

9 FAM 42.53 Procedural Notes

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

9 FAM 42.53 PN1 Determining Derivative Status

9 FAM 42.53 PN1.1 When Post Records Exist

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

a. When the post issues the principal applicant a visa, it should maintain complete records regarding the principal alien's classification, issuance, chargeability and priority date to facilitate the processing of following-to-join beneficiaries. Posts must follow proper procedures in the automated immigrant visa processing system to ensure that following-to-join case records are maintained accurately. Posts should not create new cases for following-to-join applicants if the principal was issued at that post.

b. In cases where the principal alien has been issued a visa at post, the post should establish a file for the following-to-join applicants which should include the following:

- (1) Copy of the original petition;*
- (2) Copy of the principal alien's immigrant visa;*
- (3) Copies of civil documents for each derivative beneficiary; and*

(4) Memorandum confirming biodata for derivative beneficiaries and tentative travel plans.

c. In cases where the principal applicant plans to precede the family to the United States, posts may wish to arrange an informal examination of the other members at the time of the principal's application. This will allow post to ascertain whether any of the family members has a possible mental, physical or other ground of ineligibility which may prohibit the issuance of a visa, and thus would prevent or delay them in joining the principal. [See 9 FAM 42.68 N1.]

9 FAM 42.53 PN1.2 When Post Record Does Not Exist

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

a. If no post record exists, posts should make every effort to verify the principal alien's visa category, chargeability, priority date, and admission into the United States based on available documentation such as:

- (1) The principal alien's Form I-551, Permanent Resident Card;*

(2) *Form I-181, Memorandum of Creation of Record of Lawful Permanent Residence or Form I-824 Application for Action on an Approved Application or Petition;*

(3) *Cabled notification from INS; or*

(4) *The principal alien's Adit stamp showing entry as an immigrant.*

b. The principal alien has the primary responsibility for establishing his and/or her legal resident status. Posts should only request verification of status through the VISAS BADGER process as a last resort.

9 FAM 42.53 PN1.3 When Principal Adjusts Status

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

In cases where the principal alien who adjusted status in the United States presents Form I-551, *Alien Registration Receipt Card*, with the visa application of a relative entitled to derivative classification and priority date [see 9 FAM 42.53 N6], the consular officer should create a case record for the derivative applicants. At a minimum, this record should include:

(1) Name, date and place of birth of the visa applicant;

(2) Name of the permanent resident and relationship to the applicant;

(3) Date of presentation of Form I-551; and

(4) Resident alien's registration number, date of admission for permanent residence, and visa classification

9 FAM 42.53 PN1.4 When Insufficient Evidence Exists

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

In the event that there is not sufficient evidence to establish a derivative priority date, the Department and INS have agreed to a VISAS BADGER/VISAS SIXTY-SEVEN procedure to enable posts to obtain this information. This procedure should NOT be used to verify credible, documented evidence. Posts may wish to inform applicants that the VISAS BADGER procedure can take up to 8 weeks to complete. It, therefore, may be more advantageous for the derivative beneficiaries to contact the principal applicant to request that he or she provide the necessary documentation instead.

9 FAM 42.53 PN2 Fraud and Following to Join Cases

(TL:VISA-173; 11-10-1997)

Since visa processing in follow-to-join cases is based primarily on documents presented by the applicant, a potential for fraud exists. Internal controls, document checks, and record verification are all means of guarding against fraud. However, consular officers should establish clear, consistent procedures for handling following-to-join cases based on the level of fraud which exists in the country and the security of local civil documents. Where the post has issued a visa to the principal alien, posts should retain as much pertinent information as possible on derivative beneficiaries who may apply later. In cases where the post receives INS notification of the principal alien's adjustment, confirmation of derivative beneficiaries' identities and claimed relationship is essential.

9 FAM 42.53 PN3 Namechecks for Derivative Beneficiaries

(TL:VISA-173; 11-10-1997)

a. The National Visa Center does not conduct NCIC namechecks on derivative beneficiaries whose names are not included on the Form I-130 *Petition for Alien Relative*. Posts should, therefore, initiate VISAS HAWK clearances for following-to-join beneficiaries 17 years of age and older. NCIC namechecks remain valid for one year, NCIC namechecks may be requested for any applicant if the consular officer has reason to believe that the applicant may have a criminal record in the United States.

b. Derivative beneficiaries should also be namechecked in CLASS.