

§ 42.74

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.

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(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