Sird v. *Chater*, 105 F.3d 401 (8th Cir. 1997).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing or Appeals Council).

Description of Case: Donald Sird applied for SSI benefits based on disability on September 27, 1991. In a decision dated January 27, 1995, an ALJ found that Mr. Sird had borderline intellectual capacity, a history of alcoholism, a history of chronic obstructive pulmonary disease and a history of urinary tract infection. The ALJ also found that Mr. Sird had an IQ score within the range required by Listing 12.05C but did not have ''a physical or other mental impairment imposing additional and significant work-related limitation of function.'' The ALJ further found that the combination of Mr. Sird's impairments imposed several environmental restrictions and also functional limitations. Relying on the vocational expert's opinion that an individual with Mr. Sird's characteristics could perform light or sedentary work, the ALJ concluded that, although the claimant could not perform his past relevant work, he was not disabled. After the Appeals Council denied the claimant's request for review, he sought judicial review but the district court upheld the Social Security Administration's (SSA's) decision. Mr. Sird appealed this decision to the United States Court of Appeals for the Eighth Circuit.

Holding: The Eighth Circuit vacated the judgment of the district court and remanded the case to SSA with directions to award benefits. After reviewing Eighth Circuit case law that defined the other impairment requirement of Listing 12.05C as requiring ''a physical or additional mental impairment that has a 'more than slight or minimal' effect on ability to work''[2] and the Fourth Circuit's holding in *Branham* v. *Heckler*, 775 F.2d 1271 (4th Cir. 1985)[3] that established the rule that an inability to do past relevant work meets the requirement of the Listing that the other impairment cause an additional and significant work-related limitation of function, the court held that the *Branham* court's conclusion was ''ineluctable.''

The Eighth Circuit observed that the ALJ's finding of Mr. Sird's inability to perform his past relevant work, assuming no change occurred in his mental impairments after he stopped working, was inconsistent with the ALJ's other finding that Mr. Sird did not satisfy the other impairment requirement of Listing 12.05C because he did not have an additional impairment that significantly limited his ability to work. The court was not convinced that, in this particular case, there was a difference in application between the Eighth Circuit's case law in *Warren* and *Cook*, and the *Branham* court's holding. The court concluded that under either test the claimant was disabled.

Statement As To How Sird Differs From SSA's Interpretation of the Regulations

At issue in *Sird* is the meaning of the term ''additional and significant work-related limitation of function'' in Listing 12.05C. What constitutes an ''additional and significant work-related limitation of function'' is not defined in SSA's regulations. SSA's interpretation of the Listing is that, if an individual has:

(1) mental retardation, i.e., significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period, or autism, i.e., a pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period;

(2) a valid verbal, performance or full scale IQ in the range specified by Listing 12.05C; and

(3) a physical or other mental impairment that is severe within the meaning of 20 CFR 404.1520(c) or 416.920(c), the individual's impairments meet Listing 12.05C.[4] That is, to satisfy the criteria of Listing 12.05C, the additional physical or other mental impairment must result in more than minimal limitations in the individual's ability to do basic work activities. The inability to perform past work does not *per se* satisfy this standard.

The *Sird* court held that an impairment that prevents a claimant from performing his or her past relevant work constitutes a significant work-related limitation of function that is more than slight or minimal, and *per se* meets the other impairment requirement of Listing 12.05C.[5]

Explanation of How SSA Will Apply The Sird Decision Within The Circuit

This Ruling applies only where the claimant resides in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota or South Dakota at the time of the determination or decision at any administrative level of review, i.e., initial, reconsideration, ALJ hearing or Appeals Council.

A claimant who has:

(1) mental retardation, i.e., significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period, or autism, i.e., a pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period;

(2) a valid verbal, performance or full scale IQ in the range specified by Listing 12.05C; and

(3) a physical or other mental impairment that prevents him or her from performing past relevant work, will be considered to have a physical or other mental impairment that results in more than minimal limitations in the ability to do basic work activities and to have satisfied the requirements of Listing 12.05C.

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[2] *Warren* v. *Shalala*, 29 F.3d 1287 (8th Cir. 1994) and *Cook* v. *Bowen*, 797 F.2d 687 (8th Cir. 1986). The Court of Appeals made an alternative holding in the case, and found that, under the circumstances present in the case, the outcome would be the same under the interpretation of the regulations set out in *Warren* and *Cook*. *See* 105 F.3d at 403. The court's alternative holding in the case, relying on the interpretation of Listing 12.05C made in *Warren* and *Cook*, is not inconsistent with SSA's interpretation of the Listing.

[3] On March 10, 1992, SSA published Acquiescence Ruling (AR) AR 92-3(4) at 57 FR 8463 to reflect the holding in *Branham*. On April 29, 1993, the AR was revised and republished as AR 93-1(4) at 58 FR 25996 to incorporate a regulatory change regarding the IQ range included in Listing 12.05C and to make several technical corrections.

[4] For title XVI, an individual under age 18 shall be considered to have an impairment that meets Listing 112.05D if he or she has mental retardation, as defined above, with a valid verbal, performance or full scale I.Q. of 60 through 70 and a physical or other mental impairment that is severe within the meaning of 20 CFR 416.924(c).

[5] As noted above, the Court of Appeals alternative holding, relying on the decisions in *Warren* v. *Shalala*, 29 F.3d 1287 (8th Cir. 1994) and *Cook* v. *Bowen*, 797 F.2d 687 (8th Cir. 1986) is not inconsistent with SSA's interpretation of the Listing, as explained above.

DEPARTMENT OF STATE

Office of Consular Affairs

[Public Notice 2746]

60-Day Notice of Proposed Information Collection; Nonimmigrant Visa Application

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal**

Register preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Originating Office: The Office of Consular Affairs, Visa Services.

Title of Information Collection: Nonimmigrant Visa Application.

Frequency: On occasion.

Form Number: OF–156.

Respondents: Aliens.

Estimated Number of Respondents: 8,000,000.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 8,000,000.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: February 11, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–4658 Filed 2–23–98; 8:45 am]

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Imports Statistics Relating to Competitive Need Limitations; Invitation for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; invitation for public comment.

SUMMARY: The Trade Policy Staff Committee (TPSC) is informing the public of interim 1997 import statistics relating to Competitive Need Limitations (CNL) under the Generalized System of Preferences (GSP) program. The TPSC also invites public comments by 5:00 p.m. March 20, regarding possible de minimis CNL waivers with respect to particular articles, and possible redesignations under the GSP program of articles currently subject to CNLs.

FOR FURTHER INFORMATION CONTACT:

GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, N.W., Room 518, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Competitive Need Limitations

Section 503(c)(2)(A) of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2463(c)(2)(A)), provides for Competitive Need Limitations on duty-free treatment under the GSP program. When the President determines that a beneficiary developing country exported to the United States during a calendar year either (1) a quantity of a GSP-eligible article having a value in excess of the applicable amount for that year ($80 million for 1997), or (2) a quantity of a GSP-eligible article having a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (the ''50 percent'' CNL), the President shall terminate GSP duty-free treatment for that article from that beneficiary developing country by no later than July 1 of the next calendar year.

II. Discretionary Decisions

A. De Minimis Waivers

Section 503(c)(2)(F) of the 1974 Act provides the President with discretion to waive the 50 percent CNL with respect to an eligible article imported from a beneficiary developing country if the value of total imports of that article from all countries during the calendar year did not exceed the applicable amount for that year ($13.5 million for 1997).

B. Redesignation of Eligible Articles

Where an eligible article from a beneficiary developing country ceased to receive duty-free treatment due to exceeding the CNL in a prior year, Section 503(c)(2)(C) of the 1974 Act provides the President with discretion to redesignate such an article for duty-free treatment if imports in the most recently completed calendar year did not exceed the CNLs.

III. Implementation of Competitive Need Limitations, Waivers, and Redesignations

Exclusions from GSP duty-free treatment where CNLs have been exceeded, as well as the return of GSP duty-free treatment to products for which the President has used his discretionary authority to grant redesignations will be effective July 1, 1998. Decisions on these matters, as well as decisions with respect to de minimis waivers, will be based on full 1997 calendar year import statistics.

IV. Interim 1997 Import Statistics

In order to provide advance indication of possible changes in the list of eligible articles pursuant to exceeding CNLs, and to afford an earlier opportunity for comment regarding possible de minimis waivers and redesignations, interim import statistics covering the first 10 months of 1997 are included with this notice.

The following lists contain the HTSUS numbers and beneficiary country of origin for GSP-eligible articles, the value of imports of such articles for the first ten months of 1997, and their percentage of total imports of that product from all countries. The flags indicate the status of GSP eligibility.

Articles marked with an ''*'' are those that have been excluded from GSP eligibility for the entire past calendar year. Flags ''1'' or ''2'' indicate products that were not eligible for duty-free treatment under GSP for the first six months or last six months, respectively, of 1997.

The flag ''D'' identifies articles with total U.S. imports from all countries, based on interim 1997 data, less than the applicable amount ($13.5 million in 1997) for eligibility for a de minimis waiver of the 50 percent CNL.

List I shows GSP-eligible articles from beneficiary developing countries that have exceeded the CNL of $80 million in 1997. Those articles without a flag identify articles that were GSP eligible during 1997 but stand to lose GSP duty-free treatment on July 1, 1998. In addition, List I shows articles (denoted with a flag ''*'' or ''2'') which did not have GSP duty-free treatment in all or the last half of 1997.

List II shows GSP-eligible articles from beneficiary developing countries that (1) Have not yet exceeded, but are approaching, the $80 million CNL during the period from January through October 1997, or (2) are close to or above the 50 percent CNL.

Depending on final calendar year 1997 import data, these products also