

filed. The Board shall grant or deny the petition for reconsideration and issue such orders as it deems appropriate.

§ 501.8 Clerk of the Office of the Appellate Boards; docket of proceedings; records.

(a) *Location and business hours.* The Office of the Clerk of the Appellate Boards is located at 200 Constitution Avenue, NW., Washington, DC 20210. The Office of the Clerk is open during business hours on all days except Saturdays, Sundays and Federal holidays, from 8:30 a.m. to 5 p.m.

(b) *Docket.* The Clerk will maintain a docket containing a record of all proceedings before the Board. Each docketed appeal will be assigned a number in chronological order based upon the date on which the notice of appeal is received. While the Board generally hears appeals in the order docketed, the Board retains discretion to change the order in which a particular appeal will be considered. The Clerk will prepare a calendar of cases submitted or awaiting oral argument and such other records as may be required by the Board.

(c) *Publication of decisions.* Final decisions of the Board will be published in such form as to be readily available for inspection by the general public.

§ 501.9 Representation; Appearances and Fee.

(a) *Representation.* In any proceeding before the Board, an Appellant may appear in person or by appointing a duly authorized individual as his or her Representative.

(1) *Counsel.* The designated Representative may be an attorney who has been admitted to practice and who is in good standing with any court of competent jurisdiction.

(2) *Lay representative.* A non-attorney Representative may represent an Appellant before the Board. He or she may be an accredited Representative of an employee organization.

(3) *Former members of the Board and other employees of the Department of Labor.* A former judge of the Board is not allowed to participate as counsel or other Representative before the Board in any proceeding until two years from the termination of his or her status as a judge of the Board. The practice of a former judge or other former employee of the Department of Labor is governed by 29 CFR Part 0, Subpart B.

(b) *Appearance.* No individual may appear as a Representative in a proceeding before the Board without first filing with the Clerk a written authorization signed by the Appellant to be represented. When accepted by the Board, such Representative will

continue to be recognized unless the Representative withdraws or abandons such capacity or the Appellant directs otherwise.

(c) *Change of address.* Each Appellant and Representative authorized to appear before the Board must give the Clerk written notice of any change to the address or telephone number of the Appellant or Representative. Such notice must identify the docket number and name of each pending appeal for that Appellant, or, in the case of a Representative, in which he or she is a Representative before the Board. Absent such notice, the mailing of documents to the address most recently provided to the Board will be fully effective.

(d) *Debarment of Counsel or Representative.* In any proceeding, whenever the Board finds that a person acting as counsel or other Representative for the Appellant or the Director, is guilty of unethical or unprofessional conduct, the Board may order that such person be excluded from further acting as counsel or Representative in such proceeding. Such order may be appealed to the Secretary of Labor or his or her designee, but proceedings before the Board will not be delayed or suspended pending disposition of such appeal. However, the Board may suspend the proceeding of an appeal for a reasonable time for the purpose of enabling Appellant or the Director to obtain different counsel or other Representative. Whenever the Board has issued an order precluding a person from further acting as counsel or Representative in a proceeding, the Board will, within a reasonable time, submit to the Secretary of Labor or his or her designee a report of the facts and circumstances surrounding the issuance of such order. The Board will recommend what action the Secretary of Labor should take in regard to the appearance of such person as counsel or Representative in other proceedings before the Board. Before any action is taken debarring a person as counsel or Representative from other proceedings, he or she will be furnished notice and the opportunity to be heard on the matter.

(e) *Fees for attorney, Representative, or other services.* No claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. Under 18 U.S.C. 292, collecting a fee without the approval of the Board may constitute a misdemeanor, subject to fine or imprisonment for up to a year or both. No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. No fee for service will be

approved except upon written application to the Clerk, supported by a statement of the extent and nature of the necessary work performed before the Board on behalf of the Appellant. The fee application will be served by the Clerk on the Appellant and a time set in which a response may be filed. Except where such fee is *de minimis*, the fee request will be evaluated with consideration of the following factors:

- (1) Usefulness of the Representative's services;
- (2) The nature and complexity of the appeal;
- (3) The capacity in which the Representative has appeared;
- (4) The actual time spent in connection with the Board appeal; and
- (5) Customary local charges for similar services.

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DEPARTMENT OF STATE

22 CFR Parts 7 and 50

[Public Notice: 6398]

Board of Appellate Review; Review of Loss of Nationality

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This rule eliminates the Department's Board of Appellate Review (L/BAR), which had been authorized to review certain Department determinations, in particular those related to loss of citizenship and passport denials. Because L/BAR's jurisdiction has been superseded or made obsolete, and in large part replaced by review of loss of citizenship and passport matters by the Bureau of Consular Affairs, this rule eliminates L/BAR and authorizes on a discretionary basis an alternative, less cumbersome review of loss of nationality determinations by the Bureau of Consular Affairs.

DATES: This rule is effective October 20, 2008.

FOR FURTHER INFORMATION CONTACT: Monica A. Gaw, Office of Policy Review and InterAgency Liaison, Overseas Citizens Services, who may be reached at (202) 736-9110, e-mail GAWMA@state.gov.

SUPPLEMENTARY INFORMATION: The Department published an interim final rule, Public Notice 6298 at 73 FR 41256 (July 18, 2008), with 60 days for post-promulgation comment, amending 22 CFR by removing the regulations in Part

7 that established the Board of Appellate Review (L/BAR) and revising § 50.51 to provide for an alternative method of review of loss of nationality determinations on a discretionary basis.

The rule was discussed in detail in Public Notice 6298, as were the Department's reasons for making the changes to the regulations. There were no comments to the interim final rule published July 18, 2008. The Department is now promulgating a final rule with no changes.

Regulatory Findings

Administrative Procedure Act

The Department published this rule as an interim final rule on July 18, 2008, with 60 days for post-promulgation comment, in accordance with the exemption contained in 5 U.S.C. 553(a)(2) for matters relating to agency management or personnel.

Regulatory Flexibility Act

Since this action is exempt from the notice and comment procedures contained in 5 U.S.C. 553, and no other statute mandates such procedures, no analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. However, these changes to the regulations are hereby certified as not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601–612, and Executive Order 13272, section 3(b).

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 or more (adjusted annually for inflation) 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 import markets.

Executive Order 12866

The Department does not consider this rule to be a “significant regulatory action” within the scope of section 3(f)(1) of Executive Order 12866. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 12988—Civil Justice Reform

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132—Federalism

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 significant federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

National Environmental Policy Act

The Department has analyzed this regulation for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 through 4327) and has determined that it will not have any effect on the quality of the environment.

The Paperwork Reduction Act of 1995

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects

22 CFR Part 7

Board of Appellate Review.

22 CFR Part 50

Citizenship, Nationality, Loss of Nationality.

■ Accordingly, the interim rule amending 22 CFR parts 7 and 50 published at 73 FR 41256, July 18, 2008 is adopted as final without change.

Dated: October 7, 2008.

Janice L. Jacobs,

Assistant Secretary of State, Bureau of Consular Affairs, Department of State.

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DEPARTMENT OF STATE

22 CFR Part 40

[Public Notice 6395]

RIN 1400–AB68

Uncertified Foreign Health-Care Workers

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule adopts as final without change the Department's interim rule published on December 17, 2002, at 67 FR 77158. The rule changes the requirements pertaining to the issuance of visas to certain health care workers. Certain foreign health care workers now need to present certificates establishing competency in a specific health care field. Certification is issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS) or other credentialing organizations that have been approved by the Secretary of Homeland Security (DHS) in consultation with the Secretary of Health and Human Services (HHS). This rule facilitates greater uniformity between the regulations of DHS and the Department of State.

DATES: *Effective Date:* Effective October 20, 2008.

FOR FURTHER INFORMATION CONTACT:

Penafrancia D. Salas, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106. *Phone:* 202–663–1202. *E-mail:* (salaspd@state.gov).

SUPPLEMENTARY INFORMATION:

What Is The Background of This Rule?

An alien who seeks to enter the United States for the purpose of performing labor as a health care worker, other than as a physician, is ineligible for visa issuance and is inadmissible to the United States unless the alien presents to the consular officer a certificate from the CGFNS or a certificate from an equivalent independent credentialing organization approved by DHS in consultation with HHS that indicates the following:

(a) The alien's education, training, license, and experience:

1. Meet all applicable statutory and regulatory requirements for admission