

9 FAM 40.31 PROCEDURAL NOTES

*(CT:VISA-1483; 08-30-2010)
(Office of Origin: CA/VO/L/R)*

9 FAM 40.31 PN1 PROCESSING INFORMATION RELATING TO ALIENS' ORGANIZED CRIME AFFILIATIONS (FORMERLY VISAS SHARK PROGRAM)

(CT:VISA-1369; 10-29-2009)

In September 2008, the Visas Shark and Visas Eel programs were discontinued. You must submit a request for an Advisory Opinion (AO) to the Office of Legislation, Regulations, and Advisory Assistance, Advisory Opinions Division (CA/VO/L/A) for review of the application of any applicant who is identifiable with a P3A2 CLASS entry or who you have reason to believe may be inadmissible under INA 212(a)(3)(A)(ii) based upon membership in or extensive business relationships with an organized crime group. If you obtain evidence of organized crime membership relating to aliens who are not applying for or holding valid U.S. visas, you should enter P3A2 entries for the alien(s) in question and maintain indefinitely Post files related to every CLASS entry. (See 9 FAM 40.31 N4).

9 FAM 40.31 PN1.1 "Reason to Suspect" Versus "Reason to Believe" When Entering P3A2 Hits

(CT:VISA-1483; 08-30-2010)

The "reasonable suspicion" criterion for determining that sufficient evidence exists to enter a P3A2 CLASS hit based on organized crime ties is a lesser standard than the "reasonable ground to believe" standard necessary to find an alien inadmissible under INA 212(a)(3)(A)(ii). The "reasonable suspicion" is met if the derogatory information available would warrant further detailed inquiry into the subject's background should he or she apply for a visa.

9 FAM 40.31 PN1.2 Applying "Reason to Suspect" and "Reason to Believe" Standards

(CT:VISA-1483; 08-30-2010)

- a.* If post enters a P3A2 hit in CLASS for a particular alien, based on a "reasonable suspicion" that the subject is a member of *an* organized crime group, and the applicant should later apply for a visa or for entry into the United States, the case would be referred to CA/VO/L/A by the adjudicating consular officer. At that time, CA/VO/L/A will carefully and expeditiously examine all available derogatory information, including post's files documenting the basis for the P3A2 CLASS entry, to determine whether there is a "reasonable ground to believe" that the alien is ineligible to receive a visa under INA 212(a)(3)(A)(ii).
- b.* If the information fails to meet the "reasonable ground to believe" criterion, the case will be adjudicated and consideration will be given to removing the subject's name from the CLASS and "Interagency Border Inspection System" (IBIS) lookout systems.

9 FAM 40.31 PN1.3 Determining Membership

(CT:VISA-1369; 10-29-2010)

When compiling evidence to support a P3A2 CLASS entry, posts must lay out in detail the factors that gave rise to the suspicion that the alien is a member of an organized crime group. An alien may be suspected of organized crime group membership without evidence of actual participation in the group's activities. In some cases, membership may be clear because of engagement in activities, such as the taking of an oath, that is a prerequisite of membership. In most cases, however, membership requirements do not exist or are not open to public scrutiny and membership in the organization must be inferred from the totality of the information available. Relevant factors to determine membership include, but are not limited to:

- (1) Acknowledgement of membership by the individual, the organization, or another party member;
- (2) Actively working to further the organization's aims in a way to suggest close affiliation;
- (3) Receiving financial support or recognition from the organization;
- (4) Determination of membership by a competent court;
- (5) Statement from local or U.S. law enforcement authorities that the individual is a member;
- (6) Frequent association with other members;
- (7) Voluntarily displaying symbols of the organization; and
- (8) Participating in the organization's activities, even if lawful.

9 FAM 40.31 PN1.4 Identification of Subjects

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- a. All P3A2 CLASS entries should include:
 - (1) Full name (including aliases and alternate spellings);
 - (2) Date and place of birth; and
 - (3) Gender.
- b. If exact date and place of birth are not available, a reasonable estimate of his or her age and the known or probable country of birth should be provided. P3A2 entries may be submitted to CLASS without birth data, if the subject's name is not a common one, and if the post is able to provide other identifying information. Personal details such as passport data, physical characteristics, education, profession, residential and employment history, and the names of family members are often useful in establishing identity.
- c. *A subject's crime group affiliation and his or her position therein, should always be reported, as this information is particularly valuable for identification, adjudication, and threat assessment purposes. If post has information that is not appropriate for entry into CLASS but is maintained in post's files, you should indicate in the P3A2 entry notes that additional information is available at post.*

9 FAM 40.31 PN1.5 Classification and Handling

(CT:VISA-1369; 10-29-2010)

Post's files documenting information relating to P3A2 CLASS entries or to applicants who have been found inadmissible under INA 212(a)(3)(A)(ii) should, of course, be classified at an appropriate level and protected accordingly.

9 FAM 40.31 PN1.6 Dual Purpose Reporting

(CT:VISA-1483; 08-30-2010)

- a. The Department recognizes that reporting on organized crime group members, particularly that initiated by other sections or agencies, often has purposes other than, or in addition to, watchlisting the individual in question. Posts should coordinate with the originating section or agency to compile a P3A2 file relating to that section's or agency's reporting where appropriate.
- b. You should consult with CA/VO/L/A before sharing any information related to a visa record to avoid a violation of INA section 222(f). Information not derived from visa records would not normally be covered by privacy

provisions under INA section 222(f); however, it may be covered by the Privacy Act (if relating to an American Citizen or Legal Permanent Resident) or another regulation.

9 FAM 40.31 PN1.7 Removing P3A2 CLASS Entries

(CT:VISA-1369; 10-29-2009)

Recommendations to delete P3A2 CLASS entries should be referred by e-mail to post's CA/VO/L/A desk officer if there is appropriate justification for the deletion of the record. Circumstances creating the need for such a recommendation might include the subject's demise or the development of evidence that the derogatory information against the subject, previously believed credible, is without foundation. Because the INA 212(a)(3)(A)(ii) inadmissibility is technically prospective in nature, the fact that an alien has been issued a visa based on a particular application is not, in itself, justification for removal of a prior P3A2 or 3A2 CLASS entry.

9 FAM 40.31 PN1.8 Advisory Opinion Request requires Department Response

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Once an AO request has been submitted, you must wait for a response before a visa may be issued. If an applicant makes a separate visa application which an AO and/or SAO request is pending, *you* must suspend processing of the case until all AO and SAO requests have been resolved by the Department.