9 FAM 40.52
NOTES

(CT:VISA-1316; 09-23-2009)
(Office of Origin: CA/VO/L/R)

9 FAM 40.52 N1 APPLYING INA 212(A)(5)(B)

(CT:VISA-1316; 09-23-2009)

INA 212(a)(5)(B) renders *inadmissible* an alien who is coming to the United States for the principal purpose of performing services as a member of the medical profession if the alien is a graduate of a medical school not accredited, unless, the alien:

(1) Passed parts I and II of the National Board of Medical Examiners Examination (NBMEE) or an equivalent as determined by the Secretary of Health and Human Services; and

(2) Is competent in oral and written English. INA 212(a)(5)(B) is applicable only to "graduates of a medical school" as defined in INA 101(a)(41) and only to such graduates who are beneficiaries of employment-based second or third preference petitions. This section is not applicable to an alien who is an immediate relative, a family-sponsored preference immigrant, or a refugee. Moreover, it is not applicable to an alien entitled to derivative preference status as the spouse of an employment-based preference petition beneficiary.

9 FAM 40.52 N2 DEFINING "GRADUATES OF A MEDICAL SCHOOL"

(TL:VISA-414; 05-23-2002)

a. The term "graduates of a medical school" is defined in INA 101(a)(41). An alien who has graduated from a foreign medical school is commonly referred to as a "foreign medical graduate" or, usually, "FMG".

b. The phrase "national or international renown" has not been defined. Determinations as to whether an alien is of national or international renown are made on a case-by-case basis. In general, evidence required

to support a claim to international renown would be similar to that required to support a claim to qualification for labor certification under Schedule A, Group II Aliens of Exceptional Ability in Sciences or Arts. Evidence required to support a claim to national renown, while not required to be of the same high standard, would nonetheless have to show a degree of excellence comparable to that which would result in national renown in the United States.

9 FAM 40.52 N3 MEETING REQUIREMENTS OF INA 212(A)(5)(B)

(TL:VISA-46; 08-26-1991)

An alien subject to the provisions of INA 212(a)(5)(B) may meet the requirements of that section in one of several ways, as described in 9 FAM 40.52 N3.1 through 9 FAM 40.52 N3.4 below.

9 FAM 40.52 N3.1 Graduating From Accredited Medical School

(TL:VISA-46; 08-26-1991)

An alien may meet the requirements of INA 212(a)(5)(B) by establishing that the medical school from which he or she graduated has been accredited by a body or bodies approved for the purpose by the Secretary of Education. The only body so approved is the Liaison Committee for Medical Education (LCME). The LCME was founded in 1942 and has confined itself to evaluating and accrediting medical schools in the United States and Canada. In this connection, any case involving an alien who graduated from a medical school in Canada or the United States before the accreditation system began in 1942 will require individual verification of the status of the medical school as of the time the alien graduated.

9 FAM 40.52 N3.2 National Board of Medical Examiners (NBME) Examination

9 FAM 40.52 N3.2-1 NBME Examination Applicable to U.S. and Canadian Medical Schools

(TL:VISA-414; 05-23-2002)

The policy of the NBME *i*s that only students at, or graduates of, U.S. or

Canadian medical schools are eligible to take the NBME Part I and Part II Examination. [See 9 FAM 40.52 N3.2-2 below concerning the American University Medical School at Beirut.] The NBME exam (and the FMGES) have been replaced by the United States Medical Licensing Examination (USMLE).

9 FAM 40.52 N3.2-2 NBME Examination at American University in Beirut Prior to 1982

(TL:VISA-1; 08-30-1987)

Although the American University Medical School in Beirut, Lebanon is not a U.S. or Canadian medical school, through 1982 it had a special relationship with American education authorities under which its graduates were permitted to take the NBME Examination. Medical students took Part I of the Examination in the next-to-last year of study and Part II shortly after graduation. This arrangement was terminated in 1982 and graduates thereafter will not have taken the examination.

9 FAM 40.52 N3.3 Examinations Equivalent to NBME Examination

(TL:VISA-416; 05-23-2002)

In 1992, the Federation of State Medical Boards and the National Board of Medical Examiners announced that all licensure programs would be replaced by the United States Medical Licensing Examination (USMLE). This examination has been determined by the Secretary of Health and Human Services to be the equivalent of Parts I and II of the NBME for the purposes of INA 212(a)(5)(B).

9 FAM 40.52 N3.4 Special Provision for Certain Foreign Medical Graduates

(TL:VISA-1; 08-30-1987)

Special provisions have been enacted by the Congress relating to foreign medical graduates (FMG's) in the United States as of January 9, 1978. An FMG who, as of that date, was both fully and permanently licensed to practice medicine in a State of the United States (as defined in INA 101(a)(36)) and actually practicing medicine in a State is considered to have passed Parts I and II of the NBME Examination.

9 FAM 40.52 N4 COMPETENCE IN WRITTEN AND ORAL ENGLISH

9 FAM 40.52 N4.1 English Not Required For Alien of National or International Renown

(TL:VISA-46; 08-26-1991)

An alien of national or international renown in the field of medicine (see 9 FAM 40.52 N2 above) is not required to demonstrate competence in written or oral English.

9 FAM 40.52 N4.2 English Proficiency Examination

(TL:VISA-414; 05-23-2002)

An alien required to demonstrate competence in oral and written English must do so by passing the USMLE English proficiency examination.

9 FAM 40.52 N4.3 Evidence of English Language Competence in Some Cases

(TL:VISA-1; 08-30-1987)

Aliens were allowed to take the 1977 VQE (the first time it was given) without first demonstrating competence in oral and written English. This is also true of the 1982 and 1983 VQE. In 1978, 1979, 1980, and 1981, however, an alien had to demonstrate the requisite competence in order to be allowed to take the VQE. Thus, an alien who took the 1978, 1979, 1980, or 1981 VQE is presumed to have met the requirement for competence in oral and written English, while an alien who took the 1977, 1982, or 1983 VQE will have to present separate evidence that the alien meets the oral and written English competence requirement.

9 FAM 40.52 N4.4 English Language Competence for Foreign Medical Graduates Licensed in United States as of January 9, 1978

(TL:VISA-46; 08-26-1991)

An alien who benefits from the special provision described in 9 FAM 40.52 N3.4 above (relating to FMG's fully licensed and practicing in the United

States as of January 9, 1978) will have to establish by separate evidence the requisite competence in oral and written English.

9 FAM 40.52 N5 ADJUDICATING APPLICATIONS

9 FAM 40.52 N5.1 Determining Applicability of INA 212(a)(5)(B) at Time of Adjudication of Applications for Labor Certification and/or Second or Third Employment Based Preference Petitions

(CT:VISA-1316; 09-23-2009)

Since all aliens to whom INA 212(a)(5)(B) applies are also aliens to whom INA 212(a)(5)(A) applies as well, determinations under INA 212(a)(5)(B) are made in connection with the adjudication of the application for labor certification and/or, if applicable, the adjudication of the second or third preference petition. For this reason, *you* will not normally have occasion to make such determinations.

9 FAM 40.52 N5.2 Employment-based Preference Petitions for Eligibility Under INA 212(a)(5)(B)

(CT:VISA-1316; 09-23-2009)

Department of Homeland Security/U.S. Citizenship and Immigration Services(DHS/USCIS) will not approve an employment-based preference petition in behalf of an FMG unless it has established that the beneficiary is not *inadmissible* under INA 212(a)(5)(B). All such petitions are supposed to bear a notation signifying that this determination has been made. Approved employment-based preference petitions in behalf of FMG's which bear the appropriate notation should be given the same credence as any other approved petition and should be questioned only as provided for in section 9 FAM 42.43 Notes. An employment-based preference petition approved in behalf of an FMG that does not bear the appropriate notation should be returned to the approving office of *DHS/USCIS* with a request that the question be addressed and that the petition be appropriately annotated.