

# OUR PRACTICE

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## Immigrant Visa Processing

Obtaining an immigrant visa at a U.S. consulate abroad is one of the two ways to complete the process of becoming a U.S. permanent resident. Someone who is already in the U.S. at or after the time of approval of an immigrant petition or lottery registration should consider adjustment of status as possibly a better alternative for the purpose of becoming a permanent resident. Nevertheless, thoughtful immigration attorneys often indicate on an immigrant petition that the beneficiary will process for an immigrant visa rather than adjustment within the U.S., in order to keep the beneficiary's options open, because it is easier to switch back to adjustment after petition approval than the other way. We help clients determine and pursue the best method of processing.

### Processing through the National Visa Center

The immigration service ("USCIS") sends an employment-based or family-based immigrant petition file to the State Department's National Visa Center (NVC) in one of at least three situations:

- when the petition form has requested immigrant visa processing (and the USCIS has noticed),
- when the USCIS has deemed the petition beneficiary ineligible for adjustment, or
- when someone whose file has been held by USCIS for adjustment has caused an I-824 to be filed with USCIS requesting re-direction of the case to consular processing.

It should take only a few weeks for this to happen, but sometimes it can take months (particularly with an I-824 re-direction). In lottery registrations, the State Department's Kentucky Consular Center already has the file and handles the NVC's role.

The NVC, an old naval base in New Hampshire, acts as a lower cost clearinghouse for consular offices before they receive a file for interviews. If the priority date is not current, the NVC sends a letter to the beneficiary stating that nothing will happen until it becomes current. Once the priority date APPROACHES becoming current, NVC will first send an un-represented beneficiary a Form DS-2032 to find out if the beneficiary prefers for NVC to communicate through an attorney or agent in the U.S. Then the NVC will send the beneficiary or representative bills for fees that must be paid before anything else can proceed. After bills are paid to a lockbox, NVC sends a Form DS-2001 listing the types of information and documents that will be required for processing.

### Documents and Consular Handling

As reflected on Form DS-2001, the documents required for immigrant visa processing include, for each individual who will be processing (that is, the principal beneficiary of the petition and the accompanying spouse and unmarried children under age 21, who may be eligible to derive permanent residence from the principal), include:

- Form DS-260 (Visa Application)
- In family-based cases, Form I-864 (Affidavit of Support) and required supporting documents. In other cases, other evidence of financial support.
- Police certificates (showing any or no criminal history) for each country, other than the U.S., in which the applicant has lived for over one year since age 16, except for countries for which the State Department's information sheets reflect they are not required (because they are not kept by the country or are deemed unreliable by the consulate). Police certificates can be difficult to obtain, since

they come from a foreign government which sometimes requires the applicant to be physically present to request it.

- Military certificates (showing no dishonorable discharge or other military prosecution) for any country in which there has been any military service, except where information sheets state they are not required.
- Full birth certificates, often in a longer form than commonly used.
- Photos and other certificates described on DS-2001.

Any potential applicant should begin gathering these documents as soon as possible. The types of documents available, and the manner of obtaining certificates, are described for each country in the [State Department's Visa Reciprocity and Documents Finder](#).

### **Scheduling "Documentarily Qualified" Applicants for Interview**

In most, and soon to be all, consulates, the NVC collects and reviews the DS-2001, I-864 visa application fee, and the other required documents as well, clears up any deficiencies, and even schedules the interview before sending the file on to the consulate.

Each applicant must obtain a medical examination by a physician appointed in each consular district. The medical exam cannot take place in the U.S. The applicant should take to the exam all records of prior vaccinations. If the examiner does not deliver the results directly to the applicants, then the applicants are given a sealed envelope to take to the interview without breaking the seal.

### **The Interview**

At the time of the interview, each applicant swears to a completed visa application form, and provides any other required documents. The interview may be waived for a child under 14 years of age. The consular officer questions the applicants. The officer may require additional information. If the officer finds any of the applicants inadmissible, he must offer the opportunity to apply for waiver if it exists in law, and he forwards any waiver application to USCIS for adjudication. Although the consulate lacks authority to revoke the underlying petition, it may send the petition back to USCIS for reconsideration in light of suspicious circumstances reported by the consulate. The consulate may request an "advisory opinion" from the State Department on a legal point, and this is required if visa denial is contemplated for a past misrepresentation. Any of these actions can pose days or months of delay, while the applicants are stuck waiting outside the U.S. If the visa application is ultimately denied, the options are limited to supervisory review or requests for State Department advisory opinion, and there is no appeal to an any court.

### **Approval of Visa and Admission**

If the application is approved, the consulate issues an immigrant visa in the form of a stamp in the passport and a sealed envelope containing a completed visa form and all the documents necessary for the case, which the applicant must use to seek physical admission to the U.S. at a border or port within 6 months. Upon admission, the immigration inspector places an "I-551 stamp" in the applicant's passport and sends the endorsed visa packet to the appropriate card production facility for production of the permanent resident card. Thus, the applicant should make sure that the DS-155A contains her correct U.S. address, because this is where the card production facility will send the Permanent Residence Card.

In the rare case that an immigration inspector finds the applicant inadmissible, the applicant would seek review and any available waiver in removal proceedings in Immigration Court.

### **How We Can Help**

The Baker Donelson Immigration Group helps our clients obtain immigrant petition approvals in all types of categories. We help clients understand, timely choose and efficiently pursue the best method of processing

toward permanent residence. When visa processing is the best method, we help choose and arrange processing in the most desirable consulate (whenever there is a choice), and we communicate with the consulate in its technical jargon to seek expedited processing. We help clients to obtain the necessary documents well in advance to avoid delays. We know what is needed ahead of time, allowing us to push the process along without delays. We prepare clients to show why they are not inadmissible, particularly in light of past presence in the U.S. and past encounters with consular and USCIS officials. We prepare waiver applications with supporting documents where inadmissibility is unavoidable. We press arguments to consular officials and to the State Department on complex legal issues.

### **Important Links**

- [Visa Information for Immigrants](#)
- [Visa Reciprocity and Documents Finder](#)
- [Medical Examination of Aliens](#)