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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 274a

(INS Number 1047-88)

Control of Employment of Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule provides technical amendments to Part 274a of Title 8 of the Code of Federal Regulations. That regulation, which was published as a final rule in the *Federal Register* on May 1, 1987 at 52 FR 16216, with an effective date of June 1, 1987, was necessitated by the Immigration Reform and Control Act of 1986, Pub. L. 99-603, which amended the Immigration and Nationality Act (Act) by adding provisions relating to the control of employment of aliens in the United States. These provisions make it unlawful for a person or entity to knowingly hire, recruit or refer for a fee, for employment in the United States, aliens that are not authorized to work in the United States.

These provisions also provide for an employment eligibility verification system designed to prevent the employment of unauthorized aliens.

EFFECTIVE DATE: March 16, 1988.

FOR FURTHER INFORMATION CONTACT: Michael J. Creppy, Associate General Counsel, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Washington DC 20536. Telephone: (202) 633-2895.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603 was enacted on November 6, 1986. IRCA provides that it is unlawful for a person or entity after November 6, 1986, to knowingly hire, recruit or refer for a fee, for

employment in the United States, an alien, knowing that the alien is not authorized to work in the United States. IRCA also makes it unlawful for a person or entity to continue to employ an alien, hired after November 6, 1986, knowing that the alien is or has become unauthorized for employment in the United States. The Act and its augmenting regulations require employers, recruiters and referrers for a fee to verify the identity and employment eligibility of persons hired, recruited or referred. Employers must complete the verification process for all individuals hired after November 6, 1986. Recruiters and referrers for a fee must verify each individual recruited or referred after May 1, 1987, if the person is hired by the employer to which referred.

Since publication on May 1, 1987, INS has received public comments on the regulations recommending certain technical amendments and revisions to clarify language in the final rule. The Service has reviewed the regulations for typographical errors and omissions in light of the comments received. This rule is the result of that review process. This rule amends the final rule published on May 1, 1987 by: (1) Addressing certain public concerns related to the regulations; (2) providing clarification and amplification where needed; (3) correcting typographical errors; (4) removing language inadvertently placed in the regulations; and (5) adding language that was inadvertently omitted.

Many comments were received from employers stating that persons under 18 years of age were experiencing difficulty in obtaining documents evidencing identity. In consideration of these comments, this rule amends the regulation at 8 CFR 274a.2(b)(1)(v)(B)(2), related to the production of identity documents, by providing 16 and 17 year old youths with the documentary options currently available only to those under 16 years of age. These youths will be able to establish their identity by providing documentation from an expanded list of documents, or as an alternative to documentary evidence, have a parent or legal guardian attest to their identity. INS also received comments from organizations and associations which place individuals with handicaps into positions of employment or provide them with

vocational rehabilitation opportunities. The Service recognizes the difficulty that the handicapped may have in securing identity documentation. This rule amends the regulation by providing individuals with handicaps who are being placed into employment by a nonprofit organization or association or as part of a rehabilitation program, with the opportunity to provide identity documentation from an expanded list of documents. If the individual cannot present an identity document from either 8 CFR 274a.2(b)(1)(v)(B)(1) or 8 CFR 274a.2(b)(1)(v)(B)(2), this rule authorizes the parent or legal guardian of the individual or a representative from the nonprofit organization, association or rehabilitation program, placing the individual into a position of employment, to attest to his or her identity.

This rule clarifies the type of documentation that may be used to establish employment authorization. The rule provides that a properly endorsed Form I-20 ID submitted by a nonimmigrant student (F-1) for the specific purpose of student employment, may be used to establish employment authorization pursuant to 8 CFR 274a.2(b)(1)(v)(C)(7), provided that the I-20 ID contains all relevant restrictions, limitations, and conditions of employment. There are a number of situations under which a nonimmigrant student may be authorized to accept employment in the United States (as set forth in subpart B of the regulation), some of which require an endorsement, while others do not. For those situations which require an endorsement (part-time off-campus employment due to economic necessity, employment for practical training and employment for a qualifying international organization), the document on which the endorsement is placed by the Service officer or school official who authorizes the employment is normally the Form I-20 ID. (As stated in 8 CFR 274a.12(b), part-time on-campus employment is authorized by the school and no specific endorsement by a school official or Service officer is necessary). A properly endorsed I-20 ID is one which has been endorsed by a designated school official or Service officer for practical training or by a Service official for other authorized employment, and which contains the following information:

(1) Practical Training

The date until which employment is authorized; the occupation and professional field of employment in which practical training is authorized; the name, title and signature of the designated school official or the identifying number of the Service officer; and the date and location of the endorsement.

(2) Part-Time, Off-Campus Employment

The date until which employment is authorized; a statement that the hours authorized for employment while school is in session may not exceed 20 hours per week; the identifying number of the Service officer and the date and location of the endorsement. An I-20 ID which is not properly endorsed does not constitute an employment authorization document. The regulations have also been amended to delete nonimmigrant students engaged in curricular practical training programs (formerly known as work study programs) from 8 CFR 274a.12(b), which contains a listing of those who are authorized to work for a specific employer and who do not receive an employment authorization endorsement ("list B") and to add those students to 8 CFR 274a.12(c), which contains a listing of those who must receive an endorsement ("list C"). In accordance with the provisions of 8 CFR 214.2(f)(10), such employment is authorized by the designated school official at the school the student has been authorized to attend.

The final rule published on May 1, 1987 provided that pursuant to 8 CFR 274a.2(b)(1)(B)(i)(j), a person could establish identity by presenting a state-issued driver's license or state-issued identification card containing a photograph or other identifying information. The final rule did not provide a definition for the term "state". Included in these technical amendments is that reference. The definition is taken from section 101(a)(36) of the Act. The definition of "state" includes "the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States". Pursuant to these technical amendments, a person may also present a driver's license or an identification card that is issued by an outlying possession of the United States, as that term is defined in section 101(a)(29) of the Act. The term "outlying possession of the United States" includes American Samoa and Swains Island.

Many employers, recruiters and referrers for a fee inquired as to whether the Form I-9 could be placed on microfilm or microfiche. These technical amendments permit the Forms I-9 to be

placed on microfilm or microfiche. Standards for the use of microfilm or microfiche are articulated in these amendments. These standards are consistent with current Internal Revenue Service guidelines on microfilm and microfiche.

Employers involved in seasonal agricultural services inquired whether or not they had to complete the verification process for persons hired after November 6, 1986. Section 274A(i)(3) of the Act provides for a deferral of penalties until December 1, 1988, for violations relating to the employment of an individual in seasonal agricultural services, as that term is defined in 52 FR 20372 (1987) (to be codified at 7 CFR Part 1d). Because IRCA requires employers to verify the work authorization of employees and to prepare the Form I-9, INS encourages all employers of seasonal agricultural labor to complete the Form I-9 for all employees engaged in seasonal agricultural services who are hired after November 6, 1986. Recruiters and referrers for a fee involved in recruiting or referring persons for seasonal agricultural services are also encouraged to complete the verification process for each person referred after May 31, 1987, if the person is hired by the employer to which referred. Employers in the agricultural industry whose employees are not engaged in seasonal agricultural services or recruiters or referrers for a fee referring persons to perform other than seasonal agricultural services, are not covered by the deferral of penalty provision.

This rule revises procedures to be followed by a respondent upon whom a Notice of Intent to Fine has been issued. Pursuant to this Rule, a respondent who wishes to contest the Notice of Intent to Fine must file with the INS, within thirty days of the service of the Notice of Intent to Fine, a written request for a hearing before an Administrative Law Judge. A request for a hearing is not deemed to be filed until received by the Service office designated in the Notice of Intent to Fine. Because the regulations issued by the Executive Office for Immigration Review require a respondent to file an answer with the Administrative Law Judge, this rule eliminates the requirement for filing the same answer with INS.

Justification for Final Rule

The Immigration and Naturalization Service is invoking the "good cause" exception to the notice and comment rulemaking procedures established by the Administrative Procedures Act (see 5 U.S.C. 553 (b) and (d)). Notice of this rule and related public comment

procedures would be contrary to the public interest as the time that would be required for comment would delay implementation of the rule. Expedient implementation of the rule is needed to address public concerns related to the regulations, and is therefore in the interest of the public. Furthermore, the changes being made are technical in nature.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of EO 12291.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget, under the provisions of the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

1. The authority citation for Part 274a is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a.

§ 274a.1 [Amended]

2. Section 274a.1 is amended by removing from the introductory text after the phrase "purpose of this" the word "chapter" and adding in its place the word "part".

§ 274a.2 [Amended]

3. Section 274a.2 is amended by removing from the first line the "A." before the word "General" and adding in its place the letter "(a)".

4. Section 274a.2(b)(1)(ii)(A) is amended by adding after the phrase "paragraph (b)(1)(v) of this section" the phrase "and ensure that the documents presented appear to be genuine and to relate to the individual".

5. Section 274a.2(b)(1)(v)(B)(i) is revised to read as follows:

(1) In General:

6. Section 274a.2(b)(1)(v)(B)(i)(j) is amended by removing the first sentence in the paragraph and adding in its place the following: "A driver's license or identification card containing a photograph, issued by a state (as defined in section 101(a)(36) of the Act) or an outlying possession of the United States (as defined by section 101(a)(29) of the Act)."

7. Section 274a.2(b)(1)(v)(B)(2) is amended by removing after the phrase "For individuals under age" the number "16" and adding in its place the number "18".

8. Section 274a.2(b)(1)(v)(B)(3) is amended by removing after the phrase "Minors under the age of" the number "16" and adding in its place the number "18"; by adding after the phrase "exempt from producing one of the", the phrase "enumerated identity documents if the".

9. Section 274a.2(b)(1)(v)(B)(3)(i) is amended by removing after the phrase "minor under age" the number "16" and adding in its place the number "18".

10. Section 274a.2(b)(1)(v)(B)(3)(iii) is amended by removing after the phrase "minor under age" the number "16" and adding in its place the number "18".

11. A new § 274a.2(b)(1)(v)(B)(4) is added to read as follows:

(4) Individuals with handicaps, who are unable to produce one of the identity documents listed in paragraph (b)(1)(v)(B) (1) or (2) of this section, who are being placed into employment by a nonprofit organization, association or as part of a rehabilitation program, may follow the procedures for establishing identity provided in this section for minors under the age of 18, substituting where appropriate, the term "special placement" for "minor under age 18", and permitting, in addition to a parent or legal guardian, a representative from the nonprofit organization, association or rehabilitation program placing the individual into a position of employment, to fill out and sign in the appropriate section, the Form I-9. For purposes of this section the term "individual with handicaps" means any person who

(i) Has a physical or mental impairment which substantially limits one or more of such person's major life activities,

(ii) Has a record of such impairment, or

(iii) Is regarded as having such impairment.

12. Section 274a.2(b)(1)(vi) is amended by inserting after the phrase "the document or documents within three" the word "business"; by inserting after the words "document or documents within 21" the word "business".

13. Section 274a.2(b)(1)(vii) is amended by removing in the first sentence after the phrase "If an individual's employment" the phrase "eligibility document" and adding in its place the word "authorization"; by removing from the last sentence after the phrase "recruiter or referrer for a fee" the word "should" and adding in its place the word "must"; by removing

from the last sentence after the phrase "identification number and expiration date" the word "of" and adding in its place the word "on".

14. Section 274a.2(b)(1)(viii)(C) is amended by adding after the phrase "The employee is", the word "temporarily".

15. Section 274a.2(b)(1)(viii)(G) is amended by inserting after the phrase "maintains from the previous" the word "employer".

16. Section 274a.2(b)(2)(i)(B) is amended by removing the word "referral" after the phrase "three years after the date of" and adding in its place the word "hire".

17. Section 274a.2(b)(2)(ii) is amended by adding in the first sentence, after the phrase "of the Forms by an authorized" the words "Department of Labor or"; by inserting in the second sentence, after the phrase "Forms I-9 must be made available" the phrase "in their original form or on microfilm or microfiche"; by inserting in the second sentence after the phrase "production was made" a "." and removing the rest of the sentence; by adding after the phrase "production was made." the following: "If the Forms I-9 are kept at another location, the person or entity must inform the Department of Labor or Service officer of the location where the forms are kept and make arrangements for the inspection. Inspections may be performed at an INS office."

18. A new § 274a.2(b)(2)(iii) is added to read as follows:

(b) * * *

(2) * * *

(iii) The following standards shall apply to Forms I-9 presented on microfilm (or microfiche) submitted to the Service or Department of Labor: Microfilm, when displayed on a microfilm reader (viewer) or reproduced on paper must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral which enables the observer to positively and quickly identify it to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or whole numbers. A detailed index of all microfilmed data shall be maintained and arranged in such a manner as to permit the immediate location of any particular record. It is the responsibility of the employer, recruiter or referrer for a fee.

(A) To provide for the processing, storage and maintenance of all microfilm and

(B) To be able to make the contents thereof available as required by law. The person or entity presenting the

microfilm will make available a reader-printer at the examination site for the ready reading, location and reproduction of any record or records being retained on microfilm. Reader-printers made available to DOL or Service officers shall provide safety features and be in clean condition, properly maintained and in good working order. The reader-printers must have the capacity to display and print a complete page of information. A person or entity who is determined to have failed to comply with the criteria established by this regulation for the presentation of microfilm or microfiche to the Service and at the time of the inspection does not present a properly completed Form I-9 for the employee, is in violation of section 274A(a)(1)(B) of the Act and 8 CFR 274a.2(b)(2).

§ 274a.3 [Amended]

19. Section 274a.3 is amended by inserting an "A" after the phrase "section 274".

§ 274a.7 [Amended]

20. Section 274a.7(a) is amended by removing, after the phrase "defined in § 274a.2(b)" the roman numeral "(vi)" and adding in its place "(1)(viii)".

21. Section 274a.7(b)(3) is amended by removing, after the phrase "the United States under" the phrase "an order" and adding in its place the phrase "a grant".

§ 274a.9 [Amended]

22. Section 274a.9(c) is amended by removing from the second sentence, after the phrase "a Notice of Intent to Fine on Form" the form number "I-762" and adding in its place the form number "I-763"; by inserting in the last sentence after the phrase "with concurrence of the District Counsel or his or her designee" the phrase "or Sector Counsel".

23. Section 274a.9(d) is revised to read as follows:

(d) *Request for Hearing Before an Administrative Law Judge.* (1) If a respondent contests the issuance of a Notice of Intent to Fine, he or she must file with the INS, within thirty days of the service of the Notice of Intent to Fine, a written request for a hearing before an Administrative Law Judge. A request for a hearing is not deemed to be filed until received by the Service office designated in the Notice of Intent to Fine. In computing the thirty day period prescribed by this section, the day of service of the Notice of Intent to Fine shall not be included. If the Notice of Intent to Fine was served by mail, five days shall be added to the prescribed thirty day period. The respondent may,

but is not required to, file with the INS an answer responding to each allegation listed in the Notice of Intent to Fine.

(2) If the respondent does not file a request for a hearing in writing within thirty days, the INS shall issue a final order from which there is no appeal.

§ 274a.12 [Amended]

24. Section 274a.12(a)(11) is amended by removing from the second sentence the phrase "Form I-20" and adding in its place the phrase "an employment authorization document".

25. Section 274a.12(b)(6) is revised to read as follows:

(6) A nonimmigrant student (F-1) who is in valid non-immigrant student status and pursuant to 8 CFR 214.2(f) is seeking on-campus employment for not more than twenty hours per week while school is in session or full time when school is not in session if the student intends and is eligible to register for the next term or session. Part-time on campus employment is authorized by the school and no specific endorsement by a school official or Service officer is necessary.

26. Section 274a.12(b)(10) is amended by removing from the third sentence after the phrase "Employment authorization does not" the word "extent" and adding in its place the word "extend".

27. Section 274a.12(b)(11) is amended by inserting in the first sentence, after the words "of this chapter" the phrase "and 22 CFR 514.24"; by inserting after the phrase "United States Information Agency" the phrase "as set forth in the Certificate of Eligibility (Form IAP-66) issued by the program sponsor".

28. Section 274a.12(b)(15) is amended by changing the referenced paragraphs "(b)(9), (11), and (12)" to read "(b)(2), (5), (8), (9), (10), (11), and (12)".

29. Section 274a.12(c)(1) is amended by removing the "." after the phrase "§ 214.2(a)(2) of this chapter" and inserting a ";" and removing the phrase "or the dependent of an employee of a foreign government official (A-3) pursuant to § 214.2(a)(3) of this chapter".

30. Section 274a.12(c)(3)(i) is amended by removing the word "Chapter" after the phrase "214.2(f) of this" and inserting in its place the word "chapter"; by removing "." and adding a ";" after the phrase "of this chapter" and 2 new sentences to read: "A student authorized employment under this section may use a properly endorsed I-20 ID issued to the student to establish employment authorization pursuant to 8 CFR

274a.2(b)(1)(v)(C)(7). To constitute a proper endorsement for this section, the Form I-20 ID must contain the date until which employment is authorized; a statement that the hours authorized per week while school is in session may not exceed 20 hours weekly; the identifying number of the Service officer; and the date and location of the endorsement".

31. Section 274a.12(c)(3)(ii) is amended by adding after the phrase "for purposes of practical training" the phrase "(including curricular practical training)"; by removing the "." after the phrase "pursuant to § 214.2(f) of this chapter" and adding the following text to read: "provided the alien will be employed only in an occupation which is directly related to his or her course of studies. A student authorized employment under this section may use a properly endorsed I-20 ID issued to the student, to establish employment authorization pursuant to 8 CFR 274a.2(b)(1)(v)(C)(7). A properly endorsed Form I-20 ID must contain the date until which employment is authorized; the occupation or field in which employment is authorized; the name, title and signature of the designated school official or the identifying number of the Service officer; and the date and location of the endorsement"; and by removing the last sentence in the section beginning with the words "The alien" and ending with the word "studies".

32. Section 274a.12(c)(15) is amended by changing the referenced paragraphs "(b)(9), (11) and (12)" to read as "(b)(2), (5), (8), (9), (10), (11), and (12)".

§ 274a.13 [Amended]

33. Section 274a.13(a) is amended by removing from the first sentence after the phrase "for employment authorization by an alien under", the term "§ 274.12(c)" and adding in its place the phrase "§ 274a.12(c) and Part 214".

274a.14 [Amended]

34. Section 274a.14(b)(1)(i) is amended by removing after the phrase "or for good cause shown" the "." and adding in its place a ";".

Dated: January 25, 1988.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 88-5553 Filed 3-15-88; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-157-AD; Amdt. 39-5877]

Airworthiness Directives; British Aerospace Model BAe-125 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable certain British Aerospace Model BAe-125 series airplanes, which requires inspection for cracks and repair, if necessary, of the aileron mass balance assembly. This amendment is prompted by reports of cracking of the attachment lugs of the aileron mass balance side plate. This condition, if not corrected, could result in displacement of the side plate, and possible control surface interference.

DATE: Effective April 25, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires inspection for cracks and repair, if necessary, of the aileron mass balance assembly, was published in the Federal Register on December 14, 1987 (52 FR 47401).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter had no objection to the proposal.

After careful review of the available data, the FAA has determined that air