

9 FAM 42.42 PROCEDURAL NOTES

*(CT: VISA-1412; 03-29-2010)
(Office of Origin: CA/VO/L/R)*

9 FAM 42.42 PN1 INQUIRING ABOUT THE STATUS OF PETITIONS

(TL: VISA-563; 08-01-2003)

Posts normally should not send telegrams to the Department or directly to Department of Homeland Security (DHS) inquiring about the status of petitions. As an alternative, the consular officer should advise an alien seeking such assistance to ask the petitioner to obtain the information on the pending visa petition directly from DHS. Petitioners should direct such information inquiries to the DHS Service Center with which the petition was filed. Posts may submit to the Department cases which have public relations significance, however, stating the reasons for such action in the post's telegram.

9 FAM 42.42 PN2 RECOMMENDING REINSTATEMENT OF PETITION

(CT: VISA-1412; 03-29-2010)

- a. If the consular officer believes that a petition revoked under 8 CFR 205.1(a)(3) warrants DHS consideration for humanitarian reasons, the consular officer shall prepare a memorandum requesting such consideration and forward it with the petition to DHS. In evaluating requests for reinstatement of a petition under such circumstances, DHS has considered the following factors:
 - (1) Disruption of an established family unit;
 - (2) Hardship to U.S. citizens or lawful permanent residents;
 - (3) If beneficiary is elderly or in poor health;
 - (4) If beneficiary has had lengthy residence in the United States;
 - (5) If beneficiary has no home to go to;
 - (6) Undue delay by DHS or consular officer in processing petition and visa; and

- (7) If beneficiary has strong family ties in the United States.
- b. In the case of a petition approved by a stateside Department of Homeland Security (DHS) office, the consular officer shall send the memorandum and petition *through the National Visa Center (NVC) (see 9 FAM 42.43 N3)* to the DHS District Director having jurisdiction over the petitioner's place of residence in the United States. If the petition was approved either by an DHS officer abroad or by a consular officer, the consular officer shall send the petition and memorandum to the DHS District Director having jurisdiction over the DHS office or the consular post abroad.
- c. If the consular officer does not believe that the humanitarian reasons are sufficient to warrant DHS action, but the alien beneficiary or other interested party inquires about such action, the consular officer shall instruct the individual concerned to communicate with the approving DHS office.

9 FAM 42.42 PN3 DETERMINING DERIVATIVE STATUS WHEN PRINCIPAL ADJUSTS

(CT:VISA-1363; 10-28-2009)

- a. When the principal alien in a preference status who acquires permanent resident status by adjustment under INA 245 indicates that he or she has family who will follow-to-join, DHS generally sends the Form I-895, Attestation of Alien and Memorandum of Creation of Record of Lawful Permanent Residence, to the consular office at the time of the principal alien's adjustment. If, however, the Form I-895 has not been received, and the consular officer cannot determine that the principal alien's date of admission was prior to the cut-off date for the numerical limitation applicable to the spouse or child, the consular officer must seek verification of the principal alien's admission to the United States from DHS directly to accord the family derivative status under INA 203(d).
- b. See 9 FAM 40.41 N5.5 for the Form I-864, Affidavit of Support Under Section 213A of the Act, requirement in such cases.

9 FAM 42.42 PN3.1 Post Records

(CT:VISA-1363; 10-28-2009)

- a. In some instances, the post will have processed the principal alien's visa and will indicate the:
- (1) Visa classification;
 - (2) Date of visa issuance;

- (3) Chargeability; and
 - (4) Priority date.
- b. Based on this record, post can easily verify and process the family member's visa applications. Posts are reminded per 9 FAM 42.62 PN3.3, that National Crime Information Center (NCIC) checks which are over one year may no longer be valid. If post knows or has reason to believe an applicant has been in the United States during the preceding year, post should request a new NCIC clearance via VISAS HAWK request. If the applicant has not traveled to the United States during that time, a new NCIC clearance is not necessary.

9 FAM 42.42 PN3.2 Form I-551, Permanent Resident Card

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

Apart from a complete file at post, the principal alien's Form I-551, Permanent Resident Card, is probably the best evidence of lawful permanent resident status. The Form I-551 indicates the visa category and date of entry into the United States. Posts are advised, however, that a resident alien does not receive a Form I-551 immediately. The demand on the Department of Homeland Security (DHS) card facilities to produce an increasing variety and number of cards has significantly increased the waiting period for the Permanent Resident Cards. The wait for a card can be up to a year, and, in some cases, even longer. Posts are, therefore, cautioned not to require the Form I-551 as a prerequisite for all following-to-join cases.

9 FAM 42.42 PN3.3 Alien Documentation and Identification System (ADIT) Stamps

(CT:VISA-1412; 03-29-2010)

- a. When an immigrant enters the United States, DHS endorses his or her passport with an ADIT stamp. The ADIT stamp shows the:
 - (1) Date of entry into the United States;
 - (2) Visa category; and
 - (3) Employment authorization.
- b. This is the only evidence that the resident alien will carry until the Form I-551, Permanent Resident Card, is received. ADIT stamps have, however, proven to be highly susceptible to fraud and thus should be cautiously accepted as primary evidence of following-to-join status. However, an ADIT stamp can be a very useful secondary evidence;

indicating that the individual may have a claim to derivative status and/or as a source of necessary data that may be missing from a file.

9 FAM 42.42 PN3.4 Form I-824, Application for Action on an Approved Application or Petition

(TL:VISA-563; 08-01-2003)

Legal residents who obtained status by adjustment of status in the United States, can request that Department of Homeland Security (DHS) send the Form I-824, Application for Action on an Approved Application or Petition, to post as verification of their status. The Form I-824 provides the information necessary to process a following-to-join case. At the legal resident's request, DHS will sometimes send a cable to post verifying the principal alien's resident status.

9 FAM 42.42 PN4 SELF-PETITIONING FOR BATTERED SPOUSES AND CHILDREN

(TL:VISA-563; 08-01-2003)

A self-petition cannot be filed or accepted at a U.S. embassy or consulate abroad. A self-petition also cannot be filed at a DHS Service office abroad; it must be filed at the DHS Vermont Service Center. The Vermont Service Center has been designated to handle all petitions filed by self-petitioning battered aliens. The Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, should be mailed to:

DHS Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479-0001
ATTN: Family Service Product Line (VAWA)

9 FAM 42.42 PN5 APPLICANTS QUALIFYING UNDER SECTION 424 OF THE USA PATRIOT ACT

(CT:VISA-846; 11-01-2006)

In all cases in which an applicant qualifies under Section 424 of the USA Patriot Act for visa validity for 45 days beyond the applicant's 21st birthday, the visa should be issued for the additional 45 days. Posts must override the age 21 cutoff date in the Immigrant Visa (IV) software in order to apply the extra days.