

9 FAM 42.83 NOTES

*(CT:VISA-1778; 11-30-2011)
(Office of Origin: CA/VO/L/R)*

9 FAM 42.83 N1 GROUNDS FOR TERMINATION OF REGISTRATION

(CT:VISA-1734; 10-06-2011)

You may terminate registration for an immigrant visa only in the circumstances specified in 22 CFR 42.83(a) and (b). (See 9 FAM 42.83 Related Statutory Provisions.)

9 FAM 42.83 N1.1 Failure to Make Timely Application for a Visa

(CT:VISA-1778; 11-30-2011)

You should terminate the application of a beneficiary who has not made application within one year of receiving the *Immigrant Visa Appointment* letter. The beneficiary has one year to make a timely application for a visa, beginning on the date you *mail the Immigrant Visa Appointment letter* to the beneficiary.

9 FAM 42.83 N1.2 Failure to Present Evidence to Overcome Refusal of Immigrant Visa Under Section INA 221(g)

(CT:VISA-1734; 10-06-2011)

If an applicant fails to present evidence purporting to overcome the basis for a refusal under INA 221(g) within one-year following the refusal, you should terminate the registration.

9 FAM 42.83 N2 CASES TERMINATED FOR FAILURE TO RESPOND TO PACKET 4 OR

PACKET 4(A) NOTICES

9 FAM 42.83 N2.1 Applicants Whose Cases Are Subject to Termination Under 203(g)

(CT:VISA-1734; 10-06-2011)

- a. INA 203(g) procedures apply to applicants who are immediate relatives, family-sponsored immigrants and employment-based immigrants who have received notification of the availability of a visa (i.e., who have been sent Packet 4 or Packet 4(a)). (See 9 FAM 42.63 PN10.)
- b. INA 203(g) procedures do not, however, apply to applicants in categories for which numbers are unavailable, and applicants in limited-duration programs.

9 FAM 42.83 N2.2 Extensions of the One-Year Period

(CT:VISA-1734; 10-06-2011)

The Department (CA/VO) considers the end of the one-year period to be a mandated cut-off date. Should the applicant miss a scheduled interview, that fact alone would not halt the process. The one-year period stops, however, if during that time the applicant convinces you that his or her initial failure to appear was beyond his or her control. Thus, mailing a new letter setting a second appointment date would begin the one-year period anew.

9 FAM 42.83 N2.3 Post's Action if Applicant Requests Reinstatement of Application

(CT:VISA-1734; 10-06-2011)

After the one-year period has ended, if the applicant is able to persuade you within the next year that the failure to appear within the first year was beyond his or her control, the applicant would be entitled to another appointment. The date that you agree to set the new appointment would start another one-year "timely appreciation" period.

9 FAM 42.83 N3 CASES TERMINATED FOR

FAILURE TO PURSUE APPLICATIONS WITHIN ONE YEAR OF INA 221(G) INELIGIBILITY FINDING

9 FAM 42.83 N3.1 Unavailability of Documentation or Information to Overcome INA 221(g) Refusal

(CT:VISA-1734; 10-06-2011)

An applicant who makes a credible assertion that documentation or information is not available within one year of the INA 221(g) refusal would not be subject to INA 203(g) provisions.

9 FAM 42.83 N3.2 Extending One-Year Period

(TL:VISA-66; 09-30-1992)

The one-year period is extended each time an applicant presents evidence reasonably purporting to overcome the INA 221(g) ineligibility.

9 FAM 42.83 N3.3 Beneficiaries of More Than One Approved Petition

(CT:VISA-1734; 10-06-2011)

If an applicant is the beneficiary of more than one approved visa petition, you would terminate only the petition for which the beneficiary failed to make a timely application. All other petitions would remain valid.

9 FAM 42.83 N3.4 Beneficiaries of New Petition Filed by Same Petitioner

(CT:VISA-1734; 10-06-2011)

If the same petitioner files a new petition for the same beneficiary, and the original petition was revoked under INA 203(g), the original priority date would not be valid.

9 FAM 42.83 N4 "FOLLOWING-TO-JOIN" APPLICANTS

(TL:VISA-66; 09-30-1992)

Applicants who are “following to join” the principal applicant are not subject to the provisions of INA 203(g).

9 FAM 42.83 N5 NOTIFICATION OF CHANGE OF ADDRESS

(CT:VISA-1734; 10-06-2011)

The applicant is responsible for providing the visa-issuing post with a current address. The applicant’s failure to receive the notice of termination because he or she neglected to notify post of his or her change of address will not be considered as a “reason beyond the applicant’s control” for not pursuing the application.

9 FAM 42.83 N6 REQUESTS FOR ADVISORY OPINIONS

(CT:VISA-1734; 10-06-2011)

The Department has received very few advisory opinion requests on INA 203(g) and, therefore, the Department has little basis for establishing precedence. We therefore encourage posts to submit advisory opinion requests whenever they are in doubt as to whether INA 203(g) should be applied to CA/VO/L/A.