

Department of State

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other than INA 212(a) (3)(A), (3)(C) or (3)(E).

(b) *Recommendation to designated INS officer abroad.* A consular officer may, in certain categories defined by the Secretary of State, recommend directly to designated INS officers that the temporary admission of an alien ineligible to receive a visa be authorized under INA 212(d)(3)(A).

(c) *Attorney General may impose conditions.* When the Attorney General authorizes the temporary admission of an ineligible alien as a nonimmigrant and the consular officer is so informed, the consular officer may proceed with the issuance of a nonimmigrant visa to the alien, subject to the conditions, if any, imposed by the Attorney General.

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Subpart A—Passport and Visas Not Required for Certain Nonimmigrants

§ 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).

(b) *American Indians born in Canada.* An American Indian born in Canada, having at least 50 per centum of blood of the American Indian race (Sec. 289, 66 Stat. 234; 8 U.S.C. 1359.)

(c) *Aliens entering from Guam, Puerto Rico, or the Virgin Islands.* An alien departing from Guam, Puerto Rico, or the Virgin Islands of the United States, and seeking to enter the continental United States or any other place under the jurisdiction of the United States (Sec. 212, 66 Stat. 188; 8 U.S.C. 1182.)

(d) *Armed Services personnel of a NATO member.* Personnel belonging to the armed services of a government which is a Party to the North Atlantic Treaty and which has ratified the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, signed at London on June 19, 1951, and entering the United States under Article III of that Agreement pursuant to an individual or collective movement order issued by an appropriate agency of the sending state or of NATO (TIAS 2846; 4 U.S.T. 1792.)

(e) *Armed Services personnel attached to a NATO headquarters in the United States.* Personnel attached to a NATO Headquarters in the United States set up pursuant to the North Atlantic Treaty, belonging to the armed services of a government which is a Party to the Treaty and entering the United States in connection with their official duties under the provisions of the Pro-

ocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty (TIAS 2978; 5 U.S.T. 875.)

(f) *Aliens entering pursuant to International Boundary and Water Commission Treaty.* All personnel employed either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission, and entering the United States temporarily in connection with such employment (59 Stat. 1252; TS 994.)

[52 FR 42597, Nov. 5, 1987, as amended at 56 FR 30428, July 2, 1991; 61 FR 1835, Jan. 24, 1996]

§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

Pursuant to the authority of the Secretary of State and the Attorney General under INA 212(d)(4), the passport and/or visa requirements of INA 212(a)(7)(B)(i)(I), (i)(II) are waived as specified below for the following categories of nonimmigrants:

(a) *Canadian nationals.* A passport is not required except after a visit outside the Western Hemisphere. A visa is not required.

(b) *Aliens resident in Canada or Bermuda having a common nationality with nationals of Canada or with British subjects in Bermuda.* A passport is not required except after a visit outside the Western Hemisphere. A visa is not required.

(c) *Bahamian nationals and British subjects resident in the Bahamas.* A passport is required. A visa is not required if, prior to the embarkation of such an alien for the United States on a vessel or aircraft, the examining U.S. immigration officer at Freeport or Nassau determines that the individual is clearly and beyond a doubt entitled to admission.

(d) *British subjects resident in the Cayman Islands or in the Turks and Caicos Islands.* A passport is required. A visa is not required if the alien arrives directly from the Cayman Islands or the

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Turks and Caicos Islands and presents a current certificate from the Clerk of Court of the Cayman Islands or the Turks and Caicos Islands indicating no criminal record.

(e) *British, French, and Netherlands nationals and nationals of certain adjacent islands of the Caribbean which are independent countries.* A passport is required. A visa is not required of a British, French or Netherlands national, or of a national of Antigua, Barbados, Grenada, Jamaica, or Trinidad and Tobago, who has residence in British, French, or Netherlands territory located in the adjacent islands of the Caribbean area, or has residence in Antigua, Barbados, Grenada, Jamaica, or Trinidad and Tobago, if the alien:

(1) Is proceeding to the United States as an agricultural worker; or

(2) Is the beneficiary of a valid, unexpired, indefinite certification granted by the Department of Labor for employment in the Virgin Islands of the United States and is proceeding thereto for employment, or is the spouse or child of such an alien accompanying or following to join the alien.

(f) *Nationals and residents of the British Virgin Islands proceeding to the Virgin Islands of the United States.* A passport is required. A visa is not required of a national of the British Virgin Islands who resides therein and is proceeding to the Virgin Islands of the United States.

(g) *Mexican nationals.* (1) A visa and a passport are not required of a Mexican national in possession of a border crossing identification card and applying for admission as a temporary visitor for business or pleasure from contiguous territory.

(2) A visa is not required of a Mexican national possessing a border crossing identification card and applying for admission to the United States as a temporary visitor for business or pleasure or in transit from noncontiguous territory.

(3) A visa is not required of a Mexican national employed as a crew member on an aircraft belonging to a Mexican company authorized to engage in commercial transportation into the United States.

(4) A visa is not required of a Mexican national bearing a Mexican diplo-

matic or official passport who is a military or civilian official of the Federal Government of Mexico entering the United States for a stay of up to 6 months for any purpose other than on assignment as a permanent employee to an office of the Mexican Federal Government in the United States. A visa is also not required of the official's spouse or any of the official's dependent family members under 19 years of age who hold diplomatic or official passports and are in the actual company of the official at the time of entry. This waiver does not apply to the spouse or any of the official's family members classifiable under INA 101(a)(15) (F) or (M).

(h) *Natives and residents of the Trust Territory of the Pacific Islands.* A visa and a passport are not required of a native and resident of the Trust Territory of the Pacific Islands who has proceeded in direct and continuous transit from the Trust Territory to the United States.

(i) *Aliens in immediate transit without visa (TWOV).* A passport and visa are not required of an alien in immediate and continuous transit through the United States in accordance with the terms of an agreement entered into between the carrier and INS on Form I-426, Immediate and Continuous Transit Agreement Between a Transportation Line and United States of America, pursuant to INA 238(d) to ensure transit through and departure from the United States en route to a specified foreign country. The alien must be in possession of travel documentation establishing identity, nationality, and ability to enter a country other than the United States. This waiver of visa and passport requirement is not available to an alien who is a citizen of Afghanistan, Bangladesh, Cuba, India, Iran, Iraq, Libya, Pakistan, Sri Lanka, or a citizen of a Republic of the former Socialist Federal Republic of Yugoslavia which includes Bosnia, Croatia, Serbia, Montenegro, Slovenia, and Macedonia. This waiver of visa and passport requirements is also not available to an alien who is a citizen of North Korea ("Democratic Peoples' Republic of Korea") or Vietnam ("Socialist Republic of Vietnam"), and is a resident of one of the said countries. It

is, on a basis of reciprocity, available to a national of Albania, Bulgaria, Czechoslovakia, Estonia, the German Democratic Republic, Hungary, Latvia, Lithuania, Mongolian People's Republic, People's Republic of China, Poland, Romania, or the Union of Soviet Socialist Republic, resident in one of those countries, only if he is transiting the United States by aircraft of a transportation line signatory to an agreement with the Immigration and Naturalization Service on Form 1-426 on a direct through flight which will depart directly to a foreign place from the port of arrival.

(j) *Individual cases of unforeseen emergencies.* A visa and passport are not required of an alien if, either prior to the alien's embarkation abroad or upon arrival at a port of entry, the responsible district director of the Immigration and Naturalization Service in charge of the port of entry concludes that the alien is unable to present the required documents because of an unforeseen emergency. Any waiver of the visa or passport requirement may be granted by the INS district director pursuant to INA 212(d)(4)(A) without the prior concurrence of the Department of State in each case in which the district director concludes that the alien's claim of emergency circumstances is legitimate and bona fide and that approval of the waiver would be appropriate under all of the attendant facts and circumstances.

(k) *Fiance(e) of a U.S. citizen.* Notwithstanding the provisions of paragraphs (a) through (h) of this section, a visa is required of an alien described in such paragraphs who is classified, or who seeks classification, under INA 101(a)(15)(K).

(l) *Visa Waiver Pilot Program.* (1) Notwithstanding the provisions of paragraphs (a) through (k) of this section, a visa is not required of any person who seeks admission to the United States for a period of 90 days or less as a visitor for business or pleasure and who is eligible to apply for admission to the United States as a Visa Waiver Pilot Program applicant, either as:

- (i) A citizen of a pilot program country; or
- (ii) a citizen of a pilot program country with probationary status, pursuant

to the provisions of section 217 of the Act, as amended.

(2) Countries designated as pilot program countries under paragraph (1)(1), (i) of this section, are: the United Kingdom (effective July 1, 1988); Japan (effective December 15, 1988); France and Switzerland (effective July 1, 1989); The Federal Republic of Germany and Sweden (effective July 15, 1989); Italy and The Netherlands (effective July 29, 1989); Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain (effective October 1, 1991; and Brunei (effective July 29, 1993). Countries designated as pilot program countries with probationary status under paragraph (1)(1)(ii) of this section are: Ireland effective April 1, 1995 until September 30, 1998 or the expiration of the Visa Waiver Pilot Program, whichever comes first; Argentina July 8, 1996; and Australia effective July 29, 1996.

(m) *Treaty Trader and Treaty Investor.* Notwithstanding the provisions of paragraph (a) of this section, a visa is required of a Canadian national who is classified, or who seeks classification, under INA 101(a)(15)(E).

[52 FR 42597, Nov. 5, 1987, as amended at 53 FR 9110, Mar. 21, 1988; 53 FR 50162, Dec. 13, 1988; 53 FR 53375, Dec. 30, 1988; 54 FR 27121, June 27, 1989; 56 FR 30428, July 2, 1991; 56 FR 46717, Sept. 13, 1991; 58 FR 40586, July 29, 1993; 58 FR 43439, Aug. 16, 1993; 59 FR 1473, Jan. 11, 1994; 60 FR 15874, Mar. 28, 1995; 61 FR 35629, July 8, 1996; 61 FR 39319, July 29, 1996]

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

Under the authority of INA 212(d)(4), the documentary requirements of INA 212(a)(7)(B)(i)(I), (i)(II) may be waived for any alien in whose case the consular officer serving the port or place of embarkation is satisfied after consultation with, and concurrence by, the appropriate immigration officer, that the case falls within any of the following categories:

- (a) *Residents of foreign contiguous territory; visa and passport waiver.* An alien residing in foreign contiguous territory who does not qualify for any waiver provided in § 41.1 and is a member of a visiting group or excursion proceeding

to the United States under circumstances which make it impractical to procure a passport and visa in a timely manner.

(b) *Aliens for whom passport extension facilities are unavailable; passport waiver.* As alien whose passport is not valid for the period prescribed in INA 212(a)(7)(B)(i)(I) and who is embarking for the United States at a port or place remote from any establishment at which the passport could be revalidated.

(c) *Aliens precluded from obtaining passport extensions by foreign government restrictions; passport waiver.* An alien whose passport is not valid for the period prescribed in INA 212(a)(7)(B)(i)(I) and whose government, as a matter of policy, does not revalidate passports more than 6 months prior to expiration or until the passport expires.

(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.

(e) *Members of armed forces of foreign countries; visa and passport waiver.* An alien on active duty in the armed forces of a foreign country and a member of a group of such armed forces traveling to the United States, on behalf of the alien's government or the United Nations, under advance arrangements made with the appropriate military authorities of the United States. The waiver does not apply to a citizen or resident of Cuba, Mongolian People's Republic, North Korea (Democratic People's Republic of Korea), Vietnam (Socialist Republic of Vietnam), or the People's Republic of China.

(f) *Landed immigrants in Canada; passport waiver.* An alien applying for a visa at a consular office in Canada:

(1) Who is a landed immigrant in Canada;

(2) Whose port and date of expected arrival in the United States are known; and

(3) Who is proceeding to the United States under emergent circumstances which preclude the timely procurement

of a passport or Canadian certificate of identity.

(g) *Authorization to individual consular office; visa and/or passport waiver.* An alien within the district of a consular office which has been authorized by the Department, because of unusual circumstances prevailing in that district, to join with immigration officers abroad in waivers of documentary requirements in specific categories of cases, and whose case falls within one of those categories.

[52 FR 42597, Nov. 5, 1987, as amended at 56 FR 30428, July 2, 1991; 60 FR 30188, June 8, 1995; 61 FR 1835, Jan. 24, 1996]

Subpart B—Classification of Nonimmigrants

§ 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 non-immigrant 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).

(2) In a borderline case in which an alien appears to be otherwise entitled to receive a visa under INA 101(a)(15)(B) or (F) but the consular officer concludes that the maintenance of the alien's status or the departure of the alien from the United States as required is not fully assured, a visa may nevertheless be issued upon the posting of a bond with the Attorney General under terms and conditions prescribed by the consular officer.

[52 FR 42597, Nov. 5, 1987, as amended at 61 FR 1835, Jan. 24, 1996]

§ 41.12 Classification symbols.

A visa issued to a nonimmigrant alien within one of the classes described in this section shall bear an ap-

propriate visa symbol to show the classification of the alien. The symbol shall be inserted in the space provided in the visa stamp. The following visa symbols shall be used:

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Symbol	Class	Section of law
A-1	Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family.	101(a)(15)(A)(i).
A-2	Other Foreign Government Official or Employee, or Immediate Family	101(a)(15)(A)(ii).
A-3	Attendant, Servant, or Personal Employee of A-1 or A-2, or Immediate Family.	101(a)(15)(A)(iii).
B-1	Temporary Visitor for Business	101(a)(15)(B).
B-2	Temporary Visitor for Pleasure	101(a)(15)(B).
B-1/B-2	Temporary Visitor for Business & Pleasure	101(a)(15)(B).
C-1	Alien in Transit	101(a)(15)(C).
C-2	Alien in Transit to United Nations Headquarters District Under Sec. 11.(3), (4), or (5) of the Headquarters Agreement.	101(a)(15)(C).
C-3	Foreign Government Official, Immediate Family, Attendant, Servant or Personal Employee, in Transit.	212(d)(8).
D	Crewmember (Sea or Air)	101(a)(15)(D).
E-1	Treaty Trader, Spouse or Child	101(a)(15)(E)(i).
E-2	Treaty Investor, Spouse or Child	101(a)(15)(E)(ii).
F-1	Student	101(a)(15)(F)(i).
F-2	Spouse or Child of F-1	101(a)(15)(F)(ii).
G-1	Principal Resident Representative of Recognized Foreign Government to International Organization, Staff, or Immediate Family.	101(a)(15)(G)(i).
G-2	Other Representative of Recognized Foreign Member Government to International Organization, or Immediate Family.	101(a)(15)(G)(ii).
G-3	Representative of Nonrecognized Nonmember Foreign Government to International Organization, or Immediate Family.	101(a)(15)(G)(iii).
G-4	International Organization Officer or Employee, or Immediate Family	101(a)(15)(G)(iv).
G-5	Attendant, Servant, or Personal Employee of G-1 through G-4 or Immediate Family.	101(a)(15)(G)(v).
H-1A	Registered Nurse	101(a)(15)(H)(i)(a).
H-1B	Alien in a Specialty Occupation (Profession)	101(a)(15)(H)(i)(b).
H-2A	Temporary Worker Performing Agricultural Services Unavailable In the United States (Petition filed on or After June 1, 1987).	101(a)(15)(H)(ii)(a).
H-2B	Temporary Worker Performing Other Services Unavailable in the United States (Petition filed on or After June 1, 1987).	101(a)(15)(H)(ii)(b).
H-3	Trainee	101(a)(15)(H)(iii).
H-4	Spouse or Child of Alien Classified H-1A/B, H2A/B, or H-3	101(a)(15)(H)(iv).
I	Representative of Foreign Information Media, Spouse and Child	101(a)(15)(I).
J-1	Exchange Visitor	101(a)(15)(J).
J-2	Spouse or Child of J-1	101(a)(15)(J).
K-1	Fiance(e) of United States Citizen	101(a)(15)(K).
K-2	Child of Fiance(e) of U.S. Citizen	101(a)(15)(K).
L-1	Intracompany Transferee (Executive, Managerial, and Specialized Knowledge Personnel Continuing Employment with International Firm or Corporation.	101(a)(15)(L).
L-2	Spouse or Child of Intracompany Transferee	101(a)(15)(L).
M-1	Vocational Student or Other Nonacademic Student	101(a)(15)(M).
M-2	Spouse or Child of M-1	101(a)(15)(M).
N-8	Parent of an Alien Classified SK-3 Special Immigrant	101(a)(15)(N)(i).
N-9	Child of N-8 or of an SK-1, SK-2, or SK-4 Special Immigrant	101(a)(15)(N)(ii).
NATO-1	Principal Permanent Representative of Member State to NATO (including any of its Subsidiary Bodies) Resident in the U.S. and Resident Members of Official Staff; Secretary General, Assistant Secretary General, and Executive Secretary of NATO; Other Permanent NATO Officials of Similar Rank, or Immediate Family.	Art. 12, 5 UST 1094; Art. 20, 5 UST 1098.
NATO-2	Other Representative of member state to NATO (including any of Subsidiary Bodies) including Representatives, its Advisers and Technical Experts of Delegations, Members of Immediate Art. 3, 4 UST 1796 Family; Dependents of Member of a Force Entering in Accordance with the Provisions Status-of-Forces Agreement or in Accordance with the provisions of the Protocol on the Status of International Military Headquarters; Members of Such a Force if Issued Visas.	Art. 13, 5 UST 1094; Art. 1, 4 UST 1794.
NATO-3	Official Clerical Staff Accompanying Representative of Member State to NATO (including any of its Subsidiary Bodies) or Immediate Family.	Art. 14, 5 UST 1096.
NATO-4	Official of NATO (Other Than Those Classifiable as NATO-1) or Immediate Family.	Art. 18, 5 UST 1098.

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Symbol	Class	Section of law
NATO-5	Expert, Other Than NATO Officials Classifiable Under the NATO-4, Employed in Missions on Behalf of NATO, and their Dependents.	Art. 21, 5 UST 1100.
NATO-6	Member of a Civilian Component Accompanying a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement; Member of a Civilian Component Attached to or Employed by an Allied Headquarters Under the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty; and their Dependents.	Art. 1, 4 UST 1794; Art. 3, 5 UST 877.
NATO-7	Attendant, Servant, or Personal Employee of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, and NATO-6 Classes, or Immediate Family.	Art. 12-20; 5 UST 1094-1098.
O-1	Alien with Extraordinary Ability in Sciences, Arts, Education, Business or Athletics.	101(a)(15)(O)(i).
O-2	Accompanying Alien	101(a)(15)(O)(ii).
O-3	Spouse or Child of O-1 or O-2	101(a)(15)(O)(iii).
P-1	Internationally Recognized Athlete or Member of Internationally Recognized Entertainment Group.	101(a)(15)(P)(i).
P-2	Artist or Entertainer in a Reciprocal Exchange Program	101(a)(15)(P)(ii).
P-3	Artist or Entertainer in a Culturally Unique Program	101(a)(15)(P)(iii).
P-4	Spouse or Child of P-1, P-2, or P-3	101(a)(15)(P)(iv).
Q-1	Participant in an International Cultural Exchange Program	101(a)(15)(Q).
R-1	Alien in a Religious Occupation	101(a)(15)(R).
R-2	Spouse or Child of R-1	101(a)(15)(R).
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).
TN	NAFTA Professional	214(e)(2).
TD	Spouse or Child of NAFTA Professional	214(e)(2).

[60 FR 10497, Feb. 27, 1995; as amended at 61 FR 1836, Jan. 24, 1996]

Subpart C—Foreign Government Officials

§ 41.21 General.

(a) *Definitions.* In addition to pertinent INA definitions, the following definitions are applicable:

(1) *Accredited*, as used in INA 101(a)(15)(A), 101(a)(15)(G), and 212(d)(8), means an alien holding an official position, other than an honorary official position, with a government or international organization and possessing a travel document or other evidence of intention to enter or transit the United States to transact official business for that government or international organization.

(2) *Attendants*, as used in INA 101(a)(15)(A)(iii), 101(a)(15)(G)(v), and 212(d)(8), and in the definition of the NATO-7 visa symbol, means aliens paid from the public funds of a foreign government or from the funds of an international organization, accompanying or following to join the principal alien to whom a duty or service is owed.

(3) *Immediate family*, as used in INA 101(a)(15)(A), 101(a)(15)(G), and 212(d)(8), and in classification under the NATO-

1 through NATO-5 visa symbols, means the spouse and unmarried sons and daughters, whether by blood or adoption, who are not members of some other household, and who will reside regularly in the household of the principal alien. “Immediate family” also includes any other close relatives of the principal alien or spouse who:

(i) Are relatives of the principal alien or spouse by blood, marriage, or adoption;

(ii) Are not members of some other household;

(iii) Will reside regularly in the household of the principal alien;

(iv) Are recognized as dependents by the sending Government as demonstrated by eligibility for rights and benefits, such as the issuance of a diplomatic or official passport and travel and other allowances, which would be granted to the spouse and children of the principal alien; and

(v) Are individually authorized by the Department.

(4) *Servants and personal employees*, as used in INA 101(a)(15)(A)(iii), 101(a)(15)(G)(v), and 212(d)(8), and in classification under the NATO-7 visa

symbol, means aliens employed in a domestic or personal capacity by a principal alien, who are paid from the private funds of the principal alien and seek to enter the United States solely for the purpose of such employment.

(b) *Exception to passport validity requirement for aliens in certain A, G, and NATO classes.* A nonimmigrant alien for whom the passport requirement of INA 212(a)(7)(B)(i)(I) has not been waived and who is within one of the classes:

(1) Described in INA 101(a)(15)(A)(i) and (ii); or

(2) Described in INA 101(a)(15)(G)(i), (ii), (iii), and (iv); or

(3) NATO-1, NATO-2, NATO-3, NATO-4, or NATO-6 may present a passport which is valid only for a sufficient period to enable the alien to apply for admission at a port of entry prior to its expiration.

(c) *Exception to passport validity requirement for foreign government officials in transit.* An alien classified C-3 under INA 212(d)(8) needs to present only a valid unexpired visa and a travel document which is valid for entry into a foreign country for at least 30 days from the date of application for admission into the United States.

(d) *Grounds for refusal of visas applicable to certain A, C, G, and NATO classes.*

(1) An A-1 or A-2 visa may not be issued to an alien the Department has determined to be persona non grata.

(2) Only the provisions of INA 212(a) cited below apply to the indicated classes of nonimmigrant visa applicants:

(i) Class A-1: INA 212(a) (3)(A), (3)(B), and (3)(C);

(ii) Class A-2: INA 212(a) (3)(A), (3)(B), and (3)(C);

(iii) Classes C-2 and C-3: INA 212(a) (3)(A), (3)(B), (3)(C), and (7)(B);

(iv) Classes G-1, G-2, G-3, and G-4: INA 212(a) (3)(A), (3)(B), and (3)(C);

(v) Classes NATO-1, NATO-2, NATO-3, NATO-4, and NATO-6: INA 212(a) (3)(A), (3)(B), and (3)(C);

(3) An alien within class A-3 or G-5 is subject to all grounds of refusal specified in INA 212 which are applicable to nonimmigrants in general.

[52 FR 42597, Nov. 5, 1987; 53 FR 9111, Mar. 21, 1988, as amended at 56 FR 30428, July 2, 1991]

§ 41.22 Officials of foreign governments.

(a) *Criteria for classification of foreign government officials.* (1) An alien is classifiable A-1 or A-2 under INA 101(a)(15)(A) (i) or (ii) if the principal alien:

(i) Has been accredited by a foreign government recognized de jure by the United States;

(ii) Intends to engage solely in official activities for that foreign government while in the United States; and

(iii) Has been accepted by the President, the Secretary of State, or a consular officer acting on behalf of the Secretary of State.

(2) A member of the immediate family of a principal alien is classifiable A-1 or A-2 under INA 101(a)(15)(A) (i) or (ii) if the principal alien is so classified.

(b) *Classification under INA 101(a)(15)(A).* An alien entitled to classification under INA 101(a)(15)(A) shall be classified under this section even if eligible for another nonimmigrant classification.

(c) *Classification of attendants, servants, and personal employees.* An alien is classifiable as a nonimmigrant under INA 101(a)(15)(A)(iii) if the consular officer is satisfied that the alien qualifies under those provisions.

(d) *Referral to the Department of special cases concerning principal alien applicants.* In any case in which there is uncertainty about the applicability of these regulations to a principal alien applicant requesting such nonimmigrant status, the matter shall be immediately referred to the Department for consideration as to whether acceptance of accreditation will be granted.

(e) *Change of classification to that of a foreign government official.* In the case of an alien in the United States seeking a change of nonimmigrant classification under INA 248 to a classification under INA 101(a)(15)(A) (i) or (ii), the question of acceptance of accreditation is determined by the Department.

(f) *Termination of status.* The Department may, in its discretion, cease to recognize as entitled to classification under INA 101(a)(15)(A) (i) or (ii) any

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alien who has nonimmigrant status under that provision.

(g) *Classification of foreign government official.* A foreign government official or employee seeking to enter the United States temporarily other than as a representative or employee of a foreign government is not classifiable under the provisions of INA 101(a)(15)(A).

(h) *Courier and acting courier on official business*—(1) *Courier of career.* An alien regularly and professionally employed as a courier by the government of the country to which the alien owes allegiance is classifiable as a nonimmigrant under INA 101(a)(15)(A)(i), if the alien is proceeding to the United States on official business for that government.

(2) *Official acting as courier.* An alien not regularly and professionally employed as a courier by the government of the country to which the alien owes allegiance is classifiable as a nonimmigrant under INA 101(a)(15)(A)(ii), if the alien is holding an official position and is proceeding to the United States as a courier on official business for that government.

(3) *Nonofficial serving as courier.* An alien serving as a courier but not regularly and professionally employed as such who holds no official position with, or is not a national of, the country whose government the alien is serving, shall be classified as a nonimmigrant under INA 101(a)(15)(B).

(i) *Official of foreign government not recognized by the United States.* An official of a foreign government not recognized de jure by the United States, who is proceeding to or through the United States on an official mission or to an international organization shall be classified as a nonimmigrant under INA 101(a)(15)(B), (C), or (G)(iii).

§ 41.23 Accredited officials in transit.

An accredited official of a foreign government intending to proceed in immediate and continuous transit through the United States on official business for that government is entitled to the benefits of INA 212(d)(8) if that government grants similar privileges to officials of the United States, and is classifiable C-3 under the provisions of INA 101(a)(15)(C). Members of the immediate family, attendants,

servants, or personal employees of such an official receive the same classification as the principal alien.

§ 41.24 International organization aliens.

(a) *Definition of international organization.* “International organization,” means any public international organization which has been designated by the President by Executive Order as entitled to enjoy the privileges, exemptions, and immunities provided for in the International Organizations Immunities Act. (59 Stat. 669)

(b) *Aliens coming to international organizations.* (1) An alien is classifiable under INA 101(a)(15)(G) if the consular officer is satisfied that the alien is within one of the classes described in that section and seeks to enter or transit the United States in pursuance of official duties. If the purpose of the entry or transit is other than pursuance of official duties, the alien is not classifiable under INA 101(a)(15)(G).

(2) An alien applying for a visa under the provisions of INA 101(a)(15)(G) may not be refused solely on the grounds that the applicant is not a national of the country whose government the applicant represents.

(3) An alien seeking to enter the United States as a foreign government representative to an international organization, who is also proceeding to the United States on official business as a foreign government official within the meaning of INA 101(a)(15)(A), shall be issued a visa under that section, if otherwise qualified.

(4) An alien not classifiable under INA 101(a)(15)(A) but entitled to classification under INA 101(a)(15)(G) shall be classified under the latter section, even if also eligible for another nonimmigrant classification.

§ 41.25 NATO representatives, officials, and employees.

(a) *Classification.* An alien shall be classified under the symbol NATO-1, NATO-2, NATO-3, NATO-4, or NATO-5 if the consular officer is satisfied that the alien is seeking admission to the United States under the applicable provision of the Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and

International Staff, or is a member of the immediate family of an alien classified NATO-1 through NATO-5. (See §41.12 for classes of aliens entitled to classification under each symbol.)

(b) *Armed services personnel.* Armed services personnel entering the United States in accordance with the provisions of the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces or in accordance with the provisions of the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty may enter the United States under the appropriate treaty waiver of documentary requirements contained in §41.1(d) or (e). If a visa is issued it is classifiable under the NATO-2 symbol.

(c) *Dependents of armed services personnel.* Dependents of armed services personnel referred to in paragraph (b) of this section shall be classified under the symbol NATO-2.

(d) *Members of civilian components and dependents.* Alien members of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, and dependents, or alien members of a civilian component attached to or employed by an Allied Headquarters under the Protocol on the Status of International Military Headquarters, and dependents shall be classified under the symbol NATO-6.

(e) *Attendant, servant, or personal employee of an alien classified NATO-1 through NATO-6.* An alien attendant, servant, or personal employee of an alien classified NATO-1 through NATO-6, and any member of the immediate family of such attendant, servant, or personal employee, shall be classified under the symbol NATO-7.

§41.26 Diplomatic visas.

(a) *Definitions.* (1) *Diplomatic passport* means a national passport bearing that title and issued by a competent authority of a foreign government.

(2) *Diplomatic visa* means any nonimmigrant visa, regardless of classification, which bears that title and is issued in accordance with the regulations of this section.

(3) *Equivalent of a diplomatic passport* means a national passport, issued by a

competent authority of a foreign government which does not issue diplomatic passports to its career diplomatic and consular officers, indicating the career diplomatic or consular status of the bearer.

(b) *Place of application.* With the exception of certain aliens in the United States issued nonimmigrant visas by the Department under the provisions of §41.111(b), application for a diplomatic visa shall be made at a diplomatic mission or at a consular office authorized to issue diplomatic visas, regardless of the nationality or residence of the applicant.

(c) *Classes of aliens eligible to receive diplomatic visas.* (1) A nonimmigrant alien who is in possession of a diplomatic passport or its equivalent shall, if otherwise qualified, be eligible to receive a diplomatic visa irrespective of the classification of the visa under §41.12 if within one of the following categories:

(i) Heads of states and their alternates;

(ii) Members of a reigning royal family;

(iii) Governors-general, governors, high commissioners, and similar high administrative or executive officers of a territorial unit, and their alternates;

(iv) Cabinet ministers and their assistants holding executive or administrative positions not inferior to that of the head of a departmental division, and their alternates;

(v) Presiding officers of chambers of national legislative bodies;

(vi) Justices of the highest national court of a foreign country;

(vii) Ambassadors, public ministers, other officers of the diplomatic service and consular officers of career;

(viii) Military officers holding a rank not inferior to that of a brigadier general in the United States Army or Air Force and Naval officers holding a rank not inferior to that of a rear admiral in the United States Navy;

(ix) Military, naval, air and other attaché and assistant attaché assigned to a foreign diplomatic mission;

(x) Officers of foreign-government delegations to international organizations so designated by Executive Order;

(xi) Officers of foreign-government delegations to, and officers of, international bodies of an official nature, other than international organizations so designated by Executive Order;

(xii) Officers of a diplomatic mission of a temporary character proceeding to or through the United States in the performance of their official duties;

(xiii) Officers of foreign-government delegations proceeding to or from a specific international conference of an official nature;

(xiv) Members of the immediate family of a principal alien who is within one of the classes described in paragraphs (c)(1)(i) to (c)(1)(xi) inclusive, of this section;

(xv) Members of the immediate family accompanying or following to join the principal alien who is within one of the classes described in paragraphs (c)(1)(xii) and (c)(1)(xiii) of this section;

(xvi) Diplomatic couriers proceeding to or through the United States in the performance of their official duties.

(2) Aliens Classifiable G-4, who are otherwise qualified, are eligible to receive a diplomatic visa if accompanying these officers:

(i) The Secretary General of the United Nations;

(ii) An Under Secretary General of the United Nations;

(iii) An Assistant Secretary General of the United Nations;

(iv) The Administrator or the Deputy Administrator of the United Nations Development Program;

(v) An Assistant Administrator of the United Nations Development Program;

(vi) The Executive Director of the:

(A) United Nation's Children's Fund;

(B) United Nations Institute for Training and Research;

(C) United Nations Industrial Development Organization;

(vii) The Executive Secretary of the: (A) United Nations Economic Commission for Africa;

(B) United Nations Economic Commission for Asia and the Far East;

(C) United Nations Economic Commission for Latin America;

(D) United Nations Economic Commission for Europe;

(viii) The Secretary General of the United Nations Conference on Trade and Development;

(ix) The Director General of the Latin American Institute for Economic and Social Planning;

(x) The United Nations High Commissioner for Refugees;

(xi) The United Nations Commissioner for Technical Cooperation;

(xii) The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East;

(xiii) The spouse or child of any non-immigrant alien listed in paragraphs (c)(2)(i) through (c)(2)(xii) of this section.

(3) Other individual aliens or classes of aliens are eligible to receive diplomatic visas upon authorization of the Department, the Chief of a U.S. Diplomatic Mission, the Deputy Chief of Mission, the Counselor for Consular Affairs or the principal officer of a consular post not under the jurisdiction of a diplomatic mission.

[52 FR 42597, Nov. 5, 1987; 53 FR 9111, Mar. 21, 1988]

§ 41.27 Official visas.

(a) *Definition. Official visa* means any nonimmigrant visa, regardless of classification, which bears that title and is issued in accordance with these regulations.

(b) *Place of application.* Official visas are ordinarily issued only when application is made in the consular district of the applicant's residence. When directed by the Department, or in the discretion of the consular officer, official visas may be issued when application is made in a consular district in which the alien is physically present but does not reside. Certain aliens in the United States may be issued official visas by the Department under the provisions of § 41.111(b).

(c) *Classes of aliens eligible to receive official visas.* (1) A nonimmigrant within one of the following categories who is not eligible to receive a diplomatic visa shall, if otherwise qualified, be eligible to receive an official visa irrespective of classification of the visa under § 41.12:

(i) Aliens within a class described in § 41.26(c)(2) who are ineligible to receive a diplomatic visa because they are not in possession of a diplomatic passport or its equivalent;

(ii) Aliens classifiable under INA 101(a)(15)(A);

(iii) Aliens, other than those described in § 41.26(c)(3) who are classifiable under INA 101(a)(15)(G), except those classifiable under INA 101(a)(15)(G)(iii) unless the government of which the alien is an accredited representative is recognized *de jure* by the United States;

(iv) Aliens classifiable under INA 101(a)(15)(C) as nonimmigrants described in INA 212(d)(8);

(v) Members and members-elect of national legislative bodies;

(vi) Justices of the lesser national and the highest state courts of a foreign country;

(vii) Officers and employees of national legislative bodies proceeding to or through the United States in the performance of their official duties;

(viii) Clerical and custodial employees attached to foreign-government delegations to, and employees of, international bodies of an official nature, other than international organizations so designated by Executive Order, proceeding to or through the United States in the performance of their official duties;

(ix) Clerical and custodial employees attached to a diplomatic mission of a temporary character proceeding to or through the United States in the performance of their official duties;

(x) Clerical and custodial employees attached to foreign-government delegations proceeding to or from a specific international conference of an official nature;

(xi) Officers and employees of foreign governments recognized *de jure* by the United States who are stationed in foreign contiguous territories or adjacent islands;

(xii) Members of the immediate family, attendants, servants and personal employees of, when accompanying or following to join, a principal alien who is within one of the classes referred to or described in paragraphs (c)(1)(i) through (c)(1)(xi) inclusive of this section;

(xiii) Attendants, servants and personal employees accompanying or following to join a principal alien who is within one of the classes referred to or described in paragraphs (c)(1)(i)

through (c)(1)(xiii) inclusive of § 41.26(c)(2).

(2) Other individual aliens or classes of aliens are eligible to receive official visas upon the authorization of the Department, the Chief of a U.S. Diplomatic Mission, the Deputy Chief of Mission, the Counselor for Consular Affairs, or the principal officer of a consular post not under the jurisdiction of a diplomatic mission.

[52 FR 42597, Nov. 5, 1987; 53 FR 9111, Mar. 21, 1988]

Subpart D—Temporary Visitors

§ 41.31 Temporary visitors for business or pleasure.

(a) *Classification.* An alien is classifiable as a nonimmigrant visitor for business (B-1) or pleasure (B-2) if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(B), and that:

(1) The alien intends to leave the United States at the end of the temporary stay (consular officers are authorized, if departure of the alien as required by law does not seem fully assured, to require the posting of a bond with the Attorney General in a sufficient sum to ensure that at the end of the temporary visit, or upon failure to maintain temporary visitor status, or any status subsequently acquired under INA 248, the alien will depart from the United States);

(2) The alien has permission to enter a foreign country at the end of the temporary stay; and

(3) Adequate financial arrangements have been made to enable the alien to carry out the purpose of the visit to and departure from the United States.

(b) *Definitions.* (1) The term “business,” as used in INA 101(a)(15)(B), refers to conventions, conferences, consultations and other legitimate activities of a commercial or professional nature. It does not include local employment or labor for hire. For the purposes of this section building or construction work, whether on-site or in plant, shall be deemed to constitute purely local employment or labor for hire; provided that the supervision or training of others engaged in building or construction work (but not the actual performance of any such building

or construction work) shall not be deemed to constitute purely local employment or labor for hire if the alien is otherwise qualified as a B-1 nonimmigrant. An alien seeking to enter as a nonimmigrant for employment or labor pursuant to a contract or other prearrangement is required to qualify under the provisions of § 41.53. An alien of distinguished merit and ability seeking to enter the United States temporarily with the idea of performing temporary services of an exceptional nature requiring such merit and ability, but having no contract or other prearranged employment, may be classified as a nonimmigrant temporary visitor for business.

(2) The term *pleasure*, as used in INA 101(a)(15)(B), refers to legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or service nature.

[52 FR 42597, Nov. 5, 1987; 53 FR 9172, Mar. 21, 1988]

§ 41.32 Nonresident alien Mexican border crossing identification cards; combined border crossing identification cards and B-1/B-2 visitor visa.

(a) *Border crossing identification cards (BCC)*—(1) *Posts authorized to issue.* Consular officers assigned to consular offices in Ciudad Juarez, Hermosillo, Nuevo Laredo, Matamoros, and Tijuana may issue a nonresident alien border crossing identification card (BCC), as that term is defined in INA 101(a)(6), to a nonimmigrant alien who:

- (i) Is a citizen and resident of Mexico; and
- (ii) Is a temporary visitor who, if applying for a B-1 or B-2 visitor visa for business or pleasure, would be eligible to receive such visa.

(2) *Procedures for application.* A citizen of Mexico shall apply for a BCC on Form OF-156, Nonimmigrant Visa Application. The application shall be supported by:

- (i) Evidence of Mexican citizenship and residence;
- (ii) A valid or expired Mexican Federal passport or a valid Mexican identity document (Form FM13); and

(iii) One photograph (1-½-inches square), if the alien is 16 years of age or older. Each applicant shall appear in person before a consular officer and be interviewed regarding eligibility for a temporary visitor visa, unless personal appearance is waived by the officer.

(3) *Issuance and format.* A Mexican BCC shall consist of a stamp placed in the alien's valid or expired Mexican Federal passport or valid Mexican identity document by a consular officer stationed at one of the posts designated in paragraph (a)(1) of this section. The stamps shall be numbered serially by each consular office beginning with the number "1" on October 1 of each year. They must be in the format prescribed by the Department and contain the following data:

- (i) Post symbol;
- (ii) Number of the card;
- (iii) Title and location of the issuing office;
- (iv) Date of issuance;
- (v) Name(s) of the person(s) to whom issued; and
- (vi) Signature and title of the issuing officer.

(b) *Combined border crossing identification cards and B-1/B-2 visitor visas (B-1/B-2—BCC)*—(1) *Posts authorized to issue.* Consular officers assigned to any consular office in Mexico may issue a nonresident alien border crossing identification card, as that term is defined in INA 101(a)(6), in combination with a B-1/B-2 nonimmigrant visitor visas (B-1/B-2—BCC), to a nonimmigrant alien who:

- (i) Is a citizen of Mexico;
- (ii) Seeks to enter the United States as a temporary visitor for business or pleasure as defined in INA 101(a)(15)(B) for periods of stay not exceeding 6 months; and
- (iii) Is otherwise eligible to receive a B-1 or B-2 temporary visitor visa or is the beneficiary of a waiver under INA 212(d)(3)(A) of a ground of ineligibility, which is valid for multiple applications for admission into the United States and for an indefinite period of time and which contains no restrictions as to extensions of temporary stay or itinerary.

(2) *Procedure for application.* Application for a B-1/B-2—BCC may be made by a Mexican applicant at any U.S. consular office in Mexico on Form OF-

156. The application shall be supported by:

- (i) Evidence of Mexican citizenship and residence;
- (ii) A valid Mexican Federal passport; and
- (iii) One photograph (1-½-inches square), if 16 years of age or older.

Each applicant shall appear in person before a consular officer to be interviewed regarding eligibility for a visitor visa, unless personal appearance is waived by the consular officer.

(3) *Issuance and format.* A Mexican B-1/B-2—BCC shall consist of a numbered stamp placed in the alien's valid Mexican Federal passport by a consular officer in Mexico. The stamps shall be numbered serially by each consular office beginning with the number "1" on October 1 of each year. They must be in the format prescribed by the Department and contain the following data:

- (i) Post symbol;
- (ii) Number of the card;
- (iii) Title and location of the issuing office;
- (iv) Date of issuance;
- (v) Indicia "Mexican Border Crossing Identification Card and B-1/B-2 Non-immigrant Visa";
- (vi) Name(s) of the person(s) to whom issued;
- (vii) Caption "Valid indefinitely for multiple applications for admission to the United States as a temporary visitor for business or pleasure" in the middle portion of the stamp; and
- (viii) Signature and title of the issuing officer.

(c) *Validity.* A Mexican BCC or B-1/B-2—BCC, issued pursuant to the provisions of this section, is valid until revoked. A BCC previously issued by a consular officer in Mexico on Form I-186, Nonresident Alien Mexican Border Crossing Card, or Form I-586, Nonresident Alien Border Crossing Card, is valid until revoked or voided, regardless of any expiration date on the card.

(d) *Revocation.* A Mexican BCC or B-1/B-2—BCC may be revoked under the provisions of §41.122. Upon revocation, the consular or immigration officer shall cancel the card by writing or stamping the word "Canceled" plainly across the face of the card stamp and shall indicate the location of the con-

sular or immigration office where the card was revoked.

(e) *Voidance of Mexican border crossing cards issued in Mexico on form I-186 or form I-586.* A consular officer in Mexico may declare void, without notice, a BCC previously issued in Mexico on Form I-186 or Form I-586, upon a finding that the holder is ineligible to receive a nonimmigrant visas. The card must be surrendered immediately upon voidance.

(f) *Replacement.* When a Mexican BCC or B-1/B-2—BCC issued under the provisions of this section has been lost, mutilated, or destroyed, the person to whom such card was issued may apply for a new card as provided in this section. A nonresident alien whose BCC previously issued on Form I-186 or Form I-586 by a consular officer in Mexico, has been lost, mutilated, or destroyed, may apply for a B-1/B-2—BCC at any consular office in Mexico, provided the alien qualifies under paragraph (b) of this section.

[52 FR 42597, Nov. 5, 1987; 53 FR 9111, Mar. 21, 1988]

§41.33 Nonresident alien Canadian border crossing identification card (BCC).

(a) *Aliens eligible to apply.* A consular officer assigned to a consular office in Canada may issue a nonresident alien border crossing identification card (BCC), as that term is defined in INA 101(a)(6), to a nonimmigration alien who:

(1) Has been admitted to Canada for permanent residence as a landed immigrant;

(2) Seeks to enter the United States from Canada, or will seek to enter the United States from Mexico and will not have visited any countries other than Mexico and the United States since departing Canada, only as a temporary visitor for business or pleasure as defined in INA 101(a)(15)(B) for periods of stay not exceeding 6 months; and

(3) Is otherwise eligible to receive a temporary visitor visa or is the beneficiary of a waiver under INA 212(d)(3)(A) of a ground of ineligibility, which is valid for multiple applications for admission into the United States and for an indefinite period of time and

which contains no restrictions as to extensions of temporary stay or itinerary.

(b) *Procedure for application.* Application for a Canadian BCC shall be made on Form OF-156, Nonimmigrant Visa Application. The application shall be supported by:

(1) Evidence of the applicant's landed immigrant status in Canada;

(2) A valid or expired passport or other travel document showing origin, identity, and nationality, if any; and

(3) One photograph (1½ inches square), if the applicant is 16 years of age or over. Each applicant must appear in person before a consular officer and be interviewed regarding eligibility for a visitor visa unless personal appearance is waived by the consular officer.

(c) *Issuance and format of border crossing identification card.* A Canadian BCC shall consist of a stamp placed in the alien's passport or other travel document by a consular officer in Canada. The stamps shall be numbered serially by each consular office beginning with the number "1" on October 1 of each year. They shall be in the format prescribed by the Department and contain the following data:

- (1) Post symbol;
- (2) Number of the card;
- (3) Title and location of the issuing office;
- (4) Date of issuance;
- (5) Name(s) of the person(s) to whom issued; and
- (6) Signature and title of the issuing officer.

(d) *Validity of Canadian BCC.* A Canadian BCC, issued pursuant to the provisions of this section, is valid until revoked.

(e) *Revocation of Canadian BCC.* (1) A Canadian BCC shall be revoked by a consular officer if information is developed indicating that the holder is ineligible to receive a nonimmigrant visa, or by a District Director of the Immigration and Naturalization Service if it is found that the alien has violated the conditions of admission into the United States.

(2) In canceling such a card the consular or immigration officer shall write or stamp the word "Canceled" plainly across the face of the card stamp, indi-

cate the location of the consular or immigration office where the card was revoked and follow the procedures of § 41.122.

Subpart E—Crewman and Crew-List Visas

§ 41.41 Crewmen.

(a) *Alien classifiable as crewman.* An alien shall be 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.

(b) *Alien not classifiable as crewman.* An alien employed on board a vessel or aircraft in a capacity not required for normal operation and service, or an alien employed or listed as a regular member of the crew in excess of the number normally required, shall not be classified as a crewman.

§ 41.42 Crew-list visas.

(a) *Definition.* A crew-list visa is a nonimmigrant visa issued on a manifest of crewmen of a vessel or aircraft and includes all aliens listed in the manifest unless otherwise stated. It constitutes a valid nonimmigrant visa within the meaning of INA 212(a)(7)(B)(i)(II).

(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.

(2) The formal application for a crew-list visa is the crew list together with

any other information the consular officer finds necessary to determine eligibility. No other application form is required.

(3) The crew list submitted should contain in alphabetical order the names of those alien crew members to be considered for inclusion in a crew-list visa. If the list is not alphabetical, the consular officer may require a separate alphabetical listing if this will not unduly delay the departure of the vessel or aircraft.

(4) If a vessel or aircraft destined to the United States will not call at a port or place where there is a consular office, the crew list can be submitted for visaing to a consular office at the place nearest the vessel's port of call.

(c) *Fee.* A fee in an amount determined by the Schedule of Fees for Consular Services shall be charged for a crew-list visa except that no fee shall be charged in the case of an American vessel or aircraft.

(d) *Validity.* A crew-list visa is valid for a period of 6 months from the date of issuance and for a single application for admission into the United States.

(e) *Procedure in issuing.* (1) In issuing a crew-list visa the regular non-immigrant visa stamp as prescribed in §41.113(d) shall be placed on the last page of the manifest immediately following the last name listed.

(2) The symbol D shall be inserted in the space provided in the visa stamp.

(3) The name of the vessel or identifying data regarding the aircraft shall be entered in the space provided for the name of the visa recipient.

(4) The signature and title of the consular officer shall be recorded on the visa. The post impression seal shall be affixed on the visa stamp if the visa has been stamped by a rubber hand-stamp.

(5) When a crew-list visa is issued, the consular officer delivers the original of the document to the master of the vessel or captain of the aircraft or to an authorized agent for presentation to the immigration officer at the first port of arrival in the U.S. The dated duplicate copy is retained for the consular files.

(f) *Supplemental crew-list visas.* (1) A supplemental crew-list visa shall be issued at the consular office at which the

crew-list visa was issued or at another consular office to cover any crewman signed on after the issuance of the crew-list visa and not in possession of a valid individual D visa.

(2) If the crewman is substituted for another member previously included in the visa, the substitution shall be indicated in the supplemental crew list presented for visaing.

(g) *Exclusion from and refusal of, crew-list visas—*(1) *Exclusion from crew-list visa.* If there is reason to believe that a crew list submitted for visaing contains the name of any person who is not a bona fide crewman or who is otherwise ineligible to receive an individual D visa under INA 101(a)(15)(D), the consular officer shall exclude any such person from the visa by listing the name of each excluded crew member below the visa stamp. An excluded crew member's name may not be stricken from the crew list.

(2) *Refusal of crew-list visa.* A crew-list visa shall be refused if all aliens listed thereon are found by the consular officer not to be bona fide crewmen or otherwise ineligible to receive individual visas as crew members. In any case where a crew-list visa is refused, a full report shall be forwarded to reach the Department before the arrival of the vessel or aircraft at the first port of entry. In any case of refusal the original crew list shall be returned to the master, aircraft captain, or authorized agent, and the duplicate shall be filed in the consular office.

[52 FR 42597, Nov. 5, 1987, as amended at 56 FR 30428, July 2, 1991; 61 FR 1836, Jan. 24, 1996]

Subpart F—Business and Media Visas

§ 41.51 Treaty trader or investor.

(a) *Treaty trader.* An alien is classifiable as a nonimmigrant treaty trader (E-1) if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(E)(i) and that the alien:

(1) Will be in the United States solely to carry on trade of a substantial nature, which is international in scope, either on the alien's behalf or as an

agent of a foreign person or organization engaged in trade, principally between the United States and the foreign state of which the alien is a national, consideration being given to any conditions in the country of which the alien is a national which may affect the alien's ability to carry on such substantial trade; and

(2) Intends to depart from the United States upon the termination of E-1 status.

(b) *Treaty investor.* An alien is classifiable as a nonimmigrant treaty investor (E-2) if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(E)(ii) and that the alien:

(1) Has invested or is actively in the process of investing a substantial amount of capital in a bona fide enterprise in the United States, as distinct from a relatively small amount of capital in a marginal enterprise solely for the purpose of earning a living; and

(2) Intends to depart from the United States upon the termination of E-2 status.

(c) *Employee of treaty trader or investor.* An alien employee of a treaty trader may be classified E-1 and an alien employee of a treaty investor may be classified E-2 if the employee is or will be engaged in duties of an executive or supervisory character, or, if employed in a minor capacity, the employee has special qualifications that make the services to be rendered essential to the efficient operation of the enterprise. The employer must be:

(1) A person having the nationality of the treaty country, who is maintaining the status of treaty trader or investor if in the United States; or

(2) An organization at least 50 percent owned by persons having the nationality of the treaty country who are maintaining nonimmigrant treaty trader or investor status if residing in the United States.

(d) *Spouse and children of treaty alien.* The spouse and children of a treaty alien accompanying or following to join the treaty alien are entitled to the same classification as the principal alien. The nationality of a spouse or child of a treaty alien is not material to the classification of the spouse or

child under the provisions of INA 101(a)(15)(E).

(e) *Representatives of foreign information media.* Representatives of foreign information media shall first be considered for possible classification as nonimmigrants under the provisions of INA 101(a)(15)(I), before consideration is given to their possible classification as nonimmigrants under the provisions of INA 101(a)(15)(E) and of this section.

(f) *Labor disputes.* Citizens of Canada or Mexico shall not be entitled to classification under this section if the Attorney General and the Secretary of Labor have certified that:

(1) There is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment; and

(2) The alien has failed to establish that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout.

[52 FR 42597, Nov. 5, 1987, as amended at 58 FR 68527, Dec. 28, 1993]

§ 41.52 Information media representative.

(a) *Representative of foreign press, radio, film, or other information media.* An alien is classifiable as a nonimmigrant information media representative if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(I) and is a representative of a foreign press, radio, film, or other information medium having its home office in a foreign country, the government of which grants reciprocity for similar privileges to representatives of such a medium having home offices in the United States.

(b) *Classification when applicant eligible for both I visa and E visa.* An alien who will be engaged in foreign information media activities in the United States and meets the criteria set forth in paragraph (a) of this section shall be classified as a nonimmigrant under INA 101(a)(15)(I) even if the alien may also be classifiable as a nonimmigrant under the provisions of INA 101(a)(15)(E).

(c) *Spouse and children of information media representative.* The spouse or child of an information media representative is classifiable under INA 101(a)(15)(I) if accompanying or following to join the principal alien.

§ 41.53 Temporary workers and trainees.

(a) *Requirements for H classification.* An alien shall be classifiable under INA 101(a)(15)(H) if:

(1) The consular officer is satisfied that the alien qualifies under that section; and either

(2) With respect to the principal alien, the consular officer has received official evidence of the approval by INS of a petition to accord such classification or of the extension by INS of the period of authorized entry in such classification; or

(3) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Petition approval.* The approval of a petition by the Immigration and Naturalization Service does not establish that the alien is eligible to receive a nonimmigrant visa.

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

(d) *Alien not entitled to H classification.* The consular officer must suspend action on this alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(H) is not entitled to the classification as approved.

(e) *“Trainee” defined.* The term *Trainee*, as used in INA 101(a)(15)(H)(iii), means a nonimmigrant alien who seeks to enter the United States temporarily at the invitation of an individual, organization, firm, or other trainer for the purpose of receiving instruction in any field of endeavor (other than graduate medical education or training), including agriculture, commerce, communication, finance, government, transportation, and the professions.

(f) *Former exchange visitor.* Former exchange visitors who are subject to the 2-year residence requirement of INA 212(e) are ineligible to apply for visas under INA 101(a)(15)(H) until they have fulfilled the residence requirement or obtained a waiver of the requirement.

[57 FR 31449, July 16, 1992; as amended at 61 FR 1833, Jan. 24, 1996]

§ 41.54 Intracompany transferees (executives, managers, and specialists).

(a) *Requirements for L classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(L) if:

(1) The consular officer is satisfied that the alien qualifies under that section; and either

(2) In the case of an individual petition, the consular officer has received official evidence of the approval by INS of a petition to accord such classification or of the extension by INS of the period of authorized stay in such classification; or

(3) In the case of a blanket petition, the alien has presented to the consular officer official evidence of the approval by INS of a blanket petition

(i) listing only those intracompany relationships and positions found to qualify under INA 101(a)(15)(L) or

(ii) to accord such classification to qualified aliens who are being transferred to qualifying positions identified in such blanket petition; or

(4) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Petition approval.* The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of visa.* (1) The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2)(i) or (ii) of this section.

(2) The period of validity of a visa issued on the basis of paragraph (a) to this section is not limited to the period of validity indicated in the blanket petition, notification, or confirmation required in paragraphs (a)(2)(iii) or (iv) of this section.

(d) *Alien not entitled to L-1 classification under individual petition.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa as the beneficiary of an approved individual petition under INA 101(a)(15)(L) is not entitled to such classification as approved.

(e) *Labor disputes.* Citizens of Canada or Mexico shall not be entitled to classification under this section if the Attorney General and the Secretary of Labor have certified that:

(1) There is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment; and

(2) The alien has failed to establish that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout.

(f) *Alien not entitled to L-1 classification under blanket petition.* The consular officer shall deny L classification based on a blanket petition if the documentation presented by the alien claiming to be a beneficiary thereof does not establish to the satisfaction of the consular officer that

(1) The alien has been continuously employed by the same employer, an affiliate or a subsidiary thereof, for 1 year within the 3 years immediately preceding the application for the L visa;

(2) The alien was occupying a qualifying position throughout that year; or

(3) The alien is destined to a qualifying position identified in the petition and in an organization listed in the petition.

(g) *Former exchange visitor.* Former exchange visitors who are subject to the 2-year foreign residence requirement of INA 212(e) are ineligible to apply for visas under INA 101(a)(15)(L) until they have fulfilled the residence requirement or obtained a waiver of the requirement.

[57 FR 31449, July 16, 1992, as amended at 58 FR 68527, Dec. 28, 1993; 61 FR 1833, Jan. 24, 1996]

§ 41.55 Aliens with extraordinary ability.

(a) *Requirements for O classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(O) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and either

(2) With respect to the principal alien, the consular officer has received official evidence of the approval by INS of a petition to accord such classification or of the extension by INS of the period of authorized stay in such classification; or

(3) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Approval of visa.* The approval of a petition by INS does not establish that the alien is eligible to receive a non-immigrant visa.

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

(d) *Alien not entitled to O classification.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(O) is not entitled to the classification as approved.

[57 FR 31450, July 16, 1992; as amended at 61 FR 1833, Jan. 24, 1996]

§ 41.56 Athletes, artists and entertainers.

(a) *Requirements for P classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(P) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and either

(2) With respect to the principal alien, the consular officer has received official evidence of the approval by INS of a petition to accord such classification or of the extension by INS of the period of authorized stay in such classification; or

(3) The consular officer is satisfied the alien is the spouse or child of an

alien so classified and is accompanying or following to join the principal alien.

(b) *Approval of visa.* The approval of a petition by INS does not establish that the alien is eligible to receive a non-immigrant visa.

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

(d) *Alien not entitled to P classification.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(P) is not entitled to the classification as approved.

[57 FR 31450, July 16, 1992; as amended at 61 FR 1833, Jan. 24, 1996]

§ 41.57 International cultural exchange visitors.

(a) *Requirements for Q classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(Q) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) The consular officer has received official evidence of the approval by INS of a petition or the extension by INS of the period of authorized stay in such classification.

(b) *Approval of petition.* The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa.

(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.

(d) *Alien not entitled to Q classification.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(Q) is

not entitled to the classification as approved.

[57 FR 31450, July 16, 1992; as amended at 61 FR 1833, Jan. 24, 1996]

§ 41.58 Aliens in religious occupations.

(a) *Requirements for "R" classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(R) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) The alien, for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

(3) The alien seeks to enter the United States solely for the purpose of

(i) Carrying on the vocation of a minister of that religious denomination, or

(ii) At the request of the organization, working in a professional capacity in a religious vocation or occupation for that organization, or

(iii) At the request of the organization, working in a religious vocation or occupation for the organization, or for a bona fide organization which is affiliated with the religious denomination described in section 501(c)(3) of the Internal Revenue Code of 1986; and

(4) The alien is seeking to enter the United States for a period not to exceed 5 years to perform the activities described in paragraph (3) of this section; or

(5) The alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Religious denomination.* A religious denomination is a religious group or community of believers. Among the factors that may be considered in determining whether a group constitutes a bona fide religious denomination are the presence of some form of ecclesiastical government, a recognized creed and form of worship, a formal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, and religious congregations. For purposes of this definition, an interdenominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of

the Internal Revenue Code of 1986 will be treated as a religious denomination.

(c) *Bona fide nonprofit religious organization in the United States.* For purposes of this section, a bona fide nonprofit religious organization is an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the consular officer that it would be eligible therefore if it had applied for tax exempt status.

(d) *Bona fide organization which is affiliated with the religious denomination.* A bona fide organization affiliated with the religious denomination is an organization which is both closely associated with the religious denomination and exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, as it relates to religious organizations.

(e) *Minister of religion.* A minister is an individual who is duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. A minister does not include a lay preacher who is not authorized to perform such duties. In all cases, there must be a reasonable connection between the activities performed and the religious calling of a minister.

(f) *Professional capacity.* Working in a professional capacity means engaging in an activity in a religious vocation or occupation which is defined by INA 101(a)(32) or for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required for entry into that field of endeavor.

(g) *Religious occupation.* A religious occupation is the habitual employment or engagement in an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This

group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

(h) *Religious vocation.* A religious vocation is a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to nuns, monks, and religious brothers and sisters.

(i) *Alien not entitled to classification under INA 101(a)(15)(R).* An alien who has spent 5 years in the United States under INA 101(a)(15)(R) is not entitled to classification and visa issuance under that section unless the alien has resided and been physically present outside the United States, except for brief visits to the United States for business or pleasure, for the immediate prior year.

[60 FR 42036, Aug. 15, 1995]

§ 41.59 Professionals under the North American Free Trade Agreement.

(a) *Requirements for classification as a NAFTA professional.* An alien shall be classifiable under the provisions of INA 214(e) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) In the case of citizens of Mexico, the consular officer has received from INS an approved petition according classification as a NAFTA Professional to the alien or official confirmation of such petition approval, or INS confirmation of the alien's authorized stay in such classification; or

(3) In the case of citizens of Canada, the alien shall have presented to the consular officer sufficient evidence of an offer of employment in the United States requiring employment of a person in a professional capacity consistent with NAFTA Chapter 16 Annex 1603 Appendix 1603.D.1 and sufficient evidence that the alien possesses the credentials of that profession as listed in said appendix; or

(4) The alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Visa validity.* The period of validity of a visa issued pursuant to paragraph (a) of this section may not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section. The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa. The period of validity of a visa issued pursuant to subparagraph (a)(3) of this section may not exceed the period established on a reciprocal basis.

(c) *Temporary stay.* The alien must satisfy the consular officer that the proposed stay is temporary. A temporary period has a reasonable, finite end that does not equate to permanent residence. The circumstances surrounding an application should reasonably and convincingly indicate that the alien's temporary work assignment in the United States will end predictably and that the alien will depart.

(d) *Labor disputes.* Citizens of Canada or Mexico shall not be entitled to classification under this section if the Attorney General and the Secretary of Labor have certified that:

(1) There is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment; and

(2) The alien has failed to establish that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout.

[58 FR 68527, Dec. 28, 1993]

Subpart G—Students and Exchange Visitors

§ 41.61 Students—academic and non-academic.

(a) *Definitions*—(1) *Academic*, in INA 101(a)(15)(F), refers to an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution, or a language training program.

(2) *Nonacademic*, in INA 101(a)(15)(M), refers to an established vocational or other recognized nonacademic institution (other than a language training program).

(b) *Classification.* (1) An alien is classifiable under INA 101(a) (15) (F) (i) of INA 101(a) (15) (M) (i) if the consular officer is satisfied that the alien qualifies under one of those sections, and:

(i) The alien has been accepted for attendance solely for the purpose of pursuing a full course of study in an academic institution approved by the Attorney General for foreign students under INA 101(a) (15) (F) (i) or a non-academic institution approved under INA 101(a) (15) (M) (i), as evidenced by submission of a Form I-20A-B, Certificate of Eligibility For Nonimmigrant (F-1) Student Status — For Academic and Language Students, or Form I-20M-N, Certificate of Eligibility for Nonimmigrant (M-1) Student Status— For Vocational Students, properly completed and signed by the alien and a designated school official;

(ii) The alien possesses sufficient funds to cover expenses while in the United States or can satisfy the consular officer that other arrangements have been made to meet those expenses;

(iii) The alien, unless coming to participate exclusively in an English language training program, has sufficient knowledge of the English language to undertake the chosen course of study or training. If the alien's knowledge of English is inadequate, the consular officer may nevertheless find the alien so classifiable if the accepting institution offers English language training, and has accepted the alien expressly for a full course of study in a language with which the alien is familiar, or will enroll the alien in a combination of courses and English instruction which will constitute a full course of study; and

(iv) The alien intends, and will be able, to depart upon termination of student status.

(2) An alien otherwise qualified for classification as a student, who intends to study the English language exclusively, may be classified as a student under INA 101(a) (15) (F) (i) even though no credits are given by the accepting institution for such study. The accepting institution, however, must offer a full course of study in the English language and must accept the alien expressly for such study.

(3) The alien spouse and minor children of an alien who has been or will be issued a visa under INA 101(a) (15) (F) (i) or 101(a) (15) (M) (i) may receive nonimmigrant visas under INA 101(a) (15) (F) (ii) or 101(a) (15) (M) (ii) if the consular officer is satisfied that they will be accompanying or following to join the principal alien; that sufficient funds are available to cover their expenses in the United States; and, that they intend to leave the United States upon the termination of the status of the principal alien.

(c) *Posting of bond.* In borderline cases involving an alien otherwise qualified for classification under INA 101(a) (15) (F), the consular officer is authorized to require the posting of a bond with the Attorney General in a sum sufficient to ensure that the alien will depart upon the conclusion of studies or in the event of failure to maintain student status.

§ 41.62 Exchange visitors.

(a) *J-1 classification.* An alien is classifiable as an exchange visitor if qualified under the provisions of INA 101(a) (15) (J) and the consular officer is satisfied that the alien:

(1) Has been accepted to participate, and intends to participate, in an exchange visitor program designed by the United States Information Agency as evidenced by the presentation of a properly executed Form IAP-66, Certificate of Eligibility for Exchange Visitor (J-1) Status;

(2) Has sufficient funds to cover expenses or has made other arrangements to provide for expenses;

(3) Has sufficient knowledge of the English language to undertake the program for which selected, or, except for an alien coming to participate in a graduate medical education or training program, the sponsoring organization is aware of the language deficiency and has nevertheless indicated willingness to accept the alien; and

(4) Meets the requirements of INA 212(j) if coming to participate in a graduate medical education or training program.

(b) *J-2 Classification.* The spouse or minor child of an alien classified J-1 is classifiable J-2.

(c) *Applicability of INA 212(e).* (1) An alien is subject to the 2-year foreign residence requirement of INA 212(e) if:

(i) The alien's participation in one or more exchange programs was wholly or partially financed, directly or indirectly, by the U.S. Government or by the government of the alien's country of nationality or last residence; or

(ii) At the time of the issuance of an exchange visitor visa and admission to the United States, or, if not required to obtain a nonimmigrant visa, at the time of admission as an exchange visitor, or at the time of acquisition of such status after admission, the alien is a national and resident or, if not a national, a lawful permanent resident (or has status equivalent thereto) of a country which the Director of the United States Information Agency has designated, through publication by public notice in the FEDERAL REGISTER, as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien will engage during the exchange visitor program; or

(iii) The alien acquires exchange visitor status in order to receive graduate medical education or training in the United States.

(2) For the purposes of this paragraph the terms *financed directly* and *financed indirectly* are defined as set forth in section § 514.1 of chapter V.

(3) The country in which 2 years' residence and physical presence will satisfy the requirements of INA 212(e) in the case of an alien determined to be subject to such requirements is the country of which the alien is a national and resident, or, if not a national, a lawful permanent resident (or has status equivalent thereto).

(4) If an alien is subject to the 2-year foreign residence requirement of INA 212(e), the spouse or child of that alien, accompanying or following to join the alien, is also subject to that requirement if admitted to the United States pursuant to INA 101(a) (15) (J) or if status is acquired pursuant to that section after admission.

(d) *Notification to alien concerning 2-year foreign residence requirement.* Before the consular officer issues an exchange visitor visa, the consular officer must inform the alien whether the

alien will be subject to the 2-year residence and physical presence requirement of INA 212(e) if admitted to the United States under INA 101(a) (15) (J) and, if so, the country in which 2 years' residence and physical presence will satisfy the requirement.

Subpart H—Transit Aliens

§ 41.71 Transit aliens.

(a) *Transit aliens—general.* An alien is classifiable as a nonimmigrant transit alien under INA 101(a) (15) (C) if the consular officer is satisfied that the alien:

(1) Intends to pass in immediate and continuous transit through the United States;

(2) Is in possession of a common carrier ticket or other evidence of transportation arrangements to the alien's destination;

(3) Is in possession of sufficient funds to carry out the purpose of the transit journey, or has sufficient funds otherwise available for that purpose; and

(4) Has permission to enter some country other than the United States following the transit through the United States, unless the alien submits satisfactory evidence that such advance permission is not required.

(b) *Certain aliens in transit to United Nations.* An alien within the provisions of paragraph (3), (4), or (5) of section 11 of the Headquarters Agreement with the United Nations, to whom a visa is to be issued for the purpose of applying for admission solely in transit to the United Nations Headquarters District, may upon request or at the direction of the Secretary of State be issued a nonimmigrant visa bearing the symbol C-2. If such a visa is issued, the recipient shall be subject to such restrictions on travel within the United States as may be provided in regulations prescribed by the Attorney General.

Subpart I—Fiance(e)s and Other Nonimmigrants

§ 41.81 Fiance(e) of a U.S. Citizen.

(a) *Petition requirement.* An alien is classifiable as a nonimmigrant fiance(e) under INA 101(a)(15)(K) if the consular officer is satisfied that the

alien is qualified under that provision and the consular officer has received a petition filed by the U.S. citizen to confer nonimmigrant status as a fiance(e) on the alien, which has been approved by the INS under INA 214(d), or a notification of such approval from that Service.

(b) *Certification of legal capacity and intent to marry.* Upon receipt of a petition approved by INS and the alien's sworn statement of ability and intent to conclude a valid marriage with the petitioner within 90 days of arrival in the United States, the consular officer shall grant the alien the nonimmigrant status accorded in the petition and shall determine the eligibility of the alien to receive a K-1 visa.

(c) *Eligibility as immigrant required.* The consular officer, insofar as practicable, shall determine the eligibility of an alien to receive a nonimmigrant visa under INA 101(a)(15)(K) as if the alien were an applicant for an immigrant visa. If the consular officer determines that the alien would be eligible, under INA 212 (a) and (e) and in all other respects to receive an immigrant visa, except the alien shall be exempt from the labor certification requirement of INA 212(a)(5), the officer may issue a nonimmigrant visa under this section.

[52 FR 42597, Nov. 5, 1987, as amended at 56 FR 30428, July 2, 1991]

§ 41.82 Certain parents and children of section 101(a)(27)(I) special immigrants [Reserved]

§ 41.83 Certain witnesses and informants.

(a) *General.* An alien shall be classifiable under the provisions of INA 101(a)(15)(S) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2)(i) The consular officer has received verification from the Department of State, Visa Office, that:

(A) in the case of INA 101(a)(15)(S)(i) the INS has certified on behalf of the Attorney General that the alien is accorded such classification, or

(B) in the case of INA 101(a)(15)(S)(ii) the Assistant Secretary of State for

Consular Affairs on behalf of the Secretary of State and the INS on behalf of the Attorney General have certified that the alien is accorded such classification;

(ii) and the alien is granted an INA 212(d)(1) waiver of any INA 212(a) ground of ineligibility known at the time of verification.

(b) *Certification of S visa status.* The certification of status under INA 101(a)(15)(S)(i) by the Attorney General or of status under INA 101(a)(15)(S)(ii) by the Secretary of State and the Attorney General acting jointly does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of visa.* The period of validity of a visa authorized on the basis of paragraph (a) of this section shall not exceed the period indicated in the certification required in paragraph (b) and shall not in any case exceed the period of three years.

[61 FR 1838, Jan. 24, 1996]

Subpart J—Application for Nonimmigrant Visa

§ 41.101 Place of application.

(a) *Application for regular visa made at jurisdictional consular office of alien's residence or physical presence.* (1) An alien applying for a nonimmigrant visa shall make application at a consular office having jurisdiction over the alien's place of residence, or if the alien is a resident of Taiwan, at the American Institute in Taiwan, unless—

(i) The alien is physically present in the United States and is entitled to apply for issuance or reissuance of a visa under the provisions of § 41.111(b); or

(ii) A consular office having jurisdiction over the area in which the alien is physically present but not resident has agreed, as a matter of discretion or at the direction of the Department, to accept the alien's application.

(2) The Deputy Assistant Secretary of State to the Visa Office is authorized to designate the geographical area for which each consular office possesses jurisdiction to process nonimmigrant visa applications.

(b) *Regular visa defined.* "Regular visa" means a nonimmigrant visa of

any classification which does not bear the title "Diplomatic" or "Official." A nonimmigrant visa is issued as a regular visa unless the alien falls within one of the classes entitled to a diplomatic or an official visa as described in § 41.26(c) or § 41.27(c).

[52 FR 42597, Nov. 5, 1987; 53 FR 9112, Mar. 21, 1988, as amended at 61 FR 1522, Jan. 22, 1996; 61 FR 53058, Oct. 10, 1996; 61 FR 56439, Nov. 1, 1996]

§ 41.102 Personal appearance of applicant.

(a) *Personal appearance required or waived.* Except as otherwise provided in this section, every alien seeking a nonimmigrant visa is required to apply in person before a consular officer. The requirement of personal appearance may be waived by the consular officer in the case of any alien who is:

(1) A child under 14 years of age;

(2) Within a class of nonimmigrants classifiable under the visa symbols A, C-2, C-3, G, or NATO;

(3) An applicant for a diplomatic or official visa;

(4) Within a class of nonimmigrants classifiable under the visa symbols B, C-1, H-1, or I;

(5) Within a class of nonimmigrants classifiable under the visa symbol J-1 who qualifies as a leader in a field of specialized knowledge or skill and also is the recipient of a U.S. Government grant, and such an alien's spouse and children qualifying for J-2 classification;

(6) An aircraft crewman, applying for a nonimmigrant visa under the provisions of INA 101(a)(15)(D), if the application is supported by a letter from the employing carrier certifying that the applicant is employed as an aircraft crewman, and the consular officer is satisfied that the personal appearance of the alien is not necessary to determine visa eligibility; or

(7) A nonimmigrant in any category, provided the consular officer determines that a waiver of personal appearance in the individual case is warranted in the national interest or because of unusual circumstances, including hardship to the visa applicant.

(b) *Interview by consular officer.* Except when the requirement of personal

appearance has been waived by the consular officer pursuant to paragraph (a) of this section, each applicant for a nonimmigrant visa must be interviewed by a consular officer, who shall determine on the basis of the applicant's representations and the visa application and other relevant documentation (1) the proper nonimmigrant classification, if any, of the alien and (2) the alien's eligibility to receive a visa.

[52 FR 42597, Nov. 5, 1987; 53 FR 9112, Mar. 21, 1988]

§ 41.103 Filing an application and Form OF-156.

(a) *Filing an application*—(1) *Filing of application on Form OF-156 required unless waived.* The consular officer may waive submission of an application, under paragraph (a)(3) of this section, for certain aliens for whom personal appearance has been waived under § 41.102. Except for persons for whom such waivers have been granted, every alien seeking a nonimmigrant visa must make application therefor on Form OF-156, Nonimmigrant Visa Application, unless a prior Form OF-156 is readily available at the consular office which can be appropriately amended to bring the application up to date.

(2) *Filing of Form OF-156 by alien under 16 or physically incapable.* The application for an alien under 16 years of age or one physically incapable of completing an application may be completed and 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.

(3) *Waiver of filing of application.* (i) When personal appearance is waived under § 41.102(a)(2) or (3) the consular officer may also waive the filing of a visa application.

(ii) When personal appearance is waived under § 41.102(a)(7), the consular officer may also waive the filing of a visa application in cases of hardship, emergency, or national interest.

(iii) Even if personal appearance is waived pursuant to any other subparagraph of § 41.102(a), the requirement for filing an application may not be waived.

(b) *Application form*—(1) *Preparation of Form OF-156, Nonimmigrant Visa Application.* (i) The consular officer shall ensure that Form OF-156 is fully and properly completed in accordance with the applicable regulations and instructions.

(ii) If the filing of a visa application is waived by the consular officer, the officer shall prepare a Form OF-156 on behalf of the applicant, using the data available in the passport or other documents which have been submitted.

(2) *Additional information as part of application.* The consular officer may require the submission of additional necessary information or question an alien on any relevant matter whenever the consular officer believes that the information provided in Form OF-156 is inadequate to permit a determination of the alien's eligibility to receive a nonimmigrant visa. Additional statements made by the alien become a part of the visa application. All documents required by the consular officer under the authority of § 41.105(a) are considered papers submitted with the alien's application within the meaning of INA 221(g)(1).

(3) *Signature.* When personal appearance is required, Form OF-156 shall be signed and verified by, or on behalf of, the applicant in the presence of the consular officer. If personal appearance is waived, but the submission of an application form by the alien is not waived, the form shall be signed by the applicant. If the filing of an application form is also waived, the consular officer shall indicate that the application has been waived on the Form OF-156 prepared on behalf of the applicant, as provided in paragraph (b)(1)(ii) of this section. The consular officer, in every instance, shall initial the Form OF-156 over or adjacent to the officer's name and title stamp.

(4) *Registration.* Form OF-156, when duly executed, constitutes the alien's registration record for the purposes of INA 221(b).

§ 41.104 Passport requirements.

(a) *Passports defined.* "Passport" as defined in INA 101(a)(30) is not limited to a national passport or to a single document. A passport may consist of two or more documents which, when

considered together, fulfill the requirements of a passport, provided that the documentary evidence of permission to enter a foreign country has been issued by a competent authority and clearly meets the requirements of INA 101(a)(30).

(b) *Passport requirement.* Except for certain persons in the A, C-3, G, and NATO classifications and persons for whom the passport requirement has been waived pursuant to the provisions of INA 212(d)(4), every applicant for a nonimmigrant visa is required to present a passport, as defined above and in INA 101(a)(30), which is valid for the period required by INA 212(a)(7)(B)(i)(I).

(c) *A single passport including more than one person.* The passport requirement for a nonimmigrant visa may be met by the presentation of a passport including more than one person, if such inclusion is authorized under the laws or regulations of the issuing authority and if a photograph of each visa applicant 16 years of age or over has been attached to the passport by the issuing authority.

(d) *Applicants for diplomatic visas.* Every applicant for a diplomatic visa must present a diplomatic passport, or the equivalent thereof, having the period of validity required by INA 212(a)(7)(B)(i)(I), unless such requirement has been waived pursuant to the authority contained in INA 212(d)(4) or unless the case falls within the provisions of § 41.21(b).

[52 FR 42597, Nov. 5, 1987, as amended at 56 FR 30428, July 2, 1991; 61 FR 1522, Jan. 22, 1996; 61 FR 53058, Oct. 10, 1996]

§ 41.105 Supporting documents and fingerprinting.

(a) *Supporting documents—(1) Authority to require documents.* The consular officer is authorized to require documents considered necessary to establish the alien's eligibility to receive a nonimmigrant visa. All documents and other evidence presented by the alien, including briefs submitted by attorneys or other representatives, shall be considered by the consular officer.

(2) *Unobtainable documents.* If the consular officer is satisfied that a document or record required under the authority of this section is unobtainable,

the consular officer may accept satisfactory alternative pertinent evidence. A document or other record shall be considered unobtainable if it cannot be procured without causing the applicant or a member of the applicant's family actual hardship as distinct from normal delay and inconvenience.

(3) *Photographs required or waived.* Except as otherwise provided in this paragraph, every applicant for a nonimmigrant visa must furnish photographs in such numbers as the consular officer may require. The photographs must be a reasonable recent likeness, 1½ by 1½ inches in size, unmounted, with no head covering, and showing a full, front-face view of the alien against a light background. The alien must sign (full name) the reverse side of the photographs. The photograph requirement may be waived by the consular officer for any alien who is:

- (i) Within a class of nonimmigrants classifiable under the visa symbol A, C-3, G, or NATO; or
- (ii) An applicant for a diplomatic or official visa; or
- (iii) Under 16 years of age.

A notation of any such waiver shall be made on the application in the space provided for the photograph. A new photograph need not be required by the consular officer, if there is readily available at post a photograph submitted with a prior application which reflects a reasonable current likeness of the applicant.

(4) *Police certificates.* A police certificate is a certification by the police or other appropriate authorities stating what, if anything, their records show concerning the alien. An applicant for a nonimmigrant visa is required to present a police certificate if the consular officer has reason to believe that a police or criminal record exists, except that no police certificate is required in the case of an alien who is within a class of nonimmigrants classifiable under visa symbols A-1, A-2, C-3, G-1 through G-4, NATO-1 through NATO-4 or NATO-6.

(b) *Fingerprinting.* The consular officer may require an alien making a preliminary or informal application for a visa to have a set of fingerprints taken on Form AR-4, Alien Registration Fingerprint Chart, if the officer considers

this necessary for the purposes of identification and investigation. Consular officers may use the fingerprint card in order to ascertain from the appropriate authorities whether they have information pertinent to the applicant's eligibility to receive a visa.

[52 FR 42597, Nov. 5, 1987; 53 FR 9112, 9172, Mar. 21, 1988, as amended at 61 FR 1522, Jan. 22, 1996; 61 FR 53058, Oct. 10, 1996]

§ 41.106 Processing.

Consular officers must ensure that Form OF-156, Nonimmigrant Visa Application, is properly and promptly processed in accordance with the applicable regulations and instructions.

§ 41.107 Visa fees.

(a) *Fees based on reciprocity.* The fees for the issuance of visas, including official visas, to nonimmigrant nationals or stateless residents of each foreign country shall be collected in the amounts prescribed by the Secretary of State unless, on the basis of reciprocity, no fee is chargeable. If practicable, fees will correspond to the total amount of all visa, entry, residence, or other similar fees, taxes or charges assessed or levied against nationals of the United States by the foreign countries of which such nonimmigrants are nationals or stateless residents.

(b) *Fees when more than one alien included in visa.* A single nonimmigrant visa may be issued to include all eligible family members if the spouse and unmarried minor children of a principal alien are included in one passport. Each alien must execute a separate application. The name of each family member shall be inserted in the space provided in the visa stamp. The visa fee to be collected shall equal the total of the fees prescribed by the Secretary of State for each alien included in the visa, unless upon a basis of reciprocity a lesser fee is chargeable.

(c) *Certain aliens exempted from fees.* Upon a basis of reciprocity, or as provided in section 13(a) of the Headquarters Agreement with the United Nations (61 Stat. 716; 22 U.S.C. 287, Note), no fee shall be collected for the issuance of a nonimmigrant visa to an alien who is within a class of nonimmigrants classifiable under the visa

symbols A, G, C-2, C-3, or NATO, or who is issued a diplomatic visa.

(d) *Refund of fees.* A fee collected for the issuance of a nonimmigrant visa is refundable only if the principal officer at a post or the officer in charge of a consular section determines that the visa was issued in error or could not be used as a result of action taken by the U.S. Government for which the alien was not responsible and over which the alien had no control.

(e) *Visa processing surcharge.* In addition to the collection of the fee prescribed in paragraph (a) of this section, a consular officer shall collect or ensure the collection of a surcharge for the processing of applications for machine readable nonimmigrant visas and for machine readable combined border crossing cards in the amount specified by the Secretary of State from such applicants as the Secretary of State shall designate. Such surcharge is refundable only if, as a result of action taken by the U.S. Government for which the alien was not responsible and over which the alien had no control, the alien's application is not processed.

[52 FR 42597, Nov. 5, 1987, as amended at 59 FR 25325, May 16, 1994]

§ 41.108 Medical examination.

(a) *Requirements for medical examination.* An applicant for a nonimmigrant visa shall be required to take a medical examination if:

(1) The alien is an applicant for a K nonimmigrant visa as a fiance(e) of a U.S. citizen or as the child of such an applicant; or,

(2) The alien is seeking admission for medical treatment and the consular officer considers a medical examination advisable; or,

(3) The consular officer has reason to believe that a medical examination might disclose that the alien is medically ineligible to receive a visa.

(b) *Examination by panel physician.* The required examination, which must be carried out in accordance with United States Public Health Service regulations, shall be conducted by a physician selected by the alien from a panel of physicians approved by the consular officer or, if the alien is in the United States, by a medical officer of the United States Public Health Service or

by a contract physician from a list of physicians approved by the INS for the examination of INA 245 adjustment of status applicants.

(c) *Panel physician facility requirements.* A consular officer may not include the name of a physician on the panel of physicians referred to in paragraph (b) of this section unless the physician has facilities to perform required serological and X-ray tests or is in a position to refer applicants to a qualified laboratory for such tests.

Subpart K—Issuance of Nonimmigrant Visa

§ 41.111 Authority to issue visa.

(a) *Issuance outside the United States.* Any consular officer is authorized to issue regular and official visas. Diplomatic visas may be issued only by:

(1) A consular officer attached to a U.S. diplomatic mission, if authorized to do so by the Chief of Mission; or

(2) A consular officer assigned to a consular office under the jurisdiction of a diplomatic mission, if so authorized by the Department or the Chief, Deputy Chief, or Counselor for Consular Affairs of that mission, or, if assigned to a consular post not under the jurisdiction of a diplomatic mission, by the principal officer of that post.

(b) *Issuance in the United States in certain cases.* The Director of the Visa Office of the Department and such other officers of the Department as the former may designate are authorized, in their discretion, to issue nonimmigrant visas, including diplomatic visas, to:

(1) Qualified aliens who are currently maintaining status and are properly classifiable in the A, C-2, C-3, G or NATO category and intend to reenter the United States in that status after a temporary absence abroad and who also present evidence that:

(i) They have been lawfully admitted in that status or have, after admission, had their classification changed to that status; and

(ii) Their period of authorized stay in the United States in that status has not expired; and

(2) Other qualified aliens who are currently maintaining status in an E, H, I, or L nonimmigrant category and in-

tend to reenter the United States in that status after a temporary absence abroad and who also present evidence that;

(i) They were previously issued visas at a consular office abroad and admitted to the United States in the status which they are currently maintaining; and

(ii) Their period of authorized admission in that status has not expired.

§ 41.112 Validity of visa.

(a) *Significance of period of validity of visa.* The period of validity of a nonimmigrant visa is the period during which the alien may use it in making application for admission. The period of visa validity has no relation to the period of time the immigration authorities at a port of entry may authorize the alien to stay in the United States.

(b) *Validity of visa and number of applications for admission.* (1) Except as provided in paragraph (c) of this section, a nonimmigrant visa shall have the validity prescribed in schedules provided to consular officers by the Department, reflecting insofar as practicable the reciprocal treatment accorded U.S. nationals by the government of the country of which the alien is a national or stateless resident.

(2) Nonimmigrant visas issued pursuant to INA 101(a)(15)(B) may be made valid indefinitely and for unlimited applications for admission for aliens who:

(i) Are nationals of countries that offer reciprocal treatment to U.S. citizens, as determined by the Department;

(ii) Are in possession of a valid passport; and

(iii) Are bona fide visitors and will continue to seek to enter the United States only for such purpose for an indefinite period of time, in the judgment of the consular officer.

(3) An indefinite validity visa is valid for application for admission even if the passport in which the visa is stamped has expired, provided the alien is also in possession of a valid passport issued by the authorities of the country of which the alien is a national.

(c) *Limitation on validity.* If warranted in an individual case, a consular officer may issue a nonimmigrant visa for:

(1) A period of validity that is less than that prescribed on a basis of reciprocity,

(2) A number of applications for admission within the period of the validity of the visa that is less than that prescribed on a basis of reciprocity,

(3) Application for admission at a specified port or at specified ports of entry, or

(4) Use on and after a given date subsequent to the date of issuance.

(d) *Automatic extension of validity at ports of entry.* (1) Provided that the requirements set out in paragraph (d)(2) of this section are fully met, the following provisions apply to non-immigrant aliens seeking readmission at ports of entry:

(i) The validity of an expired non-immigrant visa issued under INA 101(a)(15) may be considered to be automatically extended to the date of application for readmission, and

(ii) In cases where the original non-immigrant classification of an alien has been changed by INS to another nonimmigrant classification, the validity of an expired or unexpired non-immigrant visa may be considered to be automatically extended to the date of application for readmission, and the visa may be converted as necessary to that changed classification.

(2) The provisions in paragraph (d)(1) of this section are applicable only in the case of a nonimmigrant alien who:

(i) Is in possession of a Form I-94, Arrival-Departure Record, endorsed by INS to show an unexpired period of initial admission or extension of stay, or, in the case of a qualified F or J student or exchange visitor or the accompanying spouse or child of such an alien, is in possession of a current Form I-20, Certificate of Eligibility for Non-immigrant Student Status, or Form IAP-66, Certificate of Eligibility for Exchange Visitor Status, issued by the school the student has been authorized to attend by INS, or by the sponsor of the exchange program in which the alien has been authorized to participate by INS, and endorsed by the issuing school official or program sponsor to indicate the period of initial admission or extension of stay authorized by INS;

(ii) Is applying for readmission after an absence not exceeding 30 days solely in contiguous territory, or, in the case of a student or exchange visitor or accompanying spouse or child meeting the stipulations of paragraph (d)(2)(i) of this section, after an absence not exceeding 30 days in contiguous territory or adjacent islands other than Cuba;

(iii) Has maintained and intends to resume nonimmigrant status;

(iv) Is applying for readmission within the authorized period of initial admission or extension of stay;

(v) Is in possession of a valid passport; and

(vi) Does not require authorization for admission under INA 212(d)(3).

(3) The provisions in paragraphs (d)(1) and (d)(2) of this section shall not apply to nationals of Iraq.

[52 FR 42597, Nov. 5, 1987; 53 FR 9112, 9172, Mar. 21, 1988, as amended at 55 FR 36028, Oct. 31, 1990]

§ 41.113 Procedures in issuing visas.

(a) *Visa evidenced by stamp placed in the passport.* Except as provided in paragraph (b) of this section, a non-immigrant visa shall be evidenced by a stamp placed in the alien's passport. The appropriate symbol as prescribed in § 41.12, showing the classification of the alien shall be entered in the visa.

(b) *Cases in which visa not placed in passport.* In the following cases the visa shall be placed on the prescribed Form OF-232, Form for Nonimmigrant Visa Stamp, to which a photograph of the alien shall be attached under seal. In issuing such a visa, a notation shall be made on the Form OF-232 on which the visa is placed specifying the pertinent subparagraph of this paragraph under which the action is taken.

(1) The alien's passport was issued by a government with which the United States does not have formal diplomatic relations, unless the Department has specifically authorized the placing of the visa in such passport;

(2) The alien's passport does not provide sufficient space for the visa stamp;

(3) The passport requirement has been waived; or

(4) In other cases as authorized by the Department.

(c) *Indefinite validity visa.* In no instance may a visa issued pursuant to INA 101(a)(15)(B) and having indefinite validity as provided in §41.112(b) be placed in any document other than a valid passport.

(d) *Visa stamp.* (1) The nonimmigrant visa shall be in the format designated by the Department and contain the following data:

- (i) The number of the visa;
- (ii) The location of the issuing office;
- (iii) The classification of the visa;
- (iv) The date of issuance;
- (v) The expiration date or, if an indefinite validity visa is issued on the basis of reciprocity, the word "indefinitely";
- (vi) The number of applications for admission for which it is valid or the word "multiple";
- (vii) The name(s) of the person(s) to whom issued, unless the word "Bearer(s)" is used as authorized by paragraph (e)(1) of this section; and
- (viii) The signature or facsimile signature of the issuing officer.

(2) The format of a diplomatic visa is the same as a regular nonimmigrant visa, except that it bears the title "DIPLOMATIC".

(3) The format of an official visa is the same as a regular nonimmigrant visa, except that it bears the title "OFFICIAL".

(e) *Insertion of name; petition and derivative status notation.* (1) Except as otherwise provided in this paragraph, the name(s) of the alien(s) to whom a nonimmigrant visa is issued shall be shown on the visa just after the word "to." In visas issued in passports (or in other travel documents meeting the requirements of INA 101(a)(30)) which have been approved by the Department for this purpose, consular officers may insert the word "Bearer(s)" in lieu of the name of the alien and in lieu of the names of accompanying family members who are included in the alien's passport. The procedure for a "Bearer(s)" insert may not be applied in the case of aliens who are the beneficiaries of waivers granted under INA 212(d)(3) or in the issuance of a visa on Form OF-232.

(2) If the visa is being issued upon the basis of a petition approved by the Attorney General, the number of the peti-

tion, if any, the period for which the alien's admission has been authorized, and the name of the petitioner shall be noted immediately below the visa.

(3) In the case of an alien who derives status from a principal alien, the name and position of the principal alien shall be written below the lower margin of the visa.

(f) *Period of validity.* If a nonimmigrant visa is issued for an unlimited number of applications for admission within the period of validity, the word "multiple" shall be appropriately placed in the visa. Otherwise the number of permitted applications for admission shall be shown in word form. The date of issuance and the date of expiration of the visa shall be shown at the appropriate places in the visa by day, month and year in that order. The standard three letter abbreviation for the month shall be used in all cases. If a visitor visa is to be made valid for an indefinite period, the word "indefinitely" shall be inserted in the space provided for the expiration date of the visa.

(g) *Restriction to specified port of entry.* If a nonimmigrant visa is valid for admission only at one or more specified ports of entry, the names of those ports shall be entered immediately below the expiration date of the visa, preceded by the word "at."

(h) *Signature.* The signature or facsimile signature of the consular officer issuing the visa shall appear in the visa.

(i) *Delivery of visa and disposition of form OF-156.* In issuing a nonimmigrant visa, the consular officer shall deliver the visaed passport, or the prescribed Form OF-232 which bears the visa, to the alien or, if personal appearance has been waived, to the authorized representative. The executed Form OF-156, Nonimmigrant Visa Application, and any additional evidence furnished by the alien in accordance with §41.103(b) shall be retained in the consular files.

(j) *Disposition of supporting documents.* Original supporting documents furnished by the alien shall be returned for presentation, if necessary, to immigration authorities at the port of entry and a notation to that effect shall be made on the Form OF-156. Duplicate

copies may be retained in the consular files.

(k) *Olympic Games, Pan American Games or other regional games.* Notwithstanding the provisions of paragraph (d) of this section, in the case of an alien who:

(1) Is a participant in the Summer or Winter Olympic Games, the Pan American Games or other regional games under the auspices of the International Olympic Committee, held in the United States; and

(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:

(i) The imprint of the issuing post's rubber stamp seal; and

(ii) The signature of a consular officer affixed on the identity card shall constitute a multiple entry B-1/B-2 visa valid for the duration of the card, or, in the case of a representative of foreign press, radio, film or other foreign information media, a multiple entry I visa valid for the duration of the card.

[52 FR 42597, Nov. 5, 1987, as amended at 56 FR 30428, July 2, 1991; 61 FR 1523, Jan. 22, 1996; 61 FR 1836, Jan. 24, 1996; 61 FR 53058, Oct. 10, 1996]

§ 41.114 Transfer of visas.

(a) *Conditions for transfer.* Upon the request of the bearer a valid non-immigrant visa shall be transferred from one travel document to a different travel document which is valid for the required period if the bearer is found eligible to receive such a visa, except in a case in which the travel document containing the original visa has been lost or stolen. A visa may be transferred only if the new passport indicates that the alien's nationality is the same as when the visa was issued.

(b) *Procedure for transfer.* Application for the transfer of a nonimmigrant visa from one passport to another shall be made on an appropriate form. The consular officer may waive the personal appearance of the alien. The issuance of a transferred visa shall be evidenced by placing the visa stamp with all of the original data in the alien's passport. The validity of the transferred visa shall be the same as that of the original visa. The transferred visa shall be valid for the number of applications for admission remaining as of the date of the transfer. The word "TRANSFERRED" shall be inserted on the upper margin of the visa stamp.

(c) *Cancellation of visa in old passport.* Unless the passport in which the original visa was issued has been surrendered to the issuing authority, the original visa shall be canceled at the time of its transfer to the new travel document, except, when a visa is transferred for only some of several persons included in the original visa, that visa is not to be canceled but the names of the persons whose visas are transferred are to be stricken from the original visa.

(d) *Fee for transfer.* No fee shall be charged for the transfer of a valid non-immigrant visa.

Subpart L—Refusals and Revocations

§ 41.121 Refusal of individual visas.

(a) *Grounds for refusal.* Nonimmigrant visa refusals must be based on legal grounds, that is, one or more provisions of INA 212(a) or (e), INA 214(b), or INA 221(g). Certain classes of non-immigrant 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.* If a consular officer knows or has reason to believe that an alien is ineligible to receive a visa on grounds of ineligibility which

cannot be overcome by the presentation of additional evidence, the officer shall refuse the visa and, if practicable, shall require a nonimmigrant visa application to be executed before the refusal is recorded. In the case of a visa refusal the consular officer shall inform the applicant of the provision of law or regulations upon which the refusal is based. If the alien fails to execute a visa application after being informed by the consular officer of a ground of ineligibility to receive a nonimmigrant visa, the visa shall be considered refused. The officer shall then insert the pertinent data on the visa application, noting the reasons for the refusal, and the application form shall be filed in the consular office. Upon refusing a nonimmigrant visa, the consular officer shall retain the original or a copy of each document upon which the refusal was based as well as each document indicating a possible ground of ineligibility and may return all other supporting documents supplied by the applicant.

(c) *Review of refusal at consular office.* If the ground(s) of ineligibility upon which the visa was refused cannot be overcome by the presentation of additional evidence, the principal consular officer, or a specifically designated alternate, shall review the case without delay, record the review decision, and sign and date the prescribed form. If the ground(s) of ineligibility may be overcome by the presentation of additional evidence, and the applicant has indicated the intention to submit such evidence, a review of the refusal may be deferred for not more than 120 days. If the principal consular officer or alternate does not concur in the refusal, that officer shall either

(1) Refer the case to the Department for an advisory opinion, or

(2) Assume responsibility for the case by reversing the refusal.

(d) *Review of refusal by Department.* The Department may request a consular officer in a specific case or in specified classes of cases to submit a report if a visa has been refused. The Department will review each report and may furnish an advisory opinion to the consular officer for assistance in considering the case further. If the officer believes that action contrary to an

advisory opinion should be taken, the case shall be resubmitted to the Department with an explanation of the proposed action. Rulings of the Department concerning an interpretation of law, as distinguished from an application of the law to the facts, shall be binding upon consular officers.

[52 FR 42597, Nov. 5, 1987, as amended at 56 FR 30428, July 2, 1991]

§ 41.122 Revocation of visas.

(a) *Grounds for revocation by consular officers.* A consular officer is authorized to revoke a nonimmigrant visa issued to an alien if:

(1) The officer finds that the alien was not, or has ceased to be, entitled to the nonimmigrant classification under INA 101(a)(15) specified in the visa or that the alien was at the time the visa was issued, or has since become, ineligible under INA 212(a) to receive a visa;

(2) The visa has been physically removed from the passport in which it was issued prior to the alien's embarkation upon a continuous voyage to the United States; or

(3) For any of the reasons specified in paragraph (h) of this section if the visa has not been revoked by an immigration officer as authorized in that paragraph.

(b) *Notice of proposed revocation.* When consideration is being given to the revocation of a nonimmigrant visa under paragraph (a)(1) or (2) of this section, the consular officer considering that action shall, if practicable, notify the alien to whom the visa was issued of intention to revoke the visa. The alien shall also be given an opportunity to show why the visa should not be revoked and requested to present the travel document in which the visa was originally issued.

(c) *Procedure for physically cancelling visas.* A nonimmigrant visa which is revoked shall be canceled by writing or stamping the word "REVOKED" plainly across the face of the visa. The cancellation shall be dated and signed by the officer taking the action. The failure of the alien to present the visa for cancellation does not affect the validity of action taken to revoke it.

(d) *Notice to carriers.* Notice of revocation shall be given to the master, aircraft captain, agent, owner, charterer,

or consignee of the carrier or transportation line on which it is believed the alien intends to travel to the United States, unless the visa has been physically canceled as provided in paragraph (c) of this section.

(e) *Notice to Department.* When a visa is revoked under paragraph (a)(1) or (2) of this section, the consular officer shall promptly submit notice of the revocation, including a full report on the facts in the case, to the Department for transmission to INS. A report is not required if the visa is physically canceled prior to the alien's departure for the United States except in cases involving A, G, C-2, C-3, NATO, diplomatic or official visas.

(f) *Record of action.* Upon revocation of a nonimmigrant visa under paragraph (a)(1) or (2) of this section, the consular officer shall complete for the post files a Certificate of Revocation by Consular Officer which includes a statement of the reasons for the revocation. If the revocation is effected at other than the issuing office, a copy of the Certificate of Revocation shall be sent to that office.

(g) *Reconsideration of revocation.* (1) The consular office shall consider any evidence submitted by the alien or the alien's attorney or representative in connection with a request that the revocation be reconsidered. If the officer finds that the evidence is sufficient to overcome the basis for the revocation, a new visa shall be issued. A memorandum regarding the action taken and the reasons therefor shall be placed in the consular files and appropriate notification shall be made promptly to the carriers concerned, the Department, and the issuing office if notice of revocation has been given in accordance with paragraphs (d), (e), and (f) of this section.

(2) In view of the provisions of §41.107(d) providing for the refund of fees when a visa has not been used as a result of action by the U.S. Government, a fee shall not be charged in connection with a reinstated visa.

(h) *Revocation of visa by immigration officer.* An immigration officer is authorized to revoke a valid visa by physically canceling it in accordance with the procedure prescribed in paragraph (c) of this section if:

(1) The alien obtains an immigrant visa or an adjustment of status to that of permanent resident;

(2) The alien is ordered excluded from the United States pursuant to INA 235(c) or 236;

(3) The alien is notified pursuant to INA 235(b) by an immigration officer at a port of entry that the alien appears to be inadmissible to the United States and the alien requests and is granted permission to withdraw the application for admission;

(4) A final order of deportation or a final order granting voluntary departure with an alternate order of deportation is entered against the alien pursuant to INS regulations;

(5) The alien has been permitted by INS to depart voluntarily from the United States pursuant to INS regulations;

(6) A waiver of ineligibility pursuant to INA 212(d)(3)(A) on the basis of which the visa was issued to the alien is revoked by INS;

(7) The visa is presented in connection with an application for admission to the United States by a person other than the alien to whom it was issued; or

(8) The visa has been physically removed from the passport in which it was issued.

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Subpart A—Visa and Passport Not Required for Certain Immigrants

Sec.

42.1 Aliens not required to obtain immigrant visas.

42.2 Aliens not required to present passports.

Subpart B—Classification and Foreign State Chargeability

42.11 Classification symbols.

42.12 Rules of chargeability.

Subpart C—Immigrants Not Subject to Numerical Limitations of INA 201 and 202

42.21 Immediate relatives.

42.22 Returning resident aliens.

42.23 Certain former U.S. citizens.