9 FAM 42.12
RULES OF CHARGEABILITY

(CT:VISA-1720; 09-29-2011)
(Office of Origin: CA/VO/L/R)

9 FAM 42.12 RELATED STATUTORY PROVISIONS

(CT:VISA-1720; 09-29-2011)

See INA 201(b) (8 U.S.C. 1151(b)); INA 101(a)(27)(A) and (B) (8 U.S.C. 1101(a)(27)(A) and (B)); Sections 112, 124, 132, and 134 of Public Law 101-649; INA 202(b) and (c) (8 U.S.C. 1152(b) and (c)); Section 714 of the International Security and Development Cooperation Act of 1981; and Section 103 of the Immigration Act of 1990.

INA 201(b)

b. Aliens Not Subject to Direct Numerical Limitations. - Aliens described in this subsection, who are not subject to the worldwide levels or numerical limitations of subsection (a), are as follows:

(1)(A) Special immigrants described in subparagraph (A) or (B) of section 101(a)(27).

(B) Aliens who are admitted under section 207 or whose status is adjusted under section 209.

(C) Aliens whose status is adjusted to permanent residence under section 210, or 245A.

(D) Aliens whose removal is canceled under section 240A(a).

(E) Aliens provided permanent resident status under section 249.

(2)(A)(i) Immediate relatives. - For purposes of this subsection, the term “immediate relatives” means the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age. In the case of an alien who was the spouse of a citizen of the United States and was not legally separated from the citizen at the time of the citizen's death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but

only if the spouse files a petition under section 204(a)(1)(A)(ii) within 2 years after such date and only until the date the spouse remarries. For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) of this Act remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.

(ii) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative.

(B) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.

INA 101(a)(27)(A) and (B)

(27) The term "special immigrant" means—

(A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(B) an immigrant who was a citizen of the United States and may, under section 324(a) or 327 of title III, apply for reacquisition of citizenship;

INA 202(b) and (c)

b. Rules for Chargeability. - Each independent country, self-governing dominion, mandated territory, and territory under the international trusteeship system of the United Nations, other than the United States and its outlying possessions, shall be treated as a separate foreign state for the purposes of a numerical level established under subsection (a)(2) when approved by the Secretary of State. All other inhabited lands shall be attributed to a foreign state specified by the Secretary of State. For the purposes of this Act the foreign state to which an immigrant is chargeable shall be determined by birth within such foreign state except that-

(1) an alien child, when accompanied by or following to join his alien parent or parents, may be charged to the foreign state of either parent if such parent has received or would be qualified for an immigrant visa, if necessary to prevent the separation of the child from the parent or parents, and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached a numerical level established under subsection (a)(2) for that fiscal year;

(2) if an alien is chargeable to a different foreign state from that of his spouse, the foreign state to which such alien is chargeable may, if necessary to prevent the separation of husband and wife, be determined by the foreign state of the spouse he is accompanying or following to join, if such spouse has received or would be qualified for an immigrant visa and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached a numerical level established under subsection (a)(2) for that fiscal year;

(3) an alien born in the United States shall be considered as having been born in the country of which he is a citizen or subject, or, if he is not a citizen or subject of any country, in the last foreign country in which he had his residence as determined by the consular officer; and

(4) an alien born within any foreign state in which neither of his parents was born and in which neither of his parents had a residence at the time of such alien's birth may be charged to the foreign state of either parent.

c. Chargeability for Dependent Areas. - Any immigrant born in a colony or other component or dependent area of a foreign state overseas from the foreign state, other than an alien described in section 201(b), shall be chargeable for the purpose of the limitation set forth in subsection (a), to the foreign state.

9 FAM 42.12 RELATED REGULATORY PROVISIONS

(CT:VISA-1532; 09-23-2010)

22 CFR 42.12 Rules of Chargeability.

(a) Applicability. An immigrant shall be charged to the numerical limitation for the foreign state or dependent area of birth, unless the case falls within one of the exceptions to the general rule of chargeability provided by INA 202(b) and paragraphs (b) through (e) of this section to prevent the separation of families or the alien is classifiable under:

(1) INA 201(b);

(2) INA 101(a)(27)(A) or (B);

(3) Section 112 of Public Law 101-649;

(4) Section 124 of Public Law 101-649;

(5) Section 132 of Public Law 101-649;

(6) Section 134 of Public Law 101-649;

(7) Section 584(b)(1) as contained in section 101(e) of Public Law 100-202.

(b) Exception for child. If necessary to prevent the separation of a child from the alien parent or parents, an immigrant child, including a child born in a dependent area, may be charged to the same foreign state to which a parent is chargeable if the child is accompanying or following to join the parent, in accordance with INA 202(b)(1).

(c) Exception for spouse. If necessary to prevent the separation of husband and wife, an immigrant spouse, including a spouse born in a dependent area, may be charged to a foreign state to which a spouse is chargeable if accompanying or following to join the spouse, in accordance with INA 202(b)(2).

(d) Exception for alien born in the United States. An immigrant who was born in the United States shall be charged to the foreign state of which the immigrant is a citizen or subject. If not a citizen or subject of any country, the alien shall be charged to the foreign state of last residence as determined by the consular officer, in accordance with INA 202(b)(3).

(e) Exception for alien born in foreign state in which neither parent was born or had residence at time of alien's birth. An alien who was born in a foreign state, as defined in section 40.1, in which neither parent was born, and in which neither parent had a residence at the time of the applicant's birth, may be charged to the foreign state of either parent as provided in INA 202(b)(4). The parents of such an alien are not considered as having acquired a residence within the meaning of INA 202(b)(4), if, at the time of the alien's birth within the foreign state, the parents were visiting temporarily or were stationed there in connection with the business or profession and under orders or instructions of an employer, principal, or superior authority foreign to such foreign state.