

9 FAM 40.7 NOTES

(CT: VISA-1420; 04-12-2010)
(Office of Origin: CA/VO/L/R)

9 FAM 40.7 N1 REFUSALS UNDER IMMIGRATION AND NATIONALITY ACT (INA) SECTION 214(b)

9 FAM 40.7 N1.1 How Do I Apply INA 214(b)?

(CT: VISA-1420; 04-12-2010)

With limited exceptions, all visa applicants are presumed to be immigrants (and thus not eligible for a nonimmigrant visa (NIV)) unless and until they satisfy you that they qualify for one of the NIV categories defined in INA Section 101(a)(15). Per Section 291 of the INA, the *burden of proof* is at all times on the applicant, which means the applicant must convince you that he or she is entitled to the requested visa. Otherwise, the alien must be considered to be an applicant for immigrant status and cannot receive an NIV.

9 FAM 40.7 N1.2 Refusal Under INA 214(b) Versus Inadmissibility

(CT: VISA-1420; 04-12-2010)

- a. INA Section 214(b) applies to most categories of NIVs, but not to immigrant visas (IVs). Grounds of inadmissibility are set forth in INA 212(a) and generally most apply to both IVs and NIVs.
- b. A refusal under Section 214(b) does not constitute a finding of permanent inadmissibility, in contrast to a 212(a)(6)(C)(i) refusal, for example, which would be a permanent ineligibility. INA 214(b) serves as a basis for refusal of a visa to an alien who has not established entitlement to an NIV classification by proving that he or she falls within a definition of INA 101(a)(15). An NIV applicant who is denied under 214(b) may be approvable for an IV or another class of NIV or may even reapply for the same visa category and establish eligibility to the satisfaction of the consular officer who adjudicates the new application.

- c. You may refuse a visa under either INA 214(b) or INA 212(a) or, if applicable, both 214(b) and 212(a).

9 FAM 40.7 N1.3 Standards for Applying INA 214(b)

(CT: VISA-1420; 04-12-2010)

- a. When adjudicating NIV applications, you must be careful to recognize that the standards for qualifying for an NIV are found in the relevant subsections of 101(a)(15) and corresponding regulations and FAM guidance, not in 214(b) itself. INA 214(b) does not provide any independent standards for qualifying for an NIV. The applicant's failure to convince you that he or she meets any one of the specific requirements of the applicable NIV category will result in a 214(b) denial. (See 9 FAM 41.11 N1.5.)
- b. For example, failure to possess sufficient funds to cover educational expenses results in a 214(b) denial of a student visa. Failure to make *a* substantial investment results in a 214(b) denial of a treaty investor visa. And the failure to possess the intent not to abandon a foreign residence results in a 214(b) denial of a B visa. In each of these cases, the visa is denied under 214(b) because the applicant has not met the requirements set out for that particular visa category.
- c. The 214(b) basis of refusal may be overcome if the applicant demonstrates to *your satisfaction* that *he or she* lawfully meets and will abide by all the requirements of the particular NIV classification.

9 FAM 40.7 N1.4 INA 214(b) Not Applicable in All Categories

(CT: VISA-1420; 04-12-2010)

It is important to note that *Congress expressly* excluded H-1B, L, and V visas from the statutory presumption of immigrant intent contained in INA 214(b). In adjudicating visa applications in these categories, you must carefully review FAM guidance and other statutory provisions, including 212(a) grounds of inadmissibility.

9 FAM 40.7 N2 INA 214(b) REFUSALS: MORE THAN JUST TIES

(CT: VISA-1420; 04-12-2010)

- a. Section 214(b) cannot be simplified to mean only that applicants have

"ties" or must intend to return home. A refusal under 214(b) means that the applicant has failed to qualify for NIV status. The most common reason that an applicant fails to qualify is a failure to show the sufficient ties to his or her home country that are required for most NIV classifications. However, while a failure to show sufficient ties is the most common reason for a 214(b) finding, there are other reasons that an applicant could fail to qualify for NIV status and thus be found inadmissible under 214(b).

- b. Section 214(b) requires the visa applicant to *establish to* the satisfaction of the consular *officer that he or she* is entitled to nonimmigrant status under INA 101(a)(15). As stated above, this simply means that the NIV applicant must prove to you that he or she meets the standards required by the particular visa classification for which he or she is applying. In other words, the applicant must make a credible showing to you that all activities in which the applicant is expected to engage while in the United States are consistent with the claimed nonimmigrant status. Proper visa adjudication requires you to assess the credibility of the applicant and of the evidence he or she submits in support of the application. INA Section 291 places the *burden of proof at all times on the applicant*.
- c. If you are not satisfied that the applicant meets the standards required by the particular visa classification for which he or she is applying, you must refuse the applicant under 214(b). This is the case regardless of the applicant's financial situation or ties abroad and regardless of whether there is sufficient evidence to refuse the applicant under another section of the law (for example, 212(a)(2)(C), 212(a)(3), 212(a)(6)(C), or 212(a)(6)(E)).