

§ 42.74

copy of each document required pursuant to § 42.63.

(c) *Arrangement of visa documentation.* Form OF-155B shall be placed immediately above Form DS-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 DHS 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-155B) 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; 71 FR 34522, June 15, 2006]

§ 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:

(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-155B, 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, the consular officer shall insert the word "DUPLICATE" on Form OF-155B

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; 71 FR 34522, June 15, 2006]

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 either Form DS-230, Application for Immigrant Visa and Alien Registration, or Form DS-260, Electronic 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 provision of law or implementing regulation under which administrative relief is available. Each document related to the refusal shall then be attached to Form DS-230 for retention in the refusal files. Alternatively, each document related to the refusal shall be electronically scanned and electronically attached to Form DS-260 for retention in the electronic refusal files. Any documents not related to the refusal shall be returned to the applicant. The original copy of a document that was scanned and attached to the DS-260 for the refusal file shall be returned to the applicant. If the ground 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 as 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