

9 FAM 40.11 Notes

(TL:VISA-513; 01-23-2003)
(Office of Origin: CA/VO/L/R)

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) Lack of required vaccinations (immigrant visa applicants only);
- (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.

9 FAM 40.11 N2 Health-Related Grounds of Ineligibility under INA 212(a)(1), as Amended

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

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) Immunization requirements [see 9 FAM 40.11 N7];

- (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) Immigrant visa waiver [see 9 FAM 40.11 N10 below]; and
- (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 N3.1 Immigrant Visa Applicants

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

INA 221(d) requires all applicants applying for immigrant visas to undergo a physical and mental examination. The results of this statutorily required medical examination are used to determine the alien's eligibility for such a visa. The medical finding by the panel physician or the Centers for Disease Control (CDC) if referred to that agency is binding on the consular officer. [See also 9 FAM 42.66.]

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

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

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

- (1) A medical history;
- (2) An immunization history (immigrant visa applicants only);
- (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-342; 01-08-2002)

a. The panel physician conducts the examination and testing required to assess the applicant's medical condition and then completes Form DS-2053, Medical Examination for Immigrant or Refugee Applicant, (Form DS-3024, Chest X-ray and Classification Worksheet, Form DS-3025, Vaccination Documentation Worksheet, and Form DS-3026, Medical History and Physical Examination Worksheet. 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.” INA 212(g)(1)(A) and (B) provide waiver relief for certain HIV-positive immigrant visa applicants. [See 9 FAM 40.11 N10 and 9 FAM 40.11 PN2.1.]

9 FAM 40.11 N6.1-2 Immigrant Visa Applicants 15 Years or Older

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

In accordance with the Technical Instructions published by the Centers for Disease Control (HHS/PHS/CDC), all immigrant visa applicants 15 years of age or older must be tested for evidence of HIV infection. Those under the age of 15 must also be tested if there is reason to suspect HIV infection, e.g., a child with hemophilia, or a child with a natural parent who is HIV-positive.

9 FAM 40.11 N6.2 Immigrant Afflicted with Tuberculosis

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

a. The medical examination is not considered complete, and the consular officer cannot request a waiver for an applicant afflicted with “Class A” infectious tuberculosis until the applicant:

- (1) Receives the recommended treatment in accordance with the current Technical Instructions; and
- (2) Has the negative sputum smear examination for acid-fast bacilli on three consecutive days.

b. In the case of an applicant found to be afflicted with tuberculosis, the consular officer shall obtain a determination from the medical examiner as to whether the tuberculosis is:

- (1) “Class A”-1—infectious, communicable [see 9 FAM 40.11 N6.2-1];

- (2) “Class A”-2—infectious, not for travel purposes [see 9 FAM 40.11 N6.2-1];
- (3) “Class B”-1—clinically active, not infectious [see 9 FAM 40.11 N6.2-2];
- (4) “Class B”-2—not clinically active [see 9 FAM 40.11 N6.2-2]; or
- (5) “Class B”-3—old or healed tuberculosis [see 9 FAM 40.11 N6.2-2].

9 FAM 40.11 N6.2-1 “Class A” Finding for Infectious Tuberculosis

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

An immigrant visa applicant identified by the panel physician as having “Class A” infectious tuberculosis is ineligible to receive a visa. However, the consular officer may recommend a waiver of the ground of ineligibility, provided the alien has met certain HHS/PHS/CDC requirements. [See 9 FAM 40.11 N11.2.]

9 FAM 40.11 N6.2-2 “Class B” Finding for Infectious Tuberculosis

(TL:VISA-76; 03-26-1993)

An alien who is found to have “Class B” medical condition for tuberculosis is **not** ineligible under INA 212(a)(1)(A)(i).

9 FAM 40.11 N6.2-3 Medical Treatment at U.S. Military Institution

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

Although alien dependents of U.S. military personnel may not use U.S. military facilities for visa-related medical examinations, such facilities are authorized to treat alien dependents that have tuberculosis. Those military facilities designated by the Surgeon General of any of the U.S. Armed Services, or by the Chief Surgeon of any major Army command abroad, are considered acceptable to USPHS for the treatment of tuberculosis. A statement from the Surgeon General or a Chief Surgeon that the alien will be admitted for treatment may be accepted as meeting the requirements of 9 FAM 40.11 PN2.2. The name and address of the military hospital in the United States where the treatment will be provided must be shown on Form I-601, Application for Waiver of Grounds of Excludability, Section B.

9 FAM 40.11 N7 INA 212(a)(1)(A)(ii)—Immunization Requirement

9 FAM 40.11 N7.1 Statutory Requirement

(TL:VISA-513; 01-23-2003)

Sec. 341(b) of Pub. L. 104-208 added a requirement that all aliens lawfully admitted to the United States for permanent residence be vaccinated against certain vaccine-preventable diseases. It should be noted, however, that Pub. L. 105-73 provides for an exemption of the vaccination requirement for adopted children [IR-3s and IR-4s] 10 years of age or younger.

9 FAM 40.11 N7.2 Required Vaccinations

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

Although INA 212(a)(1)(A)(ii) lists specific vaccine-preventable diseases, the language of INA 212(a)(1)(A)(ii) requires immigrants “to present documentation of having received vaccination against vaccine-preventable diseases”. The vaccinations required by the CDC also include those recommended by the Advisory Committee for Immunization Practices. Vaccinations currently required are as follows:

- (1) Mumps;
- (2) Measles;
- (3) Rubella;
- (4) Polio;
- (5) Tetanus and diphtheria toxoids;
- (6) Pertussis;
- (7) Influenza type B;
- (8) Hepatitis type B;
- (9) Varicella; and
- (10) Pneumococcal.

9 FAM 40.11 N7.3 Completing Form DS-2053, Medical Examination for Immigrant or Refugee Applicant

(TL:VISA-342; 01-07-2002)

The nurse or other authorized staff may complete the Medical Examination for Form DS-2053, Medical Examination for Immigrant or Refugee Applicant. The panel physician, however, must review the records and make the determination as to whether the applicants meet the vaccination requirement or should seek a waiver.

9 FAM 40.11 N7.4 Cost of Vaccinations

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

The CDC and the Department accept that some panel physicians will raise the cost of the medical exam to take into account the cost of vaccinations. The costs for the vaccinations and the administering of such vaccination, however, should not be in excess of those charged the general public.

9 FAM 40.11 N7.5 Vaccination Requirement for Fiance(e)

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

Fiance(e) visa applicants, as nonimmigrant visa applicants, technically are not subject to the INA 212(a)(1)(A)(ii) vaccination requirement. However, the Department and INS have agreed that medical exams for fiance(e) visa applicants should include the vaccination assessment as a matter of expediency. Every effort should be made, therefore, to encourage fiance(e) visa applicants to meet the vaccination requirements before admission to the United States. Nevertheless, consular officers should not refuse K-visa applicants for refusing to meet the vaccination requirements. [See 9 FAM 41.82 Notes.]

9 FAM 40.11 N7.6 Exemption from Vaccination Requirement for Foreign Child

(TL:VISA-342; 01-08-2002)

Applicants for IR-3 and IR-4 immigrant visas who are age 10 years or younger are exempt from the vaccination requirement if:

(1) Prior to the child's admission to the United States, an adoptive parent or prospective adoptive parent executes the Form DS-1981, Affidavit Concerning Exemption from Immigrant Vaccination Requirements for a Foreign Adopted Child, stating that he or she is aware of the vaccination requirement [see 9 FAM 40.11 PN7.7];

(2) The adoptive or prospective adoptive parent(s) will ensure that, within 30 days of the child's admission to the United States, or at the earliest time that is medically appropriate, the child will comply with the INA 212(a)(1)(A)(ii) vaccination requirement; and

(3) The adoptive or prospective adoptive parent(s) provide an original copy of the signed affidavit to the consular officer either prior to or at the time of the visa interview for inclusion in the case file. (This copy must be attached to the Form DS-2053, Medical Examination for Immigrant or Refugee Applicant and included with the supporting documents attached to the issued IR-3 or IR-4 visa.)

9 FAM 40.11 N7.7 Form DS-1981, Affidavit Concerning Exemption from Immigrant Vaccination Requirements for a Foreign Adopted Child

(TL:VISA-342; 01-08-2002)

a. A panel physician may accept the verbal assurances of an adoptive parent, prospective adoptive parent, or individual representing the child's interests, as evidence that a completed Form DS-1981, Affidavit Concerning Exemption from Immigrant Vaccination Requirements for a Foreign Adopted Child, will be presented on behalf of the child at the time of the visa interview. In such cases, the panel physician should not conduct a vaccination assessment as part of the medical interview.

b. The adoptive or prospective adoptive parent must provide a copy of the signed Form DS-1981 to the consular officer at the time of the visa interview. The copy is to be included in the case file. This copy must be attached to the Form DS-3025, Vaccination Documentation Worksheet and included with the supporting documents attached to the issued IR-3 or IR-4 visa.

9 FAM 40.11 N7.8 Fraudulent Vaccination Records

(TL:VISA-342; 01-08-2002)

a. If the panel physician believes that the applicant's vaccination record is fraudulent, the consular officer should treat the applicant in the same fashion as if he or she has failed to present the vaccination record. This could mean that the applicant might be required to repeat doses of vaccines that he or she has actually received. In accordance with the CDC Technical Instructions, administering a second dose, however, will not endanger the applicant's health.

b. To guarantee that applicants actually receive the required vaccinations, and to guard against fraudulent vaccination records, CDC has agreed that posts may require applicants to receive the vaccinations from designated facilities. These facilities must follow the Technical Instructions on Vaccinations Requirements and must sign a separate contract. (CDC and CA/VO/F/P can assist posts in developing a suitable contract.) Posts that plan to designate a specific facility must provide CA/VO/F/P and CDC with the name and address of the facility. The panel physician must still review the applicant's vaccination record, Form DS-3025, Vaccination Documentation Worksheet and complete the medical examination, Form DS-2053, Medical Examination for Immigrant or Refugee Applicant.

9 FAM 40.11 N7.9 Annotations and Reports

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

See 9 FAM 42.73 PN2.3.

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

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

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)(A)(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 N8.2 Criminal Behavior

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

a. The consular officer shall refer to the panel physician, for a determination regarding the applicability of INA 212(a)(1)(A)(iii), any case involving an alien who has demonstrated a pattern of criminal behavior over a sustained period of time.

b. The Immigration and Naturalization Service does not require fingerprints with an application for a waiver of a ground of ineligibility under INA 212(g). However, in any case where there is reason to believe that a prior record of criminal behavior may exist, the consular officer shall submit a set of the applicant's fingerprints together with the request for a waiver. [See 9 FAM 42.67 N5 and 9 FAM 42.67 PN7.]

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)(A)(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 INA 212(g)—Waiver for Immigrants

9 FAM 40.11 N10.1 Ineligibility Under INA 212(a)(1)(A)(i)

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

INA 212(g) provides for a waiver of subsections (i) of INA 212(a)(1)(A) if the alien is:

(1) The spouse, unmarried son or daughter; or the minor unmarried lawfully adopted child of:

(a) A U.S. citizen;

(b) An alien lawfully admitted for permanent residence; or

(c) An alien who has been issued an immigrant visa; or

(2) The parent of a:

(a) A U.S. citizen son or daughter;

(b) An alien lawfully admitted for permanent residence; or

(c) An alien who has been issued an immigrant visa.

9 FAM 40.11 N10.2 Ineligibility under INA 212(a)(1)(A)(ii)

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

a. An immigrant visa applicant who is ineligible under INA 212(a)(1)(A)(ii) may benefit from an INA 212(g)(2)(A) or INA 212(g)(2)(B) waiver if:

(1) The missing vaccinations are subsequently received; or

(2) The panel physician determines that administration of the required vaccine would be medically inappropriate given the applicant's age, medical history or current medical condition.

INS has delegated blanket authority to consular officers to grant INA 212(g)(2)(A) and INA 212(g)(2)(B) waivers without the need for fee or form.

b. Applicants who object to receiving the required vaccinations on religious or moral grounds must seek an INA 212(g)(2)(c) waiver from INS by filing the Form I-724, Application to Waive Exclusion Grounds. Consular officers do not have the authority to adjudicate or grant INA 212(g)(2)(c) waivers.

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 N10.4 Ineligibility under INA 212(a)(1)(A)(iv)

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

There is no waiver relief for an immigrant visa applicant whom the consular officer finds ineligible under INA 212(a)(1)(A)(iv). The consular officer may not issue an immigrant visa to an alien the consular officer determines to be a drug abuser or addicted to a drug described in section 202 of the Controlled Substances Act. [See 9 FAM 40.23 Exhibit I.]

9 FAM 40.11 N10.5 Referring Medical Problems to USPHS in Certain Circumstances

(TL:VISA-27; 10-10-1989)

See 9 FAM 42.66 N2.

9 FAM 40.11 N10.6 Simultaneous Visa Issuance to Family Members

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

To prevent the separation of families, when an accompanying family member must seek a waiver under INA 212(g), the principal alien should be encouraged to begin the waiver procedures promptly and obtain the medical report required in Form I-601, Application for Waiver of Grounds of Excludability, or the replacement Form-I-724, Application to Waive Exclusion Grounds.

9 FAM 40.11 N10.7 Issuing New or Replacement Visa

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

A consular officer may issue a new or replacement visa to an alien who was previously granted a waiver under INA 212(g) if the conditions in 9 FAM 40.11 N10.8 are met.

9 FAM 40.11 N10.8 Validity of Waiver for Subsequent Entries

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

The Department has accepted an INS ruling that a waiver granted under INA 212(g) remains in full force and effect for any subsequent entries by the alien provided:

- (1) The waiver remains unrevoked;
- (2) No new grounds of excludability have arisen; and
- (3) The alien is complying with the conditions imposed in the original waiver.

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-432; 01-08-2002)

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, Application for Waiver of Ground of Excludability.