

## Department of State

## § 42.61

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]

### § 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 applica-

tions 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 evidence 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.