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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

8 CFR Parts 103, 208, 210, 214, 240, 242, 245a, and 274a

[INS No. 1719-95]

RIN 1115 AE16

#### Rules and Procedures for Filing an Application for Employment Authorization

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** The Immigration and Naturalization Service (INS) publishes this rule to inform the public of a change in procedures for filing certain employment authorization applications. At present, persons seeking work authorization apply either by mailing an application to an INS service center or by delivering it to an INS district office. The INS intends to expand its direct mailing program, so that more categories of applicants can file their work authorization applications by mail directly with the service centers. The expansion will enhance the agency's ability to adjudicate work authorization applications efficiently. This final rule revises the regulations to reflect the changed filing procedures. It also makes a technical amendment to the regulatory provisions governing work authorization for persons applying for suspension of deportation and two technical amendments to the regulatory provision governing interim work authorization for asylum reform applicants. The instructions that accompany an application for work authorization are being revised simultaneously to provide comprehensive general information on filing procedures.

**EFFECTIVE DATE:** This rule is effective June 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jack Tabaka, Senior Examiner Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, (202) 616-7432.

**SUPPLEMENTARY INFORMATION:** The INS announced the expansion of its direct mail program in an interim rule published in the *Federal Register* on July 1, 1994 at 59 FR 33903. In that interim rule, the INS announced its intent to reduce processing time and the need for personal visits to the INS by permitting applicants to file certain applications by mail to the service centers. Under INS regulations, an applicant generally should file an application in accordance with the instructions that accompany the application form. 8 CFR 103.2(a). The regulations required employment authorization applicants to file their applications with the district director. Many of the references to filing with the district director were removed with the publication of the July 1, 1994 interim rule to permit applicants to mail applications to the service centers. Certain employment authorization regulations continue to require that an applicant file an application with the district director having jurisdiction over the applicant's place of residence. While the interim rule removed many of the references to district director and replaced those references with the term "director" so that service center directors could accept such applications, further changes to the regulations are necessary to accomplish the expansion of the direct mail program. This rule eliminates the remaining references to "district director" filing, consistent with the change in filing procedures announced in the interim rule.

On July 1, 1994 the INS also announced the implementation of a pilot direct mail program for persons applying at the Baltimore District Office in a *Federal Register* notice published at 59 FR 33985. The INS is reviewing the comments it has received from the public on both the interim rule and the direct mail pilot program notice and will publish a response in the future.

Based in part on the addition of new personnel, INS service centers are able to accept a greater volume of

applications from a greater number of categories of employment authorization applicants. This change to the employment authorization filing procedures will reduce the number of visits to district offices now required to obtain work authorization and will permit the INS to further streamline its procedures and to improve overall efficiency to its customers. To explain more fully the changed filing procedures, the INS has revised the instructions that accompany Form I-765, Application for Employment Authorization. The INS has received Office of Management and Budget approval under the Paperwork Reduction Act for the revised set of instructions and is in the process of having the new I-765 package published and distributed to its district offices and its form distribution centers. The corresponding regulations are revised below to direct employment authorization applicants to follow the instructions that accompany the employment authorization application when determining where to file.

El Salvadoran and Guatemalan nationals who are eligible for benefits under the *American Baptist Church v. Thornburgh*, 760 F.Supp. 796 (N.D. Cal. 1991) ("ABC") should refer to special filing instructions which will supplement the I-765 instructions. Those instructions can be obtained visiting local INS offices or by calling 1-800-755-0777. Under this change in filing procedures, asylum applicants generally will file future employment authorization applications at the service centers and will no longer be required to file at district offices.

The change in filing procedures is, in the view of the INS, a rule of agency procedure or practice. Therefore, it is not subject to the notice and comment requirements of 5 U.S.C. 553. The INS publishes this rule of procedure or practice in the *Federal Register* for the guidance of the public under 5 U.S.C. 552. The INS intends to provide information to the public regarding the new filing procedures through its public outreach programs in addition to publication of this rule.

This rule also makes three technical corrections. On August 23, 1991, the INS eliminated the requirement under 8 CFR 274a.12(c)(10) that applicants for suspension of deportation establish economic necessity as a condition of

obtaining work authorization. 56 FR 41767. Nevertheless, the phrase "if the alien establishes the economic need to work" was not removed in that section and continued to appear in the Code of Federal Regulations. The final rule revising the asylum regulations on December 5, 1994 perpetuated that mistake. 59 FR 62284. The December 5, 1994 regulations also refer mistakenly to asylum applications rather than employment applications in a sentence having to do with the availability of interim employment authorization. This final rule corrects these two technical errors. In addition, the INS has made a technical correction to § 274a.13(a)(2), which concerns applications for employment authorization filed in connection with an asylum application. The last sentence of that section was amended at the publication of the December 5, 1994 final rule to state that "[t]he Service Center shall adjudicate the application within 30 days of receipt." This is correct insofar as it reiterates the period under asylum reform for adjudicating an initial request by an asylum applicant for employment authorization under § 208.7(a)(1). It is incorrect, however, to the extent that it appears to apply to applications for renewal or replacement of employment authorization, which are discussed in the sentence immediately preceding it. As is clear from the preamble to the December 5, 1994 final rule, specifically at 59 FR 62291, and from § 274a.13(d), the INS is to adjudicate requests for renewal or replacement of employment authorization within 90 days, not 30. Therefore, the last sentence of § 274a.13(a)(2) has been removed.

**Regulatory Flexibility Act**

The Commissioner of the INS, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This regulation merely provides notice to the public of change in filing procedures for employment authorization applications by correcting the remaining regulatory references to filing with the district director and makes two technical corrections to recently published INS regulations. It does not change the amount of the application fee though it corrects the figure listed currently in the regulations.

**Executive Order 12866**

This rule is not considered by the INS to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review,

and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

**Executive Order 12612**

This final rule 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 12606**

The Commissioner of the INS certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will not have an impact on family well-being.

**Paperwork Reduction Act**

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for this collection is 1115-0163.

**List of Subjects**

*8 CFR Part 103*

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

*8 CFR Part 208*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 210*

Aliens, Migrant labor, Reporting and recordkeeping requirements.

*8 CFR Part 214*

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

*8 CFR Part 240*

Administrative practice and procedure, Immigration.

*8 CFR Part 242*

Administrative practice and procedure, Aliens.

*8 CFR Part 245a*

Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 274a*

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

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

**PART 103—POWERS AND DUTIES OF SERVICE OFFICERS: AVAILABILITY OF SERVICE RECORDS**

1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR 1982 Comp., p. 166; 8 CFR part 2.

**§ 103.6 [Amended]**

2. Section 103.6(a)(2)(ii) is amended by removing the phrase "District Director" and adding the term "INS" in its place.

3. In § 103.6(a)(2)(iii) the first sentence is amended by removing "§ 109.1(b)" and adding "§ 274a.12" in its place.

\* \* \* \* \*

4. In § 103.7 (b)(1), the entry for Form I-765 is revised to read as follows:

**§ 103.7 Fees.**

\* \* \* \* \*

(b)(1) \* \* \*

Form I-765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—\$70, unless otherwise noted on the instructions attached to the application form.

\* \* \* \* \*

**PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION**

5. The authority citation for part 208 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 31 U.S.C. 9701; 8 CFR part 2.

6. Section 208.7 is amended by:  
 a. In paragraph (a)(1), the sixth sentence, removing the word "asylum" and adding the word "employment" in its place;

b. In paragraph (c), the first sentence of the introductory text, removing the phrase "asylum officer, or district director where appropriate" and adding in its place the phrase "INS, in accordance with the instructions on or attached to the employment authorization application";

c. In paragraph (c), in the second sentence, removing the phrase "asylum

officer” and adding in its place the term “INS”; and  
 d. In paragraph (e) remove the phrase “district director, in his discretion,” and add the term “INS”.

**7. PART 210—SPECIAL AGRICULTURAL WORKERS**

8. The authority citation for part 210 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1160, 8 CFR part 2.

**§ 210.2 [Amended]**

9. In § 210.2(c)(4)(iii), the third sentence is amended by removing the words “A district director” and adding the words “The INS” in their place.

10. Section 210.4(b) is amended by:
- a. Removing in paragraph (b)(1), in the first sentence, the phrase “may only be granted by a Service legalization office” and adding in its place the phrase “be granted by the INS”;
  - b. Revising in paragraph (b)(2), the fourth and fifth sentences; and
  - c. Revising in paragraph (b)(3), the second sentence, to read as follows:

**§ 210.4 Status and benefits.**

(b) \* \* \*  
 (2) *Employment and travel authorization prior to the granting of temporary resident status.* \* \* \*  
 Employment and travel authorization subsequent to an interview will be granted on the employment authorization document, and will be restricted to 6 months duration, pending final determination on the application for temporary resident status. If a final determination has not been made on the application prior to the expiration date of the employment authorization document, that date may be extended upon return of the employment authorization document by the applicant to the INS office. \* \* \*

(3) *Employment and travel authorization upon grant of temporary resident status.* \* \* \* The applicant may appear at an INS office, and upon surrender of the previously issued Form I-688A or employment authorization document will be issued Form I-688, Temporary Resident Card. \* \* \*

**PART 214—NONIMMIGRANT CLASSES**

11. 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.

12. Section 214.2 is amended by:
- a. Revising in paragraph (f)(11), introductory text the fourth sentence;

- b. Removing in paragraph (f)(11), introductory text the fifth sentence;
- c. Removing in paragraph (f)(12), in the second sentence the term “director”;
- d. Removing in paragraph (f)(16)(i), introductory text the phrase “A Service Director” and adding in its place the phrase “The Service”;
- e. Removing in paragraph (f)(16)(i)(A), the word “director”;
- f. Revising paragraph (f)(16)(ii);
- g. Removing in paragraph (j)(1)(v)(A), in the second sentence, the phrase “8 CFR 274a.12(c)(5)” and adding the phrase “the Service” in its place;
- h. Removing in paragraph (m)(14)(ii), the second and third sentences; and
- i. Removing in paragraph (m)(15), the term “district director” and adding the term “Service” in its place.

The revised text reads as follows:

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

- \* \* \* \* \*
- (f) \* \* \*  
 (11) \* \* \* An F-1 student must apply to the INS for the EAD by filing the Form I-765. \* \* \*  
 \* \* \* \* \*
- (16) \* \* \* \* \*  
 (ii) *Decision.* If the Service reinstates the student, the Service shall endorse the Form I-20 A-B to indicate that the student has been reinstated, return the I-20 ID to the student, and forward the school copy of the form to the Service’s processing center for data entry. If the Service does not reinstate the student, the student may not appeal that decision.  
 \* \* \* \* \*

**PART 240—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES**

13. The authority citation for part 240 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1254a, 1254a note.

**§ 240.12 [Amended]**

14. In § 240.12 paragraphs (a) and (c) are amended by removing the term “district director” and adding in its place the term “INS”.

**§ 240.17 [Amended]**

15. In § 240.17(a) the first and third sentences are amended by removing the term “District Office” and adding in its place the words “INS designated office”.

**PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING AND APPEAL**

16. The authority citation for part 242 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

17. In Section 242.6, paragraph (e)(5) is revised to read as follows:

**§ 242.6 Family Unity Program.**

\* \* \* \* \*  
 (e) \* \* \*  
 (5) *Employment authorization.* An alien granted benefits under the Family Unity Program is authorized to be employed in the United States and may apply for an employment authorization document in accordance with the instructions accompanying Form I-765, Application for Employment Authorization.  
 \* \* \* \* \*

**PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUBLIC LAW 99-603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUBLIC LAW 100-204, SECTION 902**

18. The authority citation for part 245a continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1255a and 1255a note.

**§ 245a.2 [Amended]**

19. Section 245a.2 is amended by:
- a. Removing in paragraph (j), in the first sentence the word “Legalization” and also by removing the phrase “Forms I-688 and I-688A” and adding in its place the words “an employment authorization document and Form I-688”;
  - b. Removing in paragraph (n)(1), in the first and last sentences, the word “Legalization”;
  - c. Revising in paragraph (n)(2)(ii) the third sentence to read as set forth below;
  - d. Removing in paragraph (n)(3), in the last sentence, the word “Legalization”.

**§ 245a.2 Application for temporary residence.**

- \* \* \* \* \*  
 (n) \* \* \*  
 (2) \* \* \*  
 (ii) \* \* \*

The employment authorization document will be given to the applicant after an interview has been completed by an immigration officer unless a formal denial is issued by the appropriate INS office. \* \* \*

\* \* \* \* \*

20. Section 245a.4 is amended by:

a. Removing in paragraph (b)(10), in the first sentence the phrase "Forms I-688A and I-688" and adding in its place the phrase "an employment authorization document and Form I-688";

b. Removing in paragraph (b)(14)(ii)(b), in the third sentence the phrase "Form I-688A, Employment Authorization," and adding in its place the phrase "An employment authorization document"; and

c. Revising in paragraph (b)(14)(iii) the second sentence to read as follows:

**§ 245a.4 Adjustment to lawful resident status of certain nationals of countries for which extended voluntary departure has been made available.**

\* \* \* \* \*

- (b) \* \* \*
- (14) \* \* \*

(iii) \* \* \* The alien will be required to return to the appropriate INS office, surrender the I-688A or employment authorization document previously issued, and obtain Form I-688, Temporary Resident Card, authorizing employment and travel abroad.

\* \* \* \* \*

**PART 274a—CONTROL OF EMPLOYMENT OF ALIENS**

21. The authority citation for part 274a continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

**§ 274a.12 [Amended]**

22. In § 274a.12 paragraph (c)(10), in the first sentence is amended by removing the phrase "", if the alien establishes the economic need to work".

23. In § 274a.13, paragraph (a) is revised to read as follows:

**274a.13 Application for employment authorization.**

(a) *General.* Aliens authorized to be employed under § 274a.12(a)(3)-(8) and (10)-(13) must file an Application for Employment Authorization (Form I-765) in order to obtain documentation evidencing this fact.

(1) Aliens who may apply for employment authorization under § 274a.12(c) of this part, except for those who may apply under § 274a.12(c)(8), shall file a Form I-765 with the director having jurisdiction over applicant's residence, or the director having jurisdiction over the port of entry at which the alien applies, or with such other Service office as the Commissioner may designate. The approval of applications filed under § 274a.12(c) of this part, except for § 274a.12(c)(8), shall be within the discretion of the director or such other officer as the Commissioner may designate. Where economic necessity has been identified as a factor, the alien must provide information regarding his or her assets, income, and expenses in accordance with instructions on Form I-765.

(2) An initial Application for Employment Authorization (Form I-765) for asylum applicants under 274a.12(c)(8) of this part shall be filed in accordance with instructions on or attached to Form I-765 with the appropriate Service Center or with such other Service office as the Commissioner may designate. The applicant also must submit a copy of the underlying application for asylum or withholding of deportation, together with evidence that the application has been filed in accordance with §§ 208.3 and 208.4 of this chapter. An application for an initial employment authorization or for a renewal of employment authorization filed in relation to a pending claim for asylum shall be adjudicated in accordance with § 208.7 of this chapter. An application for renewal or replacement of employment authorization submitted in relation to a pending claim for asylum, as provided in § 208.7 of this chapter, shall be filed, with fee or application for waiver of such fee, in accordance with the instructions on or attached to Form I-765 with the appropriate Service Center or with such other Service office as the Commissioner may designate.

\* \* \* \* \*

Dated: May 1, 1995.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 95-11058 Filed 5-2-95; 8:45 am]

BILLING CODE 4410-10-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 91-ASW-28; Amendment 39-9209; AD 95-09-06]

**Airworthiness Directives; Bell Helicopter Textron, Inc. Model 206A, 206B, 206L, 206L-1, and 206L-3 Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 206A, 206B, 206L, 206L-1, and 206L-3 helicopters, that requires installing a protective mechanical fuel valve switch guard on the fuel valve switch. This amendment is prompted by reports of airmen inadvertently placing the fuel valve switch to the "OFF" position. The actions specified by this AD are intended to prevent the fuel valve switch from being inadvertently placed in the "OFF" position, which could result in an engine failure and a subsequent power-off landing.

**DATES:** Effective June 8, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 8, 1995.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., Attention: Customer Support, P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lance Gant, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5141, fax (817) 222-5959.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI) Model 206A, 206B, 206L, 206L-1, and 206L-3 helicopters was published in the **Federal Register** on November 14, 1994 (59 FR 56436).