

When a visa application has been properly completed and executed in accordance with the provisions of the INA and the implementing regulations, the consular officer must issue the visa, refuse the visa, or, pursuant to an outstanding order under INA 243(d), discontinue granting the visa.

(b) *Refusal procedure.* (1) When a consular officer knows or has reason to believe a visa applicant is ineligible and refuses the issuance of a visa, he or she must inform the alien of the ground(s) of ineligibility (unless disclosure is barred under INA 212(b)(2) or (3)) and whether there is, in law or regulations, a mechanism (such as a waiver) to overcome the refusal. The officer shall note the reason for the refusal on the application. Upon refusing the nonimmigrant visa, the consular officer shall retain the original of each document upon which the refusal was based, as well as each document indicating a possible ground of ineligibility, and should return all other supporting documents supplied by the applicant.

(2) If an alien, who has not yet filed a visa application, seeks advice from a consular officer, who knows or has reason to believe that the alien is ineligible to receive a visa on grounds which cannot be overcome by the presentation of additional evidence, the officer shall so inform the alien. The consular officer shall inform the applicant of the provision of law or regulations upon which a refusal of a visa, if applied for, would be based (subject to the exception in paragraph (b)(1) of this section). If practicable, the consular officer should request the alien to execute a nonimmigrant visa application in order to make a formal refusal. If the individual fails to execute a visa application in these circumstances, the consular officer shall treat the matter as if a visa had been refused and create a record of the presumed ineligibility which shall be filed in the consular office.

(c) Nonimmigrant refusals must be reviewed, in accordance with guidance by the Secretary of State, by consular supervisors, or a designated alternate, to ensure compliance with laws and procedures. If the ground(s) of ineligibility upon which the visa was refused cannot be overcome by the presen-

tation of additional evidence, the refusal must be reviewed without delay; that is, on the day of the refusal or as soon as it is administratively possible. If the ground(s) of ineligibility may be overcome by the presentation of additional evidence, and the applicant has indicated the intention to submit such evidence, a review of the refusal may be deferred for not more than 120 days. If the reviewing officer disagrees with the decision and he or she has a consular commission and title, the reviewing officer can assume responsibility and readjudicate the case. If the reviewing officer does not have a consular commission and title, he or she must consult with the adjudicating officer, or with the Visa Office, to resolve any disagreement.

(d) *Review of refusal by Department.* The Department may request a consular officer in a specific case or in specified classes of cases to submit a report if a 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, shall be binding upon consular officers.

[52 FR 42597, Nov. 5, 1987, as amended at 56 FR 30428, July 2, 1991; 63 FR 671, Jan. 7, 1998; 66 FR 10364, Feb. 15, 2001; 71 FR 50339, Aug. 25, 2006; 84 FR 16612, Apr. 22, 2019]

§ 41.122 Revocation of visas.

(a) *Grounds for revocation by consular officers.* A consular officer, the Secretary, or a Department official to whom the Secretary has delegated this authority is authorized to revoke a nonimmigrant visa at any time, in his or her discretion.

(b) *Provisional revocation—(1) General.* A provisional revocation is subject to reversal through internal procedures established by the Department of State. Upon reversal of the revocation, the visa immediately resumes the validity provided for on its face. Provisional revocation shall have the same

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force and effect as any other visa revocation under INA 221(i), unless and until the revocation has been reversed. Neither the provisional revocation of a visa nor the reversal of a provisional revocation limits, in any way, the revocation authority provided for under INA 221(i), with respect to the particular visa or any other visa.

(2) *Pending visa eligibility determination.* A consular officer, the Secretary, or any Department official to whom the Secretary has delegated this authority may provisionally revoke a nonimmigrant visa while considering information related to whether a visa holder is eligible for the visa.

(3) *Automatic provisional revocation based on failure to comply with all EVUS requirements.* Visas held by individuals subject to the Electronic Visa Update System (EVUS) who have not complied with the conditions described in 8 CFR 215.24 or whose notification of compliance has expired or been rescinded are automatically provisionally revoked and are no longer valid for travel to the United States, without further notice to the visa holder. The automatic provisional revocation pursuant to this paragraph (b)(3) shall be automatically reversed upon compliance with EVUS requirements set out at 8 CFR part 215, subpart B, as confirmed by receipt of a notification of compliance. A visa revoked on grounds other than failure to comply with EVUS shall remain revoked, notwithstanding compliance with EVUS.

(c) *Notice of revocation.* Unless otherwise instructed by the Department, a consular officer shall, if practicable, notify the alien to whom the visa was issued that the visa was revoked or provisionally revoked. Regardless of delivery of such notice, once the revocation has been entered into the Department's Consular Lookout and Support System (CLASS), the visa is no longer to be considered valid for travel to the United States. The date of the revocation shall be indicated in CLASS and on any notice sent to the alien to whom the visa was issued. This paragraph (c) does not apply to provisional revocations under paragraph (b)(3) of this section.

(d) *Procedure for physically canceling visas.* Except for provisional revoca-

tions pursuant to paragraph (b)(3) of this section, a nonimmigrant visa that is revoked shall be canceled by writing or stamping the word "REVOKED" plainly across the face of the visa, if the visa is available to the consular officer. The failure or inability to physically cancel the visa does not affect the validity of the revocation.

(e) *Revocation of visa by immigration officer.* An immigration officer is authorized to revoke a valid visa by physically canceling it in accordance with the procedure described in paragraph (d) of this section if:

(1) The alien obtains an immigrant visa or an adjustment of status to that of permanent resident;

(2) The alien is ordered excluded from the United States under INA 236, as in effect prior to April 1, 1997, or removed from the United States pursuant to INA 235;

(3) The alien is notified pursuant to INA 235 by an immigration officer at a port of entry that the alien appears to be inadmissible to the United States, and the alien requests and is granted permission to withdraw the application for admission;

(4) A final order of deportation or removal or a final order granting voluntary departure with an alternate order of deportation or removal is entered against the alien;

(5) The alien has been permitted by DHS to depart voluntarily from the United States;

(6) DHS has revoked a waiver of inadmissibility granted pursuant to INA 212(d)(3)(A) in relation to the visa that was issued to the alien;

(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 the visa was issued;

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

(9) The visa has been issued in a combined Mexican or Canadian B-1/B-2 visa and border crossing identification card, and the immigration 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

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respect to the alien's status as a permanent resident of Canada.

[76 FR 23479, Apr. 27, 2011, as amended at 81 FR 72523, Oct. 20, 2016]

§ 41.123 Discontinuance of granting nonimmigrant visa pursuant to INA 243(d).

(a) *Grounds for discontinuance of granting a visa.* Consular officers in a country subject to an order by the Secretary under INA 243(d) shall discontinue granting nonimmigrant visas for categories of nonimmigrant visas specified in the order of the Secretary (or his or her designee), and pursuant to procedures dictated by the Department.

(b) *Discontinuance procedure—(1) Applications refused or discontinued only.* Starting on the day the Secretary's (or designee's) order to discontinue granting visas takes effect (effective date), no visas falling within the scope of the order, as described by the order, may be issued in the referenced country to an applicant who falls within the scope of the order, except as otherwise expressly provided in the order or related Department instructions. Beginning on the effective date, a consular officer must refuse the visa if the individual is not eligible for the visa under INA 212(a), INA 221(g), or other applicable law, but if the applicant is otherwise eligible, must process the application by discontinuing granting, regardless of when the application was filed, if the applicant falls within the scope of the order and no exception applies. The application processing fee will not be refunded. The requirement to discontinue issuance may not be waived, and continues until the sanction is terminated as described below.

(2) *Geographic applicability.* Visa sanctions under INA 243(d) only apply to visa issuance in the country that is sanctioned. If a consular officer has a reason to believe that a visa applicant potentially subject to INA 243(d) sanctions is applying at a post outside the sanctioned country to evade visa sanctions under INA 243(d) (e.g., the applicant provides no credible explanation for applying outside the country), the consular officer will transfer the case to the consular post in the consular district where INA 243(d) sanctions

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apply, review any other applicable Department instructions, and proceed accordingly. When cases are transferred to a consular district where INA 243(d) sanctions apply, the adjudication will be subject to the discontinuation of issuance under the sanctions.

(c) *Termination of sanction.* The Department shall notify consular officers in an affected country when the sanction under INA 243(d) has been lifted. After notification, normal consular operations may resume consistent with these regulations and guidance from the Department. Once the sanction under INA 243(d) is lifted, no new application processing fee is required in cases where issuance has been discontinued pursuant to an INA 243(d) order, and consular officers in the affected post must adjudicate the visa consistent with regulations and Department guidance. Consular officers may require applicants to update the visa application forms, must conduct any necessary adjudicatory steps, and may re-interview the applicant to determine eligibility.

[84 FR 16612, Apr. 22, 2019]

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

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