

the period of authorized stay in such classification.

* * * * *

(b) * * *

(c) *Validity of Visa.* The period of validity of a visa issued on the basis of paragraph (a) of this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section.

Dated: December 14, 1995.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 96-1011 Filed 1-23-96; 8:45 am]

BILLING CODE 4710-06-P

22 CFR Parts 40, 41, 42, 43, 44, 45, and 47

[Public Notice 2311]

Visas: Regulations Pertaining to Both Nonimmigrants and Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: On March 4, 1995, the President, as part of the Administration's regulatory reinvention initiative, directed all heads of departments and agencies, *inter alia*, to conduct a page-by-page review of all regulations and to "eliminate or revise those that are outdated or otherwise in need of reform." (Memorandum for Heads of Departments and Agencies, Regulatory Reinvention Initiative, March 4, 1995.) In response, the Visa Office of the Department of State has undertaken a review of its visa regulations to determine whether they may be eliminated, shortened, or rewritten in a more understandable fashion. This final rule reflects the first publication of changes to 22 CFR, Chapter I being made as a result of this review.

EFFECTIVE DATE: January 24, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Office, (202) 663-1204.

SUPPLEMENTARY INFORMATION: The President has directed each agency to undertake a review of its regulations for the purpose of reducing the regulations or, when possible, rendering them more readable and comprehensible. The Visa Office of the Department of State has engaged in a thorough line-by-line review of all visa related regulations in parts 40 through 45 and part 47 of Title

22 of the Code of Federal Regulations. As a result, the Visa Office is proposing various amendments to the regulations consistent with the President's directive. The Visa Office is also using this opportunity to make other necessary changes to the regulations. The Visa Office will be publishing the proposed changes in a series of separate publications.

Updating

Several regulations were originally crafted to address time-limited circumstances under the law. With the passage of time or as the result of the enactment of technical corrections, these provisions have become moot. Consequently, pertinent amendments are made to the following sections:

Part 40: §§ 40.1(h), 40.1(m), 40.51(a) and (c) and 40.52.

Part 41: §§ 41.11(a) and (b); 41.12; and 41.42(b)(1).

Part 42: §§ 42.31(c); 42.52(a); 42.54; 42.55(a); and 42.74(b).

This rule also repeals Parts 43; 44 and 47.

S Visa

This rule assigns visa symbols to the visa classifications created by the provisions of section 130003 of Pub. L. 103-322 which concerns aliens who supply to the U.S. critical information relating to terrorism and criminal organizations or enterprises. This rule revises section 41.12 to reflect the existence of these new nonimmigrant classifications and to provide the appropriate visa symbols.

Terminated Programs

The Immigration Reform and Control Act of 1986 (Pub. L. 99-603), the Immigration Amendments Act of 1988 (Pub. L. 100-658), and the Immigration Act of 1990 (Pub. L. 101-649) created several temporary immigrant classifications. The following parts are being repealed by this rule since these programs have terminated with the passage of time: Part 43 which implemented the FY 1987-FY 1988 Nonpreference Program under sec. 314 of Pub. L. 99-603 (commonly known as the NP-5 Program), and its successor, the FY 1992-1994 Diversity Transitional Visa Program under sec. 132 of Pub. L. 101-649 (commonly known as the AA-1 Program); Part 44 which implemented the FY 1990-1991 Immigrant Program under sec. 3 of Pub. L. 100-658 (commonly known as the OP-1 program); and Part 47 which implemented the FY 1991-1993 Transitional Program for Displaced Tibetans, sec. 134 of Pub. L. 101-649.

Transitional Visas for Legalized Aliens

Sec. 112 of the Immigration Act of 1990 (Pub. L. 101-649) provided transitional immigrant visa numbers for legalized aliens in FY 1992-1994. As this provision lapsed, the following sections are amended to remove any reference to the transitional provisions: §§ 42.31(c) 42.52(a), 42.54, 42.55(a) and 42.74(b).

Miscellaneous Provisions

Several other sections of 22 CFR have been amended to reflect changes in the law. Sec. 40.1(h) is amended to accord immigrant visa status under INA 203(b), the Diversity Program. It is also edited for clarity. As the Immigration Act of 1990 (Pub. L. 101-649) imposed different effective dates for various subtitles of the Act, both § 40.1(m) and § 40.51(a) and (c) were written to conform with those variances in effective dates. They are now edited to remove any reference to such dates. Lastly, § 41.41(b)(1) has been amended to remove the reference to the obsolete Form I-551.

Typographical Corrections

Previous issues of the Federal Register contained typographical errors which are being corrected in this rule. On page 21211 in the issue of May 7, 1991, in the third column under paragraph (b) of the regulation at § 40.63(b), "hereunder" should have read "thereunder." In the same publication on page 21212 in the second column under paragraph (a)(5) of the regulation at § 40.101, "therefore" should have read "therefor." In the July 2, 1991 issue, on page 30428 in the first column under § 41.1, the reference to "INA 212(a)(i)(I)" in the introductory paragraph should have read "INA 212(a)(7)(B)(i)(I), (i)(II)," and under § 41.1(a) there should have been a comma following the words "permanent residence." Finally in the first column of the July 17, 1991 issue, on page 32507 under § 45.5(e), the word "position" in the fourth line should have read "petition."

The 1995 edition of 22 CFR contains the following typographical errors: in § 41.3(d) the word "consulat" should be "consular"; in § 42.63(a)(2) the word "custory" should read "custody"; in § 42.72(e) the parentheses around the "(Pub. L. 101-649)" should be removed; and in § 42.82(g)(1) the "e" should be removed from the word "therefore". On page 42611 in the November 5, 1987 issue in the third column under § 41.113, the citation "INA 101(a)(3)" should read "INA 101(a)(30)." This rule

also makes the corrections to these typographical errors.

Final Rule

Because this rule contains no substantive changes to 22 CFR, it has been determined that notice and public comment are unnecessary. This rule, therefore, meets the good cause exception under 5(b)(B) and is being published as a final rule.

This rule is not considered to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule imposes no reporting or record keeping requirements on the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act.

This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. It is exempt from E.O. 12866 but has been reviewed and found to be consistent therewith.

List of Subjects in 22 CFR Parts 40, 41, 42, 43, 44, and 47

Aliens, Nonimmigrants, Immigrants, Visas and passports.

Final Regulations

In view of the foregoing, under the authority at 8 U.S.C. 1104, title 22 of the Code of Federal Regulations subchapter E—parts 40, 41, and 42 are amended to read as follows and, under the authority of sections 132, 133, and 134 of Pub. L. 101-649, 104 Stats. 5000 and 5001, parts 43, 44, and 47 are removed and reserved.

PART 40—[AMENDED]

1. The authority citation for part 40 continues to read:

Authority: 8 U.S.C. 1104.

§ 40.9 [Removed and reserved]

2. Part 40 is amended by removing and reserving section 40.9 of subpart A—General Provisions of subchapter E—VISAS.

3. In § 40.1 paragraphs (h)(2) and (3), and (m) are revised and paragraph (h)(4) is added to read as follows:

§ 40.1 Definitions.

* * * * *

(h) * * *

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

(3) Has been selected by the annual selection system to apply under INA 203(c); or

(4) Is an alien described in § 40.51(c).

* * * * *

(m) *Not subject to numerical limitation* means that the alien is

entitled to immigrant status as an immediate relative within the meaning of INA 201(b)(2)(i), or as a special immigrant within the meaning of INA 101(a)(27) (A) and (B), unless specifically subject to a limitation other than under INA 201(a), (b), or (c).

4. Section 40.51 is amended by revising paragraphs (a) and (c) to read as follows:

§ 40.51 Labor certification.

(a) *INA 212(a)(5) applicable only to certain immigrant aliens.* INA

212(a)(5)(A) applies only to immigrant aliens described in INA 203(b)(2) or (3) who are seeking to enter the United States for the purpose of engaging in gainful employment.

* * * * *

(c) *Labor certification not required in certain cases.* A spouse or child accompanying or following to join an alien spouse or parent who is a beneficiary of a petition approved pursuant to INA 203(b)(2) or (3) is not considered to be within the purview of INA 212(a)(5).

5. Section 40.52 is revised to read as follows:

§ 40.52 Unqualified physicians.

INA 212(a)(5)(B) applies only to immigrant aliens described in INA 203(a) (2) or (3).

6. Section 40.63 is amended by revising paragraph (b) to read as follows:

§ 40.63 Misrepresentation

* * * * *

(b) *Misrepresentation in application under Displaced Persons Act or Refugee Relief Act.* Subject to the conditions stated in INA 212(a)(6)(c)(i), an alien who is found by the consular officer to have made a willful misrepresentation within the meaning of section 10 of the Displaced Persons Act of 1948, as amended, for the purpose of gaining admission into the United States as an eligible displaced person, or to have made a material misrepresentation within the meaning of section 11(e) of the Refugee Relief Act of 1953, as amended, for the purpose of gaining admission into the United States as an alien eligible thereunder, shall be considered ineligible under the provisions of INA 212(a)(6)(C).

* * * * *

7. Section 40.101 is amended by revising paragraph (a)(5) to read as follows:

§ 40.101 Failure of application to comply with INA.

(a) *Refusal under INA 221(g).* The consular officer shall refuse an alien's visa application under INA 221(g)(2) as

failing to comply with the provisions of INA or the implementing regulations if:

(1) * * *

(5) The necessary fee is not paid for the issuance of the visa or, in the case of an immigrant visa, for the application therefor;

(6) * * *

PART 41—[AMENDED]

8. The authority citation for part 41 continues to read:

Authority: 8 U.S.C. 1104.

9. Section 41.1 is amended by revising the introductory text and paragraph (a) to read as follows:

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

Nonimmigrants in the following categories are exempt from the passport and visa requirements of INA 212(a)(7)(B)(i)(I), (i)(II):

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

* * * * *

10. Section 41.3 is amended by revising paragraph (d) to read as follows:

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

* * * * *

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

* * * * *

11. Section 41.11(a) and (b)(1) are revised to read as follows:

§ 41.11 Entitlement to nonimmigrant status.

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

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

12. In section 41.12 the table removing the entries for "S-1 and S-2" and adding new entries for "S-7 and S-8" to read as follows:

§ 41.12 Classification symbols.

Symbol class	Section of law
S-7 Certain Aliens Supplying Critical Information Relating to a Criminal Organization or Enterprise.	101(a)(15)(S)(i).
S-8 Certain Aliens Supplying Critical Information Relating to Terrorism.	101(a)(15)(S)(ii).

13. Section 41.42 is amended by revising paragraph (b)(1) to read as follows:

§ 41.42 Crew-list visas.

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

14. Section 41.113 is amended by revising paragraph (k)(2) introductory text to read as follows:

§ 41.113 Procedures in issuing visas.

(k) * * *
 (2) Is the holder of an official identity card which has been issued for participation in such Games under the Olympic Rules Bylaws, which includes

the signature of a competent authority of the participating government and the assurance of that government's recognition of the card for re-entry by the bearer for an additional period of six months beyond the expiration date of the card, and which otherwise meets the requirements of sections 101(a)(30) and 212(a)(7)(B)(i)(I) of the Immigration and Nationality Act, a stamp consisting of:

PART 42—[AMENDED]

15. The authority citation for Part 42 continues to read:

Authority: 8 U.S.C. 1104.

§ 42.31 Family-sponsored immigrants.

16. Section 42.31 is amended by removing paragraph (c).
 17. Section 42.52 is amended by revising paragraph (a) to read as follows:

§ 42.52 Post records of visa applications.

(a) *Waiting list.* Records of individual visa applicants entitled to an immigrant classification and their priority dates shall be maintained at posts at which immigrant visas are issued. These records shall indicate the chronological and preferential order in which consideration may be given to immigrant visa applications within the several immigrant classifications subject to the numerical limitations specified in INA 201, 202, and 203. Similar records shall be kept for the classes specified in INA 201(b)(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.

§ 42.54 Order of consideration.

18. Section 42.54 is amended by removing paragraph (b).
 19. Section 42.55 is amended by revising paragraph (a) to read as follows:

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

(a) 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 whose immigrant visa applications have been recorded in accordance with § 42.52(c)

20. Section 42.63 is amended by revising paragraph (a)(2) to read as follows:

§ 42.63 Application forms and other documentation.

(a) * * *
 (2) *Application of alien under 14 or physically incapable.* The application on Form OF-230 for an alien under 14 years of age or one physically incapable of completing an application may be executed by the alien's parent or guardian, or, if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, the alien.

21. Section 42.72 is amended by revising paragraph (e) introductory text to read as follows:

§ 42.72 Validity of visas.

(e) *Aliens entitled to the benefits of section 154(a) and (b) of Pub. L. 101-649.*

22. Section 42.74 is amended by revising paragraph (b) to read as follows:

§ 42.74 Issuance of new or replacement visas.

(b) *Replacement immigrant visa for an alien subject to numerical limitation.* An immigrant documented under INA 203(a), (b), or (c) or under section 124 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.

23. Part 43, 44 and 47 are removed and reserved.

PART 43—[REMOVED AND RESERVED]**PART 44—[REMOVED AND RESERVED]****PART 47—[REMOVED AND RESERVED]****PART 45—[AMENDED]**

24. The authority citation for part 45 continues to read as follows:

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

25. Section 45.5 is amended by revising paragraph (e) to read as follows:

PART 45 VISAS: DOCUMENTATION OF IMMIGRANTS UNDER SECTION 124 OF PUBLIC LAW 101-649.**§ 45.5 Redetermination of admissibility if visa validity extended.**

* * * * *

(e) For the purposes of this section, "qualifying position" shall include both the position occupied by the alien at the time the petition in the alien's behalf was approved and any other position within the petitioning entity's organization, regardless of geographical location, which would otherwise meet the requirements for approval of such a petition in the alien's behalf. For the purposes of this section, *qualifying employment* shall mean any position in the United States of the kind required for approval of such a petition.

Dated: December 15, 1995.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 96-1012 Filed 1-23-96; 8:45 am]

BILLING CODE 4710-06-P

22 CFR Part 41**[Public Notice 2403]****Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended**

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Interim final rule, with request for comments.

SUMMARY: The Violent Crime Control and Law Enforcement Act of 1994 created a new nonimmigrant visa classification by adding section 101(a)(15)(S) to the Immigration and Nationality Act. These regulatory amendments establish standards for the issuance of nonimmigrant visas under this classification.

DATES: Effective January 24, 1996. Written comments are invited and must be received on or before March 25, 1996.

ADDRESSES: Written comments may be submitted, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20522-0113, (202) 663-1204.

SUPPLEMENTARY INFORMATION: The Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, was signed by the President on September 13, 1994. Section 130003 of the Act amended the Immigration and Nationality Act by adding section 101(a)(15)(S), a new nonimmigrant visa classification. This visa classification provides for the admission into the United States of certain alien witnesses and informants.

The first of two paragraphs of the new section 101(a)(15)(S) provides for the admission of aliens determined by the Attorney General to possess critical reliable information concerning a criminal organization or enterprise. The alien must be willing to provide that information to federal and/or state authorities, and the Attorney General must determine that his/her presence is essential to the success of an authorized criminal investigation or prosecution. Pursuant to a new section 214(j)(i) of the INA also added by section 13003, no more than 100 visas are available in this category per fiscal year.

The second paragraph of 101(a)(15)(S) provides for nonimmigrant visas for aliens whom the Secretary of State and the Attorney General jointly determine possess critical reliable information about a terrorist organization, enterprise or operation, and who are willing to provide or have provided such information to federal law enforcement authorities, or a federal court, and who will be or have been placed in danger as the result of providing such information. They must also be eligible for an award under section 36(a) of the State Department's Basic Authorities Act of 1956. Pursuant to the new section 214(j)(i) of the INA referred to above, no more than 25 visas are available in this category per fiscal year.

The spouse, married and unmarried sons and daughters, and parents of aliens classified under subsection (S)(i) or (S)(ii) may be granted derivative status, if the Attorney General (or in the case of (S)(ii), the Secretary of State and the Attorney General jointly) consider it appropriate.

The enactment of this section provides a new mechanism to admit aliens into the U.S. as witnesses and informants. Under past law the only

means to admit such aliens were either in the B visa category or under parole.

This visa classification requires the Attorney General in the case of the first subsection and the Attorney General and the Secretary of State in the case of the second subsection to determine that all the statutory requirements are met prior to visa issuance. The Immigration and Naturalization Service (INS) has promulgated extensive regulations [60 FR 44260] on this classification, explaining how the law enforcement agencies interact with the Attorney General in order to meet the applicable legal requirements.

Under subsection (ii) of the S classification, the Secretary of State and the Attorney General act jointly in determining the alien's entitlement to classification. The initial stages of processing under (S)(ii) lie with the Department of State. When a potential (S)(ii) alien is identified, it must be determined that the alien is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956. The responsibility of carrying out this reward program under section 36(a) of that Act is delegated by the Secretary of State to the Assistant Secretary of State for Diplomatic Security. Section 226 of Volume 12 of the Foreign Affairs Manual sets forth the procedures established to carry out the requirements of section 36(a), processing of cases through the rewards committee. Determination of eligibility for receipt of a reward under section 36(a) made by the rewards committee is certified to the Assistant Secretary of State for Consular Affairs, to whom the Secretary has delegated the responsibility to implement the visa function under the Immigration and Nationality Act, which would necessarily include the recently added section 101(a)(15)(S). Acting on behalf of the Assistant Secretary for Consular Affairs, the Visa Office will then certify to the Attorney General the alien's eligibility for classification under subsection (s)(ii).

When determinations of entitlement to visa status under either section (S)(i) or (S)(ii) are completed, the INS, on behalf of the Attorney General, certifies such to the Visa Office which then communicates with the relevant consular post. The consular officer will process the visa application pursuant to guidance and instruction provided by the Visa Office. A visa may be authorized for the period necessary pursuant to the Attorney General's certification, but for a period not to exceed the three year statutory limit.

The implementation of the numerical limitation, as well as the adjustment of