9 FAM 40.1 Notes

(TL:VISA-566; 08-04-2003)
(Office of Origin: CA/VO/L/R))

9 FAM 40.1 N1 Validity of "Marriage" for Immigration Purposes

9 FAM 40.1 N1.1 Marriage and Spouse Defined

(TL:VISA-358; 02-28-2002)

Section 7 of the Defense of Marriage Act (Public Law 104-199) states: "The word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife." While the term "marriage" is not defined in the INA, it can be extrapolated from the language found in the definition of spouse, INA 101(a)(35). A marriage, in order to be valid for immigration purposes, must be celebrated in the presence of both parties, unless the marriage has been consummated. The underlying principle in determining the validity of the marriage is that the law of the place of marriage celebration controls. If the law is complied with, and the marriage is recognized, and the termination of a prior marriage, if any, is recognized, then the marriage is deemed to be valid for immigration purposes. Marriages, however, considered to be void pursuant to state law as contrary to public policy, such as polygamous or incestuous marriages, cannot be recognized for immigration purposes even if legal in the place of marriage celebration.

9 FAM 40.1 N1.2 Cohabitation

(TL:VISA-566; 08-04-2003)

In the absence of a marriage certificate, an official verification, or a legal brief verifying full marital rights, the Board of Immigration Appeals has established that a common law marriage or cohabitation is considered to be a "valid marriage" for purposes of administering the U.S. immigration law *only if:*

(1) It bestows all of the same legal rights and duties possessed by partners in a lawfully contracted marriage; and

(2) Such cohabitation is recognized by local laws as being fully equivalent in every respect to a traditional legal marriage, i.e;

(a) The relationship can only be terminated by divorce;

(b) There is a potential right to alimony;

(c) There is a right to intestate distribution of an estate; and

(d) There is a right of custody, if there are children.

9 FAM 40.1 N1.3 Proxy Marriage

9 FAM 40.1 N1.3-1 Consummated

(TL:VISA-566; 08-04-2003)

For the purpose of bestowing immigrant visa status on a “spouse”, a proxy marriage *that has been subsequently* consummated is deemed to have been valid as of the date of the proxy ceremony. *The fact that the relationship was consummated prior to the proxy ceremony will not validate it for immigration purposes, since the statute requires that the marriage “shall have been consummated” after the proxy ceremony.*

FAM 40.1 N1.3-2 Unconsummated

(TL:VISA-128; 10-20-1995)

A proxy marriage, if not subsequently consummated, does not create or confer the status of “spouse” for immigration purposes pursuant to INA 101(a)(35). Therefore, 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.

9 FAM 40.1 N1.4 Japanese or Korean Marriages

(TL:VISA-41; 01-15-1991)

An alien is a "spouse" within the meaning of INA 101(a)(35) if the marriage was lawfully entered into pursuant to the laws of Japan or the Republic of Korea through the filing of the required notification with the Ward Registrar and the parties:

(1) Were physically present together at the time of such filing;

(2) Consummated the marriage after such filing; or

(3) Had previously participated in a religious or private marriage ceremony and thereafter cohabited as man and wife.

9 FAM 40.1 N1.5 Uncle-Niece and First-Cousin Marriages

(TL:VISA-358; 02-28-2002)

a. The determination of the status of a "spouse" in an uncle-niece or first-cousin marriage involves three variables:

(1) Laws of the place where the marriage took place;

(2) Laws of the state of proposed residence in the United States; and

(3) Facts which vary in individual cases.

b. 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” [see 9 FAM 42.41 N2.4] and submitted to DHS for approval. [See 9 FAM Appendix N 201 (c)].

c. 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 42.43, the consular officer shall refer any questions concerning the validity of the petition to CA/VO/L/A for an advisory opinion.

9 FAM 40.1 N1.6 Legal Separation Versus Marriage Termination

(TL:VISA-128; 08-20-1995)

a. An alien is deemed a "spouse" for immigration 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, however, 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 immigration purposes even through the couple has not obtained a final divorce [see Matter of McKee 17 I&N 332 and Matter of Zenning 17 I&N 2816].

b. Conversely, in a case where the parties’ prior marriage has been terminated by a legal separation which is not recognized by the state in which they reside, such parties must first obtain a divorce from the prior spouse in order to qualify for an immigrant visa.

9 FAM 40.1 N2 Child Defined

(TL:VISA-566; 08-04-2003)

The term "child" refers to an unmarried person under 21 years of age. This note addresses the many categories of the term "child" under the provisions of INA 101(b)(1)(*F) or (G), which are addressed in 9 FAM 42.21 N13.*

9 FAM 40.1 N2.1 Child Born in Wedlock Under INA 101(b)(1)(A)

(TL:VISA-566; 08-04-2003)

A child born to a married couple qualifies as a "child" under 101(b)(1)(A). Note that 101(b)(1)(A) no longer refers to "legitimate" children but rather to children "born in wedlock. Therefore, children born out of wedlock who are deemed "legitimate" by virtue of host country law would not qualify for "child" status under 101(b)(1)(A), although they most probably would qualify for such status under 101(b)(1)(C) or (D), depending on the terms of the local law and the facts of the case.

9 FAM 40.1 N2.2 Stepchild Relationship Under INA 101(b)(1)(B)

(TL:VISA-566; 08-04-2003)

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 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. In addition, if the marriage between the natural parent and stepparent is still in effect, there is no requirement that an emotional relationship exist between the stepchild and stepparent.*

9 FAM 40.1 N2.2-1 Out of Wedlock Child may Qualify as Stepchild

(TL:VISA:566; 08-04-2003)

INA 101(b)(1)(B) requires that the child be under 18 when the marriage between the natural parent and stepparent occurred. This includes children born subsequent to the marriage between the natural parent and stepparent

(when they were therefore necessarily under 18). 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.

9 FAM 40.1 N2.2-2 Stepparent/Stepchild Relationships After Termination of Marriage

(TL:VISA:566; 08-04-2003)

A stepchild who has met the requirements to qualify as a "child" of the stepparent under 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 since terminated, provided the marriage was a valid marriage and the family relationship continued to exist as a matter of fact between the stepparent and stepchild.

9 FAM 40.1 N2.3 Child Born Out of Wedlock

9 FAM 40.1 N2.3-1 Qualification of *Legitimated* Child Under INA 101(b)(1)(C)

(TL:VISA-566; 08-04-2003)

In order for a child to qualify under the provisions of INA 101(b)(1)(C) the child must meet the following criteria:

(1) Legitimation by the natural father must occur in accordance with the law of the child's residence or domicile or in accordance with the law of the father's residence or domicile, whether in or outside of the United States;

(2) The father must establish that he is the child's natural father;

(3) The child must be under the age of 18; and

(4) The child must have been in the legal custody of the legitimating parent at the time the legitimation takes place. For adoption purposes, legal custody maybe granted prior to the issuance of a decree. [See 9 FAM 40.1 N2.4 below.]

9 FAM 40.1 N2.3-2 Qualification of Child Under INA 101(b)(1)(D) Through Mother

(TL:VISA-566; 08-04-2003)

A child born out of wedlock, by virtue of his or her relationship to the natural mother, is deemed to be 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.

9 FAM 40.1 N2.3-3 Qualification of *Illegitimate* Child Under INA 101(b)(1)(D) Through Father

(TL:VISA-566; 08-04-2003)

a. An illegitimate offspring of the natural father is deemed to be a "child" within the meaning of INA 101(b)(1)(D), provided the father has or had a bona fide parent or child relationship with his offspring. While an on-going father-child relationship is not required to establish a "bona fide parent or child" relationship, the consular officer 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.

b. While each case must be determined based on the facts presented, the consular officer must be satisfied that the facts demonstrate the existence of a past or present parent or child relationship. 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.

c. Proof of present or former familial relationship may include the:

(1) Father's acknowledgment within the community that the child is his own;

(2) Father's support for the child's needs;

(3) Father's genuine concern for and interest in the child; and

(4) Parent-child relationship was established while the child was unmarried and under the age of 21.

9 FAM 40.1 N2.4 Adoption

9 FAM 40. 1 N2.4-1 Qualification of Adopted Child Under INA 101(b)(1)(E)

(TL:VISA-566; 08-04-2003)

a. In order to qualify as an adopted child under INA 101(b)(1)(E) a child must have been:

(1) Legally adopted while under the age of 16 *(or under 18, if a sibling of a child adopted under 16 who meets the requirements of 101(b)(1)(E)); and*

(2) In legal custody of, and have resided with, the adoptive parents for at least two years.

b. The legal custody requirement may be fulfilled either prior to or after the child's adoption. Legal custody is deemed official at the time the adopting parents are awarded custody of the child rather than on the date the adoption becomes final. If custody did not exist prior to adoption, a certified copy of the adoption decree constitutes proof of the custody requirement at least from the date on which it was issued.

c. The period of residence for which the adoptive parents and child have lived together must be at least two years, prior to or after the adoption. Furthermore, the time frame in which the two years are accrued need not be continuous. In addition, the petitioning adoptive parents must establish that they have exercised primary parental control during the period in which they seek to establish compliance with the statutory two-year residence requirement. Evidence of such control, especially in cases where the adopted child resided or continues to reside in the same household with the natural parents, 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.

d. 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. [See 9 FAM 40.1 N4 below.]

9 FAM 40.1 N2.4-2 Adopted Child of Single Person

(TL:VISA:566; 08-04-2003)

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.*

9 FAM 40.1 N2.4-3 Illegitimate Child of Natural Father Pursuant to INA 101(b)(1)(F*)*

(TL:VISA-566; 08-04-2003)

[Moved to 9 FAM 42.21 N13]

9 FAM 40.1 N3 Parent Defined

(TL:VISA-566; 08-04-2003)

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 101(b)(1)(F), as noted in 9 FAM 42.21 N13 [this specific Note to which 9 FAM 40.1 N2.4-3 is moved].*

9 FAM 40.1 N4 Immigration Benefits

9 FAM 40.1 N4.1 Parents or Siblings of Adopted Child

9 FAM 40.1 N4.1-1 Biological Parents or Siblings

(TL:VISA-358; 02-28-2002)

An adopted child (as defined in INA 101(b)(1)(E)) may not confer immigration benefits upon a natural parent or sibling unless such adoption has been legally terminated. [See Interim Decision 3244, Matter of Li.] This is true even where the child never received an immigration benefit based on the adoption.

9 FAM 40.1 N4.1-2 When Adoption has been Terminated

(TL:VISA-307; 08-20-2001)

The Board of Immigration Appeals [Matter of Li] has determined that a natural parent or child or sibling relationship can be again recognized for immigration purposes following the termination of an adoption, if the petitioner can demonstrate that:

(1) No immigration benefit was obtained or conferred as a result of the adoptive parent;

(2) A natural parent or child relationship meeting the requirements of *INA 101(b)* once existed;

(3) Any subsequent adoption that satisfied the requirements of *INA 101(b)(1)(E)* has been lawfully terminated; and

(4) The petitioner's natural relationship with the beneficiary has been re-established, either through operation of law or through other legal process.

9 FAM 40.1 N4.2 Immigration Benefit Conferred from Child to Father

(TL:VISA-128; 10-20-1995)

The Immigration and Naturalization Service 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 40.1 N2.3-3 above.]

9 FAM 40.1 N5 Son or Daughter Defined

(TL:VISA-566; 08-04-2003)

The INA defines "son" or "daughter" as someone who has at any time met the definition of child in INA 101(b)(1).

9 FAM 40.1 N5.1 Illegitimate Child of Mother

(TL:VISA-566; 08-04-2003)

An alien born out of wedlock who is the son or daughter of a U.S. citizen or lawful permanent resident mother is a "son" or "daughter".

9 FAM 40.1 N5.2 Illegitimate Child of Father

(TL:VISA-566; 08-04-2003)

An alien who was born out of wedlock who is the son or daughter of a U.S. citizen or lawful permanent resident father is a "son" or "daughter" within the meaning of INA 203(a)(1) *if the conditions of 101(b)(1)(C) (legitimation while in the father's custody before reaching the age of 18) or 101(b)(1)(D) (the father had abona-fide parent or child relationship prior to child's 21st birthday) were met.*

9 FAM 40.1 N5.3 Stepson or Stepdaughter

(TL:VISA-566; 08-04-2003)

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.*

9 FAM 40.1 N6 Brother and Sister Defined

(TL:VISA-566; 08-04-2003)

Siblings who met the definition under the INA 101(b)(1) of a child of at least one common parent, are “brothers” or “sister” within the meaning of INA 203(a)(4) and are eligible for preference under these provisions. *Siblings by virtue of a relationship that does not meet the criteria in 101(b)(1), such as step-siblings 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).*

9 FAM 40.1 N6.1 Brothers or Sisters of Half Blood With Same Mother

(TL:VISA-128; 10-20-1995)

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 40.1 N6.2 Brothers or Sisters of Half Blood With Same Father

(TL:VISA-162; 02-24-1997)

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 the petitioner and beneficiary sibling qualified as a child under INA 101(b)(1).

9 FAM 40.1 N6.3 Stepbrother or Stepsister

(TL:VISA-128; 10-20-1995)

A stepbrother or stepsister is not a " brother" or " sister" within the meaning of INA 203(a)(4) unless, at the time the relationship was established, the stepchild, or children if both became stepchildren, were under the age of 18 according to the of INA 101(b)(1)(B). If a consular officer at a post authorized to approve petitions receives a petition involving a step-

brother or stepsister relationship where one child was under the age of 18 at the time the marriage creating the stepchild relationship occurred, but the stepbrother or stepsister was above the age of 18, the petition should be referred to *DHS* for consideration as one which is not clearly approvable. [See 9 FAM 42.41 N3.2.]

9 FAM 40.1 N6.4 Adoptive Sister or Brother

(TL:VISA-566; 08-04-2003)

Pursuant to a Board of Immigration Appeals decision, the *Department of Homeland Security (DHS)* has held, that 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 40.1 N7 Basis for "Following to Join"

9 FAM 40.1 N7.1 General

(TL:VISA-566; 08-04-2003)

The term “following to join,” as used in INA 101(a)(27)(C) and INA 203(d), permits an alien to obtain the status nonimmigrant visa (NIV) or immigrant visa (IV) and priority date of the principal alien as long as the alien following to join possesses the required spouse or child 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 as long as the spouse or child relationship continues. If the principal has died or lost status, however, there is no longer a basis to follow to join. As an example, a person would no longer qualify as a child “following to join” upon reaching the age of 21 years or by entering into a marriage. Furthermore, 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, as the child or spouse is merely following the principal alien to the United States. [See also 9 FAM 42.42 N*11*.] 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.

9 FAM 40.1 N7.2 Spouse or Child Acquired Prior to Admission of Principal Alien

(TL:VISA-373; 03-19-2002)

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 re-

gardless of whether the spouse or child had been named in the immigrant visa application of the principal alien.

9 FAM 40.1 N7.2-1 Child Born After Admission of Principal Alien

(TL:VISA-373; 03-19-2002)

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 under the provisions of 22 CFR 42.53(c) and, thus, entitled to the principal alien's priority date.

9 FAM 40.1 N7.2-2 Spouse or Child Acquired Subsequent to Admission of Principal Alien

(TL:VISA-128; 10-20-1995)

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 (c) is not derivatively entitled to the status accorded by those provisions.

9 FAM 40.1 N7.2-3 Adopted Child

(TL:VISA-41; 01-15-1991)

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.

9 FAM 40.1 N7.2-4 Effect of Principal Alien's Naturalization on Derivative Status

(TL:VISA-373; 03-19-2002)

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 must file an immediate relative petition for the family member.

9 FAM 40.1 N8 Foreign State Chargeability Obtained From Derivative Beneficiary

(TL:VISA-128; 10-20-1995)

a. An immigrant visa applicant may derive a more favorable foreign state chargeability from an accompanying alien spouse under INA 202(b)(2) and, at the same time, the spouse may derive preference status from the

principal applicant. 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 his wife who was born in a third country, may be issued a fourth preference visa chargeable to his wife's country of nationality if fourth preference numbers are readily available. By the same token, if no other visa is immediately available to her, the wife of such alien may acquire fourth preference status based on the husband's fourth preference status. In such cases, both the husband and wife, in a sense, are principal aliens. The husband is the principal alien for the purpose of conferring a preference status and the wife is the principal alien for the purpose of conferring a more favorable foreign state chargeability.

b. The principles described in the paragraph above may apply in a 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.

c. Since neither party is allowed to precede the other spouse and both spouses must apply together for admission into the United States, the consular officer shall issue the visas simultaneously to the husband and wife.

9 FAM 40.1 N9 Aggravated Felony Defined

(TL:VISA-162; 02-24-1997)

a. Public Law 101-649 was signed into law on November 29, 1990. The law addresses the definition of the term "aggravated felony" in INA 101(a)(43). The changes apply to all offenses committed on or after November 29, 1990, except for the language addressing illicit trafficking in any controlled substances and the proviso relating to offenses "in violation of federal or state law" or "in violation of foreign law."

b. Public Law 103-416 greatly expanded the list of offenses and was applicable to convictions entered on or after October 25, 1994.

c. Public Law 104-208 further expanded the list of offenses and made it clear that the new definition applies to offenses which occurred before, on, or after the date of the law's enactment.

d. An aggravated felony offense includes:

(1) Murder, rape or sexual abuse of a minor;

(2) Illicit trafficking in any controlled substance;

(3) Illicit trafficking in any firearms, destructive devices, or explosive material;

(4) Money laundering or engagement in monetary transaction in property derived from specified unlawful activity if the amount of funds exceeds $10,000;

(5) Certain offenses relating to explosive materials or firearms;

(6) Crimes of violence (not including purely political offenses) in violation of Federal or State law (or attempt or conspiracy to commit such act) for which a term of imprisonment was at least 1 year;

(7) Theft and burglary (including receipt of stolen property) for which a term of imprisonment was at least 1 year;

(8) Demand for or receipt of ransom;

(9) Child pornography;

(10) Offenses relating to racketeer influenced corrupt organizations for which a sentence of 1 or more years is imposed;

(11) Offenses relating to controlling, managing, or supervising of the prostitution business, if committed for commercial advantage;

(12) Offenses relating to peonage, slavery or involuntary servitude;

(13) Offenses relating to disclosure of classified information, sabotage or treason;

(14) Offenses relating to the protecting the identity of undercover agents;

(15) Fraud or deceit resulting in loss exceeding $10,000;

(16) Tax evasion in which revenue loss exceeds $10,000;

(17) Alien smuggling for commercial advantage, except a first offense involving the alien's spouse, child or parent, [see also 9 FAM 40.65 Notes];

(18) Document fraud, except a first offense involving the alien's spouse, child or parent, for which the term of imprisonment is at least 12 months;

(19) Defendant's failure to appear for service of sentence if offense is punishable by imprisonment of more than five years;

(20) Commercial bribery, counterfeiting, forgery, or trafficking in vehicles with altered identification numbers if imprisonment was for at least one

year;

(21) Obstruction of justice, perjury or subornation of perjury, or bribery of a witness if offense is punishable by imprisonment of more than five years;

(22) Failure to appear before a court to answer to or dispose of a charge of felony if offense is punishable by imprisonment of more than two years; and

(23) Attempt or conspiracy to commit an offense in violation of Federal or State law or violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years.

e. See also 9 FAM 40.91(d) Notes.

9 FAM 40.1 N10 "Actually Imposed" Defined

(TL:VISA-162; 02-24-1997)

The phrase "actually imposed" refers to the actual length of the sentence meted out by the court and not the period of imprisonment actually served.

9 FAM 40.1 N11 "Conviction" Defined

(TL:VISA-162; 02-24-1997)

INA 101(A)(48) defines "conviction" as:

(1) A formal judgment of guilt entered by a court;

(2) A finding of guilty by judge or jury;

(3) A plea of guilty or nolo contendere by the alien;

(4) An admission of sufficient facts to warrant a finding of guilt; or

(5) The imposition of some form of punishment, penalty or restraint of liberty by a judge.

9 FAM 40.1 N12 Definitions Under the USA Patriot Act

(TL:VISA-373; 03-19-2002)

The DHS has established the following definitions for the purpose of adjudicating applications under the USA Patriot Act (Public Law 107-56).

9 FAM 40.1 N12.1 Specified Terrorist Attack

(TL:VISA-373; 03-19-2002)

Section 428 of the Patriot Act defines "specified terrorist activity" as any terrorist activity conducted against the government or people of the United States on September 11, 2001. This includes the attacks on the World Trade Center area and the Pentagon, as well as the crash of Flight 93 in Pennsylvania. It does not include the subsequent anthrax attacks or other previous or subsequent terrorist activities.

9 FAM 40.1 N12.2 Death

(TL:VISA-373; 03-19-2002)

To demonstrate that a person was killed in the terrorist attacks against the United States on September 11, 2001, the following may be used:

(1) Official death certificate listing the date of death as September 11, 2001, accompanied by other documents attributing the death to the attacks of September 11;

(2) Interim death certificate issued by the State of New York listing the date of death as September 11, 2001;

(3) Flight records for deceased passengers on one of the four planes used in the attacks;

(4) Public records listing the deceased as a victim of the September 11 attacks; or

(5) Other official or non-official documents.

9 FAM 40.1 N12.3 Disability

(TL:VISA-373; 03-19-2002)

A licensed medical doctor or license psychiatrist must provide documentation that the physical or mental impairment of the principal applicant meets the definition of the term "disability" in section 12102(a)(2) of the Americans with Disability Act. "Disability" is therein defined as a "physical

or mental impairment that substantially limits one or more of the major life activities of such individual."

9 FAM 40.1 N12.4 Loss of Employment

(TL:VISA-373; 03-19-2002)

a. The following may be used to demonstrate loss of employment due to the physical damage to, or destruction of, a business, which directly resulted from the terrorist attacks of September 11, 2001:

(1) Letter from the employer;

(2) Official records indicating that the business was completely destroyed; or

(3) Other documentation showing the complete destruction of the business.

b. The Patriot Act notes that if the principal alien is able to continue in the employ of the business at a different location, after destruction on September 11, such an alien is not considered to have lost employment as a result of the September 11 attacks.

9 FAM 40.1 N12.5 Circumstances Preventing Timely Action in Applying For or Using Visas

(TL:VISA-373; 03-19-2002)

DHS has compiled a list of various events that aliens may use to support a claim for benefits under the Patriot Act:

(1) Office closures;

(2) Mail or courier service cessations or delays;

(3) Airline flight cessations or delays; or

(4) Other closures or delays affecting case processing or travel.