

9 FAM 42.1

NOTES

(CT:VISA-2236; 12-17-2014)
(Office of Origin: CA/VO/L/R)

9 FAM 42.1 N1 GENERAL

(CT:VISA-2204; 10-16-2014)

The regulations of the Department of Homeland Security contained in 8 CFR 211.1(b) (see 9 FAM 42.1 Exhibit I) relating to waivers of documentary requirements for immigrants provide for admission of certain aliens without visas. An unexpired immigrant visa (IV), reentry permit, or other valid entry document is required of an immigrant under INA 212(a)(7) except as indicated below.

9 FAM 42.1 N1.1 Child Born After Issuance of Visa to Parent

(CT:VISA-2226; 11-25-2014)

The child born after the issuance of a visa to a parent is not required to have a visa if the child is:

- (1) Born subsequent to issuance of an IV to the accompanying parent within the validity of the parent's immigrant visa; or
- (2) Born during the lawful permanent resident mother's temporary visit abroad provided that (see 9 FAM 42.1 N2):
 - (a) Admission is within 2 years of birth; and
 - (b) Either accompanying parent is applying for readmission upon first return after the birth of the child.

9 FAM 42.1 N1.2 Immigrants Possessing a Permanent Resident Card

9 FAM 42.1 N1.2-1 Returning Resident Aliens

(CT:VISA-2226; 11-25-2014)

An unexpired Form I-551, Permanent Resident Card, may be presented in lieu of a visa provided the alien is returning:

- (1) To an unrelinquished residence in the United States after a temporary

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absence abroad not exceeding one year;

- (2) Prior to the second anniversary of the date on which he or she obtained conditional residence under INA 216; or
- (3) Within 6 months of the date of filing a joint petition to remove conditional status obtained under INA 216; and
- (4) In possession of a receipt for such filing.

9 FAM 42.1 N1.2-2 Crewmembers

(CT:VISA-1173; 03-30-2009)

A visa is not required of a resident alien crewmember who is in possession of a valid Form I-551 and is:

- (1) Regularly serving aboard an aircraft or vessel of U.S. registry; and
- (2) Returning after a temporary absence abroad of any length in connection with duties as a crewmember.

9 FAM 42.1 N1.2-3 Civilian Employee of U.S. Government or Member of U.S. Armed Forces

(CT:VISA-1173; 03-30-2009)

a. A U.S. Government employee or a member of the U.S. Armed Forces may present a Form I-551, in lieu of an immigrant visa (IV) provided they are:

- (1) Traveling on U.S. Government orders; and
- (2) Returning from a foreign assignment of any length to an unrelinquished lawful residence in the United States.

b. See 9 FAM 42.1 N3.

9 FAM 42.1 N1.2-4 Spouse or Child of U.S. Government Employee or U.S. Service Person

(CT:VISA-1173; 03-30-2009)

The permanent resident spouse or child of such U.S. Government employee or member of the U.S. Armed Forces does not require a visa provided the spouse or child:

- (1) Resided abroad while the employee or service person was on duty abroad; and
- (2) Is preceding, accompanying, or following-to-join the employee or service person.

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9 FAM 42.1 N1.2-5 Expired 10-year Form I-551, Permanent Resident Card

(CT:VISA-2226; 11-25-2014)

No visa and no transportation letter is required if the alien is in possession of an expired Form I-551, Permanent Resident Card, provided the card was issued with a 10-year expiration date. If an alien is in possession of an expired Form I-551 with a 2-year expiration date (a conditional permanent resident), (see 9 FAM 42.22 Notes.)

9 FAM 42.1 N1.2-6 Replacing Form I-551, Permanent Resident Card

(CT:VISA-2226; 11-25-2014)

See 9 FAM 42.1 PN1 (Form I-551 with 10-year expiration) and 9 FAM Appendix N, 300 and 9 FAM 42.22 Notes (Form I-551 with 2-year expiration; conditional permanent resident).

9 FAM 42.1 N1.3 Immigrant Possessing Reentry Permit (I-327)

(CT:VISA-2226; 11-25-2014)

An immigrant returning to an unrelinquished lawful permanent U.S. residence after a temporary absence abroad not exceeding 2 years may present a valid, unexpired Permit to Reenter the United States (Form I-327) in lieu of an immigrant visa (IV).

9 FAM 42.1 N1.4 Traveler Possessing a Refugee Travel Document

(CT:VISA-1173; 03-30-2009)

A valid Refugee Travel Document (Form I-571) issued to an asylee, refugee, or lawful permanent resident (LPR) shall be regarded as a reentry permit.

9 FAM 42.1 N1.5 Immigrants Without Valid Travel Document

(CT:VISA-1173; 03-30-2009)

An immigrant returning to an unrelinquished residence in the United States who does not possess a valid immigrant visa (IV), Form I-551, a Permit to Reenter the United States, or a Refugee Travel Document may be granted a waiver under INA 211(b), if the Department of Homeland Security (DHS) district director of the port of entry (POE) is satisfied that there is good cause for failure to present the document.

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9 FAM 42.1 N1.5-1 Beneficiaries of Private Law 95-53

(CT:VISA-394; 04-12-2002)

An alien employee of the American University of Beirut who seeks to enter the United States immediately following employment may present an Form I-551, or a boarding letter issued by the U.S. consul or immigration officer in lieu of an immigrant visa (IV).

9 FAM 42.1 N1.5-2 Special Agricultural Workers

(CT:VISA-394; 04-12-2002)

Certain agricultural workers who adjusted status under INA 210, and remain under such status, may present Form I-688, Temporary Resident Card, in lieu of an IV if returning to an unrelinquished residence within one year after temporary absence abroad.

9 FAM 42.1 N1.5-3 Temporary Residents Adjusted Under INA 245A

(CT:VISA-394; 04-12-2002)

Aliens granted temporary resident status under INA 245A, and remaining under such status, may present Form I-688, Temporary Resident Card, in lieu of an IV if returning to an unrelinquished residence within 30 days after absence abroad, provided that the aggregate of such absences does not exceed 90 days.

9 FAM 42.1 N2 CERTAIN ALIEN CHILDREN NOT REQUIRED TO OBTAIN VISAS

9 FAM 42.1 N2.1 Child Under Two Years of Age Born of Lawful Permanent Resident Alien Mother During Temporary Visit Abroad

(CT:VISA-2140; 07-16-2014)

See 9 FAM 42.1 N1.1.

9 FAM 42.1 N2.2 Requiring Reentry Document of Child's Parent

(CT:VISA-1173; 03-30-2009)

The provisions of 9 FAM 42.1 N2.1 apply only if the alien parent is in possession of a valid Form I-551, a valid reentry permit, refugee travel document (lawful

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permanent resident only), or an SB-1 visa. With respect to 22 CFR 42.1(d), it is irrelevant whether the visa issued to the accompanying parent is an initial visa or a replacement visa.

9 FAM 42.1 N2.3 Evidence of Parent-Child Relationship

(CT:VISA-49; 10-30-1991)

To facilitate the admission of children under the provisions of 9 FAM 42.1 N2.1, consular officers shall instruct parents to have with them documentary evidence of the parent-child relationship.

9 FAM 42.1 N2.4 No Immigrant Visa (IV) Required for Child Born After Parent Issued Replacement Visa

(CT:VISA-184; 01-22-1999)

It is irrelevant whether the visa issued to the accompanying parent is the original visa or a replacement visa.

9 FAM 42.1 N3 MEMBERS OF U.S. ARMED FORCES, THEIR SPOUSES, AND CHILDREN

9 FAM 42.1 N3.1 Interpreting Term "Member of U.S. Armed Forces"

(CT:VISA-19; 02-27-1989)

The term "member of the U.S. Armed Forces" as used in 22 CFR 42.1(b) embraces military personnel only. It does not include civilians employed by or attached to the Armed Forces or working for firms under contract to the Armed Forces.

9 FAM 42.1 N3.2 Spouse of U.S. Armed Forces Member or U.S. Government Employee Who Marries Abroad

(CT:VISA-2226; 11-25-2014)

The provisions described in 9 FAM 42.1 N1.2-4 relating to the spouse or child of a member of the U.S. Armed Forces or of a civilian employee of the U.S. Government stationed abroad, apply to an alien who:

- (1) Has gone abroad accompanying or following-to-join such a spouse; or
- (2) Marries a member of the U.S. Armed Forces or a U.S. Government civilian employee while abroad, even if the alien has been abroad more than 1 year, provided the alien would have been eligible to receive a visa as a

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returning resident alien at the time the marriage occurred.

9 FAM 42.1 N3.3 Use of Form I-551, Permanent Resident Card, by Alien Armed Forces Members Discharged Abroad

(CT:VISA-2226; 11-25-2014)

An alien member of the U.S. Armed Forces previously lawfully admitted for permanent residence and serving abroad is considered to be constructively present in the United States. Such an alien discharged abroad may apply for readmission using the Form I-551, provided the stay abroad does not exceed 1 year from the date of discharge.

9 FAM 42.1 N3.4 Spouse and Children of U.S. Armed Forces Members or U.S. Government Civilian Employees Stationed Abroad

(CT:VISA-1173; 03-30-2009)

In interpreting the provisions of 8 CFR 211.1(b)(1) waiving the visa requirement for the spouses and children of Armed Forces members or U.S. Government civilian employees serving abroad (see 9 FAM 42.1 N1.2-4), the Department of Homeland Security (DHS) has held that:

- (1) The spouse or child need not physically accompany the Armed Forces member or civilian employee in order to benefit from the visa waiver if the alien is preceding or following-to-join the member or employee;
- (2) An alien who does not physically accompany the Armed Forces member or employee to the United States must possess evidence that he or she is the spouse or child of a member or employee who was stationed abroad on official orders and that the spouse or parent was previously lawfully admitted for permanent residence; and
- (3) To benefit from the waiver, it is not material whether the member or employee was discharged abroad, or whether the spouse or child is residing in a country different from that in which the principal alien is stationed, provided all other criteria for the waiver are met.

9 FAM 42.1 N4 PAROLE AUTHORIZATION

(CT:VISA-2226; 11-25-2014)

- a. In addition to the categories of aliens listed in 9 FAM 42.1 N1 who are not required to obtain immigrant visas (IV), INA 212(d)(5)(A) provides authority to the Secretary of Homeland Security (DHS) to parole an alien who is applying

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for admission on a case by case basis into the United States for urgent humanitarian reasons or for significant public benefit.

- b. Parole is an extraordinary measure, sparingly utilized to permit an otherwise inadmissible alien enter the United States for a temporary period due to an urgent humanitarian reason or for significant public benefit. Parole may be requested for an alien outside the United States by filing Form I-131, Application for Travel Document, or by a request from a U.S. Government agency, including the Department.
- c. Parole under INA 212(d)(5)(A) is not an admission to the United States.
- d. A Memorandum of Agreement (MOA) between DHS component agencies, U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP) sets out the division of responsibility for parole of each DHS agency. While USCIS and ICE can authorize issuance of an advance parole document, CBP makes the actual decision whether to parole an individual when the individual arrives at the port of entry in the United States on a case-by-case basis.
- e. There is only one parole authority, but there are different terms used for granting parole. "Authorization of Parole" refers to the DHS issuance of a document, before the alien travels to a port of entry and requests parole. This advance authorization requests can be made for aliens outside the United States who seek to travel to the United States on a temporary basis but cannot obtain visas or other proper travel documents. Alternatively, "Advance Parole" may be authorized for aliens inside the U.S. who seek to depart and return to the United States. In most cases, Advance Parole authority for individuals within the United States rests with DHS' U.S. Citizenship and Immigration Services (USCIS) and are processed by a USCIS Service Center or domestic Field Office. Some cases may be processed by ICE, Homeland Security Investigations (HSI).
- f. Parole is not a method for circumventing normal visa procedures, including noncurrent priority dates for preference IV categories. Parole is neither a method to bypass established refugee processing nor should it be used to avoid meeting host country or U.S. legal requirements in adoption cases.
- g. Neither the Department nor consular officers have the authority to approve or extend any type of parole under any circumstances. Parole is a discretionary authority of the Secretary of Homeland Security.

9 FAM 42.1 N4.1 Parole Does Not Confer Immigration Benefits

(CT:VISA-2236; 12-17-2014)

- a. Parole does not, in and of itself, confer any immigration benefits. Parole is authorized for a specific and temporary period, and parolees must depart the

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United States at the end of their parole authorization period, adjust to immigrant status (usually based on a previously approved petition), otherwise obtain lawful immigration status, or request to be re-paroled. Generally, parole authorization permits the alien to travel to the United States only one time and generally does not allow an alien to travel abroad and then return to the United States after the initial parole.

- b. Those authorized parole based on a Department request for protection of that alien may apply for asylum in the United States, and, if asylum is approved, may eventually adjust status to legal permanent resident, if qualified.
- c. Parolees may apply for employment authorization. Parolees who are paroled pursuant to INA 212(d)(5)(A) for urgent humanitarian reasons or for significant public benefit reasons do not receive the type of resettlement assistance that is provided to refugees. Therefore, it is imperative that all parole requests, whether by Form I-131 or by government request, identify a sponsor who will provide financial support for the parolee once in the United States.
- d. Parolees *generally must* depart the U.S. before the end of the authorized parole period; however, some circumstances may *permit* an alien to remain in the United States beyond the authorized parole period. In such situations, an alien may request to be re-paroled by filing Form I-131, or the U.S. Government agency that made the original parole request may request an alien be re-paroled. USCIS and ICE grants such requests on a case-by-case basis and approves them only for a specific period, not indefinitely. Consular officers should refer to USCIS' or ICE's parole authorization memo for each *prospective* parolee to determine the limits on the duration of stay in the United States. Consular officer must verbally inform the alien of this limit.

9 FAM 42.1 N4.2 Advance Parole for Aliens Inside the United States

(CT:VISA-2226; 11-25-2014)

- a. In some instances, USCIS or ICE authorizes Advance Parole to aliens in the United States whose immigration status is under review (e.g., pending an asylum hearing or an adjustment of status), but who request to travel abroad. Aliens seeking Advance Parole generally must apply and have approval before departing the United States. USCIS or ICE usually approves Advance Parole for a specific period of time and the alien must return to the United States before its expiration. Generally in this situation, the Advance Parole document may authorize the person to travel abroad and return to the United States multiple times, so long as the parole document has not expired or been revoked.
- b. USCIS or ICE, upon authorizing Advance Parole, issues a Form I-512-L, Authorization of Parole of an Alien into the United States, directly to the individual obtaining Advance Parole, to allow him or her to return to the United States to seek parole into the United States. There is usually no consular role

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in Advance Parole cases for aliens in the United States. However, such aliens might seek assistance from consular officers after such parole has expired or the Form I-512-L is lost or stolen. The consular officer should refer the applicant to the nearest USCIS or ICE office abroad.

9 FAM 42.1 N4.3 Parole for Aliens Outside the United States - Request by Alien (Form I-131)

(CT:VISA-2043; 10-16-2013)

- a. Commonly, Form I-131 (Application for Travel Document), is filed by aliens requesting parole for urgent humanitarian reasons. This type of parole authorization is sometimes referred to as "humanitarian parole". An alien may file Form I-131 on his or her own behalf or on behalf of an individual outside the United States.
- b. According to a Memorandum of Agreement between DHS component agencies USCIS, ICE, and CBP an alien outside the United States who is currently in removal proceedings, has been removed, or who has a final order of removal must request parole authorization from ICE.
- c. Consular officers should not routinely suggest parole as an option to applicants who are denied a visa. Post should direct aliens who inquire about parole to www.uscis.gov for information on how to apply for parole directly with USCIS (see 9 FAM 42.1 PN2). With advance authorization from USCIS International Operations Division (USCIS/IO), Form I-131 may be filed at post (See 9 FAM 42.1 PN3). Parole should be a last option for aliens who:
 - (1) Are otherwise ineligible for a visa; and
 - (2) Cannot benefit from a waiver; and
 - (3) Have urgent humanitarian reasons to travel to the United States; or
 - (4) Whose travel to the United States presents a significant public benefit.
- d. When responding to inquiries from potential applicants regarding parole, the consular officer must stress that the authority to authorize parole rests solely with DHS and adjudication is on a case-by-case basis.

9 FAM 42.1 N4.4 Parole Authorization for Aliens Outside the United States - Request by U.S. Government Agency/Department

(CT:VISA-2043; 10-16-2013)

- a. In certain compelling circumstances, U.S. Government agencies, including the Department, may submit a request to DHS to parole an alien who is outside the U.S. Authority to adjudicate U.S. Government Agency/Department parole requests for aliens outside the U.S. generally rests with both USCIS'

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International Operations Division (IO) and ICE's Law Enforcement Parole Section (LEPS), depending on the nature of the parole request and the immigration history of the alien for whom parole is requested. An alien outside the United States who is currently in removal proceedings, has been previously removed, or has a final order of removal must request parole from ICE. CBP also has authority to parole aliens who present themselves at a U.S. port-of-entry without filing a formal request for parole, but will also make the final determination on whether any parole is appropriate at the time that the individual presents him or herself for inspection. There may be limited instances where the Department may coordinate directly with CBP on a parole request that is so urgent that it cannot wait for processing by USCIS or ICE.

- b. Parole requested by the Department must be coordinated through CA/VO. The Department may request parole by submitting the appropriate parole request template along with supporting documentation in cases where there is a clear U.S. Government interest and a need to admit an alien to the United States as quickly as possible.

9 FAM 42.1 N4.4-1 Parole Authorization Request from USCIS by the Department

(CT:VISA-2043; 10-16-2013)

- a. In rare instances, the Department may request that USCIS authorize parole of an alien into the United States for either urgent humanitarian or significant public benefits reasons, also known as "significant public benefit parole" or "public interest parole." Parole requested by the Department must be coordinated through CA/VO. The Department may request parole by submitting the appropriate parole request template along with supporting documentation in cases where there is a clear U.S. Government interest and a need to admit an alien to the United States as quickly as possible. USCIS will notify posts of parole authorization in such cases via a parole authorization memo, authorizing the post to issue a boarding foil.
- b. Certain Protection Cases: Parole cannot be used in lieu of normal refugee processing except where there is a clear U.S. Government interest and a need for the alien to travel to the United States as quickly as possible. In order to meet the Department's criteria for requesting USCIS to parole an alien into the United States for protection reasons, the alien must be in imminent danger of serious harm and must be unable to be processed as a refugee through the United Nations High Commissioner for Refugees (UNHCR) or as a U.S. Department of State P1 refugee referral.
- c. Certain Child Abductors in Hague Cases: Pursuant to 9 FAM 40.103 N5.2, an alien parent who abducts a child to, or wrongfully retains a child in, a country that is a party to the Hague Convention on the Civil Aspects of International Child Abduction is not inadmissible. However, such aliens may be inadmissible for reasons not related to the child abduction. When the presence of such an

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alien is required in the United States in order to attend a custody hearing concerning the abducted child, and the alien is ineligible for a nonimmigrant visa (NIV), the consular officer must contact the appropriate officer in the Office of Children's Issues (CA/OCS/CI). CA/OCS/CI, working with CA/VO/F/P and the post, will request parole for the alien, if appropriate, using the U.S. Government agency parole request process.

9 FAM 42.1 N4.4-2 Parole Requested from ICE by Enforcement Agency and Intelligence Agency

(CT:VISA-2236; 12-17-2014)

Department parole requests to USCIS for urgent humanitarian or significant public benefit reasons should not be confused with the more commonly encountered significant public benefit parole (SPBP) cases requested by law enforcement agencies (LEAs) through Department of Justice channels. LEA SPBP cases involve an alien whose presence is necessary in connection with legal cases or investigations, whether at the Federal, State, local, or tribal level of government. Such requests are submitted to ICE. These cases will generally come to a post's attention via a parole authorization *memo* authorizing the issuance of a transportation letter (e.g., Form I-512). Other types of non-Department cases are those requested directly by intelligence agencies.

9 FAM 42.1 N4.5 Processing Parole Authorization Cases Approved by DHS

(CT:VISA-2236; 12-17-2014)

When parole has been authorized by DHS on behalf of an alien, ICE *and USCIS* will notify the post by *a memo*. *For cases authorized by ICE, post* must issue a transportation letter *and, for cases authorized by USCIS, post must issue a* boarding foil to the individual whose parole has been authorized within the validity period specified *the* parole authorization memo (USCIS). Unless requested by USCIS, post is responsible for processing boarding foils for all *parolees* authorized by USCIS even if USCIS is co-located. Upon issuance by post, the travel document or boarding foil is only valid for travel for the period specified in the memo or cable, which must appear on the transportation letter, *Form I-512* or boarding foil. The individual whose parole has been authorized must arrive at the port of entry and request parole into the United States within this period.

9 FAM 42.1 N4.6 Validity of Parole Authorization

(CT:VISA-2236; 12-17-2014)

The validity period of the parole authorization memo refers to the period of time that post has to issue the travel document (transportation letter or boarding foil).

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9 FAM 42.1 N4.6-1 Parole Authorization Based on Approved Form I-131

(CT:VISA-2236; 12-17-2014)

Parole authorization assumes that, given the *often* urgent nature of the applicant's situation, he or she will depart for the United States as soon as possible. Therefore, DHS relies on post to contact the individual whose parole has been authorized in a timely manner and issue the transportation letter or boarding foil as expeditiously as possible once DHS has authorized parole. However, occasionally the consular officer will encounter an individual whose parole has been authorized who needs to delay his or her travel to the U.S. If the individual whose parole has been authorized does not obtain his or her travel document within the period specified on the parole authorization memo, post must contact the authorizing agency, *and copy the parole officer in CA/VO/F/P*, to determine if it is willing to reissue the parole authorization memo. The authorizing agency will then determine whether circumstances have changed and whether the delay was reasonable or beyond the applicant's control prior to reissuing the parole authorization memo. The authorizing agency will inform post if the applicant is required to reapply for parole.

9 FAM 42.1 N4.6-2 Parole Authorization Approved Based on U.S. Government Agency / Department Request

(CT:VISA-2236; 12-17-2014)

Often when the Department, LEA, or an intelligence agency requests parole and DHS approves it, the consular officer may be required to prepare the boarding foil or transportation letter within a very short period. The consular officer must pay careful attention to the parole authorization memo to ensure that he or she issues the boarding foil or transportation letter within the time specified in the cable or memo.

9 FAM 42.1 N4.7 Validity of Parole Authorization Travel Document Issued by Post

(CT:VISA-2236; 12-17-2014)

The validity period of the parole travel document issued by post refers to the period of time that the parolee has to travel to the United States. The validity period will be noted in the parole authorization memo.

9 FAM 42.1 N4.8 Parole and Asylees / Refugees

(CT:VISA-2226; 11-25-2014)

- a. Posts are occasionally contacted by aliens who were admitted to the United States as refugees or who were granted asylum, and who subsequently

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departed without obtaining a Form I-571, Refugee Travel Document. If such an alien has been outside of the United States for one year or less, the consular officer should refer him or her to the USCIS Office abroad that has jurisdiction over the person's location, where he or she may be authorized to file Form I-131, Application for Travel Document, to apply for a Form I-571. USCIS has the discretion to decide whether to accept the Form I-131 filing abroad. If such an alien has been outside of the United States for more than 1 year, the consular officer may refer him or her to USCIS website for information on how to apply for parole to return to the United States.

- b. Refugees and asylees who obtained a Form I-551, Permanent Residence Card, and traveled abroad but who are unable to return due to having an expired, lost or stolen Form I-551, are not eligible for refugee processing. If none of the situations described in 9 FAM 42.1 N1 pertain, they are potentially eligible for humanitarian parole. Refer such aliens to the USCIS website for instructions on how to apply.