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]

Subpart B—Medical Grounds of Ineligibility

§ 40.11 Medical grounds of ineligibility.

(a) *Decision on eligibility based on findings of medical doctor*. A finding of a panel physician designated by the post in whose jurisdiction the examination is performed pursuant to INA 212(a)(1) shall be binding on the consular officer, except that the officer may refer a panel physician finding in an individual case to USPHS for review.

(b) *Waiver of ineligibility—INA 212(g)*. If an immigrant visa applicant is inadmissible under INA 212(a)(1)(A)(i), (ii), or (iii) but is qualified to seek the benefits of INA 212(g)(1)(A) or (B), 212(g)(2)(C), or 212(g)(3), the consular officer shall inform the alien of the procedure for applying to INS for relief under the applicable provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(g), unless the consular officer has been delegated authority by the Attorney General to grant the particular waiver under INA 212(g).

(c) *Waiver authority—INA 212(g)(2)(A) and (B)*. The consular officer may waive section 212(a)(1)(A)(ii) visa ineligibility if the alien qualifies for such waiver under the provisions of INA 212(g)(2)(A) or (B).

[56 FR 30422, July 2, 1991, as amended at 62 FR 67567, Dec. 29, 1997]

§§ 40.12—40.19 [Reserved]

Subpart C—Criminal and Related Grounds—Conviction of Certain Crimes

§ 40.21 Crimes involving moral turpitude and controlled substance violators.

(a) *Crimes involving moral turpitude*—(1) *Acts must constitute a crime under criminal law of jurisdiction where they occurred*. A Consular Officer may make a finding of ineligibility under INA 212(a)(2)(A)(i)(I) based upon an alien's admission of the commission of acts which constitute the essential elements of a crime involving moral turpitude, only if the acts constitute a crime under the criminal law of the jurisdiction where they occurred. However, a Consular Officer must base a determination that a crime involves moral turpitude upon the moral standards generally prevailing in the United States.

(2) *Conviction for crime committed under age 18*. (i) An alien will not be ineligible to receive a visa under INA 212(a)(2)(A)(i)(I) by reason of any offense committed:

(A) Prior to the alien's fifteenth birthday, or

(B) Between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code.

(ii) An alien tried and convicted as an adult for a violent felony offense, as so defined, committed after having attained the age of fifteen years, will be subject to the provisions of INA 212(a)(2)(A)(i)(I) regardless of whether at the time of conviction juvenile courts existed within the convicting jurisdiction.