

§ 204.314

8 CFR Ch. I (1–1–23 Edition)

an alien who will apply for adjustment of status, the USCIS officer with jurisdiction of the adjustment application has authority to grant this final approval upon receiving the Secretary of State's certificate under section 204(d)(2) of the Act.

(i) *Denial of Form I-800.* (1) A USCIS officer with authority to grant provisional or final approval will deny the Form I-800 if the officer finds that the child does not qualify as a Convention adoptee, or that 8 CFR 204.309(b) of this section requires denial of the Form I-800. Before denying a Form I-800, the officer will comply with the requirements of 8 CFR 103.2(b)(16)), if required to do so under that provision, and may issue a request for evidence or a notice of intent to deny under 8 CFR 103.2(b)(8).

(2) The decision will be in writing, specifying the reason(s) for the denial and notifying the petitioner of the right to appeal, if any, as specified in 8 CFR 204.314.

(3) If a Department of State officer finds, either at the provisional approval stage or the final approval stage, that the Form I-800 is “not clearly approvable,” or that 8 CFR 204.309(b) warrants denial of the Form I-800, the Department of State officer will forward the Form I-800 and accompanying evidence to the USCIS office with jurisdiction over the place of the child's habitual residence for review and decision.

[72 FR 56854, Oct. 4, 2007, as amended at 85 FR 46922, Aug. 3, 2020]

§ 204.314 Appeal.

(a) *Decisions that may be appealed.* (1) Except as provided in paragraph (b) of this section:

(i) An applicant may appeal the denial of a Form I-800A (including the denial of a request to extend the prior approval of a Form I-800A) and

(ii) A petitioner may appeal the denial of a Form I-800.

(2) The provisions of 8 CFR 103.3, concerning how to file an appeal, and how USCIS adjudicates an appeal, apply to the appeal of a decision under this subpart C.

(b) *Decisions that may not be appealed.* There is no appeal from the denial of:

(1) Form I-800A because the Form I-800A was filed during any period during which 8 CFR 204.307(c) bars the filing of a Form I-800A; or

(2) Form I-800A for failure to timely file a home study as required by 8 CFR 204.310(a)(3)(viii); or

(3) Form I-800 that is denied because the Form I-800 was filed during any period during which 8 CFR 204.307(c) bars the filing of a Form I-800;

(4) Form I-800 filed either before USCIS approved a Form I-800A or after the expiration of the approval of a Form I-800A.

PART 205—REVOCATION OF APPROVAL OF PETITIONS

Sec.

205.1 Automatic revocation.

205.2 Revocation on notice.

AUTHORITY: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, 1186a, and 1324a.

§ 205.1 Automatic revocation.

(a) *Reasons for automatic revocation.* The approval of a petition or self-petition made under section 204 of the Act and in accordance with part 204 of this chapter is revoked as of the date of approval:

(1) If the Secretary of State shall terminate the registration of the beneficiary pursuant to the provisions of section 203(e) of the Act before October 1, 1991, or section 203(g) of the Act on or after October 1, 1994;

(2) [Reserved]

(3) If any of the following circumstances occur before the beneficiary's or self-petitioner's journey to the United States commences or, if the beneficiary or self-petitioner is an applicant for adjustment of status to that of a permanent resident, before the decision on his or her adjustment application becomes final:

(i) *Immediate relative and family-sponsored petitions, other than Amerasian petitions.* (A) Upon written notice of withdrawal filed by the petitioner or self-petitioner with any officer of the Service who is authorized to grant or deny petitions.

(B) Upon the death of the beneficiary or the self-petitioner.

(C) Upon the death of the petitioner, unless:

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(I) The petition is deemed under 8 CFR 204.2(i)(1)(iv) to have been approved as a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant under 8 CFR 204.2(b); or

(2) U.S. Citizenship and Immigration Services (USCIS) determines, as a matter of discretion exercised for humanitarian reasons in light of the facts of a particular case, that it is inappropriate to revoke the approval of the petition. USCIS may make this determination only if the principal beneficiary of the visa petition asks for reinstatement of the approval of the petition and establishes that a person related to the principal beneficiary in one of the ways described in section 213A(f)(5)(B) of the Act is willing and able to file an affidavit of support under 8 CFR part 213a as a substitute sponsor.

(D) Upon the legal termination of the marriage when a citizen or lawful permanent resident of the United States has petitioned to accord his or her spouse immediate relative or family-sponsored preference immigrant classification under section 201(b) or section 203(a)(2) of the Act. The approval of a spousal self-petition based on the relationship to an abusive citizen or lawful permanent resident of the United States filed under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act, however, will not be revoked solely because of the termination of the marriage to the abuser.

(E) Upon the remarriage of the spouse of an abusive citizen or lawful permanent resident of the United States when the spouse has self-petitioned under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for immediate relative classification under section 201(b) of the Act or for preference classification under section 203(a)(2) of the Act.

(F) Upon a child reaching the age of 21, when he or she has been accorded immediate relative status under section 201(b) of the Act. A petition filed on behalf of a child under section 204(a)(1)(A)(i) of the Act or a self-petition filed by a child of an abusive United States citizen under section 204(a)(1)(A)(iv) of the Act, however, will remain valid for the duration of the relationship to accord preference status under section 203(a)(1) of the Act if the

beneficiary remains unmarried, or to accord preference status under section 203(a)(3) of the Act if he or she marries.

(G) Upon the marriage of a child, when he or she has been accorded immediate relative status under section 201(b) of the Act. A petition filed on behalf of the child under section 204(a)(1)(A)(i) of the Act or a self-petition filed by a child of an abusive United States citizen under section 204(a)(1)(A)(iv) of the Act, however, will remain valid for the duration of the relationship to accord preference status under section 203(a)(3) of the Act if he or she marries.

(H) Upon the marriage of a person accorded preference status as a son or daughter of a United States citizen under section 203(a)(1) of the Act. A petition filed on behalf of the son or daughter, however, will remain valid for the duration of the relationship to accord preference status under section 203(a)(3) of the Act.

(I) Upon the marriage of a person accorded status as a son or daughter of a lawful permanent resident alien under section 203(a)(2) of the Act.

(J) Upon legal termination of the petitioner's status as an alien admitted for lawful permanent residence in the United States unless the petitioner became a United States citizen. The provisions of 8 CFR 204.2(i)(3) shall apply if the petitioner became a United States citizen.

(ii) *Petition for Pub. L. 97-359 Amerasian.* (A) Upon formal notice of withdrawal filed by the petitioner with the officer who approved the petition.

(B) Upon the death of the beneficiary.

(C) Upon the death or bankruptcy of the sponsor who executed Form I-361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Pub. L. 97-359 Amerasian. In that event, a new petition may be filed in the beneficiary's behalf with the documentary evidence relating to sponsorship and, in the case of a beneficiary under 18 years of age, placement. If the new petition is approved, it will be given the priority date of the previously approved petition.

(D) Upon the death or substitution of the petitioner if other than the beneficiary or sponsor. However, if the petitioner dies or no longer desires or is

able to proceed with the petition, and another person 18 years of age or older, an emancipated minor, or a corporation incorporated in the United States desires to be substituted for the deceased or original petitioner, a written request may be submitted to the Service or American consular office where the petition is located to reinstate the petition and restore the original priority date.

(E) Upon the beneficiary's reaching the age of 21 when the beneficiary has been accorded classification under section 201(b) of the Act. Provided that all requirements of section 204(f) of the Act continue to be met, however, the petition is to be considered valid for purposes of according the beneficiary preference classification under section 203(a)(1) of the Act if the beneficiary remains unmarried or under section 203(a)(3) if the beneficiary marries.

(F) Upon the beneficiary's marriage when the beneficiary has been accorded classification under section 201(b) or section 203(a)(1) of the Act. Provided that all requirements of section 204(f) of the Act continue to be met, however, the petition is to be considered valid for purposes of according the beneficiary preference classification under section 203(a)(3) of the Act.

(iii) *Petitions under section 203(b), other than special immigrant juvenile petitions.* (A) Upon invalidation pursuant to 20 CFR Part 656 of the labor certification in support of the petition.

(B) Upon the death of the petitioner or beneficiary.

(C) In employment-based preference cases, upon written notice of withdrawal filed by the petitioner to any officer of USCIS who is authorized to grant or deny petitions, where the withdrawal is filed less than 180 days after approval of the employment-based preference petition, unless an associated adjustment of status application has been pending for 180 days or more. A petition that is withdrawn 180 days or more after its approval, or 180 days or more after the associated adjustment of status application has been filed, remains approved unless its approval is revoked on other grounds. If an employment-based petition on behalf of an alien is withdrawn, the job offer of the petitioning employer is re-

scinded and the alien must obtain a new employment-based preference petition in order to seek adjustment of status or issuance of an immigrant visa as an employment-based immigrant, unless eligible for adjustment of status under section 204(j) of the Act and in accordance with 8 CFR 245.25.

(D) Upon termination of the petitioning employer's business less than 180 days after petition approval under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act, unless an associated adjustment of status application has been pending for 180 days or more. If a petitioning employer's business terminates 180 days or more after petition approval, or 180 days or more after an associated adjustment of status application has been filed, the petition remains approved unless its approval is revoked on other grounds. If a petitioning employer's business terminates the job offer of the petitioning employer is rescinded and the beneficiary must obtain a new employment-based preference petition on his or her behalf in order to seek adjustment of status or issuance of an immigrant visa as an employment-based immigrant, unless eligible for adjustment of status under section 204(j) of the Act and in accordance with 8 CFR 245.25.

(iv) *Special immigrant juvenile petitions.* An approved petition for classification as a special immigrant juvenile will be revoked as provided in 8 CFR 204.11(j)(1).

(b) *Notice.* When it shall appear to the director that the approval of a petition has been automatically revoked, he or she shall cause a notice of such revocation to be sent promptly to the consular office having jurisdiction over the visa application and a copy of such notice to be mailed to the petitioner's last known address.

[61 FR 13077, Mar. 26, 1996, as amended at 71 FR 35749, June 21, 2006; 81 FR 73332, Oct. 24, 2016; 81 FR 82486, Nov. 18, 2016; 87 FR 13112, Mar. 8, 2022]

§ 205.2 Revocation on notice.

(a) *General.* Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 when the

necessity for the revocation comes to the attention of this Service.

(b) *Notice of intent.* Revocation of the approval of a petition of self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

(c) *Notification of revocation.* If, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for the revocation. The director shall notify the consular officer having jurisdiction over the visa application, if applicable, of the revocation of an approval.

(d) *Appeals.* The petitioner or self-petitioner may appeal the decision to revoke the approval within 15 days after the service of notice of the revocation. The appeal must be filed as provided in part 3 of this chapter, unless the Associate Commissioner for Examinations exercises appellate jurisdiction over the revocation under part 103 of this chapter. Appeals filed with the Associate Commissioner for Examinations must meet the requirements of part 103 of this chapter.

[48 FR 19156, Apr. 28, 1983, as amended at 58 FR 42851, Aug. 12, 1993; 61 FR 13078, Mar. 26, 1996]

PART 207—ADMISSION OF REFUGEES

Sec.

207.1 Eligibility.

207.2 Applicant processing.

207.3 Waivers of inadmissibility.

207.4 Approved application.

207.5 Waiting lists and priority handling.

207.6 Control over approved refugee numbers.

207.7 Derivatives of refugees.

207.8 Physical presence in the United States.

207.9 Termination of refugee status.

AUTHORITY: 8 U.S.C. 1101, 1103, 1151, 1157, 1159, 1182; 8 CFR part 2.

SOURCE: 46 FR 45118, Sept. 10, 1981, unless otherwise noted.

§ 207.1 Eligibility.

(a) *Filing.* Any alien who believes he or she is a refugee as defined in section 101(a)(42) of the Act, and is included in a refugee group identified in section 207(a) of the Act, may apply for admission to the United States by submitting an application, including biometric information, in accordance with the form instructions, as defined in 8 CFR 1.2.

(b) *Firmly resettled.* Any applicant (other than an applicant for derivative refugee status under 8 CFR 207.7) who has become firmly resettled in a foreign country is not eligible for refugee status under this chapter I. A refugee is considered to be “firmly resettled” if he or she has been offered resident status, citizenship, or some other type of permanent resettlement by a country other than the United States and has traveled to and entered that country as a consequence of his or her flight from persecution. Any applicant who claims not to be firmly resettled in a foreign country must establish that the conditions of his or her residence in that country are so restrictive as to deny resettlement. In determining whether or not an applicant is firmly resettled in a foreign country, the officer reviewing the matter shall consider the conditions under which other residents of the country live:

(1) Whether permanent or temporary housing is available to the refugee in the foreign country;

(2) Nature of employment available to the refugee in the foreign country; and

(3) Other benefits offered or denied to the refugee by the foreign country which are available to other residents, such as right to property ownership, travel documentation, education, public welfare, and citizenship.

(c) *Immediate relatives and special immigrants.* Any applicant for refugee status who qualifies as an immediate relative or as a special immigrant shall not be processed as a refugee unless it is in the public interest. The alien shall be advised to obtain an immediate relative or special immigrant visa and shall be provided with the proper petition forms to send to any prospective petitioners. An applicant who may be