

9 FAM 41.21 PROCEDURAL NOTES

*(CT:VISA-1757; 10-27-2011)
(Office of Origin: CA/VO/L/R)*

9 FAM 41.21 PN1 IMPORTANCE OF "A" VISAS

(TL:VISA-246; 03-27-2001)

A-1 and A-2 category visas are issued to aliens coming to the United States to perform diplomatic and official business of a governmental nature. Errors made in the issuance or refusal of an "A" visa could cause embarrassment for the U.S. Government and may have serious consequences. Consular officers should ensure that "A" visa applications are adjudicated accurately and promptly.

9 FAM 41.21 PN1.1 "A" Visas vs. Diplomatic Visas

(CT:VISA-1300; 09-16-2009)

- a. As described in 9 FAM 41.26 Notes, the "A" visa status should not be confused with the issuance of "diplomatic" type visas. Heads of state or heads of government (and their immediate family members) are always accorded A-1 visa status. Otherwise, visa classification is determined by the purpose of entry and the intended official duties, and not by the official's title, rank, or type of passport (diplomatic, official, or regular) which he or she is carrying.
- b. Foreign officials coming to the United States to represent their government, whether on permanent assignment or temporary duty, are accorded "A" status, as are their dependents. Foreign officials coming to perform non-governmental functions of commercial or competitive nature would fall into the "B", "E", or "L" categories, and would be issued "diplomatic" visas in those categories.
- c. "A" visa status only pertains to officials who are coming on behalf of their national government and their dependents. Local government officials who intend to come to the United States exclusively on behalf of their state, province, borough, or other local political entity would not qualify for "A" visa status. A dependent of a foreign official who is assigned to a third country who wishes to visit and/or vacation in the United States would not qualify for "A" visa status. Based on the applicant's reason for coming to the United States (vacation or visit), he or she would be issued

a B-2 visa.

9 FAM 41.21 PN2 CONFIRMATION OF STATUS

(CT:VISA-1042; 09-26-2008)

- a. "A" category visas are generally issued upon presentation of a diplomatic note from the appropriate host country office or foreign mission. (See 9 FAM 41.21 N2.) Under circumstances where expeditious processing is warranted in a clearly approvable case, a consular officer may issue an A-1 or A-2 visa without a diplomatic note.
- b. Under such circumstances, you should put a note in the nonimmigrant visa (NIV) system that the visa was issued without a diplomatic note, and the consular officer should request that the sending government provide written confirmation of the applicant's status as soon as possible.
- c. An application for an "A" visa should not be accepted for an alien who is not a resident of the consular district without the requisite diplomatic note, unless the alien is a current head of state or government whose eligibility for A-1 status is not in question.

9 FAM 41.21 PN3 QUESTIONABLE APPLICATION

(TL:VISA-182; 12-04-1998)

If a foreign mission, or an individual attached to such a mission, has presented a diplomatic note, which fraudulently portrays an applicant qualifying for "A" visa status, a consular officer may request that the U.S. mission in the applicant's country confirm his or her diplomatic status and the reason for travel. This should be done in situations where fraud concerns warrant a delay in processing and involvement of another U.S. mission.

9 FAM 41.21 PN4 INELIGIBILITIES

(CT:VISA-1637; 04-07-2011)

- a. An A-1 or A-2 visa applicant is not subject to any grounds of ineligibility, except INA 212(a)(3)(A) through INA 212(a)(3)(C). Thus, an applicant, who demonstrates that he or she is qualified for A-1 or A-2 visa status may not be refused as an intending immigrant or on grounds of health, criminal activities, or prior visa violations.
- b. Regardless of the previous paragraph, you must send a Visas Bear

Security Advisory Opinion to the Department (CA/VO/L/C) if one or more of the criteria in 9 FAM Appendix G, 503.4, What is a Visas Bear?, is met.

9 FAM 41.21 PN5 TEMPORARY DUTY (TDY) "A" VISAS

(CT:VISA-1607; 12-03-2010)

If an A-1 or A-2 visa applicant is coming to the United States for an assignment, which is to last less than 90 days, his or her machine readable visa (MRV) should be annotated to reflect such. (See 9 FAM 41.113 PN12.2.) If the length of the official's assignment is unclear, the consular officer should request clarification prior to issuing the visa.

9 FAM 41.21 PN5.1 Full Validity vs. Limited Validity

(CT:VISA-1267; 08-20-2009)

Foreign diplomats who qualify for A-1 or A-2 status should be issued the full validity allowed by reciprocity. In some instances, however, due to fraud concerns, prior abuse of "A" visas, and/or the purpose of travel, a limited visa may be justified. For example, a Government employee who will visit the United States on a one-time basis for a limited period of time does not necessarily require a multi-year visa in order to conduct his or her official duties.

9 FAM 41.21 PN5.2 A-2 Temporary Duty (TDY) Visas For Antiterrorism Assistance Training (ATA)

(CT:VISA-1267; 08-20-2009)

- a. The validity and duration of an A-2 visa issued to participants in the Diplomatic Security's Office of Antiterrorism Assistance (ATA) training courses must be limited to a single entry and limited to the timeframe of the specific course in which the alien is to participate, and reasonable transportation time domestically to and from the training site. The visa should be annotated as: "ATA training, commencing on (date) and ending on (date)".
- b. With written consent of the sending government and the concurrence of both the Consular Section Chief and the Regional Security Officer (RSO), the annotation on an A-2 visa issued to an ATA participant may also include identification of a specific period of time, of up to 30 days after the training period, that the alien intends to remain in the United States for personal reasons.

9 FAM 41.21 PN6 INTERVIEWS

(CT:VISA-1300; 09-16-2009)

Normally, posts should waive the personal interview requirement for bona fide A-1 and A-2 visa applicants who are citizens of, or accredited to the host country. However, posts may wish to interview an individual if a review of the application and supporting documentation raises questions concerning the applicant's eligibility for "A" visa status. Posts may also wish to interview non-resident "A" visa applicants, particularly those who could have applied for a visa in their home country and who do not have a clear reason for seeking their visa elsewhere. If the personal interview is waived for such applicants, posts should confirm that the applicant is physically present in the consular district before accepting the application.

9 FAM 41.21 PN7 IMMEDIATE FAMILY

(TL:VISA-182; 12-04-1998)

"Immediate family" members are defined as the principal applicant's spouse and unmarried legal sons and daughters of any age who are not members of some other household. Children who are subject to a full and final adoption by the principal applicant are also considered immediate family members. Such children do not need to meet the two-year requirement of INA 101(b)(1)(E) or the orphan definition of INA 101(b)(1)(F).

9 FAM 41.21 PN7.1 Other Close Relatives

(CT:VISA-1267; 08-20-2009)

- a. Close relatives related by blood, marriage, or adoption might also be issued "A" visas, on a derivative basis. (See 9 FAM 41.21 N5.) Such relatives must be members of the principal applicant's household. Consular officers need not seek Departmental authorization when it is determined that a close relative is considered to be part of the immediate family. Likewise, the consular officer may deny such derivative status without referring the case to the Department.
- b. The fact that an alien has been, even in the recent past, a member of some other household does not preclude a finding that, at the time of application for a visa, the applicant is a member of the household of the principal alien. If the consular officer is satisfied that the applicant is currently a member of the principal alien's household, a visa may be issued without submitting a request for an advisory opinion (AO) to the Department, due, for example, to age, health, or a change in circumstances.

9 FAM 41.21 PN7.2 Domestic Partners of "A" Visa Holders

(TL:VISA-182; 12-04-1998)

Domestic partners of "A" visa holders, who are either not married to the principal alien or whose marriage is not valid for immigration purposes, may be issued B-1/B-2 visas if otherwise qualified. Such individuals should be recognized as the principal alien's dependent by the sending government, but need not carry a diplomatic passport. They are, however, subject to INA 212(a) and INA 214(b).

9 FAM 41.21 PN7.3 Notification to Department for Immediate Family

(TL:VISA-182; 12-04-1998)

In cases involving derivative status for immediate family members, consular officers should only notify the Department of issuances or refusals when it is believed there are significant foreign policy issues or public interest.

9 FAM 41.21 PN8 "A" STATUS FOR LEGAL PERMANENT RESIDENTS (LPRs) AND DEPENDENTS

(TL:VISA-182; 12-04-1998)

If a Legal Permanent Resident (LPR) were employed by a foreign mission in the United States, he or she would be eligible for "A" visa status if he or she would be willing to surrender his or her permanent residence card. However, the immediate family members of these LPRs may be issued "A" visas.

9 FAM 41.21 PN9 RENEWAL OF "A", "G", AND NATO VISAS

(CT:VISA-1757; 10-27-2011)

- a. Aliens and their dependents who are in the United States in the "A", "G", or NATO visa category, except "A-3" and "G-5" aliens (see 9 FAM 41.21 PN10.1) may have their visa(s) renewed by the Diplomatic Liaison Division (CA/VO/P/D) in the Department. For information on visa renewal requirements, that office may be reached by telephone at (202) 663-1743, Monday through Friday, excluding holidays, between the hours of 2

p.m. and 4 p.m. (Eastern Time).

- b. Passports containing visas to be reissued may be delivered to the Diplomatic Reception Desk between 11 a.m. and noon daily, Monday through Friday, excluding holidays. The envelope should be clearly marked to indicate "Visa Reissuance."
- c. *G visas (except G-5) for applicants who are part of the UN community are processed through the U.S. Mission to the UN in New York, Monday through Friday, excluding U.S. holidays, between 9 a.m. and 5:30 p.m. (Eastern Time).*

9 FAM 41.21 PN10 CHANGE OF STATUS TO "A" OR "G" CLASSIFICATION

(CT:VISA-1637; 04-07-2011)

An alien in the United States who accepts employment with a diplomatic mission or an international organization must first obtain a change of status prior to commencing his or her employment with that particular mission. Applicants requesting a change of status to either the "A" or "G" category should first submit Form I-566, Interagency Record of Request -- A, G or NATO Dependent Employment Authorization or Change/Adjustment to/from A, G or NATO Status, to the Office of Protocol. Upon receipt of the certified Form I-566 from the Office of Protocol, the diplomatic mission or international organization should then contact the Diplomatic Liaison Division at (202) 663-1743, Monday through Friday (excluding holidays), between the hours of 2 p.m. to 4 p.m. (Eastern Time), for information on specific documentation to be submitted.

9 FAM 41.21 PN10.1 "A-3" or "G-5" Revalidations in the United States

(CT:VISA-1042; 09-26-2008)

Effective September 16, 2002, the Visa Office's Diplomatic Liaison Division (CA/VO/P/D) and the United States Mission to the United Nations (USUN) will no longer adjudicate "A-3" or "G-5" (domestic employee of "A" and "G" diplomatic and international organization aliens) visa applications in the United States. Applicants for a(n) "A-3" or "G-5" visas are urged to apply at a U.S. consular office abroad.

NOTE: "A-3" and "G-5" visa holders whose visas have expired, but, who remain in status, need not apply for new visas.

9 FAM 41.21 PN10.2 Issuance of "A" or "G" Visa

Abroad

(CT:VISA-1757; 10-27-2011)

- a. Department of Homeland Security (DHS) may require aliens who entered the United States in "B" status to apply for the appropriate "A" or "G" visa at a U.S. embassy or consulate abroad. If this is the case, the applicant need not apply for the change of status as described in 9 FAM 41.11 N4 and 9 FAM 41.11 N5. The foreign mission where the applicant is to be employed should contact the nonimmigrant section of the U.S consular office where the applicant will seek the visa to make the necessary arrangements for issuance of the "A" or "G" visa.
- b. Persons who have overstayed their previous nonimmigrant status in the United States are required to apply at a U.S. embassy or consulate abroad. Such applicants except those applying for "A-3" and "G-5" visas, are not subject to INA 222(g) and may apply at posts other than that in their home country. Additionally, DHS will not change the status of an alien who enters the United States under the Visa Waiver Program (VWP).
- c. *Questions regarding general policy or procedural matters should be directed to the Post Operations Division (CA/VO/F/P). Questions regarding an individual's ineligibility for a particular visa category or potential ineligibility under the law should be submitted to CA/VO/L/A for an advisory opinion (AO). Questions about SAO requests should be directed to the Coordination Division (CA/VO/L/C).*

9 FAM 41.21 PN11 FEES

(CT:VISA-1267; 08-20-2009)

There are no machine readable visa (MRV) (processing) fees or reciprocity fees for "A", "C-2", "C-3", "G", or NATO applicants. These exemptions also apply to their domestics in the "A-3", "G-5", or NATO-7 visa categories. Moreover, bearers of diplomatic passports or their equivalent, as described in 9 FAM 41.26 (a) are exempt from all visa processing and reciprocity fees, irrespective of whether the travel is official or non-official. This fee exemption is not accorded to recipients of official visas under 9 FAM 41.27 (unless the recipient qualifies for a fee exemption on some other basis, such as receiving an "A", "G", or NATO visa).

9 FAM 41.21 PN12 VISA WAIVER PROGRAM (VWP) VS. "A" VISAS

(CT:VISA-1757; 10-27-2011)

In accordance with 9 FAM 41.22, an alien, who is entitled to classification

under INA 101(a)(15)(A), *must* be issued an "A" visa, even if eligible for another nonimmigrant classification. This applies equally to entry under the VWP. Foreign officials who intend to travel to the United States on official business must, therefore, obtain the appropriate "A" or "G" visa **prior** to their entry, even if the official travel will occur within the ninety-day time limit. Furthermore, persons who enter the United States under the VWP may not adjust status to another visa category.

9 FAM 41.21 PN13 SECURITY ADVISORY OPINIONS (SAO)

(CT:VISA-1267; 08-20-2009)

Diplomats of several countries are subject to mandatory security advisory opinions (SAOs). Posts should carefully consult 9 FAM Appendix G 500, Washington Special Clearances, and the Reciprocity Schedule for specific country guidance, information, and special clearance and issuance procedures.

9 FAM 41.21 PN14 NON-SECURITY ADVISORY OPINIONS

(CT:VISA-1267; 08-20-2009)

Occasionally, posts may receive instructions to request advisory opinions (AO) for diplomats of certain countries for a variety of reasons unrelated to security concerns (e.g., unwillingness or inability to meet debts incurred by diplomatic missions in the United States). The instructions identify the office(s) in the Department to whom an advisory should be sent. Posts receiving "A" visa applications from diplomats who purport to represent former governments of countries which have experienced civil unrest or war should contact the Department (CA/VO/L/A and the relevant country desk) for guidance on whether "A" status is still appropriate.