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## DEPARTMENT OF STATE

### 22 CFR Parts 41 and 42

[Public Notice 3570]

#### **Documentation of Immigrants and Nonimmigrants Under the Immigration and Nationality Act, as Amended—Refusal of Individual Visas**

**AGENCY:** Department of State.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule adds two additional grounds of ineligibility for a visa for certain nonimmigrants to the listing of those serving as bases for the refusal of nonimmigrant visas by consular officers. It adds one of those to the regulation relating to crewmen. Moreover, the rule adds another relatively new restriction on the place of application for aliens who have overstayed the allowable period in the United States. Finally, in the interest of consistency between the rules relating to nonimmigrants and immigrants, it also adds the appropriate listing of bases for refusal of immigrant visas. There are some editorial changes to the current nonimmigrant rule on refusals for the purpose of clarification and to incorporate by reference the essence of the legislation underlying the procedures described therein.

**DATES:** Effective February 15, 2001. Written comments may be submitted through April 16, 2001.

**ADDRESSES:** Written comments may be submitted, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20520-0106.

**FOR FURTHER INFORMATION CONTACT:** H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20520-0106, (202) 663-1204, e-mail [odomhe@state.gov](mailto:odomhe@state.gov), or fax at (202) 663-3898.

**SUPPLEMENTARY INFORMATION:** Public Laws 101-649, Immigration Act of 1990, and 104-298, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, added two new grounds of ineligibility to those already in the Immigration and Nationality Act, as amended, (INA). Each is classification-specific, not a generic ineligibility such

as most of those found in INA 212(a). It also added a provision invalidating the visa of a person who had overstayed the authorized period of stay in the United States and requiring such an alien to apply in his/her home country for a new visa except under certain authorized circumstances (INA 222(g)).

#### **What Classes Are Affected?**

The first of the new ineligibilities relates to crewmen. As set forth in INA 214(f), it makes an alien unclassifiable as a crewman under INA 101(a)(15)(D) if the alien intends to land for the purpose of joining a vessel or aircraft during a labor dispute where there is a strike or lockout involving the employer and the bargaining unit of the employer. This provision is also reflected in an amendment of 22 CFR 41.41, Crewmen, which is included herein.

The other such provision, which is found in INA 214(l)—the second (l) in INA 214—relates to students. It denies an alien classification as a student under INA 101(a)(15)(F)(1) for the purpose of study at a public elementary or publicly-funded adult education program, or at a public secondary school unless the total period of stay in the latter educational institution is less than one year and the student has fully reimbursed the school for the costs of such education. Students who have been admitted in F-1 status for attendance at private schools and then transfer to a public school have, under this provision, violated their status unless the student has reimbursed the school as noted above. The seriousness of this provision is reinforced in a new INA 212(a)(6)(G), which makes an individual who violated student status under INA 214(l) inadmissible for five years after the date of the violation. Although not specifically included in the regulation covering INA 212(a)(6)(G) at 22 CFR 40.67, the terms of INA 214(l) were described in the supplementary information in the interim rule published at 62 FR 67564, December 29, 1997.

The essence of the INA 222(g) provision is set forth above.

#### **So Why This Rule Now?**

This rule is being promulgated for the primary purpose of adding those INA 214(f) and (l) citations to an existing regulation, 22 CFR 41.121, which lists the permissible grounds for denial of a nonimmigrant visa application. The necessity for so doing also provides an opportunity to include editorial revisions in paragraph (b) for the purpose of greater clarity and noting by reference the statutory basis for the refusal procedures, and to add, again by

reference, the gist of INA 214(f) to the crewman regulations. No substantive changes to past and/or current procedures are intended by the revisions in subsection 41.121(b).

The refusal regulation with respect to immigrant visa applicants equivalent to section 41.121, namely 22 CFR 42.81, does not now correspondingly specify the applicable grounds of refusal in immigrant cases. This rule inserts such data in the interest of consistency.

Finally, the regulation at 41.122, Grounds of Revocation of a Visa, does not now include INA 222(g), which is being added by reference in this rule.

#### **Regulatory Analysis and Notices**

##### *Administrative Procedure Act*

The Department is publishing this rule as an interim rule, with a 60-day provision for post-promulgation public comments, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The provisions of law being referred to in this rule became effective on January 28, 1991, in the case of a crewman proceeding to a job which is involved in a strike or lockout, and, in the case of student visa abusers, on November 29, 1996. More importantly, the rule makes no substantive changes in visa operations.

##### *Regulatory Flexibility Act*

Pursuant to § 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Assistant Secretary for Consular Affairs hereby certifies that is not expected to have a significant economic impact on a substantial number of small entities.

##### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

##### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

companies to compete with foreign-based companies in domestic and export markets.

#### *Executive Order 12866*

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section (6)(a)(3)(A).

#### *Executive Order 13132*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

#### *Paperwork Reduction Act*

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

#### **List of Subjects in 22 CFR Part 41**

Aliens, Nonimmigrants, Passports and visas.

Accordingly, the Department of State amends 22 CFR chapter I as follows:

#### **PART 41—[Amended]**

1. The authority citation for Part 41 continues to read as follows:

**Authority:** 8 U.S.C. 1104.

2. Revise § 41.41(a) to read as follows:

##### **§ 41.41 Crewmen.**

(a) *Alien classifiable as crewman.* An alien is classifiable as a nonimmigrant crewman upon establishing to the satisfaction of the consular officer the qualifications prescribed by INA 101(a)(15)(D), provided that the alien has permission to enter some foreign country after a temporary landing in the United States, unless the alien is barred from such classification under the provisions of INA 214(f).

\* \* \* \* \*

3. Revise § 41.121(a) and (b) to read as follows:

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

(a) *Grounds for refusal.* Nonimmigrant visa refusals must be based on legal grounds, such as one or more provisions of INA 212(a), INA 212(e), INA 214(b),

(f) or (l) (as added by Section 625 of Pub. L. 104–208), INA 221(g), or INA 222(g) or other applicable law. Certain classes of nonimmigrant aliens are exempted from specific provisions of INA 212(a) under INA 102 and, upon a basis of reciprocity, under INA 212(d)(8). When a visa application has been properly completed and executed in accordance with the provisions of INA and the implementing regulations, the consular officer must either issue or refuse the visa.

(b) *Refusal procedure.* (1) When a consular officer knows or has reason to believe a visa applicant is ineligible and refuses the issuance of a visa, he or she must inform the alien of the ground(s) of ineligibility (unless disclosure is barred under INA 212(b)(2) or (3)) and whether there is, in law or regulations, a mechanism (such as a waiver) to overcome the refusal. The officer shall note the reason for the refusal on the application. Upon refusing the nonimmigrant visa, the consular officer shall retain the original of each document upon which the refusal was based, as well as each document indicating a possible ground of ineligibility, and should return all other supporting documents supplied by the applicant.

(2) If an alien, who has not yet filed a visa application, seeks advice from a consular officer, who knows or has reason to believe that the alien is ineligible to receive a visa on grounds which cannot be overcome by the presentation of additional evidence, the officer shall so inform the alien. The consular officer shall inform the applicant of the provision of law or regulations upon which a refusal of a visa, if applied for, would be based (subject to the exception in paragraph (b)(1) of this section). If practicable, the consular officer should request the alien to execute a nonimmigrant visa application in order to make a formal refusal. If the individual fails to execute a visa application in these circumstances, the consular officer shall treat the matter as if a visa had been refused and create a record of the presumed ineligibility which shall be filed in the consular office.

\* \* \* \* \*

4. Amend § 41.122(a)(1) by adding before the semicolon " , or was issued a visa in contravention of INA 222(g)".

#### **PART 42—[AMENDED]**

5. The authority citation for Part 42 continues to read as follows:

**Authority:** 8 U.S.C. 1104.

6. Revise § 42.81(a) to read as follows:

##### **§ 42.81 Procedure in refusing individual visas.**

(a) *Issuance or refusal mandatory.*

When a visa application has been properly completed and executed before a consular officer in accordance with the provisions of INA and the implementing regulations, the consular officer must either issue or refuse the visa under INA 212(a) or INA 221(g) or other applicable law. Every refusal must be in conformance with the provisions of 22 CFR 40.6.

\* \* \* \* \*

Dated: December 19, 2001.

**Mary A. Ryan,**

*Assistant Secretary for Consular Affairs.*

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## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Part 301**

[TD 8911]

RIN 1545–AV92

#### **Relief for Service in Combat Zone and for Presidentially Declared Disaster; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains corrections to final regulations that were published in the **Federal Register** on December 15, 2000 (65 FR 78409). This document relates to the postponement of certain tax-related deadlines due either to service in a combat zone or a Presidentially declared disaster.

**DATES:** This correction is effective December 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bridget E. Finkenaur (202) 622–4940 (not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The final regulations that are the subject of these corrections are under section 7508 of the Internal Revenue Code.

##### **Need for Correction**

As published, the final regulations (TD 8911) contain errors that may prove to be misleading and are in need of clarification.

##### **Correction of Publication**

Accordingly, the publication of the final regulations (TD 8911), which are