

Dated: September 23, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

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DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 1491]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended; Immigrants Not Subject to Numerical Limitations of INA 201 and 202; Immigrants Subject to Numerical Limitation

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Interim Rule with request for comments.

SUMMARY: This rule amends part 42, title 22 of the Code of Federal Regulations, to implement sections 101, 111, 112, 121 and 162(b)(1)(E) of Public Law 101-649 which restructured section 203 of the Immigration and Nationality Act. Most of the changes in the regulations to part 42 are editorial and relate primarily to designations and citations. As a result of the provisions in section 121 of the Immigration Act of 1990, however, this rule also transfers to subpart D of this part the regulations relating to special immigrant classes not previously subject to numerical limitation and currently listed in subpart C. Changes have also been made to the regulations in § 42.21 to add language benefiting spouses of deceased U.S. citizens entitled to immediate relative status.

DATES: This interim rule is effective October 1, 1991. Written comments must be received on or before October 31, 1991.

ADDRESSES: Please submit comments in duplicate, to the: Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Services, Department of State, Washington, DC 20522-0113.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations, and Advisory Assistance, (202) 663-1184.

SUPPLEMENTARY INFORMATION:

Immigration Act of 1990

Sections 111 and 121 of Public Law 101-649, Immigration Act of 1990, restructured section 203 of the Immigration and Nationality Act (INA)

by dividing family-related immigration from employment-related immigration and creating several new preference classes under the latter heading. This has required the substitution of new terminology and, in some cases, a change in primary decision-making authority in some of the regulations in title 22, part 42.

Section 121 of the Immigration Act of 1990—INA 201, 203, 204

Section 121 of Public Law 101-649 included Special Immigrants (other than those under INA 101(a)(27)(A) and (B)) in the fourth employment-related class, thereby subjecting them to the numerical limits of INA 201. Subpart C of part 42 contains regulations pertaining to aliens who are not subject to the numerical limitations in INA 201 which, until October 1, 1991, includes both Immediate Relatives under INA 201(b) and Special Immigrants under INA 101(a)(27). Clearly, therefore, regulations pertaining to those classes had to be removed from subpart C and incorporated into subpart D, which relates to aliens who are subject to a numerical ceiling. Accordingly, §§ 42.24—42.27 have been redesignated as § 42.32(d)(1) through (4). Similarly, the imposition of a petition requirement under INA 204, as amended by section 162(b)(1)(E) of Public Law 101-649, on those special immigrant classes has altered the primary decision-making authority with respect to eligibility for classification in such status. Current regulations impose on the consular officer the responsibility for determining that the alien has established his or her claim to status in the Special Immigrant classes. The petition requirement vests this determination in the Service (except with respect to aliens under INA 101(a)(27)(D)) and the regulations had to be changed accordingly.

Not least, the change in designations caused by having separate (and, to an extent, duplicative) lists of preference classes (e.g., family-related first preference and employment-related first preference) has necessitated editorial changes reflecting such nomenclature. Thus, what has been § 42.33, Third Preference Immigrants, has become § 42.32(a), First (employment-based) Preference—Priority Workers. Similar changes in designations and terminology have been made for the other employment-related classes.

Immigrants Not Subject to Numerical Limitations

Specifically, subpart C, Immigrants Not Subject to Numerical Limitations under INA 201 and 202, has been modified in three minor respects:

Section 42.21, Immediate Relatives, has been designated paragraph (a) and a new paragraph (b) has been added to take note of the continuing entitlement to Immediate Relative status of certain spouses of deceased U.S. citizens.

Section 42.22(c), Relief provisions under INA 212(c), was amended editorially to restate the exceptions in accordance with the change in the statute and to add the limitation of applicability of INA 212(c). No changes were made in § 42.23. Sections 42.24 through 42.27 have been deleted from this subpart.

Immigrants Subject to Numerical Limitations

Subpart D, relating to immigrants subject to numerical limitations, has undergone substantial restructuring because of the number of classes added to this category of immigrants by Public Law 101-649, as suggested above.

Section 42.31 has been retitled "Family-sponsored Immigrants", appropriate changes in statutory designations have been made, and a new subsection (c) contains the usual injunction against issuance of an immigrant visa, this time under section 112 of the Immigration Act of 1990, unless the Immigration and Naturalization Service has approved a petition according that status and the consular officer is satisfied that the alien is within the class described in that section.

Section 42.32, which had been reserved, has become "Employment-based Preference Immigrants", with various subsections devoted to the five such classes: Section 42.32(a), First Preference—Priority Workers; § 42.32(b), Second Preference—Professionals with Advanced Degrees or Persons of Exceptional Ability; § 42.32(c), Third Preference—Skilled Workers, Professionals, Other Workers—no substantive changes have been made from the comparable regulations relating to current third and sixth preference cases, but nomenclature and statutory designations have, of course, been appropriately modified. § 42.32(d), Fourth Preference—Special Immigrants. The special immigrant classes that were moved from subpart C, with two additions, are incorporated in this section and divided into paragraphs: (1) Religious Workers; (2) U.S. Government Employees (reserved); (3) Panama Canal Employees; (4) Spouses and Children of Certain Foreign Medical Graduates; (5) Certain International Organization Employees; and (6) Certain Aliens Dependent on a Juvenile Court.

All of the above regulations, most of which were transferred from sections 42.24-27, have been modified to require receipt of an approved petition to accord the appropriate status prior to classification by a consular officer of an alien in any of these classes. Section 42.32(d)(5), regarding international organizations aliens, is new but patterned after the others. It also contains a regulatory reference to the time limits for application imposed in the statute. Section 42.32(d)(6), which relates to classification as an alien dependent on a juvenile court, contains the standard requirement for an approved petition according to the status. Section 42.32(e), Fifth Preference—Employment Creation Immigrants, also contains the standard language requiring receipt of an approved petition according to such status. Section 42.33, relating to the new class of diversity immigrants which does not become effective until October 1, 1994, is reserved.

The former §§ 42.34—Sixth preference immigrants, 42.35—Nonpreference, and 42.36—Administering labor certification provisions—have been deleted.

Regulations pertaining to special immigrants under INA 101(a)(27)(D), § 42.32(d)(2), (employees and former employees of the United States Government abroad), will be the subject of separate rulemaking because they entail new responsibilities for the Department of State.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. With regard to the information collection requirement contained in this rule, Form OF-230 has been reinstated by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

List of Subjects in 22 CFR Part 42

Aliens, Immigrants, Numerical limitations, Special immigrants, Visas.

In view of the foregoing, title 22 of the Code of Federal Regulations, subparts C and D of part 42 are revised to read as follows:

PART 42—[AMENDED]

1. Authority citation for part 42 is revised to read as follows:

Authority: 8 U.S.C. 1104; 8 U.S.C. 1101 note.

2. Subpart C (consisting of §§ 42.21 through 42.23) is revised to read as follows:

Subpart C—Immigrants Not Subject to Numerical Limitations of INA 201 and 202

Sec.

42.21 Immediate relatives.

42.22 Returning resident aliens.

42.23 Certain former U.S. citizens.

Subpart C—Immigrants Not Subject to Numerical Limitations of INA 201 and 202

§ 42.21 Immediate relatives.

(a) *Entitlement to status.*

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) (A) or (B) and not subject to any numerical limitation.

(b) *Spouse of a deceased U.S. Citizen.* The spouse of a deceased U.S. citizen shall be entitled to immediate relative status after the date of the citizen's death provided he or she meets the criteria of INA 201(b)(2)(A)(i) and the consular officer has received an approved petition from the INS which accords such status, or official notification of such approval, and the consular officer is satisfied that the alien meets those criteria.

§ 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 had 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 specified therein) to certain returning resident aliens shall remove the alien's ineligibility to receive a visa only under the conditions specified in the Attorney General's order. This relief shall not apply to an alien who has been convicted of an aggravated felony and has served a term of imprisonment of at least 5 years.

(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.

4. Subpart D (consisting of §§ 42.31 through 42.33) is revised to read as follows:

Subpart D—Immigrants Subject to Numerical Limitations

Sec.

42.31 Family-Sponsored immigrants.

42.32 Employment-based preference immigrants.

Sec.

42.33 Diversity immigrants. [Reserved]

Subpart D—Immigration Subject to Numerical Limitations**§ 42.31 Family-sponsored immigrants.***(a) Entitlement to status.*

An alien shall be classifiable as a family-sponsored immigrant under INA 203(a) (1), (2), (3) or (4) 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 (3) 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 22 CFR 40.1. In the case of a petition to accord an alien status under INA 203(a)(4) filed on or after January 1, 1977, the petitioner must be at least twenty-one years of age.

(b) Entitlement to derivative status.

Pursuant to INA 203(d), and whether or not named in the petition, the child of a family-sponsored first, second, third or fourth preference immigrant or the spouse of a family-sponsored third or fourth preference immigrant, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(c) Spouses and children of legalized aliens. An alien shall be classifiable as a spouse or child of a legalized alien pursuant to Section 112 of Public Law 101-649, if the consular officer has received from INS an approved petition which accords such status, or official notification of such an approval, and the consular officer is satisfied that the alien is within the class described in that section.

§ 42.32 Employment based immigrants.

Aliens subject to the worldwide level specified in section 201(d) for employment-based immigrants in a fiscal year shall be allotted visas as indicated below.

(a) First preference.—Priority workers. (1) *Entitlement to status.* An alien shall be classifiable as an employment-based first preference immigrant under INA 203(b)(1) if the consular office has received from INS a Petition for Immigrant Worker 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 one of the classes described in INA 203(b)(1).

(2) *Entitlement to derivative status.* Pursuant to INA 203(d), and whether or not named in the petition, the child or spouse of an employment-based first preference immigrant, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(b) Second preference—Professionals with advanced degrees or persons of exceptional ability.—(1) Entitlement to status. An alien shall be classifiable as an employment-based second preference immigrant under INA 203(b)(2) if the consular officer has received from INS a Petition for Immigrant Worker 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 one of the classes described in INA 203(b)(2).

(2) *Entitlement to derivative status.* Pursuant to INA 203(d), and whether or not named in the petition, the child or spouse of an employment-based second preference immigrant, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(c) Third preference—Skilled workers, professionals, other workers.—(1) Entitlement to status. An alien shall be classifiable as an employment-based third preference immigrant under INA 203(b)(3) if the consular officer has received from INS a Petition for Immigrant Worker 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 one of the classes described in INA 203(b)(3).

(2) *Entitlement to derivative status.* Pursuant to INA 203(d), and whether or not named in the petition, the child or spouse of an employment-based third preference immigrant, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(d) Fourth preference—Special immigrants.—(1) Religious workers. (i) *Classification based on qualifications under INA 101(A)(27)(C).* An alien shall be classifiable under INA 203(b)(4) as a

special immigrant described in INA 101(a)(27)(C) if:

(A) The consular officer has received a petition approved by INS to accord such classification, or an official notification of such approval; and

(B) The consular officer is satisfied from the evidence presented that the alien qualifies under that section; or

(C) The consular officer is satisfied the alien is the spouse or child of a religious worker so classified and is accompanying or following to join the principal alien.

(ii) *Timeliness of application.* An immigrant visa issued under INA 203(b)(4) to an alien described in INA 101(a)(27)(C), other than a minister of religion, who qualifies as a "religious worker" as defined in 8 CFR 204.5(1), shall bear the usual validity except that in no case shall it be valid later than September 30, 1994.

(2) *Certain U.S. Government employees.* (Reserved)

(3) *Panama Canal employees.* (i) *Entitlement to status.* An alien who is subject to the numerical limitations specified in section 3201(c) of the Panama Canal Act of 1979, Public Law 96-70, is classifiable under INA 203(b)(4) as a special immigrant described in INA 101(a)(27) (E), (F) or (G) if the consular officer has received a petition approved by INS to accord such classification, or official notification of such an approval, and the consular officer is satisfied that the alien is within one of the classes described in INA 101(a)(27) (E), (F), or (G).

(ii) *Entitlement to derivative status.* Pursuant to INA 203(d), and whether or not named in the petition, the spouse or child of any alien classified under INA 203(b)(4) as a special immigrant qualified under this section, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(4) *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 under INA 203(b)(4) as special immigrants defined in INA 101(a)(27)(H) if the consular officer has received an approved petition from INS which accords such status and the consular officer is satisfied that the alien is within the class described in INA 101(a)(27)(H).

(5) *Certain International Organization employees.* (i) *entitlement to status.* An alien is classifiable under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(I) if the consular officer has received a petition approved by the INS to accord such classification or official notification of such approval, and the consular officer is satisfied from the evidence presented that the alien is within one of the classes described in that section.

(ii) *Timeliness of application.* An alien accorded status under INA 203(b)(4) because of qualification under INA 101(a)(27)(I) must appear for a final visa interview and issuance of the immigrant visa within six months of establishing entitlement to status.

(6) *Certain juvenile court dependents.* An alien shall be classifiable under INA 203(b)(4) as a special immigrant defined in INA 101(a)(27)(J) if the consular officer has received from INS an approved petition to accord such status, or an official notification of such an approval, and the consular officer is satisfied the alien is within the class described in that section.

(e) *Fifth preference—Employment-creation immigrants.*

(1) *Entitlement to status.* An alien shall be classifiable as a fifth preference employment-creation immigrant if the consular officer has received from INS an approved petition to accord such 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(b)(5).

(2) *Entitlement to derivative status.* Pursuant to INA 203(d), and whether or not named in the petition, the spouse or child of an employment-based fifth preference immigrant, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

§ 42.33 Diversity immigrants. [Reserved]

Dated: September 11, 1991.

James Ward,

Acting Assistant Secretary for Consular Affairs.

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BILLING CODE 4710-06-M

22 CFR Part 42

[Public Notice 1490]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends part 42, title 22 of the Code of Federal Regulations, to implement statutory revisions and/or new provisions in the Immigration Act of 1990, Public Law 101-649. Most of the amendments are primarily editorial. In addition to the editorial changes, this rule provides a table of new immigrant visa symbols at § 42.11 and a revised substantive procedure at § 42.83 for initiating action to terminate the registration of an alien entitled to an immigrant status.

DATES: This interim rule is effective October 1, 1991. Comments are invited and must be received on or before October 31, 1991.

ADDRESSES: Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Services, Department of State, Washington, DC 20522-0113, (202) 663-1184.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Department of State, Washington, DC 20522-0113, (202) 663-1184.

SUPPLEMENTARY INFORMATION:

Background

The Immigration Act of 1990, Public Law 101-649, redesignated many sections/subsections of the Immigration and Nationality Act, added classes subject to self-contained numerical limitations not under sections 201 and 202, restructured INA 203, and added a petition requirement for classes not now subject to such a prerequisite.

Sections to This Part Not Included in This Rule

Except for § 42.32(d)(2), the regulations in subparts C and D of part 42, which relate to individual classes of aliens, are the subject of a separate interim rule. Also the subject of a separate interim rule is § 42.32(d)(2) of subpart D, which relates to special immigrants under INA 101(a)(27)(D) (employees and former employees of the United States Government). The regulations relating to changes in subpart F of part 42 also will be the subject of a separate interim rule.

Amendments by the Immigration Act of 1990

This regulatory order contains all other regulations in part 42 which have been changed in any respect. The majority of these changes are editorial and, whether or not substantive, are required for conformity with the law.

Substantive changes of a discretionary character are to be found only in §§ 42.2, 42.63, 42.65, and 42.83, as discussed below.

Section 42.2, Aliens Not Required To Present Passports

Paragraph (d), benefiting third preference applicants, was added to § 42.2 on or around 1967. It was designed to assist those immigrants most needed by U.S. industry, primarily scientists, who were natives of but not resident in totalitarian countries, unable or unwilling to obtain a passport from the authorities of their native land, and bearers of travel documents which did not meet the statutory definition of a "passport." In light of the fact that almost all aliens now have a suitable travel document and there has been little, if any, need for it, this provision has been withdrawn and the succeeding subsections (e) through (h) redesignated as (d) through (g). It should be noted, however, that any alien can still be the beneficiary of an individual passport waiver for good cause shown, and this deletion does not affect that right.

Section 42.11, Classification Symbols

New immigrant visa symbols are shown in § 42.11. The list of exceptions to the general rule that aliens are chargeable to the foreign state or dependent area of birth, contained in § 42.12, has been expanded to include those classes not subject to the numerical limitations of INA 201 and 202, i.e.: Spouses and children of legalized aliens documented under section 112 of the Immigration Act of 1990; Certain employees of U.S. businesses in Hong Kong; Natives of certain adversely affected foreign states; Displaced Tibetans; and Amerasians under section 584(b)(1), as contained in section 101(e) of Public Law 100-202. Reference therein to special immigrants, on the other hand, has been narrowed to those under INA 101(a)(27) (A) or (B), inasmuch as all others become subject to numerical limitation as the fourth employment-based preference under Public Law 101-649, section 121.

Section 42.41, Effect of Approved Petition, and Section 42.42, Petition for Immediate Relative or Preference Status

Because INA 204, as amended by section 162(b) of the Immigration Act of 1990, vests the authority and responsibility to approve petitions in the Secretary of State, rather than the Attorney General, with respect to certain classifications, § 42.41 and § 42.42 contain the minor editorial

change of deleting the reference to INS as the source of the petition approval.

Section 42.43, Suspension or Termination of Action in Petition Cases

Section 42.43(a)(2), relative to suspension of action upon expiration of the labor certification, has been deleted as no longer relevant. Section 42.43(b) reflects the new statutory citation.

Section 42.62, Personal Appearance and Interview of Applicant

Section 42.62 has been amended with respect to a cross-reference which is no longer correct, due to a change in § 42.63.

Section 42.63, Application Form and Other Documentation

Section 42.63 reflects a change in Form OF-230, which has been divided into parts I and II, and deletes current paragraph (a), which authorizes the use of a Preliminary Questionnaire. That procedure was developed in 1965 to assist aliens in understanding appropriate measures to take to obtain entitlement to an immigrant classification, primarily nonpreference, in light of the 1965 Act's changes in the structure of immigrant classes. It fell into disuse after nonpreference numbers became unavailable in 1978 and is not necessary under current conditions. The other subsections have been redesignated accordingly.

Section 42.65 Supporting Documents

Section 42.65 was amended in January, 1991, to base the period of residence that necessitates a police certificate on the location in which the alien had been resident; i.e., if the residence was in the United States, the alien's home country, or place of last permanent residence, a police certificate is required for a period of six months or longer, whereas a temporary stay in any other third country does not require a police certificate unless the stay was for a year or more. The Department subsequently found that it is not feasible to continue obtaining an FBI records check, a system that had been instituted about 15 years ago as a substitute for local/State police checks. The FBI determined such checks do not fall within the definition of a law enforcement activity, a position upheld by the Justice Department's Office of Legal Counsel. Inasmuch as the FBI has also informed the Department that such checks had rarely been productive (i.e., fewer than 1% were positive "hits" and many, if not most, of those were not grounds for exclusion or pertained to aliens who were able to obtain waivers), it would appear that discontinuing this

procedure is not deleterious to determining visa eligibility. Not least, since the FBI processes any personal requests for criminal records checks under FOIA procedures—which involve a delay of approximately a year—it is clearly not practicable or reasonable to require applicants to request such checks and still maintain an orderly processing of immigrant visa cases. Consequently, in March, 1991, the Department instructed all posts to consider police records in the United States as constructively "unobtainable". This regulation has therefore been amended to delete the reference to "the United States."

Section 42.67 Execution of Application, Registration, and Fingerprinting; Section 42.73, Procedure in Issuing Visas; and Section 42.74, Issuance of New or Replacement Visas

Section 42.67, § 42.73 and § 42.74 contain only editorial changes.

Section 42.83 Termination of Registration

Section 42.83 has been substantively as well as editorially amended. The Immigration Act of 1990, in restructuring INA 203, among other things redesignated as subsection (g) the provision relating to termination of registration, currently in paragraph (e) of this section. The revised regulations reference the new designation of the underlying statutory authority for terminating a registration. The change, although somewhat substantive is basically procedural and is designed to benefit the applicants. Under standard procedures, an applicant is requested to obtain the necessary documents to apply formally for a visa only when it appears that a visa number may become available within the following six months for persons with the applicant's priority date. The notice also instructs the applicant to notify the consular officer when the alien has complied with all the requirements therein. An appointment for an interview is customarily sent only upon receipt of the applicant's response and the allocation of a visa number for the purpose of visa issuance.

Some applicants have taken advantage of those procedures to delay their response to the initial instruction for several years, thereby negating the intent of INA 203(g). In order to further the intent of that section, the current regulation in § 42.83(a) requires the applicant to respond to a notice to appear at the consular office. This procedure has proven confusing to some applicants (inasmuch as they have not indicated to the consular office a

readiness to apply for a visa), is clearly an inconvenience, and is not necessary for compliance with the law.

In the revised regulation to this rule, the consular office will simply notify the applicant in writing that an immigrant visa number is available and put the applicant on notice that termination procedures will commence if no action is taken to obtain a visa within one year from the date of the letter. From the standpoint of the applicant, this eliminates the unnecessary and confusing step of visiting the consular office unprepared to apply formally for an immigrant visa and yet provides an appropriate alert to statutory requirements.

Interim Rule

The purpose of this rule is to reflect changes made to the Immigration and Nationality Act by the Immigration Act of 1990. The regulations contained in this rule are essentially editorial in nature and necessary for implementation of and compliance with that act. Those regulations which are of a substantive nature, § 42.65 and § 42.83, have been discussed in the preamble. The former deletes a procedural requirement which is no longer necessary, and the latter, while a substantive change, is basically procedural in nature and favorable to immigrant visa applicants in that it eliminates an unnecessary and costly requirement.

This interim rule becomes effective on October 1, 1991, the date mandated by the Immigration Act of 1990. However, it provides for post-promulgation comments, which must be submitted on or before October 31, 1991.

List of Subjects in 22 CFR Part 42

Aliens, Numerical limitations, Special immigrants, Visas.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. With regard to the information collection requirement contained in this rule, Form OF-230 has been reinstated by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

In view of the foregoing, part 42 to title 22 of the Code of Federal Regulations is amended to read as indicated below.

PART 42—[AMENDED]

1. The authority citation for part 42 is revised to read:

Authority: 8 U.S.C. 1104; 8 U.S.C. 1101 note.

§ 42.2 [Amended]

2. Section 42.2 is amended by removing paragraph (d) and

redesignating paragraphs "(e), (f), (g), and (h)" as "(d), (e), (f) and (g)."

3. Section 42.11 is revised to read as follows:

§ 42.11 Classification symbols.

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

IMMIGRANTS IMMEDIATE RELATIVES

Visa and Class	Section of Law
IR-1—Spouse of U.S. Citizen	201(b).
CR-1—Spouse of U.S. Citizen (Conditional Status)	201(b) & 216(a)(1).
IW-1—Certain spouses of Deceased U.S. Citizens	201(b).
IR-2—Child of U.S. Citizen	201(b).
CR-2—Child of U.S. Citizen (Conditional Status)	201(b) & 216.
IR-3—Orphan Adopted Abroad by U.S. Citizen	201(b).
IR-4—Orphan to be Adopted in the United States by U.S. Citizen	201(b).
IR-5—Parent of U.S. Citizen at Least 21 Years of Age	201(b).
VI-5—Parent of U.S. Citizen Who Acquired Permanent Resident Status Under the Virgin Islands Nonimmigrant Alien Adjustment Act	201(b) & Sec. 2 of the Virgin Islands Non-immigrant Alien Adjustment Act (P.L. 97-271).
Vietnam Amerasian Immigrants	
AM-1—Vietnam Amerasian Principal	584(b)(1)(A) of P.L. 100-202.
AM-2—Spouse/Child of AM-1	584(b)(1)(B) of P.L. 100-202.
AM-3—Natural Mother of AM-1 (and Spouse or Child of Such Mother), or Person Who has Acted in Effect as the Mother, Father, or Next-of-Kin of AM-1 (and Spouse or Child of Such Person)	584(b)(1)(C) of P.L. 100-202.
Special Immigrants	
SB-1—Returning Resident	101(a)(27)(A).
SC-1—Person Who Lost U.S. Citizenship by Marriage	101(a)(27)(B) & 324(a).
SC-2—Person Who Lost U.S. Citizenship by Serving in Foreign Armed Forces	101(a)(27)(B) & 327.
Family-Sponsored Preferences	
1st Preference:	
F11—Unmarried Son/Daughter of U.S. Citizen	203(a)(1)
F12—Child of F11	203(d).
2nd Preference (Subject to Country Limitations):	
F21—Spouse of Alien Resident	203(a)(2).
C21—Spouse of Alien Resident (Conditional)	216(a)(1).
F22—Child of Alien Resident	203(a)(2).
C22—Child of Alien Resident (Conditional)	216(a)(1).
F23—Child of F21 or F22	203(d).
C23—Child of C21 or C22 (Conditional)	216(a)(1).
F24—Unmarried Son/and Daughter of Alien Resident	203(a)(2)(B)
C24—Unmarried Son/Daughter of Alien Resident (Conditional)	216(a)(1).
F25—Child of F24	203(d).
C25—Child of C24 (Conditional)	216(a)(1).
2nd Preference (Exempt from Country Limitations):	
FX1—Spouse of Alien Resident	203(a)(2)(A).
CX1—Spouse of Alien Resident (Conditional)	216(a)(1).
FX2—Child of Alien Resident	203(a)(2)(A).
CX2—Child of Alien Resident (Conditional)	216(a)(1).
FX3—Child of FX1 or FX2	203(d).
CX3—Child of CX1 or CX2 (Conditional)	216(a)(1).
3rd Preference:	
F31—Married Son/Daughter of U.S. Citizen	203(a)(3).
C31—Married Son/Daughter of U.S. Citizen (Conditional)	216(a)(1).
F32—Spouse of F31	203(d).
C32—Spouse of C31	203(d).
F33—Child of F31	203(d).
C33—Child of C31	203(d).
4th Preference:	
F41—Brother/Sister of U.S. Citizen	203(a)4.
F42—Spouse of F41	203(d).
F43—Child of F41	203(d).
Employment Based Preferences	
Employment 1st Preference (Priority Workers):	
E11—Alien with Extraordinary Ability	203(b)(1)(A).
E12—Outstanding Professor or Researcher	203(b)(1)(B).
E13—Multinational Executive or Manager	203(b)(1)(C).
E14—Spouse of Alien Classified E11, E12, or E13	203(d).
E15—Child of Alien Classified E11, E12, or E13	203(d).
Employment 2nd Preference (Professional Holding Advanced Degrees or Persons of Exceptional Ability):	
E21—Professional Holding Advanced Degree or Alien of Exceptional Ability	203(b)(2).
E22—Spouse of Alien Classified E21	203(d).
E23—Child of Alien Classified E21	203(d).
Employment 3rd Preference (Skilled Workers, Professionals, and Other Workers):	
E31—Skilled Worker	203(b)(3)(A)(i).
E32—Professional Holding Baccalaureate Degree	203(b)(3)(A)(ii).
E34—Spouse of Alien Classified E31 or E32	203(d).

IMMIGRANTS IMMEDIATE RELATIVES—Continued

Visa and Class	Section of Law
E35—Child of Alien Classified E31 or E32	203(d).
EW3—Other Workers (Subgroup Numerical Limit)	203(b)(3)(A)(iii).
EW4—Spouse of Alien Classified EW3	203(d).
EW5—Child of Alien Classified EW3	203(d).
Employment 4th Preference (Certain Special Immigrants):	203(b)(4) and:
SD1—Minister of Religion	101(a)(27)(C)(i)(I).
SD2—Spouse of Alien Classified SD1	203(d).
SD3—Child of Alien Classified SD1	203(d).
SE1—Certain Employees or Former Employees of the U.S. Government Abroad	101(a)(27)(D).
SE2—Spouse of Alien Classified as SE1	203(d).
SE3—Child of Alien Classified as SE1	203(d).
SEH—Employees of the U.S. Mission in Hong Kong or their Immediate Family Members	101(a)(27)(D) or Section 152 of the Immigration Act of 1990.
SF1—Certain Former Employees of the Panama Canal Company or Canal Zone Government	101(a)(27)(E).
SF2—Spouse or Child of Alien Classified SF1	203(d).
SG1—Certain Former Employees of the U.S. Government in the Panama Canal Zone	101(a)(27)(F).
SG2—Spouse or Child of Alien Classified of SF1	203(d).
SH1—Certain Former Employees of the Panama Canal Company or Canal Zone Government on April 1, 1979	101(a)(27)(G).
SH2—Spouse or Child of Alien Classified SH1	203(d).
SJ2—Accompanying Spouse or Child of Alien Classified SJ1 (Certain Foreign Medical Graduates)	101(a)(27)(H) 203(b)(4).
SK1—Certain Retired International Organization Employees	101(a)(27)(I)(iii);
SK2—Spouse of Alien Classified SK-1	101(a)(27)(I)(iv).
SK3—Certain Unmarried Sons or Daughters of International Organization Employee	101(a)(27)(I)(i).
SK4—Certain Surviving Spouse of Deceased International Organization Employee	101(a)(27)(I)(ii).
SL1—Certain Juvenile Court Dependents	101(a)(27)(J).
SR1—Certain Religious Workers	101(a)(27)(C)(ii)(II) and (III).
SR2—Spouse of Alien Classified SR1	203(d).
SR3—Child of Alien Classified SR1	203(d).
Employment 5th Preference (Employment Creation) (Conditional Status):	
C51—Employment Creation <i>OUTSIDE</i> Targeted Area	203(b)(5)(A).
C52—Spouse of Alien Classified C51	203(d).
C53—Child of Alien Classified C51	203(d).
T51—Employment Creation <i>IN</i> Targeted Rural/High Unemployment Area	203(b)(5)(B).
T52—Spouse of Alien Classified T51	203(d).
T53—Child of Alien Classified T51	203(d).
Other Numerically Limited Categories	
Diversity Immigrants (Beginning in 1995):	
DV1—Diversity Immigrant	Section 203(c).
DV2—Spouse of DV1	Section 203(d).
DV3—Child of DV1	Section 203(d).
Transition for Spouse or Child of Legalized Aliens (Fiscal Years 1992–1994):	
LB1—Spouse of Legalized Alien	Section 112 of the Immigration Act of 1990.
LB2—Child of an Alien Classified LB1	Section 112 of the Immigration Act of 1990.
Transition for Employees of Certain U.S. Businesses in Hong Kong (Fiscal Years 1991–1993):	
HK1—Employee of U.S. Business in Hong Kong	Section 124 of the Immigration Act of 1990.
HK2—Spouse of Alien Classified HK1	Section 124 of the Immigration Act of 1990.
HK3—Child of Alien Classified HK1	Section 124 of the Immigration Act of 1990.
Diversity Transition for Natives of Certain Adversely Affected Foreign States (Fiscal Years 1992–1994):	
AA1—Diversity Transition Immigrant	Section 132 of the Immigration Act of 1990.
AA2—Spouse of Alien Classified AA1	Section 132 of the Immigration Act of 1990.
AA3—Child of Alien Classified AA1	Section 132 of the Immigration Act of 1990.
Transition for Displaced Tibetans. (Fiscal Years 1991–1993):	
DT1—Displaced Tibetan	Section 134 of the Immigration Act of 1990.
DT2—Spouse of Alien Classified DT1	Section 134 of the Immigration Act of 1990.
DT3—Child of Alien Classified DT1	Section 134 of the Immigration Act of 1990.

4. Section 42.12(a) is revised to read as follows:

§ 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 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 or the alien is classifiable under:

- (1) INA 201(b);
- (2) INA 101(a)(27) (A) or (B);
- (3) Section 112 of Public Law 101–649;
- (4) Section 124 of Public Law 101–649;
- (5) Section 132 of Public Law 101–649;
- (6) Section 134 of Public Law 101–649;

or

(7) Section 584(b)(1) as contained in section 101(e) of Public Law 100-202.

5. Sections 41.41 and 41.42 and 42.43 are revised to read as follows:

§ 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 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 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 Petitions for immediate relative or preference status.

Petition for immediate relative or preference status. The consular officer may not issue a visa to an alien as an immediate relative entitled to status under 201(b), a family-sponsored immigrant entitled to preference status under 203(a)(1)-(4), or an employment-based preference immigrant entitled to status under INA 203(b)(1)-(5), unless the officer has received 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.* 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.

(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(g) in accordance with the provisions of § 42.83.

§ 42.62 [Amended]

6. In paragraph (a) to § 42.62, change the reference "42.63(a)(3)" to read "42.63(a)(2)."

7. In § 42.63, paragraph (a)(1) is removed. Paragraph (a)(2) is redesignated as paragraph (a)(1), newly

redesignated (a)(1) is revised, and paragraph (a)(3) is redesignated as paragraph (a)(2) to read as follows:

§ 42.63 Application forms and other documentation.

(a) *Application Forms.*—(1) *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. Form OF-230 consists of parts I and II which, together, are meant in any reference to this Form.

§ 42.65 [Amended]

8. In § 42.65, paragraph (c), in line 6, "the United States," is removed and in line 11, after the word "means", the words "those of" are inserted.

9. Section 42.67(a)(2) is revised to read as follows:

§ 42.67 Execution of application, registration, and fingerprinting.

(a) *Execution of Visa Application.*
(1) * * *

(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 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 of Taiwan, who shall then sign the application over the officer's title.

10. Paragraph (a)(3) of § 42.73 is revised to read as follows:

§ 42.73 Procedure in issuing visas.

(a) *Insertion of data.* * * *

(3) No entry need be made in the space provided for foreign state or other applicable area limitation on visas issued to aliens in the classifications set forth in § 42.12(a)(1)-(7), but such visas may be numbered if a post voluntarily uses a consecutive post numbering system.

11. In § 42.74 paragraphs (a) and (b) are revised to read as follows:

§ 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) (A) or (B), 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), (b), or (c), or under sections 112, 124, or 132 of the Immigration Act of 1990, 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.

12. In § 42.83, paragraph (a) is revised to read as follows:

§ 42.83 Termination of registration.

(a) *Termination following failure of applicant to apply for visa.* In accordance with INA 203(g), an alien's registration for an immigrant visa shall be terminated if, within one year after transmission of a notification of the availability of an immigrant visa, the applicant fails to apply for an immigrant visa.

Dated: September 11, 1991.

James Ward,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 91-23467 Filed 9-30-91; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 91

[Docket No. R-91-1507; FR-2932 I-04]

RIN 2501-AB13

Comprehensive Housing Affordability Strategy; Extension of Comment Period

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule and request for comments; extension of comment period.

SUMMARY: The comment period announced in the interim rule establishing the new Comprehensive Housing Affordability Strategy (CHAS) published on February 4, 1991 (56 FR 4480) was May 6, 1991. This notice extends the comment period on the rule, and invites comment on the forms, procedures prescribed by HUD, and the CHAS development process, as well, until a date after the October 31 recommended date for submission of the CHAS to HUD. This change is being made in recognition of the fact that jurisdictions submitting CHAS documents will then be able to respond on the basis of experience under the interim rule. Comments received during this extended period will be considered along with those previously submitted during the development of a final rule, scheduled for publication in early 1992.

DATES: Comment due date: November 15, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by title and docket number and should be sent to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh St., SW., Washington, DC 20410.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable

access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may call the Rules Docket Clerk at (202) 708-2084, TDD (202) 708-3259 to confirm receipt. (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT:

David M. Cohen, Director, Office of Urban Rehabilitation, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-2685. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: A CHAS is a planning document comprised of fifteen statutory elements, principal among which are an assessment of housing assistance needs, a description of market conditions, a statement of resources available, and a plan of action to address the needs. The CHAS, authorized by title I of the Cranston-Gonzalez National Affordable Housing Act of November 28, 1990, Public Law 101-625, replaces two other documents—the Housing Assistance Plan and the Comprehensive Homeless Assistance Plan—used in HUD programs before October 31, 1991. In order to receive direct funding for a wide variety of HUD programs, applicants that are governmental units must have an approved CHAS, and applicants that are not governments must obtain a certification that their applications are in compliance with the CHAS for the jurisdiction.

This notice requests comments that will be used in determining the content of the final rule. The extended comment due date will permit public comments to reflect jurisdictions' actual experience with the interim rule, forms, procedures, and the CHAS development process. (Those having commented previously are requested not to reiterate their earlier comments.)

Development of a final rule after the new comment closing date also will allow the Department to evaluate its experience with the comprehensive housing affordability strategies submitted under the interim rule.

Authority: Sections 101-108, Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, 104 Stat. 4079); sec. 7(d), Department of Housing and Urban Development Act of 1965 (42 U.S.C. 3535(d)).

Dated: September 24, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91-23539 Filed 9-30-91; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. R-91-1565; FR-3169-F-01]

Mortgage Insurance—Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on Section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for this program into line with competitive market rates.

EFFECTIVE DATE: September 18, 1991.

FOR FURTHER INFORMATION CONTACT:

James B. Mitchell, Director, Financial Services Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-4325. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 235 insurance programs has been reduced from 9.0 percent to 8.5 percent.

Until recently, HUD regulated interest rates not only for the section 235 Program, but also for fire safety equipment loans insured under section 232 of the National Housing Act. However, section 429(e)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) amended the National Housing Act to provide that interest on fire safety equipment loans under section 232(i) of the Act will be "at such rate as may be agreed upon by the mortgagor and the mortgagee." Accordingly, these loans, like most other National Housing Act-authorized loans, now have their interest rates determined by negotiation. Accordingly, this announcement of a change in interest rate ceilings for FHA-insured mortgages is limited to the section 235 Program. The Secretary has determined that this change is immediately necessary to meet the needs of the market and to