

§ 42.82

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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 provisions under which administrative relief is available. Each document related to the refusal shall then be attached to Form OF-230 for retention in the refusal files. Any documents not related to the refusal shall be returned to the applicant. If the grounds 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 has 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

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]

§ 42.82 Revocation of visas.

(a) *Grounds for revocation.* Consular officers are authorized to revoke an immigrant visa under the following circumstances:

(1) The consular officer knows, or after investigation is satisfied, that the visa was procured by fraud, a willfully false or misleading representation, the willful concealment of a material fact, or other unlawful means;

(2) The consular officer obtains information establishing that the alien was otherwise ineligible to receive the particular visa at the time it was issued; or

(3) The consular officer obtains information establishing that, subsequent to the issuance of the visa, a ground of ineligibility has arisen in the alien's case.

(b) *Notice of proposed revocation.* The bearer of an immigrant visa which is being considered for revocation shall, if practicable, be notified of the proposed action, given an opportunity to show cause why the visa should not be revoked, and requested to present the visa to the consular office indicated in the notification of proposed cancellation.

(c) *Procedure in revoking visas.* An immigrant visa which is revoked shall be canceled by writing the word "REVOKED" plainly across the face of the visa. The cancellation shall be dated and signed by the consular officer taking the action. The failure of an alien to present the visa for cancellation

does not affect the validity of any action taken to revoke it.

(d) *Notice to carriers.* Notice of revocation of a visa shall be given to the master, commanding officer, agent, owner, charterer, or consignee of the carrier or transportation line on which it is believed the alien intends to travel to the United States, unless the visa has been canceled as provided in paragraph (c) of this section.

(e) *Notice to Department.* The consular officer shall promptly submit notice of the revocation, including a full report of the facts in the case, to the Department for transmission to the INS. A report is not required if the visa has been physically canceled prior to the alien's departure for the United States.

(f) *Record of action.* Upon the revocation of an immigrant visa, the consular officer shall make appropriate notation for the post file of the action taken, including a statement of the reasons therefor, and if the revocation of the visa is effected at other than the issuing office, a report of the action taken shall be sent to that office.

(g) *Reconsideration of revocation.* (1) The consular officer shall consider any evidence submitted by the alien or the alien's attorney or representative in connection with a request that the revocation of the visa be reconsidered. If the officer finds that the evidence is sufficient to overcome the basis for the revocation, a new visa shall be issued. A memorandum regarding the action taken and the reasons therefore shall be placed in the consular files and appropriate notification made promptly to the carriers concerned, the Department, and the issuing office if notice of revocation has been given in accordance with paragraphs (d), (e), and (f) of this section.

(2) In view of the provisions of § 42.71(b) providing for the refund of fees when the visa has not been used as a result of action by the U.S. Government, no fees shall be collected in connection with the application for or issuance of such a reinstated visa.

§ 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 termi-

nated 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) or (b) of this section, the consular officer at the post where the alien is registered shall notify the alien of the termination. The consular officer 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, and before the end of the second year after the INA 221(g) refusal if paragraph (b) applies, establishes to the satisfaction of the consular officer that the failure to apply for an immigrant visa or 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