

Department of State

§ 41.102

Deputy Assistant Secretary for Visa Services upon the favorable recommendation of an immigration or consular officer, shall make application in accordance with paragraph (a) of this section.

(3) An alien who has, or immediately prior to the alien's last entry into the United States had, a residence in a country other than the country of the alien's nationality shall apply at a consular office with jurisdiction in or for the country of residence.

(4) An alien who is a national and resident of a country in which there is no United States consular office shall apply at a consular office designated by the Deputy Assistant Secretary for Visa Services to accept immigrant visa applications from persons of that nationality.

(5) An alien who possesses more than one nationality and who has, or immediately prior to the alien's last entry into the United States had, a residence in one of the countries of the alien's nationality shall apply at a consular office in the country of such residence.

(d) *Definitions relevant to INA 222(g).*

(1) *Extraordinary circumstances*—Extraordinary circumstances may be found where compelling humanitarian or national interests exist or where necessary for the effective administration of the immigration laws. Extraordinary circumstances shall not be found upon the basis of convenience or financial burden to the alien, the alien's relative, or the alien's employer.

(2) *Nationality*—For purposes of paragraph (b) of this section, a stateless person shall be considered to be a national of the country which issued the alien's travel document.

(e) *Regular visa defined.* "Regular visa" means a nonimmigrant visa of any classification which does not bear the title "Diplomatic" or "Official." A nonimmigrant visa is issued as a regular visa unless the alien falls within one of the classes entitled to a diplomatic or an official visa as described in § 41.26(c) or § 41.27(c).

(f) *Q-2 nonimmigrant visas.* The American Consulate General at Belfast is designated to accept applications for the Q-2 visa from residents of the geographic area of Northern Ireland. The

American Embassy at Dublin is designated to accept applications for Q-2 visas from residents of the geographic area of the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal in the Republic of Ireland. Notwithstanding any other provision of this section, an applicant for a Q-2 visa may not apply at any other consular post. Consular officers at the Consulate General at Belfast and at the Embassy at Dublin have discretion to accept applications for Q-2 visas from aliens who are resident in a qualifying geographic area outside of their respective consular districts, but who are physically present in their consular district.

[52 FR 42597, Nov. 5, 1987; 53 FR 9112, Mar. 21, 1988, as amended at 61 FR 1522, Jan. 22, 1996; 61 FR 53058, Oct. 10, 1996; 61 FR 56439, Nov. 1, 1996; 63 FR 671, Jan. 7, 1998; 63 FR 36366, July 6, 1998; 65 FR 14771, Mar. 17, 2000; 66 FR 38542, July 25, 2001; 67 FR 66046, Oct. 30, 2002]

§ 41.102 Personal appearance of applicant.

(a) *Personal appearance* before a consular officer is required except as otherwise provided in this section. Except when the requirement of personal appearance has been waived pursuant to paragraph (b) or (c) of this section, each applicant for a nonimmigrant visa must personally appear before and be interviewed by a consular officer, who shall determine on the basis of the applicant's representations, the visa application and other relevant documentation:

(1) The proper nonimmigrant classification, if any, of the alien; and

(2) The alien's eligibility to receive a visa.

(b) *Waivers of personal appearance by consular officers.* Except as provided in paragraph (d) of this section or as otherwise instructed by the Deputy Assistant Secretary of State for Visa Services, a consular officer may waive the requirement of personal appearance in the case of any alien who the consular officer concludes presents no national security concerns requiring an interview and who:

(1) Is a child under 14 years of age;

(2) Is a person over 79 years of age;

(3) Is within a class of nonimmigrants classifiable under the visa

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symbols A–1, A–2, C–2, C–3 (except attendants, servants, or personal employees of accredited officials), G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, or NATO–6 and who is seeking a visa in such classification;

(4) Is an applicant for a diplomatic or official visa as described in §§ 41.26 or 41.27 of this chapter, respectively;

(5) Is an applicant who within 12 months of the expiration of the applicant's previously issued visa is seeking re-issuance of a nonimmigrant biometric visa in the same classification at the consular post of the applicant's usual residence, and for whom the consular officer has no indication of visa ineligibility or of noncompliance with U.S. immigration laws and regulations; or

(6) Is an alien for whom a waiver of personal appearance is warranted in the national interest or because of unusual circumstances.

(c) *Waivers of personal appearance by the Deputy Assistant Secretary of State.* Except as provided in paragraph (d) of this section, the Deputy Assistant Secretary for Visa Services may waive the personal appearance before a consular officer of an individual applicant or a class of applicants if the Deputy Assistant Secretary finds that the waiver of personal appearance is warranted in the national interest or because of unusual circumstances and that national security concerns do not require an interview.

(d) *Cases in which personal appearance may not be waived.* A consular officer or the Deputy Assistant Secretary of State may not waive personal appearance for:

(1) Any NIV applicant who is not a national or resident of the country in which he or she is applying, unless the applicant is eligible for a waiver of the interview under paragraphs (b)(3) or (b)(4) of this section.

(2) Any NIV applicant who was previously refused a visa, is listed in CLASS, or who otherwise requires a Security Advisory Opinion, unless:

(i) The visa was refused temporarily and the refusal was subsequently overcome;

(ii) The alien was found inadmissible, but the inadmissibility was waived; or

(iii) The applicant is eligible for a waiver of the interview under paragraphs (b)(3) or (b)(4) of this section.

(3) Any NIV applicant who is from a country designated by the Secretary of State as a state sponsor of terrorism, regardless of age, or in a group designated by the Secretary of State under section 222(h)(2)(F) of the Immigration and Nationality Act, unless the applicant is eligible for a waiver under paragraphs (b)(3) or (b)(4) of this section.

(e) *Unusual circumstances.* As used in this section, unusual circumstances shall include, but not be limited to, an emergency or unusual hardship.

[68 FR 40128, July 7, 2003, as amended at 71 FR 75663, Dec. 18, 2006]

§ 41.103 Filing an application.

(a) *Filing an application—(1) Filing of application required.* Every alien seeking a nonimmigrant visa must make an electronic application on Form DS–160 or, as directed by a consular officer, an application on Form DS–156. The Form DS–160 must be signed electronically by clicking the box designated “Sign Application” in the certification section of the application.

(2) *Filing of an electronic application (Form DS–160) or Form DS–156 by alien under 16 or physically incapable.* The application for an alien under 16 years of age or one physically incapable of completing an application may be completed and 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.

(3) *Waiver of filing of application when personal appearance is waived.* Even if personal appearance of a visa applicant is waived pursuant to 22 CFR 41.102, the requirement for filing an application is not waived.

(b) *Application—(1) Preparation of Electronic Nonimmigrant Visa Application (Form DS–160) or, alternatively, Form DS–156.* The consular officer shall ensure that the application is fully and properly completed in accordance with the applicable regulations and instructions.

(2) *Additional requirements and information as part of application.* Applicants