

## **9 FAM 40.11 NOTES**

*(CT:VISA-1215; 05-12-2009)  
(Office of Origin: CA/VO/L/R)*

### **9 FAM 40.11 N1 BACKGROUND**

*(CT:VISA-1063; 10-09-2008)*

Public Law 101-649, the Immigration Act of 1990 (IMMACT 90) revised section 212(a) of the Immigration and Nationality Act (INA) in its entirety by consolidating the then existing 33 grounds of visa ineligibility into nine. In 1996, Public Law 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), added a vaccination requirement for immigrant visa applicants. There are now four basic medical standards that apply to visa ineligibilities under INA 212(a)(1) (8 U.S.C. 1182(a)(1)):

- (1) Communicable diseases of public health significance;
- (2) Lack of required vaccinations (immigrant visa applicants only);
- (3) Physical or mental disorders and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; and
- (4) The condition of being a drug abuser or addict.

### **9 FAM 40.11 N2 HEALTH-RELATED GROUNDS OF INADMISSIBILITY UNDER INA 212(A)(1), AS AMENDED**

*(CT:VISA-1063; 10-09-2008)*

The major elements relating to a finding of inadmissibility under INA 212(a)(1) (8 U.S.C. 1182(a)(1)) include:

- (1) General requirement for medical examination (see 9 FAM 40.11 N3);
- (2) Role of panel physician (see 9 FAM 40.11 N7);
- (3) Public charge factors (see 9 FAM 40.11 N8);
- (4) Communicable diseases of public health significance (see 9 FAM 40.11 N9);

- (5) Immunization requirements (see 9 FAM 40.11 N10);
- (6) Physical or mental disorder associated with harmful behavior (see 9 FAM 40.11 N11);
- (7) Drug abuse or addiction (see 9 FAM 40.11 N12 below);
- (8) Immigrant visa waiver (see 9 FAM 40.11 N13 below); and
- (9) Nonimmigrant visa waiver (see 9 FAM 40.11 N14 below).

## **9 FAM 40.11 N3 GENERAL REQUIREMENT FOR MEDICAL EXAMINATION**

### **9 FAM 40.11 N3.1 Immigrant Visa (IV) Applicants**

*(CT:VISA-1063; 10-09-2008)*

INA 221(d) (8 U.S.C. 1201(d)) requires all applicants applying for immigrant visas (IV) to undergo a physical and mental examination. The results of this statutorily required medical examination are used to determine the alien's eligibility for such a visa. The medical finding by the panel physician or the Department of Health and Human Services/Public Health Service/Centers for Disease Control and Prevention (HHS/PHS/CDC), if referred to that agency, is binding on you. (See 9 FAM 42.66 Notes.)

### **9 FAM 40.11 N3.2 Nonimmigrant Visa (NIV) Applicants**

*(CT:VISA-1063; 10-09-2008)*

Generally, medical examinations are not required for nonimmigrant visa (NIV) applicants. However, you may require a nonimmigrant applicant to undergo a medical examination if you have reason to believe that the applicant may be ineligible for a visa under INA 212(a)(1) (8 U.S.C. 1182(a)(1)). (See also 9 FAM 41.108 Notes.)

### **9 FAM 40.11 N3.3 Asylee Follow-To-Join (V-92 Beneficiaries)**

*(CT:VISA-1063; 10-09-2008)*

All asylee follow-to-join derivatives (Visa 92 (V-92) applicants) entering the United States must have the same medical examination as IV applicants have under INA 221(d) and 234. The medical examination for V-92 beneficiaries must be conducted by a panel physician. Similar to refugees, asylee follow-to-join beneficiaries are not required to meet the immunization

requirements for immigrants until after one year when they apply for adjustment of status to become permanent residents in the United States.

## **9 FAM 40.11 N3.4 Refugees and V-93 Beneficiaries**

*(CT:VISA-1063; 10-09-2008)*

All refugees and follow-to-join derivatives (Visa 93 (V-93) beneficiaries) entering the United States must have the same medical examination as IV applicants have under the INA 221(d) and 234. The medical examination for refugees may be conducted by a panel physician or by the International Organization for Migration (IOM). The U.S. Government pays the cost of refugee medical exams through the IOM. Unlike IV applicants, refugees, including V-93 beneficiaries, are not required to meet the immunization requirements for immigrants until one year after arrival, when they apply for adjustment status to become permanent residents in the United States.

## **9 FAM 40.11 N3.5 Purpose of Medical Examination**

*(CT:VISA-1063; 10-09-2008)*

- a. The purpose of the medical examination required under the provisions of INA 221(d) is to determine whether the applicant has a:
  - (1) **"Class A" condition**—A medical condition that renders him or her ineligible to receive a visa; or
  - (2) **"Class B" condition**—A medical condition that, although not constituting an inadmissible condition, represents a departure from normal health or well-being that is significant enough to possibly:
    - (a) Interfere with the applicant's ability to care for himself or herself or to attend school or work; or
    - (b) Require extensive medical treatment or institutionalization in the future.
- b. See 42 CFR Part 34 for the scope of the medical examination.

## **9 FAM 40.11 N4 U.S. PUBLIC HEALTH SERVICE (USPHS)/CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC) REGULATIONS GOVERNING MEDICAL EXAMINATIONS**

*(CT:VISA-1063; 10-09-2008)*

- a. U.S. Public Health Service/Centers for Disease Control and Prevention (USPHS/CDC) regulations relating to medical examinations of applicants are contained in 42 CFR 34. For specific instructions for performance of medical examinations, see Technical Instructions (TIs) for Panel Physicians, the 2007 Tuberculosis (TB) TIs, and 2007 TIs for Vaccinations. Each panel physician should have his or her own personal copy of these instructions.
- b. On July 30, 2001, the CDC posted instructions to panel physicians for completing U.S. Department of State Form DS-2053, Medical Examination For Immigrant or Refugee Applicant, and associated worksheets, Form DS-3024, Chest X-Ray, Form DS-3025, Vaccination Documentation Worksheet, and Form DS-3026, Medical History and Physical Examination Worksheet. (See CDC's Instructions for Department of State Forms.)
- c. Please provide a copy of these instructions to your panel physicians. These instructions are also available from the Consular Affairs Intranet home page under the visa office links. In addition, the Technical Instructions are available directly from the CDC's Web site.

## **9 FAM 40.11 N5 MEDICAL EXAMINATION OF APPLICANTS RESIDENT IN THE UNITED STATES APPLYING AT POST**

*(CT:VISA-1063; 10-09-2008)*

An individual who resides in the United States or who is present in the United States at the time of his or her visa application, but is applying for a visa at post must receive a medical examination from a panel physician designated by post. Such individuals may not submit medical examinations conducted by a civil surgeon in the United States.

## **9 FAM 40.11 N6 VALIDITY PERIOD OF APPLICANTS' MEDICAL EXAMINATION**

*(CT:VISA-1063; 10-09-2008)*

- a. CDC has informed the Department that the medical examinations conducted in connection with visa applicants have the following validity periods:
  - (1) For posts using the **2007 TB Technical Instructions** the following validity periods apply:
    - (a) **6 month validity:** No TB findings, Non-TB or HIV Class A condition, No Class B1 TB, Class B2 TB, Class B3 TB, and no

HIV infection;

**NOTE:** For applicants with no TB findings, Class B2 TB, or Class B3 TB, the TB portion of the medical exam expires after 6 months. However, all other portions of the exam remain valid for one year. If the TB exam is repeated after 6 months and the findings have not changed, the exam is valid for an additional 6 months for a total of one year validity. If the TB exam is **not** completed after 6 months, then the entire exam is invalid until reexamination; all portions may be required depending upon the time left until expiration. For the complete table on medical exam validity, (see 9 FAM 40.11 Exhibit I.)

- (b) **3 month validity:** Class A TB with waiver (rare), Class A HIV infection, Class B1 TB Pulmonary, Class B1 TB Extrapulmonary;
  - (c) Class A TB without waiver – not medically cleared to travel until completion of successful treatment.
- (2) For posts using the **1991 Technical Instructions** the following validity periods apply:
- (a) **1 year validity:** no Class A or TB condition;
  - (b) **6 month validity:** Any Class A condition, Class B1, or B2 TB condition
- b. You should make sure to limit visa validity to the validity of the medical examination. For example, if an alien has a medical examination that is only valid for six months from the time of visa issuance, the visa should be valid for only six months.
- c. Applicants not traveling to the United States within the exam validity period will need to undergo a new medical examination.

## **9 FAM 40.11 N7 Panel Physicians**

### **9 FAM 40.11 N7.1 Role of Panel Physician**

*(CT:VISA-1063; 10-09-2008)*

- a. The panel physician is responsible for the entire examination. The examination must include:
- (1) A medical history;
  - (2) An immunization history (immigrant visa (IV) applicants only);
  - (3) A physical examination;

- (4) A mental examination;
  - (5) A full-size chest radiograph;
  - (6) A serologic test for syphilis;
  - (7) A serologic test for Human Immunodeficiency Virus (HIV);
  - (8) A sputum smear examination;
  - (9) Administration of immunizations (immigrant visa (IV) applicants only);
  - (10) Report of the results of all required tests and consultations;
  - (11) Verification that the completed medical report forms are sent directly to you; and
  - (12) Verification that the person appearing for the medical examination is the person actually applying for the visa.
- b. The panel physician does not have the authority to determine whether an alien is actually eligible for a visa. You must make that determination after reviewing all the records, including the report of the medical examination. (See also 9 FAM 42.66 Exhibit I.)

## **9 FAM 40.11 N7.2 Medical Screening Forms**

*(CT:VISA-1063; 10-09-2008)*

- a. The panel physician must complete the following forms for all visa applicants referred to them for visa medical examinations:
- (1) Form DS-2053, Medical Examination for Immigrant or Refugee Applicants;
  - (2) Form DS-3024, Chest X-Ray and Classification Worksheet;
  - (3) Form DS-3025, Vaccination Documentation Worksheet; and
  - (4) Form DS-3026, Medical History and Physical Examination Worksheet.
- b. A nurse or other authorized staff may complete forms on behalf of the panel physician. The panel physician, however, must review the records and make the determination as to whether the applicant meets all necessary medical requirements or if he or she should seek a waiver.
- c. All completed forms and any related worksheets should be provided to you as the panel physician's medical examination report for each applicant.

## **9 FAM 40.11 N7.3 Basis of Medical Report in**

## **Determining Eligibility Under INA 212(a)(1)**

*(CT:VISA-1063; 10-09-2008)*

- a. The panel physician conducts the examination and testing required to assess the applicant's medical condition and then completes Form DS-2053, Medical Examination for Immigrant or Refugee Applicant, Form DS-3024, Chest X-Ray and Classification Worksheet, Form DS-3025, Vaccination Documentation Worksheet, and Form DS-3026, Medical History and Physical Examination Worksheet. You cannot find an applicant inadmissible under INA 212(a)(1) (8 U.S.C. 1182(a)(1)) without a report from the panel physician. The panel physician determines whether diagnostic tests are needed when the medical condition is self-declared by the applicant.
- b. Upon completion of the applicant's medical examination, the examining physician shall submit the report to you. The report must include the results of any diagnostic tests required for the diagnosis of the diseases identified as communicable diseases of public health significance and any other tests necessary to confirm suspected diagnoses of any other "Class A" or "Class B" condition. You will see the list of the results on the form as follows:
  - (1) No defect, disease, or disability;
  - (2) "Class A"—a communicable disease of public health significance or a physical or mental disorder associated with harmful behavior, or drug abuse/addiction (INA 212(a)(1)(A)(i), (iii), or (iv)); or
  - (3) "Class B"—physical or mental defect, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal physical or mental well-being.

## **9 FAM 40.11 N7.4 Effect of Findings**

### **9 FAM 40.11 N7.4-1 "Class A" Finding**

*(CT:VISA-1063; 10-09-2008)*

A "Class A" medical finding requires you to find an alien inadmissible under INA 212(a)(1) (8 U.S.C. 1182(a)(1)). The physician's examination must be conducted in accordance with the current "Technical Instructions for Medical Examination of Aliens" (Technical Instructions) distributed by the Department of Health and Human Services, Public Health Service, Centers for Disease Control (HHS/PHS/CDC).

### **9 FAM 40.11 N7.4-2 "Class B" Finding**

*(CT:VISA-1063; 10-09-2008)*

A "Class B" finding informs you that a serious medical condition exists which constitutes a departure from normal health or well-being. You must consider such finding when assessing the alien's eligibility for visa issuance; i.e., the likelihood of the alien becoming a public charge.

## **9 FAM 40.11 N8 BASIS OF MEDICAL REPORT IN DETERMINING INADMISSIBILITY UNDER INA 212(A)(4)**

*(CT:VISA-1063; 10-09-2008)*

In addition to the examination for specific excludable conditions, the examining physician must also look for other physical and mental abnormalities that suggest the alien is likely to become a public charge. When identifying a "Class B" medical condition that may render the alien inadmissible under INA 212(a)(4) (8 U.S.C. 1182(a)(4)), the examining physician is required to reveal not only the full extent of the condition, but the extent of the approximate treatment needed to care for such condition. Based on the results of the examination, you must determine whether the disease or disability would be likely to render the alien unable to care for him or herself or attend school or work, or require extensive medical care or institutionalization. Thus, certain conditions (e.g., mental retardation) are no longer explicitly listed as excludable conditions. Instead, the examining physician's diagnosis and opinion regarding treatment and disability would be factors for you to consider in your "totality of the circumstances" analysis of admissibility under INA 212(a)(4). (See 9 FAM 40.41 N4.)

## **9 FAM 40.11 N9 INA 212(A)(1)(A)(I) - COMMUNICABLE DISEASES OF PUBLIC HEALTH SIGNIFICANCE**

*(CT:VISA-1063; 10-09-2008)*

INA 212(a)(1)(A)(i) refers to an excludable disease as "communicable disease of public health significance." The CDC's Technical Instructions lists these diseases which are also defined at 42 CFR Part 34.2(b). The following diseases are those that the CDC currently defines as "communicable diseases of public health significance:"

- (1) Tuberculosis (TB);
- (2) Human Immunodeficiency Virus (HIV) infection;
- (3) Syphilis;

- (4) Chancroid;
- (5) Gonorrhea;
- (6) Granuloma inguinale;
- (7) Lymphogranuloma venereum; and
- (8) Hansen's Disease (Leprosy).

## **9 FAM 40.11 N9.1 Immigrant Afflicted with Human Immunodeficiency Virus (HIV)**

### **9 FAM 40.11 N9.1-1 HIV-Infected Aliens**

*(CT:VISA-1063; 10-09-2008)*

INA 212(g)(1)(A) and (B) provide waiver relief for certain HIV-positive immigrant visa applicants. (See 9 FAM 40.11 N13 and 9 FAM 40.11 N14 for waivers.)

### **9 FAM 40.11 N9.1-2 Immigrant Visa Applicants 15 Years or Older**

*(CT:VISA-1063; 10-09-2008)*

In accordance with the Technical Instructions published by the Centers for Disease Control (HHS/PHS/CDC), all immigrant visa applicants 15 years of age or older must be tested for evidence of HIV infection. Those applicants under the age of 15 must also be tested if there is reason to suspect HIV infection (e.g., a child with hemophilia, or a child with a natural parent who is HIV-positive). You must deny the visa for any applicant who is found to be HIV-positive, although you may seek a waiver.

### **9 FAM 40.11 N9.1-3 Public Charge as Related to HIV-Positive Applicants**

*(CT:VISA-1063; 10-09-2008)*

- a. Under section 212(a)(4) of the INA, an immigrant visa (IV) applicant must demonstrate that he or she has a means of support in the United States and that he or she, therefore, will not need to seek public financial assistance. It may be difficult for the HIV-positive applicants to meet this requirement of the law because of the cost of treating the illness can be very high and because the applicant may not be able to work or obtain medical insurance. You must be satisfied that the applicant has access to funds sufficient for his or her support. You need to consider the family's income and other assets, including medical insurance coverage for any

and all HIV-related expenses, availability of public health services and hospitalization for which no provision for collecting fees from patients are made and any other relevant factors in making this determination.

- b. There is no waiver possible for this ineligibility; however, if the applicant is able to demonstrate that he or she has acquired additional insurance or funds which would be sufficient to overcome the ineligibility, you may determine that the ineligibility no longer applies. For information about treatment and care of persons who are HIV-positive, consult a physician or public health service official in your country.

## **9 FAM 40.11 N9.2 Immigrant Afflicted with Tuberculosis**

*(CT:VISA-1063; 10-09-2008)*

- a. The CDC revised the Technical Instructions for Tuberculosis (TB TIs). The 2007 TB TIs will be phased in at posts over the next several years. Posts that are not yet 2007 TB TI compliant will continue to use the 1991 TB TIs.
- b. **2007 TB TIs:** The medical examination is not considered complete until you obtain a determination from the medical examiner(s) with the applicant's tuberculosis classification(s). Applicants should be assigned one or more of the following TB classifications:
  - (1) No TB Classification;
  - (2) "Class A TB" – chest x-ray findings suggestive of pulmonary TB and positive sputum smears or positive cultures (see 9 FAM 40.11 N9.2-1);
  - (3) "Class B1 TB, Pulmonary;"
    - (a) No treatment – chest x-ray findings suggestive of pulmonary TB but negative sputum smears and cultures (see 9 FAM 40.11 N9.2-2);
    - (b) Completed treatment – Diagnosed with pulmonary TB and successfully completed directly observed therapy;
  - (4) "Class B1 TB, Extrapulmonary" – TB clinically active, not infectious, x-ray or other evidence of TB outside of the lung (see 9 FAM 40.11 N9.2-2);
  - (5) "Class B2 TB, Latent Tuberculosis Infection (LTBI) Evaluation" – Applicants who have tuberculin skin test (TST) greater than or equal to 10 mm but who otherwise have a negative evaluation to TB (see 9 FAM 40.11 N9.2-2); or
  - (6) "Class B3 TB, Contact Evaluation" – Applicants who have had

contact with a known TB case. Contact is defined as having shared the same enclosed air space (i.e., exposure) in a household or other closed environment for a prolonged period of time (days or weeks, not minutes or hours) with a person who had a smear and/or culture-positive for pulmonary tuberculosis (see 9 FAM 40.11 N9.2-2).

- c. For applicants infected with Class A TB, the medical exam is not considered complete until the applicant:
  - (1) Receives the recommended treatment in accordance with the revised 2007 TB TIs. The Technical Instructions are available on the CDC's Web site. The recommended treatment involves directly observed therapy (DOT) where a health care worker watches a patient swallow each dose of medication. DOT treatment enhances adherence and reduces the risk of development of drug resistance. The 2007 TB TIs require drug susceptibility testing (DST) of sputum cultures to determine which medications will treat the applicant's disease; and
  - (2) Has the negative sputum smear and culture for acid fast bacilli for three consecutive working days. The 2007 TB TIs require laboratory cultures of sputum samples which are more effective in detecting tuberculosis than chest x-rays or sputum smears alone.
- d. **1991 TB TI:** The medical examination is not considered complete in the case of an applicant found to be afflicted with tuberculosis, until you obtain a determination from the medical examiner as to whether the tuberculosis is:
  - (1) "Class A"-1—infectious, communicable (see 9 FAM 40.11 N9.2-1);
  - (2) "Class A"-2—infectious, not for travel purposes (see 9 FAM 40.11 N9.2-1);
  - (3) "Class B"-1—clinically active, not infectious (see 9 FAM 40.11 N9.2-2);
  - (4) "Class B"-2—not clinically active (see 9 FAM 40.11 N9.2-2); or
- e. For applicants infected with Class A TB, the medical exam is not considered complete until the applicant:
  - (1) Receives the recommended treatment in accordance with the current Technical Instructions; and
  - (2) Has a negative sputum smear examination for acid fast bacilli on three consecutive days.

## **9 FAM 40.11 N9.2-1 "Class A" Finding for Infectious Tuberculosis**

*(CT:VISA-1063; 10-09-2008)*

- a. **2007 or 1991 TB TIs:** A visa applicant identified by the panel physician as having "Class A" infectious tuberculosis is ineligible to receive a visa under INA 212(a)(1). However, in exceptional medical situations, a provision allows applicants undergoing pulmonary tuberculosis treatment to petition for a Class A waiver. Waivers can be pursued for any applicant who has a complicated clinical course and who would benefit from receiving treatment of their TB in the United States. It should be noted that historically these waivers have rarely been granted due to the infectious nature of the illness. You may recommend a waiver of the ground of inadmissibility to the Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS) for IV or DHS/U.S. Customs and Border Protection (CBP) for NIV; provided that the alien has met certain HHS/PHS/CDC requirements. (See also 9 FAM 40.11 N13 for waiver procedures for immigrants or 9 FAM 40.11 N14 for waiver procedures for nonimmigrants.)
- b. Any applicant with Class A TB who needs treatment overseas and who is not granted a waiver, is medically ineligible to receive a visa until the completion of successful DOT treatment and have negative sputum smears and cultures at the end of therapy in accordance to the 2007 TB TIs or who have negative sputum smears for three consecutive days in accordance to the 1991 TB TIs.
- c. Do not issue a visa to applicants with positive sputum smears or positive cultures who do not want to be treated.
- d. Do not issue a visa to an applicant with a history of noncompliance until he or she has completed DOT treatment in accordance to the 2007 TB TIs or until he or she has three consecutive negative sputum smears in accordance to the 1991 TB TIs.

## **9 FAM 40.11 N9.2-2 "Class B" Finding for Infectious Tuberculosis**

*(CT:VISA-1063; 10-09-2008)*

An alien who is found to have "Class B" medical condition for tuberculosis is **not** inadmissible under INA 212(a)(1)(A)(i) (8 U.S.C. 1182(a)(1)(A)(i)).

## **9 FAM 40.11 N9.2-3 Medical Treatment at U.S. Military Institution**

*(CT:VISA-1063; 10-09-2008)*

Although alien dependents of U.S. military personnel may not use U.S. military facilities for visa-related medical examinations, such facilities are

authorized to treat alien dependents that have tuberculosis. Those military facilities designated by the Surgeon General of any of the U.S. Armed Services, or by the Chief Surgeon of any major Army command abroad, are considered acceptable to U.S. Public Health Service (USPHS) for the treatment of tuberculosis. A statement from the Surgeon General or a Chief Surgeon that the alien will be admitted for treatment may be accepted as meeting the requirements of 9 FAM 40.11 N13.2. The name and address of the military hospital in the United States where the treatment will be provided must be shown on Form I-601, Application for Waiver of Grounds of Inadmissibility, Section B.

## **9 FAM 40.11 N10 INA 212(A)(1)(A)(II) - IMMUNIZATION REQUIREMENT**

### **9 FAM 40.11 N10.1 Statutory Requirement**

*(CT:VISA-1063; 10-09-2008)*

Section 341(b) of Public Law 104-208 added a requirement that all aliens lawfully admitted to the United States for permanent residence be vaccinated against certain vaccine-preventable diseases. However, Public Law 105-73 provides an exemption for internationally adopted children (IR-3s and IR-4s) 10 years of age or younger from immunization requirement.

### **9 FAM 40.11 N10.2 Required Vaccinations**

*(CT:VISA-1063; 10-09-2008)*

Although INA 212(a)(1)(A)(ii) (8 U.S.C. 1182(a)(1)(A)(i)) lists specific vaccine-preventable diseases, the language of INA 212(a)(1)(A)(ii) requires immigrants "to present documentation of having received vaccination against vaccine-preventable diseases." In 2007, CDC updated the Technical Instructions for Vaccination for immigrant visa (IV) applicants to include an updated list of required vaccines. Applicants are required to receive at least one dose of each age-appropriate vaccine. If applicants had previously received a dose or doses of a required vaccine but had not completed the series, then the next required dose should be administered. Although applicants are not required to complete the vaccine series, they are encouraged to receive as many additional doses as possible prior to travel to the United States. The vaccinations required by the CDC include those recommended by the Advisory Committee for Immunization Practices. Vaccinations currently required by CDC are as follows (Note – many vaccines have age-appropriate guidelines):

- (1) Mumps;

- (2) Measles;
- (3) Rubella;
- (4) Polio;
- (5) Tetanus;
- (6) Diphtheria;
- (7) Pertussis;
- (8) Haemophilus influenzae Type B;
- (9) Rotavirus;
- (10) Hepatitis A;
- (11) Hepatitis B;
- (12) Meningococcal disease;
- (13) Human papillomavirus (HPV);
- (14) Varicella;
- (15) Pneumococcal pneumonia;
- (16) Influenza; and
- (17) Zoster.

## **9 FAM 40.11 N10.3 “Not Medically Appropriate” Categories on Form DS-3025, Vaccination Documentation Worksheet**

*(CT:VISA-1063; 10-09-2008)*

The CDC and the Department accept that in many cases it might not be medically appropriate to administer a dose of a particular vaccine. Form DS-3025, Vaccination Documentation Worksheet, has five “Not Medically Appropriate” categories that are acceptable. These categories should be used when determining an applicant’s eligibility for a blanket waiver. A blanket waiver is a waiver that is applied uniformly to a group of conditions and does not require a separate waiver application or fee to be filed with USCIS. The five categories are:

- (1) Not age appropriate – for all applicants this box will need to be checked for at least one of the required vaccines. For example, infants and adults do not need all the same vaccinations;
- (2) Insufficient time interval between doses – this box will be checked if administration of the single doses of a vaccine at the time of the medical examination does not complete the series for that vaccine. Only one dose of each series is required to be administered by the

panel physician for immigration purposes;

- (3) Contraindicated – A contraindication is a condition in a recipient which is likely to result in a life-threatening problem if the vaccine is given (i.e., an allergic reaction);
- (4) Not routinely available – “Not routinely available” can mean that a vaccine is not available in a particular country, that a panel site does not regularly stock the vaccine, or that due to a shortage it cannot be obtained in a reasonable amount of time. Cost should not be a factor of consideration.
- (5) Not fall (flu) season – The influenza vaccine is required during the influenza (flu) season; if it is not flu season at post this vaccination is not required. Influenza occurs throughout the year in tropical areas.

## **9 FAM 40.11 N10.4 Cost of Vaccinations**

*(CT:VISA-1063; 10-09-2008)*

The CDC and the Department accept that some panel physicians will raise the cost of the medical examination to take into account the cost of vaccinations. The costs for the vaccinations and the administering of such vaccination, however, should not be in excess of those charged the general public.

## **9 FAM 40.11 N10.5 Vaccination Requirements for Fiancé(e)**

*(CT:VISA-1063; 10-09-2008)*

Fiancé(e) visa applicants, as nonimmigrant visa (NIV) applicants, technically are not subject to the INA 212(a)(1)(A)(ii) (8 U.S.C. 1182(a)(1)(A)(ii)) vaccination requirement. However, we (Department of State) and the Department of Homeland Security (DHS) have agreed that medical exams for fiancé(e) visa applicants should include the vaccination assessment as a matter of expediency. Every effort should be made, therefore, to encourage fiancé(e) visa applicants to meet the vaccination requirements before admission to the United States. Nevertheless, do not refuse K-visa applicants for refusing to meet the vaccination requirements.

## **9 FAM 40.11 N10.6 Exemptions from Vaccination Requirement for Foreign Adopted Children**

*(CT:VISA-1063; 10-09-2008)*

Applicants for IR-3 and IR-4 immigrant visas (IV) who are age 10 years or

younger are exempt from the vaccination requirement if:

- (1) Prior to the child's admission to the United States, an adoptive parent or prospective adoptive parent executes the Form DS-1981, Affidavit Concerning Exemption from Immigrant Vaccination Requirements for a Foreign Adopted Child, stating that he or she is aware of the vaccination requirement. (See also 9 FAM 40.11 N10.2.)
- (2) The adoptive or prospective adoptive parent(s) will ensure that, within 30 days of the child's admission to the United States, or at the earliest time that is medically appropriate, the child will comply with the INA 212(a)(1)(A)(ii) (8 U.S.C. 1182(a)(1)(A)(ii)) vaccination requirement; and
- (3) The adoptive or prospective adoptive parent(s) provide an original copy of the signed affidavit to you either prior to or at the time of the visa interview for inclusion in the case file. (This copy must be attached to the Form DS-2053, Medical Examination for Immigrant or Refugee Applicant, and included with the supporting documents attached to the issued IR-3 or IR-4 visa.)

## **9 FAM 40.11 N10.7 Form DS-1981, Affidavit Concerning Exemption from Immigrant Vaccination Requirements for a Foreign Adopted Child**

*(CT:VISA-1063; 10-09-2008)*

- a. A panel physician may accept the verbal assurances of an adoptive parent, prospective adoptive parent, or individual representing the child's interests, as evidence that a completed Form DS-1981, Affidavit Concerning Exemption from Immigrant Vaccination Requirements for a Foreign Adopted Child, will be presented on behalf of the child at the time of the visa interview. In such cases, the panel physician should not conduct a vaccination assessment as part of the medical interview.
- b. The adoptive or prospective adoptive parent must provide a copy of the signed Form DS-1981 to you at the time of the visa interview. The copy is to be included in the case file. This copy must be attached to the Form DS-3025, Vaccination Documentation Worksheet, and included with the supporting documents attached to the issued IR-3 or IR-4 visa.

## **9 FAM 40.11 N10.8 Fraudulent Vaccination Records**

*(CT:VISA-1063; 10-09-2008)*

- a. If the panel physician believes that the applicant's vaccination record is fraudulent, you should treat the applicant in the same fashion as if he or

she has failed to present the vaccination record. Acceptable vaccination documentation must come from a vaccination record, either a personal vaccination record or a copy of the medical chart record with entries made by a physician or other appropriate medical personnel. Only those records of doses of vaccines that include the dates of receipt (month, day, and year) are acceptable. Self-reported doses of vaccines without written documentation are not acceptable. This could mean that the applicant might be required to repeat doses of vaccines that he or she has actually received, if he or she is not able to provide sufficient acceptable documentation. In accordance with the CDC Technical Instructions, administering a second dose, however, will not endanger the applicant's health.

- b. To guarantee that applicants actually receive the required vaccinations and to guard against fraudulent vaccination records, CDC has agreed that posts may require applicants to receive the vaccinations from designated facilities. These facilities must follow the Technical Instructions on Vaccinations Requirements and must sign a separate contract. (CDC and the Post Liaison Division (CA/VO/F/P) can assist posts in developing a suitable contract.) Posts that plan to designate a specific facility must provide CA/VO/F/P and CDC with the name and address of the facility. The panel physician must still review the applicant's vaccination record, Form DS-3025, Vaccination Documentation Worksheet, and complete the medical examination, Form DS-2053, Medical Examination for Immigrant or Refugee Applicant.

## **9 FAM 40.11 N11 INA 212(A)(1)(A)(III) PHYSICAL OR MENTAL DISORDERS**

*(CT:VISA-1063; 10-09-2008)*

The nature of INA 212(a)(1)(A)(iii) (8 U.S.C. 1182(a)(1)(A)(iii)) has changed radically from prior law. The application of medical standards has replaced the listing of very specific diseases and medical conditions in the former. A physical or mental disorder must be associated with a requisite display of harmful behavior. Thus, the mere presence of a physical or mental disorder does not by itself render the applicant ineligible. Under the provisions of INA 212(a)(1)(A)(iii)(I) and (II), in order to find an applicant inadmissible, you must determine that the applicant:

- (1) Has a physical or mental disorder and behavior associated with the disorder that may pose or has posed, a threat to the property, safety, or welfare of the applicant or others; or
- (2) Has a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to

the property, safety, or welfare of the applicant or others and which is likely to recur or to lead to other harmful behavior.

## **9 FAM 40.11 N11.1 Harmful Behavior**

*(CT:VISA-1063; 10-09-2008)*

- a. For purposes of INA 212(a)(1)(A)(iii) (8 U.S.C. 1182(a)(1)(A)(iii)), current harmful behavior, or a history of it, would include a dangerous action or series of actions by the alien which has:
  - (1) Caused injury (psychological or physical) to the applicant or another person;
  - (2) Threatened the health or safety of the applicant or another person; or
  - (3) Resulted in property damage.
- b. The panel physician must evaluate such behavioral history to determine whether an applicant has an excludable condition. (A conviction for such behavior is not determinative.) In cases where the panel physician does not feel that he or she has the necessary experience and background in these types of harmful behavior disorders, the panel physician should refer the applicant to a psychiatrist or psychologist who has more experience in diagnosing these types of disorders.

## **9 FAM 40.11 N11.2 Criminal Behaviors**

*(CT:VISA-1063; 10-09-2008)*

- a. You shall refer to the panel physician for a determination regarding the applicability of INA 212(a)(1)(A)(iii) (8 U.S.C. 1182(a)(1)(A)(iii)), any case involving an alien who has demonstrated a pattern of criminal behavior over a sustained period of time.
- b. DHS/USCIS does not require fingerprints with an application for a waiver of a ground of inadmissibility under INA 212(g) (8 U.S.C. 1182(g)). However, in any case where there is reason to believe that a prior record of criminal behavior may exist, you must submit a set of the applicant's fingerprints together with the request for a waiver. (See 9 FAM 42.67 PN7 and 9 FAM 40.201 Related Statutory Provisions.)

## **9 FAM 40.11 N11.3 Alcohol Dependence (Alcoholism) or Alcohol Abuse**

*(CT:VISA-1063; 10-09-2008)*

- a. While alcoholism constitutes a medical condition, INA 212(a)(1)(A)(iii) (8

U.S.C. 1182(a)(1)(A)(iii)) does not refer explicitly to alcoholics or alcoholism. Evaluation for alcohol abuse or dependence is included in the evaluation for mental and physical disorders with associated harmful behavior. An alcohol abuser is **not** ineligible to receive a visa **unless** there is evidence of current or past harmful behavior associated with the disorder that has posed or is likely to pose a threat to the property, safety, or welfare of the alien or others. To ensure proper evaluation, you **must** refer applicants (IV and NIV) to panel physicians when they have:

- (1) A single drunk driving arrest or conviction with the last three calendar years;
  - (2) Two or more drunk driving arrests or convictions in any time period; or
  - (3) If there is any other evidence to suggest an alcohol problem.
- b. Applicants who are referred to a panel physician due to drunk driving-related offenses must receive the full medical exam evaluation, less the vaccination requirement for NIV applicants. Chest x-rays and any other necessary testing must be conducted for the exam to be considered complete.
- c. NIV applicants with a single drunk driving arrest or conviction within the last three calendar years who the panel physician finds to have a Class B or no physical or mental condition, who are otherwise eligible to receive a visa, and who have not had another drunk driving arrest or conviction since the original or previous exam do **not** have to repeat the medical exam with each new NIV application. If an applicant is found to have a Class A condition associated with alcohol abuse (a single DUI (Driving Under the Influence)) or has two or more drunk driving arrests or convictions in any time period, then the applicant must be referred to the panel physician with each new NIV application if the original medical exam has expired.

## **9 FAM 40.11 N12 DRUG ABUSER OR ADDICT AND EFFECT OF INA 212(A)(1)(A)(IV)**

*(CT:VISA-1063; 10-09-2008)*

The nonmedical use of any drugs listed in section 202 of the Controlled Substances Act generally qualifies as a "Class A" condition. It should be noted that harmful behavior is not a relevant factor in rendering a determination under the provisions of INA 212(a)(1)(A)(iv) (8 U.S.C. 1182(a)(1)(A)(iv)). An immigrant visa (IV) waiver of inadmissibility is not available to an alien who is diagnosed as engaging in psychoactive

substance abuse or dependence or using psychoactive substances listed in the Controlled Substances Act. (See 9 FAM 40.23 Exhibit I.)

## **9 FAM 40.11 N12.1 Definitions**

*(CT:VISA-1063; 10-09-2008)*

Definitions relating to psychoactive substance abuse/dependence as provided by the Department of Health and Human Services (HHS) are quoted below. Psychoactive substance abuse/dependence as used here, includes 2 groups:

- (1) Nonmedical users of drugs listed in section 202 of the Controlled Substances Act. (See 9 FAM 40.23 Exhibit I). Nonmedical use of any drug listed in section 202 of the Controlled Substances Act is illegal and qualifies as a "Class A" condition, whether or not harmful behavior is documented.
- (2) Nonmedical users of drugs not listed in section 202 of the Controlled Substances Act and abusers of alcohol, inhalants, or other psychoactive agents with resultant harmful or dysfunctional behavior patterns. Determination of "Class A" or "Class B" status is the same as that of any other mental or physical condition.

## **9 FAM 40.11 N12.2 Terms in 42 CFR Part 34**

*(CT:VISA-1063; 10-09-2008)*

- a. The term "drug abuse" means the nonmedical use of a substance listed in section 202 of the Controlled Substances Act, as amended, (21 U.S.C. 802) which **has not** necessarily resulted in physical or psychological dependence.
- b. The term "drug addiction" means the nonmedical use of a substance listed in section 202 of the Controlled Substances Act, as amended, (21 U.S.C. 802) which **has** resulted in physical or psychological dependence.

## **9 FAM 40.11 N12.3 Nonmedical Drug Use**

*(CT:VISA-1063; 10-09-2008)*

Nonmedical use is considered to be more than experimentation with the substance (e.g., a single use of marijuana or other non-prescribed psychoactive substances such as amphetamines or barbiturates). Experimentation with any of these drugs would not be considered a ground of inadmissibility. A panel physician should consult with a physician with experience in the medical evaluation of substance abusers, when a clinical question is raised as to whether the use was experimental or part of a pattern of abuse.

## **9 FAM 40.11 N12.4 Finding of Remission**

*(CT:VISA-1063; 10-09-2008)*

Remission is defined as no nonmedical use of a drug listed in section 202 of the Controlled Substances Act for 3 or more years, or no nonmedical use of any other psychoactive substance for 2 or more years. An alien in remission is not ineligible to receive a visa, if the panel physician finds the alien to be in a "Class-B" status.

## **9 FAM 40.11 N12.5 Determining "Class A" or "Class B" Status**

*(CT:VISA-1063; 10-09-2008)*

- a. A determination of "Class A" or "Class B" status should be rendered in the same way as a determination of any other mental or physical disorder under the provisions of INA 212(a)(1)(A)(iii).
- b. In a "Class A" condition, which would include nonmedical use of a substance listed in section 202 of the Controlled Substance Act (such as amphetamines, cannabinoids, cocaine and related substances, etc.), the panel physician must determine whether the applicant:
  - (1) Is currently using or has used a psychoactive substance within the last 3 years; or
  - (2) Is or has abused a psychoactive substance other than those listed in section 202 within the last 2 years.
- c. In a "Class B" condition, the panel physician needs only to determine:
  - (1) No nonmedical use of a substance listed in section 202 of the Controlled Substances Act in the last three years; or
  - (2) No abuse of a psychoactive substance other than those listed in section 202 of that act in the last two years.

## **9 FAM 40.11 N13 INA 212(G) - WAIVER FOR IMMIGRANTS**

### **9 FAM 40.11 N13.1 Waiver Procedures for Immigrants**

*(CT:VISA-1063; 10-09-2008)*

- a. If you determine that the immigrant visa applicant is eligible to apply for the waiver, you should give the applicant the Form I-601, Application for

Waiver of Grounds of Inadmissibility. The applicant or applicant's sponsor is responsible for completing pages 1, 2, 3 (for TB cases), and 4 (for HIV-positive cases) of the Form I-601 and returning the completed form to the consular section.

**Note:** If page 3 (for TB cases) or page 4 (for HIV-positive cases) is not completed for applicants requesting TB or HIV waivers, USCIS will consider the application incomplete and will not take action on the rest.

- b. Send copies (not the originals) of the completed Form I-601 and supporting documents (including the Form DS-2053 and supporting worksheets, and if provided, a supporting letter or statement from a U.S. health care provider) via mail to CDC at the following address:

Immigrant, Refugee and Migrant Health Branch,

**Attention: Waivers**

Division of Global Migration and Quarantine (E-03)

Centers for Disease Control and Prevention (CDC)

1600 Clifton Road

Atlanta, GA. 30333

Routine requests should be sent via mail. If a case warrants expeditious review (i.e., emergency cases) post may fax the waiver form and supporting documents to CDC on fax number 404-639-4441. The fax cover sheet should be marked **Attention: Waivers** and should also indicate that it is urgent and request that the CDC response be sent via fax to the post.

- c. The CDC will establish a file on the waiver case, ensure that identify a U.S health-care provider or physician is identified by the applicant's sponsor for the follow up medical evaluation and return a response letter to post indicating results of the review.
- d. When the CDC response letter is received, any missing information should be completed by the applicant or applicant's sponsor and returned to post.
- e. Once the post receives the missing information, the post should send the entire waiver package, which includes all forms, the CDC response letter, and any other evidence submitted by the applicant to establish waiver eligibility, to the USCIS office abroad having jurisdiction over the consular district.
- f. The post will collect from the applicant the USCIS waiver fee indicated in 8 CFR 103.7, either in the form of a cashier's check in the amount payable to USCIS or in cash, and provide the applicant with a receipt.
- g. If USCIS approves the waiver, and the applicant has no other ineligibilities, the consular officer may issue the visa.

## **9 FAM 40.11 N13.2 Applicant Inadmissible Under Grounds other than INA 212(a)(1)**

*(CT:VISA-1063; 10-09-2008)*

Although any applicant who has a qualifying relationship may apply for a waiver, you may not recommend a waiver unless all other grounds of ineligibility have been addressed. In some cases, the applicant may apply for waivers for other ineligibility grounds at the same time as the waiver for INA 212(a)(1) inadmissibility. If the applicant is also ineligible under a ground of the INA that cannot be waived, you may not issue a visa even if the INA 212(a)(1)(A) inadmissibility could be waived.

## **9 FAM 40.11 N13.3 Inadmissibility Under INA 212(a)(1)(A)(i) Communicable Diseases of Public Health Significance**

*(CT:VISA-1063; 10-09-2008)*

INA 212(g) (8 U.S.C. 1182(g)) provides for a waiver of subsections (i) of INA 212(a)(1)(A) if the alien is:

- (1) The spouse, unmarried son or daughter, or the minor unmarried lawfully adopted child of:
  - (a) A U.S. citizen;
  - (b) An alien lawfully admitted for permanent residence; or
  - (c) An alien who has been issued an immigrant visa (IV); or
- (2) The parent of a:
  - (a) A U.S. citizen son or daughter;
  - (b) An alien lawfully admitted for permanent residence; or
  - (c) An alien who has been issued an immigrant visa (IV).

## **9 FAM 40.11 N13.3-1 Waiver for HIV-Positive IV Applicants**

### **9 FAM 40.11 N13.3-1(A) Background on HIV**

*(CT:VISA-1063; 10-09-2008)*

A positive result from the Western blot or other confirmatory test for HIV/AIDS establishes a ground of immigrant visa (IV) inadmissibility under the provisions of INA 212(a)(1)(A)(i). When the visa is denied, the post must enter the applicant's name into the Consular Lookout and Support

System (CLASS) as a Category I HIV refusal under code 1A1.

## **9 FAM 40.11 N13.3-1(B) Waiving the Inadmissibility**

*(CT:VISA-1063; 10-09-2008)*

- a. An HIV-positive applicant who is the spouse, unmarried son or daughter (regardless of age), or parent of a U.S. citizen or legal permanent resident (LPR), may apply to DHS for a waiver of inadmissibility. Prior to submission of the waiver application, you must determine whether a qualifying relationship exists. Some IV applicants who are HIV-positive also have other grounds of visa ineligibility. Do not recommend that the HIV waiver be approved until all other grounds of ineligibility have also been addressed. Sometimes the applicant can apply for several waivers at the same time.
- b. If you determine that the IV applicant is eligible to apply for the waiver, you should give the applicant Form I-601, Application for Waiver of Grounds of Inadmissibility. The applicant or applicant's sponsor is responsible for completing pages 1, 2, and 4 of the Form I-601 and returning the completed form to the consular section.

**Note:** If page 4 is not completed for applicants requesting HIV waivers, USCIS will consider the application incomplete and will not take action on the rest.

- c. For complete IV medical waiver procedures, see 9 FAM 40.11 N13.1 above.

## **9 FAM 40.11 N13.3-2 Waivers for IV applicants with "Class A" Tuberculosis**

*(CT:VISA-1063; 10-09-2008)*

- a. Do not recommend a waiver for an immigrant visa (IV) applicant identified by the panel physician as being afflicted with Class A infectious tuberculosis, unless he or she needs a complicated clinical treatment course that he or she can only receive in the United States. This type of waiver is for exceptional medical situations and historically these waivers have rarely been granted, due to the infectious nature of the illness.
- b. You may recommend a waiver of the grounds of the medical ineligibility to DHS/USCIS; provided that the alien is the spouse, unmarried son or daughter (regardless of age), or the parent of a U.S. citizen or LPR, qualifies per paragraph a above.
- c. If you determine that the IV applicant is eligible to apply for the waiver, give the applicant the Form I-601, Application for Waiver of Grounds of Inadmissibility. The applicant or applicant's sponsor is responsible for

completing pages 1, 2, and 3 of the Form I-601 and returning the completed form to the consular section.

**Note:** If page 3 is not completed for applicants requesting TB waivers, USCIS will not consider the application complete and will not take action on the rest.

- (1) The applicant must complete statement A on page 3 of the form, agreeing to comply with the applicable terms, conditions, and controls imposed;
  - (2) The applicant's sponsor must have statement B completed by a private physician, health department, other public or private health facility, or military hospital;
  - (3) If other public or private facility or private practice is checked in Statement B, then the physician must complete statement C; and
  - (4) The physician or local or state health officer must complete statement D.
- d. For complete IV medical waiver procedures, (see 9 FAM 40.11 N13.1 above.)

## **9 FAM 40.11 N13.4 Inadmissibility Under INA 212(a)(1)(A)(ii) Immunization Requirement**

*(CT:VISA-1063; 10-09-2008)*

- a. An immigrant visa (IV) applicant who is ineligible under INA 212(a)(1)(A)(ii) (8 U.S.C. 1182(a)(1)(A)(ii)) Vaccination Requirements may benefit from an INA 212(g)(2)(A) (8 U.S.C. 1182(g)(2)(B)) or INA 212(g)(2)(B) waiver if:
  - (1) The missing vaccinations are subsequently received; or
  - (2) The panel physician determines that administration of the required vaccine would be medically inappropriate given the applicant's age, medical history, or current medical condition.
- b. DHS/USCIS has delegated blanket authority to you to grant INA 212(g)(2)(A) and INA 212(g)(2)(B) waivers without the need for fee or form.
- c. IV applicants who object to receiving the required vaccinations on religious or moral grounds must seek an INA 212(g)(2)(c) waiver from DHS/USCIS by filing the Form I-601, Application for Waiver of Grounds of Inadmissibility, (see 9 FAM 40.11 N13.) You do not have the authority to adjudicate or grant INA 212(g)(2)(c) waivers.

### **9 FAM 40.11 N13.4-1 Waiver Under INA 212(g)(2)(A)**

*(CT:VISA-1063; 10-09-2008)*

INA 212(g)(2)(A) appears to have been written chiefly to accommodate cases where an applicant seeks adjustment of the status. Since medical exams for most immigrant applicant are conducted prior to the visa interview, most applicants will not need an INA 212(g)(2)(A) waiver. However, in cases where the applicant appears for their interview without the completed Form DS-2053, Medical Examination for Immigrant or Refugee Applicant (i.e., before their medical examination), refuse these applicants under INA 212(a)(1)(A)(ii) and tell the applicant to return to the panel physician to complete his or her medical examination. Once the medical examination, including required vaccinations, is completed, the applicant will obtain the completed Form DS-2053 from the panel physician. This form is submitted to the consular office and you should approve a blanket waiver under INA 212(g)(2)(A).212(g)(2)(A).

### **9 FAM 40.11 N13.4-2 Waiver Under INA 212(g)(2)(B)**

*(CT:VISA-1063; 10-09-2008)*

INA 212(g)(2)(B) provides a waiver in any case where the panel physician determines that a required vaccination is medically inappropriate. In such cases, the panel physician will indicate on page two of the Form DS-2053, Medical Examination for Immigrant or Refugee Applicant, if the vaccine history is incomplete and which type of waiver is requested. You must refer to Form DS-3025, Vaccination Documentation Worksheet, and may then authorize a waiver in accordance with INA 212(g)(2)(B) for any of the following reasons (see 9 FAM 40.11 N10.3 for definitions of below categories):

- (1) Not age appropriate;
- (2) Contraindication;
- (3) Insufficient time interval between doses;
- (4) Seasonal administration; or
- (5) Vaccine unavailable.

### **9 FAM 40.11 N13.4-3 Waiver Under INA 212(g)(2)(C)**

*(CT:VISA-1063; 10-09-2008)*

- a. The Secretary of Homeland Security may authorize an INA 212(g)(2)(C) waiver when the alien establishes that compliance with the vaccination requirements for immigrants would be contrary to his or her religious beliefs or moral convictions.
- b. An applicant seeking a waiver under INA 212(g)(2)(C) must:

- (1) Complete the Form I-601, Application for Waiver of Grounds of Inadmissibility (see 9 FAM 40.11 N13.1 for directions on completing the Form I-601);
- (2) Provide written evidence that he or she qualifies for a waiver under INA 212(g)(2)(c) by meeting the three below requirements. If the waiver application is for a child, the parents must satisfy these requirements:
  - (a) He or she is opposed to vaccinations in any form;
  - (b) The objections are based on religious belief or moral convictions (whether or not the applicant is a member of a recognized religion); and
  - (c) The religious belief or moral conviction (whether or not as part of a recognized religion) is sincere.
- c. Once the post receives the completed Form I-601 from the applicant, the post should send the entire waiver package to the USCIS office abroad having jurisdiction over the consular district.
- d. The post will collect from the applicant the USCIS waiver fee indicated in 8 CFR 103.7, either in the form of a cashier's check in the amount payable to USCIS or in cash, and provide the applicant with a receipt.
- e. If USCIS approves the waiver, and the applicant has no other ineligibilities, you may issue the visa.

## **9 FAM 40.11 N13.4-4 INA 212(g)(2)(C) Waivers for IR-3 or IR-4 Applicants**

*(CT:VISA-1063; 10-09-2008)*

Applicants for IR-3 and IR-4 immigrant visas (IV) who are 10 years of age or younger are exempt from the vaccination requirement if:

- (1) Adoptive or prospective adoptive parents who could otherwise take advantage of the exemption from the vaccination requirement available to IR-3 and IR-4 applications; and
- (2) Adoptive or prospective adoptive parents **must** seek an INA 212(g)(2)(C) waiver on behalf of their adopted child. This is because the exemption available to IR-3 and IR-4 applicants is conditioned on the adoptive parent signing the Form DS-1981, Affidavit Concerning Exemption from Immigrant Vaccination Requirements for a Foreign Adopted Child, attesting that the child will receive any required and medically appropriate vaccinations following their arrival in the United States. (See 9 FAM 40.11 N10.6.)

## **9 FAM 40.11 N13.5 Inadmissibility Under INA 212(a)(1)(A)(iii) - Physical or Mental Disorder**

*(CT:VISA-1063; 10-09-2008)*

The Secretary of Homeland Security may, under terms that he or she sets forth, in his or her discretion, and after consultation with the Secretary of Health and Human Services, grant a waiver to an alien inadmissible under INA 212(a)(1)(A)(iii).

## **9 FAM 40.11 N13.6 Inadmissibility Under INA 212(a)(1)(A)(iv) - Drug Abuse or Addiction**

*(CT:VISA-1063; 10-09-2008)*

There is no waiver relief for an immigrant visa (IV) applicant who is inadmissible under INA 212(a)(1)(A)(iv) (8 U.S.C. 1182(a)(1)(A)(iv)). Do not issue an immigrant visa (IV) to an alien you determine to be a drug abuser or addicted to a drug described in section 202 of the Controlled Substances Act. (See 9 FAM 40.23 Exhibit I.)

## **9 FAM 40.11 N13.7 Simultaneous Visa Issuance to Family Members**

*(CT:VISA-1063; 10-09-2008)*

To prevent the separation of families, when an accompanying family member must seek a waiver under INA 212(g) (8 U.S.C. 1182(g)), the principal alien should be encouraged to begin the waiver procedures promptly.

## **9 FAM 40.11 N13.8 Issuing New or Replacement Visa**

*(CT:VISA-1063; 10-09-2008)*

You may issue a new or replacement visa to an alien who was previously granted a waiver under INA 212(g) (8 U.S.C. 1182(g)) if the conditions in 9 FAM 40.11 N13.4 are met.

## **9 FAM 40.11 N13.9 Validity of Waiver for Subsequent Entries**

*(CT:VISA-1063; 10-09-2008)*

The Department has accepted a DHS ruling that a waiver granted under INA 212(g) remains in full force and effect for any subsequent entries by the

alien provided:

- (1) The waiver remains unrevoked;
- (2) No new grounds of inadmissibility have arisen; and
- (3) The alien is complying with the conditions imposed in the original waiver.

## **9 FAM 40.11 N14 INA 212(D)(3)(A) WAIVER FOR NONIMMIGRANTS**

*(CT:VISA-1063; 10-09-2008)*

If you determine that an alien is ineligible for a nonimmigrant visa (NIV) under any of the provisions of INA 212(a)(1)(A) (8 U.S.C. 1182(a)(1)(A)), you may recommend to U.S. Customs and Border Protection (DHS/USCBP), through the Admissibility Review Information Service (ARIS) system, that a waiver under INA 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)) be granted to the alien. DHS/USCBP may, in its discretion, authorize a waiver to allow the alien temporary admission. (See also 9 FAM 40.301 Notes and 9 FAM 40.301 Procedural Notes.)

### **9 FAM 40.11 N14.1 Aliens Traveling for Medical Reasons**

*(CT:VISA-1063; 10-09-2008)*

The requirements listed below must be fulfilled in the case of an alien traveling for medical treatment of a condition that leads to a finding of inadmissibility under INA 212(a)(1)(A)(i) & (iv) (8 U.S.C. 1182(a)(1)(A)(i) & (iv)). When a waiver of a medical ground of inadmissibility is deemed necessary, the applicant must establish that arrangements, including financial, have been made for treatment. When the personal resources of an alien are not sufficient or may not be available outside the alien's country of residence, the alien must include explicit information regarding which facilities are available for support during the proposed medical treatment. The sponsor of the affidavit must confirm that a bond will be made available if required by the DHS.

### **9 FAM 40.11 N14.2 Waivers for NIV Applicants Afflicted with "Class A" Tuberculosis**

*(CT:VISA-1063; 10-09-2008)*

- a. Do not recommend a waiver for an NIV applicant identified by the panel physician as being afflicted with Class A infectious tuberculosis, unless he

or she has a complicated clinical course and would benefit from receiving TB treatment in the United States. This type of waiver is for exceptional medical situations and historically these waivers have rarely been granted, due to the infectious nature of the illness.

- b. You may recommend a waiver of the ground of the medical ineligibility (if the applicant qualifies per paragraph (a)) to DHS/USCBP, through the ARIS system, that a waiver under INA 212(d)(3)(A) be granted to the alien. DHS/USCBP may, in its discretion, authorize a waiver to allow the alien temporary admission into the U.S. (See also 9 FAM 40.301 Notes and Procedural Notes.)

## **9 FAM 40.11 N14.3 NIV HIV Waiver Authorization Procedures**

*(CT:VISA-1191; 04-16-2009)*

- a. On October 6, 2008, DHS issued the HIV Waiver Authorization Final Rule. This new rule amends 8 CFR 212 and provides, on a limited and categorical basis, a more streamlined process for nonimmigrant aliens inadmissible under section 212(a)(1)(A)(i) of the INA because of HIV infection to enter the United States as temporary visitors on B category nonimmigrant visas. This new provision authorizes visa issuance without the additional step of a recommendation from the Secretary of State or the consular officer to DHS for individualized, case-by-case consideration of a waiver authorization under INA 212(d)(3)(A)(i). Consular officers overseas will now have the authority to grant to otherwise eligible HIV-positive applicants who meet the requirements of the new regulation, temporary visitor nonimmigrant visas without seeking a waiver authorization from DHS/CBP/ARO. The length of stay for these individuals will be limited to a maximum of thirty (30) days per entry. The HIV Waiver Authorization Final Rule does not authorize admission to an alien applying under the Visa Waiver Program or to an alien who does not need a visa (see 8 CFR 212.1), nor is visa issuance authorized under the HIV Waiver Authorization Final Rule for any alien who has previously failed to comply with any condition of an admission authorized per this new regulation.
- b. An alien inadmissible under section 212(a)(1)(A)(i) of the INA because of HIV infection may be issued a B1, B1/B2, or B2 visa by an overseas consular officer, and be authorized to apply for temporary admission into the United States by this officer under section 212(d)(3)(A)(i) of the INA, for a period not to exceed (NTE) thirty (30) days, provided the following conditions are met:
  - (1) The applicant has tested positive for HIV infection;
  - (2) The applicant is not currently exhibiting symptoms indicative of an

active, contagious infection associated with acquired immune deficiency syndrome;

- (3) The applicant is aware of, has been counseled on, and understands the nature, severity, and communicability of his or her medical condition;
- (4) The applicant's admission poses a minimal risk of danger to public health in the United States and poses a minimal risk of transmission of the infection to any other person in the United States;
- (5) The applicant will have in his or her possession, or will have access to (as medically appropriate) an adequate supply of antiretroviral drugs for the anticipated stay in the United States and possesses sufficient assets, such as insurance that is accepted in the United States, to cover any medical care that the applicant may require in the event of illness at any time in the United States;
- (6) The applicant's admission will not create any cost to the United States, or a State or local government or agency, without prior written consent of the agency;
- (7) The applicant is seeking admission solely for activities that are consistent with a B1, B1/B2, or B2 nonimmigrant visa category;
- (8) The applicant is aware that no single admission to the United States will exceed thirty (30) days;
- (9) The applicant is otherwise admissible to the United States and no other grounds of inadmissibility apply;
- (10) The applicant is aware that (s)he cannot be admitted under the Visa Waiver Program (VWP);
- (11) The applicant is aware that any failure to comply with any condition for admission authorized under this new provision will thereafter make him or her ineligible for future authorization under the new provision; and
- (12) The applicant, for the purpose of admission pursuant to authorization under this new provision, waives any opportunity to apply for an extension of nonimmigrant stay, a change of nonimmigrant status or adjustment of status to that of a permanent resident. This condition does not preclude an alien admitted under the blanket authority from applying for asylum under INA Section 208 and, if granted asylum, from applying for permanent resident status under the asylum adjustment provisions of INA Section 209. No authorization for visa issuance and admission under this provision constitutes a waiver of inadmissibility under INA section 209 or 8 CFR 209.

- c. All applicants applying for visas under this streamlined process must read and sign the Form DS-5512, INA 212(a)(1)(A)(i) Waiver Certification. This form is the applicant's acknowledgement of, and ability to meet, the requirements of paragraph 4. If the applicant does not sign this form, or is unable to meet the requirements above, then he or she should not be issued a visa without being referred to DHS/CBP/ARO for an individualized, case-by-case waiver authorization review. The Form DS-5512 is available on eForms or via the CA Web Visas Medical Exam section.
- d. Nonimmigrant temporary visitor visas (B1, B1/B2, or B2) issued to HIV-positive applicants under this specific authority may not be valid for more than twelve months or for more than two entries. If post's visa reciprocity schedule has a validity period of less than twelve months for B1, B1/B2, or B2 category visas, then the schedule should be followed and entries should be limited to only one or two. For example, if the reciprocity for B1/B2 visas is six month, multiple entries, and the applicant is eligible for full validity, then the maximum visa validity an officer can issue is six months, two entries.
- e. All visas issued pursuant to this blanket authorization for HIV-positive aliens must be annotated with the following language:  
"212(d)(3)(A)(i): (1)(A)(i) Entry NTE 30 days."
- f. The HIV Waiver Authorization Final Rule is a streamlined process for issuance of nonimmigrant visas to HIV-positive visa applicants. However, NIV applicants who do not meet the requirements of the new rule, outlined in paragraph (b) above, or who do not wish to consent to the conditions imposed by this rule, may elect to seek an individualized, case-by-case consideration of a waiver authorization under INA 212(d)(3)(A)(i). Under the case-by-case method, a consular officer may recommend to CBP/ARO, through the Admissibility Review Information Service (ARIS) system, that it grant a waiver authorization of INA 212(a)(1)(A)(i) ineligibilities under INA 212(d)(3)(A)(i). CBP may, in its discretion, grant a waiver authorization to permit temporary admission to the applicant. CBP has committed to making decisions on such requests within thirty days, unless there are unforeseen delays. Average processing in FY 2007 was 18 days, and in FY 2008 10 days. In addition, consular officers may use the "EXPEDITE" function in ARIS to request faster consideration when necessary. (See 9 FAM 40.11 N14 for procedures to submit NIV authorization requests.)

## **9 FAM 40.11 N15 WHEN WAIVER IS NOT RECOMMENDED**

*(CT:VISA-1063; 10-09-2008)*

If you do not believe that a waiver is warranted, then you are not obligated to submit the case to USCIS or CBP for review. However, you must send a report to the Department, Advisory Opinions Division (CA/VO/L/A) for consideration under INA 212(d)(3)(A) on any case referred to in 9 FAM 40.301 N6.2.

## **9 FAM 40.11 N16 POSTING THE FEMALE GENITAL MUTILATION (FGM) NOTICE**

*(CT:VISA-1215; 05-12-2009)*

- a. Section 644 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Public Law 104-208 (8 U.S.C. 1374), requires Department of Homeland Security (DHS), with the cooperation from the Department of State, to notify visa recipients of the severe harm to physical and psychological health caused by Female Genital Mutilation (FGM). DHS regulations require that written notice be given to immigrants in countries where FGM is a common practice.
- b. All posts must display the FGM notice (Form G-1015, Fact Sheet on Female Genital Mutilation) in the NIV and/or IV waiting room. This notice should be translated into the local language so that applicants from countries where FGM is practice will have notice that this practice is illegal in the United States. The notice (in English, French, Portuguese, Arabic, Amharic, Swahili, and Somalian) can be found on the CA Web site via the visas section.
- c. Posts should be able to download and print locally copies of the notice in the relevant language. Posts are authorized to use their Machine Readable Visa (MRV) allotment or fund site if needed to cover local reproduction costs. (See 9 FAM 42.73 *PN11* for further information on FGM).

## **9 FAM 40.11 N17 CLASS ENTRIES**

*(CT:VISA-1063; 10-09-2008)*

- a. In cases where a confirmatory or laboratory medical test is required and a significant time lag (more than three days) is expected before the results are received, enter the name of the applicant pending test results in Consular Lookout and Support System (CLASS) as P1A1; i.e., quasi-refusal under INA 212(a)(1)(A)(i). Place appropriate notes into the CLASS entry about the refusal code, including if available the expected final test or lab results. Once the final confirmed results become

available, CLASS must be updated accordingly.

- b. If the test results are positive under 1A1 grounds, the quasi-refusal should be changed from a P1A1 to a 1A1. Appropriate notes should be included about the refusal.
- c. If the test results are negative, you must request that the P1A1 be deleted from CLASS. A negative test result means that the applicant is not ineligible on the basis of the 1A1.

## **9 FAM 40.11 N17.1 "Do Not Board" CLASS Entries**

*(CT:VISA-1063; 10-09-2008)*

- a. Individuals who may pose a public health (PH) risk for disease transmission on board public conveyances are now being placed on travel restriction ("Do Not Board") and intervention ("Lookout") lists when CDC receives information about this public health threat from international and domestic public health officials. The CDC, Division of Global Migration and Quarantine, Travel Restriction and Intervention Team (CDC/DGMQ/TRIT), upon receiving information about the PH risk from the international and domestic public health officials, is responsible for requesting that DHS add an individual to a travel restriction and/or intervention list. DHS will notify the agency that maintains the list (Transportation Security Administration (TSA) and/or CBP) when the request is approved so that they can add that person to the appropriate list. The TRIT representative is also responsible for notifying the Post Liaison Division (CA/VO/F/P) and American Citizens Services and Crisis Management (CA/OCS/ACS) when an individual is added to one of the lists so they can take necessary actions on their part. A lookout is placed in the Transportation Enforcement Communications System (TECS) for the individual with the PH risk. In cases of foreign nationals, the TECS PH lookout will replicate into CLASS as a 1A1 PH hit. The CLASS hit will contain notes about the specifics of the case. A 1A1 PH CLASS hit is a considered a Class A medical condition and a visa ineligibility.
- b. When CA/VO/F/P is notified by CDC/DGMQ/TRIT that a foreign national has been added to the "Do Not Board" list and/or "Lookout" list, post will be contacted and may be requested to assist with items such as notification to the individual and possibly to the local airlines.
  - (1) CA/OCS/ACS receives the notifications for American Citizens.
  - (2) If CA/VO/F/P or CA/OCS/ACS receives notification about a Legal Permanent Resident (LPR), they will notify post to pass this information to the regional of DHS/USCIS office.
- c. If post believes that there is in individual within their jurisdiction who may be eligible for a PH travel restriction or addition to the Do Not Board List,

then the Travel Restriction and Intervention Team should be contacted through the CDC twenty-four hour Director's Emergency Operations Center by calling 770-488-7100. You should also contact your regional CA/VO/F/P liaison officer.

## **9 FAM 40.11 N17.2 Deleting Public Health CLASS Entries**

*(CT:VISA-1063; 10-09-2008)*

- a. If a panel physician finds an applicant to have a Class B medical condition for which there was a previous Class A 1A1 CLASS entry, then you must CLOK out this entry.
- b. If you find a 1A1 PH CLASS hit that is no longer valid due to the applicant receiving treatment, then you should notify your regional Post Liaison Division (CA/VO/F/P) liaison officer to request removal of this CLASS entry. 1A1 PH Class entries created by TECS at the request of CDC/DGMQ/TRIT cannot be removed without proof that the individual no longer poses a travel risk of disease transmission.