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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Part 245

[CIS No. 2420–07; Docket No. USCIS–2007–0047]

RIN 1615–AB62

Removal of Receipt Requirement for Certain H and L Adjustment Applicants Returning From a Trip Outside the United States

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: This rule removes the requirement that certain H and L nonimmigrants returning to the United States following a trip abroad must present a receipt notice for their adjustment of status applications to avoid having such applications deemed abandoned. The purpose of this narrow change is to remove an unnecessary documentation requirement from the regulations that the Department of Homeland Security has determined causes an undue burden on H and L nonimmigrants.

DATES: *Effective Date:* This rule is effective November 1, 2007.

FOR FURTHER INFORMATION CONTACT: Carol Vernon, Regulations and Product Management Division, Domestic Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, Room 2034, Washington, DC 20529, telephone (202) 272–8350.

SUPPLEMENTARY INFORMATION:

I. Background

Travel outside the United States for an alien who has filed Form I–485, ''Application to Register Permanent Residence or Adjust Status,'' to obtain lawful permanent resident status under section 245 of the Immigration and Nationality Act (INA), 8 U.S.C. 1255, may adversely affect that application unless the alien takes certain steps before the trip. Most applicants must obtain permission from U.S. Citizenship and Immigration Services (USCIS) to travel prior to the trip, a process referred to as ''advance parole.'' *See* 8 CFR 212.5 (c) and (f). For these applicants, departing the United States without advance parole while their adjustment of status applications are pending results in automatic abandonment of the applications and constitutes grounds for denial. 8 CFR 245.2(a)(4)(ii)(A) & (B).

However, some applicants do not need to obtain advance parole prior to departing from the United States. 8 CFR 245.2(a)(4)(ii)(C) & (D). These are applicants who are permitted by statute to maintain a nonimmigrant status while they seek to obtain permanent resident status. *See* INA section 214(h), 8 U.S.C. 1184(h). This rulemaking applies to such applicants with respect to two qualifying nonimmigrant classifications: H–1 and L–1 (including dependents, H–4 and L–2). *See* INA section 101(a)(15)(H) and (L), 8 U.S.C. 1101(a)(15)(H) and (L) (describing H and L nonimmigrant classifications); 8 CFR 214.2(h) and (l). Both nonimmigrant classifications are employment-based. H–1 nonimmigrants include the H–1B classification for ''specialty occupation'' workers and the H–1C classification for certain registered nurses. *See* 8 CFR 214.2(h)(1)(ii)(A) and (B). L–1 nonimmigrants include the L–1A classification for certain intracompany transferees who are managers or executives, and the L–1B classification for ''specialized knowledge'' workers. *See* 8 CFR 214.2(l)(ii)(A).

Under current regulations, adjustment of status applicants maintaining H or L nonimmigrant status who depart the United States will not be deemed to have abandoned their applications if they did not obtain advance parole prior to departure. However, upon return to the United States, they must demonstrate to the immigration officer at the port of entry that they:

- Remain eligible for H–1/H–4 or L–1/L–2 nonimmigrant status;
- Will resume employment with the same employer for which they had previously been authorized to work as an H–1 or L–1 nonimmigrant (not applicable to H–4 or L–2 nonimmigrants);
- Are in possession of a valid H–1/H–4 or L–1/L–2 nonimmigrant visa (if a visa is required); and
- Are in possession of the original receipt notice for the application for adjustment of status, Form I–797, ''Notice of Action'' (issued by USCIS).

See 8 CFR 245.2(a)(4)(ii)(C). Preserving the pendency of an adjustment of status application in this manner does not apply to H–1/H–4 or L–1/L–2 nonimmigrants who are under exclusion, deportation, or removal proceedings. In such cases, the Executive Office for Immigration Review of the Department of Justice has jurisdiction over the adjustment of status application and 8 CFR 245.2(a)(4)(ii)(A) governs the effect of travel abroad on those applications.

Because of its varying workload, USCIS recognizes that it is not always able to ensure immediate issuance and mailing of Form I–797 receipt notices upon receipt of an adjustment of status application. At times, USCIS therefore may experience delays in processing and issuing the receipt. This situation places H–1B/H–4 or L–1/L–2 nonimmigrants who are awaiting a Form I–797 receipt notice, but wish to travel outside the United States while their adjustment of status application is pending, in the difficult position of having to decide whether to cancel a planned trip or risk denial of the adjustment application as a result of the departure. Either option would result in hardship to the alien and his or her dependents that the Department of Homeland Security (DHS) finds is unduly burdensome and unnecessary. This is because it renders otherwise qualifying adjustment applications abandoned notwithstanding the fact that the information provided by presentation of the receipt (evidence of filing of an adjustment application) is already available to DHS. An alien whose adjustment of status application is deemed abandoned for failing to present a Form I–797 receipt notice upon readmission to the United States resulting in a denial of the application would be forced to incur the time and expense involved in filing a new adjustment application.

Section 214(h) of the INA, 8 U.S.C. 1184(h), establishing the H–1/H–4 and

L–1/L–2 nonimmigrant's ability to maintain nonimmigrant status while pursuing permanent resident status, is broad and places no documentary restrictions on such ability. Further, DHS has determined, in light of advances in database technology, that the removal of the Form I–797 receipt requirement will not have any adverse impact on its responsibilities to ensure control over aliens seeking admission to the United States. Such aliens must establish eligibility for admission, in any case, before DHS permits them to reenter the United States. In addition, DHS creates a record of its inspection of the alien, including the alien's application for admission.

II. Regulatory Changes

This rule amends 8 CFR 245.2(a)(4)(ii)(C) to remove the requirement that an H–1/H–4 or L–1/L–2 nonimmigrant present an original of the Form I–797 receipt notice for a pending adjustment of status application upon readmission to the United States following a trip abroad in order to avoid abandonment of the adjustment of status application as a result of the departure. This rule makes no other changes to 8 CFR 245.2(a)(4)(ii)(C).

III. Rulemaking Requirements

DHS finds that this rule relates to internal agency management, procedure, and practice and therefore is exempt from the public comment requirements of the Administrative Procedure Act (APA) under 5 U.S.C. 553(b)(A). This rule does not alter substantive criteria by which USCIS will approve or deny applications or determine eligibility for any immigration benefit. Instead, this rule relieves a document presentation requirement for certain applicants for immigration benefits. Specifically, this rule removes the requirement that H–1/H–4 and L–1/L–2 nonimmigrants present a Form I–797 receipt notice for their adjustment of status applications upon readmission to the United States after a trip abroad in order to avoid having their applications abandoned. This document presentation requirement is unnecessary since it concerns information that is already available to DHS. This final rule merely eliminates an unnecessary burden on these arriving aliens and streamlines agency management of its processes. As a result, DHS is not required to provide the public with an opportunity to submit comments on the subject matter of this rule.

Moreover, DHS finds that good cause exists under 5 U.S.C. 553(b)(B) to make the rule effective upon publication in the **Federal Register** without prior notice and public comment on the grounds that delaying implementation of this rule to allow for public comment would be impracticable and contrary to the public interest. As a result of USCIS's July 17, 2007, announcement that it would accept employment-based Forms I–485 filed by aliens whose priority dates are current under Department of State Visa Bulletin No. 107, USCIS received an unprecedented volume of employment-based applications for adjustment of status, including those filed by H and L nonimmigrants. Because of the recent surge in such filings, it will take several weeks for USCIS to enter the necessary data and issue Form I–797 receipt notices for employment-based adjustment of status applications. Therefore, it is important for this rule to take effect as soon as possible to avoid undue hardship on applicants who may need travel outside the United States prior to receiving the receipt notice.

In addition, no substantive rights or obligations of the affected public are changed by this rule. DHS believes the public will welcome this change. The public needs no time to conform its conduct so as to avoid violation of these regulations because the rule relieves a requirement of the existing regulations. Further, this rule will have no adverse impact on DHS' adjudicatory responsibilities or ability to track the foreign travel of affected persons since DHS already records the admission of all nonimigrants. For these reasons, this rule is effective immediately under 5 U.S.C. 553(d)(1) and (3).

This rule relates to internal agency management, and, therefore, is exempt from the provisions of Executive Order Nos. 12630, 12988, 13045, 13132, 13175, 13211, and 13272. This rule is not considered by DHS to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, it has not been reviewed by the Office of Management and Budget. Further, this action is not a proposed rule requiring an initial or final regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* In addition, this rule is not subject to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. Ch. 17A, 25, or the E-Government Act of 2002, 44 U.S.C. 3501, note.

Finally, under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. This rule does not affect any information collections, reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

■ Accordingly, part 245 of chapter 1 of title 8 of the Code of Federal Regulations is amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 1. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

■ 2. Section 245.2 is amended by revising paragraph (a)(4)(ii)(C) as follows:

§ 245.2 Application.

(a) * * *

(4) * * *

(ii) * * *

(C) The travel outside of the United States by an applicant for adjustment of status who is not under exclusion, deportation, or removal proceeding and who is in lawful H–1 or L–1 status shall not be deemed an abandonment of the application if, upon returning to this country, the alien remains eligible for H or L status, is coming to resume employment with the same employer for whom he or she had previously been authorized to work as an H–1 or L–1 nonimmigrant, and, is in possession of a valid H or L visa (if required). The travel outside of the United States by an applicant for adjustment of status who is not under exclusion, deportation, or removal proceeding and who is in lawful H–4 or L–2 status shall not be deemed an abandonment of the application if the spouse or parent of such alien through whom the H–4 or L–2 status was obtained is maintaining H–1 or L–1 status and the alien remains otherwise eligible for H–4 or L–2 status, and, the alien is in possession of a valid H–4 or L–2 visa (if required). The travel outside of the United States by an applicant for adjustment of status, who is not under exclusion, deportation, or removal proceeding and who is in lawful K–3 or K–4 status shall not be deemed an abandonment of the application if, upon returning to this country, the alien is in possession of a valid K–3 or K–4 visa and remains eligible for K–3 or K–4 status.

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Dated: October 15, 2007.

Michael Chertoff,

Secretary.

[FR Doc. E7–21506 Filed 10–31–07; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. FSIS–2007–0024]

RIN 0583–AD25

Eligibility of Chile to Export Poultry and Poultry Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is adding Chile to the list of countries eligible to export poultry and poultry products to the United States. Reviews by FSIS of Chile's laws, regulations, and inspection implementation show that its poultry inspection system requirements are equivalent to the relevant provisions of the Poultry Products Inspection Act (PPIA) and its implementing regulations.

With this final rule, poultry and poultry products processed in certified Chilean establishments may be exported to the United States. All such products will be subject to reinspection at United States ports-of-entry by FSIS inspectors.

DATES: *Effective Dates:* December 3, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Sally White, Director, International Equivalence Staff, Office of International Affairs; (202) 720–6400.

SUPPLEMENTARY INFORMATION:

Background

The Food Safety and Inspection Service (FSIS) is amending its poultry products inspection regulations to add Chile to the list of countries eligible to export poultry and poultry products to the United States (9 CFR 381.196).

Statutory Basis for Proposed Action

Section 17 of the PPIA (21 U.S.C. 466) prohibits importation into the United States of slaughtered poultry, or parts or products thereof, of any kind unless they are healthful, wholesome, fit for human food, not adulterated, and contain no dye, chemical, preservative, or ingredient that renders them unhealthful, unwholesome, adulterated, or unfit for human food. Under the PPIA and the regulations that implement it, poultry products imported into the United States must be produced under standards for safety, wholesomeness, and labeling accuracy that are equivalent to those of the United States. Section 381.196 of Title 9 of the CFR sets out the procedures by which foreign countries wanting to export poultry and poultry products to the United States may become eligible to do so.

Section 381.196(a) provides that a foreign country's poultry inspection system must include standards equivalent to those of the United States, and that the legal authority for the inspection system and its implementing regulations must also be equivalent to those of the United States. Specifically, a country's regulations must impose requirements equivalent to those of the United States with respect to: (1) Ante-mortem and post-mortem inspection; (2) official controls by the national government over plant construction, facilities, and equipment; (3) direct and continuous supervision of slaughter activities, where applicable, and product preparation by official inspection personnel; (4) separation of establishments certified to export from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified establishments; and (6) official controls over condemned product.

The foreign country's inspection system must ensure that establishments preparing poultry or poultry products for export to the United States, and their products, comply with requirements equivalent to those of the PPIA and the regulations promulgated by FSIS under the authority of that statute. The foreign country certifies the appropriate establishments as having met the required standards. The country must satisfy FSIS that the certifications it issues are reliable before FSIS will grant approval to the country to export poultry or poultry products to the United States (9 CFR 381.196). To assess the reliability of the foreign country's certifications, FSIS evaluates the country's inspection system and performs ongoing reviews of that system. To ensure that products imported into the United States are safe, wholesome, and properly labeled and packaged, FSIS randomly re-inspects and samples those products before they enter the United States.

In addition to meeting the certification requirements, a foreign country's inspection system must be evaluated by FSIS before eligibility to export poultry or poultry products to the United States can be granted. This evaluation consists of two processes: A document review and an on-site review. The document review is an evaluation of the laws, regulations, and other written materials used by the country to effect its inspection program. To help the country in organizing its material, FSIS gives the country questionnaires asking for detailed information about the country's inspection practices and procedures in five risk areas. These five risk areas, which are the focus of the evaluation, are sanitation, animal disease, slaughter/processing, residues, and enforcement. FSIS evaluates the information to verify that the critical points in the five risk areas are addressed satisfactorily with respect to standards, activities, resources, and enforcement. If the document review is satisfactory, an on-site review is scheduled using a multi-disciplinary team to evaluate all aspects of the country's inspection program, including laboratories and individual establishments within the country. The process of determining equivalence is described fully on the FSIS Web site at *http://www.fsis.usda.gov/regulations_&_policies/equivalence_process/index.asp*.

The PPIA and the regulations that implement it require that foreign countries be listed as eligible in the Code of Federal Regulations. FSIS must do rulemaking to list a country as eligible. Countries found eligible to export poultry or poultry products into the United States are listed in the poultry inspection regulations at 9 CFR 381.196(b). Once listed, it is the responsibility of the eligible country to certify that establishments meet the requirements to export poultry or poultry products to the United States, and to ensure that products from these establishments are safe, wholesome, and not misbranded.

Evaluation of the Chilean Inspection System for Poultry and Poultry Products

In response to a request from Chile for approval to export poultry and poultry products to the United States, FSIS conducted a review of Chile's poultry slaughter inspection system to determine whether it is equivalent to the U.S. poultry inspection system. First, FSIS compared Chile's poultry inspection laws and regulations with U.S. requirements. The Agency concluded that the requirements contained in Chile's poultry slaughter inspection laws and regulations are equivalent to the PPIA and to the regulations that FSIS has adopted under the PPIA to effect that statute.