

**§ 40.204 [Reserved]****§ 40.205 Applicant for immigrant visa under INA 203(c).**

An alien shall be ineligible to receive a visa under INA 203(c) if the alien does not have a high school education or its equivalent, as defined in 22 CFR 42.33(a)(2), or does not have, within the five years preceding the date of application for such visa, at least two years of work experience in an occupation which requires at least two years of training or experience.

[59 FR 55045, Nov. 3, 1994. Redesignated at 61 FR 59184, Nov. 21, 1996]

**§ 40.206 Frivolous applications [Reserved]****§§ 40.207–40.210 [Reserved]****Subpart M—Waiver of Ground of Ineligibility**

SOURCE: 56 FR 30422, July 2, 1991, unless otherwise noted. Redesignated at 61 FR 59184, Nov. 21, 1996]

**§ 40.301 Waiver for ineligible non-immigrants under INA 212(d)(3)(A).**

(a) *Report or recommendation to Department.* Except as provided in paragraph (b) of this section, consular officers may, upon their own initiative, and shall, upon the request of the Secretary of State or upon the request of the alien, submit a report to the Department for possible transmission to the Attorney General pursuant to the provisions of INA 212(d)(3)(A) in the case of an alien who is classifiable as a nonimmigrant but who is known or believed by the consular officer to be ineligible to receive a nonimmigrant visa under the provisions of INA 212(a), 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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AUTHORITY: 8 U.S.C. 1104; 22 U.S.C. 2651a.

SOURCE: 52 FR 42597, Nov. 5, 1987, unless otherwise noted.

**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

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to the Treaty and entering the United States in connection with their official duties under the provisions of the Protocol 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 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.* (1) A national of the British Virgin Islands and resident therein requires a passport but not a visa if proceeding to the United States Virgin Islands.

(2) A national of the British Virgin Islands and resident therein requires a passport but does not require a visa to apply for entry into the United States if such applicant:

(i) Is proceeding by aircraft directly from St. Thomas, U.S. Virgin Islands;

(ii) Is traveling to some other part of the United States solely for the purpose of business or pleasure as described in INA 101(a)(15)(B);

(iii) Satisfies the examining U.S. Immigration officer at that port of entry that he or she is admissible in all respects other than the absence of a visa; and

(iv) Presents a current Certificate of Good Conduct issued by the Royal Virgin Islands Police Department indicating that he or she has no criminal record.

(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 and a passport are not required of a Mexican national who is entering solely for the purpose of applying for a Mexican passport or other official Mexican document at a Mexican consular office on the United States side of the border.

(4) A passport is not required of a Mexican national who is applying for a B-1/B-2 Visa/BCC and who meets the conditions for waiver of the passport requirement in section 41.32(a)(2)(iii).

(5) 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.

(6) A visa is not required of a Mexican national bearing a Mexican diplomatic 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).* (1) An alien in immediate and continuous transit through the United States is not required to be in possession of a passport or visa if:

(i) The carrier transporting the alien has signed an agreement with the Immigration and Naturalization Service (INS) pursuant to the provisions of INA 233(c); and

(ii) The alien is en route to a specified foreign country; and

(iii) The alien possesses documentation establishing identity, nationality, and the ability to enter a country other than the United States.

(2) Notwithstanding the provisions of paragraph (i)(1) of this section, this waiver is not available to an alien who is a citizen of: Afghanistan, Angola, Bangladesh, Belarus, Bosnia-Herzegovina, Burma, Burundi, Central African Republic, People's Republic of China, Congo (Brazzaville), India, Iran, Iraq, Libya, Nigeria, North Korea, Pakistan, Russia, Serbia, Sierra Leone, Somalia, Sri Lanka, Sudan.

(j) Except as provided in paragraphs (a) through (i) and (k) through (m) of this section, all aliens are required to present a valid, unexpired visa and passport upon arrival in the United States. An alien may apply for a waiver of the visa and passport requirement 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 (INS) in charge of the port of entry concludes that the alien is unable to present the required documents because of an unforeseen emergency. The INS district director may grant a waiver of the visa or passport requirement pursuant to INA 212(d)(4)(A), without the prior concurrence of the Department of State, if the district director concludes that the alien's claim of emergency circumstances is legitimate 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

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who seeks classification, under INA 101(a)(15)(K).

(1) *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.

(2) Countries designated as pilot program countries under paragraph (1)(1), 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); Brunei (effective July 29, 1993); Ireland (effective April 1, 1995); Argentina (effective July 8, 1996); Australia (effective July 29, 1996) and Slovenia (effective September 30, 1997); Portugal, Singapore and Uruguay (effective August 9, 1999).

(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; 62 FR 51031, Sept. 30, 1997; 63 FR 16893, Apr. 7, 1998; 64 FR 7999, Feb. 18, 1999; 64 FR 28916, May 28, 1999; 64 FR 42033, Aug. 3, 1999; 66 FR 1034, Jan. 5, 2001]

EFFECTIVE DATE NOTE: At 66 FR 1034, Jan. 5, 2001, § 41.2 was amended by revising paragraph (i), effective Feb. 5, 2001. At 66 FR 17361, Mar. 30, 2001, § 41.2 was further amended by revising paragraph (i)(2), effective April 2, 2001. The superseded text of paragraph (i)(2) remaining in effect from Feb. 5, 2001 until April 2, 2001, is set forth as follows.

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### § 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of non-immigrants.

\* \* \* \* \*

(i)

(2) Notwithstanding the provisions of paragraph (i)(1) of this section, this waiver is not available to an alien who is a citizen of: Afghanistan, Angola, Bangladesh, Belarus, Bosnia-Herzegovina, Burma, Burundi, Central African Republic, People's Republic of China, Colombia, Congo (Brazzaville), India, Iran, Iraq, Libya, Nigeria, North Korea, Pakistan, Russia, Serbia, Sierra Leone, Somalia, Sri Lanka, Sudan.

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### § 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

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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, Mongolia, 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; 63 FR 48577, Sept. 11, 1998]

**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 appropriate 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:

**NONIMMIGRANTS**

Symbol	Class	Section of law
A-1 .....	Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family.	101(a)(15)(A)(i).

NONIMMIGRANTS—Continued

Symbol	Class	Section of law
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-1/D	Combined Transit and Crewman Visa	101(a)(15)(C) and (D).
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-1B	Alien in a Specialty Occupation (Profession)	101(a)(15)(H)(i)(b).
H-1C	Nurses in health professional shortage areas	101(a)(15)(H)(i)(c).
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 or Immediate Family 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.
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.

NONIMMIGRANTS—Continued

Symbol	Class	Section of law
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)(i).
Q–2	Irish Peace Process Program Participant	101(a)(15)(Q)(ii).
Q–3	Spouse or child of Q–2	101(a)(15)(Q)(iii).
R–1	Alien in a Religious Occupation	101(a)(15)(R).
R–2	Spouse or Child of R–1	101(a)(15)(R).
S–5	Certain Aliens Supplying Critical Information Relating to a Criminal Organization or Enterprise.	101(a)(15)(S)(i).
S–6	Certain Aliens Supplying Critical Information Relating to Terrorism	101(a)(15)(S)(ii).
S–7	Qualified Family Member of S–5 or S–6	101(a)(15)(S).
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; 63 FR 48578, Sept. 11, 1998; 65 FR 14770, Mar. 17, 2000; 65 FR 20904, Apr. 19, 2000]

**Subpart C—Foreign Government Officials**

**§41.21 Foreign Officials—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 adop-

tion, 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 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

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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 non-immigrant 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 non-immigrant 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 non-immigrant 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.

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## § 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 non-immigrant 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

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§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 non-immigrant 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 diplo-

matic 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;

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(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

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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 De-

partment, 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 visas.**

(a) *Combined B-1/B-2 visitor visa and border crossing identification card (B-1/B-2 Visa/BCC).* (1) *Authorization for issuance.* Consular officers assigned to a consular office in Mexico designated by the Deputy Assistant Secretary for Visa Services for such purpose may issue a border crossing identification card, as that term is defined in INA 101(a)(6), in combination with a B-1/B-2 nonimmigrant visitor visa (B-1/B-2 Visa/BCC), to a nonimmigrant alien who:

- (i) Is a citizen and resident 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 six months;
- (iii) Is otherwise eligible for 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 waiver is valid for multiple applications for admission into the United States and for a period of at least ten years and which contains no restrictions as to extensions of temporary stay or itinerary.

(2) *Procedure for application.* Mexican applicants shall apply for a B-1/B-2

Visa/BCC at any U.S. consular office in Mexico designated by the Deputy Assistant Secretary of State for Visa Services pursuant to paragraph (a) of this section to accept such applications. The application shall be submitted on Form OF-156. The application shall be supported by:

(i) Evidence of Mexican citizenship and residence;

(ii) The applicant's digitized photographic image taken at the time of the application; and

(iii) A valid Mexican Federal passport or a Certificate of Mexican Nationality (as long as the Certificate of Mexican Nationality is supported by another form of identification which includes a photograph) unless the applicant is the bearer of a currently valid or expired United States visa or BCC or B-1/B-2 Visa/BCC which has neither been voided by operation of law nor revoked by a consular or immigration officer. BCCs that, after October 1, 2001, or such other date as may be enacted, are no longer useable for entry due only to the absence of a machine readable biometric identifier shall not be considered to have been voided or revoked for the purpose of making an application under this section.

(iv) A digitized impression of the prints of the alien's index fingers taken at the time of the application.

(3) *Personal appearance.* Each applicant shall appear in person before a consular officer to be interviewed regarding eligibility for a visitor visa, unless the consular officer waives personal appearance.

(4) *Issuance and format.* A B-1/B-2 Visa/BCC issued on or after April 1, 1998, shall consist of a card, Form DSP-150, containing a machine-readable biometric identifier. It shall contain the following data:

- (i) Post symbol;
- (ii) Number of the card;
- (iii) Date of issuance;
- (iv) Indicia "B-1/B-2 Visa and Border Crossing Card";
- (v) Name, date of birth, and sex of the person to whom issued; and
- (vi) Date of expiration.

(b) *Validity.* 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 the expiration date on the card (if any) unless previously revoked, but not later than the date, currently October 1, 2001, on which a machine-readable, biometric identifier in the card is required in order for the card to be usable for entry. The BCC portion of a B-1/B-2 Visa/BCC issued to a Mexican national pursuant to provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998 is valid until the date of expiration, unless previously revoked, but not later than the date, currently October 1, 2001, on which a machine-readable, biometric identifier in the card is required in order for the card to be usable for entry.

(c) *Revocation.* A consular or immigration officer may revoke a BCC issued on Form I-186 or Form I-586, or a B-1/B-2 Visa/BCC under the provisions of §41.122, or if the consular or immigration officer determines that the alien to whom any such document was issued has ceased to be a resident and/or a citizen of Mexico. Upon revocation, the consular or immigration officer shall notify the issuing consular or immigration office. If the revoked document is a card, the consular or immigration officer shall take possession of the card and physically cancel it under standard security conditions. If the revoked document is a stamp in a passport the consular or immigration officer shall write or stamp "canceled" on the face of the document.

(d) *Voidance.* (1) The voiding pursuant to INA 222(g) of the visa portion of a B-1/B-2 Visa/BCC issued at any time by a consular officer in Mexico under provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, also voids the BCC portion of that document.

(2) A BCC issued at any time by a consular officer in Mexico under any provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, is void if a consular or immigration officer determines that the alien has violated the conditions of the alien's admission into the United States, including the period of stay authorized by the Attorney General.

(3) A consular or immigration officer shall immediately take possession of a card determined to be void under paragraphs (d) (1) or (2) of this section and physically cancel it under standard security conditions. If the document voided in paragraphs (d) (1) or (2) is in the form of a stamp in a passport the officer shall write or stamp "canceled" across the face of the document.

(e) *Replacement.* When a B-1/B-2 Visa/BCC issued under the provisions of this section, or a BCC or B-1/B-2 Visa/BCC issued under any provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, has been lost, mutilated, destroyed, or expired, the person to whom such card was issued may apply for a new B-1/B-2 Visa/BCC as provided in this section.

[64 FR 45163, Aug. 19, 1999]

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

(a) *Validity of Canadian BCC.* A Canadian BCC or the BCC portion of a Canadian B-1/B-2 Visa/BCC issued to a permanent resident of Canada pursuant to provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, is valid until the date of expiration, if any, unless previously revoked, but not later than the date, currently October 1, 2001, on which a machine readable biometric identifier is required in order for a BCC to be usable for entry.

(b) *Revocation of Canadian BCC.* A consular or immigration officer may revoke a BCC or a B-1/B-2 Visa/BCC issued in Canada at any time under the provisions of §41.122, or if the consular or immigration officer determines that the alien to whom any such document was issued has ceased to be a permanent resident of Canada. Upon revocation, the consular or immigration officer shall notify the issuing consular office and if the revoked document is a card, the consular or immigration officer shall take possession of the card and physically cancel it under standard security conditions. If the revoked document is a stamp in a passport the consular or immigration officer shall write or stamp "canceled" on the face of the document.

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(c) *Voidance.* (1) The voiding pursuant to INA 222(g) of the visa portion of a B-1/B-2 Visa/BCC issued at any time by a consular officer in Canada under provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, also voids the BCC portion of that document.

(2) A BCC issued at any time by a consular officer in Canada under any provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, is void if a consular or immigration officer finds that the alien has violated the conditions of the alien's admission into the United States, including the period of stay authorized by the Attorney General.

(3) A consular or immigration officer shall immediately take possession of a card determined to be void under paragraphs (c) (1) or (2) of this section and physically cancel it under standard security conditions. If the document voided under paragraphs (c) (1) or (2) is in the form of a stamp in a passport the officer shall write or stamp "canceled" across the face of the document.

[64 FR 45164, Aug. 19, 1999]

### Subpart E—Crewman and Crew-List Visas

#### § 41.41 Crewmen.

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

(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.

[52 FR 42597, Nov. 5, 1987, as amended at 66 FR 10364, Feb. 15, 2001]

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#### § 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

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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 offi-

cer 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 treaty 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 employee 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 *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) Is seeking entry solely to develop and direct the enterprise; and

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

(c) *Employee of treaty trader or treaty 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 in or is coming to the United States to engage in duties of an executive or supervisory character, or, if employed in a lesser 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 treaty investor if in the United States or if not in the United States would be classifiable as a treaty trader or treaty investor; or

(2) An organization at least 50% owned by persons having the nationality of the treaty country who are maintaining nonimmigrant treaty trader or treaty investor status if residing in the United States or if not residing in the United States who would be classifiable as treaty traders or treaty investors.

(d) *Spouse and children of treaty trader or treaty investor.* The spouse and children of a treaty trader or treaty investor accompanying or following to join the principal alien are entitled to the same classification as the principal alien. The nationality of a spouse or child of a treaty trader or treaty investor is not material to the classification of the spouse or child under the provisions of INA 101(a)(15)(E).

(e) *Representative 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) *Treaty country.* A treaty country is for purposes of this section a foreign state with which a qualifying Treaty of Friendship, Commerce, and Navigation or its equivalent exists with the United States. A treaty country includes a foreign state that is accorded treaty visa

privileges under INA 101(a)(15)(E) by specific legislation (other than the INA).

(g) *Nationality of the treaty country.* The nationality of an individual treaty trader or treaty investor is determined by the authorities of the foreign state of which the alien claims nationality. In the case of an organization, ownership must be traced as best as is practicable to the individuals who ultimately own the organization.

(h) *Trade.* The term “trade” as used in this section means the existing international exchange of items of trade for consideration between the United States and the treaty country. Existing trade includes successfully negotiated contracts binding upon the parties which call for the immediate exchange of items of trade. This exchange must be traceable and identifiable. Title to the trade item must pass from one treaty party to the other.

(i) *Item of trade.* Items which qualify for trade within these provisions include but are not limited to goods, services, technology, monies, international banking, insurance, transportation, tourism, communications, and some news gathering activities.

(j) *Substantial trade.* Substantial trade for the purposes of this section entails the quantum of trade sufficient to ensure a continuous flow of trade items between the United States and the treaty country. This continuous flow contemplates numerous exchanges over time rather than a single transaction, regardless of the monetary value. Although the monetary value of the trade item being exchanged is a relevant consideration, greater weight is given to more numerous exchanges of larger value. In the case of smaller businesses, an income derived from the value of numerous transactions which is sufficient to support the treaty trader and his or her family constitutes a favorable factor in assessing the existence of substantial trade.

(k) *Principal trade.* Trade shall be considered to be principal trade between the United States and the treaty country when over 50% of the volume of international trade of the treaty trader is conducted between the United States and the treaty country of the treaty trader’s nationality.

(l) *Investment.* Investment means the treaty investor's placing of capital, including funds and other assets, at risk in the commercial sense with the objective of generating a profit. The treaty investor must be in possession of and have control over the capital invested or being invested. The capital must be subject to partial or total loss if investment fortunes reverse. Such investment capital must be the investor's unsecured personal business capital or capital secured by personal assets. Capital in the process of being invested or that has been invested must be irrevocably committed to the enterprise. The alien has the burden of establishing such irrevocable commitment given to the particular circumstances of each case. The alien may use any legal mechanism available, such as by placing invested funds in escrow pending visa issuance, that would not only irrevocably commit funds to the enterprise but that might also extend some personal liability protection to the treaty investor.

(m) *Bona fide enterprise.* The enterprise must be a real and active commercial or entrepreneurial undertaking, producing some service or commodity for profit and must meet applicable legal requirements for doing business in the particular jurisdiction in the United States.

(n) *Substantial amount of capital.* A substantial amount of capital constitutes that amount that is:

(1)(i) Substantial in the proportional sense, i.e., in relationship to the total cost of either purchasing an established enterprise or creating the type of enterprise under consideration;

(ii) Sufficient to ensure the treaty investor's financial commitment to the successful operation of the enterprise; and

(iii) Of a magnitude to support the likelihood that the treaty investor will successfully develop and direct the enterprise.

(2) Whether an amount of capital is substantial in the proportionality sense is understood in terms of an inverted sliding scale; i.e., the lower the total cost of the enterprise, the higher, proportionately, the investment must be to meet these criteria.

(o) *Marginal enterprise.* A marginal enterprise is an enterprise that does not have the present or future capacity to generate more than enough income to provide a minimal living for the treaty investor and his or her family. An enterprise that does not have the capacity to generate such income but that has a present or future capacity to make a significant economic contribution is not a marginal enterprise. The projected future capacity should generally be realizable within five years from the date the alien commences normal business activity of the enterprise.

(p) *Solely to develop and direct.* The business or individual treaty investor does or will develop and direct the enterprise by controlling the enterprise through ownership of at least 50% of the business, by possessing operational control through a managerial position or other corporate device, or by other means.

(q) *Executive or supervisory character.* The executive or supervisory element of the employee's position must be a principal and primary function of the position and not an incidental or collateral function. Executive and/or supervisory duties grant the employee ultimate control and responsibility for the enterprise's overall operation or a major component thereof.

(1) An executive position provides the employee great authority to determine policy of and direction for the enterprise.

(2) A position primarily of supervisory character grants the employee supervisory responsibility for a significant proportion of an enterprise's operations and does not generally involve the direct supervision of low-level employees.

(r) *Special qualifications.* Special qualifications are those skills and/or aptitudes that an employee in a lesser capacity brings to a position or role that are essential to the successful or efficient operation of the enterprise.

(1) The essential nature of the alien's skills to the employing firm is determined by assessing the degree of proven expertise of the alien in the area of operations involved, the uniqueness of the specific skill or aptitude, the length of experience and/or training

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with the firm, the period of training or other experience necessary to perform effectively the projected duties, and the salary the special qualifications can command. The question of special skills and qualifications must be determined by assessing the circumstances on a case-by-case basis.

(2) Whether the special qualifications are essential will be assessed in light of all circumstances at the time of each visa application on a case-by-case basis. A skill that is unique at one point may become commonplace at a later date. Skills required to start up an enterprise may no longer be essential after initial operations are complete and are running smoothly. Some skills are essential only in the short-term for the training of locally-hired employees. Long-term essentiality might, however, be established in connection with continuous activities in such areas as product improvement, quality control, or the provision of a service not generally available in the United States.

(s) *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.

[62 FR 48154, Sept. 12, 1997]

## § 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 privi-

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leges 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, or by the Department of Labor in the case of temporary agricultural workers, 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 or by the Department of Labor 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; 65 FR 52306, Aug. 29, 2000]

**§ 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;

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(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]

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## § 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 and visitors under the Irish Peace Process Cultural and Training Program Act (IPPCTPA).

(a) *International cultural exchange visitors.* (1) *Requirements for classification under INA section 101(a)(15)(Q)(i).* A consular officer may classify an alien under the provisions of INA 101(a)(15)(Q)(i) if:

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

(ii) The consular officer has received official evidence of the approval by INS of a petition or the extension by INS of

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the period of authorized stay in such classification.

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

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

(4) *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 does not qualify under INA section 101(a)(15)(Q)(i).

(b) *Trainees under INA section 101(a)(15)(Q)(ii).* (1) *Requirements for classification under INA section 101(a)(15)(Q)(ii).* A consular officer may classify an alien under the provisions of INA section 101(a)(15)(Q)(ii) if:

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

(ii) The consular officer has received a certification letter prepared by a program administrator charged by the Department of State in consultation with the Department of Justice with the operation of the Irish Peace Process Cultural and Training Program which states at a minimum:

(A) The name of the alien's employer in the United States;

(B) That the employment is in an occupation designated by the employment and training administration of the alien's place of residence as being most beneficial to the local economy;

(C) That the program administrator has registered the alien in the program;

(D) That the alien has been physically resident in Northern Ireland or in the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal in the Republic of Ireland and the length of time immediately prior to the application that the alien has claimed such place as his or her residence;

(E) The alien's date and place of birth;

(iii) If applicable, the consular officer is satisfied the alien is the spouse or

child of an alien classified under INA section 101(a)(15)(Q)(ii), and is accompanying or following to join the principal alien.

(2) *Requirements for certification letter.* Before the program administrator (or its agent) may properly issue the certification letter required under paragraph (a)(1)(ii) of this section, the program administrator (or agent) must establish:

(i) Either that the alien:

(A) Has been unable to maintain regular employment for the three months prior to the date of application for participation in the program; or

(B) Has completed or is currently participating in a T&EA or FAS or other publicly funded training/employment program; or

(C) Has received a redundancy notice (notice of loss of employment by reduction in force); or

(D) If the alien is regularly employed, the alien's employer has nominated the alien to leave such employer temporarily in order to participate in the program;

(ii) That the position selected for the alien by the program administrator reasonably fits within the alien's background and experience; and

(iii) That the alien understands both the requirements for maintenance of lawful nonimmigrant status in the United States and that to qualify for visa issuance the alien must have a residence abroad that the alien has no intention of abandoning.

(3) *Aliens not entitled to such classification.* The consular officer must suspend action on the alien's application and notify the alien and the designated program administrator described in paragraph (b)(1)(ii) of this section if the consular officer knows or has reason to believe that an alien does not qualify under INA section 101(a)(15)(Q)(ii).

[65 FR 14770, Mar. 17, 2000]

### §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

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(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 entry.* Temporary entry means an entry into the United States without the intent to establish permanent residence. 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 upon completion of the assignment.

(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, as amended at 63 FR 10305, Mar. 3, 1998]

**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.

**§ 41.63 Two-year home-country physical presence requirement.**

(a) *Statutory basis for rule.* Section 212(e) of the Immigration and Nationality Act, as amended, provides in substance as follows:

(1) No person admitted under Section 101(a) (15)(J) or acquiring such status after admission:

(i) Whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the United States Government or by the government of the country of his nationality or of his last legal permanent residence;

(ii) Who at the time of admission or acquisition of status under 101(a)(15)(J) was a national or resident of a country which the Secretary of State of the Department of State, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged [See “Exchange Visitor Skills List”, 49 FR 24194, *et seq.* (June 12, 1984) as amended]; or

(iii) Who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until is established that such person has resided and been physically present in the country of his nationality or his last legal permanent residence for an aggregate of at least two years following departure from the United States.

(2) Upon the favorable recommendation of the Secretary of State of the Department of State, pursuant to the request of an interested United States Government agency (or in the case of an alien who is a graduate of a medical school pursuing a program in graduate medical education or training, pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization after the latter has determined that departure from the United States would impose exceptional hardship upon the alien’s spouse or child (if such spouse or child is a citizen of the United States or a legal permanent alien), or that the alien cannot return to the country of his nationality or last legal permanent residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, the waiver shall be subject to the requirements of section 214(k) of the

Immigration and Nationality Act (8 U.S.C. 1184).

(3) Except in the case of an alien who is a graduate of a medical school pursuing a program in graduate medical education or training, the Attorney General, upon the favorable recommendation of the Secretary of State of the Department of State, may also waive such two-year foreign residency requirement in any case in which the foreign country of the alien’s nationality or last legal permanent residence has furnished the Secretary of State of the Department of State a statement in writing that it has no objection to such waiver in the case of such alien. Notwithstanding the foregoing, an alien who is a graduate of a medical school pursuing a program in medical education or training may obtain a waiver of such two-year foreign residence requirements if said alien meets the requirements of section 214(k) of the Immigration and Nationality Act (8 U.S.C. 1184) and paragraphs (a) (2) and (e) of this section.

(b) *Request for waiver on the basis of exceptional hardship or probable persecution on account of race, religion, or political opinion.* (1) An exchange visitor who seeks a waiver of the two-year home-country physical presence requirement on the grounds that such requirement would impose exceptional hardship upon the exchange visitor’s spouse or child (if such spouse or child is a citizen of the United States or a legal permanent resident alien), or on the grounds that such requirement would subject the exchange visitor to persecution on account of race, religion, or political opinion, shall submit the application for waiver (INS Form I-612) to the District Office of the Immigration and Naturalization Service having administrative jurisdiction over the exchange visitor’s place of temporary residence in the United States, or, if the exchange visitor has already departed the United States, to the district Office having administrative jurisdiction over the exchange visitor’s last legal place of residence in the United States.

(2)(i) If the Commissioner of the Immigration and Naturalization Service (“Commissioner”) determines that compliance with the two-year home-

country physical presence requirement would impose exceptional hardship upon the spouse or child of the exchange visitor, or would subject the exchange visitor to persecution on account of race, religion, or political opinion, the Commissioner shall transmit a copy of his determination together with a summary of the details of the expected hardship or persecution, to the Waiver Review Division, office of Exchange Visitor Program Services, in the Department of State's Office of Bureau of Consular Affairs.

(ii) With respect to those cases in which the Commissioner has determined that compliance with the two-year home-country physical presence requirement would impose exceptional hardship upon the spouse or child of the exchange visitor, the Waiver Review Division shall review the program, policy, and foreign relations aspects of the case, make a recommendation, and forward it to the Commissioner. If it deems it appropriate, the Department of State may request the views of each of the exchange visitors' sponsors concerning the waiver application. Except as set forth in §514.44(f)(4), *infra*, the recommendation of the Waiver Review Division shall constitute the recommendation of the Department of State.

(iii) With respect to those cases in which the Commissioner has determined that compliance with the two-year home-country physical presence requirement would subject the exchange visitor to persecution on account of race, religion, or political opinion, the Waiver Review Division shall review the program, policy, and foreign relations aspects of the case, and after consulting thereon with the Bureau of Human Rights and Humanitarian Affairs of the United States Department of State, make a recommendation, and forward such recommendation to the Commissioner. Except as set forth in §514.44(f)(4), *infra*, the recommendation of the Waiver Review Division shall constitute the recommendation of the Department of State and such recommendation shall be forwarded to the Commissioner.

(c) *Requests for waiver made by an interested United States Government Department of State.* (1) A United States

Government agency may request a waiver of the two-year home-country physical presence requirement on behalf of an exchange visitor if such exchange visitor is actively and substantially involved in a program or activity sponsored by or of interest to such agency.

(2) A United States Government agency requesting a waiver shall submit its request in writing and fully explain why the grant of such waiver request would be in the public interest and the detrimental effect that would result to the program or activity of interest to the requesting agency if the exchange visitor is unable to continue his or her involvement with the program or activity.

(3) A request by a United States Government agency shall be signed by the head of the agency, or his or her designee, and shall include copies of all IAP-66 forms issued to the exchange visitor, his or her current address, and his or her country of nationality or last legal permanent residence.

(4) A request by a United States Government agency, excepting the Department of Veterans Affairs, on behalf of an exchange visitor who is a foreign medical graduate who entered the United States to pursue graduate medical education or training, and who is willing to provide primary medical care in a designated primary care Health Professional Shortage Area, or a Medically Underserved Area, or psychiatric care in a Mental Health Professional Shortage Area, shall, in addition to the requirements set forth in §514.44(c) (2) and (3), include:

(i) A copy of the employment contract between the foreign medical graduate and the health care facility at which he or she will be employed. Such contract shall specify a term of employment of not less than three years and that the foreign medical graduate is to be employed by the facility for the purpose of providing not less than 40 hours per week of primary medical care, i.e. general or family practice, general internal medicine, pediatrics, or obstetrics and gynecology, in a designated primary care Health Professional Shortage Area or designated Medically Underserved Area ("MUA") or psychiatric care in a designated

Mental Health Professional Shortage Area. Further, such employment contract shall not include a non-compete clause enforceable against the foreign medical graduate.

(ii) A statement, signed and dated by the head of the health care facility at which the foreign medical graduate will be employed, that the facility is located in an area designated by the Secretary of Health and Human Services as a Medically Underserved Area or Primary Medical Care Health Professional Shortage Area or Mental Health Professional Shortage Area and provides medical care to both Medicaid or Medicare eligible patients and indigent uninsured patients. The statement shall also list the primary care Health Professional Shortage Area, Mental Health Professional Shortage Area, or Medically Underserved Area/Population identifier number of the designation (assigned by the Secretary of Health and Human Services), and shall include the FIPS county code and census tract or block numbering area number (assigned by the Bureau of the Census) or the 9-digit zipcode of the area where the facility is located.

(iii) A statement, signed and dated by the foreign medical graduate exchange visitor that shall read as follows:

I, \_\_\_\_\_ (name of exchange visitor) hereby declare and certify, under penalty of the provisions of 18 U.S.C. 1101, that I do not now have pending nor am I submitting during the pendency of this request, another request to any United States Government department or agency or any State Department of Public Health, or equivalent, other than \_\_\_\_\_ (insert name of United States Government Agency requesting waiver) to act on my behalf in any matter relating to a waiver of my two-year home-country physical presence requirement.

(iv) Evidence that unsuccessful efforts have been made to recruit an American physician for the position to be filled.

(5) Except as set forth in §514.44(f)(4), *infra*, the recommendation of the Waiver Review Division shall constitute the recommendation of the Department of State and such recommendation shall be forwarded to the Commissioner.

(d) *Requests for waiver made on the basis of a statement from the exchange visitor's home-country that it has no ob-*

*jection to the waiver.* (1) Applications for waiver of the two-year home-country physical presence requirement may be supported by a statement of no objection by the exchange visitor's country of nationality or last legal permanent residence. The statement of no objection shall be directed to the Secretary of State through diplomatic channels; i.e., from the country's Foreign Office to the Department of State through the U.S. Mission in the foreign country concerned, or through the foreign country's head of mission or duly appointed designee in the United States to the Secretary of State in the form of a diplomatic note. This note shall include applicant's full name, date and place of birth, and present address. Upon receipt of the no objection statement, the Waiver Review Division shall instruct the applicant to complete a data sheet and to provide all Forms IAP-66 and the data sheet to the Waiver Review Division. If deemed appropriate, the Department of State may request the views of each of the exchange visitor's sponsors concerning the waiver application.

(2) The Waiver Review Division shall review the program, policy, and foreign relations aspects of the case and forward its recommendation to the Commissioner. Except as set forth in §514.44(f)(4), *infra*, the recommendation of the Waiver Review Division shall constitute the recommendation of the Department of State.

(3) An exchange visitor who is a graduate of a foreign medical school and who is pursuing a program in graduate medical education or training in the United States is prohibited under section 212(e) of the Immigration and Nationality Act from applying for a waiver solely on the basis of no objection from his or her country of nationality or last legal permanent residence. However, an alien who is a graduate of a medical school pursuing a program in medical education or training may obtain a waiver of such two-year foreign residence requirements if said alien meets the requirements of section 214(k) of the Immigration and Nationality Act (8 U.S.C. 1184) and paragraphs (a) (2) and (e) of this section.

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(e) *Requests for waiver from a State Department of Public Health, or its equivalent, on the basis of Public Law 103-416.*

(1) Pursuant to Public Law 103-416, in the case of an alien who is a graduate of a medical school pursuing a program in graduate medical education or training, a request for a waiver of the two-year home-country physical presence requirement may be made by a State Department of Public Health, or its equivalent. Such waiver shall be subject to the requirements of section 214(k) of the Immigration and Nationality Act (8 U.S.C. 1184(k)) and this §514.44.

(2) With respect to such waiver under Public Law 103-416, if such alien is contractually obligated to return to his or her home country upon completion of the graduate medical education or training, the Secretary of State of the Department of State is to be furnished with a statement in writing that the country to which such alien is required to return has no objection to such waiver. The no objection statement shall be furnished to the Secretary of State in the manner and form set forth in paragraph (d) of this section and, additionally, shall bear a notation that it is being furnished pursuant to Public Law 103-416.

(3) The State Department of Public Health, or equivalent agency, shall include in the waiver application the following:

(i) A completed "Data Sheet." Copies of blank data sheets may be obtained from the Department of State's Exchange Visitor Program office.

(ii) A letter from the Secretary of State of the designated State Department of Public Health, or its equivalent, which identifies the foreign medical graduate by name, country of nationality or last residence, and date of birth, and states that it is in the public interest that a waiver of the two-year home residence requirement be granted;

(iii) An employment contract between the foreign medical graduate and the health care facility named in the waiver application, to include the name and address of the health care facility, and the specific geographical area or areas in which the foreign medical graduate will practice medicine.

The employment contract shall include a statement by the foreign medical graduate that he or she agrees to meet the requirements set forth in section 214(k) of the Immigration and Nationality Act. The term of the employment contract shall be at least three years and the geographical areas of employment shall only be in areas, within the respective state, designated by the Secretary of Health and Human Services as having a shortage of health care professionals;

(iv) Evidence establishing that the geographic area or areas in the state in which the foreign medical graduate will practice medicine are areas which have been designated by the Secretary of Health and Human Services as having a shortage of health care professionals. For purposes of this paragraph, the geographic area or areas must be designated by the Department of Health and Human Services as a Health Professional Shortage Area ("HPSA") or as a Medically Underserved Area/Medically Underserved Population ("MUA/MUP").

(v) Copies of all forms IAP-66 issued to the foreign medical graduate seeking the waiver;

(vi) A copy of the foreign medical graduate's *curriculum vitae*;

(vii) If the foreign medical graduate is otherwise contractually required to return to his or her home country at the conclusion of the graduate medical education or training, a copy of the statement of no objection from the foreign medical graduate's country of nationality or last residence; and,

(viii) Because of the numerical limitations on the approval of waivers under Public Law 103-416, *i.e.*, no more than twenty waivers for each State each fiscal year, each application from a State Department of Public Health, or its equivalent, shall be numbered sequentially, beginning on October 1 of each year.

(4) The Department of State's Waiver Review Division shall review the program, policy, and foreign relations aspects of the case and forward its recommendation to the Commissioner. Except as set forth in §514.44(g)(4)(i),

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the recommendation of the Waiver Review Division shall constitute the recommendation of the Department of State.

(f) *Changed circumstances.* An applicant for a waiver on the grounds of extreme hardship or probable persecution on account of race, religion, or political opinion, has a continuing obligation to inform the Immigration and Naturalization Service of changed circumstances material to his or her pending application.

(g) *The Exchange Visitor Waiver Review Division.* (1) The Exchange Visitor Waiver Review Division (“Division”) shall consist of Department of State positions equivalent to the following positions:

(i) The Associate Director of the Bureau of Educational and Cultural Affairs, or his or her designee;

(ii) The Director of the geographic area office responsible for the geographical area of the waiver applicant, or his or her designee;

(iii) The Director of the office of Congressional and Intergovernmental Affairs, or his or her designee;

(iv) The Director of the Office of Academic Exchange, or his or her designee; and

(v) The Director of the Office of Research, or his or her designee.

(2) A person who has had substantial prior involvement in a particular case referred to the Division may not be appointed to, or serve on, the Division for that particular case unless the Bureau of Consular Affairs determines that the individual’s inclusion on the Division is otherwise necessary or practicably unavoidable.

(3) The State Department official equivalent to the Associate Director of the Bureau of Educational and Cultural Affairs, or his or her designee, shall serve as Division Chairman. No designee under paragraph (g)(3) shall serve for more than 2 years.

(4) Cases will be referred to the Division at the discretion of the Chief, Waiver Review Division, of the Department’s Office of Exchange Visitor Program Services. The Waiver Review Division shall prepare a summary of the particular case referred and forward it along with copy of the relevant file to the Division Chairman. The Chief,

Waiver Review Division, or his or her designee may, at the Chairman’s discretion, appear and present facts related to the case but shall not participate in Division deliberations.

(5) The Chairman of the Division shall be responsible for convening the Division and distributing all necessary information to its members. Upon being convened, the Division shall review the case file and weight the request against the program, policy, and foreign relations aspects of the case.

(6) The Bureau of Consular Affairs shall appoint, on a case-by-case basis, from among the attorneys in the Office of the Bureau of Consular Affairs, one attorney to serve as legal advisor to the Division.

(7) At the conclusion of its review of the case, the Division shall make a written recommendation either to grant or to deny the waiver application. The written recommendation of a majority of the Division shall constitute the recommendation of the Division. Such recommendation shall be promptly transmitted by the Chairman to the Division Chief, Waiver Review Division.

(8) The recommendation of the Division in any case reviewed by it shall constitute the recommendation of the Department of State and such recommendation shall be forwarded to the Commissioner by the Division Chief, Waiver Review Division.

[58 FR 15196, Mar. 19, 1993; 58 FR 18305, Apr. 8, 1993; 58 FR 48448, Sept. 16, 1993; 60 FR 16787, 16788, April 3, 1995; 60 FR 53125, Oct. 12, 1995; 62 FR 19222, Apr. 21, 1997; 62 FR 28803, May 28, 1997. Redesignated and amended at 64 FR 54539, 54540, Oct. 7, 1999]

### 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;

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(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; or

(iii) The alien is subject to INA 222(g) and must apply as set forth in paragraph (b) or (c) of this section.

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

(b) *Place of application for persons subject to INA 222(g).* Notwithstanding the requirements of paragraph (a) of this section, an alien whose prior nonimmigrant visa has been voided pursuant to INA 222(g), who is applying for a new nonimmigrant visa, shall make application at a consular office which has jurisdiction in or for the country of the alien's nationality unless extraordinary circumstances have been determined to exist with respect to that alien as set forth in paragraph (c) of this section.

(c) *Exceptions based on extraordinary circumstances.* (1) An alien physician serving in underserved areas of the United States under the provisions of INA 214(l) for whom an application for a waiver of the 2-year foreign residence requirement and/or a petition to accord H-1B status was filed prior to the end of the alien's authorized period of stay and was subsequently approved, but whose authorized stay expired during the adjudication of such application(s),

shall make application in accordance with paragraph (a) of this section.

(2) Any other individual or group whose circumstances are determined to be extraordinary, in accordance with paragraph (d)(1) of this section, by the Deputy Assistant Secretary for Visa Services upon the favorable recommendation of an immigration or consular officer, shall make application in accordance with paragraph (a) of this section.

(3) An alien who has, or immediately prior to the alien's last entry into the United States had, a residence in a country other than the country of the alien's nationality shall apply at a consular office with jurisdiction in or for the country of residence.

(4) An alien who is a national and resident of a country in which there is no United States consular office shall apply at a consular office designated by the Deputy Assistant Secretary for Visa Services to accept immigrant visa applications from persons of that nationality.

(5) An alien who possesses more than one nationality and who has, or immediately prior to the alien's last entry into the United States had, a residence in one of the countries of the alien's nationality shall apply at a consular office in the country of such residence.

(d) *Definitions relevant to INA 222(g).*

(1) *Extraordinary circumstances*—Extraordinary circumstances may be found where compelling humanitarian or national interests exist or where necessary for the effective administration of the immigration laws. Extraordinary circumstances shall not be found upon the basis of convenience or financial burden to the alien, the alien's relative, or the alien's employer.

(2) *Nationality*—For purposes of paragraph (b) of this section, a stateless person shall be considered to be a national of the country which issued the alien's travel document.

(e) *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

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one of the classes entitled to a diplomatic or an official visa as described in § 41.26(c) or § 41.27(c).

(f) *Q-2 nonimmigrant visas.* The American Consulate General at Belfast is designated to accept applications for the Q-2 visa from residents of the geographic area of Northern Ireland. The American Embassy at Dublin is designated to accept applications for Q-2 visas from residents of the geographic area of the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal in the Republic of Ireland. Notwithstanding any other provision of this section, an applicant for a Q-2 visa may not apply at any other consular post. Consular officers at the Consulate General at Belfast and at the Embassy at Dublin have discretion to accept applications for Q-2 visas from aliens who are resident in a qualifying geographic area outside of their respective consular districts, but who are physically present in their consular district.

[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; 63 FR 671, Jan. 7, 1998; 63 FR 36366, July 6, 1998; 65 FR 14771, Mar. 17, 2000]

### § 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 applica-

tion 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

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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*. Every applicant for a nonimmigrant visa must furnish a photograph in such numbers as the consular officer may require. Photographs must be a reasonable likeness, 1½ by 1½ inches in size, unmounted, and showing a full, front-face view of the applicant against a light background. At the discretion of the consular officer, head coverings may be permitted provided they do not interfere with the full, front-face view of the applicant. The applicant must sign (full name) on the reverse side of the photographs. The consular officer may use a previously submitted photograph, if he is satisfied that it bears a reasonable likeness to 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; 64 FR 13510, Mar. 19, 1999]

### § 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.*

(1) 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 application for or 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 B-1 issued for participation in an official observer mission to the United Nations, or who is issued a diplomatic visa as defined in § 41.26.

(2) The consular officer shall waive the nonimmigrant visa application and issuance fees for an alien who will be engaging in charitable activities for a charitable organization upon the written request of the charitable organization claiming that it will find the fees a financial burden, if the consular officer is satisfied that:

(i) The organization seeking relief from the fees is, if based in the United States, tax-exempt as a charitable organization under the provisions of section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)); if a foreign organization based outside the United States in a country having laws according recognition to charitable institutions, that it establishes that it is recognized as a charitable institution by that government; and if a foreign organization based in a country without such laws, that it is engaged in activities substantially similar to those underlying section 501(c)(3), and

(ii) The charitable activities in which the alien will engage are specified and will be a part of, or will be related to and in support of, the organization's provision of services, including but not limited to health care, food and housing, job training, and similar direct services and assistance to the poor and needy, and

(iii) The request includes the location of the proposed activities, the number and identifying data of each of the alien(s) who will be applying for visas, and

(iv) The proposed duration of the alien(s)'s temporary stay in the United States is reasonably consistent with the charitable purpose for which the

alien(s) seek to enter the United States.

(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; 63 FR 24108, May 1, 1998; 63 FR 52970, Oct. 2, 1998; 65 FR 52307, Aug. 29, 2000]

**§ 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

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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 Deputy Assistant Secretary for Visa Services and such 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:

(i) Are currently maintaining status in the E, H, I, L, O, or P nonimmigrant category;

(ii) Intend to reenter the United States in that status after a temporary absence abroad; and

(iii) Who also present evidence that:

(A) 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

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

[52 FR 42597, Nov. 5, 1987, as amended at 66 FR 12738, Feb. 28, 2001]

#### §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, U.S. permanent residents, or aliens granted refugee status in the U.S. by the government of the country of which the alien is a national, permanent resident, refugee or stateless resident.

(2) Notwithstanding paragraph (b)(1) of this section, United States nonimmigrant visas shall have a maximum validity period of 10 years.

(3) An unexpired 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,

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(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 nonimmigrant aliens seeking readmission at ports of entry:

(i) The validity of an expired nonimmigrant 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 nonimmigrant classification of an alien has been changed by INS to another nonimmigrant classification, the validity of an expired or unexpired nonimmigrant 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 Nonimmigrant 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 ac-

companying 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; 62 FR 24332, May 5, 1997]

### §41.113 Procedures in issuing visas.

(a) *Visa evidenced by stamp placed in passport.* Except as provided in paragraphs (b) of this section, a nonimmigrant visa shall be evidenced by a visa stamp placed in the alien's passport. The appropriate symbol as prescribed in 41.12, showing the classification of the alien, shall be entered on 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. 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;

(3) The passport requirement has been waived; or

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

(c) *Visa stamp.* A machine-readable nonimmigrant visa foil, or other indicia as directed by the Department, shall constitute a visa "stamp," and shall be in a format designated by the Department, and contain, at a minimum, the following data:

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- (1) Full name of the applicant;
- (2) Visa type/class;
- (3) Location of the visa issuing office;
- (4) Passport number;
- (5) Sex;
- (6) Date of birth;
- (7) Nationality;
- (8) Number of applications for admission or the letter "M" for multiple entries;
- (9) Date of issuance;
- (10) Date of expiration;
- (11) Visa control number.

(d) *Insertion of name; petition and derivative status notation.* (1) The surname and given name of the visa recipient shall be shown on the visa in the space provided.

(2) If the visa is being issued upon the basis of a petition approved by the Attorney General, the number of the petition, if any, the period for which the alien's admission has been authorized, and the name of the petitioner shall be reflected in the annotation field on 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 reflected in the annotation field of the visa.

(e) *Period of validity.* If a nonimmigrant visa is issued for an unlimited number of applications for admission within the period of validity, the letter "M" shall be shown under the word "entries". Otherwise the number of permitted applications for admission shall be identified numerically. 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.

(f) *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 in the annotation field. In cases where there is insufficient room to list the ports of entry, they shall be listed by hand on a clean passport page. Reference shall be made in the visa's annotation field citing the passport page upon which the ports are listed.

(g) *Delivery of visa and disposition of Form OF-156.* In issuing a non-

immigrant visa, the consular officer shall deliver the visa and 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.

(h) *Disposition of supporting documents.* Original supporting documents furnished by the alien shall be returned for presentation, if necessary, to the 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.

[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; 62 FR 24334, May 5, 1997]

### Subpart L—Refusals and Revocations

#### §41.121 Refusal of individual visas.

(a) *Grounds for refusal.* Nonimmigrant visa refusals must be based on legal grounds, such as one or more provisions of INA 212(a), INA 212(e), INA 214(b), (f) or (1) (as added by Section 625 of Pub. L. 104-208), INA 221(g), or INA 222(g) or other applicable law. Certain classes of nonimmigrant aliens are exempted from specific provisions of INA 212(a) under INA 102 and, upon a basis of reciprocity, under INA 212(d)(8). When a visa application has been properly completed and executed in accordance with the provisions of INA and the implementing regulations, the consular officer must either issue or refuse the visa.

(b) *Refusal procedure.* (1) When a consular officer knows or has reason to believe a visa applicant is ineligible and refuses the issuance of a visa, he or she must inform the alien of the ground(s) of ineligibility (unless disclosure is barred under INA 212(b)(2) or (3)) and whether there is, in law or regulations, a mechanism (such as a waiver) to overcome the refusal. The officer shall note the reason for the refusal on the application. Upon refusing the nonimmigrant visa, the consular officer

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shall retain the original of each document upon which the refusal was based, as well as each document indicating a possible ground of ineligibility, and should return all other supporting documents supplied by the applicant.

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

(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; 63 FR 671, Jan. 7, 1998; 66 FR 10364, Feb. 15, 2001]

§ 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, or was issued a visa in contravention of INA 222(g);

(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.

(4) The visa has been issued in a combined Mexican or Canadian B-1/B-2 visa and border crossing identification card and the officer makes the determination specified in § 41.32(c) with respect to the alien's Mexican citizenship and/or residence or the determination specified in § 41.33(b) with respect to the alien's status as a permanent resident of Canada.

(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

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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.

(9) The visa has been issued in a combined Mexican or Canadian B-1/B-2 visa and border crossing identification card and the officer makes the determination specified in § 41.32(c) with respect to the alien's Mexican citizenship and/or residence or the determination specified in § 41.33(b) with respect to the

alien's status as a permanent resident of Canada.

[52 FR 42597, Nov. 5, 1987, as amended at 63 FR 16895, Apr. 7, 1998; 66 FR 10364, Feb. 15, 2001]

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

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AUTHORITY: 8 U.S.C. 1104.

SOURCE: 52 FR 42613, Nov. 5, 1987, unless otherwise noted.

### **Subpart A—Visa and Passport Not Required for Certain Immigrants**

#### **§ 42.1 Aliens not required to obtain immigrant visas.**

An immigrant within any of the following categories is not required to obtain an immigrant visa:

(a) *Aliens lawfully admitted for permanent residence.* An alien who has previously been lawfully admitted for permanent residence and who is not required under the regulations of INS to present a valid immigrant visa upon returning to the United States.

(b) *Alien members of U.S. Armed Forces.* An alien member of the U.S. Armed Forces bearing military identification, who has previously been lawfully admitted for permanent residence and is coming to the United States under official orders or permit of those Armed Forces.

(c) *Aliens entering from Guam, Puerto Rico, or the Virgin Islands.* An alien who has previously been lawfully admitted for permanent residence who seeks to enter the continental United States or any other place under the jurisdiction of the United States directly from Guam, Puerto Rico, or the Virgin Islands of the United States.