

Consular Processing

This section deals with a foreign national's ability to obtain immigrant and nonimmigrant visas at U.S. consular posts abroad. In order to avoid potential problems or delays associated with the issuance of a visa, one should be familiar with the relevant sections of the Immigration and Nationality Act (INA), the regulations of USCIS and Department of State (DOS), the DOS Foreign Affairs Manual, and the most recent cables from the DOS Visa Office and the specific consulate's internal policies and procedures. An experienced immigration attorney can assist you with these rules. A. Immigrant Visa Processing Permanent residence ("green card") status is conferred either through issuance of an immigrant visa by a U.S. consulate abroad or through approval of an adjustment of status application (see "adjustment of status") filed in the United States with USCIS. For those present in the United States who have both alternatives available to them, adjustment is generally the preferred method since the applicant whose case is denied can challenge the denial through the administrative and/or judicial appellate processes and the applicant is not required to leave U.S. However, there may be specific situations where it is preferable to go through immigrant visa processing abroad, such as when there are long delays at USCIS. Consular processing is particularly attractive in time-sensitive situations, such as diversity lottery cases or minors who will "age-out" (i.e., turn age 21). In order to be eligible for an immigrant visa, the applicant must establish entitlement under one of the classifications enumerated under the Immigration and Naturalization Act. To be eligible the applicant must be:

- The beneficiary of an approved visa petition granting family-based immediate relative or preference classification, or employment-based preference classification.
- A derivative family member (i.e., spouses and minor unmarried children of preference aliens if they are accompanying or following to join the primary applicant).
- The foreign national is entitled to special immigrant status under INA §101(a)(27); or
- The foreign national qualifies for a visa under special legislation, such as the Chinese Student Protection Act of 1992, Vietnam Amerasian program, or certain provisions of the Immigration Act of 1990, such as the diversity lottery provisions. In most instances consular processing involves returning to the country of the foreign national's nationality or last residence. There are circumstances, however, when the alien is unable or unwilling to return and may be able to process the immigrant visa in a third country. Such circumstances may include inconvenience, fear of persecution, travel costs, or lack of consular services. A consular office may, as a matter of discretion, accept an immigrant visa application from a foreign national who is neither a resident of, nor physically present in the area designated for such purpose.

Application Process:

The immigrant visa processing is initiated by the National Visa Center ("NVC"). The NVC continues to revise its procedures, having recently ended the Packet 3/4 system. The intended role of the NVC is to review the approved immigrant petition for accuracy and completeness. A case file and computer record is then created. If the immigrant visa application can be processed immediately, a packet of instructions (formerly packet 3) is sent to a designated agent, or attorney. The petition itself is forwarded to the appropriate overseas post for further processing and visa issuance. If the applicant's priority date does not allow immediate processing, the petition is stored at the facility and a letter of explanation is sent to the applicant or attorney, advising that the packet of instructions will be sent when the priority date becomes current. Visa Issuance:

Unlike nonimmigrant visas, which are attached to the applicants' passport, the immigrant visa is the Form DS-230, together with an endorsement by the consular officer and the supporting documents. These documents are placed in a sealed envelope for travel to the United States. An immigrant visa is valid for travel to the United States for a period of up to six months. In some situations, the visa may be issued for a shorter period. For example, the validity may not extend beyond a date 60 days prior to the expiration of the applicant's passport, or, when issued to an accompanying child, may not extend beyond the date on which the child becomes 21. Entry to the United States:

Once the visa is granted, the applicant must enter the United States while the visa is still valid. At the port of entry, the applicant is inspected. INA §204(e) provides that an approved petition does not guarantee admission, and INA §291 places the burden of proof of eligibility on the applicant. Once admitted, the person's passport is marked with the applicant's "A" number and stamped with the following: "Processed for I-551. Temporary evidence of lawful admission for permanent residence valid until _____. Employment authorized for Form I-551." As of the date of entry, the person is considered a lawful permanent resident, even though the alien registration card will be sent in the mail later. B. Nonimmigrant Visa Processing Most foreign nationals wishing to enter the United States on a temporary basis to visit, study, work, and for other purposes are required to obtain a nonimmigrant visa from a U.S. consulate. Due to the attacks of September 11, 2001, DOS has instituted an additional name-check clearance procedure requiring a 20-day wait for security clearance for individuals of certain countries. The details of the program are classified, but appear to affect males between the ages of 16 and 45 from most Middle Eastern countries and Indonesia, Pakistan, Malaysia, Somalia, Sudan. In practice, this appears to refer to country of citizenship, rather than country of birth. Affected individuals should plan on at least a 20-day stay abroad before obtaining their visa. This development makes travel more uncertain, and increases the attractiveness of automatic revalidation and application by mail. There are a few notable exceptions to the visa requirements. These involve parolees, Canadians seeking entry in categories other than E-1 and E-2, and aliens from specific countries who are eligible for short visits pursuant to the visa waiver program. Visa issuance alone does not guarantee admission to the United States, as each applicant for admission must also establish his or her admissibility to an Immigration Service inspector at a port of entry. Foreign nationals who have already been issued a nonimmigrant visa in the H, L, and E visa categories, who are currently in valid status and whose visa expired less than one year prior to the application date, may apply for visa reissuance through the Department of State ("DOS") Visa

Office, now in St. Louis. The visa reissuance process ordinarily takes from six to eight weeks, though processing times vary. It offers obvious advantages including convenience to the applicant and avoidance of a possible visa refusal at a consulate. A consular officer, at the direction of the DOS or as a matter of discretion, can accept a visa application from a foreign national who is not a resident of the consular district but is physically present therein. The DOS has strongly recommended that a consular officer should seldom, if ever, reject discretionary jurisdiction over nonimmigrant visa ("NIV") applications from out-of-district applicants physically present in the jurisdiction, unless there is a valid reason for doing so. Despite this recommendation, a consulate can reject an out-of-district NIV application under the premise of workload, or lack of familiarity with documents or conditions in the applicant's home territory.