

9 FAM 42.83 PROCEDURAL NOTES

(CT:VISA-1095; 10-31-2008)
(Office of Origin: CA/VO/L/R)

9 FAM 42.83 PN1 NO RESPONSE TO THE IMMIGRANT VISA APPOINTMENT PACKAGE OR FOLLOW-UP INSTRUCTION PACKAGE FOR IMMIGRANT VISA APPLICANTS OR REFUSAL UNDER INA 221(G)

(CT:VISA-1095; 10-31-2008)

An applicant becomes liable to possible termination of registration if the applicant:

- (1) Does not respond to the appointment notice included with the Immigrant Visa Appointment Package, meaning that the applicant fails to appear for final visa application interview on the scheduled appointment date and fails to take further action on the case within one year of the scheduled interview;
- (2) Is refused at the interview under INA 221(g), and fails to provide to you *with* evidence to overcome the refusal within one year; or
- (3) Fails to comply with the Follow-up Instruction Package for Immigrant Visa Applicants within one year.

9 FAM 42.83 PN2 INITIATING TERMINATION OF REGISTRATION

(CT:VISA-1095; 10-31-2008)

If, after one year, the applicant does not request reinstatement of the application or has failed to overcome an INA 221(g) refusal, the post will use the features of the automated immigrant visa processing system to run the Report of Cases Subject to Possible Termination and forward to all cases on that report the Notice of Termination of Registration (*also known as the*

Termination 1 letter), a letter automatically generated by the automated system. It is essential that consular managers take steps to ensure that data entry is kept as up to date as possible so that this report and others are as accurate as possible. It is also vital that consular personnel use the “date of last contact” filed in the automated application so that active cases are not improperly placed.

9 FAM 42.83 PN3 ACTION IF REINSTATEMENT REQUESTED

(CT:VISA-1095; 10-31-2008)

If during the one-year period following the mailing of *the* Notice of Termination of Registration (*Termination 1 letter*), the applicant satisfies the consul that failure to pursue the application was for reasons beyond his or her control, the consul shall reinstate the application and petition.

9 FAM 42.83 PN3.1 Reinstating Cases for Documentarily Qualified Applicants

(CT:VISA-1095; 10-31-2008)

If the applicant is documentarily qualified, the post will renew all clearances that are over six months old and, if the priority data is current, request a visa number from the *Immigration Visa Control and Reporting Division* (CA/VO/F/I).

9 FAM 42.83 PN3.2 Reinstating Cases for Applicants not Documentarily Qualified

(TL:VISA-398; 04-23-2002)

If the applicant requesting reinstatement of the case is not yet documentarily qualified, the post will:

- (1) Give the applicant a new Instruction Package for Immigrant Visa Applicants; and
- (2) Ensure that the automated immigrant visa processing system is updated to reflect this action.

9 FAM 42.83 PN4 MAILING FINAL NOTICE OF CANCELLATION

(CT:VISA-1095; 10-31-2008)

When one year has passed following the mailing of the Notice of Termination of Registration (*Termination 1 letter*), and the applicant has not established that a basis for reinstatement of registration exists, the post will take the following action sending the applicant the Final Notice of Cancellation of Registration (*also known as the Termination 2 letter*), which is generated automatically by the automated system.

9 FAM 42.83 PN5 DISPOSITION OF PETITIONS/DOCUMENTS IN TERMINATED CASES

9 FAM 42.83 PN5.1 Petitions Terminated under INA 203(g)

(CT:VISA-943; 03-28-2008)

When a case is terminated under INA 203(g), posts and the National Visa Center shall take the following action to dispose of visa petitions:

- (1) Notify the petitioner/applicant or agent that the petition was revoked under INA 203(g);
- (2) Destroy the petition and copies of supporting documents filed with the petition;
- (3) Return the labor certification to the prospective employer; and
- (4) Return original documents (i.e., birth, death, marriage, divorce certificates) to the petitioner (if filed with the petition), or to the beneficiary or agent (if filed during the application process).

NOTE: Due diligence requires us to protect the privacy of the applicant/petitioner by destroying the original or supporting documents if the applicant/petitioner or agent fails to respond to mailings from posts or the National Visa Center.

9 FAM 42.83 PN5.2 Pre-IMMACT 90 P3 and P6

Petitions

(TL:VISA-183; 12-18-1998)

IMMACT 90 provided for the conversion of employment-based petitions (P3 and P6) to the new E2 and E3 classifications, allowing a two-year period for such conversion. If the beneficiaries did not apply within the two-year period, the petitions have expired. In such cases, posts shall take the following action:

- (1) Return the labor certification, along with any attached documentation, to the employer or attorney or record;
- (2) Attach a memo with the following text:

"We are returning the enclosed labor certification (ETA 750A & B) which you filed on behalf of (name of beneficiary). The accompanying Form I-140, Immigrant Petition for Alien Worker, which you filed at the same time, has expired after a period of at least two years. During this two-year period, a visa number was available but the beneficiary failed to apply for an immigrant visa. The petition is part of a group of employment-based petitions which converted to another visa classification under the provisions of the Immigration Act of 1990. The petition has now expired and neither our office nor the Department of State is retaining any record of the petition. The labor certification is returned to you for appropriate action."

9 FAM 42.83 PN5.3 Labor Certification Returned as Undeliverable

(TL:VISA-183; 12-18-1998)

If the labor certification is returned as undeliverable, post may destroy the certification and any attached documents. Any significant original documents (i.e., birth, death, marriage certificates, etc.) should be returned to the petitioner or beneficiary (whoever submitted it).