9 FAM 42.81 Notes

9 FAM 42.81 N1 Visa Issued or Refused if Application Properly Completed and Executed

(TL:VISA-66; 9-30-92)

There are no exceptions to the rule that once a visa application has been properly completed and executed before a consular officer a visa must be either issued or refused. For statistical and comparison purposes, all posts should follow the identical refusal procedures and report refusals the same way in their required reports of visas issued and refused. [See FAM 9 PART IV - Reports.] Accordingly, any alien to whom a visa is not issued by the end of the working day on which the application is made, or by the end of the next working day if it is normal post procedure to issue visas to some or all applicants the following day, must be found ineligible under one or more provisions of INA 212(a), 212(e), or 221(g). (INA 221(g) is not to be used when a provision of INA 212(a) is applicable.) This requirement to find an applicant ineligible when a visa is not issued applies even when:

(1) A case is medically deferred;

(2) The post requests an advisory opinion from the Department;

(3) The post decides to make additional local inquiries or conduct a full investigation; or

(4) The only deficiency is a clearance from another post. There is no such thing as an informal refusal or a pending case once a formal application has been made.

9 FAM 42.81 N2 Notice of Denials

(TL:VISA-66; 9-30-92)

If the consular officer determines an alien to be excludable under INA 212(a), the consular officer shall provide the alien with a timely written notice that states the determination, and lists the specific provision or provisions of the law under which the alien is excludable.

9 FAM 42.81 N3 Guidelines on Grounds for Refusals

(TL:VISA-66; 9-30-92)

Guidelines for determining the applicable INA provisions as grounds of refusal in varying circumstances follow:

(1) When a spouse or child of the principal alien is ineligible for a visa and the principal alien and remainder of the family decide to wait until the ineligible person has overcome the ineligibility, the spouse or child should be refused under the pertinent section(s) of INA 212(a), 212(e), or 221(g). The remainder of the family should be refused under INA 221(g).

(2) When the principal alien only is ineligible, the principal alien should be refused under the pertinent grounds of INA 212(a), 212(e), or 221(g). Other family members should be refused under INA 221(g).

(3) When an applicant is delayed for suspected tuberculosis, the applicant and family members who wish to wait and travel with the applicant should be refused under INA 221(g). If further tests indicate ineligibility under INA 212(a)(1)(A)(i), a new refusal under that section should be made for the afflicted applicant only.

(4) When a case is deferred for the results of an advisory opinion, an investigation, an inquiry, or a clearance, the principal alien and family members should all be refused under INA 221(g). If subsequent information calls for refusal under INA 212(a), a new finding should be made under the pertinent section only for the applicant concerned.

9 FAM 42.81 N4 Reconsidering Refusal

9 FAM 42.81 N4.1 Applicant Has 1 Year To Overcome Refusal to Avoid New Fee

(TL:VISA-3; 8-30-87)

Under 22 CFR 42.81(e) a refused alien need pay no new application fee if evidence is presented overcoming the ground of ineligibility within 1 year of the date of refusal.

9 FAM 42.81 N4.2 No New Fee Required in Certain Other Cases

(TL:VISA-66; 9-30-92)

See FAM 9 section 9 FAM 42.67 N1.

9 FAM 42.81 N4.3 Reconsidering Refusal After 1 Year

(TL:VISA-3; 8-30-87)

As long as the applicant is still entitled to visa status, reconsideration may be given to the case at any time. If more than1 year has elapsed, however, a new application and fee must be taken prior to the approval of the case and to the issuance of a visa. [See 22 CFR 42.43, Revocation of Petitions and 22 CFR 42.83, Termination of Registration.]