

9 FAM 42.43 SUSPENSION OR TERMINATION OF ACTION IN PETITION CASES

*(CT: VISA-1418; 04-09-2010)
(Office of Origin: CA/VO/L/R)*

9 FAM 42.43 RELATED STATUTORY PROVISIONS

(CT: VISA-985; 07-29-2008)

See INA 203(g) (8 U.S.C. 1153(g))

INA 203(g)

g. Lists

For purposes of carrying out the Secretary's responsibilities in the orderly administration of this section, the Secretary of State may make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories under subsections (a), (b), and (c) of this section and to rely upon such estimates in authorizing the issuance of visas. The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within 2 years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond the alien's control.

9 FAM 42.43 RELATED REGULATORY PROVISIONS

(CT: VISA-1418; 04-09-2010)

See 22 CFR 42.43 and 8 CFR 205

22 CFR 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 DHS 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 DHS of notice of revocation of the petition in accordance with DHS 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 Sec. 42.83.

8 CFR 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) If the filing fee and associated service charge are not paid within 14 days of the notification to the remitter that his or her check or other financial instrument used to pay the filing fee has been returned as not payable; or
 - (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; or
- (C) Upon the death of the petitioner, unless:
 - (1) 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; or
 - (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 Public Law 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 Public Law 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; or
 - (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) Upon written notice of withdrawal filed by the petitioner, in employment-based preference cases, with any officer of the Service who is authorized to grant or deny petitions; or
 - (D) Upon termination of the employer's business in an employment-based preference case under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act.
- (iv) **Special immigrant juvenile petitions.** Unless the beneficiary met all of the eligibility requirements as of November 29, 1990, and the petition requirements as of November 29, 1990, and the petition for classification as a

special immigrant juvenile was filed before June 1, 1994, or unless the change in circumstances resulted from the beneficiary's adoption or placement in a guardianship situation:

- (A) Upon the beneficiary reaching the age of 21;
- (B) Upon the marriage of the beneficiary;
- (C) Upon the termination of the beneficiary's dependency upon the juvenile court;
- (D) Upon the termination of the beneficiary's eligibility for long-term foster care; or
- (E) Upon the determination in administrative or judicial proceedings that it is in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.

(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.

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 or 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.