

9 FAM 41.108 NOTES

(CT:VISA-1047; 10-01-2008)
(Office of Origin: CA/VO/L/R)

9 FAM 41.108 N1 MEDICAL EXAMINATION OF NONIMMIGRANT VISA (NIV) APPLICANTS

9 FAM 41.108 N1.1 Medical Examination for NIVs

(CT:VISA-1047; 10-01-2008)

With the exceptions listed below, medical examinations generally are not required for nonimmigrant visa applicants. You may, however, require a nonimmigrant applicant to undergo a medical examination if you have reason to believe that the applicant may be ineligible for a visa under INA 212(a)(1) (8 U.S.C. 1182(a)(1)). (See also 9 FAM 40.11 and 9 FAM 42.66 for further information on medical examinations.)

9 FAM 41.108 N1.2 Medical Examination for Fiancé(e)s

(CT:VISA-1047; 10-01-2008)

- a. Since applicants for K visas are essentially intending immigrants, a complete medical examination is required in every case. (See 9 FAM 41.81 N4 (a)(1).) As nonimmigrant visa (NIV) applicants, fiancé(e) visa applicants technically are not subject to the INA 212(a)(1)(A)(ii) (8 U.S.C. 1182(a)(1)(A)(ii)) vaccination requirement. However, we (the Department of State) and the Department of Homeland Security (DHS) have agreed that medical exams for fiancé(e) visa applicants should include the vaccination assessment as a matter of expediency. Every effort should be made, therefore, to encourage fiancé(e) visa applicants to meet the vaccination requirements before admission to the United States. Nevertheless, you may not refuse K-visa applicants for refusing to meet the vaccination requirements.
- b. K visa applicants who do not meet all the vaccination requirements may not be refused a fiancé(e) visa on that basis. In cases where the

vaccination requirement is not met by the alien prior to the issuance of a fiancé(e) visa, posts may prepare a single page addendum to the Form DS-3025, Vaccination Documentation Worksheet. A decision on the waiver of INA 212(a)(1)(A)(ii) will be deferred pending the filing of the adjustment of status application and review by the Department of Homeland Security (DHS).

- c. After the alien is admitted to the United States in K status and applies for an adjustment of status based on the relationship to the U.S. citizen named in the approved Form I-129-F, Petition for Alien Fiancé(e), DHS will use the panel physician's findings set forth on the Form DS-3025, Vaccination Documentation Worksheet, to determine the alien's admissibility on medical grounds. Where the applicant has fully met the vaccination's requirements of INA 212(a)(1)(A)(ii), as indicated on the Form DS-3025, no further action will be required. Aliens who have not fully satisfied the vaccination requirements, however, will have to do so before they may finalize their adjustment of status in the United States (unless otherwise entitled to an individual or blanket waiver from DHS).

9 FAM 41.108 N1.3 Medical Examination for DUIs

(CT:VISA-1047; 10-01-2008)

- a. While alcoholism constitutes a medical condition, INA 212(a)(1)(A)(iii) (8 U.S.C. 1182(a)(1)(A)(iii)) does not refer explicitly to alcoholics or alcoholism. Evaluation for alcohol abuse or dependence is included in the evaluation for mental and physical disorders with associated harmful behavior. An alcohol abuser is **not** ineligible to receive a visa **unless** there is evidence of current or past harmful behavior associated with the disorder that has posed or is likely to pose a threat to the property, safety, or welfare of the alien or others. To ensure proper evaluation, you must refer applicants to panel physicians when they have:
 - (1) A single drunk driving arrest or conviction within the last three calendar years;
 - (2) Two or more drunk driving arrests or convictions in any time period; or
 - (3) If there is any other evidence to suggest an alcohol problem.
- b. Applicants who are referred to a panel physician due to drunk driving-related offenses must receive the full medical exam evaluation, less the vaccination requirement for NIV applicants. Chest x-rays and any other necessary testing must be conducted for the exam to be considered complete.

- c. NIV applicants with a single drunk driving arrest or conviction within the last three calendar years who the panel physician finds to have a Class B or no physical or mental condition, who are otherwise eligible to receive a visa, and who have not had another drunk driving arrest or conviction since the original or previous exam do **not** have to repeat the medical exam with each new NIV application. If an applicant is found to have a Class A condition associated with alcohol abuse (a single DUI) or has two or more drunk driving arrests or convictions in any time period, then the applicant must be referred to the panel physician with each new NIV application if the original medical exam has expired.

9 FAM 41.108 N1.4 Other Nonimmigrants To Be Examined Only if Medical Ineligibility Suspected

(CT:VISA-1047; 10-01-2008)

A medical examination is required for a nonimmigrant applicant if the consular officer believes that it might disclose that the alien is medically ineligible to receive a visa. (See 9 FAM 40.11 and/or 22 CFR 41.108(a)(3).)

9 FAM 41.108 N1.5 Aliens Seeking Admission for Medical Treatment

9 FAM 41.108 N1.5-1 Waiver May Be Required

(CT:VISA-1047; 10-01-2008)

Whenever an alien is seeking admission for medical treatment, complete information is required regarding the nature of the disease, effect, or disability for which treatment is being sought. (If action under INA 212(d)(3)(A) will be required, see 9 FAM 40.11 N8 and 9 FAM 40.301 Regs/Statutes and 9 FAM 40.301 Notes.)

9 FAM 41.108 N1.5-2 Public Charge Requirement

(CT:VISA-1047; 10-01-2008)

When the alien's own resources are not sufficient or would not be available for use outside the country of residence and sponsorship affidavits are accepted, the affidavits shall include explicit information regarding the arrangements that have been made or the facilities that will be available to the alien for support in the United States during the proposed period of medical treatment and assurance that a bond will be available if required by

the Attorney General.

9 FAM 41.108 N2 FEE FOR MEDICAL EXAMINATION CONDUCTED BY PANEL PHYSICIAN

(CT:VISA-1047; 10-01-2008)

The fees charged for the medical examination, chest X-ray, vaccinations, and serological tests of visa applicants are decided on by the consular officer and the selected panel physician and should be governed by the prevailing medical fees within the country for similar services.

9 FAM 41.108 N3 VALIDITY PERIOD OF APPLICANT'S MEDICAL EXAMINATION

(CT:VISA-1047; 10-01-2008)

See 9 FAM 40.11 N6.

9 FAM 41.108 N4 BASIS OF MEDICAL REPORT IN DETERMING ELIGIBILITY UNDER INA 212(A)(1) - CLASS A/CLASS B MEDICAL FINDINGS

(CT:VISA-1047; 10-01-2008)

- a. The panel physician will conduct the examination and testing required to assess the applicant's medical condition and complete Form DS-2053, Medical Examination for Immigrant or Refugee Applicant, Form DS-3024, Chest X-Ray and Classification Worksheet, Form DS-3025, Vaccination Documentation Worksheet, and Form DS-3026, Medical History and Physical Examination Worksheet. You may not find an applicant inadmissible under INA 212(a)(1) (8 U.S.C. 1182(a)(1)) without a report from the panel physician. The panel physician will determine whether diagnostic tests are needed when a medical condition is self-declared by the applicant.
- b. Upon completion of the applicant's medical examination, the examining physician will submit the report to you. The report must include the

results of any diagnostic tests required for the diagnosis of the diseases identified as communicable diseases of public health significance and any other tests necessary to confirm a suspected diagnosis of any other "Class A" or "Class B" condition. You will see the list of the results on the form as follows:

- (1) No defect, disease, or disability;
 - (2) "Class A"—a communicable disease of public health significance or a physical or mental disorder associated with harmful behavior, or drug abuse/addiction (INA 212(a)(1)(A)(i), (iii), or (iv)); or
 - (3) "Class B"—physical or mental defect, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal physical or mental well-being.
- c. A "Class A" medical finding requires you to find an alien inadmissible under INA 212(a)(1). The physician's examination must be conducted in accordance with the current "Technical Instructions for Medical Examination of Aliens" (Technical Instructions) distributed by the Centers for Disease Control (CDC).
- d. A "Class B" finding informs you that a serious medical condition exists which constitutes a departure from normal health or well-being. You must consider such finding when assessing the alien's eligibility for visa issuance; i.e., the likelihood of the alien becoming a public charge.

9 FAM 41.108 N5 COMMUNICABLE DISEASES OF PUBLIC HEALTH SIGNIFICANCE

(CT:VISA-1047; 10-01-2008)

See 9 FAM 40.11 N6 for list.

9 FAM 41.108 N6 FORM DS-2053, MEDICAL EXAMINATION FOR IMMIGRANT OR REFUGEE APPLICANT, SHOULD BE USED CONSISTENTLY

(CT:VISA-1047; 10-01-2008)

Consular officers shall ensure that a panel physician has recorded the results of medical examinations on Form DS-2053, Medical Examination for Immigrant or Refugee Applicant, and related worksheets. This form should

be completed for any applicants receiving a medical examination, including NIV applicants.

9 FAM 41.108 N7 PRECAUTIONS IN ESTABLISHING IDENTITY OF VISA APPLICANTS UNDERGOING MEDICAL EXAMINATION

9 FAM 41.108 N7.1 Verifying Identity of Person Examined

(CT:VISA-1047; 10-01-2008)

Consular officers shall ensure that panel physicians take every possible safeguard to verify that the person who is examined by the physician is, in fact, the visa applicant. Appropriate steps shall be taken to preclude the substitution of persons at medical examinations as well as other fraud.

9 FAM 41.108 N7.2 Physicians' Responsibilities Regarding Alien's Identity

(CT:VISA-1047; 10-01-2008)

- a. Post shall provide an instruction sheet to the alien outlining the medical examination requirements and procedures. The consular officer must direct the applicant to present these instructions and his or her passport to the panel physician at the time of the medical examination.
- b. The instruction sheets must convey to the examining physician the need for careful comparison of the identity of the visa applicant to the photograph attached to the alien's passport or to other documents of identity in order to prevent potential fraud. Instruction sheets shall also include a requirement that the physician endorse Form DS-2053, Medical Examination for Immigrant or Refugee Applicant.

9 FAM 41.108 N7.3 X-Ray and Other Medical Documents to Refer to Specific Alien by Name

(CT:VISA-1047; 10-01-2008)

The reports of serological and other tests, particularly chest x-rays, must

include the name of the alien examined to prevent document substitution. This requirement applies to all images, regardless of format. CDC acceptable formats are recordable compact disks (CD-Rs), laser-printed films, or conventional emulsion films. You should instruct the panel physician(s) to follow the procedure set forth in 9 FAM 42.66 N4.5 when he or she refers a visa applicant to another physician or to a laboratory for an x-ray examination or laboratory tests. Also instruct the physician or laboratory to which the alien is referred to take similar care in establishing the visa applicant's identity on all documentation.

9 FAM 41.108 N8 CHEST X-RAYS, SEROLOGIC TESTS, AND X-RAY REQUIREMENT FOR APPLICANTS UNDER 15 YEARS OLD AND PREGNANT WOMEN

9 FAM 41.108 N8.1 Chest X-Ray and Serologic Tests for Applicants Under 15 Years Old

(CT:VISA-1047; 10-01-2008)

The regulations of the CDC provide that neither a chest x-ray examination nor serologic testing for syphilis and HIV shall be required if the alien is under the age of 15. However, applicants under the age of 15 who are ill and have signs or symptoms suggestive of tuberculosis or who are known acquaintances with someone diagnosed with tuberculosis should have a tuberculin skin test (TST). A chest x-ray (CXR) examination may be required, depending on the result of the TST. Applicants under the age of ten who receive a CXR should have a standard view and lateral view images. If the applicant has a CXR with findings suggestive of tuberculosis, or has HIV, the applicant should provide three sputum specimens to undergo microscopy for acid-fast bacilli as well as cultures for mycobacteria and confirmation of the Mycobacterium species. A serologic test may also be required where there is reason to suspect infection with syphilis or HIV.

9 FAM 41.108 N8.2 X-Ray Requirement for Pregnant Women

(CT:VISA-1047; 10-01-2008)

CDC mandates that women who are both pregnant and required to have a medical examination in connection with the issuance of a visa must have a

chest x-ray examination conducted. Pregnant women will have to provide the panel physician with consent to conduct the chest x-ray. For the health of the applicant and her unborn child, CDC instructs panel physicians and laboratories to provide abdominal and pelvic protection with double layer, wrap-around lead shields for pregnant women receiving chest radiographs.

9 FAM 41.108 N9 REFERRAL OF DOUBTFUL CASES BY PANEL PHYSICIANS TO LOCAL SPECIALISTS AND U.S. PUBLIC HEALTH SERVICE (USPHS)/CDC

9 FAM 41.108 N9.1 Cases To Be Referred Locally if Possible

(CT:VISA-1047; 10-01-2008)

Since U.S. Public Health Service (USPHS)/CDC does not currently have physicians stationed abroad to whom panel physicians may refer doubtful cases, consular officers shall inform local panel physicians that whenever further medical consultation is deemed advisable the visa applicant shall be referred to an appropriate local specialist at the applicant's expense. Under generally accepted medical procedures, the specialist should report findings and opinion to the panel physician who remains responsible for the completion of Form DS-2053, Medical Examination for Immigrant or Refugee Applicant, Form DS-3026, Medical History and Physical Examination Worksheet, Form DS-3024, Chest X-Ray and Classification Worksheet, Form DS-3025, Vaccination Documentation Worksheet, and the final results of the medical examination.

9 FAM 41.108 N9.2 Referral to USPHS/CDC in Rare Instances

(CT:VISA-1047; 10-01-2008)

- a. In those comparatively rare instances where no local specialist is available for consultation, local panel physicians may refer specific problems to the USPHS/CDC at the following address:

Attention: QAP Manager Chief
Immigrant, Refugee, and Migrant Health
Division of Global Migration and Quarantine (MS-E03)

Centers for Disease Control and Prevention
Atlanta, Georgia 30333

- b. In submitting medical questions relating to diseases of the chest, the panel physician should furnish the following:
 - (1) A complete medical history, including history of the clinical course of the disease;
 - (2) Bacteriological studies (AFB smears or culture results);
 - (3) Description of x-ray findings (transmit all x-rays);
 - (4) Detailed account of treatment (chemotherapy and other); and
 - (5) Organism resistance studies, if done.
- c. If the problem relates to mental illness, the following information should be furnished:
 - (1) A complete medical history of the alien, including details of any hospitalized care or treatment for any physical or mental condition;
 - (2) Findings as to the current physical condition of the alien, including reports of chest x-ray examination and of serologic testing for syphilis and HIV infection and other pertinent diagnostic tests; and
 - (3) Findings as to the current mental condition of the alien, with information as to prognosis and life expectancy and with a report of a psychiatric examination conducted by a psychiatrist who, in case of mental retardation, should also provide an evaluation of intelligence.
- d. For an alien with a past history of mental illness, the medical report should contain information on which the USPHS/CDC can base a finding as to whether the alien has been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery.

9 FAM 41.108 N9.3 Confidentiality of Reports Received from the USPHS/CDC

(CT:VISA-1047; 10-01-2008)

Consular officers receiving reports from the USPHS/CDC in response to direct requests for review may inform inquirers that requested the review that the report has been received but may furnish additional information

only as consistent with the provisions of INA 222(f) concerning the confidentiality of records pertaining to the issuance or refusal of visas.

9 FAM 41.108 N10 DIVULGENCE OF CONTENTS OF MEDICAL EXAMINATION REPORTS

(CT:VISA-1047; 10-01-2008)

The information in 9 FAM 40.4 N3, discussing Freedom of Information Act (FOIA) and Privacy Act disclosures, should guide consular officers when responding to inquiries on individual visa cases and grounds of visa ineligibility for medical reasons. Consular officers should not divulge the particulars of an applicant's general physical or mental health. The inquirer should be told only that the applicant has been found to be medically qualified for a visa. The inquirer should be referred to the visa applicant for further information. If the applicant is not medically qualified, then the inquirer should be directed to the applicant.

9 FAM 41.108 N11 DISPOSITION OF MEDICAL REPORTS

(CT:VISA-1047; 10-01-2008)

- a. In cases in which no Class A or inadmissible Class B medical condition is detected, the panel physician may give the medical reports to the applicant to take to the interview.
- b. In cases in which a Class A medical condition is detected, the panel physician must not give the medical report to the applicant but must ensure that it is delivered directly to the consular officer, except in cases in which the procedure is impractical. In those rare instances in which it is necessary for the applicant to take the medical report to the consular officer, the panel physician must ensure that the report is placed in a sealed envelope in such a way that the consular officer can easily determine if it has been opened.
- c. In cases in which an inadmissible Class B medical condition (i.e., Class B tuberculosis) is detected, the panel physician must not give the medical report to the applicant but must ensure that it is delivered directly to the consular officer, except in cases in which the procedure is impractical. In those rare instances in which it is necessary for the applicant to take the

medical report to the consular officer, the panel physician must ensure that the report is placed in a sealed envelope in such a way that the consular officer can easily determine if it has been opened.

9 FAM 41.108 N12 DISPOSITION OF MEDICAL DOCUMENTS AFTER VISA ISSUANCE TO APPLICANTS WITH AND WITHOUT CLASS A OR B MEDICAL CONDITIONS

(CT:VISA-1047; 10-01-2008)

- a. **NO CLASS A OR CLASS B MEDICAL CONDITION:** The panel physician should provide a copy of all medical examination forms and related worksheets to the alien. Aliens without a Class A or Class B medical condition are not required to present copies of their medical evaluation at the port of entry. In cases where the applicant has had a chest x-ray, you should instruct the panel physician to give the x-ray image(s) directly to the alien. If, however, the x-ray image(s) or CD-R is hand-carried or sent to the consular section, you must give the images to the applicant for their medical records. Instruct the alien to:
- (1) Retain this x-ray image as an important record of his or her physical condition at the time of the medical examination; and
 - (2) Take the chest x-ray image(s) to the United States as part of his or her permanent health record.
- b. **CLASS A OR CLASS B MEDICAL CONDITION:**
- (1) **Medical Report:** Attach to the alien's passport (by staples) with the visa , at the time of visa issuance, a sealed envelope containing the original and three copies of Form DS-2053, Medical Examination for Immigrant or Refugee Applicants, and all related worksheets. U.S. Customs and Border Protection (CBP) will collect the original form, give one copy to the alien, and give two copies to the USPHS/CDC Quarantine Station, which will keep one copy and send the other to CDC Headquarters. The envelope must be clearly marked "**Medical Report (Form DS-2053 and related worksheets) enclosed.**"
 - (2) **X-ray Images:** Give to the applicant all available x-ray image(s) (in a CDC accepted format) pertaining to the case in a separate sealed envelope. Label the envelope:

For delivery by (alien's name) to the (name of hospital agreed on) as soon as possible after entry into the United States.

Instruct the alien to:

- (a) Retain the x-ray image(s) as an important record of his or her physical condition at the time of the medical examination; and
- (b) Take the chest x-ray image(s) to the United States as part of his or her permanent health record.

Since these images are for follow-up evaluation purposes only, the alien need not hand-carry the x-ray image(s) for presentation at the port of entry (POE).

9 FAM 41.108 N13 USE OF NOTATION "MED" IN VISA STAMP

(CT:VISA-1047; 10-01-2008)

A nonimmigrant visa (NIV) should be annotated as indicated in the following cases:

- (1) When the medical examination has revealed a Class A tuberculosis or another Class A medical condition, and an INA 212(d)(3)(A) waiver has been granted, the visa should be annotated: "MED: 212(d)(3)(A)."
- (2) When the medical examination has revealed a Class B tuberculosis condition or Class B leprosy, non-infectious, the visa should be annotated: "MED: Class B."