

9 FAM 42.65 NOTES

(CT:VISA-1459; 07-30-2010)
(Office of Origin: CA/VO/L/R)

9 FAM 42.65 N1 BASIC DOCUMENT REQUIREMENTS

(CT:VISA-1459; 07-30-2010)

INA 222(b) (*8 U.S.C. 1202(b)*) requires that an applicant applying for an immigrant visa (IV) submit the following documentation, if available:

- (1) A valid unexpired passport or other suitable travel document (see 9 FAM 42.2);
- (2) A copy of the police certificate for the country of nationality and country of the alien's residence at the time of visa application in which the applicant has resided for six months or more;
- (3) A copy of police certificates for any other country in which the applicant has resided for one year or more;
- (4) Certified copies of prison records, if applicable;
- (5) Certified copies of military records; if applicable;
- (6) A certified copy of the birth record;
- (7) Other documents establishing relationship to spouse or children, if applicable; and
- (8) Records or documents pertinent to the applicant's identity or visa classification with respect to visa eligibility.

9 FAM 42.65 N2 AVAILABILITY OF SUPPORTING DOCUMENTS

(TL:VISA-720; 03-10-2005)

For information regarding the availability of documents, (see Visa Reciprocity and Country Documents Finder for the country concerned).

9 FAM 42.65 N3 VALIDITY OF SUPPORTING DOCUMENTS AND APPLICATION FORM DS-230, APPLICATION FOR IMMIGRANT VISA AND ALIEN REGISTRATION, OR FORM DS-260, ELECTRONIC APPLICATION FOR IMMIGRANT VISA AND ALIEN REGISTRATION

(CT:VISA-1459; 07-30-2010)

Supporting documents that are subject to change are valid for one year. This time limitation applies to Form DS-230, Application for Immigrant Visa and Alien Registration, *Form DS-260, Online Application for Immigrant Visa and Alien Registration*, medical examinations, and police certificates from any country visited or inhabited subsequent to the previous clearances. It does not apply to a birth certificate or a third country clearance or police certificates from an area to which the alien has not returned since its issuance. The affidavit of support (AOS) must be submitted within six months of its signature by the supporting relative; however, it remains valid indefinitely. However, because the AOS is based on the Federal Poverty Guidelines in effect at the time of the visa issuance, it may need to be updated.

9 FAM 42.65 N4 POLICE CERTIFICATES

(CT:VISA-877; 04-09-2007)

See Visa Reciprocity and Country Documents Finder for availability of police certificates for individual countries.

9 FAM 42.65 N4.1 From Country of Current Residence or Country of Nationality

(CT:VISA-914; 11-26-2007)

An applicant must present a police certificate, if obtainable, from his or her country of current residence and country of nationality, if residence in such country exceeds six months.

9 FAM 42.65 N4.2 From Country of Previous Residence

(TL:VISA-185; 02-26-1999)

Police certificates are required from countries of previous residence, if residence there was for more than one year.

9 FAM 42.65 N5 MILITARY RECORD

(TL:VISA-720; 03-10-2005)

Military records must contain a complete record of the applicant's service and conduct while in the service. The record must show any convictions of crime before military tribunals. (See Visa Reciprocity and Country Documents Finder to determine availability of military records.)

9 FAM 42.65 N6 UNOBTAINABLE DOCUMENTS

(CT:VISA-1076; 10-16-2008)

- a. If a required document cannot be procured without causing the applicant or a family member actual hardship, other than normal delay or inconvenience, it may be considered "unobtainable," and you may permit the applicant to submit other satisfactory evidence in lieu of such document or record, per 22 CFR 42.65(d). You should use this authority sparingly.
- b. If you find that a required document is unobtainable, you must complete and sign Form FS-552, Certificate Regarding Documents Required by 22 CFR 42.65(b) Which Are Unobtainable, and attach to the Form FS-552 secondary evidence and/or a certificate from the appropriate authority, if obtainable, showing that in this particular case the missing document was never properly recorded.

9 FAM 42.65 N6.1 Unreliable Documents

(CT:VISA-1459; 07-30-2010)

We recognize that some documents may be obtainable, but may also be unreliable either because of local corruption, or the ease with which such documents can be altered or counterfeited. It is, nevertheless, our position, as well as a legal requirement, that supporting civil and other documents

specified in the application procedures be presented by the applicant if such documents are available. In some instances, you may detect an altered document that might trigger a revealing line of inquiry on the applicant's criminal record. For example, if you find the presentation of a fraudulent document was an effort to conceal a line of inquiry, which might have resulted in a proper denial of the visa, an advisory opinion (AO) should be submitted. On the other hand, if you can establish that presentation of the document clearly involved misrepresentation of an independent ground of ineligibility, the application should be immediately refused under INA 212(a)(6)(C)(i) (*8 U.S.C. 1182(a)(6)(C)(i)*). In this later case, no AO would need to be submitted.

9 FAM 42.65 N6.2 Member of Armed Forces Applying Outside Own Country

(CT:VISA-877; 04-09-2007)

In any case involving a member of the armed forces of a foreign country who applies for an immigrant visa (IV) outside his or her own country, the alien's military record will be considered unobtainable under 22 CFR 42.65(d) if the applicant's government refuses to furnish certified copies.

9 FAM 42.65 N6.3 Member of Armed Forces Applying in Own Country

(CT:VISA-877; 04-09-2007)

When a member of the armed forces of a foreign country applies for an IV in his or her own country and the government refuses to furnish the applicant's military records, you will defer final action on the application in view of the possible foreign relations implications. You will direct an informal inquiry to the local authorities to determine their position. Depending on the response of the local authorities and actions they may take, you will decide whether to proceed with the consideration of the visa application. If, within a reasonable time after notification, the local authorities do not take appropriate action to prevent the alien's departure, you will proceed with the consideration of the visa application. However, if political sensitivities become evident, you will consult with individuals at appropriate levels of the consular post or embassy concerning the matter. The Department may be consulted as necessary.

9 FAM 42.65 N7 SECONDARY EVIDENCE IN LIEU OF SUPPORTING DOCUMENT

(CT:VISA-1459; 07-30-2010)

INA 222(b) (*8 U.S.C. 1202(b)*) prescribes the documentation required of applicants. It will be rare that a document listed as available in Visa Reciprocity and Country Documents Finder is unobtainable. If, however, you are satisfied that a document is unobtainable, the officer must require substitute documentation or secondary evidence. 22 CFR 42.65(d)(2) requires the consular officer "to affix a signed statement describing in detail the reasons for considering the record or document unobtainable and for accepting the particular secondary evidence attached to the visa." (See 22 CFR 42.65(d).) In these cases, the applicant must submit proof of the unavailability of the missing document; for example, a statement from the local authorities that records for the year in question were destroyed by fire, or proof of the attempts made to obtain the document. When accepting substitute documentation or secondary evidence, you must complete Form FS-552, Certificate Regarding Documents Required by 22 CFR 42.65(b) Which Are Unobtainable, upon which the officer will make the statement required by 22 CFR 42.65(d)(2) and attach the Form FS-552 to the visa.

9 FAM 42.65 N8 APPLICANTS SUBMITTING OTHER SATISFACTORY EVIDENCE OF GOOD CONDUCT

(CT:VISA-877; 04-09-2007)

If an applicant has presented a comprehensive police certificate fully meeting the requirements of 22 CFR 42.65(c) from the applicant's country of principal residence, you need not require a police certificate from other places of former residence, provided the applicant presents other satisfactory evidence of good conduct. For example, it has been held that proof of membership in or affiliation with a reputable religious organization in a religious capacity during periods of foreign residence may be accepted as such evidence. However, if you have reason to believe that a police or criminal record might exist in the foreign country, which would render the alien ineligible to receive a visa, you must require the alien to obtain the police certificate. If the police certificate is not obtainable from the local authorities, the alien must present other convincing evidence that he is not ineligible to receive a visa.

9 FAM 42.65 N9 DOCUMENTS REQUIRED FOR SPOUSE OR CHILDREN NOT ACCOMPANYING ALIEN

(CT:VISA-1459; 07-30-2010)

In addition to the personal documentation required of an applicant, a principal alien is also required to submit documentation establishing the relationship between such principal, the spouse, and all children, including those who will not accompany the principal applicant. If a male principal applicant has an illegitimate offspring who meets the definition of "child" in INA 101(b)(1)(D) (*8 U.S.C. 1101(b)(1)(D)*), as amended, you will also require documentation for that child. (See 9 FAM 42.65 PN2.)

9 FAM 42.65 N10 PHOTOGRAPH REQUIREMENTS

(CT:VISA-1217; 05-15-2009)

- a. One of the most common problems the Department of Homeland Security (DHS) encounters with IV packets is a poor quality photograph. The IV photograph is a crucial item—ultimately it will become the image on the bearer's "green card." Posts should ensure that photographs are in accordance with these instructions, as well as the instructions on photographs found in 9 FAM Appendix L.
- b. In the rush to process cases quickly, you may be tempted to accept substandard photos rather than refusing the applicants until they bring in new ones. However, in the long run, those applicants will be better served if posts require them to retake poor quality photos. The applicants will ultimately be spared the time and trouble of having to repeat the process in DHS secondary inspection at the port of entry (POE), or having their Form I-551, Permanent Resident Card, questioned at some future point because of the poor quality photo.
- c. For further guidelines on visa photograph requirements, refer to 9 FAM Appendix L 302.

9 FAM 42.65 N10.2 Photograph Specifications

(CT:VISA-934; 03-14-2008)

- a. Applicants must present two color photographs. Photographs must be:

- (1) Glossy, untouched, un-mounted, and on a white or off-white background;
- (2) The subject will be shown in full frontal view, with full head, from top of hair to bottom of chin, with the eyes wide open; and
- (3) The dimension of the facial image must be about one inch (33 mm) from the chin to the top of the hair.

NOTE: Instant-type photos are acceptable, but any photographs submitted must meet all specifications given above and bear a clear resemblance to the applicant.

- b. Generally, applicants must have their photo taken without head covering of any kind. You may accept a photo with a head covering only when the presentation of a photo without head covering would conflict with the applicant's religious practices. A photograph depicting a person wearing a head covering must show enough of the face so as to establish identity. A photo depicting a person wearing a traditional facemask or veil, which conceals portions of the face and does not permit adequate identification, is not acceptable. A photo is required of all applicants regardless of age.
- c. Also, eyeglasses should be worn if normally used by the subject.

9 FAM 42.65 N11 REVIEWING COPIES OF DOCUMENTS SUBMITTED TO THE DEPARTMENT OF HOMELAND SECURITY (DHS)

(CT:VISA-1076; 10-16-2008)

The Department of Homeland Security (DHS) does not routinely require the submission of original documents or certified copies with the filing of petitions. You must ensure that photocopies of documents submitted in support of petitions are compared with original documents at the time of immigrant visa (IV) application. Original documents connected with petition filing, but not required for IV issuance, should not be routinely required unless there is reason to doubt their authenticity. However, the consular officer, at his or her discretion, may require submission of any original document in order to compare it with a photocopy upon which a petition was approved.