

## CHAPTER 4

# CONSULAR PROCESSING

### Overview

Applicants for a family-based immigrant visa will apply at a U.S. consulate if they are residing abroad or are ineligible for or elect not to adjust status in this country.<sup>1</sup> This process is controlled mostly by the Department of State (DOS) and is performed by the National Visa Center (NVC) and the immigrant visa sections at U.S. consulates.<sup>2</sup> Applicants in the United States who are eligible to adjust status under Immigration and Nationality Act (INA) §245(a), (c), or (i) usually elect to do so rather than suffer the inconveniences and uncertainties of consular processing. In addition to the added time and expense, leaving the United States may trigger certain bars to re-entry.<sup>3</sup> However, many intending immigrants in the United States are ineligible to adjust status and will need to consular process. The grounds of inadmissibility and possible waivers are set forth in chapters 6 and 7. This chapter will describe the process of applying for the immigrant visa at U.S. consulates.

If the U.S. citizen or lawful permanent resident (LPR) relative is residing in the United States, he or she first will petition for the alien relative by filing an I-130 petition with U.S. Citizenship and Immigration Services (USCIS). If the petitioner is residing abroad, he or she will likely be filing the I-130 petition at the nearest U.S. consulate or USCIS overseas office.<sup>4</sup> The I-130 petition process is set forth in chapter 2. After the I-130 is approved, notice is sent to the petitioner and the approved petition is forwarded to the NVC. Once the visa is “current” (or available), the NVC processing office sends out an initial set of instructions informing the beneficiary listed on the I-130—now the applicant for the immigrant visa—that he or she may begin the consular processing stage. The initial instructions include fee bills that inform the applicant that certain fees must be paid in order to continue the processing of the case. Once the necessary fees are paid, the applicant is instructed to complete the appropriate forms and gather the necessary documents. Once the required forms are completed and submitted, the file is forwarded to the post, and, in most cases, the NVC will schedule the visa interview. This process is explained in greater detail below.

### National Visa Center

After USCIS approves the I-130 petition and sends an approval notice to the petitioner, it forwards the approved petition to the NVC if the parties have indicated that

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<sup>1</sup> INA §§221, 245.

<sup>2</sup> INA §§104(a), 202(a)(1)(B).

<sup>3</sup> INA §212(a)(9)(B).

<sup>4</sup> 8 CFR §204.1(e)(2).

they will be consular processing. The NVC is responsible for centralizing the next processing stage. It advises the intending immigrant on when the priority date is current,<sup>5</sup> the fees that need to be paid, the documents that will be needed, and the process of obtaining the immigrant visa through the consulate. For all consular posts, the NVC requests and reviews the required forms and documents from the applicant and, except for some interviews at the post in Guangzhou, China, schedules the visa appointment. After this initial processing is complete, the NVC forwards the approved I-130 and the completed forms and documents to the appropriate consulate.

The intending immigrant will apply for an immigrant visa at one of the following U.S. consulates: (1) the consulate in the country where the alien is residing or last resided; (2) the consulate in the country where the alien is physically located and intends to remain throughout the processing; (3) any other consulate that will accept jurisdiction of the case if the alien is currently residing in the United States and establishes hardship if forced to return to the country of last residence.<sup>6</sup> In the last situation, hardship can be civil unrest or war, but cannot be simply economic factors. Applicants residing in a country with which the United States does not maintain diplomatic relations, or in which the consular section is closed due to unstable or insecure conditions in the country, are called “homeless” visa applicants.<sup>7</sup> These applicants will process at a consulate designated by DOS.<sup>8</sup>

If the applicant is in a preference category that is not current, the NVC stores the approved I-130 petition and sends the intending immigrant a letter informing him or her that it will send further documents once the priority date becomes current and there is a visa immediately available. Once a visa is available— either because the beneficiary on the I-130 is an immediate relative or because the preference category is close to current—the NVC sends notification of the next step in the process.<sup>9</sup> Notices are generally sent by regular mail unless NVC has an e-mail address on file, then standard processing correspondence can be sent via e-mail to the petitioner, beneficiary and representative.

The NVC sends instructions on paying the required immigrant visa and affidavit of support fees. The NVC payment correspondence explains the payment options and includes the Affidavit of Support (I-864) Fee Bill Invoice and Immigrant Visa Application Processing Fee Bill Invoice. The letter and fee bills will be sent to the attorney or accredited representative who assisted in filing the I-130 and who submitted a Form G-28. If no G-28 was filed or if the petitioner filed the I-130 pro se, the NVC informs the beneficiary to complete a Form DS-261, Online Choice of Agent and Address, and

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<sup>5</sup> 9 *Foreign Affairs Manual* (FAM) 42.52 N3.5.

<sup>6</sup> 22 CFR §42.61.

<sup>7</sup> 9 FAM 42.61 N3.2-1.

<sup>8</sup> 9 FAM 42.61 N3.2-4.

<sup>9</sup> 9 FAM 42.52 N3.3.

sends the petitioner the Affidavit of Support Fee Bill Invoice. The DS-261 requires the intending immigrant to appoint an agent or attorney who will receive further communications from the NVC or consulate, or to indicate that correspondence be sent to the intending immigrant. Once the DS-261 is completed, NVC sends out the Immigrant Visa Fee Bill to the intending immigrant or designated agent.

The immigrant visa and affidavit of support fees can be paid electronically from a checking or savings account held at a U.S. financial institution. Payers who choose to pay online are instructed to go online to the Consular Electronic Application Center (CEAC) Immigrant Visa Invoice Payment Center and follow the fee collection instructions. In order to pay online, the payer will need the immigrant visa case number and the invoice identification number found on the NVC payment letter. The payer will also need his or her bank's routing number and checking or savings account number. Two or three days following payment online, payers are instructed to return to the DOS website to view the payment receipt and print a cover page for each fee paid. The cover page(s) must then be sent to the NVC with the required forms and other requested documentation.

The fees can also be paid by cashier's check or money order sent to a NVC post office box in St. Louis. All of the fee bills contain a unique barcode, and fees paid by cashier's check or money order must be accompanied by the original fee bill invoice. Currently, the fee for the affidavit of support processing is \$88 and the immigrant visa fee is \$230. Sample fee bills are included as appendix 4A.

### **Immigrant Visa Application**

After the necessary fees have been paid, all applicants must complete and submit the DS-260, Online Immigrant Visa and Alien Registration Application. The form is completed and submitted through the CEAC website. To access the form the applicant or preparer must input the NVC case number and invoice I.D. number. All of the information entered online is accessible by the NVC and consular posts and the applicant is not required to submit a paper version to the NVC or bring a copy to the visa interview. The DS-260 requests standard biographical data on the visa applicant. The form includes questions on the applicant's spouse, parents, children, places the applicant has lived for at least six months since the age of 16, previous travel to the United States, previous employment, and educational institutions attended. The form also asks questions related to the applicant's admissibility to the U.S. and whether the applicant has ever been refused admission to the United States. It is important to note that the questions asking for dates of residence in or visits to the United States may reveal periods of "unlawful presence," which could trigger the three- or ten-year bars to admissibility.

Prior to the mandatory use of the DS-260 for processing at all posts, most applicants downloaded and completed the Form DS-230, Application for Immi-

grant Visa and submitted it to the NVC. The applicant completed part I and part II<sup>10</sup> of the form but signed only part I, since part II had to be signed at the time of the consular interview. With the DS-260, once all of the fields are completed, the applicant submits the form by clicking on the "Sign and Submit Application" button. At the time of the interview, the applicant will be required to swear under oath that the information entered into the form is true and correct and will provide a biometric signature.

The petitioner must complete and submit the I-864, Affidavit of Support and supporting documentation to the NVC for a technical review. The NVC will review the I-864 for completeness and may send a notice to the representative or agent if there are any deficiencies on the form or in the documentation. This notice will include a list of the missing documents and/or instructions on correcting the form. Detailed information on completing the affidavit of support is set forth in chapter 8.

### **Required Documentation**

The intending immigrant is required to send original or certified copies of civil documents and police certificates (unless the applicant is from a country where those are not available) to the NVC for prescreening.<sup>11</sup> In addition to requesting that the applicant send the original documents or certified copies, the NVC requests that the applicant also submit a photocopy of the original or certified copies. It is important to return these documents with the original NVC document cover sheet that contains the case number and bar code. The only exception to submitting the original or certified copies is if the applicant is processing through a post that allows or requires electronic processing. For those select posts, original documents are scanned and e-mailed to NVC. The electronic processing program is discussed in more detail below. Documents not in English or in the native language of the jurisdiction where the consular post is located must be translated into English. The translations should bear a certificate of accuracy in which the translator swears that he or she is familiar with both languages, has translated the document into English, and that it is a true and complete translation. The documents that are required include the following:

- a photocopy of the biographic data page of the applicant's valid, unexpired passport;<sup>12</sup>
- original or certified copy of applicant's birth certificate;
- original or certified copy of marriage certificate;
- evidence of the termination of each prior marriage, such as a final divorce decree, death certificate, or annulment papers;

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<sup>10</sup> 22 CFR §42.63.

<sup>11</sup> 22 CFR §42.65(b).

<sup>12</sup> The original passport should not be sent to the NVC.

- if the applicant has served in the military forces of any country, a copy of his or her military record;
- if the applicant has been convicted of a crime, a certified copy of each court disposition;
- if the applicant is age 16 or older, he or she must submit a police certificate, if available, from that country.

Primary documentation, such as of birth or marriage, would be a certificate from a government agency that maintains official records. If such a document is unavailable in the issuing country, the applicant is allowed to submit secondary evidence, which may consist of such documents as baptismal or other church records.<sup>13</sup> If these are also unavailable, then an affidavit from a person who has personal knowledge of the event in question may be accepted. For more information on acceptable documents, see 8 CFR §204.1(g). For information on the availability of documents in foreign countries, see DOS's *Foreign Affairs Manual* (FAM) at 9 FAM, appendix C.

Additionally, each applicant must submit two front-view color photographs with a white background measuring two inches by two inches in size.

### **Electronic Processing Program**

The NVC has established a program for the electronic submission of documents when processing at a few specific consular posts. Under this program, the required civil documents and supporting documents must be converted to PDF files and then e-mailed to the NVC. Also, the I-864 is downloaded, completed, signed, scanned, saved as a PDF file and e-mailed to the NVC. For these select posts, it is not required to mail the forms, civil documents, and other supporting documents to the NVC, but the applicant must be prepared to present the original physical documents at the time of the visa interview.

Currently, all immigrant visa applicants processing at the consular post in Amman, Jordan; Ashgabat, Turkmenistan; Damascus, Syria and Sana'a, Yemen, are required to submit their forms and documents electronically under the electronic processing program. Some special immigrants processing at the U.S. Embassy in Kabul, Afghanistan also process under this program. Applicants processing at the consulate in Ciudad Juarez, Mexico who are immigrating as the spouse or child of a U.S. citizen (i.e., in the IR-1, IR-2, CR-1 or CR-2 categories), are also required to follow the instructions for electronic processing. These applicants will have MEP as the first three letters of their NVC case number for "Mexico Electronic Processing." Additionally, applicants processing in Guangzhou, China and Montreal, Canada have the option to either process electronically or submit their forms and documents physically by mail.

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<sup>13</sup> 22 CFR §42.65(d).

## **Appointment Letter for Immigrant Visa Applicants**

Approximately four to six weeks before the scheduled immigrant visa interview, the applicant will receive an appointment letter that contains the date, time, and location of the visa interview.<sup>14</sup> This letter will be issued by the NVC, unless the applicant is processing by mail through Guangzhou, China. The appointment letter again instructs applicants to visit the DOS website for interview preparation instructions and to review consulate specific instructions. A sample appointment letter is included as part of appendix 4D.

The website provides information to the visa applicant on preparing for the medical examination and reminds the applicant of all the necessary original documents that must be available at the time of the interview. Additionally, applicants are provided with a number of important notices about the visa interview process. These notices advise the applicant that:

- Failure to bring a copy of the appointment letter to the interview may delay the interview.
- He or she should not make any travel arrangements or give up employment or property prior to issuance of the visa.
- It is possible that the applicant will have to spend several hours at the consulate before a decision is made on the application. Should complications arise, the applicant may not receive a visa on the day of the appointment and may have to return to the consulate at a later date.
- No assurances can be given in advance that a visa will be issued.

In addition to the general notices provided on the website, applicants are advised to look at specific instructions provided by the individual consulate to determine if there are other requirements or documents needed.

Once the NVC has completed the administrative processing and scheduled the visa interview, it will send the case file along with electronic data to the appropriate U.S. consulate abroad.

For information on the status of a case still pending at the NVC, one may call the automated voice center at (603) 334-0700. Telephone operators are available to answer questions Monday through Friday from 7:00 a.m. to midnight (Eastern). The mailing address is 31 Rochester Avenue, Suite 200, Portsmouth, NH 03801-2915. Representatives with a G-28 on file also can inquire about a client's case via e-mail at *nvcattorney@state.gov*. The inquiry should be limited to one case per e-mail and should contain the NVC case number as the subject heading of the e-mail. The inquiry also should contain the petitioner's and beneficiary's name, date of birth, and country of chargeability, the representative's full name, and the agency or firm name and address.

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<sup>14</sup> 22 CFR §42.62(b).

## The Medical Examination

All applicants for an immigrant visa must undergo a medical examination.<sup>15</sup> The examination must be conducted by a designated doctor, called a panel physician, located in the country where the interview takes place.<sup>16</sup> Medical examinations are conducted according to regulations published by the Department of Health and Human Services (HHS) and procedures established by the Centers for Disease Control and Prevention (CDC), an agency of HHS.<sup>17</sup> The medical examination is not a complete examination but is designed to screen for certain medical conditions that are relevant to the applicant's admissibility to the United States.

The DOS website provides a listing of the panel physicians authorized to conduct the medical exam in the location of each U. S. consulate.<sup>18</sup> Applicants are instructed to contact one of the physicians to schedule a medical exam and to obtain information on the cost of the exam and necessary testing. In addition to the list of panel physicians, some consulates provide specific instructions on scheduling the medical exam and the documents needed for the appointment. A sample Instructions for Medical Examination is included as appendix 4E. In all cases the applicant must bring the visa appointment letter, his or her passport, and vaccination records, if available. The vaccination requirements comprise an important part of the medical examination. A discussion of the vaccination requirements and other health-related grounds of inadmissibility can be found in chapter 6. Additionally, a discussion of the waivers available for certain health-related grounds can be found in chapter 7.

Following the medical examination, the panel physician either will forward the results directly to the consulate or will provide the applicant with the result in a sealed envelope for the applicant to bring to the interview.

## Consular Interview

During the interview the consular official will confirm the information contained in the DS-230 or DS-260 application, screen for any applicable ground of inadmissibility, review the supporting documents, confirm that the medical exam does not reveal any health-related problem that could prevent approval or require a waiver, and determine whether the applicant is likely to become a public charge.<sup>19</sup> The consular

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<sup>15</sup> INA §221(d); 22 CFR §42.66(a).

<sup>16</sup> 22 CFR §42.66(b).

<sup>17</sup> 42 CFR §34.3; CDC, Technical Instructions for the Medical Examination of Aliens [panel physicians], available at [www.cdc.gov/ncidod/dq/panel.htm](http://www.cdc.gov/ncidod/dq/panel.htm).

<sup>18</sup> [http://travel.state.gov/visa/immigrants/info/info\\_3739.html](http://travel.state.gov/visa/immigrants/info/info_3739.html).

<sup>19</sup> The grounds of inadmissibility are described in chapter 6 and the affidavit of support requirements are set forth in chapter 8.

officer has the right to inquire into the validity of the marriage or the relationship that forms the basis of the immigrant petition.<sup>20</sup>

If the applicant is found inadmissible for a ground that is waivable, the applicant will submit the waiver form and supporting documentation by mail to a USCIS lockbox in Phoenix, Arizona.<sup>21</sup> The lockbox facility will forward the waiver to the Nebraska Service Center (NSC) for adjudication. Once a decision is made on the waiver, NSC will send an electronic notification to the appropriate U.S. embassy or consulate abroad.<sup>22</sup>

When an immigrant visa is issued, it is usually valid for six months.<sup>23</sup> In order to obtain permanent residence status, the immigrant visa holder must travel to the United States with an immigrant visa packet and be admitted within the visa validity period. Additionally, in order to obtain a visa, the applicant must present a passport that is valid for at least 60 days beyond the validity of the immigrant visa.<sup>24</sup> Immigrant visa holders in the first- and second-preference categories should be warned by consular officials that they are admissible in those categories only if they remain unmarried at the time of application for admission at the port of entry.<sup>25</sup>

If an immigrant visa is refused, the consular officer will inform the applicant of the reasons for the denial, including the provision of law or regulation on which the refusal is based.<sup>26</sup> If the reason for the refusal may be overcome with the submission of additional documents and the applicant indicates an intention to submit the additional evidence, the file will remain open for up to one year.<sup>27</sup> Once the applicant has obtained the necessary documentation, the interview should be rescheduled. However, if no action is taken on the case for one year after the interview, registration—*i.e.*, eligibility to apply for an immigrant visa—will be terminated.<sup>28</sup> The consular officer at the post should notify the applicant of the termination and the right to have the reg-

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<sup>20</sup> 22 CFR §42.62(b).

<sup>21</sup> Some Immediate Relative applicants will be eligible to apply for a provisional waiver of the three and ten year unlawful presence bars prior to leaving the United States for their consular interview. The provisional waiver does not extend to other family-preference categories, nor does it apply if the applicant would be inadmissible based on any other ground. Additionally, the hardship can only be to a U.S. citizen spouse or parent (not an LPR spouse or parent). The USCIS has designated the National Benefits Center to adjudicate these waivers.

<sup>22</sup> Sample I-601 waiver applications are included as appendices 7B, 7C, and 7D. A sample I-212 waiver application is included as appendix 7E.

<sup>23</sup> 22 CFR §42.72(a).

<sup>24</sup> 22 CFR §42.64(b).

<sup>25</sup> 22 CFR §42.72(d).

<sup>26</sup> 22 CFR. §42.81(b).

<sup>27</sup> *Id.*

<sup>28</sup> 9 FAM 42.52 N5.



istration reinstated within one year by demonstrating that the failure to act was due to circumstances beyond his or her control.<sup>29</sup>

If the consular officer is requesting information or documentation that the applicant or representative believes is inappropriate or unnecessary, it is advisable to communicate directly with the consular post by fax, telephone, or e-mail. Concerns should be put in writing with cites to the appropriate regulations, FAM section, or DOS cables that support your position. If attempts to persuade the consular official that is handling the case are unsuccessful, the applicant or representative may seek a review from the principal consular officer at that post.<sup>30</sup> In most instances, there is no judicial review of a visa denial.<sup>31</sup> Representatives also may seek intervention from officials at the DOS Visa Office in Washington, D.C. For such intervention or to request an advisory opinion on a specific legal issue, an e-mail should be sent to *legalnet@state.gov*.

### **USCIS Immigrant Fee**

Immigrant visa holders are required to pay a USCIS Immigrant Fee of \$165.00 after they receive the visa packet from the consulate or embassy. This fee is separate from the immigrant visa fee paid to the DOS. The fee covers the cost of producing and delivering the permanent resident card once the visa holder is admitted to the United States. The fee must be paid online through the USCIS website with a debit or credit card or a checking account from a U.S. financial institution. Once the fee is paid, the payer should print a receipt and keep it for his or her records. The fee does not have to be paid by the applicant him or herself but can be paid by any other person on the applicant's behalf.

If the USCIS Immigrant Fee is not paid, the visa holder will still be admitted to the U.S. and receive a passport stamp valid for one year evidencing lawful permanent residence status. However, the new resident will not receive an I-551 Permanent Resident Card until the required fee is paid. Adopted children who immigrate under the inter-country adoption programs and K visa holders are exempt from paying this fee.

### **Termination of Registration**

Under INA §203(g), DOS is authorized to terminate the registration of anyone who fails to apply for an immigrant visa within one year of notification of the availability of the visa. This provision applies if the applicant fails to contact the NVC after being notified of visa availability or if the applicant fails to appear for a scheduled interview and does not contact the consulate within a year of the missed appoint-

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<sup>29</sup> 22 CFR §42.83(d).

<sup>30</sup> 22 CFR §42.82(c).

<sup>31</sup> *Kleindienst v. Mandel*, 408 U.S. 753 (1972) (judicial review when the government denies a visa if no facially legitimate and bona fide reason).

ment.<sup>32</sup> Registration is also terminated if an alien fails to submit evidence to overcome the basis for a visa denial within one year after visa refusal.<sup>33</sup>

The regulations require that the consulate notify the registrant of the termination of registration and the right to seek reinstatement within one year of notification by establishing that the failure to apply for an immigrant visa within one year was due to circumstances beyond the applicant's control.<sup>34</sup> Such circumstances include illness preventing the alien from traveling and inability to get travel documents.<sup>35</sup>

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<sup>32</sup> 22 CFR §42.83(a).

<sup>33</sup> 22 CFR §42.83(b).

<sup>34</sup> 22 CFR §42.83(c).

<sup>35</sup> 22 CFR §42.83(e).