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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 2106-00]

RIN 1115-AG01

Special Immigrant Visas for Fourth Preference Employment-Based Broadcasters

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service's (Service) regulations by establishing the procedure under which the International Broadcasting Bureau of the United States Broadcasting Board of Governors (BBG), or a BBG grantee organization, may file special fourth preference immigrant petitions for foreign language alien broadcasters. This rule explains the requirements that alien broadcasters must meet in order to be the beneficiary of an immigrant visa petition. This regulatory change is necessary so that the BBG can fulfill its statutory obligation to broadcast internationally on behalf of the United States Government.

DATES: *Effective date:* This interim rule is effective November 13, 2001.

Comment date: Written comments must be submitted on or before December 10, 2001.

ADDRESSES: Written comments must be submitted, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference the INS number 2106-00 on your correspondence. Comments are available for public inspection at this

location by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Craig Howie, Business and Trade Services Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3040, Washington, DC 20536, telephone (202) 353-8177.

SUPPLEMENTARY INFORMATION:

Background

Section 203 of the Immigration and Nationality Act (the Act) provides for the allocation of preference visas for both family and employment-based immigrants. The fourth preference employment-based category (EB-4) allows for the immigration of a variety of aliens who possess various specialized job skills or abilities. See section 203(b)(4) of the Act. The Act at section 101(a)(27) also offers definitions of the various jobs or professions that aliens must hold or possess in order to qualify for the EB-4 category.

Legislative Authority

On November 22, 2000, the President approved enactment of the Special Immigrant Status For Certain United States International Broadcasting Employees Act (IBE Act), Public Law 106-536. Section 1 of the IBE Act amends section 101(a)(27) of the Act by adding a new subparagraph (M). The amendment establishes a special fourth preference employment-based immigrant category for immigrants seeking to enter the United States to work as a broadcaster in the United States for the BBG or a BBG grantee. (Currently, BBG grantees are Radio Free Asia, Inc., and Radio Free Europe/Radio Liberty, Inc.) This interim rule is necessary to codify the provisions of the IBE Act and to put into place procedures for the BBG, its grantees and Service officers to follow.

Why Does the BBG Need Alien Broadcasters?

The BBG and its grantees are charged by Congress to broadcast internationally on behalf of the United States Government. This requires that the BBG attract and retain a large number of foreign language broadcasters. These broadcasters must have the unique combination of native fluency in the broadcast language combined with an in-depth knowledge of the people,

history, and culture of the broadcast area. Historically, the BBG has experienced difficulty in finding and employing members of the domestic workforce possessing this unusual combination of skills to meet the United States Government's international broadcasting needs.

By creating a new special EB-4 category, the IBE Act allows the BBG to directly petition for alien broadcasters. Being able to offer immigrant status to an alien broadcaster and his or her spouse and children may assist the BBG in fulfilling its obligation as the international broadcasting conduit for the United States Government.

Is There a Limit to the Number of Visas That May Be Issued to Alien Broadcasters Petitioned for by the BBG or Its Grantees?

Yes, the IBE Act plainly stipulates a yearly limit of 100 visas available to the BBG and its grantees for alien broadcasters. The accompanying spouse and children of alien broadcasters are not counted towards this yearly limit. See section 203(b)(4) of the Act.

How Does the Service Define the Term "Broadcaster"?

In order for the BBG and its grantees to meet their Congressional charge of broadcasting internationally on behalf of the United States Government, the Service consulted with the BBG to identify what positions within the BBG or its grantees fall under the term "broadcaster." To that end, this rule describes the term "broadcaster" as encompassing: reporters, writers, translators, editors, producers or announcers for news broadcasts; hosts for news broadcasts, news analysis, editorial and other broadcast features; or news analysis specialists. Technicians and other support personnel are not included in the definition since such positions do not call for the skills that prompted the new special immigrant category to be created. See 8 CFR 204.13(a).

What Form Should the BBG or a BBG Grantee Use To Petition for Qualified Alien Broadcasters and What Evidence Should Be Submitted?

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant has been designated as the appropriate petition for other fourth preference employment-based immigrant

categories. The BBG and its grantees shall also use Form I-360 to petition for EB-4 alien broadcasters. See 8 CFR 204.13(c).

In addition to the information required on Form I-360, the interim rule at 8 CFR 204.13(d) requires the BBG or its grantee to submit an attestation that reflects the job title and a full description of the job to be performed and the experience held by the alien broadcaster, including the number of years, if any, the alien has been performing the duties that relate to the prospective position.

Request for Comments

The Service is seeking public comments regarding all aspects of this interim rule. The Service welcomes suggestions concerning the information contained within this interim rule.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reason and necessity for immediate implementation of this interim rule without prior notice and comment is that the new legislation became effective retroactive to enactment (October 1, 2000), and thus immediately requires the Service to establish a petitioning procedure for this new category of fourth preference employment-based immigrants. Issuing an interim rule allows the regulatory provisions to become effective and allows the BBG and its grantees to begin taking advantage of the new provisions without delay.

The Service notes that the BBG has been consulted and has been provided draft versions of this interim rule for review and comment. Comments and suggestions from this Government entity have been included in this rulemaking. The Service also notes that the amendment is clear that the BBG and its grantees are the only organizations that are eligible to take advantage of this new category of special employment-based immigrants. They are the only organizations that will be able to petition for this category of broadcasters.

The Commissioner has determined that because this rule establishes an immigrant preference category that only the BBG (an independent and autonomous Federal entity) can use, that public comment is unnecessary. Further, because the BBG broadcasts internationally on behalf of the United States, it would be contrary to the public interest to delay allowing the

BBG to use this new congressionally-established preference category to more effectively carry out its public mission. Therefore, there is good cause for dispensing with the requirements of prior notice. However, the Service welcomes public comment on this interim rule and will address those comments prior to issuance of the final rule.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This interim rule provides a special process that benefits individuals who will be coming to the United States to work as broadcasters. It does not affect small entities as that term is defined in 5 U.S.C. 601(6).

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 one 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 not 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, the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This 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 section 6 of Executive Order 13132, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act of 1995

The supplemental evidence requirements contained in § 204.13(d) that must be submitted with the Form I-360 are considered information collections. Since this interim rule is effective 30 days from the date of publication in the **Federal Register**, the Service is using emergency review procedures for review and clearance by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (PRA) of 1995.

The OMB approval has been requested by October 26, 2001. If granted, the emergency approval is only valid for 180 days. Comments concerning the information collection should be directed to: Office of Information and Regulatory Affairs, OMB Desk Officer for the Immigration and Naturalization Service, Office of Management and Budget, Room 10235, Washington, DC 20503.

During the first 60 days of this same period a regular review of this information will also be undertaken. Written comments are encouraged and will be accepted until December 10, 2001. Your comments should address one or more of the following points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Service, in calculating the overall burden this requirement will place upon the public, notes that a maximum of 100 broadcasters may petition for these EB-4 visas annually. The Service also estimates that it will take broadcasters approximately 2 hours to comply with the new requirements as noted in this interim rule. This amounts to 200 total burden hours.

Organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of this information collection requirement, including suggestions for reducing the burden, should direct them to: Immigration and Naturalization Service, Director, Policy Directives and Instructions Branch, 425 I Street NW., Room 4034, Washington, DC 20536.

List of Subjects in 8 CFR Part 204

Administrative practice and procedures, Aliens, Employment, Immigration, Petitions.

Accordingly, part 204 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

2. Section 204.13 is added to read as follows:

§ 204.13 How can the International Broadcasting Bureau of the United States Broadcasting Board of Governors petition for a fourth preference special immigrant broadcaster?

(a) *Which broadcasters qualify?* Under section 203(b)(4) of the Act, the International Broadcasting Bureau of the United States Broadcasting Board of Governors (BBG), or a grantee of the BBG, may petition for an alien (and the alien's accompanying spouse and children) to work as a broadcaster for the BBG or a grantee of the BBG in the United States. For the purposes of this section, the terms:

BBG grantee means Radio Free Asia, Inc (RFA) or Radio Free Europe/Radio Liberty, Inc. (RFE/RL); and

Broadcaster means a reporter, writer, translator, editor, producer or announcer for news broadcasts; hosts for news broadcasts, news analysis, editorial and other broadcast features; or

a news analysis specialist. The term broadcaster does not include individuals performing purely technical or support services for the BBG or a BBG grantee.

(b) *Is there a yearly limit on the number of visas available for alien broadcasters petitioned by the BBG or a BBG grantee?*

(1) Under the provisions of section 203(b)(4) of the Act, a yearly limit of 100 fourth preference special immigrant visas are available to aliens intending to work as broadcasters in the United States for the BBG or a BBG grantee. These 100 visas are available in any fiscal year beginning on or after October 1, 2000.

(2) The alien broadcaster's accompanying spouse and children are not counted towards the 100 special broadcaster visa limit.

(c) *What form should the BBG use to petition for these special alien broadcasters?* The BBG or a BBG grantee shall use Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, to petition for an alien broadcaster. The petition must be submitted with the correct fee noted on the form. All BBG petitions for alien broadcasters shall be submitted to the Vermont Service Center for processing.

(d) *Will the BBG need to submit supplemental evidence with Form I-360 for alien broadcasters?*

(1) All Form I-360 petitions submitted by the BBG or a BBG grantee on behalf of an alien for a broadcaster position with the BBG or BBG grantee must be accompanied by a signed and dated supplemental attestation that contains the following information about the prospective alien broadcaster:

(i) The job title and a full description of the job to be performed; and

(ii) The broadcasting expertise held by the alien, including how long the alien has been performing duties that relate to the prospective position or a statement as to how the alien possesses the necessary skills that make him or her qualified for the broadcasting-related position within the BBG or BBG grantee.

Dated: October 4, 2001.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 01-25478 Filed 10-10-01; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 2099-00]

RIN 1115-AF95

Removing Burma From the Guam Visa Waiver Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adopts without change the interim rule published by the Immigration and Naturalization Service (Service) in the **Federal Register** on January 3, 2001, that removed Burma (internationally recognized as the Union of Myanmar) from the list of countries authorized to participate in the Guam Visa Waiver Program (GVWP). The GVWP waives the nonimmigrant visa requirement for nationals of certain countries, applying for admission as nonimmigrant visitors for business or pleasure for the sole purpose of visiting Guam for a period not to exceed 15 days.

DATES: This final rule is effective November 13, 2001.

FOR FURTHER INFORMATION CONTACT: Marty Newingham, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW, Room 4064, Washington, DC 20536, telephone (202) 616-7992.

SUPPLEMENTARY INFORMATION:

What Is the GVWP?

The GVWP waives the nonimmigrant visa requirement for certain aliens who apply for admission as a nonimmigrant visitor for business or pleasure for the sole purpose of visiting Guam for a period not exceeding 15 days.

The Omnibus Territories Act of 1986, Public Law 99-396, provided statutory authority to implement the GVWP. On December 18, 1987, the Service published a final rule in the **Federal Register** at 52 FR 48082, implementing the provisions of Public Law 99-396. The final rule also designated several countries including Burma to the list of countries authorized to participate in the GVWP.

What Are the Requirements for Initial GVWP Participation?

For a country to participate in the GVWP:

- The Attorney General, Secretary of State, and Secretary of Interior, acting jointly, after consultation with the