

Visa Denials

Liza was excited. In three days her friend Timothy would come visit her in the United States. Suddenly, the phone rang. Liza couldn't believe her ears! Sadly, Timothy told her, "I cannot come...the consul said I am 214(b)."

On any given day throughout the world some visa applicants find themselves in Timothy's situation. They hear the consular officer say, "Your visa application is refused. You are not qualified under Section 214(b) of the Immigration and Nationality Act." To be refused a visa when you are not expecting it causes great disappointment and sometimes embarrassment. Here is what a 214(b) visa refusal means and what applicants and friends can do to prepare for a visa reapplication.

Why is there a visa requirement?

The United States is an open society. Unlike many other countries, the United States does not impose internal controls on most visitors, such as registration with local authorities. In order to enjoy the privilege of unencumbered travel in the United States, aliens have a responsibility to prove they are going to return abroad before a visitor or student visa is issued. Our immigration law requires consular officers to view every visa applicant as an intending immigrant until the applicant proves otherwise.

What is section 214(b)?

Section 214(b) is part of the Immigration and Nationality Act (INA). It states:

Every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for admission, that he is entitled to a nonimmigrant status...

To qualify for a visitor or student visa, an applicant must meet the requirements of sections 101(a)(15)(B) or (F) of the INA respectively. Failure to do so will result in a refusal of a visa under INA 214(b). The most frequent basis for such a refusal concerns the requirement that the prospective visitor or student possess a residence abroad he/she has no intention of abandoning. Applicants prove the existence of such residence by demonstrating that they have ties abroad that would compel them to leave the U.S. at the end of the temporary stay. The law places this burden of proof on the applicant.

Our consular officers have a difficult job. They must decide in a very short time if someone is qualified to receive a temporary visa. Most cases are decided after a brief interview and review of whatever evidence of ties an applicant presents.

What constitutes "strong ties"?

Strong ties differ from country to country, city to city, individual to individual. Some examples of ties can be a job, a house, a family, a bank account. "Ties" are the

various aspects of your life that bind you to your country of residence: your possessions, employment, social and family relationships.

As a U.S. citizen or legal permanent resident, imagine your own ties in the United States. Would a consular office of a foreign country consider that you have a residence in the United States that you do not intend to abandon? It is likely that the answer would be "yes" if you have a job, a family, if you own or rent a house or apartment, or if you have other commitments that would require you to return to the United States at the conclusion of a visit abroad. Each person's situation is different.

Our consular officers are aware of this diversity. During the visa interview they look at each application individually and consider professional, social, cultural and other factors. In cases of younger applicants who may not have had an opportunity to form many ties, consular officers may look at the applicants specific intentions, family situations, and long-range plans and prospects within his or her country of residence. Each case is examined individually and is accorded every consideration under the law.

Is a denial under section 214(b) permanent?

No. The consular officer will reconsider a case if an applicant can show further convincing evidence of ties outside the United States. Your friend, relative or student should contact the embassy or consulate to find out about reapplication procedures. Unfortunately, some applicants will not qualify for a nonimmigrant visa, regardless of how many times they reapply, until their personal, professional, and financial circumstances change considerably.

How can I help?

You may provide a letter of invitation or support. However, this cannot guarantee visa issuance to a foreign national friend, relative or student. Visa applicants must qualify for the visa according to their own circumstances, not on the basis of an American sponsor's assurance.

What can you do if an acquaintance is refused a visa under 214(b) for lack of a residence abroad?

First encourage your relative, friend or student to review carefully their situation and evaluate realistically their ties. You can suggest that they write down on paper what qualifying ties they think they have which may not have been evaluated at the time of their interview with the consular officer. Also, if they have been refused, they should review what documents were submitted for the consul to consider. Applicants refused visas under section 214(b) may reapply for a visa. When they do, they will have to show further evidence of their ties or how their circumstances have changed since the time of the original application. It may help to answer the following questions before reapplying: (1) Did I explain my situation accurately? (2) Did the

consular officer overlook something? (3) Is there any additional information I can present to establish my residence and strong ties abroad?

Your acquaintances should also bear in mind that they will be charged a nonrefundable application fee each time they apply for a visa, regardless of whether a visa is issued.

Who can influence the consular officer to reverse a decision?

Immigration law delegates the responsibility for issuance or refusal of visas to consular officers overseas. They have the final say on all visa cases. By regulation the U.S. Department of State has authority to review consular decisions, but this authority is limited to the interpretation of law, as contrasted to determinations of facts. The question at issue in such denials, whether an applicant possesses the required residence abroad, is a factual one. Therefore, it falls exclusively within the authority of consular officers at our Foreign Service posts to resolve. An applicant can influence the post to change a prior visa denial only through the presentation of new convincing evidence of strong ties.

You may wish to send this information to your relative, friend or student abroad. We hope that a better understanding of section 214(b) will prepare them for successful visa interviews.

The phone rang. "Liza, its Timothy. I went back to the Embassy for another interview! I showed the consul more information about my job and family. This time I got my visa!" Liza was overjoyed. "Great!" she exclaimed, I'll see you next week!"