08-0584-cv

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROSE AMOUGOU NGASSAM,

Plaintiff-Appellant,

v.

MICHAEL CHERTOFF, Secretary of Department of Homeland Security; EMILIO GONZALEZ, Director of United States Citizenship & Immigration Services; F. GERARD HEINAUER, Director of the Nebraska Service Center of United States Citizenship & Immigration Services,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF THE AMERICAN IMMIGRATION LAW FOUNDATION AS AMICUS CURIAE IN SUPPORT OF THE PLAINTIFF-APPELLANT

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CORPORATE DISCLOSURE STATEMENT UNDER RULE 26.1

No.08-0584-cv, Ngassam v. Chertoff

I, Mary Kenney, attorney for the *Amicus Curiae*, American Immigration Law Foundation, certify that this organization is a non-profit organization which does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10% or more of its stock.

Dated: April 16, 2008

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Mary Kenney

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I. INTRODUCTION AND STATEMENT OF AMICUS

The specific issue before the Court in this case is whether the district court erred in dismissing plaintiff/appellant's[1] Administrative Procedure Act (APA) challenge to defendant United States Citizenship and Immigration Services' (USCIS) denial of the asylee relative petitions that she filed on behalf of her children. Plaintiff has been granted asylum in the United States due to unspeakable persecution in her home country of Cameroon. She desperately has been attempting to reunite with six[2] of her children in the United States for many years, and reasonably fears for their wellbeing and safety as long as they remain in Cameroon.

Approval of her asylee relative petitions by USCIS, an agency within defendant Department of Homeland Security (DHS), is a necessary first step in the two-step process for plaintiff to reunite with her children. USCIS denied the asylee relative petitions for an alleged failure to satisfy non-discretionary, statutory and regulatory eligibility requirements. Specifically, USCIS found that plaintiff failed to demonstrate the age and marital status of her children. Plaintiff alleges in her suit that, in reaching this decision,

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[1] For convenience, amicus hereinafter will refer to plaintiff/appellant in this brief as plaintiff, and defendants/appellees as defendants.

[2] One of her children was granted permission to enter the United States and is presently with her.

USCIS failed to follow its own regulations and failed to consider all evidence before it.

Amicus proffers this brief to supplement plaintiff's brief on the issue of the district court's jurisdiction over plaintiff's APA claim. A review of plaintiff's complaint demonstrates that she properly asserts jurisdiction under 28 U.S.C. § 1331 and properly asserts a cause of action under the APA, 5 U.S.C. § 701 *et seq.* Defendants' denial of the asylee relative petitions was not based upon the exercise of discretion, and thus judicial review of these denials is not barred by either the APA or § 242(a)(2)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1252(a)(2)(B).

Finally, plaintiff names the proper defendants in the case – DHS and USCIS – and the issue of consular non-reviewability is inapplicable to these defendants and to the claims that are raised. For all of these reasons, plaintiff's claims are properly in federal court and were improperly dismissed by the district court for lack of jurisdiction.

AILF is a non-profit organization established to increase public understanding of immigration law and policy and to advance fundamental fairness, due process, and constitutional and human rights in immigration law and administration. AILF has a direct interest in ensuring that noncitizens are not unduly prevented from exercising their statutory right to

challenge, in federal court, unlawful agency action by DHS and USCIS, such as the non-discretionary denial of the asylee relative petitions in the present case.

II. STANDARD OF REVIEW

In a dismissal of an action for lack of subject matter jurisdiction, this Court will review factual findings for clear error and legal conclusions *de novo*. *Natural Resources Defense Council v. Johnson*, 461 F.3d 164, 171 (2d Cir. 2006) (citations omitted). "'[T]he court must take all facts alleged in the complaint as true and draw all reasonable inferences in favor of the plaintiff.'" *Id.* (quoting *Sweet v. Sheahan*, 235 F.3d 80, 83 (2d Cir. 2000)). Because legal issues are reviewed de novo, no deference is afforded to the district court's conclusions. *See, e.g.*, *Karpova v. Snow*, 497 F.2d 262, 267 (2d Cir. 2007).

III. ARGUMENT

A. Plaintiff's Complaint Demonstrates That Her Claims Can Be Reviewed Fully By The District Court.

1. Plaintiff properly invokes jurisdiction under 28 U.S.C. § 1331.

In her complaint, plaintiff alleges jurisdiction under 28 U.S.C. §§ 1331, 1361, and 2201. She also alleges jurisdiction under the APA, 5 U.S.C. §701 *et seq*. As discussed below, 28 U.S.C. § 1331 confers jurisdiction in

this case.[3] Moreover, the APA provides both a cause of action and a waiver of sovereign immunity for the non-monetary relief that plaintiff seeks.[4]

Jurisdiction in a district court exists under 28 U.S.C. § 1331 over any civil action "arising under the Constitution, laws, or treaties of the United States." This Court has held that "[f]ederal question jurisdiction may be properly invoked only if the plaintiff's complaint necessarily draws into question the interpretation or application of federal law." *New York v. White*, 528 F.2d 336, 338 (2d Cir. 1975). Moreover, "[a] federal court may refuse to entertain a claim based on federal law otherwise within its jurisdiction *only* if the federal basis for that claim is 'so attenuated and

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[3] The Mandamus Statute, 28 U.S.C. § 1361, also independently confers jurisdiction. *See, e.g., Duomutef v. INS,* 386 F.3d 172, 180 (2d Cir. 2004). The District Court altogether failed to address this basis for jurisdiction, which itself is grounds for a remand. A full discussion of the mandamus claim is beyond the scope of this amicus brief, however, which focuses only on the APA claim and § 1331 jurisdiction.

The Declaratory Judgment Statute, 28 U.S.C. § 2201 *et seq.*, does not confer jurisdiction on the court. *Fleet Bank Nat'l Assoc. v. Burke*, 160 F.3d 883, 886 (2d Cir. 1998) (citing *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950)). However, the jurisdictional basis for the relief sought by plaintiff under the Declaratory Judgment Statute is the same as that for her APA claim, 28 U.S.C. § 1331. *See, e.g., New York v. White*, 528 F.2d 336, 338 (2d Cir. 1975). Because this proper jurisdictional ground is alleged, it is immaterial that plaintiff mistakenly listed the Declaratory Judgment Act as an alternate jurisdictional basis.

[4] While the APA does not confer jurisdiction, it does waive sovereign immunity. The Supreme Court has explained that "[s]overeign immunity is jurisdictional in nature." *FDIC v. Meyer*, 510 U.S. 471, 475 (1994). Thus, reference to the APA as a jurisdictional ground is warranted where, as here, plaintiff is relying on the APA's waiver of sovereign immunity.

unsubstantial as to be absolutely devoid of merit.'" *Adams v. Suozzi*, 433 F.3d 220, 225 (2d Cir. 2005) (quotations omitted) (emphasis added). A claim will not be found to be so insubstantial as to be without merit "merely because it relies upon a tenuous legal theory or is otherwise likely to fail," but rather only if prior decisions render the claims frivolous. *Id.* (citations omitted).

Here, plaintiff's complaint alleges, *inter alia*, that defendants violated INA § 208(b), 8 U.S.C. § 1158(b), and the agency's own implementing regulations when it denied the asylee relative petitions. Thus, her complaint "draws into question" the interpretation and application of federal asylum law. Moreover, plaintiff has alleged detailed facts and law in support of her claims. Altogether, her complaint demonstrates "[a]dequate pleading of a non-frivolous substantive issue – whereby the plaintiff wins under one construction of a federal statute and loses under another – [which] is deemed sufficient to invoke federal question jurisdiction, *see Bell v. Hood,* 327 U.S. 678, 685, 66 S. Ct. 773, 90 L. Ed. 939 (1946)." *Alliance for Environmental Renewal, Inc. v. Pyramid Crossgates Co.*, 430 F.3d 82, 86 n.4 (2d Cir. 2006).

It also is well-settled that § 1331 provides the jurisdiction for an APA case. *Clark v. Commodity Futures Trading Commission,* 170 F.3d

110, 113 n.1 (2d Cir. 1999) ("[d]istrict courts … require no further statutory authority to hear appeals from agency decisions than the federal question jurisdiction set forth at 28 U.S.C. § 1331"); *see also Bowen v. Massachusetts*, 487 U.S. 879, 891 n.16 (1988) ("[I]t is common ground that if review is proper under the APA, the District Court has jurisdiction under 28 USC § 1331").

In sum, plaintiff's complaint demonstrates that jurisdiction exists under 28 U.S.C. § 1331, as is appropriate for an APA case.

2. Plaintiff properly alleges the APA as her cause of action.

While the APA does not confer jurisdiction, it does "explicitly create[] a cause of action for 'persons' [ ] aggrieved by agency action." *Seafarers Internat'l Union v. U.S. Coast Guard*, 736 F.2d 19, 25 (2d Cir. 1984); see also *Bennett v. Spear*, 520 U.S. 154, 175 (1997) (stating that 5 U.S.C. § 704[5] provides a cause of action for all "final agency action for which there is no other adequate remedy in a court"); *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 n.4 (1986) (holding that § 704 expressly creates a "right of action" absent clear and convincing evidence of legislative intention to preclude review); *Md. Dep't of Human Res. v. Dep't*

[5] 5 U.S.C. § 704 states in relevant part: "Actions Reviewable. Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review."

of Health and Human Servs., 763 F.2d 1441, 1445 n.5 (D.C. Cir. 1985) (describing the APA as a "generic" cause of action for persons aggrieved by agency action).

Reviewing plaintiff's complaint, it is clear that she is challenging specific agency action – USCIS' denial of her asylee relative petitions for her children; that she has claimed that this agency action is unlawful – for example, as violating both the asylum statute and the agency's own regulations; and that she has alleged harm as the result. Plaintiff thus has properly made out a claim under the APA.

Moreover, because the APA provides the cause of action in her case, it is immaterial whether the INA provides a private right of action. *See, e.g.*, *Chrysler Corp. v. Brown*, 441 U.S. 281, 317 (1979) (finding that a private right of action is not necessary because review is available under the APA); *Hernandez-Avalos v. INS*, 50 F.3d 842, 846 (10th Cir. 1995) (a plaintiff who has alleged a cause of action under the APA need not rely on an implied right of action under any other statute).

Huli v. Way, 393 F. Supp. 2d 266, 277 (S.D.N.Y. 2005), relied upon by the district court to reach a contrary conclusion, is factually inapposite. In *Huli*, as here, the plaintiff challenged the denial of a refugee relative petition by USCIS. Unlike the present case, however, the *Huli* plaintiff did

not allege a cause of action under the APA, but instead relied *only* upon the INA. *Id.*, 393 F. Supp. 2d. at 27. The district court found that the INA did not create a private right of action, and thus – because no other cause of action was alleged – dismissed the suit. The district court here failed to recognize this fundamental flaw in the *Huli* pleading and how it differentiated that case from plaintiff's case.

3. Defendants denied the asylee relative petitions on non-discretionary grounds and thus there is no bar to review under either the APA or the INA.

The APA applies to review of allegations of unlawful agency action except to the extent that another statute precludes review or to the extent agency action is committed to agency discretion by law. 5 U.S.C. §§ 701(a)(1) and (2). Neither exception applies here.

a. The INA does not bar review of non-discretionary statutory eligibility questions such as that at issue here.

As is the case with many immigration benefits, a decision on an asylee relative petition by USCIS includes both non-discretionary and discretionary components. *See* 8 U.S.C. § 1158(b)(3). A denial can be based upon either or both of these components.

This Court has made clear that where a denial of an immigration benefit rests on non-discretionary, statutory eligibility grounds, the bars to

review of discretionary decisions found in 8 U.S.C. §§ 1252(a)(2)(B)(i) and (ii) are inapplicable. *See, e.g., Rodriguez v. Gonzales,* 451 F.3d 60 (2d Cir. 2006) (under § 1252(a)(2)(B)(i), court held that it had jurisdiction to review non-discretionary eligibility questions related to adjustment of status and cancellation of removal); *Firstland International, Inc. v. US INS*, 377 F.3d 127 (2d Cir. 2004) (holding that, under § 1252(a)(2)(B)(ii), while substance of a visa revocation is discretionary, court could review whether non-discretionary mandatory notice requirements were met in order for the revocation to be effective).

The court's task is to analyze the agency decision to ensure that the bar is applied narrowly, consistent with the statutory language and the general presumption in favor of judicial review. *Sepulveda v. Gonzales,* 407 F.3d 59, 62-63 (2d Cir. 2005); *Sanusi v. Gonzales,* 415 F.3d 193 (2d Cir. 2006). Moreover, this narrow reading of the INA's bars on review of discretionary decisions applies regardless of whether the case arises in the removal or, as here, non-removal context. *Cf., Rodriguez v. Gonzales*, 451 F.3d 60 (2d Cir. 2006) (removal case) with *Firstland International, Inc. v. US INS*, 377 F.3d 127 (2d Cir. 2004) (non-removal case).

Here, USCIS denied the plaintiff's asylee relative petitions for alleged failure of the plaintiff to demonstrate statutory eligibility of the children,

such as their age and marital status. These are factual and evidentiary issues that do not involve any exercise of discretion on the part of the USCIS adjudicator. Under the law of this circuit, judicial review is not barred by 8 U.S.C. §§ 1252(a)(2)(B)(i) or (ii).

b. USCIS' denial of plaintiff's asylee relative petitions for non-discretionary statutory eligibility reasons is not "agency action committed to agency discretion by law."

The second APA exception is also not applicable here; since there is no exercise of discretion at issue, there clearly is no "agency action committed to agency discretion by law." As noted, the basis for the denial of the plaintiff's asylee relative petitions was factual and legal, not discretionary.

Moreover, even if this were not the case, this APA exception is limited to "rare" circumstances in which "the relevant statute 'is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion.'" *Lincoln v. Vigil*, 508 U.S. 182, 190-91 (1993) (*quoting Heckler v. Chaney*, 470 U.S. 821, 830 (1985)). The lack of a meaningful standard for measuring agency action has been found only in circumstances that traditionally have been outside the scope of a court's review, such as an agency's expenditure of a lump sum allocation which contained no statutory restrictions, *Lincoln*, 508 U.S. at 192; an agency's

prosecutorial decision not to institute enforcement proceedings, *Heckler*; and the denial of a motion to reconsider for material error. *ICC v. Locomotive Engs.*, 482 U.S. 270 (1987).

This Court also has applied this exception narrowly. In *Kamboli v. Gonzales*, 449 F.3d 454, 461-464 (2d Cir. 2004), the Court found that an "internal operating rule" of the Board of Immigration Appeals – an "affirmance without opinion" decision by a single Board member – fell within this narrow exception. The Court based its conclusion on the fact that the governing regulation did not provide a standard for review and that the sole Board member issuing the decision was prohibited from explaining the decision, thus giving no guidance to the court. At the same time that it found the decision to issue an affirmance without opinion insulated from review, however, the Court "emphasize[d]" that it still maintained jurisdiction to review the merits of the decision for factual and legal errors. *Id.*, 449 F.3d at 464.

Plaintiff here does not seek review over an "internal operating rule" of USCIS, but instead challenges the factual and legal basis of the agency's denial of her asylee relative petitions – exactly that which this Court found subject to review in *Kamboli*. Moreover, there is "law to apply" in this APA action, just as there is in all APA actions. *See, e.g., Fox Television*

Stations, Inc., v. FCC, 489 F.3d 444, 454-55 (2d Cir. 2007) (agency decision will be found to be "arbitrary and capricious" if, *inter alia*, it entirely fails to consider an important aspect of the problem or offers an explanation that runs counter to the evidence).

4. The doctrine of consular non-reviewability is inapplicable to defendants DHS and USCIS with respect to the denial of the asylee relative petitions.

Plaintiff fully outlines both the history behind the doctrine of "consular non-reviewability" and its legal underpinnings in her opening brief, and amicus will not repeat these explanations. Amicus fully agrees with plaintiff that this doctrine is inapplicable here. There are two compelling reasons for this conclusion.

First, as plaintiff comprehensively argues, the challenged decisions were issued by USCIS, not consular officers. Moreover, only USCIS had the legal authority to adjudicate and decide these asylee relative petitions. *See* INA § 208, 8 U.S.C. § 1158 generally (granting Secretary of DHS the authority to issue asylum decisions) and § 208(b)(3), 8 U.S.C. § 1158(b)(3) (pertaining to spouses and children of asylees); *see also* 8 C.F.R. § 208.21 (USCIS regulations governing asylee relative petitions).

Second, even when the consular office of the Department of State (DOS) does become involved – at step two of the process, involving the

issuance of travel documents to the overseas family member[6] – the consular officer acts in large part, if not entirely, as a *delegate* of USCIS. *See* U.S. Department of State Foreign Affairs Manual (FAM), Volume 9, Appendix O, § 1202, http://www.state.gov/documents/organization/88059.pdf (Attached hereto as Attachment A).

DOS' own manual governing the processing of asylee relative petitions by consular officers makes clear that the decision to approve or deny such a petition rests with USCIS alone. *See, e.g.*, FAM Vol. 9, App. O, § 1207.2-3(a) ("USCIS will assume responsibility for determining whether to make a formal finding of inadmissibility"); § 1207.2-5(B) (indicating that USCIS will make final determination whether to reaffirm or deny previously approved petition that consular officer has questioned).

Once a petition filed by the asylee has been approved by USCIS, the second step is to interview the relative overseas to confirm the relationship and the relative's eligibility; determine if there are any issues that would interfere with the relative's admission into the U.S.; and issue necessary

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[6] To the extent that plaintiff equates the issuance of a travel document to an asylee's family members with the issuance of a visa, *see, e.g.*, Plaintiff's Brief at 4 n.3, amicus respectfully disagrees. These travel documents are not visas, as the DOS FAM makes clear. U.S. Department of State Foreign Affairs Manual (FAM), Volume 9, Appendix O, § 1206.1(c), http://www.state.gov/documents/organization/88059.pdf (Attached hereto as Attachment A).

travel documents to the relative. FAM Vol. 9, App. O. §§ 1207, 1209. FAM makes clear that USCIS employees can, and at times do, perform all of these tasks. FAM Vol. 9, App. O. § 1202 ("In countries with a permanent U.S. Citizenship and Immigration Services (USCIS) office, USCIS officers will usually interview [asylee] beneficiaries and prepare the travel packets"). Only when a USCIS officer is unavailable to carry out the job, does a consular officer step in; when a consular officer does perform such tasks, it is as a "delegate" for USCIS not in the role of a consular officer for DOS. FAM Vol. 9, App. O. §1202.[7]

In sum, both because the decision in this case was made solely by USCIS and because any participation by a consular officer was simply as a delegate for USCIS, the decision to deny the asylee relative petitions rests completely with USCIS. USCIS decisions are not shielded under the doctrine of consular non-reviewability, and thus this doctrine is inapplicable to the case.

IV. CONCLUSION

For the reasons stated, amicus urges this Court to grant plaintiff's appeal, find that the district court erred in dismissing this case for lack of

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[7] The Secretary of DHS has the authority to delegate the job of an "immigration officer" to any U.S. employee. *See* 8 C.F.R. § 2.1, 103.1(a) and (b).

jurisdiction, and remand the case to the district court for a decision on the merits.

Dated: April 16, 2008

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
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Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 28.1(e)(2) or 32(a)(7)(B) because this brief contains 3,236 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii)

2. This brief complies with the typeface requirements of Fed.R.App.P. 32(a)(5) and the type style requirements of Fed.R.App.P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2002 in 14 Times New Roman.

Dated: April 16, 2008

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Mary Kenney

Attachment A

9 FAM APPENDIX O, 1200 CONSULAR PROCESSING OF V-92 BENEFICIARIES

(CT:VISA-867; 03-20-2007)
(Office of Origin: CA/VO/L/R)

a. Under INA 208, a person already in the United States (whether lawfully, e.g., in nonimmigrant visa (NIV) status, or unlawfully) may apply for asylum. Decisions on whether to grant asylum are made by U.S. Citizenship and Immigration Services (USCIS). Accordingly, the adjudication of asylum cases, including applications for the admission of family members on a derivative basis, is governed by USCIS regulations in 8 CFR Part 208. Nevertheless, consular officers, particularly ones at posts with no USCIS officer present, are required to assist in processing cases of spouses and children of persons granted asylum. This chapter provides guidance to consular officers on handling such cases. Posts with questions should direct them to CA/VO/F/P, which will coordinate a response with USCIS as appropriate.

b. Asylum cases (VISAS 92): INA 208 provides that a person determined to be a refugee "may" be granted asylum, and that the spouse or child of an alien granted asylum "may" be granted the same status if accompanying, or following to join, the principal applicant (INA 208(b)(3)). This makes clear that a spouse or child is not automatically entitled to the same status as the principal applicant, but that the grant of derivative status is discretionary. In implementing regulations at 8 CFR 208.21 (effective 2/26/98), USCIS has excluded from eligibility spouses and children who have committed certain kinds of acts (e.g., persecution, serious crimes) and/or who constitute a danger to the United States, and persons whose relationship to the principal applicant does not meet certain requirements established in furtherance of the "follow-to-join" requirement. Because the grant of status is discretionary, USCIS may also deny VISAS 92 for other reasons.

9 FAM APPENDIX O, 1201 WHAT IS THE DIFFERENCE BETWEEN V-92 AND V-93?

(CT:VISA-867; 03-20-2007)

a. Petitioners of V-93 beneficiaries are admitted to the United States as

refugees. Petitioners of V-92 beneficiaries are granted asylum in the United States. V-93 beneficiaries are counted as refugee arrivals and benefit from all U.S. Government-funded services provided to refugees. V-92 beneficiaries are not eligible for U.S. Government-funded International Organization for Migration (IOM) travel loans or other processing benefits accorded to refugees.

b. Unlike the V-93 process, the cost of medical examinations and treatment to make a V-92 beneficiary travel ready is paid entirely by the applicant. The U.S. Government does not fund medical treatment or examinations for Asylum follow-to-join beneficiaries.

9 FAM APPENDIX O, 1202 CONSULAR RESPONSIBILITY FOR PROCESSING V-92 CASES

(CT:VISA-867; 03-20-2007)

a. In countries with a permanent U.S. Citizenship and Immigration Services (USCIS) office, USCIS officers will usually interview V-92 beneficiaries and prepare the travel packets.

b. In countries without a USCIS presence, USCIS delegates the authority to process V-92 beneficiaries to a consular officer, and the consular section will prepare the travel packet.

c. Consular officers must take care to preserve the confidentiality of the asylum process. The fact that the petitioner of a V-92 case has been granted asylum may not be disclosed to anyone outside the U.S. Government without authorization from the Department.

9 FAM APPENDIX O, 1203 ELIGIBILITY FOR V-92 PROCESSING

(CT:VISA-867; 03-20-2007)

a. VISAS 92 beneficiaries are the spouses and children of persons who have been granted asylum in the United States under INA 208, and who are the subject of approved Form I-730, Refugee/Asylee Related Petition. A spouse is a person who meets the definition of "spouse" in INA 101(a)(35). To be eligible for derivative status, the spouse must also meet timing requirements described in 9 FAM Appendix O, 1207.1-2. A

child is a person who meets the definition of "child" in INA 101(b). To be eligible for derivative status, the child must also meet timing requirements described in 9 FAM Appendix O, 1207.1-2 below.

b. Each applicant must be the beneficiary of a separate Form I-730 filed by the petitioner.

c. V-92 beneficiaries are eligible for derivative status on the basis of their relationship to an asylee. They are not required to establish eligibility under the first sentence of INA 101(a)(42) (persons either being persecuted or with a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion) or to prove they are not firmly resettled.

9 FAM APPENDIX O, 1204 VALIDITY OF FORM I-730, REFUGEE/ASYLEE RELATED PETITION

(CT:VISA-867; 03-20-2007)

a. Under USCIS regulations, persons granted asylum in the United States must file a Form I-730, Refugee/Asylee Related Petition within two years of their grant of asylum. An eligible V-92 beneficiary may apply on the basis of the Form I-730 until the petitioner becomes a U.S. citizen.

b. V-92 beneficiaries remain eligible for derivative status even after the petitioner has adjusted from asylum status to lawful permanent resident (LPR). A V-92 petitioner who becomes a U.S. citizen must file Form I-730 to petition his spouse and unmarried children under 21 as immediate relatives.

9 FAM APPENDIX O, 1205 EFFECT OF THE CHILD STATUS PROTECTION ACT (CSPA) ON DERIVATIVES OF ASYLEES

(CT:VISA-867; 03-20-2007)

a. The Child Status Protection Act (CSPA), Public Law 107-208, 116 Statute 927, effective August 6, 2002, allows some children reaching the age of 21 to continue being classified as a "child" and derive eligibility for V-92 status from a parent.

b. The CSPA applies to V-92 children who turn 21 years of age while the parent's Form I-589, Registration for Classification as a Asylee (the child must be listed on this Form I-589), or Form I-730, Refugee/Asylee Relative Petition, is pending. For complete guidance on applying the CSPA to refugee processing, see the USCIS memoranda below, both available at USCIS:

   (1) U.S. Citizenship and Immigration Service Memorandum, Processing Derivative Refugees and Asylees under the Child Status Protection Act, HQIAO 120/5.2, dated July 23, 2003; and

   (2) U.S. Citizenship and Immigration Service Memorandum, The Child Status Protection Act -- Children of Asylees and Refugees, HWOPRD 70/6.1, dated August 17, 2004.

c. Children who turned 21 years of age prior to August 6, 2002, are not covered by the CSPA unless either the Form I-730 or the petitioner's Form I-589 was pending on that date. These documents are considered pending if they were approved by August 6, 2002, but the beneficiaries had not yet been issued documentation to travel to the United States.

9 FAM APPENDIX O, 1206 PRELIMINARY PROCESSING STEPS IN V-92 CASES, NATIONAL VISA CENTER (NVC) FORWARDS APPROVED FORM I-730 REFUGEE/ASYLEE RELATIVE PETITION TO POST

(CT:VISA-867; 03-20-2007)

The National Visa Center (NVC) receives approved Form I-730s from the U.S. Citizenship and Immigration Services (USCIS) and forwards the petition to the consulate in the country where the V-92 beneficiary resides. If there is no consulate in the country of residence, the petitioner may designate the country where the beneficiary will apply and the approved Form I-730 will be forwarded to that post.

9 FAM Appendix O, 1206.1 Scheduling the Consular Interview for V-92 Beneficiaries

(CT:VISA-867; 03-20-2007)

a. The NVC does not notify the petitioner or beneficiary when the approved

Form I-730 has been forwarded to post. As soon as possible after receiving the Form I-730 or telegraphic notice of approval from NVC, the consular section should contact the V-92 beneficiary and advise him or her of documentary requirements, and schedule an interview. Posts may draft their own letters for this purpose without Department approval.

b. Each applicant must have eight color photos that meet the current passport application standard; post may take the photos or ask the applicants to provide them at the time of interview.

c. After the interview is scheduled, post should enter the beneficiaries into the nonimmigrant visa (NIV) Applicant Information window in the same manner as regular visa applicants. Post should then select YY as the visa class and select the following annotation from the dropdown menu: ***"Not a visa. Foil prepared at DHS request. May be boarded without transportation carrier liability."*** The machine readable visa (MRV) fee and reciprocity fees will default to 0, since there are no fees for asylee follow-to-join transportation letters. (See 9 FAM Appendix O, 1206 Processing Steps After V-92 Interview, *et seq*. for further information on these steps.)

9 FAM Appendix O, 1206.2 No Police Certificate Required in V-92 Processing

(CT:VISA-867; 03-20-2007)

A police certificate is not required for V-92 cases. The consular officer may, however, request a V-92 beneficiary to present a police certificate for the country of residence, if available. Assess the risk to the applicant or other family members if brought to official attention in the country of origin or first asylum.

9 FAM APPENDIX O, 1207 CONSULAR INTERVIEW WITH V-92 BENEFICIARIES

9 FAM Appendix O, 1207.1 Adjudicating V-92 Cases

(CT:VISA-867; 03-20-2007)

The purpose of the consular interview with V-92 beneficiaries is to verify the applicant's identity, confirm the relationship between the petitioner and beneficiary, and determine whether any INA 212(a) inadmissibilities or other bars to admission exist. Posts should also collect biometric fingerprints at

the interview.

9 FAM Appendix O, 1207.1-1 Verify Identity and Relationship

(CT:VISA-867; 03-20-2007)

a. The interview should begin with the applicant(s) taking an oath or affirmation. V-92 applicants should show evidence of identity and family relationship. Consular officers should examine marriage, death, divorce, and/or birth certificates or certificates of adoption, if available. If civil documents are not available, credible oral testimony and secondary documentary evidence may be used. Although specific documentary evidence is not required, burden of proof is on the V-92 beneficiary to verify the existence of qualifying relationship. Keep copies of any evidence provided during the interview to include in the case file. Make notes as to the statements made during the interview.

b. In cases where fraud is suspected, (see 9 FAM Appendix O, 706.2-5(B) Evidence of Fraud in Identity or Claimed Relationship).

9 FAM Appendix O, 1207.1-2 Derivative Relationship Between the Petitioner and Beneficiary

(CT:VISA-867; 03-20-2007)

a. Note that in order to derive status under 8 CFR 208.21:

(1) The qualifying relationship must have existed at the time of the petitioner's asylum application was approved and must continue to exist at the time of filing for accompanying benefits and at the time of the spouse or child’s subsequent admission to the United States; and

(2) If the asylee is the parent of a child who was born after asylum was granted, but who was in utero on the date of the asylum grant, the child shall be eligible for follow-to-join status. The child's mother only qualifies as a beneficiary if married to the petitioner at the time of his admission to the United States as a refugee.

b. Even if the applicant is a spouse or unmarried child of the petitioner and meets the criteria in the above paragraph, the applicant is not eligible to derive status if:

(1) He/she was previously granted asylum or refugee status;

(2) An adopted child whose adoption took place after the age of 16, or who has not been in the legal custody of and living with the parent(s) for at least two years;

(3) A stepchild from a marriage that occurred after the child was 18 years old;

(4) A husband or wife who was not physically present at the marriage ceremony and whose marriage was not consummated; or

(5) A husband or wife determined by USCIS to have attempted or conspired to enter into a marriage for the purpose of evading immigration laws.

c. A parent, sister, brother, grandparent, grandchild, uncle, aunt, nephew, niece, cousin, or in-law does not have a qualifying relationship.

d. See 8 CFR 208.21 for further guidance.

9 FAM Appendix O, 1207.1-3 Effect of Death of Petitioner

(CT:VISA-867; 03-20-2007)

a. If information that the petitioner is deceased develops during the application process, obtain the death certificate or other evidence that the petitioner is deceased (if available). The approval on the petition is no longer valid when the petitioner is deceased. No derivative asylee benefits may be issued and the petition should be returned to USCIS for the case to be reopened and denied.

b. While the beneficiaries lose eligibility to apply for Form I-730 benefits when the petitioner dies before derivative family members arrive in the United States, the beneficiaries may apply for humanitarian parole with the Parole and Humanitarian Assistance Branch of the Department of Homeland Security (DHS) in order to travel to the United States.

9 FAM Appendix O, 1207.1-4 Marriage of V-92 Beneficiary Prior to Travel

(CT:VISA-867; 03-20-2007)

Consistent with procedures for immigrant visa (IV) derivatives, unmarried children approved as beneficiaries of Form I-730 petitions lose eligibility if they marry after approval of their visa but prior to arrival in the United States.

9 FAM Appendix O, 1207.1-5 Preparation of Forms Required for Admission

(CT:VISA-867; 03-20-2007)

The forms below are required in the travel packet that the V-92 beneficiary will present for inspection at the port of entry (POE). They should be prepared and executed at the time of the interview.

9 FAM Appendix O, 1207.1-6 U.S. Citizenship and Immigration Services (USCIS) Form I-590

(CT:VISA-867; 03-20-2007)

a. Complete a Form I-590, Registration for Classification as Refugee, for each applicant. The interviewing officer should administer the oath or affirmation at the time of the interview and each applicant must sign. A parent may sign for a child under 14 years of age. Attach one photo securely to the Form I-590.

b. After all clearances have been received and the applicant is ready to travel, the consular officer should sign in the middle box on the back page of the Form I-590, indicating, "Documented for travel pursuant to approval under 208(b)(3) of the INA."

9 FAM Appendix O, 1207.1-7 Other USCIS Forms

(CT:VISA-867; 03-20-2007)

Prepare for signature at the interview the following Department of Homeland Security (DHS) forms that must be included in each beneficiary's travel packet:

(1) Form G-325-C, Biographic Information, required for each applicant 14 years old or older; and

(2) Form G-646, Sworn Statement of Refugee Applying for Admission to the United States concerning the grounds of inadmissibility and bars to asylee status, required for each applicant 14 years of age or older.

9 FAM Appendix O, 1207.2 Determining Inadmissibility in V-92 Cases

9 FAM Appendix O, 1207.2-1 Determine if Exclusion of INA 101(a)(42) Applies

(CT:VISA-867; 03-20-2007)

V-92 applicants who "ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion" are excluded under 101(a)(42) of the INA.

9 FAM Appendix O, 1207.2-2 Determine if INA 212(a) Inadmissibilities Apply

(CT:VISA-867; 03-20-2007)

Inadmissibilities that apply to immigrants under INA 212(a) apply to V-92 beneficiaries, except as follows:

(1) The public charge exclusion under INA 212(a)(4) does not apply to V-92 beneficiaries;

(2) The requirements to have a labor certification under INA 212(a)(5) do not apply to V-92 beneficiaries; and

(3) The immigrant documentation requirement of INA 212(a)(7)(A) does not apply to V-92 beneficiaries.

9 FAM Appendix O, 1207.2-3 What To Do if Applicant May Be Inadmissible?

(CT:VISA-867; 03-20-2007)

a. If a V-92 applicant appears to be barred as a persecutor under INA 101(a)(42) or may be inadmissible under 212(a) other than medical grounds, report the facts and any assessment to the overseas USCIS office with jurisdiction by telegram asking for guidance. The USCIS will assume responsibility for determining whether to make a formal finding of inadmissibility.

b Inform the applicant in writing that the case is being submitted to the USCIS.

c. Enter the case into consular lookout and support system CLASS with the appropriate suspected ineligibility code and file the case file in the post's Category 1 files.

If USCIS confirms a finding of inadmissibility:

(1) Update the CLASS entry;

(2) Forward the original case file with a copy of the USCIS finding to the overseas USCIS office with jurisdiction; and

(3) Maintain a copy of the original case file in the consular Category 1 files.

9 FAM Appendix O, 1207.2-4 When to Report Possible Inadmissibilities to the Department

(CT:VISA-867; 03-20-2007)

a. Consular officers must review all V-92 cases carefully for possible inadmissibilities. In most cases in which a possible inadmissibility is identified, the consular officer must report the facts and his or her assessment to the CIS District Office abroad with jurisdiction, which will assume responsibility for determining whether a formal CIS finding of inadmissibility should be made. Because of the Department's responsibility for foreign policy, human rights, and worldwide narcotics and counter terrorism policies, consular officers must report to CA/VO/L/C any case in which the officer believes that the beneficiary may warrant review for possible inadmissibility under any of the following grounds:

(1) INA 212(a)(2)(C) (controlled substance traffickers); and

(2) INA 212(a)(3)(A) (espionage/tech transfer/unlawful activity), (B) (terrorism), (C) (foreign policy), or (E) (Nazi persecution/genocide); the second sentence of INA 101(a)(42) (persons who have engaged in persecution).

b. The Department may choose to review such cases for purposes of making a recommendation to CIS or a formal finding under INA 212(a)(3)(C).

9 FAM Appendix O, 1207.2-5 Evidence of Fraud in V-92 Cases

9 FAM Appendix O, 1207.2-5(A) Evidence that Petitioner's Asylum Claim Fraudulent or Invalid

(CT:VISA-867; 03-20-2007)

a. Officers should report all cases involving overwhelming evidence that a

petitioner's claim to asylum status appears to be fraudulent. A fraud report should be limited to verifiable or factual information, provided during the normal course of the Visas 92 interview, which contradicts the petitioner's claim. Suspected fraud should not be reported simply if a claim of persecution is inconsistent with a country's political environment.

b. When reporting suspected fraud in the original asylum claim, address the SBU/NOFORN cable to CA/VO/F/P, and the USCIS Headquarters Asylum Branch. Include the appropriate overseas USCIS district office and CA/FPP as information addressees on the cable.

c. When reporting suspected fraud, officers should keep in mind that Visas 92 beneficiaries are eligible for derivative status solely on the basis of their relationship to the asylee. Beneficiaries are not required to establish a separate claim of being persecuted or having a well-founded fear of persecution. Consular officers may not suspend processing of V-92 cases even if the beneficiary provides information that casts doubt on the petitioner's right to asylum status. Process the case to completion unless the beneficiary's identity, the qualifying relationship is in question or it is determined that the beneficiary is inadmissible or otherwise barred from obtaining V-92 benefits.

9 FAM Appendix O, 1207.2-5(B) Evidence of Fraud in Identity or Claimed Relationship

(CT:VISA-867; 03-20-2007)

a. If the interview with the V-92 applicant reveals strong evidence that the relationship claimed on the Form I-730 is fraudulent, the consular officer must return the original petition with all supporting documents and a covering memorandum to the USCIS Service Center that approved the petition (either the Nebraska or Texas Service Center) through the NVC.

b. The memorandum to request denial of the V-92 benefit should be comprehensive and show factual and concrete reasons for the request. Because USCIS may release all unclassified information provided in support of its intention to deny the benefit, provide information in a form that protects the identity of confidential sources.

c. Inform the V-92 applicant in writing that the petition has been returned to USCIS for reconsideration.

d. Enter the applicant's name, as well as date and place of birth, in CLASS under the P6C lookout code in case the applicant applies for a visa while the petition is pending reconsideration. Retain post's case file in the consular Category 1 files. If the applicant's petition is reaffirmed and

subsequently processed to completion, the consular officer must submit a Visas CLOK request to remove the P6C from CLASS.

9 FAM Appendix O, 1207.3 Waivers of Inadmissibility in V-92 Cases

9 FAM Appendix O, 1207.3-1 Authority to Grant Waivers

(CT:VISA-867; 03-20-2007)

a. The Secretary of Homeland Security has delegated authority to U.S. Citizenship and Immigration Services (USCIS) Officers-in-Charge (OIC) overseas to waive inadmissibilities of INA 212(a) as they apply V-92 beneficiaries. Waivers are available for all inadmissibilities except:

   (1) Inadmissibilities relating to traffickers in controlled substances under INA 212(a)(2)(C) applies to V-92 beneficiaries and cannot be waived; and

   (2) The security inadmissibilities under INA 212(a)(3)(A), (B), (C), (E), and (F) apply to V-92 beneficiaries and cannot be waived. These inadmissibilities relate to espionage, terrorism, genocide, and other security matters.

b. USCIS may grant waivers on an individual basis after investigation for humanitarian purposes, for family unity, or when in the public interest.

9 FAM Appendix O, 1207.3-2 Requesting a Waiver of Inadmissibility

(CT:VISA-867; 03-20-2007)

a. To apply for a waiver of inadmissibility under INA 212(a), the V-92 applicant must submit Form I-602, Application by Refugee for Waiver of Grounds of Excludability. The Form I-602 fee applies to V-92 applicants. Send Form I-602 to the Officer-in-Charge (OIC) of the overseas USCIS office with jurisdiction over the case. Consular officers may send the information in Form I-602 by telegram to the USCIS office with jurisdiction.

b. USCIS will notify the applicant and the post in writing of the decision. If the application is denied, the letter will give the reason for the denial. The decision cannot be appealed.

c. If the waiver application is approved, include the waiver in the travel

packet.

9 FAM Appendix O, 1207.3-3 Special Procedures for Waivers of Medical Inadmissibilities

9 FAM Appendix O, 1207.3-3(A) Waivers for HIV-Positive V-92 Applicants

(CT:VISA-867; 03-20-2007)

a. V-92 applicants who are HIV-positive must satisfy three criteria developed to ensure public health, safety, and welfare:

   (1) The danger to the public health created by the applicant's admission is minimal;

   (2) The possibility of the spread of the infection created by the applicant's admission is minimal; and

   (3) No expense will be incurred by any Government agency without that agency's prior consent.

b. Under guidance issued in 1999, USCIS considers that V-92 applicants already meet the third requirement for prior consent based on their eligibility for federally funded programs and the assurances provided by the Department of Health and Human Services (HHS).

c. To satisfy the first two requirements, HIV positive V-92 applicants must submit an addendum to USCIS with the Form I-602, Application by Refugee for Waiver of Grounds of Inadmissibility. The panel physician should assist the applicant to fill the top of page one of the waiver application. (See State 033614 dated February 24, 2000, or 9 FAM Appendix O, Exhibit I for the text of the addendum.)

   (1) The addendum includes statements that must be signed by the physician that performs the medical examination and by the applicant to certify that the physician has provided counseling and the applicant understands how to prevent spread of the HIV infection.

   (2) To continue the waiver process, the V-92 applicant must also sign the “Statement of Release of Confidential Information” (included in the addendum form). This release allows the Government to share information about the applicant’s HIV status with health personnel in the United States.

(3) If the applicant refuses to sign the statement allowing release of confidential information to health authorities, the waiver applicant cannot be completed and processing stops.

(a) In this case, USCIS does not need to confirm the finding of inadmissibility.

(b) Enter the applicant's name in the CLASS system with the code "1-A-1" for a communicable disease.

(**NOTE**: HIV is not the only disease linked to this code.)

(c) Other family members may continue to be processed with their own petitions.

(d) HIV-positive applicants do not need to fill out the second and third pages of the Form I-602 unless they also have tuberculosis.

(e) Consular officers should submit the Form I-602 with the HIV addendum to DHS, along with copies of the medical examination.

9 FAM Appendix O, 1207.3-3(B) Waivers of Other Class A Medical Inadmissibilities

(CT:VISA-867; 03-20-2007)

a. V-92 applicants found inadmissible because of infectious tuberculosis or Hansen's disease usually receive treatment to reduce their medical conditions from Class A to Class B status before they are processed for travel to the United States. (See 9 FAM Appendix O, 706.3-4 Who Pays for Necessary Medical Treatment for V-93 Beneficiaries?)

b. As soon as the panel physician has confirmed that the disease is no longer communicable, and indicates on the medical forms that the applicant's medical condition is now a Class B status, the consular officer may continue to process the applicant for V-92 benefits. No V-92 applicant with a Class B medical condition is considered inadmissible under Section 212(a)(1)(A) of the INA. (Once treated, the Form I-602 is no longer needed).

9 FAM APPENDIX O, 1208 PROCESSING STEPS AFTER V-92 INTERVIEW

(CT:VISA-867; 03-20-2007)

After the consular interview with the V-92 beneficiary, the consular officer must conduct all applicable checks (i.e., CLASS, IDENT, FR), and resolve any inadmissabilities. The applicant should proceed with medical examinations. Once all of these steps are completed, the V-92 beneficiary will be "travel-ready" and travel arrangements can be made. This section describes these steps in more detail. (See 9 FAM, Appendix O, Section 1300 reference for a summary checklist of processing steps for V-92 cases.)

9 FAM Appendix O, 1208.1 Security Clearances for V-92 Applicants

(CT:VISA-867; 03-20-2007)

Applicants processed for asylee follow-to-join admission are subject to the same security clearances as immigrant visa (IV) applicants. Post should send security advisory opinion (SAO) requests through the nonimmigrant visa (NIV) system, and follow established procedures for NCIC, WP and VGTO hits. All inadmissabilities must be resolved through standard channels before the foil is printed. SAOs for V-92s are sent as Merlin 92s.

9 FAM Appendix O, 1208.1-1 Requesting Consular Lookout and Support System (CLASS) Name Check in V-92 Cases

(CT:VISA-867; 03-20-2007)

Each applicant must clear the CLASS name check, i.e., the CLASS name check does not uncover any potential ground of inadmissibility.

9 FAM Appendix O, 1208.1-2 Requesting Security Advisory Opinion (SAO) in V-92 Cases

(CT:VISA-867; 03-20-2007)

a. The consular officer must request an SAO for V-92 applicants, if required by current Department guidance. As with visa applicants, no V-92 beneficiaries may be issued either a travel packet or boarding foil before receiving the Department's reply to an SAO.

b. If the applicant appears to be inadmissible to the United States under INA 212(a), CA/VO/L/C will advise the consular officer.

9 FAM Appendix O, 1208.1-3 Fingerprinting V-92 Cases with FBI Lookout

(CT:VISA-867; 03-20-2007)

a. If the CLASS name check shows a hit entered by the Federal Bureau of Investigation (FBI) such as an "NCIII" or "VGTOF" hit, the applicant must submit fingerprints before clearance.

   (1) Take the fingerprints using established consular procedures.

   (2) Send the fingerprints to the NVC. NVC will notify post when the clearance is received.

9 FAM Appendix O, 1208.1-4 Validity of CLASS Name Check and SAO Clearance in V-92 Cases

(CT:VISA-867; 03-20-2007)

CLASS name checks and security advisory opinion (SAO) clearances for V-92 beneficiaries, are valid for travel only within **one year** from the date of clearance. Follow standard visa procedure to request a new name check and SAO clearance if the V-92 beneficiary has not traveled within **one year,** and the boarding foil expires.

9 FAM Appendix O, 1208.2 Medical Requirements for V-92 Beneficiaries

(CT:VISA-867; 03-20-2007)

a. All derivatives of asylees entering the United States must have the same medical examination as immigrant visa applicants have under INA 221(d) and 234. The medical examination for V-92 beneficiaries must be conducted by a panel physician.

b. The result of the medical exam must be reported on Form DS-2053, Medical Examination for Immigrant or Refugee Applicant. Include three copies in the refugee travel packet, along with the refugee's X-rays. (See 9 FAM 42.66 and Notes.)

c. All INA 212(a)(1) medical inadmissibilities apply to V-92 beneficiaries. For more information on applying for waivers of medical inadmissibilities in follow-to-join cases, (see 9 FAM Appendix O, 1205.3-3 Waivers of Medical Inadmissibilities).

d. Consular officers should assist applicants to apply to USCIS for waivers, using Form I-602, Application by Refugee for Waiver of Grounds of Excludability.

9 FAM Appendix O, 1208.2-1 What are the Vaccination Requirements for V-92 Beneficiaries?

(CT:VISA-867; 03-20-2007)

V-92 beneficiaries are not required to meet the immunization requirements for immigrants until after one year when they apply for adjustment of status to become permanent residents in the United States. However, whenever available, vaccination records should be included as part of the V-92 travel packet using the Form DS-3025, Vaccination Documentation Worksheet or copies of the applicant's personal vaccination records.

9 FAM Appendix O, 1208.2-2 May the Medical Examination Be Scheduled Before the Consular Interview?

(CT:VISA-867; 03-20-2007)

The exam may take place before the consular interview if the V-92 applicant is known to have what may be an excludable medical condition or if the processing is being expedited. However, medical exams should usually be scheduled after the consular officer has interviewed and approved V-92 applicants.

9 FAM Appendix O, 1208.2-3 Who Pays for the V-92 Medical Examination and Treatment?

(CT:VISA-867; 03-20-2007)

See 9 Fam, Appendix O, 1201.

9 FAM Appendix O, 1208.2-4 Validity of V-92 Medical Clearance

(CT:VISA-867; 03-20-2007)

a. Medical examinations are valid for 12 months from the date of the exam, except for persons with Class A medical conditions.

b. If a V-92 applicant has a Class A medical condition, the medical exam is valid only for six months from the date of exam.

9 FAM APPENDIX O, 1209 V-92 TRAVEL PACKET

(CT:VISA-867; 03-20-2007)

Each departing V-92 beneficiary must hand carry a travel packet. The travel packet includes the documents that the immigration officer will require on entry. V-92 beneficiaries processed by consular officers must also possess a travel document (passport or Form DS-232, Unrecognized Passport or Waiver Cases) bearing a V-92 boarding foil. This section gives information on travel documentation and explains how to prepare the travel packet.

9 FAM Appendix O, 1209.1 Preparing the Travel Packet

(CT:VISA-867; 03-20-2007)

a. The travel packet is a large envelope containing several smaller envelopes. The contents of each are listed below. Label and seal the envelopes as indicated. Attach the applicant's photo to the outside of the travel packet.

b. Staple the envelopes together in the top left-hand corners, in the following order, top to bottom:

(1) Medical Envelope, addressed to: The Public Health Officer, U.S. Department of Health and Human Services (USPHS), at Port of Entry. (Seal envelope and stamp sealed edges with post's rubber seal);

(2) If applicable, include a separate envelope to the USPHS containing the original and four copies of the Form I-602 waiver;

(3) Case File Envelope, addressed to U.S. Immigration Officer, Port of Entry. (Seal envelope and stamp sealed edges with post's rubber seal);

(4) Customs/Form I-94 Arrival and Departure Record Envelope (Seal envelope normally); and

(5) X-Rays.

c. The contents of each internal envelope are described below.

MEDICAL	**Medium Brown Envelope**

Contents	• Three copies each of the medical exam forms (DS-2053, DS-3025, DS-3026, and DS-3024, if applicable)

CASE FILE	**Large Brown Envelope**
Content **(Staple one photo to the inside left cover of the case file.)**	• Form I-730, or V-92 notification cable if no petition was sent to post • Copies of all interview notes and/or supporting documents presented to verify applicant's identity and relationship to the petitioner • Medical forms (DS-2053, DS-3025 and DS-3026) • DS-3024 with chest x-rays, for applicants 14 years old or older • Completed Form G-325-C, Biographic Information • Completed Form I-590, approved and signed by the interviewing DHS or consular officer. The back page of the Form I-590, middle box, should indicate, "Documented for travel pursuant to approval under 208(b)(3) of the INA," and be signed by the DHS or consular officer • Completed Form G-646, Sworn Statement (concerning grounds of exclusion) • Completed Form I-765, Application for Employment Authorization • Form DS-1810, Selective Service notice, if applicable • Approved Form I-602, Application by Refugee for Waiver of Grounds of Excludability, if applicable
CBP	**Small Envelope**

	• Completed Form I-94, Arrival and Departure Record • (Birth date should be dd/mm/yy. Indicate the alien number on the back of the card. Annotate the Form I-94 appropriately if the applicant has a waiver of inadmissibility.) • Completed U.S. Customs declaration
X-RAYS	**Extra Large Envelope**

9 FAM Appendix O, 1209.2 Delivery of Travel Packet

(CT:VISA-867; 03-20-2007)

The travel packet(s) and travel document(s) with boarding foil(s) should be given directly to the applicant(s). V-92 applicants are responsible for scheduling and financing their own travel to the United States.

9 FAM Appendix O, 1209.3 What To Do If A V-92 Travel Packet Is Lost or Stolen

(CT:VISA-867; 03-20-2007)

If a V-92 travel packet is lost or stolen, report this immediately by email or telegram to the overseas Office of the U.S. Citizenship and Immigration Services (USCIS) with jurisdiction over the case. Include the CA/VO/F/P as an information addressee. Lost boarding foils should be reported immediately to CA/VO/F/P.

9 FAM Appendix O, 1209.4 Does a V-92 Need a Passport?

(CT:VISA-867; 03-20-2007)

A V-92 beneficiary does not need a passport to enter the United States. The travel packet includes the documents necessary for admission. However, for purposes of security, uniformity and workload tracking, all V-92 cases processed by consular officers must be issued V-92 foils. These foils will also facilitate the boarding of beneficiaries by airlines flying to the United States.

9 FAM Appendix O, 1209.4-1 What May a V-92 Show to Board a Flight?

(CT:VISA-867; 03-20-2007)

Airlines flying to the United States are required to examine travel documents before boarding passengers to avoid fines imposed by the U.S. Government. Airlines will sometimes ask for a boarding letter or other document if the V-92 beneficiary does not have a passport. For V-92 beneficiaries processed by consular officers, the V-92 boarding foil will satisfy this request. Once the V-92 boarding foil is processed, it must be placed either in a passport on or a Form DS-232. The beneficiary may show this foil to the airline to board the flight. For V-92 cases processed by Overseas Processing Entities (OPEs) and adjudicated by DHS/USCIS, the boarding letter will be issued by DHS/USCIS. (See 9 FAM Appendix O, Exhibit III, Sample Boarding Letter.)

9 FAM Appendix O, 1209.4-2 How to Prepare a Boarding Letter If Required by Airline

OPEs handling a V-92 case should not issue a boarding letter. When V-92 cases are processed by OPEs and adjudicated by DHS/USCIS, DHS/UCSIS will issue the boarding letter. See 9 FAM Appendix O, Exhibit III, Sample Boarding Letter. No fee is charged for issuing a boarding letter to a V-92 beneficiary.

CERTIFICATE OF SERVICE

On April 16, I, Leah Shaw, served one copy of this Brief as Amicus Curiae on each of the following counsel of record by regular mail:

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