

## **Waivers of US Visa Denials and Waivers in Thailand**

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This article is intended for US citizens that wish to bring their Thai wife, husband or fiancé(e) to America on a K1 or K3 visa, but is facing visa denial issues. There is a plethora of information on the internet that focuses on the grounds of US visa denials and the available waivers of inadmissibility. Most of these articles, however, focus on the black letter law without much written regarding the practical realities of visa denials and waivers. Rather than taking a bird's eye view, this article takes a worm's eye view of the practice at the consular level based on 15 years of practice of a US immigration lawyer in Thailand.

### **Main Grounds of Excludability**

According to the United States Immigration and Nationality Act, there are ten major grounds of excludability. In our experience the most commonly encountered grounds of excludability are actually communicable diseases, especially HIV/AIDs. In the Thai context one of the most discussed grounds of denial is based on prostitution.

### **Reality of Numbers**

There are several categories of visa denials that may allow for a waiver of grounds of inadmissibility (I-601) based on the relevant evidence presented. Worldwide statistics from 2008 released by the US Bureau of Consular Affairs shed a light on the true numbers of visa denials, presented in the chart below. For those applying for nonimmigrant visas, the majority of applicants were denied visas based on the "failure to establish entitlement to nonimmigrant status" (line 56), followed by "non-compliance with the provisions of INA" (57), denials on the basis of misrepresentation (32) and unlawful presence (47). As for immigrant visas, the majority of applicants were denied visas based similarly on "non-compliance with the provisions of INA or regulations issued pursuant thereto" (57), unlawful presence (47) labor certification (28) and misrepresentation (32). Thus, the main grounds of denial are actually

failing to establish entitlement and non-compliance with regulations; these catch-all phrases usually mean the petition or application presented did not meet even basic standards for visa qualification.

### **Myth of Prostitution**

In spite of the volume of material published regarding prostitution as a cause of visa denial, in our experience, cases of denial on the grounds of prostitution are quite rare. The number of applicants that are concerned about this issue seems disproportional when compared to the number of actual recorded cases. This observation is supported by the US Bureau of Consular Affairs statistics: for non-immigrant visas, 27 persons were denied visas as a result of suspected involvement in prostitution and two of those that were denied on this ground subsequently received a waiver. This number drops for immigrant visa applicants: 17 were denied and nine received waivers. Out of almost two and a half million visa denials worldwide, clearly denial on the grounds of prostitution is a rather small proportion.

### **HIV/AIDs**

The majority of people seeking our assistance with waiver applications, however, are for visa denial based on the grounds of communicable diseases, HIV/AIDs in particular. If an individual is faced with inadmissibility on the basis of HIV/AIDs he/she will normally be required to file a waiver application and provide supplementary documentation, including: proof of insurance covering applicant's HIV positive condition in the form of a letter from an insurance company acknowledging coverage for HIV; and a signed statement completed by the physician or health facility that has agreed to provide counseling and treatment or observation. We have never had any problems seeking this waiver.

1. According to the United States Immigration and Nationality Act under Section 212(a), the list of grounds for excludability include: health, criminal, national security, public charge, labor certification, illegal entrants and immigration violators, lack of proper documentation, ineligibility for citizenship, aliens previously removed and miscellaneous grounds.

### **Waiver Outcomes**

Individuals and their situations are evaluated on a case by case basis by the consular officer and USCIS official handling the cases. It is best to seek the advice of a trained legal

professional in this area for the likelihood of receiving a waiver in these and other situations. Some waivers require a very high standard of evidence. A waiver petition should be treated as a court pleading with references to the Immigration and Nationality Act and appropriate case law as necessary. Of course, denials based on various other grounds need to meet different standards for waiver applications.

**For more information please see:**

[K1 Visa Thailand](#)

[K3 Visa Thailand](#)

[US Visa Denial and Waivers Thailand](#)

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Immigrant and Nonimmigrant Visa Ineligibilities (by Grounds for Refusal Under the Immigration and Nationality Act) Fiscal Year 2008						
		Immigrant		Nonimmigrant		
Grounds for Refusal Under the Immigration and Nationality Act		Ineligibility Finding	Ineligibility Overcome	Ineligibility Finding	Ineligibility Overcome	
1	212(a)(1)(A)(i)	Communicable Disease	832	437	219	187
2	212(a)(1)(A)(ii)	Immigrant lacking required vaccinations	29	26	0	0
3	212(a)(1)(A)(iii)	Physical or mental disorder	479	89	329	135
4	212(a)(1)(A)(iv)	Drug Abuser or Addict	2,457	0	189	56
5	212(a)(2)(A)(i)(I)	Crime Involving Moral Turpitude	1,196	202	5,308	3,290
6	212(a)(2)(A)(i)(II)	Controlled Substance Violators	465	22	2,841	1,867
7	212(a)(2)(B)	Multiple Criminal Convictions	90	6	309	123
8	212(a)(2)(C)(i)	Illicit Trafficker in Any Controlled Substance	384	3	1,607	499
9	212(a)(2)(C)(ii)	Spouse, Son, or Daughter Who Benefited from Illicit Activities of Trafficker	20	1	381	27
10	212(a)(2)(D)(i)	Prostitution (within 10 years)	17	9	27	2
11	212(a)(2)(D)(ii)	Procuring (within 10 years)	5	1	33	7
12	212(a)(2)(D)(iii)	Unlawful Commercialized Vice	1	1	3	2
13	212(a)(2)(E)	Asserted immunity to avoid prosecution	0	0	0	0
14	212(a)(2)(G)	Foreign government officials who have engaged in violations of religious freedom	0	0	0	0
15	212(a)(2)(H)	Significant traffickers in persons	1	0	2	0
16	212(a)(2)(I)	Money Laundering	2	0	24	5
17	212(a)(3)(A)(i)	Espionage, sabotage,	4	0	212	5

		technology transfer, etc.				
18	212(a)(3)(A)(ii)	Other Unlawful Activity	23	0	41	7
19	212(a)(3)(A)(iii)	Act to Overthrow USG	0	0	0	0
20	212(a)(3)(B)	Terrorist Activities	17	0	401	266
21	212(a)(3)(C)	Foreign Policy	0	0	0	0
22	212(a)(3)(D)	Immigrant Membership in Totalitarian Party	19	11	0	0
23	212(a)(3)(E)(i)	Participants In Nazi Persecutions	0	0	0	0
24	212(a)(3)(E)(ii)	Participants in Genocide	0	0	0	0
25	212(a)(3)(E)(iii)	Commission of Acts of Torture or Extrajudicial Killings	0	0	0	0
26	212(a)(3)(F)	Association with Terrorist Organizations	0	0	0	0
27	212(a)(4)	Public Charge	6,862	5,198	743	52
28	212(a)(5)(A)	Labor Certification	18,025	464	0	0
29	212(a)(5)(B)	Unqualified Physician	2	1	0	0
30	212(a)(5)(C)	Uncertified foreign health-care workers	13	33	0	0
31	212(a)(6)(B)	Failure to attend removal proceedings	33	0	28	14
32	212(a)(6)(C)(i)	Misrepresentation	6,045	1,280	7,977	1,968
33	212(a)(6)(C)(ii)	Falsely claiming citizenship	992	0	981	258

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		Immigrant			Nonimmigrant	
Grounds for Refusal Under the Immigration and Nationality Act		Ineligibility Finding	Ineligibility Overcome	Ineligibility Finding	Ineligibility Overcome	
34	212(a)(6)(E)	Smugglers	1,104	86	1,963	507
35	212(a)(6)(F)	Subject of civil penalty (under INA 274C)	0	1	0	0
36	212(a)(6)(G)	Student visa abusers	1	0	14	3
37	212(a)(7)(B)	Documentation requirement for nonimmigrants	-	-	22	12
38	212(a)(8)(A)	Immigrant permanently ineligible for citizenship (IV only)	0	0	-	-
39	212(a)(8)(B)	Draft evader	0	0	6	7
40	212(a)(9)(A)(i)	Ordered removed upon arrival	1,340	220	494	110
41	212(a)(9)(A)(i)	Ordered removed upon arrival - multiple removals	73	7	45	7
42	212(a)(9)(A)(i)	Ordered removed upon arrival - convicted aggravated felony	22	0	20	7
43	212(a)(9)(A)(ii)	Ordered removed or departed while removal order outstanding	934	247	481	223
44	212(a)(9)(A)(ii)	Ordered removed or departed while removal order outstanding multiple removals	165	34	89	16
45	212(a)(9)(A)(ii)	Ordered removed or departed while removal order outstanding convicted aggravated felony	68	1	66	6
46	212(a)(9)(B)(i)(I)	Unlawfully present 181-364 days (within 3 years)	503	333	1,509	133
47	212(a)(9)(B)(i)(II)	Unlawfully present 365 or more days	30,566	16,589	7,849	784

		(within 10 years)				
48	212(a)(9)(C)	Unlawfully present after previous immigration violations	4,267	0	1,189	55
49	212(a)(10)(A)	Practicing polygamist	23	5	0	0
50	212(a)(10)(C)(1)	International child abductor	0	0	0	0
51	212(a)(10)(C)(2)	Aliens supporting abductors and relatives of abductors	0	0	0	0
52	212(a)(10)(D)	Unlawful voter	1	0	1	0
53	212(a)(10)(E)	Former U.S. citizen who renounced citizenship to avoid taxation	0	0	0	0
54	212(e)	Certain former exchange visitors	11	7	20	8
55	212(f)	Presidential proclamation	0	0	373	11
56	214(b)	Failure to establish entitlement to nonimmigrant status	-	-	1,481,471	19,837
57	221(g)	Application does not comply with provisions of INA or regulations issued pursuant thereto	257,177	169,334	589,418	510,549
58	222(g)(2)	Alien in illegal status, required to apply for new NIV in country of alien's nationality	-	-	144	20
59	Sec.103 Pub. Law 105-227	Disclosure/trafficking of confidential U.S. business information	0	0	0	0
60	Sec. 401 Pub. Law 104-114	Helms-Burton refusal	0	0	0	0
61	Sec. 402 Pub. Law 104-114	Conversion of confiscated U.S. property for gain	0	0	0	0
62	Sec. 306 Pub. Law 107-173	Inadmissible alien from a country that is a state sponsor of terrorism	0	0	65	5

	Total Grounds of Ineligibility:	334,268	194,648	2,106,894	541,070
	Number of Applications:1	291,792	184,457	2,083,726	538,129
<p>The figures at the end of this table show totals of applications refused and refusals overcome. The total of applications refused does not necessarily reflect the number of persons refused during the year. One applicant can apply and be found ineligible more than one time in a fiscal year.</p>					

Source: <http://www.travel.state.gov/pdf/FY08-AR-TableXX.pdf>

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