9 FAM 41.2
WAIVER BY SECRETARY OF STATE AND ATTORNEY GENERAL OF PASSPORT AND/OR VISA REQUIREMENTS FOR CERTAIN CATEGORIES OF NONIMMIGRANTS

(CT:VISA-991; 08-12-2008)
(Office of Origin: CA/VO/L/R)

9 FAM 41.2 RELATED STATUTORY PROVISIONS

(CT:VISA-991; 08-12-2008)

See INA 212(a)(7)(B)(i) (8 U.S.C. 1182(a)(7)(B)(i)); INA 212(d)(3)(B) (8 U.S.C. 1182(d)(3)(B)); INA 212(d)(4) (8 U.S.C. 1182(d)(4)); INA 212(d)(8) (8 U.S.C. 1182(d)(8)); INA 212(l) (8 U.S.C. 1182(l)) [Amended by INA 214(a)]; INA 217; INA 233(c) (8 U.S.C. 1223(c)); INA 245(a) (8 U.S.C. 1255(a)); INA 245(c)(4) (8 U.S.C. 1255(c)(4)), and INA 248 (8 U.S.C. 1258); Sec. 635(c)(2) of Public Law 104-208.

INA 212(a)(7)(B)(i)

(7) Documentation requirements.-

(B) Nonimmigrants.-

(i) In general.-Any nonimmigrant who-

(I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period, or

(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission, is inadmissible

INA 212(d)(3)(B)

d. Temporary admission of nonimmigrants.

(B) (i) The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may conclude in such Secretary's sole unreviewable discretion that subsection (a)(3)(B)(i)(IV)(bb) or (a)(3)(B)(i)(VII) of this section shall not apply to an alien, that subsection (a)(3)(B)(iv)(VI) of this section shall not apply with respect to any material support an alien afforded to an organization or individual that has engaged in a terrorist activity, or that subsection (a)(3)(B)(vi)(III) of this section shall not apply to a group solely by virtue of having a subgroup within the scope of that subsection. The Secretary of State may not, however, exercise discretion under this clause with respect to an alien once removal proceedings against the alien are instituted under section 234(a) of this title.

(ii) Not later than 90 days after the end of each fiscal year, the Secretary of State and the Secretary of Homeland Security shall each provide to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on International Relations of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Homeland Security of the House of Representatives a report on the aliens to whom such Secretary has applied clause (i). Within one week of applying clause (i) to a group, the Secretary of State or the Secretary of Homeland Security shall provide a report to such Committees.

INA 212(d)(4)

(4) Either or both of the requirements of paragraph (7)(B)(i) of subsection (a) of this section may be waived by the Attorney General and the Secretary of State acting jointly

(A) on the basis of unforeseen emergency in individual cases, or

(B) on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals, or

(C) in the case of aliens proceeding in immediate and continuous

transit through the United States under contracts authorized in section 233(c) of this title.

INA 212(d)(8)

(8) Upon a basis of reciprocity accredited officials of foreign governments, their immediate families, attendants, servants, and personal employees may be admitted in immediate and continuous transit through the United States without regard to the provisions of this section except paragraphs (3)(A), (3)(B), (3)(C), and (7)(B) of subsection (a) of this section.

INA 212(l)

l. (1) The requirement of paragraph (7)(B)(i) of subsection (a) of this section may be waived by the Attorney General, the Secretary of State, and the Secretary of the Interior, acting jointly, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay on Guam for a period not to exceed fifteen days, if the Attorney General, the Secretary of State and the Secretary of the Interior, after consultation with the Governor of Guam, jointly determine that

(A) an adequate arrival and departure control system has been developed on Guam, and

(B) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.

(2) An alien may not be provided a waiver under this subsection unless the alien has waived any right-

(A) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into Guam, or

(B) to contest, other than on the basis of an application for asylum, any action for removal of the alien. (3) If adequate appropriated funds to carry out this subsection are not otherwise available, the Attorney General is authorized to accept from the Government of Guam such funds as may be tendered to cover all or any part of the cost of administration and enforcement of this subsection.

[Amended by sec. 699L Public Law 110-161, 121 Stat. 2373; 2007.]

INA 233(c)

c. The Attorney General shall have power to enter into contracts including bonding agreements with transportation lines to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries. Notwithstanding any other provision of this Act, such aliens may not have their classification changed under section 248.

INA 245(a)

a. The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if

(1) the alien makes an application for such adjustment,

(2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and

(3) an immigrant visa is immediately available to him at the time his application is filed.

INA 245(c)(4)

c. Other than an alien having an approved petition for classification as a VAWA self-petitioner, 1aa/ subsection (a) shall not be applicable to

(4) an alien (other than an immediate relative as defined in section 201(b)) who was admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217.

[Amended by sec 634(k)(2) Public Law 110-161, 121 Stat. 2329; 2007.]

INA 248

a. The Secretary of Homeland Security may, under such conditions as he may prescribe, authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status and who is not inadmissible under section 212(a)(9)(B)(i) (or whose inadmissibility under such section is waived under section 212(a)(9)(B)(v)), except (subject to subsection (b)) in the case of-

(1) an alien classified as a nonimmigrant under subparagraph (C), (D), (K), or (S) of section 101(a)(15),

(2) an alien classified as a nonimmigrant under subparagraph (J) of section 101(a)(15) who came to the United States or acquired such classification in order to receive graduate medical education or training,

(3) an alien (other than an alien described in paragraph (2)) classified as a nonimmigrant under subparagraph (J) of section 101(a)(15) who is subject to the two-year foreign residence requirement of section 212(e) and has not received a waiver thereof, unless such alien applies to have the alien's classification changed from classification under subparagraph (J) of section 101(a)(15) to a classification under subparagraph (A) or (G) of such section, and

(4) an alien admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217.

b. The exceptions specified in paragraphs (1) through (4) of subsection (a) shall not apply to a change of nonimmigrant classification to that of a nonimmigrant under subparagraph (T) or (U) of section 101(a)(15).

9 FAM 41.2 RELATED REGULATORY PROVISIONS

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See 22 CFR 41.2.