

9 FAM 42.62

PROCEDURAL NOTES

(CT:VISA-2126; 06-16-2014)
(Office of Origin: CA/VO/L/R)

9 FAM 42.62 PN1 PREPARING FOR APPOINTMENT WITH APPLICANT

(CT:VISA-2126; 06-16-2014)

- a. When appearing at the appointed time for the formal visa appointment, an applicant is entitled to receive prompt attention. The post should pull and review the *appointment list and case files* prior to the appointment *date*.
- b. The consular officer must send unclassified material to the document checker for review. The consular officer must review classified material.

9 FAM 42.62 PN2 CLASS NAMECHECKS FOR IMMIGRANT VISA APPLICANTS

(CT:VISA-2126; 06-16-2014)

The post must namecheck all immigrant visa applicants on the Consular Lookout and Support System (CLASS). This check is conducted automatically by the automated immigrant visa *overseas (IVO)* processing system.

9 FAM 42.62 PN3 U.S. CRIMINAL RECORDS CHECKS

9 FAM 42.62 PN3.1 Federal Bureau of Investigation (FBI) Records Checks through IAFIS

(CT:VISA-1951; 12-13-2012)

Immigrant visa (IV) applicants age 14 and above must submit fingerprints. There is no upper-age limit exempting IV applicants from submitting fingerprints. After the fingerprints are saved in the immigrant visas overseas (IVO) system, the fingerprints are processed through the FBI's Integrated Automated Fingerprint Identification System (IAFIS). (See 9 FAM Appendix L, 400, for specific information about processing fingerprints through IAFIS.)

9 FAM 42.62 PN3.2 Validity of FBI Fingerprint Checks

(CT:VISA-1951; 12-13-2012)

There is no fixed expiration date on an IAFIS check once it has been completed. If the applicant has never been to the United States, the check need never be done again. Officers should exercise judgment on any clearance that is more than 1 year old. If the officer has reason to believe the applicant was in the United States since the clearance, the officer should update the clearance. Officers should use discretion and any available evidence at hand in determining whether to resubmit the fingerprints to IAFIS before visa issuance.

9 FAM 42.62 PN3.3 "Law Enforcement Sensitive" (LES) National Crime Information Center (NCIC)-III Information

9 FAM 42.62 PN3.3-1 Defining "Law Enforcement Sensitive" (LES) Information

(CT:VISA-1951; 12-13-2012)

- a. The FBI designates "Law Enforcement Sensitive" (LES) as any unclassified information whose disclosure could jeopardize or seriously harm law enforcement activities. All information received through the NCIC and III name checks or via a fingerprint check is considered "Law Enforcement Sensitive."
- b. The FBI has established strict rules on handling, storing, and disclosing this information. The FBI periodically audits users with access to LES information to ensure policy and procedures are adhered to.

9 FAM 42.62 PN3.3-2 Access to "Law Enforcement Sensitive" (LES) Information

(CT:VISA-2126; 06-16-2014)

- a. Only employees with a need to know should have access to LES information. The need-to-know is granted to individuals at post whose jobs require them to handle criminal history records. This includes officers, Foreign Service nationals (FSNs), part time intermittent temporary (PIT), *employees at the National Visa Center (NVC) and Kentucky Consular Center (KCC)*, and American family member (AFM) employees with immigrant visas (IV) and diversity visas (DV) processing responsibilities.
- b. "Law Enforcement Sensitive" (LES) information must not be left in areas where unauthorized persons may access it. Likewise, LES information should not be discussed with persons who do not have a need to know. As part of a visa record, a criminal history record is protected against unauthorized disclosure

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under INA 222(f). Procedures for maintaining the confidentiality of visa records may be found in 9 FAM 40.4, Related Statutory Provisions. All employees working with LES information must be briefed using the Diplomatic Security (DS) briefing paper, "Requirements for the Protection of National Crime Information Center (NCIC) Criminal History Information as LES."

9 FAM 42.62 PN3.3-3 Storage and Destruction of "Law Enforcement Sensitive" (LES) Information

(CT:VISA-1951; 12-13-2012)

- a. "Law Enforcement Sensitive" (LES) information must be stored in a secure area. This requirement can be satisfied by filing the information in a locked cabinet, or by keeping it in an office area secured by cipher lock and accessible only to authorized employees.
- b. LES information must be destroyed by burning or shredding. LES information on diskettes or hard drives must be overwritten (i.e., unconditionally reformatted), degaussed, or physically destroyed.

9 FAM 42.62 PN3.3-4 Dissemination of "Law Enforcement Sensitive" (LES) Information

(CT:VISA-1951; 12-13-2012)

- a. A post may disseminate "Law Enforcement Sensitive" (LES) information (including details of an applicant's criminal history record) to the Department of Homeland Security (DHS) and other posts only when the information is necessary for the administration or enforcement of U.S. law. For example, criminal history records may be sent to the DHS with a waiver request, or disclosed to another post or DHS office inquiring about a CLASS lookout entry. Any further distribution of LES information must be cleared with the regional security officer (RSO).
- b. Posts must log where and when they disseminate LES material. This log may be a page stapled to a category-one refusal file. Logs must be retained for a minimum of 2 years, and may be requested from post during an FBI audit. The log must contain:
 - (1) The name of the subject, the National Crime Information Center (NCIC) Index Record Number (Federal Bureau of Investigation (FBI)) number;
 - (2) To whom and on what date the information was disclosed; and
 - (3) The name of the person sending it.
- c. The Federal Bureau of Investigation does not permit information obtained through a name check to be transmitted via e-mail. If information obtained through IAFIS indicates a possible hit, this information must be faxed to the requesting individual and only when the individual receiving the name check

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request acknowledges that he or she is waiting by the receiving fax machine.

9 FAM 42.62 PN3.3-5 Certification

(CT:VISA-1951; 12-13-2012)

The consular officer in charge of the immigrant visas (IV) and/or diversity visas (DV) section must be responsible for the proper handling of all "Law Enforcement Sensitive" (LES) information. The consular officer in charge must sign a certification stating he or she has read the Diplomatic Security (DS) briefing paper mentioned in 9 FAM 42.62 PN3.4-2 and has briefed U.S. and Foreign Service national (FSN) subordinates having access to LES information. The National Visa Center (NVC) will keep a roster of immigrant visas (IV) chiefs to establish accountability for FBI auditors.

9 FAM 42.62 PN3.3-6 Directing Questions to Department

(CT:VISA-1951; 12-13-2012)

Posts should direct questions on the protection, storage, or dissemination of LES information to the Post Liaison Division (CA/VO/F/P) and to DS/OA/SYS.

9 FAM 42.62 PN4 FUNCTIONS PRELIMINARY TO INTERVIEW

9 FAM 42.62 PN4.1 Initial Duties of Document Checker

(CT:VISA-2126; 06-16-2014)

When the applicant presents the documents, the post must check the documents for completeness and legibility. The document checker should ensure each question on Form DS-260, Online Application for Immigrant Visa and Alien Registration, has been answered. *Post should use the "Add Remarks" function associated with a section of the application that needs correction or amplification.* If Form DS-260 is incomplete, the document checker must reopen the application via the "Reopen DS-260" button at the top of the online IV application report and direct the applicant to log back onto the Consular Electronic Application Center and complete the missing information. If necessary, the document checker may assist the applicant in completing the application.

9 FAM 42.62 PN4.2 Paying Processing Fee

(CT:VISA-2126; 06-16-2014)

In cases where the applicant has submitted Form DS-260, Online Application for Immigrant Visa and Alien Registration, once the medical forms and other

documents have been placed in logical order and Form DS-260 is complete, the alien must proceed to the cashier and pay the processing fee. The alien must pay before the interview. In situations described in 9 FAM 42.71 N2.2, the cashier must not collect a new processing fee. After the fee has been paid, the document checker must give the documents, the medical forms, applicable printouts from the automated system, and any papers from the A-Z file, to the consular officer who will interview the applicant. Note: The document checker should not print out the online IV application report associated with the submitted Form DS-260.

NOTE: Most cases are processed through the National Visa Center (NVC) and the processing fee will have already been collected in the United States before the case was forwarded to post. *The NVC's Post Supplement Report, included in the file of cases scheduled by the NVC, will indicate whether the fee has been paid. If the Post Supplement Report is unavailable, post can determine if the fee has been paid using the IVIS Beneficiary Report in the CCD. If there are any questions about whether a fee was paid while a case was at the NVC, post should email NVCPost@state.gov.*

9 FAM 42.62 PN5 VISA INTERVIEW

(CT:VISA-584; 10-14-2003)

The interview with the consular officer is the most significant part of the visa issuing process. It is particularly important from the point of view of full and correct application of the law. Section 237 of Public Law 106-113 and subsequent legislation requires that the Department establish a policy under which immediate relative (and fiancé(e)) visas be processed within 30 days of receipt of the necessary information from the applicant and the Department of Homeland Security (DHS); all other family-based immigrant visas (IV) must be processed within 60 days. The Department expects all posts to strive to meet the 30/60 day requirements.

9 FAM 42.62 PN5.1 Review of Pamphlet During Interview

(CT:VISA-1940; 11-14-2012)

During the interview of each spouse applying for an IR1, CR1 or F2A (F21, C21, FX1, or CX1) immigrant visa, you must:

- (1) Provide a copy of the USCIS pamphlet, "Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa," in English or another appropriate language.
- (2) Orally review with the applicant, in his or her primary language, if feasible, or otherwise in either the language spoken in the country of application or

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English, the synopsis of the points contained in the pamphlet (found at 9 FAM 41.81 Exhibit I).

- (3) Add case notes in IVO that the pamphlet was received, read, and understood by the applicant.

9 FAM 42.62 PN6 INTERVIEW EVEN IF DOCUMENTATION IS MISSING

(CT:VISA-584; 10-14-2003)

- a. In addition to the inconvenience and expense caused to the alien (particularly an alien applying with family members), it is generally inefficient for the post if an application is not taken and the interview not conducted on the appointment date. In a busy post, the number of daily interviews is set to maximize the use of space and personnel. A canceled interview results in a gap in that day's productivity without gain, since the interview must be rescheduled for another day. In addition, there is no guarantee that the alien will be found eligible the second time around. Rescheduling causes administrative backlogs, which, in turn, result in lost time answering correspondence and responding to telephone inquiries.
- b. As a general rule, therefore, consular officers should accept applications from and interview all applicants appearing on the appointed date. If an applicant fails to present all of the required documentation, the applicant should nevertheless pay the processing fee and be interviewed by the consular officer who must then refuse the application under INA 221(g). The consular officer should tell the applicant or a member of the family to mail or bring in the missing documentation, and also the issuance fee, and make clear that the visa(s) will be issued immediately if the documentation is found acceptable.

9 FAM 42.62 PN7 COMPLETING FORM DS-260, APPLICATION FOR IMMIGRANT VISA AND ALIEN REGISTRATION, IN LANGUAGE OTHER THAN ENGLISH

(CT:VISA-2126; 06-16-2014)

Form DS-260, Online Application for Immigrant Visa and Alien Registration, cannot be submitted in any language other than English.

9 FAM 42.62 PN8 IMPORTANCE OF U.S. ADDRESS

(CT:VISA-2126; 06-16-2014)

Department of Homeland Security (DHS) uses the address stated on Form DS-260, Online Application for Immigrant Visa and Alien Registration, as the alien's final destination to mail the Form I-551, Permanent Resident Card (machine-readable green card), to the visa recipient. It is important, therefore, that the alien furnish as complete an address as possible, including ZIP code. The alien may use the address of a prospective employer if there are no friends or relatives to whom Form I-551 may be forwarded.

9 FAM 42.62 PN8.1 Action Fee Receipts

(CT:VISA-2126; 06-16-2014)

For fees paid at post, request the two fee receipts printed through the Automated Cash Register System (ACRS) and issued by the cashier for the processing fee. Initial both receipt copies, return the customer copy to the applicant, and retain the Department-of-State copy.

9 FAM 42.62 PN8.2 Explaining Significance of Oath to Applicant

(CT:VISA-2126; 06-16-2014)

At the outset of the interview, inform the applicant that the interview will be based on answers given to the questions on Form DS-260, Online Application for Immigrant Visa and Alien Registration, and any others that might arise from examination of the supporting documents. Clarify that, after the interview is ended, the applicant will be required to swear or affirm that all statements made during the interview and on the form are true. Also inform the applicant of the significance of such oath or affirmation. You may, in this connection, refer to Section 1001 of Title 18, U.S.C. (18 U.S.C. 1001), which provides a penalty for making a false statement or using a false document in any matter within the jurisdiction of any department or agency of the U.S. Government. If the applicant has submitted Form DS-260, you must have the applicant recite the following oath:

"By submitting my fingerprint, I, (name) certify under penalty of perjury both that I have read and understood the questions in my immigrant visa application and that all statements that appear in my immigrant visa application have been made by me and are true and complete to the best of my knowledge and belief. Furthermore, I certify, under penalty of perjury, that all statements that I have made in this interview are true and complete to the best of my knowledge and belief."

9 FAM 42.62 PN8.3 Establishing That Alien Understands Contents of Form DS-260, Online

Application for Immigrant Visa and Alien Registration

(CT:VISA-2126; 06-16-2014)

Establish that it was the applicant who furnished the answers to the questions on Form DS-260, Online Application for Immigrant Visa and Alien Registration, or, if assisted by someone else, that the applicant nevertheless is fully aware of the nature of the application and the answers given, and has no questions about the application. In most cases, you can accomplish this by asking the applicant a few of the questions on the form and comparing the oral responses with the written replies. Should the applicant appear to have inadequate knowledge of the contents of the application, you must go over orally all questions having a bearing on the applicant's eligibility to receive a visa. To discourage professional intermediaries from coaching applicants, avoid establishing a set pattern in questioning applicants.

9 FAM 42.62 PN8.4 Correcting Form DS-260, Online Application for Immigrant Visa and Alien Registration

(CT:VISA-2126; 06-16-2014)

If any answers on Form DS-260, Online Application for Immigrant Visa and Alien Registration, need correction or amplification, make the correction using the "Add Remarks" function associated with the section of the application that needs correction or amplification. For example, if the applicant needs to correct a gap in education history, make the correction using the "Add Remarks" button on the Work/Education/Training Section of the online IV application report.

9 FAM 42.62 PN8.5 Sources of Background Investigation Information Not Revealed

(CT:VISA-1464; 08-09-2010)

Ensure that interviews are conducted so as to persuade the applicant to make full and frank disclosure of all information bearing on the application without disclosure by the officer of the actual sources of information obtained during the course of background investigations.

9 FAM 42.62 PN8.6 Consular Officer's Responsibility in Labor Certification Cases

(CT:VISA-1464; 08-09-2010)

If the applicant is applying for a visa on the basis of a job offer, labor certification, or a Schedule-A case not previously evaluated by a consular officer, you must determine that the applicant has the professional or occupational qualifications on which certification is based.