

# **9 FAM 41.3 WAIVER BY JOINT ACTION OF CONSULAR AND IMMIGRATION OFFICERS OF PASSPORT AND/OR VISA REQUIREMENTS**

*(CT:VISA-1277; 09-01-2009)  
(Office of Origin: CA/VO/L/R)*

## **9 FAM 41.3 RELATED STATUTORY PROVISIONS**

*(CT:VISA-1277; 09-01-2009)*

INA 212(d)(4) (8 U.S.C. 1182(d)(4)); and INA 212(a)(7)(B)(i) (8 U.S.C. 1182(a)(7)(B)(i)).

### **INA 212(d)(4)**

- (4) Either or both of the requirements of paragraph (7)(B)(i) of subsection (a) of this section may be waived by the Attorney General and the Secretary of State acting jointly
  - (A) On the basis of unforeseen emergency in individual cases, or
  - (B) On the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals, or
  - (C) In the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in section 233(c) of this title.

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

- (7) Documentation requirements.-
  - (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.

## 9 FAM 41.3 Related Regulatory Provisions

*(CT:VISA-1277; 09-01-2009)*

See 22 CFR 41.3.

### ***41.3 Waiver by joint action of consular and immigration officers of passport and/or visa requirements.***

Under the authority of INA 212(d)(4), the documentary requirements of INA 212(a)(7)(B)(i)(I), (i)(II) may be waived for any alien in whose case the consular officer serving the port or place of embarkation is satisfied after consultation with, and concurrence by, the appropriate immigration officer, that the case falls within any of the following categories:

- (a) **Residents of foreign contiguous territory; visa and passport waiver.** An alien residing in foreign contiguous territory who does not qualify for any waiver provided in 41.1 and is a member of a visiting group or excursion proceeding to the United States under circumstances which make it impractical to procure a passport and visa in a timely manner.
- (b) **Aliens for whom passport extension facilities are unavailable; passport waiver.** As alien whose passport is not valid for the period prescribed in INA 212(a)(7)(B)(i)(I) and who is embarking for the United States at a port or place remote from any establishment at which the passport could be revalidated.
- (c) **Aliens precluded from obtaining passport extensions by foreign government restrictions; passport waiver.** An alien whose passport is not valid for the period prescribed in INA 212(a)(7)(B)(i)(I) and whose government, as a matter of policy, does not revalidate passports more than 6 months prior to expiration or until the passport expires.
- (d) **Emergent circumstances; visa waiver.** An alien well and favorably known at the consular office, who was previously issued a nonimmigrant visa

which has expired, and who is proceeding directly to the United States under emergent circumstances which preclude the timely issuance of a visa.

(e) **Members of armed forces of foreign countries; visa and passport waiver.** An alien on active duty in the armed forces of a foreign country and a member of a group of such armed forces traveling to the United States, on behalf of the alien's government or the United Nations, under advance arrangements made with the appropriate military authorities of the United States. The waiver does not apply to a citizen or resident of Cuba, Mongolia, North Korea (Democratic People's Republic of Korea), Vietnam (Socialist Republic of Vietnam), or the People's Republic of China.

(f) **Landed immigrants in Canada; passport waiver.** An alien applying for a visa at a consular office in Canada:

(1) Who is a landed immigrant in Canada;

(2) Whose port and date of expected arrival in the United States are known; and

(3) Who is proceeding to the United States under emergent circumstances which preclude the timely procurement of a passport or Canadian certificate of identity.

(g) **Authorization to individual consular office; visa and/or passport waiver.** An alien within the district of a consular office which has been authorized by the Department, because of unusual circumstances prevailing in that district, to join with immigration officers abroad in waivers of documentary requirements in specific categories of cases, and whose case falls within one of those categories.

(52 FR 42597, Nov. 5, 1987, as amended at 56 FR 30428, July 2, 1991; 60 FR 30188, June 8, 1995; 61 FR 1835, Jan. 24, 1996; 63 FR 48577, Sept. 11, 1998)