

Canada who is a national of a designated Visa Waiver Program country listed in § 217.2(a) of this chapter, entry may be made under this program only for a purpose as described in section 101(a)(15)(B)(ii) of the Act as a visitor for pleasure. Persons seeking to enter the United States for any other purpose must do so at a port-of-entry staffed by immigration inspectors. Persons aboard a vessel which has crossed the international boundary between the United States and Canada and who do not intend to land in the United States, other than at a staffed port-of-entry, are not required to be in possession of Form I-68, Canadian Border Boat Landing Permit, or evidence of enrollment in an Alternative Inspections program merely because they have crossed the international boundary. However, the Service retains the right to conduct inspections or examinations of all persons applying for admission or readmission to or seeking transit through the United States in accordance with the Act.

(1) \* \* \*

(v) A permanent resident of Canada who is a national of a Visa Waiver Program may apply for admission simultaneously with the Form I-68 application and thereby obtain a Form I-94 or I-94W.

\* \* \* \* \*

(5) \* \* \*

(ii) \* \* \* Participants who are permanent residents of Canada who are nationals of a Visa Waiver Program country listed in § 217.2(a) of this chapter must also be in possession of proper documentation as described in paragraph (e) of this section.

\* \* \* \* \*

## PART 286—IMMIGRATION USER FEE

7. The authority citation for part 286 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1356; 8 CFR part 2.

8. Section 286.9 is amended by revising paragraph (b)(4).

The revision reads as follows:

### § 286.9 Fee for processing applications and issuing documentation at land border Ports-of-Entry.

\* \* \* \* \*

(b) \* \* \*

(4) A citizen or lawful permanent resident alien of the United States or a Canadian citizen or permanent resident of Canada who is a national of a designated Visa Waiver Program country listed in § 217.2(a) of this chapter who requests Form I-68, Canadian Border Boat Landing Permit, pursuant to § 235.1(e) of this chapter, for

entry to the United States from Canada as an eligible pleasure boater on a designated body of water, must remit the required fee at the time of application for Form I-68.

Dated: January 24, 2003.

**Michael J. Garcia,**

*Acting Commissioner, Immigration and Naturalization Service.*

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## DEPARTMENT OF STATE

### 22 CFR Part 41

[Public Notice 4163]

RIN 1400-AB43

### Visas: Removal of Visa and Passport Waiver for Certain Permanent Residents of Canada and Bermuda

**AGENCY:** Department of State.

**ACTION:** Interim rule, with request for comments.

**SUMMARY:** This rule amends the Department of State's regulation that allows certain permanent residents of Canada and Bermuda who share a common nationality with nationals of Canada or with British subjects in Bermuda to enter the United States without a passport or visa. The Department is taking this action in conjunction with the Immigration and Naturalization Service of the Department of Justice (INS) due to the heightened border security concerns following the events of September 11, 2001. Aliens affected by this change will hereafter be required to present a passport and a visa when applying for entry into the United States. The Department is also changing the reference in the current regulation to "British subjects in Bermuda". In the amended regulation, in accordance with recent legislation adopted by the United Kingdom, those persons will instead be referred to as "citizens of the Overseas Territory of Bermuda". Canadian nationals and citizens of the Overseas Territory of Bermuda will retain their current waiver privileges.

**DATES:** *Effective Date:* This rule is effective 45 days from the date of publication in the **Federal Register**.

*Comment Date:* Interested persons should submit comments on or before 60 days from date of publication in the **Federal Register**.

**ADDRESSES:** Submit comments, in duplicate, to H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State,

Washington, DC 20522-0113; or by e-mail to [visaregs@state.gov](mailto:visaregs@state.gov).

**FOR FURTHER INFORMATION CONTACT:** For information regarding the publication of this regulation under the Administrative Procedures Act contact Patrick A. Chairge, Legislation and Regulations Division, Visa Office, Room L603-C, SA-1, Department of State, Washington, DC 20520-0106, (202) 663-1260; or e-mail: [chairgepa@state.gov](mailto:chairgepa@state.gov). For information regarding the possible effect of this regulation on individual visa applicants or any group of applicants contact the Public Inquiries Division of the Directorate for Visa Services at (202) 663-1225, or by e-mail to [usvisa@state.gov](mailto:usvisa@state.gov).

### SUPPLEMENTARY INFORMATION:

#### On What Authority Has the Department Granted This Waiver?

Section 212(d)(4)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(4), permits the Secretary of State and the Attorney General, acting jointly, to waive the passport and visa requirements of section 212(a)(7) of the INA, 8 U.S.C. 1182(a)(7). This waiver is granted on the basis of reciprocity with respect to nationals of foreign contiguous territories or adjacent islands or for residents who have a common nationality with those nationals.

#### Who Currently Benefits From This Waiver?

Currently, subsection (b) of 22 CFR 41.2 benefits Canadian permanent residents who have a common nationality with Canadians, British subjects in Bermuda and aliens who have a common nationality with such subjects. The waiver thus includes citizens of Commonwealth countries as well as citizens of Ireland. Nationals of 54 countries currently benefit from this waiver.

#### Why Is the Department Removing Part of This Waiver?

In light of the terrorist attacks of September 11, 2001, the Department has determined that it is in the public interest to reconsider this waiver, in part. Findings from the Department's review indicate that some beneficiaries of the waiver who are lawful permanent residents of Canada or Bermuda include nationals from countries requiring special clearance procedures. Beneficiaries also include nationals from countries with high rates of fraud and abuse and nationals from countries with high nonimmigrant refusal rates. In view of these determinations, the Department is removing that part of its

current regulation that benefits Canadian and Bermudan non-citizen residents who have a common nationality with Canadian and Bermudan citizens. Those non-citizen residents will be required to present visas and passports when attempting to enter the United States, except those entering pursuant to the permanent Visa Waiver Program who will require a passport but not a visa.

#### **Why Has the Department Changed the Reference to "British Subjects in Bermuda"?**

The "British Overseas Territory Act of 2002" changed former references to "dependent territories", including Bermuda, to "British Overseas Territories" and established the citizenship of such territories as "British Overseas Territories Citizenship". Therefore citizens of Bermuda will now be referred to in the regulation as "citizens of the British Overseas Territory of Bermuda", rather than "British subjects in Bermuda".

#### **Request for Comments**

The Department is seeking public comments regarding this interim rule. The Department welcomes comments on all topics contained within this interim rule.

#### **Interim Rule**

This interim rule amends the Department's regulation at 41.2(b) that grants visa and passport waivers to certain Canadian permanent residents, British subjects in Bermuda and certain permanent residents of Bermuda by removing from its application Canadian and Bermudan permanent residents.

#### **Regulatory Analysis and Notices**

##### **Administrative Procedure Act**

The Department's implementation of this regulation as an interim rule, with a provision for public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The Department believes that immediate implementation of this regulation is in the public interest to ensure public safety in light of ongoing security concerns following the terrorist attacks of September 11, 2001. Some beneficiaries of the visa and passport waiver include nationals from countries requiring special clearance procedures.

Beneficiaries also include nationals from countries with high rates of fraud and abuse and nationals from countries with high nonimmigrant refusal rates. The Department has established a 45-day post publication effective date for this rule in order to allow sufficient time to those Canadian and Bermudan residents affected by it to obtain the documentation that it requires they present when applying for entry into the United States. In this manner the Department hopes to minimize any disruption to travel along the border and also to minimize strain on INS and Department resources that might otherwise occur if significant numbers of aliens did not have sufficient time to obtain proper documentation.

#### **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 the 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**

The Department of State considers this rule to be a "significant regulatory

action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, it was submitted for review by the Office of Management and Budget.

#### **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.

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

Aliens, Nonimmigrants, Passports and visas.

Accordingly, amend 22 CFR part 41 as follows:

#### **Part 41—[AMENDED]**

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

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

2. Revise paragraph (b) of 41.2 to read as follows:

#### **§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.**

\* \* \* \* \*

(b) Citizens of the British Overseas Territory of Bermuda. A passport is not required except after a visit outside the Western Hemisphere. A visa is not required.

\* \* \* \* \*

Dated: January 23, 2003.

**Timothy Egert,**

*Federal Register Liaison, Department of State.*  
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