

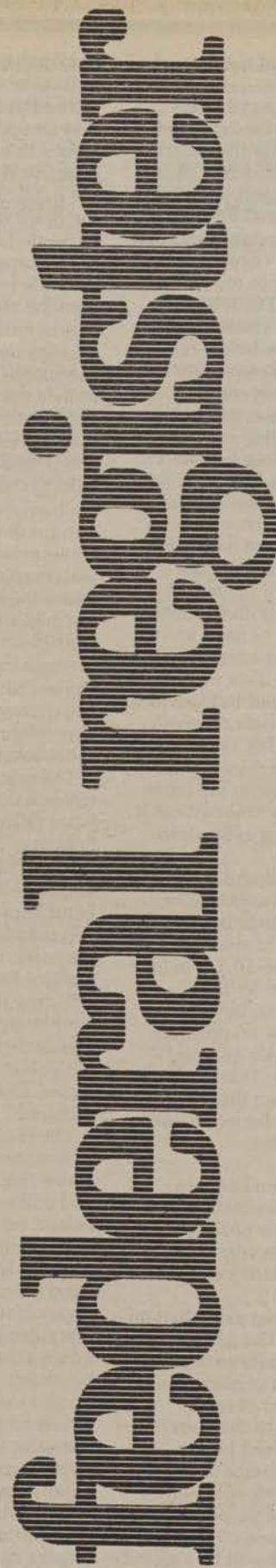
Ethylbenzyl chloride/Chloromethylation (Hydrogen chloride + formaldehyde, zinc chloride) of ethylbenzene	Dimethoxybenzaldehyde/Hydroquinone dimethyl ether + Hydrogen cyanide, hydrolysis	Sarcosine (N-Methyl glycine), sodium salt/ Hexamethylene tetraamine + Sodium cyanide, hydrolysis
2-Ethyl hexanol/Aldol condensation-hydrogenation of n-Butyraldehyde	Benzyl cyanide/Benzyl chloride + Sodium cyanide	Thiophene acetic acid/Chloromethylation (Hydrogen chloride + Formaldehyde) + Sodium cyanide, hydrolysis
Glyoxal-urea formaldehyde textile resin/ Condensation to N-bis (hydroxymethyl) ureas + N,N'-Dihydroxyethyl) ureas	Coal tar products/Distillation of coal tar condensate	Tolylene diisocyanate (isomeric mixture)/ Toluylene diamines + Phosgene
Isobutanol/Hydrogenation of isobutyraldehyde, Oxo process	Cyanoacetic acid/Chloracetic acid + sodium cyanide	Tris(anilino)S-triazine/Cyanuric chloride + Aniline and its cognates
Isopropanol/Catalytic hydrogenation of acetone	Cyanuric chloride/Catalyzed trimerization of cyanogen chloride	Triethylorthoformate/Ethanol + Hydrogen cyanide
Methallylidene diacetate/Condensation of 2-Methypropenal + acetic anhydride	Vat dyes, Indigo paste as Vat Blue 1/ Sodamide + potassium N-Phenylglycine, fused with caustic N-phenylglycine + Aniline + Formaldehyde + Sodium bisulfite, sodium cyanide, hydrolysis with potassium hydroxide	Trimethylorthoformate/Methanol + Hydrogen cyanide
Methanol/Low pressure synthesis from natural gas via synthetic gas	Disperse dyes, Azo and Vat	<b>Appendix B to Part 414—Complexed Metal-Bearing Waste Streams</b>
Methyl chloride/Hydrochlorination of methanol	Ethylenediamine tetraacetic acid/ Ethylenediamine + Formaldehyde + Sodium cyanide	<b>Chromium</b>
Methylethyl ketone/Dehydrogenation of sec- Butanol	Diethylenetriamine pentaacetic acid/ Diethylenetriamine + Formaldehyde + Sodium cyanide	Azo dye intermediates/Substituted diazonium salts + coupling compounds
Naphthenic acid salts	N,N'-bis(o-Acetamidophenol)ethylenediamine, ferric complex/ Salicylaldehyde + Ethylenediamine + Hydrogen cyanide, hydrolysis to amide	Vat dyes/Mixing purchased dyestuffs (Anthraquinones, polycyclic Quinones and Indigooids)
Nylon	Diethylenetriamine pentaacetic acid, pentasodium salt/Diethylenetriamine pentaacetic acid + caustic	Acid dyes
Nylon 6 & 66 copolymers/Polycondensation of Nylon salt + Caprolactam	Ethylenediamine tetraacetic acid, metal salts/Ethylenediamine tetraacetic acid + metal bases	Azo dyes, metallized/Azo dye + metal acetate
Nylon 6 fiber/Extrusion (melt spinning)	Hydroxyethyl ethylenediamine triacetic acid, trisodium salt/ Ethylenediamine + Ethylene oxide + Formaldehyde + Sodium cyanide, hydrolysis	Acid dyes, Azo (including metallized)
Oxo alcohols, C12-C15/Hydroformylation & hydrogenation of C11-C14 olefins	Hexamethylene diisocyanate/ Hexamethylene diamine (1,6-Diaminohexane) + phosgene	Organic pigments, miscellaneous lakes and toners
Phenolic urethan resins/Phenol + excess formaldehyde + Methylene aniline diisocyanate	5,5-Dimethyl hyantoin/Acetone + ammonia + carbon dioxide + hydrogen cyanide	<b>Copper</b>
Polystyrene (crystal) modified/Polystyrene + sulfonation, chloromethylation and/or amination	Hydrogen cyanide/By-product of acrylonitrile by ammonoxidation of propylene	Disperse dyes
Rayon/Viscose process	Iminodiacetic acid/Hexamethylene tetraamine + Hydrogen cyanide, hydrolysis of iminoacetonitrile salt	Vat dyes/Mixing purchased dyestuffs (Anthraquinones, polycyclic Quinones and Indigooids)
SAN resin/Emulsion polymerization	Methionine/Acrolein + Methyl mercaptan, with hydrogen cyanide and ammonium carbonate	Acid dyes
Silicones: Silicone rubbers/Hydrolysis and condensation of chlorosilanes	Methylene Diphenylisocyanate (MDI)/ Phosgenation of methylene dianiline from Aniline + Formaldehyde	Direct dyes
Silicones: Silicone specialties (grease, dispersion agents, defoamers & other products)	Nitrotriaceic acid/Hexamethylene tetraamine + Hydrogen cyanide, hydrolysis of nitrotriaceic acid salt	Vat dyes
Silicones: Silicone resins/Hydrolysis & condensation of methyl, phenyl & vinyl chlorosilanes	Picolines, mixed/Condensation of acetaldehyde + formaldehyde + ammonia	Sulfur dyes
Silicones: Silicone fluids/Hydrolysis of chlorosilanes to acyclic & cyclic organosiloxanes	Organic pigments, Azo/Diazotization of aniline cognate, coupling to B-Naphthol	Disperse dye coupler/N-substitution of 2-Amino-4-acetamidoanisole
Stearic acid, metal salts/Neutralization with a metallic base	Polyurethane resins/Diisocyanate + Polyoxalkylene glycol	Azo dyes, metallized/Azo dye + metal acetate
Styrene/Dehydrogenation of ethylbenzene	Polyurethane fibers (Spandex)/ Polyoxalkylene glycol + Toluene diisocyanate + dialkylamine	Direct dyes, Azo
Styrene-butadiene resin/Emulsion polymerization	Pyrimidines, 2-Isopropyl-4-methoxy-/ Isobutyronitrile + methanol, ammonia and methylacetacetate (ring closure)	Disperse dyes, Azo and Vat
Vinyl acetate/Reduction of acetylene + acetic acid	Pyridine (synthetic)/Condensation of acetaldehyde + ammonia + formaldehyde	Organic pigment Green 7/Copper phthalocyanine
Vinyl toluene/Dehydrogenation (thermal) of ethyltoluene	Cyanopyridine/Ammoxidation of picoline	Organic pigments
Xylenes, mixed/By-product vinyl toluene (from ethyltoluene)		Organic pigments/Phthalocyanine pigments
<b>Cyanide</b>		Organic pigments/Copper phthalocyanine (Blue Crude)
Acetone cyanohydrin/Acetone + Hydrogen cyanide		Organic pigments, miscellaneous lakes and toners
Acetonitrile/By-product of acrylonitrile from propylene by ammonoxidation		<b>Lead</b>
Acrylic resins/Solution polymerization		Organic pigments, Quinacridines
Acrylic fiber (85% acrylonitrile)/Suspension polymerization, and wet spinning		Organic pigments, Thioindigoids
Acrylic fiber (85% acrylonitrile)/Solution polymerization, and wet spinning		<b>Nickel</b>
Acrylonitrile/Ammoxidation of propylene		Azo dyes, metallized/Azo dye + metal acetate
Adiponitrile/Butadiene + Hydrogen cyanide (direct cyanation)		<b>Zinc</b>
Allylnitrile/Allyl chloride + Sodium cyanide		Organic pigments/Azo pigments by diazotization and coupling

**PART 416—[REMOVED]**

2. 40 CFR is amended by removing Part 416.

[FR Doc. 87-23568 Filed 11-4-87; 8:45 am]

BILLING CODE 6560-50-M



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Thursday  
November 5, 1987

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**Part V**

**Department of the  
Interior**

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**Bureau of Land Management**

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**43 CFR Parts 5460 and 5470  
Sales Administration; Contract  
Modification—Extension—Assignment;  
Interim Final Rulemaking**

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[IA-230-07-6310-02]

**43 CFR Parts 5460 and 5470****Sales Administration; Contract Modification—Extension—Assignment****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Interim final rulemaking.

**SUMMARY:** This interim final rulemaking would amend provisions of the existing regulations in 43 CFR Parts 5460—Sales Administration, and 5470—Contract Modification—Extension—Assignment. The Department of the Interior has determined that it is necessary to amend the existing regulations concerning the extension of time for cutting and removing contract timber in limited circumstances and conditions resulting from fires and other natural disasters.

**EFFECTIVE DATE:** November 5, 1987. Comments on this interim final rulemaking will be accepted until January 4, 1988. Comments received or postmarked after this date may not be considered in the decisionmaking process on the final rulemaking.

**ADDRESS:** Comments should be sent to: Director (140), Bureau of Land Management, Department of the Interior, 1800 C Street NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Dave Estola (503) 231-6873 or Gary Ryan (202) 653-8864.

**SUPPLEMENTARY INFORMATION:** Disastrous fires in August and September, 1987, in southwestern Oregon damaged a volume of timber exceeding, in preliminary field estimates, a third of a billion board feet. Planning for the salvage of as much of the value of this damaged timber as possible disclosed a problem that would tend to prevent the public from receiving full value for the timber.

Timber purchasers will bid on salvage timber only if they have personnel and equipment available during the period required without interfering with other contract commitments. This means that purchasers with active Federal timber contracts are less likely to be able to bid on the salvage timber unless there is a reasonable opportunity to postpone their other commitments without suffering economic hardship. Also, increasing the pool of possible bidders will increase the likelihood that there will be sufficient purchasers to absorb the large volumes of timber associated with

events of the magnitude of the fires of 1987.

The present regulations at 43 CFR 5463.2 allow contracts to be extended for 1 year for reasons other than market fluctuations, and for additional 1-year periods upon written request. However, the present regulations at 43 CFR 5473.1 require that in all cases extensions shall not be granted without a reappraisal of the timber that is subject to the contract being extended. While 43 CFR 5473.4-1(b) provides that reappraisals shall not reduce the purchase price below the original contract price, there are no exceptions that would prevent the purchase price from increasing upon extension, regardless of the circumstances of or reasons for the extension, even if it were for the convenience or benefit of the public.

This prospect of an increase with no countervailing possibility of a decrease upon reappraisal would discourage any potential bidder holding a contract for green timber from seeking an extension on that contract in order to have an opportunity to bid on and harvest less valuable salvage timber. This would reduce the pool of potential bidders and in turn likely reduce the bids received on the salvage timber. Also, the costs of reappraising the timber subject to an extension would be added to the costs to the public of the entire transaction, if contract holders requiring extensions joined the bidding.

Therefore, in order to broaden the opportunity to bid on salvage timber when extraordinary damage is caused by fire, whether natural or man-caused, or other disaster, § 5473.4-1(b) is being amended to allow waiver by the appropriate State Director, Bureau of Land Management, of the reappraisal requirement for timber sale contract extensions in such cases. This rulemaking does not affect the reappraisal requirement for extension requests arising from other circumstances.

This interim final rulemaking also amends § 5463.2 to allow extensions for periods sufficient to allow orderly completion of the salvage contracts, again only to accommodate harvest of salvage timber.

This rulemaking is being published on an interim final basis in the public interest, effective upon publication rather than 30 days after publication, in order to allow the Bureau of Land Management to apply it to the current emergency situation caused by the extensive fires of the summer of 1987. Public comments are being solicited, which will be considered preparatory to publishing final regulations on this subject. Such regulations will be applied

in all subsequent situations caused by natural or other disasters.

The Department of the Interior finds that an opportunity for public comment before this rulemaking becomes effective is unnecessary and contrary to the public interest. Several species of the fire-damaged timber must be harvested within 1 year of the incidence of the damage or be lost. While it is possible to harvest this timber within the time constraints under the current regulations, the requirement that existing contracts be reappraised upon extension, regardless of the reason, will reduce the field of bidders on the salvage timber to the extent that bids may be reduced significantly.

It is true that by allowing the State Director to waive reappraisal upon contract extension in the event of a natural or other disaster, the Government would be permitting the waiver of contractual rights provided for under the current regulations. However, the public would be receiving valuable consideration for the potential losses in revenue caused by failure to reappraise, in view of the desirability of having the fire-damaged timber removed as expeditiously as possible for as great an economic return as possible.

The principal authors of this proposed rulemaking are Dave Estola, Oregon State Office, and Gary Ryan, Division of Forestry, Washington Office, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The Bureau of Land Management sells timber valued at approximately \$100 million annually, but this rulemaking would affect only a minimal proportion of those sales, and not every year. The last incident to occur to which this proposed procedure would have been an appropriate response was 25 years ago. Also, all purchasers would be affected equally, regardless of size.

This rulemaking does not contain information collection requirements that require approval by the Office of

Management and Budget under 44 U.S.C. 3501 *et seq.*

**List of Subjects**

**43 CFR Part 5460**

Forest and forest products,  
Government contracts, Public lands.

**43 CFR Part 5470**

Forest and forest products,  
Government contracts, Public lands,  
Reporting and recordkeeping  
requirements.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

**PART 5460—[AMENDED]**

1. The authority citation continues to read as follows:

**Authority:** Sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*

2. Section 5463.2 is amended by designating the present section as paragraph (a) and adding a new paragraph (b) to read:

**§ 5463.2 Extension of time.**

\* \* \* \* \*

(b) Upon written request of the purchaser, the State Director may extend a contract to harvest green timber to allow that purchaser to harvest as salvage from Federal lands timber that has been damaged by fire or other natural or man-made disaster. The duration of the extension shall not exceed that necessary to meet the salvage objectives.

**PART 5470—[AMENDED]**

1. The authority citation continues to read as follows:

**Authority:** Sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*, unless otherwise noted.

2. Section 5473.1 is revised to read:

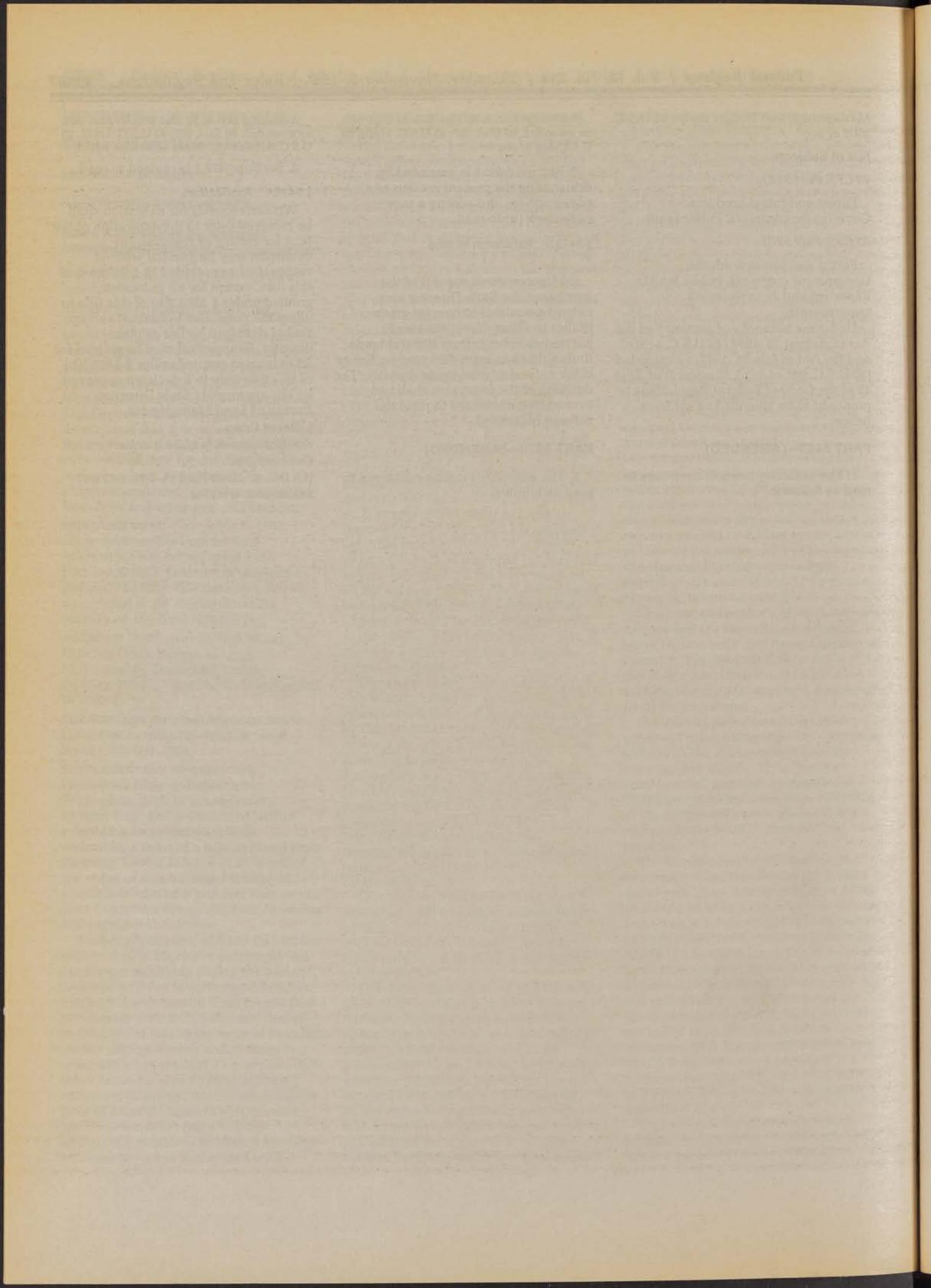
**§ 5473.1 Application.**

Written requests for extension shall be received prior to the expiration of the time for cutting or removal. No extension may be granted without reappraisal as provided in § 5473.4-1 of this title, except for an extension granted under § 5463.2(b) of this title to allow the purchaser to harvest salvage timber damaged by fire or other disaster. Reappraisal may be waived for an extension granted under § 5463.2(b) of this title only in a decision approved by the appropriate State Director, Bureau of Land Management.

**J. Steven Griles,**

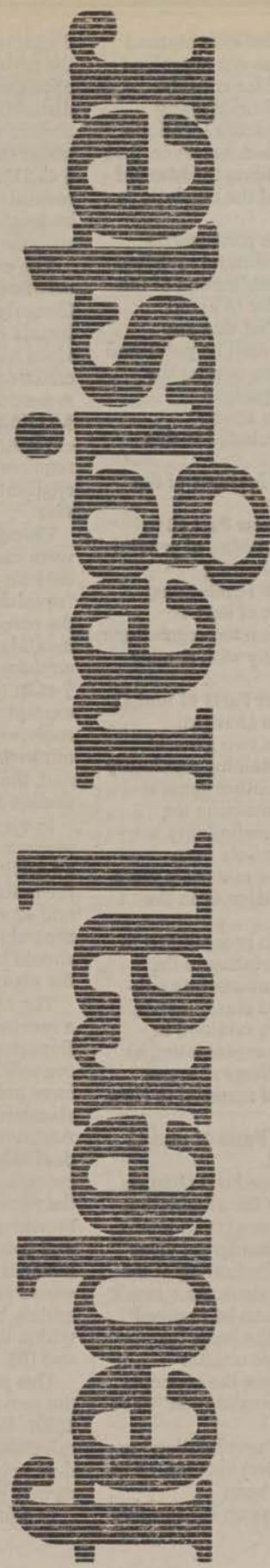
*Assistant Secretary of the Interior.*  
October 7, 1987.

[FR Doc. 87-25663 Filed 11-4-87; 8:45 am]  
BILLING CODE 4310-84-M



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Thursday  
November 5, 1987



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**Part VI**

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**Department of State**

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**Bureau of Consular Affairs**

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**22 CFR Parts 40, 41 and 42**

**Visas; Regulations and Documentation  
Pertaining to Both Nonimmigrants and  
Immigrants Under the Immigration and  
Nationality Act; Final Rule**

**DEPARTMENT OF STATE****Bureau of Consular Affairs****22 CFR Parts 40, 41 and 42**

[108.865]

**Visas; Regulations and Documentation Pertaining to Both Nonimmigrants and Immigrants Under the Immigration and Nationality Act****AGENCY:** Bureau of Consular Affairs, State.**ACTION:** Final Rule.

**SUMMARY:** This rule reorganizes the Department's present regulations which have been set forth in Part 41 and Part 42 of Title 22. This reorganization is intended to facilitate consular operations by placing the regulations in a more logical sequence. The reorganization of the regulations includes transfer of certain portions to a new Part 40 and a renumbering of those portions retained in Parts 41 and 42. In addition, grammatical and stylistic changes have been made for purposes of clarity and uniformity of usage, as well as to remove gender-specific usages. This change is being published as a Final Rule, without Notice and Comment, since no substantive changes are made by this publication.

**EFFECTIVE DATE:** November 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services, or Guida Evans-Magher, Consular Officer, Washington, DC 20520, (202) 663-1204 or 663-1206.

**SUPPLEMENTARY INFORMATION:** The Department's visa regulations under the Immigration and Nationality Act (Act) were originally promulgated in 1953 as Parts 40, 41, and 42 of Title 22, Code of Federal Regulations. In 1959 and 1960 they were extensively edited, reorganized, and republished as Parts 41 and 42 only, and, although frequently amended, have existed in that form since that time.

Several years ago the Department undertook a detailed study of the organization of the Department's Visa Manual (Volume 9—VISAS, Foreign Affairs Manual). The Visa Manual contains not only the visa regulations, but also both interpretive information and procedural instructions. Although it is available to the public, it is intended principally as a substantive and procedural guide for consular officers in their administration of the Act generally and in the processing and adjudication of individual visa applications. The

study concluded that the Visa Manual was too long, that it was not organized in a way most efficient for consular officers and that it contained many obsolete usages and obscure locations. The study also concluded, however, that the principle of subdividing the Manual according to sections of the regulations should be retained.

Taken together, these conclusions have necessitated an editorial revision, reorganization and republication of the visa regulations. In order to avoid confusion, it was decided that any substantive changes would be published separately, either before or after the publication of the reorganized regulations. Thus, there are no substantive changes included in this publication.

The most significant features of the reorganization are—

1. The creation of a new Part 40 to include regulatory provisions of general applicability, thus eliminating publication of duplicate regulations;
2. The reorganization of Part 41 (nonimmigrants) to group the regulations into subdivisions dealing with similar classifications; and
3. The renumbering of Parts 41 and 42 because of the first two changes.

New Part 40 contains two general subparts—the first containing regulatory definitions and certain other general matters, the second containing the regulations relating to ineligibility to receive visas and the reliefs from ineligibility. All of these materials were included in Parts 41 and/or 42 in the former regulations.

New Part 41 has been reorganized to group the regulations relating to the nonimmigrant classifications into subparts containing related classifications.

New Part 42 has been retained in substantially the same organization as previously, except for those changes required by transfers of material to New Part 40.

The sections of both Parts 41 and 42 have been renumbered.

Two noteworthy procedural changes in Part 41 relate first to the elimination of the distinction between invalidation and revocation of nonimmigrant visas and, secondly, to the elimination of the term "revalidation" of visas. As a result of the changes, a visa can be revoked regardless of whether the basis for ineligibility arose before or after issuance of the visa since the concepts of "revocation" and "invalidation" have been merged.

The use of the term "revalidation" to denote a second (or later) visa issued in the same category has been discontinued. There was no substantive

distinction between the issuance and the revalidation of a visa. There appeared to be no need to maintain the distinction. All former revalidations abroad will be treated as visa issuances under the terms of the regulations in § 41.113. What have been termed revalidations in the United States will be treated as reissuances in accordance with the authority in § 41.111(b).

The exemption from the labor certification requirement of the Act formerly set forth in § 42.91(a)(14) for female fiancees seeking nonpreference visas has been eliminated because it contained discrimination based on sex. A gender-neutral exemption from § 212(a)(14) of the Act has been explicitly set forth in § 41.81(c) which requires fiance(e)s generally to meet the eligibility standards for an immigrant visa.

Changes contained in this rule which were made for administrative reasons only involve: The elimination of the term "revalidation" of nonimmigrant visas; the merging of the concepts of invalidation and revocation of nonimmigrant visas; the explication in § 41.81 (Fiance(e) of U.S. Citizen) of the exemption from the labor certification requirement of the Act for aliens otherwise eligible for an immigrant visa and, thus, a nonimmigrant visa under section 101(a)(15)(K).

In view of the extensive reorganization of Parts 41 and 42 and as an additional aid, Tables which show the restructuring of Title 22, Parts 40, 41 and 42 appear at the end of this preamble. The information in the Tables should be of assistance to persons using the visa regulations.

The changes in the final rule relate to a reorganization and compilation of Departmental regulations, and to the consolidation of substantive rules which have previously been subject to the standard rulemaking process. Additionally, since these amendments deal solely with agency organization, procedure and practice, compliance with the provisions of the Administrative Procedure Act (APA) relative to notice and comment, is not applicable in this instance and further public comment would under the circumstances be both unduly burdensome and unnecessary within the meaning of 5 U.S.C. 553(b) (A) and (B).

This publication is also exempt, under the provisions of section 1(a)(3) of E.O. 12291, from giving notice of a proposed rulemaking and from a delayed effective date because the regulations relate to agency organization and management.

In addition, this rule does not fall

within the provisions of section 1(b) of E.O. 12291 or within the criteria of the Regulatory Flexibility Act since it is not expected to have an annual effect on the economy of \$100 million or more, nor is it expected to have a significant impact on a substantial number of small entities.

**List of Subjects in 22 CFR Parts 40, 41 and 42**

Aliens, Immigration, Passport and visas.

Key reorganization tables are herein provided as a guide for the aid of users of the regulations in Title 22 CFR Chapter 1, Subchapter E—Visas, Parts 40, 41 and 42. Sections of Part 40 are listed in the first column of the Derivation Table, in numerical order, with the source section or sections in the former regulations listed in the second column. The Redesignation Tables are provided for sections of Parts 41 and 42 which have been rearranged and renumbered.

**DERIVATION TABLE**

[Part 40—General Provisions]

New section	Old section
40.1—Definitions .....	42.1 (in part); 41.1 (in part).
40.2—Documentation of Nationals.	41.3; 42.3
40.3—Entry Into Areas Under U.S. Administration.	41.145; 42.145
40.4—Furnishing Records and Information from Visa Files for court proceedings.	41.150; 42.150
40.5—(Unassigned).....	None.
40.6—Basis for Refusal.	41.90; 42.90
40.7—Grounds of Ineligibility.	
40.7(a)—Ineligibility under INA 212(a).	41.91(a); 42.91(a)
40.7(b)—Failure of application to comply with INA.	41.91(c); 42.91(b)
40.7(c)—Former exchange visitors.	41.91(d); 42.91(c)
40.7(d)—Alien entitled to A, E or G NIV classification.	42.91(d)
40.8—Waiver for ineligible nonimmigrant under INA 212(d)(3)(A).	41.95

**REDESIGNATION TABLE**  
[Part 41—Nonimmigrant Visas]

Old section	New section
41.1 .....	40.1; 41.21; 41.24; 41.26; 41.27; 41.101; 41.104
41.3 .....	40.2
41.5 .....	41.1
41.6 .....	41.2
41.7 .....	41.3
41.10 .....	41.11
41.12 .....	41.12
41.13 .....	41.107
41.14 .....	Deleted.
41.20 .....	41.22
41.21 .....	41.22
41.22 .....	41.22
41.25 .....	41.31
41.30 .....	41.71
41.31 .....	41.71
41.32 .....	41.23
41.35 .....	41.41
41.36 .....	41.3
41.40 .....	41.51
41.41 .....	41.51
41.45 .....	41.61
41.50 .....	41.24
41.55 .....	41.53
41.60 .....	41.52
41.65 .....	41.62
41.66 .....	41.81
41.67 .....	41.54
41.68 .....	41.61
41.70 .....	41.25
41.90 .....	40.6
41.91 .....	40.7
41.95 .....	40.8
41.100 .....	41.101
41.102 .....	41.26
41.104 .....	41.27
41.110 .....	41.101
41.111 .....	41.105
41.112 .....	41.104
41.113 .....	41.108
41.114 .....	41.102
41.115 .....	41.103
41.116 .....	41.103; 41.105
41.117 .....	41.103
41.120 .....	41.111
41.121 .....	41.107
41.122 .....	41.112
41.123 .....	41.107
41.124 .....	41.113
41.125(f) .....	41.112
41.125(a)–(e), (g), (h) .....	Deleted.
41.126 .....	41.114
41.127 .....	41.42
41.128 .....	41.32
41.129 .....	41.33
41.130 .....	41.121
41.132 .....	41.42
41.134 .....	41.122
41.145 .....	40.3
41.150 .....	40.4

**REDESIGNATION TABLE**  
[Part 42—Immigrant Visas]

Old section	New section
42.1 .....	40.1
42.3 .....	40.2
42.5 .....	42.1
42.6 .....	42.2
42.12 .....	42.11
42.20 .....	42.12; 42.21
42.21 .....	42.21
42.22 .....	Deleted.
42.23 .....	42.22
42.24 .....	42.23
42.25 .....	42.24
42.26 .....	42.25
42.27 .....	Repealed.
42.28 .....	42.27
42.30 .....	42.31
42.31 .....	42.31
42.32 .....	42.33
42.33 .....	42.31
42.34 .....	42.31
42.35 .....	42.34
42.36 .....	42.35
42.37 .....	42.26
42.40 .....	42.41
42.41 .....	42.42
42.42 .....	42.42
42.43 .....	42.43
42.50 .....	42.12
42.51 .....	42.12
42.52 .....	42.12
42.53 .....	42.12
42.54 .....	42.12
42.55 .....	42.12
42.60 .....	42.51
42.61 .....	42.52
42.62 .....	42.53
42.63 .....	42.54
42.64 .....	42.55
42.65 .....	42.83
42.90 .....	40.6
42.91 .....	40.7
42.95 .....	42.22
42.100 .....	42.52
42.110 .....	42.61
42.111 .....	42.65
42.112 .....	42.64
42.113 .....	42.66
42.114 .....	42.62
42.115 .....	42.63
42.116 .....	42.67
42.117 .....	42.62; 42.67
42.118 .....	42.68
42.120 .....	42.71
42.121 .....	42.71
42.122 .....	42.72
42.124 .....	42.73
42.125 .....	42.74
42.130 .....	42.81
42.134 .....	42.82
42.140 .....	42.61
42.145 .....	40.3
42.150 .....	40.4

In view of the foregoing, Title 22, Chapter I, Subchapter E-Visas of the Code of Federal Regulations is amended by adding Part 40 and revising Part 41 and Part 42 as follows:

1. Part 40 is added to read as follows:

**PART 40—REGULATIONS PERTAINING TO BOTH NONIMMIGRANTS AND IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED**

**Subpart A—General Provisions**

Sec.

- 40.1 Definitions.
- 40.2 Documentation of nationals.
- 40.3 Entry into areas under U.S. administration.
- 40.4 Furnishing records and information from visa files for court proceedings.

**Subpart B—Ineligibility**

- 40.6 Basis for refusal.
- 40.7 Grounds of ineligibility.
- 40.8 Waiver for ineligible nonimmigrant under INA 212(d)(3)(A).

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), Pub. L. 95-105, 91 Stat. 847.

**Subpart A—General Provisions**

**§ 40.1 Definitions.**

The following definitions supplement definitions contained in the Immigration and Nationality Act (INA). As used in these regulations, the term:

(a) "Accompanying" or "accompanied by" means not only an alien in the physical company of a principal alien but also an alien who is issued an immigrant visa within 4 months of either the date of issuance of a visa to, or the date of adjustment of status in the United States of, the principal alien, or the date on which the principal alien personally appears and registers before a consular officer abroad to confer alternate foreign state chargeability or immigrant status upon a spouse or child. An "accompanying" relative may not precede the principal alien to the United States.

(b) "Act" means the Immigration and Nationality Act (or INA), as amended.

(c) "Competent officer," as used in INA 101(a)(26), means a "consular officer" as defined in INA 101(a)(9).

(d) "Consular officer," as used in INA 101(a)(9), includes commissioned consular officers and the Director of the Visa Office of the Department and such other officers as the Director may designate for the purpose of issuing nonimmigrant visas only, but does not include a consular agent, an attache or an assistant attache. The assignment by the Department of any Foreign Service Officer to a diplomatic or consular office abroad in a position administratively designated as requiring, solely, partially,

or principally, the performance of consular functions, and the initiation of a request for a consular commission, constitutes designation of the officer as a "consular officer" within the meaning of INA 101(a)(9).

(e) "Department" means the Department of State of the United States of America.

(f) "Dependent area" means a colony or other competent or dependent area overseas from the governing foreign state, natives of which are subject to the limitation prescribed by INA 202(c).

(g) "Documentarily qualified" means that the alien has reported that all the documents specified by the consular officer as sufficient to meet the requirements of INA 222(b) have been obtained, and that necessary clearance procedures of the consular office have been completed. This term shall be used only with respect to the alien's qualification to apply formally for an immigrant visa; it bears no connotation that the alien is eligible to receive a visa.

(h) "Entitled to immigrant classification" means that the alien:

(1) Is the beneficiary of an approved petition granting immediate relative or preference status;

(2) Has satisfied the consular officer as to entitlement to special immigrant status under INA 101(a)(27); or

(3) Has obtained an individual labor certification, or is within one of the professional or occupational groups listed in Schedule A of the Department of Labor regulations, or is within one of the classes described in § 40.7(a)(14) (iii) and is therefore not within the purview of INA 212(a)(14).

(i) With respect to alternate chargeability pursuant to INA 202(b), the term "foreign state" is not restricted to those areas to which the numerical limitation prescribed by INA 202(a) applies but includes dependent areas, as defined in this section.

(j) "INA" means the Immigration and Nationality Act, as amended.

(k) "INS" means the Immigration and Naturalization Service.

(l) "Not subject to numerical limitation" means that the alien is entitled to immigrant status as an immediate relative within the meaning of INA 201(b), or as a special immigrant within the meaning of INA 101(a)(27), unless specifically subject to a limitation other than under INA 201(a).

(m) "Parent," "father," and "mother," as defined in INA 101(b) (2), are terms which are not changed in meaning if the child becomes 21 years of age or marries.

(n) "Port of entry" means a port or place designated by the Commissioner of Immigration and Naturalization at

which an alien may apply to INS for admission into the United States.

(o) "Principal alien" means an alien from whom another alien derives a privilege or status under the law or regulations.

(p) "Regulation" means a rule which is established under the provisions of INA 104(a) and is duly published in the *Federal Register*.

(q) "Son" or "daughter" includes only a person who would have qualified as a "child" under INA 101(b)(1) if the person were under 21 and unmarried.

(r) "Western Hemisphere" means North America (including Central America), South America and the islands immediately adjacent thereto including the places named in INA 101(b)(5).

**§ 40.2 Documentation of nationals.**

(a) *Nationals of the United States.* A national of the United States shall not be issued a visa or other documentation as an alien for entry into the United States.

(b) *Former nationals of the United States.* A former national of the United States who seeks to enter the United States must comply with the documentary requirements applicable to aliens under the INA.

**§ 40.3 Entry into areas under U.S. administration.**

An immigrant or nonimmigrant seeking to enter an area which is under U.S. administration but which is not within the "United States," as defined in INA 101(a)(38), is not required by the INA to be documented with a visa unless the authority contained in INA 215 has been invoked.

**§ 40.4 Furnishing records and information from visa files for court proceedings.**

Upon receipt of a request for information from a visa file or record for use in court proceedings, as contemplated in INA 222(f), the consular officer must, prior to the release of the information, submit the request together with a full report to the Department.

**Subpart B—Ineligibility**

**§ 40.6 Basis for refusal.**

A visa can be refused only upon a ground specifically set out in the law or implementing regulations. The term "reason to believe," as used in INA 221(g), shall be considered to require a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive a visa as provided in INA and as implemented by the regulations. Consideration shall be given to any evidence submitted indicating that the ground for a prior

refusal of a visa may no longer exist. The burden of proof is upon the applicant to establish eligibility to receive a visa under INA 212 or any other provision of law or regulation.

#### § 40.7 Grounds of ineligibility.

(a) *Aliens ineligible under INA 212(a).* Determinations relating to ineligibility of aliens under INA 212(a) shall be governed by the following:

(1)-(6) *Medical grounds of ineligibility*—(i) *Decision on eligibility based on findings of medical doctor.* A finding of a panel physician designated by the post in whose jurisdiction the examination is performed pursuant to INA 212(a)(1) through (6), shall be binding on the consular officer, except that the officer may refer a panel physician finding in an individual case to USPHS for review.

(ii) *Waivers of ineligibility for certain immigrants.* The provisions of INA 212(g) shall apply to an immigrant alien ineligible under INA 212(a)(1) or (3) or afflicted with tuberculosis in any form who is the spouse, unmarried son or daughter, the minor unmarried lawfully adopted child, or the parent of a U.S. citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa.

(7) *Physical defect affecting alien's ability to earn a living.* A consular officer may issue a visa to an alien who is within the purview of INA 212(a)(7) upon receipt of a notice from INS of the giving of a bond or undertaking in accordance with INA 213 and INA 221(g)(3). If the consular officer is satisfied that the giving of such bond or undertaking removes the likelihood that the alien might become a public charge within the meaning of INA 212(a)(15) and the alien is otherwise eligible to receive a visa.

(8) *Pauper, professional beggar, or vagrant.* The provisions of INA 212(a)(8) shall apply only in the case of an alien who is at the time of visa application a pauper, professional beggar, or vagrant.

(9) *Crime involving moral turpitude*—(i) *Acts must constitute a crime under criminal law of jurisdiction where they occurred.* A determination that a crime involves moral turpitude shall be based upon the moral standards generally prevailing in the United States. Before a finding of ineligibility under INA 212(a)(9) may be made because of an admission of the commission of acts which constitute the essential elements of a crime involving moral turpitude, it must first be established that the acts constitute a crime under the criminal law of the jurisdiction where they occurred.

(ii) *Conviction for crime committed when under age 18.* An alien shall not be ineligible to receive a visa under INA 212(a)(9) by reason of any offense committed prior to the alien's fifteenth birthday. Nor shall an alien be ineligible to receive a visa under INA 212(a)(9) by reason of any offense committed between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code. An alien tried and convicted as an adult for a violent felony offense, as so defined, committed after having attained the age of fifteen years, shall be subject to the provisions of INA 212(a)(9) regardless of whether at that time juvenile courts existed within the jurisdiction of the convictions.

(iii) *Two or more crimes committed while under age 18.* An alien convicted of a crime involving moral turpitude or admitting the commission of acts which constitute the essential elements of such a crime and who has committed an additional crime involving moral turpitude is ineligible under INA 212(a)(9), even though the crimes were committed while the alien was under the age of 18 years.

(iv) *Waiver of ineligibility—INA 212(h).* If an immigrant visa applicant is ineligible under INA 212(a)(9) but has the requisite family relationship to seek the benefits of INA 212(h), the consular officer shall advise the alien of the procedure for applying to INS for relief under that section. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

(v) *Conviction in absentia.* A conviction in absentia of a crime involving moral turpitude does not constitute a conviction within the meaning of INA 212(a)(9).

(vi) *Effect of pardon by appropriate U.S. authorities/foreign States.* An alien shall not be considered ineligible under INA 212(a)(9) by reason of a conviction of a crime involving moral turpitude for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under INA 212(a)(9).

(vii) *Political offenses.* The term "purely political offense", as used in INA 212(a)(9), includes offenses that resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious, or political minorities.

(10) *Conviction of two or more offenses*—(i) *Waiver of ineligibility—INA 212(h).* If an immigrant visa applicant is ineligible under INA 212(a)(10) but has the requisite family relationship to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that section. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

(ii) *Conviction(s) for crime(s) committed under age 18.* An alien shall not be ineligible to receive a visa under INA 212(a)(10) by reason of any offense committed prior to the alien's fifteenth birthday. Nor shall an alien be ineligible under INA 212(a)(10) by reason of any offense committed between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code. An alien, tried and convicted as an adult for a violent felony offense, as so defined, committed after having attained the age of fifteen years, and who has also been convicted of at least one other such offense or any other offense committed as an adult, shall be subject to the provisions of INA 212(a)(10) regardless of whether at that time juvenile courts existed within the jurisdiction of the conviction.

(iii) *Conviction in absentia.* A conviction in absentia shall not constitute a conviction within the meaning of INA 212(a)(10).

(iv) *Effect of pardon by appropriate U.S. authorities/foreign States.* An alien shall not be considered ineligible under INA 212(a)(10) by reason in part of having been convicted of an offense for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under INA 212(a)(10).

(v) *Political offense.* The term "purely political offense", as used in INA 212(a)(10), includes offenses that resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious, or political minorities.

(vi) *Suspended sentence.* A sentence to confinement that has been suspended by a court of competent jurisdiction is not one which has been "actually imposed" within the meaning of INA 212(a)(10).

(11) *Polygamy—(i) Nonimmigrants not subject to INA 212(a)(11).* A nonimmigrant visa applicant is exempted from the provisions of INA 212(a)(11) by INA 212(d)(1).

(ii) *Immigrant must personally be a polygamist.* An immigrant visa applicant who is a member of a religious organization which tolerates polygamy is not ineligible under INA 212(a)(11) unless the alien is personally a polygamist, or practices or advocates the practice of polygamy.

(12) *Prostitution, procuring, and related activities—(i) Prostitute defined.* The term "prostitute" means a person given to promiscuous sexual intercourse for hire. A finding that an alien has "engaged" in prostitution must be based on elements of continuity and regularity, indicating a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts.

(ii) *Former prostitute ineligible.* The fact that an alien may have ceased to engage in prostitution shall not serve to remove the existing ground of ineligibility under INA 212(a)(12).

(iii) *Where prostitution not illegal.* A person who comes under one or more of the categories of persons described in INA 212(a)(12) is ineligible to receive a visa under that section even if the acts engaged in are not prohibited under the laws of the foreign country where the acts occurred.

(iv) *Waiver of ineligibility—INA 212(h).* If an alien applying for an immigrant visa is ineligible under INA 212(a)(12) but qualifies for the benefits of INA 212(h) the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

(13) *Immoral sexual act.* An alien shall not be ineligible under INA 212(a)(13), unless the alien's primary purpose in coming to the United States is to engage in an immoral sexual act.

(14) *Aliens entering the United States to perform skilled or unskilled labor—(i) INA 212(a)(14) applies only to certain immigrant aliens.* INA 212(a)(14) is applicable only to immigrant aliens described in INA 203(a)(3), (6), or (7) who are seeking to enter for the purpose of engaging in gainful employment. It does not apply to nonimmigrant aliens or to immigrant aliens described in INA 101(a)(27)(A) through (I), 201(b) or 203(a)(1), (2), (4), or (5).

(ii) *Determination of need for alien's labor skills.* An alien within one of the classes described in INA 203(a)(3), (6), or (7), who seeks to enter the United States for the purpose of engaging in gainful employment, is ineligible under INA 212(a)(14) to receive a visa unless the Secretary of Labor has certified to the Attorney General and the Secretary of State, that—

(A) There are not sufficient workers in the United States who are able, willing, qualified, (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts) and available at the time of application for a visa and at the place to which the alien is destined to perform such skilled or unskilled labor, and

(B) The employment of such alien will not adversely affect the wages and working conditions of the workers in the United States similarly employed.

(iii) *Labor certification not required in certain cases.* The following persons are not considered to be within the purview of INA 212(a)(14) and do not require a labor certification:

(A) An alien who establishes to the satisfaction of the consular officer that the alien does not intend to seek employment;

(B) A spouse or child accompanying or following to join an alien spouse or parent who either has a labor certification or is a nondependent alien not requiring such certification; or

(C) An alien who establishes by documentary evidence that the purpose of admission is to engage in an enterprise in which the alien:

(1) Has invested, or is actively in the process of investing, capital totaling at least \$100,000;

(2) Will be a principal manager of the enterprise; and

(3) Will employ at least one person in the United States who is a citizen or an alien lawfully admitted for permanent residence, exclusive of the principal alien and the spouse and children of such principal alien.

(iv) *Western Hemisphere aliens registered prior to January 1, 1977.* Notwithstanding the provisions of paragraphs (a)(14)(i) and (ii) of this

section, an alien who is within the purview of 22 CFR 42.53(c) is deemed to have met the requirements of INA 212(a)(14) for the purpose of applying for an immigrant visa, if the status, relationship, or other qualification which formed the basis for the alien's original registration as an intending immigrant still exists when the alien applies for a visa. If such status, relationship, or other qualification no longer exists, the alien must again become entitled to nonpreference immigrant classification.

(15) *Public charge—(i) Basis for determination of ineligibility.* Any determination that an alien is ineligible under INA 212(a)(15) must be predicated upon circumstances indicating that the alien will probably become a public charge after admission.

(ii) *Posting of bond.* A consular officer may issue a visa to an alien who is within the purview of INA 212(a)(15) upon receipt of notice from INS of the giving of a bond or undertaking in accordance with INA 213 and INS 221(g), provided the officer is satisfied that the giving of such bond or undertaking removes the likelihood that the alien might become a public charge within the meaning of this section of the law and that the alien is otherwise eligible in all respects.

(iii) *Pearranged employment.* An immigrant visa applicant relying on an offer of prearranged employment to establish eligibility under INA 212(a)(15), other than an offer of employment certified by the Department of Labor pursuant to INA 212(a)(14), must establish the offer of employment by a document that confirms the essential elements of the employment offer. Any document presented to confirm the employment offer must be sworn and subscribed to before a notary public by the employer or an authorized employee or agent of the employer. The signer's printed name and position or other relationship with the employer must accompany the signature.

(iv) *Significance of income poverty guidelines.* An immigrant visa applicant relying solely on personal income to establish eligibility under INA 212(a)(15), who does not demonstrate an annual income above the income poverty guidelines published by the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, and who is without other adequate financial resources, shall be presumed ineligible under INA 212(a)(15).

(16)–(17) *Alien deported—(i) Aliens excluded and deported under INA 212(a)(16).* An alien who was excluded

and deported from the United States under INA 212(a)(16) may not be issued a visa within 1 year from the date of deportation unless the alien has obtained permission from INS to reapply for admission.

(ii) *Aliens arrested and deported or removed from the United States under INA 212(a)(17).* An alien who was arrested and deported from the United States or who was removed from the United States as stated in INA 212(a)(17) shall not be issued a visa unless the alien has remained outside the United States for at least five successive years following the last deportation or removal or has obtained permission from the Immigration and Naturalization Service to reapply for admission to the United States.

(18) *Stowaways.* INA 212(a)(18) is not applicable at the time of visa application.

(19) *Fraud and misrepresentation—(i) Fraud and misrepresentation and INA 212(a)(19) applicability to certain refugees.* An alien who seeks to procure, or has sought to procure, or has procured a visa, other documentation, or entry into the United States or other benefit provided under the Act by fraud or willfully misrepresenting a material fact at any time shall be ineligible under INA 212(a)(19); provided, that the provisions of this paragraph are not applicable if the fraud or misrepresentation was committed by an alien at the time the alien sought entry into a country other than the United States or obtained travel documents as a bona fide refugee and the refugee was in fear of being repatriated to a former homeland if the facts were disclosed in connection with an application for a visa to enter the United States; provided further, that the fraud or misrepresentation was not committed by such refugee for the purpose of evading the quota or numerical restrictions of the U.S. immigration laws, or investigation of the alien's record at the place of former residence or elsewhere in connection with an application for a visa.

(i) *Misrepresentation in application under Displaced Persons Act or Refugee Relief Act.* Subject to the conditions stated in paragraph (a)(19)(i) of this section, an alien who is found by the consular officer to have made a willful misrepresentation within the meaning of section 10 of the Displaced Persons Act of 1948, as amended, for the purpose of gaining admission into the United States as an eligible displaced person, or to have made material misrepresentation within the meaning of section 11(e) of the Refugee Relief Act of 1953, as amended, for the purpose of gaining

admission into the United States as an alien eligible thereunder, shall be considered ineligible under the provisions of INA 212(a)(19).

(iii) *Waiver of ineligibility—INA 212(i).* If an alien applying for an immigrant visa is ineligible under INA 212(a)(19) but qualifies to seek the benefits of INA 212(i), the consular officer shall advise the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(i).

(20) *Immigrant documentary requirements.* INA 212(a)(20) is not applicable at time of visa application. [For waiver of documentary requirements for immigrants see 22 CFR 42.1 and 42.2.]

(21) *Noncompliance with INA 203.* INA 212(a)(21) is not applicable at time of visa application.

(22) *Alien who is ineligible for U.S. citizenship or who departed to avoid service in the Armed Forces—(i) Applicability to nonimmigrants.* An alien is ineligible for a nonimmigrant visa under INA 212(a)(22) only if, having had at the time other than nonimmigrant status, the alien departed from or remained outside the United States between September 8, 1939 and September 24, 1978 to avoid or evade training or service in the U.S. Armed Forces.

(ii) *Applicability to immigrants.* An alien shall be ineligible to receive an immigrant visa under INA 212(a)(22) if the alien either is ineligible to citizenship or departed from or remained outside the United States between September 8, 1939 and September 24, 1978, to avoid or evade training or service in the United States Armed Forces.

(23) *Controlled substance violators—(i) Date of conviction not pertinent.* An alien shall be ineligible under INA 212(a)(23) irrespective of whether the conviction for a violation of or for conspiracy to violate any law or regulation relating to a controlled substance, as defined in the Controlled Substance Act (21 U.S.C. 802), occurred before, on, or after October 27, 1986.

(ii) *Waiver under INA 212(h).* If an immigrant visa applicant is ineligible under INA 212(a)(23) for possession of 30 grams or less of marijuana but has the requisite family relationship to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that section. A visa may not be issued to the alien until the consular officer has received notification from

INS of the approval of the alien's application under INA 212(h).

(24) [INA 212(a)(24) was repealed by the Act of November 14, 1986 (Pub. L. 99-653) [Reserved].]

(25) *Illiterates.* INA 212(a)(25) is not applicable to nonimmigrants or the following classes or immigrants:

(i) *Permanent residents.* An alien who has been lawfully admitted for permanent residence and is returning from a temporary visit abroad;

(ii) *Certain children.* An alien who is not over 16 years of age;

(iii) *Persons physically incapacitated.* An alien who is physically incapable of reading;

(iv) *Certain relatives.* An alien who is the parent, grandparent, spouse, son or daughter of an alien independently eligible to receive a visa, or of an alien lawfully admitted for permanent residence, or of a U.S. citizen, if accompanying such eligible alien or accompanying or coming to join such citizen or lawfully admitted alien in the United States; or

(v) *Certain persecutees.* An alien who seeks admission to the United States to avoid religious persecution in the country of the alien's last permanent residence whether such persecution is evidenced by overt acts or by laws or governmental regulations that discriminate against the alien or any group to which the alien belongs because of religious faith.

(26) *Nonimmigrant documentary requirements.* A passport which is valid indefinitely for the return of the bearer to the country whose government issued such passport shall be deemed to have the required minimum period of validity as specified in INA 212(a)(26).

(27) *Prejudicial activity.* [Reserved]

(28) *Affiliates and members of proscribed organizations—(i) Definition of "affiliate".* The term "affiliate," as used in INA 212(a)(28)(C) and (I), means an organization which is related to, or identified with, a proscribed association or party, including any section, subsidiary, branch, or subdivision thereof, in such close association as to evidence an adherence to or a furtherance of the purposes and objectives of such association or party, or as to indicate a working alliance to bring fruition the purposes and objectives of the proscribed association or party. An organization which gives, loans, or promises support, money, or other thing of value for any purpose to any proscribed association or party is presumed to be an "affiliate" of such association or party, but nothing contained in this paragraph shall be

construed as an exclusive definition of the term "affiliate."

(ii) *Service in Armed Forces.* Service, whether voluntary or not, in the armed forces of any country shall not be regarded, of itself, as constituting or establishing an alien's membership in, or affiliation with, any proscribed party or organization, and shall not, of itself, constitute a ground of ineligibility to receive a visa.

(iii) *Voluntary service in a political capacity.* Voluntary service in a political capacity shall constitute affiliation with the political party or organization in power at the time of such service.

(iv) *Voluntary membership after age 16.* If an alien continues or continued membership in or affiliation with a proscribed organization on or after reaching 16 years of age, only the alien's activities after reaching that age shall be pertinent to a determination of whether the continuation of membership or affiliation is or was voluntary.

(v) *"Operation of law" defined.* The term "operation of law", as used in INA 212(a)(28)(I)(i), includes any case wherein the alien automatically, and without personal acquiescence, automatically became a member of or affiliated with a proscribed party or organization by official act, proclamation, order, edict, or decree.

(vi) *Membership in organization advocating totalitarian dictatorship in U.S.* In accordance with the definition of "totalitarian party" contained in INA 101(a)(37), a former or present voluntary member of, or an alien who was, or is, voluntarily affiliated with a noncommunist party, organization, or group, or of any section, subsidiary, branch, affiliate or subdivision thereof, which during the time of its existence did not or does not advocate the establishment in the United States of a totalitarian dictatorship, is not considered ineligible under INA 212(a)(28)(C) to receive a visa, unless the alien is known or believed by the consular officer to advocate, or to have advocated, personally, the establishment in the United States of a totalitarian dictatorship within the meaning of INA 212(a)(28)(D).

(vii) *"Actively opposed" explained.* The words "actively opposed," as used in INA 212(a)(28)(I)(ii), shall be considered as embracing speeches, writings, and other overt or covert activities in opposition to the doctrine, program, principles, and ideology of the party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof, of which the alien was formerly a voluntary member.

(29) *Espionage, sabotage, or other subversive activities.* [Reserved]

(30) *Alien accompanying excludable alien.* INA 212(a)(30) is not applicable at time of visa application.

(31) *Alien who aided illegal entrant.* [Reserved]

(32) *Foreign medical graduates.* INA 212(a)(32) is not applicable to nonimmigrant aliens and is applicable only to immigrant aliens in the classes described in INA 203(a) (3), (6), and (7) (other than those who come within such classes by virtue of INA 203(a)(8)).

(33) *Certain former Nazis.* [Reserved]

(b) *Failure of application to comply with INA.*—(1) *Refusal under INA 221(g).* The consular officer shall refuse an alien's visa application under INA 221(g)(2) as failing to comply with the provisions of INA or the implementing regulations if:

(i) The applicant fails to furnish information as required by law or regulations;

(ii) The application contains a false or incorrect statement other than one which would constitute a ground of ineligibility under INA 212(a)(19);

(iii) The application is not supported by the documents required by law or regulations;

(iv) The applicant refuses to be fingerprinted as required by law or regulations;

(v) The necessary fee is not paid for such application or for the issuance of the immigrant visa;

(vi) The alien fails to swear to, or affirm, the application before the consular officer; or

(vii) The application otherwise fails to meet specific requirements of law or regulations for reasons for which the alien is responsible.

(2) *Reconsideration of refusals.* A refusal of a visa application under paragraph (b)(1) of this section does not bar reconsideration of the application upon compliance by the applicant with the requirements of INA and the implementing regulations or consideration of a subsequent application submitted by the same applicant.

(c) *Certain former exchange visitors.* An alien who was admitted into the United States as an exchange visitor, or who acquired such status after admission, and who is within the purview of INA 212(e) as amended by the Act of April 7, 1970, (84 Stat. 116) and by the Act of October 12, 1976, (90 Stat. 2301), is not eligible to apply for or receive an immigrant visa or a nonimmigrant visa under INA 101(a)(15) (H), (K), or (L), notwithstanding the approval of a petition on the alien's behalf, unless:

(1) It has been established that the alien has resided and has been

physically present in the country of the alien's nationality or last residence for an aggregate of at least 2 years following the termination of the alien's exchange visitor status as required by INA 212(e), or

(2) The foreign residence requirement of INA 212(e) has been waived by the Attorney General in the alien's behalf.

(d) *Alien entitled to A, E, or G nonimmigrant classification.* An alien entitled to nonimmigrant classification under INA 101(a)(15) (A), (E) or (G) who is applying for an immigrant visa and who intends to continue the activities required for such nonimmigrant classification in the United States is not eligible to receive an immigrant visa until the alien executes a written waiver of all rights, privileges, exemptions and immunities, which would accrue by reason of such occupational status.

#### § 40.8 Waiver for ineligible nonimmigrant under INA 212(d)(3)(A).

(a) *Report or recommendation submitted to Department.* Except as provided in paragraph (b) of this section, consular officers may, upon their own initiative, and shall, upon the request of the Secretary of State or upon the request of the alien, submit a report to the Department for possible transmission to the Attorney General pursuant to the provisions of INA 212(d)(3)(A) in the case of an alien who is classifiable as a nonimmigrant but who is known or believed by the consular officer to be ineligible to receive a nonimmigrant visa under the provisions of INA 212(a), other than for § 40.7(a) (27), (29), and (33).

(b) *Delegated approval authority.*—(1) *Consular officers.* A consular officer may, in certain categories defined by the Secretary of State, approve on behalf of the Attorney General a recommendation by a consular officer, other than the approving officer, that the temporary admission of an alien ineligible to receive a visa solely under section 212(a)(28)(C) of the Act be authorized under the provisions of section 212(d)(3)(A) of the Act;

(2) *Designated INS officers abroad.* A consular officer may, in certain categories defined by the Secretary of State, recommend directly to designated INS officers that the temporary admission of an alien ineligible to receive a visa, other than an alien described in paragraph (b)(1) of this section, be authorized under INA 212(d)(3)(A).

(c) *Attorney General may impose conditions.* When the Attorney General authorizes the temporary admission of an ineligible alien as a nonimmigrant

and the consular officer is so informed, the consular officer may proceed with the issuance of a nonimmigrant visa to the alien, subject to the conditions, if any, imposed by the Attorney General.

2. Part 41 is revised to read as follows:

**PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED**

**Subpart A—Passport and Visas Not Required for Certain Nonimmigrants**

Sec.

- 41.1 Exemption by law or treaty from passport and visa requirements.
- 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.
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Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), Pub. L. 95-105, 91 Stat. 847.

**Subpart A—Passport and Visas Not Required for Certain Nonimmigrants**

**§ 41.1 Exemption by law or treaty from passport and visa requirements.**

Nonimmigrants in the following categories are exempt from the passport and visa requirements of INA 212(a)(26):

(a) *Alien members of the U.S. Armed Forces.* An alien member of the U.S. Armed Forces in uniform or bearing proper military identification, who has not been lawfully admitted for permanent residence coming to the United States under official orders or permit of such Armed Forces. (Sec. 284, 86 Stat. 232; 8 U.S.C. 1354.)

(b) *American Indians born in Canada.* An American Indian born in Canada, having at least 50 per centum of blood of the American Indian race (Sec. 289, 66 Stat. 234; 8 U.S.C. 1359.)

(c) *Aliens entering from Guam, Puerto Rico, or the Virgin Islands.* An alien departing from Guam, Puerto Rico, or the Virgin Islands of the United States, and seeking to enter the continental United States or any other place under the jurisdiction of the United States (Sec. 212, 66 Stat. 188; 8 U.S.C. 1182.)

(d) *Armed Services personnel of a NATO member.* Personnel belonging to the armed services of a government which is a Party to the North Atlantic Treaty and which has ratified the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, signed at London on June 19, 1951, and entering the United States under Article III of that

Agreement pursuant to an individual or collective movement order issued by an appropriate agency of the sending state or of NATO (TIAS 2846; 4 U.S.T. 1792.)

(e) *Armed Services personnel attached to a NATO headquarters in the United States.* Personnel attached to a NATO Headquarters in the United

States set up pursuant to the North Atlantic Treaty, belonging to the armed services of a government which is a Party to the Treaty and entering the United States in connection with their official duties under the provisions of the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty (TIAS 2978; 5 U.S.T. 875.)

(f) *Aliens entering pursuant to International Boundary and Water Commission Treaty.* All personnel employed either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission, and entering the United States temporarily in connection with such employment (59 Stat. 1252; TS 994.)

**§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.**

Pursuant to the authority of the Secretary of State and the Attorney General under INA 212(d)(4), the passport and/or visa requirements of INA 212(a)(26) are waived as specified below for the following categories of nonimmigrants:

(a) *Canadian nationals.* A passport is not required except after a visit outside the Western Hemisphere. A visa is not required.

(b) *Aliens resident in Canada or Bermuda having a common nationality with nationals of Canada or with British subjects in Bermuda.* A passport is not required except after a visit outside the Western Hemisphere. A visa is not required.

(c) *Bahamian nationals and British subjects resident in the Bahamas.* A passport is required. A visa is not required if, prior to the embarkation of such an alien for the United States on a vessel or aircraft, the examining U.S. immigration officer at Freeport or Nassau determines that the individual is clearly and beyond a doubt entitled to admission.

(d) *British subjects resident in the Cayman Islands or in the Turks and Caicos Islands.* A passport is required. A visa is not required if the alien arrives directly from the Cayman Islands or the Turks and Caicos Islands and presents a current certificate from the Clerk of Court of the Cayman Islands or the Turks and Caicos Islands indicating no criminal record.

(e) *British, French, and Netherlands nationals and nationals of certain adjacent islands of the Caribbean which are independent countries.* A passport is required. A visa is not required of a British, French or Netherlands national, or of a national of Antigua, Barbados, Grenada, Jamaica, or Trinidad and Tobago, who has residence in British, French, or Netherlands territory located in the adjacent islands of the Caribbean area, or has residence in Antigua, Barbados, Grenada, Jamaica, or Trinidad and Tobago, if the alien:

(1) Is proceeding to the United States as an agricultural worker; or

(2) Is the beneficiary of a valid, unexpired, indefinite certification granted by the Department of Labor for employment in the Virgin Islands of the United States and is proceeding thereto for employment, or is the spouse or child of such an alien accompanying or following to join the alien.

(f) *Nationals and residents of the British Virgin Islands proceeding to the Virgin Islands of the United States.* A passport is required. A visa is not required of a national of the British Virgin Islands who resides therein and is proceeding to the Virgin Islands of the United States.

(g) *Mexican nationals.* (1) A visa and a passport are not required of a Mexican national in possession of a border crossing identification card and applying for admission as a temporary visitor for business or pleasure from contiguous territory.

(2) A visa is not required of a Mexican national possessing a border crossing identification card and applying for admission to the United States as a temporary visitor for business or pleasure or in transit from noncontiguous territory.

(3) A visa is not required of a Mexican national employed as a crew member on an aircraft belonging to a Mexican company authorized to engage in commercial transportation into the United States.

(4) A visa is not required of a Mexican national bearing a Mexican diplomatic or official passport who is a military or civilian official of the Federal Government of Mexico entering the United States for a stay of up to 6 months for any purpose other than on assignment as a permanent employee to an office of the Mexican Federal Government in the United States. A visa is also not required of the official's spouse or any of the official's dependent family members under 19 years of age who hold diplomatic or official passports and are in the actual company of the official at the time of entry. This waiver does not apply to the spouse or

any of the official's family members classifiable under INA 101(a)(15) (F) or (M).

(h) *Natives and residents of the Trust Territory of the Pacific Islands.* A visa and a passport are not required of a native and resident of the Trust Territory of the Pacific Islands who has proceeded in direct and continuous transit from the Trust Territory to the United States.

(i) *Aliens in immediate transit without visa (TWOV).* A passport and visa are not required of an alien in immediate and continuous transit through the United States in accordance with the terms of an agreement entered into between the carrier and INS on Form I-426, Immediate and Continuous Transit Agreement Between a Transportation Line and United States of America, pursuant to INA 238(d) to ensure transit through and departure from the United States en route to a specified foreign country. The alien must be in possession of travel documentation establishing identity, nationality, and ability to enter a country other than the United States. This waiver of visa and passport requirement is not available to an alien who is a citizen of Afghanistan, Bangladesh, Cuba, India, Iran, Iraq, Libya, Pakistan or Sri Lanka. This waiver of visa and passport requirements is also not available to an alien who is a citizen of North Korea ("Socialist Peoples' Republic of Korea") or Vietnam ("Socialist Republic of Vietnam"), and is a resident of one of the said countries. It is, on a basis of reciprocity, available to a national of Albania, Bulgaria, Czechoslovakia, Estonia, the German Democratic Republic, Hungary, Latvia, Lithuania, Mongolian People's Republic, People's Republic of China, Poland, Romania, or the Union of Soviet Socialist Republic, resident in one of those countries, only if he is transiting the United States by aircraft of a transportation line signatory to an agreement with the Immigration and Naturalization Service on Form 1-426 on a direct through flight which will depart directly to a foreign place from the port of arrival.

(j) *Individual cases of unforeseen emergencies.* A visa and passport are not required of an alien if, either prior to the alien's embarkation abroad or upon arrival at a port of entry, the responsible INS district director in charge of the port of entry concludes, with the concurrence of the Director of the Visa Office, that the alien was unable to obtain the required documents because of an unforeseen emergency.

(k) *Fiance(e) of a U.S. citizen.* Notwithstanding the provisions of paragraphs (a) through (h) of this

section, a visa is required of an alien described in such paragraphs who is classified, or who seeks classification, under INA 101(a)(15)(K).

**§41.3 Waiver by joint action of consular and immigration officers of passport and/or visa requirements.**

Under the authority of INA 212(d)(4), the documentary requirements of INA 212(a)(26) may be waived for any alien in whose case the consular officer serving the port or place of embarkation is satisfied after consultation with, and concurrence by, the appropriate immigration officer, that the case falls within any of the following categories:

(a) *Residents of foreign contiguous territory; visa and passport waiver.* An alien residing in foreign contiguous territory who does not qualify for any waiver provided in § 41.1 and is a member of a visiting group or excursion proceeding to the United States under circumstances which make it impractical to procure a passport and visa in a timely manner.

(b) *Aliens for whom passport extension facilities are unavailable; passport waiver.* An alien whose passport is not valid for the period prescribed in INA 212(a)(26) and who is embarking for the United States at a port or place remote from any establishment at which the passport could be revalidated.

(c) *Aliens precluded from obtaining passport extensions by foreign government restrictions; passport waiver.* An alien whose passport is not valid for the period prescribed in INA 212(a)(26) and whose government, as a matter of policy, does not revalidate passports more than 6 months prior to expiration or until the passport expires.

(d) *Emergent circumstances; visa waiver.* An alien well and favorably known at the consulat office, who was previously issued a nonimmigrant visa which has expired, and who is proceeding directly to the United States under emergent circumstances which preclude the timely issuance of a visa.

(e) *Members of armed forces of foreign countries; visa and passport waiver.* An alien on active duty in the armed forces of a foreign country and a member of a group of such armed forces traveling to the United States, on behalf of the alien's government or the United Nations, under advance arrangements made with the appropriate military authorities of the United States. The waiver does not apply to a citizen or resident of Albania, Bulgaria, Cuba, Czechoslovakia, Estonia, German Democratic Republic, Hungary, Latvia, Lithuania, Mongolian People's Republic,

North Korea (Democratic People's Republic of Korea), Vietnam (Socialist Republic of Vietnam), People's Republic of China, Poland, Romania, or the Union of Soviet Socialist Republics.

(f) *Landed immigrants in Canada; passport waiver.* An alien applying for a visa at a consular office in Canada:

(1) Who is a landed immigrant in Canada;

(2) Whose port and date of expected arrival in the United States are known; and

(3) Who is proceeding to the United States under emergent circumstances which preclude the timely procurement of a passport or Canadian certificate of identity.

(g) *Authorization to individual consular office; visa and/or passport waiver.* An alien within the district of a consular office which has been authorized by the Department, because of unusual circumstances prevailing in that district, to join with immigration officers abroad in waivers of documentary requirements in specific

categories of cases, and whose case falls within one of those categories.

#### Subpart B—Classification of Nonimmigrants.

##### §41.11 Entitlement to nonimmigrant status.

(a) *Presumption of immigrant status and burden of proof.* An applicant for a nonimmigrant visa shall be presumed to be an immigrant until the consular officer is satisfied that the applicant is entitled to a nonimmigrant status described in INA 101(a)(15) or otherwise established by law or treaty. The burden of proof is upon the applicant to establish entitlement for nonimmigrant status and the type of nonimmigrant visa for which application is made.

(b) *Aliens unable to establish nonimmigrant status.* (1) A nonimmigrant visa shall not be issued to an alien who has failed to overcome the presumption of immigrant status established by INA 214(b). An alien shall be considered to have established bona fide nonimmigrant status only if

the consular officer is satisfied that his case falls within one of the nonimmigrant categories described in INA 101(a)(15) or otherwise established by law or treaty.

(2) In a borderline case in which an alien appears to be otherwise entitled to receive a visa under INA 101(a)(15)(B) or (F) but the consular officer concludes that the maintenance of the alien's status or the departure of the alien from the United States as required is not fully assured, a visa may nevertheless be issued upon the posting of a bond with the Attorney General under terms and conditions prescribed by the consular officer.

##### §41.12 Classification symbols.

A visa issued to a nonimmigrant alien within one of the classes described in this section shall bear an appropriate visa symbol to show the classification of the alien. The symbol shall be inserted in the space provided in the visa stamp. The following visa symbols shall be used:

Class	Section of law or treaty citation	Visa symbol
Ambassador, public, minister, career, diplomatic or consular officer, and members of immediate family.	101(a)(15)(A)(i)	A-1
Other foreign government official or employee, and members of immediate family.	101(a)(15)(A)(ii)	A-2
Attendant, servant, or personal employee of A-1 and A-2 classes, and members of immediate family.	101(a)(15)(A)(iii)	A-3
Temporary visitor for business	101(a)(15)(B)	B-1
Temporary visitor for pleasure	101(a)(15)(B)	B-2
Temporary visitor for business and pleasure	101(a)(15)(B)	B-1 and B-2
Alien in transit	101(a)(15)(C)	C-1
Alien in transit to United Nations Headquarters District under 11(3), (4), or (5) of the Headquarters Agreement with the United Nations	101(a)(15)(C)	C-2
Foreign government official, members of immediate family, attendant, servant, or personal employee, in transit	212(d)(8)	C-3
Crew member (ship or aircraft crew)	101(a)(15)(D)	D
Treaty trader, spouse and children	101(a)(15)(E)(i)	E-1
Treaty investor, spouse and children	101(a)(15)(E)(ii)	E-2
Student (academic or language training program)	101(a)(15)(F)(i)	F-1
Spouse and children of alien classified F-1	101(a)(15)(F)(ii)	F-2
Principal resident representative of recognized foreign member government to international organization, representative's staff, and members of immediate family	101(a)(15)(G)(i)	G-1
Other representative of recognized foreign member government to international organization, and members of immediate family	101(a)(15)(G)(ii)	G-2
Representative of nonrecognized or nonmember foreign government to international organization, and members of immediate family	101(a)(15)(G)(iii)	G-3
International organization officer or employee, and members of immediate family	101(a)(15)(G)(iv)	G-4
Attendant, servant, or personal employee of G-1, G-2, G-3, and G-4 classes, and members of immediate family	101(a)(15)(G)(v)	G-5
Temporary worker of distinguished merit and ability	101(a)(15)(H)(i)	H-1
Temporary worker performing agricultural services unavailable in the United States	101(a)(15)(H)(ii)(a)	H-2(A)
Temporary worker performing other services unavailable in the United States	101(a)(15)(H)(ii)(b)	H-2(B)
Trainee	101(a)(15)(H)(iii)	H-3
Spouse and children of alien classified H-1, H-2, or H-3	101(a)(15)(H)(iv)	H-4
Representative of foreign information media, spouse and children	101(a)(15)(I)	I
Exchange visitor	101(a)(15)(J)	J-1
Spouse and children of alien classified J-1	101(a)(15)(J)	J-2
Fiance (e) of U.S. citizen	101(a)(15)(K)	K-1
Children of alien classified K-1	101(a)(15)(K)	K-2
Intracompany transferee (executive, managerial, and specialized personnel continuing employment with international firm or corporation)	101(a)(15)(L)	L-1
Spouse and children of alien classified L-1	101(a)(15)(L)	L-2
Student (vocational or other recognized nonacademic)	101(a)(15)(M)(i)	M-1
Spouse and children of alien classified M-1	101(a)(15)(M)(ii)	M-2
The parent of an alien child classified SK-3 under section 101(a)(27)(l)(i)	101(a)(15)(N); 100 Stat. 3559	N-8
The child of parent classified N-8 or of alien classified SK-1, SK-2; SK-4 under section 101(a)(27)(l)(ii), (iii), or (iv)	101(a)(15)(N), 100 Stat. 3559	N-9
Principal permanent representative of Member State to NATO (including any of its subsidiary bodies) resident in the United States and resident members of permanent representative's official staff; Secretary General, Deputy Secretary General, Assistant Secretaries General and Executive Secretary of NATO; other permanent NATO officials of similar rank; and members of immediate family.	Art. 12, 5 UST 1094, Art. 20, 5 UST 1098	NATO-1
Other representatives of Member States to NATO (including any of its subsidiary bodies) including representatives, advisers and technical experts of delegations, and members of immediate family; dependents of member of a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement or in accordance with the provisions of the Protocol on the Status of International Military Headquarters; members of such a force if issued visas.	Art. 13, 5 UST 1094, Art. 1, 4 UST 1794, Art. 3, 4 UST 1796	NATO-2
Official clerical staff accompanying a representative of Member State to NATO (including any of its subsidiary bodies) and members of immediate family.	Art. 14, 5 UST 1096	NATO-3
Officials of NATO (other than those classifiable under NATO-1) and members of immediate family.	Art. 18, 5 UST 1098	NATO-4
Experts, other than NATO officials classifiable under the symbol NATO-4, employed on missions on behalf of NATO and their dependents	Art. 21, 5 UST 1100	NATO-5
Members of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement; members of a civilian component attached to or employed by an Allied force.	Art. 1, 4 UST 1794, Art. 3, 5 UST 877	NATO-6
Headquarters under the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty; and their dependents.		

Class	Section of law or treaty citation	Visa symbol
Attendant, servant, or personal employee of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, and NATO-6 classes, and members of immediate family...	Arts. 12-20, 5 UST	NATO-7

## Subpart C—Foreign Government Officials

### § 41.21 General.

(a) *Definitions.* In addition to pertinent INA definitions, the following definitions are applicable:

(1) "Accredited," as used in INA 101(a)(15)(A), 101(a)(15)(G), and 212(d)(8), means an alien holding an official position, other than an honorary official position, with a government or international organization and possessing a travel document or other evidence of intention to enter or transit the United States to transact official business for that government or international organization.

(2) "Attendants," as used in INA 101(a)(15)(A)(iii), 101(a)(15)(G)(v), and 212(d)(8), and in the definition of the NATO-7 visa symbol, means aliens paid from the public funds of a foreign government or from the funds of an international organization, accompanying or following to join the principal alien to whom a duty or service is owed.

(3) "Immediate family," as used in INA 101(a)(15)(A), 101(a)(15)(G), and 212(d)(8), and in classification under the NATO-1 through NATO-5 visa symbols, means the spouse and unmarried sons and daughters, whether by blood or adoption, who are not members of some other household, and who will reside regularly in the household of the principal alien. "Immediate family" also includes any other close relatives of the principal alien or spouse who:

- (i) Are relatives of the principal alien or spouse by blood, marriage, or adoption;
- (ii) Are not members of some other household;
- (iii) Will reside regularly in the household of the principal alien;
- (iv) Are recognized as dependents by the sending Government as demonstrated by eligibility for rights and benefits, such as the issuance of a diplomatic or official passport and travel and other allowances, which would be granted to the spouse and children of the principal alien; and
- (v) Are individually authorized by the Department.

(4) "Servants" and "personal employees," as used in INA 101(a)(15)(A)(iii), 101(a)(15)(G)(v), and 212(d)(8), and in classification under the NATO-7 visa symbol, means aliens employed in a domestic or personal

capacity by a principal alien, who are paid from the private funds of the principal alien and seek to enter the United States solely for the purpose of such employment.

(b) *Exception to passport validity requirement for aliens in certain A, G, and NATO classes.* A nonimmigrant alien for whom the passport requirement of INA 212(a)(26) has not been waived and who is within one of the classes:

(1) Described in INA 101(a)(15)(A)(i) and (ii); or

(2) Described in INA 101(a)(15)(G)(i), (ii), (iii), and (iv); or

(3) NATO-1, NATO-2, NATO-3, NATO-4, or NATO-6 may present a passport which is valid only for a sufficient period to enable the alien to apply for admission at a port of entry prior to its expiration.

(c) *Exception to passport validity requirement for foreign government officials in transit.* An alien classified C-3 under INA 212(d)(8) needs to present only a valid unexpired visa and a travel document which is valid for entry into a foreign country for at least 30 days from the date of application for admission into the United States.

(d) *Grounds for refusal of visas applicable to certain A, C, G, and NATO classes.* (1) An A-1 or A-2 visa may not be issued to an alien the Department has determined to be *persona non grata*.

(2) Only the provisions of INA 212(a) cited below apply to the indicated classes of nonimmigrants:

(i) Class A-1: INA 212(a)(27) in accordance with a directive of the President and the issuance of appropriate rules and regulations;

(ii) Class A-2: INA 212(a)(26)(A), (27), (28), and (29);

(iii) Class C-2: INA 212(a)(26)(A), (27), (28), and (29);

(iv) Class C-3: INA 212(a)(26)(A), (27) and (29);

(v) Class G-1: INA 212(a)(27);

(vi) Class G-2, G-3, and G-4: INA 212(a) (27) and (29);

(vii) Class NATO-1: INA 212(a) (27);

(viii) Classes NATO-2, NATO-3, NATO-4 and NATO-6: INA 212(a)(27) and (29).

(3) An alien within class A-3 or G-5 is subject to all grounds of refusal specified in INA 212, which are applicable to nonimmigrants in general, except for those specified in INA 212(a)(28).

### § 41.22 Officials of foreign governments.

(a) *Criteria for classification of foreign government officials.* (1) An alien is classifiable A-1 or A-2 under INA 101(a)(15)(A) (i) or (ii) if the principal alien:

(i) Has been accredited by a foreign government recognized *de jure* by the United States;

(ii) Intends to engage solely in official activities for that foreign government while in the United States; and

(iii) Has been accepted by the President, the Secretary of State, or a consular officer acting on behalf of the Secretary of State.

(2) A member of the immediate family of a principal alien is classifiable A-1 or A-2 under INA 101(a)(15)(A) (i) or (ii) if the principal alien is so classified.

(b) *Classification under INA 101(a)(15)(A).* An alien entitled to classification under INA 101(a)(15)(A) shall be classified under this section even if eligible for another nonimmigrant classification.

(c) *Classification of attendants, servants, and personal employees.* An alien is classifiable as a nonimmigrant under INA 101(a)(15)(A)(iii) if the consular officer is satisfied that the alien qualifies under those provisions.

(d) *Referral to the Department of special cases concerning principal alien applicants.* In any case in which there is uncertainty about the applicability of these regulations to a principal alien applicant requesting such nonimmigrant status, the matter shall be immediately referred to the Department for consideration as to whether acceptance of accreditation will be granted.

(e) *Change of classification to that of a foreign government official.* In the case of an alien in the United States seeking a change of nonimmigrant classification under INA 248 to a classification under INA 101(a)(15)(A) (i) or (ii), the question of acceptance of accreditation is determined by the Department.

(f) *Termination of status.* The Department may, in its discretion, cease to recognize as entitled to classification under INA 101(a)(15)(A) (i) or (ii) any alien who has nonimmigrant status under that provision.

(g) *Classification of foreign government official.* A foreign government official or employee seeking to enter the United States temporarily other than as a representative or

employee of a foreign government is not classifiable under the provisions of INA 101(a)(15)(A).

(h) *Courier and acting courier on official business.*—(1) *Courier of career.* An alien regularly and professionally employed as a courier by the government of the country to which the alien owes allegiance is classifiable as a nonimmigrant under INA 101(a)(15)(A)(i), if the alien is proceeding to the United States on official business for that government.

(2) *Official acting as courier.* An alien not regularly and professionally employed as a courier by the government of the country to which the alien owes allegiance is classifiable as a nonimmigrant under INA 101(a)(15)(A)(ii), if the alien is holding an official position and is proceeding to the United States as a courier on official business for that government.

(3) *Nonofficial serving as courier.* An alien serving as a courier but not regularly and professionally employed as such who holds no official position with, or is not a national of, the country whose government the alien is serving, shall be classified as a nonimmigrant under INA 101(a)(15)(B).

(i) *Official of foreign government not recognized by the United States.* An official of a foreign government not recognized de jure by the United States, who is proceeding to or through the United States on an official mission or to an international organization shall be classified as a nonimmigrant under INA 101(a)(15)(B), (C), or (G)(iii).

#### § 41.23 Accredited officials in transit.

An accredited official of a foreign government intending to proceed in immediate and continuous transit through the United States on official business for that government is entitled to the benefits of INA 212(d)(8) if that government grants similar privileges to officials of the United States, and is classifiable C-3 under the provisions of INA 101(a)(15)(C). Members of the immediate family, attendants, servants, or personal employees of such an official receive the same classification as the principal alien.

#### § 41.24 International organization aliens.

(a) *Definition of international organization.* "International organization," means any public international organization which has been designated by the President by Executive Order as entitled to enjoy the privileges, exemptions, and immunities provided for in the International Organizations Immunities Act. (59 Stat. 669)

(b) *Aliens coming to international organizations.* (1) An alien is classifiable under INA 101(a)(15)(G) if the consular officer is satisfied that the alien is within one of the classes described in that section and seeks to enter or transit the United States in pursuance of official duties. If the purpose of the entry or transit is other than pursuance of official duties, the alien is not classifiable under INA 101(a)(15)(G).

(2) An alien applying for a visa under the provisions of INA 101(a)(15)(G) may not be refused solely on the grounds that the applicant is not a national of the country whose government the applicant represents.

(3) An alien seeking to enter the United States as a foreign government representative to an international organization, who is also proceeding to the United States on official business as a foreign government official within the meaning of INA 101(a)(15)(A), shall be issued a visa under that section, if otherwise qualified.

(4) An alien not classifiable under INA 101(a)(15)(A) but entitled to classification under INA 101(a)(15)(G) shall be classified under the latter section, even if also eligible for another nonimmigrant classification.

#### § 41.25 NATO representatives, officials, and employees.

(a) *Classification.* An alien shall be classified under the symbol NATO-1, NATO-2, NATO-3, NATO-4, or NATO-5 if the consular officer is satisfied that the alien is seeking admission to the United States under the applicable provision of the Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff, or is a member of the immediate family of an alien classified NATO-1 through NATO-5. (See § 41.12 for classes of aliens entitled to classification under each symbol.)

(b) *Armed services personnel.* Armed services personnel entering the United States in accordance with the provisions of the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces or in accordance with the provisions of the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty may enter the United States under the appropriate treaty waiver of documentary requirements contained in § 41.1(d) or (e). If a visa is issued it is classifiable under the NATO-2 symbol.

(c) *Dependents of armed services personnel.* Dependents of armed services personnel referred to in

paragraph (b) of this section shall be classified under the symbol NATO-2.

(d) *Members of civilian components and dependents.* Alien members of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, and dependents, or alien members of a civilian component attached to or employed by an Allied Headquarters under the Protocol on the Status of International Military Headquarters, and dependents shall be classified under the symbol NATO-6.

(e) *Attendant, servant, or personal employee of an alien classified NATO-1 through NATO-6.* An alien attendant, servant, or personal employee of an alien classified NATO-1 through NATO-6, and any member of the immediate family of such attendant, servant, or personal employee, shall be classified under the symbol NATO-7.

#### § 41.26 Diplomatic visas.

(a) *Definitions.* (1) "Diplomatic passport" means a national passport bearing that title and issued by a competent authority of a foreign government.

(2) "Diplomatic visa" means any nonimmigrant visa, regardless of classification, which bears that title and is issued in accordance with the regulations of this section.

(3) "Equivalent of a diplomatic passport" means a national passport, issued by a competent authority of a foreign government which does not issue diplomatic passports to its career diplomatic and consular officers, indicating the career diplomatic or consular status of the bearer.

(b) *Place of application.* With the exception of certain aliens in the United States issued nonimmigrant visas by the Department under the provisions of § 41.111(b), application for a diplomatic visa shall be made at a diplomatic mission or at a consular office authorized to issue diplomatic visas, regardless of the nationality or residence of the applicant.

(c) *Classes of aliens eligible to receive diplomatic visas.* (1) A nonimmigrant alien who is in possession of a diplomatic passport or its equivalent shall, if otherwise qualified, be eligible to receive a diplomatic visa irrespective of the classification of the visa under § 41.12 if within one of the following categories:

(i) Heads of states and their alternates;

(ii) Members of a reigning royal family;

(iii) Governors-general, governors, high commissioners, and similar high

administrative or executive officers of a territorial unit, and their alternates;

(iv) Cabinet ministers and their assistants holding executive or administrative positions not inferior to that of the head of a departmental division, and their alternates;

(v) Presiding officers of chambers of national legislative bodies;

(vi) Justices of the highest national court of a foreign country;

(vii) Ambassadors, public ministers, other officers of the diplomatic service and consular officers of career;

(viii) Military officers holding a rank not inferior to that of a brigadier general in the United States Army or Air Force and Naval officers holding a rank not inferior to that of a rear admiral in the United States Navy;

(ix) Military, naval, air and other attaché and assistant attaché assigned to a foreign diplomatic mission;

(x) Officers of foreign-government delegations to international organizations so designated by Executive Order;

(xi) Officers of foreign-government delegations to, and officers of, international bodies of an official nature, other than international organizations so designated by Executive Order;

(xii) Officers of a diplomatic mission of a temporary character proceeding to or through the United States in the performance of their official duties;

(xiii) Officers of foreign-government delegations proceeding to or from a specific international conference of an official nature;

(xiv) Members of the immediate family of a principal alien who is within one of the classes described in paragraphs (a) to (k) inclusive, of this section;

(xv) Members of the immediate family accompanying or following to join the principal alien who is within one of the classes described in paragraphs (c)(1)(xii) and (c)(1)(xiii) of this section;

(xvi) Diplomatic couriers proceeding to or through the United States in the performance of their official duties.

(2) Aliens Classifiable G-4, who are otherwise qualified, are eligible to receive a diplomatic visa if accompanying these officers:

(i) The Secretary General of the United Nations;

(ii) An Under Secretary General of the United Nations;

(iii) An Assistant Secretary General of the United Nations;

(iv) The Administrator or the Deputy Administrator of the United Nations Development Program;

(v) An Assistant Administrator of the United Nations Development Program;

(vi) The Executive Director of the: (A) United Nation's Children's Fund; (B) United Nations Institute for Training and Research;

(C) United Nations Industrial Development Organization;

(vii) The Executive Secretary of the:

(A) United Nations Economic Commission for Africa;

(B) United Nations Economic Commission for Asia and the Far East;

(C) United Nations Economic Commission for Latin America;

(D) United Nations Economic Commission for Europe;

(viii) The Secretary General of the United Nations Conference on Trade and Development;

(ix) The Director General of the Latin American Institute for Economic and Social Planning;

(x) The United Nations High Commissioner for Refugees;

(xi) The United Nations Commissioner for Technical Co-operation;

(xii) The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East;

(xiii) The spouse or child of any nonimmigrant alien listed in paragraph (c)(2)(i) through (c)(2)(xii) of this section.

(3) Other individual aliens or classes of aliens are eligible to receive diplomatic visas upon authorization of the Department, the Chief of a U.S. Diplomatic Mission, the Deputy Chief of Mission, the Counselor for Consular Affairs or the principal officer of a consular post not under the jurisdiction of a diplomatic mission.

#### § 41.27 Official visas.

(a) *Definition.* "Official visas" means any nonimmigrant visa, regardless of classification, which bears that title and is issued in accordance with these regulations.

(b) *Place of application.* Official visas are ordinarily issued only when application is made in the consular district of the applicant's residence. When directed by the Department, or in the discretion of the consular officer, official visas may be issued when application is made in a consular district in which the alien is physically present but does not reside. Certain aliens in the United States may be issued official visas by the Department under the provisions of § 41.111(b).

(c) *Classes of aliens eligible to receive official visas.* (1) A nonimmigrant within one of the following categories who is not eligible to receive a diplomatic visa shall, if otherwise qualified, be eligible to receive an official visa irrespective of classification of the visa under § 41.12:

(i) Aliens within a class described in § 41.26(c)(2) who are ineligible to receive a diplomatic visa because they are not in possession of a diplomatic passport or its equivalent;

(ii) Aliens classifiable under INA 101(a)(15)(A);

(iii) Aliens, other than those described in 22 CFR 41.26(c)(3) who are classifiable under INA 101(a)(15)(G), except those classifiable under INA 101(a)(15)(G)(iii) unless the government of which the alien is an accredited representative is recognized *de jure* by the United States;

(iv) Aliens classifiable under INA 101(a)(15)(C) as nonimmigrants described in INA 212(d)(8);

(v) Members and members-elect of national legislative bodies;

(vi) Justices of the lesser national and the highest state courts of a foreign country;

(vii) Officers and employees of national legislative bodies proceeding to or through the United States in the performance of their official duties;

(viii) Clerical and custodial employees attached to foreign-government delegations to, and employees of, international bodies of an official nature, other than international organizations so designated by Executive Order, proceeding to or through the United States in the performance of their official duties;

(ix) Clerical and custodial employees attached to a diplomatic mission of a temporary character proceeding to or through the United States in the performance of their official duties;

(x) Clerical and custodial employees attached to foreign-government delegations proceeding to or from a specific international conference of an official nature;

(xi) Officers and employees of foreign governments recognized *de jure* by the United States who are stationed in foreign contiguous territories or adjacent islands;

(xii) Members of the immediate family, attendants, servants and personal employees of, when accompanying or following to join, a principal alien who is within one of the classes referred to or described in paragraphs (a) through (k) inclusive of this section;

(xiii) Attendants, servants and personal employees accompanying or following to join a principal alien who is within one of the classes referred to or described in paragraphs (a) through (m) inclusive of § 41.26(c)(2).

(2) Other individual aliens or classes of aliens are eligible to receive official visas upon the authorization of the

Department, the Chief of a U.S. Diplomatic Mission, the Deputy Chief of Mission, the Counselor for Consular Affairs, or the principal officer of a consular post not under the jurisdiction of a diplomatic mission.

#### Subpart D—Temporary Visitors

##### § 41.31 Temporary visitors for business or pleasure.

(a) *Classification.* An alien is classifiable as a nonimmigrant visitor of business (B-1) or pleasure (B-2) if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(B), and that:

(1) The alien intends to leave the United States at the end of the temporary stay (consular officers are authorized, if departure of the alien as required by law does not seem fully assured, to require the posting of a bond with the Attorney General in a sufficient sum to ensure that at the end of the temporary visit, or upon failure to maintain temporary visitor status, or any status subsequently acquired under INA 248, the alien will depart from the United States);

(2) The alien has permission to enter a foreign country at the end of the temporary stay; and

(3) Adequate financial arrangements have been made to enable the alien to carry out the purpose of the visit to and departure from the United States.

(b) *Definitions.* (1) The term "business," as used in INA 101(a)(15)(B), refers to conventions, conferences, consultations and other legitimate activities of a commercial or professional nature. It does not include local employment or labor for hire. For the purposes of this section building or construction work, whether on-site or in plant, shall be deemed to constitute purely local employment or labor for hire; provided that the supervision or training of others engaged in building or construction work (but not the actual performance of any such building or construction work) shall not be deemed to constitute purely local employment or labor for hire if the alien is otherwise qualified as a B-1 nonimmigrant. An alien seeking to enter as a nonimmigrant for employment or labor pursuant to a contract or other prearrangement is required to qualify under the provisions of § 41.53. An alien of distinguished merit and ability seeking to enter the United States temporarily with the idea of performing temporary services of an exceptional nature requiring such merit and ability, but having no contract or other prearranged employment, may be classified as a nonimmigrant temporary visitor for business.

(2) The term "pleasure," as used in INA 101(a)(15)(B), refers to legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or service nature.

##### § 41.32 Nonresident alien Mexican border crossing identification cards; combined border crossing identification cards and B-1/B-2 visitor visa.

(a) *Border crossing identification cards (BCC)—(1) Posts authorized to issue.* Consular officers assigned to consular offices in Ciudad Juarez, Hermosillo, Nuevo Laredo, Matamoros, and Tijuana may issue a nonresident alien border crossing identification card (BCC), as that term is defined in INA 101(a)(6), to a nonimmigrant alien who:

(i) Is a citizen and resident of Mexico; and

(ii) Is a temporary visitor who, if applying for a B-1 or B-2 visitor visa for business or pleasure, would be eligible to receive such visa.

(2) *Procedures for application.* A citizen of Mexico shall apply for a BCC on Form OF-156, Nonimmigrant Visa Application. The application shall be supported by:

(i) Evidence of Mexican citizenship and residence;

(ii) A valid or expired Mexican Federal passport or a valid Mexican identity document (Form FM13); and

(iii) One photograph (1-1/2-inches square), if the alien is 16 years of age or older. Each applicant shall appear in person before a consular officer and be interviewed regarding eligibility for a temporary visitor visa, unless personal appearance is waived by the officer.

(3) *Issuance and format.* A Mexican BCC shall consist of a stamp placed in the alien's valid or expired Mexican Federal passport or valid Mexican identity document by a consular officer stationed at one of the posts designated in paragraph (a)(1) of this section. The stamps shall be numbered serially by each consular office beginning with the number "1" on October 1 of each year. They must be in the format prescribed by the Department and contain the following data:

(i) Post symbol;

(ii) Number of the card;

(iii) Title and location of the issuing office;

(iv) Date of issuance;

(v) Name(s) of the person(s) to whom issued; and

(vi) Signature and title of the issuing officer.

(b) *Combined border crossing identification cards and B-1/B-2 visitor visas (B-1/B-2—BCC)—(1)—Posts*

authorized to issue. Consular officers assigned to any consular office in Mexico may issue a nonresident alien border crossing identification card, as that term is defined in INA 101(a)(6), in combination with a B-1/B-2 nonimmigrant visitor visas (B-1/B-2—BCC), to a nonimmigrant alien who:

(i) Is a citizen of Mexico;

(ii) Seeks to enter the United States as a temporary visitor for business or pleasure as defined in INA 101(a)(15)(B) for periods of stay not exceeding 6 months; and

(iii) Is otherwise eligible to receive a B-1 or B-2 temporary visitor visa or is the beneficiary of a waiver under INA 212(d)(3)(A) of a ground of ineligibility, which is valid for multiple applications for admission into the United States and for an indefinite period of time and which contains no restrictions as to extensions of temporary stay or itinerary.

(2) *Procedure for application.*

Application for a B-1/B-2—BCC may be made by a Mexican applicant at any U.S. consular office in Mexico on Form OF-156. The application shall be supported by:

(i) Evidence of Mexican citizenship and residence;

(ii) A valid Mexican Federal passport; and

(iii) One photograph (1-1/2-inches square), if 16 years of age or older.

Each applicant shall appear in person before a consular officer to be interviewed regarding eligibility for a visitor visa, unless personal appearance is waived by the consular officer.

(3) *Issuance and format.* A Mexican B-1/B-2—BCC shall consist of a numbered stamp placed in the alien's valid Mexican Federal passport by a consular officer in Mexico. The stamps shall be numbered serially by each consular office beginning with the number "1" on October 1 of each year. They must be in the format prescribed by the Department and contain the following data:

(i) Post symbol;

(ii) Number of the card;

(iii) Title and location of the issuing office;

(iv) Date of issuance;

(v) Indicia "Mexican Border Crossing Identification Card and B-1/B-2 Nonimmigrant Visa";

(vi) Name(s) of the person(s) to whom issued;

(vii) Caption "Valid indefinitely for multiple applications for admission to the United States as a temporary visitor for business or pleasure" in the middle portion of the stamp; and

(viii) Signature and title of the issuing officer.

(c) *Validity.* A Mexican BCC or B-1/B-2—BCC, issued pursuant to the provisions of this section, is valid until revoked. A BCC previously issued by a consular officer in Mexico on Form I-186, Nonresident Alien Mexican Border Crossing Card, or Form I-586, Nonresident Alien Border Crossing Card, is valid until revoked or voided, regardless of any expiration date on the card.

(d) *Revocation.* A Mexican BCC or B-1/B-2—BCC may be revoked under the provisions of § 41.122. Upon revocation, the consular or immigration officer shall cancel the card by writing or stamping the word "Canceled" plainly across the face of the card stamp and shall indicate the location of the consular or immigration office where the card was revoked.

(e) *Voidance of Mexican border crossing cards issued in Mexico on form I-186 or form I-586.* A consular officer in Mexico may declare void, without notice, a BCC previously issued in Mexico on Form I-186 or Form I-586, upon a finding that the holder is ineligible to receive a nonimmigrant visa. The card must be surrendered immediately upon voidance.

(f) *Replacement.* When a Mexican BCC or B-1/B-2—BCC issued under the provisions of this section has been lost, mutilated, or destroyed, the person to whom such card was issued may apply for a new card as provided in this section. A nonresident alien whose BCC previously issued on Form I-186 or Form I-586 by a consular officer in Mexico, has been lost, mutilated, or destroyed, may apply for a B-1/B-2—BCC at any consular office in Mexico, provided the alien qualifies under paragraph (b) of this section.

**§ 41.33 Nonresident alien Canadian border crossing identification card (BCC).**

(a) *Aliens eligible to apply.* A consular officer assigned to a consular office in Canada may issue a nonresident alien border crossing identification card (BCC), as that term is defined in INA 101(a)(6), to a nonimmigrant alien who:

(1) Has been admitted to Canada for permanent residence as a landed immigrant;

(2) Seeks to enter the United States from Canada, or will seek to enter the United States from Mexico and will not have visited any countries other than Mexico and the United States since departing Canada, only as a temporary visitor for business or pleasure as defined in INA 101(a)(15)(B) for periods of stay not exceeding 6 months; and

(3) Is otherwise eligible to receive a temporary visitor visa or is the beneficiary of a waiver under INA 212(d)(3)(A) of a ground of ineligibility, which is valid for multiple applications for admission into the United States and for an indefinite period of time and which contains no restrictions as to extensions of temporary stay or itinerary.

(b) *Procedure for application.* Application for a Canadian BCC shall be made on Form OF-156, Nonimmigrant Visa Application. The application shall be supported by:

(1) Evidence of the applicant's landed immigrant status in Canada;

(2) A valid or expired passport or other travel document showing origin, identity, and nationality, if any; and

(3) One photograph (1½ inches square), if the applicant is 16 years of age or over. Each applicant must appear in person before a consular officer and be interviewed regarding eligibility for a visitor visa unless personal appearance is waived by the consular officer.

(c) *Issuance and format of border crossing identification card.* A Canadian BCC shall consist of a stamp placed in the alien's passport or other travel document by a consular officer in Canada. The stamps shall be numbered serially by each consular office beginning with the number "1" on October 1 of each year. They shall be in the format prescribed by the Department and contain the following data:

(1) Post symbol;

(2) Number of the card;

(3) Title and location of the issuing office;

(4) Date of issuance;

(5) Name(s) of the person(s) to whom issued; and

(6) Signature and title of the issuing officer.

(d) *Validity of Canadian BCC.* A Canadian BCC, issued pursuant to the provisions of this section, is valid until revoked.

(e) *Revocation of Canadian BCC.* (1) A Canadian BCC shall be revoked by a consular officer if information is developed indicating that the holder is ineligible to receive a nonimmigrant visa, or by a District Director of the Immigration and Naturalization Service if it is found that the alien has violated the conditions of admission into the United States.

(2) In canceling such a card the consular or immigration officer shall write or stamp the word "Canceled" plainly across the face of the card stamp, indicate the location of the consular or immigration office where the card was revoked and follow the procedures of § 41.122.

**Subpart E—Crewman and Crew-List Visas**

**§ 41.41 Crewmen.**

(a) *Alien classifiable as crewman.* An alien shall be classifiable as a nonimmigrant crewman upon establishing to the satisfaction of the consular officer the qualifications prescribed by INA 101(a)(15)(D) provided that the alien has permission to enter some foreign country after a temporary landing in the United States.

(b) *Alien not classifiable as crewman.* An alien employed on board a vessel or aircraft in a capacity not required for normal operation and service, or an alien employed or listed as a regular member of the crew in excess of the number normally required, shall not be classified as a crewman.

**§ 41.42 Crew-List visas.**

(a) *Definition.* A crew-list visa is a nonimmigrant visa issued on a manifest of crewmen of a vessel or aircraft and includes all aliens listed in the manifest unless otherwise stated. It constitutes a valid nonimmigrant visa within the meaning of INA 212(a)(26)(B).

(b) *Application.* (1) A list of all alien crewmen serving on a vessel or aircraft proceeding to the United States and not in possession of a valid individual D visa or INS Form I-151 or Form I-551, Alien Registration Receipt Card, shall be submitted in duplicate to a consular officer on INS Form I-418, Passenger List-Crew List, or other prescribed forms. The duplicate copy of Form I-418 must show in column (4) the date, city, and country of birth of each person listed and in column (5) the place of issuance and the issuing authority of the passport held by that person. For aircraft crewmen, the manifest issued by the International Civil Aviation Organization (ICAO) or Customs Form 7507, General Declaration, may be used in lieu of Form I-418 if there is adequate space for the list of names.

(2) The formal application for a crew-list visa is the crew list together with any other information the consular officer finds necessary to determine eligibility. No other application form is required.

(3) The crew list submitted should contain in alphabetical order the names of those alien crew members to be considered for inclusion in a crew-list visa. If the list is not alphabetical, the consular officer may require a separate alphabetical listing if this will not unduly delay the departure of the vessel or aircraft.

(4) If a vessel or aircraft destined to the United States will not call at a port

or place where there is a consular office, the crew list can be submitted for visaing to a consular office at the place nearest the vessel's port of call.

(c) *Fee.* A fee in an amount determined by the Schedule of Fees for Consular Services shall be charged for a crew-list visa except that no fee shall be charged in the case of an American vessel or aircraft.

(d) *Validity.* A crew-list visa is valid for a period of 6 months from the date of issuance and for a single application for admission into the United States.

(e) *Procedure in issuing.* (1) In issuing a crew-list visa the regular nonimmigrant visa stamp as prescribed in § 41.113(d) shall be placed on the last page of the manifest immediately following the last name listed.

(2) The symbol D shall be inserted in the space provided in the visa stamp.

(3) The name of the vessel or identifying data regarding the aircraft shall be entered in the space provided for the name of the visa recipient.

(4) The signature and title of the consular officer shall be recorded on the visa. The post impression seal shall be affixed on the visa stamp if the visa has been stamped by a rubber handstamp.

(5) When a crew-list visa is issued, the consular officer delivers the original of the document to the master of the vessel or captain of the aircraft or to an authorized agent for presentation to the immigration officer at the first port of arrival in the U.S. The dated duplicate copy is retained for the consular files.

(f) *Supplemental crew-list visas.* (1) A supplemental crew-list visa shall be issued at the consular office at which the crew-list visa was issued or at another consular office to cover any crewman signed on after the issuance of the crew-list visa and not in possession of a valid individual D visa.

(2) If the crewman is substituted for another member previously included in the visa, the substitution shall be indicated in the supplemental crew list presented for visaing.

(g) *Exclusion from and refusal of crew-list visas.* (1) *Exclusion from crew-list visas.* If there is reason to believe that a crew list submitted for visaing contains the name of any person who is not a bona fide crewman or who is otherwise ineligible to receive an individual D visa under INA 101(a)(15)(D), the consular officer shall exclude any such person from the visa by listing the name of each excluded crew member below the visa stamp. An excluded crew member's name may not be stricken from the crew list.

(2) *Refusal of crew-list visa.* A crew-list visa shall be refused if all aliens listed thereon are found by the consular

officer not to be bona fide crewmen or otherwise ineligible to receive individual visas as crew members. In any case where a crew-list visa is refused, a full report shall be forwarded to reach the Department before the arrival of the vessel or aircraft at the first port of entry. In any case of refusal the original crew list shall be returned to the master, aircraft captain, or authorized agent, and the duplicate shall be filed in the consular office.

## Subpart F—Business and Media Visas

### § 41.51 Treaty trader or investor.

(a) *Treaty trader.* An alien is classifiable as a nonimmigrant treaty trader (E-1) if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(E)(i) and that the alien:

(1) Will be in the United States solely to carry on trade of a substantial nature, which is international in scope, either on the alien's behalf or as an agent of a foreign person or organization engaged in trade, principally between the United States and the foreign state of which the alien is a national, consideration being given to any conditions in the country of which the alien is a national which may affect the alien's ability to carry on such substantial trade; and

(2) Intends to depart from the United States upon the termination of E-1 status.

(b) *Treaty investor.* An alien is classifiable as a nonimmigrant treaty investor (E-2) if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(E)(ii) and that the alien:

(1) Has invested or is actively in the process of investing a substantial amount of capital in a bona fide enterprise in the United States, as distinct from a relatively small amount of capital in a marginal enterprise solely for the purpose of earning a living; and

(2) Intends to depart from the United States upon the termination of E-2 status.

(c) *Employee of treaty trader or investor.* An alien employee of a treaty trader may be classified E-1 and an alien employee of a treaty investor may be classified E-2 if the employee is or will be engaged in duties of an executive or supervisory character, or, if employed in a minor capacity, the employee has special qualifications that make the services to be rendered essential to the efficient operation of the enterprise. The employer must be:

(1) A person having the nationality of the treaty country, who is maintaining the status of treaty trader or investor if in the United States; or

(2) An organization at least 50 percent owned by persons having the nationality of the treaty country who are maintaining nonimmigrant treaty trader or investor status if residing in the United States.

(d) *Spouse and children of treaty alien.* The spouse and children of a treaty alien accompanying or following to join the treaty alien are entitled to the same classification as the principal alien. The nationality of a spouse or child of a treaty alien is not material to the classification of the spouse or child under the provisions of INA 101(a)(15)(E).

(e) *Representatives of foreign information media.* Representatives of foreign information media shall first be considered for possible classification as nonimmigrants under the provisions of INA 101(a)(15)(I), before consideration is given to their possible classification as nonimmigrants under the provisions of INA 101(a)(15)(E) and of this section.

### § 41.52 Information media representative.

(a) *Representative of foreign press, radio, film, or other information media.* An alien is classifiable as a nonimmigrant information media representative if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(I) and is a representative of a foreign press, radio, film, or other information medium having its home office in a foreign country, the government of which grants reciprocity for similar privileges to representatives of such a medium having home offices in the United States.

(b) *Classification when applicant eligible for both I visa and E visa.* An alien who will be engaged in foreign information media activities in the United States and meets the criteria set forth in paragraph (a) of this section shall be classified as a nonimmigrant under INA 101(a)(15)(I) even if the alien may also be classifiable as a nonimmigrant under the provisions of INA 101(a)(15)(E).

(c) *Spouse and children of information media representative.* The spouse or child of an information media representative is classifiable under INA 101(a)(15)(I) if accompanying or following to join the principal alien.

### § 41.53 Temporary workers and trainees.

(a) *Requirements for H classification; visa validity.* An alien shall be classifiable under the provisions of INA 101(a)(15)(H) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) The consular officer has received a petition approved by INS to accord such classification or an official notification of the approval thereof; or

(3) The alien shall have presented to the consular officer official confirmation of the approval by INS of the petition to accord the alien such classification or of the extension by INS of the period of authorized stay in such classification; or

(4) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien. The period of validity of a visa issued on the above basis must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of (3) of this section. The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa.

(b) *Alien not entitled to H classification.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(H) is not qualified to perform the services or to undertake the training specified in the employer's petition.

(c) *"Trainee" defined.* The term "trainee," as used in INA 101(a)(15)(H)(iii), means a nonimmigrant alien who seeks to enter the United States temporarily at the invitation of an individual, organization, firm, or other trainer for the purpose of receiving instruction in any field of endeavor (other than graduate medical education or training), including agriculture, commerce, communication, finance, government, transportation, and the professions as well as in a purely industrial establishment.

(d) *Former exchange visitor.* Former exchange visitors who are subject to the 2-year residence requirement of INA 212(e) are ineligible to apply for visas under INA 101(a)(15)(H) until they have fulfilled the residence requirement or obtained a waiver of the requirement.

#### § 41.54 Intracompany transferees (executives, managers, and specialists).

(a) *Requirements for L classification: visa validity.* An alien shall be classifiable under the provisions of INA 101(a)(15)(L) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) The consular officer has received an individual petition approved by INS under INA 214(c) to accord such classification to the alien or an official notification of the approval thereof; or

(3) The alien shall have presented to the consular officer official confirmation of approval by INS of an individual petition according such classification to the alien or confirmation of the alien's authorized stay in such classification; or

(4) The alien shall have presented to the consular officer an approved blanket petition or a notification of approval listing only those intracompany relationships and positions which were found to qualify under INA 101(a)(15)(L); or

(5) The alien shall have presented to the consular officer a blanket petition to accord such classification to qualified aliens who are being transferred to managerial or executive positions identified in the approved blanket petition; or

(6) The alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

The period of validity of a visa issued on the above basis must not exceed the period indicated in the petition, notification, or confirmation required in paragraphs (a)(2), (3), (4) or (5) of this section. The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa.

(b) *Ineligible alien under individual petition.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa as the beneficiary of an approved individual petition under INA 101(a)(15)(L) has not been continuously employed for 1 year by the same employer or an affiliate or subsidiary thereof, or has not been employed in an executive or managerial capacity, or does not possess specialized knowledge, as specified in the employer's petition.

(c) *Alien not entitled to L-1 classification under blanket petition.* The consular officer shall deny L classification based on a blanket petition if the documentation presented by the alien claiming to be a beneficiary thereof does not establish to the satisfaction of the consular officer that

(1) The alien has been continuously employed by the same employer, an affiliate or subsidiary thereof, for the one year immediately preceding the application for the L visa,

(2) The alien was occupying an executive or managerial position throughout that year, or

(3) The alien is destined to a position identified as executive or managerial in the petition and in an organization listed in the petition.

(d) *Former exchange visitor.* Former exchange visitors who are subject to the 2-year foreign residence requirement of INA 212(e) are ineligible to apply for visas under INA 101(a)(15)(L) until they have fulfilled the residence requirement or obtained a waiver of the requirement.

#### Subpart G—Students and Exchange Visitors

##### § 41.61 Students—academic and nonacademic.

(a) *Definitions.* (1) "Academic", in INA 101(a)(15)(F), refers to an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution, or a language training program.

(2) "Nonacademic", in INA 101(a)(15)(M), refers to an established vocational or other recognized nonacademic institution (other than a language training program).

(b) *Classification.* (1) An alien is classifiable under INA 101(a)(15)(F) (i) of INA 101(a)(15)(M) (i) if the consular officer is satisfied that the alien qualifies under one of those sections, and:

(i) The alien has been accepted for attendance solely for the purpose of pursuing a full course of study in an academic institution approved by the Attorney General for foreign students under INA 101(a)(15)(F) (i) or a nonacademic institution approved under INA 101(a)(15)(M) (i), as evidenced by submission of a Form I-20A-B, Certificate of Eligibility For Nonimmigrant (F-1) Student Status—For Academic and Language Students, or Form I-20M-N, Certificate of Eligibility for Nonimmigrant (M-1) Student Status—For Vocational Students, properly completed and signed by the alien and a designated school official;

(ii) The alien possesses sufficient funds to cover expenses while in the United States or can satisfy the consular officer that other arrangements have been made to meet those expenses;

(iii) The alien, unless coming to participate exclusively in an English language training program, has sufficient knowledge of the English language to undertake the chosen course of study or training. If the alien's knowledge of English is inadequate, the consular officer may nevertheless find the alien so classifiable if the accepting institution offers English language training, and has accepted the alien expressly for a full course of study in a language with which the alien is familiar, or will enroll the alien in a

combination of courses and English instruction which will constitute a full course of study; and

(iv) The alien intends, and will be able, to depart upon termination of student status.

(2) An alien otherwise qualified for classification as a student, who intends to study the English language exclusively, may be classified as a student under INA 101(a) (15) (F) (i) even though no credits are given by the accepting institution for such study. The accepting institution, however, must offer a full course of study in the English language and must accept the alien expressly for such study.

(3) The alien spouse and minor children of an alien who has been or will be issued a visa under INA 101(a) (15) (F) (i) or 101(a) (15) (M) (i) may receive nonimmigrant visas under INA 101(a) (15) (F) (ii) or 101(a) (15) (M) (ii) if the consular officer is satisfied that they will be accompanying or following to join the principal alien; that sufficient funds are available to cover their expenses in the United States; and, that they intend to leave the United States upon the termination of the status of the principal alien.

(c) *Posting of bond.* In borderline cases involving an alien otherwise qualified for classification under INA 101(a) (15) (F), the consular officer is authorized to require the posting of a bond with the Attorney General in a sum sufficient to ensure that the alien will depart upon the conclusion of studies or in the event of failure to maintain student status.

#### § 41.62 Exchange visitors.

(a) *J-1 classification.* An alien is classifiable as an exchange visitor if qualified under the provisions of INA 101(a) (15) (J) and the consular officer is satisfied that the alien:

(1) Has been accepted to participate, and intends to participate, in an exchange visitor program designed by the United States Information Agency as evidenced by the presentation of a properly executed Form IAP-66, Certificate of Eligibility for Exchange Visitor (J-1) Status;

(2) Has sufficient funds to cover expenses or has made other arrangements to provide for expenses;

(3) Has sufficient knowledge of the English language to undertake the program for which selected, or, except for an alien coming to participate in a graduate medical education or training program, the sponsoring organization is aware of the language deficiency and has nevertheless indicated willingness to accept the alien; and

(4) Meets the requirements of INA 212(j) if coming to participate in a graduate medical education or training program.

(b) *J-2 Classification.* The spouse or minor child of an alien classified J-1 is classifiable J-2.

(c) *Applicability of INA 212(e).* (1) An alien is subject to the 2-year foreign residence requirement of INA 212(e) if:

(i) The alien's participation in one or more exchange programs was wholly or partially financed, directly or indirectly, by the U.S. Government or by the government of the alien's country of nationality or last residence; or

(ii) At the time of the issuance of an exchange visitor visa and admission to the United States, or, if not required to obtain a nonimmigrant visa, at the time of admission as an exchange visitor, or at the time of acquisition of such status after admission, the alien is a national and resident or, if not a national, a lawful permanent resident (or has status equivalent thereto) of a country which the Director of the United States Information Agency has designated, through publication by public notice in the **Federal Register**, as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien will engage during the exchange visitor program; or

(iii) The alien acquires exchange visitor status in order to receive graduate medical education or training in the United States.

(2) For the purposes of this paragraph the terms "financed directly" and "financed indirectly" are defined as set forth in section § 514.1 of Chapter V.

(3) The country in which 2 years' residence and physical presence will satisfy the requirements of INA 212(e) in the case of an alien determined to be subject to such requirements is the country of which the alien is a national and resident, or, if not a national, a lawful permanent resident (or has status equivalent thereto).

(4) If an alien is subject to the 2-year foreign residence requirement of INA 212(e), the spouse or child of that alien, accompanying or following to join the alien, is also subject to that requirement if admitted to the United States pursuant to INA 101(a) (15) (J) or if status is acquired pursuant to that section after admission.

(d) *Notification to alien concerning 2-year foreign residence requirement.*

Before the consular officer issues an exchange visitor visa, the consular officer must inform the alien whether the alien will be subject to the 2-year residence and physical presence requirement of INA 212(e) if admitted to the United States under INA 101(a) (15)

(J) and, if so, the country in which 2 years' residence and physical presence will satisfy the requirement.

#### Subpart H—Transit Aliens

##### § 41.71 Transit aliens.

(a) *Transit aliens—general.* An alien is classifiable as a nonimmigrant transit alien under INA 101(a) (15) (C) if the consular officer is satisfied that the alien:

(1) Intends to pass in immediate and continuous transit through the United States;

(2) Is in possession of a common carrier ticket or other evidence of transportation arrangements to the alien's destination;

(3) Is in possession of sufficient funds to carry out the purpose of the transit journey, or has sufficient funds otherwise available for that purpose; and

(4) Has permission to enter some country other than the United States following the transit through the United States, unless the alien submits satisfactory evidence that such advance permission is not required.

(b) *Certain aliens in transit to United Nations.* An alien within the provisions of paragraph (3), (4), or (5) of section 11 of the Headquarters Agreement with the United Nations, to whom a visa is to be issued for the purpose of applying for admission solely in transit to the United Nations Headquarters District, may upon request or at the direction of the Secretary of State be issued a nonimmigrant visa bearing the symbol C-2. If such a visa is issued, the recipient shall be subject to such restrictions on travel within the United States as may be provided in regulations prescribed by the Attorney General.

#### Subpart I—Fiance(e) of a U.S. Citizen

##### § 41.81 Fiance(e) of a U.S. Citizen.

(a) *Petition requirement.* An alien is classifiable as a nonimmigrant fiance(e) under INA 101(a)(15)(K) if the consular officer is satisfied that the alien is qualified under that provision and the consular officer has received a petition filed by the U.S. citizen to confer nonimmigrant status as a fiance(e) on the alien, which has been approved by the INS under INA 214(d), or a notification of such approval from that Service.

(b) *Certification of legal capacity and intent to marry.* Upon receipt of a petition approved by INS and the alien's sworn statement of ability and intent to conclude a valid marriage with the petitioner within 90 days of arrival in the United States, the consular officer

shall grant the alien the nonimmigrant status accorded in the petition and shall determine the eligibility of the alien to receive a K-1 visa.

(c) *Eligibility as immigrant required.* The consular officer, insofar as practicable, shall determine the eligibility of an alien to receive a nonimmigrant visa under INA 101(a)(15)(K) as if the alien were an applicant for an immigrant visa. If the consular officer determines that the alien would be eligible, under INA 212(a) and (e) and in all other respects to receive an immigrant visa, except the alien shall be exempt from the labor certification requirement of INA 212(a)(14), the officer may issue a nonimmigrant visa under this section.

#### Subpart J—Application for Nonimmigrant Visa

##### § 41.101 Place of application.

(a) *Application for regular visa made in consular district of alien's residence or alien's presence.* Unless a consular officer, at the direction of the Department or as a matter of discretion, will accept a visa application from an alien who is not a resident of the consular district but is physically present therein, or the alien is in the United States and entitled to apply for issuance or reissuance of a visa under the provisions of § 41.111(b), an alien seeking a nonimmigrant visa shall apply to a consular in the consular district in which the applicant resides or, if the applicant is a resident of Taiwan, to an officer of the American Institute in Taiwan.

(b) *Regular visa defined.* "Regular visa" means a nonimmigrant visa of any classification which does not bear the title "Diplomatic" or "Official." A nonimmigrant visa is issued as a regular visa unless the alien falls within one of the classes entitled to a diplomatic or an official visa as described in § 41.26(c) or § 41.27(c).

##### § 41.102 Personal appearance of applicant.

(a) *Personal appearance required or waived.* Except as otherwise provided in this section, every alien seeking a nonimmigrant visa is required to apply in person before a consular officer. The requirement of personal appearance may be waived by the consular officer in the case of any alien who is:

(1) A child under 14 years of age;

(2) Within a class of nonimmigrants classifiable under the visa symbols A, C-2, C-3, G, or NATO;

(3) An applicant for a diplomatic or official visa;

(4) Within a class of nonimmigrants classifiable under the visa symbols B, C-1, H-1, or I;

(5) Within a class of nonimmigrants classifiable under the visa symbol J-1 who qualifies as a leader in a field of specialized knowledge or skill and also is the recipient of a U.S. Government grant, and such an alien's spouse and children qualifying for J-2 classification;

(6) An aircraft crewman, applying for a nonimmigrant officer visa under the provisions of INA 101(a)(15)(D), if the application is supported by a letter from the employing carrier certifying that the applicant is employed as an aircraft crewman, and the consular officer is satisfied that the personal appearance of the alien is not necessary to determine visa eligibility; or

(7) A nonimmigrant in any category, provided the consular officer determines that a waiver of personal appearance in the individual case is warranted in the national interest or because of unusual circumstances, including hardship to the visa applicant.

(b) *Interview by consular officer.* Except when the requirement of personal appearance has been waived by the consular officer pursuant to paragraph (a) of this section, each applicant for a nonimmigrant visa must be interviewed by a consular officer, who shall determine on the basis of the applicant's representations and the visa application and other relevant documentation (1) the proper nonimmigrant classification, if any, of the alien and (2) the alien's eligibility to receive a visa.

##### § 41.103 Filing an application and form OF-156.

(a) *Filing an application—(1) Filing of application on form OF-156 required unless waived.* The consular officer may waive submission of an application, under paragraph (a)(3) of this section, for certain aliens for whom personal appearance has been waived under § 41.102. Except for persons for whom such waivers have been granted, every alien seeking a nonimmigrant visa must make application therefor on Form OF-156, Nonimmigrant Visa Application, unless a prior Form OF-156 is readily available at the consular office which can be appropriately amended to bring the application up to date.

(2) *Filing of form OF-156 by alien under 16 or physically incapable.* The application for an alien under 16 years of age or one physically incapable of completing an application may be completed and executed by the alien's parent or guardian, or, if the alien has no parent or guardian, by any person

having legal custody of, or a legitimate interest in, the alien.

(3) *Waiver of filing of application.* (i) When personal appearance is waived under § 41.102(a)(2) or (3) the consular officer may also waive the filing of a visa application.

(ii) When personal appearance is waived under § 41.102(a)(7), the consular officer may also waive the filing of a visa application in cases of hardship, emergency, or national interest.

(iii) Even if personal appearance is waived pursuant to any other subparagraph of § 41.102(a), the requirement for filing an application may not be waived.

(b) *Application form—(1) Preparation of form OF-156, Nonimmigrant Visa Application.*

(i) The consular officer shall ensure that Form OF-156 is fully and properly completed in accordance with the applicable regulations and instructions.

(ii) If the filing of a visa application is waived by the consular officer, the officer shall prepare a Form OF-156 on behalf of the applicant, using the data available in the passport or other documents which have been submitted.

(2) *Additional information as part of application.* The consular officer may require the submission of additional necessary information or question an alien on any relevant matter whenever the consular officer believes that the information provided in Form OF-156 is inadequate to permit a determination of the alien's eligibility to receive a nonimmigrant visa. Additional statements made by the alien become a part of the visa application. All documents required by the consular officer under the authority of § 41.105(a) are considered papers submitted with the alien's application within the meaning of INA 221(g)(1).

(3) *Signature.* When personal appearance is required, Form OF-156 shall be signed and verified by, or on behalf of, the applicant in the presence of the consular officer. If personal appearance is waived, but the submission of an application form by the alien is not waived, the form shall be signed by the applicant. If the filing of an application form is also waived, the consular officer shall indicate that the application has been waived on the Form OF-156 prepared on behalf of the applicant, as provided in paragraph (b)(1)(ii) of this section. The consular officer, in every instance, shall initial the Form OF-156 over or adjacent to the officer's name and title stamp.

(4) *Registration.* Form OF-156, when duly executed, constitutes the alien's

registration record for the purposes of INA 221(b).

**§ 41.104 Passport requirements.**

(a) *Passports defined.* "Passport" as defined in INA 101(a)(30) is not limited to a national passport or to a single document. A passport may consist of two or more documents which, when considered together, fulfill the requirements of a passport, provided that the documentary evidence of permission to enter a foreign country has been issued by a competent authority and clearly meets the requirements of INA 101(a)(30).

(b) *Passport requirement.* Except for certain persons in the A, C-3, G, and NATO classifications and persons for whom the passport requirement has been waived pursuant to the provisions of INA 212(d)(4), every applicant for a nonimmigrant visa is required to present a passport, as defined above and in INA 101(a)(30), which is valid for the period required by INA 212(a)(26).

(c) *A single passport including more than one person.* The passport requirement for a nonimmigrant visa may be met by the presentation of a passport including more than one person, if such inclusion is authorized under the laws or regulations of the issuing authority and if a photograph of each visa applicant 16 years of age or over has been attached to the passport by the issuing authority.

(d) *Applicants for diplomatic visas.* Every applicant for a diplomatic visa must present a diplomatic passport, or the equivalent thereof, having the period of validity required by INA 212(a)(26), unless such requirement has been waived pursuant to the authority contained in INA 212(d)(4) or unless the case falls within the provisions of § 41.21(b).

**§ 41.105 Supporting documents and fingerprinting.**

(a) *Supporting documents—(1) Authority to require documents.* The consular officer is authorized to require documents considered necessary to establish the alien's eligibility to receive a nonimmigrant visa. All documents and other evidence presented by the alien, including briefs submitted by attorneys or other representatives, shall be considered by the consular officer.

(2) *Unobtainable documents.* If the consular officer is satisfied that a document or record required under the authority of this section is unobtainable, the consular officer may accept satisfactory alternative pertinent evidence. A document or other record shall be considered unobtainable if it cannot be procured without causing the

applicant or a member of the applicant's family actual hardship as distinct from normal delay and inconvenience.

(3) *Photographs required or waived.* Except as otherwise provided in this paragraph, every applicant for a nonimmigrant visa must furnish photographs in such numbers as the consular officer may require. The photographs must be a reasonable recent likeness, 1 1/2 by 11/2 inches in size, unmounted, with no head covering, and showing a full, front-face view of the alien against a light background. The alien must sign (full name) the reverse side of the photographs. The photograph requirement may be waived by the consular officer for any alien who is:

(i) Within a class of nonimmigrants classifiable under the visa symbol A, C-3, G, or NATO; or

(ii) An applicant for a diplomatic or official visa; or

(iii) Under 16 years of age. A notation of any such waiver shall be made on the application in the space provided for the photograph. A new photograph need not be required by the consular officer, if there is readily available at post a photograph submitted with a prior application which reflects a reasonable current likeness of the applicant.

(4) *Police certificates.* A police certificate is a certification by the police or other appropriate authorities stating what, if anything, their records show concerning the alien. An applicant for a nonimmigrant visa is required to present a police certificate if the consular officer has reason to believe that a police or criminal record exists, except that no police certificate is required in the case of an alien who is within a class of nonimmigrants classifiable under visa symbols A-1, A-2, C-3, G-1 through G-4, NATO-1 through NATO-4 or NATO-6.

(b) *Fingerprinting.* The consular officer may require an alien making a preliminary or informal application for a visa to have a set of fingerprints taken on Form AR-4, Alien Registration Fingerprint Chart, if the officer considers this necessary for the purposes of identification and investigation. Consular officers may use the fingerprint card in order to ascertain from the appropriate authorities whether they have information pertinent to the applicant's eligibility to receive a visa.

**§ 41.106 Processing.**

Consular officers must ensure that Form OF-156, Nonimmigrant Visa Application, is properly and promptly processed in accordance with the applicable regulations and instructions.

**§ 41.107 Visa fees.**

(a) *Fees based on reciprocity.* The fees for the issuance of visas, including official visas, to nonimmigrant nationals or stateless residents of each foreign country shall be collected in the amounts prescribed by the Secretary of State unless, on the basis of reciprocity, no fee is chargeable. If practicable, fees will correspond to the total amount of all visa, entry, residence, or other similar fees, taxes or charges assessed or levied against nationals of the United States by the foreign countries of which such nonimmigrants are nationals or stateless residents.

(b) *Fees when more than one alien included in visa.* A single nonimmigrant visa may be issued to include all eligible family members if the spouse and unmarried minor children of a principal alien are included in one passport. Each alien must execute a separate application. The name of each family member shall be inserted in the space provided in the visa stamp. The visa fee to be collected shall equal the total of the fees prescribed by the Secretary of State for each alien included in the visa, unless upon a basis of reciprocity a lesser fee is chargeable.

(c) *Certain aliens exempted from fees.* Upon a basis of reciprocity, or as provided in section 13(a) of the Headquarters Agreement with the United Nations (61 Stat. 716; 22 U.S.C. 287, Note), no fee shall be collected for the issuance of a nonimmigrant visa to an alien who is within a class of nonimmigrants classifiable under the visa symbols A, G, C-2, C-3, or NATO, or who is issued a diplomatic visa.

(d) *Refund of fees.* A fee collected for the issuance of a nonimmigrant visa is refundable only if the principal officer at a post or the officer in charge of a consular section determines that the visa was issued in error or could not be used as a result of action taken by the U.S. Government for which the alien was not responsible and over which the alien had no control.

**§ 41.108 Medical examination.**

(a) *Requirements for medical examination.* An applicant for a nonimmigrant visa shall be required to take a medical examination if:

(1) The alien is an applicant for a K nonimmigrant visa as a fiance(e) of a U.S. citizen or as the child of such an applicant; or,

(2) The alien is seeking admission for medical treatment and the consular officer considers a medical examination advisable; or,

(3) The consular officer has reason to believe that a medical examination

might disclose that the alien is medically ineligible to receive a visa.

(b) *Examination by panel physician.* The required examination, which must be carried out in accordance with United States Public Health Service regulations, shall be conducted by a physician selected by the alien from a panel of physicians approved by the consular officer or, if the alien is in the United States, by a medical officer of the United States Public Health Service or by a contract physician from a list of physicians approved by the INS for the examination of INA 245 adjustment of status applicants.

(c) *Panel physician facility requirements.* A consular officer may not include the name of a physician on the panel of physicians referred to in paragraph (b) of this section unless the physician has facilities to perform required serological and X-ray tests or is in a position to refer applicants to a qualified laboratory for such tests.

#### Subpart K—Issuance of Nonimmigrant Visa

##### § 41.111 Authority to issue visa.

(a) *Issuance outside the United States.* Any consular officer is authorized to issue regular and official visas.

Diplomatic visas may be issued only by:

(1) A consular officer attached to a U.S. diplomatic mission, if authorized to do so by the Chief of Mission; or

(2) A consular officer assigned to a consular office under the jurisdiction of a diplomatic mission, if so authorized by the Department or the Chief, Deputy Chief, or Counselor for Consular Affairs of that mission, or, if assigned to a consular post not under the jurisdiction of a diplomatic mission, by the principal officer of that post.

(b) *Issuance in the United States in certain cases.* The Director of the Visa Office of the Department and such other officers of the Department as the former may designate are authorized, in their discretion, to issue nonimmigrant visas, including diplomatic visas, to:

(1) Qualified aliens who are currently maintaining status and are properly classifiable in the A, C-2, C-3, G or NATO category and intend to reenter the United States in that status after a temporary absence abroad and who also present evidence that:

(i) They have been lawfully admitted in that status or have, after admission, had their classification changed to that status; and

(ii) Their period of authorized stay in the United States in that status has not expired; and

(2) Other qualified aliens who are currently maintaining status in an E, H, I,

or L nonimmigrant category and intend to reenter the United States in that status after a temporary absence abroad and who also present evidence that:

(i) They were previously issued visas at a consular office abroad and admitted to the United States in the status which they are currently maintaining; and

(ii) Their period of authorized admission in that status has not expired.

##### § 41.112 Validity of visa.

(a) *Significance of period of validity of visa.* The period of validity of a nonimmigrant visa is the period during which the alien may use it in making application for admission. The period of visa validity has no relation to the period of time the immigration authorities at a port of entry may authorize the alien to stay in the United States.

(b) *Validity of visa and number of applications for admission.* (1) Except as provided in paragraph (c) of this section, a nonimmigrant visa shall have the validity prescribed in schedules provided to consular officers by the Department, reflecting insofar as practicable the reciprocal treatment accorded U.S. nationals by the government of the country of which the alien is a national or stateless resident.

(2) Nonimmigrant visas issued pursuant to INA 101(a)(15)(B) may be made valid indefinitely and for unlimited applications for admission for aliens who:

(i) Are nationals of countries that offer reciprocal treatment to U.S. citizens, as determined by the Department;

(ii) Are in possession of a valid passport; and

(iii) Are bona fide visitors and will continue to seek to enter the United States only for such purpose for an indefinite period of time, in the judgment of the consular officer.

(3) An indefinite validity visa is valid for application for admission even if the passport in which the visa is stamped has expired, provided the alien is also in possession of a valid passport issued by the authorities of the country of which the alien is a national.

(c) *Limitation on validity.* If warranted in an individual case, a consular officer may issue a nonimmigrant visa for:

(1) A period of validity that is less than that prescribed on a basis of reciprocity.

(2) A number of applications for admission within the period of the validity of the visa that is less than that prescribed on a basis of reciprocity.

(3) Application for admission at a specified port or at specified ports of entry, or

(4) Use on and after a given date subsequent to the date of issuance.

(d) *Automatic extension of validity at ports of entry.* (1) Provided that the requirements set out in paragraph (d)(2) of this section are fully met, the following provisions apply to nonimmigrant aliens seeking readmission at ports of entry:

(i) The validity of an expired nonimmigrant visa issued under INA 101(a)(15) may be considered to be automatically extended to the date of application for readmission, and

(ii) In cases where the original nonimmigrant classification of an alien has been changed by INS to another nonimmigrant classification, the validity of an expired or unexpired nonimmigrant visa may be considered to be automatically extended to the date of application for readmission, and the visa may be converted as necessary to that changed classification.

(2) The provisions in paragraph (l) of this section are applicable only in the case of a nonimmigrant alien who:

(i) Is in possession of a Form I-94, Arrival-Departure Record, endorsed by INS to show an unexpired period of initial admission or extension of stay, or, in the case of a qualified F or J student or exchange visitor or the accompanying spouse or child of such an alien, is in possession of a current Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, or Form IAP-66, Certificate of Eligibility for Exchange Visitor Status, issued by the school the student has been authorized to attend by INS, or by the sponsor of the exchange program in which the alien has been authorized to participate by INS, and endorsed by the issuing school official or program sponsor to indicate the period of initial admission or extension of stay authorized by INS;

(ii) Is applying for readmission after an absence not exceeding 30 days solely in contiguous territory, or, in the case of a student or exchange visitor or accompanying spouse or child meeting the stipulations of paragraph (a) of this section, after an absence not exceeding 30 days in contiguous territory or adjacent islands other than Cuba;

(iii) Has maintained and intends to resume nonimmigrant status;

(iv) Is applying for readmission within the authorized period of initial admission or extension of stay;

(v) Is in possession of a valid passport; and

(vi) Does not require authorization for admission under INA 212(d)(3).

**§ 41.113 Procedures in issuing visas.**

(a) *Visa evidenced by stamp placed in the passport.* Except as provided in paragraph (b) of this section, a nonimmigrant visa shall be evidenced by a stamp placed in the alien's passport. The appropriate symbol as prescribed in § 41.12, showing the classification of the alien shall be entered in the visa.

(b) *Cases in which visa not placed in passport.* In the following cases the visa shall be placed on the prescribed Form OF-232, Form for Nonimmigrant Visa Stamp, to which a photograph of the alien shall be attached under seal. In issuing such a visa, a notation shall be made on the Form OF-232 on which the visa is placed specifying the pertinent subparagraph of this paragraph under which the action is taken.

(1) The alien's passport was issued by a government with which the United States does not have formal diplomatic relations, unless the Department has specifically authorized the placing of the visa in such passport;

(2) The alien's passport does not provide sufficient space for the visa stamp;

(3) The passport requirement has been waived; or

(4) In other cases as authorized by the Department.

(c) *Indefinite validity visa.* In no instance may a visa issued pursuant to INA 101(a)(15)(B) and having indefinite validity as provided in § 41.112(b) be placed in any document other than a valid passport.

(d) *Visa stamp.* (1) The nonimmigrant visa shall be in the format designated by the Department and contain the following data:

- (i) The number of the visa;
- (ii) The location of the issuing office;
- (iii) The classification of the visa;
- (iv) The date of issuance;

(v) The expiration date or, if an indefinite validity visa is issued on the basis of reciprocity, the word "indefinitely";

(vi) The number of applications for admission for which it is valid or the word "multiple";

(vii) The name(s) of the person(s) to whom issued, unless the word "Bearer(s)" is used as authorized by paragraph (e)(1) of this section; and

(viii) The signature or facsimile signature of the issuing officer.

(2) The format of a diplomatic visa is the same as a regular nonimmigrant visa, except that it bears the title "DIPLOMATIC".

(3) The format of an official visa is the same as a regular nonimmigrant visa, except that it bears the title "OFFICIAL".

(e) *Insertion of name; petition and derivative status notation.* (1) Except as otherwise provided in this paragraph, the name(s) of the alien(s) to whom a nonimmigrant visa is issued shall be shown on the visa just after the word "to." In visas issued in passports (or in other travel documents meeting the requirements of INA 101(a)(30)) which have been approved by the Department for this purpose, consular officers may insert the word "Bearer(s)" in lieu of the name of the alien and in lieu of the names of accompanying family members who are included in the alien's passport. The procedure for a "Bearer(s)" insert may not be applied in the case of aliens who are the beneficiaries of waivers granted under INA 212(d)(3) or in the issuance of a visa on Form OF-232.

(2) If the visa is being issued upon the basis of a petition approved by the Attorney General, the number of the petition, if any, the period for which the alien's admission has been authorized, and the name of the petitioner shall be noted immediately below the visa.

(3) In the case of an alien who derives status from a principal alien, the name and position of the principal alien shall be written below the lower margin of the visa.

(f) *Period of validity.* If a nonimmigrant visa is issued for an unlimited number of applications for admission within the period of validity, the word "multiple" shall be appropriately placed in the visa. Otherwise the number of permitted applications for admission shall be shown in word form. The date of issuance and the date of expiration of the visa shall be shown at the appropriate places in the visa by day, month and year in that order. The standard three letter abbreviation for the month shall be used in all cases. If a visitor visa is to be made valid for an indefinite period, the word "indefinitely" shall be inserted in the space provided for the expiration date of the visa.

(g) *Restriction to specified port of entry.* If a nonimmigrant visa is valid for admission only at one or more specified ports of entry, the names of those ports shall be entered immediately below the expiration date of the visa, preceded by the word "at."

(h) *Signature.* The signature or facsimile signature of the consular officer issuing the visa shall appear in the visa.

(i) *Delivery of visa and disposition of form OF-156.* In issuing a nonimmigrant visa, the consular officer shall deliver the visa on the passport, or the prescribed Form OF-232 which bears the visa, to the alien or, if personal appearance has

been waived, to the authorized representative. The executed Form OF-156, Nonimmigrant Visa Application, and any additional evidence furnished by the alien in accordance with § 41.103(b) shall be retained in the consular files.

(j) *Disposition of supporting documents.* Original supporting documents furnished by the alien shall be returned for presentation, if necessary, to immigration authorities at the port of entry and a notation to that effect shall be made on the Form OF-156. Duplicate copies may be retained in the consular files.

(k) *Olympic Games, Pan American Games or other regional games.* Notwithstanding the provisions of paragraph (d) of this section, in the case of an alien who:

(l) Is a participant in the Summer or Winter Olympic Games, the Pan American Games or other regional games under the auspices of the International Olympic Committee, held in the United States; and

(2) Is the holder of an official identity card which has been issued for participation in such Games under the Olympic Rules Bylaws, which includes the signature of a competent authority of the participating government and the assurance of that government's recognition of the card for re-entry by the bearer for an additional period of six months beyond the expiration date of the card, and which otherwise meets the requirements of section 101(a)(3) and 212(a)(26) of the Immigration and Nationality Act, a stamp consisting of:

(i) The imprint of the issuing post's rubber stamp seal; and

(ii) The signature of a consular officer affixed on the identity card shall constitute a multiple entry B-1/B-2 visa valid for the duration of the card, or, in the case of a representative of foreign press, radio, film or other foreign information media, a multiple entry I visa valid for the duration of the card.

**§ 41.114 Transfer of visas.**

(a) *Conditions for transfer.* Upon the request of the bearer a valid nonimmigrant visa shall be transferred from one travel document to a different travel document which is valid for the required period if the bearer is found eligible to receive such a visa, except in a case in which the travel document containing the original visa has been lost or stolen. A visa may be transferred only if the new passport indicates that the alien's nationality is the same as when the visa was issued.

(b) *Procedure for transfer.* Application for the transfer of a

nonimmigrant visa from one passport to another shall be made on an appropriate form. The consular officer may waive the personal appearance of the alien. The issuance of a transferred visa shall be evidenced by placing the visa stamp with all of the original data in the alien's passport. The validity of the transferred visa shall be the same as that of the original visa. The transferred visa shall be valid for the number of applications for admission remaining as of the date of the transfer. The word "TRANSFERRED" shall be inserted on the upper margin of the visa stamp.

(c) *Cancellation of visa in old passport.* Unless the passport in which the original visa was issued has been surrendered to the issuing authority, the original visa shall be canceled at the time of its transfer to the new travel document, except, when a visa is transferred for only some of several persons included in the original visa, that visa is not to be canceled but the names of the persons whose visas are transferred are to be stricken from the original visa.

(d) *Fee for transfer.* No fee shall be charged for the transfer of a valid nonimmigrant visa.

#### Subpart L—Refusals and Revocations

##### § 41.121 Refusal of individual visas.

(a) *Grounds for refusal.* Nonimmigrant visa refusals must be based on legal grounds, that is, one or more provisions of INA 212(a) or (e), INA 214(b), or INA 221(g). Certain classes of nonimmigrant aliens are exempted from specific provisions of INA 212(a) under INA 102, INA 212(d)(1), INA 212(d)(2) and, upon a basis of reciprocity, under INA 212(d)(8). When a visa application has been properly completed and executed in accordance with the provisions of INA and the implementing regulations, the consular officer must either issue or refuse the visa.

(b) *Refusal procedure.* If a consular officer knows or has reason to believe that an alien is ineligible to receive a visa on grounds of ineligibility which cannot be overcome by the presentation of additional evidence, the officer shall refuse the visa and, if practicable, shall require a nonimmigrant visa application to be executed before the refusal is recorded. In the case of a visa refusal the consular officer shall inform the applicant of the provision of law or regulations upon which the refusal is based. If the alien fails to execute a visa application after being informed by the consular officer of a ground of ineligibility to receive a nonimmigrant visa, the visa shall be considered refused. The officer shall then insert the

pertinent data on the visa application, noting the reasons for the refusal, and the application form shall be filed in the consular office. Upon refusing a nonimmigrant visa, the consular officer shall retain the original or a copy of each document upon which the refusal was based as well as each document indicating a possible ground of ineligibility and may return all other supporting documents supplied by the applicant.

(c) *Review of refusal at consular office.* If the ground(s) of ineligibility upon which the visa was refused cannot be overcome by the presentation of additional evidence, the principal consular officer, or a specifically designated alternate, shall review the case without delay, record the review decision, and sign and date the prescribed form. If the ground(s) of ineligibility may be overcome by the presentation of additional evidence, and the applicant has indicated the intention to submit such evidence, a review of the refusal may be deferred for not more than 120 days. If the principal consular officer or alternate does not concur in the refusal, that officer shall either

(1) Refer the case to the Department for an advisory opinion, or

(2) Assume responsibility for the case by reversing the refusal.

(d) *Review of refusal by Department.* The Department may request a consular officer in a specific case or in specified classes of cases to submit a report if a visa has been refused. The Department will review each report and may furnish an advisory opinion to the consular officer for assistance in considering the case further. If the officer believes that action contrary to an advisory opinion should be taken, the case shall be resubmitted to the Department with an explanation of the proposed action. Rulings of the Department concerning an interpretation of law, as distinguished from an application of the law to the facts, shall be binding upon consular officers.

##### § 41.122 Revocation of visas.

(a) *Grounds for revocation by consular officers.* A consular officer is authorized to revoke a nonimmigrant visa issued to an alien if:

(1) The officer finds that the alien was not, or has ceased to be, entitled to the nonimmigrant classification under INA 101(a)(15) specified in the visa or that the alien was at the time the visa was issued, or has since become, ineligible under INA 212(a) to receive a visa;

(2) The visa has been physically removed from the passport in which it was issued prior to the alien's

embarkation upon a continuous voyage to the United States; or

(3) For any of the reasons specified in paragraph (h) of this section if the visa has not been revoked by an immigration officer as authorized in that paragraph.

(b) *Notice of proposed revocation.* When consideration is being given to the revocation of a nonimmigrant visa under paragraph (a)(1) or (2) of this section, the consular officer considering that action shall, if practicable, notify the alien to whom the visa was issued of intention to revoke the visa. The alien shall also be given an opportunity to show why the visa should not be revoked and requested to present the travel document in which the visa was originally issued.

(c) *Procedure for physically cancelling visas.* A nonimmigrant visa which is revoked shall be canceled by writing or stamping the word "REVOKE" plainly across the face of the visa. The cancellation shall be dated and signed by the officer taking the action. The failure of the alien to present the visa for cancellation does not affect the validity of action taken to revoke it.

(d) *Notice to carriers.* Notice of revocation shall be given to the master, aircraft captain, agent, owner, charterer, or consignee of the carrier or transportation line on which it is believed the alien intends to travel to the United States, unless the visa has been physically canceled as provided in paragraph (c) of this section.

(e) *Notice to Department.* When a visa is revoked under paragraph (a)(1) or (2) of this section, the consular officer shall promptly submit notice of the revocation, including a full report on the facts in the case, to the Department for transmission to INS. A report is not required if the visa is physically canceled prior to the alien's departure for the United States except in cases involving A, G, C-2, C-3, NATO, diplomatic or official visas.

(f) *Record of action.* Upon revocation of a nonimmigrant visa under paragraph (a)(1) or (2) of this section, the consular officer shall complete for the post files a Certificate of Revocation by Consular Officer which includes a statement of the reasons for the revocation. If the revocation is effected at other than the issuing office, a copy of the Certificate of Revocation shall be sent to that office.

(g) *Reconsideration of revocation.* (1) The consular office shall consider any evidence submitted by the alien or the alien's attorney or representative in connection with a request that the revocation be reconsidered. If the officer finds that the evidence is sufficient to

overcome the basis for the revocation, a new visa shall be issued. A memorandum regarding the action taken and the reasons therefor shall be placed in the consular files and appropriate notification shall be made promptly to the carriers concerned, the Department, and the issuing office if notice of revocation has been given in accordance with paragraphs (d), (e), and (f) of this section.

(2) In view of the provisions of § 41.107(d) providing for the refund of fees when a visa has not been used as a result of action by the U.S. Government, a fee shall not be charged in connection with a reinstated visa.

(h) *Revocation of visa by immigration officer.* An immigration officer is authorized to revoke a valid visa by physically canceling it in accordance with the procedure prescribed in paragraph (c) of this section if:

(1) The alien obtains an immigrant visa or an adjustment of status to that of permanent resident;

(2) The alien is ordered excluded from the United States pursuant to INA 235(c) or 236;

(3) The alien is notified pursuant to INA 235(b) by an immigration officer at a port of entry that the alien appears to be inadmissible to the United States and the alien requests and is granted permission to withdraw the application for admission;

(4) A final order of deportation or a final order granting voluntary departure with an alternate order of deportation is entered against the alien pursuant to INS regulations;

(5) The alien has been permitted by INS to depart voluntarily from the United States pursuant to INS regulations;

(6) A waiver of ineligibility pursuant to INA 212(d)(3)(A) on the basis of which the visa was issued to the alien is revoked by INS;

(7) The visa is presented in connection with an application for admission to the United States by a person other than the alien to whom it was issued; or

(8) The visa has been physically removed from the passport in which it was issued.

3. Part 42 is revised to read as follows:

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

### Subpart A—Visa and Passport Not Required for Certain Immigrants

Sec.

42.1 Aliens not required to obtain immigrant visas.

Sec.

42.2 Aliens not required to present passports.

### Subpart B—Classification and Foreign State Chargeability

42.11 Classification symbols.  
42.12 Rules of chargeability.

### Subpart C—Immigrants not Subject to the Numerical Limitations of INA 201

42.21 Immediate relatives.  
42.22 Returning resident aliens.  
42.23 Certain former U.S. citizens.  
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### Subpart D—Immigrants Subject to Numerical Limitation

42.31 Relative preference immigrants.  
42.32 [Reserved]  
42.33 Third preference immigrants.  
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### Subpart E—Petitions

42.41 Effect of approved petition.  
42.42 Petition for immediate relative or preference status.  
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### Subpart F—Numerical Controls and Priority Dates

42.51 Department control of numerical limitations.  
42.52 Post records of visa applications.  
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### Subpart G—Application for Immigrant Visas

42.61 Place of application.  
42.62 Personal appearance and interview of applicant.  
42.63 Application forms and other documentation.  
42.64 Passport requirements.  
42.65 Supporting documents.  
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42.67 Execution of application, registration, and fingerprinting.  
42.68 Informal evaluation of family members if principal applicant precedes them.

### Subpart H—Issuance of Immigrant Visas

42.71 Authority to issue visas; visa fees.  
42.72 Validity of visas.  
42.73 Procedure in issuing visas.  
42.74 Issuance of new or replacement visas.

### Subpart I—Refusal, Revocation, and Termination of Registration

42.81 Procedure in refusing individual visas.  
42.82 Revocation of visas.  
42.83 Termination of registration.

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; sec. 109(b)(1), Pub. L. 95-105, 91 Stat. 847.

### Subpart A—Visa and Passport Not Required for Certain Immigrants

#### § 42.1 Aliens not required to obtain immigrant visas.

An immigrant within any of the following categories is not required to obtain an immigrant visa:

(a) *Aliens lawfully admitted for permanent residence.* An alien who has previously been lawfully admitted for permanent residence and who is not required under the regulations of INS to present a valid immigrant visa upon returning to the United States.

(b) *Alien members of U.S. Armed Forces.* An alien member of the U.S. Armed Forces bearing military identification, who has previously been lawfully admitted for permanent residence and is coming to the United States under official orders or permit of those Armed Forces.

(c) *Aliens entering from Guam, Puerto Rico, or the Virgin Islands.* An alien who has previously been lawfully admitted for permanent residence who seeks to enter the continental United States or any other place under the jurisdiction of the United States directly from Guam, Puerto Rico, or the Virgin Islands of the United States.

(d) *Child born after issuance of visa to accompanying parent.* An alien child born after the issuance of an immigrant visa to an accompanying parent, who will arrive in the United States with the parent, and apply for admission during the period of validity of the visa issued to the parent.

(e) *Child born of a national or lawful permanent resident mother during her temporary visit abroad.* An alien child born during the temporary visit abroad of a mother who is a national or lawful permanent resident of the United States if applying for admission within 2 years of birth and accompanied by either parent applying and eligible for readmission as a permanent resident upon that parent's first return to the United States after the child's birth.

(f) *American Indians born in Canada.* An American Indian born in Canada and having at least 50 per centum of blood of the American Indian race.

#### § 42.2 Aliens not required to present passports.

An immigrant within any of the following categories is not required to present a passport in applying for an immigrant visa:

(a) *Certain relatives of U.S. citizens.* An alien who is the spouse, unmarried son or daughter, or parent, of a U.S. citizen, unless the alien is applying for a visa in the country of which the

applicant is a national and the possession of a passport is required for departure.

(b) *Returning aliens previously lawfully admitted for permanent residence.* An alien previously lawfully admitted for permanent residence who is returning from a temporary visit abroad, unless the alien is applying for a visa in the country of which the applicant is a national and the possession of a passport is required for departure.

(c) *Certain relatives of aliens lawfully admitted for permanent residence.* An alien who is the spouse, unmarried son or daughter, or parent of an alien lawfully admitted for permanent residence, unless the alien is applying for a visa in the country of which the applicant is a national and the possession of a passport is required for departure.

(d) *Aliens qualified to receive third preference visas.* An alien who is eligible to receive a third preference visa, and accompanying spouse and child, unless the alien is applying for a visa in the country of which the applicant is a national and the possession of a passport is required for departure.

(e) *Stateless persons.* An alien who is a stateless person, and accompanying spouse and unmarried son or daughter.

(f) *Nationals of Communist-controlled countries.* An alien who is a national of a Communist-controlled country and who is unable to obtain a passport from the government of that country, and accompanying spouse and unmarried son or daughter.

(g) *Alien members of U.S. Armed Forces.* An alien who is a member of the U.S. Armed Forces.

(h) *Beneficiaries of individual waivers.* (1) An alien who would be within one of the categories described in paragraphs (a) through (d) of this section except that the alien is applying for a visa in a country of which the applicant is a national and possession of a passport is required for departure, in whose case the passport requirement has been waived by the Secretary of State, as evidence by a specific instruction from the Department.

(2) An alien unable to obtain a passport and not within any of the foregoing categories, in whose case the passport requirement imposed by § 42.64(b) or by INS regulations has

been waived by the Attorney General and the Secretary of State as evidenced by a specific instruction from the Department.

#### Subpart B—Classification and Foreign State Chargeability

##### § 42.11 Classification symbols.

A visa issued to an immigrant alien within one of the classes described in this section shall bear an appropriate visa symbol to show the classification of the alien.

(a) *Special immigrants.* The following symbols shall be used in cases of aliens who are special immigrants:

Class	Section of law	Visa symbol	
Returning resident	101(a)(27)(A) .....	SB-1	
Person who lost U.S. citizenship by marriage	101(a)(27)(B) and 324(a).	SC-1	
Person who lost U.S. citizenship by service in foreign armed forces	101(a)(27)(B) and 327.	SC-2	
Minister of religion	101(a)(27)(C) .....	SD-1	
Spouse of alien classified SD-1	101(a)(27)(C) .....	SD-2	
Child of alien classified SD-1	101(a)(27)(C) .....	SD-3	
Certain employees or former employees of U.S. Government abroad	101(a)(27)(D) .....	SE-1	
Accompanying spouse of alien classified SE-1	101(a)(27)(D) .....	SE-2	
Accompanying child of alien classified SE-1	101(a)(27)(D) .....	SE-3	
Certain former employees of the Panama Canal Company or Canal Zone Government	101(a)(27)(E) .....	SF-1	
Accompanying spouse or child of alien classified	101(a)(27)(E) .....	SF-2	
Certain former employees of the U.S. Government in the Panama Canal Zone	101(a)(27)(F) .....	SG-1	
Accompanying spouse or child of alien classified SG-1	101(a)(27)(F) .....	SG-2	
Certain former employees of the Panama Canal Company or Canal Zone Government on April 1, 1979	101(a)(27)(G) .....	SH-1	
Accompanying spouse or child of alien classified SH-1	101(a)(27)(G) .....	SH-2	
Certain foreign medical graduates	101(a)(27)(H) .....	SJ-1	
Accompanying spouse or children of alien classified SJ-1	101(a)(27)(H) .....	SJ-2	
Retired officer or employee classified G-4 under section 101(a)(15)(G) (iv)	101(a)(27)(I) (iii); 100 Stat. 3434.	SK-I	
Spouse of retired officer or employee classified SK-1	101(a)(27)(I) (iv); 100 Stat. 3434.	SK-2	
Unmarried son or daughter of a present or former officer or employee classified G-4 under section 101(a)(15)(G) (iv)	101(a)(27)(I) 100 Stat. 3434.	SK-3	
A spouse classified G-4 or N-9 who is the survivor of a deceased officer or employee classified G-4 under section 101(a)(15)(G) (iv)	101(a)(27)(I) (ii); 100 Stat. 3434.	SK-4	

(b) *Immediate relatives.* The following symbols shall be used in cases of aliens who qualify as immediate relatives:

Class	Section of law	Visa symbol
Spouse of U.S. citizen.	201(b) .....	IR-1
Spouse of U.S. citizen (conditional status).	201(b); 216(a), 100 Stat. 3537.	CR-1
Child of U.S. citizen.	201(b) .....	IR-2
Child of U.S. citizen (conditional status).	201(b); 216(a), 100 Stat. 3537.	CR-2
Child of U.S. citizen (conditional status).	201(b); 216(a),....	CR-2
Orphan adopted abroad by U.S. citizen.	201(b) .....	IR-3
Orphan to be adopted by U.S. citizen.	201(b) .....	IR-4
Parent of U.S. citizen.	201(b) .....	IR-5

(c) *Numerically-restricted immigrants.* The following symbols shall be used in cases of immigrants who are subject to the numerical limitations specified in INA 201(a):

Class	Section of law	Visa symbol
First preference: Unmarried son or daughter of U.S. citizen.	203(a) (1) .....	P1-1
First preference: Child of alien classified P1-1.	203(a) (8) .....	P1-2
Second preference: Spouse of alien resident.	203(a) (2) .....	P2-1
Second preference: Spouse of alien resident (conditional status).	203(a) (2); 216(a), 100 Stat. 3537.	C2-1
Second preference: Unmarried son or daughter of alien resident.	203(a) (2) .....	P2-2

Class	Section of law	Visa symbol	Class	Section of law	Visa symbol
Second preference: Unmarried son or daughter of alien resident (conditional status).	203(a) (2); 216(a), 100 Stat. 3537.	C2-2	Fifth preference: Brother or sister of U.S. citizen twenty-one years of age or older.	203(a) (5) .....	P5-1
Second preference: Child of alien classified P2-1 or P2-2.	203(a) (8) .....	P2-3	Fifth preference: Spouse of alien classified P5-1.	203(a) (8) .....	P5-2
Second preference: Child of alien classified C2-1 or C2-2 (conditional status).	203(a) (8); 216(a), 100 Stat. 3537.	C2-3	Fifth preference: Child of alien classified P5-1.	203(a) (8) .....	P5-3
Third preference: Professional or highly skilled immigrant.	203(a) (3) .....	P3-1	Sixth preference: Needed skilled or unskilled worker.	203(a) (6) .....	P6-1
Third preference: Spouse of alien classified P3-1.	203(a) (8) .....	P3-2	Sixth preference: Spouse of alien classified P6-1.	203(a)(8) .....	P6-2
Third preference: Child of alien classified P3-1.	203(a) (8) .....	P3-3	Sixth preference: Child of alien classified P6-1: Nonpreference immigrant.	203(a) (8) .....	P6-3
Fourth preference: Married son or daughter of U.S. citizen.	203(a) (4) .....	P4-1	203(a) (7) .....	NP-1	
Fourth preference: Married son or daughter of U.S. citizen (conditional status).	203(a)(4); 216(a), 100 Stat. 3537.	C4-1			
Fourth preference: Spouse of alien classified P4-1.	203(a) (8) .....	P4-2			
Fourth preference: Child of alien classified P4-1.	203(a) (8) .....	P4-3			
Fourth preference: Child of alien classified C4-1 (conditional status).	203(a) (8); 216(a).	C4-3			

#### § 42.12 Rules of chargeability.

(a) *Applicability.* An immigrant shall be charged to the numerical limitation for the foreign state or dependent area of birth, unless—(1) Classifiable as an immediate relative under INA 201(b), or (2) Classifiable as a special immigrant under INA 101(a)(27), or (3) The case falls within one of the exceptions to the general rule of chargeability provided by INA 202(b) and paragraphs (b) through (e) of this section to prevent the separation of families.

(b) *Exception for child.* If necessary to prevent the separation of a child from the alien parent or parents, an immigrant child, including a child born in a dependent area, may be charged to the same foreign state to which a parent is chargeable if the child is accompanying or following to join the parent, in accordance with INA 202(b)(1).

(c) *Exception for spouse.* If necessary to prevent the separation of husband and wife, an immigrant spouse,

including a spouse born in a dependent area, may be charged to a foreign state to which a spouse is chargeable if accompanying or following to join the spouse, in accordance with INA 202(b)(2).

(d) *Exception for alien born in the United States.* An immigrant who was born in the United States shall be charged to the foreign state of which the immigrant is a citizen or subject. If not a citizen or subject of any country, the alien shall be charged to the foreign state of last residence as determined by the consular officer, in accordance with INA 202(b)(3).

(e) *Exception for alien born in foreign state in which neither parent was born or had residence at time of alien's birth.* An alien who was born in a foreign state, as defined in § 40.1, in which neither parent was born, and in which neither parent had a residence at the time of the applicant's birth, may be charged to the foreign state of either parent as provided in INA 202(b)(4). The parents of such an alien are not considered as having acquired a residence within the meaning of INA 202(b)(4), if, at the time of the alien's birth within the foreign state, the parents were visiting temporarily or were stationed there in connection with the business or profession and under orders or instructions of an employer, principal, or superior authority foreign to such foreign state.

#### Subpart C—Immigrants not Subject to the Numerical Limitations of INA 201

##### § 42.21 Immediate relatives.

An alien who is a spouse or child of a United States citizen, or a parent of a U.S. citizen at least 21 years of age, shall be classified as an immediate relative under INA 201(b) if the consular officer has received from INS an approved Petition to Classify Status of Alien Relative for Issuance of an Immigrant Visa, filed on the alien's behalf by the U.S. citizen and approved in accordance with INA 204 and the officer is satisfied that the alien has the relationship claimed in the petition. An immediate relative shall be documented as such unless the U.S. citizen refuses to file the required petition, or unless the immediate relative is also a special immigrant under INA 101(a)(27) not subject to any numerical limitation.

##### § 42.22 Returning resident aliens.

(a) *Requirements for returning resident status.* An alien shall be classifiable as a special immigrant under INA 101(a)(27)(A) if the consular officer is satisfied from the evidence presented that:

(1) The alien has the status of an alien lawfully admitted for permanent residence at the time of departure from the United States;

(2) The alien departed from the United States with the intention of returning and has not abandoned this intention; and

(3) The alien is returning to the United States from a temporary visit abroad and, if the stay abroad was protracted, this was caused by reasons beyond the alien's control and for which the alien was not responsible.

(b) *Documentation needed.* Unless the consular officer has reason to question the legality of the alien's previous admission for permanent residence or the alien's eligibility to receive an immigrant visa, only those records and documents required under INA 222(b) which relate to the period of residence in the United States and the period of the temporary visit abroad shall be required. If any required record or document is unobtainable, the provisions of § 42.65(d) shall apply.

(c) *Relief provisions for certain returning resident aliens under INA 212(c).* The exercise by the Attorney General of discretionary authority under INA 212(c) to grant relief from certain grounds of ineligibility other than those described in INA 212(a)(26), (27), (28), and (29) to certain returning resident aliens shall remove the alien's ineligibility to receive a visa only under the provisions specified in the Attorney General's order.

(d) *Returning resident alien originally admitted under the Act of December 28, 1945.* An alien admitted into the United States under section 1 of the Act of December 28, 1945 ("GI Brides Act") shall not be refused an immigrant visa after a temporary absence abroad solely because of a mental or physical defect or defects that existed at the time of the original admission.

##### § 42.23 Certain former U.S. citizens.

(a) *Women expatriates.* An alien woman, regardless of marital status, shall be classifiable as a special immigrant under INA 101(a)(27)(B) if the consular officer is satisfied by appropriate evidence that she was formerly a U.S. citizen and that she meets the requirements of INA 324(a).

(b) *Military expatriates.* An alien shall be classifiable as a special immigrant under INA 101(a)(27)(B) if the consular officer is satisfied by appropriate evidence that the alien was formerly a U.S. citizen and that the alien lost citizenship under the circumstances set forth in INA 327.

##### § 42.24 Ministers of religion.

(a) *Classification.* (1) An alien minister of religion shall be classifiable as a special immigrant under INA 101(a)(27)(C) if the consular officer concludes from the evidence presented that the alien qualifies under that section.

(2) The spouse or child of a minister of religion classifiable as a special immigrant under this section is also classifiable as a special immigrant under INA 101(a)(27)(C) if accompanying or following to join the principal alien.

(b) *"Minister" defined.* The term "minister," as used in INA 101(a)(27)(C), means a person duly authorized by a recognized religious denomination having a bona fide organization in the United States to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. The term does not include a lay preacher not authorized to perform such duties, and does not include a nun, lay brother, or cantor.

##### § 42.25 Certain U.S. Government employees.

An alien is classifiable as a special immigrant under INA 101(a)(27)(D) if the consular officer is satisfied that the alien meets the requirements of that section. An alien may qualify on the basis of employment abroad with one or more agencies of the U.S. Government.

##### § 42.26 Panama Canal employees.

An alien who is subject to the numerical limitations specified in section 3201(c) of the Panama Canal Act of 1979, Pub. L. 96-70, is classifiable as a special immigrant under INA 101(a)(27)(E), (F) or (G) if the consular officer is satisfied from the evidence presented that the alien qualifies under any of those three paragraphs and that the alien:

(a) Was an employee of the Panama Canal Company or Canal Zone Government on October 1, 1979, and a resident in the Canal Zone on April 1, 1979, and performed faithful service for at least 1 year; or

(b) Is a Panamanian national who was—(1) Honorably retired from U.S. Government employment in the Canal Zone before October 1, 1979, following a total of 15 years or more of faithful service, or (2) Employed by the U.S. Government in the Canal Zone with a total of 15 years or more of faithful service on October 1, 1979, and is honorably retired from such service; or

(c) Was an employee of the Panama Canal Company or Canal Zone

Government on April 1, 1979, who has performed faithful service for 5 years or more and whose personal safety or the personal safety of whose spouse or children, as a direct result of the Panama Canal Treaty of 1977, is reasonably placed in danger because of the special nature of such employment; or

(d) Is the spouse or child of any alien the consular officer concludes is qualified as a special immigrant under this section and is accompanying the alien to the United States.

**§ 42.27 Spouse and children of certain foreign medical graduates.**

The accompanying spouse and children of a graduate of a foreign medical school, or of a person qualified to practice medicine in a foreign state, who has adjusted status as a special immigrant under the provisions of INA 101(a)(27)(H), are classifiable as special immigrants under that section if the consular officer is satisfied from evidence presented, or INS has confirmed, that the principal alien has been granted an adjustment of status to that of an alien lawfully admitted for permanent residence.

**Subpart D—Immigrants Subject to Numerical Limitation**

**§ 42.31 Relative preference immigrants.**

(a) *Entitlement to status.* An alien shall be classifiable as a preference immigrant under INA 203(a) (1), (2), (4) or (5) if the consular officer has received from INS a Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa approved in accordance with INA 204 to accord the alien such preference status, or official notification of such an approval, and the consular officer is satisfied that the alien has the relationship to the petitioner indicated in the petition. In the case of a petition according an alien status under INA 203(a) (1) or (4) or status as an unmarried son or daughter under INA 203(a)(2), the petitioner must be a "parent" as defined in INA 101(b)(2) and § 40.1. In the case of a petition filed on or after January 1, 1977, to accord an alien status under INA 203(a)(5), the petitioner must be at least twenty-one years of age.

(b) *Entitlement to derivative status.* Pursuant to INA 203(a)(8), and whether or not named in the petition, the child of a first, second, fourth, or fifth preference immigrant or the spouse of a fourth or fifth preference immigrant, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under INA 203(a) (1) through (7), is entitled to derivative status.

corresponding to the classification of the beneficiary of the petition.

**§ 42.32 [Reserved]**

**§ 42.33 Third preference immigrants.**

(a) *Entitlement to status.* An alien shall be classifiable as a third preference immigrant under INA 203(a)(3) if the consular officer has received from INS a Petition to Classify Preference Status of Alien on Basis of Profession or Occupation approved in accordance with INA 204 to accord the alien such preference status, or official notification of such an approval, and the consular officer is satisfied that the alien is within the class described in INA 203(a)(3).

(b) *Entitlement to derivative status.* The spouse or child of the beneficiary of an approved petition according status under INA 203(a)(3) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, be entitled to the same status as the beneficiary of the petition.

**§ 42.34 Sixth preference immigrants.**

(a) *Entitlement to status.* An alien shall be classifiable as a sixth preference immigrant under INA 203(a)(6) if the consular officer has received from INS a Petition to Classify Preference Status of Alien on Basis of Profession or Occupation approved in accordance with INA 204 to accord the alien such preference status, or official notification of such an approval, and the consular officer is satisfied that the alien is within the class described in INA 203(a)(6).

(b) *Entitlement to derivative status.* The spouse or child of the beneficiary of an approved petition according status under INA 203(a)(6) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, be entitled to the same status as the beneficiary of the petition.

**§ 42.35 Nonpreference Immigrants.**

An alien subject to numerical limitations specified in INA 1201(a) who is not entitled to, or chooses not to apply for, a preference status shall be classified as a nonpreference immigrant under INA 203(a)(7) only if the alien—

(a) Obtains a labor certification pursuant to INA 212(a)(14), or

(b) Establishes to the satisfaction of a consular or immigration officer that the requirement for a labor certification is inapplicable to the alien, as provided in 22 CFR 40.7(a)(14)(iii).

**§ 42.36 Administering labor certification provisions of INA 212(a)(14).**

If an alien who desires to immigrate to the U.S. seeks information from a

consular office concerning the requirements for immigration, the consular officer shall determine whether the alien will require a labor certification in order to qualify for immigration to the United States. The consular officer may require the alien to complete and submit Form OF-222 (Preliminary Questionnaire to Determine Immigrant Status) for this purpose.

**Subpart E—Petitions**

**§ 42.41 Effect of approved petition.**

Consular officers are authorized to grant to an alien the immediate relative or preference status accorded in a petition approved in the alien's behalf upon receipt from INS of the approved petition or official notification of its approval. The status shall be granted for the period authorized by law or regulation. The approval of a petition by INS does not relieve the alien of the burden of establishing to the satisfaction of the consular officer that the alien is eligible in all respects to receive a visa.

**§ 42.42 Petition for immediate relative or preference status.**

The consular officer may not issue a visa to an alien as an immediate relative or preference alien unless the officer has received from INS a petition filed and approved in accordance with INA 204 or official notification of such filing and approval.

**§ 42.43 Suspension or termination of action in petition cases.**

(a) *Suspension of action.* (1) The consular officer shall suspend action in a petition case and return the petition, with a report of the facts, for reconsideration by INS if the petitioner requests suspension of action, or if the officer knows or has reason to believe that approval of the petition was obtained by fraud, misrepresentation, or other unlawful means, or that the beneficiary is not entitled, for some other reason, to the status approved.

(2) If a third or sixth preference petition is automatically revoked because of the expiration of the beneficiary's labor certification, the consular officer shall suspend action in the case and retain the petition while affording the beneficiary whose labor certification has expired an opportunity to seek revalidation of the labor certification or obtain a new one.

(b) *Termination of action.* (1) The consular officer shall terminate action in a petition case upon receipt from INS of notice of revocation of the petition in accordance with INS regulations.

(2) The consular officer shall terminate action in a petition case

subject to the provisions of INA 203(e) in accordance with the provisions of § 42.83.

#### Subpart F—Numerical Controls and Priority Dates

##### § 42.51 Department control of numerical limitations.

(a) *Centralized control.* Centralized control of the numerical limitations on immigration specified in INA 201, 202, and 203 is established in the Department. The Department shall limit the number of immigrant visas that may be issued and the number of adjustments of status that may be granted to aliens subject to these numerical limitations to a number:

(1) Not to exceed a total of 72,000 in any of the first three quarters of any fiscal year; and

(2) Not to exceed, in any month of a fiscal year, a total of 27,000 plus any balance remaining from authorizations for preceding months in the same fiscal year.

(b) *Allocation of numbers.* Within the foregoing limitations, the Department shall allocate immigrant visa numbers for use in connection with the issuance of immigrant visas and adjustments of status based on the chronological order of the priority dates of visa applicants reported by consular officers pursuant to § 42.55(b) and of applicants for adjustment of status as reported by officers of INS.

(c) *Recaptured visa numbers.* An immigrant visa number shall be returned to the Department for reallocation within the fiscal year in which the visa was issued when:

(1) An immigrant having an immigrant visa is excluded from the United States and deported;

(2) An immigrant does not apply for admission to the United States before the expiration of the validity of the visa;

(3) An alien having a preference immigrant visa is found not to be a preference immigrant; or

(4) An immigrant visa is revoked pursuant to § 42.82.

(d) *Special immigrants—Panama.* Centralized control of the numerical limitations on immigration specified in section 3201(c) of the Panama Canal Act of 1979 is established in the Department. The Department shall limit the number of special immigrant visas that may be issued and the number of adjustments of status that may be granted to aliens qualifying for visas under INA 101(a)(27) (E), (F), and (G) to a number not to exceed a total of 5,000 in any fiscal year beginning on October 1, 1979. If an immigrant having an immigrant visa issued under INA 101(a)(27) (E), (F) or

(G) is excluded from the United States and deported or does not apply for admission to the United States before the expiration of the validity of the visa, or if such a visa is revoked pursuant to § 42.82, the number shall be returned to the Department for reallocation.

##### § 42.52 Post records of visa applications.

(a) *Waiting list.* Records of individual visa applicants entitled to an immigrant classification and their priority dates shall be maintained at posts at which immigrant visas are issued. These records shall indicate the chronological and preferential order in which consideration may be given to immigrant visa applications within the several immigrant classifications subject to the numerical limitations specified in INA 201, 202, and 203. Similar records shall be kept for the classes specified in INA 201(b) and 101(a)(27) which are not subject to numerical limitations. The records which pertain to applicants subject to numerical limitations constitute "waiting lists" within the meaning of INA 203.

(b) *Entitlement to immigrant classification.* An alien shall be entitled to immigrant classification if the alien:

(1) Is the beneficiary of an approved petition according immediate relative or preference status;

(2) Has obtained an individual labor certification, or

(3) Has satisfied the consular officer or an INS officer in appropriate cases that the alien:

(i) Is entitled to special immigrant status under INA 101(a)(27);

(ii) Is within one of the professional or occupational groups listed in Schedule A of the Department of Labor regulations, or

(iii) Is within one of the classes described in § 40.7(a)(14)(iii) and therefore not within the purview of INA 212(a)(14).

(c) *Record made when entitlement to immigrant classification is established.*

(1) A record that an alien is entitled to an immigrant visa classification shall be made on Form OF-224, Immigrant Visa Control Card, or through the automated system in use at selected posts, whenever the consular officer is satisfied—or receives evidence—that the alien is within the criteria set forth in paragraph (b) of this section.

(2) A separate record shall be made of family members entitled to derivative immigrant status whenever the consular officer determines that a spouse or child is chargeable to a different foreign state or other numerical limitation than the principal alien. The provisions of INA 202(b) are to be applied as appropriate

when either the spouse or parent is reached on the waiting list.

(3) A separate record shall be made of a spouse or child entitled to derivative immigrant status whenever the consular officer determines that the principal alien intends to precede the family.

##### § 42.53 Priority date of individual applicants.

(a) *Preference applicant.* The priority date of a first, second, fourth or fifth preference visa applicant shall be the filing date of the approved petition that accorded preference. In the case of a third or sixth preference petition the filing date of the petition within the meaning of INA 203(c) shall be determined by the INS in accordance with INS regulations.

(b) *Nonpreference applicant and certain special immigrants.* The priority date of other applicants shall be:

(1) The date that an individual labor certification under INA 212(a)(14) has been granted for the applicant, or

(2) The date of submission to the consular officer, or to INS in appropriate cases, of evidence to establish:

(i) That the applicant is within one of the professional or occupational groups listed by the Department of Labor in Schedule A,

(ii) That circumstances specified in § 40.7(a)(14)(iii) are applicable to the applicant and therefore the applicant is not within the purview of INA 212(a)(14), or

(iii) That the applicant is entitled to classification as a special immigrant under INA 101(27) (E), (F), or (G).

(c) *Former Western Hemisphere applicant with priority date prior to January 1, 1977.* Notwithstanding the provisions of paragraphs (a) and (b) of this section, an alien who prior to January 1, 1977, was subject to the numerical limitation specified in section 21(e) of the Act of October 3, 1965, and who was registered as a Western Hemisphere immigrant with a priority date prior to January 1, 1977, shall retain that priority date as a nonpreference immigrant under INA 203(a)(7) or as a preference immigrant upon approval of a petition according to status under INA 203(a)(1)–(6).

(d) *Derivative priority date for spouse or child of principal alien.*

Notwithstanding the provisions of paragraphs (a) and (b) of this section, a spouse or child of an INA 203(a) principal alien acquired prior to the principal alien's admission into the United States shall be entitled to the priority date of the principal alien, whether or not named in the immigrant visa application of the principal alien. A

child born of a marriage which existed at the time of an INA 203(a) principal alien's admission to the United States is considered to have been acquired prior to the principal alien's admission.

**§ 42.54 Order of consideration.**

Consular officers shall request applicants to take the steps necessary to meet the requirements of INA 222(b) in order to apply formally for a visa as follows:

(a) In the chronological order of the priority dates of all applicants within each of the immigrant classifications specified in INA 203(a);

(b) In the order specified in INA 203(b) with regard to all applicants chargeable to the same foreign state or dependent area as specified in INA 202(a) and 202(c); and

(c) In the chronological order of the priority dates of all applicants within the special immigrant classifications specified in INA 101(a)(27) (E), (F), or (G).

**§ 42.55 Reports on numbers and priority dates of applications on record.**

(a) *Report of immigrant visa applicants subject to numerical limitations.* Consular officers shall report periodically, as the Department may direct, the number and priority dates of all applicants subject to the numerical limitations prescribed in INA 201, 202 and 203 and in section 3201(c) of the Panama Canal Act of 1979 and whose immigrant visa applications have been recorded in accordance with § 42.52(c).

(b) *Documentarily qualified applicants.* Consular officers shall also report periodically, as the Department may direct, the number and priority dates of all applicants described in paragraph (a) of this section who have informed the consular office that they have obtained the documents required under INA 222(b), for whom the necessary clearance procedures have been completed.

**Subpart G—Application for Immigrant Visas**

**§ 42.61 Place of application.**

(a) *Alien to apply in consular district of residence.* Under ordinary circumstances, an alien seeking an immigrant visa shall have the case processed in the consular district in which the alien resides. The consular officer shall accept the case of an alien having no residence in the consular district, however, if the alien is physically present and expects to remain therein for the period required for processing the case. An immigrant visa case may, in the discretion of the

consular officer, or shall, at the direction of the Department, be accepted from an alien who is neither a resident of, nor physically present in, the consular district. An alien residing temporarily in the United States is considered to be a resident of the consular district of last residence abroad.

(b) *Transfer of immigrant visa cases.*

(1) All documents, papers, and other evidence relating to an applicant whose case is pending or has been refused at one post may be transferred to another post at the applicant's request and risk when there is reasonable justification for the transfer and the transferring post has no reason to believe that the alien will be unable to appear at the receiving post.

(2) Any approved petition granting immediate relative or preference status should be included among the documents when a case is transferred from one post to another.

(3) In no case may a visa number be transferred from one post to another. A visa number which cannot be used as a result of the transfer must be returned to the Department immediately.

**§ 42.62 Personal appearance and interview of applicant.**

(a) *Personal appearance of applicant before consular officer.* Every alien applying for an immigrant visa, including an alien whose application is executed by another person pursuant to § 42.63(a)(3), shall be required to appear personally before a consular officer for the execution of the application or, if in Taiwan, before a designated officer of the American Institute in Taiwan, except that the personal appearance of any child under the age of 14 may be waived at the officer's discretion.

(b) *Interview by consular officer.* Every alien executing an immigrant visa application must be interviewed by a consular officer who shall determine on the basis of the applicant's representations and the visa application and other relevant documentation—

(1) The proper immigrant classification, if any, of the visa applicant, and

(2) The applicant's eligibility to receive a visa.

The officer has the authority to require that the alien answer any question deemed material to these determinations.

**§ 42.63 Application forms and other documentation.**

(a) *Application forms.*—(1) *Preliminary questionnaire.* The consular officer may require an alien to complete Form OF-222, Preliminary Questionnaire to Determine Immigrant Status, for the

purpose of assisting in the determination of the alien's classification and chargeability to numerical limitations.

(2) *Application on Form OF-230 required.* Every alien applying for an immigrant visa must make application on Form OF-230, Application for Immigrant Visa and Alien Registration. This requirement may not be waived.

(3) *Application of alien under 14 or physically incapable.* The application on Form OF-230 for an alien under 14 years of age or one physically incapable of completing an application may be executed by the alien's parent or guardian, or, if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, the alien.

(b) *Preparation of forms.* The consular officer shall ensure that Form OF-230 and all other forms an alien is required to submit are fully and properly completed in accordance with the applicable regulations and instructions.

(c) *Additional information as part of application.* The officer may require the submission of additional information or question the alien on any relevant matter whenever the officer believes that the information provided in Form OF-230 is inadequate to determine the alien's eligibility to receive an immigrant visa. Additional statements made by the alien become a part of the visa application. All documents required under the authority of § 42.62 are considered papers submitted with the alien's application within the meaning of INA 221(g)(1).

**§ 42.64 Passport requirements.**

(a) *Passport defined.* "Passport," as defined in INA 101(a)(30), is not limited to a national passport or to a single document. A passport may consist of two or more documents which, when considered together, fulfill the requirements of a passport, provided that documentary evidence of permission to enter a foreign country has been issued by a competent authority and clearly meets the requirements of INA 101(a)(30).

(b) *Passport validity requirements.* Except as provided in § 42.2, every applicant for an immigrant visa shall present a passport, as defined in INA 101(a)(30), that is valid for at least 60 days beyond the period of validity of the visa. The 60-day additional validity requirement does not apply to an applicant who would be excepted as provided in 22 CFR 42.2 were it not for the fact that the applicant is applying in the country of which the applicant is a national and the possession of a passport is required for departure. Such

an applicant may be issued a visa valid for 4 months or for such shorter period as will assure its expiration in unison with the passport.

(c) *A single passport including more than one person.* The passport requirement of this section may be met by the presentation of a passport including more than one person, if such inclusion is authorized under the laws or regulations of the issuing authority and if a photograph of each person 16 years of age or over is attached to the passport by the issuing authority.

#### § 42.65 Supporting documents.

(a) *Authority to require documents.* The consular officer is authorized to require documents considered necessary to establish the alien's eligibility to receive an immigrant visa. All such documents submitted and other evidence presented by the alien, including briefs submitted by attorneys or other representatives, shall be considered by the officer.

(b) *Basic documents required.* An alien applying for an immigrant visa shall be required to furnish, if obtainable: A copy of a police certificate or certificates; a certified copy of any existing prison record, military record, and record of birth; and a certified copy of all other records or documents which the consular officer considers necessary.

(c) *Definitions.* (1) "Police certificate" means a certification by the police or other appropriate authorities stating what, if anything, their records show concerning the alien. The words "appropriate police authorities," as used in INA 222(b), mean the police authorities of any country, area or locality wherein the alien has had a residence for 6 months or more or any other police authority which maintains central police records. A consular officer may also require a police certificate covering any residence of less than 6 months if the officer has reason to believe that a police record exists in the country, area, or locality concerned.

(2) "Prison record" means an official document containing a report of the applicant's record of confinement and conduct in a penal or correctional institution.

(3) "Military record" means an official document containing a complete record of the applicant's service and conduct while in military service, including any convictions of crime before military tribunals as distinguished from other criminal courts. A certificate of discharge from the military forces or an enrollment book belonging to the applicant shall not be acceptable in lieu of the official military record, unless it shows the alien's complete record while

in military service. The applicant may, however, be required to present for inspection such a discharge certificate or enrollment book if deemed necessary by the consular officer to establish the applicant's eligibility to receive a visa.

(4) A "certified copy of an alien's record of birth" means a certificate issued by the official custodian of birth records in the country of birth showing the date and place of birth and the parentage of the alien, based upon the original registration of birth.

(5) "Other records or documents" include any records or documents establishing the applicant's relationship to a spouse or children, if any, and any records or documents pertinent to a determination of the applicant's identity, classification, or any other matter relating to the applicant's visa eligibility.

(d) *Unobtainable documents.* (1) If the consular officer is satisfied, or the catalogue of available documents prepared by the Department indicates, that any document or record required under this section is unobtainable, the officer may permit the immigrant to submit other satisfactory evidence in lieu of such document or record. A document or other record shall be considered unobtainable if it cannot be procured without causing to the applicant or a family member actual hardship as opposed to normal delay and inconvenience.

(2) If the consular officer determines that a supporting document, as described in paragraph (b) of this section, is in fact unobtainable, although the catalogue of available documents shows it is available, the officer shall affix to the visa application a signed statement describing in detail the reasons for considering the record or document unobtainable and for accepting the particular secondary evidence attached to the visa.

(e) *Authenticity of records and documents.* If the consular officer has reason to believe that a required record or document submitted by an applicant is not authentic or has been altered or tampered with in any material manner, the officer shall take such action as may be necessary to determine its authenticity or to ascertain the facts to which the record or document purports to relate.

(f) *Photographs.* Every alien shall furnish color photographs of the number and specifications prescribed by the Department, except that, in countries where facilities for producing color photographs are unavailable as determined by the consular officer, black and white photographs may be substituted.

#### § 42.66 Medical examination.

(a) *Medical examination required of all applicants.* Before the issuance of an immigrant visa, the consular officer shall require every alien, regardless of age, to undergo a medical examination in order to determine eligibility to receive a visa.

(b) *Examination by physician from approved panel.* The required examination shall be conducted in accordance with requirements and procedures established by the United States Public Health Service and by a physician selected by the alien from a panel of physicians approved by the consular officer.

(c) *Facilities required for panel physician.* A consular officer shall not include the name of a physician on the panel of physicians referred to in paragraph (b) of this section unless the physician has facilities to perform required serological and X-ray tests or is in a position to refer applicants to a qualified laboratory for such tests.

#### § 42.67 Execution of application, registration, and fingerprinting.

(a) *Execution of visa application—(1) Application fee.* A fee is prescribed for each application for an immigrant visa. It shall be collected prior to the execution of the application and a receipt shall be issued.

(2) *Oath and signature.* The applicant shall be required to read the Form OF-230, Application for Immigrant Visa and Alien Registration, when it is completed or it shall be read to the alien in the alien's language or the alien otherwise informed of its full contents. Aliens shall be asked whether they are willing to subscribe thereto. If the alien is not willing to subscribe to the application unless changes are made in the information stated therein, the required changes shall be made. The application shall then be then sworn to or affirmed and signed by or on behalf of the applicant before a consular officer, or a designated officer of the American Institute in Taiwan, who shall then sign the application over the officer's title.

(b) *Registration.* Form OF-230, when duly executed, shall constitute the alien's registration record for the purposes of INA 221(b).

(c) *Fingerprinting.* An alien may be required at any time prior to the execution of Form OF-230 to have a set of fingerprints taken on Form AR-4 if such procedure is necessary for purposes of identification or investigation.

**§ 42.68 Informal evaluation of family members if principal applicant precedes them.**

(a) *Preliminary determination of visa eligibility.* If a principal applicant proposes to precede the family to the United States, the consular officer may arrange for an informal examination of the other members of the principal applicant's family in order to determine whether there exists at that time any mental, physical, or other ground of ineligibility on their part to receive a visa.

(b) *When family member ineligible.* In the event the consular officer finds that any member of such family would be ineligible to receive an immigrant visa, the principal applicant shall be informed and required to acknowledge receipt of this information in writing.

(c) *No guarantee of future eligibility.* A determination in connection with an informal examination that an alien appears to be eligible for a visa carries no assurance that the alien will be issued an immigrant visa in the future. The principal applicant shall be so informed and required to acknowledge receipt of this information in writing. The question of visa eligibility can be determined definitively only at the time the family member applies for a visa.

**Subpart H—Issuance of Immigrant Visas**

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

(a) *Authority to issue visas.* Consular officers are authorized to issue immigrant visas at designated consular offices abroad pursuant to INA 101(a)(16), 221(a), and 224. (Consular offices authorized to issue immigrant visas are listed periodically in Visa Office Bulletins published by the Department of State.) A consular officer assigned to duty in the territory of a country against which the sanctions provided in INA 243(g) have been invoked shall not issue an immigrant visa to an alien who is a national, citizen, subject, or resident of that country, unless the officer has been informed that the sanction has been waived by INS in the case of an individual alien or a specified class of aliens.

(b) *Immigrant visa fees.* Fees are prescribed by the Secretary of State for the execution of an application for, and the issuance of, an immigrant visa. The application fee shall be collected prior to the visa interview and execution of the application. The issuance fee shall be collected after completion of the visa interview and prior to issuance of the visa. A fee receipt shall be issued for each fee. A fee collected for the

application for or issuance of an immigrant visa is refundable only if the principal officer at a post or the officer in charge of a consular section determines that the visa was issued in error or could not be used 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.

**§ 42.72 Validity of visas.**

(a) *Period of validity.* With the exception indicated herein, the period of validity of an immigrant visa shall not exceed 4 months, beginning with the date of issuance. Any visa issued to a child lawfully adopted by a U.S. citizen and spouse while such citizen is serving abroad in the U.S. Armed Forces, is employed abroad by the U.S. Government, or is temporarily abroad on business, however, shall be valid until such time, for a period not to exceed 3 years, as the adoptive citizen parent returns to the United States in the course of that parent's military service, U.S. Government employment, or business.

(b) *Extension of period of validity.* If the visa was originally issued for a period of validity less than the maximum authorized by paragraph (a) of this section, the consular officer may extend the validity of the visa up to but not exceeding the maximum period permitted. If an immigrant applies for an extension at a consular office other than the issuing office, the consular officer shall, unless the officer is satisfied beyond doubt that the alien is eligible for the extension, communicate with the issuing office to determine if there is any objection to an extension. In extending the period of validity, the officer shall make an appropriate notation on the visa of the new expiration date, sign the document with title indicated, and impress the seal of the office thereon.

(c) *No fee for extension of period of validity.* No fee shall be charged for extending the period of validity of an immigrant visa.

(d) *Age and marital status in relation to validity of certain immigrant visas.* In accordance with § 42.64(b), the validity of a visa may not extend beyond a date sixty days prior to the expiration of the passport. The period of validity of a visa issued to an immigrant as a child shall not extend beyond the day immediately preceding the date on which the alien becomes 21 years of age. The consular officer shall warn an alien, when appropriate, that the alien will be admissible as such an immigrant only if unmarried and under 21 years of age at the time of application for admission at a U.S. port of entry. The consular officer shall also warn an alien issued a visa as

a first or second preference immigrant as an unmarried son or daughter of a citizen or lawful permanent resident of the United States that the alien will be admissible as such an immigrant only if unmarried at the time of application for admission at a U.S. port of entry.

**§ 42.73 Procedure in issuing visas.**

(a) *Insertion of data.* In issuing an immigrant visa, the issuing office shall insert the pertinent information in the designated blank spaces provided on Form OF-155A, Immigrant Visa and Alien Registration, in accordance with the instructions contained in this section.

(1) A symbol as specified in § 42.11 shall be used to indicate the classification of the immigrant.

(2) An immigrant visa issued to an alien subject to numerical limitations shall bear a number allocated by the Department. The foreign state or dependent area limitation to which the alien is chargeable shall be entered in the space provided.

(3) No entry need be made in the space provided for foreign state or other applicable area limitation on visas issued to immediate relatives under INA 201(b) or special immigrants under INA 101(a)(27), but such visas may be numbered if a post voluntarily uses a consecutive post numbering system.

(4) The date of issuance and the date of expiration of the visa shall be inserted in the proper places on the visa and show the day, month, and year in that order, with the name of the month spelled out, as in "24 December 1986."

(5) In the event the passport requirement has been waived under § 42.2, a notation shall be inserted in the space provided for the passport number, setting forth the authority (section and paragraph) under which the passport was waived.

(6) A signed photograph shall be attached in the space provided on Form OF-155A by the use of a legend machine, unless specific authorization has been granted by the Department to use the impression seal.

(b) *Documents comprising an immigrant visa.* An immigrant visa consists of Form OF-155A and Form OF-230, Application for Immigrant Visa and Alien Registration, properly executed, and a copy of each document required pursuant to § 42.63.

(c) *Arrangement of visa documentation.* Form OF-155A shall be placed immediately above Form OF-230 and the supporting documents attached thereto. Any document required to be attached to the visa, if furnished to the consular officer by the alien's sponsor or

other person with a request that the contents not be divulged to the visa applicant, shall be placed in an envelope and sealed with the impression seal of the consular office before being attached to the visa. If an immigrant visa is issued to an alien in possession of a United States reentry permit, valid or expired, the consular officer shall attach the permit to the immigrant visa for disposition by INS at the port of entry. (Documents having no bearing on the alien's qualifications or eligibility to receive a visa may be returned to the alien or to the person who furnished them.)

(d) *Signature, seal, and issuance of visa.* The consular officer shall sign the visa (Form OF-155A) and impress the seal of the office on it so as to partially cover the photograph and the signature. The immigrant visa shall then be issued by delivery to the immigrant or the immigrant's authorized agent or representative.

#### § 42.74 Issuance of new or replacement visas.

(a) *New immigrant visa for an alien not subject to numerical limitation.* An immediate relative under INA 201(b), or a special immigrant under INA 101(a)(27), who establishes that a visa has been lost or mutilated or has expired, or that the alien will be unable to use it during the period of its validity, may be issued a new visa at the same or any other consular office, if the consular officer then finds the alien qualified. The alien must pay anew the statutory application and issuance fees. Prior to issuing a new immigrant visa at a consular office other than the one that issued the original visa, the consular officer must also ascertain whether the original issuing office knows of any reason why a new visa should not be issued.

(b) *Replacement immigrant visa for an alien subject to numerical limitation.* An immigrant documented under INA 203(a) who was or will be unable to use the visa during the period of its validity because of reasons beyond the alien's control and for which the alien is not responsible may be issued a replacement immigrant visa under the original number during the same fiscal year in which the original visa was issued (provided the number has not been returned to the Department), if the consular officer then finds the alien qualified. The alien must pay anew the statutory application and issuance fees. Prior to issuing a replacement immigrant visa at a consular office other than the one that issued the original visa, the consular officer must also ascertain whether the original issuing office

knows of any reason why a replacement visa should not be issued. In issuing a visa under this paragraph, the consular officer shall insert the word "REPLACE" on Form OF-155A, Immigrant Visa and Alien Registration, before the word "IMMIGRANT" in the title of the visa.

(c) *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 and issuance fees. In issuing a visa under this paragraph, the consular officer shall insert the word "DUPLICATE" on Form OF-155A before the word "IMMIGRANT" in the title of the visa.

#### Subpart I—Refusal, Revocation, and Termination of Registration

##### § 42.81 Procedure in refusing individual visas.

(a) *Issuance or refusal mandatory.* When a visa application has been properly completed and executed before a consular officer in accordance with the provisions of INA and the implementing regulations, the consular officer shall either issue or refuse the visa. Every refusal shall be in conformance with the provisions of 22 CFR 40.6.

(b) *Refusal procedure.* A consular officer may not refuse an immigrant visa until Form OF-230, Application for Immigrant Visa and Alien Registration, has been executed by the applicant. When an immigrant visa is refused, an appropriate record shall be made in duplicate on a form prescribed by the Department. The form shall be signed and dated by the consular officer. The consular officer shall inform the applicant of the provision of law or implementing regulation on which the refusal is based and of any statutory provisions under which administrative relief is available. Each document related to the refusal shall then be attached to Form OF-230 for retention in the refusal files. Any documents not related to the refusal shall be returned to the applicant. If the grounds of ineligibility may be overcome by the presentation of additional evidence and the applicant indicates an intention to submit such evidence, all documents may, with the consent of the alien, be retained in the consular files for a period

not to exceed one year. If the refusal has not been overcome within one year, any documents not relating to the refusal shall be removed from the file and returned to the alien.

(c) *Review of refusal at consular office.* If the grounds of ineligibility upon which the visa was refused cannot be overcome by the presentation of additional evidence, the principal consular officer at a post, or a specifically designated alternate, shall review the case without delay, record the review decision, and sign and date the prescribed form. If the grounds of ineligibility may be overcome by the presentation of additional evidence and the applicant indicates the intention to submit such evidence, a review of the refusal may be deferred. If the principal consular officer or alternate does not concur in the refusal, that officer shall either (1) refer the case to the Department for an advisory opinion, or (2) assume responsibility for final action on the case.

(d) *Review of refusal by Department.* The Department may request a consular officer in an individual case or in specified classes of cases to submit a report if an immigrant visa has been refused. The Department will review each report and may furnish an advisory opinion to the consular officer for assistance in considering the case further. If the officer believes that action contrary to an advisory opinion should be taken, the case shall be resubmitted to the Department with an explanation of the proposed action. Rulings of the Department concerning an interpretation of law, as distinguished from an application of the law to the facts, are binding upon consular officers.

(e) *Reconsideration of refusal.* If a visa is refused, and the applicant within 1 year from the date of refusal adduces further evidence tending to overcome the ground of ineligibility on which the refusal was based, the case shall be reconsidered. In such circumstance, an additional application fee shall not be required.

##### § 42.82 Revocation of visas.

(a) *Grounds for revocation.* Consular officers are authorized to revoke an immigrant visa under the following circumstances:

(1) The consular officer knows, or after investigation is satisfied, that the visa was procured by fraud, a willfully false or misleading representation, the willful concealment of a material fact, or other unlawful means;

(2) The consular officer obtains information establishing that the alien was otherwise ineligible to receive the

particular visa at the time it was issued:

(3) The consular officer obtains information establishing that, subsequent to the issuance of the visa, a ground of ineligibility has arisen in the alien's case.

(b) *Notice of proposed revocation.* The bearer of an immigrant visa which is being considered for revocation shall, if practicable, be notified of the proposed action, given an opportunity to show cause why the visa should not be revoked, and requested to present the visa to the consular office indicated in the notification of proposed cancellation.

(c) *Procedure in revoking visas.* An immigrant visa which is revoked shall be canceled by writing the word "REVOKE" plainly across the face of the visa. The cancellation shall be dated and signed by the consular officer taking the action. The failure of an alien to present the visa for cancellation does not affect the validity of any action taken to revoke it.

(d) *Notice to carriers.* Notice of revocation of a visa shall be given to the master, commanding officer, agent, owner, charterer, or consignee of the carrier or transportation line on which it is believed the alien intends to travel to the United States, unless the visa has been canceled as provided in paragraph (c) of this section.

(e) *Notice to Department.* The consular officer shall promptly submit notice of the revocation, including a full report of the facts in the case, to the Department for transmission to the INS. A report is not required if the visa has been physically canceled prior to the alien's departure for the United States.

(f) *Record of action.* Upon the revocation of an immigrant visa, the consular officer shall make appropriate notation for the post file of the action taken, including a statement of the reasons therefor, and if the revocation of

the visa is effected at other than the issuing office, a report of the action taken shall be sent to that office.

(g) *Reconsideration of revocation.* (1) The consular officer shall consider any evidence submitted by the alien or the alien's attorney or representative in connection with a request that the revocation of the visa be reconsidered. If the officer finds that the evidence is sufficient to overcome the basis for the revocation, a new visa shall be issued. A memorandum regarding the action taken and the reasons therefore shall be placed in the consular files and appropriate notification made promptly to the carriers concerned, the Department, and the issuing office if notice of revocation has been given in accordance with paragraphs (d), (e), and (f) of this section.

(2) In view of the provisions of § 42.71(b) providing for the refund of fees when the visa has not been used as a result of action by the U.S. Government, no fees shall be collected in connection with the application for or issuance of such a reinstated visa.

#### § 42.83 Termination of registration.

(a) *Termination following failure of applicant to apply for visa.* In accordance with INA 203(e), an alien's registration for an immigrant visa shall be terminated if, within 1 year following the scheduling of an appointment for final interview, the applicant fails to apply for an immigrant visa.

(b) *Termination following visa refusal.* An alien's registration for an immigrant visa shall be terminated if, within 1 year following the refusal of the immigrant visa application under INA 221(g), the alien has failed to present to a consular officer evidence purporting to overcome the basis for refusal.

(c) *Notice of termination.* Upon the termination of registration under paragraph (a) or (b) of this section, the consular officer at the post where the

alien is registered shall notify the alien of the termination. The consular officer shall also inform the alien of the right to have the registration reinstated if the alien, before the end of the second year after the missed appointment date if paragraph (a) applies, and before the end of the second year after the INA 221(g) refusal if paragraph (b) applies, establishes to the satisfaction of the consular officer that the failure to apply for an immigrant visa or to present evidence purporting to overcome the ineligibility under INA 221(g) was due to circumstances beyond the alien's control.

(d) *Reinstatement of registration.* If the consular officer is satisfied that an alien, as provided for in paragraph (c) of this section, has established that failure to apply as scheduled for an immigrant visa or to present evidence purporting to overcome ineligibility under INA 221(g) was due to circumstances beyond the alien's control, the consular officer shall reinstate the alien's registration for an immigrant visa. Any petition approved under INA 204(b) which had been automatically revoked as a result of the termination of registration shall be considered to be automatically reinstated if the registration is reinstated.

(e) *Interpretation of "circumstances beyond alien's control".* For the purpose of this section, the term "circumstances beyond the alien's control" includes, but is not limited to, an illness or other physical disability preventing the alien from traveling, a refusal by the authorities of the country of an alien's residence to grant the alien permission to depart as an immigrant, and foreign military service.

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Joan M. Clark,

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