

## Department of State

## § 42.1

(6) A waiver of ineligibility pursuant to INA 212(d)(3)(A) on the basis of which the visa was issued to the alien is revoked by INS;

(7) The visa is presented in connection with an application for admission to the United States by a person other than the alien to whom it was issued; or

(8) The visa has been physically removed from the passport in which it was issued.

(9) The visa has been issued in a combined Mexican or Canadian B-1/B-2 visa and border crossing identification card and the officer makes the determination specified in §41.32(c) with respect to the alien's Mexican citizenship and/or residence or the determination specified in §41.33(b) with respect to the alien's status as a permanent resident of Canada.

[52 FR 42597, Nov. 5, 1987, as amended at 63 FR 16895, Apr. 7, 1998; 66 FR 10364, Feb. 15, 2001; 66 FR 38544, July 25, 2001; 67 FR 66046, Oct. 30, 2002]

### **PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED**

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AUTHORITY: 8 U.S.C. 1104.

SOURCE: 52 FR 42613, Nov. 5, 1987, unless otherwise noted.

#### **Subpart A—Visa and Passport Not Required for Certain Immigrants**

##### **§ 42.1 Aliens not required to obtain immigrant visas.**

An immigrant within any of the following categories is not required to obtain an immigrant visa:

(a) *Aliens lawfully admitted for permanent residence.* An alien who has previously been lawfully admitted for permanent residence and who is not required under the regulations of INS to

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present a valid immigrant visa upon returning to the United States.

(b) *Alien members of U.S. Armed Forces.* An alien member of the U.S. Armed Forces bearing military identification, who has previously been lawfully admitted for permanent residence and is coming to the United States under official orders or permit of those Armed Forces.

(c) *Aliens entering from Guam, Puerto Rico, or the Virgin Islands.* An alien who has previously been lawfully admitted for permanent residence who seeks to enter the continental United States or any other place under the jurisdiction of the United States directly from Guam, Puerto Rico, or the Virgin Islands of the United States.

(d) *Child born after issuance of visa to accompanying parent.* An alien child born after the issuance of an immigrant visa to an accompanying parent, who will arrive in the United States with the parent, and apply for admission during the period of validity of the visa issued to the parent.

(e) *Child born of a national or lawful permanent resident mother during her temporary visit abroad.* An alien child born during the temporary visit abroad of a mother who is a national or lawful permanent resident of the United States if applying for admission within 2 years of birth and accompanied by either parent applying and eligible for readmission as a permanent resident upon that parent's first return to the United States after the child's birth.

(f) *American Indians born in Canada.* An American Indian born in Canada and having at least 50 per centum of blood of the American Indian race.

### § 42.2 Aliens not required to present passports.

An immigrant within any of the following categories is not required to present a passport in applying for an immigrant visa:

(a) *Certain relatives of U.S. citizens.* An alien who is the spouse, unmarried son or daughter, or parent, of a U.S. citizen, unless the alien is applying for a visa in the country of which the applicant is a national and the possession of a passport is required for departure.

(b) *Returning aliens previously lawfully admitted for permanent residence.* An alien previously lawfully admitted for permanent residence who is returning from a temporary visit abroad, unless the alien is applying for a visa in the country of which the applicant is a national and the possession of a passport is required for departure.

(c) *Certain relatives of aliens lawfully admitted for permanent residence.* An alien who is the spouse, unmarried son or daughter, or parent of an alien lawfully admitted for permanent residence, unless the alien is applying for a visa in the country of which the applicant is a national and the possession of a passport is required for departure.

(d) *Stateless persons.* An alien who is a stateless person, and accompanying spouse and unmarried son or daughter.

(e) *Nationals of Communist-controlled countries.* An alien who is a national of a Communist-controlled country and who is unable to obtain a passport from the government of that country, and accompanying spouse and unmarried son or daughter.

(f) *Alien members of U.S. Armed Forces.* An alien who is a member of the U.S. Armed Forces.

(g) *Beneficiaries of individual waivers.*  
(1) An alien who would be within one of the categories described in paragraphs (a) through (d) of this section except that the alien is applying for a visa in a country of which the applicant is a national and possession of a passport is required for departure, in whose case the passport requirement has been waived by the Secretary of State, as evidenced by a specific instruction from the Department.

(2) An alien unable to obtain a passport and not within any of the foregoing categories, in whose case the passport requirement imposed by § 42.64(b) or by INS regulations has been waived by the Attorney General and the Secretary of State as evidenced by a specific instruction from the Department.

[52 FR 42613, Nov. 5, 1987, as amended at 56 FR 49680, Oct. 1, 1991]

**Subpart B—Classification and Foreign State Chargeability**

below shall bear an appropriate visa symbol to show the classification of the alien.

**§ 42.11 Classification symbols.**

A visa issued to an immigrant alien within one of the classes described

**IMMIGRANTS**

Symbol	Class	Section of law
<b>Immediate Relatives</b>		
IR1 .....	Spouse of U.S. Citizen .....	201(b).
IR2 .....	Child of U.S. Citizen .....	201(b).
IR3 .....	Orphan Adopted Abroad by U.S. Citizen .....	201(b).
IR4 .....	Orphan Adopted Abroad by U.S. Citizen .....	201(b).
IR5 .....	Parent of U.S. Citizen at Least 21 Years of Age .....	201(b).
CR1 .....	Spouse of U.S. Citizen (Conditional Status) .....	201(b) & 216(a)(1).
CR2 .....	Child of U.S. Citizen (Conditional Status) .....	201(b) & 216.
IW1 .....	Certain Spouses of Deceased U.S. Citizens .....	201(b).
IW2 .....	Child of IW1 .....	201(b).
IB1 .....	Self-petition Spouse of U.S. Citizen .....	204(a)(1)(A)(iii).
IB2 .....	Self-petition child of U.S. Citizen .....	204(a)(1)(A)(iv).
IB3 .....	Child of IB1 .....	204(a)(1)(A)(iii).
VI5 .....	Parent of U.S. Citizen Who Acquired Permanent Resident Status Under the Virgin Islands Nonimmigrant Alien Adjustment Act.	201(b) & sec. 2 of the Virgin Islands, Nonimmigrant Alien, Adjustment Act, (P.L. 97–271).
<b>Vietnam Amerasian Immigrants</b>		
AM1 .....	Vietnam Amerasian Principal .....	584(b)(1)(A), 584(b)(1)(B), and 584(b)(1)(C) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (As contained in section 101(e) of Public Law 100–102 as amended.
AM2 .....	Spouse or Child of AM1 .....	
AM3 .....	Natural Mother of Unmarried AM1 (Spouse or Child of Such Mother) or Person Who has Acted in Effect as the Mother, Father, or Next-of-Kin of Unmarried AM1 (and Spouse or Child of Such Person).	
<b>Special Immigrants</b>		
SB1 .....	Returning Resident .....	101(a)(27)(A).
SC1 .....	Person Who Lost U.S. Citizenship by Marriage .....	101(a)(27)(B) & 324(a).
SC2 .....	Person Who Lost U.S. Citizenship by Serving in Foreign Armed Forces	101(a)(27)(B) & 327.
<b>Family-Sponsored Preferences</b>		
<b>Family 1st Preference</b>		
F11 .....	Unmarried Son or Daughter of U.S. Citizen .....	203(a)(1).
F12 .....	Child of F11 .....	203(d).
B11 .....	Self-petition Unmarried Son or Daughter of U.S. Citizen .....	204(a)(1)(A)(iv) & 203(a)(1).
B12 .....	Child of B11 .....	203(d).
<b>Family 2nd Preference (Subject to Country Limitations)</b>		
F21 .....	Spouse of Alien Resident .....	203(a)(2)(A).
F22 .....	Child of Alien Resident .....	203(a)(2)(A).
F23 .....	Child of F21 or F22 .....	203(d).
F24 .....	Unmarried Son or Daughter of Alien Resident .....	203(a)(2)(B).
F25 .....	Child of F24 .....	203(d).
C21 .....	Spouse of Alien Resident (Conditional) .....	203(a)(2)(A) & 216.
C22 .....	Child of Alien Resident (Conditional) .....	202(a)(2)(A) & 216.
C23 .....	Child of C21 or C22 (Conditional) .....	203(d) & 216.
C24 .....	Unmarried Son or Daughter of Alien Resident (Conditional) .....	203(a)(2)(B) & 216.
C25 .....	Child of F24 (Conditional) .....	203(d) & 216.
B21 .....	Self-petition Spouse of Lawful Permanent Resident .....	204(a)(1)(B)(ii).
B22 .....	Self-petition Child of Lawful Permanent Resident .....	204(a)(1)(B)(iii).
B23 .....	Child of B21 or B22 .....	204(a)(1)(B)(ii).
B24 .....	Self-petition Unmarried Son or Daughter of Lawful Permanent Resident	203(d).

IMMIGRANTS—Continued

Symbol	Class	Section of law
B25	Child of B24	203(d).
<b>Family 2nd Preference (Exempt from Country Limitations)</b>		
FX1	Spouse of Alien Resident	202(a)(4)(A) & 203(a)(2)(A).
FX2	Child of Alien Resident	202(a)(4)(A) & 203(a)(2)(A).
FX3	Child of FX1 and FX2	202(a)(4)(A) & 203(d) 203(a)(2)(A).
CX1	Spouse of Alien Resident (Conditional)	202(a)(4)(A) & 216.
CX2	Child of Alien Resident (Conditional)	202(a)(4)(A) & 216.
CX3	Child of CX1 & CX2 (Conditional)	202(a)(4)(A) & 203(d) & 216.
BX1	Self-petition Spouse of Lawful Permanent Resident	204(a)(1)(B)(ii).
BX2	Self-petition Child of Lawful Permanent Resident	204(a)(1)(B)(iii).
BX3	Child of BX1 or BX2	203(d).
<b>Family 3rd Preference</b>		
F31	Married Son or Daughter of U.S. Citizen	203(a)(3).
F32	Spouse of F31	203(d).
F33	Child of F31	302(d).
C31	Married Son or Daughter of U.S. Citizen (Conditional)	216(a)(1).
C32	Spouse of C31 (Conditional)	203(d) & 216.
C33	Child of C31 (Conditional)	203(d) & 216.
B31	Self-petition Married Son or Daughter of U.S. Citizen	204(a)(1)(A)(iv) & 203(a)(3).
B32	Spouse of B31	203(d).
B33	Child of B31	203(d).
<b>Family 4th Preference</b>		
F41	Brother or Sister of U.S. Citizen	203(a)(4).
F42	Spouse of F41	203(d).
F43	Child of F41	203(d).
<b>Employment-Based Preferences</b>		
<b>Employment 1st Preference (Priority Workers)</b>		
E11	Alien with Extraordinary Ability	203(b)(1)(A).
E12	Outstanding Professor or Researcher	203(b)(1)(B).
E13	Multinational Executive or Manager	203(b)(1)(C).
E14	Spouse of E11, E12, or E13	203(d).
E15	Child of E11, E12, or E13	203(d).
<b>Employment 2nd Preference (Professionals Holding Advanced Degrees or Persons of Exceptional Ability)</b>		
E21	Professional Holding Advanced Degree or of Exceptional Ability	203(b)(2).
E22	Spouse of E21	203(d).
E23	Child of E21	203(d).
<b>Employment 3rd Preference (Skilled Workers, Professionals, and Other Workers)</b>		
E31	Skilled Worker	203(b)(3)(A)(i).
E32	Professional Holding Baccalaureate Degree	203(b)(3)(A)(ii).
E34	Spouse of E31 or E32	203(d).
E35	Child of E31 or E32	203(d).
EW3	Other Worker (Subgroup Numerical Limit)	203(b)(3)(A)(iii).
EW4	Spouse of EW3	203(d).
EW5	Child of EW3	203(d).
<b>Employment 4th Preference (Certain Special Immigrants)</b>		
BC1	Broadcaster in the U.S. employed by the International Broadcasting Bureau of the Broadcasting Board of Governors or a grantee of such organization.	101(a)(27)(M)
BC2	Accompanying spouse of a BC1	101(a)(27)(M)
BC3	Accompanying child of a BC1	101(a)(27)(M)
SD1	Minister of Religion	101(a)(27)(C) & 203(b)(4).
SD2	Spouse of SD1	101(a)(27)(C) & 203(b)(4).
SD3	Child of SD1	101(a)(27)(C) & 203(b)(4).
SE1	Certain Employees or Former Employees of the U.S. Government Abroad.	101(a)(27)(D).
SE2	Spouse of SE1	101(a)(27)(D).
SE3	Child of SE1	101(a)(27)(D).
SEH	Employee of the Mission in Hong Kong or Immediate Family	101(a)(27)(D) & Section 152 of the Immigration Act of 1990.

IMMIGRANTS—Continued

Symbol	Class	Section of law
SF1 .....	Certain Former Employees of the Panama Canal Company or Canal Zone Government.	101(a)(27)(E).
SF2 .....	Spouse or Child of SF1 .....	101(a)(27)(E).
SG1 .....	Certain Former Employees of the U.S. Government in the Panama Canal Zone.	101(a)(27)(F).
SG2 .....	Spouse or Child of SG1 .....	101(a)(27)(F).
SH1 .....	Certain Former Employees of the Panama Canal Company or Canal Zone Government on April 1, 1979.	101(a)(27)(G).
SH2 .....	Spouse or Child of SH1 .....	101(a)(27)(G).
SJ1 .....	Certain Foreign Medical Graduates (Adjustments Only) .....	101(a)(27)(H).
SJ2 .....	Accompanying Spouse or Child of SJ1 .....	101(a)(27)(H).here
SK1 .....	Certain Retired International Organization employees .....	101(a)(27)(I)(iii)
SK2 .....	Spouse of SK1 .....	101(a)(27)(I)(iv) & 101(a)(27)(L).
SK3 .....	Certain Unmarried Sons or Daughters of an International Organization Employee.	101(a)(27)(I)(i) & 101(a)(27)(L).
SK4 .....	Certain Spouses of a deceased International Organization Employee ...	101(a)(27)(I)(ii) & 101(a)(27)(L).
SL1 .....	Juvenile Court Dependent .....	101(a)(27)(J).
SM1 .....	Alien Recruited Outside the United States Who Has Served or is Enlisted to Serve in the U.S. Armed Forces for 12 Years (Became Eligible After the Date of Enactment)..	101(a)(27)(K).
SM2 .....	Spouse of SM1 .....	101(a)(27)(K).
SM3 .....	Child of SM1 .....	101(a)(27)(K).
SM4 .....	Alien Recruited Outside the United States Who Has Served or is Enlisted to Serve in the U.S. Armed Forces for 12 Years (Became Eligible As of the Date of Enactment).	101(a)(27)(K).
SM5 .....	Spouse or Child of SM4 .....	101(a)(27)(K).
SN1 .....	Certain retired NATO6 civilians .....	101(a)(27)(L)
SN2 .....	Spouse of an immigrant classified SN1 .....	101(a)(27)(L)
SN3 .....	Certain unmarried sons or daughters of NATO6 civilian employees .....	101(a)(27)(L)
SN4 .....	Certain surviving spouses of deceased NATO-6 civilian employees .....	101(a)(27)(L)
SP .....	Alien Beneficiary of a petition or labor certification application filed prior to September 11, 2001, if the petition or application was rendered void due to a terrorist act of September 11, 2001. Spouse, child of such alien, or the grandparent of a child orphaned by a terrorist act of September 11, 2001.	Section 421 of Public Law 107-56.
SR1 .....	Certain Religious Workers .....	101(a)(27)(C)(ii)(II) & (III).
SR2 .....	Spouse of SR1 .....	101(a)(27)(C)(ii)(II) & (III).
SR3 .....	Child of SR1 .....	101(a)(27)(C)(ii)(II) & (III).

Employment 5th Preference (Employment Reaction Conditional Status)

C51 .....	Employment Creation <i>OUTSIDE</i> Targeted Areas .....	203(b)(5)(A).
C52 .....	Spouse of C51 .....	203(d).
C53 .....	Child of C51 .....	203(d).
T51 .....	Employment Creation <i>IN</i> Targeted Rural/High Unemployment Area .....	203(b)(5)(B).
T52 .....	Spouse of T51 .....	203(d).
T53 .....	Child of T51 .....	203(d).
R51 .....	Investor Pilot Program, Not in Targeted Area .....	203(b)(5) & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (P.L. 102-395)

Other Numerically Limited Categories

Diversity Immigrants (Beginning in FY 1995)

DV1 .....	Diversity Immigrant .....	Section 203(c).
DV2 .....	Spouse of DV1 .....	Section 203(c).
DV3 .....	Child of DV1 .....	Section 203(c).

Diversity Transition for Natives of Certain Adversely Affected Foreign States (Fiscal Years 1992-1995)

AA1 .....	Diversity Transition Immigration .....	Section 132 of the Immigration Act of 1990.
AA2 .....	Spouse of AA1 .....	Section 132 of the Immigration Act of 1990.
AA3 .....	Child of AA1 .....	Section 132 of the Immigration Act of 1990.

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[60 FR 10499, Feb. 27, 1995, as amended at 62 FR 614, Jan. 6, 1997; 65 FR 20904, Apr. 19, 2000; 66 FR 32742, June 18, 2001; 66 FR 38154, July 23, 2001; 67 FR 55320, Aug. 29, 2002; 67 FR 70839, Nov. 27, 2002]

### § 42.12 Rules of chargeability.

(a) *Applicability.* An immigrant shall be charged to the numerical limitation for the foreign state or dependent area of birth, unless the case falls within one of the exceptions to the general rule of chargeability provided by INA 202(b) and paragraphs (b) through (e) of this section to prevent the separation of families or the alien is classifiable under:

- (1) INA 201(b);
- (2) INA 101(a)(27) (A) or (B);
- (3) Section 112 of Public Law 101-649;
- (4) Section 124 of Public Law 101-649;
- (5) Section 132 of Public Law 101-649;
- (6) Section 134 of Public Law 101-649;

or

(7) Section 584(b)(1) as contained in section 101(e) of Public Law 100-202.

(b) *Exception for child.* If necessary to prevent the separation of a child from the alien parent or parents, an immigrant child, including a child born in a dependent area, may be charged to the same foreign state to which a parent is chargeable if the child is accompanying or following to join the parent, in accordance with INA 202(b)(1).

(c) *Exception for spouse.* If necessary to prevent the separation of husband and wife, an immigrant spouse, including a spouse born in a dependent area, may be charged to a foreign state to which a spouse is chargeable if accompanying or following to join the spouse, in accordance with INA 202(b)(2).

(d) *Exception for alien born in the United States.* An immigrant who was born in the United States shall be charged to the foreign state of which the immigrant is a citizen or subject. If not a citizen or subject of any country, the alien shall be charged to the foreign state of last residence as determined by the consular officer, in accordance with INA 202(b)(3).

(e) *Exception for alien born in foreign state in which neither parent was born or had residence at time of alien's birth.* An alien who was born in a foreign state, as defined in § 40.1, in which neither parent was born, and in which neither parent had a residence at the time of

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the applicant's birth, may be charged to the foreign state of either parent as provided in INA 202(b)(4). The parents of such an alien are not considered as having acquired a residence within the meaning of INA 202(b)(4), if, at the time of the alien's birth within the foreign state, the parents were visiting temporarily or were stationed there in connection with the business or profession and under orders or instructions of an employer, principal, or superior authority foreign to such foreign state.

[52 FR 42613, Nov. 5, 1987, as amended at 56 FR 49681, Oct. 1, 1991]

### Subpart C—Immigrants Not Subject to Numerical Limitations of INA 201 and 202

SOURCE: 56 FR 49676, Oct. 1, 1991, unless otherwise noted.

#### § 42.21 Immediate relatives.

(a) *Entitlement to status.* An alien who is a spouse or child of a United States citizen, or a parent of a U.S. citizen at least 21 years of age, shall be classified as an immediate relative under INA 201(b) if the consular officer has received from INS an approved Petition to Classify Status of Alien Relative for Issuance of an Immigrant Visa, filed on the alien's behalf by the U.S. citizen and approved in accordance with INA 204, and the officer is satisfied that the alien has the relationship claimed in the petition. An immediate relative shall be documented as such unless the U.S. citizen refuses to file the required petition, or unless the immediate relative is also a special immigrant under INA 101(a)(27) (A) or (B) and not subject to any numerical limitation.

(b) *Spouse of a deceased U.S. citizen.* The spouse of a deceased U.S. citizen, and each child of the spouse, will be entitled to immediate relative status after the date of the citizen's death provided the spouse or child meets the criteria of INA 201(b)(2)(A)(i) or of section 423(a)(1) of Public Law 107-56 (USA Patriot Act) and the Consular Officer has received an approved petition from the INS which accords such status, or official notification of such approval, and the Consular Officer is satisfied that the alien meets those criteria.

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(c) *Child of a U.S. citizen victim of terrorism.* The child of a U.S. citizen slain in the terrorist actions of September 11, 2001, shall retain the status of an immediate relative child (regardless of changes in age or marital status) if the child files a petition for such status within two years of the citizen's death pursuant to section 423(a)(2) of Public Law 107-56, and the consular officer has received an approved petition according such status or official notification of such approval.

[56 FR 49676, Oct. 1, 1991, as amended at 64 FR 55419, Oct. 13, 1999; 67 FR 1415, Jan. 11, 2002]

### § 42.22 Returning resident aliens.

(a) *Requirements for returning resident status.* An alien shall be classifiable as a special immigrant under INA 101(a)(27)(A) if the consular officer is satisfied from the evidence presented that:

(1) The alien had the status of an alien lawfully admitted for permanent residence at the time of departure from the United States;

(2) The alien departed from the United States with the intention of returning and has not abandoned this intention; and

(3) The alien is returning to the United States from a temporary visit abroad and, if the stay abroad was protracted, this was caused by reasons beyond the alien's control and for which the alien was not responsible.

(b) *Documentation needed.* Unless the consular officer has reason to question the legality of the alien's previous admission for permanent residence or the alien's eligibility to receive an immigrant visa, only those records and documents required under INA 222(b) which relate to the period of residence in the United States and the period of the temporary visit abroad shall be required. If any required record or document is unobtainable, the provisions of § 42.65(d) shall apply.

(c) *Returning resident alien originally admitted under the Act of December 28, 1945.* An alien admitted into the United States under Section 1 of the Act of December 28, 1945 ("GI Brides Act") shall not be refused an immigrant visa after a temporary absence abroad solely because of a mental or physical de-

fect or defects that existed at the time of the original admission.

[56 FR 49676, Oct. 1, 1991, as amended at 63 FR 48578, Sept. 11, 1998]

### § 42.23 Certain former U.S. citizens.

(a) *Women expatriates.* An alien woman, regardless of marital status, shall be classifiable as a special immigrant under INA 101(a)(27)(B) if the consular officer is satisfied by appropriate evidence that she was formerly a U.S. citizen and that she meets the requirements of INA 324(a).

(b) *Military expatriates.* An alien shall be classifiable as a special immigrant under INA 101(a)(27)(B) if the consular officer is satisfied by appropriate evidence that the alien was formerly a U.S. citizen and that the alien lost citizenship under the circumstances set forth in INA 327.

## Subpart D—Immigrants Subject to Numerical Limitations

SOURCE: 56 FR 49676, Oct. 1, 1991, unless otherwise noted.

### § 42.31 Family-sponsored immigrants.

(a) *Entitlement to status.* An alien shall be classifiable as a family-sponsored immigrant under INA 203(a) (1), (2), (3) or (4) if the consular officer has received from INS a Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa approved in accordance with INA 204 to accord the alien such preference status, or official notification of such an approval, and the consular officer is satisfied that the alien has the relationship to the petitioner indicated in the petition. In the case of a petition according an alien status under INA 203(a) (1) or (3) or status as an unmarried son or daughter under INA 203(a)(2), the petitioner must be a "parent" as defined in INA 101(b)(2) and 22 CFR 40.1. In the case of a petition to accord an alien status under INA 203(a)(4) filed on or after January 1, 1977, the petitioner must be at least twenty-one years of age.

(b) *Entitlement to derivative status.* Pursuant to INA 203(d), and whether or not named in the petition, the child of a family-sponsored first, second, third

or fourth preference immigrant or the spouse of a family-sponsored third or fourth preference immigrant, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

[56 FR 49676, Oct. 1, 1991, as amended at 61 FR 1836, Jan. 24, 1996]

**§ 42.32 Employment-based preference immigrants.**

Aliens subject to the worldwide level specified in section 201(d) for employment-based immigrants in a fiscal year shall be allotted visas as indicated below.

(a) *First preference—Priority workers—*  
(1) *Entitlement to status.* An alien shall be classifiable as an employment-based first preference immigrant under INA 203(b)(1) if the consular office has received from INS a Petition for Immigrant Worker approved in accordance with INA 204 to accord the alien such Preference status, or official notification of such an approval, and the consular officer is satisfied that the alien is within one of the classes described in INA 203(b)(1).

(2) *Entitlement to derivative status.* Pursuant to INA 203(d), and whether or not named in the petition, the child or spouse of an employment-based first preference immigrant, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(b) *Second preference—Professionals with advanced degrees or persons of exceptional ability—*  
(1) *Entitlement to status.* An alien shall be classifiable as an employment-based second preference immigrant under INA 203(b)(2) if the consular officer has received from INS a Petition for Immigrant Worker approved in accordance with INA 204 to accord the alien such preference status, or official notification of such an approval, and the consular officer is satisfied that the alien is within one of the classes described in INA 203(b)(2).

(2) *Entitlement to derivative status.* Pursuant to INA 203(d), and whether or

not named in the petition, the child or spouse of an employment-based second preference immigrant, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(c) *Third preference—Skilled workers, professionals, other workers—*  
(1) *Entitlement to status.* An alien shall be classifiable as an employment-based third preference immigrant under INA 203(b)(3) if the consular officer has received from INS a Petition for Immigrant Worker approved in accordance with INA 204 to accord the alien such preference status, or official notification of such an approval, and the consular officer is satisfied that the alien is within one of the classes described in INA 203(b)(3).

(2) *Entitlement to derivative status.* Pursuant to INA 203(d), and whether or not named in the petition, the child or spouse of an employment-based third preference immigrant, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(d) *Fourth preference—Special immigrants—*  
(1) *Religious workers—*  
(i) *Classification based on qualifications under INA 101(A)(27)(C).* An alien shall be classifiable under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(C) if:

(A) The consular officer has received a petition approved by INS to accord such classification, or an official notification of such approval; and

(B) The consular officer is satisfied from the evidence presented that the alien qualifies under that section; or

(C) The consular officer is satisfied the alien is the spouse or child of a religious worker so classified and is accompanying or following to join the principal alien.

(ii) *Timeliness of application.* An immigrant visa issued under INA 203(b)(4) to an alien described in INA 101(a)(27)(C), other than a minister of religion, who qualifies as a “religious worker” as defined in 8 CFR 204.5, shall bear the

usual validity except that in no case shall it be valid later than September 30, 2003.

(2) *Certain U.S. Government employees—(i) General.* (A) An alien is classifiable under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) if a petition to accord such status has been approved by the Secretary of State. An alien may file such a petition only after, but within one year of, notification from the Department that the Secretary of State has approved a recommendation from the Principal Officer that special immigrant status be accorded the alien in exceptional circumstances and has found it in the national interest so to do.

(B) An alien may qualify as a special immigrant under INA 101(a)(27)(D) on the basis of employment abroad with more than one agency of the U.S. Government provided the total amount of full-time service with the U.S. Government is 15 years or more.

(C) Pursuant to INA 203(d), and whether or not named in the petition, the spouse or child of an alien classified under INA 203(b)(4), if not entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(ii) *Special immigrant status for certain aliens employed at the United States mission in Hong Kong.* (A) An alien employed at the United States Consulate General in Hong Kong under the authority of the Chief of Mission or an alien employed pursuant to section 5913 of title 5 of the United States Code is eligible for classification under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) provided:

(1) The alien has performed faithfully for a total of three years or more;

(2) The alien is a member of the immediate family of an employee entitled to such special immigrant status; and

(3) The welfare of the alien or the family member is subject to clear threat due directly to the employee's employment with the United States Government or under a United States Government official; and

(4) Subsequent to the Secretary's approval of the Principal Officer's rec-

ommendation and finding it in the national interest to do so, but within one year thereof, the alien has filed a petition for status under INA 203(b)(4) which the Secretary has approved.

(B) An alien desiring to benefit from this provision must seek such status not later than January 1, 2002.

(C) For purposes of § 42.32(d)(2)(ii)(A), the term *member of the immediate family* means the definition (as of November 29, 1990) in Volume 6 of the Foreign Affairs Manual, section 117k, of a relative who has been living with the employee in the same household.

(iii) *Priority date.* The priority date of an alien seeking status under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) shall be the date on which the petition to accord such classification is filed. The filing date of the petition is that on which a properly completed form and the required fee are accepted by a Foreign Service post.

(iv) *Petition validity.* Except as noted in this paragraph, the validity of a petition approved for classification under INA 203(b)(4) shall be six months beyond the date of the Secretary of State's approval thereof or the availability of a visa number, whichever is later. In cases described in § 42.32(d)(2)(ii), the validity of the petition shall not in any case extend beyond January 1, 2002.

(v) *Extension of petition validity.* If the principal officer of a post concludes that circumstances in a particular case are such that an extension of the validity of the Secretary's approval of special immigrant status or of the petition would be in the national interest, the principal officer shall recommend to the Secretary of State that such validity be extended for not more than one additional year.

(vi) *Fees.* The Secretary of State shall establish a fee for the filing of a petition to accord status under INA 203(b)(4) which shall be collected following notification that the Secretary has approved status as a special immigrant under INA 101(a)(27)(D) for the alien.

(vii) *Delegation of authority to approve petitions.* The authority to approve petitions to accord status under INA 203(b)(4) to an alien described in INA

101(a)(27)(D) is hereby delegated to the chief consular officer at the post of recommendation or, in the absence of the consular officer, to any alternate approving officer designated by the principal officer. Such authority may not be exercised until the Foreign Service post has received formal notification of the Secretary's approval of special immigrant status for the petitioning alien.

(3) *Panama Canal employees*—(i) *Entitlement to status*. An alien who is subject to the numerical limitations specified in section 3201(c) of the Panama Canal Act of 1979, Public Law 96–70, is classifiable under INA 203(b)(4) as a special immigrant described in INA 101(a)(27) (E), (F) or (G) if the consular officer has received a petition approved by INS to accord such classification, or official notification of such an approval, and the consular officer is satisfied that the alien is within one of the classes described in INA 101(a)(27) (E), (F), or (G).

(ii) *Entitlement to derivative status*. Pursuant to INA 203(d), and whether or not named in the petition, the spouse or child of any alien classified under INA 203(b)(4) as a special immigrant qualified under this section, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(4) *Spouse and children of certain foreign medical graduates*. The accompanying spouse and children of a graduate of a foreign medical school or of a person qualified to practice medicine in a foreign state who has adjusted status as a special immigrant under the provisions of INA 101(a)(27)(H) are classifiable under INA 203(b)(4) as special immigrants defined in INA 101(a)(27)(H) if the consular officer has received an approved petition from INS which accords such status and the consular officer is satisfied that the alien is within the class described in INA 101(a)(27)(H).

(5) *Certain international organization and NATO civilian employees*—(i) *Entitlement to status*. An alien is classifiable under INA 203(b)(4) as a special immigrant defined in INA 101(a)(27)(I) or (L) if the consular officer has received a

petition approved by the INS to accord such classification, or official notification of such approval, and the consular officer is satisfied from the evidence presented that the alien is within one of the classes described therein.

(ii) *Timeliness of application*. An alien accorded status under INA 203(b)(4) because of qualification under INA 101(a)(27)(I) or (L) must appear for the final visa interview and issuance of the immigrant visa within six months of establishing entitlement to status.

(6) *Certain juvenile court dependents*. An alien shall be classifiable under INA 203(b)(4) as a special immigrant defined in INA 101(a)(27)(J) if the consular officer has received from INS an approved petition to accord such status, or an official notification of such an approval, and the consular officer is satisfied the alien is within the class described in that section.

(7) *Certain members of the United States Armed Forces recruited abroad*—(i) *Entitlement to status*. An alien is classifiable under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(K) if the consular office has received a petition approved by the INS to accord such classification, or official notification of such an approval, and the consular officer is satisfied from the evidence presented that the alien is within the class described in INA 101(a)(27)(K).

(ii) *Entitlement to derivative status*. Pursuant to INA 203(d), and whether or not named in the petition, the spouse or child of any alien classified under INA 203(b)(4) as a special immigrant qualified under this section, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(8) *Certain United States international broadcasting employees*.

(i) *Entitlement to status*. An alien is classifiable as a special immigrant under INA 203(b)(4) as described in INA 101(a)(27)(M), if the consular office has received a petition approved by the INS to accord such classification, or official notification of such an approval, and the consular officer is satisfied from the evidence presented that the alien is

within the class described in INA 101(a)(27)(M).

(ii) Entitlement to derivative status. Pursuant to INA 203(d), and whether or not named in the petition, the spouse or child of any alien classified under INA 203(b)(4) as a special immigrant qualified under this section, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(e) *Fifth preference—Employment-creation immigrants*—(1) *Entitlement to status*. An alien shall be classifiable as a fifth preference employment-creation immigrant if the consular officer has received from INS an approved petition to accord such status, or official notification of such an approval, and the consular officer is satisfied that the alien is within the class described in INA 203(b)(5).

(2) *Entitlement to derivative status*. Pursuant to INA 203(d), and whether or not named in the petition, the spouse or child of an employment-based fifth preference immigrant, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

[56 FR 49676, Oct. 1, 1991, as amended at 56 FR 51172, Oct. 10, 1991; 56 FR 55077, Oct. 24, 1991; 60 FR 35839, July 12, 1995; 63 FR 4394, Jan. 29, 1998; 63 FR 68393, Dec. 11, 1998; 65 FR 80745, Dec. 22, 2000; 66 FR 15350, Mar. 19, 2001]

#### § 42.33 Diversity immigrants.

(a) *General*—(1) *Eligibility to compete for consideration under section 203(c)*. An alien shall be eligible to compete for consideration for visa issuance under INA 203(c) during a fiscal year only if he or she is a native of a low-admission foreign state, as determined by the Attorney General pursuant to INA 203(c)(1)(E)(i), with respect to the fiscal year in question; and if he or she has at least a high school education or its equivalent or, within the five years preceding the date of application for a visa, has two years of work experience in an occupation requiring at least two years training or experience. The eligi-

bility for a visa under INA 203(c) ceases at the end of the fiscal year in question. Under no circumstances may a consular officer issue a visa or other documentation to an alien after the end of the fiscal year during which an alien possesses diversity visa eligibility.

(2) *Definition of high school education or its equivalent*. For the purposes of this section, the phrase *high school education or its equivalent* shall mean successful completion of a twelve-year course of elementary and secondary education in the United States or successful completion in another country of a formal course of elementary and secondary education comparable to completion of twelve years' elementary and secondary education in the United States. In order to be considered comparable to a U.S. high school education, a foreign course of study must provide the alien with the minimum academic records required for admission to study in U.S. universities or colleges as determined in the most recent edition of the publication entitled "Foreign Credentials Required for Consideration of Admission to Universities and Colleges in the United States.

(3) *Determinations of work experience*. For all cases registered for the 2003 Diversity Visa Program, consular officers shall use the Department of Labor's O\*Net OnLine to determine qualifying work experience.

(4) *Limitation on number of petitions per year*. No more than one petition may be submitted by, or on behalf of, any alien for consideration during any single fiscal year. If two or more petitions for any single fiscal year are submitted by, or on behalf of, any alien, all such petitions shall be void and the alien by or for whom submitted shall not be eligible for consideration for visa issuance during the fiscal year in question.

(5) *Northern Ireland*. For purposes of determining eligibility to file a petition for consideration under INA 203(c) for a fiscal year, the districts comprising that portion of the United Kingdom of Great Britain and Northern Ireland, known as "Northern Ireland", shall be treated as a separate foreign state. The districts comprising "Northern Ireland" are Antrim, Ards,

Armagh, Ballymena, Ballymoney, Banbridge, Belfast, Carrickfergus, Castlereagh, Coleraine, Cookstown, Craigavon, Down, Dungannon, Fermanagh, Larne, Limavady, Lisburn, Londonderry, Magherafelt, Moyle, Newry and Mourne, Newtownabbey, North Down, Omagh, and Strabane.

(b) *Petition for consideration*—(1) *Form of petition*. An alien claiming to be entitled to compete for consideration under INA 203(c) shall file a petition for such consideration. The petition shall consist of a sheet of paper on which shall be typed or legibly printed in the Roman alphabet:

- (i) The petitioner's name;
- (ii) Date and place of birth (including city and county of which the alien claims to be a native, if other than the country of birth);
- (iii) Name(s), and date(s) and place(s) of birth of spouse and all child(ren), if any, (including legally-adopted and stepchildren, regardless of whether or not they are living with the petitioner or intend to accompany or follow to join the petitioner), but excluding those children who are already U.S. citizens or LPRs); and
- (iv) Current mailing address.

(2) *Signatures*. The petitioner shall personally sign his or her signature on the sheet of paper, in his or her native alphabet. (Neither an initialed signature nor block printing of the petitioner's name will be accepted. The use of either will result in the disqualification of the entry).

(3) *Photographs*. The alien shall also affix to the entry a photograph of himself or herself and photographs of his or her spouse and all unmarried children under the age of 21 years. The photographs shall meet the following specifications:

- (i) The photograph must be between 1½ by 1½ and 2 by 2 inches (37 to 50 mm) square;
- (ii) The alien shall print his or her name and date of birth on the back of the photograph;
- (iii) The alien must be directly facing the camera; the head of the person being photographed shall not be tilted up, down, or to the side, and must cover about 50% of the photo area;

(iv) The photograph must be taken with the person in front of a neutral, light-colored background;

(v) The alien's face must be in focus;

(vi) The person in the photograph shall not wear sunglasses or other paraphernalia which detracts from the face;

(vii) Photos with the alien wearing head coverings or hats are only acceptable due to religious beliefs, and even then, may not obscure any portion of the face of the applicant. Photos of applicants wearing tribal, military, airline or other headwear not specifically religious in nature will not be accepted;

(viii) Photographs may be either color or black and white.

(4) *Submission of petition*—(i) *General*. A petition for consideration for visa issuance under INA 203(c) shall be submitted by mail to the address designated by the Department for that purpose. The Department shall establish a period of not less than thirty days during each fiscal year during which petitions for consideration during the next following fiscal year may be submitted. Each fiscal year, the Department shall give timely notice of both the mailing address and the exact dates of the application period, through publication in the FEDERAL REGISTER and such other methods as will ensure the widest possible dissemination of the information, both abroad and within the United States.

(ii) *Form of mailing*. Petitions for consideration under this section shall be submitted by normal surface or air mail only. Petitions submitted by hand, telegram, FAX, or by any means requiring any form of special handling or acknowledgement of receipt such as express or priority mail, second day airmail, fax, hand or messenger delivery) will not be processed. The petitioner shall type or print legibly, using the Roman alphabet, on the upper left-hand corner of the envelope in which the petition is mailed his or her full name and mailing address, and the name of the country of which the petitioner is a native, as shown on the petition itself. Envelopes shall be between 6" and 10" (15 cm to 25 cm) in length and between 3½" and 4½" (9 cm to 11 cm) in

width. Envelopes not bearing this information and/or not conforming to the restrictions as to size shall not be processed for consideration.

(c) *Processing of petitions.* Envelopes received at the mailing address during the application period established for the fiscal year in question and meeting the requirements of subsection (b) shall be assigned a number in a separate numerical sequence established for each regional area specified in INA 203(c)(1)(F). Upon completion of the numbering of all envelopes, all numbers assigned for each region shall be separately rank-ordered at random by a computer using standard computer software for this purpose. The Department shall then select in the rank orders determined by the computer program a quantity of envelopes for each region estimated to be sufficient to ensure, to the extent possible, usage of all immigrant visas authorized under INA 203(c) for the fiscal year in question.

(d) *Approval of petitions.* Envelopes selected pursuant to paragraph (c) of this section shall be opened and reviewed. Petitions which are legible and contain the information specified in paragraph (b) of this section shall be approved for further consideration.

(e) *Validity of approved petitions.* A petition approved pursuant to paragraph (d) of this section shall be valid until Midnight of the last day of the fiscal year for which the petition was submitted. At that time, the petition is automatically revoked pursuant to INA 203(c)(1) and no diversity immigrant visa numbers can be allotted after that date.

(f) *Order of consideration.* Further consideration for visa issuance of aliens whose petitions have been approved pursuant to paragraph (d) of this section shall be in the regional rank orders established pursuant to paragraph (c) of this section.

(g) *Allocation of visa numbers.* Diversity immigrant visa numbers should be allocated in accordance with INA 203(c)(1) and shall be allotted only during the fiscal year for which a petition to accord diversity immigrant status was submitted and approved. Under no circumstances shall immigrant visa numbers be allotted after Midnight of

the last day of the fiscal year for which the petition was submitted and approved.

(h) *Further processing.* The Department shall inform applicants whose petitions have been approved pursuant to paragraph (d) of this section of the steps necessary to meet the requirements of INA 222(b) in order to apply formally for an immigrant visa.

(i) *Maintenance of information concerning petitioners who are visa recipients.* (1) The Department shall compile and maintain the following information concerning petitioners to whom immigrant visas are issued under INA 203(c):

- (i) Age;
- (ii) Country of birth;
- (iii) Marital status;
- (iv) Sex;
- (v) Level of education; and
- (vi) Occupation and level of occupational qualification.

(2) Names of visa recipients shall not be maintained in connection with this information and the information shall be compiled and maintained in such form that the identity of visa recipients cannot be determined therefrom.

(i) *Diversity visa lottery surcharge.* In addition to collecting the immigrant visa application processing fee, as provided in § 42.71(b) of this part, the consular officer shall also collect from each applicant for a visa under the Diversity Immigrant Visa Program such fee for the processing of the diversity lottery as the Secretary of State prescribes.

(ii) [Reserved]

(j) *Processing fee.* In addition to collecting the immigrant visa application and, if applicable, issuance fees, as provided in § 42.71(b) of this part, the consular officer shall also collect from each applicant for a visa under the Diversity Immigrant Visa Program such processing fee as the Secretary of State shall prescribe.

[59 FR 15301, Mar. 31, 1994, as amended at 61 FR 1524, Jan. 22, 1996; 66 FR 39437, July 31, 2001; 66 FR 54136, Oct. 26, 2001; 67 FR 38893, June 6, 2002; 67 FR 51753, Aug. 9, 2002]

**Subpart E—Petitions**

**§ 42.41 Effect of approved petition.**

Consular officers are authorized to grant to an alien the immediate relative or preference status accorded in a petition approved in the alien's behalf upon receipt of the approved petition or official notification of its approval. The status shall be granted for the period authorized by law or regulation. The approval of a petition does not relieve the alien of the burden of establishing to the satisfaction of the consular officer that the alien is eligible in all respects to receive a visa.

[56 FR 49682, Oct. 1, 1991]

**§ 42.42 Petitions for immediate relative or preference status.**

*Petition for immediate relative or preference status.* The consular officer may not issue a visa to an alien as an immediate relative entitled to status under 201(b), a family-sponsored immigrant entitled to preference status under 203(a)(1)–(4), or an employment-based preference immigrant entitled to status under INA 203(b)(1)–(5), unless the officer has received a petition filed and approved in accordance with INA 204 or official notification of such filing and approval.

[56 FR 49682, Oct. 1, 1991]

**§ 42.43 Suspension or termination of action in petition cases.**

(a) *Suspension of action.* The consular officer shall suspend action in a petition case and return the petition, with a report of the facts, for reconsideration by INS if the petitioner requests suspension of action, or if the officer knows or has reason to believe that approval of the petition was obtained by fraud, misrepresentation, or other unlawful means, or that the beneficiary is not entitled, for some other reason, to the status approved.

(b) *Termination of action.* (1) The consular officer shall terminate action in a petition case upon receipt from INS of notice of revocation of the petition in accordance with INS regulations.

(2) The consular officer shall terminate action in a petition case subject

to the provisions of INA 203(g) in accordance with the provisions of § 42.83.

[56 FR 49682, Oct. 1, 1991]

**Subpart F—Numerical Controls and Priority Dates**

SOURCE: 56 FR 51174, Oct. 10, 1991, unless otherwise noted.

**§ 42.51 Department control of numerical limitations.**

(a) *Centralized control.* Centralized control of the numerical limitations on immigration specified in INA 201, 202, and 203 is established in the Department. The Department shall limit the number of immigrant visas that may be issued and the number of adjustments of status that may be granted to aliens subject to these numerical limitations to a number:

(1) Not to exceed 27 percent of the world-wide total made available under INA 203 (a), (b) and (c) in any of the first three quarters of any fiscal year; and

(2) Not to exceed, in any month of a fiscal year, 10% of the world-wide total made available under INA 203 (a), (b) and (c) plus any balance remaining from authorizations for preceding months in the same fiscal year.

(b) *Allocation of numbers.* Within the foregoing limitations, the Department shall allocate immigrant visa numbers for use in connection with the issuance of immigrant visas and adjustments based on the chronological order of the priority dates of visa applicants classified under INA 203 (a) and (b) reported by consular officers pursuant to § 42.55(b) and of applicants for adjustment of status as reported by officers of the INS, taking into account the requirements of INA 202(e) in such allocations. In the case of applicants under INA 203(c), visa numbers shall be allocated within the limitation for each specified geographical region in the random order determined in accordance with sec. 42.33(c) of this part.

(c) *Recaptured visa numbers.* An immigrant visa number shall be returned to the Department for reallocation within the fiscal year in which the visa was issued when:

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(1) An immigrant having an immigrant visa is excluded from the United States and deported;

(2) An immigrant does not apply for admission to the United States before the expiration of the validity of the visa;

(3) An alien having a preference immigrant visa is found not to be a preference immigrant; or

(4) An immigrant visa is revoked pursuant to § 42.82.

[56 FR 51174, Oct. 10, 1991, as amended at 59 FR 15302, Mar. 31, 1994; 63 FR 48578, Sept. 11, 1998]

### § 42.52 Post records of visa applications.

(a) *Waiting list.* Records of individual visa applicants entitled to an immigrant classification and their priority dates shall be maintained at posts at which immigrant visas are issued. These records shall indicate the chronological and preferential order in which consideration may be given to immigrant visa applications within the several immigrant classifications subject to the numerical limitations specified in INA 201, 202, and 203. Similar records shall be kept for the classes specified in INA 201(b)(2) and 101(a)(27) (A) and (B) which are not subject to numerical limitations. The records which pertain to applicants subject to numerical limitations constitute “waiting lists” within the meaning of INA 203(e)(3) as redesignated by the Immigration Act of 1990.

(b) *Entitlement to immigrant classification.* An alien shall be entitled to immigrant classification if the alien:

(1) Is the beneficiary of an approved petition according immediate relative or preference status;

(2) Has satisfied the consular officer that the alien is entitled to special immigrant status under INA(101)(a)(27) (A) or (B);

(3) Is entitled to status as a Vietnam Amerasian under section 584(b)(1) of section 101(e) of Public Law 100-202 as amended by Public Law 101-167 and reamended by Public Law 101-513; or

(4) Beginning in FY-95, is entitled to status as a diversity immigrant under INA 203(c).

(c) *Record made when entitlement to immigrant classification is established.* (1)

A record that an alien is entitled to an immigrant visa classification shall be made on Form OF-224, Immigrant Visa Control Card, or through the automated system in use at selected posts, whenever the consular officer is satisfied—or receives evidence—that the alien is within the criteria set forth in paragraph (b) of this section.

(2) A separate record shall be made of family members entitled to derivative immigrant status whenever the consular officer determines that a spouse or child is chargeable to a different foreign state or other numerical limitation than the principal alien. The provisions of INA 202(b) are to be applied as appropriate when either the spouse or parent is reached on the waiting list.

(3) A separate record shall be made of a spouse or child entitled to derivative immigrant status whenever the consular officer determines that the principal alien intends to precede the family.

[56 FR 51174, Oct. 9, 1991, as amended at 61 FR 1836, Jan. 24, 1996]

### § 42.53 Priority date of individual applicants.

(a) *Preference applicant.* The priority date of a preference visa applicant under INA 203 (a) or (b) shall be the filing date of the approved petition that accorded preference status.

(b) *Former Western Hemisphere applicant with priority date prior to January 1, 1977.* Notwithstanding the provisions of paragraph (a) of this section, an alien who, prior to January 1, 1977, was subject to the numerical limitation specified in section 21(e) of the Act of October 3, 1965, and who was registered as a Western Hemisphere immigrant with a priority date prior to January 1, 1977, shall retain that priority date as a preference immigrant upon approval of a petition according status under INA 203 (a) or (b).

(c) *Derivative priority date for spouse or child of principal alien.* A spouse or child of a principal alien acquired prior to the principal alien’s admission shall be entitled to the priority date of the principal alien, whether or not named in the immigrant visa application of the principal alien. A child born of a marriage which existed at the time of a

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principal alien's admission to the United States is considered to have been acquired prior to the principal alien's admission.

### § 42.54 Order of consideration.

(a) *General.* Consular officers shall request applicants to take the steps necessary to meet the requirements of INA 222(b) in order to apply formally for a visa as follows:

(1) In the chronological order of the priority dates of all applicants within each of the immigrant classifications specified in INA 203 (a) and (b); and

(2) In the random order established by the Secretary of State for each region for the fiscal year for applicants entitled to status under INA 203(c).

(b) [Reserved]

[56 FR 51174, Oct. 10, 1991, as amended at 59 FR 15302, Mar. 31, 1994; 61 FR 1836, Jan. 24, 1996; 63 FR 48578, Sept. 11, 1998]

### § 42.55 Reports on numbers and priority dates of applications on record.

(a) Consular officers shall report periodically, as the Department may direct, the number and priority dates of all applicants subject to the numerical limitations prescribed in INA 201, 202, and 203 whose immigrant visa applications have been recorded in accordance with § 42.52(c).

(b) *Documentarily qualified applicants.* Consular officers shall also report periodically, as the Department may direct, the number and priority dates of all applicants described in paragraph (a) of this section who have informed the consular office that they have obtained the documents required under INA 222(b), for whom the necessary clearance procedures have been completed.

[56 FR 51174, Oct. 10, 1991, as amended at 61 FR 1836, Jan. 24, 1996]

## Subpart G—Application for Immigrant Visas

### § 42.61 Place of application.

(a) *Alien to apply in consular district of residence.* Unless otherwise directed by the Department, an alien applying for an immigrant visa shall make application at the consular office having juris-

isdiction over the alien's place of residence; except that, unless otherwise directed by the Department, an alien physically present in an area but having no residence therein may make application at the consular office having jurisdiction over that area if the alien can establish that he or she will be able to remain in the area for the period required to process the application. Finally, a consular office may, as a matter of discretion, or shall, at the direction of the Department, accept an immigrant visa application from an alien who is neither a resident of, nor physically present in, the area designated for that office for such purpose. For the purposes of this section, an alien physically present in the United States shall be considered to be a resident of the area of his or her last residence prior to entry into the United States.

(b) *Transfer of immigrant visa cases.* (1) All documents, papers, and other evidence relating to an applicant whose case is pending or has been refused at one post may be transferred to another post at the applicant's request and risk when there is reasonable justification for the transfer and the transferring post has no reason to believe that the alien will be unable to appear at the receiving post.

(2) Any approved petition granting immediate relative or preference status should be included among the documents when a case is transferred from one post to another.

(3) In no case may a visa number be transferred from one post to another. A visa number which cannot be used as a result of the transfer must be returned to the Department immediately.

[52 FR 42613, Nov. 5, 1987, as amended at 59 FR 39955, Aug. 4, 1994]

### § 42.62 Personal appearance and interview of applicant.

(a) *Personal appearance of applicant before consular officer.* Every alien applying for an immigrant visa, including an alien whose application is executed by another person pursuant to § 42.63(a)(2), shall be required to appear personally before a consular officer for the execution of the application or, if in Taiwan, before a designated officer of the American Institute in Taiwan, except that the personal appearance of

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any child under the age of 14 may be waived at the officer's discretion.

(b) *Interview by consular officer.* Every alien executing an immigrant visa application must be interviewed by a consular officer who shall determine on the basis of the applicant's representations and the visa application and other relevant documentation—

(1) The proper immigrant classification, if any, of the visa applicant, and

(2) The applicant's eligibility to receive a visa.

The officer has the authority to require that the alien answer any question deemed material to these determinations.

[52 FR 42613, Nov. 5, 1987, as amended at 56 FR 49682, Oct. 1, 1991]

### § 42.63 Application forms and other documentation.

(a) *Application Forms—(1) Application on Form OF-230 Required.* Every alien applying for an immigrant visa must make application on Form OF-230, Application for Immigrant Visa and Alien Registration. This requirement may not be waived. Form OF-230 consists of parts I and II which, together, are meant in any reference to this Form.

(2) *Application of alien under 14 or physically incapable.* The application on Form OF-230 for an alien under 14 years of age or one physically incapable of completing an application may be executed by the alien's parent or guardian, or, if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, the alien.

(b) *Preparation of forms.* The consular officer shall ensure that Form OF-230 and all other forms an alien is required to submit are fully and properly completed in accordance with the applicable regulations and instructions.

(c) *Additional information as part of application.* The officer may require the submission of additional information or question the alien on any relevant matter whenever the officer believes that the information provided in Form OF-230 is inadequate to determine the alien's eligibility to receive an immigrant visa. Additional statements made by the alien become a part of the visa application. All documents required under the authority of § 42.62 are

considered papers submitted with the alien's application within the meaning of INA 221(g)(1).

[52 FR 42613, Nov. 5, 1987, as amended at 56 FR 49682, Oct. 1, 1991; 61 FR 1836, Jan. 24, 1996]

### § 42.64 Passport requirements.

(a) *Passport defined.* *Passport*, as defined in INA 101(a)(30), is not limited to a national passport or to a single document. A passport may consist of two or more documents which, when considered together, fulfill the requirements of a passport, provided that documentary evidence of permission to enter a foreign country has been issued by a competent authority and clearly meets the requirements of INA 101(a)(30).

(b) *Passport validity requirements.* Except as provided in § 42.2, every applicant for an immigrant visa shall present a passport, as defined in INA 101(a)(30), that is valid for at least 60 days beyond the period of validity of the visa. The 60-day additional validity requirement does not apply to an applicant who would be excepted as provided in § 42.2 were it not for the fact that the applicant is applying in the country of which the applicant is a national and the possession of a passport is required for departure. Such an applicant may be issued a visa valid for 6 months or for such shorter period as will assure its expiration in unison with the passport.

(c) *A single passport including more than one person.* The passport requirement of this section may be met by the presentation of a passport including more than one person, if such inclusion is authorized under the laws or regulations of the issuing authority and if a photograph of each person 16 years of age or over is attached to the passport by the issuing authority.

[52 FR 42613, Nov. 5, 1987; 53 FR 9112, Mar. 21, 1988, as amended at 63 FR 48578, Sept. 11, 1998]

### § 42.65 Supporting documents.

(a) *Authority to require documents.* The consular officer is authorized to require documents considered necessary to establish the alien's eligibility to receive an immigrant visa. All such documents submitted and other evidence presented by the alien, including briefs

submitted by attorneys or other representatives, shall be considered by the officer.

(b) *Basic documents required.* An alien applying for an immigrant visa shall be required to furnish, if obtainable: A copy of a police certificate or certificates; a certified copy of any existing prison record, military record, and record of birth; and a certified copy of all other records or documents which the consular officer considers necessary.

(c) *Definitions.* (1) *Police certificate* means a certification by the police or other appropriate authorities reporting information entered in their records relating to the alien. In the case of the country of an alien's nationality and the country of an alien's current residence (as of the time of visa application) the term "appropriate police authorities" means those of a country, area or locality in which the alien has resided for at least six months. In the case of all other countries, areas, or localities, the term "appropriate police authorities" means the authorities of any country, area, or locality in which the alien has resided for at least one year. A consular officer may require a police certificate regardless of length of residence in any country if he or she has reason to believe that a police record exists in the country, area, or locality concerned.

(2) *Prison record* means an official document containing a report of the applicant's record of confinement and conduct in a penal or correctional institution.

(3) *Military record* means an official document containing a complete record of the applicant's service and conduct while in military service, including any convictions of crime before military tribunals as distinguished from other criminal courts. A certificate of discharge from the military forces or an enrollment book belonging to the applicant shall not be acceptable in lieu of the official military record, unless it shows the alien's complete record while in military service. The applicant may, however, be required to present for inspection such a discharge certificate or enrollment book if deemed necessary by the consular offi-

cer to establish the applicant's eligibility to receive a visa.

(4) *A certified copy of an alien's record of birth* means a certificate issued by the official custodian of birth records in the country of birth showing the date and place of birth and the parentage of the alien, based upon the original registration of birth.

(5) *Other records or documents* include any records or documents establishing the applicant's relationship to a spouse or children, if any, and any records or documents pertinent to a determination of the applicant's identity, classification, or any other matter relating to the applicant's visa eligibility.

(d) *Unobtainable documents.* (1) If the consular officer is satisfied, or the catalogue of available documents prepared by the Department indicates, that any document or record required under this section is unobtainable, the officer may permit the immigrant to submit other satisfactory evidence in lieu of such document or record. A document or other record shall be considered unobtainable if it cannot be procured without causing to the applicant or a family member actual hardship as opposed to normal delay and inconvenience.

(2) If the consular officer determines that a supporting document, as described in paragraph (b) of this section, is in fact unobtainable, although the catalogue of available documents shows it is available, the officer shall affix to the visa application a signed statement describing in detail the reasons for considering the record or document unobtainable and for accepting the particular secondary evidence attached to the visa.

(e) *Authenticity of records and documents.* If the consular officer has reason to believe that a required record or document submitted by an applicant is not authentic or has been altered or tampered with in any material manner, the officer shall take such action as may be necessary to determine its authenticity or to ascertain the facts to which the record or document purports to relate.

(f) *Photographs.* Every alien shall furnish color photographs of the number and specifications prescribed by the Department, except that, in countries

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where facilities for producing color photographs are unavailable as determined by the consular officer, black and white photographs may be substituted.

[52 FR 42613, Nov. 5, 1987, as amended at 55 FR 29015, July 17, 1990; 56 FR 49682, Oct. 1, 1991]

### § 42.66 Medical examination.

(a) *Medical examination required of all applicants.* Before the issuance of an immigrant visa, the consular officer shall require every alien, regardless of age, to undergo a medical examination in order to determine eligibility to receive a visa.

(b) *Examination by physician from approved panel.* The required examination shall be conducted in accordance with requirements and procedures established by the United States Public Health Service and by a physician selected by the alien from a panel of physicians approved by the consular officer.

(c) *Facilities required for panel physician.* A consular officer shall not include the name of a physician on the panel of physicians referred to in paragraph (b) of this section unless the physician has facilities to perform required serological and X-ray tests or is in a position to refer applicants to a qualified laboratory for such tests.

### § 42.67 Execution of application, registration, and fingerprinting.

(a) *Execution of visa application—(1) Application fee.* A fee is prescribed for each application for an immigrant visa. It shall be collected prior to the execution of the application and a receipt shall be issued.

(2) *Oath and signature.* The applicant shall be required to read the Form OF-230, Application for Immigrant Visa and Alien Registration, when it is completed, or it shall be read to the alien in the alien's language, or the alien otherwise informed of its full contents. Aliens shall be asked whether they are willing to subscribe thereto. If the alien is not willing to subscribe to the application unless changes are made in the information stated therein, the required changes shall be made. The application shall then be sworn to or affirmed and signed by or on behalf of

the applicant before a consular officer, or a designated officer of the American Institute of Taiwan, who shall then sign the application over the officer's title.

(b) *Registration.* The alien shall be considered to be registered for the purposes of INA 221(b) and 203(g) upon the filing of Form DS-230, when duly executed, or the transmission by the Department to the alien of a notification of the availability of an immigrant visa, whichever occurs first.

(c)(1) *Fingerprinting.* An alien may be required at any time prior to the execution of Form OF-230 to have a set of fingerprints taken if such procedure is necessary for purposes of identification or investigation.

(2) *NCIC name check response.* When an automated database name check query indicates that an immigrant applicant may have a criminal history record indexed in an NCIC database, the applicant shall be required to have a set of fingerprints taken in order for the Department to obtain such record. The applicant must pay the fingerprint processing fee as indicated in the schedule of fees found at 22 CFR 22.1.

[52 FR 42613, Nov. 5, 1987, as amended at 55 FR 29015, July 17, 1990; 56 FR 49682, Oct. 1, 1991; 67 FR 8478, Feb. 25, 2002; 67 FR 77161, Dec. 17, 2002]

### § 42.68 Informal evaluation of family members if principal applicant precedes them.

(a) *Preliminary determination of visa eligibility.* If a principal applicant proposes to precede the family to the United States, the consular officer may arrange for an informal examination of the other members of the principal applicant's family in order to determine whether there exists at that time any mental, physical, or other ground of ineligibility on their part to receive a visa.

(b) *When family member ineligible.* In the event the consular officer finds that any member of such family would be ineligible to receive an immigrant visa, the principal applicant shall be informed and required to acknowledge receipt of this information in writing.

(c) *No guarantee of future eligibility.* A determination in connection with an

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informal examination that an alien appears to be eligible for a visa carries no assurance that the alien will be issued an immigrant visa in the future. The principal applicant shall be so informed and required to acknowledge receipt of this information in writing. The question of visa eligibility can be determined definitively only at the time the family member applies for a visa.

### Subpart H—Issuance of Immigrant Visas

#### § 42.71 Authority to issue visas; visa fees.

(a) *Authority to issue visas.* Consular officers may issue immigrant visas at designated consular offices abroad pursuant to the authority contained in INA 101(a)(16), 221(a), and 224. (Consular offices designated to issue immigrant visas are listed periodically in Visa Office Bulletins published at [www.travel.state.gov](http://www.travel.state.gov) by the Department of State.) A consular officer assigned to duty in the territory of a country against which the sanctions provided in INA 243(d) have been invoked must not issue an immigrant visa to an alien who is a national, citizen, subject, or resident of that country, unless the officer has been informed that the sanction has been waived by INS in the case of an individual alien or a specified class of aliens.

(b) *Immigrant visa fees.* The Secretary of State prescribes a fee for the processing of immigrant visa applications. An individual registered for immigrant visa processing at a post designated for this purpose by the Deputy Assistant Secretary for Visa Services must pay the processing fee upon being notified that a visa is expected to become available in the near future and being requested to obtain the supporting documentation needed to apply formally for a visa. A fee collected for the processing of an immigrant visa application is refundable only if the principal officer of a post or the officer in charge of a consular section determines that the application was not adjudicated as a result of action by the U. S. Government over which the alien had no control and for which the alien was not re-

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sponsible, that precluded the applicant from benefiting from the processing.

[67 FR 38893, June 6, 2002]

#### § 42.72 Validity of visas.

(a) *Period of validity.* With the exception indicated herein, the period of validity of an immigrant visa shall not exceed six months, beginning with the date of issuance. Any visa issued to a child lawfully adopted by a U.S. citizen and spouse while such citizen is serving abroad in the U.S. Armed Forces, is employed abroad by the U.S. Government, or is temporarily abroad on business, however, shall be valid until such time, for a period not to exceed 3 years, as the adoptive citizen parent returns to the United States in the course of that parent's military service, U.S. Government employment, or business.

(b) *Extension of period of validity.* If the visa was originally issued for a period of validity less than the maximum authorized by paragraph (a) of this section, the consular officer may extend the validity of the visa up to but not exceeding the maximum period permitted. If an immigrant applies for an extension at a consular office other than the issuing office, the consular officer shall, unless the officer is satisfied beyond doubt that the alien is eligible for the extension, communicate with the issuing office to determine if there is any objection to an extension. In extending the period of validity, the officer shall make an appropriate notation on the visa of the new expiration date, sign the document with title indicated, and impress the seal of the office thereon.

(c) [Reserved]

(d) *Age and marital status in relation to validity of certain immigrant visas.* In accordance with § 42.64(b), the validity of a visa may not extend beyond a date sixty days prior to the expiration of the passport. The period of validity of a visa issued to an immigrant as a child shall not extend beyond the day immediately preceding the date on which the alien becomes 21 years of age. The consular officer shall warn an alien, when appropriate, that the alien will be admissible as such an immigrant only if unmarried and under 21 years of age at the time of application

for admission at a U.S. port of entry. The consular officer shall also warn an alien issued a visa as a first or second preference immigrant as an unmarried son or daughter of a citizen or lawful permanent resident of the United States that the alien will be admissible as such an immigrant only if unmarried at the time of application for admission at a U.S. port of entry.

[52 FR 42613, Nov. 5, 1987, as amended at 56 FR 32323, July 16, 1991; 61 FR 1836, Jan. 24, 1996; 62 FR 27694, May 21, 1997; 64 FR 28916, May 28, 1999; 67 FR 38894, June 6, 2002; 68 FR 13628, Mar. 20, 2003]

#### § 42.73 Procedure in issuing visas.

(a) *Insertion of data.* In issuing an immigrant visa, the issuing office shall insert the pertinent information in the designated blank spaces provided on Form OF-155A, Immigrant Visa and Alien Registration, in accordance with the instructions contained in this section.

(1) A symbol as specified in § 42.11 shall be used to indicate the classification of the immigrant.

(2) An immigrant visa issued to an alien subject to numerical limitations shall bear a number allocated by the Department. The foreign state or dependent area limitation to which the alien is chargeable shall be entered in the space provided.

(3) No entry need be made in the space provided for foreign state or other applicable area limitation on visas issued to aliens in the classifications set forth in § 42.12(a)(1)–(7), but such visas may be numbered if a post voluntarily uses a consecutive post numbering system.

(4) The date of issuance and the date of expiration of the visa shall be inserted in the proper places on the visa and show the day, month, and year in that order, with the name of the month spelled out, as in “24 December 1986.”

(5) In the event the passport requirement has been waived under § 42.2, a notation shall be inserted in the space provided for the passport number, setting forth the authority (section and paragraph) under which the passport was waived.

(6) A signed photograph shall be attached in the space provided on Form OF-155A by the use of a legend ma-

chine, unless specific authorization has been granted by the Department to use the impression seal.

(b) *Documents comprising an immigrant visa.* An immigrant visa consists of Form OF-155A and Form OF-230, Application for Immigrant Visa and Alien Registration, properly executed, and a copy of each document required pursuant to § 42.63.

(c) *Arrangement of visa documentation.* Form OF-155A shall be placed immediately above Form OF-230 and the supporting documents attached thereto. Any document required to be attached to the visa, if furnished to the consular officer by the alien’s sponsor or other person with a request that the contents not be divulged to the visa applicant, shall be placed in an envelope and sealed with the impression seal of the consular office before being attached to the visa. If an immigrant visa is issued to an alien in possession of a United States reentry permit, valid or expired, the consular officer shall attach the permit to the immigrant visa for disposition by INS at the port of entry. (Documents having no bearing on the alien’s qualifications or eligibility to receive a visa may be returned to the alien or to the person who furnished them.)

(d) *Signature, seal, and issuance of visa.* The consular officer shall sign the visa (Form OF-155A) and impress the seal of the office on it so as to partially cover the photograph and the signature. The immigrant visa shall then be issued by delivery to the immigrant or the immigrant’s authorized agent or representative.

[52 FR 42613, Nov. 5, 1987, as amended at 56 FR 49682, Oct. 1, 1991]

#### § 42.74 Issuance of new or replacement visas.

(a) *New immigrant visa for a special immigrant under INA 101(a)(27)(A) and (B).*

(1) The consular officer may issue a new immigrant visa to a qualified alien entitled to status under INA 101(a)(27)(A) or (B), who establishes:

(i) That the original visa has been lost, mutilated or has expired, or

(ii) The alien will be unable to use it during the period of its validity;

(2) Provided:

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(i) The alien pays anew the application processing fees prescribed in the Schedule of Fees; and

(ii) The consular officer ascertains whether the original issuing office knows of any reason why a new visa should not be issued.

(b) *Replacement immigrant visa for an immediate relative or for an alien subject to numerical limitation.* (1) A consular officer may issue a replacement visa under the original number of a qualified alien entitled to status as an immediate relative (INA 201(b)(2)), a family or employment preference immigrant (INA 203(a) or (b)), or a diversity immigrant (INA 203(c)), if—

(i) The alien is unable to use the visa during the period of its validity due to reasons beyond the alien's control;

(ii) The visa is issued during the same fiscal year in which the original visa was issued, or in the following year, in the case of an immediate relative only, if the original number had been reported as recaptured;

(iii) The number has not been returned to the Department as a "recaptured visa number" in the case of a preference or diversity immigrant;

(iv) The alien pays anew the application and processing fees prescribed in the Schedule of Fees; and

(v) The consular officer ascertains whether the original issuing office knows of any reason why a new visa should not be issued.

(2) In issuing a visa under this paragraph (b), the consular officer shall insert the word "REPLACE" on Form OF-155A, Immigrant Visa and Alien Registration, before the word "IMMIGRANT" in the title of the visa.

(c) *Duplicate visas issued within the validity period of the original visa.* If the validity of a visa previously issued has not yet terminated and the original visa has been lost or mutilated, a duplicate visa may be issued containing all of the information appearing on the original visa, including the original issuance and expiration dates. The applicant shall execute a new application and provide copies of the supporting documents submitted in support of the original application. The alien must pay anew the application processing fees prescribed in the Schedule of Fees. In issuing a visa under this paragraph,

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the consular officer shall insert the word "DUPLICATE" on Form OF-155A before the word "IMMIGRANT" in the title of the visa.

[52 FR 42613, Nov. 5, 1987, as amended at 56 FR 49682, Oct. 1, 1991; 61 FR 1836, Jan. 24, 1996; 63 FR 4393, Jan. 29, 1998; 67 FR 1416, Jan. 11, 2002; 67 FR 38894, June 6, 2002]

### Subpart I—Refusal, Revocation, and Termination of Registration

#### § 42.81 Procedure in refusing individual visas.

(a) *Issuance or refusal mandatory.* When a visa application has been properly completed and executed before a consular officer in accordance with the provisions of INA and the implementing regulations, the consular officer must either issue or refuse the visa under INA 212(a) or INA 221(g) or other applicable law. Every refusal must be in conformance with the provisions of 22 CFR 40.6.

(b) *Refusal procedure.* A consular officer may not refuse an immigrant visa until Form OF-230, Application for Immigrant Visa and Alien Registration, has been executed by the applicant. When an immigrant visa is refused, an appropriate record shall be made in duplicate on a form prescribed by the Department. The form shall be signed and dated by the consular officer. The consular officer shall inform the applicant of the provision of law or implementing regulation on which the refusal is based and of any statutory provisions under which administrative relief is available. Each document related to the refusal shall then be attached to Form OF-230 for retention in the refusal files. Any documents not related to the refusal shall be returned to the applicant. If the grounds of ineligibility may be overcome by the presentation of additional evidence and the applicant indicates an intention to submit such evidence, all documents may, with the consent of the alien, be retained in the consular files for a period not to exceed one year. If the refusal has not been overcome within one year, any documents not relating to the refusal shall be removed from the file and returned to the alien.

(c) *Review of refusal at consular office.* If the grounds of ineligibility upon which the visa was refused cannot be overcome by the presentation of additional evidence, the principal consular officer at a post, or a specifically designated alternate, shall review the case without delay, record the review decision, and sign and date the prescribed form. If the grounds of ineligibility may be overcome by the presentation of additional evidence and the applicant indicates the intention to submit such evidence, a review of the refusal may be deferred. If the principal consular officer or alternate does not concur in the refusal, that officer shall either (1) refer the case to the Department for an advisory opinion, or (2) assume responsibility for final action on the case.

(d) *Review of refusal by Department.* The Department may request a consular officer in an individual case or in specified classes of cases to submit a report if an immigrant visa has been refused. The Department will review each report and may furnish an advisory opinion to the consular officer for assistance in considering the case further. If the officer believes that action contrary to an advisory opinion should be taken, the case shall be resubmitted to the Department with an explanation of the proposed action. Rulings of the Department concerning an interpretation of law, as distinguished from an application of the law to the facts, are binding upon consular officers.

(e) *Reconsideration of refusal.* If a visa is refused, and the applicant within one year from the date of refusal adduces further evidence tending to overcome the ground of ineligibility on which the refusal was based, the case shall be reconsidered. In such circumstance, an additional application fee shall not be required.

[52 FR 42613, Nov. 5, 1987; 53 FR 9112, Mar. 21, 1988, as amended at 66 FR 10364, Feb. 15, 2001]

#### § 42.82 Revocation of visas.

(a) *Grounds for revocation.* Consular officers are authorized to revoke an immigrant visa under the following circumstances:

(1) The consular officer knows, or after investigation is satisfied, that the visa was procured by fraud, a willfully

false or misleading representation, the willful concealment of a material fact, or other unlawful means;

(2) The consular officer obtains information establishing that the alien was otherwise ineligible to receive the particular visa at the time it was issued; or

(3) The consular officer obtains information establishing that, subsequent to the issuance of the visa, a ground of ineligibility has arisen in the alien's case.

(b) *Notice of proposed revocation.* The bearer of an immigrant visa which is being considered for revocation shall, if practicable, be notified of the proposed action, given an opportunity to show cause why the visa should not be revoked, and requested to present the visa to the consular office indicated in the notification of proposed cancellation.

(c) *Procedure in revoking visas.* An immigrant visa which is revoked shall be canceled by writing the word "REVOKED" plainly across the face of the visa. The cancellation shall be dated and signed by the consular officer taking the action. The failure of an alien to present the visa for cancellation does not affect the validity of any action taken to revoke it.

(d) *Notice to carriers.* Notice of revocation of a visa shall be given to the master, commanding officer, agent, owner, charterer, or consignee of the carrier or transportation line on which it is believed the alien intends to travel to the United States, unless the visa has been canceled as provided in paragraph (c) of this section.

(e) *Notice to Department.* The consular officer shall promptly submit notice of the revocation, including a full report of the facts in the case, to the Department for transmission to the INS. A report is not required if the visa has been physically canceled prior to the alien's departure for the United States.

(f) *Record of action.* Upon the revocation of an immigrant visa, the consular officer shall make appropriate notation for the post file of the action taken, including a statement of the reasons therefor, and if the revocation of the visa is effected at other than the issuing office, a report of the action taken shall be sent to that office.

(g) *Reconsideration of revocation.* (1) The consular officer shall consider any evidence submitted by the alien or the alien's attorney or representative in connection with a request that the revocation of the visa be reconsidered. If the officer finds that the evidence is sufficient to overcome the basis for the revocation, a new visa shall be issued. A memorandum regarding the action taken and the reasons therefore shall be placed in the consular files and appropriate notification made promptly to the carriers concerned, the Department, and the issuing office if notice of revocation has been given in accordance with paragraphs (d), (e), and (f) of this section.

(2) In view of the provisions of § 42.71(b) providing for the refund of fees when the visa has not been used as a result of action by the U.S. Government, no fees shall be collected in connection with the application for or issuance of such a reinstated visa.

**§ 42.83 Termination of registration.**

(a) *Termination following failure of applicant to apply for visa.* In accordance with INA 203(g), an alien's registration for an immigrant visa shall be terminated if, within one year after transmission of a notification of the availability of an immigrant visa, the applicant fails to apply for an immigrant visa.

(b) *Termination following visa refusal.* An alien's registration for an immigrant visa shall be terminated if, within one year following the refusal of the immigrant visa application under INA 221(g), the alien has failed to present to a consular officer evidence purporting to overcome the basis for refusal.

(c) *Notice of termination.* Upon the termination of registration under paragraph (a) or (b) of this section, the consular officer at the post where the alien is registered shall notify the alien of the termination. The consular officer shall also inform the alien of the right to have the registration reinstated if the alien, before the end of the second year after the missed appointment date if paragraph (a) applies, and before the end of the second year after the INA 221(g) refusal if paragraph (b) applies, establishes to the satisfaction of the consular officer that the failure to

apply for an immigrant visa or to present evidence purporting to overcome the ineligibility under INA 221(g) was due to circumstances beyond the alien's control.

(d) *Reinstatement of registration.* If the consular officer is satisfied that an alien, as provided for in paragraph (c) of this section, has established that failure to apply as scheduled for an immigrant visa or to present evidence purporting to overcome ineligibility under INA 221(g) was due to circumstances beyond the alien's control, the consular officer shall reinstate the alien's registration for an immigrant visa. Any petition approved under INA 204(b) which had been automatically revoked as a result of the termination of registration shall be considered to be automatically reinstated if the registration is reinstated.

(e) *Interpretation of "circumstances beyond alien's control".* For the purpose of this section, the term "circumstances beyond the alien's control" includes, but is not limited to, an illness or other physical disability preventing the alien from traveling, a refusal by the authorities of the country of an alien's residence to grant the alien permission to depart as an immigrant, and foreign military service.

[52 FR 42613, Nov. 5, 1987, as amended at 56 FR 49682, Oct. 1, 1991]

**PARTS 43-45 [RESERVED]**

**PART 46—CONTROL OF ALIENS DEPARTING FROM THE UNITED STATES**

- Sec.
- 46.1 Definitions.
- 46.2 Authority of departure-control officer to prevent alien's departure from the United States.
- 46.3 Aliens whose departure is deemed prejudicial to the interests of the United States.
- 46.4 Procedure in case of alien prevented from departing from the United States.
- 46.5 Hearing procedure before special inquiry officer.
- 46.6 Departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States.
- 46.7 Instructions from the Administrator required in certain cases.