

9 FAM 40.38 NOTES

*(CT:VISA-1469; 08-11-2010)
(Office of Origin: CA/VO/L/R)*

9 FAM 40.38 N1 BACKGROUND

(CT:VISA-1390; 01-12-2010)

- a. Section 212(a) of the INA provides that individuals who are inadmissible for admission into the United States under the section are also ineligible to receive visas. Public Law 110-340, the Child Soldiers Accountability Act of 2008, amended Section 212(a) to include subsection (3)(G).
- b. An individual will be inadmissible under Section 212(a)(3)(G) if you determine, based on reason to believe, that the individual has engaged in the recruitment or use of child soldiers, children under the age of 15, in violation of Section 2442 of Title 18, United States Code (18 U.S.C. 2442). A conviction is not required. The recruitment or use of a child soldier may have occurred at any time.

9 FAM 40.38 N2 PARTICIPATION IN HOSTILITIES

(CT:VISA-1213; 05-04-2009)

- a. Section 212(a)(3)(G) as amended, provides for a broad interpretation of a child's active participation in armed hostilities. This participation includes:
 - (1) Actual combat or military activities:
 - (a) Including sabotage; and
 - (b) Serving as a decoy, courier, or at a military checkpoint; and
 - (2) Direct combat support functions, such as:
 - (a) Transporting supplies; or
 - (b) Providing other services in support of armed hostilities.

- b. This section defines armed forces or groups, meaning any army, militia, or other military organization whether or not it is state-sponsored. It does exclude any group assembled solely for nonviolent political association.

9 FAM 40.38 N3 APPLICABILITY AND SECURITY ADVISORY OPINIONS (SAO)

(CT:VISA-1390; 01-12-2010)

- a. Section 212(a)(3)(G) provides that those who recruit or conscript children under the age of 15 into armed conflict are presumed to have committed a criminal act.
- b. An individual who recruited or used child soldiers need not have been convicted of doing so in order to be denied a visa or be denied admission to the United States.
- c. You must submit a security advisory opinion (SAO) to the Department's Coordination Division (CA/VO/L/C) if you believe that an applicant has engaged in the recruitment of, or the use of, a child soldier and thus may be inadmissible under Section 212(a)(3)(G).
- d. Include in the SAO all information that leads you to believe the applicant may be inadmissible. Deny the visa under INA 221(g) pending a decision by the Department.

9 FAM 40.38 N4 WAIVERS

(CT:VISA-1469; 08-11-2010)

There is no waiver available for immigrants found inadmissible under INA 212(a)(3)(G). You can recommend nonimmigrants for an INA 212(d)(3)(A) waiver. (See 9 FAM 40.301.)