

(k) *INS* means the Immigration and Naturalization Service.

(l) *Native* shall mean born within the territory of a foreign state, or entitled to be charged for immigration purposes to that foreign state pursuant to section 202(b) of the Immigration and Nationality Act, as amended.

(m) *Not subject to numerical limitation* means that the alien is entitled to immigrant status as an immediate relative within the meaning of INA 201(b)(2)(i), or as a special immigrant within the meaning of INA 101(a)(27)(A) and (B), unless specifically subject to a limitation other than under INA 201(a), (b), or (c).

(n) *Parent, father, and mother*, as defined in INA 101(b)(2), are terms which are not changed in meaning if the child becomes 21 years of age or marries.

(o) *Port of entry* means a port or place designated by the Commissioner of Immigration and Naturalization at which an alien may apply to INS for admission into the United States.

(p) *Principal alien* means an alien from whom another alien derives a privilege or status under the law or regulations.

(q) *Regulation* means a rule which is established under the provisions of INA 104(a) and is duly published in the FEDERAL REGISTER.

(r) *Son or daughter* includes only a person who would have qualified as a “child” under INA 101(b)(1) if the person were under 21 and unmarried.

(s) *Western Hemisphere* means North America (including Central America), South America and the islands immediately adjacent thereto including the places named in INA 101(b)(5).

[56 FR 30422, July 2, 1991, as amended at 56 FR 43552, Sept. 3, 1991; 59 FR 15300, Mar. 31, 1994; 61 FR 1835, Jan. 24, 1996]

§ 40.2 Documentation of nationals.

(a) *Nationals of the United States*. A national of the United States shall not be issued a visa or other documentation as an alien for entry into the United States.

(b) *Former Nationals of the United States*. A former national of the United States who seeks to enter the United States must comply with the documentary requirements applicable to aliens under the INA.

§ 40.3 Entry into areas under U.S. administration.

An immigrant or nonimmigrant seeking to enter an area which is under U.S. administration but which is not within the “United States”, as defined in INA 101(a)(38), is not required by the INA to be documented with a visa unless the authority contained in INA 215 has been invoked.

§ 40.4 Furnishing records and information from visa files for court proceedings.

Upon receipt of a request for information from a visa file or record for use in court proceedings, as contemplated in INA 222(f), the consular officer must, prior to the release of the information, submit the request together with a full report to the Department.

§ 40.5 [Reserved]

§ 40.6 Basis for refusal.

A visa can be refused only upon a ground specifically set out in the law or implementing regulations. The term “reason to believe”, as used in INA 221(g), shall be considered to require a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive a visa as provided in the INA and as implemented by the regulations. Consideration shall be given to any evidence submitted indicating that the ground for a prior refusal of a visa may no longer exist. The burden of proof is upon the applicant to establish eligibility to receive a visa under INA 212 or any other provision of law or regulation.

§§ 40.7–40.8 [Reserved]

§ 40.9 Classes of inadmissible aliens.

Subparts B through L describe classes of inadmissible aliens who are ineligible to receive visas and who shall be ineligible for admission into the United States, except as otherwise provided in the Immigration and Nationality Act, as amended.

[61 FR 59184, Nov. 21, 1996]