

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 INS 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 INS of notice of revocation of the petition in accordance with INS 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 INS, 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:

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(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 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 on Form OF-224, Immigrant Visa Control Card, or through the automated system in use at selected posts, 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 principal alien intends to precede the family.

[56 FR 51174, Oct. 9, 1991, as amended at 61 FR 1836, Jan. 24, 1996]

§ 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