

9 FAM 40.301 WAIVER FOR INELIGIBLE NONIMMIGRANT UNDER INA 212(D)(3)(A)

*(CT:VISA-978; 06-27-2008)
(Office of Origin: CA/VO/L/R)*

9 FAM 40.301 RELATED STATUTORY PROVISIONS

(CT:VISA-978; 06-27-2008)

See INA 212(d)(3)(A).

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.

9 FAM 40.301 RELATED REGULATORY PROVISIONS

(CT:VISA-978; 06-27-2008)

See 22 CFR 40.301.

§ 40.301 Waiver for ineligible nonimmigrants under INA 212(d)(3)(A).

- (a) *Report or recommendation to Department.* Except as provided in paragraph (b) of this section, consular officers may, upon their own initiative, and shall, upon the request of the Secretary of State or upon the request of the alien, submit a report to the Department for possible transmission to the Secretary of Homeland Security pursuant to the provisions of INA 212(d)(3)(A) in the case of an alien who is classifiable as a nonimmigrant but who is known or believed by the consular officer to be ineligible to receive a nonimmigrant visa under the provisions of INA 212(a), other than INA 212(a) (3)(A), (3)(C) or (3)(E).
- (b) *Recommendation to designated DHS officer abroad.* A consular officer may, in certain categories defined by the Secretary of State, recommend directly to designated DHS officers that the temporary admission of an alien ineligible to receive a visa be authorized under INA 212(d)(3)(A).
- (c) *Secretary of Homeland Security may impose conditions.* When the Secretary of Homeland Security authorizes the temporary admission of an ineligible alien as a nonimmigrant and the consular officer is so informed, the consular officer may proceed with the issuance of a nonimmigrant visa to the alien, subject to the conditions, if any, imposed by the Secretary of Homeland Security.