

## **9 FAM 41.102 Notes**

*(TL:VISA-646; 08-25-2004)*  
*(Office of Origin: CA/VO/L/R)*

### **9 FAM 41.102 N1 Personal Appearance and Interview**

*(TL:VISA-556; 07-17-2003)*

Section 222(e) of the Immigration and Nationality Act, as well as 9 FAM 41.101 N3 and 9 FAM 41.102 N2 cover the general requirement that ALL aliens applying for a nonimmigrant visa appear before, and be interviewed by a consular officer, unless the consular officer waives the personal appearance. The consular officer shall determine the applicant's eligibility to receive a visa, and the proper nonimmigrant classification of the visa applicant on the basis of the applicant's application, supporting evidence, and interview.

### **9 FAM 41.102 N2 Waiver of Personal Appearance by Consular Officer**

*(TL:VISA-646; 08-25-2004)*

The interview is an important part of the visa application process. While the consular officer may waive the interview in certain specific circumstances, the officer must exercise that authority with judgment and care. Furthermore, the waiver of the applicant's personal appearance does not relieve the consular officer from the responsibility for the quality of the final decision. A personal appearance may be waived by the consular officer in the case of a nonimmigrant visa applicant who:

- (1) Is a child 16 years of age or under;
- (2) Is a person 60 years of age or older;
- (3) Is classifiable under the visa classification symbols A-1, A-2, C-2, C-3, G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 and is seeking a visa in such classification;
- (4) Is an applicant for a diplomatic or official visa, as described in 9 FAM 42.26 and 9 FAM 42.27, respectively;
- (5) Is an applicant who within 12 months of the expiration of the applicant's previously issued visa is seeking re-issuance of a nonimmigrant visa in the same classification at the consular post of the alien's usual residence, and for whom the consular officer has no indication of any noncompliance with U.S. immigration laws and regulations; *or*
- (6) Is an alien for whom a waiver of personal appearance is warranted in the national interest or because of unusual circumstances, as determined by the consular officer.

## **9 FAM 41.102 N2.1 Aliens of National Security Concern**

*(TL:VISA-556; 07-17-2003)*

If the consular officer suspects an applicant to be of national security concern to the United States, a waiver of personal appearance shall not be granted to that person, irrespective of the authority stated above, unless specifically authorized by the Deputy Assistant Secretary (DAS) for Visa Services in the national interest.

## **9 FAM 41.102 N2.2 Consular Waiver of Personal Appearance in the National Interest or Under Unusual Circumstances**

*(TL:VISA-556; 07-17-2003)*

a. The waiver of the personal appearance requirement for an applicant may be considered:

- (1) When warranted in the national interest; or
- (2) Due to unusual circumstances.

b. It is imperative, for the purposes of accountability, for the consular officer to document in the case-notes feature of the appropriate automated system the reason(s) for the waiver of personal appearance. The officer shall consider the first three elements above in 9 FAM 41.102 N3.2-1 to support a waiver in addition to the following:

- (1) **National interest:** Same factors as in 9 FAM 41.102 N3.2-1(4);
- (2) **Unusual circumstances:** Most of these cases will involve emergencies. They include medical situations, involving a grave threat to the health of the applicant or that of a significant relative residing in the United States; and
- (3) **Unusual hardship:** This may include an unusual, non-frivolous situation beyond the applicant's control in which the applicant can not appear at post in a timely fashion for a visa interview prior to travel to the United States.

## **9 FAM 41.102 N2.3 Cases in Which Consular Waiver is Prohibited**

*(TL:VISA-609; 03-17-2004)*

A consular officer shall not waive the requirement for personal appearance for any applicant who:

- (1) Does not reside in the consular district where they are making application;
- (2) Was previously refused a visa (unless the refusal was overcome or a waiver of the ineligibility has been obtained (see 9 FAM 41.102 N4));
- (3) Is the subject of a CLASS hit, or requires a security advisory opinion or other Department clearance (exceptions can be made for A and G visas in the national interest, except for A and G applicants from a country included in the Department's list of state sponsors of terrorism); or
- (4) Is identified by post as belonging to a group or sector of its visa clientele representing a high fraud risk, high refusal rates, or a security threat.

## **9 FAM 41.102 N3 Waiver of Personal Appearance by Deputy Assistant Secretary (DAS) for Visa Services**

*(TL:VISA-556; 07-17-2003)*

In general, the DAS may waive the personal appearance of any individual visa applicant or any class of applicants when the waiver is determined by the DAS to be in the national interest or to be necessary as the result of unusual circumstances. Nevertheless, other than in the most exceptional circumstances, the DAS will not exercise this authority in any instance in which the individual applicant or class of applicants are suspected of posing any threat to the national security.

### **9 FAM 41.102 N3.1 Waiver by Deputy Assistant Secretary (DAS) for Class of Applicants**

*(TL:VISA-556; 07-17-2003)*

Although in the vast majority of cases consular officers at each post must adhere to the standards set forth in the regulations and 9 FAM 41.102 N2, the Department recognizes that unforeseen or unique circumstances may exist or would warrant granting authority to waive the personal appearance of a specific class of applicants. Therefore, the officer may seek to have the DAS, pursuant to his or her regulatory authority, waive the personal appearance of a class of applicants if the DAS finds that the waiver is warranted in the national interest or because of unusual circumstances and that national security circumstances do not require an interview.

## **9 FAM 41.102 N3.2 Procedure for Obtaining Waiver of Personal Appearance for a Class of Applicants**

*(TL:VISA-556; 07-17-2003)*

If the principal consular officer believes a waiver of a class of applicants is appropriate in a particular circumstance, the post must present to the Visa Office (CA/VO/F/P) those special circumstances for consideration by the DAS. The post's presentation shall be comprehensive and detailed. All of the elements listed below must be addressed. Specific questions are provided in the procedural notes to this section, as a guide in the preparation of the post's request and of the DAS' analysis of the circumstances. The DAS may waive the requirement for a designated period of time or indefinitely.

### **9 FAM 41.102 N3.2-1 Factors Considered for Class Waivers**

*(TL:VISA-556; 07-17-2003)*

The following is a non-exhaustive list of factors for consideration of a possible waiver of personal appearance of a class of applicants, all of which must be addressed in the post's submission:

(1) **Security:** This is the primary concern. It must be shown that individuals in the subject class do not pose any known risk or threat to the United States, based on an up to date analysis of intelligence derived from appropriate sources;

(2) **Fraud:** Current reporting must reveal that there is no meaningful fraud experienced among the applicants in the class;

(3) **Substantive qualifications:** Experience generally, but recent experience in particular, must demonstrate that the class of applicants have no apparent inadmissibilities under INA 212(a), 214(b) and other pertinent grounds, and that within the class there is rarely a question of qualification for the visa classification sought. This, in part, may be evidenced by an extremely low refusal rate;

(4) **National interest:** While this is a very broad criterion, very specific issues must be presented to establish a substantial benefit to U.S. strategic, foreign policy or humanitarian interests. Factors may include:

(a) An assessment of the benefit to support for US counter-terrorist activities;

(b) The adverse foreign policy consequences of not extending a waiver; and

(c) Critical emergency services to be provided to the U.S. public.

(5) **Additional factors:** These factors will vary among posts, but should focus in large measure on cooperation in bilateral intelligence and law enforcement programs with host governments. If applicable, they should address issues such as enhanced security screening measures taken prior to the visa application process, in lieu of personal appearance, and any hardship that might be endured by visa applicants if required to travel to a U.S. consular facility to make a personal appearance.

## **9 FAM 41.102 N4 Personal Appearance in INA 212(d)(3)(A) Waiver Cases**

*(TL:VISA-556; 07-17-2003)*

Ordinarily, personal appearance should be required of any alien for whom a waiver of visa ineligibility under INA 212(d)(3)(A) is sought. However, if the applicant is otherwise qualified as a nonimmigrant, the officer may waive personal appearance if:

(1) The consular officer has the authority to waive personal appearance under 9 FAM 41.102 N2, items (1) through (6) and, in the case of a waiver pursuant to item (6), there is substantial information available on which to base a request for a waiver of personal appearance in the national interest; and

(2) No collateral intelligence purpose would be served by the applicant's personal appearance.

## **9 FAM 41.102 N5 Conduct of Visa Interviews**

*(TL:VISA-556; 07-17-2003)*

Interviewing visa applicants is one of the most demanding jobs of the consular officer. Techniques for good interviewing, including the critical skill of how to ask the right questions, deserve very careful attention. Consular officers should make every effort to conduct visa interviews fairly, employing high professional standards. The consular officer shall use best interviewing techniques to elicit pertinent information in order to assess the alien's qualifications for the visa. These would include techniques and questions to identify any potential security concerns. The consular officer should provide the visa applicant with adequate opportunity to present evidence establishing the bona-fide nature of his or her application. In cases where the consular officer's determinations are difficult to make, or which are, or may become the subject of controversy, the officer should make a careful record of the interview in the appropriate automated system so that the basis for the final action can be fully documented.

## **9 FAM 41.102 N6 Applicability of Standard Application Requirements**

*(TL:VISA-556; 07-17-2003)*

The waiver of an applicant's personal appearance is not intended to change the requirements and standards of existing regulations and instructions with regard to security checks, visa classification, number of entries, and validity of visas.