

## § 41.123

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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AUTHORITY: 8 U.S.C. 1104 and 1182; Pub. L. 105-277, 112 Stat. 2681; Pub. L. 108-449, 118 Stat. 3469; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105-51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); 42

U.S.C. 14901-14954 (Pub. L. 106-279, 114 Stat. 825); 8 U.S.C. 1101 (Pub. L. 117-31, 135 Stat. 309); 8 U.S.C. 1154 (Pub. L. 109-162, 119 Stat. 2960); 8 U.S.C. 1201 (Pub. L. 114-70, 129 Stat. 561).

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

EDITORIAL NOTE: Nomenclature changes to part 42 appear at 71 FR 34522, June 15, 2006.

### 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 the Department of Homeland Security to 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

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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 appli-

cant 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 evidence 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 DHS regulations has been waived by the Secretary of Homeland Security 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**

**§ 42.11 Classification symbols.**

An immigrant visa issued to an applicant who applies to one of the classes described below shall bear an appropriate visa symbol to show its classification.

TABLE 1 TO § 42.11

Symbol	Class	Section of law
<b>Immediate Relatives</b>		
IR1 .....	Spouse of U.S. Citizen .....	INA 201(b).
IR2 .....	Child of U.S. Citizen .....	INA 201(b).
IR3 .....	Orphan Adopted Abroad by U.S. Citizen .....	INA 201(b) & INA 101(b)(1)(F).
IH3 .....	Child from Hague Convention Country Adopted Abroad by U.S. Citizen.	INA 201(b) & INA 101(b)(1)(G).
IR4 .....	Orphan to be Adopted in U.S. by U.S. Citizen .....	INA 201(b) & INA 101(b)(1)(F).
IH4 .....	Child from Hague Convention Country to be Adopted in U.S. by U.S. Citizen.	INA 201(b) & INA 101(b)(1)(G).
IR5 .....	Parent of U.S. Citizen at Least 21 Years of Age ...	INA 201(b).
CR1 .....	Spouse of U.S. Citizen (Conditional Status) .....	INA 201(b) & INA 216.

TABLE 1 TO § 42.11—Continued

Symbol	Class	Section of law
CR2	Child of U.S. Citizen (Conditional Status)	INA 201(b) & INA 216.
IW1	Certain Spouses of Deceased U.S. Citizens	INA 201(b).
IW2	Child of IW1	INA 201(b).
IB1	Self-petition Spouse of U.S. Citizen	INA 204(a)(1)(A)(iii).
IB2	Self-petition Child of U.S. Citizen	INA 204(a)(1)(A)(iv).
IB3	Child of IB1	INA 204(a)(1)(A)(iii).
IB5	Self-petition Parent of U.S. Citizen	INA 204(a)(1)(A)(vii).
VI5	Parent of U.S. Citizen Who Acquired Permanent Resident Status under the Virgin Islands Non-immigrant Alien Adjustment Act.	INA 201(b) & Section 2 of the Virgin Islands Non-immigrant Alien Adjustment Act (Pub. L. 97–271).
<b>Vietnam Amerasian Immigrants</b>		
AM1	Vietnam Amerasian Principal	Section 584(b)(1)(A) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. 100–102) as amended.
AM2	Spouse or Child of AM1	Section 584(b)(1)(A) and 584(b)(1)(B) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. 100–102) as amended.
AM3	Natural Mother of AM1 (and Spouse or Child of Such Mother) or Person Who has Acted in Effect as the Mother, Father, or Next-of-Kin of AM1 (and Spouse or Child of Such Person).	Section 584(b)(1)(A) and 584(b)(1)(C) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. 100–102) as amended.
<b>Special Immigrants</b>		
SB1	Returning Resident	INA 101(a)(27)(A).
SC1	Person Who Lost U.S. Citizenship by Marriage	INA 101(a)(27)(B) & INA 324(a).
SC2	Person Who Lost U.S. Citizenship by Serving in Foreign Armed Forces.	INA 101(a)(27)(B) & INA 327.
SI1	Certain Persons Employed by the U.S. Government in Iraq or Afghanistan as Translators or Interpreters.	Section 1059 of Public Law 109–163, as amended.
SI2	Spouse of SI1	Section 1059 of Public Law 109–163, as amended.
SI3	Child of SI1	Section 1059 of Public Law 109–163, as amended.
SM1	Person Recruited Outside the United States Who Has Served or is Enlisted to Serve in the U.S. Armed Forces for 12 Years.	INA 101(a)(27)(K).
SM2	Spouse of SM1	INA 101(a)(27)(K).
SM3	Child of SM1	INA 101(a)(27)(K).
SQ1	Certain Iraqis or Afghans Employed by or on Behalf of the U.S. Government.	Section 602(b), Division F, Title VI, Omnibus Appropriations Act of 2009, Public Law 111–8, as amended and Section 1244 of Public Law 110–181, as amended.
SQ2	Spouse of SQ1	Section 602(b), Division F, Title VI, Omnibus Appropriations Act of 2009, Public Law 111–8, as amended and Section 1244 of Public Law 110–181, as amended.
SQ3	Child of SQ1	Section 602(b), Division F, Title VI, Omnibus Appropriations Act of 2009, Public Law 111–8, as amended and Section 1244 of Public Law 110–181, as amended.
SU2	Spouse of U1	INA 245(m)(3) & INA 101(a)(15)(U)(ii).
SU3	Child of U1	INA 245(m)(3) & INA 101(a)(15)(U)(ii).
SU5	Parent of U1	INA 245(m)(3) & INA 101(a)(15)(U)(ii).
<b>Family-Sponsored Preferences</b>		
Family 1st Preference		
F11	Unmarried Son or Daughter of U.S. Citizen	INA 203(a)(1).
F12	Child of F11	INA 203(b) & INA 203(a)(1).
B11	Self-petition Unmarried Son or Daughter of U.S. Citizen.	INA 204(a)(1)(A)(iv) & INA 203(a)(1).
B12	Child of B11	INA 203(d), INA 204(a)(1)(A)(iv), & INA 203(a)(i).

TABLE 1 TO § 42.11—Continued

Symbol	Class	Section of law
<b>Family 2nd Preference (Subject to Per-Country Limitations)</b>		
F21 .....	Spouse of Lawful Permanent Resident .....	INA 203(a)(2)(A).
F22 .....	Child of Lawful Permanent Resident .....	INA 203(a)(2)(A).
F23 .....	Child of F21 or F22 .....	INA 203(d) & INA 203(a)(2)(A).
F24 .....	Unmarried Son or Daughter of Lawful Permanent Resident.	INA 203(a)(2)(B).
F25 .....	Child of F24 .....	INA 203(d) & INA 203(a)(2)(B).
C21 .....	Spouse of Lawful Permanent Resident (Conditional).	INA 203(a)(2)(A) & INA 216.
C22 .....	Child of Lawful Permanent Resident (Conditional)	INA 203(a)(2)(A) & INA 216.
C23 .....	Child of C21 or C22 (Conditional) .....	INA 203(a)(2)(A), INA 203(d) & INA 216.
C24 .....	Unmarried Son or Daughter of Lawful Permanent Resident (Conditional).	INA 203(a)(2)(B) & INA 216.
C25 .....	Child of C24 (Conditional) .....	INA 203(a)(2)(B), INA 203(d), & INA 216.
B21 .....	Self-petition Spouse of Lawful Permanent Resident.	INA 204(a)(1)(B)(ii).
B22 .....	Self-petition Child of Lawful Permanent Resident ..	INA 204(a)(1)(B)(iii).
B23 .....	Child of B21 or B22 .....	INA 203(d) & INA 204(a)(1)(B)(ii).
B24 .....	Self-petition Unmarried Son or Daughter of Lawful Permanent Resident.	INA 204(a)(1)(B)(iii).
B25 .....	Child of B24 .....	INA 203(d) & INA 204(a)(1)(B)(iii).
<b>Family 2nd Preference (Exempt from Per-Country Limitations)</b>		
FX1 .....	Spouse of Lawful Permanent Resident .....	INA 202(a)(4)(A) & INA 203(a)(2)(A).
FX2 .....	Child of Lawful Permanent Resident .....	INA 202(a)(4)(A) & INA 203(a)(2)(A).
FX3 .....	Child of FX1 or FX2 .....	INA 202(a)(4)(A), INA 203(a)(2)(A), & INA 203(d).
CX1 .....	Spouse of Lawful Permanent Resident (Conditional).	INA 202(a)(4)(A), INA 203(a)(2)(A), & INA 216.
CX2 .....	Child of Lawful Permanent Resident (Conditional)	INA 202(a)(4), INA 203(a)(2)(A), & INA 216.
CX3 .....	Child of CX1 or CX2 (Conditional) .....	INA 202(a)(4)(A), INA 203(a)(2)(A), INA 203(d), & INA 216.
BX1 .....	Self-petition Spouse of Lawful Permanent Resident.	INA 204(a)(1)(B)(ii).
BX2 .....	Self-petition Child of Lawful Permanent Resident ..	INA 204(a)(1)(B)(iii).
BX3 .....	Child of BX1 or BX2 .....	INA 203(d) & INA 204(a)(1)(B)(ii).
<b>Family 3rd Preference</b>		
F31 .....	Married Son or Daughter of U.S. Citizen .....	INA 203(a)(3).
F32 .....	Spouse of F31 .....	INA 203(d) & INA 203(a)(3).
F33 .....	Child of F31 .....	INA 203(d) & INA 203(a)(3).
C31 .....	Married Son or Daughter of U.S. Citizen (Conditional).	INA 203(a)(3) & INA 216.
C32 .....	Spouse of C31 (Conditional) .....	INA 203(d), INA 203(a)(3), & INA 216.
C33 .....	Child of C31 (Conditional) .....	INA 203(d), INA 203(a)(3), & INA 216.
B31 .....	Self-petition Married Son or Daughter of U.S. Citizen.	INA 204(a)(1)(A)(iv) & INA 203(a)(3).
B32 .....	Spouse of B31 .....	INA 203(d), INA 204(a)(1)(A)(iv) & INA 203(a)(3).
B33 .....	Child of B31 .....	INA 203(d), INA 204(a)(1)(A)(iv), & INA 203(a)(3).
<b>Family 4th Preference</b>		
F41 .....	Brother or Sister of U.S. Citizen at Least 21 Years of Age.	INA 203(a)(4).
F42 .....	Spouse of F41 .....	INA 203(a)(4) & INA 203(d).
F43 .....	Child of F41 .....	INA 203(a)(4) & INA 203(d).
<b>Employment-Based Preferences</b>		
<b>Employment 1st Preference (Priority Workers)</b>		
E11 .....	Person with Extraordinary Ability .....	INA 203(b)(1)(A).
E12 .....	Outstanding Professor or Researcher .....	INA 203(b)(1)(B).
E13 .....	Multinational Executive or Manager .....	INA 203(b)(1)(C).
E14 .....	Spouse of E11, E12, or E13 .....	INA 203(d), INA 203(b)(1)(A), INA 203(b)(1)(B), & INA 203(b)(1)(C).
E15 .....	Child of E11, E12, or E13 .....	INA 203(d), INA 203(b)(1)(A), INA 203(b)(1)(B), & INA 203(b)(1)(C).

TABLE 1 TO § 42.11—Continued

Symbol	Class	Section of law
Employment 2nd Preference (Professionals Holding Advanced Degrees or Persons of Exceptional Ability)		
E21 .....	Professional Holding Advanced Degree or Person of Exceptional Ability.	INA 203(b)(2).
E22 .....	Spouse of E21 .....	INA 203(b)(2) & INA 203(d).
E23 .....	Child of E21 .....	INA 203(b)(2) & INA 203(d).
Employment 3rd Preference (Skilled Workers, Professionals, or Other Workers)		
E31 .....	Skilled Worker .....	INA 203(b)(3)(A)(i).
E32 .....	Professional Holding Baccalaureate Degree .....	INA 203(b)(3)(A)(ii).
E34 .....	Spouse of E31 or E32 .....	INA 203(b)(3)(A)(i), INA 203(b)(3)(A)(ii), & INA 203(d).
E35 .....	Child of E31 or E32 .....	INA 203(b)(3)(A)(i), INA 203(B)(3)(A)(ii), & INA 203(d).
EW3 .....	Other Worker (Subgroup Numerical Limit) .....	INA 203(b)(3)(A)(iii).
EW4 .....	Spouse of EW3 .....	INA 203(b)(3)(A)(iii) & INA 203(d).
EW5 .....	Child of EW3 .....	INA 203(b)(3)(A)(iii) & INA 203(d).
Employment 4th Preference (Certain Special Immigrants)		
BC1 .....	Broadcaster in the U.S. Employed by the International Broadcasting Bureau of the Broadcasting Board of Governors or a Grantee of Such Organization.	INA 101(a)(27)(M) & INA 203(b)(4).
BC2 .....	Accompanying Spouse of BC1 .....	INA 101(a)(27)(M) & INA 203(b)(4).
BC3 .....	Accompanying Child of BC1 .....	INA 101(a)(27)(M) & INA 203(b)(4).
SD1 .....	Minister of Religion .....	INA 101(a)(27)(C)(ii)(I) & INA 203(b)(4).
SD2 .....	Spouse of SD1 .....	INA 101(a)(27)(C)(ii)(I) & INA 203(b)(4).
SD3 .....	Child of SD1 .....	INA 101(a)(27)(C)(ii)(I) & INA 203(b)(4).
SE1 .....	Certain Employee or Former Employee of the U.S. Government Abroad.	INA 101(a)(27)(D)(i) & INA 203(b)(4).
SE2 .....	Spouse of SE1 .....	INA 101(a)(27)(D)(i) & INA 203(b)(4).
SE3 .....	Child of SE1 .....	INA 101(a)(27)(D)(i) & INA 203(b)(4).
SF1 .....	Former Employee of the Panama Canal Company or Canal Zone Government.	INA 101(a)(27)(E) & INA 203 (b)(4).
SF2 .....	Spouse or Child of SF1 .....	INA 101(a)(27)(E) & INA 203 (b)(4).
SG1 .....	Former Employee of the U.S. Government in the Panama Canal Zone (Panamanian National).	INA 101(a)(27)(F) & INA 203 (b)(4).
SG2 .....	Spouse or Child of SG1 .....	INA 101(a)(27)(F) & INA 203 (b)(4).
SH1 .....	Former Employee of the Panama Canal Company or Canal Zone Government (Five Years of Service).	INA 101(a)(27)(G) & INA 203(b)(4).
SH2 .....	Spouse or Child of SH1 .....	INA 101(a)(27)(G) & INA 203(b)(4).
SJ1 .....	Foreign Medical Graduate (Adjustment Only) .....	INA 101(a)(27)(H).
SJ2 .....	Spouse or Child of SJ1 .....	INA 101(a)(27)(H) & INA 203(b)(4).
SK1 .....	Retired International Organization Employee .....	INA 101(a)(27)(I)(iii) & INA 203(b)(4).
SK2 .....	Spouse of SK1 .....	INA 101(a)(27)(I)(iv) & INA 203(b)(4).
SK3 .....	Unmarried Son or Daughter of SK1 .....	INA 101(a)(27)(I)(i) & INA 203(b)(4).
SK4 .....	Surviving Spouse of a Deceased International Organization Employee.	INA 101(a)(27)(I)(ii) & INA 203(b)(4).
SL1 .....	Juvenile Court Dependent (Adjustment Only) .....	INA 101(a)(27)(J) & INA 203(b)(4).
SN1 .....	Retired NATO6 Civilian Employee .....	INA 101(a)(27)(L) & INA 203(b)(4).
SN2 .....	Spouse of SN1 .....	INA 101(a)(27)(L) & INA 203(b)(4).
SN3 .....	Unmarried Son or Daughter of SN1 .....	INA 101(a)(27)(L) & INA 203(b)(4).
SN4 .....	Surviving Spouse of Deceased NATO6 Civilian Employee.	INA 101(a)(27)(L) & INA 203(b)(4).
SP .....	Beneficiary of a Petition or Labor Certification Application Filed Prior to September 11, 2001, if the Petition or Application was Rendered Void Due to the Terrorist Acts of September 11, 2001, or the Spouse, Child of such Beneficiary, or the Grandparent of a Child Orphaned by a Terrorist Act of September 11, 2001.	Section 421 of Public Law 107-56.
SR1 .....	Religious Worker .....	INA 101(a)(27)(C)(ii)(II) & (III), as amended & INA 203(b)(4).
SR2 .....	Spouse of SR1 .....	INA 101(a)(27)(C)(ii)(II) & (III), as amended & INA 203(b)(4).
SR3 .....	Child of SR1 .....	INA 101(a)(27)(C)(ii)(II) & (III), as amended & INA 203(b)(4).
SS1 .....	Surviving Spouse or Child of an Employee of the United States Government Abroad.	INA 101(a)(27)(D)(ii) & INA 203(b)(4).

TABLE 1 TO § 42.11—Continued

Symbol	Class	Section of law
SS2 .....	Current Spouse of SS1 .....	INA 101(a)(27)(D)(ii), INA 203(b)(4) & INA 203(d).
SS3 .....	Child of SS1 (Excludes Surviving Child of an Employee of the United States Government Abroad), provided the child meets the definition of 101(b)(1) of the INA.	INA 101(a)(27)(D)(ii), INA 1101(b)(1), 203(b)(4), & INA 203(d).
Employment 5th Preference (Employment Creation Conditional Status) (Petitions Filed Before March 15, 2022)		
C51 .....	Employment Creation, Outside Targeted Area .....	INA 203(b)(5)(A).
C52 .....	Spouse of C51 .....	INA 203(b)(5)(A) & INA 203(d).
C53 .....	Child of C51 .....	INA 203(b)(5)(A) & INA 203(d).
T51 .....	Employment Creation in Targeted Rural/High Unemployment Area.	INA 203(b)(5)(B).
T52 .....	Spouse of T51 .....	INA 203(b)(5)(B) & INA 203(d).
T53 .....	Child of T51 .....	INA 203(b)(5)(B) & INA 203(d).
R51 .....	Regional Center Program, Not in Targeted Area ...	INA 203(b)(5) & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.
R52 .....	Spouse of R51 .....	INA 203(b)(5), INA 203(d), & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.
R53 .....	Child of R51 .....	INA 203(b)(5), INA 203(d), & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.
I51 .....	Regional Center Program, Target Area .....	INA 203(b)(5) & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.
I52 .....	Spouse of I51 .....	INA 203(b)(5), INA 203(d), & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.
I53 .....	Child of I51 .....	INA 203(b)(5), INA 203(d), & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.
Employment 5th Preference (Employment Creation Conditional Status) (Petitions Filed On or After March 15, 2022)		
NU1 .....	Investor in Non-Regional Center, Unreserved .....	INA 203(b)(5), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
NU2 .....	Spouse of NU1 .....	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
NU3 .....	Child of NU1 .....	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RU1 .....	Investor in Regional Center, Unreserved .....	INA 203(b)(5), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RU2 .....	Spouse of RU1 .....	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).

TABLE 1 TO § 42.11—Continued

Symbol	Class	Section of law
RU3 .....	Child of RU1 .....	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102-395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117-103).
NR1 .....	Investor in Non-Regional Center, Set Aside—Rural.	INA 203(b)(5), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102-395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117-103).
NR2 .....	Spouse of NR1 .....	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102-395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117-103).
NR3 .....	Child of NR1 .....	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102-395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117-103).
NH1 .....	Investor in Non-Regional Center, Set Aside—High Unemployment.	INA 203(b)(5), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102-395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117-103).
NH2 .....	Spouse of NH1 .....	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102-395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117-103).
NH3 .....	Child of NH1 .....	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102-395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117-103).
RR1 .....	Investor in Regional Center, Set Aside—Rural .....	INA 203(b)(5), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102-395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117-103).
RR2 .....	Spouse of RR1 .....	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102-395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117-103).
RR3 .....	Child of RR1 .....	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102-395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117-103).
RH1 .....	Investor in Regional Center, Set Aside—High Unemployment.	INA 203(b)(5), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102-395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117-103).

TABLE 1 TO § 42.11—Continued

Symbol	Class	Section of law
RH2 .....	Spouse of RH1 .....	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RH3 .....	Child of RH1 .....	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RI1 .....	Investor in Regional Center, Set Aside—Infrastructure.	INA 203(b)(5), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RI2 .....	Spouse of RI1 .....	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RI3 .....	Child of RI1 .....	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
<b>Other Categories</b>		
Diversity Immigrants		
DV1 .....	Diversity Immigrant .....	INA 203(c).
DV2 .....	Spouse of DV1 .....	INA 203(c) & 203(d).
DV3 .....	Child of DV1 .....	INA 203(c) & 203(d).

[88 FR 45072, July 14, 2023, as amended at 89 FR 60566, July 26, 2024; 89 FR 99078, Dec. 10, 2024]

**§ 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

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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 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 DHS 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 DHS which accords such status, or official notification of such approval, and the Consular Officer is satisfied that the alien meets those criteria.

(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

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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 defect 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) [Reserved]

(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.

[56 FR 49676, Oct. 1, 1991, as amended at 85 FR 38322, June 26, 2020]

## § 42.24 Adoption under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and the Intercountry Adoption Act of 2000.

(a) Except as described in paragraph (n), for purposes of this section, the definitions in 22 CFR 96.2 apply.

(b) On or after the Convention effective date, as defined in 22 CFR 96.17, a child habitually resident in a Convention country who is adopted by a United States citizen deemed to be habitually resident in the United States in accordance with applicable DHS regulations must qualify for visa status under the provisions of INA section 101(b)(1)(G) as provided in this section. Such a child shall not be accorded status under INA section 101(b)(1)(F), *provided that* a child may be accorded status under INA section 101(b)(1)(F) if Form I-600A or I-600 was filed before the Convention effective date. Although this part 42 generally applies to the issuance of immigrant visas, this section 42.24 may also provide the basis for issuance of a nonimmigrant visa to permit a Convention adoptee to travel

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to the United States for purposes of naturalization under INA section 322.

(c) The provisions of this section govern the operations of consular officers in processing cases involving children for whom classification is sought under INA section 101(b)(1)(G), unless the Secretary of State has personally waived any requirement of the IAA or these regulations in a particular case in the interests of justice or to prevent grave physical harm to the child, to the extent consistent with the Convention.

(d) An alien child shall be classifiable under INA section 101(b)(1)(G) only if, before the child is adopted or legal custody for the purpose of adoption is granted, a petition for the child has been received and provisionally approved by a DHS officer or, where authorized by DHS, by a consular officer, and a visa application for the child has been received and annotated in accordance with paragraph (h) of this section by a consular officer. No alien child shall be issued a visa pursuant to INA section 101(b)(1)(G) unless the petition and visa application are finally approved.

(e) If a petition for a child under INA section 101(b)(1)(G) is properly filed with a consular officer, the consular officer will review the petition for the purpose of determining whether it can be provisionally approved in accordance with applicable DHS requirements. If a properly completed application for waiver of inadmissibility is received by a consular officer at the same time that a petition for a child under INA section 101(b)(1)(G) is received, provisional approval cannot take place unless the waiver is approved, and therefore the consular officer, pursuant to 8 CFR 204.313(i)(3) and 8 CFR 212.7, will forward the petition and the waiver application to DHS for decisions as to approval of the waiver and provisional approval of the petition. If a petition for a child under INA section 101(b)(1)(G) is received by a DHS officer, the consular officer will conduct any reviews, determinations or investigations requested by DHS with regard to the petition and classification determination in accordance with applicable DHS procedures.

(f) A petition shall be provisionally approved by the consular officer if, in

accordance with applicable DHS requirements, it appears that the child will be classifiable under INA section 101(b)(1)(G) and that the proposed adoption or grant of legal custody will be in compliance with the Convention. If the consular officer knows or has reason to believe the petition is not provisionally approvable, the consular officer shall forward it to DHS pursuant to 8 CFR 204.313(i)(3).

(g) After a petition has been provisionally approved, a completed visa application form, any supporting documents required pursuant to §§ 42.63 and 42.65, and any required fees must be submitted to the consular officer in accordance with § 42.61 for a provisional review of visa eligibility. The requirements in §§ 42.62, 42.64, 42.66 and 42.67 shall also be satisfied to the extent practicable.

(h) A consular officer shall provisionally determine visa eligibility based on a review of the visa application, submitted supporting documents, and the provisionally approved petition. In so doing, the consular officer shall follow all procedures required to adjudicate the visa to the extent possible in light of the degree of compliance with §§ 42.62 through 42.67. If it appears, based on the available information, that the child would not be ineligible under INA section 212 or other applicable law to receive a visa, the consular officer shall so annotate the visa application. If evidence of an ineligibility is discovered during the review of the visa application, and the ineligibility was not waived in conjunction with provisional approval of the petition, the prospective adoptive parents shall be informed of the ineligibility and given an opportunity to establish that it will be overcome. If the visa application cannot be annotated as described above, the consular officer shall deny the visa in accordance with § 42.81, regardless of whether the application has yet been executed in accordance with § 42.67(a); provided however that, in cases in which a waiver may be available under the INA and the consular officer determines that the visa application appears otherwise approvable, the consular officer shall inform the prospective adoptive parents of the procedure for applying to DHS for a waiver. If in addition

the consular officer comes to know or have reason to believe that the petition is not clearly approvable as provided in 8 CFR 204.313(i)(3), the consular officer shall forward the petition to DHS pursuant to that section.

(i) If the petition has been provisionally approved and the visa application has been annotated in accordance with subparagraph (h), the consular officer shall notify the country of origin that the steps required by Article 5 of the Convention have been taken.

(j) After the consular officer has received appropriate notification from the country of origin that the adoption or grant of legal custody has occurred and any remaining requirements established by DHS or §§ 42.61 through 42.67 have been fulfilled, the consular officer, if satisfied that the requirements of the IAA and the Convention have been met with respect to the adoption or grant of legal custody, shall affix to the adoption decree or grant of legal custody a certificate so indicating. This certificate shall constitute the certification required by IAA section 301(a) and INA section 204(d)(2). For purposes of determining whether to issue a certificate, the fact that a consular officer notified the country of origin pursuant to paragraph (i) of this section that the steps required by Article 5 of the Convention had been taken and the fact that the country of origin has provided appropriate notification that the adoption or grant of legal custody has occurred shall together constitute prima facie evidence of compliance with the Convention and the IAA.

(k) If the consular officer is unable to issue the certificate described in paragraph (j) of this section, the consular officer shall notify the country of origin of the consular officer's decision.

(l) After the consular officer determines whether to issue the certificate described in paragraph (j) of this section, the consular officer shall finally adjudicate the petition and visa application in accordance with standard procedures.

(m) If the consular officer is unable to give final approval to the visa application or the petition, then the consular officer shall forward the petition to DHS, pursuant to § 42.43 or 8 CFR

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204.313(i)(3), as applicable, for appropriate action in accordance with applicable DHS procedures, and/or refuse the visa application in accordance with § 42.81. The consular officer shall notify the country of origin that the visa has been refused.

(n) Notwithstanding paragraphs (d) through (m) of this section, an alien described in paragraph (n)(1) of this section may qualify for visa status under INA section 101(b)(1)(G)(iii) without meeting the requirements set forth in paragraphs (d) through (m) of this section.

(1) Per Section 4(b) of the Inter-country Adoption Simplification Act, Public Law 111-287 (IASA), an alien otherwise described in INA section 101(b)(1)(G)(iii) who attained the age of 18 on or after April 1, 2008 shall be deemed to meet the age requirement imposed by INA section 101(b)(1)(G)(iii)(III), provided that a petition is filed for such child in accordance with DHS requirements not later than November 30, 2012.

(2) For any alien described in paragraph (n)(1) of this section, the “competent authority” referred to in INA section 101(b)(1)(G)(i)(V)(aa) is a court or governmental agency of a foreign country of origin having jurisdiction and authority to make decisions in matters of child welfare, including adoption. If the competent authority over matters of child welfare no longer has jurisdiction or authority over the alien due to his or her age, then the passport issuing authority of the country of origin may be considered the competent authority for the purposes of INA section 101(b)(1)(G)(i)(V)(aa).

[72 FR 61305, Oct. 30, 2007, as amended at 76 FR 67363, Nov. 1, 2011; 78 FR 32990, June 3, 2013]

### 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

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received from DHS 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 DHS 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 DHS 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 DHS 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 DHS 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) See 22 CFR 42.34.

(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 DHS 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 DHS 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 DHS 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 DHS 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 DHS 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 DHS 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.

(9) *Certain victims of the September 11, 2001 terrorist attacks—(i) Entitlement to status.* An alien shall be classifiable as a special immigrant under INA 203(b)(4) as specified in section 421 of Public Law 107–56, if:

(A) The consular officer has received a petition approved by the DHS 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 entitled to that classification; or

(B) The alien is the spouse or child of an alien so classified in paragraph (d)(9)(i) of this section and is accompanying or following to join the principal alien.

(ii) *Ineligibility exemption.* An alien classified under paragraph (d)(9)(i) of this section shall not be subject to the provisions of INA 212(a)(4).

(iii) *Priority date.* Aliens entitled to status under paragraph (d)(9)(i) of this section shall be assigned a priority

date as of the date the petition was filed under INA 204 for classification under section INA 203(b)(4) and visas shall be issued in the chronological order of application submission. However, in the event that the annual limit for immigrants under INA 203 is reached, the alien may retain the earlier priority date of the petition that was revoked.

(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 DHS 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; 68 FR 24639, May 8, 2003; 85 FR 36326, June 16, 2020]

#### § 42.33 Diversity immigrants.

(a) *General*—(1) *Eligibility to compete for consideration under section 203(c)*. An alien will 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 Secretary of Homeland Security pursuant to INA 203(c)(1)(E), 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 eligibility for a visa under INA 203(c) ceases at the end of the fiscal year in question. Under no cir-

cumstances 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 means the 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.

(3) *Determinations of work experience*. For all cases registered for the 2003 Diversity Visa Program and Diversity Visa Programs occurring in subsequent fiscal years, consular officers must use the Department of Labor's O\*Net On Line 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 will be void pursuant to INA 204(a)(1)(I)(i) and the alien by or for whom the petition has been submitted will not be eligible for consideration for diversity 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", will 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 requirement*. An alien claiming to be entitled to compete for

consideration under INA 203(c) must file a petition with the Department of State for such consideration. At the alien petitioner's request, another person may file a petition on behalf of the alien. The petition will consist of an electronic entry form that the alien petitioner or a person acting on the behalf of the alien petitioner must complete on-line and submit to the Department of State via a Web site established by the Department of State for the purpose of receiving such petitions. The Department will specify the address of the Web site prior to the commencement of the 30-day or greater period described in paragraph (b)(3) of this section using the notice procedure prescribed in that paragraph.

(1) *Information to be provided in the petition.* The website will include the electronic entry form mentioned in paragraph (b) of this section. The entry form will require the person completing the form to provide the following information, typed in the Roman alphabet, regarding the alien petitioner:

- (i) The petitioner's full name;
- (ii) The petitioner's date and place of birth (including city and country, province or other political subdivision of the country);
- (iii) The petitioner's gender;
- (iv) The country of which the petitioner claims to be a native, if other than the country of birth;
- (v) The name[s], date[s] and place[s] of birth and gender of the petitioner's spouse and child[ren], if any, (including legally adopted and step-children), regardless of whether or not they are living with the petitioner or intend to accompany or follow to join the petitioner should the petitioner immigrate to the United States pursuant to INA 203(c), but excluding a spouse or a child[ren] who is already a U.S. citizen or U.S. lawful permanent resident;
- (vi) A current mailing address for the petitioner;
- (vii) The location of the consular office nearest to the petitioner's current residence or, if in the United States, nearest to the petitioner's last foreign residence prior to entry into the United States.

(2) *Requirements for photographs.* The petition will also require inclusion of a

photograph of the petitioner and of his or her spouse and all unmarried children under the age of 21 years. The photographs must meet the following specifications:

(i) A digital image of the applicant from either a digital camera source or a scanned photograph via scanner. If scanned, the original photographic print must have been 2" by 2" (50mm × 50mm). Scanner hardware and digital image resolution requirements will be further specified in the public notice described in paragraph (b)(3) of this section.

(ii) The image must be in the Joint Photographic Experts Group (JPEG) File Interchange Format (JFIF) format.

(iii) The image must be in color.

(iv) The image must have been taken no more than six months prior to the date of the petition submission.

(v) The person being photographed must be directly facing the camera with the head neither tilted up, down, or to the side. The head must cover about 50% of the area of the photograph.

(vi) The photograph must be taken with the person in front of a neutral, light-colored background. Photos taken with very dark or patterned, busy backgrounds will not be accepted.

(vii) The person's face must be in focus.

(viii) The person in the photograph must not wear eyeglasses, sunglasses, or other paraphernalia that obstruct the view of the face.

(ix) A photograph with the person wearing a head covering or a hat is only acceptable if the covering or hat is worn specifically due to that person's religious beliefs, and even then, the hat or covering may not obscure any portion of the face. A photograph of a person wearing tribal, military, airline or other headgear not specifically religious in nature will not be accepted.

(3) *Submission of petition.* A petition for consideration for visa issuance under INA 203(c) must be submitted to the Department of State by electronic entry to an Internet website designated by the Department for that purpose. No fee will be collected at the time of submission of a petition, but a processing

fee may be collected at a later date, as provided in paragraph (i) of this section. The Department will establish a period of not less than thirty days during each fiscal year within which aliens may submit petitions for approval of eligibility to apply for visa issuance during the following fiscal year. Each fiscal year the Department will give timely notice of both the website address and the exact dates of the petition submission period, as well as other pertinent information, 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.

(c) *Processing of petitions.* Entries received during the petition submission period established for the fiscal year in question and meeting all of the requirements of paragraph (b) of this section will 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 petitions, all numbers assigned for each region will be separately rank-ordered at random by a computer using standard computer software for that purpose. The Department will then select in the rank orders determined by the computer program a quantity of petitions 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. The Department will consider petitions selected in this manner to have been approved for the purposes of this section.

(d) *Validity of approved petitions.* A petition approved pursuant to paragraph (c) of this section will be valid for a period not to exceed Midnight of the last day of the fiscal year for which the petition was approved. At that time, the Department of State will consider approval of the petition to cease to be valid pursuant to INA 204(a)(1)(I)(ii)(II), which prohibits issuance of visas based upon petitions submitted and approved for a fiscal year after the last day of that fiscal year.

(e) *Order of consideration.* Consideration for visa issuance to aliens whose petitions have been approved pursuant

to paragraph (c) of this section will be in the regional rank orders established pursuant that paragraph.

(f) *Allocation of visa numbers.* To the extent possible, diversity immigrant visa numbers will be allocated in accordance with INA 203(c)(1)(E) and will be allotted only during the fiscal year for which a petition to accord diversity immigrant status was submitted and approved. Under no circumstances will immigrant visa numbers be allotted after midnight of the last day of the fiscal year for which the petition was submitted and approved.

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

(h) *Maintenance of certain information.* (1) The Department will 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) The Department will not maintain the names of visa recipients in connection with this information and the information will be compiled and maintained in such form that the identity of visa recipients cannot be determined therefrom.

(i) *Diversity Visa Lottery fee.* Consular officers shall collect, or ensure the collection of, the Diversity Visa Lottery fee from those persons who apply for a diversity immigrant visa, described in INA 203(c), after being selected by the diversity visa lottery program. The Diversity Visa Lottery fee, as prescribed by the Secretary of State, is set forth in the Schedule of Fees, 22 CFR 22.1.

[68 FR 49355, Aug. 18, 2003, as amended at 73 FR 7670, Feb. 11, 2008; 77 FR 18914, Mar. 29, 2012; 81 FR 63695, Sept. 16, 2016; 84 FR 25991, June 5, 2019; 87 FR 35415, June 10, 2022]

**§ 42.34 Special immigrant visas—certain U.S. Government employees.**

(a) *General.* An applicant is classifiable under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) provided:

(1) (i) The applicant has performed faithful service to the United States Government abroad, or the American Institute in Taiwan, for a total of fifteen years or more; or

(ii) The applicant is the surviving spouse or child of an employee of the United States Government abroad who performed faithful service for a total of not less than 15 years or was killed in the line of duty; and

(2) The principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director), recommends granting special immigrant status to such person in exceptional circumstances; and

(3) The Secretary of State, or designee, approves such recommendation and finds that it is in the national interest to grant such status.

(b) *Petition requirement.* An applicant who seeks classification as a special immigrant described in paragraph (a) of this section must file a Form DS-1884, Petition to Classify Special Immigrant under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad, or the Surviving Spouse or Child of an Employee of the U.S. Government Abroad, with the Department of State. An applicant described in INA 101(a)(27)(D) may file such a petition only after, but within one year of, notification from the Department that the Secretary of State or designee has approved a recommendation from the principal officer that special immigrant status be accorded the applicant in exceptional circumstances and has found it in the national interest to do so.

(1) *Petition 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 of State, or designee, has approved the recommendation that the applicant be granted status as a special immigrant under INA 101(a)(27)(D).

(2) *Establishing priority date.* The priority date of an applicant seeking sta-

tus 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, the DS-1884, is filed. The filing date of the petition is the date on which a properly completed form and the required fee are accepted by a Foreign Service post. Pursuant to INA 203(d), and whether named in the petition, the current spouse or child who meets the definition of “child” under INA 101(b)(1) of an applicant classified under INA 203(b)(4), if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to the classification and priority date of the beneficiary of the petition.

(3) *Delegation of authority to approve petitions.* The authority to approve petitions to accord status under INA 203(b)(4) to an applicant 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 of State or designee’s approval of special immigrant status for the petitioning applicant.

(4) *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.

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

(c) *Definitions—(1) Full-time service.* Where 15 years of service is the minimum time required for eligibility for a special immigrant visa, the employee must have been employed for a total of

at least 15 full-time years, or the equivalent thereof, in the service of the U.S. Government abroad. The number of hours per week that qualify an employee as full-time is dependent on local law and prevailing practice in the country where the individual is or was employed, as reflected in the employment documentation submitted with the application for special immigrant status. The years of service may be met based on employment abroad with one, or 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, or the equivalent thereof.

(2) *Faithful service.* Where faithful service is required for eligibility for a special immigrant visa, an employee must have performed faithfully in the position held. The principal officer has the primary responsibility for determining whether the employee's service meets this requirement. A record of disciplinary actions that have been taken against the employee does not automatically disqualify the applicant. The principal officer must assess the record of disciplinary actions considering the extent and gravity of the misconduct and when the incidents occurred, and determine whether the record as a whole, notwithstanding disciplinary actions, is one of faithful service.

(3) *Continuity.* Where 15 years of service is the minimum time required for eligibility for a special immigrant visa, the employee's period of service need not have been continuous but must have an aggregate total of 15 years of service to qualify.

(4) *Abroad.* The service must have occurred anywhere outside the United States, as the term "United States" is defined in INA 101(a)(38).

(5) *Employment at the American Institute in Taiwan.* INA 101(a)(27)(D) permits both present and former employees of the American Institute in Taiwan to apply for special immigrant status. An employee's service before and after the founding of the American Institute in Taiwan is counted toward the minimum 15 years of service requirement.

(6) *Honorably retired.* Separations within the meaning of "honorably re-

tired" include, for example, those resulting from mandatory or voluntary retirement, reduction-in-force, or resignation for personal reasons. Separations not within the meaning of "honorably retired" would include a termination for cause or an involuntary termination or resignation in lieu of a termination for cause.

(7) *Exceptional circumstances for employees of the United States Government abroad.* For classification as a special immigrant under INA 101(a)(27)(D)(i), the principal officer must determine that an employee demonstrates at least one form of "exceptional circumstances" to support an application for special immigrant status.

(i) *Prima facie indicators of exceptional circumstances.* In the following situations, an employee's service with the U.S. Government generally will be deemed to have met exceptional circumstances.

(A) Diplomatic relations between the employee's country of nationality and the United States have been severed;

(B) Diplomatic relations between the country in which the employee was employed and the United States have been severed;

(C) The country in which the employee was employed and the United States have strained relations and the employee may be subjected to retribution by the local, State, Federal, or other official government body merely because of association with the U.S. Government, or the employee may be pressured to divulge information contrary to U.S. national interests; or

(D) The employee was hired at the Consulate General at Hong Kong on or before July 1, 1999.

(ii) *Strong indicators of exceptional circumstances.* (A) It is believed that continued service to the U.S. Government might endanger the life of the employee;

(B) The employee has fulfilled responsibilities or given service in a manner that approaches the heroic;

(C) The employee has been awarded a global or a regional "Foreign Service National of the Year" Award;

(D) The employee has disclosed waste, fraud or abuse, a substantial and specific danger to public health or safety, or a violation of law, rule, or

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regulation within the Department or other U.S. Government agency, if such disclosure results in significant action by the Department or other U.S. Government agency against an offending party, such as termination or severance of a contractual relationship, or criminal charges against any person or entity.

(E) The employee has served the U.S. Government for a period of twenty years or more.

(8) *Exceptional circumstances for surviving spouses and children.* For classification as a special immigrant under INA 101(a)(27)(D)(ii), the principal officer must determine that the deceased employee:

(i) Was killed in the line of duty; or  
(ii) Performed faithful service to the United States Government abroad for a total of not less than 15 years; and

(A) Was employed by the U.S. Government as of the date of their death or in the immediately preceding period as defined in paragraph (c)(9) of this section, or

(B) Was an honorably retired former employee who, prior to their death, demonstrated at least one form of “exceptional circumstances” as defined in paragraph (c)(7) of this section.

(9) *Immediately preceding period.* (i) As provided in paragraph (c)(8)(ii)(A) of this section, a deceased employee is considered to have been employed by the U.S. Government in the period immediately preceding their death if such employment ceased due to circumstances that resulted in their death.

(ii) A deceased employee is presumed to not meet the criteria in paragraph (c)(8)(ii)(A) of this section if the employee’s death occurred more than five years following cessation of employment. This presumption can be rebutted if the applicant establishes, to the satisfaction of the principal officer, that the employment ceased due to circumstances that resulted in the employee’s death, and the Secretary or appropriate designee finds it in the national interest to grant such status. The principal officer has the primary responsibility for determining whether the applicant meets this criterion, taking into consideration as informed by the circumstances of the cessation of

employment, the cause of the employee’s death as documented by the applicant, and other relevant evidence the applicant presents that demonstrates that the cessation of employment was for reasons that ultimately resulted in the employee’s death.

(10) *Immediate intent to immigrate.* (i) The recommendation of the principal officer must certify that the applicant being recommended is prepared to file a petition within one year of the Department’s notification to the post of approval of special immigrant status, and to pursue an immigrant visa application within six months of the Secretary of State’s approval of the petition or of an immigrant visa becoming available, whichever is later. If the applicant is an employee who is not yet honorably retired, the recommendation must also certify that the employee intends permanent separation from U.S. Government employment abroad no later than the date of departure for the United States following issuance of an immigrant visa.

(ii) Employees of Hong Kong Consulate General hired on or before July 1, 1999, are not required to establish immediate intent to immigrate. Employees of the Hong Kong Consulate General who received or were approved for special immigrant status before July 1, 1999, also may continue employment with the U.S. Government.

[89 FR 99079, Dec. 10, 2024]

**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 DHS 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 DHS of notice of revocation of the petition in accordance with DHS 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 DHS, 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:

(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

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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 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 prin-

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cipal alien intends to precede the family.

[56 FR 51174, Oct. 9, 1991, as amended at 61 FR 1836, Jan. 24, 1996; 78 FR 31399, May 24, 2013]

### § 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 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]

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### § 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 jurisdiction 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 evi-

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

(b) *Interview by consular officer.* (1) 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—

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

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

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

[86 FR 70740, Dec. 13, 2021]

### § 42.63 Definitions.

(a) *Application forms*—(1) *Application on Form DS-230 or Form DS-260 required.*

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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 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 appli-

cant 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 officer 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 pre-

pared 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 applicant shall furnish photographs of the number and specifications prescribed by the Department. The applicant must either upload a digital photograph electronically as part of submitting an online visa application, or a paper photograph at the direction of the Department. The photograph shall be considered signed when the applicant biometrically signs and executes the application under oath pursuant to § 42.67(a).

[52 FR 42613, Nov. 5, 1987, as amended at 55 FR 29015, July 17, 1990; 56 FR 49682, Oct. 1, 1991; 88 FR 13696, Mar. 6, 2023]

#### § 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.

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(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 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

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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 [Reserved]

## 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.

(b) *Immigrant visa fees—(1) Payment of fees.* The Secretary of State prescribes a fee for the processing of immigrant visa applications. Except as provided in paragraphs (b)(2) and (3) of this section, 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 fee upon being notified that a visa is expected to become available in the near future, and upon being requested to obtain the supporting documentation needed to apply formally for a visa, in accordance with instructions received with such notification. The fee must be paid before an applicant at

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a post so designated will receive an appointment to appear and make application before a consular officer. Applicants at a post not yet so designated will pay the fee immediately prior to formal application 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 responsible, which precluded the applicant from benefitting from the processing, or as provided in paragraph (b)(2) of this section.

(2) *Waiver or refund of fees for replacement immigrant visas for adoptees.* The consular officer shall waive the application processing fee for a replacement immigrant visa or, upon request, refund such a fee where already paid, if the consular officer is satisfied that the alien, the alien's parent(s), or the alien's representative has established that:

(i) The prior immigrant visa was issued on or after March 27, 2013, to an alien who has been lawfully adopted, or who is coming to the United States to be adopted, by a United States citizen;

(ii) The alien was unable to use the original immigrant visa during the period of its validity as a direct result of extraordinary circumstances, including the denial of an exit permit; and

(iii) The inability to use the visa was attributable to factors beyond the control of the adopting parent or parents and of the alien.

(3) *Exemption from fees for immigrant visa applicants previously refused solely pursuant to Proclamation 9645 or Proclamation 9983.* An immigrant visa applicant shall be exempt from the application processing fee and the affidavit of support review fee, if the applicant was previously denied an immigrant visa on or between December 8, 2017, and January 19, 2020; the sole ground of ineligibility was based on Proclamation 9645 or 9983; and the applicant is applying again for an immigrant visa. This paragraph (b)(3) provides only for a one-

time exemption of the applicable fees per applicant.

[84 FR 35298, July 23, 2019, as amended at 87 FR 2705, Jan. 19, 2022; 88 FR 35740, June 1, 2023]

### § 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

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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) *Evidence of visa.* An immigrant visa shall be evidenced by a physical visa or by an electronic visa located in the Department's records. The appropriate symbol as prescribed in § 42.11, showing the classification of the alien, shall be entered on the visa.

(b) *Visa format.* A machine-readable visa shall be in the format designated by the Department, and contain, at a minimum, the following data:

- (1) Full name of the immigrant;
- (2) Visa symbol;
- (3) Location of the visa issuing office;
- (4) Passport number;
- (5) The registration number (A-number) assigned to the immigrant;
- (6) Sex;
- (7) Date of birth;
- (8) Nationality;
- (9) Date of issuance;
- (10) Date of expiration;
- (11) Visa control number;
- (12) Any annotations entered to reflect waivers or other information useful to an immigration officer at a port of entry (POE) upon the immigrant's application for admission to the United States;
- (13) A digitized photo of the immigrant; and
- (14) Machine-readable data that can be processed by an immigration officer at a POE.

(c) *Disposition of supporting documents.* Post shall, wherever possible, return original supporting documents furnished by the alien. Duplicate copies may be retained in the consular system, as required or necessary.

[84 FR 35299, July 23, 2019]

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

(a) *New immigrant visa for a special immigrant under INA 101(a)(27)(A) and (B).* The consular officer may issue a new immigrant visa to a qualified alien entitled to status under INA 101(a)(27)(A) or (B), provided that:

(1) The alien establishes that the original visa has been lost, mutilated, or has expired; or that the alien will be unable to use it during the period of its validity; and

(2) The alien pays anew the application processing fees prescribed in the Schedule of Fees (22 CFR 22.1); and

(3) 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.* 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—

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

(2) 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;

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

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

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

(c) *Replacement visa for adoptees.* A consular officer may issue a replacement immigrant visa to a qualified alien, if the conditions in paragraphs (a)(1) and (3) of this section are met, and if the consular officer determines—

(1) A prior immigrant visa was issued on or after March 27, 2013, to a child who has been lawfully adopted, or who

is coming to the United States to be adopted, by a United States citizen;

(2) The inability to use the visa was attributable to factors beyond the control of the adoptee or the adopting parent(s); and

(3) The application processing fee has been waived pursuant to § 42.71(b)(2) or has been paid anew.

(d) *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.

[84 FR 35299, July 23, 2019, as amended at 87 FR 2705, Jan. 19, 2022]

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

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

(a) *Grounds for refusal.* When a visa application has been properly completed and executed before a consular officer in accordance with the provisions of the INA and the implementing regulations, the consular officer must issue the visa, refuse the visa under INA 212(a) or 221(g) or other applicable law or, pursuant to an outstanding order under INA 243(d), discontinue granting the visa.

(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

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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; 71 FR 34522, June 15, 2006; 75 FR 45477, Aug. 3, 2010; 84 FR 16612, Apr. 22, 2019]

## § 42.82 Revocation of visas.

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

(b) *Provisional revocation.* A consular officer, the Secretary, or any Department official to whom the Secretary has delegated this authority may provisionally revoke an immigrant visa while considering information related to whether a visa holder is eligible for the visa. Provisional revocation shall have the same force and effect as any other visa revocation under INA 221(i).

(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.

(d) *Procedure for physically canceling visas.* An immigrant visa that is revoked shall be canceled by writing or stamping the word "REVOKED" plainly across the face of the visa, if the

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visa is available to the consular officer. The failure or inability to physically cancel the visa does not affect the validity of the revocation.

[76 FR 23479, Apr. 27, 2011]

## § 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) of this section, the National Visa Center (NVC) shall notify the alien of the termination. The NVC 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, establishes to the satisfaction of the consular officer at the post where the alien is registered that the failure to apply for an immigrant visa was due to circumstances beyond the alien's control. If paragraph (b) applies, the consular officer at the post where the alien is registered shall, upon the termination of registration, notify the alien of the termination and the right to have the registration reinstated if the alien, before the end of the second year after the INA 221(g) refusal, establishes to the satisfaction of the consular officer at such post that the failure 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; 73 FR 11028, Feb. 29, 2008]

**§ 42.84 Discontinuance of granting immigrant 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 immigrant visas for categories of immigrant 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. In the case of diversity immigrant selectees applying under INA 203(c), if the discontinuance of granting has not been lifted by the end of the fiscal year, the applicant will not be eligible for a diversity visa for that fiscal year, regardless of the status of the diversity immigrant visa application at the time 243(d) sanctions were imposed.

(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 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 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 fees are 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 application 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 to determine eligibility. In numerically controlled immigrant visa categories, an applicant's immigrant visa priority date may no

longer be current once sanctions under INA 243(d) are lifted, in which case the applicant must await visa availability.

[84 FR 16613, Apr. 22, 2019]

### 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.

AUTHORITY: Secs. 104, 215, 66 Stat. 174, 190; 8 U.S.C. 1104, 1185.

### § 46.1 Definitions.

For the purposes of this part:

(a) The term *alien* means any person who is not a citizen or national of the United States.

(b) The term *Commissioner* means the Commissioner of Immigration and Naturalization.

(c) The term *regional commissioner* means an officer of the Immigration and Naturalization Service duly appointed or designated as a regional commissioner, or an officer who has been designated to act as a regional commissioner.

(d) The term *district director* means an officer of the Immigration and Naturalization Service duly appointed or designated as a district director, or an officer who has been designated to act as a district director.

(e) The term *United States* means the several States, the District of Columbia, the Canal Zone, Puerto Rico, the Virgin Islands, Guam, American Samoa, Swains Island, the Trust Territory of the Pacific Islands, and all other territory and waters, continental

and insular, subject to the jurisdiction of the United States.

(f) The term *continental United States* means the District of Columbia and the several States, except Alaska and Hawaii.

(g) The term *geographical part of the United States* means (1) the continental United States, (2) Alaska, (3) Hawaii, (4) Puerto Rico, (5) the Virgin Islands, (6) Guam, (7) the Canal Zone, (8) American Samoa, (9) Swains Island, or (10) the Trust Territory of the Pacific Islands.

(h) The term *depart from the United States* means depart by land, water, or air (1) from the United States for any foreign place, or (2) from one geographical part of the United States for a separate geographical part of the United States: *Provided*, That a trip or journey upon a public ferry, passenger vessel sailing coastwise on a fixed schedule, excursion vessel, or aircraft, having both termini in the continental United States or in any one of the other geographical parts of the United States and not touching any territory or waters under the jurisdiction or control of a foreign power, shall not be deemed a departure from the United States.

(i) The term *departure-control officer* means any immigration officer as defined in the regulations of the Immigration and Naturalization Service who is designated to supervise the departure of aliens, or any officer or employee of the United States designated by the Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or the governor of an outlying possession of the United States, to supervise the departure of aliens.

(j) The term *port of departure* means a port in the continental United States, Alaska, Guam, Hawaii, Puerto Rico or the Virgin Islands, designated as a port of entry by the Attorney General or by the Commissioner, or in exceptional circumstances such other place as the departure-control officer may, in his discretion, designate in an individual case, or a port in American Samoa, Swains Island, the Canal Zone, or the Trust Territory of the Pacific Islands, designated as a port of entry by the chief executive officer thereof.