

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 2020-99]

RIN 1115-AF81

Update of the List of Countries Whose Citizens or Nationals Are Ineligible for Transit Without Visa (TWOV) Privileges to the United States Under the TWOV Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Transit Without Visa (TWOV) Program allows certain aliens to transit the United States en route to a specified foreign country without a passport or visa provided they are traveling on a carrier signatory to an agreement with the Immigration and Naturalization Service (Service) in accordance with section 233(c) of the Act. This interim rule updates the list of those countries that the Service, acting on behalf of the Attorney General and jointly with the Department of State, has determined to be ineligible for participation in the TWOV program. This rule also removes certain countries from the ineligible listing so that aliens from these countries can have their passport and visa requirements waived. This rule is intended to benefit the travelling public by expanding the number of countries whose citizens or nationals may transit the United States without a visa while preventing an increase in the abuse of the TWOV program by citizens or nationals of countries placed on the ineligible list.

DATES: *Effective Date:* This interim rule is effective February 5, 2001.

Comment Date: Written comments must be submitted on or before March 6, 2001.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, room 4034, Washington, DC 20536. Please include INS number 2020-99 on your correspondence to ensure proper and timely handling. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Robert F. Hutnick, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW,

room 4064, Washington, DC 20536, telephone number (202) 616-7499.

SUPPLEMENTARY INFORMATION:**What Is the Authority for Participation in the TWOV Program?**

Section 212(d)(4)(C) of the Immigration and Nationality Act (Act) provides authority for the Attorney General acting jointly with the Secretary of State (see Department of State regulation published elsewhere in this issue of the **Federal Register**) to waive nonimmigrant visa requirements for aliens who are proceeding in immediate and continuous transit through the United States and are using a carrier which has entered into a contract with the Service authorized under section 233(c) of the Act, in this case an Immediate and Continuous Transit Agreement on Form I-426, also known as a TWOV Agreement.

How Does This Interim Rule Amend the Regulations?

As the Service will no longer consider where a citizen of a particular country resides in determining under what conditions he or she may participate in the TWOV program, this interim rule amends the regulations by removing § 212.1(f)(2). This rule amends § 212.1(f)(3) by adding certain countries to the list of countries whose citizens are ineligible for TWOV privileges and re-designates § 212.1(f)(3) as § 212.1(f)(2).

How Will This Amendment Affect Carrier Liability in Pending Cases Involving the Bringing to the United States of an Alien Who Was Ineligible for TWOV Privileges?

This change will not have any effect on pending cases. The change enters into force on February 5, 2001, and applies to cases involving aliens who arrive in the United States on or after that date. If, before that date, a carrier violated the Act by bringing an alien who did not have a visa and was not eligible for TWOV privileges, the carrier's violation was complete at that time. The fact that an alien from that country may now be eligible for TWOV privileges, therefore, will not relieve the carrier of liability.

What Countries Will Benefit From This Action?

In the aftermath of the breakup of the former Soviet Union, the Service and the Department of State are waiving the passport and visa requirements for citizens of certain former Union of Soviet Socialist Republics which request to transit the United States without a nonimmigrant visa. These

countries, from the former Soviet Union, include: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. They now will be afforded TWOV privileges.

Due to the democratization of the former Warsaw Pact countries, the citizens from these countries will be allowed to transit the United States without a nonimmigrant visa. The countries that will be afforded this privilege will include: Albania, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, and Slovakia.

Due to the relative stability of certain countries that were formerly part of the Socialist Federal Republic of Yugoslavia, this rule will allow citizens of the following countries to use the TWOV program: Croatia, the Former Yugoslav Republic of Macedonia, and Slovenia.

Lastly, the improved stability in Mongolia and Vietnam will permit citizens of these countries to apply for TWOV privileges under this rule.

What Countries Are Being Added to the Ineligibility List in § 212.1(f)(2), as Revised?

The following countries are being added to § 212.1(f)(2) making the waiver of passport and visa requirement not available to an alien who is a citizen of that country (ineligible for TWOV privileges): Angola, Belarus, Burma, Burundi, Central African Republic, People's Republic of China, Congo (Brazzaville), Nigeria, Russia, Sierra Leone, Somalia, and Sudan.

Why Are Citizens From These Countries Now Ineligible for TWOV Privileges?

In determining which countries may or may not transit without visa, the Service (in conjunction with the Department of State) takes into consideration such things as, but not limited to, past abuse of the transit without visa privilege; the country's nonimmigrant visa refusal rate; whether the country grants United States nationals reciprocal treatment; the country's crime rate, the stability of the country; any security concerns; whether the country has diplomatic relations with the United States; and other relevant factors.

Good Cause Exception

The implementation of this rule as an interim rule, with a 60-day provision for post-promulgation public comments, is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and 553(d)(3). A notice and comment period

prior to implementation would have been unnecessary and contrary to the public interest. A portion of this rule expands the categories of persons who may transit the United States without a visa and is thus considered beneficial to both the traveling public and the United States Government. Moreover, this aspect of the rule grants or recognizes an exemption or relieves a restriction within the scope of the exception set forth at 5 U.S.C. 553(d)(1). Certain other countries have been added to the countries ineligible to transit without a visa. The reason for the necessity for implementation of this aspect of the interim rule is as follows: It is necessary to prevent an anticipated sharp increase in the abuse of the TWOV program by citizens of the countries placed on the list of ineligible TWOV countries. These countries are placed on the ineligible to TWOV list for a variety of reasons including past abuse of the transit without visa privilege; the country's nonimmigrant visa refusal rate; whether the country grants United States citizens reciprocal treatment; the country's crime rate; the stability of the country; any security concerns; and, whether the country has diplomatic relations with the United States, among other reasons.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule governs whether a citizen of a particular country may transit the United States under the TWOV program. These aliens are not considered small entities as that term is defined under 5 U.S.C. 601(6).

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 in any 1-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 cost 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

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory actions" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the 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 warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and Visas.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. Section 212.1 is amended by:
 a. Removing paragraph (f)(2);
 b. Redesignating paragraphs (f)(3) and (f)(4) as paragraphs (f)(2) and (f)(3) respectively; and by
 c. Revising newly redesignated paragraph (f)(2), to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *
 (f) * * *

(2) *Unavailability to transit.* This waiver of passport and visa requirement is not available to an alien who is a citizen of Afghanistan, Angola, Bangladesh, Belarus, Bosnia-Herzegovina, Burma, Burundi, Central African Republic, People's Republic of China, Congo (Brazzaville), Cuba, India, Iran, Iraq, Libya, Nigeria, North Korea, Pakistan, Russia, Serbia, Seirra Leone, Somalia, Sri Lanka, and Sudan.

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Dated: December 21, 2000.

Mary Ann Wyrtsch,

Acting Commissioner, Immigration and Naturalization Service.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 337, and 362

RIN 3064-AC38

Activities and Investments of Insured State Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule and confirmation of interim final rule with changes.

SUMMARY: The FDIC is adopting a final rule to implement certain provisions of the Gramm-Leach-Bliley Act (G-L-B Act), governing activities and investments of insured state banks. Under the final rule, the FDIC adopts a streamlined certification process for insured state nonmember banks to follow before they may conduct activities as principal through a financial subsidiary. State nonmember banks will self-certify that they meet the requirements to carry out these activities, which will allow the banks to conduct the new activities immediately. There will be no delay for administrative approval or review, although the FDIC will evaluate these activities as part of its normal supervision process for safety and soundness standards pursuant to the FDIC's authority under section 8 of the Federal Deposit Insurance Act (FDI Act). The final rule confirms, with modifications, an interim rule that has been in effect since March 11, 2000. To eliminate unnecessary provisions and make technical amendments, the FDIC also has revised its rule implementing sections 24 and 18(m) of the FDI Act dealing with other activities and investments of insured state banks.

EFFECTIVE DATE: January 5, 2001.