

## **9 FAM 42.74 ISSUANCE OF NEW OR REPLACEMENT VISAS**

*(CT:VISA-1719; 09-29-2011)  
(Office of Origin: CA/VO/L/R)*

### **9 FAM 42.74 RELATED STATUTORY PROVISION**

*(CT:VISA-1719; 09-29-2011)*

See INA 105(b) (8 U.S.C. 1105(b)), INA 206 (8 U.S.C. 1156), INA 221(c) (8 U.S.C. 1201(c)), INA 222b (8 U.S.C. 1202(b)).

#### **INA 105(b)**

- (1) The Attorney General and the Director of the Federal Bureau of Investigation shall provide the Department of State and the Service access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index (NCIC-III), Wanted Persons File, and to any other files maintained by the National Crime Information Center that may be mutually agreed upon by the Attorney General and the agency receiving the access, for the purpose of determining whether *or* not a visa applicant or applicant for admission has a criminal history record indexed in any such file.

#### **INA 206**

If an immigrant having an immigrant visa is denied admission to the United States and removed, or does not apply for admission before the expiration of the validity of his visa, or if an alien having an immigrant visa issued to him as a preference immigrant is found not to be a preference immigrant, an immigrant visa or a preference immigrant visa, as the case may be, may be issued in lieu thereof to another qualified alien.

#### **INA 221(c)**

- c. An immigrant visa shall be valid for such period, not exceeding six months, as shall be by regulations prescribed, except that any visa issued to a child lawfully adopted by a United States citizen and spouse while

such citizen is serving abroad in the United States Armed Forces, or is employed abroad by the United States Government, or is temporarily abroad on business, shall be valid until such time, for a period not to exceed three years, as the adoptive citizen parent returns to the United States in due course of his service, employment, or business. A nonimmigrant visa shall be valid for such periods as shall be by regulations prescribed. In prescribing the period of validity of a nonimmigrant visa in the case of nationals of any foreign country who are eligible for such visas, the Secretary of State shall, insofar as practicable, accord to such nationals the same treatment upon a reciprocal basis as such foreign country accords to nationals of the United States who are within a similar class; except that in the case of aliens who are nationals of a foreign country and who either are granted refugee status and firmly resettled in another foreign country or are granted permanent residence and residing in another foreign country, the Secretary of State may prescribe the period of validity of such a visa based upon the treatment granted by that other foreign country to alien refugees and permanent residents, respectively, in the United States. An immigrant visa may be replaced under the original number during the fiscal year in which the original visa was issued for an immigrant who establishes to the satisfaction of the consular officer that he was unable to use the original immigrant visa during the period of its validity because of reasons beyond his control and for which he was not responsible: Provided, That the immigrant is found by the consular officer to be eligible for an immigrant visa and the immigrant pays again the statutory fees for an application and an immigrant visa.

### **INA 222(b)**

- b. Every alien applying for an immigrant visa shall present a valid unexpired passport or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Secretary of State. The immigrant shall furnish to the consular officer with his application a copy of a certification by the appropriate police authorities stating what their records show concerning the immigrant; a certified copy of any existing prison record, military record, and record of his birth; and a certified copy of all other records or documents concerning him or his case which may be required by the consular officer. The copy of each document so furnished shall be permanently attached to the application and become a part thereof. In the event that the immigrant establishes to the satisfaction of the consular officer that any document or record required by this subsection is unobtainable, the consular officer may permit the immigrant to submit in lieu of such document or record other satisfactory evidence of the fact to which such document or record would, if obtainable, pertain. All immigrant visa

applications shall be reviewed and adjudicated by a consular officer.

## **9 FAM 42.74 RELATED REGULATORY PROVISION**

*(CT:VISA-1719; 09-29-2011)*

### **22 CFR 42.74, Issuance of New or Replacement Visas.**

#### **(a) New immigrant visa for a special immigrant under INA 101(a)(27)(A) and (B).**

- (1) *The consular officer may issue a new immigrant visa to a qualified alien entitled to status under INA 101(a)(27)(A) or (B), who establishes:*
  - (i) *That the original visa has been lost, mutilated or has expired, or*
  - (ii) *The alien will be unable to use it during the period of its validity;*
- (2) *Provided:*
  - (i) *The alien pays anew the application processing fees prescribed in the Schedule of Fees; and*
  - (ii) *The consular officer ascertains whether the original issuing office knows of any reason why a new visa should not be issued.*

#### **(b) Replacement immigrant visa for an immediate relative or for an alien subject to numerical limitation.**

- (1) *A consular officer may issue a replacement visa under the original number of a qualified alien entitled to status as an immediate relative (INA 201(b)(2)), a family or employment preference immigrant (INA 203(a) or (b)), or a diversity immigrant (INA 203(c)), if—*
  - (i) *The alien is unable to use the visa during the period of its validity due to reasons beyond the alien's control;*
  - (ii) *The visa is issued during the same fiscal year in which the original visa was issued, or in the following year, in the case of an immediate relative only, if the original number had been*

*reported as recaptured;*

- (iii) The number has not been returned to the Department as a "recaptured visa number" in the case of a preference or diversity immigrant;*
  - (iv) The alien pays anew the application and processing fees prescribed in the Schedule of Fees; and*
  - (v) The consular officer ascertains whether the original issuing office knows of any reason why a new visa should not be issued.*
- (2) In issuing a visa under this paragraph (b), the consular officer shall insert the word "REPLACE" on Form OF-155B, Immigrant Visa and Alien Registration, before the word "IMMIGRANT" in the title of the visa.*
- (c) **Duplicate visas issued within the validity period of the original visa.** If the validity of a visa previously issued has not yet terminated and the original visa has been lost or mutilated, a duplicate visa may be issued containing all of the information appearing on the original visa, including the original issuance and expiration dates. The applicant shall execute a new application and provide copies of the supporting documents submitted in support of the original application. The alien must pay anew the application processing fees prescribed in the Schedule of Fees. In issuing a visa under this paragraph, the consular officer shall insert the word "DUPLICATE" on Form OF-155B before the word "IMMIGRANT" in the title of the visa.*