

9 FAM 41.112 VALIDITY OF VISA

*(CT:VISA-973; 06-12-2008)
(Office of Origin: CA/VO/L/R)*

9 FAM 41.112 RELATED STATUTORY PROVISIONS

(CT:VISA-973; 06-12-2008)

See INA 101(b)(5) (8 U.S.C. 1101(b)(5)), INA 212(d)(8) (8 U.S.C. 1182(d)(8)), INA 221(c) (8 U.S.C. 1201(c)), INA 222(g) (8 U.S.C. 1202(g)), and INA 281 (8 U.S.C. 1351).

INA 101(b)(5)

b. As used in subchapters I and II of this chapter—

- (1) The term “child” means an unmarried person under twenty-one years of age who is—
 - (A) a child born in wedlock;
 - (B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;
 - (C) a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;
 - (D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;
 - (E) (i) a child adopted while under the age of sixteen years

if the

child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

- (ii) subject to the same proviso as in clause (i), a child who:
 - (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i);
 - (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and
 - (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years; or
- (F) (i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201 (b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence; Provided, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: Provided further, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or
- (ii) subject to the same provisos as in clause (i), a child who:

- (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i);
 - (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and
 - (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b) of this title.
- (2) The terms "parent", "father", or "mother" mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.
- (3) The term "person" means an individual or an organization.
- (4) The term "immigration judge" means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 of this title. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.
- (5) The term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

INA 212(d)(8)

d. Temporary admission of nonimmigrants

- (8) Upon a basis of reciprocity accredited officials of foreign

governments, their immediate families, attendants, servants, and personal employees may be admitted in immediate and continuous transit through the United States without regard to the provisions of this section except paragraphs (3)(A), (3)(B), (3)(C), and (7)(B) of subsection (a) of this section.

- (iii) Guam visa waiver.-For provision authorizing waiver of clause (i) in the case of visitors to Guam, see subsection (l).
- (iv) VISA WAIVER 11a/ PROGRAM.-For authority to waive the requirement of clause (i) under a 11a/ program, see section 217 .

[Amended by sec. 699L Pub. L. 110-161, 121 Stat. 2373; 2007]

INA 221(c)

- c. An immigrant visa shall be valid for such period, not exceeding six months, as shall be by regulations prescribed, except that any visa issued to a child lawfully adopted by a United States citizen and spouse while such citizen is serving abroad in the United States Armed Forces, or is employed abroad by the United States Government, or is temporarily abroad on business, shall be valid until such time, for a period not to exceed three years, as the adoptive citizen parent returns to the United States in due course of his service, employment, or business. A nonimmigrant visa shall be valid for such periods as shall be by regulations prescribed. In prescribing the period of validity of a nonimmigrant visa in the case of nationals of any foreign country who are eligible for such visas, the Secretary of State shall, insofar as practicable, accord to such nationals the same treatment upon a reciprocal basis as such foreign country accords to nationals of the United States who are within a similar class; except that in the case of aliens who are nationals of a foreign country and who either are granted refugee status and firmly resettled in another foreign country or are granted permanent residence and residing in another foreign country, the Secretary of State may prescribe the period of validity of such a visa based upon the treatment granted by that other foreign country to alien refugees and permanent residents, respectively, in the United States. An immigrant visa may be replaced under the original number during the fiscal year in which the original visa was issued for an immigrant who establishes to the satisfaction of the consular officer that he was unable to use the original immigrant visa during the period of its validity because of reasons beyond his control and for which he was not responsible: Provided, That the immigrant is found by the consular officer to be eligible for an immigrant visa and the immigrant pays again the statutory fees for an application and an immigrant visa.

INA 222(g)

- (g) (1) In the case of an alien who has been admitted on the basis of a nonimmigrant visa and remained in the United States beyond the period of stay authorized by the Attorney General, such visa shall be void beginning after the conclusion of such period of stay.
- (2) An alien described in paragraph (1) shall be ineligible to be readmitted to the United States as a nonimmigrant, except-
 - (A) on the basis of a visa (other than the visa described in paragraph (1) issued in a consular office located in the country of the alien's nationality (or, if there is no office in such country, in such other consular office as the Secretary of State shall specify); or
 - (B) where extraordinary circumstances are found by the Secretary of State to exist.

INA 281

The fees for the furnishing and verification of applications for visas by nonimmigrants of each foreign country and for the issuance of visas to nonimmigrants of each foreign country shall be prescribed by the Secretary of State, if practicable, in amounts corresponding to the total of all visa, entry, residence, or other similar fees, taxes, or charges assessed or levied against nationals of the United States by the foreign countries of which such nonimmigrants are nationals or stateless residents: Provided, That nonimmigrant visas issued to aliens coming to the United States in transit to and from the headquarters district of the United Nations in accordance with the provisions of the Headquarters Agreement shall be gratis. 1/ Subject to such criteria as the Secretary of State may prescribe, including the duration of stay of the alien and the financial burden upon the charitable organization, the Secretary of State shall waive or reduce the fee for application and issuance of a nonimmigrant visa for any alien coming to the United States primarily for, or in activities related to, a charitable purpose involving health or nursing care, the provision of food or housing, job training, or any other similar direct service or assistance to poor or otherwise needy individuals in the United States.

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(CT:VISA-973; 06-12-2008)

See 22 CFR 41.112

41.112 Validity of visa.

- (a) *Significance of period of validity of visa.* The period of validity of a nonimmigrant visa is the period during which the alien may use it in making application for admission. The period of visa validity has no relation to the period of time the immigration authorities at a port of entry may authorize the alien to stay in the United States.
- (b) Validity of visa and number of applications for admission.
- (1) Except as provided in paragraphs (c) and (d) of this section, a nonimmigrant visa shall have the validity prescribed in schedules provided to consular officers by the Department, reflecting insofar as practicable the reciprocal treatment accorded U.S. nationals, U.S. permanent residents, or aliens granted refugee status in the U.S. by the government of the country of which the alien is a national, permanent resident, refugee or stateless resident.
 - (2) Notwithstanding paragraph (b)(1) of this section, United States nonimmigrant visas shall have a maximum validity period of 10 years.
 - (3) An unexpired visa is valid for application for admission even if the passport in which the visa is stamped has expired, provided the alien is also in possession of a valid passport issued by the authorities of the country of which the alien is a national.
- (c) *Limitation on validity.* If warranted in an individual case, a consular officer may issue a nonimmigrant visa for:
- (1) A period of validity that is less than that prescribed on a basis of reciprocity,
 - (2) A number of applications for admission within the period of the validity of the visa that is less than that prescribed on a basis of reciprocity,
 - (3) Application for admission at a specified port or at specified ports of entry, or
 - (4) Use on and after a given date subsequent to the date of issuance.
- (d) Automatic extension of validity at ports of entry.
- (1) Provided that the requirements set out in paragraph (d)(2) of this section are fully met, the following provisions apply to nonimmigrant aliens seeking readmission at ports of entry:

- (i) The validity of an expired nonimmigrant visa issued under INA 101(a)(15) may be considered to be automatically extended to the date of application for readmission; and
 - (ii) In cases where the original nonimmigrant classification of an alien has been changed by DHS to another nonimmigrant classification, the validity of an expired or unexpired nonimmigrant visa may be considered to be automatically extended to the date of application for readmission, and the visa may be converted as necessary to that changed classification.
- (2) The provisions in paragraph (d)(1) of this section are applicable only in the case of a nonimmigrant alien who:
- (i) Is in possession of a Form I-94, Arrival-Departure Record, endorsed by DHS to show an unexpired period of initial admission or extension of stay, or, in the case of a qualified F or J student or exchange visitor or the accompanying spouse or child of such an alien, is in possession of a current Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, or Form IAP-66, Certificate of Eligibility for Exchange Visitor Status, issued by the school the student has been authorized to attend by DHS, or by the sponsor of the exchange program in which the alien has been authorized to participate by DHS, and endorsed by the issuing school official or program sponsor to indicate the period of initial admission or extension of stay authorized by DHS;
 - (ii) Is applying for readmission after an absence not exceeding 30 days solely in contiguous territory, or, in the case of a student or exchange visitor or accompanying spouse or child meeting the stipulations of paragraph (d)(2)(i) of this section, after an absence not exceeding 30 days in contiguous territory or adjacent islands other than Cuba;
 - (iii) Has maintained and intends to resume nonimmigrant status;
 - (iv) Is applying for readmission within the authorized period of initial admission or extension of stay;
 - (v) Is in possession of a valid passport;
 - (vi) Does not require authorization for admission under INA 212(d)(3); and

(vii) Has not applied for a new visa while abroad.

- (3) The provisions in paragraphs (d)(1) and (d)(2) of this section shall not apply to the nationals of countries identified as supporting terrorism in the Department's annual report to Congress entitled Patterns of Global Terrorism.

[52 FR 42597, Nov. 5, 1987; 53 FR 9112, 9172, Mar. 21, 1988, as amended at 55 FR 36028, Oct. 31, 1990; 62 FR 24332, May 5, 1997; 66 FR 38543, July 25, 2001; 67 FR 10323, Mar. 7, 2002; 67 FR 66046, Oct. 30, 2002]