

## § 42.63

(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 Definitions.

(a) *Application forms*—(1) *Application on Form DS-230 or Form DS-260 required.* Every alien applying for an immigrant visa must make application, as directed by the consular officer, on Form DS-230, Application for Immigrant Visa and Alien Registration, or on Form DS-260, Electronic Application for Immigrant Visa and Alien Registration. This requirement may not be waived. Form DS-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 DS-230 or on Form DS-260 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 DS-230 or Form DS-260 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 DS-230 or Form DS-260 is inadequate to determine the alien's eligibility to receive an immigrant visa. Additional statements made by the alien become a

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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).

[75 FR 45476, Aug. 3, 2010]

## § 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

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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 on Form DS-230.* The applicant shall be required to read the Form DS-230, Application for Immigrant Visa and Alien Registration, when it is completed, or it shall be read to the applicant in the applicant's language, or the applicant shall otherwise be informed of its full contents. Applicants shall be asked whether they are willing to subscribe thereto. If the applicant 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

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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.

(3) *Oath and signature on Form DS-260.* The applicant shall be required to read the Form DS-260, Electronic Application for Immigrant Visa and Alien Registration, when it has been completed, or it shall be read to the applicant in the applicant's language, or the applicant shall otherwise be informed of its full contents, before the applicant electronically signs and submits the application to the Department. At the time of the applicant's interview the applicant shall be asked whether they are willing to subscribe thereto to the information provided on Form DS-260. 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, biometrically, by or on behalf of the applicant before a consular officer, or a designated officer of the American Institute of Taiwan, who shall then electronically sign the application.

(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 or Form DS-260, 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) *Fingerprinting.* Every applicant for an immigrant visa must furnish fingerprints prior to the execution of Form DS-230 or Form DS-260.

[75 FR 45476, Aug. 3, 2010]

### § 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