

# **SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION**

## **Electronic Application for Immigrant Visa and Alien Registration OMB Number 1405-XXXX DS-260**

### **A. JUSTIFICATION**

1. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, statutorily mandates the application and eligibility requirements for aliens seeking to obtain an immigrant visa and alien registration. INA Section 221(a) [8 U.S.C. 1201(a)] (Attachment One) provides that a consular officer may issue an immigrant visa to an individual who has made proper application therefore.

INA Section 222(a) [8 U.S.C. 1202(a)] (Attachment Two) specifically requires that an applicant provide the following information in an application for an immigrant visa: full and true name; any other names he/she has used or by which he/she has been known; age; sex; date of birth; place of birth; and such additional information necessary to the identification of the applicant and the enforcement of the immigration and nationality laws as may be by regulations prescribed.

INA Section 222(b) [8 U.S.C. 1202(b)] (Attachment Three) further identifies other documentary evidence needed to obtain an immigrant visa. Every individual applying for an immigrant visa shall furnish to the consular officer, with his/her application, a copy of a certification from appropriate police authorities as to what their records contain concerning the applicant, prison records, military records and record of birth, as well as any other documentation that the consular officer may require.

INA Section 221(b) [8 U.S.C. 1201(b)] (Attachment Four) requires that a photograph accompany the application.

INA Section 221(d) [8 U.S.C. 1201(d)] (Attachment Five) provides that every immigrant shall be required to submit to a physical and mental examination.

INA Section 222(e) [8 U.S.C. 1202] (Attachment Six) requires that an applicant sign the application in the presence of the consular officer under oath.

Grounds for the ineligibility of certain individuals to receive a visa or to be admitted to the U.S. are detailed in INA Section 212(a) [8 U.S.C. 1182(a)] (Attachment Seven), INA Section 208(d)(6) [8 U.S.C. 1158(d)(6)] (Attachment Eight), and other statutes. Among the grounds of ineligibility are those related to the health of the applicant, the applicant's past and present criminal activities, security concerns, potential for the applicant to become a public charge, and previous violations of the INA by the applicant. The various grounds of ineligibility are summarily stated on the visa application form and applicants are asked to indicate whether or not any ground may apply to them.

Department of State regulations pertaining to immigrant visas are published in 22 C.F.R Part 42. The regulations pertaining to the filing of a paper-based application for an immigrant

visa (Application for Immigrant Visa and Alien Registration, DS-230, OMB Control No. 1405-0015) are specifically provided for in 22 C.F.R. 42.63 (Attachment Nine). 22 C.F.R. 42.63 will be amended to provide the filing of the electronic application following the Office of Management and Budget's approval of the DS-260.

2. Department of State consular officers will use Form DS-260 (Electronic Application for Immigrant Visa and Alien Registration), in conjunction with a personal interview, to elicit information necessary to ascertain the applicability of the legal requirements to issue an immigrant visa. The information required on the form is limited to that which is necessary for the consular officer to determine efficiently the eligibility and classification of an individual seeking an immigrant visa to the United States. A consular officer is unable to approve such a visa without collecting this information.
3. The Department has developed an application process that will allow applicants to electronically submit their applications to the Department. An applicant will be directed to an internet site, <https://ceac.state.gov>, to begin the application process. The applicant will provide answers to a series of standardized questions. Depending on the applicant's answers to these questions, the applicant will be asked specific questions concerning their application. For example, all applicants will be asked about their marital status. If the applicant indicates that he/she is married, the applicant will be directed to answer questions related to his or her spouse. If the applicant indicates that he/she is single, he/she will not be asked any questions concerning a spouse. Once the application is completed and the applicant has verified the answers provided, the applicant will electronically sign and submit the application to the Department in electronic form. The applicant may print a copy of the application for record keeping purposes, but no paper copy of the application will be submitted to the Department. The applicant will be required to print a copy of his/her confirmation page which will contain a 2-D bar code record locator and a copy of the required sworn statement. The applicant will present this confirmation page at the time of his/her visa interview. The record locator will be scanned and the application will be electronically retrieved from the Department's secure database. The electronic form will ensure that consular officers have all the necessary information to process the application and will significantly reduce the need for additional paperwork during the applicant's interview. The electronic submission of the application to the Department will allow for the information to be reviewed before the time of an interview. The consular officer will obtain the applicants' sworn affirmation and electronic signature at the time of the interview.
4. The DS-260 will be required of all immigrant visa applicants who elect to electronically submit an application to the Department. Information is not duplicative of information maintained elsewhere or otherwise available.
5. This information collection will not involve small businesses or other small entities.
6. The information to be collected on the DS-260 is essential for determining whether an applicant is eligible for an immigrant visa. An applicant will fill out the DS-260 one time; it is not possible to collect the information less frequently.
7. Not applicable; no such circumstances exist.
8. The Department of State (Bureau of Consular Affairs, Visa Services) published a 60-day notice in the Federal Register on February 10, 2009. No comments were received from the

public. Visa Services meets regularly with immigration experts from the Department of Homeland Security to coordinate policy. Visa Services also meets with student groups, business groups, the American Immigration Lawyers Association and other interested groups to discuss their opinions and suggestions regarding visas procedures and operations.

9. No payment or gift is provided to respondents.
10. In accordance with INA Section 222(f) [8 U.S.C. 1202(f)] (Attachment Ten), information obtained from the DS-260 will be considered confidential and will only be used for the formulation, amendment, administration or enforcement of the immigration, nationality, or other laws of the United States, or as otherwise provided in Section 222(f).
11. Consular officers may not issue a visa to an individual who is ineligible under INA section 212(a). In order to enforce this provision of the law, the application form specifically asks for information concerning the individual's health, criminal offenses, narcotics addiction/use, political affiliation with subversive organizations, and participation in genocide, as well as other potentially sensitive information. Questions about family status, mental health, occupational information, and financial support are also required. As noted above in Item 10, such information is considered confidential under Section INA 222(f).
12. The form will be completed by approximately 700,000 respondents per year. Each applicant, whether issued or refused a visa, will complete the application. Although the information collected does not require any special research on the applicant's part, the detailed background information requires that an applicant spend approximately two hours filling out the form. Therefore, the annual hour burden to respondents is estimated to be 1,400,000 hours (700,000 x 2 hours).
13. The Department of State charges a fee of \$400 per immigrant visa application which includes an immigrant visa security surcharge. The applicant's petitioner must also pay an affidavit of support fee of \$70 per application. Additionally, the applicant must submit a digital photo, which may result in a cost. Based on a survey of various overseas embassies, the Department estimates that the average cost to an alien of obtaining a digital photograph will be five dollars. We therefore estimate that the total cost burden for the collection is \$332,500,000 (\$475 x 700,000 applicants).
14. The immigrant visa function is not a centrally funded line item; rather, general consular operations are aggregated without distinction into the overall operational budgets of the Department of State's regional bureaus (African Affairs, East Asian and Pacific Affairs, European Affairs, Western Hemisphere Affairs, Near Eastern Affairs, and South Asian Affairs). Based on a cost of service study, the Department of State estimates that it costs the federal government, on average, \$355 to process an immigrant visa application. The estimated annual cost to the Federal Government is therefore \$248,500,000 per year to process immigrant visa applications (\$355 x 700,000 applications).
15. The program change indicated is a result of this submission as a new collection.
16. A quantitative summary of the Department of State's visa operations is published in the annual Report of the Visa Office.
17. The Department will display the expiration date for OMB approval on the information collection.

18. The Department is not requesting any exceptions to the certification statement requirements identified on OMB Form 83-1.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not employ statistical methods.

**Attachment One—INA Section 221(a) [8 U.S.C. 1201(a)]**

(a)

- (1) Under the conditions hereinafter prescribed and subject to the limitations prescribed in this Act or regulations issued thereunder, a consular officer may issue
  - (A) to an immigrant who has made proper application therefor, an immigrant visa which shall consist of the application provided for in section 222, visaed by such consular officer, and shall specify the foreign state, if any, to which the immigrant is charged, the immigrant's particular status under such foreign state, the preference, immediate relative, or special immigrant classification to which the alien is charged, the date on which the validity of the visa shall expire, and such additional information as may be required; and
  - (B) to a nonimmigrant who has made proper application therefor, a nonimmigrant visa, which shall specify the classification under section 101(a)(15) of the nonimmigrant, the period during which the nonimmigrant visa shall be valid, and such additional information as may be required.
- (2) The Secretary of State shall provide to the Service an electronic version of the visa file of each alien who has been issued a visa to ensure that the data in that visa file is available to immigration inspectors at the United States ports of entry before the arrival of the alien at such a port of entry.

**Attachment Two—INA Section 222(a) [8 U.S.C. 1202(a)]**

- (a) Every alien applying for an immigrant visa and for alien registration shall make application therefor in such form and manner and at such place as shall be by regulations prescribed. In the application the alien shall state his full and true name, and any other name which he has used or by which he has been known; age and sex; the date and place of his birth; and such additional information necessary to the identification of the applicant and the enforcement of the immigration and nationality laws as may be by regulations prescribed.

**Attachment Three—INA Section 222(b) [8 U.S.C. 1202(b)]**

- (b) Every alien applying for an immigrant visa shall present 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 Secretary of State. The immigrant shall furnish to the consular officer with his application a copy of a certification by the appropriate police authorities stating what their records show concerning the immigrant; a certified copy of any existing prison record, military record, and record of his birth; and a certified copy of all other records or documents concerning him or his case which may be required by the consular officer. The copy of each document so furnished shall be permanently attached to the application and become a part thereof. In the event that the immigrant establishes to the satisfaction of the consular officer that any document or record required by this subsection is unobtainable, the consular officer may permit the immigrant to submit in lieu of such document or record other satisfactory evidence of the fact to which such document or record would, if obtainable, pertain. All immigrant visa applications shall be reviewed and adjudicated by a consular officer.

**Attachment Four—INA Section 221(b) [8 U.S.C. 1201(b)]**

- (b) Each alien who applies for a visa shall be registered in connection with his application, and shall furnish copies of his photograph signed by him for such use as may be by regulations required. The requirements of this subsection may be waived in the discretion of the Secretary of State in the case of any alien who is within that class of nonimmigrants enumerated in sections 101(a)(15)(A), and 101(a)(15)(G), or in the case of any alien who is granted a diplomatic visa on a diplomatic passport or on the equivalent thereof.



**Attachment Five—INA Section 221(d) [8 U.S.C. 1201(d)]**

- (d) Prior to the issuance of an immigrant visa to any alien, the consular officer shall require such alien to submit to a physical and mental examination in accordance with such regulations as may be prescribed. Prior to the issuance of a nonimmigrant visa to any alien, the consular officer may require such alien to submit to a physical or mental examination, or both, if in his opinion such examination is necessary to ascertain whether such alien is eligible to receive a visa.

**Attachment Six—INA Section 222(e) [8 U.S.C. 1202(e)]**

- (e) Except as may be otherwise prescribed by regulations, each application for an immigrant visa shall be signed by the applicant in the presence of the consular officer, and verified by the oath of the applicant administered by the consular officer. The application for an immigrant visa, when visaed by the consular officer, shall become the immigrant visa. The application for a nonimmigrant visa or other documentation as a nonimmigrant shall be disposed of as may be by regulations prescribed. The issuance of a nonimmigrant visa shall, except as may be otherwise by regulations prescribed, be evidenced by a stamp, or other placed in the alien's passport.

**Attachment Seven—INA Section 212(a) [8 U.S.C. 1182(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:
- (1) Health-related grounds.-
    - (A) In general.-Any alien-
      - (i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome,
      - (ii) except as provided in subparagraph (C) who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices,
      - (iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)-
        - (I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or
        - (II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or
      - (iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict, is inadmissible.
    - (B) Waiver authorized.-For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).
    - (C) EXCEPTION FROM IMMUNIZATION REQUIREMENT FOR ADOPTED CHILDREN 10 YEARS OF AGE OR YOUNGER.--Clause (ii) of subparagraph (A) shall not apply to a child who—
      - (i) is 10 years of age or younger,
      - (ii) is described in section 101(b)(1)(F), and
      - (iii) is seeking an immigrant visa as an immediate relative under section 201(b), if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the provisions of subparagraph (A)(ii) and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in such subparagraph.

- (2) Criminal and related grounds.-
- (A) Conviction of certain crimes.-
- (i) In general.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
- (I) a crime involving moral turpitude (other than a purely political offense or an attempt or conspiracy to commit such a crime), or
- (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.
- (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
- (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or
- (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).
- (B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement 2/ were 5 years or more is inadmissible.
- (C) CONTROLLED SUBSTANCE TRAFFICKERS-Any alien who the consular officer or the Attorney General knows or has reason to believe—
- (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or
- (ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,
- is inadmissible.
- (D) Prostitution and commercialized vice.-Any alien who-

- (i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,
  - (ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10- year period) received, in whole or in part, the proceeds of prostitution, or
  - (iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,
- is inadmissible.
- (E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution.-Any alien-
- (i) who has committed in the United States at any time a serious criminal offense (as defined in section 101(h)),
  - (ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,
  - (iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and
  - (iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense, is inadmissible.
- (F) Waiver authorized.-For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).
- (G) FOREIGN GOVERNMENT OFFICIALS WHO HAVE ENGAGED IN PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM-- Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time during the preceding 24-month period, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998, and the spouse and children, if any, are inadmissible.
- (3) Security and related grounds.-
- (A) In general.-Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in-
- (i) any activity (I) to violate any law of the United States relating to espionage or sabotage or (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,
  - (ii) any other unlawful activity, or
  - (iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means, is inadmissible.
- (B) Terrorist activities-
- (i) In general.-Any alien who-
    - (I) has engaged in a terrorist activity,

- (II) a consular officer or the Attorney General knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iii)),
  - (III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity,
  - (IV) is a representative (as defined in clause (iv)) of a foreign terrorist organization, as designated by the Secretary under section 219,
  - (V) is a member of a foreign terrorist organization, as designated by the Secretary under section 219, which the alien knows or should have known is a terrorist organization,
- is inadmissible. An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this Act, to be engaged in a terrorist activity.
- (ii) Terrorist activity defined.-As used in this Act, the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:
- (I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).
  - (II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.
  - (III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.
  - (IV) An assassination.
  - (V) The use of any-
    - (a) biological agent, chemical agent, or nuclear weapon or device, or
    - (b) explosive or firearm (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.
  - (VI) A threat, attempt, or conspiracy to do any of the foregoing.
- (iii) Engage in terrorist activity defined.-As used in this Act, the term "engage in terrorist activity" means to commit, in an individual capacity or as a member of an organization, an act of terrorist activity or an act which the actor knows, or reasonably should know, affords material support to any individual, organization, or government in conducting a terrorist activity at any time, including any of the following acts:
- (I) The preparation or planning of a terrorist activity.
  - (II) The gathering of information on potential targets for terrorist activity.

- (III) The providing of any type of material support, including a safe house, transportation, communications, funds, false documentation or identification, weapons, explosives, or training, to any individual the actor knows or has reason to believe has committed or plans to commit a terrorist activity.
- (IV) The soliciting of funds or other things of value for terrorist activity or for any terrorist organization.
- (V) The solicitation of any individual for membership in a terrorist organization, terrorist government, or to engage in a terrorist activity.
- (iv) Representative defined.-As used in this paragraph, the term 'representative' includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.
- (C) Foreign policy.-
  - (i) In general.-An alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is inadmissible.
  - (ii) Exception for officials.-An alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office during the period immediately preceding the election for that office, shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) solely because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States.
  - (iii) Exception for other aliens.-An alien, not described in clause (ii), shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States, unless the Secretary of State personally determines that the alien's admission would compromise a compelling United States foreign policy interest.
  - (iv) Notification of determinations.-If a determination is made under clause (iii) with respect to an alien, the Secretary of State must notify on a timely basis the chairmen of the Committees on the Judiciary and Foreign Affairs of the House of Representatives and of the Committees on the Judiciary and Foreign Relations of the Senate of the identity of the alien and the reasons for the determination.
- (D) Immigrant membership in totalitarian party.-
  - (i) In general.-Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.
  - (ii) Exception for involuntary membership.- Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the

satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.

- (iii) Exception for past membership.-Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that-
  - (I) the membership or affiliation terminated at least-
    - (a) 2 years before the date of such application, or
    - (b) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and
  - (II) the alien is not a threat to the security of the United States.
- (iv) Exception for close family members.-The Attorney General may, in the Attorney General's discretion, waive the application of clause (i) in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son, or daughter of an alien lawfully admitted for permanent residence for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the immigrant is not a threat to the security of the United States.
- (E) Participants in Nazi persecutions or genocide.-
  - (i) Participation in Nazi persecutions.-Any alien who, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with-
    - (I) the Nazi government of Germany,
    - (II) any government in any area occupied by the military forces of the Nazi government of Germany,
    - (III) any government established with the assistance or cooperation of the Nazi government of Germany, or
    - (IV) any government which was an ally of the Nazi government of Germany, ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion is inadmissible.
  - (ii) Participation in genocide.-Any alien who has engaged in conduct that is defined as genocide for purposes of the International Convention on the Prevention and Punishment of Genocide is inadmissible.
- (4) Public charge.-
  - (A) In general.-Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.



- (B) Factors to be taken into account.-
- (i) In determining whether an alien is excludable under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's-
    - (I) age;
    - (II) health;
    - (III) family status;
    - (IV) assets, resources, and financial status; and
    - (V) education and skills
  - (ii) In addition to the factors under clause (i), the consular officer or the Attorney General may also consider any affidavit of support under section 213A for purposes of exclusion under this paragraph.
- (C) Family-Sponsored immigrants.-Any alien who seeks admission or adjustment of status under a visa issued under section 201(b)(2) or 203(a) is excludable under this paragraph unless-
- (i) the alien has obtained-
    - (I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) or section 204(a)(1)(A), or
    - (II) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B);
 or
  - (ii) the person petitioning for the alien's admission (including any additional sponsor required under section 213A(f)) has executed an affidavit of support described in section 213A with respect to such alien.
- (D) Certain employment-based immigrants.-Any alien who seeks admission or adjustment of status under a visa number issued under section 203(b) by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is excludable under this paragraph unless such relative has executed an affidavit of support described in section 213A with respect to such alien.
- (5) Labor certification and qualifications for certain immigrants.-
- (A) Labor certification.-
- (i) In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
    - (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
    - (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.
  - (ii) Certain aliens subject to special rule.-For purposes of clause (i)(I), an alien described in this clause is an alien who-
    - (I) is a member of the teaching profession, or

- (II) has exceptional ability in the sciences or the arts.
- (iii) PROFESSIONAL ATHLETES-
  - (I) In general.-A certification made under clause (i) with respect to a professional athlete shall remain valid with respect to the athlete after the athlete changes employer, if the new employer is a team in the same sport as the team which employed the athlete when the athlete first applied for certification.
  - (II) Definition.-For purposes of subclause (I), the term "professional athlete" means an individual who is employed as an athlete by-
    - (aa) a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or
    - (bb) any minor league team that is affiliated with such an association.
- (B) Unqualified physicians.-An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien (i) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral and written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.
- (C) Uncertified foreign health-care workers.-7a/ Subject to subsection (r), any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is excludable unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that-
  - (i) the alien's education, training, license, and experience-
    - (I) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;
    - (II) are comparable with that required for an American health-care worker of the same type; and
    - (III) are authentic and, in the case of a license, unencumbered;
  - (ii) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in

consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and

- (iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test, or has passed such an examination.

For purposes of clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review.

- (D) Application of grounds.-The grounds of inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 203(b).
- (6) Illegal entrants and immigration violators.-
- (A) ALIENS PRESENT WITHOUT admission or parole.-
    - (i) In general.-An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.
    - (ii) Exception for certain battered women and children.-Clause (i) shall not apply to an alien who demonstrates that-
      - (I) the alien qualifies for immigrant status under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 204(a)(1),
      - (II)
        - (a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or
        - (b) the alien's child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and
      - (III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States.
  - (B) Failure to attend removal proceeding.-Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

- (C) Misrepresentation.-
  - (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
  - (ii) Falsely claiming citizenship.-Any alien who falsely represents, or has falsely represented, himself or herself to be citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is excludable.
  - (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (I).
- (D) Stowaways.-Any alien who is a stowaway is inadmissible.
- (E) Smugglers.-
  - (i) In general.-Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.
  - (ii) Special rule in the case of family reunification.-Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.
  - (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(11).
- (F) Subject of civil penalty.-
  - (i) In general.-An alien who is the subject of a final order for violation of section 274C is inadmissible.
  - (ii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(12).
- (G) Student visa abusers.-An alien who obtains the status of a nonimmigrant under section 101(a)(15)(F)(i) and who violates a term or condition of such status under section 214(l) is excludable until the alien has been outside the United States for a continuous period of 5 years after the date of the violation.
- (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).
- (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 visa waiver.-For provision authorizing waiver of clause (i) in the case of visitors to Guam, see subsection (l).
- (iv) Visa waiver pilot program.-For authority to waive the requirement of clause (i) under a pilot program, see section 217.
- (8) Ineligible for citizenship.-
- (A) In general.-Any immigrant who is permanently ineligible to citizenship is inadmissible.
- (B) Draft evaders.-Any person who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency is inadmissible, except that this subparagraph shall not apply to an alien who at the time of such departure was a nonimmigrant and who is seeking to reenter the United States as a nonimmigrant.
- (9) ALIENS PREVIOUSLY Removed.-
- (A) Certain aliens previously removed.-
- (i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (ii) Other aliens.-Any alien not described in clause (i) who-
- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a

- second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.
- (B) ALIENS UNLAWFULLY PRESENT.-
- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
- (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or
- (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
- (ii) Construction of unlawful presence.-For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.
- (iii) Exceptions.-
- (I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (I).
- (II) Asylees.-No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.
- (III) Family unity.-No period of time in which the alien is a beneficiary of family unity protection pursuant to section 301 of the Immigration Act of 1990 14/ shall be taken into account in determining the period of unlawful presence in the United States under clause (I).
- (IV) Battered women and children.-Clause (i) shall not apply to an alien who would be described in paragraph (6)(A)(ii) if "violation of the terms of the alien's nonimmigrant visa" were substituted for "unlawful entry into the United States" in subclause (III) of that paragraph.
- (iv) Tolling for good cause.-In the case of an alien who-
- (I) has been lawfully admitted or paroled into the United States,

- (II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and
- (III) has not been employed without authorization in the United States before or during the pendency of such application, the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.
- (v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.
- (C) Aliens unlawfully present after previous immigration violations.-
  - (i) In general.-Any alien who-
    - (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
    - (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.
  - (ii) Exception.-Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.
- (10) MISCELLANEOUS.-
  - (A) Practicing polygamists.-Any immigrant who is coming to the United States to practice polygamy is inadmissible.
  - (B) Guardian required to accompany helpless alien.-Any alien-
    - (i) who is accompanying another alien who is inadmissible and who is certified to be helpless from sickness, mental or physical disability, or infancy pursuant to section 232(c), and
    - (ii) whose protection or guardianship is determined to be required by the alien described in clause (I), is inadmissible.
  - (C) International child abduction.-
    - (i) In general.-Except as provided in clause (ii), any alien who, after entry of an order by a court in the United States granting custody to a person of a United States citizen child who detains or retains the child, or withholds custody of the child, outside the United States from the person granted custody by that order, is inadmissible until the child is surrendered to the person granted custody by that order.
    - (ii) ALIENS SUPPORTING ABDUCTORS AND RELATIVES OF ABDUCTORS. -- Any alien who—

- (I) is known by the Secretary of State to have intentionally assisted an alien in the conduct described in clause (i),
  - (II) is known by the Secretary of State to be intentionally providing material support or safe haven to an alien described in clause (i), or
  - (III) is a spouse (other than the spouse who is the parent of the abducted child), child (other than the abducted child), parent, sibling, or agent of an alien described in clause (i), if such person has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion, is inadmissible until the child described in clause (i) is surrendered to the person granted custody by the order described in that clause, and such person and child are permitted to return to the United States or such person's place of residence.
- (iii) EXCEPTIONS. -- Clauses (i) and (ii) shall not apply—
- (I) to a government official of the United States who is acting within the scope of his or her official duties;
  - (II) to a government official of any foreign government if the official has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion; or
  - (III) so long as the child is located in a foreign state that is a party to the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.
- (D) Unlawful voters.-Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is excludable.
- (E) Former citizens who renounced citizenship to avoid taxation.-Any alien who is a former citizen of the United States who officially renounces United States citizenship and who is determined by the Attorney General to have renounced United States citizenship for the purpose of avoiding taxation by the United States is excludable.



**Attachment Eight—INA Section 208(d)(6) [8 U.S.C. 1158(d)(6)]**

(d) Asylum Procedure.—

- (6) Frivolous applications.—If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

**Attachment Nine—22 C.F.R. 42.63**

- (a) *Application Forms* —
  - (1) *Application on Form DS–230 Required.* Every alien applying for an immigrant visa must make application on Form DS–230, Application for Immigrant Visa and Alien Registration. This requirement may not be waived. Form DS–230 consists of parts I and II which, together, are meant in any reference to this Form.
  - (2) *Application of alien under 14 or physically incapable.* The application on Form DS–230 for an alien under 14 years of age or one physically incapable of completing an application may be executed by the alien's parent or guardian, or, if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, the alien.
- (b) *Preparation of forms.* The consular officer shall ensure that Form DS–230 and all other forms an alien is required to submit are fully and properly completed in accordance with the applicable regulations and instructions.
- (c) *Additional information as part of application.* The officer may require the submission of additional information or question the alien on any relevant matter whenever the officer believes that the information provided in Form DS–230 is inadequate to determine the alien's eligibility to receive an immigrant visa. Additional statements made by the alien become a part of the visa application. All documents required under the authority of §42.62 are considered papers submitted with the alien's application within the meaning of INA 221(g)(1).

**Attachment Ten—INA Section 222(f) [8 U.S.C. 1202(f)]**

- (f) The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that—
- (1) in the discretion of the Secretary of State certified copies of such records may be made available to a court with certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.
  - (2) the Secretary of State, in the Secretary’s discretion and on the basis of reciprocity, may provide to a foreign government information in the Department of State’s computerized visa lookout database and, when necessary and appropriate, other records covered by this section related to information in the database—
    - (A) with regard to individual aliens, at any time on a case-by-case basis for the purpose of preventing, investigating, or punishing acts that would constitute a crime in the United States including, but not limited to, terrorism or trafficking in controlled substances, persons or illicit weapons; or
    - (B) with regard to any or all aliens in the database, pursuant to such conditions as the Secretary of State shall establish in an agreement with the foreign government in which that government agrees to use such information and records for the purposes described in subparagraph (A) or to deny visas to persons who would be inadmissible to the United States.