

(2) *Entitlement to derivative status.* Pursuant to INA 203(d), and whether or not named in the petition, the spouse or child of an employment-based fifth preference immigrant, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

[56 FR 49676, Oct. 1, 1991, as amended at 56 FR 51172, Oct. 10, 1991; 56 FR 55077, Oct. 24, 1991; 60 FR 35839, July 12, 1995; 63 FR 4394, Jan. 29, 1998; 63 FR 68393, Dec. 11, 1998]

§ 42.33 Diversity immigrants.

(a) *General*—(1) *Eligibility to compete for consideration under section 203(c).* An alien shall be eligible to compete for consideration for visa issuance under INA 203(c) during a fiscal year only if he or she is a native of a low-admission foreign state, as determined by the Attorney General pursuant to INA 203(c)(1)(E)(i), with respect to the fiscal year in question; and if he or she has at least a high school education or its equivalent or, within the five years preceding the date of application for a visa, has two years of work experience in an occupation requiring at least two years training or experience.

(2) *Definition of high school education or its equivalent.* For the purposes of this section, the phrase *high school education or its equivalent* shall mean successful completion of a twelve-year course of elementary and secondary education in the United States or successful completion in another country of a formal course of elementary and secondary education comparable to completion of twelve years' elementary and secondary education in the United States.

(3) *Determinations of work experience.* The most recent edition of the Dictionary of Occupational Titles published by the Employment and Training Administration, United States Department of Labor, shall be controlling in determining whether a particular occupation is one "which requires at least 2 years of training or experience" as provided in INA 203(c)(2).

(4) *Limitation on number of petitions per year.* No more than one petition may be submitted by, or on behalf of,

any alien for consideration during any single fiscal year. If two or more petitions for any single fiscal year are submitted by, or on behalf of, any alien, all such petitions shall be void and the alien by or for whom submitted shall not be eligible for consideration for visa issuance during the fiscal year in question.

(5) *Northern Ireland.* For purposes of determining eligibility to file a petition for consideration under INA 203(c) for a fiscal year, the districts comprising that portion of the United Kingdom of Great Britain and Northern Ireland, known as "Northern Ireland", shall be treated as a separate foreign state. The districts comprising "Northern Ireland" are Antrim, Ards, Armagh, Ballymena, Ballymoney, Banbridge, Belfast, Carrickfergus, Castlereagh, Coleraine, Cookstown, Craigavon, Down, Dungannon, Fermanagh, Larne, Limavady, Lisburn, Londonderry, Magherafelt, Moyle, Newry and Mourne, Newtownabbey, North Down, Omagh, and Strabane.

(b) *Petition for consideration*—(1) *Form of petition.* An alien claiming to be entitled to compete for consideration under INA 203(c) shall file a petition for such consideration. The petition shall consist of a sheet of paper on which shall be typed or legibly printed in the Roman alphabet the petitioner's name; date and place of birth (including city and country, province or other political subdivision of the country); the country of which the alien claims to be a native, if other than the country of birth; name[s] and date[s] and place[s] of birth of spouse and child[ren], if any; a current mailing address; and location of consular office nearest to current residence or, if in the United States, nearest to last foreign residence prior to entry into the United States. The alien shall sign his or her signature on the sheet of paper, using his or her usual signature. The alien shall also affix to the sheet of paper a recent photograph of himself or herself. The photograph shall be 1½ inches square (37mm × 37mm) and the alien shall clearly print his or her name in the Roman alphabet on the reverse of the photograph before affixing the photograph to the sheet of paper.

(2) *Submission of petition*—(i) *General*. A petition for consideration for visa issuance under INA 203(c) shall be submitted by mail to the address designated by the Department for that purpose. The Department shall establish a period of not less than thirty days during each fiscal year during which petitions for consideration during the next following fiscal year may be submitted. Each fiscal year, the Department shall give timely notice of both the mailing address and the exact dates of the application period, through publication in the FEDERAL REGISTER and such other methods as will ensure the widest possible dissemination of the information, both abroad and within the United States.

(ii) *Form of mailing*. Petitions for consideration under this section shall be submitted by normal surface or air mail only. Petitions submitted by hand, telegram, FAX, or by any means requiring any form of special handling or acknowledgement of receipt will not be given consideration. The petitioner shall type or print legibly, using the Roman alphabet, on the upper left-hand corner of the envelope in which the petition is mailed his or her full name and mailing address, and the name of the country of which the petitioner is a native, as shown on the petition itself. Envelopes shall be between 6 and 10 inches (15 cm to 25 cm) in length and between 3 and one-half and 4 and one-half inches (9 cm to 11 cm) in width. Envelopes not bearing this information and/or not conforming to the restrictions as to size shall not be processed for consideration.

(c) *Processing of petitions*. Envelopes received at the mailing address during the application period established for the fiscal year in question and meeting the requirements of subsection (b) shall be assigned a number in a separate numerical sequence established for each regional area specified in INA 203(c)(1)(F). Upon completion of the numbering of all envelopes, all numbers assigned for each region shall be separately rank-ordered at random by a computer using standard computer software for this purpose. The Department shall then select in the rank orders determined by the computer program a quantity of envelopes for each

region estimated to be sufficient to ensure, to the extent possible, usage of all immigrant visas authorized under INA 203(c) for the fiscal year in question.

(d) *Approval of petitions*. Envelopes selected pursuant to paragraph (c) of this section shall be opened and reviewed. Petitions which are legible and contain the information specified in paragraph (b) of this section shall be approved for further consideration.

(e) *Validity of approved petitions*. A petition approved pursuant to paragraph (d) of this section shall be valid for a period not to exceed Midnight of the last day of the fiscal year for which the petition was submitted.

(f) *Order of consideration*. Further consideration for visa issuance of aliens whose petitions have been approved pursuant to paragraph (d) of this section shall be in the regional rank orders established pursuant to paragraph (c) of this section.

(g) *Further processing*. The Department shall inform applicants whose petitions have been approved pursuant to paragraph (d) of this section of the steps necessary to meet the requirements of INA 222(b) in order to apply formally for an immigrant visa.

(h) *Maintenance of information concerning petitioners who are visa recipients*. (1) The Department shall compile and maintain the following information concerning petitioners to whom immigrant visas are issued under INA 203(c):

- (i) age;
- (ii) country of birth;
- (iii) marital status;
- (iv) sex;
- (v) level of education; and
- (vi) occupation and level of occupational qualification.

(2) Names of visa recipients shall not be maintained in connection with this information and the information shall be compiled and maintained in such form that the identity of visa recipients cannot be determined therefrom.

(i) *Processing fee*. In addition to collecting the immigrant visa application and, if applicable, issuance fees, as provided in § 42.71(b) of this part, the consular officer shall also collect from each applicant for a visa under the Diversity Immigrant Visa Program such

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processing fee as the Secretary of State shall prescribe.

[59 FR 15301, Mar. 31, 1994; as amended at 61 FR 1524, Jan. 22, 1996]

Subpart E—Petitions

§ 42.41 Effect of approved petition.

Consular officers are authorized to grant to an alien the immediate relative or preference status accorded in a petition approved in the alien's behalf upon receipt of the approved petition or official notification of its approval. The status shall be granted for the period authorized by law or regulation. The approval of a petition does not relieve the alien of the burden of establishing to the satisfaction of the consular officer that the alien is eligible in all respects to receive a visa.

[56 FR 49682, Oct. 1, 1991]

§ 42.42 Petitions for immediate relative or preference status.

Petition for immediate relative or preference status. The consular officer may not issue a visa to an alien as an immediate relative entitled to status under 201(b), a family-sponsored immigrant entitled to preference status under 203(a)(1)–(4), or an employment-based preference immigrant entitled to status under INA 203(b)(1)–(5), unless the officer has received a petition filed and approved in accordance with INA 204 or official notification of such filing and approval.

[56 FR 49682, Oct. 1, 1991]

§ 42.43 Suspension or termination of action in petition cases.

(a) *Suspension of action.* The consular officer shall suspend action in a petition case and return the petition, with a report of the facts, for reconsideration by INS if the petitioner requests suspension of action, or if the officer knows or has reason to believe that approval of the petition was obtained by fraud, misrepresentation, or other unlawful means, or that the beneficiary is not entitled, for some other reason, to the status approved.

(b) *Termination of action.* (1) The consular officer shall terminate action in a petition case upon receipt from INS

of notice of revocation of the petition in accordance with INS regulations.

(2) The consular officer shall terminate action in a petition case subject to the provisions of INA 203(g) in accordance with the provisions of § 42.83.

[56 FR 49682, Oct. 1, 1991]

Subpart F—Numerical Controls and Priority Dates

SOURCE: 56 FR 51174, Oct. 10, 1991, unless otherwise noted.

§ 42.51 Department control of numerical limitations.

(a) *Centralized control.* Centralized control of the numerical limitations on immigration specified in INA 201, 202, and 203 is established in the Department. The Department shall limit the number of immigrant visas that may be issued and the number of adjustments of status that may be granted to aliens subject to these numerical limitations to a number:

(1) Not to exceed 27 percent of the world-wide total made available under INA 203 (a), (b) and (c) in any of the first three quarters of any fiscal year; and

(2) Not to exceed, in any month of a fiscal year, 10% of the world-wide total made available under INA 203 (a), (b) and (c) plus any balance remaining from authorizations for preceding months in the same fiscal year.

(b) *Allocation of numbers.* Within the foregoing limitations, the Department shall allocate immigrant visa numbers for use in connection with the issuance of immigrant visas and adjustments based on the chronological order of the priority dates of visa applicants classified under INA 203 (a) and (b) reported by consular officers pursuant to § 42.55(b) and of applicants for adjustment of status as reported by officers of the INS, taking into account the requirements of INA 202(e) in such allocations. In the case of applicants under INA 203(c), visa numbers shall be allocated within the limitation for each specified geographical region in the random order determined in accordance with sec. 42.33(c) of this part.

(c) *Recaptured visa numbers.* An immigrant visa number shall be returned to