

9 FAM 41.21 NOTES

*(CT:VISA-1300; 09-16-2009)
(Office of Origin: CA/VO/L/R)*

9 FAM 41.21 N1 EXEMPTIONS FROM INELIGIBILITY PROVISIONS

9 FAM 41.21 N1.1 Exemptions for A-1 Class

(TL:VISA-320; 09-27-2001)

- a. In exempting class A-1 foreign government officials from the provisions of the Immigration and Nationality Act (INA) relating to aliens ineligible to receive visas, the Congress acted on the assumption that to do otherwise might infringe upon the constitutional prerogative of the President to receive ambassadors and other public ministers (Article II, Section 3 of the Constitution). The legislative history underlying the distinctions made in the INA between A-1 and A-2 classes of foreign government officials offers some assistance in determining legislative intent. Committee Report No. 1365 which accompanied House Report No. 5678, 82nd Congress contains the following paragraph on page 34.
- b. Ambassadors, public ministers, and career diplomatic and consular officers who have been accredited by foreign governments recognized de jure by the United States and accepted by the President or the Secretary of State, and members of their immediate families, are exempted from all provisions relating to the exclusion and deportation of aliens generally, except those provisions relating to reasonable requirements of passport and visas as means of identification and documentation. In view of constitutional limitations, such aliens may be excluded on grounds of public safety only under such regulations as may be deemed necessary by the President.

9 FAM 41.21 N1.2 Absence of Presidential Directive

(TL:VISA-320; 09-27-2001)

The President has not issued a directive to date applying the provisions of INA 212(a)(3)(A), (3)(B), and (3)(C) to aliens within the A-1 classification. (See INA 102(1)).

9 FAM 41.21 N2 ISSUING CERTAIN VISAS UPON APPROPRIATE REQUEST

(CT:VISA-1237; 07-01-2009)

Ordinarily, you may issue a visa in the A, C-2, C-3, G, or North Atlantic Treaty Organization (NATO) categories only upon receipt of a note from the appropriate foreign office, mission, international organization, or NATO authority. Under unusual circumstances, if you issue a visa upon the oral request of a competent foreign authority, you make a note in the nonimmigrant visa (NIV) system regarding the request (e.g., name and position of requester, date of request, etc.). You should also solicit a written confirmation from the appropriate foreign office, mission, international organization, or NATO authority.

9 FAM 41.21 N3 WAIVER OF PERSONAL APPEARANCE AND FILING OF VISA APPLICATIONS

(CT:VISA-1300; 09-16-2009)

Under the provisions of 22 CFR 41.102(a)(2) and (b)(3), you are authorized to waive personal appearances *for* A-1, A-2, C-2, C-3, G-1, G-2, G-3, G-4, and NATO 1-6 aliens and applicants for diplomatic or official visas. However, in such cases, pursuant to 22 CFR 41.103(a)(3) even if a personal appearance of a visa applicant is waived, the filing of an application is not waived.

9 FAM 41.21 N4 ALIENS OF CLASSES A AND G ON ASSIGNMENTS OF LESS THAN 90 DAYS

(CT:VISA-917; 11-29-2007)

Posts are to enter Temporary Duty ("TDY") in the annotation field of a machine readable visa (MRV) issued to the recipient of an A or G visa who is coming to the United States for assignments of less than 90 days. The request for an A or G visa must clearly specify that the official is coming for a temporary assignment of less than 90 days. Absent this information, you are to seek clarification about the length of the assignment from the authorities concerned.

9 FAM 41.21 N5 MEMBERS OF IMMEDIATE FAMILY OF FOREIGN OFFICIALS

9 FAM 41.21 N5.1 "Immediate Family"

9 FAM 41.21 N5.1-1 Spouse and Unmarried Sons and Daughters

(TL:VISA-2; 08-30-1987)

The term "immediate family" includes the spouse and unmarried legal sons and daughters of any age of the principal alien. Such legal sons and daughters need not previously have qualified as a "child" as defined in INA 101(b)(1).

9 FAM 41.21 N5.1-2 Other Close Relatives

(CT:VISA-1237; 07-01-2009)

The term "immediate family" also includes, upon individual authorization from the Department, other close relatives; that is, any other relative by blood, marriage, or adoption of the principal alien or spouse. To be considered as immediate family members, such relatives must bear the same type of passport as the spouse and children of the principal alien, and must be recognized as dependents by the sending Government. In requesting the Department's authorization in an individual case, you must describe the factors which lead you to believe the authorization is merited. (See 9 FAM 41.21 N5.2, paragraph c.)

9 FAM 41.21 N5.2 Aliens Who are Members of Some Other Household

(CT:VISA-907; 10-11-2007)

- a. An alien who has been a member of a household other than the household of the principal alien would not normally be included within the "immediate family" of the principal alien as that term is defined in 22 CFR 41.21(a)(3), regardless of other circumstances. Thus a nephew of college age who has resided in the household of the principal alien's sister and brother-in-law would not qualify as an immediate relative of the principal alien simply to join the principal alien's household with the intention of attending college in the United States. F-1 classification under sponsorship of the principal alien might be appropriate in such a situation.
- b. However, the fact that an alien has been, even in the recent past, a

member of some other household does not preclude a finding that, at the time of application for a visa, the applicant is a member of the household of the principal alien. For example, a recently widowed, divorced, or aging parent may have closed a former household with the intention of becoming part of the principal alien's household. This could also occur because the parent, due to advanced age or infirmity, had ceased to be able to maintain his or her own household. The test in adjudicating these cases is whether the applicant, for reasons of age, health, or change in circumstances beyond his or her control, is incapable of maintaining or reestablishing an independent household.

- c. In adjudicating the visa applications of aliens who are or have been members of another household, but who are seeking "immediate family" status, you may consider that status to be individually authorized by the Department of State in accordance with 22 CFR 41.21(a)(3)(v) in all cases in which you have made a favorable determination on the alien's application, and in which, in your judgment no significant foreign policy issues or public interest exist(s). If such issues or interest are believed to exist, you must refer the case to the Department (CA/VO/L/A) for an advisory opinion (AO). Likewise, when you have determined that such status does not exist, only those cases involving significant foreign policy issues or public interest must be referred to the Department (CA/VO/L/A) for an AO.

9 FAM 41.21 N5.3 Aliens Who Will Reside Regularly in Household of Principal Alien

(TL:VISA-2; 08-30-1987)

An alien may be held to reside regularly in the household of the principal alien even though actually absent from the household for a large part of the year while attending a boarding school or college.

9 FAM 41.21 N5.4 Immediate Family of Foreign Official Who Has Requested Status of Permanent Resident

(TL:VISA-320; 09-27-2001)

An alien who is a member of the immediate family of a principal alien classifiable as A-1, A-2, G-1, G-2, G-3, or G-4 may receive that classification even when the principal alien has requested permission to obtain or retain the status of permanent resident under INA 247(b). The principal alien must have waived his and/or her rights, privileges, exemptions, and immunities.

9 FAM 41.21 N6 A-3, G-5, OR NATO-7 CLASSIFICATION

9 FAM 41.21 N6.1 Aliens Entitled to A-3, G-5, or NATO-7 Classification

(CT:VISA-1300; 09-16-2009)

- a. An alien who is the attendant, servant, or personal employee of an alien classified A-1 or A-2, G-1 through G-4, or NATO-1 through NATO-6 is entitled to the appropriate A-3, G-5, or NATO-7 classification. Such aliens are required to demonstrate that they are entitled to an A-3, G-5, or NATO-7 nonimmigrant classification (e.g., letter of reference from a former employer, evidence of previous employment in that sector, etc.). You must, therefore, establish the official status of the employer and the intent of both parties to enter into (or remain in) an employer-employee relationship. In cases where the domestic employee either is renewing an A-3, G-5, or NATO-7 visa or is joining an employer who has already taken up his or her assignment in the United States, post may access Protocol's records in The OFM Management Information System (TOMIS) through the Consular Consolidated Database (CCD) Cross Applications menu to verify an employer's current official status. Posts need to keep in mind that if a domestic employee is accompanying the employer to a new diplomatic assignment in the United States, Protocol may not yet be aware of the employer and *they* may not *yet* appear in the TOMIS database. If post has any question regarding an employer's status (e.g., name does not appear in TOMIS; appears to have been accredited for an unusual length of time), refer the case to CA/VO/L/A. Additionally, if a particular A-3, G-5, or NATO-7 application raises fraud concerns, refer the case to the Department for further verification.

NOTE: Protocol expects to establish, during the *Fall* of 2009, a requirement for the employer's foreign mission or international organization to pre-notify Protocol of the intention to sponsor the alien as a domestic or personal employee. Once that requirement has been established, this note will be updated to provide that adjudication of an A-3 or G-5 application should not take place until TOMIS contains a record of the pre-notification.

- b. Consular officers are reminded that A, G, and NATO visa applicants meet the requirements of INA 214(b) by establishing entitlement to such *nonimmigrant* status. They do not need to demonstrate that they:
 - (1) Are not intending immigrants;
 - (2) Have a residence abroad they do not intend to abandon; or

- (3) Have compelling ties outside the United States.
- c. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA) requires you to ensure that an individual applying for an A-3, G-5, or NATO-7 visa is made aware of his or her legal rights under Federal immigration, labor, and employment laws. This includes information on the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States. At the time of the visa interview, you must confirm that a pamphlet described in 9 FAM 41.21 N6.5-1 has been received, read, and understood by the applicant. You are also required to review the contents of the mandatory employment contract, as described in 9 FAM 41.21 N6.2, with the applicant.

9 FAM 41.21 N6.2 Terms and Conditions of Employment; Mandatory Employment Contracts

(CT:VISA-1237; 07-01-2009)

- a. You must be satisfied that the wage to be received by the A-3, G-5, or NATO-7 applicant is a fair wage comparable to that offered in the area of employment and sufficient to overcome INA 212(a)(4) (8 U.S.C. 1182(a)(4)). To insure that the applicant will receive a fair wage, applications for such visas must include an employment contract signed by the employer and the employee. The contract must include the following elements:
 - (1) An agreement by the employer to abide by all Federal, state, and local laws in the United States;
 - (2) A guarantee the employee will be compensated at the state or Federal minimum or prevailing wage, whichever is greater. Department of Labor (DOL) maintains an Alien Labor Certification/Occupational Employment Survey (ALC-OES) database that breaks down prevailing wage statistics by occupation and metropolitan area. This information is available on the Web on the Department of Labor's Online Wage Library & Data Center.
NOTE: You must be satisfied that any money deducted for food or lodging is no more than reasonable;
 - (3) Information on the frequency and form of payment, work duties, weekly work hours, holidays, sick days, and vacation days;
 - (4) A statement by the employee that he or she will not accept any other employment while working for the employer;
 - (5) A statement by the employer that he or she will not withhold the passport, employment contract, or other personal property of the

employee; and

- (6) A statement indicating that both parties understand that the employee cannot be required to remain on the premises after working hours without compensation.
- b. You may encounter applications where the applicant does not submit a contract, the contract does not guarantee a fair wage or working conditions, or you have evidence that the employer will not comply with the conditions specified in the contract. In such cases, you should refuse the visa under either INA 214(b), because the applicant has not shown entitlement to nonimmigrant status under an A, G, NATO, or under INA 221(g), because the alien has failed to submit a required document. If the agreed wage falls below the minimum or prevailing wage because of deductions for food and lodging by the employer, and you conclude that the remaining wage available to the employee is insufficient to provide a reasonable incentive to continue in the A-3, G-5, or NATO-7 employment, you should also refuse the visa pursuant to INA 214(b). You may refuse visas for A-3, G-5, or NATO-7 applicants under any appropriate provision of law.

9 FAM 41.21 N6.3 Domestics and Personal Employees of Aliens in Permanent Resident Status Not Eligible for A-3, G-5, or NATO-7 Classification

(CT:VISA-907; 10-11-2007)

An alien in A, G, or NATO status, who acquires or retains permanent resident status as provided in INA 247(b) or in 22 CFR 40.203 may not have in his employ a personal employee in the A-3, G-5, or NATO-7 classification. The employee of such an alien must qualify for and obtain an H-2B nonimmigrant visa (NIV) or an immigrant visa (IV) for the purpose of working for the employer.

9 FAM 41.21 N6.4 Endorsing A-3, G-5, and NATO-7 Visas

(CT:VISA-1100; 11-04-2008)

Posts are to endorse A-3, G-5, and NATO-7 visas issued to attendants, servants, and personal employees of aliens classified A-1, A-2, G-1 through G-4, or NATO-1 through NATO-6. The notation is to be placed in the annotation field of the MRV and is to contain the name of the principal alien and his place of employment. For example:

John Doe, Embassy of Z,
Washington, DC

9 FAM 41.21 N6.5 Information Pamphlet on Legal Rights of A-3, G-5, NATO-7, H, J, and Domestic Employees

(CT:VISA-1237; 07-01-2009)

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA) requires the Secretary of State, in consultation with the Secretary of Homeland Security, the Attorney General, and the Secretary of Labor, to develop an information pamphlet on the legal rights and available resources for aliens applying for A-3, G-5, H, or J visas, as well as any nonimmigrant visa (NIV) (such as B-1 domestic and NATO-7) issued to a personal or domestic servant who is accompanying or following to join an employer. This pamphlet is currently in development.

9 FAM 41.21 N6.5-1 Contents of Information Pamphlet

(CT:VISA-1237; 07-01-2009)

- a. The contents of the information pamphlet will include a discussion of procedural issues, legal rights, and available legal resources concerning items such as:
 - (1) The nonimmigrant visa (NIV) application processes, including information about the portability of employment;
 - (2) The legal rights of employment or education-based nonimmigrant visa (NIV) holders under Federal immigration, labor, and employment laws;
 - (3) The illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States;
 - (4) The legal rights of immigrant victims of trafficking in persons and worker exploitation, including--
 - (a) The right of access to immigrant and labor rights groups;
 - (b) The right to seek redress in United States courts;
 - (c) The right to report abuse without retaliation;
 - (d) The right of the nonimmigrant not to relinquish possession of his or her passport to his or her employer;
 - (e) The requirement of an employment contract between the employer and the nonimmigrant; and
 - (f) An explanation of the rights and protections included in the mandatory employment contract; and

- (5) Information about nongovernmental organizations that provide services for victims of trafficking in persons and worker exploitation, including--
 - (a) Anti-trafficking in persons telephone hotlines operated by the Federal Government;
 - (b) The Operation Rescue and Restore hotline; and
 - (c) A general description of the types of victims' services available for individuals subject to trafficking in persons or worker exploitation.
- b. The pamphlet will be translated into certain foreign languages, based on the languages spoken by the greatest concentration of employment and education-based nonimmigrant visa (NIV) applicants. Once published and translated, the pamphlet will be posted on the Department of State travel Web site and must be posted, in English and any relevant local language that the pamphlet has been translated into, on the Web site of every consular post.

9 FAM 41.21 N6.5-2 Consular Officer Responsibilities

(CT:VISA-1237; 07-01-2009)

- a. The WWTVPRA requires you, during the interview of an applicant for an A-3 or G-5 visa:
 - (1) To confirm that the alien has received, read, and understood the contents of the information pamphlet, and to offer to answer any questions the alien may have regarding the contents of the pamphlet; and
 - (2) If the pamphlet was not received, read, or understood, to provide a copy to the applicant and orally disclose in a language that the alien understands, and offer to answer any questions that the alien may have regarding information contained in the pamphlet as well as information described below regarding legal rights, U.S. law, and victim services. Such an oral disclosure should include:
 - (a) The legal rights of employment-based nonimmigrants under Federal immigration, labor, and employment laws;
 - (b) The illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States;
 - (c) The legal rights of immigrant victims of trafficking in persons, worker exploitation, and other related crimes, including--
 - (i) The right of access to immigrant and labor rights groups;

- (ii) The right to seek redress in United States courts; and
- (iii) The right to report abuse without retaliation; and
- (d) The availability of services for victims of human trafficking and worker exploitation in the United States, including victim services complaint hotlines.

NOTE: The obligation for a consular officer to provide such an oral disclosure if an applicant did not receive, read, or understand the contents of the pamphlet will apply once the Department has made the pamphlet available to posts.

- b. All applicants for an A-3, G-5, or NATO-7 visa must be interviewed, regardless of whether the applicant has been issued a previous visa in the same classification, to work for the same employer. The interview of an A-3, G-5, or NATO-7 applicant must be conducted outside the presence of the employer or recruitment agent.

9 FAM 41.21 N6.6 Suspension of Processing of A-3 and G-5 Applications from Certain Foreign Missions and International Organizations

(CT:VISA-1237; 07-01-2009)

- a. The Secretary of State shall suspend, for such period as the Secretary determines necessary, the issuance of A-3 visas or G-5 visas to applicants seeking to work for officials of a diplomatic mission or an international organization, if the Secretary determines that there is credible evidence that one or more employees of such mission or international organization have abused or exploited one or more nonimmigrants holding an A-3 visa or a G-5 visa, and that the diplomatic mission or international organization tolerated such actions.
- b. The Secretary may suspend the application of the limitation under paragraph (a) if the Secretary determines and reports to the appropriate Congressional committees that a mechanism is in place to ensure that such abuse or exploitation does not reoccur with respect to any alien employed by an employee of such mission or institution.
- c. All visa processing posts will be advised when the Secretary has determined that A-3 or G-5 visa processing should be suspended for a specific diplomatic mission or international organization.

9 FAM 41.21 N7 DESIGNATED PORTS OF ENTRY (POE) FOR CERTAIN DIPLOMATIC AND INTERNATIONAL ORGANIZATION PERSONNEL

(CT:VISA-907; 10-11-2007)

See Visa Reciprocity and Country Documents Finder under country concerned.

9 FAM 41.21 N8 REQUIRING SECURITY ADVISORY OPINION (SAO) IN CERTAIN CASES

(CT:VISA-907; 10-11-2007)

See Visa Reciprocity and Country Documents Finder for country specific guidance.

9 FAM 41.21 N9 VALIDITY OF A-3 AND G-5 VISAS

(CT:VISA-1237; 07-01-2009)

See 9 FAM 41.112 N2.6.

9 FAM 41.21 N10 CLASSIFYING SPOUSE AND CHILD OF A, G, OR NATO ALIEN

(TL:VISA-320; 09-27-2001)

See 9 FAM 41.11 N4 and 9 FAM 41.11 N5.