

Department of State

§ 41.59

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, as amended at 66 FR 52502, Oct. 16, 2001]

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

(3) 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 USCIS 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 precede or exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section.

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

[74 FR 51237, Oct. 6, 2009]

§ 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 DHS an approved petition according classification as a NAFTA Professional to the alien or official confirmation of such petition approval, or DHS 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 DHS 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 Secretary of Homeland Security 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