

9 FAM 42.72 Notes

(TL:VISA-168; 08-08-1997)

9 FAM 42.72 N1 Extended Validity for Certain Visa Applicants

9 FAM 42.72 N1.1 Possible Impact at Posts Worldwide

(TL:VISA-45; 6-14-91)

Although the major impact of section 154 of the Immigration Act of 1990 will be felt in Hong Kong, it is imperative that consular officers at other posts familiarize themselves with this material, as the need either to issue or to confirm continuing admissibility of beneficiary aliens could arise anywhere. [See 9 FAM 42.72 N4 below.]

9 FAM 42.72 N1.2 Aliens Qualifying for Extended Validity Visas

(TL:VISA-63; 7-30-92)

a. Consular officers may extend to January 1, 2002, the validity of an immigrant visa for certain aliens who meet the requirements of section 154 of the Immigration Act of 1990. Additionally, consular officers may extend the visa validity for their spouses and children. This extension does not mean "to a date between normal validity and January 1, 2002"; it means the visa must have the usual validity or that of January 1, 2002. If the alien chooses to have the visa validity extended until January 1, 2002, see 9 FAM 42.72 N3 below for special instructions.

b. An alien may request an extension of visa validity if the alien:

(1) Was issued a visa under section 124 of the Immigration Act of 1990 during the period FY 1991 through FY 1993. [see 9 FAM PART 45];
or

(2) Is chargeable to Hong Kong or China under INA 202; and

(a) Resided in Hong Kong as of November 29, 1990, and

(b) Was issued an immigrant visa during FY 1991 under INA 203(a)(1), (2), (4), or (5), or was issued an immigrant visa during FY 1992 and, thereafter, under INA 203(a) or 203(b)(1) as amended by Pub. L. 101-649 of November 29, 1990.

9 FAM 42.72 N2 Special Considerations Regarding Children

(TL:VISA-45; 6-14-91)

a. If the child elects to have his or her visa validity extended, entitlement to status shall not cease should such alien attain the age of twenty-one or marry prior to an application for admission into the United States. Consequently, the consular officer shall not limit the validity of a visa for an eligible child to the date before his or her 21st birthday nor require the completion of the Statement of a Marriageable Age Child, as would be customary.

b. The House Committee Report notes that it is intended a child born during the extended validity of a visa issued to a principal is also entitled to status.

c. INS regulation (8 CFR 211.1(a)(1)) provides for the entry, without a visa, of a child born subsequent to the issuance of a visa to the parent. [See 9 FAM 42.1(d) Related Statutory Provisions .] It should not, therefore, be necessary to issue visas to such after-acquired children.

9 FAM 42.72 N3 Issuing Extended Validity Visas

(TL:VISA-168; 08-08-1997)

a. If an alien entitled to extended visa validity under section 154 of the Immigration Act of 1990 requests extended validity at the time of visa issuance, the consular officer shall endorse the face of the issued immigrant visa "section 154 applies".

b. If an alien requests extended visa validity subsequent to the issuance of the original visa but within *six* months following the visa issuance, the consular officer shall issue a replacement visa bearing the extended expiration date rather than annotating the original visa. The alien must also pay another issuance fee.

c. Additionally, in both instances, the consular officer shall inform the alien, both orally and in writing, of the need to return to the consular section prior to departure for the United States for a redetermination of admissibility. [See 9 FAM 42.72 N4 below.]

9 FAM 42.72 N4 Redetermining Admissibility Of Long-Term Visa Bearer

9 FAM 42.72 N4.1 Required Documentation

(TL:VISA-57; 4-15-92)

a. The Department recognizes that the amount and kinds of required documentation necessary to establish continuing admissibility will vary depending on circumstances, and, therefore, does not wish to prescribe specific requirements. For example, some applicants may not leave until several years later and would need new police certificates, medical examinations, and perhaps even clearances from other posts. Others might leave sooner than initially intended and within the initial validity of his or her medical examination and/or police certificate. Therefore, consular officers shall determine the necessary documentary evidence required for each case independently.

b. See 9 FAM PART 45 for aliens entitled to status under section 124 of the Immigration Act of 1990.

9 FAM 42.72 N4.1-1 Medical Ineligibility under Pub. L. 104-208

(TL:VISA-168; 08-08-1997)

Aliens granted extended visa validity must meet the requirements of INA 212(a)(1)(A)(ii) if they apply for a visa or appear for redetermination of admissibility after July 1, 1997.

9 FAM 42.72 N4.1-2 Other Ineligibility under Pub. L. 104-208

(TL:VISA-168; 08-08-1997)

An alien applying for redetermination of admissibility must meet the additional grounds of ineligibility under Pub. L. 104-208.

9 FAM 42.72 N4.2 Notification of Departure/Scheduling Appointment

(TL:VISA-168; 08-08-1997)

a. Although consular officers must encourage bearers of extended validity visas to notify the post well in advance (preferably about *eight* months before) of the date of intended departure, it is quite possible that some will make their decision to leave for the United States without much advance notification. The law and 22 *CFR* 42.72(e)(4) both require the consular officer to schedule the interview no less than *six* months prior to the applicant's intended departure.

b. This provision was obviously drawn to protect the applicant. If, however, the applicant does not, for whatever reason, give the consular officer enough notice to permit compliance with the regulation, the consular officer shall give the alien the first available appointment at the time of such notification. The consular officer shall also inform the alien that if he or she wishes to delay departure, the consular officer will give the alien additional time to acquire whatever documentation will be necessary for the readjudication.

9 FAM 42.72 N4.3 Issuing Duplicate Visa After Redetermining Admissibility

(TL:VISA-57; 4-15-92)

If at the time of the alien's departure for the United States, a consular officer determines that the alien bearing an extended visa validity visa continues to be admissible, the consular officer shall issue the alien a duplicate immigrant visa, inserting the word "Duplicate" in front of the word "Immigrant" on Form OF-155A.

9 FAM 42.72 N4.4 Revocation if Inadmissible

(TL:VISA-45; 6-14-91)

If the consular officer determines that the alien is not admissible, the consular officer shall revoke the immigrant visa in accordance with the requirements and procedures set forth in 9 FAM 42.82 Related Statutory Provisions .

9 FAM 42.72 N5 Hong Kong Residence Requirement

(TL:VISA-45; 6-14-91)

a. Consular officers shall note that the Hong Kong residence requirement differs with respect to aliens qualifying under INA 203 and aliens qualifying under section 124 of the Immigration Act of 1990. [See 9 FAM PART 45 for section 124 aliens.] With respect to aliens qualifying under INA 203 the requirement is that they were resident in Hong Kong on November 29, 1990. There is, however, no requirement for continuing residence in Hong Kong.

b. It is unlikely, but certainly possible, that beneficiaries resident in Hong Kong on November 29, 1990, might be residing in some other consular district at the time of visa issuance or proposed entry into the United States, particularly those chargeable to a heavily oversubscribed category.

9 FAM 42.72 N6 Limiting Extension

(TL:VISA-45; 6-14-91)

Consular officers shall not extend visas issued under section 154 of the Immigration Act of 1990 beyond January 1, 2002.

9 FAM 42.72 N7 Arrival in United States After Visa Expiration

(TL:VISA-168; 08-08-1997)

INS regulation, 8 CFR 211.3, provides that:

An immigrant visa, reentry permit, refugee travel document or Form I-551 shall be regarded as unexpired if the rightful holder:

(1) Embarked or enplaned before the expiration of the immigrant visa, reentry permit or refugee travel document or, with respect to the I-551, before the first anniversary of the date of departure from the United States; and

(2) The vessel or aircraft arrives in the United States or foreign contiguous territory on a continuous voyage.

9 FAM 42.72 N7.1 Defining “Continuous Voyage”

(TL:VISA-168; 08-08-1997)

The continuity of the voyage shall not be deemed to have been interrupted if the alien:

(1) Makes scheduled or emergency stops en route to the United States or foreign contiguous territory;

(2) Lays over in foreign contiguous territory for the sole purpose of effecting a transportation connection to the United States, or

(3) Transfers to another conveyance in foreign contiguous territory solely for the purpose of effecting a transportation connection to the United States.