



Fact Sheet

April 9, 2009

Immigrant Visa Petitions Returned by the State Department Consular Offices

An approved immigrant visa petition may be revoked by a U. S. Citizenship and Immigration Services (USCIS) officer authorized to approve such petitions.

Reasons for Revocation

When USCIS has previously approved an immigrant visa petition, the U.S. Department of State (DOS) may grant a family-based or employment-based immigrant visa to the petition's beneficiary and qualified derivatives. A petitioner is defined as the family member or employer (or the employer's agent) who submitted the petition to USCIS. A beneficiary is an alien family member or employee who will seek admission to the United States upon approval of the petition and issuance of the appropriate visa from DOS.

The most common types of immigrant visa petitions are the Form I-130 (Petition for Alien Relative) and the Form I-140 (Immigrant Petition for Alien Worker). Either of these petitions may be revoked at the discretion of USCIS upon notice or, under certain prescribed circumstances, automatically. *See* 8 CFR 205.1 (listing appropriate grounds for automatic revocation), 8 CFR 205.2 (revocation on notice); *see generally* INA section 205 (specifying that revocation of immigrant visa petitions is discretionary).

If a DOS consular officer discovers during the course of a visa interview that the underlying petition should not have been approved, or is no longer approvable, the petition may be referred back to USCIS. In such cases, the returned petition should be accompanied by a memorandum explaining the reasons the approved petition should be revoked. Once returned, a USCIS officer will review the petition and DOS's findings, and may either:

- Find that the petition is not revocable and return the petition to DOS with an explanation of the decision not to revoke the petition;
- Issue a Notice of Intent to Revoke to the petitioner; or, if warranted,
- Issue a Notice of Automatic Revocation to the petitioner.

Revocation

In certain instances, such as the death of the beneficiary or the petitioner, or termination of registration under INA section 203(g) (failure of the alien to timely file an application for an immigrant visa petition), an approved petition or self-petition is automatically revoked as of the date of approval. *See* 8 CFR 205.1. If USCIS is aware of such circumstances, USCIS will send a notice of the automatic revocation to the consular office having jurisdiction over the visa application, with a copy to the petitioner's last known address.

In other instances, the approval of an immigrant visa petition may be revoked upon notice ("revocation on notice") by issuing a Notice of Intent to Revoke (NOIR) to the *petitioner*. *See* 8 CFR 205.2. The NOIR will explain the reasons the approved petition should be revoked and will give the petitioner a reasonable period of time to submit evidence to show why the petition should not be revoked. The petitioner must respond within the time allotted. An extension may be granted at the discretion of USCIS if the petitioner

needs additional time to obtain documentation from abroad or for other meritorious reasons; however, the petitioner *must* timely respond to the NOIR by the stated deadline, and provide a reason for requesting the extra time.

Decision on Revocation

If, based on the evidence received, the USCIS officer determines that the approval should not be revoked, the petitioner will receive a notice advising of the decision to reaffirm the petition. The petition will be returned to DOS's National Visa Center (NVC) for shipment to the appropriate consulate with the USCIS letter of reaffirmation, a copy of the letter of intent to revoke and the petitioner's response. The NVC will then forward the petition to the consular office. The consular officer may accept the petition as valid and adjudicate the visa application to completion, or present to USCIS new evidence that was not previously considered. In the latter case, USCIS will determine whether such evidence supports revocation of the petition.

If the petitioner does not overcome the basis for the revocation, or fails to timely respond, a decision of revocation will be issued to the petitioner on Form I-292. The petitioner may file an appeal on a decision to revoke a petition just as if the petition had been denied originally, except that the authorized period for filing the appeal is only 15 days regardless of the type of petition. *See* 8 CFR 205.2(d). Most courts have determined that a final decision by USCIS to revoke an immigrant visa petition is not reviewable.

What the beneficiary should expect

When a consular officer returns an immigrant visa petition to USCIS for reconsideration and possible revocation, he or she will typically deny the visa application on the basis of INA section 221(g) (temporary refusal of immigrant visa), pending USCIS review of the returned petition. The consular officer may also deny the visa application on another basis, if appropriate. If USCIS later reaffirms the approval of the petition, USCIS will send the petition back to DOS, at which point the consular officer will either accept the petition as valid and adjudicate the visa application to completion, or present USCIS with new evidence that was not previously considered. When a DOS consular officer denies an immigrant visa application, he or she will provide the beneficiary with a refusal letter listing the section of law under which the visa was refused.