

9 FAM 41.101 Notes

(TL:VISA-14; 8-30-88)

9 FAM 41.101 N1 Interpretation of Concepts

9 FAM 41.101 N1.1 Residence

(TL:VISA-14; 8-30-88)

“Residence” is defined in INA 101(a)(33) as the alien’s “place of general abode; the ... principal, actual dwelling place in fact, without regard to intent.” In other words, it is the place where the alien in fact lives and under most common circumstances from which the alien conducts his or her life. It is not necessarily the place where the alien actually is at any given moment.

9 FAM 41.101 N1.2 Physical Presence

(TL:VISA-14; 8-30-88)

“Physical presence” constitutes the fact of being in a place at a given moment. This is a factual state or condition. “Physical presence” differs from “residence” in that “residence” is the particular location of a person’s general abode whereas “physical presence” is the particular location of the person at the given time. Thus, although the alien’s general abode may be located in one place, the alien may be physically present in another.

9 FAM 41.101 N2 Place of Application for Visa Applicants

(TL:VISA-14; 8-30-88)

A consular officer must accept a nonimmigrant visa application in either of two circumstances:

- (1) The alien is a resident of the consular district; or
- (2) At the direction of the Department, regardless of the location of the alien’s residence.

The alien must make application for nonimmigrant visa issuance in the consular district in which the alien has residence; or, if the alien seeks acceptance of the nonimmigrant visa application in a consular district in which he or she is physically present but not resident, the consular officer may accept the application.

9 FAM 41.101 N2.1 Alien who is Resident in a Consular District

(TL:VISA-14; 8-30-88)

22 CFR 41.101 requires the consular officer to accept applications from visa applicants resident in that district, even though the applicant may be absent from that district at the time of application. The regulatory language does not specifically require an alien with residence in the district to be physically present in the district, nor does it restrict the applicant's presence to any particular location, at the time of application. Therefore, an alien resident in the consular district could apply in person if there, or could be any place in the world (including the United States) and apply by mail.

9 FAM 41.101 N2.2 Alien who is Physically Present but Not Resident in a Consular District

(TL:VISA-14; 8-30-88)

a. 22 CFR 41.101(a) permits an alien to apply for nonimmigrant visa issuance outside his or her home district at any consular district when physically present therein. While 22 CFR 41.101(a) gives consular officers discretionary authority to reject applications by persons who are physically present in but not residents of the consular district, the Department expects that such authority will seldom if ever be used.

b. For example, the applicant might find it more practical to apply at the nearest consular office if return to the home district would be long and costly; or, because of requirements in many countries that passports remain in the possession of visitors and temporary residents (or of the police or other authorities) until the visitor's departure, the alien might not be able to mail the application and passport to the office in the home consular district for possible issuance there.

9 FAM 41.101 N2.3 Alien who is Neither Resident nor Physically Present in a Consular District

(TL:VISA-14; 8-30-88)

The provisions of 22 CFR 41.101(a) preclude acceptance or processing of a nonimmigrant visa application when the alien is neither a resident of nor physically present in the consular district at the time of application. Under no circumstances whatsoever may a consular officer accept an application from, nor may a nonimmigrant visa be issued to, such an alien.

9 FAM 41.101 N3 Personal Appearance

(TL:VISA-14; 8-30-88)

As set forth in 22 CFR 41.102, every alien seeking a nonimmigrant visa must apply in person and be interviewed by a consular officer. The regulation does provide for specific exceptions. If certain circumstances are present, the consular officer may in his or her discretion waive personal appearance. Neither 22 CFR 41.101 nor its interpretations in these Notes have any bearing on the personal appearance requirement of 22 CFR 41.102; 22 CFR 41.102 still requires personal appearance unless waived at the discretion of the consular office at which an alien is to apply for a nonimmigrant visa. Consular officers shall take into account both the factors noted in N2.2 of this section and the limitations of waiver authority in 22 CFR 41.102 in determining whether a waiver of personal appearance is warranted in a mail-in application from an alien resident of the district who is physically present elsewhere.

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