

9 FAM 40.26 NOTES

*(CT:VISA-1308; 09-18-2009)
(Office of Origin: CA/VO/L/R)*

9 FAM 40.26 N1 BACKGROUND AND SUMMARY OF INA 212(A)(2)(G)

(CT:VISA-1308; 09-18-2009)

Section 604 of Public Law 105-292 October 27, 1998, the International Religious Freedom Act (IRFA) of 1998, amended the INA by adding subsection (G) to Section 212(a)(2) making certain religious persecutors inadmissible. Section 5502(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 amended INA 212(a)(2)(G) (making an alien inadmissible based on a violation at any time, rather than within the 24 months preceding application, and eliminating language that had provided for the inadmissibility of a violator's spouse and children). As amended, INA 212(a)(2)(G) requires the refusal of a visa and the denial of entry to any alien who, while serving as a foreign government official (FGO) was responsible for, or directly carried out, at any time "particularly severe violations of religious freedom," as defined in 9 FAM 40.26 N3.1 below. *The provisions of IRFA are incorporated into 22 U.S.C. 73 (6401) et seq.*

9 FAM 40.26 N2 ADVISORY OPINIONS

(CT:VISA-913; 11-20-2007)

Post must submit all cases involving potential INA 212(a)(2)(G) ineligibilities to Consular Affairs, Visa Services, Office of Legislation, Regulations and Advisory Assistance (CA/VO/L/A) for an advisory opinion. When submitting the case for review, the application must be denied under INA 221(g) and the applicant, in question, must be entered into the Consular Lookout and Support System (CLASS) system under CLASS codes "G" and "P2G" until such time as post receives the Department's opinion. You should state in the request for review whether, if the alien is a nonimmigrant and is determined to be inadmissible, a waiver of inadmissibility is advisable. CA/VO/L/A will work in concert with DRL/IRF, the relevant country desk, and any other relevant offices to render an advisory opinion regarding the applicability under INA 212(a)(2)(G). If the alien is ultimately found ineligible under that section of the law, you must deny the application and

enter the alien into the CLASS system under CLASS code "2G."

9 FAM 40.26 N2.1 Conditions for Request for Advisory Opinion

(CT:VISA-913; 11-20-2007)

You must request an advisory opinion in cases in which both of the following conditions are met:

- (1) The applicant served as a foreign government official (FGO) from a country cited by the Human Rights Report and/or the Annual Report on International Religious Freedom as having committed particularly severe violations of religious freedom, as defined in 9 FAM 40.26 N3.1 below; and
- (2) You reasonably believe the applicant, during his or her official tenure and at any time immediately preceding the date of application, has engaged in, was responsible for, or directly carried out particularly severe violations of religious freedom, as defined in 9 FAM 40.26 N3.1 below.

9 FAM 40.26 N2.2 Waiver Provisions

(TL:VISA-461; 09-11-2002)

As mentioned in 9 FAM 40.26 N2, INA Section 212(d)(3)(A) waiver provisions apply to nonimmigrants. There is no waiver of the inadmissibility for immigrants.

9 FAM 40.26 N3 DEFINITION OF TERMS

9 FAM 40.26 N3.1 "Particularly Severe Violations of Religious Freedom" Defined

(CT:VISA-1308; 09-18-2009)

22 U.S.C. 6402(11) defines "particularly severe violations of religious freedom" as: systematic, ongoing, egregious violations of religious freedom, including violations such as:

- (1) Torture or cruel, inhuman, or degrading treatment or punishment;
- (2) Prolonged detention without charges;
- (3) Causing the disappearance of persons by the abduction or clandestine detention of those persons; or

- (4) Other flagrant denial of the right of life, liberty, or the security of persons.

9 FAM 40.26 N3.2 "Violations of Religious Freedom" Defined

(CT:VISA-1308; 09-18-2009)

Violations of the internationally recognized right to freedom of religion and religious beliefs and practice, as described in 22 U.S.C. 6402(13) include the following violations such as:

- (1) Arbitrary prohibitions on, restrictions of, or punishment for:
 - (a) Assembling for peaceful religious activities such as worship, preaching, and prayer, including arbitrary registration requirements;
 - (b) Speaking freely about one's religious beliefs;
 - (c) Changing one's religious *beliefs and* affiliation;
 - (d) Possession and distribution of religious literature, including Bibles; or
 - (e) Raising one's children in the religious teachings and practices of one's choice; or
- (2) Any of the following acts if committed on account of an individual's religious belief or practice: detention; interrogation; imposition of an onerous financial penalty; forced labor; forced mass resettlement; imprisonment; forced religious conversion; beating; torture; mutilation; rape; enslavement; murder and execution.

9 FAM 40.26 N3.3 "Foreign Government Officials" Defined

(CT:VISA-1308; 09-18-2009)

For a definition of Foreign Government Officials (FGO), see 9 FAM 41.22. *Per 22 U.S.C. 6402(8) the term "government" or "foreign government"* includes any agency or instrumentality of the government. The determination of whether an applicant is an official of a foreign government is dependent on whether the services performed by the alien are themselves of an inherently governmental character. In determining *whether* such services rise to the level *of making the alien* an FGO, you should assess the applicant's level of responsibility within the government and any policy-making components of the position in question. *You should consult with the Visa Office for cases where the applicant's status as an FGO is not clear.*

9 FAM 40.26 N4 RESERVED

(CT:VISA-913; 11-20-2007)

9 FAM 40.26 N5 BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, OFFICE OF INTERNATIONAL RELIGIOUS FREEDOM (DRL/IRF)

(CT:VISA-1308; 09-18-2009)

DRL/IRF was created within the Department and is headed by the Ambassador-at-Large for International Religious Freedom. The President appoints the Ambassador-at-Large with the advice and consent of the Senate, *(22 U.S.C. 6411)*.

9 FAM 40.26 N6 RESPONSIBILITIES OF AMBASSADOR-AT-LARGE

(CT:VISA-1308; 09-18-2009)

- a. According to *22 U.S.C. 6411(c)*, the Ambassador-At-Large has the primary responsibilities:
- (1) Advancing the right to freedom of religion abroad;
 - (2) Denouncing violations of that right, and recommending responses by the U.S. Government when that right is violated;
 - (3) Acting as *a* principal advisor to the President and the Secretary on matters *affecting* religious freedom abroad and, with the advice from the Commission on International Religious Freedom, *must make recommendations regarding the policies of the U.S. Government toward governments that violate freedom of religion or that fail to ensure the individual's right to religious belief and practice and policies to advance the right to religious freedom abroad;*
 - (4) *Subject to the direction of the President and the Secretary of State, acting as the U.S. representative in matters relating to religious freedom abroad; and*
 - (5) *Fulfilling the requirements under 22 U.S.C. 6412, including preparing the annual International Religious Freedom Report and sections of the annual Human Rights Report relating to freedom of religion and freedom from discrimination based on religion and*

those portions of other information provided Congress under 22 U.S.C. 2151n and U.S.C. 2304 that relate to the right to freedom of religion.

- b. Pursuant to *22 U.S.C 6412 (b)*, on September 1 of each year, or the first day thereafter on which the appropriate House of Congress is in session, the Secretary, with the assistance of the Ambassador-at-Large, submits to Congress the annual report on International Religious Freedom, supplementing the most recent Human Rights Report. The report is written with the assistance of and input from all posts; and identifies on a country-by-country basis the developments in protection and deterioration of the right to religious freedom. You should consider the annual reports' descriptions of particularly severe violations of religious freedom committed or tolerated by a country's government and its officials, when you are making a determination of whether to request an advisory opinion regarding an applicant's possible inadmissibility under INA 212(a)(2)(G). (See 9 FAM 40.26 N2.1.)

9 FAM 40.26 N7 TRAINING REQUIREMENTS OF THE INTERNATIONAL RELIGIOUS FREEDOM ACT (IRFA) THE NEW LAW

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- a. *The* IRFA amended the Foreign Service Act of 1980 by adding *new training requirements for foreign service officers, which are found at 22 U.S.C. 4028*. This section requires the Secretary of State, with the assistance of the Ambassador-at-Large and other relevant officials to establish training in the field of internationally recognized human rights. Such training is to include:
 - (1) Instruction on international documents and United States policy in human rights, which is to be mandatory for all members of the Foreign Service having reporting responsibilities relating to human rights and for chiefs of mission; and
 - (2) Instruction on the internationally recognized right to freedom of religion, the nature, activities, and beliefs of different religions, and the various aspects and manifestations of violations of religious freedom.
 - (3) *Instruction on international documents and United States policy on trafficking in persons, including provisions of the Trafficking Victims Protection Act of 2000 (division A of Public Law 106-386; 22 U.S.C. 7101 et seq.) which may affect the United States bilateral relationships.*

- (4) *Instruction on refugee law and adjudications and on religious persecution to each individual seeking a commission as a United States consular officer. The Secretary must also ensure that any member of the Service who is assigned to a position that may be called upon to assess requests for consideration for refugee admissions, including any consular officer, has completed training on refugee law and refugee adjudications.*
- b. Section 105 of the IRFA requires that United States chiefs of mission seek out and contact religious nongovernmental organizations for high-level meetings "where appropriate and beneficial." It also provides that United States chiefs of mission and Foreign Service officers abroad are to seek to meet with imprisoned religious leaders where appropriate and beneficial.