

9 FAM 40.11 PROCEDURAL NOTES

(TL:VISA-541; 05-19-2003)
(Office of Origin: CA/VO/L/R)

9 FAM 40.11 PN1 Posting the Female Genital Mutilation (FGM) Notice

(TL:VISA-427; 06-20-2002)

a. ALL NIV and IV processing posts should post the Form G-1015, *INS Fact Sheet on Female Genital Mutilation* (translated into the local language) in the Unit so that applicants from countries where FGM is practiced will have notice that the practice of FGM is illegal in the United States.

b. The Department has posted copies of the Form G-1015 on the Internet and Intranet translated into French, Portuguese, Arabic, Amharic, Swahili and Somali. [See 9 FAM 42.73 PN11.1 for instructions on how to access the form.]

9 FAM 40.11 PN2 Waiver Procedures for Immigrants

(TL:VISA-427; 06-20-2002)

a. If the consular officer determines that an applicant is eligible to apply for a waiver, the post will give the applicant the Form I-601, *Application for Waiver of Grounds of Excludability*. The applicant will complete page 1 of the Form and return it to the consular officer. The post will send the form to:

U.S. Public Health
Division of Quarantine
Centers for Disease Control and Prevention (CDC)
Atlanta, GA. 30333

b. The CDC will establish a file and return Form I-601, *Application for Waiver of Grounds of Excludability*, to the post with the form (affixed to the back of the Form I-601).

c. The applicant will complete statement A of the form agreeing to comply with the applicable terms, conditions and controls imposed, to wit:

(1) Go directly to the health care provider upon arrival in the United States;

(2) Submit to such examinations, treatment and medical regimen as may be required; and

(3) Remain under the prescribed treatment or observation until discharged.

d. The sponsor must have statement B completed by the medical practitioner who will care for the applicant in the United States. If a private physician completes statement B, a local or state health official must complete statement D. The sponsor must complete statement C.

e. When the supplemental form is completed and returned to the post, the post should send the entire waiver package, which includes the forms and any other evidence submitted by the applicant to establish waiver eligibility, to the INS office abroad having jurisdiction over the consular district. The post will collect from the applicant the INS waiver fee indicated in 8 CFR 103.7, either in the form of a cashier's check in the amount payable to the INS or in cash, and provide the applicant with a receipt. If INS approves the waiver, and the applicant has no other ineligibilities, the consular officer may issue the visa.

9 FAM 40.11 PN2.2 Applicant Ineligible Under Grounds other than INA 212(a)(1)

(TL:VISA-189; 04-22-1999)

Although any applicant who has a qualifying relationship may apply for a waiver, the consular officer may not recommend a waiver unless all other grounds of ineligibility have been addressed. In some cases, the applicant may apply for waivers for other ineligibility grounds at the same time as the waiver for INA 212(a)(1) ineligibility. If the applicant is also ineligible under a ground of the INA that cannot be waived, the consular officer may not issue a visa even if the INA 212(a)(1)(A) ineligibility could be waived.

9 FAM 40.11 PN2.3 FBI Fingerprint Checks

(TL:VISA-189; 04-22-1999)

See 9 FAM 42.72 N5 and 9 FAM 42.72 PN7.

9 FAM 40.11 PN3 Aliens Ineligible Under INA 212(a)(1)(A)(i)

9 FAM 40.11 PN3.1 Aliens with HIV Positive Results

9 FAM 40.11 PN3.1-1 Background

(TL:VISA-207; 09-19-2000)

The National Institutes of Health Revitalization Act of 1993, which

became effective on July 10, 1993, amended INA 212(a)(1)(A)(i) to mandate that communicable diseases of public health significance now include "infection with the etiologic agent for acquired immune deficiency syndrome." Therefore, a positive result from the western blot or other confirmatory test establishes a ground of immigrant visa ineligibility under the provisions of INA 212(a)(1)(A)(i). When the visa is denied, the post must enter the applicant's name into CLASS as a Category I HIV refusal under code 1A1. The consular officer should provide the applicant with a copy of the information leaflet entitled, Important Information for Immigrant Visa Applicants Who are HIV-positive.

9 FAM 40.11 PN3.1-2 Overcoming the Ineligibility

(TL:VISA-427; 06-20-2002)

a. An HIV-positive alien may apply to the Immigration and Naturalization Service for a waiver of ineligibility provided the alien is the spouse, unmarried son or daughter (regardless of age), or parent of a U.S. citizen or LPR.

b. If the applicant is eligible to apply for the waiver:

(1) The applicant must complete and return to the consular officer page 1 of the Form I-601, *Application for Waiver of Grounds of Excludability*.

(2) The consular officer shall send the form to the U.S. Centers for Disease Control and Prevention (CDC) in Atlanta, Georgia.

(3) CDC will record the information and return the form, plus a supplemental form (affixed to the back of the Form I-601), to the consular officer.

(4) The consular officer will give the form to the applicant.

(5) The applicant will complete statement A of the form and send the form to his or her sponsor in the United States.

(6) The sponsor must have the medical practitioner who will care for the applicant complete statement B of the form and then must have the form endorsed by a local or state health officer.

(7) The sponsor shall return the completed form to the consular officer.

(8) The consular officer will collect the fee and send the waiver application to INS.

(9) INS will approve or deny the application and notify the consular officer and the applicant.

(10) Provided the applicant has no other grounds of ineligibility, if INS approves the waiver the consular officer should contact the waiver and issue the immigrant visa.

9 FAM 40.11 PN3.2 Aliens with "Class A" Tuberculosis

(TL:VISA-189; 04-22-1999)

a. The consular officer may not consider a waiver for an applicant with "Class A" tuberculosis until the applicant:

(1) Receives the recommended treatment in accordance with the current CDC Technical Instructions; and

(2) Has had a negative sputum smear exam for acid-fast bacilli on three consecutive days.

b. When the notice of the waiver is received, the consular officer shall give the alien the sealed envelope containing all available x-ray films pertaining to the case. The consular officer should instruct the alien to hand-carry the envelope to the United States, and deliver it directly to an official at the hospital to which the alien has agreed to report. The post must mark the envelope:

For delivery by (alien's name) to the (name of hospital agreed on) as soon as possible after entry into the United States.

9 FAM 40.11 PN4 Aliens Ineligible Under INA 212(a)(1)(A)(ii)

9 FAM 40.11 PN4.1 Waiver Under INA 212(g)(2)(A)

(TL:VISA-427; 06-20-2002)

INA 212(g)(2)(A) appears to have been written chiefly to accommodate adjustment of status cases. It allows the Attorney General to grant a waiver to any alien who subsequently has been vaccinated after having been found ineligible at the time of adjustment of status. Since medical exams for immigrants are conducted prior to the visa interview, most applicants will not need an INA 212(g)(2)(A) waiver. However, during the initial phases, some applicants will appear for their interview without the completed Form DS-2053, *Medical Examination for Immigrant or Refugee Applicant*. Consular officers must refuse these applicants under INA 212(a)(1)(A)(ii) and the applicant must return to the panel physician to complete their medical exam. Once they have done so, they will obtain a Form DS-2053. This form is submitted to the consular office and the consular officer would approve a blanket waiver under INA 212(g)(2)(A).

9 FAM 40.11 PN4.2 Waiver Under INA 212(g)(2)(B)*(TL:VISA-342; 01-08-2002)*

INA 212(g)(2)(B) provides a waiver, in any case, where the panel physician determines that a required vaccination is medically inappropriate. In such cases, the panel physician will indicate this on the Form DS-2053, *Medical Examination for Immigrant or Refugee Applicant*. Consular officers may then authorize a waiver in accordance with INA 212(g)(2)(B). The consular officer should then check the appropriate waiver box if the vaccination is considered inappropriate for any of the following reasons:

- (1) Not age appropriate;
- (2) Contraindication;
- (3) Insufficient time interval between doses;
- (4) Seasonal administration; or
- (5) Vaccine unavailable.

9 FAM 40.11 PN4.3 Waiver Under INA 212(g)(2)(C)*(TL:VISA-189; 04-22-1999)*

a. The Attorney General will authorize an INA 212(g)(2)(C) waiver when the alien establishes that compliance with the vaccination requirements would be contrary to his or her religious beliefs or moral convictions. Consular officers must submit such waiver requests to INS. Consular officers must submit waivers filed through consular sections to the INS office abroad having jurisdiction over their consular area. To qualify for a waiver under INA 212(g)(2)(C) the applicant must show that:

- (1) He or she is opposed to vaccinations in any form;
- (2) The objections are based on religious belief or moral convictions (whether or not the applicant is a member of recognized religion); and
- (3) The religious belief or moral conviction (whether or not as part of a recognized religion) is sincere.

b. If the waiver application is for a child, the parents must satisfy these requirements.

9 FAM 40.11 PN4.4 Applying for INA 212(g)(2)(C) Waivers*(TL:VISA-189; 04-22-1999)*

An applicant seeking a waiver under INA 212(g)(2)(C) must:

- (1) Complete the Form I-601, *Application for Waiver of Excludability*;
- (2) Provide written evidence that he or she meets the three requirement [see 9 FAM 40.11 PN3.3]; and
- (3) Provide a copy of the receipt indicating payment of the required fees.

9 FAM 40.11 PN4.5 INA 212(g)(2)(C) Waivers for IR-3 or IR-4

(TL:VISA-207; 09-19-2000)

Adoptive or prospective adoptive parents who could, otherwise, take advantage of the exemption from the vaccination requirement available to IR-3 and IR-4 applications, MUST seek an INA 212(g)(2)(C) waiver on behalf of their adopted child. This is because the exemption available to IR-3 and IR-4 applicants is conditioned on the adoptive parent signing the Form DS-1981, *Affidavit Concerning Exemption from Immigrant Vaccination Requirements for a Foreign Adopted Child*, attesting that the child will receive any required and medically appropriate vaccinations following their arrival in the United States.

9 FAM 40.11 PN5 CLASS Entries

(TL:VISA-189; 04-22-1999)

In cases where a confirmatory HIV test is required and a significant time lag is expected before the results are received, the post shall enter the name of the applicant tested positive in CLASS as P1A1, i.e., quasi-refusal under INA 212(a)(1)(A)(i).

9 FAM 40.11 PN5.1 Significant Time Lag Defined

(TL:VISA-189; 04-22-1999)

Local circumstances may be a factor in deciding what constitutes a "significant time lag." For example, at posts where confirmatory tests are locally available and where normally the results can be provided within one or two days, posts may decide not to enter the P1A1 code into CLASS. On the other hand, posts should enter the applicant into CLASS where sera are shipped elsewhere and the results are normally not returned for weeks or even months.

9 FAM 40.11 PN5.2 Visa Shopping

(TL:VISA-189; 04-22-1999)

A CLASS entry under code P1A1 may prevent inadvertent nonimmigrant issuance to a visa shopper who is waiting for a confirmatory test, after testing positive on two ELISA tests. The CLASS entry ensures that if an applicant abandons the IV application after testing positive twice on the ELISA test, the applicant's name will remain in CLASS as a Category I refusal to prevent the applicant from obtaining a visa at another post.

9 FAM 40.11 PN5.3 Deleting CLASS Entries

(TL:VISA-189; 04-22-1999)

Posts that enter quasi-refusals in CLASS must delete such entries immediately upon confirmation of negative results on the Western blot or other confirmatory test. A negative result for the confirmatory test means the applicant is not ineligible on that basis to receive a visa, and the consular officer may issue the visa if the alien is otherwise eligible.

9 FAM 40.11 PN6 Emergency Waiver Procedures

(TL:VISA-541; 05-19-2003)

a. In emergent cases, the post may expedite CDC processing by faxing the Form I-601, *Application for Waiver of Grounds of Excludability* and supporting medical documentation to CDC (FAX number is 404-498-1633) or sending all pertinent information by cable to CDC. The fax or cable must include:

- (1) A description of the case;
- (2) The reason for urgency;
- (3) Details concerning the interested parties;
- (4) The applicant's name, sex, DPOB, and current foreign address;
- (5) Detailed results of the medical exam, including blood serology;
- (6) Data on the principal alien;

(7) *Name, address and phone number of the U.S. sponsor (or, if the sponsor is abroad, another U.S. contact that CDC can reach to provide the CDC application for a waiver (CDC Form 4.422-1 Statements in Support of Application for Waiver of Inadmissibility under Section 212(a)(1)(A)(iii)(I) or 212(a)(1)(A)(iii)(II), Immigration and Nationality Act); and*

(8) An explanation of the required arrangements, which must be made with a medical provider in the United States.

9 FAM 40.11 PN7 Waiver Procedures for Nonimmigrants

9 FAM 40.11 PN7.1 INA 212(d)(3)(A) Waiver

(TL:VISA-189; 04-22-1999)

A consular officer may recommend a waiver of ineligibility under the provisions of INA 212(d)(3)(A) for a temporary admission, provided the alien meets the criteria outlined in 9 FAM 40.301 Notes.

9 FAM 40.11 PN7.2 Recommending Waivers to INS

(TL:VISA-207; 09-19-2000)

A nonimmigrant excluded under INA 212(a)(1)(A) who seeks a waiver of excludability under INA 212(d)(3)(A) should submit the request to post. A consular officer may recommend a waiver for any nonimmigrant who requests to INS when the case meets the criteria described in 9 FAM 40.301 N3. The post's recommendation must include the:

(1) Reasons for inadmissibility and each section of the law under which the alien is inadmissible;

(2) Length of proposed stay;

(3) Purpose of the visit;

(4) Number of entries the alien intends to make into the United States;
and

(5) Reasons for the consular officer's recommendation to INS to exercise discretionary authority to approve the waiver.

9 FAM 40.11 PN8 Waiver for Nonimmigrants with Tuberculosis

(TL:VISA-189; 04-22-1999)

If a nonimmigrant applicant has been in contact with a known TB case, or if there is any other reasonable ground for the consular officer to suspect TB, the applicant should be directed to undergo a medical examination. The panel physician should perform the examination in accordance with the Technical Instructions for the Medical Examination of Aliens. If the medical examination reveals that the applicant has a "CLASS A" medical condition for infectious tuberculosis, the medical examination will not be considered complete. The consular officer cannot recommend a waiver under INA 212(d)(3)(A), until the applicant has:

(1) Received the recommended treatment prescribed in the technical instructions; and

(2) Had negative sputum smear examinations for acid-fast bacilli on three consecutive days.

9 FAM 40.11 PN9 Waiver for Nonimmigrants with HIV

9 FAM 40.11 PN9.1 Waiver Procedures when Entry is in Public Interest

(TL:VISA-427; 06-20-2002)

a. A nonimmigrant infected with HIV or AIDS may apply to a consular officer for a waiver of excludability if the:

(1) Public benefit of such visit outweighs any risk to the public health; and

(2) Alien is coming for 30 days or less.

b. For example, a consular officer could recommend a waiver for an applicant coming to the United States for humanitarian reasons, such as attending academic or health-related activities (including seeking medical treatment), to conduct temporary business or to visit family. Entry into the United States for tourism essentially does not constitute the requisite public benefit to overcome the risk. The consular officer must send the recommendation to the INS office abroad having jurisdiction over the consular district for concurrence.

9 FAM 40.11 PN9.2 Waiver Procedures to Attend HHS-Designated Events

(TL:VISA-189; 04-22-1999)

The Department has established special waiver procedures in the rare instances where an alien seeks to enter the United States for 10 days or less to attend an event that HHS has designated to be in the public interest. In such cases, the Department will advise posts of the particulars of the event and the special applicable procedures.

9 FAM 40.11 PN10 Waiver Application Form

(TL:VISA-427; 06-20-2002)

INS plans to replace the Form I-601, *Application for Waiver of Grounds of Excludability*, with the new Form I-724, *Application to Waive Exclusion Ground*. Post should continue, however, to use the Form I-601 until the new form is approved.

9 FAM 40.11 PN11 When Waiver Is Not Recommended

(TL:VISA-207; 09-20-2000)

If the consular officer does not believe that a waiver is warranted, the officer is not obligated to submit the case to INS. However, consular officers must send a report to the Department (CA/VO/L/A) for consideration under INA 212(d)(3)(A) on any case referred to in 9 FAM 40.301 N6.2.