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**DEPARTMENT OF STATE**

**22 CFR Parts 22 and 42**

**[Public Notice 10109]**

**RIN 1400-AE11**

**Schedule of Fees for Consular Services, Department of State and Overseas**

**Embassies and Consulates – Visa Services Fee Changes**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** This rule is promulgated to implement the Adoptive Family Relief Act (the Act), which allows for the waiver or refund of fees relating to the renewal or replacement of an immigrant visa for certain already-adopted children where the adopted child was unable to use his or her initially issued immigrant visa as a direct result of extraordinary circumstances. The Department is also amending its regulations regarding immigrant visa application procedures to cover new technologies, application forms, and procedures that have been implemented in recent years.

**DATES:** This rule is effective on [insert date of publication in the *Federal Register*].

**FOR FURTHER INFORMATION CONTACT:** Jorge Abudei, Management Analyst, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202-485-6697, telefax: 202-485-6826; e-mail: [fees@state.gov](mailto:fees@state.gov).

**SUPPLEMENTARY INFORMATION:**

Why is the Department promulgating this rule?

The Adoptive Family Relief Act (Public Law 114-70) (the Act) amended Section 221(c) of the Immigration and Nationality Act (INA), 8 U.S.C. 1201(c), to allow for the waiver or refund of certain immigrant visa fees for a lawfully adopted child, or a child coming to the United States to be adopted by a United States citizen (hereinafter referred to as adoptive children), subject to criteria prescribed by the Secretary of State. More than 350 American families have successfully adopted children from the Democratic Republic of the Congo. However, since September 25, 2013, some families have not been able to bring their adoptive children home to the United States because the Democratic Republic of the Congo suspended the issuance of “exit permits” for these children. As the permit suspension drags on, however, American families are repeatedly paying visa renewal and related fees, while also continuing to be separated from their adoptive children. The waiver or refund provides “support and relief to American families seeking to bring their adoptive children from the Democratic Republic of the Congo home to the United States, and would also provide relief to similarly situated adoptive families should barriers arise in other countries in the future.” *See* 161 Cong. Rec. S2796-01.

The Department is amending current rules regarding immigrant visa fees found in §§ 22.1, 42.71(b) and 42.74 of 22 CFR in order to implement the Act. Thus, the current text of § 42.71(b) will become § 42.71(b)(1) and a new paragraph (b)(2) will set forth the requirements for the waiver or refund of immigrant visa fees for adoptive families who must renew a visa for an adoptive child who, through no fault of the parent(s) or child, is unable to travel to the United States. If an immigrant visa was issued on or after March 27, 2013 and an adoptive child was unable to use that visa as a direct result of

extraordinary circumstances beyond the control of the adoptive child or adoptive parent(s), such as denial of an exit permit, the adoptive child, adoptive parent(s), or their representative may request a waiver or refund of the immigrant visa fee relating to a replacement of such visa. All other visa replacement requirements still apply. This rule also adds this exemption to the Schedule of Fees at 22 CFR 22.1 and adds a paragraph at § 42.74(a)(3) on replacement immigrant visas for adoptive children covered by the Act.

In addition to implementing the Act, this rule also updates existing regulations regarding immigrant visa application procedures to more accurately reflect new technologies, application forms, and procedures that have been implemented in recent years. Obsolete language in §§ 42.71, 42.73, and 42.74 regarding discontinued immigrant visa issuance procedures and outdated forms has been deleted. Superfluous language in § 42.71 related to an outdated procedure has been removed. Both §§ 42.73 and 42.74 have been reorganized for readability and § 42.73 has been revised to more closely track the equivalent provision to procure issuance of nonimmigrant visas at § 41.113. In addition, language related to the locations of specific immigrant visa content on the Department's websites has been deleted, as websites and their content are generally subject to frequent reorganization and other changes. More specific guidance is available in Volume 9 of the Foreign Affairs Manual (*see* [fam.state.gov](http://fam.state.gov)) and on [travel.state.gov](http://travel.state.gov).

## **REGULATORY FINDINGS**

### **Administrative Procedure Act.**

The Department is publishing this rule as a final rule, with an effective date less than 30 days from the date of publication, based on the "good cause" exceptions set forth

at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The Department is issuing this final rule with an effective date on the date of publication. The APA permits a final rule to become effective fewer than 30 days after the publication if the issuing agency finds good cause. 5 U.S.C. 553(d)(3). The Department finds that good cause exists for an early effective date in this instance because Congress has already mandated that, subject to criteria prescribed by the Secretary of State, the visa fees for certain lawfully adopted children may be waived, or, if paid, may be refunded. This rulemaking implements the Congressional mandate.

Regulatory Flexibility Act/Executive Order 13272: Small Business.

Because this final rule is exempt from notice-and-comment rulemaking under 5 U.S.C. 553, it is exempt from the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Because this rule is exempt, the Department did not conduct an economic analysis of the impact on small entities.

Unfunded Mandates Reform Act of 1995.

The Unfunded Mandates Reform Act of 1995 (codified at 2 U.S.C. 1532) generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804(2).

Executive Orders 12866 and 13563.

The Department has considered this rule in light of Executive Orders 12866 and 13563 and affirms that this regulation is consistent with the guidance therein. The Office

of Management and Budget has designated this rule not significant for purposes of E.O. 12866. The Department does not consider this rule to be an economically significant rulemaking action.

*Executive Orders 12372 and 13132.*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

*Executive Order 13771 - Reducing Regulation and Controlling Regulatory Costs.*

This rule is not subject to the requirements of EO 13771 (82 FR 9339, February 3, 2017) because it is not significant under EO 12866.

*Executive Order 13175.*

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

*Executive Order 12988.*

The Department has reviewed the regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Paperwork Reduction Act*

This rule does not impose any new information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35. The Office of

Information and Regulatory Affairs previously approved the application for a refund under the Adoptive Family Relief Act (OMB Control No. 1405-0223).

**List of Subjects in 22 CFR Parts 22 and 42**

Consular services, Fees, Passports and visas.

Accordingly, for the reasons stated in the preamble, 22 CFR parts 22 and 42 are amended as follows:

**PART 22--SCHEDULE OF FEES FOR CONSULAR SERVICES—  
DEPARTMENT OF STATE AND FOREIGN SERVICE**

1. The authority citation for part 22 is revised to read as follows:

Authority: 8 U.S.C. 1101 note, 1153 note, 1157 note, 1183a note, 1184(c)(12), 1201(c), 1351, 1351 note, 1714, 1714 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 214 note, 1475e, 2504(h), 2651a, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632 (1957), 3 CFR, 1954-1958 Comp., p. 382; E.O. 11295, 31 FR 10603 (1966), 3 CFR, 1966-1970 Comp., p. 570.

2. Section 22.1 is amended by adding item 32(e) to read as follows:

**§ 22.1 Schedule of fees.**

\* \* \* \* \*

**Schedule of Fees for Consular Services**

Item No.	Fee
* * * * *	
<b>Immigrant and Special Visa Services</b>	
* * * * *	
32. Immigrant Visa Application Processing Fee (per person)	
* * * * *	
(e) Certain applicants for replacement Immigrant Visas as described in 22 CFR 42.74(b)(2)	NO FEE
* * * * *	

**PART 42-VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED**

3. The authority citation for part 42 is revised to read as follows:

AUTHORITY: 8 U.S.C. 1104 and 1182; Pub. L. 105-277, 112 Stat. 2681; Pub. L. 108-449, 118 Stat. 3469; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105-51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); 42 U.S.C. 14901-14954 (Pub. L. 106-279, 114 Stat. 825); 8 U.S.C. 1101 (Pub. L. 111-287, 124 Stat. 3058); 8 U.S.C. 1154 (Pub. L. 109-162, 119 Stat. 2960); 8 U.S.C. 1201 (Pub. L. 114-70, 129 Stat. 561).

4. Section 42.71 is revised to read as follows:

**§ 42.71 Authority to issue visas; visa fees.**

(a) *Authority to issue visas.* Consular officers may issue immigrant visas at designated consular offices abroad pursuant to the authority contained in INA 101(a)(16), 221(a), and 224.

(b) *Immigrant visa fees--(1) Payment of fees.* The Secretary of State prescribes a fee for the processing of immigrant visa applications. Except as provided in paragraph (b)(2) of this section, an individual registered for immigrant visa processing at a post designated for this purpose by the Deputy Assistant Secretary for Visa Services must pay the fee upon being notified that a visa is expected to become available in the near future, and upon being requested to obtain the supporting documentation needed to apply formally for a visa, in accordance with instructions received with such notification. The fee must

be paid before an applicant at a post so designated will receive an appointment to appear and make application before a consular officer. Applicants at a post not yet so designated will pay the fee immediately prior to formal application for a visa. A fee collected for the processing of an immigrant visa application is refundable only if the principal officer of a post or the officer in charge of a consular section determines that the application was not adjudicated as a result of action by the U.S. Government over which the alien had no control and for which the alien was not responsible, which precluded the applicant from benefitting from the processing, or as provided in paragraph (b)(2).

(2) *Waiver or refund of fees for replacement immigrant visas.* The consular officer shall waive the application processing fee for a replacement immigrant visa or, upon request, refund such a fee where already paid, if the consular officer is satisfied that the alien, the alien's parent(s), or the alien's representative has established that:

- (i) The prior immigrant visa was issued on or after March 27, 2013, to an alien who has been lawfully adopted, or who is coming to the United States to be adopted, by a United States citizen;
- (ii) The alien was unable to use the original immigrant visa during the period of its validity as a direct result of extraordinary circumstances, including the denial of an exit permit; and
- (iii) The inability to use the visa was attributable to factors beyond the control of the adopting parent or parents and of the alien.

5. Section 42.73 is revised to read as follows:

**§ 42.73 Procedure in issuing visas.**

(a) *Evidence of visa.* An immigrant visa shall be evidenced by a physical visa or by an electronic visa located in the Department's records. The appropriate symbol as prescribed in § 42.11, showing the classification of the alien, shall be entered on the visa.

(b) *Visa format.* A machine-readable visa shall be in the format designated by the Department, and contain, at a minimum, the following data:

- (1) Full name of the immigrant;
- (2) Visa symbol;
- (3) Location of the visa issuing office;
- (4) Passport number;
- (5) The registration number (A-number) assigned to the immigrant;
- (6) Sex;
- (7) Date of birth;
- (8) Nationality;
- (9) Date of issuance;
- (10) Date of expiration;
- (11) Visa control number;
- (12) Any annotations entered to reflect waivers or other information useful to an immigration officer at a port of entry (POE) upon the immigrant's application for admission to the United States;
- (13) A digitized photo of the immigrant; and
- (14) Machine-readable data that can be processed by an immigration officer at a POE.

(c) *Disposition of supporting documents.* Post shall, wherever possible, return original supporting documents furnished by the alien. Duplicate copies may be retained in the consular system, as required or necessary.

6. Section 42.74 is revised to read as follows:

**§ 42.74 Issuance of new, replacement, or duplicate visas.**

(a) *New immigrant visa for a special immigrant under INA 101(a)(27)(A) and (B).* The consular officer may issue a new immigrant visa to a qualified alien entitled to status under INA 101(a)(27)(A) or (B), who establishes:

- (1)(i) That the original visa has been lost, mutilated or has expired; or
- (ii) That the alien will be unable to use it during the period of its validity; provided that:
  - (A) The alien pays anew the application processing fees prescribed in the Schedule of Fees (22 CFR 22.1); and
  - (B) The consular officer ascertains whether the original issuing office knows of any reason why a new visa should not be issued.

(2) [Reserved]

(b) *Replacement immigrant visa for an immediate relative or for an alien subject to numerical limitation.* A consular officer may issue a replacement visa under the original number of a qualified alien entitled to status as an immediate relative (INA 201(b)(2)), a family or employment preference immigrant (INA 203(a) or (b)), or a diversity immigrant (INA 203(c)), if—

- (1) The alien is unable to use the visa during the period of its validity due to reasons beyond the alien's control;
- (2) The visa is issued during the same fiscal year in which the original visa was issued, or in the following year in the case of an immediate relative only, if the original number had been reported as recaptured;
- (3) The number has not been returned to the Department as a “recaptured visa number” in the case of a preference or diversity immigrant;
- (4) The alien pays anew the application processing fees prescribed in the Schedule of Fees; and
- (5) The consular officer ascertains whether the original issuing office knows of any reason why a new visa should not be issued.

(c) *Replacement visa for adoptees.* A consular officer may issue a replacement immigrant visa to a qualified alien, if the conditions in paragraphs (a)(1) and (3) of this section are met, and if the consular officer determines—

- (1) A prior immigrant visa was issued on or after March 27, 2013, to a child who has been lawfully adopted, or who is coming to the United States to be adopted, by a United States citizen;
- (2) The inability to use the visa was attributable to factors beyond the control of the adoptee or the adopting parent(s); and
- (3) The application processing fee has been waived pursuant to § 42.71(b)(2) or has been paid anew.

(d) *Duplicate visas issued within the validity period of the original visa.* If the validity of a visa previously issued has not yet terminated and the original visa has been lost or mutilated, a duplicate visa may be issued containing all of the information appearing on the original visa, including the original issuance and expiration dates. The applicant shall execute a new application and provide copies of the supporting documents submitted in support of the original application. The alien must pay anew the application processing fees prescribed in the Schedule of Fees.

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