DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1914–98]

RIN 1115–AF15

Authorizing Suspension of Applicability of Employment Authorization Requirements in Emergent Circumstances for Certain F–1 Students

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations of the Immigration and Naturalization Service (Service) that apply to nonimmigrant aliens who are admitted to the United States in F–1 student classification for duration of status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (Act), and who are seeking either on-campus employment or authorization for off-campus employment. The rule allows the Commissioner, by notice in the **Federal Register**, to permit specified F–1 students to engage in on-campus employment for more than 20 hours per week and to suspend the applicability of the eligibility requirements for off-campus employment authorization, where emergent circumstances exist. F–1 students who find it necessary to reduce their normal course of study in order to engage in this specially authorized employment will be considered to be maintaining status and pursuing a full course of study. This interim rule is necessary to provide a means for the Service to take immediate action when emergency situations arise.

DATES: *Effective date:* This interim rule is effective June 10, 1998.

Comment date: Written comments must be submitted on or before August 10, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1914–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Maurice R. Berez, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Current regulations at 8 CFR 214.2(f)(8) permit F–1 students to engage in on-campus or off-campus employment while pursuing their studies in the United States as long as certain requirements are met. The regulations provide no flexibility in these requirements. Crises may arise, however, that warrant suspension of some or all of the requirements for certain students. An amendment to the current regulations is necessary to provide the Commissioner a means to institute immediate measures for affected students in case of a crisis. The most expedient means is by notice in the **Federal Register**. This interim rule amends the regulations to provide such a procedure with respect to on-campus employment, off-campus employment authorization, duration of status, and full course of study.

On-Campus Employment

Under the current regulations for on-campus employment at 8 CFR 214.2(f)(9)(i), F–1 students may work no more than 20 hours per week when school is in session. Current regulations provide no exceptions to thIS limitation. This rule amends the regulations for on-campus employment to permit the Commissioner, by notice in the **Federal Register,** to allow specified F–1 students to work on-campus more than 20 hours per week for a temporary period where an emergency situation has arisen. Before a student may engage in such employment, the student must demonstrate to the Designated School Official (DSO) at the student's school that the employment is necessary to avoid severe economic hardship resulting from the emergency, and the DSO must notate the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, in accordance with the **Federal Register** document.

Off-Campus Employment Authorization

Current regulations at 8 CFR 214.2(f)(9)(ii) provide that an F–1 student may be authorized to work off-campus where: the student has been in F–1 status for one full academic year; the student is in good academic standing and is carrying a ''full course of study;'' the student demonstrates that the employment will not interfere with his or her ability to carry a full course of study; and the student demonstrates that he or she must work to avoid severe economic hardship due to unforeseen circumstances beyond the student's control. Just as with on-campus employment, a student granted off-campus employment authorization may work no more than 20 hours per week when school is in session. The student may work full-time during holidays or school vacations. Section 214.2(f)(9)(ii)(A) of the current regulations provides for automatic termination of employment authorization where the student fails to maintain his or her F–1 status as set forth in 8 CFR 214.2(f)(5).

To provide the necessary flexibility to address unforeseeable emergencies, this rule amends the regulations to allow the Commissioner, by notice in the **Federal Register**, to suspend the applicability of some or all of the requirements for off-campus employment authorization for specified F–1 students where an emergency situation has arisen calling for this action.

Duration of Status and Full Course of Study

To maintain F–1 status, all F–1 students must pursue a full course of study. The time during which an F–1 student is pursuing a full course of study is called ''duration of status.'' *See* 8 CFR 214.2(f)(5). An F–1 student who pursues less than a full course of study and violates his or her status can seek reinstatement if he or she meets the requirements of 8 CFR 214.2(f)(16). Where the Commissioner has exercised her authority established by this interim rule to suspend the applicability of the requirements for on-campus and off-campus employment authorization by notice in the **Federal Register**, affected F–1 students may, but are not required to, pursue less than their normal course of study in order to meet their financial needs by accepting the authorized employment. So that these students will not be considered to have violated their status, this interim rule amends the regulations at 8 CFR 214.2(f)(5) to provide that affected F–1 students carrying a reduced course load will be considered to be in status during the authorized employment, as long as the student remains registered for a minimum course load, which will be specified in the **Federal Register** document. Under the rule, in no event may the minimum course load be less than 6 semester or quarter hours of instruction per academic term if the student is at the undergraduate level or 3 semester or quarter hours of instruction per academic term if the student is at the graduate level. In addition, the rule amends the regulations defining ''full course of study'' at 8 CFR 214.2(f)(6) to provide

that affected F–1 students carrying a reduced course load will be deemed to be engaged in a full course of study during the authorized employment, as long as the student remains registered for a minimum course load, which may not be less than the number of semester or quarter hours specified in the **Federal Register** document. Because affected F–1 students who must reduce their course load will be considered to be in status, they do not need to request reinstatement to return to a full course of study.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the ''good cause'' exception found at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). This rule permits the Commissioner to suspend the application of certain regulatory requirements where an emergency situation arises calling for such action. Immediate implementation is necessary because emergency circumstances have, in fact, arisen that require immediate action by the Service. A number of Asian countries are experiencing an extreme economic crisis as a result of a sharp drop in the value of their currencies. This crisis will have a severe impact on the United States' national interest. Thailand, Indonesia, Malaysia, South Korea, and the Philippines are among the hardest hit by this crisis.

There are approximately 80,000 nationals currently in the United States whose means of financial support comes from one of these five countries. As a result of the crisis in the five countries, many of these students may not be able to afford to remain in school or meet living expenses and will be forced to leave the United States. The President and the Secretary of State have requested the Government to assist in addressing this crisis in order to further important foreign policy interests. In light of this crisis, the Service must implement a mechanism to aid affected students immediately. In this issue of the **Federal Register,** the Service is simultaneously issuing a document with this interim rule to notify the public of the suspension of applicability of certain requirements under 8 CFR 214.2(f)(9) for F–1 students whose means of financial support comes from South Korea, Thailand, Indonesia, Malaysia and the Philippines.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this interim rule and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities since this rule affects individual aliens, not small entities as that term is defined in 5 U.S.C. 601(b).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, it has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Organization and functions (Government agencies).

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by:

a. Adding a new paragraph (f)(5)(v);

b. Adding a new paragraph (f)(6)(i)(F);

c. Revising the fifth sentence in paragraph (f)(9)(i); and by

d. Adding a sentence at the end of paragraph (f)(9)(ii)(A), to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

(5) * * *

(v) *Emergent circumstances as determined by the Commissioner.* Where the Commissioner has suspended the applicability of any or all of the requirements for on-campus or off-campus employment authorization for specified students pursuant to paragraphs (f)(9)(i) or (f)(9)(ii) of this section by notice in the **Federal Register,** an affected student who needs to reduce his or her full course of study as a result of accepting employment authorized by such notice in the **Federal Register** will be considered to be in status during the authorized employment, subject to any other conditions specified in the notice, provided that, for the duration of the authorized employment, the student is registered for the number of semester or quarter hours of instruction per academic term specified in the notice, which in no event shall be less than 6 semester or quarter hours of instruction per academic term if the student is at the undergraduate level or less than 3 semester or quarter hours of instruction per academic term if the student is at the graduate level, and is continuing to make progress toward completing the course of study.

(6) * * *

(i) * * *

(F) Notwithstanding paragraphs (f)(6)(i)(A) and (f)(6)(i)(B) of this section, an alien who has been granted employment authorization pursuant to the terms of a document issued by the Commissioner under paragraphs (f)(9)(i)

or (f)(9)(ii) of this section and published in the **Federal Register** shall be deemed to be engaged in a ''full course of study'' if he or she remains registered for no less than the number of semester or quarter hours of instruction per academic term specified by the Commissioner in the notice for the validity period of such employment authorization.

* * * * *

(9) * * *

(i) *On-campus employment.* * * * Employment authorized under this paragraph must not exceed 20 hours a week while school is in session, unless the Commissioner suspends the applicability of this limitation due to emergent circumstances, as determined by the Commissioner, by means of notice in the **Federal Register,** the student demonstrates to the DSO that the employment is necessary to avoid severe economic hardship resulting from the emergent circumstances, and the DSO notates the Form I–20 in accordance with the **Federal Register** document.* * *

(ii) * * *

(A) *General.* * * * In emergent circumstances as determined by the Commissioner, the Commissioner may suspend the applicability of any or all of the requirements of paragraph (f)(9)(ii) of this section by notice in the **Federal Register.**

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Dated: May 1, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–15507 Filed 6–8–98; 2:23 pm]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1911–98]

Employment Authorization for Certain F–1 Nonimmigrant Students Whose Means of Financial Support Comes From Indonesia, South Korea, Malaysia, Thailand, or the Philippines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of suspension of applicability of certain requirements.

SUMMARY: The Commissioner of the Immigration and Naturalization Service (Service) is temporarily suspending the applicability of certain requirements in 8 CFR 214.2(f)(9) governing on-campus and off-campus employment for nonimmigrant aliens who are admitted to the United States in F–1 classification for duration of status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (Act), and whose means of financial support as reflected in the students' Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, is from Indonesia, South Korea, Malaysia, Thailand, or the Philippines. This action is necessary because students whose means of financial support comes from these countries are experiencing severe economic hardship due to the rapid devaluation of their currencies against the United States dollar and the consequent reduction in financial support. These affected students may need to be exempted from the normal student employment requirements in order to continue their studies in the United States.

DATES: This document is effective June 10, 1998 and will remain in effect until the Attorney General rescinds this document.

FOR FURTHER INFORMATION CONTACT:

Maurice R. Berez, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Why Is The Service Taking This Action?

The currencies of Indonesia, South Korea, Malaysia, Thailand, and the Philippines have experienced a sudden and severe drop in value over recent months relative to the United States dollar. The United States Department of the Treasury advises that this economic crisis will likely continue for the next several months. The President and the Secretary of State have requested the Government, as a matter of foreign policy and wherever feasible, to assist students whose means of financial support comes from these countries to mitigate the adverse impact of this crisis. The economic crisis has had a severe economic impact on many F–1 nonimmigrant students who are presently in the United States and whose means of financial support comes from any of these five countries. The total population of such students attending colleges and universities in the United States is approximately 80,000. Given the magnitude of this student population in the United States, the economic crisis in these students' countries is also having an indirect but serious adverse impact on campuses across the country.

While some affected students will have brought enough money with them to the United States for the entire academic year, many other students who depend on a regular flow of funds from one of the five enumerated countries may be experiencing severe economic hardship as a result of the economic crisis. These students may be unable to continue to cover the full cost of their studies and reasonable living expenses, and may therefore need to seek immediate employment to meet this unexpected change in their financial support.

Based on the above-noted foreign policy grounds, and in order to aid such adversely affected students, the Commissioner is exercising her authority under 8 CFR 214.2(f)(9) and is temporarily suspending the applicability of certain regulatory requirements pertaining to employment authorization for certain F–1 students whose means of financial support, as reflected on their Form I–20, comes from Indonesia, South Korea, Malaysia, Thailand, or the Philippines, and who, due to the economic crisis, would suffer severe economic hardship without such employment authorization. Under this temporary suspension, eligible F–1 students will be permitted to exceed the normal 20-hour limit on both on-campus and off-campus employment, and to reduce their full course of study without violating their F–1 status. This action is taken pursuant to amendments made to the regulations at 8 CFR 214.2(f)(5), 214.2(f)(6), and 214.2(f)(9) in an interim rule issued by the Service and published in this issue of the **Federal Register**.

For What Requirements in 8 CFR 214.2(f)(9) Is The Applicability Temporarily Suspended?

1. On-Campus Employment

For F–1 students whose means of financial support, as reflected in their Form I–20, comes from Indonesia, South Korea, Malaysia, Thailand or the Philippines, and who seek to engage in on-campus employment because of severe economic hardship resulting from the current economic crisis, the Commissioner is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 student's on-campus employment to 20 hours per week while school is in session. The applicability of this requirement will be suspended until this document is rescinded. Students whose means of financial support comes from one of the five enumerated countries, and who are experiencing severe economic hardship due to the