

Department of State

§ 45.3

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) 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 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]

PARTS 43–44 [RESERVED]

PART 45—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER SECTION 124 OF PUBLIC LAW 101–649

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AUTHORITY: 8 U.S.C. 1104; 8 U.S.C. 1153 Note, unless otherwise noted.

SOURCE: 56 FR 32506, July 17, 1991, unless otherwise noted.

§ 45.1 General.

Except as specifically provided in this part, the provisions of the INA, as amended, and of parts 40 and 42 of this chapter shall apply to application for, consideration of, and issuance or refusal of, immigrant visas under section 124 of Public Law 101–649.

§ 45.2 Priority date of applicants.

The priority date of an alien who is the beneficiary of a petition approved by the Service to accord status under section 124 of Public Law 101–649 shall be the filing date of the approved petition, as determined by the Immigration and Naturalization Service. The priority date of the spouse or child, accompanying or following to join such an alien shall be the priority date of the alien spouse or parent.

§ 45.3 Control of numerical limitation.

(a) *Centralized control.* Centralized control of the numerical limitation specified in section 124 of Public Law 101–649 is established in the Department. In order to effect this control, the Department shall limit the number of immigrant visas and the number of adjustments of status that may be

granted to aliens applying under section 124 of Public Law 101–649 to a number not to exceed 12,000 in any fiscal year and not to exceed in any month of a fiscal year 1,200 plus any balance remaining from authorizations for preceding months in the same fiscal year.

(b) *Allocation of immigrant visa numbers.* Within the numerical limitations specified in paragraph (a) of this section and based on the chronological order of priority dates of applicants as established pursuant to §45.2 of this part, the Department shall allocate immigrant visa numbers for use in connection with the issuance of immigrant visas and the granting of adjustment of status to such aliens.

§ 45.4 Period of validity of immigrant visas.

The period of validity of an immigrant visa issued to an alien pursuant to the provisions of this part may, at the request of the applicant, be extended until January 1, 2002, if the applicant so requests either at the time of issuance of the visa or within four months thereafter. If the applicant fails to make such a request at the time of visa issuance but subsequently, within four months thereafter, makes such a request, the consular officer shall issue a replacement visa to the alien in accordance with the provisions of § 42.74(b) of part 42 of this title.

§ 45.5 Redetermination of admissibility if visa validity extended.

(a) An alien to whom an immigrant visa is issued pursuant to this part who elects to have the validity of the visa extended as provided in §45.4 shall have his or her admissibility redetermined prior to actual travel to the United States as follows:

(1) If the alien is the beneficiary of a petition to accord status under section 124 of Public Law 101–649 which was supported by a specific offer of employment from the petitioning entity, or is the spouse or child of such an alien, a redetermination of admissibility is required only if the anticipated date of actual application for admission for permanent residence is more than four months following the date of visa issuance;

(2) If the alien is the beneficiary of a petition to accord status under section 124 of Public Law 101–649 which was supported by a general assurance from the petitioning entity that an appropriate job would be made available to the alien upon entry, or is the spouse or child of such an alien, a redetermination of admissibility is required whenever the alien proposes to apply for admission for permanent residence, whether within four months of the date of visa issuance or later.

(b) When an alien to whom an immigrant visa is issued pursuant to this part elects to have the validity of the visa extended pursuant to paragraph (a) of this section, the consular officer shall notify the alien in writing of the requirement for a redetermination of admissibility as provided in paragraph (a) and shall endorse the visa “section 154 applies.” Thereafter, the alien shall, not sooner than four months preceding the contemplated date of application for admission for permanent residence notify the appropriate consular officer of his or her intention to travel to the United States for this purpose. The consular officer shall thereupon schedule an appointment with such alien for the purpose of determining whether or not the alien remains admissible into the United States for permanent residence. If the consular officer determines that the alien continues to be so admissible, he or she shall issue to the alien a duplicate immigrant visa as provided in §45.6 of this part. If the consular officer determines that the alien has become inadmissible to the United States, he or she shall revoke the visa as provided in §42.82 of part 42 of this title.

(c) An alien who elects to have the period of validity of his or her immigrant visa extended pursuant to §45.4 and whose entitlement to the immigrant classification of such visa was based upon his or her status as a child at the time of visa issuance shall not cease to be entitled to such visa by reason of attaining age twenty-one or marrying prior to his or her application for admission for permanent residence.