

alien's nationality unless extraordinary circumstances have been determined to exist with respect to that alien as set forth in paragraph (c) of this section.

(c) *Exceptions based on extraordinary circumstances.* (1) An alien physician serving in underserved areas of the United States under the provisions of INA 214(l) for whom an application for a waiver of the 2-year foreign residence requirement and/or a petition to accord H-1B status was filed prior to the end of the alien's authorized period of stay and was subsequently approved, but whose authorized stay expired during the adjudication of such application(s), shall make application in accordance with paragraph (a) of this section.

(2) Any other individual or group whose circumstances are determined to be extraordinary, in accordance with paragraph (d)(1) of this section, by the Deputy Assistant Secretary for Visa Services upon the favorable recommendation of an immigration or consular officer, shall make application in accordance with paragraph (a) of this section.

(3) An alien who has, or immediately prior to the alien's last entry into the United States had, a residence in a country other than the country of the alien's nationality shall apply at a consular office with jurisdiction in or for the country of residence.

(4) An alien who is a national and resident of a country in which there is no United States consular office shall apply at a consular office designated by the Deputy Assistant Secretary for Visa Services to accept immigrant visa applications from persons of that nationality.

(5) An alien who possesses more than one nationality and who has, or immediately prior to the alien's last entry into the United States had, a residence in one of the countries of the alien's nationality shall apply at a consular office in the country of such residence.

(d) *Definitions relevant to INA 222(g).* (1) *Extraordinary circumstances*—Extraordinary circumstances may be found where compelling humanitarian or national interests exist or where necessary for the effective administration of the immigration laws. Extraordinary circumstances shall not be

found upon the basis of convenience or financial burden to the alien, the alien's relative, or the alien's employer.

(2) *Nationality*—For purposes of paragraph (b) of this section, a stateless person shall be considered to be a national of the country which issued the alien's travel document.

(e) *Regular visa defined.* "Regular visa" means a nonimmigrant visa of any classification which does not bear the title "Diplomatic" or "Official." A nonimmigrant visa is issued as a regular visa unless the alien falls within one of the classes entitled to a diplomatic or an official visa as described in § 41.26(c) or § 41.27(c).

(f) *Q-2 nonimmigrant visas.* The American Consulate General at Belfast is designated to accept applications for the Q-2 visa from residents of the geographic area of Northern Ireland. The American Embassy at Dublin is designated to accept applications for Q-2 visas from residents of the geographic area of the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal in the Republic of Ireland. Notwithstanding any other provision of this section, an applicant for a Q-2 visa may not apply at any other consular post. Consular officers at the Consulate General at Belfast and at the Embassy at Dublin have discretion to accept applications for Q-2 visas from aliens who are resident in a qualifying geographic area outside of their respective consular districts, but who are physically present in their consular district.

[52 FR 42597, Nov. 5, 1987; 53 FR 9112, Mar. 21, 1988, as amended at 61 FR 1522, Jan. 22, 1996; 61 FR 53058, Oct. 10, 1996; 61 FR 56439, Nov. 1, 1996; 63 FR 671, Jan. 7, 1998; 63 FR 36366, July 6, 1998; 65 FR 14771, Mar. 17, 2000; 66 FR 38542, July 25, 2001; 67 FR 66046, Oct. 30, 2002]

§ 41.102 Personal appearance of applicant.

(a) *Personal appearance* before a consular officer is required except as otherwise provided in this section. Except when the requirement of personal appearance has been waived pursuant to paragraph (b) or (c) of this section, each applicant for a nonimmigrant visa must personally appear before and be interviewed by a consular officer, who

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shall determine on the basis of the applicant's representations, the visa application and other relevant documentation:

(1) The proper nonimmigrant classification, if any, of the alien; and

(2) The alien's eligibility to receive a visa.

(b) *Waivers of personal appearance by consular officers.* Unless otherwise instructed by the Deputy Assistant Secretary of State for Visa Services, a consular officer may waive the requirement of personal appearance in the case of any alien who the consular officer concludes presents no national security concerns requiring an interview and who:

(1) Is a child 16 years of age or under;

(2) Is a person 60 years of age or older;

(3) Is within a class of nonimmigrants classifiable under the visa symbols A-1, A-2, C-2, C-3, G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 and who is seeking a visa in such classification;

(4) Is an applicant for a diplomatic or official visa as described in §§ 41.26 and 41.27 of this chapter, respectively;

(5) Is an applicant who within 12 months of the expiration of the applicant's previously issued visa is seeking re-issuance of a nonimmigrant visa in the same classification at the consular post of the applicant's usual residence, and for whom the consular officer has no indication of visa ineligibility or noncompliance with U.S. immigration laws and regulations; or

(6) Is an alien for whom a waiver of personal appearance is warranted in the national interest or because of unusual circumstances, as determined by the consular officer.

(c) *Waivers of personal appearance by the Deputy Assistant Secretary of State.* The Deputy Assistant Secretary for Visa Services may waive the personal appearance before a consular officer of an individual applicant or a class of applicants if the Deputy Assistant Secretary finds that the waiver of personal appearance is warranted in the national interest or because of unusual circumstances and that national security concerns do not require an interview.

(d) *Unusual circumstances.* As used in this section, unusual circumstances shall include, but not be limited to, an emergency or unusual hardship.

[68 FR 40128, July 7, 2003]

§ 41.103 Filing an application and Form OF-156.

(a) *Filing an application—(1) Filing of application on Form OF-156 required unless waived.* The consular officer may waive submission of an application, under paragraph (a)(3) of this section, for certain aliens for whom personal appearance has been waived under § 41.102. Except for persons for whom such waivers have been granted, every alien seeking a nonimmigrant visa must make application therefor on Form OF-156, Nonimmigrant Visa Application, unless a prior Form OF-156 is readily available at the consular office which can be appropriately amended to bring the application up to date.

(2) *Filing of Form OF-156 by alien under 16 or physically incapable.* The application for an alien under 16 years of age or one physically incapable of completing an application may be completed and executed by the alien's parent or guardian, or, if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, the alien.

(3) *Waiver of filing of application.* (i) When personal appearance is waived under § 41.102(a)(2) or (3) the consular officer may also waive the filing of a visa application.

(ii) When personal appearance is waived under § 41.102(a)(7), the consular officer may also waive the filing of a visa application in cases of hardship, emergency, or national interest.

(iii) Even if personal appearance is waived pursuant to any other subparagraph of § 41.102(a), the requirement for filing an application may not be waived.

(b) *Application form—(1) Preparation of Form OF-156, Nonimmigrant Visa Application.* (i) The consular officer shall ensure that Form OF-156 is fully and properly completed in accordance with the applicable regulations and instructions.

(ii) If the filing of a visa application is waived by the consular officer, the officer shall prepare a Form OF-156 on