

9 FAM 42.55 Notes

(TL:VISA-395; 04-15-2002)

9 FAM 42.55 N1 Post Reports of Immigrant Visa Applicants

9 FAM 42.55 N1.1 Monthly Reports of Qualified Applicants

(TL:VISA-395; 04-15-2002)

The documentarily qualified figures submitted monthly [see 22 CFR (9 FAM) 42.52 PN3.6] provide the Department the known total (by priority date, chargeability, classification, and post) of visa applicants who are awaiting only visa numbers to apply formally for a visa. After collation of these data, the Department makes monthly allotments to the extent available visa numbers permit. [See 22 CFR (9 FAM) 42.51.] If the demand exceeds the supply of numbers, the priority date of the first applicant for whom a number is not available becomes the issuance cutoff date for the categories and foreign states concerned. The documentarily qualified totals are also used to respond to the Congress and for planning purposes with respect to proposed legislative changes. It is, therefore, essential that the following general guidelines be strictly observed in preparing the monthly reports of documentarily qualified applicants:

(1) All applicants processing posts must prepare Report 20, Monthly Report of Documentarily Qualified Immigrant Visa Demand, and submit it so that it arrives in the department (CA/VO/F/I) before the first working day of the month. The automated immigrant visa processing system is used to generate this report and submit it via e-mail. The Visas Whale cable procedure should only be used as a last resort and in coordination with CA/VO/F/I.

(2) Post must ensure that data entry is up-to-date so that all applicants who have become documentarily qualified during the reporting period are reported;

(3) No applicant's priority date should be reported twice unless an allocation was made on the basis of a previous documentarily qualified report and the applicant either failed to keep the appointment or was not qualified for a visa at that time and has subsequently returned.

See also 9 FAM 42.51 N1. IVACS posts should submit Report 20.

9 FAM 42.55 N1.2 Monthly Report of Immigrant Visas Issued

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At the end of each month, posts authorized to issue immigrant visas should prepare and transmit the Immigrant Visa Workload Report (Report 28 on the automated immigrant visa processing system) . This report will reflect all immigrant visas issued during the month.

9 FAM 42.55 N1.3 Annual Report

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The “Annual Report of Immigrant Visa Applicants Subject to Numerical Limitations” (*formerly Form OF-469, Annual Report of Qualified Visa Applicants, or Report 29 on the automated system*) is no longer required. Although this data is the raw material from which the movement of the qualifying date is calculated. *It is now available to the Department through the Consolidated Consular Database.* They are also necessary for consideration of proposed legislative changes.

9 FAM 42.55 N2 Reporting Issuances under Section 2 of Pub. L. 102-110

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Section 2 of the Armed Forces Adjustment Act of 1991 (Pub. L. 102-110) established a new special immigrant class under INA 101(a)(27)(K) [see 22 CFR (9 FAM) 42.32(d)(7)]. The numerical scheme relating to the numbers in this class is somewhat complex to describe but, from the standpoint of post reporting, very simple. Documentarily qualified demand should not be reported; allocations for this class will not be made by the Department. Issuances, however, must be reported on the monthly report of immigrant visa workload. Unlike other “special immigrant” fourth preference applicants, these must be reported by specific visa classification symbol (SM1, SM2, etc.) rather than lumped together as a generic SM class of immigrants.

9 FAM 42.55 N2.1 Specific Numerical Limits and Their Effects

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a. There are certain specific limits placed on this class, to which some beneficiaries are not subject. In general, the limits are not more than:

(1) 2,000 annually for nationals of a foreign state for which there is a numerical limitation treaty or agreement, or

(2) 100 annually for nationals of any other foreign state.

b. Under INA 203(b)(6) (added by Pub. L. 102-110), however, members of the Armed Forces who met the requirements of INA 101(a)(27)(K) as of October 1, 1991, are exempt from those numerical limits. Those who become eligible for such classification after that date are so limited. The Department believes it unlikely these limits will be reached, at least in the immediate future. This is one of the reasons the Department will not regulate such admissions by allocation of visa numbers but must be kept aware of total issuances in case the limits are neared.

c. Moreover, although the limits noted in 9 FAM 42.55 N2.1 above apply in the year of issuance or adjustment, the numerical effects of visa issuances to or adjustments by such applicants does not impact on visa numbers under INA 202 and 203 until the following year, total admissions of employment-based fourth preference immigrants whose status as based on qualification under INA 101(a)(27)(K), including spouses and children of Armed Forces personnel, will be divided by three and one-third of the total will be subtracted from the visa numbers available to classes described in INA 203(b)(1), (2) and (3) each.

9 FAM 42.55 N2.2 Per-country Ceiling

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In addition, the per-country numerical limitation under INA 202(a) will be reduced by the number of such admissions attributable to nationals of such country in the following year. Not only will the per-country limit be reduced, for countries subject to the pro rate provisions of INA 202(e) there will also be a reduction of one-third of the total of such admissions attributable to that country in the pro rata amount of visas available in the employment-based first through third preferences.

9 FAM 42.55 N3 Preparing Reports

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See the immigrant visa application users manual for instructions for preparing and submitting reports referred to in 9 FAM 42.55 N1 above.