9 FAM 41.21
NOTES

(CT:VISA-2309; 07-28-2015)
(Office of Origin: CA/VO/L/R)

9 FAM 41.21 N1 EXEMPTIONS FROM INELIGIBILITY PROVISIONS

9 FAM 41.21 N1.1 Exemptions for A-1 Class

(TL:VISA-320; 09-27-2001)

a. In exempting class A-1 foreign government officials from the provisions of the Immigration and Nationality Act (INA) relating to aliens ineligible to receive visas, the Congress acted on the assumption that to do otherwise might infringe upon the constitutional prerogative of the President to receive ambassadors and other public ministers (Article II, Section 3 of the Constitution). The legislative history underlying the distinctions made in the INA between A-1 and A-2 classes of foreign government officials offers some assistance in determining legislative intent. Committee Report No. 1365 which accompanied House Report No. 5678, 82nd Congress contains the following paragraph on page 34.

b. Ambassadors, public ministers, and career diplomatic and consular officers who have been accredited by foreign governments recognized de jure by the United States and accepted by the President or the Secretary of State, and members of their immediate families, are exempted from all provisions relating to the exclusion and deportation of aliens generally, except those provisions relating to reasonable requirements of passport and visas as means of identification and documentation. In view of constitutional limitations, such aliens may be excluded on grounds of public safety only under such regulations as may be deemed necessary by the President.

9 FAM 41.21 N1.2 Absence of Presidential Directive

(CT:VISA-1437; 06-02-2010)

The President has not issued a directive to date applying the provisions of INA 212(a)(3)(A) (8 U.S.C. 1182(a)(3)(A)), (3)(B), and (3)(C) to aliens within the A-1 classification. (See INA 102(1)) (8 U.S.C. 1102(1)).
9 FAM 41.21 N2  ISSUING CERTAIN VISAS UPON APPROPRIATE REQUEST

(CF:VISA-2135; 07-01-2014)

a. Ordinarily, you may issue a visa in the A, C-2, C-3, G, or North Atlantic Treaty Organization (NATO) categories only upon receipt of a note from the appropriate foreign office, mission, international organization, or NATO authority. You must scan the note into the application record in the nonimmigrant visa (NIV) system.

b. The note should include the following information concerning the principal applicant:

(1) Name and date of birth;
(2) Position and title;
(3) Place of assignment or visit;
(4) Purpose of travel;
(5) Brief description of duties;
(6) Travel date;
(7) Anticipated length of stay or tour of duty in the United States; and
(8) The names, relationships, and dates of birth of any dependents and other members of household who will be accompanying or joining the principal.

c. For any non-TDY foreign government official or employee who will serve at a diplomatic or consular mission (including a mission to an international organization) or at a miscellaneous foreign government office in the United States for 90 days or more, the diplomatic note should be issued by the sending government’s foreign ministry, and not by a mission or miscellaneous foreign government office in the United States. In the case of a career official currently assigned outside of the United States, you may accept a note from the embassy or consulate outside the United States where the official is currently assigned, provided that the note certifies that the foreign ministry requests the visa application.

d. In emergency situations, you may issue a visa upon the oral request of a competent foreign authority. You should make a note in the nonimmigrant visa (NIV) system regarding the request (e.g., name and position of requester, date of request, etc.). You should also solicit a written confirmation from the appropriate foreign office, international organization, or NATO authority. Under unusual circumstances, if you issue a visa based on an incomplete note, you should solicit the missing information from the appropriate foreign office, international organization, or NATO authority as soon as possible.
9 FAM 41.21 N3 WAIVER OF PERSONAL APPEARANCE AND FILING OF VISA APPLICATIONS

(CT:VISA-1300; 09-16-2009)

Under the provisions of 22 CFR 41.102(a)(2) and (b)(3), you are authorized to waive personal appearances for A-1, A-2, C-2, C-3, G-1, G-2, G-3, G-4, and NATO 1-6 aliens and applicants for diplomatic or official visas. However, in such cases, pursuant to 22 CFR 41.103(a)(3) even if a personal appearance of a visa applicant is waived, the filing of an application is not waived.

9 FAM 41.21 N4 ALIENS OF CLASSES A AND G ON ASSIGNMENTS OF LESS THAN 90 DAYS

(CT:VISA-2135; 07-01-2014)

Posts are to enter "TDY" (for temporary duty)in the annotation field of a machine readable visa (MRV) issued to the recipient of an A or G visa who is coming to the United States for assignments of less than 90 days. The request for an A or G visa must clearly specify that the official is coming for a temporary assignment of less than 90 days, and such information should be included in the note received pursuant to 9 FAM 41.21 N2. Absent this information, you are to seek clarification about the length of the assignment from the authorities concerned.

9 FAM 41.21 N5 MEMBERS OF IMMEDIATE FAMILY OF FOREIGN OFFICIALS

9 FAM 41.21 N5.1 “Immediate Family”

9 FAM 41.21 N5.1-1 Spouse and Unmarried Sons and Daughters

(CT:VISA-1437; 06-02-2010)

The term “immediate family” includes the spouse and unmarried legal sons and daughters of any age of the principal alien. Such legal sons and daughters need not previously have qualified as a “child” as defined in INA 101(b)(1) (8 U.S.C. 1101(b)(1)).
9 FAM 41.21 N5.1-2 Other Members of Principal Alien’s Household

(CT:VISA-1437; 06-02-2010)

a. The term "immediate family" may also include, upon individual authorization from the Department (see 9 FAM 41.21 N5.2, paragraph c), any other alien who will reside regularly in the household of the principal alien, is not a member of some other household, and is recognized as an immediate family member of the principal alien by the sending Government or International Organization, as demonstrated by eligibility for rights and benefits such as the issuance of a diplomatic or official passport or other similar documentation, or travel or other allowances. Aliens who may qualify for immediate family status on this basis include: any other relative, by blood, marriage, or adoption, of the principal alien or spouse; a domestic partner; and a relative by blood, marriage, or adoption of the domestic partner. The term "domestic partner" for the purpose of this section means a same-sex domestic partner.

b. Before you issue a derivative visa in an A or G classification other than G-4 to a domestic partner, you must confirm that the sending state would provide reciprocal treatment to domestic partners of U.S. Mission members. Individuals who do not qualify as immediate family, as described above, may otherwise potentially qualify for a B-2 visa (see, e.g., 9 FAM 40.101 N4 and 9 FAM 41.31 N14.4). In any request for an advisory opinion (AO) (per 9 FAM 41.21 N5.2 paragraph c) for an individual case involving significant foreign policy issues or public interest, address how the policy issues or public interest relate to the visa case.

9 FAM 41.21 N5.2 Aliens Who are Members of Some Other Household

(CT:VISA-1386; 12-11-2009)

a. An alien who has been a member of a household other than the household of the principal alien would not normally be included within the "immediate family" of the principal alien as that term is defined in 22 CFR 41.21(a)(3), regardless of other circumstances. Thus a nephew of college age who has resided in the household of the principal alien's sister and brother-in-law would not qualify as an immediate relative of the principal alien simply to join the principal alien's household with the intention of attending college in the United States. F-1 classification under sponsorship of the principal alien might be appropriate in such a situation.

b. However, the fact that an alien has been, even in the recent past, a member of some other household does not preclude a finding that, at the time of application for a visa, the applicant is a member of the household of the principal alien. For example, a recently widowed, divorced or aging parent may have closed a former household with the intention of becoming part of the
principal alien's household. This could also occur because, due to advanced age or infirmity, the parent has experienced significant difficulty in maintaining his or her own household. The test in adjudicating these cases is whether the applicant, for reasons of age, health, or change in circumstances, has a compelling reason to join the household of the principal alien rather than maintain or reestablish an independent household.

c. You may consider "immediate family" status to be individually authorized by the Department of State in accordance with 22 CFR 41.21(a)(3)(iv) in all cases in which you have made a favorable determination on the alien's application provided that, in the case of a domestic partner, you have confirmed that the sending state would provide reciprocal treatment to domestic partners of U.S. Mission members, and provided that in your judgment no significant foreign policy issues or public interest exists. If you are unable to confirm reciprocal treatment or if significant foreign policy issues or public interest exist, you must refer the case to the Department (CA/VO/L/A) for an advisory opinion (AO).

9 FAM 41.21 N5.3 Aliens Who Will Reside Regularly in Household of Principal Alien

(TL:VISA-2; 08-30-1987)

An alien may be held to reside regularly in the household of the principal alien even though actually absent from the household for a large part of the year while attending a boarding school or college.

9 FAM 41.21 N5.4 Immediate Family of Foreign Official Who Has Requested Status of Permanent Resident

(CT:VISA-2309; 07-28-2015)

An alien who is a member of the immediate family of a principal alien classifiable as A-1, A-2, G-1, G-2, G-3, or G-4 may receive that classification even when the principal alien has requested permission to obtain or retain the status of permanent resident under INA 247(b) (8 U.S.C. 1257(b)). The principal alien must have waived his and/or her rights, privileges, exemptions, and immunities by filing Form I-508 with USCIS.

9 FAM 41.21 N6 ALIENS ENTITLED TO A-3, G-5, OR NATO-7 CLASSIFICATION

(CT:VISA-2135; 07-01-2014)

You may issue an A-3, G-5, or NATO-7 visa to the personal employee of an alien of a foreign mission in the United States in the A-1 or A-2 category (A-3 visa), G-1 through G-4 category (G-5 visa), or NATO-1 through NATO-6 category (NATO-7
visa) if the applicant qualifies for the visa classification, the contract meets the requirements set out in N6.4 below, you ensure that the applicant is aware of his/her rights as set out in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WVTVPRA) pamphlet notifications (see 9 FAM 41.21 N6.8), and each of the following are met:

(1) The diplomat or official employing the alien is in “A”, “G”, or "NATO" visa status, or received an A, G, or NATO visa and will be traveling with the domestic employee to take up a new diplomatic assignment;

(2) The foreign mission or international organization pre-notified the Office of the Chief of Protocol (Protocol) by submitting the necessary “Pre-Notification of a Domestic Worker” form to Protocol (DomesticWorkers@state.gov); and the applicant has been entered into The Office of Foreign Missions Information System (TOMIS) and shows as “pending”, (for new proposed employees), or “active” (for renewing A-3 or G-5 employees continuing to work for the same employer). All family members accompanying or following to join the domestic employee also must be pre-notified to Protocol, and if not included in the domestic employee’s initial pre-notification request, need to be separately pre-notified to Protocol before visa issuance. The family members' names will be listed in TOMIS under the A-3 or G-5 principal's record, once Protocol has received and accepted the family member's pre-notification.

(a) TOMIS is available in the Consular Consolidated Database (CCD) under the “Other Agencies/Bureaus” menu. To find a record in TOMIS, you may search by surname and either given name, nationality, visa, or country/organization; or with an eight-digit personal identification number (PID), if available, which is issued to each person registered with Protocol. If the employer is listed in TOMIS as "active", but the personal employee is not listed under that employer’s “private servants”, refuse the case under INA 221(g) pending the employee’s inclusion in TOMIS. Protocol will not notify post of a new “Pre-Notification of a Domestic Worker,” so post must check periodically in TOMIS to see if the employee has been added. A “pending” entry indicates that Protocol has accepted and data-entered the pre-notification, and post may continue processing the case to conclusion. The record will be updated to “active” after the A-3 or G-5 visa holder enters the United States and Protocol is notified of his or her entry on duty by the diplomatic mission or international organization.

(b) You must wait until the pre-notification is accepted and entered by Protocol, and may not issue A-3 and G-5 visas upon mere presentation of a diplomatic note (see TDY exceptions in NOTE below), and also may not issue B-1 visas to allow a diplomat’s domestic employee to travel on an “emergency” basis. It generally takes Protocol several days to review and enter pre-notifications into TOMIS. If the employer or applicant advises that the diplomatic mission or international
organization sent a pre-notification request more than a week earlier, and it still is not showing in TOMIS, contact CA/VO/F/P and CA/VO/P/D. CA/VO will check with Protocol to see if there are technical problems or more serious problems which prevent Protocol from accepting the pre-notification, for example, complaints of abuse against the employer by previous A-3 or G-5 employees.

NOTE: The requirements for pre-notification and a TOMIS record for an A-3 or G-5 applicant do not apply in instances where the employee is on a temporary assignment of less than 90 days or for NATO-7 applicants. In such cases, please see annotation instructions in 9 FAM 41.113 PN12.2. However, if you receive an A-3 or NATO-7 application from a domestic employee planning to work 90 days or more for an A-2 foreign military or NATO visa holders, request guidance from CA/VO/L/A, CA/VO/F/P, and CA/VO/P/D before issuing the visa.

9 FAM 41.21 N6.1 Personal Employees of Aliens in Permanent Resident Status Not Eligible for A-3, G-5, or NATO-7 Classification

(CT:VISA-2023; 09-23-2013)

An alien in A, G, or NATO status, who acquires or retains permanent resident status as provided in INA 247(b) (8 U.S.C. 1257(b)) or in 22 CFR 40.203 may not have in his or her employ a personal employee in the A-3, G-5, or NATO-7 classification. The employee of such an alien must qualify for and obtain an H-2B nonimmigrant visa (NIV) or an immigrant visa (IV) for the purpose of working for the employer.

9 FAM 41.21 N6.2 Qualifying for A-3, G-5, or NATO-7 Visa

(CT:VISA-2077; 03-31-2014)

a. In order to benefit from A-3, G-5, or NATO-7 status, the alien must be coming to the United States to perform a specific job, and must be capable of doing so, regardless of whether the alien has ever performed such a job in the past. For example, an alien with a degree in computer science who is coming to work as a domestic employee may be issued an A-3, G-5, or NATO-7 visa if he or she clearly has the intent and ability to perform the job. However, if a consular officer believes that an applicant is presented as a domestic employee for someone in A, G, or NATO status, but will actually work as a computer consultant for a private company, then the A-3, G-5, or NATO-7 visa should be denied. The alien should be found ineligible under INA 214(b) (8 U.S.C. 1184(b)), as he or she has not established his or her eligibility in any nonimmigrant visa (NIV) category. Such an applicant may also be subject to a finding of ineligibility under INA 212(a)(6)(C) (8 U.S.C. 1182(a)(6)(C)).
Similarly, an A-3, G-5, or NATO-7 visa applicant who has recently resided illegally in the United States, or who may have previously sought another visa status and was refused under INA 214(b) (8 U.S.C. 1184(b)), and who appears to be using the A-3, G-5, or NATO-7 application to evade U.S. immigration requirements, should be carefully scrutinized to determine whether he or she actually intends to take up the stated employment; however, the previous illegal status and change to A-3, G-5, or NATO-7 status is not a basis in itself for refusal if you believe the applicant plans to take up the stated employment.

b. You may not issue or renew an A-3, G-5, or NATO-7 visa unless the visa applicant has executed a contract with the employer or prospective employer containing detailed provisions described below (See 9 FAM 41.21 N6.4). You must conduct a personal interview with the applicant outside the presence of the employer or any recruitment agent.

c. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA) (Public Law 110-457) requires you to ensure that an individual applying for an A-3, G-5, or NATO-7 visa is made aware of his or her legal rights under Federal immigration, labor, and employment laws. This includes information on the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States. At the time of the visa interview, you must confirm that a pamphlet (described in 9 FAM 41.21 N6.8) has been received, read, and understood by the applicant. You are also required to review the contents of the mandatory employment contract, as described in 9 FAM 41.21 N6.4, with the applicant.

d. A-3, G-5, and NATO-7 applicants are subject to all ineligibilities under INA 212(a) (8 U.S.C. 1182(a)), as well as INA 222(g) (8 U.S.C. 1202(g)). Consular officers are reminded that A, G, and NATO visa applicants meet the requirements of INA 214(b) by establishing entitlement to such nonimmigrant status. They do not need to demonstrate that they:

   (1) Are not intending immigrants;
   (2) Have a residence abroad they do not intend to abandon; or
   (3) Have compelling ties outside the United States.

9 FAM 41.21 N6.3 Key Questions to be Addressed in A-3, G-5, and NATO-7 Applications

(CT:VISA-2148; 07-22-2014)

a. Several key questions should be addressed by the consular officer in cases involving A-3, G-5, and NATO-7 applicants:

   (1) Is the applicant capable of performing the work required?
   (2) Are the parties concerned entering into a true employee and/or employer relationship for a reasonable period of time? i.e., can it be reasonably
assumed that the applicant’s background, education skills, employment history, or relationship to the prospective employer will not preclude the parties from entering into a “true” employee and/or employer relationship? In particular, you should consider whether this requirement is met in cases where officials are employing family members;

(3) Will the applicant receive a fair wage by U.S. and Department standards? All full-time, live-in domestic employees must be paid the greater of the prevailing or minimum wage per hour under U.S. Federal and state law, and in the jurisdiction which the domestic will be employed, for all hours on duty. Live-in domestics must receive free room and board in addition to their salary. No deductions are allowed from the domestic worker’s salary for lodging, medical care, medical insurance, travel, or meals. Although the employer is not required to pay for medical insurance, the employer is responsible for ensuring that the employee does not become a public charge while in his or her employ.

(4) Does the contract address all of the stipulated necessary minimum provisions outlined in 9 FAM 41.21 N6.4 below?

(5) Is the applicant otherwise fully qualified?

b. Provided the answer to each question above is "yes," and the applicant is not inadmissible on independent grounds of the INA, an A-3, G-5, or NATO-7 visa should be issued. Otherwise, the applicant should be denied the visa under INA 214(b) (8 U.S.C. 1184(b)) and/or any other appropriate section of the INA. Additionally, if a particular A-3, G-5, or NATO-7 application raises fraud concerns, refer the case to the Department for further verification.

9 FAM 41.21 N6.4 Salary, Contracts, and Employer Obligations

(CT:VISA-2135; 07-01-2014)

a. A-3, G-5, and NATO-7 employees are covered by the Fair Labor Standards Act (FLSA). In each case, an employee applying for an A-3, G-5, or NATO-7 visa must present a copy of the employment contract, in both English and (if the applicant does not understand English) a language understood by the applicant, that has been signed by both the applicant and the employer to demonstrate that the employee will receive a fair wage, and that the employee understands his or her duties and rights regarding salary and working conditions. Post must scan the employment contract into the application record in NIV.

b. The contract must contain the following provisions:

(1) Description of Duties. The contract must describe the work to be performed, (e.g., housekeeping, gardening, child care) and must include a statement that the domestic employee shall work only for the employer who signed the contract and will not accept any other employment while
(2) Hours of Work. The contract must state the time of the normal working hours and the number of hours per week. It is generally expected that domestic workers will be required to work 35-40 hours per week. It also must state that the domestic employee will be provided a minimum of one full day off each week. The contract must indicate the number of paid holidays, sick days, and vacation days the domestic employee will be provided.

(3) Minimum Wage. The contract must state the hourly wage to be paid to the domestic employee. The rate must be the greater of the minimum wage under U.S. Federal and state law, or the prevailing wage for all working hours. Information on the prevailing wage statistics by occupation and metropolitan area is available on the Department of Labor's Online Wage Library & Data Center website.

The contract must state that wages will be paid to the domestic employee either weekly or biweekly and also state what deductions are to be taken from the wages. As of March 2011, the Department determined that no deductions are allowed for lodging, medical care, medical insurance, or travel. As of April 2012, deductions taken for meals are also no longer allowed.

(4) Overtime Work. The contract must state that any hours worked in excess of the normal number of hours worked per week are considered overtime hours, and that hours in which the employee is “on call” count as work hours. It also must state that such work must be paid as required by U.S. local laws.

NOTE: Under Federal law, the rate of overtime pay need not exceed the regular hourly rate if the employee resides in the home of the employer, but State law governing overtime rates also applies and must be checked. If the employee does not reside with the employer, overtime for hours in excess of 40 hours per week must be paid at the rate of time and a half.

(5) Payment. The contract must state that after the first 90 days of employment, all wage payments must be made by check or by electronic transfer to the domestic worker's bank account. The bank account must be in the United States so that domestic workers may readily access and utilize their wages. Neither Mission members nor their family members should have access to domestic workers' bank accounts. In addition, the Department requires that the employer retain records of employment and payment for three years after the termination of the employment in order to address any complaints that may subsequently arise.

(6) Transportation to and from the United States. The contract must state that the domestic employee will be provided with transportation to and from the United States.
(7) Other Required Terms of Employment. The contract must state that the employer agrees to abide by all Federal, State, and local laws in the United States. The contract also must include a statement that the domestic worker's passport and visa will be in the sole possession of the domestic worker. In addition, the contract must state that a copy of the contract and other personal property of the domestic employee will not be withheld by the employer for any reason. The contract must include a statement that the domestic worker's presence in the employer's residence will not be required except during working hours.

(8) Other Recommended Terms of Employment. The contract may include additional agreed-upon terms of employment, if any, provided they are fully consistent with all U.S. Federal, State, and local laws. Any modification to the contract must be in writing.

c. You may encounter applications where the applicant does not submit a contract, the contract does not guarantee a fair wage or working conditions, or you have evidence that the employer will not comply with the conditions specified in the contract. In such cases, you should refuse the application under either INA 214(b) (8 U.S.C. 1184(b)), because the applicant has not shown entitlement to A, G, or NATO nonimmigrant status, or under INA 221(g) (8 U.S.C. 1201(g)), because the alien has failed to submit a required document. If the agreed wage falls below the minimum or prevailing wage you should refuse the application pursuant to INA 214(b) (8 U.S.C. 1184(b)) because the applicant has not shown entitlement to A-3, G-5 or NATO-7 nonimmigrant status, or under INA 221(g) (8 U.S.C. 1201 (g)), pending submission of an updated contract. You may refuse visas for A-3, G-5, or NATO-7 applicants under any appropriate provision of law. If you routinely encounter A-3, G-5, or NATO-7 applications that do not meet fair wage standards, contact CA/VO/L/A for assistance.

d. In accordance with INA 291 (8 U.S.C. 1361), the burden of proof for A-3, G-5, or NATO-7 eligibility is on the applicant. You must assess the credibility of the applicant and the evidence submitted to determine qualification for an A-3, G-5, or NATO-7. The applicant must satisfy you that he or she will credibly engage in A-3, G-5, or NATO-7 activity under the contractual thereby maintain lawful status.

e. Do not issue a visa unless you can reasonably conclude that the employer will in fact provide the employee with the required wages and working conditions. You may presume that the applicant is not eligible if the employer does not carry the diplomatic rank of Minister or higher, or a position equivalent to Minister or higher. To rebut this presumption, the employer must demonstrate that he or she will have sufficient funds to comply with the FLSA and Department standards, as reflected in the contract. You must deny the visa if you are not convinced the employer can in fact meet the terms of the contract. Consideration also must be given to the number of employees a particular employer may reasonably be able to pay. Note that this presumption applies in
all cases in which the applicant’s employer is an employee of an international organization classifiable as G-4, and it therefore will be necessary for the employer to demonstrate that he or she has sufficient funds to provide the required wages and working conditions, as such employer and position would never be of the rank of Minister or higher.

f. If an employer has had previous instances of non-compliance with contracts with A-3, G-5, or NATO-7 employees or has a pattern of employee disappearance or credible abuse allegations, you may presume that the applicant is not eligible for the visa and refuse the application (see paragraph d above). To rebut this presumption, the employer and the visa applicant would have to convince you that such an outcome is unlikely to reoccur; for example, by the employer establishing that he or she reasonably expected that previous employees would remain in A-3, G-5, or NATO-7 status, rather than suddenly cease working in the household and remain unlawfully in the United States; that the disappearances of the former employees were promptly reported; by presenting evidence establishing that the employer and the visa applicant intend to fulfill the provisions of the contract and enter into a bona fide employer-employee relationship; and that the applicant intends to maintain A-3, G-5, or NATO-7 visa status while in the United States. The burden of proof remains on the applicant and the employer to establish eligibility and future compliance with all requirements.

9 FAM 41.21 N6.5  A-3, G-5, and NATO-7 Domestic Worker Principal Applicants Under the Age of 18

(CT:VISA-2023; 09-23-2013)

Posts must obtain an advisory opinion (AO) from CA/VO/L/A before issuing an A-3, G-5, or NATO-7 visa to a domestic worker principal applicant under the age of 18.

9 FAM 41.21 N6.6  Refusals and Advisory Opinions (AO)

(CT:VISA-2171; 09-09-2014)

Posts are not required to obtain an advisory opinion before refusing an A-3, G-5, or NATO-7 visa application under INA 214(b) in cases where the applicant does not intend to take up the position, or where a contract is not provided in accordance with the consular officer’s request. Consular officers may not, however, refuse an A-3, G-5, or NATO-7 visa applicant under INA 214(b) who meets the qualifications for A-3, G-5, or NATO-7 status, but whom the consular officer believes is an intending immigrant. Posts should not hesitate to seek the Visa Office’s advice in questions of eligibility. In addition, posts should report by cable to the Department any denials in the 'A,' 'G' or 'NATO' category which are likely to prompt inquiries or complaints from the applicant’s host government. These cabled reports should be slugged for the Office of the Chief of Protocol.
Endorsing A-3, G-5, and NATO-7 Visas

(CY:VISA-2023; 09-23-2013)

Posts are to endorse A-3, G-5, and NATO-7 visas issued to attendants, servants, and personal employees of aliens classified A-1 or A-2 (A-3 visa), G-1 through G-4 (G-5 visa), or NATO-1 through NATO-6 (NATO-7 visa). The notation is to be placed in the annotation field of the MRV and is to contain the name of the principal alien and his place of employment. For example:

John Doe, Embassy of Z,
Washington, DC

Information Pamphlet on Legal Rights of A-3, G-5, NATO-7, H, J, and Domestic Employees

(CY:VISA-2023; 09-23-2013)

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA) requires the Secretary of State, in consultation with the Secretary of Homeland Security, the Attorney General, and the Secretary of Labor, to hand out an information pamphlet on legal rights and available resources to aliens applying for A-3, G-5, H, or J visas, as well as to any personal or domestic servant (such as B-1 domestic or NATO-7) who is accompanying or following to join an employer.

Contents of Information Pamphlet

(CY:VISA-2023; 09-23-2013)

a. The contents of the information pamphlet, “For Certain Employment or Education-Based Nonimmigrants,” include a discussion of procedural issues, legal rights, and available legal resources concerning items such as:

(1) The nonimmigrant visa (NIV) application process, including information about the portability of employment;

(2) The legal rights of employment- or education-based NIV holders under Federal immigration, labor, and employment laws;

(3) The illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States;

(4) The legal rights of immigrant victims of trafficking in persons and worker exploitation, including:
(a) The right of access to immigrant and labor rights groups;
(b) The right to seek redress in United States courts;
(c) The right to report abuse without retaliation;
(d) The right of the nonimmigrant not to relinquish possession of his or her passport to his or her employer;
(e) The requirement for an employment contract between the employer and the nonimmigrant; and
(f) An explanation of the rights and protections included in the mandatory employment contract.

(5) Information about nongovernmental organizations that provide services for victims of trafficking in persons and worker exploitation, including:
(a) Anti-trafficking in persons telephone hotlines operated by the Federal Government;
(b) The Operation Rescue and Restore hotline; and
(c) A general description of the types of victims’ services available for individuals subject to trafficking in persons or worker exploitation.

b. The pamphlet has been translated into certain foreign languages, based on the languages spoken by the greatest concentration of employment- and education-based NIV applicants. The pamphlet is posted on the Department of State's travel information Web site and must be posted, in English and any relevant local language that the pamphlet has been translated into, on the Web site of every consular post.

9 FAM 41.21 N6.8-2 Consular Officer Responsibilities Under the William Wilberforce Trafficking Victims Protection Act (WWTVPRA)

(CT:VISA-2148; 07-22-2014)
a. The WWTVPRA requires you to ensure that aliens applying for A-3, G-5, H, or J visas or a personal or domestic servant accompanying or following to join an employer (such as B-1 domestic or NATO-7), are made aware of their legal rights under Federal immigration, labor, and employment laws. This includes information on the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States. At the time of the NIV interview, you must confirm that a pamphlet prepared by the Department detailing this information has been received, read, and understood by the applicant. Consular officers must add a mandatory case note in the NIV system stating that the pamphlet was provided and that the applicant indicated s/he understood its contents.

(1) Consular officers must confirm that the alien has received, read, and
understood the contents of the information pamphlet, and to offer to answer any questions the alien may have regarding the contents of the pamphlet; or

(2) If the pamphlet was not received, read, or understood, to provide a copy to the applicant and orally disclose its contents in a language that the applicant understands, and offer to answer any questions that the applicant may have regarding information contained in the pamphlet, as well as information described below regarding legal rights, U.S. law, and victim services. Such an oral disclosure should include:

(a) The legal rights of employment-based nonimmigrants under Federal immigration, labor, and employment laws;

(b) The illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States;

(c) The legal rights of nonimmigrant victims of trafficking in persons, worker exploitation, and other related crimes, including:
   (i) The right of access to immigrant and labor rights groups;
   (ii) The right to seek redress in United States courts; and
   (iii) The right to report abuse without retaliation; and

(d) The availability of services for victims of human trafficking and worker exploitation in the United States, including victim services complaint hotlines.

b. All applicants for A-3, G-5, or NATO-7 visas must be interviewed, regardless of whether the applicant has been issued a previous visa in the same classification to work for the same employer. The interview of an A-3, G-5, or NATO-7 applicant must be conducted outside the presence of the employer or recruitment agent.

Note: No interview is required when the A-3, G-5 or NATO-7 applies to extend his/her stay (I-94) domestically. However, the employee must provide a copy of the contract with the application for extension of stay. The contract should be reviewed for compliance and scanned into the record.

9 FAM 41.21 N6.9 Suspension of Processing of A-3 and G-5 Applications from Certain Foreign Missions and International Organizations

(CT:VISA-2023; 09-23-2013)

a. The Secretary of State shall suspend, for such period as the Secretary determines necessary, the issuance of A-3 visas or G-5 visas to applicants seeking to work for officials of a diplomatic mission or an international
organization, if the Secretary determines that there is credible evidence that one or more employees of such mission or international organization have abused or exploited one or more nonimmigrants holding an A-3 visa or a G-5 visa, and that the diplomatic mission or international organization tolerated such actions.

b. The Secretary may suspend the application of the limitation under paragraph (a) if the Secretary determines and reports to the appropriate Congressional committees that a mechanism is in place to ensure that such abuse or exploitation does not reoccur with respect to any alien employed by an employee of such mission or institution.

c. All visa processing posts will be advised when the Secretary has determined that A-3 or G-5 visa processing should be suspended for a specific diplomatic mission or international organization.

9 FAM 41.21 N7 DESIGNATED PORTS OF ENTRY (POE) FOR CERTAIN DIPLOMATIC AND INTERNATIONAL ORGANIZATION PERSONNEL

(CT:VISA-907; 10-11-2007)
See Visa Reciprocity and Country Documents Finder under country concerned.

9 FAM 41.21 N8 REQUIRING SECURITY ADVISORY OPINION (SAO) IN CERTAIN CASES

(CT:VISA-907; 10-11-2007)
See Visa Reciprocity and Country Documents Finder for country specific guidance.

9 FAM 41.21 N9 VALIDITY OF A-3 AND G-5 VISAS

(CT:VISA-1237; 07-01-2009)
See 9 FAM 41.112 N2.6.

9 FAM 41.21 N10 CLASSIFYING SPOUSE AND CHILD OF A, G, OR NATO ALIEN

(CT:VISA-320; 09-27-2001)
See 9 FAM 41.11 N4 and 9 FAM 41.11 N5.