

9 FAM 41.102 NOTES

(CT:VISA-1057; 10-07-2008)
(Office of Origin: CA/VO/L/R)

9 FAM 41.102 N1 INTERVIEW AND FINGERPRINT REQUIREMENTS

(CT:VISA-1057; 10-07-2008)

You must determine an applicant's eligibility to receive a visa and the proper nonimmigrant classification of the visa applicant on the basis of the applicant's application and interview, and other relevant documentation. Generally, all applicants must be interviewed. There are certain circumstances in which you, the chief of mission (*COM*), and the Deputy Assistant Secretary (DAS) for Visa Services may waive the personal interview and fingerprint requirement for a visa applicant. However, if admissibility issues or national security concerns arise in the visa application process after the interview requirement has been waived, you must conduct a personal interview of the applicant.

9 FAM 41.102 N1.1 Background on Interview Requirements

(CT:VISA-1057; 10-07-2008)

Section 222(h) of the Immigration and Nationality Act and 22 CFR 41.102 require that any alien applying for a nonimmigrant visa (*NIV*) must make a personal appearance and be interviewed by a consular officer unless the in-person interview requirement is waived by the consular officer or the DAS for Visa Services in specific limited situations. Section 222(h) was added to the Immigration and Nationality Act (INA) by section 5301 of the Intelligence Reform and Terrorism Prevention Act of 2004.

9 FAM 41.102 N1.2 Background on Fingerprint Requirements

(CT:VISA-1057; 10-07-2008)

Section 403 of the USA PATRIOT Act required the development and certification of a technology standard for verifying the identity of persons applying for a visa or seeking to enter the United States pursuant to a visa,

for the purposes of conducting background checks, confirming identity, and ensuring that a person has not received a visa or entered the United States under a different name. Section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 has required, since October 26, 2004, that all visas issued by the Department must be machine-readable and tamper-resistant and use biometric identifiers. In consultation with *the Department of Homeland Security (DHS)* and the Department of Justice (DOJ), the Department determined that fingerprints and a photo image should be required as biometric identifiers. When the *Biometric Visa Program* began, available technology allowed for the efficient capture and comparisons of only two fingerscans. As a result of technological improvements, we have instituted a *ten fingerscan* standard to raise the accuracy rate in matching fingerscans and enhance our ability to detect and thwart persons who are ineligible for visas. *(See 9 FAM Appendix L for additional information on biometric requirements.)*

9 FAM 41.102 N2 IN-PERSON INTERVIEW

(CT:VISA-1057; 10-07-2008)

The in-person interview is an important requirement of the visa application process. Under 22 CFR 41.102, any alien applying for a nonimmigrant visa (*NIV*) must make a personal appearance and be interviewed by a consular officer unless, after concluding that the alien presents no national security concerns requiring an interview:

- (1) The consular officer determines that the alien is younger than 14 years of age or older than 79 years of age;
- (2) The consular officer waives the in-person interview requirement for an individual applicant who satisfies the criteria listed in 9 FAM 41.102 N3;
- (3) The Deputy Secretary for Visa Services waives the personal appearance requirement for an individual applicant after determining that such waiver is either in the national interest of the United States or necessary as a result of unusual or emergent circumstances (See 9 FAM 41.102 N4); or
- (4) The chief of mission (COM) waives the personal appearance requirement for an applicant for whom the COM has waived the Biometric Visa Program finger scan requirement (see 9 FAM 41.102 N8.3).

9 FAM 41.102 N2.1 Visa Interviews

(CT:VISA-975; 06-19-2008)

You must make every effort to conduct visa interviews in a fair manner. Interviewing visa applicants is one of your most demanding duties. Use your best interviewing techniques to elicit pertinent information in order to assess the alien's qualifications for the visa and identify any potential security concerns.

9 FAM 41.102 N2.2 Applicant Should Have an Opportunity to Present Evidence

(CT:VISA-975; 06-19-2008)

Provide the visa applicant with an opportunity to present evidence establishing the veracity of his or her application. In cases where your decisions are difficult to make, are controversial, or may become the subject of controversy, create a detailed record of the interview in the case memo(s) feature of the NIV system so that the basis for the final action can be fully documented.

9 FAM 41.102 N2.3 English Language Skills of Students

(CT:VISA-1057; 10-07-2008)

When appropriate in relation to the course of study that a student will be pursuing, assess the English language skills of the student during the interview. *(See 9 FAM 41.61 N5.)*

9 FAM 41.102 N2.4 Applicability of Standard Application Requirements

(CT:VISA-975; 06-19-2008)

The waiver of the in-person interview requirement for an applicant does not change the requirements and standards of existing regulations and instructions with regard to security checks, visa classification, number of entries, and validity of visas.

9 FAM 41.102 N3 WAIVER OF IN-PERSON INTERVIEW REQUIREMENT BY CONSULAR OFFICER

(CT:VISA-1057; 10-07-2008)

- a. You may waive the in-person interview requirement for an applicant under certain circumstances. Remember to exercise that authority with

judgment and care. You remain ultimately responsible for the final decision.

- b. If none of the grounds mandating an in-person interview stated in 9 FAM 41.102 N5 applies, you are authorized to waive the in-person interview requirement for a nonimmigrant visa (*NIV*) applicant in one of the categories listed below who is not exempt on the basis of age (*see* 9 FAM 41.102 N2), unless there is an indication of the applicant's visa ineligibility or failure to comply with U.S. immigration laws and regulations, or you are unable conclude that the applicant poses no national security concerns requiring an interview:
- (1) The applicant is classifiable under one of the following nonimmigrant visa categories: 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;
 - (2) The applicant satisfies the criteria for a diplomatic or official visa in 22 CFR 41.26 and 22 CFR 41.27; or
 - (3) The applicant is applying for a visa in the same classification as their prior nonimmigrant biometric visa (i.e., same visa class and same category (principal or derivative)), not more than 12 months after the previous visa expired, at the post of their normal residence, subject to the limitations listed in 9 FAM 41.102 N7, provided that you do not have any information regarding immigration violations. For example, an H-1B visa holder applying for an L-1 visa, an E-2 spouse applying for a visa as an E-2 principal, and an F-2 visa holder applying for an F-1 visa all would need to appear for an interview.
- c. You must request a personal interview and any needed additional information when there is any doubt regarding an applicant's qualifications for a nonimmigrant visa (*NIV*) prior to the issuance of a visa. Keep in mind that you always have the option to require an interview of any applicant if you doubt the alien's credibility or veracity. You must also be vigilant to ensure that personal appearance waiver procedures are not used to commit fraud.

9 FAM 41.102 N3.1 Aliens of National Security Concern

(CT:VISA-1057; 10-07-2008)

- a. "National security concern" is a reasonable suspicion, based upon *Consular Lookout and Support System* (CLASS) records or an up-to-date analysis of intelligence derived from appropriate sources, that an

individual visa applicant or a class of applicants (see 9 FAM 41.102 N4.1) presents a risk of terrorist activity or other activity that threatens the national security of the United States such that the individual applicant or a member of the class of applicants is subject to INA 212(a)(3)(A) or (B) or could appropriately be subject to a determination by the Secretary under INA 212(a)(3)(F).

- b. Do not grant a waiver of the requirement for an in-person interview to any applicant you suspect to be of national security concern to the United States, regardless of the authority cited in 9 FAM 41.102 N2, unless:
 - (1) The Deputy Assistant Secretary (DAS) for Visa Services has determined that any national security concerns do not require an interview and that a waiver is either in the national interest of the United States or necessary as a result of unusual or emergent circumstances;
 - (2) The alien is a national or resident of the country in which post is located; and
 - (3) None of the disqualifying factors for a waiver listed in 9 FAM 41.102 N5 applies.

9 FAM 41.102 N4 WAIVER OF PERSONAL APPEARANCE BY DEPUTY ASSISTANT SECRETARY (DAS) FOR VISA SERVICES

(CT:VISA-1057; 10-07-2008)

- a. The Secretary's authority under INA 222(h)(1)(C) to waive the in-person interview requirement has been delegated to the Deputy Assistant Secretary for Visa Services (VO DAS). Provided the alien is not otherwise required, per 9 FAM 41.102 N5, to submit to an in-person interview with a consular officer, the VO DAS may waive the in-person interview requirement for an applicant for a nonimmigrant visa (*NIV*) if the VO DAS 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. We expect that exercise of this authority will be rare. (See 22 CFR 41.102(c).)
- b. When determining whether to support a requested waiver by the VO DAS of the in-person interview requirement, take into consideration all relevant factors, including the following, and send them to your post liaison officer in *the Post Liaison Division (CA/VO/F/P)*:
 - (1) Security: Establish that the applicant does not pose any known risk or threat to the United States, based upon an up-to-date analysis of

- intelligence derived from appropriate sources;
- (2) Fraud: You must have no reason to suspect fraud or misrepresentation by the applicant;
 - (3) Substantive qualifications: You must be satisfied that the applicant satisfies the criteria for the NIV classification, and have no reason to suspect that the applicant is ineligible under INA 212(a) or other pertinent provisions of law;
 - (4) National interest: Specific reasons must be addressed to establish whether a waiver of the appearance requirement will substantially benefit the strategic, foreign policy, or humanitarian interests of the United States. Factors may include:
 - (a) An assessment of the benefit to foreign support for U.S. counterterrorism activities;
 - (b) The adverse foreign policy consequences of not extending a waiver; and
 - (c) Critical emergency services to be provided to the U.S. public;
 - (5) Unusual hardship or emergent circumstances: This may include an unusual situation beyond the applicant's control that prevents the applicant from making a personal appearance at post in a timely manner for an interview prior to traveling to the United States.
- c. It is imperative for the purposes of accountability that you document in the case-notes feature of the NIV system the reason for the waiver of personal appearance. You may not waive the interview until your post liaison officer notifies you that the DAS has approved the waiver.

9 FAM 41.102 N4.1 Waiver by Deputy Assistant Secretary for Visa Services (VO DAS) for a Class of Applicants

(CT:VISA-1057; 10-07-2008)

We recognize that, on occasion, unforeseen or unique circumstances will occur that may provide reason to recommend a waiver of the in-person interview requirement for a specific class of applicants. When you reasonably believe that a waiver of a class of applicants is appropriate, you must inform the Visa Office (CA/VO/F/P) of the facts and circumstances surrounding the situation, including comments addressing all of the factors listed in 9 FAM 41.102 N4.2, and request that the VO DAS waive the personal appearance of the class. The VO DAS may issue the waiver if he or she finds that it is in the national interest or necessary as a result of unusual or emergent circumstances, and that national security concerns do not require an interview.

9 FAM 41.102 N4.2 Factors to be Considered for Interview Waivers for a Class of Applicants

(CT:VISA-1057; 10-07-2008)

- a. When determining whether to support a requested waiver by the VO DAS of the in-person interview requirement, take into consideration all relevant factors, including the following, and address them in post's submission to CA/VO/F/P:
 - (1) Security: Establish that individuals in the subject class do not pose any known risk or threat to the United States, based upon an up-to-date analysis of intelligence derived from appropriate sources;
 - (2) Fraud: Current reporting must reveal that there is no meaningful fraud experienced among the applicants in the class;
 - (3) Substantive qualifications: Experience generally, but recent experience in particular, must demonstrate that the class of applicants has no apparent inadmissibility issues under INA 212(a), 214(b), and other pertinent grounds;
 - (4) National interest: Specific reasons must be addressed to establish whether a waiver of the appearance requirement will substantially benefit the strategic, foreign policy, or humanitarian interests of the United States. Factors may include:
 - (a) An assessment of the benefit to foreign support for U.S. counterterrorism activities;
 - (b) The adverse foreign policy consequences of not extending a waiver; and
 - (c) Critical emergency services to be provided to the U.S. public;
 - (5) Additional factors - These factors will vary among posts, but should focus on the cooperation with bilateral intelligence and law enforcement programs with host governments. If applicable, they should address issues such as enhanced security screening measures taken prior to the visa application process, in lieu of personal appearance, and any hardship that might be endured by visa applicants if required to travel to a U.S. consular facility to make a personal appearance.
- b. It is imperative, for the purposes of accountability, that you document in the case-notes feature of the NIV system the reason(s) for the waiver of personal appearance for an applicant who is a member of the class.

9 FAM 41.102 N5 CASES IN WHICH PERSONAL APPEARANCE MAY NOT BE WAIVED

(CT:VISA-1057; 10-07-2008)

Unless the alien is eligible for a waiver of the interview because of an A, G, or NATO classification listed in 9 FAM 41.102 N3(1), or a diplomatic or official type visa under 22 CFR 41.26 or 22 CFR 41.27 (see 9 FAM 41.102 N3(3)), no waiver under 9 FAM 41.102 N3 or N4 of the requirement to appear for an in person interview may be approved for any applicant who:

- (1) Was previously refused a visa (unless the refusal was subsequently overcome), is listed in CLASS, or otherwise requires a Security Advisory Opinion (*SAO*) (other than Postcheck Visas Mantis, which serves to notify the Department and other agencies of a previously cleared applicant's new travel plans);
- (2) Has any other indication of ineligibility or noncompliance with U.S. immigration laws and regulations;
- (3) Is a national of a country designated by the Secretary of State as a state sponsor of terrorism, regardless of age, unless the applicant is also a national of a country that is not designated as a state sponsor of terrorism, and the applicant meets the definition of a nominal national found in 9 FAM Appendix G, 504.3(d)); or
- (4) Is a member of a group or sector that the Secretary determines, under INA 222(h)(2)(F), to:
 - (a) Pose a substantial risk of submitting inaccurate information to obtain a visa;
 - (b) Have historically had visa applications denied at a rate that is higher than the average rate of such denials; or
 - (c) Pose a security threat to the United States.

9 FAM 41.102 N6 DOCUMENTING WAIVERS

(CT:VISA-1057; 10-07-2008)

- a. All waivers of the in-person interview requirement authorized under your discretionary authority or that of the Deputy Assistant Secretary for Visa Services (*VO DAS*) must be documented in the NIV system. Your comments must reflect the reason(s) for the waiver. In a case in which you recommend that the VO DAS waive the in-person interview requirement, you must include comments addressing all of the factors listed in 9 FAM 41.102 N4.2.

- b. Visa Lookout Accountability (VLA) is a permanent on-going requirement with which all visa-issuing officers must comply. Officers must properly resolve valid hits before issuance.*

9 FAM 41.102 N6.1 Procedures for Interview Waiver Cases

(CT:VISA-1057; 10-07-2008)

- a. Note that only some of the eligibility criteria in 9 FAM 41.102 N3 can be verified by the NIV software. Posts will have to verify the other interview waiver criteria (including prior refusals and possible SAO or ineligibilities) through the usual pre-screening and adjudication procedures.*
- b. Posts using call centers for data entry or to flag potential interview waiver cases will need to have locally employed staff (LES) verify whether applicants qualify for an interview waiver as well as whether there are prints in the system, so they can let the call center know what action to take.*
- c. Posts should be certain that their procedures address how to deal with applicants who apply for an interview waiver and are found to be unqualified, especially if post accepts these applications by mail. While most applicants will legitimately believe they qualify, there will be those who attempt to bypass long wait times for interviews. Such applicants could be told to contact the call center or make an appointment online, for instance.*
- d. Please note that even applicants who qualify for the interview waiver must be refused in person. Therefore, if you determine that an applicant for whom the interview is waived is ineligible for a visa, you must request that applicant to appear in person to be informed of the decision on the case. (See 9 FAM 41.121 for visa refusal procedures.)*
- e. Applications received by mail or by messenger should be acted on promptly upon receipt. All processing, including file and visa lookout system checks, a review by the issuing officer, and issuance of the visa should be geared to completing action on routine applications as quickly as is practicable.*
- f. When practicable, posts should charge for postage when passports are returned by mail. Passports delivered by travel agents or messengers should be returned to the applicants. The originals of any additional supporting documents submitted by an applicant should be returned with the passport. The post should not retain paper copies of the documents, but rather scan them into the NIV record on the case. The post will judge whether the local postal system is safe for the return of passports.*
- g. Posts may adjust these procedures as appropriate for their workflow, as*

long as they are in keeping with the policy stated in 9 FAM 41.102 N3. For instance, posts that use call centers for data entry may need to have those centers flag potential interview waiver cases. However, since the centers cannot see whether there are prints in the system for a potential interview waiver case, LES may have to verify and let the call center know what action to take.

9 FAM 41.102 N6.2 Procedures for Requiring Interviews in Potential Interview Waiver Cases

(CT:VISA-1057; 10-07-2008)

You must refuse the case under INA 221(g) and require an interview under these circumstances:

- (1) If there is an apparent ineligibility in CLASS, IDENT, or Integrated Automated Fingerprint Identification System (IAFIS), or if an SAO is required. There are two exceptions to this rule. The first is for postcheck Mantises (see 9 FAM Appendix G, 502.7), which are travel advisories and do not require re-interview. The second is a rare exception where the VO DAS can waive the interview requirement for high-profile contacts who have previously received a waiver. (See 9 FAM 41.102 N4.1.);*
- (2) If the applicant is from a country which is a state sponsor of terrorism;*
- (3) If there is fraud indicated. Follow post fraud investigating procedures;*
- (4) If the applicant does not meet the conditions for interview waiver with fingerprint reuse; or*
- (5) Any other case in which you believe for any reason that an interview is necessary to establish the applicant's eligibility.*

9 FAM 41.102 N7 BIOMETRIC VISA PROGRAM

(CT:VISA-1057; 10-07-2008)

- a. Unless they qualify for an exemption (see 9 FAM 41.102 N8), all applicants for a nonimmigrant visa (*NIV*) from whom a *ten*-print fingerscan has not yet been collected must appear at post, or an authorized off-site collection facility, to provide fingerprints. Those visa applicants who are not required to appear for fingerprinting must submit a photograph of themselves with their application. The photograph will become the biometric identifier of the visa applicant for this application and will be processed through the facial recognition program.

- b. **All** visa applicants, regardless of the type of passport that they hold or their visa classification, must complete *the appropriate* application forms and provide appropriate photos.

9 FAM 41.102 N7.1 Missing Fingers

(CT:VISA-975; 06-19-2008)

If an applicant has a condition on his or her fingers that would affect the ability to capture a print, such as a blister or a cut, ask the applicant to return once his or her finger(s) has healed. If an applicant is missing a hand or finger(s), make a notation on the fingerprint chart regarding the applicant's missing hand or finger.

9 FAM 41.102 N8 BIOMETRIC VISA PROGRAM EXEMPTIONS

(CT:VISA-1057; 10-07-2008)

US-VISIT exemption criteria at ports of entry (POE), listed in 9 FAM 41.102 N8.1, also apply to the Biometric Visa Program with one exception: under the Biometric Visa Program, fingerscans are required of Mexican nationals applying for Border Crossing Cards beginning at age 7. Additionally, a blanket exemption from the Biometric Visa fingerscan requirement has been granted for government applicants from entities identified in 9 FAM 41.102 N8.2. Further, the Secretary has provided chiefs of mission (COM) with discretionary authority in individual cases, to waive the Biometric Visa fingerscan requirement for certain foreign government officials on non-official travel (See 9 FAM 41.102 N8.3).

9 FAM 41.102 N8.1 DHS US-VISIT Exemptions

(CT:VISA-975; 06-19-2008)

- a. The following exemptions from the DHS US-VISIT requirement to provide fingerprints at the port of entry are listed in 8 CFR 235.1(f)(1)(iv):
- (1) Aliens younger than 14 or older than 79;
 - (2) Aliens admitted on A-1, A-2, C-3 (except for 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 visas, and certain Taiwan officials who hold E-1 visas and members of their immediate families who hold E-1 visas unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to the requirement to provide a biometric identifier;

- (3) Classes of aliens to whom the Secretary of Homeland Security and the Secretary of State jointly determine it shall not apply; or
 - (4) An individual alien to whom the Secretary of Homeland Security, the Secretary of State, or the Director of Central Intelligence determines it shall not apply.
- b. As noted in 9 FAM 41.102 N8, the above exemptions also apply to the Biovisa Program, except that Mexican nationals applying for a Border Crossing Card must appear at post for fingerprinting beginning at age 7 if ten prints have not already been collected.

9 FAM 41.102 N8.2 Official Representatives

(CT:VISA-975; 06-19-2008)

An exemption from the fingerprint requirement, on a blanket basis, has been granted for government applicants from the Hong Kong Special Administrative Region, from the Palestinian Authority, and from Northern Cyprus (TRNC) who are applying for B-1 visas for official travel and, under circumstances of a normal bilateral governmental relationship, would be eligible for diplomatic or official visa categories A or G, as well as members of observer missions to the United Nations.

9 FAM 41.102 N8.3 Chief of Mission (COM) Waiver Authority

(CT:VISA-1057; 10-07-2008)

- a. The Secretary has authorized chiefs of mission (COMs), at their discretion, in an individual case, to waive the biometric visa fingerscan and interview requirements for foreign officials holding the rank of vice-minister or higher, when:
- (1) The officials apply for nonimmigrant visas for nonofficial travel, using their diplomatic or official passports;
 - (2) There is sufficient evidence to conclude that they occupy a position of this rank;
 - (3) There is a clear U.S. Government interest; and
 - (4) The officials are not otherwise required per 9 FAM 41.102 N5 to submit to an in-person interview with a consular officer.
- b. COMs are also authorized to waive the fingerprint requirement for the officials' spouses and minor children, if they are accompanying or following to join such officials, are applying for visas in the same nonimmigrant classification as the principal, using their diplomatic or official passports, and are not otherwise required under 9 FAM 41.102 N2

to submit to an in-person interview before a consular officer.

- c. This discretionary waiver authority does not extend to official staff accompanying these officials, or to their attendants, servants, or personal employees.
- d. The fingerprint waiver must be documented and signed by the COM and must be scanned into the NIV system and recorded in the NIV system in the same manner as referrals. (See 9 FAM Appendix K, 400.) The waiver request must contain the following language:

"In the national interest, I request a waiver of the biovisa fingerprint requirements for [*name/s*], who is [*rank*] in the central government of [*country*]. I also request a waiver for the following family members who are accompanying him/her: [*name/s*]. The requirement for an in person visa interview by a consular officer is also being waived for each of these applicants."