

authorities were given to the FDA by the Safe Medical Devices Act of 1990.

EFFECTIVE DATE: October 10, 1991.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: On November 28, 1990, the President signed into law the Safe Medical Devices Act of 1990 (SMDA) (Pub. L. 101-629, which amends the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*)). The purpose of the new legislation is to strengthen the Medical Device Amendments of 1976, the first legislation to provide a comprehensive framework to regulate medical devices, and to further ensure the safety and effectiveness of medical devices by providing the agency tools to quickly remove dangerous and defective articles from the market. Two such tools that the SMDA provided the Secretary are authority to temporarily suspend the approval of an application of a device, and to recall devices. (See sections 515(e) and 518(e) of the act (21 U.S.C. 360e(c)(3) and 360h(e)).) Section 515(e)(3) of the act states that if, after providing an opportunity for an informal hearing, the Secretary determines there is a reasonable probability that the continuation of distribution of a device under an approved application would cause serious adverse health consequences or death, the Secretary shall by order temporarily suspend the approval of the application. Section 518(e) provides that if the Secretary finds that there is a reasonable probability that a device intended for human use would cause serious adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person to immediately cease distribution of such device, and to immediately notify health professionals and device user facilities of the order and to instruct such professionals and facilities to cease use of such device. Under 21 CFR 5.10(a), authority to exercise functions vested in the Secretary under the act are redelegated to the Commissioner of Food and Drugs. Under this regulation, the Commissioner of Food and Drugs is redelegating the temporary suspension and recall authorities under the act, sections 515(e)(3) and 518(e), to CDRH because these authorities are directly related to current CDRH operations and programs. Authority to recall devices under section 518(e) of the act is redelegated to the Director and Deputy Director, CDRH, and the Director and Deputy Director,

Office of Compliance and Surveillance, CDRH. Authority to temporarily suspend premarket approval applications is redelegated to the Director and Deputy Director, CDRH, the Director, and Deputy Director, Office of Compliance and Surveillance, CDRH, and the Director, Deputy Director, and Associate Director, Office of Device Evaluation, CDRH.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 is revised to read as follows:

Authority: U.S.C. 504, 552, App. 2; 7 U.S.C. 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 21 U.S.C. 41-50, 61-63, 141-149, 467f, 679(b), 801-886, 1031-1309; secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354-360F, 361, 362, 1701-1706, 2101-2672 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 2421, 242n, 243, 262, 263, 263b-263n, 264, 265, 300u-300u-5, 300aa-1-300ff); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11490, 11921, and 12591.

2. New §§ 5.56 and 5.57 are added to subpart B to read as follows:

§ 5.56 Recall authority.

The following officials for medical devices assigned to their respective organizations are authorized to determine under section 518(e) of the Federal Food, Drug, and Cosmetic Act, that there is reasonable probability that a device intended for human use would cause serious adverse health consequences or death and to issue an order, upon making such a determination, requiring appropriate persons, including manufacturers, importers, distributors, or retailers of medical devices, to cease distribution immediately and to notify immediately health professionals and device user facilities of the order and to instruct such professionals and facilities to cease use of the device:

(a) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH).

(b) The Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

§ 5.57 Temporary suspension of a medical device application.

The following officials for medical devices assigned to their respective organizations are authorized under section 515(e) of the Federal Food, Drug, and Cosmetic Act, to determine that there is reasonable probability that continuation of the distribution of a device under an approved application would cause serious adverse health consequences or death, and upon making such a determination, to issue an order to temporarily suspend the approval of an application:

(a) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH).

(b) The Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

(c) The Director, Deputy Director, and Associate Director, Office of Device Evaluation, CDRH.

Dated: October 3, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

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DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 1499]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended; Immigrants Subject to Numerical Limitations

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends part 42 of title 22, Code of Federal Regulations, to implement the provisions of sections 121, 152, and 162 of Public Law, 101-649, Immigration Act of 1990. Sections 121 and 162 relate to special immigrants designated as employment-based fourth preference immigrants, and section 152 relates to extension of special immigrant status to certain employees of the Consulate General in Hong Kong and their family members. These regulations are being added to

§ 42.32(d)(2) (formerly § 42.25) and reflect the amendments of the Immigration Act of 1990.

The regulations in this interim rule incorporate the essence of the regulations in former § 42.25 and equivalent material relating to certain employees, and their families, of the Consulate General in Hong Kong plus measures associated with the petition requirement. As such, they are mandated for conformity with the statute. Because of this and the time constraints imposed by the effective date of the statutory provisions (October 1, 1991), they are being published as an interim rule with request for comments.

DATES: This interim rule is effective October 1, 1991. Comments are invited and must be received on or before November 12, 1991.

ADDRESSES: Comments may be submitted in duplicate to: 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 Services, Department of State, Washington, DC, 20522-0113, (202) 663-1184.

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act, as enacted, continued the prior statutory exemption from numerical limitations of certain classes of aliens by designating them as "special immigrants" under INA 101(a)(27). Under current law, applicants for such status have only to satisfy the consular officer that they meet the criteria for the specific class as described in an appropriate paragraph of INA 101(a)(27).

Changes Made by the Immigration Act of 1990

The Immigration Act of 1990 designated all but two (returning residents and certain expatriates) of the "special immigrant" classes as employment-based fourth preference immigrants, thus subjecting them for the first time not only to numerical restrictions but also to a petition requirement. Under the new provisions, all but one of the affected classes will have to satisfy the petition-adjudicating officer of the INS that they are qualified for such status in order to obtain status under INA 203(b)(4). The exception is INA 101(a)(27)(D), which accords special immigrant status to certain employees and former employees of the United States Government abroad, and will require the filing of a petition with the Secretary of State.

Classification under INA 101(a)(27)(D)

Classification of certain employees as special immigrants was requested by the Department of State at the time of consideration of the 1952 legislation. This status became INA 101(a)(27)(D). Under its terms, the principal officer of a Foreign Service post has to recommend such status for the employee or retiree under exceptional circumstances and the recommendation has to be approved by the Secretary of State in the national interest. The new petition requirement to acquire status under INA 203(b)(4) has not supplanted the criteria or procedures for approval of special immigrant status under INA 101(a)(27)(D). It is an additional step, levied after the Secretary's approval of special immigrant status has been granted.

Employees of Consulate General at Hong Kong

The Immigration Act of 1990 also authorized the inclusion of employees of the Consulate General in Hong Kong as special immigrants under INA 101(a)(27)(D) under different criteria. The regulations in § 42.32 (d)(2)(i) and (d)(2)(ii) therefore contain not only the gist of the current regulations relating to the requirement for the Secretary's grant of special immigrant status for long-term employees but also the subset of statutory requirements for those employed in Hong Kong.

Discussion of Regulations

The regulations herein are essentially straight-forward and self-explanatory but two aspects of the regulations deserve, perhaps require, additional explanation. One is the time limit for petitioning following the Secretary's grant of special immigrant status and the other relates to the fee requirement.

Time Limit for Petitioning

There has long been a procedural requirement that employees acquiring special immigrant status use it to obtain a visa and admission within one year. This was based on the premise that acquisition of such status should not be simply a "safety-valve", and is analogous to the "termination of registration" provision in INA 203(g), as redesignated. (Experience had shown, over a number of years prior to enactment of the termination provision in 1965, that many aliens who had no immediate intention of immigrating nonetheless sought immigrant status solely to protect themselves against a possible change in circumstances that would make immigration desirable or even necessary.) The administrative

procedure relating to the prompt use of special immigrant status has been formalized in regulations as a part of the petition requirement.

Fee Requirement

Clearly, government employees could not be exempted from payment of a fee, inasmuch as INS has petition filing fees to acquire status under the other preferences and undoubtedly will for the other special immigrants blanketed under INA 203(b)(4). On the other hand, the Service will base its fee on adjudication of the alien's entitlement to special immigrant status as well as the question of fourth preference. Only in the case of government employees is the adjudication procedure in two separate steps. As a matter of equity as well as practicality, therefore, the petition filing fee (when determined) for aliens described in INA 101(a)(27)(D) will include costs associated with the preliminary adjudication of special immigrant status as well as petition approval.

Other Changes

The regulations also address the petition requirement for both classes of aliens eligible for special immigrant status under INA 101(a)(27)(D). The petition requirement in itself has necessitated other regulatory provisions, such as priority date, at § 42.32(d)(2)(iii); validity period, § 42.32 (d)(2)(iv) and (d)(2)(v); fee, § 42.32(d)(2)(vi); and, under the circumstances, delegation of petition-approval authority, § 42.32(d)(2)(vii). (It is inconceivable that the Secretary, having found it in the national interest to grant special immigrant status, would deny the petition to accord preference status under INA 203(b)(4).)

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. The information collection requirement contained in this rule is being submitted to the Office of Management and Budget in compliance with the Paperwork Reduction Act of 1980.

List of Subjects in 22 CFR Part 42

Immigrants, Special immigrants, Visa petitions.

In view of the foregoing, part 42 to title 22 is amended by revising § 42.32(d).

PART 42—[AMENDED]

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

Authority: 8 U.S.C. 1104; 8 U.S.C. 1101 note; 8 U.S.C. 1153.

2. In section 42.32, paragraph (d)(2) is added to read as follows:

§ 42.32 Employment based immigrants.

(d) *Fourth Preference—Special immigrants.* (1) *Religious workers.* * * *

(2) *Certain U.S. Government employees—(i) General.* (A) An alien is classifiable under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) if a petition to accord such status has been approved by the Secretary of State. An alien may file such a petition only after, but within one year of, notification from the Department that the Secretary of State has approved a recommendation from the Principal Officer that special immigrant status be accorded the alien in exceptional circumstances and has found it in the national interest so to do.

(B) An alien may qualify as a special immigrant under INA 101(a)(27)(D) on the basis of employment abroad with more than one agency of the U.S. Government provided the total amount of full-time service with the U.S. Government is 15 years or more.

(C) Pursuant to INA 203(d), and whether or not named in the petition, the spouse or child of an alien classified under INA 203(b)(4), if not 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.

(ii) *Special Immigrant Status for Certain Aliens Employed at the United States Mission in Hong Kong.* (A) An alien employed at the United States Consulate General in Hong Kong under the authority of the Chief of Mission or an alien employed pursuant to section 5913 of title 5 of the United States Code is eligible for classification under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) provided:

(1) The alien has performed faithfully for a total of three years or more;

(2) The alien is a member of the immediate family of an employee entitled to such special immigrant status; and

(3) The welfare of the alien or the family member is subject to clear threat due directly to the employee's employment with the United States Government or under a United States Government official; and

(4) Subsequent to the Secretary's approval of the Principal Officer's

recommendation and finding it in the national interest to do so, but within one year thereof, the alien has filed a petition for status under INA 203(b)(4) which the Secretary has approved.

(B) An alien desiring to benefit from this provision must seek such status not later than January 1, 2002.

(C) For purposes of § 42.32(d)(2)(ii)(A), the term "member of the immediate family" means the definition (as of November 29, 1990) in Volume 6 of the Foreign Affairs Manual, section 117k, of a relative who has been living with the employee in the same household.

(iii) *Priority Date.* The priority date of an alien seeking status under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) shall be the date on which the petition to accord such classification is filed. The filing date of the petition is that on which a properly completed form and the required fee are accepted by a Foreign Service post.

(iv) *Petition Validity.* Except as noted in this paragraph, the validity of a petition approved for classification under INA 203(b)(4) shall be six months beyond the date of the Secretary of State's approval thereof or the availability of a visa number, whichever is later. In cases described in § 42.32(d)(2)(ii), the validity of the petition shall not in any case extend beyond January 1, 2002.

(v) *Extension of Petition Validity.* If the principal officer of a post concludes that circumstances in a particular case are such that an extension of the validity of the Secretary's approval of special immigrant status or of the petition would be in the national interest, the principal officer shall recommend to the Secretary of State that such validity be extended for not more than one additional year.

(vi) *Fees.* The Secretary of State shall establish a fee for the filing of a petition to accord status under INA 203(b)(4) which shall be collected following notification that the Secretary has approved status as a special immigrant under INA 101(a)(27)(D) for the alien.

(vii) *Delegation of Authority to Approve Petitions.* The authority to approve petitions to accord status under INA 203(b)(4) to an alien described in INA 101(a)(27)(D) is hereby delegated to the chief consular officer at the post of recommendation or, in the absence of the consular officer, to any alternate approving officer designated by the principal officer. Such authority may not be exercised until the Foreign Service post has received formal notification of the Secretary's approval of special

immigrant status for the petitioning alien.

* * * * *

Dated: September 18, 1991.

John H. Adams,

Acting Assistant Secretary for Consular Affairs.

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22 CFR Part 42

[Public Notice 1498]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended; Numerical Controls and Priority Dates Under the INA as Amended by Public Law 101-649

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends part 42 to title 22, Code of Federal Regulations (1) to implement the provisions of sections 101, 102, 104, 111 and 121 of Public Law 101-649, and (2) to incorporate the provisions of section 112 of the same act. The regulations at §§ 42.51, 42.52, 42.53, and 42.54 reflect changes mandated for conformity with the statute. The regulation at § 42.55 reflects an editorial change deleting a reference which is no longer applicable.

DATES: This interim rule is effective October 1, 1991. Written comments are invited and must be received on or before November 12, 1991.

ADDRESSES: Comments may be submitted in duplicate to: 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:

Background

Immigration and Nationality Act (INA)

The Immigration and Nationality Act (INA) has long contained three standards for the distribution of immigrant visa numbers:

(1) They must be allocated in the order in which petitions according status were filed—INA 203(c) which will become 203(e) on October 1, 1991;

(2) Natives of a single country may not receive more than 20,000 in a fiscal year—INA 202(a); and

(3) Allocations to countries subject to INA 202(e) (i.e., those who had been allocated 20,000 the prior year) have to conform to the preference percentages.

The latter two requirements were expressly designed to be a brake on the application of the first. The INA 202(a) provision dates to 1965, and the legislative history shows it was intended to prevent any country (or small group of countries) from pre-empting all the visa numbers as a result of huge backlogs that had developed during the operation of the national origins quota system.

Thus, for example, even if, in strict chronological order, the first 40,000 applicants in a preference were the natives of Italy or China (both had large preference backlogs when the 1965 Act was under consideration), the per-country limit alone effectively prevented the Department of State from allocating such preference numbers exclusively to natives of that country. In other words, despite the generally-applicable absolute chronological requirement of INA 203(c), Congress also provided that, in certain circumstances, applicants with earlier priority dates would be bypassed so that others would be able to immigrate.

Similarly, concern was being expressed by the early 1970's about the effect of the INA 203(a) requirement that visas be allocated in the order of the preference classes. In some instances, this led to the pre-emption of all the numbers available under the per-country ceiling by the first 2 or 3 preference classes, thus denying visas to members of the lower preferences from that country and increasing backlogs in those classes. In other cases, a majority of visa numbers in a given preference were being pre-empted by the natives of one country with a substantial demand in that preference by applicants with very early priority dates. In 1976, therefore, Congress enacted another provision [INA 202(e)] to negate the combined effect of INA 203(a) and 203(c).

In short, Congress appears to have intended that applicants be taken in priority date order to the extent practicable, although it did not so state.

Procedures in Allocating Numbers

The system employed by the Department of State to implement these several, seemingly conflicting, provisions has been to allocate approximately 1/12th of total numbers for each class each month. Relying on reasonable estimates, in accordance with INA 203(g), as redesignated by the Immigration Act of 1990, it has been quite possible to know, for example, that natives of country "x" will be limited to

5200 2nd preference numbers (plus "fall down", if any) during the fiscal year under INA 202(e). After making allowance for that many applicants, it has then been permissible, indeed required, to bypass other applicants chargeable to that country and allocate 2nd preference numbers to applicants next in line from other countries. It must be emphasized that whether country "x" receives its 5200 2nd preference numbers over the 12 months or in the first few months of the fiscal year, the necessity to "skip over" the remaining applicants chargeable to country "x" having the earliest priority dates, despite INA 203(c), would still exist. The only alternative would be a total bar against 2nd preference issuance anywhere else in the world, thus causing upwards of 100,000 2nd preference numbers to fall to the lower preferences. This was clearly not the intent of Congress as it would defeat the Congressional purpose in establishing a ratio within total visa numbers attributed to the various classifications in INA 202(e) and 203(a).

The allocation system employed not only complied with the intent of Congress. It also made for orderly processing at posts around the world. Staffing problems rarely, and only transitorily, caused "administrative backlogs", i.e., a situation in which a post's qualified demand and permissible allocations exceeded the post's capability to process that amount of cases.

Section 102 of Public Law 101-649

Section 102 of the Immigration Act of 1990 amended INA 202 in a dramatic fashion by providing that 75% of the visa numbers set aside for 2nd preference spouses and children would not be charged against the per-country ceiling. In short, it removed the brake on "over-allocating" to natives of a single country.

This seems a very understandable response to the development of immense backlogs in 2 or 3 countries that result in such disparities as a 2nd preference cutoff date of 7-01-80 for Mexico, 9-22-83 for the Philippines, 4-08-87 for the Dominican Republic but 10-15-88 for the rest of the world (as of the date of enactment). This statutory change will have a drastic effect, however, on the resulting distribution of visa numbers and, to a lesser extent, on the allocation system.

Section 203(a)(2)(A) of the Immigration and Nationality Act, as amended by Public Law 101-649

Current backlogs show that Mexico has approximately 22,000 second

preference applicants with priority dates earlier than those of applicants from any other country, and that about 8,000 natives of the Philippines would next be competitive (along with an additional 24,000 Mexicans) for 2A "per-country ceiling exempt" visas before applicants from any other country could be considered.

Although those applicants will be first in line for the "per-country ceiling exempt" visa numbers, the law still provides a braking mechanism similar in effect to the former INA 202(e) formula. The new formulation forbids the use of 2A "per-country ceiling counted" numbers by applicants chargeable to an oversubscribed country that receives more 2A "exempt" numbers than the pro-rata share of 2A numbers would total. In effect, this Provision will Permit concurrent allocations of 2A "exempt" and 2A "counted" visa numbers.

Specifically, as documentarily qualified demand is reported to the Department, the priority dates are tabulated (without regard to the country of chargeability of the applicants) in strict chronological sequence. Thereafter, in allocating approximately 8000 2A visa numbers each month, the first 75% (i.e., 6000) will be allocated for applicants with the 6000 earliest priority dates. Since, as noted, the cutoff date for Mexico has long been years earlier than other 2nd preference cutoff dates, the vast majority of those 6000 numbers will go to persons chargeable to Mexico.

Nonetheless, there are always a few applicants scattered around the world who do not, for one reason or another, apply for a visa as soon as possible. Therefore, there will almost inevitably be some documentarily qualified applicants with priority dates as early as some of those chargeable to Mexico. It does not matter, however, what country one is from. If the priority date is within the first 6000, a "per-country exempt" visa number will be allocated.

The remaining 25% of the Family 2A numbers can then be allocated to the applicants from other countries next in line, because of the prohibition against use of such numbers by certain countries as noted above. Mexico, and probably the Philippines in FY-92, can be expected to receive 2A per-country exempt numbers in excess of a pro-rata total. As a result, in allocating the final 2000 2A numbers, priority dates of applicants chargeable to Mexico and Philippines must be bypassed. Documentarily qualified applicants from all other countries will receive allocations from this 2000 numbers pool.

Discussion of Regulations

The Department is therefore amending the numerical control regulations in § 42.51 not only to reflect the new numerical limitations but also to provide for simultaneous allocation of INA 203(a)(2)(A) per-country-limit-exempt and (2)(A) per-country-limit-counted visa numbers as set forth below.

The amendments made in the other sections require less explanation. The Immigration Act of 1990 added several classes of aliens subject to a numerical limitation other than those under INA 201, 202 and 203; it also abolished the nonpreference class. Several of the new classes, e.g., diversity transition immigrants, are covered in other parts of title 22. On the other hand, spouses and children of legalized aliens under section 112 of the Immigration Act of 1990 are not; as family-sponsored second Preference immigrants, regulations pertaining to them are in § 42.31.

Accordingly, § 42.51(a) has been amended not only to accord with the new numerical limitations but also to provide for Departmental control over the limitation set forth in section 112. Section 42.51(d) contains minor editorial changes required by the inclusion of special immigrants in INA 203(b)(4).

Similarly, § 42.52(a) as amended herein requires records to be maintained also of aliens described in section 112 of the Immigration Act of 1990. Section 42.52(b) has been amended to (1) eliminate those bases of entitlement to status which related to the nonpreference class, (2) limit the INA 101(a)(27) reference to the only two special immigrant classifications that will not require petitions, and (3) add both Vietnam Amerasians and diversity immigrants under INA 203(c).

Section 42.53(a) has been amended to delete the reference to third and sixth preference applicants. Section 42.53(b) (which dealt with nonpreference applicants) has been deleted. Section 42.53(c) has been redesignated as § 42.53(b) and edited to remove the reference to nonpreference immigrants and to specify the new designations in INA 203. Section 42.53(d) has been redesignated as § 42.53(c), and contains a minor editorial change.

Section 42.54(a), as amended on May 3, 1991 (56 FR 2034), has been further amended editorially to (1) specify, in paragraph (a)(1), the revised designations of INA 203, (2) replace the current text of paragraph (2) with new text relating to diversity immigrants, and (3) delete paragraph (3) because of the inclusion of INA 101(e)(27) (E), (F) and (G) applicants in the employment-based

fourth preference at § 42.32(d)(2) (which brings them within the terms of § 42.54(a)(1)). An editorial change was made in § 42.55 to delete the reference to the Panama Canal Act beneficiaries, who will now be reported as applicants under INA 203(b)(4).

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. There is no collection of information under the Paperwork Reduction Act of 1980 required in this rule.

List of Subjects in 22 CFR Part 42

Immigrants, Numerical controls, Priority dates.

In view of the foregoing, title 22 of the Code of Federal Regulations, subpart F of part 42 is revised to read as follows:

PART 42—[AMENDED]

* * * * *

Subpart F—Numerical Controls and Priority Dates

Sec.	
42.51	Department control of numerical limitations.
42.52	Post records of visa applications.
42.53	Priority date of individual applicants.
42.54	Order of consideration.
42.55	Reports on numbers and priority dates of applications on record.

Subpart F—Numerical Controls and Priority Dates

§ 42.51 Department control of numerical limitations.

(a) *Centralized control.* (1) 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:

- (i) Not to exceed 27 percent of the world-wide total made available under INA 203 (a), (b) and (c) in any of the first three quarters of any fiscal year; and
- (ii) Not to exceed, in any month of a fiscal year, 10% of the world-wide total made available under INA 203 (a), (b) and (c) plus any balance remaining from authorizations for preceding months in the same fiscal year.

(2) The Department shall control the limitation set forth in section 112 of the Immigration Act of 1990, under which not more than 10% of the total numbers plus any numbers remaining from authorizations for preceding months

shall be allocated in any month of a 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 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 the INS, taking into account the limitations prescribed in INA 202(e) in the allocation of visa numbers under INA 212(a)(4)(B) and INA 203(a)(2)(A).

(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) *Aliens subject to Panama Canal Act.* Centralized control of the numerical limitations on immigration specified in section 3201 of the Panama Canal Act of 1979 is established in the Department. The Department shall limit the number of visas that may be issued and the number of adjustments of status that may be granted to immigrants qualifying for visas under INA 203(b)(4) as aliens described in 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 or after October 1, 1979. If an alien as so described 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 a visa issued to such an alien is revoked pursuant to § 42.82, that fact shall be reported to the Department for recapture of the Panama Canal Act number.

§ 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 and section 112 of the Immigration Act of 1990. Similar records shall be kept for the classes specified in INA 201(b)(2) and 101(a)(27) (A) and (B) 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(e)(3), as redesignated by the Immigration Act of 1990.

(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 satisfied the consular officer that the alien is entitled to special immigrant status under INA(101)(a)(27) (A) or (B);

(3) Is entitled to status as a Vietnam Amerasian under section 584(b)(1) of section 101(e) of Public Law 100-202 as amended by Public Law 101-167 and re-amended by Public Law 101-513; or

(4) Beginning in FY-95, is entitled to status as a diversity immigrant under INA 203(c).

(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 preference visa applicant under INA 203 (a) or (b) shall be the filing date of the approved petition that accorded preference status.

(b) *Former Western Hemisphere applicant with priority date prior to January 1, 1977.* Notwithstanding the provisions of paragraph (a) 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 preference immigrant upon approval of a petition according status under INA 203 (a) or (b).

(c) *Derivative priority date for spouse or child of principal alien.* A spouse or child of a principal alien acquired prior to the principal alien's admission 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 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.

(a) *General.* 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:

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

(2) Beginning with fiscal year 1995, in the random order established by the Secretary of State for the fiscal year for all applicants entitled to status under INA 203(c).

(b) *Beneficiaries of section 155 of Public Law 101-649.* Notwithstanding paragraph (a) of this section, for fiscal years 1991 and 1992:

(1) The Department shall notify consular officers of the latest priority date, based on a reasonable estimate, for which visa numbers will probably be available worldwide under INA 203(a) (2) and (5) (in FY-91) and INA 203(a) (2) and (4) (in FY-92);

(2) Immediately after receipt of the Department's projected fiscal year ultimate priority date, if they have not previously done so, consular officers shall ensure that all natives of Lebanon who are beneficiaries of petitions conferring such status, approved no later than November 29, 1990, are notified promptly of the requirements the applicants must meet under INA 222(b) to apply formally for a visa. Such notifications sent to applicants not physically present in Lebanon may require, if necessary, additional information to enable the consular officer to determine whether or not the applicant is firmly resettled (as defined

in 8 CFR 207.1(b)) in a country other than Lebanon;

(3) Upon a determination that the applicant is not firmly resettled in a country outside Lebanon, and that the applicant is documentarily qualified as provided in § 42.55(b), the consular officer shall so report any such preference Lebanese applicant and the Department shall promptly allocate a visa number for the use of such applicant.

§ 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 112 of the Immigration Act of 1990 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.

Dated: September 18, 1991.

John H. Adams,
Acting Assistant Secretary for Consular Affairs.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 5c

[T.D. 8366]

RIN 1545-AN52

Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to Treasury Decision 8366 relating to real estate mortgage investment conduits (REMICs).