

9 FAM 40.6 EXHIBIT I GROUNDS OF INELIGIBILITY AND AVAILABLE WAIVERS

*(CT:VISA-1334; 10-05-2009)
 (Office of Origin: CA/VO/L/R)*

HEALTH RELATED GROUNDS

Class of Ineligibility	NIV Waivers	IV Waivers
Communicable Disease of Public Health Significance (INA 212(a)(1)(A)(i); 9 FAM 40.11)	1. Applicant with TB who has received treatment and had three consecutive negative tests for the disease. 2. Applicant afflicted with HIV who plans to attend designated health conferences in the United States. 3. Those coming to the United States for treatment. 4. Humanitarian cases in which an alien can be admitted if accompanied by an escort, if traveling under sedation, or if other measures are taken which might ensure that there is no threat to the public.	1. An alien who is the spouse, unmarried son or daughter, or minor lawfully adopted child of a U.S. citizen or alien who has been issued an immigrant visa. 2. The parent of a son or daughter who is a U.S. citizen, permanent resident alien, or alien who has been issued an immigrant visa.
Failure to Submit Proof of Vaccination	Not Applicable.	1. If alien receives vaccines that are initially missing a

<p>(INA 212(a)(1)(A)(iii); 9 FAM 40.11)</p>		<p>blanket waiver may be approved by the consular officer.</p> <p>2. If required vaccinations would not be medically appropriate a blanket waiver is available.</p> <p>3. If there is a religious or moral objection to vaccination a waiver may be applied to or approved by Department of Homeland Security (DHS).</p>
<p>Physical or Mental Disorder or Behavior Which May Pose a Threat, or Which Has Posed a Threat to Property or Safety, and Which is Likely to Recur</p> <p>(INA 212(a)(1)(A)(iii); 9 FAM 40.11)</p>	<p>Waivers may be subject to conditions proposed by the Department of Health and Human Services, such as a requirement that a family member or medical escort accompany the applicant.</p> <p>(9 FAM 40.11 N11)</p>	<p>Waivers are granted at the discretion of DHS in consultation with Health and Human Services. Waivers may be subject to conditions proposed by the Department of Health and Human Services, such as the giving of bond or requirement that a family member or medical escort accompany the applicant. (9 FAM 40.11 N13.5)</p>
<p>Drug Abuser or Addict, one who has engaged in "non-medical use of a controlled substance."</p> <p>(INA 212(a)(1)(A)(iv);</p>	<p>Available upon recommendation of the consular officer to DHS. (9 FAM 40.11 N13.6 and N14)</p>	<p>Not Applicable.</p>

9 FAM 40.11)		
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CRIMINAL AND RELATED GROUNDS

Class of Ineligibility	NIV Waivers	IV Waivers
<p>Crimes Involving Moral Turpitude</p> <p>(INA 212(a)(2)(A)(i)(I); 9 FAM 40.21(a))</p>	<p>Factors to be considered include the nation and date of the offense, possible rehabilitation of the alien’s character, and the necessity for, or urgency of, the alien’s proposed trip to the United States.</p>	<p>1. If the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien’s application; the alien’s admission to the United States. would not be contrary to the national welfare, safety, or security; and the alien has been rehabilitated.</p> <p>2. For the spouse, parent, son, or daughter of a U.S. citizen or legal permanent resident (LPR) if, in the opinion of DHS, not granting the waiver would result in extreme hardship to the U.S. citizen or LPR.</p> <p>Neither waiver is available if the applicant has committed murder or criminal acts involving torture.</p>
<p>Controlled Substance Violators</p>	<p>Factors to consider include the nature and date of the offense,</p>	<p>1. If activities for which the alien is inadmissible occurred more than 15</p>

<p>(INA 212(a)(2)(A)(i)(II); 9 FAM 40.21(b))</p>	<p>possible rehabilitation of the alien’s character, and the necessity for, or urgency of, the alien’s proposed trip to the United States.</p>	<p>years before the date of the alien’s application; the alien’s admission to the United States would not be contrary to the national welfare, safety, or security; and the alien has been rehabilitated.</p> <p>2. For the spouse, parent, son, or daughter to the U.S. citizen or LPR if, in the opinion of the Attorney General, refusing the waiver would result in extreme hardship to the U.S. citizen or LPR.</p> <p>Only available if the violation related to a single offense of simple possession of 30 grams or less of marijuana.</p>
<p>Multiple Convictions (INA 212(a)(2)(B); 9 FAM 40.22)</p>	<p>Factors to consider include the nature and date of the offense, possible rehabilitation of the alien’s character, and the necessity for, or urgency of, the alien’s proposed trip to the United States.</p>	<p>1. If activities for which the alien is inadmissible occurred more than 15 years before the date of the alien’s application; the alien’s admission to the U.S. would not be contrary to the national welfare, safety, or security; and the alien has been rehabilitated.</p> <p>2. For the spouse, parent, son, or daughter to the U.S. citizen or LPR if, in the</p>

		<p>opinion of the Attorney General, refusing the waiver would result in extreme hardship to the U.S. citizen or LPR.</p> <p>Neither waiver is available if the applicant has committed murder or criminal acts involving torture.</p>
<p>Controlled Substance Traffickers and the Relatives of Substance Traffickers Who Obtained Benefit from the Illicit Activity Within Past 5 Years</p> <p>(INA 212(a)(2)(C); 9 FAM 40.23)</p>	<p>Factors to consider include the nature and date of the offense, possible rehabilitation of the alien’s character, and the necessity for, or urgency of, the alien’s proposed trip to the United States.</p>	<p>No waiver available.</p>
<p>Prostitution and Commercialized Vice Within the Past 10 Years</p> <p>(INA 212(a)(2)(D); 9 FAM 40.24)</p>	<p>Factors to be considered include the nature and date of the offense, possible rehabilitation of the alien’s character, and the necessity for, or urgency of, the alien’s proposed trip to the United States.</p>	<ol style="list-style-type: none"> 1. Available in cases of prostitution or procuring if the alien’s admission to the United States would not be contrary to the national welfare, safety, or security, and the alien has been rehabilitated. 2. Available in cases of other commercialized vice if the two conditions above are met, and all relevant criminal acts took place more than 15 years before the date of

		<p>application.</p> <p>3. Available to IV applicants with a close family relationship (spouse, parent, son, or daughter) to a U.S. citizen or LPR, if, in the opinion of DHS, not granting the waiver would result in extreme hardship to the petitioning U.S. citizen or LPR.</p>
<p>Certain Aliens Involved in Serious Criminal Activity Who Have Asserted Immunity from Prosecution</p> <p>(INA 212(a)(2)(E)</p> <p>9 FAM 40.25)</p>	<p>Factors to be considered include the nature and date of the offense, possible rehabilitation of the alien’s character, and the necessity for, or urgency of, the alien’s proposed trip to the United States.</p>	<p>1. Available if the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien’s application, the alien’s admission to the United States would not be contrary to the national welfare, safety, or security, and the alien has been rehabilitated.</p> <p>2. To applicants with a close family relationships (spouse, parent, son, or daughter) to a U.S. citizen or LPR, if, in the opinion of DHS, refusing the waiver would result in extreme hardship to the U.S. citizen or LPR.</p> <p>Neither waiver is available if the applicant has committed murder or criminal acts</p>

		involving torture.
<p>Foreign Government Officials Engaging in Violations of Religious Freedom</p> <p>(INA 212(a)(2)(G); 9 FAM 40.26)</p>	<p>Factors to be considered include the nature and date of the offense, possible rehabilitation of the alien’s character, and the necessity for, or urgency of, the alien’s proposed trip to the United States.</p>	No waiver available.
<p>Significant Traffickers in Persons and Relatives of Trafficker Who Obtained Financial Benefit from the Activity in Past 5 Years</p> <p>(INA 212(a)(2)(H); 9 FAM 40.27)</p>	<p>Factors to be considered include the nature and date of the offense, possible rehabilitation of the alien’s character, and the necessity for, or urgency of, the alien’s proposed trip to the United States.</p>	No waiver available.

SECURITY AND RELATED GROUNDS

Class of Ineligibility	NIV Waivers	IV Waivers
<p>General Prejudicial Activities: Espionage, Sabotage, or Prohibited Export of Sensitive Technology</p> <p>(INA 212(a)(3)(A); 9 FAM 40.31)</p>	No waivers available.	No waivers available.
<p>Terrorist Activities</p> <p>(INA 212(a)(3)(B); 9</p>	<p>With the concurrence of DHS and the Department. Such waivers must be</p>	No waiver available.

FAM 40.32)	submitted by post to the Department, not to DHS.	
Entry Would Have Serious Adverse Foreign Policy Consequences (INA 212(a)(3)(C); 9 FAM 40.33)	No waivers available.	No waivers available.
Membership or Affiliation with Communist or Other Totalitarian Party (applies only to immigrants) (INA 212(a)(3)(D); 9 FAM 40.34)	Not applicable.	DHS may, in its discretion, waive the application of this <i>inadmissibility</i> in the case of an immigrant who is the parent, spouse, son, or daughter <i>of a U.S. citizen or</i> of an LPR, to assure family unity, or when it is otherwise in the public interest, and the immigrant is not a threat to the security of the United States.
Participation in Nazi Persecutions or Genocide and Commission of Acts of Torture or Extrajudicial Killings (INA 212(a)(3)(E); 9 FAM 40.35(a) and (b))	No waivers available.	No waivers available.
Associations with Terrorist Organizations	No waivers available.	No waivers available.

(INA 212(a)(3)(F); 9 FAM 40.36)		
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PUBLIC CHARGE

Class of Ineligibility	NIV Waivers	IV Waivers
Public Charge (INA 212(a)(4)(A); 9 FAM 40.41)	Waivers are available, but rarely used. Typically, refusals are overcome if an applicant presents evidence that convinces the consular officer that the ineligibility no longer exists.	No waiver available. Applicants may overcome the finding by presenting evidence to convince <i>you</i> that the <i>inadmissibility</i> no longer applies. While there are provisions for overcoming the ineligibility by posting a bond with DHS, the applicant is still subject to AOS and income requirements. Consequently, there are few circumstances in which a bond would be offered as an alternative to the AOS.

LABOR AND QUALIFICATIONS FOR CERTAIN IMMIGRANTS

Class of Ineligibility	NIV Waivers	IV Waivers
Aliens Entering the United States to Perform Skilled or Unskilled Labor Whose Intended Employment Has Not Been Certified by the Department of Labor or Who is Unqualified for His/Her Certified Employment.	No waivers available.	No waivers available.

(INA 212(a)(5)(A); 9 FAM 40.51)		
Unqualified Physicians (INA 212(a)(5)(B); 9 FAM 40.52)	No waivers available.	No waivers available.
Uncertified Foreign Health Care Workers (INA 212(a)(5)(C); 9 FAM 40.53)	No waivers available.	No waivers available.

ILLEGAL ENTRANTS, IMMIGRATION VIOLATORS, AND MISREPRESENTATION

Class of Ineligibility	NIV Waivers	IV Waivers
Aliens Present Without Admission or Parole (INA 212(a)(6)(A); 9 FAM 40.61)	No waivers available.	No waivers available.
Failure to Attend a Removal Proceeding (INA 212(a)(6)(B); 9 FAM 40.62)	No waivers available.	No waivers available.

<p>Misrepresentation</p> <p>(INA 212(a)(6)(C)(i); 9 FAM 40.63)</p>	<p>Waivers are available upon recommendation of the consular officer to DHS.</p>	<p>Waivers are available to an immigrant <i>inadmissible</i> for fraud or misrepresentation if s/he is the spouse, son, or daughter of a U.S. citizen or of an LPR, but only if the petitioner would suffer extreme hardship if the waiver were not granted.</p>
<p>False Claim of Citizenship</p> <p>(INA 212(a)(6)(C)(ii); 9 FAM 40.63)</p>	<p>Available upon recommendation of the consular officer to DHS.</p>	<p>No waiver available.</p>
<p>Stowaways</p> <p>(INA 212(a)(6)(D); 9 FAM 40.64)</p> <p>Applies only to aliens seeking admission at a port of entry. <i>You are not to</i> refuse visas under this provision.</p>	<p>Not applicable.</p>	<p>Not applicable.</p>
<p>Smugglers</p> <p>(INA 212(a)(6)(E); 9 FAM 40.65)</p>	<p>Available upon recommendation of the consular officer to DHS.</p>	<p>1. DHS may grant a waiver to an applicant for family-based immigration if the alien applicant had encouraged, induced, assisted, abetted, or aided an individual who</p>

		<p>at the time of such action was the alien’s spouse, parent, son, or daughter entering the United States in violation of the law. The brother or sister of a U.S. citizen is not eligible for this waiver.</p> <p>2. DHS may grant a waiver to a LPR who is returning to the United States after a temporary absence abroad; had illegally assisted only his or her spouse, son or daughter, or parent, and no others; and is otherwise eligible for admission. In this way, DHS avoids penalizing too heavily aliens already admitted to the United States who were not ineligible prior to the 1990 amendments to the law, who would now be ineligible because of the 1990 amendments, and who had assisted only a close family member’s entry into the United States.</p>
<p>Subject of Final Order Under Section 274C (Document Counterfeiting)</p> <p>(INA 212(a)(6)(F); 9 FAM 40.66)</p>	<p>Available upon recommendation of the consular officer to DHS.</p>	<p>DHS may grant a waiver to certain permanent resident aliens who have been abroad temporarily and are not under order of deportation, and to aliens seeking admission or adjustment of status as immediate relatives or family-based</p>

		beneficiaries. The fraudulent document offense must have been committed solely to assist the alien’s spouse or child.
Student Visa Abuser (INA 212(a)(6)(G); 9 FAM 40.67)	Available upon recommendation of the consular officer to DHS.	No waiver available.

DOCUMENTATION REQUIREMENTS

Class of Ineligibility	NIV Waivers	IV Waivers
No Entry Documents – Immigrants (INA 212(a)(7)(A); 9 FAM 40.71)	Not applicable.	Section 212(k) of the INA allows DHS to waive lack of a document at the port of entry if the alien has an IV, is otherwise eligible, and could not have known of the <i>inadmissibility</i> .
Nonimmigrants Not in Possession of Valid Passport of Nonimmigrant Visa or Border Crossing Card (INA 212(a)(7)(B); 9 FAM 40.72)	1. Available on the basis of unforeseen emergency in individual cases. 2. Available on the basis of reciprocity to nationals of a foreign continuous territory or of adjacent islands (and residents of those territories or islands having a common nationality with such nationals).	Not applicable.

INELIGIBLE FOR CITIZENSHIP

Class of Ineligibility	NIV Waivers	IV Waivers
<p>Permanently Ineligible for Citizenship (Immigrant Visas)</p> <p>(INA 212(a)(8)(A); 9 FAM 40.81)</p>	<p>Not applicable.</p>	<p>No waiver available.</p>
<p>Alien Who Departed the United States to Avoid Service in the Armed Forces in Time of War or National Emergency</p> <p>(INA 212(A)(8)(B); 9 FAM 40.82)</p>	<p>Available upon <i>your</i> recommendation to DHS.</p>	<p>No waiver available.</p>

ALIENS PREVIOUSLY REMOVED AN UNLAWFULLY PRESENT

Class of Ineligibility	NIV Waivers	IV Waivers
<p>Aliens Previously Removed</p> <p>(INA 212(a)(9)(A); 9 FAM 40.91)</p>	<p>Available upon <i>your</i> recommendation to DHS.</p>	<p>DHS may grant permission to reapply for admission to the United States to an alien otherwise ineligible under this section. However, such permission to reapply does not remove the grounds which led to the</p>

		alien’s denial of admission to or removal from the United States. The reason for such denial of admission or removal may lead to another ground of <i>inadmissibility</i> .
Aliens Unlawfully Present (INA 212(a)(9)(B); 9 FAM 40.92)	Available upon recommendation of the consular officer to DHS. (9 FAM 40.92 N6)	DHS has sole discretion to grant a waiver in the case of an immigrant who is the spouse, son, or daughter of a U.S. citizen or LPR, if refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawful resident spouse or parent of such alien. DHS’s decision is not reversible in any court.
Aliens Unlawfully Present After Previous Immigration Violation (INA 212(a)(9)(C); 9 FAM 40.93)	Available upon recommendation of the consular officer to DHS.	No waiver available.

MISCELLANEOUS

Class of Ineligibility	NIV Waivers	IV Waivers
Practicing Polygamists (INA 212(a)(10)(A);	Not applicable.	No waiver available.

<p>9 FAM 40.101</p>		
<p>Guardian Required to Accompany Helpless Alien</p> <p>(INA 212(a)(10)(B); 9 FAM 40.102)</p>	<p>No waivers available.</p>	<p>No waivers available.</p>
<p>International Child Abduction</p> <p>(INA 212(a)(10)(C); 9 FAM 40.103)</p>	<p>Available upon recommendation of the consular officer to DHS.</p>	<p>No waiver available.</p>
<p>Unlawful Voters</p> <p>(INA 212(a)(10)(D); 9 FAM 40.104)</p>	<p>Available upon <i>your</i> recommendation of the consular officer.</p>	<p>No waiver available.</p>
<p>Former Citizens Who Renounced Citizenship to Avoid Taxation</p> <p>(INA 212(a)(10)(E); 9 FAM 40.105)</p>	<p>Available upon <i>your</i> recommendation to DHS.</p>	<p>No waiver available.</p>

OTHER INELIGIBILITIES

Class of Ineligibility	NIV Waivers	IV Waivers
<p>Certain Former Exchange Visitors</p> <p>(INA 212(e); 9 FAM 40.202)</p>	<p>The foreign residence requirement of INA 212(e) has been waived by the Secretary of Homeland Security</p>	<p>The foreign residence requirement of INA 212(e) has been waived by the Secretary of Homeland Security</p>
<p>Presumption of Immigrant Status</p> <p>(INA 214(b); 9 FAM 40.203)</p>	<p>No waiver available.</p>	<p>Not Applicable.</p>
<p>Alien Who Knowingly Made a Frivolous Application for Asylum</p> <p>(INA 208(d)(6); 9 FAM 40.206)</p>	<p>No waiver available.</p>	<p>No waiver available.</p>
<p>Aliens Involved in Confiscation of Property of U.S. Nationals</p> <p>(Section 401 of Public Law 104-114; 9 FAM 40.207)</p>	<p>Where the Secretary of State finds, on a case by case basis, that the entry into the United States of the person who would otherwise be <i>inadmissible</i> under this section is necessary for medical reasons or for purposes of litigation of an action under Title III.</p>	<p>No waiver available.</p>

<p>Aliens Involved in Political Killings</p> <p>(Section 616 of Public Law 105-277; 9 FAM 40.208)</p>	<p>No waiver available.</p>	<p>No waiver available.</p>
<p>Alien Detrimental to U.S. Interests</p> <p>(INA 212(f))</p>	<p>No waiver available.</p>	<p>No waiver available.</p>
<p>Alien in Illegal Status</p> <p>(INA 222(g); 9 FAM 40.68 & 41.101)</p>	<p>Where extraordinary circumstances are found by the Secretary of State to exist.</p>	<p>Not applicable.</p>
<p>Persons Engaged in Forced Abortions or Sterilization</p> <p>(8 U.S. Code 1182(e))</p>	<p>If the Secretary of State determines that it is important to the national interest of the United States to do so and provides written notification to the appropriate congressional committees containing a justification for the waiver.</p>	<p>Not applicable.</p>

<p>Chinese and Other Nationals Engaged in Coerced Organ or Bodily Tissue Transplantation</p> <p>(8 U.S. Code 1182(f))</p>	<p>If the Secretary of State determines that it is important to the national interest of the United States to do so, and no later than 30 days after the issuance of a visa, the Secretary provides written notification to the appropriate Congressional committee containing a justification for the waiver.</p>	<p>Not applicable.</p>
<p>Persons Credibly Alleged to Have Aided and Abetted Colombian Insurgent and Paramilitary Groups</p> <p>(Section 3205 of Public Law 106-246)</p>	<ol style="list-style-type: none"> 1. If the Secretary of State finds, on a case by case basis, that the entry into the United States of a person who would otherwise be excluded under this section is necessary for medical reasons. 2. To permit the prosecution of such person in the United States or when the person has cooperated fully with the investigation of crimes committed by individuals associated with the Revolutionary Armed Forces of Columbia (FARC), the National Liberation Army (ELN), or the United Colombian Self Defense Organization (AUC). 3. The President may waive the limitation if he 	<p>No waiver available.</p>

	determines that the waiver is in the national interest.	
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