

n a t i o n a l
IMMIGRATION
p r o j e c t
of the National Lawyers Guild

14 Beacon Street Suite 602 • Boston, MA • 02108 • Tel. (617) 227-9727 • Fax (617) 227-5495

Statutes Related to Visa Eligibility¹

<p>Key</p> <p>6 U.S.C. § 236 - codification of § 428 of the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (Nov. 25, 2002)</p> <p>MOU - Memorandum of Understanding Between the Secretaries of State and Homeland Security Concerning the Implementation of Section 428 of the Homeland Security Act of 2002</p> <p>** - indicates that neither MOU nor 6 U.S.C. § 236 address the statutory provision</p>
--

Statutory Provision	Agency Responsible for Visa-Related Determination	Supporting Authority
8 U.S.C. § 1101(a)(11) – visa guidance over defining term of diplomatic visa	Secy of State	MOU at 4
8 U.S.C. § 1101(a)(15)(A) - classify certain foreign diplomats, their staff and their immediate families as nonimmigrants; and related visa guidance	Secy of State	6 U.S.C. § 236(c)(2)(A); MOU at 4
8 U.S.C. § 1101(a)(15)(C) – determine who is eligible to pass in transit to and from UN Headquarters District	Secy of State	MOU at 4
8 U.S.C. § 1101(a)(15)(E) – determine what is a qualifying treaty of commerce and navigation for E visa classification	Secy of State	MOU at 4
8 U.S.C. § 1101(a)(15)(G) – NATO and other defense or arms control agreements	Secy of State	MOU at 4
8 U.S.C. § 1101(a)(15)(I) – determine whether qualifying reciprocity exists for press visa	Secy of State	MOU at 4
8 U.S.C. § 1101(a)(15)(J) – designate qualifying exchange visitor programs	Secy of State	MOU at 4

¹

Statutory Provision	Agency Responsible for Visa-Related Determination	Supporting Authority
8 U.S.C. § 1101(a)(15)(Q) – approval of Q nonimmigrant visa classification of international cultural exchange programs designated by DHS	Joint responsibility – DHS and DOS Secretaries	MOU at 4
8 U.S.C. § 1101(a)(15)(S)(ii) – approval of visa eligibility for person in possession of critical reliable information about terrorist org, enterprise or operation	Joint responsibility – DHS and DOS Secretaries	8 U.S.C. § 1101(a)(15)(S)(ii); MOU at 4
8 U.S.C. § 1101(a)(27)(D) – approval of visas for longtime US government employees abroad or employees of the American Institute in Taiwan	Secy of State	8 U.S.C. § 1101(a)(27)(D); MOU at 4
8 U.S.C. § 1101(a)(45) – establish amount of trade or capital that is “substantial” for E visa purposes	Secy of State, in consultation with appropriate agencies	8 U.S.C. § 1101(a)(45); MOU at 4
8 U.S.C. § 1154(d)(2) - certify certain visa petitions filed in conjunction with an international adoption; and related visa guidance	Secy of State	8 U.S.C. § 1154(d)(2); 6 U.S.C. § 236(c)(2)(B); MOU at 4
8 U.S.C. § 1182(a)(1) – health related grounds	Conoffs, and DHS Secy and DHS HQ staff in accordance with broad authority under 6 U.S.C. § 236(b)(1) “to refuse visas in accordance with law”	**
8 U.S.C. § 1182(a)(2) – criminal related grounds	Conoffs, and DHS Secy and HQ staff in accordance with broad authority under 6 U.S.C. § 236(b)(1) “to refuse visas in accordance with law”	**
8 U.S.C. § 1182(a)(2)(G) – determine who is a foreign government official involved in severe violations of religious freedom	Secy of State	MOU at 4
8 U.S.C. § 1182(a)(3)(B) – terrorist grounds	<p>Conoffs, and DHS Secy and HQ staff in accordance with broad authority under 6 U.S.C. § 236(b)(1) “to refuse visas in accordance with law”</p> <p>If DHS exercises authority to refuse visa, DHS must provide DOS with sufficient information (including factual basis for the refusal) for Secy of State to fulfill reporting requirement under 22 U.S.C. § 2723</p> <p>See below for responsibilities relating to specific aspects of this ground of inadmissibility</p>	<p>**</p> <p>MOU at 18</p>

Statutory Provision	Agency Responsible for Visa-Related Determination	Supporting Authority
8 U.S.C. § 1182(a)(3)(B)(i) – determine PLO association	Secy of State	MOU at 4
8 U.S.C. § 1182(a)(3)(B)(i)(IV)(bb) – render inadmissible someone who is a representative of “a political, social, or other group that endorses or espouses terrorist activity”; and related visa guidance	Secy of State	6 U.S.C. § 236(c)(2)(C); MOU at 4
8 U.S.C. § 1182(a)(3)(B)(i)(VI) – renders inadmissible a member of a terrorist organization as defined in 8 U.S.C. § 1182(a)(3)(B)(vi)(III) -	Secy of State	6 U.S.C. § 236(c)(2)(D); MOU at 4
Guidance concerning exception to material support provisions in 8 U.S.C. § 1182(a)(3)(B)(iv)	Joint responsibility – DHS and DOS Secretaries	MOU at 4
8 U.S.C. § 1182(a)(3)(B)(vi)(II) – designate a terrorist organization; and related visa guidance	Secy of State, in consultation with or upon request of AG or DHS Secy	6 U.S.C. § 236(c)(2)(E); 8 U.S.C. § 1182(a)(3)(B)(vi)(III); MOU at 4
8 U.S.C. § 1182(a)(3)(C) – render inadmissible persons whose admission would have “potentially serious adverse foreign policy consequences”; and related visa guidance	Secy of State, provided he has “reasonable grounds” for the belief	8 U.S.C. § 1182(a)(3)(C); 6 U.S.C. § 236(c)(2)(F); MOU at 4
8 U.S.C. § 1182(a)(3)(E) – define participation in Nazi persecution and genocide	Secy of State	MOU at 4
Guidance concerning exception to material support provision in 8 U.S.C. § 1182(a)(3)(F)	Joint responsibility – DHS and DOS Secretaries (Secy of State, in consultation with AG, or vice versa, makes determination whether a person is associated with a terrorist organization)	MOU at 4
8 U.S.C. § 1182(a)(4) – public charge	Conoffs, and DHS Secy and HQ staff in accordance with broad authority under 6 U.S.C. § 236(b)(1) “to refuse visas in accordance with law”	**
8 U.S.C. § 1182(a)(5) – labor certification related	Conoffs, and DHS Secy and HQ staff in accordance with broad authority under 6 U.S.C. § 236(b)(1) “to refuse visas in accordance with law”	**
8 U.S.C. § 1182(a)(6) related to: (A) illegal entrants and immigration violators; (B) failure to attend removal proceedings; (C) misrepresentation, including false claim to U.S. citizenship; (D) stowaways; (E) smugglers; (F) civil document fraud; and (G) student visa abusers	Conoffs, and DHS Secy and HQ staff in accordance with broad authority under 6 U.S.C. § 236(b)(1) “to refuse visas in accordance with law”	**

Statutory Provision	Agency Responsible for Visa-Related Determination	Supporting Authority
8 U.S.C. § 1182(a)(7) – nonimmigrants lacking proper docs	Conoffs, and DHS Secy and HQ staff in accordance with broad authority under 6 U.S.C. § 236(b)(1) “to refuse visas in accordance with law”	**
8 U.S.C. § 1182(a)(8) – persons permanently ineligible for citizenship, including draft evaders	Conoffs, and DHS Secy and HQ staff in accordance with broad authority under 6 U.S.C. § 236(b)(1) “to refuse visas in accordance with law”	**
8 U.S.C. § 1182(a)(9) related to (A) previous removals; (B) unlawful presence; and (C) illegal entry after unlawful presence/prior removal	Conoffs, and DHS Secy and HQ staff in accordance with broad authority under 6 U.S.C. § 236(b)(1) “to refuse visas in accordance with law”	**
8 U.S.C. § 1182(a)(10) – miscellaneous, including practicing polygamists, guardians, international child abduction (but see next box below), unlawful voters, and renunciation of citizenship to avoid taxation	Conoffs, and DHS Secy and HQ staff in accordance with broad authority under 6 U.S.C. § 236(b)(1) “to refuse visas in accordance with law”	**
8 U.S.C. § 1182(a)(10)(C) – identifying individuals involved in international child abduction; and related visa guidance	Secy of State	8 U.S.C. § 1182(a)(10)(C)(ii); 6 U.S.C. § 236(c)(2)(G); MOU at 4
8 U.S.C. § 1182(d) – waivers	Statute refers to AG. Secy of State and DHS both have some statutorily specified roles.	8 U.S.C. § 1182(d), see subsections for details; **
8 U.S.C. § 1182(d)(8) – reciprocity for transit of accredited foreign officials, family and staff	Secy of State	MOU at 4
8 U.S.C. § 1182(e) – waiver for foreign residence requirement	DHS, although statute refers to AG	8 U.S.C. § 1182(e); **
8 U.S.C. § 1182(f) – suspending entry based on Presidential proclamation of AG determination of commercial airline compliance with documentation requirements; and related visa guidance	Secy of State	6 U.S.C. § 236(c)(2)(H); 6 U.S.C. § 236(d)(2); MOU at 4
8 U.S.C. § 1182(g) – waiver for relatives of mentally disabled/ill, tubercular, or VAWA folks	Statute refers to AG and HHS Secy	8 U.S.C. § 1182(g); **
8 U.S.C. § 1182(h) – waiver of inadmissibility under 8 U.S.C. §§ 1182(a)(2)(A)(i)(I), (II), (B), (D), (E)	Statute refers to AG	8 U.S.C. § 1182(h); **
8 U.S.C. § 1182(i)	Statute refers to AG	8 U.S.C. § 1182(i); **
8 U.S.C. §§ 1182(j)-(t)	Omitted, see specific statutory provisions	**
8 U.S.C. § 1189(a) – designate foreign terrorist organization; and related visa guidance	Secy of State	6 U.S.C. § 236(c)(2)(I); MOU at 4

Statutory Provision	Agency Responsible for Visa-Related Determination	Supporting Authority
8 U.S.C. § 1227(a)(4)(C) – render deportable persons whose admission would have “potentially serious adverse foreign policy consequences”; related visa guidance	Secy of State, provided he has “reasonable grounds” for the belief	8 U.S.C. § 1227(a)(4)(C); 6 U.S.C. § 236(c)(2)(J); MOU at 4
22 U.S.C. § 6091 – requiring the Secy of State to deny visas to individuals involved in the confiscation of property of US national by the Cuban government	Secy of State	6 U.S.C. § 236(c)(2)(K); MOU at 4
§ 613 [§ 616] of Public Law No. 105-277 as amended by Public Law No. 106-553 - authorizing an exemption to the ban on visa issuance to persons involved in extrajudicial and political killings of Haitians; related visa guidance	Secy of State, on a case-by-case basis provided visa issued for medical reasons or because person fully cooperated in the investigation of such murders	Pub. L 105-277, Pub. L. 106-553, 6 U.S.C. § 236(c)(2)(L); MOU at 4
22 U.S.C. § 6713(f) – requiring Secy of State to deny visas to individuals (their spouses, children and agents) who disclose U.S. confidential business information without authorization; and related visa guidance	Secy of State	22 U.S.C. § 6713(f); 6 U.S.C. § 236(c)(2)(M); MOU at 4
8 U.S.C. § 1182e – authorizing Secy of State to waive ban on visas and entry to individuals engaged in enforcement or establishment of forced abortions or sterilization	Secy of State	8 U.S.C. § 1182e; 6 U.S.C. § 236(c)(2)(N); MOU at 4
§ 568 of Public Law No. 107-115 - authorizing Secy of State to waive ban on visas to supporters of Columbian illegal armed groups; and related visa guidance	Secy of State	§ 568 of Public Law No. 107-115; 6 U.S.C. § 236(c)(2)(O); MOU at 4
22 U.S.C. § 2723 – requiring Secy of State to report all visa denials on the grounds of terrorist activities or foreign policy and report all granting of visas to inadmissible persons; and related visa guidance	Secy of State	22 U.S.C. § 2723; 6 U.S.C. § 236(c)(2)(P); MOU at 4
§ 2225 of the Foreign Affairs Reform and Restructuring Act of 1998, <i>see</i> Public Law No. 105-277 – denial of visas to confiscators of American property	Secy of State	MOU at 4

Statutory Provision	Agency Responsible for Visa-Related Determination	Supporting Authority
<p>§ 411 of the USA PATRIOT Act, Public Law No. 107-56 – exception to the retroactive application of § 411(a)-(c) regarding changes to §§ 1182(a)(3)(B), 1227(a)(4)(B) and 1189</p>	<p>Secy of State</p>	<p>§ 411(c)(4) of the PATRIOT Act; MOU at 4</p>
<p>8 U.S.C. § 1735 – determination of whether country is a “state sponsor of terrorism” and restriction of visa issuance</p>	<p>Secy of State in charge of designation</p> <p>DHS Secy has final responsibility over procedures and standards to administer restrictions, unless DOS objects, and then the Secretaries must consult and reach agreement</p> <p>Even if Secy of State finds person does not pose a threat, DHS Secy has final authority to refuse or revoke visa</p>	<p>MOU at 6-7; 8 U.S.C. § 1735, which mentions AG, Secy of State and heads of other appropriate agencies</p>