

## Appendix E

### U.S. Dept of State Foreign Affairs Manual

This appendix contains those sections of the United States Department of State Foreign Affairs Manual (FAM) on Visas, which relate to medical grounds for ineligibility for entry into the United States or to receive a Visa.

#### **E-1 9 FAM PART I, 40.11, Medical grounds of ineligibility.** (TL: VISA-177; 04-30-1998)

##### **(a) Decision on eligibility based on findings of medical doctor.** (TL: VISA-46; 8-26-91)

A finding by a panel physician designated by the post in whose jurisdiction the examination is performed pursuant to INA 212(a)(1) shall be binding on the consular officer, except that the officer may refer a panel physician finding in an individual case to USPHS for review.

#### **E-2 9 FAM 40.11 Related Statutory Provisions, INA 212(a)(1) Health Related Grounds.—** (TL: VISA-177; 04-30-1998)

##### (1) HEALTH RELATED GROUNDS.

###### (A) IN GENERAL.—Any alien—

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance,

(ii) *Not applicable.*

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)—

(I) to have a physical or mental disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history or behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict, is inadmissible.

(B) WAIVER AUTHORIZED.—For provision authorizing waiver of certain clauses of subparagraph (a), see subsection (g).

*[Amended by Sec. 308(d) of Pub. L. 104-208, Sept. 24, 1996.]*

#### **E-3 INA 212(g)** (TL: VISA-159; 12-20-96)

(g) The Attorney General may waive the application of—

(1) subsection (a)(1)(A)(i) in the case of any alien who—

(A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa, or

(B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence; in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe;

(2) subsection (a)(1)(A)(ii) in the case of any alien—

(A) who receives vaccination against the vaccine-preventable disease or diseases for which the alien has failed to present documentation of previous vaccination,

(B) for whom a civil surgeon, medical officer, or panel physician (as those terms are defined by section 34.2 of title 42 of the Code of Federal Regulations) certifies, according to such regulations as the Secretary of Health and Human Services may prescribe, that such vaccination would not be medically appropriate, or

(C) under such circumstances as the Attorney General provides by regulation, with respect to whom the requirement of such a vaccination would be contrary to the alien's religious beliefs or moral convictions; or

(D) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe. [Amended by sec. 341(b) of Pub. L. 104-208, Sept. 30, 1996.]

#### **E-4 9 FAM 41.22, OFFICIALS OF FOREIGN GOVERNMENTS (TL: VISA-9; 3-23-88)**

##### **(a) Criteria for Classification of Foreign Government Officials (TL: VISA-9; 3-23-88)**

*(1) An alien is classifiable A-1 or A-2 under INA 101(a)(15)(A)(i) or (ii) if the principal alien: (i) Has been accredited by a foreign government recognized de jure by the United States; (ii) Intends to engage solely in official activities for that foreign government while in the United States; and (iii) Has been accepted by the President, the Secretary of State, or a consular officer acting on behalf of the Secretary of State. A member of the immediate family of a principal alien is classifiable A-1 or A-2 under INA 101(a)(15)(A)(i) or (ii) if the principal alien is so classified.*

#### **E-5 9 FAM 40.11 Notes**

##### *9 FAM 40.11 N1 Background*

*(TL:VISA-189; 04-22-1999)*

*Pub. L. 101-649, the Immigration Act of 1990 (IMMACT 90) revised section 212(a) of the Immigration and Nationality Act (INA) in its entirety by consolidating the then existing 33 grounds of visa ineligibility into nine. In 1996, Pub. L. 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), added a vaccination requirement for immigrant visa applicants. There are now four basic medical standards that apply to visa ineligibilities under INA 212(a)(1):*

- (1) Communicable diseases of public health significance;
- (2) NA
- (3) Physical or mental disorders and behavior associated with the disorder that has passed, or may pose, a threat to the property, safety, or welfare of the alien or others; and
- (4) The condition of being a drug abuser or addict.
- (5) 9 FAM 40.11 N2 Health-Related Grounds of Ineligibility under INA 212(a)(1), as Amended
- (6) (TL:VISA-189; 04-22-1999)
- (7) The major elements relating to a finding of ineligibility under INA 212(a)(1) include:
  - (1) *General requirement for medical examination [see 9 FAM 40.11 N3];*
  - (2) *Role of panel physician [see 9 FAM 40.11 N4];*
  - (3) *Public charge factors [see 9 FAM 40.11 N5];*
  - (4) *Communicable disease of public health significance [see 9 FAM 40.11 N6];*
  - (5) *Not Applicable*
  - (6) *Physical or mental disorder associated with harmful behavior [see 9 FAM 40.11 N8];*
  - (7) *Drug abuse or addiction [see 9 FAM 40.11 N9 below];*
  - (8) NA
  - (9) Nonimmigrant visa waiver [see 9 FAM 40.11 N11 below].

## **9 FAM 40.11 N3 General Requirement for Medical Examination**

### **9 FAM 40.11 N3.2 Nonimmigrant Visa Applicants**

(TL:VISA-189; 04-22-1999)

Generally, medical examinations are not required for nonimmigrant visa applicants. However, the consular officer may require a nonimmigrant applicant to undergo a medical examination if the consular officer has reason to believe that the applicant may be ineligible for a visa under INA 212(a)(1). [See also 9 FAM 41.108.]

### **9 FAM 40.11 N3.3 Purpose of Medical Examination**

(TL:VISA-189; 04-22-1999)

*The purpose of the medical examination required under the provisions of INA 221(d) is to determine whether the applicant has a:*

- (1) **“Class A” condition**—A medical condition that renders him or her ineligible to receive a visa or
- (2) **“Class B” condition**—A medical condition that, although not constituting an excludable condition, represents a departure from normal health or well-being that is significant enough to possibly:
  - (a) Interfere with the applicant’s ability to care for himself or herself, or to attend school or work, or
  - (b) Require extensive medical treatment or institutionalization in the future.

See 42 CFR Part 34.3 through 34.8 for the scope of the medical examination.

## **9 FAM 40.11 N4 Panel Physicians**

### **9 FAM 40.11 N4.1 Role of Panel Physician**

*The panel physician is responsible for the entire examination. The examination must include:*

- (1) A medical history;
- (2) Not Applicable to NON IMMIGRANTS
- (3) A physical examination;
- (4) A mental examination;
- (5) A full-size chest radiograph;
- (6) A serologic test for syphilis;
- (7) A serologic test for Human Immunodeficiency Virus (HIV);
- (8) A sputum smear examination;

- (9) Administration of immunizations (immigrant visa applicants only);
- (10) Report of the results of all required tests and consultations;
- (11) Verification that the completed medical report forms are sent directly to the consular officer; and
- (12) Verification that the person appearing for the medical examination is the person actually applying for the visa.

The panel physician does not have the authority to determine whether an alien is actually eligible for a visa. Consular officers must make that determination after reviewing all the records, including the panel physician's report. [See also 9 FAM 42.66 Exhibit I.]

#### **9 FAM 40.11 N4.2 Basis of Medical Report in Determining Eligibility under INA 212(a)(1)**

(TL:VISA-189; 04-22-1999)

a. The panel physician conducts the examination and testing required to assess the applicant's medical condition and then completes Form OF-157, Medical Examination of Applicants for U.S. Visas, [NOTE: This form is currently undergoing revision by the Centers for Disease Control (CDC).] The consular officer cannot find an applicant ineligible under INA 212(a)(1) without a report from the panel physician. The panel physician determines whether diagnostic tests are needed when the medical condition is self-declared by the applicant.

b. Upon completion of the applicant's medical examination, the examining physician shall submit the report to the consular officer. The report must include the results of any diagnostic tests required for the diagnosis of the diseases identified as communicable diseases of public health significance and any other tests necessary to confirm a suspected diagnosis of any other "Class A" or "Class B" condition. The consular officer will list the results on the form as follows:

- (1) No defect, disease, or disability;
- (2) "Class A"—a communicable disease of public health significance or a physical or mental disorder associated with the requisite harmful behavior, or drug abuse/addiction (INA 212(a)(1)(A)(i), (iii), or (iv)); or
- (3) "Class B"—physical or mental defect, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal physical or mental well-being.

#### **9 FAM 40.11 N4.3 Effect of Findings**

##### **9 FAM 40.11 N4.3-1 "Class A" Finding**

(TL:VISA-189; 04-22-1999)

A "Class A" medical finding requires the consular officer to find an alien ineligible under INA 212(a)(1). The physician's examination must be conducted in accordance with the current "Technical Instructions for Medical Examination of Aliens" (Technical Instructions) distributed by the Department of Health and Human Services (HHS), Public Health Service, Centers for Disease Control (PHS-CDC).

##### **9 FAM 40.11 N4.3-2 "Class B" Finding**

(TL:VISA-189; 04-22-1999)

A "Class B" finding informs the consular officer that a serious medical condition exists which constitutes a departure from normal health or well-being. The consular officer must consider such finding when assessing the alien's eligibility for visa issuance, i.e., the likelihood of the alien becoming a public charge.

**9 FAM 40.11 N5 Basis of Medical Report in Determining Ineligibility under INA 212(a)(4)**

(TL:VISA-189; 04-22-1999)

In addition to the examination for specific excludable conditions, the examining physician must also look for other physical and mental abnormalities that suggest the alien is likely to become a public charge. When identifying a "Class B" medical condition that may render the alien ineligible under INA 212(a)(4), the examining physician is required to reveal not only the full extent of the condition, but the extent of the approximate treatment needed to care for such condition. Based on the results of the examination, the consular officer determines whether the disease or disability would be likely to render the alien unable to care for himself/herself or to attend school or work, or require extensive medical care or institutionalization.

**9 FAM 40.11 N6 INA 212(a)(1)(A)(i)—Communicable Diseases of Public Health Significance**

(TL:VISA-189; 04-22-1999)

INA 212(a)(1)(A)(i) refers to an excludable disease as "communicable disease of public health significance." The CDC's Technical Instructions lists these diseases which are also defined at 42 CFR Part 34.2(b). The following diseases are those that the CDC currently defines as "communicable diseases of public health significance:"

- (1) Chancroid;
- (2) Gonorrhea;
- (3) Granuloma inguinale;
- (4) Human immunodeficiency virus (HIV) infection;
- (5) Leprosy, infectious;
- (6) Lymphogranuloma venereum;
- (7) Syphilis, infectious stage; and
- (8) Tuberculosis, active.

**9 FAM 40.11 N6.1 Immigrant Afflicted with Human Immunodeficiency Virus (HIV)**

**9 FAM 40.11 N6.1-1 HIV-Infected Aliens Included in INA Definition**

(TL:VISA-189; 04-22-1999)

INA 212(a)(1)(A)(i) states that a communicable disease of public health significance "shall include infection with the etiologic agent for acquired immune deficiency syndrome."

## **9 FAM 40.11 N8 INA 212(a)(1)(A)(iii)—Physical or Mental Disorders**

(TL:VISA-XXX; xxxx)

*The nature of INA 212(a)(1)(A)(iii) has changed radically from prior law. The application of medical standards has replaced the listing of very specific diseases and medical conditions in the former. A physical or mental disorder must be associated with a requisite display of harmful behavior. Thus, the mere presence of a physical or mental disorder does not by itself render the applicant ineligible. Under the provisions of INA 212(a)(1)(A)(iii)(I) and (II), in order to find an applicant ineligible, the consular officer must determine that the applicant:*

(1) *Has a physical or mental disorder with associated harmful behavior that may pose or has posed, a threat to the property, safety, or welfare of the applicant or others; or*

(2) *Has a history of behavior associated with the disorder, which has posed, a threat to the property, safety, or welfare of the applicant or others and which is likely to recur or to lead to other harmful behavior.*

### **9 FAM 40.11 N8.1 Harmful Behavior**

(TL:VISA-189; 04-22-1999)

a. *For purposes of INA 212(a)(1)(iii), current harmful behavior, or a history of it, would include a dangerous action or series of actions by the alien which has:*

(1) *Caused injury (psychological or physical) to the alien or another person;*

(2) *Threatened the health or safety of the alien or another person; or*

(3) *Resulted in property damage.*

b. *The panel physician must evaluate such behavioral history to determine whether an alien has an excludable condition. (A conviction for such behavior is not determinative.)*

### **9 FAM 40.11 N8.3 Alcohol Dependence (Alcoholism) or Alcohol Abuse**

(TL:VISA-189; 04-22-1999)

*While alcoholism constitutes a medical condition, INA 212(a)(1)(A)(iii) does not refer explicitly to alcoholics or alcoholism. Evaluation for alcohol abuse or dependence is included in the evaluation for mental and physical disorders with associated harmful behavior. An alcoholic is **not** ineligible to receive a visa **unless** there is current or a history of, harmful behavior associated with the disorder that has posed or is likely to pose a threat to the property, safety, or welfare of the alien or others. For example, CDC has determined that a conviction for driving while under the influence of alcohol would constitute evidence of a medical disorder with associated harmful behavior.*

### **9 FAM 40.11 N9 Drug Abuser or Addict and Effect of INA 212(a)(1)(A)(iv)**

(TL:VISA-189; 04-22-1999)

The nonmedical use of any drugs listed in section 202 of the Controlled Substances Act generally qualifies as a "Class A" condition. It should be noted that harmful behavior is not a relevant factor in rendering a determination under the provisions of INA 212(a)(1)(iv). An immigrant visa waiver of ineligibility is not available to an alien who is diagnosed as engaging in psychoactive substance abuse or dependence or using psychoactive substances listed in the Controlled Substances Act. [See 9 FAM 40.23 Exhibit I.]

#### **9 FAM 40.11 N9.1 Definitions**

(TL:VISA-189; 04-22-1999)

Definitions relating to psychoactive substance abuse/dependence as provided by the Department of Health and Human Services (HHS) are quoted below.

"a. Psychoactive substance abuse/dependence as used here, includes 2 groups:

*Nonmedical users of drugs listed in section 202 of the Controlled Substances Act [see section 9 FAM 40.23 Exhibit I]. Nonmedical use of any drug listed in section 202 of the Controlled Substances Act is illegal and qualifies as a "Class A" condition, whether or not harmful behavior is documented.*

*Nonmedical users of drugs not listed in section 202 of the Controlled Substances Act, abusers of alcohol, inhalants, or other psychoactive agents with resultant harmful or dysfunctional behavior patterns. Determination of "Class A" or "Class B" status is the same as that of any other mental or physical condition.*

b. *Remission—no nonmedical use of a drug listed in section 202 of the Controlled Substances Act for 3 or more years, or no nonmedical use of any other psychoactive substance for 2 or more years.*

c. *Nonmedical use—is considered to be more than experimentation with the substance (e.g., a single use of marijuana or other non-prescribed psychoactive substances such as amphetamines or barbiturates). ... (Experimentation with any of these drugs would not be considered a ground of ineligibility)".*

#### **9 FAM 40.11 N9.2 Terms in 42 CFR Part 34**

(TL:VISA-189; 04-22-1999)

a. *The term "drug abuse" means the nonmedical use of a substance listed in section 202 of the Controlled Substances Act, as amended, (21 U.S.C. 802) which **has not** necessarily resulted in physical or psychological dependence.*

b. *The term "drug addiction" means the nonmedical use of a substance listed in section 202 of the Controlled Substances Act, as amended, which **has** resulted in physical or psychological dependence."*

#### **9 FAM 40.11 N9.3 Nonmedical Drug Use**

(TL:VISA-189; 04-22-1999)

*Nonmedical use is considered to be more than experimentation with the substance (e.g., a single use of marijuana or other non-prescribed substances). A panel physician should consult with a physician with experience in the medical evaluation of substance abusers in making the determination as to whether the use was experimental or part of a pattern of abuse. Experimentation with any of the drugs listed in this paragraph would not be considered a ground of ineligibility.*

**9 FAM 40.11 N9.4 Finding of Remission**

*(TL:VISA-189; 04-22-1999)*

*An alien in remission, is not ineligible to receive a visa, if the panel physician finds the alien to be in a "Class-B" status.*

**9 FAM 40.11 N9.5 Determining "Class A" or "Class B" Status**

*(TL:VISA-189; 04-22-1999)*

a. *A determination of "Class A" or "Class B" status should be rendered in the same way as a determination of any other mental or physical disorder under the provisions of INA 212(a)(1)(A)(iii).*

b. *In a "Class A" condition, which would include nonmedical use of a substance listed in section 202 of the Controlled Substance Act (such as amphetamines, cannabinoids, cocaine and related substances, etc.), the panel physician must determine whether the applicant:*

(1) *Is currently using or has used a psychoactive substance within the last 3 years, or*

(2) *Is or has abused a psychoactive substance other than those listed in section 202 within the last 2 years.*

c. *In a "Class B" condition, the panel physician need only to determine:*

(1) *No nonmedical use of a substance listed in section 202 of the Controlled Substances Act in the last three years, or*

(2) *No abuse of a psychoactive substance other than those listed in section 202 of that act in the last two years.*

**9 FAM 40.11 N10.3 Ineligibility under INA 212(a)(1)(A)(iii)**

*(TL:VISA-189; 04-22-1999)*

*The Attorney General may, under terms that he or she sets forth, in his or her discretion, and after consultation with the Secretary of State, grant a waiver to an alien ineligible under INA 212(a)(1)(A)(iii).*

**9 FAM 40.11 N11 INA 212(d)(3)(A) Waiver for Nonimmigrants**

*(TL:VISA-189; 04-22-1999)*

*If the consular officer determines that an alien is ineligible for a nonimmigrant visa under any of the provisions of INA 212(a)(1)(A), the consular officer may recommend to INS that a waiver under INA 212(d)(3)(A) be granted to the alien. INS may, in its discretion, authorize a waiver to allow the alien temporary admission. [See also 9 FAM 40.301 Notes.] Consular officers should note that INS approval, in such cases, is often a lengthy process.*

#### **9 FAM 40.11 N11.1 Aliens Traveling for Medical Reasons**

*(TL:VISA-189; 04-22-1999)*

*The requirements listed below must be fulfilled in the case of an alien traveling for medical treatment of a condition that leads to a finding of ineligibility under INA 212(a)(1)(A)(i)-(iv). When a waiver of a medical ground of ineligibility is deemed necessary, the applicant must establish that arrangements, including financial, have been made to treat the alien. When the personal resources of an alien are not sufficient or may not be available outside the alien's country of residence, the alien must include explicit information regarding which facilities are available for support during the proposed medical treatment. The sponsor of the affidavit must confirm that a bond will be made available if required by the Attorney General.*

#### **9 FAM 40.11 N11.2 Aliens Afflicted with Tuberculosis**

*(TL:VISA-189; 04-22-1999)*

*The consular officer shall not consider a waiver for an applicant afflicted with infectious tuberculosis until the applicant receives the recommended treatment in accordance with the current Technical Instructions manual and has had negative sputum smear examinations for acid-fast bacilli on three consecutive tests. Furthermore, the consular officer should instruct the principal alien to obtain the assurances specified in Form I-601.*

### **E-6 9 FAM 40.11 Procedural Notes**

#### **9 FAM 40.11 PN6 Waiver Procedures for Nonimmigrants**

##### **9 FAM 40.11 PN6.1 INA 212(d)(3)(A) Waiver**

*A consular officer may recommend a waiver of ineligibility under the provisions of INA 212(d)(3)(A) for a temporary admission, provided the alien meets the criteria outlined in 9 FAM 40.301 Notes.*

##### **9 FAM 40.11 PN6.2 Recommending Waivers to INS**

*A nonimmigrant excluded under INA 212(a)(1)(A) who seeks a waiver of excludability under INA 212(d)(3)(A) should submit the request to post. A consular officer may recommend a waiver for any nonimmigrant who requests to INS when the case meets the criteria described in 9 FAM 40.301 N5.1 The post's recommendation must include the:*

- (1) Reasons for inadmissibility and each section of the law under which the alien is inadmissible;*
- (2) Length of proposed stay;*
- (3) Purpose of the visit;*
- (4) Number of entries the alien intends to make into the United States; and*

(5) *Reasons for the consular officer's recommendation to INS to exercise discretionary authority to approve the waiver.*

#### **9 FAM 40.11 PN7 Waiver for Nonimmigrants with Tuberculosis**

*(TL:VISA-189; 04-22-1999)*

*If a nonimmigrant applicant has been in contact with a known TB case, or if there is any other reasonable ground for the consular officer to suspect TB, the applicant should be directed to undergo a medical examination. The panel physician should be performed the examination in accordance with the Technical Instructions for the Medical Examination of Aliens. If the medical examination reveals that the applicant has a "CLASS A" medical condition for infectious tuberculosis, the medical examination will not be considered complete. The consular officer cannot recommend a waiver under INA 212(d)(3)(A), until the applicant has:*

- (1) Received the recommended treatment prescribed in the technical Instructions; and*
- (2) Had negative sputum smear examinations for acid-fast bacilli on three consecutive days.*

#### **9 FAM 40.11 PN8 Waiver for Nonimmigrants with HIV**

##### **9 FAM 40.11 PN8.1 Waiver Procedures when Entry is in Public Interest**

*a. A nonimmigrant infected with HIV or AIDS may apply to a consular officer for a waiver of excludability if the:*

- (1) Public benefit of such visit outweighs any risk to the public health; or*
- (2) Alien is coming for 30 days or less.*

*b. For example, a consular officer could recommend a waiver for an applicant coming to the United States for humanitarian reasons, such as attending academic or health-related activities (including seeking medical treatment), to conduct temporary business or to visit family. Entry into the United States for tourism essentially does not constitute the requisite public benefit to overcome the risk. The consular officer must send the recommendation to the INS office abroad having jurisdiction over the consular district for concurrence.*

#### **9 FAM 40.11 PN9 Waiver Application Form**

*(TL:VISA-189; 04-22-1999)*

*INS plans to replace the Form I-601, Application for Waiver of Grounds of Excludability, with the new Form I-724, Application to Waive Exclusion Ground. Posts should continue, however, to use the Form I-601 until the new form is approved.*

#### **9 FAM 40.11 PN10 When Waiver Is Not Recommended**

*(TL:VISA-189; 04-22-1999)*

*If the consular officer does not believe that a waiver is warranted, the officer is not obligated to submit the case to INS. However, consular officers must send a report to the Department (CA/VO/L/A) for consideration under INA 212(d)(3)(A) on any case referred to in 9 FAM 40.301 N5.3.*