

2 FAM 220

IMMUNITIES OF U.S. REPRESENTATIVES AND ESTABLISHMENTS ABROAD

(TL:GEN-310; 01-15-2004)
(Office of Origin: HR/CDA/SL/PAS)

2 FAM 221 DIPLOMATIC IMMUNITIES

2 FAM 221.1 Diplomatic Personnel

(TL:GEN-310; 01-15-2004)

a. Diplomatic *agents* accredited to a foreign government as ambassadors, or other public ministers, are immune from the jurisdiction of all courts and tribunals of the receiving state whether criminal or civil. They cannot be prosecuted, sued, punished, or compelled to testify in the country to which accredited. The families and households of such diplomatic *agents* enjoy the same immunity.

b. Chiefs of mission *are encouraged to request* the foreign ministry of the government to which they are accredited for formal notification of the privileges and immunities which it extends to the various categories of personnel assigned to the mission, and report such information to their *Post Management Officer in the Department*.

2 FAM 221.2 Restriction on Diplomatic Privileges

(TL:GEN-310; 01-15-2004)

a. Foreign Service posts shall not, *except as provided in this section, seek or assist in obtaining diplomatic privileges and immunities (by means of normal notifications to the host government or otherwise)* for persons who are not actively serving as members of the official U.S. Government mission, regardless of the status which may be accorded such persons by local authorities. Persons *not normally entitled to privileges and immunities under the foregoing restrictions* include but *are not limited to* international organization personnel, retired U.S. Government officials, contract personnel, and representatives of State governments.

b. *The Department recognizes, however, that under certain circumstances it may be in the national interest to seek the accreditation of contract personnel. For example, personnel performing such highly sensitive functions as embassy construction, security, or communications (who may be clear targets for hostile intelligence penetration) and narcotics eradica-*

tion, enforcement and interdiction in remote locations may present a compelling case for accreditation. Therefore, the Department may authorize limited exceptions to the general rule cited above, applicable to specific individuals or posts.

c. Requests for the notification of contract personnel abroad shall be directed to M/DGHR, which shall consider the request in light of U.S. national interests, including the following factors. Requests may be granted at the discretion of M/DGHR when the following criteria are generally satisfied:

(a) Accreditation of such personnel is necessary to overcome significant barriers to entry or residence in the receiving state, or

(b) Security concerns warrant accreditation, as evidenced by the nature of the work performed and/or the level of security clearance;

(2) Such personnel will be performing diplomatic and consular support functions;

(3) The employment relationship, and in particular the provisions of the contract, provide adequate departmental and chief-of-mission control over the contractors and its individual employees (and its subcontractors and their individual , employees where relevant), including in particular a right of withdrawal from the host country of individual personnel: and

(4) Generally, the projected length; of stay is equal to or greater than the minimum length of stay for which diplomatic or consular personnel are accredited.

d. Even where accreditation appears to satisfy the above criteria, this Department may decline a request to seek accreditation where it considers that the privileges and immunities that would be granted by the receiving state are inappropriate to such contract personnel or where accreditation would not otherwise serve national interests. The following factors may be relevant to declining such a request:

(1) Seeking accreditation for such personnel will create obligations or expectations of reciprocal treatment for similar personnel assigned to the United States, and the likelihood of reciprocal treatment is small; or

(2) Host state numerical limitations on diplomatic or consular personnel would or may be exceeded by the accreditation of contract personnel.

e. Contract personnel who are approved for notification shall normally be notified at the administrative and technical staff or consular employee level.

2 FAM 221.3 Diplomatic Establishments

(TL:GEN-207; 04-25-1983)

Embassies, chanceries, and all buildings used for diplomatic purposes, including residences of diplomatic officers, together with their contents and archives, are inviolable. Such premises are immune from entry and search, and the premises, contents, and archives are not subject to the legal process of the receiving state.

2 FAM 221.4 Diplomatic Couriers

(TL:GEN-207; 04-25-1983)

Diplomatic couriers employed as such by their government and traveling through a foreign territory, are considered privileged persons and are regarded as completely immune from civil and criminal jurisdiction. That part of their luggage which contains diplomatic material and is sealed with the official seal may not be opened or searched.

2 FAM 221.5 Waiver of Immunity

(TL: GEN-310; 01-15-2004)

a. The immunities described in this section shall not be waived by the post except with the prior express consent of the Department, which normally shall be requested via cable or other written correspondence and, in any event, shall always be in writing. Requests for waiver of immunity shall be set forth in sufficient factual detail to afford the Department an adequate basis to act thereon and shall be addressed to the Department to the attention of the Office of the Assistant Legal Adviser for *Diplomatic Law and Legislation* (L/DL) and to the executive director of the appropriate regional bureau. Other Department offices shall be listed as addressees or consulted, as appropriate. An information copy of the request, as well as the Department's response thereto, shall be forwarded to the Chief of Protocol (S/CPR) and the Office of Foreign Missions (DS/OFM) for the purpose of evaluating the reciprocity factors applicable to foreign missions and their personnel in the United States.

b. These guidelines shall be followed in the types of cases described below:

(1) In cases involving official activities of Department personnel, the key factor in determining whether or not immunity may be waived is the potential impact upon the interests of the U.S. Government. If the interests of the U.S. Government are not likely to be injured as a result of the waiver, and if the interests of the individual whose immunity is to be waived are not likely to be adversely affected, a presumption in favor of waiver will be authorized if the interests of justice will be served;

(2) Except as provided in subparagraph (3) of this section, the immunity of a Department employee will not normally be waived in private cases unless the employee consents or unless there is evidence that the waiver is essential to protecting the interests of innocent third parties, the U.S. Government, or both; and

(3) In private domestic relations matters (including divorce, separation, maintenance, child custody, and child support), the Department will adhere to the following guidelines:

(a) If both parties consent and the action is pursued in the United States, the Department will normally grant any necessary waiver of immunity;

(b) If one party is in the United States and the other party is at the post, a waiver will be granted for the purpose of allowing service of process on the latter if that party consents;

(c) If one party is in the United States and the other party is at the post, a waiver of immunity will be authorized to allow services on the party at post absent that party's consent only if the waiver is necessary in order to prevent undue hardship on the party seeking service, or family members, and if the action is to be pursued in the United States; and

(d) Waiver of immunity will normally be granted to allow a domestic relations action to be pursued in the host country if both parties consent and if the prosecution of the action will not adversely affect the interests of the U.S. Government.

2 FAM 222 EMPLOYEES OF DIPLOMATIC MISSIONS

2 FAM 222.1 Unassigned

2 FAM 222.2 Subject to Military Service

(TL:GEN-207; 04-25-1983)

Principal officers should not request exemptions from military service for Foreign Service national employees or servants.

2 FAM 222.3 Names Furnished to Local Governments

(TL:GEN-207; 04-25-1983)

A mission may, when requested, furnish to the local government a list of names of Foreign Service national employees; this is not in lieu of the usual practice of notifying the receiving state of the employment of its nationals where notification to and acceptance by the receiving state is a condition of extending them immunity.

2 FAM 222.4 Protests When Immunities are Violated

(TL:GEN-297; 11-15-1999)

When the local authorities refuse to recognize the immunities to which the U.S. Government considers its Foreign Service national employees are entitled, chiefs of mission shall make appropriate representations to the local authorities and shall report such action to the Department. *Such representation should be based on the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, or such bilateral agreement as may have provide the basis for privileges and immunities.]*

2 FAM 223 CONSULAR IMMUNITIES

2 FAM 223.1 Consular Officers and Employees

(TL:GEN-310; 01-15-2004)

The status of consular officers and consular employees is usually governed by the Vienna Convention on Consular Relations, which generally provides that officers and employees who are nationals of the sending state are immune from the local jurisdiction for all official acts. It must be ascertained in each instance whether a bilateral treaty or agreement about immunities of consular officers and employees is in effect, in which case the privileges and immunities granted by the terms of the treaty are applicable.

2 FAM 223.2 Inviolability of Consular Premises and Archives

(TL:GEN-310; 01-15-2004)

Consular archives are to be considered inviolable. *The Vienna Convention on Consular Relations provides that those portions of the consular premises “that are used exclusively for the work of the consular post” are inviolable. The residences of consular officers, in the absence of a treaty or agreement so providing, are not inviolable.*

2 FAM 223.3 Employees of Consular Posts

(TL:GEN-297; 11-15-1999)

Immunities should not be claimed for Foreign Service national employees or servants who are nationals of the country in which a consular post *is* located. When there is a consular convention between the United States and the country concerned, the local employee will be accorded the immunity specified in the convention.

2 FAM 223.4 Infringement of Consular Immunities to be Protested

(TL:GEN-206; 04-18-1983)

Consular officers shall familiarize themselves with the pertinent treaties and agreements regarding consular privileges, rights, and duties in the country of assignment. A consular officer must protest to the appropriate local authorities any infringement of the rights and privileges necessary to carry out the consular officer's duties.

2 FAM 224 OTHER U.S. REPRESENTATIVES

(TL:GEN-310; 01-15-2004)

Immunities, if any, of U.S. representatives other than diplomatic and consular representatives depend primarily on specific treaties or agreements in each case and may vary accordingly from country to country. Questions concerning immunities of such representatives are referred to the Department (*L/DL*), when necessary.

2 FAM 225 ABUSE OF PRIVILEGES AND IMMUNITIES

2 FAM 225.1 Evasion of Personal Obligations

(TL:GEN-206; 04-18-1983)

A diplomatic or consular officer, or other representative of the United States, shall not take advantage of the protection afforded by reason of the officer's official position nor should the officer evade the settlement of just obligations.

2 FAM 225.2 Property Held In Personal Capacity

(TL:GEN-206; 04-18-1983)

If a diplomatic officer holds real or personal property in a foreign country, in a personal as distinguished from an official capacity, such property, not necessary or incident to the officer's official assignment, may be subject to the local laws.

2 FAM 225.3 Importation and Sale of Personal Property

(TL:GEN-297; 11-15-1999)

(Uniform State/AID/Commerce/Agriculture)

a. These provisions apply to the personal effects of all U.S. Government employees (including contractor employees), their spouses and dependents, regardless of agency, under the jurisdiction of the chief of mission.

b. Personal property imported into host countries by U.S. citizen employees under diplomatic privileges and immunities must be for their *bona fide* personal use or that of their dependents. The chief of mission shall establish procedures to ensure that subsequent sales of such property are in compliance with bilateral agreements, international treaties, and host government laws.

c. In instances where there is reason to believe that *bona fide* personal use would not be or has not been the intended purpose of the importation, the chief of mission or designee, **after coordination with the Office of Inspector General/Office of Investigation (OIG/INV)**, will investigate the importation, or the request therefor if the importation has not yet been authorized. If, based on the investigation, the chief of mission determines that the property was imported or intended to be imported under diplomatic privileges and immunities primarily for the purpose of sale at a profit, the chief of mission may take one or more of the following actions:

- (1) As appropriate, deny request to import the property or deny the sale;
- (2) Require the employee to repay the U.S. Government the original cost of shipping the property to post;
- (3) Deny use of embassy facilities for conversion or transfer of funds;
- (4) Withhold certification of employee's diplomatic or official privileges to sell, register, or transfer title to the property;
- (5) Require property to be reexported at employee's expense;
- (6) Take such other action as may be appropriate, including recommending disciplinary action against the employee.

b. See also 3 FAM 4100, Employee Relations, and 6 FAM 165.7, Limitations at Specific Posts, for treatment of this subject.

2 FAM 225.4 Notifying the Office of Inspector General (OIG)

(TL:GEN-297; 11-15-1999)

Promptly notify the Office of Inspector General/Office of Investigations (OIG/NIV) if there is reason to believe that U.S. or host country laws or regulations have been violated.

2 FAM 226 REPORTING ON LITIGATION

(TL:GEN-297; 11-15-1999)

a. Each post shall inform the Department of any litigation in a local court in which a U.S. citizen employee may become involved in employee's private capacity. The post's report should be in the form prescribed in 2 FAM 280 for reporting suits against the United States, but should not be marked for the attention of the Justice Department. The post's initial report shall include full particulars regarding the accreditation of the employee to the foreign government for purposes of privileges and immunities.

b. Members of the Foreign Service are responsible for reporting to their posts of assignment litigation in foreign courts in which they may become involved. Members shall avoid taking actions which may imply an unauthorized waiver of immunity in violation of 2 FAM 221.5.

c. See 2 FAM 280, Claims Against the United States, for suits against a member of the Foreign Service in that member's official capacity.

2 FAM 227 REQUESTS FOR ASYLUM BY FOREIGN NATIONALS

2 FAM 227.1 Policy

(TL:GEN-297; 11-15-1999)

a. Both within the United States and abroad, foreign nationals who request asylum of the U.S. Government owing to persecution or fear of persecution should be given full opportunity to have their requests considered on their merits. The request of a person for asylum or temporary refuge shall not be arbitrarily or summarily refused by U.S. personnel. Because of the wide variety of circumstances which may be involved, each request must be dealt with on an individual basis, taking into account humanitarian principles, applicable laws, and other factors.

b. In cases of such requests occurring within foreign jurisdictions, the ability of the U.S. Government to give assistance will vary with location and circumstances of the request. INR/IC issues annual instructions to posts by telegram on how to handle such requests. Appropriate officers, as identified in the telegram, should review that material.

2 FAM 227.2 U.S. Objectives

(TL:GEN-206; 04-18-1983)

a. A basic objective of the United States is to promote institutional and individual freedom and humanitarian concern for the treatment of the individual.

b. Through the implementation of generous policies of asylum and assistance for political refugees, the United States provides leadership toward resolving refugee problems.

2 FAM 227.3 Background

(TL:GEN-206; 04-18-1983)

a. A primary consideration in U.S. asylum policy is the Protocol Relating to the Status of Refugees (19 United States Treaties and Other International Agreements 6223), to which the United States is a party. The principle of asylum inherent in this international treaty (and in the 1951 Refugee Convention whose substantive provisions are by reference incorporated in the Protocol), and its explicit prohibition against the forcible return of refugees to conditions of persecution, have solidified these concepts further in international law. As a party to the Protocol, the United States has an international treaty obligation for its implementation within areas subject to jurisdiction of the United States.

b. U.S. participation in assistance programs for the relief of refugees outside U.S. jurisdiction and for their permanent resettlement in asylum or other countries helps resolve existing refugee problems. It also avoids extensive accumulation of refugees in asylum countries and promotes the willingness of the latter to maintain policies of asylum for other arriving refugees.

c. The President has reemphasized the U.S. commitment to the provision of asylum for refugees and has directed appropriate departments and agencies of the U.S. Government, under the coordination of the Department of State, to take steps to bring to every echelon of the U.S. Government which could possibly be involved with persons seeking asylum, a sense of the depth and urgency of our commitment.

d. Procedures relating to handling asylum requests by persons in the United States or in areas outside any foreign jurisdiction have also been established. As they are not of direct concern to posts abroad, they have been deleted from these regulations. Questions relating to such procedures may be referred to the Department, Bureau of Population, Refugees, and Migration (PRM).

2 FAM 228 HANDLING ASYLUM REQUESTS BY PERSONS WITHIN FOREIGN JURISDICTIONS

2 FAM 228.1 General Procedures

(TL:GEN-297; 11-15-1999)

General regulations set forth procedures for all U.S. Government agencies abroad in dealing with asylum requests at U.S. installations, vessels, or aircraft in foreign jurisdictions. INR/IC issues annual instructions to posts by telegram on how to handle such requests. Appropriate officers, as identified in the telegram, should review that material.

2 FAM 228.2 Granting Asylum

(TL:GEN-206; 04-18-1983)

While it is the policy of the United States not to grant asylum at its units or installations within the territorial jurisdiction of a foreign state, any requests for U.S. asylum should be reported in accordance with the procedures set forth herein.

2 FAM 228.3 Granting Temporary Refuge

(TL:GEN-297; 11-15-1999)

a. Immediate temporary refuge for humanitarian reasons, however, may be granted (except to board aircraft because of their vulnerability to hijacking) in extreme or exceptional circumstances wherein the life or safety of a person is put in danger, such as pursuit by a mob.

b. When such temporary refuge is granted, the U.S. embassy or consular post having jurisdiction, the Washington headquarters of the concerned agency, and the Department of State should be immediately notified. Military units under direct embassy jurisdiction will report through the embassy, unless the senior diplomatic official determines otherwise.

c. To the extent circumstances permit, persons given temporary refuge should be afforded every reasonable care and protection. The measures

which can prudently be utilized in providing this protection must be a matter for decision of the senior U.S. official present at the scene, taking into consideration the safety of U.S. personnel and the established security procedures for the unit or installation concerned.

d. Protection shall be terminated when the period of active danger is ended, except that authority to do so shall be obtained from the Department of State. Where a military installation not under direct embassy jurisdiction is involved, such authority shall be obtained from its Washington headquarters upon concurrence of the Department of State. Any inquiries from interested foreign authority will be met by the senior official present with a response that the case has been referred to Washington.

2 FAM 228.4 Notification to Department of State of Asylum Requests

(TL:GEN-152; 08-18-1972)

Upon receipt of a request for U.S. asylum made by any foreign national, U.S. personnel within foreign jurisdictions should notify immediately the nearest U.S. diplomatic or consular post in the country in which the request is made. Embassies or consulates will forward this information to the Department of State by an IMMEDIATE precedence telegram. Agencies having their own rapid communications systems with direct contact with their headquarters in the United States may notify those headquarters, with information copies to the nearest embassy or consular post and the Department of State, by IMMEDIATE precedence message.

2 FAM 228.5 Information to be Transmitted

(TL:GEN-297; 11-15-1999)

With respect to requests for temporary refuge (whether or not granted) or for asylum, the following information should be furnished when available, but the initial report should not be delayed pending its development:

- (1) Name and nationality of the individual seeking asylum;
- (2) Date, place of birth, and occupation;
- (3) Description of any documentation in the individual's possession;
- (4) What foreign authorities are aware of individual seeking asylum;
- (5) Circumstances surrounding the request for asylum;
- (6) Exact location. If aboard vessel or aircraft, estimated time of arrival at next intended port or airport;

(7) Reason for claiming asylum;

(8) Description of any criminal charges known or alleged to be pending against the asylum seeker. Indicate also any piracy at sea, air piracy, or hijacking background; and

(9) Any Communist Party affiliation or affiliation with other political party; any government office now held or previously occupied.

2 FAM 229 DIPLOMATIC AND CONSULAR ESTABLISHMENTS

2 FAM 229.1 Requests for Asylum (Restrictions on Extending Asylum)

(TL:GEN-297; 11-15-1999)

As a rule, a diplomatic or consular officer shall not extend asylum to persons outside of the officer's official or personal household. Refuge may be afforded to uninvited persons who are in danger of serious harm, as from mob violence, but only for the period during which active danger continues. With the concurrence of the Department, refuge shall be terminated on receipt of satisfactory assurances from the established national government that the refugee's personal safety is guaranteed against lawless or arbitrary actions and that the refugee will be accorded due process of law. INR/IC issues annual instructions to posts by telegram on how to handle such requests. Appropriate officers, as identified in the telegram, should review that material.

2 FAM 229.2 Routine Requests

(TL:GEN-152; 08-18-1972)

Requests of third country nationals for asylum made to diplomatic and consular posts need not be reported immediately to the Department of State when all of the following conditions exist:

- a. Adequate host government machinery is well established which, in the opinion of the embassy, assures satisfactory protection of the asylum seeker's rights;
- b. There is no evidence of danger of forcible repatriation; and
- c. Local authorities can be expected to assume responsibility for the asylum seeker.

2 FAM 229.3 Coordination With Host Country Authorities

(TL:GEN-297; 11-15-1999)

a. Action with regard to third country nationals seeking asylum should normally be taken within the over-all policy that the granting of asylum is the right and responsibility of the government of the country in whose territory the request is made. Unless the embassy deems that there are cogent reasons for not doing so, these authorities should be informed by the embassy as soon as practicable of the request for asylum.

b. Activities should also be coordinated by the embassy with the representative of the United Nations High Commissioner for Refugees (UNHCR), where such a representative is resident and the embassy deems it appropriate. The UNHCR is a valuable instrument for providing international protection and securing adequate legal and political status for refugees. In addition to providing guarantees against forcible repatriation, the UNHCR seeks to secure for refugees legal, political, economic, and social rights within asylum countries.

2 FAM 229.4 Available U.S. Assistance

(TL:GEN-152; 08-18-1972)

The United States is prepared in the cases of selected refugees to provide care and maintenance, and to assist in local settlement in the country of first asylum or in another country of resettlement, including the United States. Such assistance is normally provided through voluntary agencies under a contract with the Department of State. In cases where the embassy or consular post has determined that U.S. assistance is warranted, it should telegraph the Department of State recommending the type and extent of initial aid and ultimate resettlement considered most suitable.