

## **9 FAM 41.101 PROCEDURAL NOTES**

*(CT:VISA-1268; 08-20-2009)  
(Office of Origin: CA/VO/L/R)*

### **9 FAM 41.101 PN1 PLACE OF APPLICATION**

*(CT:VISA-1268; 08-20-2009)*

As per 9 FAM 41.101 N2, you must accept a nonimmigrant visa (NIV) application in either of two circumstances: the alien is a resident of the consular district, or the Department directs you to accept it. The latter case is very rare. You should also accept a NIV application from an applicant who is physically present in your consular district.

### **9 FAM 41.101 PN1.1 221(g) Refusals of Out-of-District Applicants**

*(CT:VISA-1268; 08-20-2009)*

Refusing an applicant simply because he is out of district is a missed opportunity and a waste of post and applicants' time. Some posts, in an effort to enforce the consular district, refuse these applicants under INA 221(g). You must adjudicate these applications to issuance or refusal under 214(b) or 212(a) rather than refusing them under 221(g) solely because the applicants are out-of-district.

### **9 FAM 41.100 PN1.2 214(b) Refusals of Out-of-District Applicants**

*(CT:VISA-1268; 08-20-2009)*

- a. Refusing an applicant under INA 214(b) solely for out-of-district reasons is not appropriate. Section 214(b) requires that the applicant demonstrate both entitlement for a specific visa classification and absence of immigrant intent (see 9 FAM 41.11 N1.5). Consular officers can still determine whether the alien qualifies for a particular visa class, and whether there is immigrant intent on the part an out-of-district applicant.

- b. Certainly, an out-of-district applicant may alert you to possible fraud or, at the least, forum shopping. In addition, it may be more difficult for an out-of-district applicant to overcome the burden of proof. However, you should not refuse an applicant solely because he or she is out of the consular district.
- c. In addition, most NIV applicants must establish that they have a residence abroad that they do not intend to abandon. That residence need not be in the country where they are applying. It is incorrect to refuse an out-of-district applicant solely because his or her ties are to a different country abroad. However, if the applicant is applying for a visa category that requires that he or she demonstrate a residence abroad that he or she does not intend to abandon, and the applicant is unable to do so, you should refuse the case under 214(b) because the applicant has not demonstrated that he or she qualifies for the visa for which he or she applied.
- d. Some nationalities described as "homeless," residents of countries where no U.S. consular services are available, have specific posts designated for their applications with appropriate language-trained officers. When officers are concerned about document, language and translation barriers, posts should let the public and prospective applicants know that lack of a common language could negatively affect an application. Posts may want to use this language on their Web sites: "Applicants from outside this office's consular district may apply for visas. However, you should be aware that language difficulties and interviewing officers' unfamiliarity with local conditions in other countries may make it more difficult to demonstrate your qualifications for a visa here than in your home district or at a post designated for your application."

## **9 FAM 41.101 PN2 FACILITATION OF NONIMMIGRANT VISA (NIV) PROCESSING**

*(CT:VISA-1268; 08-20-2009)*

All necessary administrative steps to facilitate the processing of nonimmigrant visa (NIV) applications should be taken to encourage foreign travel to the United States. Consular officers should ensure that NIV procedures are kept simple and consistent with effective administration of existing laws and regulations. Posts should review their procedures at intervals and revise workflow to adapt to changing conditions. Every applicant is to be given prompt and courteous service.

## **9 FAM 41.101 PN3 REDESIGNATING CONSULAR POSTS**

*(CT:VISA-1268; 08-20-2009)*

The Deputy Assistant Secretary for Visa Services may designate the geographical areas over which consular posts have jurisdiction to process nonimmigrant visas (NIV). This, however, does not affect an alien's ability to apply for a NIV at any issuing consular post within the country of the alien's residence. Department approval, however, is necessary before countries with multiple visa-issuing posts can make changes to NIV application policy. A cable, captioned for CA/VO/F/P, requesting approval of such authority and outlining the country-wide plan should be made by the supervisory consular officer in the country.

## **9 FAM 41.101 PN4 ALIENS SUBJECT TO INA 222(g)**

*(CT:VISA-1268; 08-20-2009)*

If a consular officer determines that an alien is subject to the provisions of INA 222(g), the consular officer shall:

- (1) Inform the alien in writing that he or she is ineligible for visa processing and must apply for a visa in the country of his or her nationality;
- (2) Enter the applicant's name in CLASS under code "G" with the annotation "visa overstay" in the free field; and,
- (3) Retain the machine readable visa (MRV) fee.

## **9 FAM 41.101 PN5 "Extraordinary Circumstances" Annotation**

*(CT:VISA-1268; 08-20-2009)*

Nonimmigrant visas (NIV) issued to aliens subject to INA 222(g), but who are exempt from the "home country requirement", should be annotated as follows:

"INA 222(g) overcome under extraordinary circumstances."

## **9 FAM 41.101 PN6 CLEARANCES TO BE SENT TO VISA ISSUING OFFICE**

*(CT:VISA-1268; 08-20-2009)*

Consular officers are urged to accept and process visa applications made by residents of their districts, even though the office accepting the visa application is aware that the alien may depart that district prior to the issuance of the visa. In such cases, a clearance for the district accepting the visa application, together with clearances obtained from any other district, if pertinent, should be sent to the consular office which will take final action on the visa application.

## **9 FAM 41.101 PN7 TRANSFER OF VISA FILES**

### **9 FAM 41.101 PN7.1 Applicant in Travel Status**

*(CT:VISA-1268; 08-20-2009)*

A visa file may be transferred from one consular office to another without a specific request from the receiving post, if the sending post believes there is justification for the transfer and the alien will personally appear at the receiving office to apply for a visa. Special priority should be given to the cases of applicants who, because of their profession, must travel frequently.

### **9 FAM 41.101 PN7.2 Registered Pouch or Registered Mail**

*(CT:VISA-1268; 08-20-2009)*

All visa files should be transferred from one post to another by registered pouch using Form OF-120, Diplomatic Pouch Mail Registration (see INFOFORMS), or by open registered mail.

### **9 FAM 41.101 PN7.3 Prior Refusal of Visa**

*(CT:VISA-1268; 08-20-2009)*

When considering the application of an alien previously refused a visa by another post, the consular officer should request that the alien's file be transferred from the post which refused his or her application to the post taking action on the application.

## **9 FAM 41.101 PN7.4 Record of Transfer**

*(CT:VISA-1268; 08-20-2009)*

A brief record of the transfer to another office of a visa file should be prepared (on a 3 by 5-inch index card and filed in the index card file). The record should reference the number and date of any transferred petition.

## **9 FAM 41.101 PN7.5 Telegram in Urgent Cases**

*(CT:VISA-1268; 08-20-2009)*

In urgent cases, the consular officer may forward clearance and petition information to another post by telegram, e-mail or telephone.