

Department of State

§ 40.92

§ 40.69 [Reserved]

§§ 40.83–40.89 [Reserved]

Subpart H—Documentation Requirements

Subpart J—Aliens Previously Removed

§ 40.71 Documentation requirements for immigrants.

INA 212(a)(7)(A) is not applicable at the time of visa application. (For waiver of documentary requirements for immigrants see 22 CFR 42.1 and 42.2.)

SOURCE: 61 FR 59184, Nov. 21, 1996, unless otherwise noted.

§ 40.91 Certain aliens previously removed.

§ 40.72 Documentation requirements for nonimmigrants.

A passport which is valid indefinitely for the return of the bearer to the country whose government issued such passport shall be deemed to have the required minimum period of validity as specified in INA 212(a)(7)(B).

(a) *5-year bar.* An alien who has been found inadmissible, whether as a result of a summary determination of inadmissibility at the port of entry under INA 235(b)(1) or of a finding of inadmissibility resulting from proceedings under INA 240 initiated upon the alien's arrival in the United States, shall be ineligible for a visa under INA 212(a)(9)(A)(i) for 5 years following such alien's first removal from the United States.

§§ 40.73–40.79 [Reserved]

Subpart I—Ineligible for Citizenship.

(b) *10-year bar.* An alien who has otherwise been removed from the United States under any provision of law, or who departed while an order of removal was in effect, is ineligible for a visa under INA 212(a)(9)(A)(ii) for 10 years following such removal or departure from the United States.

§ 40.81 Ineligible for citizenship.

An alien will be ineligible to receive an immigrant visa under INA 212(a)(8)(A) if the alien is ineligible for citizenship, including as provided in INA 314 or 315.

(c) *20-year bar.* An alien who has been removed from the United States two or more times shall be ineligible for a visa under INA 212(a)(9)(A)(i) or INA 212(a)(9)(A)(ii), as appropriate, for 20 years following the most recent such removal or departure.

[64 FR 55418, Oct. 13, 1999]

§ 40.82 Alien who departed the United States to avoid service in the armed forces.

(a) *Applicability to immigrants.* INA 212(a)(8)(A) applies to immigrant visa applicants who have departed from or remained outside the United States between September 8, 1939 and September 24, 1978, to avoid or evade training or service in the United States Armed Forces.

(d) *Permanent bar.* If an alien who has been removed has also been convicted of an aggravated felony, the alien is permanently ineligible for a visa under INA 212(a)(9)(A)(i) or 212(a)(9)(A)(ii), as appropriate.

(b) *Applicability to nonimmigrants.* INA 212(a)(8)(B) applies to nonimmigrant visa applicants who have departed from or remained outside the United States between September 8, 1939 and September 24, 1978 to avoid or evade training or service in the U.S. Armed Forces except an alien who held nonimmigrant status at the time of such departure.

(e) *Exceptions.* An alien shall not be ineligible for a visa under INA 212(a)(9)(A)(i) or (ii) if the Secretary of Homeland Security has consented to the alien's application for admission.

[62 FR 67568, Dec. 29, 1997, as amended at 63 FR 64628, Nov. 23, 1998]

§ 40.92 Aliens unlawfully present.

(a) *3-year bar.* An alien described in INA 212(a)(9)(B)(i)(I) shall be ineligible for a visa for 3 years following departure from the United States.

(b) *10-year bar.* An alien described in INA 212(a)(9)(B)(i)(II) shall be ineligible