

## 9 FAM 42.43 PROCEDURAL NOTES

(CT:VISA-1245; 07-14-2009)  
(Office of Origin: CA/VO/L/R)

### 9 FAM 42.43 PN1 RETURNING PETITIONS FOR POSSIBLE REVOCATION

(CT:VISA-1245; 07-14-2009)

- a. If U.S. Citizenship & Immigration Services (USCIS) requests the return of a visa petition, or if you know or have reason to believe, that the alien beneficiary of an approved petition is not entitled to the accorded status, you will return the petition to USCIS through the National Visa Center (NVC). (See 9 FAM 42.43 N3.) No petition revocation requests should be sent directly to USCIS in the United States. All cases that are *immigrant visa (IV)*, and K, V, asylee and refugee petitions being returned for revocation should be sent to NVC for processing.

The only exception to this will be that when Form I-130, Petition for Alien Relative filed and approved overseas, or found "not clearly approvable" by you, will be sent directly to the appropriate overseas USCIS regional office. That office will make the determination on the request. Do not send petitions initially filed at posts abroad to NVC. (See 9 FAM 42.41 N4.2-3 *paragraph* d, 9 FAM Appendix N 201 *paragraph* c and 9 FAM Appendix N 205.)

The original petition, along with all supporting documents, will be returned along with Form DS-3096, IV Petition Revocation Request Cover Sheet - National Visa Center, and a memorandum supporting the recommendation for revocation. The report must be comprehensive, clearly showing factual and concrete reasons for revocation. The report must be well reasoned and analytical rather than conclusory. Observations made by you cannot be conclusive, speculative, equivocal or irrelevant.

- b. When returning petitions for revocation, include as much information as possible. Provide documentation, including relevant translations, memoranda of interviews, etc. USCIS must have the back-up documentation; just saying something is so will not meet the evidentiary standards required of USCIS to permit or sustain a revocation. If a case is being returned because the petitioner and applicant failed a Deoxyribonucleic Acid (DNA) test, be sure to include the DNA test results.

When possible, take sworn statements, especially when an applicant and/or petitioner admits during the interview that the primary purpose of the relationship is to circumvent U.S. immigration laws. Signed statements are of greater value than second hand reports. When a statement is prepared in English by a non-native English speaker, it should be proofread carefully. Posts can consult with CA/VO/L/A on cases where there are questions or concerns over the sufficiency of evidence cited in the memo supporting a petition return.

- c. If returning a petition for revocation based on a local custom/law or religious doctrine, be sure to include documentation of the custom/law/doctrine together with an English translation. For example, if you are returning a petition because a religious text that states a woman must wait a certain period of time after divorcing in order to remarry, include a copy of the relevant passage for the USCIS adjudicator to review. In most cases, USCIS will not have the ability to look up local customs/laws or religious doctrines, so it is important for posts to provide as much information as possible.
- d. When post determines that a petition should be returned with a request for revocation, the procedures set out in the revocation guide available on the CA/FPP Web site should be followed. Additional assistance in writing revocation memoranda can be found on the Consular Affairs Intranet site, *which has* sample revocation letters for a variety of petition types. There are sample letters cleared by CA/VO/L/A that should be given to beneficiaries when a petition is being returned for possible revocation. These can be requested from NVC.

## **9 FAM 42.43 PN2 PETITIONS TERMINATED UNDER INA 203(G)**

### **9 FAM 42.43 PN2.1 Post Action**

*(CT:VISA-873; 03-23-2007)*

When a registration is terminated under INA 203(g) posts shall take the following action:

- (1) Send the applicant Final Notice of Cancellation of Registration, under Section 203(g). (See 9 FAM 42.83 Related Statutory Provisions and 9 FAM 42.83 Notes);
- (2) Destroy the petition; and
- (3) Send a memorandum to NVC advising them of the destruction of the petition.

## **9 FAM 42.43 PN2.2 National Visa Center Action**

*(CT:VISA-873; 03-23-2007)*

Upon notification of the termination of registration and the destruction of the visa petition, NVC shall make a record of the following information:

- (1) The Alien's name;
- (2) The Alien's date and place of birth;
- (3) The Alien's priority date; and
- (4) The date of termination of the petition.

This information shall be made available to USCIS prior to granting of requests for old priority dates.

## **9 FAM 42.43 PN3 DISCLOSING INFORMATION FROM VISA FILES TO U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) IN PETITION REVOCATION CASES**

*(CT:VISA-873; 03-23-2007)*

- a. Because petitioners have a right to know why their petitions are denied, or approval is being revoked, all information provided to USCIS in revocation proceedings which is not classified is subject to release by USCIS. In this regard, information coming from sources which the post feels should be held confidential and not released to the petitioner should be presented to USCIS in a form which protects the identity of the source. All classified information should be clearly identified as classified and not releasable to prevent accidental release by USCIS.
- b. As the final statutory responsibility for evaluating the factual evidence and drawing legal conclusions rests with USCIS, posts should take care to present the factual record developed pertaining to the provability of the petition and avoid unnecessary evaluative or conclusive comments and the inclusion of information not directly relevant to the issue. Posts should also refrain from including derogatory characterizations and emotionally charged or imprecise phrases in reports to USCIS. These remarks have little evidentiary value, and may prove embarrassing when they end up in the hands of the petitioner. (For release of information directly by you, to the petitioner see 9 FAM 40.4 Related Statutory Provisions and 9 FAM 40.4 Notes.)

## **9 FAM 42.43 PN4 PREPARING INVESTIGATION REQUESTS**

*(CT:VISA-897; 06-19-2007)*

It is essential in preparing this type of case to specify exactly what aspects of the case should be pursued in the United States. For USCIS to make a case for revocation, they must have all the facts developed overseas as well as those facts developed in the course of their investigation. You should carefully set forth all the facts that can reasonably be developed to be included in the memo requesting the investigation. You should include the originals of all documents that have a bearing on the case as evidence.

## **9 FAM 42.43 PN5 RECEIVING REQUESTS FROM PETITIONER, APPLICANT OR REPRESENTATIVE**

*(CT:VISA-873; 03-23-2007)*

If post receives a request from the petitioner, applicant, or attorney/representative on the status of a petition that has been returned to USCIS for revocation, post should refer the requestor to the USCIS office that adjudicated the petition, not to NVC. Petitions sent to NVC are only retained for a short time before they are sent to USCIS. It may be helpful for post to remember that processing and investigations at NVC are internal and non-adjudicatory, meaning that NVC's results and conclusions are advisory only for posts and USCIS but have no legal effect. Therefore, it is important that petitioners, applicants, and attorney/representatives not be referred to NVC.