

## **9 FAM 40.65 SMUGGLERS**

*(TL:VISA-515; 01-29-2003)*

### **(a) General**

*(TL:VISA-515; 01-29-2003)*

*See 22 CFR 40.65, INA 212(a)(6)(E), and INA 212(d)(3)(11)*

A visa shall not be issued to an alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

### **(b) Waiver of ineligibility—INA 212(d)(11).**

*(TL:VISA-515; 01-29-2003)*

If an immigrant applicant is ineligible under INA 212(a)(6)(E) but is qualified to seek the benefits of INA 212(d)(11), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(d)(11).

## **9 FAM 40.65 Related Statutory Provisions**

*(TL:VISA-515; 01-29-2003)*

### **(E) SMUGGLERS.—**

(i) **IN GENERAL.**—Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible

(ii) **SPECIAL RULE IN THE CASE OF FAMILY REUNIFICATION.**— Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 103(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) **WAIVER AUTHORIZED.**—For provisions authorizing waiver of clause (I), see subsection (d)(11).

[Added by sec. 601 of Public Law 101-649, Nov. 29, 1990, 104 Stat. 5067.]

[Amended by sec. 307(a)(8) of Public Law 102-232, Dec. 12, 1991, 105 Stat. 1754.]

*[Amended by sec. 308(d) of Public Law 104-208, Sept. 30, 1996.]*

### **INA 212(d), in part**

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(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof) if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

[Amended by sec. 601(d)(2)(F) of Public Law 101-649, 104 Stat. 5076, Nov. 29, 1990.]

[Amended by sec. 307(d) of Public Law 102-232, Dec. 12, 1991, 105 Stat. 1754.]

[Amended by sec. 219(e) of Public Law 103-416, Oct. 25, 1994, 108 Stat. 4316.]

[Amended by sec. 351 of (Public Law 104-208), Sep. 30, 1996.]