



Foreign Affairs Manual

VOLUME 9 – Visas

Change Transmittal: VISA-1328

Date: September 30, 2009

9 FAM 41.51 NOTES

9 FAM 41.55 NOTES

Changes

1. This Change Transmittal issues updates to the following sections:

9 FAM 41.51 Notes,

- | | |
|---------|--|
| N3.1 | 50 Percent Rule |
| N4.2 | Trade Entails Exchange |
| N5 | TECRO Employees |
| N10.2 | Interpretations of "Substantial" Investment |
| N10.4 | Proportionality Test |
| N11 | Enterprise Must Be More Than Marginal |
| N14.1 | Employer Qualifications |
| N14.2 | Executive and Supervisory Employee Responsibility |
| N16.1 | Background |
| N16.2-1 | Principals |
| N16.3-1 | Filing of Form ETA-9035, Labor Condition Application for Nonimmigrant Workers |
| N16.3-2 | Acceptance of Form ETA-9035, Labor Condition Application (LCA) for Nonimmigrant Workers by Posts |
| N16.4 | Definition of Specialty Occupation |
| N16.5-1 | Deciding if the Proposed Employment is a "Specialty Occupation" |
| N16.5-2 | Referring Questionable Cases to CA/VO/L/A and/or the Kentucky Consular Center (KCC) |
| N16.8 | Numerical Limitation on E-3 Visas |

N16.12 Reports of Cancelled or Revoked E-3 Visas
 N19 Special Note About H-1B Petitions

9 FAM 41.55 Notes,

N2.1 O-1 Nonimmigrants
 N6 Consultation Requirement
 N8.1 Department of Homeland Security (DHS) Responsible for
 Adjudicating O Petitions
 N8.4 Approved Petition Is Prima Facie Evidence of Entitlement to
 O Classification
 N8.5 Referring Approved O Petition to Department of Homeland
 Security (DHS), U.S. Citizenship and Immigration
 Services (USCIS) for Reconsideration
 N9.1 Services in More Than One Location
 Correcting the form name in these sections N9.4 Amended
 Petition; N11.2 Petition Extension; N12.1 Extension
 Procedures
 N13.2 Evidence Forming Basis for O Visa Issuance
 N13.3 Consular Consolidated Database (CCD) Access to Approved
 NIV Petitions

2. **Change Transmittal** has replaced the term, Transmittal Letter. Change Transmittal was selected as being more appropriate in this age of electronic information transmission. The FAM volume's transmittal acronym and numerical series remains in place.
3. Revisions since the last update appear in *italics* and *dark magenta*. Other than formal titles, the italics will be removed the next time the material is updated. Only current changes will appear in italics. Italics provide a historical record of changes.
4. Officers are reminded that Department-issued materials not codified in the Foreign Affairs Manual or its supplemental Foreign Affairs Handbook series generally have no regulatory validity (see 2 FAM 1115.2).

Filing Instructions (Paper Copies)

1. Remove and discard the old 9 FAM 41.51 Notes (CT:VISA-969; 06-12-2008, 32 pages) and insert the new 9 FAM 41.51 Notes (CT:VISA-1328; 09-30-2009, 32 pages).

Remove and discard the old 9 FAM 41.55 Notes (CT:VISA-1262; 07-30-2009, 16 pages) and insert the new 9 FAM 41.55 Notes (CT:VISA-1328; 09-30-2009, 16 pages).

2. After inserting the material in the binder, insert this change transmittal letter immediately following the CT Checklist, then fill in the entry line for CT:VISA-1328, and initial.

Distribution Notice

1. The Foreign Affairs Manual and Handbooks (unclassified) official version can be found on the State Department's Intranet site.
2. All posts and offices keeping paper versions of the Foreign Affairs Manual are responsible for maintaining the FAM on a current basis (see 2 FAM 1116.5).
3. Use **KFAM** and **AINF** TAGS on **all** communications on FAM/FAH issues; direct questions concerning issuance, validity, and updating to A/GIS/DIR. Direct questions concerning substance and interpretations to the office indicated at the end of this change transmittal letter.

(CA/VO/L/R)