

9 FAM 40.28 NOTES

(CT: VISA-1713; 09-27-2011)
(Office of Origin: CA/VO/L/R)

9 FAM 40.28 N1 MONEY LAUNDERING INADMISSIBILITY

(CT: VISA-1713; 09-27-2011)

- a. Section 212(a)(2)(I) of the Immigration and Nationality Act (INA) provides that an alien is inadmissible, and thus ineligible for a visa, if there is reason to believe the alien has engaged, is engaging, or seeks to enter the United States to engage in, money laundering, as defined in 18 U.S.C. 1956 or 18 U.S.C. 1957.
- b. It also provides that any alien who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assistor, conspirator, or colluder with money launderers is inadmissible. Section 212(a)(2)(I) was added to the INA by Section 1006(a) of the USA Patriot Act, October 26 2001, Public Law 107-56. Section 1006(b) of the Act provided a "MONEY LAUNDERING WATCHLIST." (See 9 FAM 40.28 N3 below.)
- c. *In order to apply this ineligibility, the consular officer must articulate specific facts, relevant to the elements of the crime of money laundering as defined in Chapter 18 of the U.S. Code. These facts must provide a basis for "reason to believe" as described in 9 FAM 40.23 N2.*

9 FAM 40.28 N2 MANDATORY ADVISORY OPINIONS (AO)

(CT: VISA-1631; 03-07-2011)

- a. The two Federal money laundering statutes on which INA 212(a)(2)(I) is based are complex and incorporate, by reference, a large number of other criminal statutes. Properly applying INA 212(a)(2)(I), therefore, requires a good understanding of the underlying criminal statutes, which may in some instances be outside the expertise of the adjudicating

consular officer. In addition, the exact scope of INA 212(a)(2)(I) (and, in particular, its applicability to activities that occur solely outside the United States) is still being examined. For these reasons, posts must submit all cases involving potential INA 212(a)(2)(I) ineligibilities to the Advisory Opinion Division, CA/VO/L/A, for an advisory opinion.

- b. The advisory opinion request should specify and/or describe the nature and location of the illegal activity that is believed to have been the source of the money laundering transaction(s) as well as the nature and location of the laundering transactions themselves. The mandatory advisory opinion requirement is applicable when an alien applies for a visa or when post becomes aware of a potentially inadmissible alien who currently holds a valid visa, so long as the post believes that the alien may have engaged in, or may intend to engage in, money laundering activity. Any case that appears to involve criminal activity of the type described in 18 U.S.C. 1956 or 18 U.S.C. 1957 should be referred to CA/VO/L/A, regardless of where the activity took place or whether there was any apparent United States nexus to the activity.

9 FAM 40.28 N3 MONEY LAUNDERING WATCHLIST

(CT:VISA-1631; 03-07-2011)

- a. The USA Patriot Act (10/26/01) also requires the Secretary of State in cooperation with the Attorney General, the Secretary of Treasury, and the Director of the Central Intelligence Agency, to develop within 90 days of enactment, and thereafter, continually implement, update, and certify to the Congress a **"MONEY LAUNDERING WATCHLIST"** which identifies individuals worldwide who are known or suspected of money laundering.
- b. The WatchList must be readily accessible to, and must be checked by you or other Federal official prior to issuance of a visa or admission of an alien to the United States. Pursuant to this requirement, relevant Washington, DC agencies are providing names of known and suspected money launderers to the Department for addition into the CLASS database under the appropriate code (ordinarily 00). (These entries will be in addition to CLASS entries made at the post level by consular personnel. (See 9 FAM 40.28 N4 below.)

9 FAM 40.28 N4 CLASS CODES

(CT:VISA-1631; 03-07-2011)

- a. The Department has created two new Class Codes that consular posts are to use for this inadmissibility:
 - (1) "2I"—for cases in which Department has concurred in a visa refusal or visa revocation under INA 212(a)(2)(I); and
 - (2) "P2I"—for suspected money launderers who come to post's attention but who have not yet applied for U.S. visas and whose cases have therefore not yet been referred to the Department.
- b. As noted in 9 FAM 40.28 N3 above, the Department will also enter known and suspected money launderers into the CLASS system under the 00 code. As with any 00 entry, posts must send a VISAS DONKEY when encountering such a hit and must await a response from the Department before proceeding further. (See 9 FAM Appendix E, 303, From Posts to Department (SBU), and 9 FAM Appendix G, 503, Second Tier: Security Advisory Opinions (SAO): Visas Donkey, Visas Bear, and Visas Merlin (SBU).)