

Human Rights Related Ineligibilities

Reference Document: STATE 063167, 06/10

1. Summary. The United States understands that respect for human rights helps secure peace, deter aggression, promote the rule of law, combat crime and corruption, strengthen democracies, and prevent humanitarian crises. Because the promotion of human rights is an important national interest, the United States seeks to promote greater respect for human rights, including freedom from torture, freedom of expression, freedom of the press, women's rights, children's rights, and the protection of minorities. The United States also seeks to ensure that individuals who have violated or abused human rights do not get safe haven in the United States. To this end, this cable outlines the various visa ineligibilities that are related to human rights violations and abuses. This cable also includes instructions for entering the names of suspected human rights violators and abusers into the Consular Lookout and Support System (CLASS). End Summary.

Human Rights Related Ineligibilities

2. GENERAL: There is no general ineligibility for individuals who have been implicated in human rights violations and abuses. However, there are several discrete visa ineligibilities that are related to human rights violations and abuses, including ineligibilities for foreign government officials who have engaged in severe violations of religious freedom; human traffickers; participants in Nazi persecutions; participants in genocide; individuals who have been involved in torture; individuals who have been involved in extrajudicial killings; individuals who have been involved in the recruitment or use of child soldiers; individuals who have established or enforced policies that force abortions or sterilizations; and individuals who have engaged in coerced organ or tissue transplantation.

3. NOTE ON ADVISORY OPINIONS: Even if applicants for A and G (other than A-3 and G-5) visas are exempted from the ineligibility provision below for which an advisory opinion or security advisory opinion is required, posts should still submit these for an advisory or security advisory opinion, as there may be other foreign policy issues relating to human rights concerns that could lead to either an ineligibility finding or a refusal based on a determination not to accept the applicant for A-1 or A-2 status.

4. FOREIGN GOVERNMENT OFFICIALS ENGAGED IN VIOLATIONS OF RELIGIOUS FREEDOM: Section 212(a)(2)(G) of the Immigration and Nationality Act, as amended, provides that "an alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom . . . is inadmissible." Violations of the internationally recognized right to freedom of religion and religious beliefs and practice include:

The arbitrary prohibition on, the restriction of, or punishment for:

Assembling for peaceful religious activities such as worship, preaching, and prayer;

Speaking freely about religious beliefs;

Changing religious beliefs and affiliation;

Possession and distribution of religious literature;

Raising children in accordance with religious teachings and practices; or,

The imposition of an onerous financial penalty, detention, interrogation, forced labor, forced mass resettlement, imprisonment, forced conversion, beating, torture, mutilation, rape, enslavement, murder, or execution of an individual because of his or her religious belief or practice.

A particularly severe violation of religious freedom is a systematic, ongoing, egregious violation of the religious freedom of another, including, but not limited to:

The use of torture or cruel, inhumane, or degrading treatment or punishment;

Prolonged detention without formal charges;

Causing the disappearance of an individual through abduction or clandestine detention; or

Other flagrant forms of the denial of the right of life, liberty, or the security of an individual.

If there is evidence that an applicant, during his or her official tenure as a foreign government official, has engaged in, was responsible for, or directly carried out a particularly severe violation of religious freedom, you must request an advisory opinion from CA/VO/L/A.

5. **TRAFFICKERS IN PERSONS:** Section 212(a)(2)(H) of the Immigration and Nationality Act, as amended, provides that any alien who "commits or conspires to commit human trafficking offenses . . . is inadmissible." It also provides that any alien who "the consular officer . . . knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons ... is inadmissible." Severe forms of trafficking are defined, pursuant to 22 USC 7102(8) as:

The recruitment, harboring, transportation, provision or obtaining of a person for the purpose of a commercial sex act in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not yet attained 18 years of age; or

The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery.

If you believe that an applicant has committed or conspired to commit a human trafficking offense or has knowingly aided, abetted, assisted, conspired or colluded in a human trafficking offense, you must request an advisory opinion from CA/VO/L/A and notify G/TIP.

6. **PARTICIPANTS IN NAZI PERSECUTIONS:** Section 212(a)(3)(E)(i) of the Immigration and Nationality Act, as amended, provides that an individual who "ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion" during the

period from March 23, 1933 to May 8, 1945 under the direction of or in association with the Nazi government of Germany or an allied or occupied government is inadmissible.

If there is evidence to indicate that an applicant has engaged in Nazi-related persecutions, you must request a security advisory opinion from CA/VO/L/C.

7. PARTICIPATION IN GENOCIDE: Section 212(a)(3)(E)(ii) of the Immigration and Nationality Act, as amended, provides that an individual who "ordered, incited, assisted, or otherwise participated in genocide is inadmissible." Genocide is defined as the commission of an act committed with the intent to destroy, in whole or in substantial part, a national, ethnic, racial or religious group. Actions that can be considered an act of genocide include:

Killing members of a national, ethnic, racial or religious group;

Causing serious bodily injury to members of a national, ethnic, racial or religious group, or causing permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;

Subjecting a national, ethnic, racial, or religious group to conditions of life intended to cause the group's physical destruction, in whole or in part;

Imposing measures intended to prevent births within a national, ethnic, racial or religious group; and/or

Forcibly transferring children of a national, ethnic, racial or religious group to another group.

In addition to the commission of genocide, an individual can be found ineligible for having conspired to commit genocide, for the direct and public incitement of others to commit genocide, for an attempt to commit genocide, and for complicity in genocide.

If there is evidence to indicate that an applicant has engaged in genocide you must request a security advisory opinion from CA/VO/L/C.

8. TORTURE AND EXTRAJUDICIAL KILLINGS: Section 212(a)(3)(E)(iii) of the Immigration and Nationality Act, as amended, provides that an individual who has "committed, ordered, incited, assisted, or otherwise participated in the commission of any act of torture . . . or . . . any extrajudicial killing is inadmissible." Torture is defined as an act committed by a person, acting under the color of law, specifically intended to inflict severe physical or mental pain or suffering (other than that incidental to lawful sanctions) upon an individual within his custody or physical control. Severe mental pain or suffering is prolonged mental harm that is caused by or results from:

The intentional infliction or threatened infliction of severe physical pain or suffering;

The administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to profoundly disrupt the senses or the personality;

The threat or imminent death; and/or

The threat that another individual will be imminently subjected to death or severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.

Extrajudicial killing is defined as the deliberate killing of an individual that is not authorized by a previous judgment pronounced by a regular court affording all the indispensable judicial guarantees. Extrajudicial killing does not, repeat does not, include a killing that is lawfully carried out under the authority of a foreign nation.

If there is evidence to indicate that an applicant has engaged in torture or extrajudicial killings, you must request a security advisory opinion from CA/VO/L/C.

9. RECRUITMENT AND/OR USE OF CHILD SOLDIERS: Section 212(a)(3)(G) of the Immigration and Nationality Act, as amended, provides that an individual who has "engaged in the recruitment or use of child soldiers is inadmissible." The recruitment of a child soldier is defined as the recruitment, enlistment or conscription of a child under the age of 15 to serve with an armed force or group. An armed force or group is any army, militia, or other military organization regardless of whether the organization is state-sponsored. The use of child soldiers is defined as using an individual under 15 as an active participant in hostilities. Active participation in hostilities is defined in the act to include:

Combat and/or military activities related to combat, including sabotage, serving as a decoy, or serving at a military checkpoint; and/or

Direct support functions related to combat, including transporting supplies or providing other services.

If there is evidence to indicate that an applicant has engaged in the recruitment or use of a child soldier as defined in the act, you must request a security advisory opinion from CA/VO/L/C.

10. INDIVIDUALS ENGAGED IN FORCED ABORTIONS OR STERILIZATIONS: Section 1182e of Title 8 of the United States Code provides that an individual who has been directly involved in the establishment or enforcement of population control policies that force a woman to undergo an abortion against her will or force an individual to undergo sterilization against his or her free will is ineligible for admission to the United States unless the Secretary of State has substantial grounds for believing that the foreign national has discontinued his or her involvement with, and support for, such policies.

If there is evidence to indicate that an applicant has engaged in establishing or enforcing policies that force abortions or sterilizations, you must request an advisory opinion from CA/VO/L/A.

11. INDIVIDUALS ENGAGED IN COERCED ORGAN OR TISSUE TRANSPLANTATION: Section 1182f of Title 8 of the United States Code provides that an individual who has been directly involved in the coercive transplantation of human organ or bodily tissue is ineligible for admission to the United States unless the Secretary of State has substantial grounds for believing that the foreign national has discontinued his or her involvement with, and support for, such practices.

If there is evidence to indicate that an applicant has engaged in coerced organ or tissue transplantation, you must request an advisory opinion from CA/VO/L/A.

12. APPLICATION AND INTERVIEW: The visa application forms contain questions that are related to many of the ineligibilities described above. If the applicant completed the DS-160, Online Application for Nonimmigrant Visa, or the DS-260, Online Application for Immigrant Visa and Alien Registration, he or she is required to explain any "YES" answer to a security or background question.

Pay special attention to these questions and the applicant's explanation. It is important that you use information on the visa application and your own knowledge of local conditions and history to guide the visa interview. Regardless of whether the applicant has answered "Yes" to any of the security and background questions on the application form, if you have any facts that lead you to believe that an individual may be ineligible under any of the above-enumerated grounds, you must ask questions during the interview that will elicit the information necessary to request an advisory opinion or a security advisory opinion.

CLASS Entries for Potential Human Rights
Violators/Abusers

13. GENERAL: The Department wants to ensure the names of, and other biographic information concerning, individuals who may be potential human rights violators or abusers are entered into CLASS.

14. [Redacted] As noted earlier, if the information arises in the context of a visa application, you must refuse the applicant under 221(g) and request an advisory or a security advisory opinion.

If the necessary biographic information cannot be developed but you and the reporting officer believe the allegations against the individual are serious enough to warrant inclusion in CLASS, notwithstanding any deficiencies in biographic information, submit the individual's name to the Department along with all known information on the individual so that the Department can make a decision about a potential CLASS entry.

15. QUESTIONS: Questions about human rights-related visa ineligibilities can be addressed to [redacted] CA/VO/L/R.