

9 FAM 42.51 Procedural Notes

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

9 FAM 42.51 PN1 Monthly Request for Immigrant Visa Numbers

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

a. The Department allocates visa numbers on the basis of monthly reports of documentarily qualified visa applicants. Issuing offices abroad *must prepare and submit Report 20 Monthly Report of Documentarily Qualified Immigrant Visa Demand so that it reaches the Department (CAVO/F/I)* by the first of the month. Posts authorized to issue immigrant visas but having no reportable applicants in a given month must send a report stating there are no reportable applicants.

b. The monthly allotment of immigrant visa numbers is close to the maximum permissible. Therefore, only a few immigrant visa numbers remain for allocation in response to individual requests from posts. For this reason, posts should not request allocation of immigrant visa numbers for applicants who become documentarily qualified after the submission of the report unless special circumstances exist in an individual case necessitating immediate issuance of a visa. A post with otherwise unused numbers in a particular category/chargeability which would be returned to VO at the end of a month should use such numbers before requesting additional allocations in the same category/chargeability. During the last month of a fiscal year, immigrant visa numbers available for individual allocation are generally less than in any other month and only requests for the most compelling cases can be honored during that time.

9 FAM 42.51 PN2 Reporting Former Sixth Preference Cases

(TL:VISA-61; 06-05-1992)

All former sixth preference cases are deemed to be new employment-based third preference. However, the new employment-based third preference includes a subcategory of "other (i.e., unskilled) workers" who are subject to an annual numerical limit of 10,000 per year. Posts, therefore, must determine and differentiate the preference cases which are subject to this "other worker" limitation (classified "EW") from the skilled workers (classified "E3"). Since this determination cannot be made by the Department, posts must report cases under the new classifications "E3" or "EW".

9 FAM 42.51 PN2-1 Determining "E3" or "EW" Classification

9 FAM 42.51 PN2.1-1 Principal Alien

(TL:VISA-61; 06-05-1992)

a. Under the Immigration Act of 1990 (Pub. L. 101-649) "other workers" (i.e., unskilled) are those whose labor certifications are for work which requires less than two years training or experience. In Item 14 of Form ETA-750 A, Application for Alien Employment Certification (Offer of Employment), the prospective employer must indicate the minimum training, experience, and post secondary education required to perform the job duties. If all of these factors taken together total at least two years, the applicant should be considered to meet the standard for skilled worker, and the case would be properly accorded the classification symbol "E3". High school level education is NOT a factor for consideration in this regard. If less than a total of two years training, education and experience is specified as required, the applicant would be an "other worker", and should be accorded the classification symbol "EW".

b. When factoring the minimum experience into this total, posts may take account of the experience specified in item 14 in either the job offered or in a related occupation, but the experience in both of these categories cannot be added together.

c. Additionally, it has been determined that where the labor certification is approved under Schedule A and where item 14 of Form ETA-750 A is not completed, the Labor Department requirements for pre-certification as indicated in the notes with Schedule A should be considered. It is anticipated that all sixth preference Schedule A cases will be found to fall within the definition of skilled worker and be accorded "E3" status. If, however, a post encounters any Schedule A case which the post believes might not fall within that category, submit the case to the Department (CA/VO/L/A) for an advisory opinion.

9 FAM 42.51 PN2.1-2 Derivative Spouse or Child

(TL:VISA-61; 06-05-1992)

All accompanying or following-to-join derivatives of former sixth preference principals (either "E3" or "EW") who were issued visas prior to October 1, 1991, are now deemed to be spouses and children of "skilled workers" and thus should be accorded the classification "E3". Thus they are not subject to the 10,000 annual limit on "other (unskilled) workers", regardless of the job to which the principal sixth preference visa recipient was destined.

9 FAM 42.51 PN3 Returning Unused Visa Numbers

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

Posts shall return unused visa numbers allocated for a specific month to the Department (CA/VO/F/I) by VISAS GIRAFFE cable. VISAS GIRAFFE cables must be sent within five calendar days of the end of each month. [See 9 FAM *Appendix I*.]

9 FAM 42.51 PN4 "Recaptured Visas"

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

A "recaptured visa" is a visa that is known not to have been used (e.g., the bearer died or was unable to travel during the validity period). Such visas should be recaptured and the visa number returned to the Department unless the same applicant wants to replace his or her visa during the same fiscal year. [See 22 *CFR* (9 FAM) 42.74(b) Regs/Statutes and 9 FAM 42.74 Notes.]

9 FAM 42.51 PN4.1 Importance of Prompt Return

(TL:VISA-61; 06-05-1992)

Posts shall return recaptured numbers to the Department (CA/VO/F/I) as quickly as possible. A visa number returned during the fiscal year of original issuance may be reallocated by the Department during the same fiscal year. Although all such visa numbers should be returned as soon as they have been recaptured, it is essential that recaptured visa numbers be promptly returned near the end of the fiscal year so that they may be used elsewhere before the end of the fiscal year.

9 FAM 42.51 PN4.2 Using "VISAS GIRAFFE" Telegram to Return Recaptured Numbers

(TL:VISA-183; 12-18-1998)

Posts shall return recaptured visa numbers by telegram using the code word "GIRAFFE" followed by the words "Recaptured Visa Numbers." This is designed to preclude any possible confusion of these returns with those of other unused visa numbers. The issuance date (month and year) of the allotted number being returned should also be indicated. Posts shall make a notation of the recapture and return in their records.

9 FAM 42.51 PN4.3 "Recaptured" Immediate Relative Visa

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

Immediate relative visas are not subject to numerical limit and, therefore, no visa numbers are allocated or used for *immediate relative visa* issuances. Under the terms of the INA as revised by the Immigration Act of 1990, however, each year's total of immediate relatives must be considered when the Department calculates the family preference numerical limit for the following year. Thus, it is now important for the Department to know when *immediate relative* visas are unused by the recipients so that visas will not be counted when the family preference limit is being determined. Posts are asked to report such "recaptured" immediate relative visas to VO in the same manner as recaptured visa numbers are reported; they should be identified as "Recaptured Immediate Relative Visa(s)", and the month of visa issuance should be indicated.