

UNCLASSIFIED 18 STATE 3508

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From: SECSTATE WASHDC

Subject: Revisions to 9 FAM 402.3-9: A-3, C-3, G-5, NATO-7 Visa Applicants

1. The Visa Office has reorganized 9 FAM 402.3-9 to help guide consular officers through visa eligibility requirements for attendants, servants, and personal employees of foreign government officials and employees; officers and employees of international organizations; and NATO personnel, including A-3, C-3 (attendants, servants, and personal employees only), G-5, and NATO-7 visa applicants. As part of the reorganization, 9 FAM 402.3-9 now reflects updated legal, policy, and procedural changes, including new or amended contract terms, updates to minimum wage requirements, presumptions of ineligibility or other relevant considerations, and the applicability of INA 214(b).

#### Updated Contract Terms

3. Effective immediately, all A-3, C-3 (attendants, servants, and personal employees only), G-5, and NATO-7 visa applicants must present a contract complying with 9 FAM 402.3-9(B)(3), describing contract terms required by the Office of the Chief of Protocol (Protocol). Employers of A-3, C-3, G-5, and NATO-7 visa applicants may use Protocol's employment contract template, available on the Protocol website. Posts should not create their own contract template. The applicant must present a copy of the employment contract in a language understood by the applicant and signed by both the applicant and employer. If the contract is not in English, an accurate English-language translation must be attached. Posts should scan the contract into the NIV system. The contract requirements for A-3, C-3, G-5, and NATO-7 applicants are not applicable to B-1 domestic workers.

#### Burden of Proof and Presumptions

4. In accordance with INA 291, the burden of proof for visa eligibility is on the applicant. The applicant must demonstrate to the consular officer's satisfaction that he or she will credibly engage in A-3, C-3, G-5, or NATO-7 activity. An A-3, C-3, G-5, or NATO-7 applicant must be coming to the United States to perform a specific job outlined in the contract. As appropriate, the consular officer should ask questions about the terms of the contract and the intended employment to confirm that the applicant understands the terms of the contract and is traveling for the stated purpose.

5. Consular officers must presume that an applicant is not eligible for the visa if the employer is not the principal officer or deputy principal officer or does not carry the diplomatic rank of minister or higher, due to concerns about the employer's ability to compensate the applicant as required under U.S. law. To rebut this presumption, the employer or the employee may provide additional information to demonstrate that the employer has sufficient funds to comply with minimum wage requirements as reflected in the contract. The sending government or international organization may also be able to provide general information as to how their organization compensates its employees based on rank or position. Please note that employers who are officers and employees of international organizations (G-4 visa holders) rarely hold the

rank of minister or higher and, therefore, their compensation is unlikely to be sufficient to cover the cost of employing a personal employee. Accordingly, the consular officer must determine that the employer has sufficient funds to provide the required minimum wages and work conditions to the G-5 visa applicant in order to issue the visa.

#### Grounds of Ineligibility, Including INA 214(b), Apply

7. A-3, C-3 (attendants, servants, and personal employees only), G-5, and NATO-7 visa applicants are subject to all grounds of ineligibility, including INA §§ 212(a), 214(b), 221(g), and 222(g). Accordingly, all A-3, C-3 (attendants, servants, and personal employees only), G-5, and NATO-7 applicants must establish to the consular officer's satisfaction they qualify for the visa classification sought and must demonstrate they: (1) are not intending immigrants; (2) have a residence abroad they do not intend to abandon; and (3) intend to depart from the United States upon the completion of the approved activities. When assessing these factors, consular officers should keep in mind the work these applicants engage in may require the applicant to live outside his or her country of residence for long periods of a time and the applicant may not own real property and may not intend to return to the country where the applicant is applying for a visa. The residence abroad requirement should not be exclusively connected to "ties," as noted in 9 FAM 402.3-9(B)(6). The consular officer must focus on the applicant's immediate intent and be satisfied at the time of application the applicant possesses the present intent to depart the United States at the conclusion of his or her duties. The same is true for an immediate family member applying for an A-3, C-3, G-5, or NATO-7 visa to accompany a domestic worker. If the consular officer is not satisfied that the immediate family member will depart the United States at the conclusion of the domestic employee's duties, the visa must be refused under INA 214(b). The visa should also be refused under INA 214(b) if the consular officer is not satisfied that the immediate family member will not seek unlawful employment in the United States.

9. (U) The Department thanks posts in advance for your cooperation and commitment to ensuring the protection of domestic workers.