

## 9 FAM 40.68 PROCEDURAL NOTES

*(CT:VISA-1822; 03-15-2012)*  
*(Office of Origin: CA/VO/L/R)*

### 9 FAM 40.68 PN1 ANNOTATING THE VISA

*(CT:VISA-821; 07-14-2006)*

Nonimmigrant visas (NIV) issued to aliens exempted from INA 222(g) under extraordinary circumstances should be annotated:

**“INA Section 222(g) overcome where extraordinary circumstances are found by the Secretary of State to exist”.**

### 9 FAM 40.68 PN2 REQUESTING ADVISORY OPINIONS

*(CT:VISA-1822; 03-15-2012)*

If posts are unsure whether an applicant is subject to INA 222(g), or if posts have questions as to whether “extraordinary circumstances” exist for a favorable recommendation for an exemption from INA 222(g), posts should submit an advisory opinion request to the Office of Legislation, Regulations and Advisory *Opinions* Division (CA/VO/L/A). If posts believe that “extraordinary circumstances” do exist, they still must submit an advisory opinion with CA/VO/L/A for approval. The Department will not render an advisory opinion on an “extraordinary circumstances” request unless the applicant has been found subject to INA 222(g).

### 9 FAM 40.68 PN3 DETERMINING OVERSTAYS

#### 9 FAM 40.68 PN3.1 Reliance on Class Entries

*(CT:VISA-1016; 09-12-2008)*

- a. In some instances, the Department of Homeland Security (DHS) may enter a lookout when a visa is cancelled under INA 222(g) and DHS removes the alien or permits the alien to withdraw his or her application for admission. In such cases, DHS will use the code “275” for voluntary withdrawals or “ER7” (or “ER6”) to indicate expedited removal for aliens

not in possession of the required document (or for fraud). Also, if DHS or an immigration judge (IJ) determines that an alien previously admitted for duration of status has violated status, the alien's name may be entered into the DHS lookout database. These entries would automatically pass into consular lookout and support system (CLASS).

- b. In those instances when DHS does not enter the lookout, it is your responsibility to determine whether the alien is inadmissible under INA 222(g). (See 9 FAM 40.68 PN3.2.)

## **9 FAM 40.68 PN3.2 Department of Homeland Security (DHS) Departure Controls**

*(CT:VISA-1822; 03-15-2012)*

Eventually, when DHS departure controls are in place, DHS will document overstays at the time of departure. Until such time, you cannot be expected to make a complete search and determination as to whether an alien has remained beyond the period of authorized stay. Therefore, unless in the course of visa processing the possibility of a previous overstay becomes apparent through information otherwise routinely obtained (e.g., through inspection of passport, answer to question 30 on the Form DS-156, Nonimmigrant Visa Application or the answer to the section on Previous U.S. Travel Information on the Form DS-160, *Electronic* Nonimmigrant Visa Application (see 9 FAM 41.103 *N1-N2*)), lengthy interrogation of applicants to determine whether the alien is subject to INA 222(g) should not ordinarily be undertaken.

## **9 FAM 40.68 PN4 REFUSALS UNDER INA 222(G)**

*(CT:VISA-821; 07-14-2006)*

If you determine that an alien is ineligible for visa processing under INA 222(g):

- (1) The visa on which the overstay occurred should be physically cancelled (if it is still valid);
- (2) The alien should be advised, in writing, that he or she has been determined to be ineligible under INA 222(g) and must apply for a visa in the country of his or her nationality;
- (3) The applicant's name should be entered into CLASS under code "222" with the annotation "Visa Overstay" in the free field; and
- (4) The Machine Readable Visa (MRV) fee should be retained.