

**DEPARTMENT OF JUSTICE****Immigration and Naturalization Service****8 CFR Parts 214, 235 and 248****[INS No. 2176-01]****RIN 1115-AG43****Limiting the Period of Admission for B Nonimmigrant Aliens****AGENCY:** Immigration and Naturalization Service, Justice.**ACTION:** Proposed rule.

**SUMMARY:** The Immigration and Naturalization Service (Service) is proposing to amend its regulations by eliminating the minimum admission period of B-2 visitors for pleasure, reducing the maximum admission period of B-1 and B-2 visitors from 1 year to 6 months, and establishing greater control over a B visitor's ability to extend status or to change status to that of a nonimmigrant student. These changes will enhance the Service's ability to support the national security needs of the United States. These regulatory modifications are within the Service's authority under sections 214(a) and 248 of the Immigration and Nationality Act (Act) and will help lessen the probability that alien visitors will establish permanent ties in the United States and thus remain in the country illegally.

**DATES:** Written comments must be submitted on or before May 13, 2002.

**ADDRESSES:** Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC, 20536. To ensure proper handling, please reference the INS No. 2176-01 on your correspondence. Comments may also be submitted electronically to the Service at *insregs@usdoj.gov*. When submitting comments electronically, please include INS No. 2176-01 in the subject heading. 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***What Is a B Nonimmigrant Alien?*

A B nonimmigrant is an alien whose admission to the United States is based on a temporary visit for business (B-1) or a temporary visit for pleasure (B-2). Section 101(a)(15)(B) of the Act defines the visitor classification as:

An alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

Based on the statutory language, the Service has long held a B-1 nonimmigrant to be one seeking admission for legitimate activities of a commercial or professional nature such as meetings, conferences, or consultations in the United States in connection with the conduct of international business and commerce. A B-2 nonimmigrant is one seeking admission for activities relating to pleasure such as touring, family visits, or for purposes of receiving medical treatment.

Service regulations at 8 CFR 214.2(b)(1) currently provide that a B-1 or B-2 visitor may be admitted for an initial period of not more than 1 year. B nonimmigrants may request extensions of the period of admission by filing Form I-539, Application to Extend/Change Nonimmigrant Status.

*What Is the Service Proposing to Change?*

The Service is proposing to eliminate the minimum period of admission for a B-2 nonimmigrant visitor for pleasure, currently a 6-month admission. In place of the minimum period of admission for B-2 visitors, the Service is proposing that both B-1 and B-2 visitors will be admitted for a period of time that is fair and reasonable for the completion of the purpose of the visit.

The Service is also proposing to reduce the maximum period of admission for B-1 and B-2 visitors from 1 year to 6 months. The maximum increment of extension of stay will remain 6 months, and this 6-month maximum will apply to all B-1 and B-2 visitors.

This rule also restates explicitly the general requirement for extensions of status, to provide that an alien requesting an extension of either B-1 or B-2 status bears the burden of proving that he or she has the adequate financial resources to continue his or her

temporary stay in the United States and that he or she is maintaining an unrelinquished residence abroad.

Finally, the rule proposes to establish greater control over a B visitor's eligibility to change to a student nonimmigrant status.

*Why Is the Service Proposing To Eliminate the Minimum Admission Period for a B-2 Nonimmigrant Visitor for Pleasure?*

As previously noted, Service regulations at 8 CFR 214.2(b)(2) currently provide that an alien seeking admission to the United States as a B-2 visitor for pleasure will be granted a minimum 6-month period of admission. The 6-month period is granted to the alien regardless of whether the alien plans to stay in the United States for a few days or for the entire 6-month period. The Service implemented this 6-month minimum admission period many years ago to reduce filings of extensions of stays from aliens who develop a need to stay in the United States longer than the initial period of admission.

The Service views the proposal to eliminate the minimum admission period for B-2 visitors for pleasure as reasonable and within the Service's authority under section 214(a) of the Act. This proposal also comports with the Act's requirements that the Service maintain control of the alien population within the United States. This is especially important in light of the attacks of September 11, 2001.

Under this proposed rule, both B-1 visitors for business and B-2 visitors for pleasure will be granted a period of admission that accurately comports with the stated purpose of the visit. Eliminating the minimum period of admission and establishing a fair and reasonable period of admission for B-2 visitors for pleasure, as modeled on the existing policy used to determine periods of admission for B-1 visitors for business, will lessen the probability that an alien visitor will establish permanent ties in the United States and remain in the country illegally.

While inspecting Service officers will make every effort to take into account language and cultural differences when eliciting the information needed to determine a reasonable period of admission, the burden still rests with the alien to adequately establish the precise nature and purpose of the visit.

Because the vast majority of B-1 and B-2 nonimmigrants do not have a stated need to remain in the United States for more than 30 days, it is reasonable to expect that most will depart within that time frame. Accordingly, in any case

where there is any ambiguity whether a shorter or longer period of admission would be fair and reasonable under the circumstances, a B-1 or B-2 nonimmigrant should be admitted for a period of 30 days. This period is neither a minimum nor a maximum, and the inspecting Service officer will be authorized to admit a B nonimmigrant for a shorter period or for a longer period (not to exceed 6 months), depending on the circumstances and the stated purpose of the alien's visit to the United States.

*Why Is the Service Proposing To Reduce the Maximum Admission Period for B-1 and B-2 Visitors From 1 Year to 6 Months?*

As previously noted, Service regulations at 8 CFR 214.2(b)(1) currently provide that a B-1 visitor for business or B-2 visitor for pleasure may be admitted for a period of up to 1 year. As the attacks of September 11, 2001, demonstrated, this generous period of stay is susceptible to abuse by aliens who seek to plan and execute acts of terrorism. Virtually all B visitors with legitimate business or tourism interests are able to accomplish the purposes of their visits in less than 6 months. Accordingly, it is proposed that the maximum period of admission for B-1 and B-2 visitors be reduced from 1 year to 6 months for each admission. In addition to promoting the security of the United States, this change will reduce the likelihood that an alien visitor will establish permanent ties in the United States and remain in the country illegally.

*Will B Visitors Be Able To File Requests for Extensions of Stays?*

Under the proposed rule, all B visitors for business or pleasure will continue to be eligible to apply for extensions of stay, but only in cases that have resulted from unexpected events (such as an event that occurs that is out of the alien's control and that prevents the alien from departing the United States), compelling humanitarian reasons, such as for emergency or continuing medical treatment, or as Service policy may direct.

In addition, this proposed rule recognizes that a few B nonimmigrants enter for specific, legitimate reasons that, by their very nature, can require a stay of longer than 6 months. Those nonimmigrants, enumerated at proposed § 214.2(b)(6), who are lawfully continuing in those activities may also apply for extension of status.

All such requests, made on Form I-539, Application to Extend/Change Nonimmigrant Status, must be timely

filed and non-frivolous, and the alien must document that he or she is maintaining an unrelinquished residence abroad and has adequate financial resources to continue the temporary stay. Documentary evidence showing ties to the alien's country of residence and possession of sufficient financial means to remain in the country for the requested period of time can include such items as current bank records and lease or real property ownership documents.

The Service believes that the vast majority of aliens seeking admission as B visitors will be able to complete their stays in the United States within the period of time granted by the inspecting Service officer. The burden will be on the arriving alien to adequately explain to the inspecting Service officer at the time of admission the precise nature of the visit so the Service officer can make a determination on the period of stay to be granted. Requests for extensions of stay only heighten the probability that alien visitors will establish permanent ties in the United States and thus remain in the country illegally.

*Will the Proposed Rule Affect the Status of B-1 or B-2 Visitors Already Admitted to the United States?*

The new admission procedures under this rule will not affect aliens who were admitted to the United States as B-1 or B-2 visitors for business or pleasure at any time prior to the effective date of a final rule, which will be published in the **Federal Register** at a later date. However, B-1 or B-2 nonimmigrants who were admitted to the United States before the effective date of the final rule, but who apply for an extension of nonimmigrant status on or after that effective date, will be subject to the heightened requirements for extension of stay and to the 6-month limit on such extensions.

*What Changes Is the Service Proposing Regarding a B Visitor's Ability To Change Nonimmigrant Status to That of Student?*

Current Service regulations at 8 CFR part 248 allow for the change of a B nonimmigrant to the status of a nonimmigrant F or M student. While the proposed rule does not alter the ability of a B nonimmigrant to change nonimmigrant status to that of a student, it does establish a requirement that the alien make this intent known when he or she initially applies for admission to the United States as either a B-1 or B-2 visitor. If the alien has already received any Forms I-20, Certificate of Eligibility for Nonimmigrant Student, from one or more approved schools,

indicating that the alien has been accepted for enrollment, the alien must also present those forms to the inspecting Service officer at the time of the application for admission as a B visitor.

The Service has long accommodated prospective alien students by allowing them to enter the United States in B nonimmigrant status and visit the campuses where the student has been admitted, and then allowing the prospective student to file Form I-539 in order to change nonimmigrant status once the student has made a decision as to which school to attend. While the Service does not intend to discontinue this accommodation, it is reasonable to expect an intending nonimmigrant student to be honest about the ultimate purpose of his or her admission when being questioned by the inspecting Service officer. This intent must be made known to the inspecting Service officer regardless of whether the alien's B visa is annotated with the words, "Prospective Student."

Therefore, the Service proposes at 8 CFR 248.1(c)(2) to require a prospective alien student to state this purpose to the inspecting Service officer, and present any Forms I-20 that the alien has received, and to require the officer to make an annotation on the alien's Form I-94, Arrival-Departure Record, that reflects the alien's intent. Aliens who file an application for change of nonimmigrant status in order to change to student status without a Form I-94 that has been annotated by an inspecting Service officer will be denied the change of nonimmigrant status. Such aliens will be required, instead, to follow the regular process to seek an F or M nonimmigrant student visa from a consular officer abroad. By implementing this change, the Service intends to gain greater control over the process by which a B nonimmigrant can change status to that of either an F or M nonimmigrant student.

The Service notes that Canadian citizens (and certain Canadian permanent residents and other aliens described in 8 CFR 212.1(a)) generally are not required to obtain nonimmigrant visas or to be issued a Form I-94 upon entry into the United States. However, the Service proposes to amend 8 CFR 235.1(f)(1)(i) to provide that prospective Canadian students who intend to enter the United States to visit schools and who intend to remain in the United States and change nonimmigrant status to that of an F or M student will be required to make this declaration when applying for admission. The prospective Canadian student will be issued a Form I-94 inscribed with a notation that

reflects the alien's intent to change to student status.

The requirement that a B visitor must have stated his or her intention as a prospective student at the time of admission in B nonimmigrant status, in order to be eligible for change of status to an F or M nonimmigrant student, will be applied only to aliens who are admitted as B visitors on or after the effective date of a final rule. Because aliens who were admitted as B visitors prior to that effective date will not have been required to state their intention as a prospective student at the time of admission, they will not be subject to that limitation if they apply for change of status to F or M status. However, any alien who applies for and is granted an extension of B nonimmigrant status after the effective date of this final rule will not be eligible for change of status to F or M status. Allowing such aliens (who would already have been present in the United States as a B visitor for many months, even one year) to apply for change of status to F or M status would be inconsistent with the basic premise of this rule, which is to allow a limited accommodation for prospective students, who have already been admitted to one or more schools, to enter the United States briefly before deciding which school at which they will enroll.

Finally, the Service takes note of a related interim rule, (published elsewhere in this issue of the **Federal Register**), which stipulates that no person who has entered the United States as a B nonimmigrant may enroll in a course of study or otherwise take action inconsistent with his or her B status unless the Service has already approved his or her application for change of status to that of an F or M nonimmigrant student. That separate rule, which takes effect upon publication, complements the provisions of this proposed rule as it relates to a change of status from B-1 or B-2 visitor status to that of an F or M nonimmigrant.

**What Continuing Obligations Do All B Nonimmigrants Have During the Time They Remain in the United States?**

The Service notes that, under the existing provisions of section 261(a) of the Act, an alien who remains in the United States for a period of 30 days or more (other than an A or G nonimmigrant) is subject to the requirements for registration of aliens. Nonimmigrant aliens register initially using the Form I-94, Arrival-Departure Record. However, aliens who are subject to the registration requirements are also obligated, under section 265(a) of the

Act, to notify the Service of each change of address within 10 days of such change, by submitting Form AR-11 to the Service. The obligation to notify the Service of each change of address applies to all B nonimmigrants (indeed, all nonimmigrants other than those in A or G status) who remain in the United States for more than 30 days, regardless of whether their continued stay is pursuant to their initial admission or as a result of a change or extension of status.

The change of address requirements are set forth in the existing law and regulations. Accordingly, the Service does not need to propose changes in this rule to implement them. However, the Service is restating these existing requirements here for the benefit of readers, so that aliens who apply for nonimmigrant status will be advised of them.

**What Happens if a B Visitor Overstays His or Her Period of Stay?**

While this proposed rule does not address the issue of nonimmigrant aliens overstaying authorized periods of stay, the Service notes that an existing law, section 222(g) of the Act, provides for the automatic voidance of a nonimmigrant visa at the conclusion of a period of stay if the alien remains in the United States longer than the period of authorized admission. All B visitors should be aware of this provision of the law and are responsible for remaining in lawful nonimmigrant status while within the United States. Under section 222(g) of the Act, a B visa (including a multiple-entry visa-a visa that is usually valid for a number of years and allows the bearer to make multiple applications for admission to the United States without having to obtain a new visa for each admission) shall be void if the alien who entered the United States as a B visitor overstays his or her authorized period of admission. Thereafter, the alien would not be able to re-apply for admission to the United States using that same visa, but would be required to seek a new B visa or other appropriate visa from a consular officer abroad.

Any nonimmigrant admitted to the United States bears the burden of maintaining legal status during the period of admission that has been granted by the inspecting Service officer. The Service cannot emphasize enough the importance of maintaining lawful status while in the United States. See section 212(a)(9)(B) of the Act for more information on the important and far-reaching implications of unlawful presence and the impact that unlawful presence may have on an alien's future

ability to reapply for a nonimmigrant visa, for admission to the United States, or for adjustment of status to that of a lawful permanent resident.

Aliens should note that the statute provides an accommodation to nonimmigrants with pending applications for extension of stay or change of status if certain requirements have been met. Extension or change of status, however, will only be granted in cases where the Service deems the request to be legitimate and to meet the new criteria specified in this rule. Such requests, made on Form I-539, must be filed prior to the expiration of the alien's authorized admission, subject to a narrow exception where the delay was caused by extraordinary circumstances beyond the control of the alien. See 8 CFR 214.1(c)(4) and 248.1(b), respectively. Also, an alien who has filed Form I-539 to request an extension of stay is expected to depart from the United States upon the expiration of the requested extension regardless of whether the alien has received a copy of the Service's decision on the application for extension of stay.

**Request for Comments**

The Service is seeking public comments regarding this proposed rule. The Service notes that, in view of the national security needs of the United States, public comment on this proposed rule is being limited to 30 days. The Service requests that parties interested in commenting on the proposals contained within this rule submit comments on or before May 13, 2002, as the Service will not extend the comment period.

**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 this rule will not have a significant economic impact on a substantial number of small entities. This rule applies only to nonimmigrant aliens visiting the United States as visitors for business or pleasure. 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 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, this rule has been submitted to the Office of Management and Budget for review.

### 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

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

### List of Subjects

#### 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment.

#### 8 CFR Part 235

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

#### 8 CFR Part 248

Aliens, Immigration, Reporting and recordkeeping requirements.

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

### PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1101 note, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; sec. 643, Pub. L. 104-208, 110 Stat. 3009-708; Public Law 106-386, 114 Stat. 1477-1480; Section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

2. Section 214.2 is amended by revising paragraphs (b)(1) and (b)(2) and by adding a new paragraph (b)(6), to read as follows:

#### § 214.2 Special requirements for admission, extension, and maintenance of status.

\* \* \* \* \*

(b) \* \* \*

(1) *General.* Any B-1 visitor for business or B-2 visitor for pleasure may be admitted for not more than 6 months and may be granted extensions of temporary stay in increments of not more than 6 months each. Those B-1 and B-2 visitors admitted pursuant to the waiver provided at § 212.1(e) of this chapter may be admitted to and stay on Guam for a period not to exceed 15 days and are not eligible for extensions of stay.

(2) *Specific requirements for admission of B-1 and B-2 visitors.* (i) *Initial admission.* The burden is on the arriving alien to adequately explain to the inspecting Service officer the precise nature of the visit so the Service officer can make a determination on the period of stay to be granted. Any B-1 or B-2 visitor who is found otherwise admissible will be admitted for a period of time that is fair and reasonable for the completion of the stated purpose of the visit, provided that any required passport is valid as specified in section 212(a)(7)(B)(i) of the Act. If it is not clear whether a shorter or longer period would be fair and reasonable under the circumstances, in light of the stated purpose of the alien's visit, the alien will be admitted for a period of 30 days.

(ii) *Change of status to nonimmigrant student.* An alien may be admitted in B-1 or B-2 visitor status as a prospective student (that is, an alien who intends to remain in the United States and apply for change of nonimmigrant status as an F or M student at an approved school), but the alien must state this intent at the time he or she applies for admission to the United States as a B nonimmigrant. The burden is on the prospective student, applying for admission as a B-1 or B-2 visitor, to explain to the inspecting Service officer that the alien's ultimate purpose is to attend school in either F or M nonimmigrant status, whether or not the alien's B nonimmigrant visa has been annotated as a “prospective student” by a consular officer abroad. (This requirement also applies with respect to Canadian citizens and certain nationals, see § 235.1(f)(1)(i) of this chapter.) If an alien has already received any currently-valid Forms I-20 from one or more approved schools, indicating that the alien has been accepted for enrollment, the alien must also present those Forms to the inspecting Service officer at the time of the application for admission as a B visitor. The inspecting Service officer will make a notation to the alien's Form I-94 reflecting that he or she is a prospective student. See 8 CFR part 248 for a discussion of change of nonimmigrant status for B-1 or B-2 visitors to that of an F or M nonimmigrant student.

\* \* \* \* \*

(6) *Requests for extensions.* (i)

*Eligibility.* An alien admitted in B-1 or B-2 status may apply for an extension of stay using Form I-539, Application to Extend/Change Nonimmigrant Status. The alien bears the burden of proving that he or she has the adequate financial resources to continue his or her temporary stay in the United States and that he or she is maintaining an unrelinquished residence abroad. An extension, if granted, will be for a fair and reasonable period, not to exceed 6 months, as determined under the circumstances as established by the alien, and based on information available to the Service.

(ii) *General standards.* In general, except as the Service's publicly-stated policy may direct, the Service will grant an extension of status only in the following circumstances:

(A) The alien establishes that an unexpected circumstance (that is, a documented and significant situation or event that is out of the alien's control) prevents the alien from departing the United States at the conclusion of the granted period of admission (as noted

on the Form I-94, Arrival-Departure Record);

(B) An extension is appropriate for compelling humanitarian reasons, including but not limited to situations involving an alien's new or continued medical treatment, the need of an alien parent to stay with his or her minor child receiving medical treatment or specialized education in the United States, or the need of an alien adult to attend to an acutely ill immediate family member who is receiving medical treatment;

(C) The alien is a member of a religious denomination coming solely and temporarily to do missionary work in behalf of a religious denomination, provided that such work does not involve the selling of articles or the solicitation or acceptance of donations;

(D) The alien is establishing a new office, as provided at paragraph (l)(7)(i)(A)(3) of this section relating to intra-company transfers;

(E) The alien is the personal or domestic servant of an alien or United States citizen, as outlined at § 274a.12(c)(17)(i) and (ii) of this chapter;

(F) The alien is an employee of a foreign airline engaged in international transportation of passengers or freight, as outlined at § 274a.12(c)(17)(iii) of this chapter; or

(G) The alien owns a home in the United States and occupies that home on a seasonal or occasional basis only.

\* \* \* \* \*

#### PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

3. The authority citation for part 235 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

4. Section 235.1 is amended by revising paragraph (f)(1)(i) to read as follows:

##### § 235.1 Scope of examination.

\* \* \* \* \*

(f) \* \* \*  
(1) \* \* \*

(i) Any nonimmigrant alien described in § 212.1(a) of this chapter and 22 CFR 41.33 who is admitted as a visitor for business or pleasure or admitted to proceed in direct transit through the United States: *provided, however,* that a prospective student who is seeking admission as a B nonimmigrant and whose intent is to remain in the United States and change nonimmigrant status to that of an F or M nonimmigrant student is required to state such intent to the inspecting Service officer at the time of admission, to present any currently-valid Forms I-20 that the student has received from an approved school, and to complete a Form I-94; \* \* \* \* \*

#### PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

5. The authority citation for part 248 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

6. Section 248.1 is amended by adding paragraph (c)(2) to read as follows:

##### § 248.1 Eligibility.

\* \* \* \* \*

(c) \* \* \*

(2) A nonimmigrant who is admitted as a B-1 or B-2 visitor under section 101(a)(15)(B) of the Act on or after (the effective date of a final rule to be published in the **Federal Register**), may change nonimmigrant classification to that of an F or M nonimmigrant student only if the B-1 or B-2 visitor had stated such intent as a prospective student at the time he or she applied for admission to the United States as a B nonimmigrant, as provided in 8 CFR 214.2(b)(2)(ii). (This requirement also applies with respect to Canadian citizens and certain Canadian nationals, see 8 CFR 235.1(f)(1)(i).) A B nonimmigrant applying to change nonimmigrant status to that of an F or M nonimmigrant student under the provisions of § 248.3 must submit, with the application to change B nonimmigrant status, a copy of the Form I-94 that contains an annotation reflecting the alien's prospective student intent, or the application for change of status will be denied. An alien who has been granted an extension of B nonimmigrant status on or after (the effective date of a final rule to be published in the **Federal Register**) is not eligible to apply for change of status to that of an F or M nonimmigrant student.

Dated: April 9, 2002.

**James W. Ziglar,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 02-8927 Filed 4-9-02; 1:54 pm]

**BILLING CODE 4410-10-P**