

### How Is the Department Amending Its Regulations?

The Department is adding a new section to its regulations at 22 CFR 40.53 that instructs a consular officer to obtain the appropriate statutorily required certification of competency from an alien seeking to enter the United States to perform services in certain health care occupations, prior to issuing an immigrant or a nonimmigrant visa to the alien.

### Does the Department Intend To Continue To Exercise Its Discretion Under Section 212(d)(3)(A) of the INA to Temporarily Waive This Inadmissibility for Nonimmigrant Aliens Seeking To Enter the United States as Health Care Workers Where There May Be Conflict With the North American Free Trade Agreement (NAFTA)?

The Department and INS have exercised their joint discretion under section 212(d)(3)(A) to waive the certification requirement for nonimmigrants due to a possible conflicting obligation of the United States under NAFTA. The Department will continue to use its discretion to temporarily waive this inadmissibility for nonimmigrant health care workers until concerned Executive branch agencies resolve the apparent conflict.

### Regulatory Analysis and Notices

#### *Administrative Procedure Act*

The Department's implementation of this regulation as an interim rule is based upon the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The amendment to the regulation simply implements a legislative mandate without interpretation and codifies current practices. Therefore, the Department has determined that it is appropriate to publish this rule as an interim rule. Nevertheless, the Department will solicit comments from the public.

#### *The Regulatory Flexibility Act*

The Department of State, pursuant with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has assessed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### *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 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*

Although this rule is being promulgated in conjunction with the Immigration and Naturalization Service, a domestic agency, the Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

#### *Executive Order 13132*

This regulation 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.

#### *Paperwork Reduction Act*

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

#### List of Subjects in 22 CFR Part 40

Aliens, Nonimmigrants, Immigrants, Documentation, Passports and visas.

For the reasons set forth in the preamble, the Department is amending the regulations at 22 CFR part 40 to read as follows:

#### **PART 40—[AMENDED]**

1. The authority citation for part 40 shall continue to read:

**Authority:** 8 U.S.C. 1104.

2. Section 40.53 is added to read as follows:

#### **§ 40.53 Uncertified Foreign Health-Care Workers.**

(a) Subject to paragraph (b) of this section, a consular officer must not issue a visa to any alien seeking admission to the United States for the purpose of performing services in a health care occupation, other than as a physician, unless, in addition to meeting all other requirements of law and regulation, the alien provides to the officer a certification issued by the Commission On Graduates of Foreign Nursing Schools (CGFNS) or another credentialing service that has been approved by the Attorney General for such purpose, which certificate complies with the provisions of sections 212(a)(5)(C) and 212(r) of the Act, 8 U.S.C. 1182(a)(5)(C) and 8 U.S.C. 1182(r), respectively, and the regulations found at 8 CFR 212.15.

(b) Paragraph (a) of this section does not apply to an alien:

1. Seeking to enter the United States in order to perform services in a non-clinical health care occupation as described in 8 CFR 212.15(b)(1); or

2. Who is the immigrant or nonimmigrant spouse or child of a foreign health care worker and who is seeking to accompany or follow to join as a derivative applicant the principal alien to whom this section applies; or

3. Who is applying for an immigrant or a nonimmigrant visa for any purpose other than for the purpose of seeking entry into the United States in order to perform health care services as described in 8 CFR 212.15.

Dated: November 29, 2002.

**George C. Lannon,**

*Acting Assistant Secretary for Consular Affairs, Department of State.*

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#### **DEPARTMENT OF STATE**

#### **22 CFR Part 41**

[Public Notice 4217]

#### **Exchange Visitor Program; Correction**

**AGENCY:** Department of State.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to a regulation published in the **Federal Register** by the United States Information Agency (USIA) on May 28, 1997 [62 FR 28801]. The regulation relates to requests for a

waiver of the two-year home-country physical presence requirement for exchange visitors who are foreign medical graduates.

**EFFECTIVE DATE:** December 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Pam Chavez, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522-0113.

**SUPPLEMENTARY INFORMATION:** Regulatory Findings

#### *Background*

On May 28, 1997, the USIA (which has now been incorporated by the Department of States) published an amendment to their regulations regarding requests for waivers of the two-year home-country physical presence requirement by interested U.S. Government agencies on behalf of exchange visitors who are foreign medical graduates. The rule amended 514.44 of 22 CFR (now 41.63). Paragraph (c)(4)(iii), as amended, contained an error in the U.S. Code citation.

#### *Correction*

The regulation at 41.63(c)(4)(iii) contains a statement to be signed and dated by foreign medical graduate exchange visitors. The statement indicates that the medical graduate will incur penalties, as provided for under the provisions of "18 U.S.C. 1101," for making false or misleading statements. The U.S.C. cite was incorrect, and should have been "18 U.S.C. 1001". This rule amends the U.S.C. citation.

#### **List of Subjects in 22 CFR Part 41**

Nonimmigrants, Visas and passports.

Accordingly, for the reasons set forth in the preamble, 22 CFR 41 is corrected as follows:

#### **PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED**

1. The authority citation for part 41 continues to read as follows:

**Authority:** 8 U.S.C. 1104, 1181, 1201, 1202; Pub. L. 105-277, 112, Stat. 2681 *et seq.*

#### **§ 41.63 Two-year home-country physical presence requirement.**

2. In § 41.63 (c)(4)(iii) change the U.S.C. cite to read "18 U.S.C. 1001."

Dated: December 12, 2002.

**Maura Harty,**

*Assistant Secretary for Consular Affairs,*  
*Department of State.*

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## **DEPARTMENT OF STATE**

### **22 CFR Part 42**

#### **[Public Notice 4219]**

#### **Documentation of Immigrants—Visa Registration**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Department's regulation that defines "registration" in connection with an application for an immigrant visa. This change is necessary because the current definition, as written, may be interpreted as being inconsistent with other sections of this Part concerning the Secretary of State's authority to cancel the registration of an alien who fails to apply for an immigrant visa within a specific one-year time period. When this rule becomes effective the "registration" of an immigrant visa applicant will be defined to mean the filing of an immigrant visa form (DS-230), when duly executed, or the transmission by the Department to the alien of a notification of the availability of an immigrant visa, whichever occurs first.

**EFFECTIVE DATE:** December 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Pamela R. Chavez, Legislation and Regulations Division, 202-663-1206.

#### **SUPPLEMENTARY INFORMATION:**

#### **What Statutes Require Registration and Termination of Registration?**

The registration of every immigrant alien in connection with the alien's visa application is required under Section 221(b) of the Immigration and Nationality Act (INA). Section 203(g) of the INA requires that the Secretary of State terminate an alien's registration if he or she fails to apply for an immigrant visa within one year following notification that a visa is available.

#### **What Procedures Have Been Used To Register An Alien and To Terminate an Alien's Registration?**

In order to make its procedures conform to changes in the Immigration Act of 1990 (Pub. L. 101-649), the Department published several amendments to its regulations on October 1, 1991. (See 56 FR 49678). The amendments revised, among other things, the regulation to allow a consular officer to begin termination of an alien's registration for an immigrant visa if the alien failed to apply within one year from the date of transmission of the consular officer's notification to the alien that a visa was available (see

22 CFR 42.83). In making this revision, however, the Department did not also amend its corresponding definition of "registration." Therefore, the Department is publishing this rule to correct this oversight. The Department has been applying this definition in its daily practice since 1991.

#### **Regulatory Analysis and Findings**

##### *Administrative Procedure Act*

The Department's implementation of this regulation as a final rule is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The amendments reflect a change in the Department's procedures rather than a change in policy.

##### *Regulatory Flexibility Act*

The Department of State, 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.

##### *Unfunded Mandates 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 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*

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##### *Executive Order 12866*

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, in accordance with the letter to the Department of State of February 4, 1994 from the Director of the Office of Management and Budget, it does not require review by the Office of Management and Budget.