

## **9 FAM 40.11**

# **MEDICAL GROUNDS OF INELIGIBILITY**

*(CT:VISA-1697; 09-20-2011)*  
*(Office of Origin: CA/VO/L/R)*

## **9 FAM 40.11 RELATED STATUTORY PROVISIONS**

*(CT:VISA-1697; 09-20-2011)*

See INA 212(a)(1) (8 U.S.C. 1182(a)(1)); INA 212(g) (8 U.S.C. 1182(g)); INA 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)); and Section 644 of Public Law 104-208.

### **INA 212(a)(1)**

a. Classes of Aliens Ineligible for Visas or Admission.-

Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds.-

(A) In General

Any alien—

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

(ii) except as provided in subparagraph (C), who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices,

- (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 and behavior associated with the 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 of 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).
- (C) Exception from immunization requirement for adopted children 10 years of age or younger.\*

Clause (ii) of subparagraph (A) shall not apply to a child who—

- (i) is 10 years of age or younger,
- (ii)\*\* is described in section 101(b)(1)(F), and
- (iii) is seeking an immigrant visa as an immediate relative under section 201(b), if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the provisions of subparagraph (A)(ii) and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in such subparagraph.

*\*Subpar. (C) added by Act Nov. 12, 1997, Public Law No. 105-73, 111 Stat. 1459.*

*\*\*Subpar. (C)(ii) amended by International Adoption Simplification Act of Nov. 30, 2010, Public Law 111-287, 124 Stat. 3058, Sec. 2, effective as provided by Sec. 4 of the Act (see "Section 101, Note A-21", INA 101).*

**INA 212(g)**

g. Bond and conditions for admission of alien inadmissible on health-related grounds

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,
  - (B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; or
  - (C) \* is a VAWA self-petitioner, 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) of this section 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
- (3) subsection (a)(1)(A)(iii) of this section 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.

*\*Subpar. (g)(1)(C) added by Sec. 1505(d), title V [Battered Immigrant women Protection Act of 2000], [Violence Against women Act of 2000], Public Law No. 106-386 [Victims of Trafficking and Violence Protection Act of 2000]. Amended by sec. 6(b)(2), Act. Of Aug. 12, 2006, Public Law No. 109-271, (tech. Corrs. to VAWDOJRA 2005).*

### **INA 212(d)(3)(A)**

d. Temporary admission of nonimmigrants

(3)(A) \* Except as provided in this subsection, an alien

- (i) \*\* who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under subsection (a) of this section (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or
- (ii) \*\*\* who is inadmissible under subsection (a) of this section (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General. The Attorney General shall prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of inadmissible aliens applying for temporary admission under this paragraph.

*\*Designation of introductory text of subsec. (d)(3) as "(A)" inserted by Sec.104, Title I. REAL ID Act of 2005 [such Act for Defense, the Global War on Terror, and Tsunami Relief, 2005], Public Law NO.109-13, 119 STAT 231.*

*\*\*Formerly subsec. (d)(3)(A), redesignated as subsec. (d)(3)(A)(i) by Sec . 104, Title I, REAL ID Act of 2005, Act of May 11, 2005, Public Law No. 109-13, 119 Stat. 231. During its prior designation as subsec.*

*(d)(3)(A), it was amended by Sec. 5503(1), Intelligence Reform and Terrorism Prevention Act of 2004, Public Law No. 108-458.*

*\*\*\*Formerly subsec. (d)(3)(B), redesignated as subsec. (d)(3)(A)(ii) by Sec. 104, Title I, REAL ID Act of 2005, Act of May 11, 2005, Public Law No. 109-13, 119 Stat. 231. During its prior designation as subsec. (d)(3)(B), it was amended by Sec. 5503(2), Intelligence Reform and Terrorism Prevention Act of 2004, Public Law No. 108-458.*

## **Section 644 of Public Law 104-208.**

### **INFORMATION REGARDING FEMALE GENITAL MUTILATION (FGM).**

*(a) PROVISION OF INFORMATION REGARDING FEMALE GENITAL MUTILATION.-The Immigration and Naturalization Service (in cooperation with the Department of State) shall make available for all aliens who are issued immigrant or nonimmigrant visas, prior to or at the time of entry into the United States, the following information:*

*(1) Information on the severe harm to physical and psychological health caused by female genital mutilation which is compiled and presented in a manner which is limited to the practice itself and respectful to the cultural values of the societies in which such practice takes place.*

*(2) Information concerning potential legal consequences in the United States for (A) performing female genital mutilation, or (B) allowing a child under his or her care to be subjected to female genital mutilation, under criminal or child protection statutes or as a form of child abuse.*

*(b) LIMITATION.-In consultation with the Secretary of State, the Commissioner of Immigration and Naturalization shall identify those countries in which female genital mutilation is commonly practiced and, to the extent practicable, limit the provision of information under subsection (a) to aliens from such countries.*

*(c) DEFINITION.-For purposes of this section, the term "female genital mutilation" means the removal or infibulation (or both) of the whole or part of the clitoris, the labia minora, or labia majora.*

## **9 FAM 40.11 RELATED REGULATORY PROVISIONS**

*(CT:VISA-1640; 04-19-2011)*

See 22 CFR 40.11.

**Section 40.11 Medical grounds of ineligibility.**

- (a) *Decision on eligibility based on findings of medical doctor.* A finding of 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.
- (b) *Waiver of ineligibility—INA 212(g).* If an immigrant visa applicant is inadmissible under INA 212(a)(1)(A)(i), (ii), or (iii) but is qualified to seek the benefits of INA 212(g)(1)(A) or (B), 212(g)(2)(C), or 212(g)(3), the consular officer shall inform the alien of the procedure for applying to DHS for relief under the applicable provision of law. A visa may not be issued to the alien until the consular officer has received notification from DHS of the approval of the alien's application under INA 212(g), unless the consular officer has been delegated authority by the Secretary of Homeland Security to grant the particular waiver under INA 212(g).
- (c) *Waiver authority—INA 212(g)(2)(A) and (B).* The consular officer may waive section 212(a)(1)(A)(ii) visa ineligibility if the alien qualifies for such waiver under the provisions of INA 212(g)(2)(A) or (B).

[56 FR 30422, July 2, 1991, as amended at 62 FR 67567, Dec. 29, 1997]