

7 that established the Board of Appellate Review (L/BAR) and revising § 50.51 to provide for an alternative method of review of loss of nationality determinations on a discretionary basis.

The rule was discussed in detail in Public Notice 6298, as were the Department's reasons for making the changes to the regulations. There were no comments to the interim final rule published July 18, 2008. The Department is now promulgating a final rule with no changes.

### Regulatory Findings

#### *Administrative Procedure Act*

The Department published this rule as an interim final rule on July 18, 2008, with 60 days for post-promulgation comment, in accordance with the exemption contained in 5 U.S.C. 553(a)(2) for matters relating to agency management or personnel.

#### *Regulatory Flexibility Act*

Since this action is exempt from the notice and comment procedures contained in 5 U.S.C. 553, and no other statute mandates such procedures, no analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. However, these changes to the regulations are hereby certified as not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601–612, and Executive Order 13272, section 3(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 (adjusted annually for inflation) in any 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 import markets.

#### *Executive Order 12866*

The Department does not consider this rule to be a “significant regulatory action” within the scope of section 3(f)(1) of Executive Order 12866. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

#### *Executive Order 12988—Civil Justice Reform*

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

#### *Executive Orders 12372 and 13132—Federalism*

This regulation 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 section 6 of Executive Order 13132, it is determined that this rule does not have significant federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

#### *National Environmental Policy Act*

The Department has analyzed this regulation for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 through 4327) and has determined that it will not have any effect on the quality of the environment.

#### *The Paperwork Reduction Act of 1995*

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

### List of Subjects

#### *22 CFR Part 7*

Board of Appellate Review.

#### *22 CFR Part 50*

Citizenship, Nationality, Loss of Nationality.

■ Accordingly, the interim rule amending 22 CFR parts 7 and 50 published at 73 FR 41256, July 18, 2008 is adopted as final without change.

Dated: October 7, 2008.

**Janice L. Jacobs,**

*Assistant Secretary of State, Bureau of Consular Affairs, Department of State.*

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## DEPARTMENT OF STATE

### 22 CFR Part 40

[Public Notice 6395]

RIN 1400–AB68

### Uncertified Foreign Health-Care Workers

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final without change the Department's interim rule published on December 17, 2002, at 67 FR 77158. The rule changes the requirements pertaining to the issuance of visas to certain health care workers. Certain foreign health care workers now need to present certificates establishing competency in a specific health care field. Certification is issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS) or other credentialing organizations that have been approved by the Secretary of Homeland Security (DHS) in consultation with the Secretary of Health and Human Services (HHS). This rule facilitates greater uniformity between the regulations of DHS and the Department of State.

**DATES:** *Effective Date:* Effective October 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Penafrancia D. Salas, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106. *Phone:* 202–663–1202. *E-mail:* (salaspd@state.gov).

#### SUPPLEMENTARY INFORMATION:

#### What Is The Background of This Rule?

An alien who seeks to enter the United States for the purpose of performing labor as a health care worker, other than as a physician, is ineligible for visa issuance and is inadmissible to the United States unless the alien presents to the consular officer a certificate from the CGFNS or a certificate from an equivalent independent credentialing organization approved by DHS in consultation with HHS that indicates the following:

(a) The alien's education, training, license, and experience:

1. Meet all applicable statutory and regulatory requirements for admission

into the United States under the specified visa;

2. Are comparable with those required for an American health care worker of the same type;

3. Are authentic; and,

4. In the case of a license is unencumbered (not burdened or affected);

(b) The alien has the level of competence in oral and written English considered by the Secretary of HHS, in consultation with the Secretary of Education, to be appropriate for the health care work in which the alien will be engaged. HHS's finding is to be based on an established score on one or more nationally recognized, commercially available, standardized assessments; and,

(c) If a majority of states licensing the profession in which the alien intends to work recognize a test predicting an applicant's success on the profession's licensing or certification examination, the alien has passed such a test, or has passed the certification examination.

The Immigration and Nationality Act section 212(r) created an alternative certification process for certain aliens seeking to enter the United States to perform nursing services. In general, such procedures apply to those aliens who already possess a valid, unrestricted, authentic and unencumbered license as a nurse in a state where the alien intends to be employed and who received their nursing training in a country where the quality of education and the English proficiency of nursing graduates have been recognized by the CGFNS as meeting its standards.

On July 25, 2003, the Department of Homeland Security published in the **Federal Register** at 68 FR 43901 its final rule establishing at 8 CFR 212.15 the regulations governing the certification process for aliens seeking to enter to provide labor as health care providers. Aliens in covered health care occupations (with the exception of aliens who, under 8 CFR 212.15(b) are not subject to the certification requirement of 212(a)(5)(C) and 212(r) of the INA (8 U.S.C. 1182(a)(5)(C) and 8 U.S.C. 1182(r) respectively, and the Department of Homeland Security Regulations at 8 CFR 212.15) specified at 8 CFR 212.15(c) are inadmissible.

#### *Comments*

#### **Were Comments Solicited on This Rule?**

Yes, comments were solicited. Although the Department received four comments in response to this rule, the comments raised issues regarding the hardship on the individual commenters

that the statutory requirements imposed. For example, several comments focused on the shortage of nurses in the United States and the need for foreign nurses to make up the shortage. Other comments focused on issues relating to the licensure of nurses.

#### *Regulatory Findings*

#### **Administrative Procedure Act**

The Department's implementation of the interim rule was based upon the "good cause" exception found at 5 U.S.C. 553(b)(B). Section 553(b) of the APA authorizes agencies to dispense with certain notice procedures for rules when they are "impracticable, unnecessary, or contrary to public interest." Nevertheless, the Department solicited public comments. This rule makes final an amendment to the regulation that implemented a legislative mandate that codified current practices.

#### **Regulatory Flexibility Act/Executive Order 13272: Small Business**

The Department of State, pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), has assessed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### **The Unfunded Mandates Reform Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104-4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

#### **The Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121. 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 import markets.

#### **Executive Order 12866: Regulatory Review**

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of the regulation justify its costs. The Department does not consider the rule to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of \$100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

#### **Executive Orders 12372 and 13132: Federalism**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

#### **Executive Order 12988: Civil Justice Reform**

The Department has reviewed the proposed regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

#### **Paperwork Reduction Act**

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

#### **List of Subjects in 22 CFR Part 40**

Aliens, Nonimmigrants, Immigrants, Documentation, Passports and Visas.

■ Accordingly, the interim rule amending 22 CFR part 40 published at 67 FR 77158, December 17, 2002 is adopted as final without change.

Dated: October 6, 2008.

**Janice L. Jacobs,**

*Assistant Secretary for Consular Affairs  
Department of State.*

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