

9 FAM 42.65 Notes

(TL:VISA-647; 08-30-2004)
(Office of Origin: CA/VO/L/R)

9 FAM 42.65 N1 Basic Document Requirements

(TL:VISA-185; 02-26-1999)

INA 222(b) requires that an applicant applying for an immigrant visa submit the following documentation, if available:

(1) A valid unexpired passport or other suitable travel document [see 9 FAM 42.1 Notes];

(2) A copy of the police certificate for the country of nationality and country of the alien's residence at the time of visa application in which the applicant has resided for six months or more;

(3) A copy of police certificates for any other country in which the applicant has resided for one year or more;

(4) Certified copies of prison records, if applicable;

(5) Certified copies of military records; if applicable;

(6) A certified copy of the birth record;

(7) Other documents establishing relationship to spouse or children, if applicable; and

(8) Records or documents pertinent to the applicant's identity or visa classification with respect to visa eligibility.

9 FAM 42.65 N2 Availability of Supporting Documents

(TL:VISA-494; 11-21-2002)

For information regarding the availability of documents see 9 FAM Appendix C for the country concerned.

9 FAM 42.65 N3 Validity of Supporting Documents and Application Form DS-230, *Application for Immigrant Visa and Alien Registration*

(TL:VISA-185; 02-26-1999)

Supporting documents that are subject to change are valid for one year. This time limitation applies to Form DS-230, *Application for Immigrant Visa and Alien Registration*, medical examinations and police certificates from any country visited or inhabited subsequent to the previous clearances. It does not apply to a birth certificate or a third country clearance or police certificates from an area to which the alien has not returned since its issuance. The affidavit of support must be submitted within six months of its signature by the supporting relative, however, it remains valid indefinitely. However, because the affidavit of support is based on the Federal Poverty Guidelines in effect at the time of the visa issuance, it may need to be updated.

9 FAM 42.65 N4 Police Certificates

(TL:VISA-494; 11-21-2002)

See 9 FAM Appendix C for availability of police certificates for individual countries.

9 FAM 42.65 N4.1 From Country of Current Residence or Country of Nationality

(TL:VISA-185; 02-26-1999)

An applicant must present a police certificate, if obtainable, from his or her country of current residence or nationality, if residence in such country exceeds six months.

9 FAM 42.65 N4.2 From Country of Previous Residence

(TL:VISA-185; 02-26-1999)

Police certificates are required from countries of previous residence, if residence there was for more than one year.

9 FAM 42.65 N5 Military Record

(TL:VISA-284; 05-17-2001)

Military records must contain a complete record of the applicant's service and conduct while in the service. The record must show any convictions of crime before military tribunals. [See 9 FAM Appendix C to determine availability of military records.]

9 FAM 42.65 N6 Unobtainable Documents

9 FAM 42.65 N6.1 Unreliable Documents

(TL:VISA-550; 06-12-2003)

The Department recognizes that some documents may be obtainable, but may also be unreliable either because of local corruption, or the ease with which such documents can be altered or counterfeited. It is, nevertheless, the Department's position, as well as a legal requirement, that supporting civil and other documents specified in the application procedures be presented by the applicant if such documents are available. In some instances, detection by a consular officer of an altered document might trigger a revealing line of inquiry on the applicant's criminal record. For example, if, in the consular officer's opinion, the presentation of a fraudulent document was an effort to conceal a line of inquiry which might have resulted in a proper denial of the visa, an advisory opinion should be submitted. On the other hand, if the consular officer can establish that presentation of the document clearly involved misrepresentation of an independent ground of ineligibility, the application should be immediately refused under INA 212(a)(6)(C)(i). In this latter case, no advisory opinion would need to be submitted.

9 FAM 42.65 N6.2 Member of Armed Forces Applying Outside Own Country

(TL:VISA-185; 02-26-1999)

In any case involving a member of the armed forces of a foreign country who applies for an immigrant visa outside his or her own country, the alien's military record shall be considered unobtainable under 9 FAM 42.65(d) Regs/Statutes if the applicant's government refuses to furnish certified copies.

9 FAM 42.65 N6.3 Member of Armed Forces Applying in Own Country

(TL:VISA-185; 02-26-1999)

When a member of the armed forces of a foreign country applies for an immigrant visa in his or her own country and the government refuses to furnish the applicant's military records, the consular officer shall defer final action on the application in view of the possible foreign relations implications. The consular officer shall direct an informal inquiry to the local authorities to determine their position. Depending on the response of the local authorities and actions they may take, the consular officer shall decide whether to proceed with the consideration of the visa application. If, within a reasonable time after notification, the local authorities do not take appropriate action to prevent the alien's departure, the consular officer shall proceed with the consideration of the visa application. However, if political sensitivities become evident, the consular officer shall consult with individuals at appropriate levels of the consular post or embassy concerning the matter. The Department may be consulted as necessary.

9 FAM 42.65 N7 Secondary Evidence in Lieu of Supporting Document

(TL:VISA-494; 11-21-2002)

INA 222(b) prescribes the documentation required of applicants. It will be rare that a document listed as available in 9 FAM Appendix C is unobtainable. If, however, the consular officer is satisfied that a document is unobtainable, the officer must require substitute documentation or secondary evidence. [See 9 FAM 42.65(d) Regs/Statutes.] In these cases, the applicant must submit proof of the unavailability of the missing document, for example, a statement from the local authorities that records for the year in question were destroyed by fire, or proof of the attempts made to obtain the document. When accepting substitute documentation or secondary evidence, the consular officer must complete Form FS-552, *Certificate Regarding Documents Required by 22 CFR 42.65(b) Which Are Unobtainable*, [see 9 FAM 42.65 Exhibit I] upon which the officer shall make the statement required by 9 FAM 42.65(d)(2) Regs/Statutes and attach the Form FS-552 to the visa.

9 FAM 42.65 N8 Applicants Submitting Other Satisfactory Evidence of Good Conduct

(TL:VISA-185; 02-26-1999)

If an applicant has presented a comprehensive police certificate fully meeting the requirements of 9 FAM 42.65(c) Regs/Statutes from the applicant's country of principal residence, the consular officer need not require a police certificate from other places of former residence, provided the applicant presents other satisfactory evidence of good conduct. For example, it has been held that proof of membership in or affiliation with a reputable religious organization in a religious capacity during periods of foreign residence may be accepted as such evidence. However, if the consular officer has reason to believe that a police or criminal record might exist in the foreign country, which would render the alien ineligible to receive a visa, the consular officer must require the alien to obtain the police certificate. If the police certificate is not obtainable from the local authorities, the alien must present other convincing evidence that he is not ineligible to receive a visa.

9 FAM 42.65 N9 Documents Required for Spouse or Children Not Accompanying Alien

(TL:VISA-39; 09-28-1990)

In addition to the personal documentation required of an applicant, a principal alien is also required to submit documentation establishing the relationship between such principal, the spouse, and all children, including those who will not accompany the principal applicant. If a male principal applicant has an illegitimate offspring who meets the definition of "child" in INA 101(b)(1)(D) as amended, the consular officer shall also require documentation for that child. [See 9 FAM 42.65 PN2.]

9 FAM 42.65 N10 Photograph Requirements

9 FAM 42.65 N10.1 Color Photographs Normally Required

(TL:VISA-647; 08-30-2004)

a. One of the most common problems *The Department of Homeland Security (DHS)* encounters with IV packets is poor quality photographs. The IV photograph attached to the Form OF-155B, *Immigrant Visa an Alien Registration*, is a crucial item—ultimately it will become the image on the bearer's "green card". Posts should ensure that the photographs are in accordance with these instructions, as well as the instructions on photographs found in 9 FAM 42.65 N10.1 through 9 FAM 42.65 N10.3.

b. In particular, posts must take care that the photo dimensions, size and clarity, as well as angle of portrait, match the requirements. As noted in N10.1 and 10.2, photos should be in color, with a white *or off-white* background. Black and white photos are acceptable in countries when color photos are unavailable. However, in such instances, the applicants will have to be re-photographed on arrival at the U.S. port of entry. Applicants must submit two glossy-finish photos (one for the visa and one to process the Form I-551, *Permanent Resident Card*, with their name written on the reverse).

c. In the rush to process cases quickly, consular officers may be tempted to accept substandard photos rather than refusing the applicants until they bring in new ones. However, in the long run, those applicants will be better served if posts require them to retake poor quality photos. The applicants will ultimately be spared the time and trouble of having to repeat the process in *DHS* secondary inspection at the port of entry, or having their Form I-551 questioned at some future point because of the poor quality photo.

9 FAM 42.65 N10.2 Black and White Photograph Acceptable if Color Photograph Unavailable

(TL:VISA-647; 08-30-2004)

Black and white photographs are acceptable in those countries where color photographs are unavailable or when the consular officer determines that obtaining color photographs would cause undue hardship on the applicant. However, since *DHS* requires color photographs to produce the Form I-551, applicants should make every effort to obtain color photographs to avoid inconvenience at the time of admission. Applicants who are unable to furnish color photographs at the time of visa issuance must be photographed again when they apply for admission. Posts shall attach photographs to Form OF-155B, *Immigrant Visa and Alien Registration*, and identify them as indicated in 9 FAM 42.65 N8.1.

9 FAM 42.65 N10.3 Photograph Specifications

(TL:VISA-647; 08-30-2004)

a. Applicants must present *one* photograph, either colored or, if authorized by the consular officer, black and white. Photographs must be:

(1) Glossy, untouched, unmounted, and on a white *or off-white* background;

(2) The subject shall be shown in *full* frontal view, *with full head, from top of hair to bottom of chin, with the eyes wide open*; and

(3) The dimension of the facial image must be about one inch (33 mm) from the chin to the top of the hair.

Since instant-type photos are acceptable, the photographs need not be identical as long as they meet all specifications given above and bear a clear resemblance to the applicant.

b. Generally, applicants shall have their photos taken without head covering of any kind. Consular officers may accept photos with heads covered only when the presentation of photos without head covering would conflict with the applicant's religious practices. A photograph depicting a person wearing a head covering must show enough of the face so as to establish identity. A photo depicting a person wearing a traditional face mask or veil which conceals portions of the face and does not permit adequate identification is not acceptable. Photos are required of all applicants regardless of age.

c. *Also, eyeglasses should be worn if normally used by the subject.*

9 FAM 42.65 N11 Reviewing Copies of Documents Submitted to *DHS*

(TL:VISA-647; 08-30-2004)

The *Department of Homeland Security (DHS)* does not routinely require the submission of original documents or certified copies with the filing of petitions. Consular officers must ensure that photocopies of documents submitted in support of petitions are compared with original documents at the time of immigrant visa application. Original documents connected with petition filing, but not required for immigrant visa issuance, should not be routinely required unless there is reason to doubt their authenticity. However, the consular officer, at his or her discretion, may require submission of any original document in order to compare it with a photocopy upon which a petition was approved.