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DOS Publishes Final Rule on Regulatory Exception for Certain Nonimmigrant Visa Classifications

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22 CFR Part 41

Visas: Regulatory Exception to Permit Compliance With the United Nations Headquarters Agreement and Other International Obligations and Clarification of the Definition of "Immediate Family" for Certain Nonimmigrant Visa Classifications; Final Rule

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DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 8511]
RIN 1400-AD43

Visas: Regulatory Exception to Permit Compliance With the United Nations Headquarters Agreement and Other International Obligations and Clarification of the Definition of "Immediate Family" for Certain Nonimmigrant Visa Classifications

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule creates a regulatory exception to visa restrictions under applicable laws providing for such an exception, in order to permit compliance with the Agreement between the United States and the United Nations Regarding the Headquarters of the United Nations (UNHQA), signed at Lake Success June 26, 1947, entered into force November 21, 1947, and other international obligations. This rule also clarifies that the Department of State's definition of "immediate family" for classifications and also applies to foreign government officials who may be admitted in immediate and continuous transit through the United States, and to all relevant NATO visa classifications under the Agreement on the Status of the North Atlantic Treaty Organization, National Representatives, and International Staff, signed at Ottawa, September 20, 1951, entered into force May 18 1954.

DATES: This rule is effective November 6, 2013.

FOR FURTHER INFORMATION CONTACT: Jennifer Liu, Legislation and Regulations Division, Legal Affairs, Office of Visa Services, Bureau of Consular Affairs, Department of State, 2401 E Street NW., Room L-603D, Washington, DC 20520-0106, (202) 663-1203, email (LiuJN@state.gov ^[3]).

SUPPLEMENTARY INFORMATION:

Why is the Department promulgating this rule?

This rule amends paragraph (d)(4) of 22 CFR 41.21, by broadening the regulatory exception to visa restrictions under applicable laws providing for such an exception, in order to allow compliance with the UNQHA and other international obligations. Currently, 22 CFR 41.21(d)(4) implements exceptions to the visa restrictions that are contained in the Tom Lantos Bloc Burmese JADE (Junta's Anti-Democratic

Efforts) Act of 2008 (Pub. L. 110-286), in order to permit the United States to comply with the UNHQA and other applicable international agreements, and to permit operation of the U.S. and Burmese diplomatic missions and other official U.S. business in Burma. Other statutory visa restrictions contain similar exceptions, which the regulation does not currently implement. For example, the Secretary of State is also authorized to prescribe regulations providing for exceptions to the visa restrictions to permit the United States to comply with the UNHQA and other applicable international obligations under Section 105(c) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) (Pub. L. 111-195) and Executive Order 13553, and Section 301(d) of the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRA) (Pub. L. 112-158) and Presidential Memorandum of October 9, 2012, 78 FR 21183 (Apr. 19, 2013). This rule amends 22 CFR 41.21(d) to implement exceptions to the visa restrictions contained in such legislation, to allow the United States to comply with UNHQA and other applicable international obligations. The term "international obligations" includes "international agreements," and is used to cover the scope of exceptions authorized by ITRA and CISADA. This final rule retains the exception authorized by the JADE Act to permit operation of the U.S. and Burmese missions and other official U.S. business in Burma.

Additionally, this rule amends 22 CFR 41.21(a)(3) to clarify that, under the Agreement on the Status of the North Atlantic Treaty Organization, National Representatives, and International Staff, the definition of "immediate family" used for the classifications in INA 101(a)(15)(A) and 101(a)(15)(G) also applies to classifications under all the NATO visa symbols, where applicable. Similarly, this rule adopts the same definition of "immediate family" for purposes of INA 212(d)(8), which permits the admission of officials of foreign governments and their immediate families who are in immediate and continuous transit through the United States without regard to certain provisions of the INA.

Regulatory Findings

A. Administrative Procedure Act

The Department is publishing this rule as a final rule based on its determination that this regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rule making procedures set forth at 5 U.S.C. 553.

B. Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth at sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with section 605(b) of the Regulatory Flexibility Act (5

U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule regulates individual aliens applying for visas under INA Sec. 101(A)(15) and does not affect any small entities, as defined in 5 U.S.C. 601(6).

C. The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48, codified at 2 U.S.C. 1532) generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121). 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 adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

E. Executive Order 12866

The Department has reviewed this proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of this final regulation outweigh its costs. The Department does not consider this final rule to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy

of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

F. Executive Order 13563: Improving Regulation and Regulatory Review

The Department has considered this rule in light of Executive Order 13563 and affirms that this regulation is consistent with the guidance therein.

G. Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the

States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

H. Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

I. Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

J. Paperwork Reduction Act

This rule does not impose new information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 41

Documentation of nonimmigrants.

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

PART 41--[AMENDED]

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

Authority: 8 U.S.C. 1104.

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2. In Sec. 41.21, paragraphs (a)(3) and (d)(4) are revised to read as follows:

Sec. 41.21 Foreign Officials--General.

(a) * * *

(3) Immediate family, as used in INA 101(a)(15)(A), 101(a)(15)(G), and 212(d)(8), and in classification under the NATO visa symbols, means the spouse and unmarried sons and daughters, whether by blood or adoption, who are not members of some other household, and who will reside regularly in the household of the principal alien. ``Immediate family" also includes individuals who:

- (i) Are not members of some other household;
- (ii) Will reside regularly in the household of the principal alien;
- (iii) Are recognized as immediate family members of the principal alien by the sending Government as demonstrated by eligibility for rights and benefits, such as the issuance of a diplomatic or official passport, or travel or other allowances; and
- (iv) Are individually authorized by the Department.

* * * * *

(d) * * *

(4) Notwithstanding the visa restrictions imposed by applicable laws and consistent with a provision in such laws providing for a regulatory exception to the visa restrictions contained therein, a visa may be issued to a visa applicant who is otherwise ineligible for a visa under such laws:

(i) To permit the United States to comply with the United Nations Headquarters Agreement and other applicable international obligations; and

(ii) To permit the United States and Burma to operate their diplomatic missions, and to permit the United States to conduct other official United States Government business in Burma.

* * * * *

Dated: September 26, 2013.

Janice L. Jacobs,

Assistant Secretary for Consular Affairs, Department of State.

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Nonimmigrant Visas:

General Nonimmigrant Visa ^[4]

Agency:

DOS ^[5]

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