

9 FAM 40.31 PROCEDURAL NOTES

(CT:VISA-710; 02-28-2005)
(Office of Origin: CA/VO/L/R)

9 FAM 40.31 PN1 VISAS SHARK PROGRAM

(CT:VISA-710; 02-28-2005)

An alien who is a member of an organized crime group operating in the *Newly Independent States (NIS)* may be found inadmissible under INA 212(a)(30)(A)(ii). It applies to aliens who are members of organized crime groups originating in the NIS, wherever they may operate, and to such groups originating in the Baltic Republics (BR) if they are operating in the NIS. It would not apply *in* the unlikely event that an alien is a member of an organized crime group originating in the BR and not operating in the NIS, although the alien could still be found ineligible if the facts warrant a case-specific determination.

9 FAM 40.31 PN1.2 Limited to Non-visa Applicants

(TL:VISA-311; 08-21-2001)

The VISAS SHARK Program (VSP) is intended solely for reporting on individuals who are NOT currently applying for U.S. Visas. An alien who is an actual visa applicant would be subject to the VISAS EEL Advisory Opinion.

9 FAM 40.31 PN1.3 VSP Administration

(TL:VISA-311; 08-21-2001)

Because terrorist threats and organized crime activities are likely to be monitored by the same sections and agencies at posts abroad, the VSP should be administered by the VISAS VIPER Committee. The combined VISAS VIPER and VISAS SHARK Committee may be modified to include representatives of additional sections and agencies who may have knowledge of NIS and/or BR organized crime activities within the host country. While VISAS VIPER and SHARK Committee meetings are the principal forums for sharing intelligence at post on NIV and/or BR organized crime members who are NOT visa applicants, information developed on an ad hoc basis, particularly that of an urgent nature, must also be considered for expeditious reporting through the VISAS SHARK Channel.

9 FAM 40.31 PN1.4 Duties of Post VSP and RBII Coordinators

(TL:VISA-311; 08-21-2001)

In countries where NIS and/or BR organized crime groups are active, posts are encouraged to designate a VISAS SHARK or RBII coordinator, normally the consular section chief or an officer responsible to him or her, who would serve the following functions:

- (1) Provide information or advice on VSP and RBII policies and procedures;
- (2) Encourage post-wide VISAS SHARK reporting on NIS and/or BR organized crime figures;
- (3) Coordinate RBII information gathering and reporting;
- (4) Ensure that State Department officers use the VISAS SHARK and VISAS EEL code indicators when appropriate;
- (5) Promote awareness and utilization of the VSP among other-agency representatives;
- (6) Maintain contact with the Department's VISAS SHARK and RBII coordinators,
- (7) Seek guidance on questions regarding VSP and RBII issues; and
- (8) Respond to the Department's requests for information on VISAS SHARK and RBII cases.

9 FAM 40.31 PN1.5 VSP Administrative Duties in the Department

(CT:VISA-710; 02-28-2005)

a. In the Department, the VSP is administered by TIPOFF, a program in the Bureau of Intelligence and Research (INR) that coordinates the Department's use of sensitive interagency intelligence for the watch listing of terrorists and NIS or BR organized crime group members. The TIPOFF and SHARK staff, works in close cooperation with the Visa Office's Advisory Opinion Division (CA/VO/L/A):

- (1) Develops VISAS SHARK policies and procedures;
- (2) Creates and updates TIPOFF records;
- (3) Determines whether the names of individuals are entered into CLASS (as DPT-00) and "Interagency Border Inspection System" (IBIS);

- (4) Provides feedback and guidance to overseas posts on VISAS SHARK reporting; and
- (5) Serves as liaison with interested offices in the Department and with the headquarters of other government agencies on matters relating to the program. Communications to the TIPOFF and SHARK staff should be directed to INR/TIPOFF.

b. *The Department's VISAS VIPER Coordinator, Gregory G. Graff, also administers the VSP. CA/VO/L/A's RBII Coordinator is Ryika Hooshangi. Current contact information can be found in the Global Address Book.*

9 FAM 40.31 PN1.6 VISAS SHARK Reporting Criteria

(TL:VISA-311; 08-21-2001)

Posts should submit a VISAS SHARK CABLE if:

- (1) The consular officer suspects that an individual who is not a visa applicant falls within the purview of INA 212(a)(30(A)(ii) as a member of an organized crime group from the NIS and/or BR; and
- (2) There is sufficient biographic data to positively identify the subject of the information.

9 FAM 40.31 PN1.7 "Reason to Suspect" Vs. "Reason to Believe"

(TL:VISA-311; 08-21-2001)

The "reasonable suspicion" criterion for submitting a VISAS SHARK is a lesser standard than the "reasonable ground to believe" standard necessary to find an alien inadmissible under INA 212(a)(30(A)(ii). The "reasonable suspicion" is met if the derogatory information available would warrant further detailed inquiry into the subject's background should he or she apply for a visa.

9 FAM 40.31 PN1.8 Applying "Reason to Suspect" and "Reason to Believe" Standards

(CT:VISA-710; 02-28-2005)

When a post submits a VISAS SHARK cable based on a "reasonable suspicion" that the subject is a member of a NIS or BR organized crime group, INR/IC/TIPOFF will either create or update a TIPOFF record. The subject's name will also be entered into CLASS (as a DPT-00) and IBIS. If the applicant should later apply for a visa or for entry into the United States,

the case would be referred to CA/VO/L/A by the consular officer's submission of a VISAS EEL advisory opinion request or to INR/IC/TIPOFF by *DHS*. At that time, CA/VO/L/A will carefully and expeditiously examine all available derogatory information to determine whether there is a "reasonable ground to believe" that the alien is ineligible to receive a visa under INA 212(a)(3)(A)(ii). If the information fails to meet the "reasonable ground to believe" criterion, the case will be adjudicated and consideration will be given to removing the subject's name from the CLASS and "*Interagency Border Inspection System*" (IBIS) lookout systems.

9 FAM 40.31 PN1.9 Determining Membership

(CT:VISA-710; 02-28-2005)

When submitting a VISAS SHARK posts must lay out in detail the factors that gave rise to the suspicion that the alien is a member of an organized crime group. An alien may be suspected of organized crime group membership without evidence of actual participation in the group's activities. In some cases, membership may be clear because of engagement in activities, such as the taking of an oath, that is *a prerequisite* of membership. In most cases, however, membership requirements do not exist or are not open to public scrutiny and membership in the organization must be inferred from the totality of the information available. Relevant factors to determine membership include, but are not limited to:

- (1) Acknowledgement of membership by the individual, the organization or another party member;
- (2) Actively working to further the organization's aims in a way to suggest close affiliation;
- (3) Receiving financial support or recognition from the organization;
- (4) Determination of membership by a competent court;
- (5) Statement from local or U.S. law enforcement authorities that the individual is a member;
- (6) Frequent association with other members;
- (7) Voluntarily displaying symbols of the organization; and
- (8) Participating in the organization's activities, even if lawful.

9 FAM 40.31 PN1.10 Identification of Subjects

(TL:VISA-311; 08-21-2001)

a. VISAS SHARK telegrams ideally should provide :

- (1) Full name (including aliases and alternate spellings);

- (2) Date and place of birth; and
 - (3) Gender
- b. If exact date and place of birth are not available, a reasonable estimate of his or her age and the known or probable country of birth should be provided if possible. VISAS SHARK may be submitted without birth data, if the subject's name is not a common one, and if the post is able to provide other identifying information. Personal details such as passport data, physical characteristics, education, profession, residential and employment history, and the names of family members are often useful in establishing identity. A subject's crime group affiliation and his or her position therein, should always be reported, as this information is particularly valuable for identification, adjudication and threat assessment purposes.

9 FAM 40.31 PN1.11 Responsibility of VIPER and SHARK Committees

(TL:VISA-311; 08-21-2001)

Evaluating information on NIS and BR organized crime group members for the purpose of submitting VISAS SHARK reporting requires flexibility and subjective judgment for which there are not always clear guidelines. The Department believes that such assessments are best made by each post's VISAS VIPER and/or SHARK committee, which has first-hand knowledge of the threat posed by organized crime groups operating in the host country. If the post believes that the reporting criteria outlined in 9 FAM 40.31 PN1.6 above have been met, a VISAS SHARK telegram providing all known information should be submitted. The Department assumes responsibility for action taken once the information is reported.

9 FAM 40.31 PN1.12 VISAS SHARK Reporting Channels

(TL:VISA-311; 08-21-2001)

VISAS SHARK information may be developed and shared through either the post's interagency VISAS VIPER and SHARK committee or on an ad hoc basis. While the consular section has responsibility for coordinating and monitoring VISAS SHARK reporting, other Department sections, and, to the extent possible, other mission elements are responsible for sharing information on NIS and BR crime group members with the consular section. (For guidance on VSP reporting procedures, see 9 FAM 40.31 PN1.13 and 9 FAM 40.31 PN1.16 below.)

9 FAM 40.31 PN1.13 Other Agency Reporting

(TL:VISA-311; 08-21-2001)

The VISAS SHARK channel is intended to supplement, rather than supplant, previously existing channels used by other agencies for reporting on NIS and BR organized crime group members. Other agencies may share such information with the post's VISAS VIPER and SHARK committee for transmission to the Department through the SHARK channel, or may choose to send it directly to their headquarters. Data transmitted through this traditional route is usually later passed to the Department for possible CLASS and IBIS entry through the TIPOFF Program. Other-agency drafters can expedite TIPOFF's receipt of their reporting on NIV and BR crime group members by including the phrase "recommended for consideration in the VISAS SHARK program" in the text of the outgoing messages. Originating agencies may prefer to use their own reporting channels for a variety of reasons, including the protection of sources, methods, and ongoing operations. However, all post agencies should be aware of the availability of the VISAS SHARK channel as a direct and more expeditious means of watchlisting suspected NIS and BR organized crime figures in the border security lookout systems (CLASS and IBIS) and should be encouraged to use it in emergent circumstances.

9 FAM 40.31 PN1.14 VISAS SHARK Reporting Procedures

9 FAM 40.31 PN1.14-1 VISAS SHARK Overview

(TL:VISA-311; 08-21-2001)

The procedures discussed below are intended to facilitate VISAS SHARK reporting to the extent possible consistent with meeting the following requirements:

- (1) That all available identifying and derogatory information be provided; and
- (2) That the reports receive the distribution necessary for alerting interested agencies and for watchlisting the subjects.

9 FAM 40.31 PN1.14-2 The "KSRK" Tag

(TL:VISA-311; 08-21-2001)

The program tag, "KSRK", must be used on all VISAS SHARK telegraphic communications.

9 FAM 40.31 PN1.14-3 Preparing VISAS SHARK Telegrams

(TL:VISA-311; 08-21-2001)

VISAS SHARK cables should be slugged "Department for DHS/TIPOFF, CA/VO/L/A (RBII), DS/CR/VF (RBII)." The Department's electronic distribution process will automatically relay the cable to the FBI, DHS, and the U.S. Customs Service. Other posts having jurisdiction over the subject's place of nationality or residence or over the area in which the subject, or the subject's group, has been active should normally be included as info addressees. The VISAS SHARK code indicator should appear in the caption line and the first paragraph of the telegram, and the following tags should be used: KSRK, KCRM, CVIS, KFRD, ASEC, PINR, PREL, SNAR, (country tag). At posts' discretion, multiple names may be submitted in a single telegram.

The cable should provide all identifying data available regarding the subject(s) as well as a detailed recitation of the derogatory information known to post, including the identification of the NISD and/or BR organized crime group with which the subject may be affiliated. Finally, VISAS SHARK telegrams should include an evaluation of the credibility and applicability of the information submitted a general description of the source, and an assessment of the source's reliability.

9 FAM 40.31 PN1.14-4 Classification and Handling

(TL:VISA-311; 08-21-2001)

VISAS SHARK cables should, of course, be classified at an appropriate level and assigned appropriate telegraphic precedence. In a classified SHARK telegram, the portion containing the subject's name, date and place of birth, nationality, and passport number should remain unclassified, as these data elements will likely be entered into the unclassified CLASS and IBIS lookout systems. All other information provided is maintained by the Department and protected according to its classification. Avoid using the Roger Channel when sending VISAS SHARK cables, as it requires special handling, which delays processing.

9 FAM 40.31 PN1.15 Dual Purpose Reporting

(TL:VISA-311; 08-21-2001)

The Department recognizes that reporting on organized crime group members, particularly that initiated by other sections or agencies, often has purposes other than, or in addition to, watchlisting the individual in question. For this reason, and to obviate the need for duplicate reporting, posts are not required to follow any particular format when preparing VISAS SHARK cables. As long as the telegram contains the "KSRK" tag and the "VISAS SHARK" code indicator, and provides complete information regarding the

suspected crime figure's identity and activities, it will receive appropriate distribution and be processed by the TIPOFF and/or SHARK staff.

9 FAM 40.31 PN1.16 CLASS Entry by Posts in Certain Cases

(TL:VISA-311; 08-21-2001)

When a consular officer at a post believes that a suspected organized crime figure should be included in CLASS immediately, the consular officer should enter the subject's name directly using the appropriate quasi INA 212(a)(30(A)(ii) refusal code. Circumstances requiring such action include a credible imminent threat to United States interests or a suspected impending application for an U.S. visa by the subject. The consular officer must then expeditiously submit a VISAS SHARK telegram, in which the post's class entry should be reported.

9 FAM 40.31 PN1.17 Conducting CLASS Checks

(CT:VISA-710; 02-28-2005)

Prior to submitting a VISAS SHARK telegram on a suspected NIS or BR organized crime group member, consular posts must conduct a class check to determine whether the subject was previously included as a *DPT-00* entry or under another code requiring the Department's opinion. The VISAS SHARK telegram should be submitted even if the CLASS check reveals a previous entry since the information available to post is likely to add to the existing record. The results of the CLASS check should be reported in the VISAS SHARK cable. Any class entries must be fully cited so that the subject may be accurately identified and his or her record expeditiously *located*.

9 FAM 40.31 PN1.18 Removing VSP, CLASS and IBIS Entries

(CT:VISA-710; 02-28-2005)

Recommendations to delete CLASS and IBIS entries that were based upon VISAS SHARK reporting should be submitted to the Department slugged for *DHS*/TIPOFF and CA/VO/L/A. The cable should contain the "VISAS SHARK" code indicator and the "KSRK" tag. Justification for the deletion request must be provided. Circumstances creating the need for such a recommendation might include the subject's demise or the development of evidence that the derogatory information against the subject, previously believed credible, is without foundation.

9 FAM 40.31 PN1.19 Department Feedback

(TL:VISA-311; 08-21-2001)

The Department will reply in a timely manner to all VISAS SHARK communications. In individual cases, the Department will inform posts regarding the watchlisting of the subject(s) and will advise if additional information is needed. Posts' inquiries regarding VISAS SHARK policies and procedures will also receive the Department's prompt attention. The Department will make every effort to provide comprehensive guidance and feedback on VISAS SHARK matters and to form a true partnership with posts abroad in fulfilling this important national security responsibility.

9 FAM 40.31 PN2 VISAS EEL

(CT:VISA-710; 02-28-2005)

All *advisory opinion* requests involving Russian Business Investigation Initiative (RBII) requests, 00-RBII information requests, and all other cables requesting assistance in adjudicating visa applications relating to Russian international organized crime should be transmitted under the heading of VISAS EEL and *slugged for CA/VO/L/A*.

9 FAM 40.31 PN2.1 When to Submit a VISAS EEL

(TL:VISA-311; 08-21-2001)

Posts should submit a VISAS EEL cable if:

- (1) An advisory opinion is sought on a visa applicant who may fall within the purview of INA 212(a)(3)(A)(ii) as a member of an organized crime group; or
- (2) An RBII investigation is necessary on a visa applicant who may be involved in activity which would make him or her fall within the purview of INA 212(a)(3)(A)(ii) as a member of an organized crime group.

9 FAM 40.31 PN2.2 Format for VISAS EEL

(TL:VISA-311; 08-21-2001)

See 9 FAM PART IV Appendix E, Chapter 302, VISAS EEL.

9 FAM 40.31 PN2.3 VISAS EEL Requires Department Response

(TL:VISA-311; 08-21-2001)

Once a VISAS EEL request has been submitted, the consular officer must wait for a response before a visa may be issued.