

9 FAM 40.35(a) PROCEDURAL NOTES

*(CT:VISA-1016; 09-12-2008)
(Office of Origin: CA/VO/L/R)*

9 FAM 40.35(a) PN1 REQUESTING INFORMATION FROM BUNDESARCHIV

(CT:VISA-1016; 09-12-2008)

- a. You shall request by immediate cable to USOFFICE BERLIN a summary of the records of any alien entered in Consular Lookout and Support System (CLASS) as P3E1, any alien who is otherwise known or believed to have been a member of one of the "criminal organizations" (see 9 FAM 40.35(a) N6), and any former Nazi Party member who is suspected of falling within the purview of INA 212(a)(3)(E)(i). Any known aliases and/or alternate biographic data should be included. The cable should be in the following format:

ACTION: USOFFICE USBERLIN
SECSTATE WASHDC

INFO: AMEMBASSY BONN
BUNDESARCHIV, FINCKENALLEE 63, BERLIN 12205

TAGS: CVIS, PGOV, PEPR, (Country TAG for Applicant's Nationality)
(Applicant's Name)

SUBJECT: Possible 212(a)(3)(E)(i) *Inadmissibility*

- (1) (Subject's name, DPOB) applied for a (type of visa) on (date of application).
 - (2) In order to assist in determination of visa eligibility, request BUNDESARCHIV provide a summary of information on applicant contained in BUNDESARCHIV files.
- b. Upon receipt of the BUNDESARCHIV summary (which we will also have received as an addressee), you should schedule a visa interview and ask the applicant to bring any pertinent documentation.

9 FAM 40.35(a) PN2 INITIAL INTERVIEW OF POSSIBLY INELIGIBLE APPLICANTS

(CT:VISA-1016; 09-12-2008)

The following lines of inquiry should be pursued when the applicant affirmatively answers question 30(c) on Form DS-230, Application for Immigrant Visa and Alien Registration, question 38 on Form DS-156, Nonimmigrant Visas Application, *the section on Security and Background on Form DS-160, Nonimmigrant Visa Electronic Application (see 9 FAM 41.103 N2)*, or when other information relating to the applicant indicates the possibility of *inadmissibility* under INA 212(a)(3)(E)(i).

9 FAM 40.35(a) PN2.1 Certain German or Austrian Applicants

(CT:VISA-812; 05-25-2006)

If the applicant was a German or Austrian national during the period encompassed by INA 212(a)(3)(E)(i) and there is reason to believe he or she may be inadmissible under that section, you inquire whether the applicant:

- (1) Was ever a member of, or in any way affiliated with, any of the following organizations:
 - (a) The Leadership Corps of the Nazi Party;
 - (b) The Gestapo (Geheime Staatspolizei);
 - (c) The SD (Sicherheitsdienst des Reichsfuhrer SS); or
 - (d) The SS (Schutzstaffel der NSDAP), including the Allgemeine SS and Waffen SS.
- (2) Was ever a member or affiliate of a police unit or ever performed police duties in any territory occupied by or allied with the Nazi Government of Germany; and
- (3) Ever served as a guard or received military training at an extermination, concentration, or prisoner-of-war (POW) camp under the control of the Nazi Government of Germany, or the government of any area occupied by or allied with the Nazi Government of Germany.

9 FAM 40.35(a) PN2.2 Non-German or Austrian Nationals

(CT:VISA-812; 05-25-2006)

In the case of possibly inadmissible aliens from countries allied with or occupied by Nazi Germany during the relevant time period (see 9 FAM 40.35(a) Exhibit I), the same inquiries specified (see 9 FAM 40.35(a) PN2.1)

above should be pursued concerning the alien's activities and his or her possible association with organizations involved in persecutions. Many, but not all, such organizations are listed. (See 9 FAM 40.35(a) Exhibit II.)

9 FAM 40.35(a) PN2.3 Other Particulars Regarding Activities

(CT:VISA-1016; 09-12-2008)

If there is evidence of, or the alien admits to, membership in or association with any of the organizations or activities indicated above, these follow-on questions, together with others that the interview may prompt, will assist you in developing a complete and meaningful case for assessment and submission to the Department for a security advisory opinion (SAO):

- (1) Specific identification of the organization(s) and/or unit(s) with which the alien served;
- (2) Inclusive dates of service in each organization or unit;
- (3) The activities or mission of each organization or unit;
- (4) The alien's rank or position therein;
- (5) The duties and responsibilities of the alien;
- (6) The alien's duty station(s), if applicable; and
- (7) The names of the alien's commanding officers or superiors.

9 FAM 40.35(A) PN3 REINTERVIEW BASED ON BUNDESARCHIV SUMMARIES

(CT:VISA-1016; 09-12-2008)

a. Following receipt of a BUNDESARCHIV summary, you should:

- (1) Re-interview the alien in depth regarding his or her military or civilian government service *and* his or her other activities during the 1933 to 1945 period; and
- (2) Ask explicit questions regarding the alien's participation in and/or awareness of the activities proscribed by INA 212(a)(3)(E)(i).

b. Particular attention should be paid to any apparent discrepancies between the alien's statements and the BUNDESARCHIV summary.

9 FAM 40.35(a) PN4 SECURITY ADVISORY OPINION (SAO) PROCEDURES

(CT:VISA-1016; 09-12-2008)

All cases of possible inadmissibility under INA 212(a)(3)(E)(i) must be submitted to the Department for a SAO by means of a "VISAS DONKEY" SAO slugged for the *Office of Legislation and Coordination Division* (CA/VO/L/C) and *the Office of Central European Affairs* (EUR/CE). Once an SAO has been requested, no visa may be issued until the Department's response has been received.

9 FAM 40.35(a) PN4.1 Information Included in Security Request

(CT:VISA-812; 05-25-2006)

The first paragraph of the SAO request should provide the alien's name, date and place of birth, the type of visa applied for, the date of application, the date of the visa interview, and the intended travel date and destination in the United States. The remainder of the SAO must contain the following information:

- (1) The basis for exploring possible ineligibility (i.e., CLASS entry, admission orally or on the application form, etc.);
- (2) A summary of the evidence available to you pertinent to the alien's eligibility, including specifics of such documents as denazification certificates, military records, post-war military tribunal reports, and POW camp release papers;
- (3) A detailed discussion of the visa interview with special emphasis on explaining apparent discrepancies or gaps in chronology, particularly where the applicant's statements are at variance with the BUNDESARCHIV summary;
- (4) Your evaluation of the applicant's credibility; and
- (5) Your opinion regarding the alien's eligibility.

9 FAM 40.35(a) PN4.2 Time Required to Process Advisory Opinion (AO)

(CT:VISA-1016; 09-12-2008)

The time required to process an advisory opinion (AO) request generally runs two *to* four weeks although the period may be longer in cases necessitating additional research. Your careful attention to the development of the case contributes greatly to expeditious action. We are sensitive to the desirability of accommodating travel plans and, to the extent possible, will make every effort to avoid inconveniencing eligible applicants. We respond to posts in the "VISAS ONE" or "VISAS TWO" format, and will, as

appropriate, either remove the alien's CLASS entry or change the entry to reflect a finding of inadmissibility under INA 212(a)(3)(E)(i).