

## **9 FAM 40.5**

# **LIMITATION ON THE USE OF NATIONAL CRIME INFORMATION CENTER (NCIC) CRIMINAL HISTORY INFORMATION**

*(CT:VISA-1592; 10-18-2010)*  
*(Office of Origin: CA/VO/L/R)*

## **9 FAM 40.5 RELATED STATUTORY PROVISIONS**

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

### **INA 105(b)**

- b. (1) The Attorney General and the Director of the Federal Bureau of Investigation shall provide the Department of State and the Service access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index (NCIC-III), Wanted Persons File, and to any other files maintained by the National Crime Information Center that may be mutually agreed upon by the Attorney General and the agency receiving the access, for the purpose of determining whether or not a visa applicant or applicant for admission has a criminal history record indexed in any such file.
- (2) Such access shall be provided by means of extracts of the records for placement in the automated visa lookout or other appropriate database, and shall be provided without any fee or charge.
- (3) The Federal Bureau of Investigation shall provide periodic updates of the extracts at intervals mutually agreed upon with the agency receiving the access. Upon receipt of such updated extracts, the receiving agency shall make corresponding updates to its database and destroy previously provided extracts.
- (4) Access to an extract does not entitle the Department of State to obtain the full content of the corresponding automated criminal history record. To obtain the full content of a criminal history record, the Department of State shall submit the applicant's fingerprints and any appropriate fingerprint processing fee authorized by law to the Criminal Justice Information Services

Division of the Federal Bureau of Investigation.

- c. The provision of the extracts described in subsection (b) may be reconsidered by the Attorney General and the receiving agency upon the development and deployment of a more cost-effective and efficient means of sharing the information
- d. For purposes of administering this section, the Department of State shall, prior to receiving access to NCIC data but not later than 4 months after the date of enactment of this subsection, promulgate final regulations:
  - (1) To implement procedures for the taking of fingerprints; and
  - (2) To establish the conditions for the use of the information received from the Federal Bureau of Investigation; in order
    - (i) To limit the redissemination of such information;
    - (ii) To ensure that such information is used solely to determine whether or not to issue a visa to an alien or to admit an alien to the United States;
    - (iii) To ensure the security, confidentiality, and destruction of such information; and
    - (iv) To protect any privacy rights of individuals who are subjects of such information.

## 9 FAM 40.5 RELATED REGULATORY PROVISIONS

*(CT:VISA-1592; 10-18-2010)*

See 22 CFR 40.5

### **Section 40.5 Limitations on the use of National Crime Information Center (NCIC) criminal history information.**

- (a) *Authorized access.* The FBI's National Crime Information Center (NCIC) criminal history records are law enforcement sensitive and can only be accessed by authorized consular personnel with visa processing responsibilities.
- (b) *Use of information.* NCIC criminal history record information shall be used solely to determine whether or not to issue a visa to an alien or to admit an alien to the United States. All third party requests for access to NCIC criminal history record information shall be referred to the FBI.
- (c) *Confidentiality and protection of records.* To protect applicants' privacy,

authorized Department personnel must secure all NCIC criminal history records, automated or otherwise, to prevent access by unauthorized persons. Such criminal history records must be destroyed, deleted or overwritten upon receipt of updated versions.

[67 FR 8478, Feb. 25, 2002]