

9 FAM 40.301 PROCEDURAL NOTES

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

9 FAM 40.301 PN1 Submitting Waiver Recommendation

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

When submitting an INA 212(d)(3)(A) waiver recommendation to an INS office abroad, the consular officer must send a completed Form OF 221, Two-Way Visa Action Request and Response, or a cable to INS containing the information required in 9 FAM 40.301 PN2.2 below. In all instances the recommendation must include:

- (1) *The legal and factual basis for the eligibility(ies) to be waived;*
- (2) *Any subsequent derogatory information arising after the initial ineligibility finding that may have been a bearing on the appropriateness of granting a waiver (e.g.. subsequent criminal arrests or convictions);*
- (3) *The alien's prior waiver history (if any);*
- (4) The relevant humanitarian, political, economic, or public relations factors;
- (5) A statement where applicable that the consular officer is satisfied the alien has a residence abroad and has no intention of abandoning it;
- (6) A statement that the alien is properly classifiable as a nonimmigrant; and
- (7) The consular officer's recommendation and reasons for the recommendation.

b. If the post opposes the waiver, but the applicant or an interested party insists on pursuing the request, the post should submit the case to the Department. Any classified information shall be forwarded to INS in accordance with 9 FAM 40.301 N6.2.

9 FAM 40.301 PN2 Telegraphic Indicators

9 FAM 40.301 PN2.1 To the Department

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If 9 FAM Appendix C requires a *security* advisory opinion, the telegram must be slugged VISAS DONKEY. If an INA 212(d)(3)(A) waiver is needed and recommended, the indicator CHIPMUNK must immediately follow DONKEY. [See 9 FAM Appendix E 300.]

9 FAM 40.301 PN2.2 To INS Offices Abroad

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

If a telegraphic recommendation is made to INS, the indicator VISAS SQUIRREL must be used [See 9 FAM Appendix E 300.]. The telegram must include the alien's name, type of visa, date and place of birth, nationality, occupation, basis for ineligibility, purpose of trip and destination, date and place of entry, length of stay and reasons for waiver recommendation. If a multiple entry waiver is recommended the reasons therefor must be included in the message. *The telegram must include:*

- (1) The alien's name;*
- (2) Alien's date and place of birth;*
- (3) Alien's nationality;*
- (4) Alien's occupation;*
- (5) Type of visa;*
- (6) Basis for ineligibility;*
- (7) Purpose of trip and destination;*
- (8) Date and place of entry;*
- (9) Length of stay; and*
- (10) Reasons for waiver recommendation.*

9 FAM 40.301 PN3 Notations To Be Placed in Visa in INA 212(d)(3)(A) Waiver Cases

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

a. When a ground of exclusion is waived under INA 212(d)(3)(A), the notation "INA 212(d)(3)(A)," followed by the number of the paragraph of INA 212(a) which has been waived, the duration of stay authorized, the port of entry (if specified in the order), and an indication of the purpose of the visit *must* be noted immediately below the visa stamp; for example:

*INA 212(d)(3)(A): INA 212(a)(i)(II)—4 months,
N.Y., N.Y., Conference,
Ford Motor Company*

b. If the order authorizes multiple entries, a notation regarding the initial port of entry is sufficient. [See 9 FAM 41.113 Exhibit II] If the port of entry is not specified in the INA 212(d)(3)(A) order, none shall be entered in the visa.

9 FAM 40.301 PN4 INS Washington District Office Permission Required for Itinerary Changes or Extension of Stay

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

In any case in which the INS or the Department notifies the consular officer that permission of the Washington District Office is required for any change in itinerary or extension of temporary stay, "WAS" is to be inserted in the notation on the visa regarding the INA 212(d)(3)(A) authorized; for example:

*INA 212(d)(3)(A): INA 212(a)(i)(II) WAS—4 months,
N.Y., N.Y., Conference,
Ford Motor Company*

9 FAM 40.301 PN5 Cases With Number of Entries and/or Period of Validity Authorized by Waiver Exceeds Reciprocity

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If INS grants a waiver for more entries or a longer period than the appropriate visa reciprocity schedule specifies, the visa shall be issued for the number of entries and validity period listed in the reciprocity schedule. (For example, if INS grants a waiver for multiple entries for a *six*-month period and the reciprocity schedule calls for one entry of *three* months, the visa shall be issued for one entry, *three* months). Subsequent visas may be issued in such cases until the waiver period has expired.