

## **9 FAM 41.121**

### **Refusal of individual visas.**

*(TL:VISA-177; 04-30-1998)*

#### **(a) Grounds for refusal.**

*(TL:VISA-177; 04-30-1998)*

Nonimmigrant visa refusals must be based on legal grounds, that is, one or more provisions of INA 212(a) or (e), INA 214(b), INA 221(g), or INA 222(g). Certain classes of nonimmigrant aliens are exempted from specific provisions of INA 212(a) under INA 102, INA 212(d)(1), INA 212(d)(2) and, upon a basis of reciprocity, under INA 212(d)(8). When a visa application has been properly completed and executed in accordance with the provisions of INA and the implementing regulations, the consular officer must either issue or refuse the visa.

*[Amended by 63 FR 669, Jan. 7, 1998.]*

#### **(b) Refusal procedure.**

*(TL:VISA-9; 3-23-88)*

If a consular officer knows or has reason to believe that an alien is ineligible to receive a visa on grounds of ineligibility which cannot be overcome by the presentation of additional evidence, the officer shall refuse the visa and, if practicable, shall require a nonimmigrant visa application to be executed before the refusal is recorded. In the case of a visa refusal the consular officer shall inform the applicant of the provision of law or regulations upon which the refusal is based. If the alien fails to execute a visa application after being informed by the consular officer of a ground of ineligibility to receive a nonimmigrant visa, the visa shall be considered refused. The officer shall then insert the pertinent data on the visa application, noting the reasons for the refusal, and the application form shall be filed in the consular office. Upon refusing a nonimmigrant visa, the consular officer shall retain the original or a copy of each document upon which the refusal was based as well as each document indicating a possible ground of ineligibility and may return all other supporting documents supplied by the applicant.

### **(c) Review of refusal at consular office.**

*(TL:VISA-2; 8-30-87)*

If the ground(s) of ineligibility upon which the visa was refused cannot be overcome by the presentation of additional evidence, the principal consular officer, or a specifically designated alternate, shall review the case without delay, record the review decision, and sign and date the prescribed form. If the ground(s) of ineligibility may be overcome by the presentation of additional evidence, and the applicant has indicated the intention to submit such evidence, a review of the refusal may be deferred for not more than 120 days. If the principal consular officer or alternate does not concur in the refusal, that officer shall either

- (1) Refer the case to the Department for an advisory opinion, or
- (2) Assume responsibility for the case by reversing the refusal.

### **(d) Review of refusal by Department.**

*(TL:VISA-2; 8-30-87)*

The Department may request a consular officer in a specific case or in specified classes of cases to submit a report if a visa has been refused. The Department will review each report and may furnish an advisory opinion to the consular officer for assistance in considering the case further. If the officer believes that action contrary to an advisory opinion should be taken, the case shall be resubmitted to the Department with an explanation of the proposed action. Rulings of the Department concerning an interpretation of law, as distinguished from an application of the law to the facts, shall be binding upon consular officers.

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## **9 FAM 41.121 Related Statutory Provisions**

### **INA 102**

*(TL:VISA-9; 3-23-88)*

**For provisions of INA 102, see 9 FAM 41.21 Related Statutory Provisions .**

## **INA 212(a)**

*(TL:VISA-168; 08-08-1997)*

**For provisions of INA 212(a), see 9 FAM 40.11 Related Statutory Provisions through 9 FAM 40.105 Related Statutory Provisions .**

## **INA 212(b)**

*(TL:VISA-168; 08-08-1997)*

(b) Notice of Denials—(1) Subject to paragraphs (2) and (3), if an alien's application for a visa, for admission to the United States, or for adjustment of status is denied by an immigration or consular officer because the officer determines the alien to be inadmissible under subsection (a), the officer shall provide the alien with a timely written notice that—

(A) states the determination, and

(B) lists the specific provision or provisions of law under which the alien is inadmissible or ineligible for entry or adjustment of status.

(2) The Secretary of State may waive the requirements of paragraph (1) with respect to a particular alien or any class or classes of inadmissible aliens.

(3) Paragraph (1) does not apply to any alien inadmissible under paragraph (2) or (3) of subsection (a).

[Amended by sec. 601(b) of Pub. L. 101-649, 104 Stat. 4075; 8 U.S.C. 1182; Nov. 29, 1990; sec. 412 of Pub. L. 104-132, 110 Stat. 1214, 8 U.S.C. 1182(b), Apr. 24, 1996]

## **INA 212(d)(3), in part**

*(TL:VISA-47; 8-30-91)*

(3) an alien (A) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under subsection (a) (other than paragraphs (3)(A), 3(C), and (3)(D) of such subsection), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General,...The Attorney General shall prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of excludable aliens applying for temporary admission under this paragraph.

[Amended by sec. 601(d) of Pub. L. 101-649, 104 Stat. 5076; 8 U.S.C. 1182; Nov. 29, 1990]

## **INA 212(d)(8)**

(TL:VISA-9; 3-23-88)

**For provisions of INA 212(d)(8), see 9 FAM 41.2 Related Statutory Provisions .**

## **INA 212(e)**

(TL:VISA-9; 3-23-88)

**For provisions of INA 212(e), see 9 FAM 41.62 Related Statutory Provisions .**

## **INA 214(b)**

(TL:VISA-94; 9-30-94)

(b) Every alien (other than a nonimmigrant described in subparagraph (H)(i) or (L) of section 101(a)(15)) shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 101(a)(15). An alien who is an officer or employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act, or an alien who is the attendant, servant, employee, or member of the immediate family of any such alien shall not be entitled to apply for or receive an immigrant visa, or to enter the United States as an immigrant unless he executes a written waiver in the same form and substance as is prescribed by section 247(b).

[Amended by sec. 205(b)(1) of Pub. L. 101-649, 104 Stat. 5019; Nov. 29, 1990]

## **INA 221(g)**

(TL:VISA-47; 8-30-91)

(g) No visa or other documentation shall be issued to an alien if (1) 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 section 212, or any other provision of law, (2) the application fails to comply with the provisions of this Act, or the regulations issued thereunder, or (3) 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: *Provided*, That a visa or other documentation may be issued to an alien who is within the purview of section 212(a)(4), if such alien is otherwise entitled to receive a visa or other documentation, upon receipt of notice by the consular officer from the Attorney General of the giving of a bond or undertaking providing

indemnity as in the case of aliens admitted under section 213: Provided further, That a visa may be issued to an alien defined in section 101(a)(15)(B) or (F), if such alien is otherwise entitled to receive a visa, upon receipt of a notice by the consular officer from the Attorney General of the giving of a bond with sufficient surety in such sum and containing such conditions as the consular officer shall prescribe, to insure that at the expiration of the time for which such alien has been admitted by the Attorney General, as provided in section 214(a), or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 248 of the Act, such alien will depart from the United States.

[Amended by sec. 603(a) of Pub. L. 101-649, 104 Stat. 5083; 8 U.S.C. 1201(g); Nov. 29, 1990.]

### **INA 222(g)**

*(TL:VISA-177; 04-30-1998)*

**For the provisions of INA 222(g), see 9 FAM 40.68 Related Statutory Provisions .**