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DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 9343]

RIN: 1400-AD80

Visas: Interview Waiver Authority

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This rule is promulgated to clarify the circumstances in which a consular officer and the Deputy Assistant Secretary for Visa Services may waive the requirement for a nonimmigrant visa interview.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Lauren A. Boquin, Legislation and Regulations Division, Visa Services, Bureau of Consular Affairs, Department of State, 600 19th St, N.W., Washington, D.C. 20006, (202) 485-7638.

SUPPLEMENTARY INFORMATION:

Why is the Department promulgating this rule?

The Immigration and Nationality Act (INA), at section 222(h), sets out detailed requirements for in-person interviews of applicants for nonimmigrant visas. This rule amends 22 CFR 41.102 to be consistent with INA 222(h). It is also amended to reflect delegation of the Secretary of State's authority under INA section 222(h)(1)(C)(ii) to waive visa interviews upon a determination that a waiver is necessary as a result of

unusual or emergent circumstances. In a delegation of authority dated August 20, 2012 (77 FR 52379), the Secretary authorized the Assistant Secretary for Consular Affairs to waive in-person visa interviews under such circumstances, which would include humanitarian crises or medical emergencies. The delegation also included authority to re-delegate, and the authority was re-delegated to the Deputy Assistant Secretary for Visa Services.

Paragraph (b) of section 41.102 is amended to add Taipei Economic and Cultural Representative Office (TECRO) nonimmigrants classifiable as E-1 visa holders, since such nonimmigrants are equivalent to diplomatic or official visa holders. Paragraph (c) was inserted to reflect the Secretary's undelegated authority to waive the personal appearance requirement in the national interest. The amended paragraph (d) of this regulation reflects the full scope of the Deputy Assistant Secretary for Visa Services' waiver authority, consistent with the above-referenced delegations. Paragraph (e) revised the prior paragraph (d) to reflect the revised structure of the regulation and to be consistent with the authority in INA 222(h) on overcoming prior refusals.

Regulatory Findings:

Administrative Procedure Act

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is exempt from the requirements of 5 U.S.C. 553. In addition, since this rulemaking relates to rules of Department organization, procedure, or practice, it is exempt from notice-and-comment rulemaking in accordance with 5 U.S.C. 553(b). Finally, since this rulemaking is exempt from section 553, the provisions of 5 U.S.C. 553(d) do not apply, and this rulemaking is effective immediately.

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 Act (5 U.S.C. 603 and 604). Nonetheless, consistent with 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.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (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.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804. The Department is aware of no monetary effect on the economy that will result from this rulemaking

Executive Orders 12866 and 13563

The Department of State has reviewed this 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 regulation outweigh any cost. The Department has considered this rule in light of Executive Order 13563 and affirms that this regulation is consistent with the guidance therein. The Department does not consider this rule to be a significant rulemaking action.

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 12372 and 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

This rule does not impose any 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

Aliens, Foreign officials, Immigration, Documentation of nonimmigrants, Passports and visas.

For the reasons stated in the preamble, the Department of State amends 22 CFR Part 41 to read as follows:

PART 41-[AMENDED]

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

Authority: 22 U.S.C. 2651a; 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801; 8 U.S.C. 1185 note (sec. 7209 of Pub. L. 108–458, as amended by sec. 546 of Pub. L. 109–295).

2. Section 41.102 is revised to read as follows:

§41.102 - Personal appearance of applicant.

(a) Except when the requirement of personal appearance has been waived pursuant to paragraph (b), (c), or (d) of this section, each applicant for a nonimmigrant visa who is at least 14 years of age and not more than 79 years of age must personally appear before and be interviewed by a consular officer, who shall determine on the basis of the applicant's representations, the visa application and other relevant documentation:

- (1) The proper nonimmigrant classification, if any, of the alien; and
- (2) The alien's eligibility to receive a visa.

(b) Waivers of personal appearance by consular officers. Except as provided in paragraph (e) of this section or as otherwise instructed by the Deputy Assistant Secretary of State for Visa Services, a consular officer may waive the requirement of personal appearance if the consular officer concludes the alien presents no national security concerns requiring an interview and:

- (1) Is within a class of nonimmigrants classifiable under the visa symbols A-1, A-2, C-2, C-3 (except attendants, servants, or personal employees of accredited officials), G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, or is a Taipei Economic and Cultural Representative Office (TECRO) nonimmigrant classifiable under visa symbol E-1, and is seeking a visa in such classification; or
- (2) Is an applicant for a diplomatic or official visa as described in §41.26 or §41.27 of this chapter; or
- (3) Is an applicant who is within 12 months of the expiration of the applicant's previously issued visa and:
 - (i) Is seeking re-issuance of a nonimmigrant visa in the same classification;
 - (ii) Is applying at the consular post of the applicant's usual residence; and

(iii) Is an applicant for whom the consular officer has no indication of visa ineligibility or of noncompliance with U.S. immigration laws and regulations.

(c) Waivers of personal appearance in the national interest. Except as provided in paragraph (e) of this section, the Secretary may waive the requirement of personal appearance of an individual applicant or a class of applicants if the Secretary determines that such waiver is in the national interest of the United States.

(d) Waivers of personal appearance in unusual or emergent circumstances. Except as provided in paragraph (e) of this section, the Deputy Assistant Secretary for Visa Services may waive the requirement of personal appearance of an individual applicant or a class of applicants if the Deputy Assistant Secretary determines that such waiver is necessary as a result of unusual or emergent circumstances.

(e) Cases in which personal appearance may not be waived. Except for a nonimmigrant applicant whose personal appearance is waived under paragraphs (b)(1), (b)(2), or (c) of this section, the personal appearance requirement may not be waived for:

(1) Any nonimmigrant applicant who is not a national or resident of the country in which he or she is applying.

(2) Any nonimmigrant applicant who was previously refused a visa, is listed in CLASS, or otherwise requires a Security Advisory Opinion, unless:

(i) The visa was refused and the refusal was subsequently overcome; or

(ii) The alien was found inadmissible, but the inadmissibility was waived.

(3) Any nonimmigrant applicant who is from a country designated by the Secretary

of State as a state sponsor of terrorism, regardless of age, or who is a member of a group or sector designated by the Secretary of State under section 222(h)(2)(F) of the Immigration and Nationality Act.

August 17, 2015 _____

(Date)

Michele Thoren Bond,
Assistant Secretary for
Consular Affairs,
Department of State.

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