

9 FAM 40.81 NOTES

*(CT:VISA-1715; 09-29-2011)
(Office of Origin: CA/VO/L/R)*

9 FAM 40.81 N1 INELIGIBLE TO CITIZENSHIP

9 FAM 40.81 N1.1 Resident Alien Exempted From Military Service

(TL:VISA-239; 02-26-2001)

- a. A grant of exemption from military service does not in itself constitute a ground of deportation, and some resident aliens continue to reside in the United States after being relieved from service. If such aliens depart from the United States, INA 212(a)(8)(A) may bar their readmission as an immigrant. Any alien who requested and was granted exemption from military service based upon alienage (whether pursuant to treaty agreement or a provision of U.S. law) is generally disqualified from becoming a U.S. citizen by INA 315, and is, therefore, ineligible to receive an immigrant visa under INA 212(a)(8)(A). The only exception to ineligibility to citizenship under INA 315 arises when the alien claims exemption from training or service in the U.S. military pursuant to rights accorded in a treaty, if before the alien claimed such an exemption he or she has served in the armed forces of a foreign country of which the alien was a national. Such aliens would not be ineligible under INA 212(a)(8)(A). INA 212(a)(8)(A) does not apply to nonimmigrant visa applicants. Any alien listed in CLASS, credited to the "refusing Post" SSL (Selected Service System) may be regarded as having applied for and received relief from U.S. military service on the basis of alienage.
- b. Consular officers must submit an advisory opinion request to the Department (CA/VO/L/A) for cases involving aliens listed under this category who deny applying for and obtaining relief from U.S. military service on the basis of alienage. The burden of proof rests upon the alien to prove such claim.
- c. Consular officers should note that the amendments to INA 315 are in force at the time of the visa applications. Thus, an alien who had

previously been found to be ineligible under INA 212(a)(8)(A) may, subsequent to November 29, 1990, reapply for a visa and be found eligible to receive a visa.

9 FAM 40.81 N1.2 Alien's Conviction of Desertion

(TL:VISA-239; 02-26-2001)

INA 212(a)(8)(A) also extends to instances in which a person is disqualified from citizenship by INA 314. However, INA 314 is limited to cases where the person deserted or departed from the United States in time of war and was duly convicted before an appropriate tribunal for such desertion or departure.

9 FAM 40.81 N2 EFFECT OF *PRESIDENT CARTER'S PARDON*

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See 9 FAM 40.82 N5.3.