

(d)(9)(i) of this section and is accompanying or following to join the principal alien.

(ii) *Ineligibility exemption.* An alien classified under paragraph (d)(9)(i) of this section shall not be subject to the provisions of INA 212(a)(4).

(iii) *Priority date.* Aliens entitled to status under paragraph (d)(9)(i) of this section shall be assigned a priority date as of the date the petition was filed under INA 204 for classification under section INA 203(b)(4) and visas shall be issued in the chronological order of application submission. However, in the event that the annual limit for immigrants under INA 203 is reached, the alien may retain the earlier priority date of the petition that was revoked.

(e) *Fifth preference—Employment-creation immigrants—(1) Entitlement to status.* An alien shall be classifiable as a fifth preference employment-creation immigrant if the consular officer has received from DHS an approved petition to accord such status, or official notification of such an approval, and the consular officer is satisfied that the alien is within the class described in INA 203(b)(5).

(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; 65 FR 80745, Dec. 22, 2000; 66 FR 15350, Mar. 19, 2001; 68 FR 24639, May 8, 2003]

#### § 42.33 Diversity immigrants.

(a) *General—(1) Eligibility to compete for consideration under section 203(c).* An alien will 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 Secretary of Homeland Security pursuant to INA 203(c)(1)(E), 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. The eligibility for a visa under INA 203(c) ceases at the end of the fiscal year in question. Under no circumstances may a consular officer issue a visa or other documentation to an alien after the end of the fiscal year during which an alien possesses diversity visa eligibility.

(2) *Definition of high school education or its equivalent.* For the purposes of this section, the phrase high school education or its equivalent means the 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.* For all cases registered for the 2003 Diversity Visa Program and Diversity Visa Programs occurring in subsequent fiscal years, consular officers must use the Department of Labor's O\*Net On Line to determine qualifying work experience.

(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 will be void pursuant to INA 204(a)(1)(I)(i) and the alien by or for whom the petition has been submitted will not be eligible for consideration for diversity 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", will be treated as a separate foreign state. The districts comprising "Northern Ireland" are Antrim, Ards,

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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 requirement.* An alien claiming to be entitled to compete for consideration under INA 203(c) must file a petition with the Department of State for such consideration. At the alien petitioner's request, another person may file a petition on behalf of the alien. The petition will consist of an electronic entry form that the alien petitioner or a person acting on the behalf of the alien petitioner must complete on-line and submit to the Department of State via a Web site established by the Department of State for the purpose of receiving such petitions. The Department will specify the address of the Web site prior to the commencement of the 30-day or greater period described in paragraph (b)(3) of this section using the notice procedure prescribed in that paragraph.

(1) *Information to be provided in the petition.* The website will include the electronic entry form mentioned in paragraph (b) of this section. The entry form will require the person completing the form to provide the following information, typed in the Roman alphabet, regarding the alien petitioner:

- (i) The petitioner's full name;
- (ii) The petitioner's date and place of birth (including city and country, province or other political subdivision of the country);
- (iii) The petitioner's gender;
- (iv) The country of which the petitioner claims to be a native, if other than the country of birth;
- (v) The name[s], date[s] and place[s] of birth and gender of the petitioner's spouse and child[ren], if any, (including legally adopted and step-children), regardless of whether or not they are living with the petitioner or intend to accompany or follow to join the petitioner should the petitioner immigrate to the United States pursuant to INA 203(c), but excluding a spouse or a child[ren] who is already a U.S. citizen or U.S. lawful permanent resident;

(vi) A current mailing address for the petitioner;

(vii) The location of the consular office nearest to the petitioner's current residence or, if in the United States, nearest to the petitioner's last foreign residence prior to entry into the United States;

(2) *Requirements for photographs.* The petition will also require inclusion of a photograph of the petitioner and of his or her spouse and all unmarried children under the age of 21 years. The photographs must meet the following specifications:

(i) A digital image of the applicant from either a digital camera source or a scanned photograph via scanner. If scanned, the original photographic print must have been 2" by 2" (50mm × 50mm). Scanner hardware and digital image resolution requirements will be further specified in the public notice described in paragraph (b)(3) of this section.

(ii) The image must be in the Joint Photographic Experts Group (JPEG) File Interchange Format (JFIF) format.

(iii) The image must be in color.

(iv) The image must have been taken no more than six months prior to the date of the petition submission.

(v) The person being photographed must be directly facing the camera with the head neither tilted up, down, or to the side. The head must cover about 50% of the area of the photograph.

(vi) The photograph must be taken with the person in front of a neutral, light-colored background. Photos taken with very dark or patterned, busy backgrounds will not be accepted.

(vii) The person's face must be in focus.

(viii) The person in the photograph must not wear eyeglasses, sunglasses, or other paraphernalia that obstruct the view of the face.

(ix) A photograph with the person wearing a head covering or a hat is only acceptable if the covering or hat is worn specifically due to that person's religious beliefs, and even then, the hat or covering may not obscure any portion of the face. A photograph of a person wearing tribal, military,

airline or other headgear not specifically religious in nature will not be accepted.

(3) *Submission of petition.* A petition for consideration for visa issuance under INA 203(c) must be submitted to the Department of State by electronic entry to an Internet website designated by the Department for that purpose. No fee will be collected at the time of submission of a petition, but a processing fee may be collected at a later date, as provided in paragraph (i) of this section. The Department will establish a period of not less than thirty days during each fiscal year within which aliens may submit petitions for approval of eligibility to apply for visa issuance during the following fiscal year. Each fiscal year the Department will give timely notice of both the website address and the exact dates of the petition submission period, as well as other pertinent information, 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.

(c) *Processing of petitions.* Entries received during the petition submission period established for the fiscal year in question and meeting all of the requirements of paragraph (b) of this section will 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 petitions, all numbers assigned for each region will be separately rank-ordered at random by a computer using standard computer software for that purpose. The Department will then select in the rank orders determined by the computer program a quantity of petitions 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. The Department will consider petitions selected in this manner to have been approved for the purposes of this section.

(d) *Validity of approved petitions.* A petition approved pursuant to paragraph (c) of this section will be valid for a period not to exceed Midnight of the last day of the fiscal year for which the pe-

tion was approved. At that time, the Department of State will consider approval of the petition to cease to be valid pursuant to INA 204(a)(1)(I)(ii)(II), which prohibits issuance of visas based upon petitions submitted and approved for a fiscal year after the last day of that fiscal year.

(e) *Order of consideration.* Consideration for visa issuance to aliens whose petitions have been approved pursuant to paragraph (c) of this section will be in the regional rank orders established pursuant that paragraph.

(f) *Allocation of visa numbers.* To the extent possible, diversity immigrant visa numbers will be allocated in accordance with INA 203(c)(1)(E) and will be allotted only during the fiscal year for which a petition to accord diversity immigrant status was submitted and approved. Under no circumstances will immigrant visa numbers be allotted after midnight of the last day of the fiscal year for which the petition was submitted and approved.

(g) *Further processing.* The Department will inform applicants whose petitions have been approved pursuant to paragraph (c) 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 certain information.* (1) The Department will 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) The Department will not maintain the names of visa recipients in connection with this information and the information will be compiled and maintained in such form that the identity of visa recipients cannot be determined therefrom.

(i) *Diversity Visa Lottery fee.* Consular officers shall collect, or ensure the collection of, the Diversity Visa Lottery fee from those persons who apply for a diversity immigrant visa, described in INA 203(c), after being selected by the

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diversity visa lottery program. The Diversity Visa Lottery fee, as prescribed by the Secretary of State, is set forth in the Schedule of Fees, 22 CFR 22.1.

[68 FR 49355, Aug. 18, 2003, as amended at 73 FR 7670, Feb. 11, 2008; 77 FR 18914, Mar. 29, 2012; 81 FR 63695, Sept. 16, 2016]

### 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 DHS 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 DHS of notice of revocation of the petition in accordance with DHS 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 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 DHS, 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