcoming the ground of ineligibility within one year of the date of refusal.
- b. **(U) No New Fee Required in Certain Other Cases:** See [9 FAM 504.6-5\(B\)](#).
- c. **(U) Reconsidering Refusal After One Year:** As long as the applicant is still entitled to visa status, reconsideration may be given to the case at any time. If more than one year has elapsed, however, a new application and fee must be taken prior to the approval of the case and to the issuance of a visa. (See 22 CFR 42.43, Suspension or Termination of Action in Petition Cases and 22 CFR 42.83, Termination of Registration.)

9 FAM 504.11-4(D) (U) Visa Annotation With Refusal Overcome

(CT:VISA-1; 11-18-2015)

- a. **(U)** In cases where an alien's name has been entered into CLASS as a formal INA 212(a) refusal, and the grounds for refusal are subsequently overcome for whatever reason, annotate the visa to reflect that the bearer has overcome the ineligibility. This is necessary because all INA 212(a) CLASS entries are also shared with the other U.S. border security systems and deletion from these systems may take several months. Meanwhile the alien will be subject to secondary inspection unless there is a notation on his or her visa.
- b. **(U)** Posts should not confuse this annotation procedure with specific waiver information. Where an ineligibility is waived rather than overcome, posts should continue to annotate the visa with the waiver information.

9 FAM 504.12

(U) REVOCATION OF IMMIGRANT VISAS

(CT:VISA-62; 02-26-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 504.12-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 504.12-1(A) (U) Immigration and Nationality Act

(CT:VISA-62; 02-26-2016)

(U) INA 221(i) (8 U.S.C. 1201(i)).

9 FAM 504.12-1(B) (U) Code of Federal Regulations

(CT:VISA-62; 02-26-2016)

(U) 22 CFR 42.82.

9 FAM 504.12-2 (U) GROUNDS FOR REVOCATION OF AN IMMIGRANT VISA (IV)

(CT:VISA-62; 02-26-2016)

(U) You are Authorized to Revoke an Immigrant Visa (IV) Under the Following Rare Circumstances:

- (1) **(U)** You know, or after investigation are satisfied, that the visa was procured by fraud, a willfully false or misleading representation, the willful concealment of a material fact, or other unlawful means;
- (2) **(U)** You obtain information establishing that the alien was otherwise ineligible to receive the particular visa at the time it was issued; or
- (3) **Unavailable**

9 FAM 504.12-3 (U) REVOCATION PROCEDURES

9 FAM 504.12-3(A) (U) Revocation Must Take Place Prior to Entry Into the United States

(CT:VISA-62; 02-26-2016)

- a. **(U)** An immigrant visa (IV) may not be revoked once Customs and Border Protection (CBP) has admitted the visa holder into the United States.
- b. **(U)** However, you must promptly report to the Office of Field Operations Division (CA/VO/F) by email if it appears that an alien, subsequently determined to be ineligible for an IV, was issued an IV and has since entered the United States. CA/VO/F will forward this information to the Department of Homeland Security (DHS).
- c. **(U)** The report submitted to CA/VO/F should include the following information:
 - (1) **(U)** The alien's full name, including aliases;
 - (2) **(U)** Date and place of birth;
 - (3) **(U)** Country of nationality and residence;
 - (4) **(U)** Date of issuance of visa, date of expiration of visa, and visa symbol;
 - (5) **(U)** Type, number, date and place of issuance of passport;
 - (6) **(U)** All sections of law under which the alien is ineligible, if pertinent;
 - (7) **(U)** A full report of the information upon which the finding of ineligibility is based, and your comments;
 - (8) **(U)** If available, the means of transportation, prospective date and port of arrival, and the alien's address in the United States; and
 - (9) **(U)** Any other pertinent information, including date of revocation.

9 FAM 504.12-3(B) (U) Revocation Procedures at Post

(CT:VISA-62; 02-26-2016)

- a. **(U) Notice of Proposed Revocation:** If practicable, you must take the following three steps after deciding to revoke an immigrant visa (IV):
 - (1) **(U)** Enter a quasi-refusal in CLASS;
 - (2) **(U)** Notify the bearer of the IV of the proposed action as soon as possible;
 - (3) **(U)** Give the bearer of the IV an opportunity to show why the visa should not be revoked; and
 - (4) **(U)** Request that the bearer of the IV present the visa at post.
- b. **(U) Revocation at Post:** To revoke the visa when the immigrant visa (IV) bearer presents his/her visa at post, you must stamp the visa, "Cancelled," plainly across the face of the visa. Sign and date the visa with the date of revocation. In addition, make certain to make any appropriate notations of the revocation in the case files.

9 FAM 504.12-3(C) (U) If Visa is Not Physically Cancelled

(CT:VISA-62; 02-26-2016)

- a. **(U)** If the bearer of the IV does not appear at post in response to your request, or if you have reason to suspect that he/she will not appear at post, you must immediately inform CA/VO/F and CA/VO/SAC by email for transmission to CBP. This notice should include the same information as the report in [9 FAM 504.12-3\(A\)](#) above.
- b. **(U) Revocation En Route to United States:** If the alien has already commenced a journey without intermediate stops to the United States, please contact CA/VO/SAC at VO-Revocations@state.gov, requesting a revocation. This request should include all available biographic information, visa information, as well as details outlining the potential ineligibility. CA/VO/SAC will then notify Customs and Border Protection (CBP) to flag this subject for non-admission. If you find that the alien will be stopping en route to the United States at a city in which an American consular office is located, you should request that the consular office make every effort to contact the alien and physically cancel the visa. If the other consular officer cancels the visa this way and you have already notified the Department of the revocation, the post responsible for physically cancelling the visa must also inform both the Department and the issuing office that it has physically cancelled the IV.

9 FAM 504.12-4 (U) RECONSIDERATION OF REVOCATION

(CT:VISA-62; 02-26-2016)

- a. **(U)** The alien may ask that you reconsider the revocation of his/her immigrant visa (IV). You should consider any evidence submitted by the alien or the alien's attorney or representative in connection with any request for reconsideration.
- b. **(U)** If you find that the evidence is sufficient to overcome the basis for revocation, you should issue the alien a new IV.
 - (1) **(U)** Be certain to make the appropriate notations of the action taken and the reasons therefore in the case files.
 - (2) **(U)** If you have already sent notice to the Department, and/or the issuing office per the above guidance, send the appropriate notifications that you have issued a new IV. You should submit CLOK removal requests for any revocation-related entries (or contact the Department for entries with DPT refusal sites), and contact the CA Service Desk for removal of the red REVOKED banner from any applicable NIV records.
- c. **(U)** Per [9 FAM 504.6-5\(B\)](#), you may not collect a fee in connection with the application for, or issuance of, a reinstated visa.

9 FAM 504.13

TERMINATION OF IMMIGRANT VISA REGISTRATION

(CT:VISA-114; 04-20-2016)

(Office of Origin: CA/VO/L/R)

9 FAM 504.13-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 504.13-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 203(g) (8 U.S.C. 1153(g)); INA 221(g) (8 U.S.C. 1201(g)).

9 FAM 504.13-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 205(a)(1); 22 CFR 42.43; 22 CFR 42.83.

9 FAM 504.13-2 INACTIVE CASES

9 FAM 504.13-2(A) When a Case is Considered "Inactive"

(CT:VISA-114; 04-20-2016)

An applicant becomes liable to possible termination of registration under INA 203(g) if the applicant:

- (1) Has not made application within one year of receiving the Immigrant Visa Appointment letter *or other notice of visa availability*. The beneficiary has one year to make *an* application for a visa, beginning on the date you mail the Immigrant Visa Appointment letter to the beneficiary.
- (2) Does not respond to the appointment notice included with the Immigrant Visa Appointment Package, meaning that the applicant fails to appear for visa application interview on the scheduled appointment date and fails to take further action on the case within one year of the scheduled interview;
- (3) Is refused at the interview under INA 221(g), and fails to present evidence purporting to overcome the basis for a refusal under INA 221(g) within one-year following the refusal; or

- (4) Fails to comply with the Follow-up Instruction Package for Immigrant Visa Applicants within one year.

9 FAM 504.13-2(A)(1) Who is Subject to 203(g)?

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.83 N2.1; CT:VISA-1734; 10-06-2011)

a. **Applicants Whose Cases are Subject to Termination Under 203(g):** INA 203(g) procedures apply to applicants who are immediate relatives, family-sponsored immigrants and employment-based immigrants who have received notification of the availability of a visa (i.e., who have been sent Packet 4 or Packet 4(a)). (See [9 FAM 504.4-5\(C\)\(1\).](#))

b. **Applicants Whose cases are Not Subject to Termination Under 203(g):**

- (1) INA 203(g) procedures do not apply to applicants in categories for which numbers are unavailable, and applicants in limited-duration programs.

(Previous location: 9 FAM 42.83 N3.1; CT:VISA-1734; 10-06-2011)

- (2) **Unavailability of Documentation or Information to Overcome INA 221(g) Refusal:** An applicant who makes a credible assertion that documentation or information is not available within one year of the INA 221(g) refusal would not be subject to INA 203(g) provisions.

(Previous location: 9 FAM 42.83 N3.3; CT:VISA-1734; 10-06-2011)

- (3) **Beneficiaries of More than One Approved Petition:** If an applicant is the beneficiary of more than one approved visa petition, you would terminate only the petition for which the beneficiary failed to make a timely application. All other petitions would remain valid.

(Previous location: 9 FAM 42.83 N3.4 CT:VISA-1734; 10-06-2011)

- (4) **Beneficiaries of New Petition Filed by Same Petitioner:** If the same petitioner files a new petition for the same beneficiary, and the original petition was revoked under INA 203(g), the original priority date would not be valid.

(Previous location: 9 FAM 42.83 N4; TL:VISA-66; 09-30-1992)

- (5) **“Following-to-Join” Applicants:** Applicants who are “following to join” the principal applicant are not subject to the provisions of INA 203(g).

9 FAM 504.13-2(A)(2) Identifying Inactive Cases

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.52 N4; CT:VISA-1559; 09-30-2010)

a. Consular managers should periodically use the various reporting features available in the automated immigrant visa processing system to monitor the status of pending immigrant visa (IV) cases, including those considered inactive and undergoing termination processing, and long-pending INA 221(g) refusal cases.

(Previous location: 9 FAM 42.52 N5; CT:VISA-1559; 09-30-2010)

- b. Cases should be terminated if the applicant has not applied or responded to follow-up mailings by post or the National Visa Center (NVC) within one year, or fails to present evidence purporting to overcome the basis of an INA 221(g) refusal within one year. Consular officers should refer to [9 FAM 504.13-2\(B\)\(1\)](#) in this subchapter regarding termination of registration.

9 FAM 504.13-2(B) Notification of Possible Termination of Registration

9 FAM 504.13-2(B)(1) Notification Requirements

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.63 PN13 CT: VISA-2236; 12-17-2014)

- a. You must send a follow-up package including notification of possible termination of registration in cases in which applicants have not responded to the instruction package for immigrant visa applicants within one year to comply with the provisions of INA 203(g). In the case of an applicant whose priority date has not been reached on the one-year anniversary, you should send this follow-up package when the applicant's priority date is reached.
- b. You may choose to initiate the termination process by mailing only the notice of possible termination of registration, a form letter automatically generated by the automated immigrant visa processing system.
- (1) If the applicant responds requesting that registration not be terminated, then the follow-up instruction package for immigrant visa (IV) applicants outlined below should be sent.
 - (2) Alternatively, you may choose to send the instruction package as an initial mailing.
 - (3) **The Follow-Up Package Consists of:**
 - (a) Notice of Possible Termination of Registration;
 - (b) Form DS-2001, Notification of Applicant Readiness; and
 - (c) Instructions for accessing Form DS-260, Online Application for Immigrant Visa and Alien Registration.
- c. All cases held at NVC will have notifications of termination mailed directly to the applicant. The follow-up package mailed from NVC consists of:
- (1) Notice of Possible Termination of Registration; and
 - (2) A response request containing the following:
 - (a) Yes, I wish to pursue my immigrant visa application, please send me information on applying for my immigrant visa. I understand I will have to resubmit all required fees and documents in order to continue the immigrant visa processor
 - (b) No, I do not want to pursue my immigrant visa application for one of the

following reasons:

- (i) I have adjusted status (please send a copy of both sides of your alien registration card);
- (ii) I have received an immigrant visa through another petition and am now a permanent resident (please send us a copy of both sides of your alien registration card);
- (iii) I am no longer interested in immigrating to the United States; or
- (iv) Other (please explain).

9 FAM 504.13-2(B)(2) Applicant Response to Notification

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.63 PN14.1; CT:VISA-2100; 05-06-2014)

a. Applicant Advises Documentarily Qualified:

- (1) If the applicant's response to the follow-up package is to return Form DS-2001, Notification of Applicant Readiness, and Form DS-260, Online Application for Immigrant Visa and Alien Registration, you must process the applicant in the same manner as any other applicant who responds to the instruction package for immigrant visa (IV) applicants (i.e., background checks will be conducted, a number will be requested, a medical exam will be scheduled, and the applicant will be sent an appointment letter).
- (2) If the applicant's response to the follow-up package is sent to NVC, NVC will start the process of collecting forms and fees again as outlined in [9 FAM 504.6-5\(B\)](#).

(Previous location: 9 FAM 42.63 PN14.2; CT:VISA-1598; 10-28-2010)

b. Applicant Fails to Respond: If the applicant does not comply with the follow-up instructions within one year and a visa is available, you or NVC must initiate proceedings to terminate the alien's IV registration.

9 FAM 504.13-2(C) Extension of One-Year Period of Registration

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.83 N2.2; CT:VISA-1734; 10-06-2011)

a. Failure to Appear: The Department (CA/VO) considers the end of the one-year period to be a mandated cut-off date. Should the applicant miss a scheduled interview, that fact alone would not halt the process. The one-year period stops, however, if during that time the applicant convinces you that his or her initial failure to appear was beyond his or her control. Thus, mailing a new letter setting a second appointment date would begin the one-year period anew.

(Previous location: 9 FAM 42.83 N3.2; TL:VISA-66; 09-30-1992)

b. 221(g) refusals: The one-year period is extended each time an applicant presents

evidence reasonably purporting to overcome the INA 221(g) ineligibility.

9 FAM 504.13-2(D) Initiating Termination of Registration

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.83 PN2; CT:VISA-2325; 09-08-2015)

- a. If, after one year, the applicant does not request reinstatement of the application or has failed to overcome an INA 221(g) refusal, (and has not received an extension by presenting evidence to overcome 221(g)), post will use the features of the automated immigrant visa processing system to run the Report of Cases Subject to Possible Termination and forward to all cases on that report the Notice of Termination of Registration (also known as the Termination 1 letter), a letter automatically generated by the automated system. It is essential that consular managers take steps to ensure that data entry is kept as up to date as possible so that this report and others are as accurate as possible. It is also vital that consular personnel use the "date of last contact" filed in the automated application so that active cases are not improperly placed.

(Previous location: 9 FAM 42.83 PN4; CT:VISA-1095; 10-31-2008)

- b. **Mailing Final Notice of Cancellation:** When one year has passed following the mailing of the Notice of Termination of Registration (Termination 1 letter), and the applicant has not established that a basis for reinstatement of registration exists, post must send the applicant the Final Notice of Cancellation of Registration (also known as the Termination 2 letter), which is generated automatically by the automated system.

9 FAM 504.13-2(E) Termination Notices

9 FAM 504.13-2(E)(1) Notice of Termination of Registration

(CT:VISA-114; 04-20-2016)

NOTICE OF TERMINATION OF REGISTRATION

United States Department of State
Washington, D.C. 20520

Dear Visa Applicant:

We refer to your application for an immigrant visa. Section 203(g) of the Immigration and Nationality Act requires that your registration be canceled and any petition approved on your behalf canceled, if you do not apply for your immigrant visa within one year of being advised *of visa availability, or fail to present evidence purporting to overcome the basis of your refusal under INA 221(g) within one year following the refusal.*

You were advised of this requirement on _____, but we have not received a response from you since then. As a result, you are hereby notified that your application for a visa has been canceled and any petition approved on your behalf has also been canceled.

Your application may be reinstated and any petition revalidated if, within one year, you can

establish that your failure to pursue your immigrant visa application was due to circumstances beyond your control.

If you have any questions or are experiencing difficulty in complying with the above instructions, please contact the National Visa Center at the address below:

United States Department of State

National Visa Center

Attn: Term 1 Letter

32 Rochester Avenue

Portsmouth, NH 03801-2909

Tel: (603) 334-0700

9 FAM 504.13-2(E)(2) Final Notice of Cancellation of Registration

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.83 Exhibit II CT:VISA-1774; 11-18-2011)

FINAL NOTICE OF CANCELLATION OF REGISTRATION

United States Department of State
Washington, D.C. 20520

Dear:

This office previously notified you that as of _____ your registration for an immigrant visa was cancelled, and any petition approved on your behalf was also cancelled. We informed you that your application might be reinstated if, within one year, you could establish that your failure to pursue your immigrant visa application was due to circumstances beyond your control.

Since you have failed to do so, the record of your registration and any petition approved on your behalf and all supporting documents have been destroyed; any Department of Labor certification has been returned to your prospective employer.

Principal Applicant:

Case Number:

Sincerely,

Letter
Termination 2

9 FAM 504.13-3 REINSTATEMENT OF TERMINATED PETITIONS

9 FAM 504.13-3(A) Requests for Reinstatement

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.83 N2.3; CT:VISA-1734; 10-06-2011)

- a. **After the One-Year Period has Ended:** If the applicant is able to persuade you within the next year that the failure to appear within the first year was beyond his or her control, the applicant would be entitled to another appointment. The date that you agree to set the new appointment would start another one-year "timely appreciation" period.

(Previous location: 9 FAM 42.83 N5; CT:VISA-1734; 10-06-2011)

- b. **Notification of Change of Address:** The applicant is responsible for providing the visa-issuing post with a current address. The applicant's failure to receive the notice of termination because he or she neglected to notify post of his or her change of address will not be considered as a "reason beyond the applicant's control" for not pursuing the application.

(Previous location: 9 FAM 42.83 N6; CT:VISA-1734; 10-06-2011)

- c. **Requests for Advisory Opinions:** The Department has received very few advisory opinion requests on INA 203(g) and, therefore, the Department has little basis for establishing precedence. We therefore encourage posts to submit advisory opinion requests whenever they are in doubt as to whether INA 203(g) should be applied to CA/VO/L/A.

9 FAM 504.13-3(B) Reinstatement Procedures

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.83 PN3; CT:VISA-1095; 10-31-2008)

- a. If during the one-year period following the mailing of the Notice of Termination of Registration (Termination 1 letter), the applicant satisfies you that failure to pursue the application was for reasons beyond his or her control, you shall reinstate the application and petition.

(Previous location: 9 FAM 42.83 PN3.1; CT:VISA-1095; 10-31-2008)

- b. **Reinstating Cases for Documentarily Qualified Applicants:** If the applicant is documentarily qualified, post will renew all clearances that are over six months old and, if the priority data is current, request a visa number from the Immigration Visa Control and Reporting Division (CA/VO/DO/I).

(Previous location: 9 FAM 42.83 PN3.2; CT:VISA-398; 04-23-2002)

- c. **Reinstating Cases for Applicants Not Documentarily Qualified:** If the applicant requesting reinstatement of the case is not yet documentarily qualified, post must:
- (1) Give the applicant a new Instruction Package for Immigrant Visa Applicants; and
 - (2) Ensure that the automated immigrant visa processing system is updated to reflect this action.

9 FAM 504.13-4 DISPOSITION OF DOCUMENTS IN TERMINATED CASES

9 FAM 504.13-4(A) Petitions Terminated Under INA 203(g)

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.83 PN5.1; CT:VISA-943; 03-28-2008)

- a. **Disposition of Visa Petitions:** When a case is terminated under INA 203(g), posts and the National Visa Center must take the following action to dispose of visa petitions:
- (1) Notify the petitioner/applicant or agent that the petition was revoked under INA 203(g);
 - (2) Destroy the petition and copies of supporting documents filed with the petition;
 - (3) Return the labor certification to the prospective employer; and
 - (4) Return original documents (i.e., birth, death, marriage, divorce certificates) to the petitioner (if filed with the petition), or to the beneficiary or agent (if filed during the application process).
 - (5) Due diligence requires us to protect the privacy of the applicant/petitioner by destroying the original or supporting documents if the applicant/petitioner or agent fails to respond to mailings from posts or the National Visa Center.

(Previous location: 9 FAM 40.51 PN2.2; CT:VISA-1113; 11-17-2008)

- b. **Disposition of Unused Labor Certifications:** If the certification will not be used because registration has been terminated you must return the petition and the supporting documents to the approving office of the Department of Homeland Security/United States Citizenship and Immigration Services (DHS/USCIS) under cover of a memorandum.

9 FAM 504.13-4(B) Pre-IMMACT 90 P3 and P6 Petitions

(CT:VISA-1; 11-18-2015)

(Previous location: 9 FAM 42.83 PN5.2; CT:VISA-183; 12-18-1998)

- a. IMMACT 90 provided for the conversion of employment-based petitions (P3 and P6) to the new E2 and E3 classifications, allowing a two-year period for such conversion. If the beneficiaries did not apply within the two-year period, the petitions have expired. In such cases, post must take the following actions:
- (1) Return the labor certification, along with any attached documentation, to the employer or attorney or record;
 - (2) Attach a memo with the following text:
"We are returning the enclosed labor certification (ETA 750A & B) which you

filed on behalf of (name of beneficiary). The accompanying Form I-140, Immigrant Petition for Alien Worker, which you filed at the same time, has expired after a period of at least two years. During this two-year period, a visa number was available but the beneficiary failed to apply for an immigrant visa. The petition is part of a group of employment-based petitions which converted to another visa classification under the provisions of the Immigration Act of 1990. The petition has now expired and neither our office nor the Department of State is retaining any record of the petition. The labor certification is returned to you for appropriate action."

(Previous location: 9 FAM 42.83 PN5.3; CT:VISA-183; 12-18-1998)

- b. **Labor Certification Returned as Undeliverable:** If the labor certification is returned as undeliverable, post may destroy the certification and any attached documents. Any significant original documents (i.e., birth, death, marriage certificates, etc.) should be returned to the petitioner or beneficiary (whoever submitted it).