

## **9 FAM 41.1**

# **EXEMPTION BY LAW OR TREATY FROM PASSPORT AND VISA REQUIREMENTS**

*(CT:VISA-1322; 09-24-2009)*  
*(Office of Origin: CA/VO/L/R)*

## **9 FAM 41.1 RELATED STATUTORY PROVISIONS**

*(CT:VISA-1322; 09-24-2009)*

See INA 212(a)(7)(A) [8 U.S.C. 1182(a)(7)(A)], *INA 212(a)(7)(B)* [8 U.S.C. 1182(a)(7)(B)], INA 212(d)(7) [8 U.S.C. 1354(d)(7)], INA 284 [8 U.S.C. 1354], and INA 289 [8 U.S.C. 1359].

### **INA 212(a)(7)(A)**

a. Classes of Aliens Ineligible for Visas or Admission.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(7) Documentation requirements.-

(A) Immigrants.-

(i) In general.-Except as otherwise specifically provided in this Act, any immigrant at the time of application for admission-

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a), or

(II) whose visa has been issued without compliance with the provisions of section 203, is inadmissible.

(ii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (k).

**INA 212(a)(7)(B)**

- (B) Nonimmigrants.-
  - (i) In general.-Any nonimmigrant who-
    - (I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period, or
    - (II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission, is inadmissible.
  - (ii) General waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(4).
  - (iii) GUAM AND NORTHERN MARIANA ISLANDS VISA WAIVER.-For provision authorizing waiver of clause (i) in the case of visitors to Guam or the Commonwealth of the Northern Mariana Islands, see subsection (l).
  - (iv) VISA WAIVER PROGRAM.-For authority to waive the requirement of clause (i) under a program, see section 217.

**INA 212(d)(7)**

- (7) The provisions of subsection (a) (other than paragraph (7)) shall be applicable to any alien who shall leave Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States. Any alien described in this paragraph, who is denied admission to the United States, shall be immediately removed in the manner provided by section of this Act.

**INA 284**

- a. Nothing contained in this title shall be construed so as to limit, restrict, deny, or affect the coming into or departure from the United States of an alien member of the Armed Forces of the United States who is in the uniform of, or who bears documents identifying him as a member of, such Armed Forces, and who is coming to or departing from the United States under official orders or permit of such Armed Forces: Provided, That nothing contained in this section shall be construed to give to or confer

upon any such alien any other privileges, rights, benefits, exemptions, or immunities under this Act, which are not otherwise specifically granted by this Act.

- b. If a person lawfully admitted for permanent residence is the spouse or child of a member of the Armed Forces of the United States, is authorized to accompany the member and reside abroad with the member pursuant to the member's official orders, and is so accompanying and residing with the member (in marital union if a spouse), then the residence and physical presence of the person abroad shall not be treated as—
- (1) an abandonment or relinquishment of lawful permanent resident status for purposes of clause (i) of section 101(a)(13)(C); or
  - (2) an absence from the United States for purposes of clause (ii) of such section.

### **INA 289**

Nothing in this title shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race.

## **9 FAM 41.1 RELATED REGULATORY PROVISIONS**

*(CT:VISA-1189; 04-15-2009)*

See 22 CFR 41.1.

### **41.1 Exemption by law or treaty from passport and visa requirements.**

Nonimmigrants in the following categories are exempt from the passport and visa requirements of INA 212(a)(7)(B)(i)(I) , (i)(II) :

- (a) Alien members of the U.S. Armed Forces. An alien member of the U.S. Armed Forces in uniform or bearing proper military identification, who has not been lawfully admitted for permanent residence, coming to the United States under official orders or permit of such Armed Forces (Sec. 284, 86 Stat. 232; 8 U.S.C. 1354).
- (b) American Indians born in Canada. An American Indian born in Canada, having at least 50 per centum of blood of the American Indian race,

entering from contiguous territory by land or sea (sec. 289, 66 Stat. 234; 8 U.S.C. 1359).

- (c) Aliens entering from Guam, Puerto Rico, or the Virgin Islands. An alien departing from Guam, Puerto Rico, or the Virgin Islands of the United States, and seeking to enter the continental United States or any other place under the jurisdiction of the United States (Sec. 212, 66 Stat. 188; 8 U.S.C. 1182.)
- (d) Armed Services personnel of a NATO member. Personnel belonging to the armed services of a government which is a Party to the North Atlantic Treaty and which has ratified the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, signed at London on June 19, 1951, and entering the United States under Article III of that Agreement pursuant to an individual or collective movement order issued by an appropriate agency of the sending state or of NATO (TIAS 2846; 4 U.S.T. 1792.)
- (e) Armed Services personnel attached to a NATO headquarters in the United States. Personnel attached to a NATO Headquarters in the United States set up pursuant to the North Atlantic Treaty, belonging to the armed services of a government which is a Party to the Treaty and entering the United States in connection with their official duties under the provisions of the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty (TIAS 2978; 5 U.S.T. 875.)
- (f) Aliens entering pursuant to International Boundary and Water Commission Treaty. All personnel employed either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission, and entering the United States temporarily in connection with such employment (59 Stat. 1252; TS 994.)

[52 FR 42597, Nov. 5, 1987, as amended at 56 FR 30428, July 2, 1991; 61 FR 1835, Jan. 24, 1996; 71 FR 68430, Nov. 24, 2006.]