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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Part 274a

[CIS No. 2463–08; Docket No. USCIS–2008–0072]

RIN 1615–AB78

Employment Authorization and Verification of Aliens Enlisting in the Armed Forces

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations governing the employment authorization of aliens and the employment eligibility verification process. This rule provides for employer-specific employment authorization for certain aliens lawfully enlisted into the U.S. Armed Forces (Armed Forces), and those whose enlistment the Secretary with jurisdiction over such Armed Force has determined would be vital to the national interest. This rule also adds the military identification card to the list of documents acceptable for establishing employment eligibility and identity for the Employment Eligibility Verification Form (Form I–9), but only for use by the Armed Forces to verify employment eligibility of aliens lawfully enlisted in the Armed Forces. This rule is necessary to conform DHS regulations to existing statutory authorities regarding the enlistment of aliens by the Armed Forces.

DATES: *Effective date.* This rule is effective on February 23, 2009.

FOR FURTHER INFORMATION CONTACT: Philip B. Busch, Office of Chief Counsel, U. S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Ave., NW., Suite 4210, Washington, DC 20529, telephone (202) 272–1400 or e-mail at *Philip.Busch@dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 504 of Title 10, U.S. Code, provides citizenship and immigration status eligibility criteria for enlistment in the Armed Forces. The Armed Forces are defined under 10 U.S.C. 101(a)(4) to mean only the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard. Under section 504, only citizens and noncitizen nationals of the United States; lawful permanent resident aliens; and certain nationals of the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau who are admissible as nonimmigrants under the Compacts of Free Association with those nations, are eligible to enlist in the Armed Forces. *See* 10 U.S.C. 504(b)(1). Section 504(b)(2), however, also authorizes the Secretary of any Armed Force to enlist other aliens ''if the Secretary determines that such enlistment is vital to the national interest.'' *Id.* section 504(b)(2).

Section 274A of the Immigration and Nationality Act (INA), 8 U.S.C. 1324a, prohibits the employment of persons who are not authorized to be employed under U.S. immigration laws, and requires employers to verify the identity and employment eligibility of each individual they hire for employment in the United States. Under DHS regulations governing employment authorization (8 CFR 274a.12) and employment eligibility verification (8 CFR 274a.2), aliens who are lawfully enlisted in the Armed Forces under 10 U.S.C. 504(b)(1) are also employment authorized. DHS regulations, however, do not currently authorize employment for aliens that enlist in the Armed Forces under section 504(b)(2) following a determination by a Secretary of one of the Armed Forces that the enlistment of such aliens is vital to the national interest. This final rule closes that gap and extends employment authorization to any alien lawfully enlisted in the Armed Forces under 10 U.S.C. 504. In order to enable certain aliens who are not otherwise employment authorized to complete the enlistment process, this final rule authorizes an alien to accept employment with a specific Armed Force prior to completing the enlistment process. An alien is so authorized when the Secretary of an Armed Force determines that the alien's enlistment would be vital to the national interest.

II. Regulatory Changes

A. Employer-Specific Employment Authorization

This final rule provides that any person lawfully enlisted in the Armed Forces under the authority of 10 U.S.C. 504 has employer-specific work authorization to serve in the Armed Forces. *See* new 8 CFR 274a.12(d). The rule clarifies that the new employer-specific work authorization is for those aliens who do not otherwise have work authorization that would permit enlistment, either because they do not have work authorization at all, or because their work authorization is employer-specific for an employer other than the Armed Forces. In particular, this rule will conform work authorization under the INA and DHS regulations to such use as the Armed Forces may make of 10 U.S.C. 504(b)(2) in the national interest.

In short, the final rule provides that if an Armed Force lawfully enlists any alien under the authority of 10 U.S.C. 504 who is not otherwise work authorized, the alien enlisted will be considered by DHS to have work authorization for the purpose of, and limited to, that enlistment. The final rule's reference to lawful enlistment under 10 U.S.C. 504 is meant to ensure that it is not construed to provide work authorization to any alien who is falsely or fraudulently enlisted in the Armed Forces through error or misrepresentation of a qualifying section 504 status. The rule also provides the same limited employment authorization to certain aliens prior to their enlistment in the Armed Forces. So that these individuals may complete the enlistment process, they are provided with this limited employment authorization when it is determined that their enlistment would be vital to the national interest under 10 U.S.C. 504.

The final rule provides work authorization, but does not confer nonimmigrant or other immigration status to members of the Armed Forces by virtue of their enlistment. DHS notes, however, that under section 284 of the INA, 8 U.S.C. 1354, and 8 CFR 235.1(c), alien members of the Armed Forces

traveling under official orders or permit are not subject to the removal provisions of the INA. Further, under section 329 of the INA, 8 U.S.C. 1440, and Executive Order 13269 (July 3, 2002), present members of the Armed Forces with honorable service on active duty and satisfying other statutory requirements are immediately eligible to apply for naturalization.

This final rule provides work authorization to serve in the Armed Forces as an alien, during which time the alien may apply for naturalization. The rule does not authorize employment for any employer other than the Armed Forces or for any purpose other than lawful enlistment in one of the Armed Forces.

B. Form I–9 Completion.

Form I–9 has three categories of documents that may be accepted, alone or in combination, by employers for employment eligibility verification:

(1) *List A*—documents that establish both identity and employment eligibility (e.g., U.S. passport; Form I–551, ''Permanent Resident Card;'' and Form I–766, ''Employment Authorization Document'');

(2) *List B*—documents that establish only identity (e.g., State-issued driver's license or identification card); and

(3) *List C*—documents that establish only employment eligibility (e.g., State-issued birth certificate and social security account number card).

See INA sec. 274A(b)(1)(B), (C) and (D), 8 U.S.C. 1324a(b)(1)(B), (C) and (D); 8 CFR 274a.2(b)(1)(v)(A), (B) and (C). An individual must present to his or her employer either one document from List A or one document each from List B and List C.

The documents authorized for the purposes of verifying identity and employment eligibility on the Form I–9 do not adequately address documents that are available to aliens enlisted in the military. In particular, aliens from the Pacific Island nations described in section 10 U.S.C. 504(b)(1)(C) who are enlisted abroad, or aliens enlisted under section 10 U.S.C. 504(b)(2), may not have the appropriate documentation required on the Form I–9. This final rule provides an additional option that an Armed Force may accept to verify both employment eligibility and identity under List A of the Form I–9. In the case of an individual lawfully enlisted for military service only, a military identification card issued by the Armed Forces may now serve as a List A document. *See* new 8 CFR 274a.2(b)(1)(v)(A)(7).

DHS has determined that in the limited situation of verifying employment authorization for military enlistment, which includes a background check to verify citizenship and immigration status, it is appropriate to designate the military identification card as a List A document for Form I–9 purposes. DHS has determined that military identification cards contain a photograph and other personal identification sufficient for verification purposes, and that, along with the background check, they contain adequate security features, thus complying with the statutory requirements in section 274A(b)(1)(B)(ii) of the INA, 8 U.S.C. 1324a(b)(1)(B)(ii), for designating List A documents. The final rule does not change or modify the Form I–9 document list for private or public employers other than the Armed Forces; private or public employers other than the Armed Forces may not accept a military identification card as a List A document to satisfy documentation requirements of the Form I–9. For other employers, a military identification card may continue to be accepted only as a List B identification document as currently provided in 8 CFR 274a.2(b)(1)(v)(B)(1)(iv).

III. Regulatory Requirements

A. Administrative Procedure Act

This rule solely addresses military personnel matters relating to the enlistment of members of the Armed Forces. This rule therefore is exempt from notice and comment rulemaking procedures under the military function exception set forth in section 553(a)(1) of the Administrative Procedure Act (APA), 5 U.S.C. 553(a)(1). For the same reason, this rule is effective immediately upon publication in the **Federal Register**.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBRFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). RFA analysis is not required when a rule is exempt from notice and comment rulemaking requirements under the Administrative Procedure Act. *See* 5 U.S.C. 601(2), 603(a) and 604(a). This rule involves a military function of the United States and therefore is exempt from notice and comment rulemaking requirements pursuant to 5 U.S.C. 553(a)(1). DHS therefore is not required to provide an RFA analysis for this rule.

C. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. This rule would not result in such an expenditure.

D. 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. 5 U.S.C. 804. 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 the United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Order 12866

Section 3(d)(2) of Executive Order 12866 provides that regulations that pertain to a military function of the United States are not subject to its review requirements. Accordingly, this final rule has not been reviewed by the Office of Management and Budget.

F. Executive Order 13132

This rule would have no 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, this

rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Paperwork Reduction Act

This final rule does not modify any collection of information as defined in 44 U.S.C. 3502(3), and it will not require a revision to the Form I–9 (OMB Control Number 1615–0047).

List of Subjects in 8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

■ Accordingly, part 274a of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 1. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

■ 2. Section 274a.2 is amended by:
■ a. Adding and reserving paragraph (b)(1)(v)(A)(*6*), and by
■ b. Adding a new paragraph (b)(1)(v)(A)(*7*).

The additions read as follows:

§ 274a.2 Verification of identity and employment authorization.

* * * * *

(b) * * *
(1) * * *
(v) * * *
(A) * * *
(*6*) [Reserved]
(*7*) In the case of an individual lawfully enlisted for military service in the Armed Forces under 10 U.S.C. 504, a military identification card issued to such individual may be accepted only by the Armed Forces.

* * * * *

■ 3. Section 274a.12 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(d) An alien lawfully enlisted in one of the Armed Forces, or whose enlistment the Secretary with jurisdiction over such Armed Force has determined would be vital to the national interest under 10 U.S.C. 504(b)(2), is authorized to be employed by that Armed Force in military service, if such employment is not otherwise authorized under this section and the immigration laws. An alien described in this section is not issued an employment authorization document.

Janet Napolitano,

Secretary.

[FR Doc. E9–3801 Filed 2–19–09; 11:15 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0952; Directorate Identifier 98–ANE–49–AD; Amendment 39–15816; AD 2009–04–10]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80A, CF6–80C2, and CF6–80E1 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for General Electric Company (GE) CF6–80A, CF6–80C2, and CF6–80E1 series turbofan engines. That AD required revisions to the Airworthiness Limitations Section (ALS) of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required inspection of selected critical life-limited parts at each piece-part exposure. This AD requires revisions to the CF6–80A, CF6–80C2, and CF6–80E1 series engines ALS sections of the manufacturer's manuals and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements, and to update certain Engine Manual Inspection Task and Sub Task Number references. This AD results from the need to require enhanced inspection of selected critical life-limited parts of CF6–80A, CF6–80C2, and CF6–80E1 series engines. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective March 30, 2009.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *robert.green@faa.gov*; telephone (781) 238–7754; (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2002–07–12, Amendment 39–12707 (67 FR 17279, April 10, 2002), with a proposed AD. The proposed AD applies to GE CF6–80A, CF6–80C2, and CF6–80E1 series turbofan engines. We published the proposed AD in the **Federal Register** on October 23, 2008 (73 FR 63090). That action proposed to require revisions to the CF6–80A, CF6–80C2, and CF6–80E1 series engines ALS sections of the manufacturer's manuals and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements, and to update certain Engine Manual Inspection Task and Sub Task Number references.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the one comment received.

ABX Air requests that we add a statement to the AD, acknowledging that previously approved alternative methods of compliance (AMOCs) for AD 2002–07–12, the AD being superseded, are also approved for this AD.

We agree and added that statement to the AD.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the