

9 FAM 42.32(d)(9) NOTES

(CT:VISA-1281; 09-03-2009)
(Office of Origin: CA/VA/L/R)

9 FAM 42.32(d)(9) N1 DEFINITION OF TERMS UNDER THE USA PATRIOT ACT

(CT:VISA-1281; 09-03-2009)

For the Department of Homeland Security (*DHS*) evidentiary standards for death, disability, loss of employment, and circumstances, which might have prevented timely application or use of visas, see 9 FAM 40.1 N12.

9 FAM 42.32(d)(9) N2 SECTION 421 OF THE USA PATRIOT ACT

(CT:VISA-1281; 09-03-2009)

Section 421 of the USA Patriot Act (Public Law 107-56) provides special immigrant status *subject to numerical limitations* under INA 101(a)(27) for certain aliens who can demonstrate:

- (1) They are victim of the terrorist attacks of September 11, 2001 (evidentiary requirements as determined by the Secretary of the Department of Homeland Security); and
- (2) They are beneficiaries of petitions or labor certification applications filed on or before September 11, 2001, revoked, terminated, or rendered null because the petitioner was killed, disabled, or the business was ruined as the result of such terrorist activity.

9 FAM 42.32(d)(9) N3 ENTITLEMENT TO SPECIAL IMMIGRANT STATUS UNDER SECTION 421 OF THE USA PATRIOT ACT FOR SURVIVING SPOUSE, CHILD, OR FIANCE OF A U.S. CITIZEN FOR WHOM PETITION FILED

(CT:VISA-1281; 09-03-2009)

The surviving spouse, child, or fiancé of a U.S. citizen killed in the September 11 attacks may self-petition for special immigrant status as if the principal alien had not died. The petition must have been filed before September 11, 2001. The relationship of a derivative spouse or child to the principal alien must have existed on September 10, 2001. The alien must demonstrate that the death of the principal alien was a direct result of the terrorist attack of September 11, 2001. The derivative child must enter the United States by September 11, 2003.

9 FAM 42.32(d)(9) N4 APPLYING FOR SPECIAL IMMIGRANT STATUS UNDER PROVISIONS OF THE USA PATRIOT ACT

(CT:VISA-672; 01-14-2005)

Applicants must submit Department of Homeland Security (DHS) Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant including evidence of entitlement to special immigrant status, to the DHS service center that has jurisdiction over the alien's place of residence. Consular officers should be advised to contact the DHS for detailed application procedures and requirements. Consular officers must wait for the approved petition before visa processing can begin.

9 FAM 42.32(d)(9) N5 PROCESSING APPLICATIONS UNDER SECTION 421 OF THE USA PATRIOT ACT

(TL:VISA-386; 04-05-2002)

Posts will be notified of Form I-140, Immigrant Petition for Alien Worker approval via National Visa Center (NVC). Posts should then proceed with regular IV processing by sending Instruction and Appointment packages to the applicant. Applicants must comply with the usual security checks, demonstrate evidence of relationships, and undergo the standard medical exam. However, no Form I-864, Affidavit of Support Under Section 213A of the Act may be required. The Patriot Act specifically exempts applicants from the public charge ground of inadmissibility under INA 212(a)(4). Qualified applicants should be issued:

"SP - beneficiary of section 421, USA PATRIOT ACT".

9 FAM 42.32(d)(9) N6 INA 212(A)(4)

(TL:VISA-386; 04-05-2002)

The public charge provisions of INA 212(a)(4) are not applicable to aliens granted special immigrant status under section 421 of the USA Patriot Act. All other grounds of ineligibility apply.

9 FAM 42.32(d)(9) N7 PRIORITY DATE

(TL:VISA-386; 04-05-2002)

Under section 421 of the USA Patriot Act, an alien's priority date under INA 203(b)(4) is generally the date that the alien files the petition for classification as a special immigrant. However, if an alien already has established a priority date based on the initial petition, the alien can maintain the earlier priority date.

9 FAM 42.32(d)(9) N8 ACCOMPANYING AND FOLLOWING-TO-JOIN DEPENDENTS

9 FAM 42.32(d)(9) N8.1 Spouse and Child

(TL:VISA-386; 04-05-2002)

The spouse and children of an alien who qualifies under section 421 of the USA Patriot Act as a special immigrant may also be granted special immigrant status provided:

- (1) The relationship to the principal alien existed on September 10, 2001; and
- (2) The alien is accompanying or following-to-join the principal alien no later than September 11, 2003.

9 FAM 42.32(d)(9) N8.2 Child Over Age 21

(TL:VISA-386; 04-05-2002)

The child of an alien who is granted special immigrant status under section 421 of the USA Patriot Act who was a "child" on September 10, 2001, may still benefit from the special immigrant provisions even after reaching the age of 21.

9 FAM 42.32(d)(9) N8.3 Grandparents

(TL:VISA-386; 04-05-2002)

The grandparent of an alien who qualifies under section 421 of the USA

Patriot Act may be granted special immigrant status if both parents of the grandchild died as a result of the September 11 attacks and if one of the parents was a U.S. citizen, U.S. national or a lawful permanent resident alien on September 10, 2001. The spouse or child of the grandparent who qualifies under this section may accompany or follow-to-join the principal applicant.

9 FAM 42.32(d)(9) N8.3-1 Applying for Special Immigrant Status

(TL:VISA-386; 04-05-2002)

The grandparent who qualifies under section 421(c) of the USA Patriot Act, must self-petition using Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The grandparent must demonstrate that he or she is coming to the United States to assume legal custody of a child both of whose parents were killed in the September 11, 2001 terrorist attack. (See 9 FAM 40.1 N12.)

9 FAM 42.32(d)(9) N8.3-2 Processing Special Immigrants Under Section 421(c) of the USA Patriot Act

(CT:VISA-672; 01-14-2005)

Upon receipt of an approved Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, consular officers should process the case as any other immigrant case. However, no Form I-864, Affidavit of Support Under Section 213A of the Act, may be required and the applicant is exempt of INA 212(a)(4). The applicant shall be issued a visa annotated:

"SP - beneficiary of section 421, USA PATRIOT ACT".

9 FAM 42.32(d)(9) N9 BENEFICIARY OF USA PATRIOT ACT WITH APPROVED LABOR CERTIFICATION

(TL:VISA-386; 04-05-2002)

Under section 421(b)(1)(A)(ii), a principal alien beneficiary of an approved labor certification that is revoked due to the disabling of the principal alien or the loss of his or her employment due to physical damage caused by the terrorist attacks of September 11 is eligible for special immigrant status, as are his or her derivative spouse and children. If the principal alien was killed in the attacks of September 11, a surviving spouse or child is eligible for special immigrant status. The labor certification must have been filed on or before September 11, 2001. The relationship of a derivative spouse or child

to the principal alien must have existed on September 10, 2001. (See 9 FAM 40.1 N12).

9 FAM 42.32(d)(9) N9.1 Applying for Status

(CT:VISA-672; 01-14-2005)

The alien classified as an SP alien under the USA Patriot Act must file Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant with DHS at the service center that has jurisdiction over the intended place of residence.

9 FAM 42.32(d)(9) N9.2 Processing an Alien Under 421(b)(1)(A)(ii) of the USA Patriot Act

(CT:VISA-672; 01-14-2005)

The consular officer shall follow standard Immigrant Visa (IV) processing once the approved petition is received from NVC. However, no Form I-864, Affidavit of Support Under Section 213A of the Act, may be required and the applicant is exempt from 212(a)(4) ineligibility. Issue as follows:

“SP - beneficiary of section 421, USA PATRIOT ACT”.