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DEPARTMENT OF STATE

22 CFR Part 41

RIN: 1400-AD96

[Public Notice: 9638]

Visas: Classification of Immediate Family Members as A, C-3, G, and NATO Nonimmigrants

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This rule amends the definition of immediate family for purposes of A, C-3, G, and NATO visa classifications in two ways: it revises the eligibility requirements for unmarried adult sons and daughters age 21 or older for these visa classifications, and clarifies for purposes of G-4 visa classification that the international organization employing the principal alien must recognize an individual as immediate family to be eligible for derivative U.S. visa status. Furthermore, this rule permits qualified immediate family members of A-1, A-2, G-1, G-2, G-3, and G-4 nonimmigrants to be independently classified as NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, and NATO-6.

DATE: This final rule is effective on [insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Paul-Anthony L. Magadia, U.S. Department of State, Office of Legislation and Regulations, CA/VO/L/R, 600 19th Street, N.W., SA-17, Room 12-526B, Washington, D.C. 20522, 202-485-7641 or magadiapl@state.gov.

SUPPLEMENTARY INFORMATION: Prior to this amendment, an unmarried adult son or daughter who is not part of any other household and resides regularly in the household of the principal alien must be classified in A or G visa classifications, even if otherwise eligible for another nonimmigrant classification and regardless of age or the intention of the sending government or international organization. Yet for purposes of privileges and immunities, the Department of State accepts only unmarried children under the age of 21, or unmarried sons and daughters under the age of 23 and in full-time attendance as students at post-secondary educational institutions, as dependents. Similarly, under 8 CFR 214.2(a)(2) and (g)(2) for employment authorization purposes, Department of Homeland Security (DHS) regulations generally only consider unmarried children under the age of 21, or unmarried sons and daughters under the age of 23 and in full-time attendance as students at post-secondary educational institutions, to be

dependents. (Under certain circumstances, DHS, under its regulations, may also recognize as dependents sons and daughters up to the age of 25 or of any age if physically or mentally challenged.) In practice, requiring A or G classification for sons and daughters above these age limits precludes them from obtaining a nonimmigrant classification that would enable them to accept employment in the United States.

This rule narrows the definition of immediate family in the A, C-3 (aliens in transit under section 212(d)(8) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(8)), G, and relevant NATO nonimmigrant visa classifications so that only unmarried sons and daughters residing with the principal who are under the age of 21, or under the age of 23 and in full-time attendance as students at post-secondary educational institutions, will continue to be considered immediate family. Any other unmarried son or daughter residing with the principal will only qualify if he or she meets the same criteria the rule imposes on other family members. In particular, he or she must be recognized as an "immediate family member" by the sending government or international organization for purposes of eligibility for rights and benefits and also is individually authorized by the Department. An adult son or daughter who is no longer recognized as an immediate family member would have to apply, and be eligible for, another visa classification

or seek a change of status to another nonimmigrant status. This rule also amends 22 CFR 41.21(a)(3)(iii)(C) to clarify that for purposes of G-4 visa classification, the employing international organization must recognize individuals as immediate family members, before they may be treated as such for U.S. visa purposes, similar to the requirement that a sending government must recognize an individual as immediate family.

Finally, prior to this amendment, 22 CFR 41.22(b) and 41.24(b) required that an alien entitled to classification as an A-1, A-2, or G-1 through G-4 nonimmigrant must be classified as such, even those who would otherwise be eligible for another nonimmigrant classification. This rule allows immediate family members of A-1s, A-2s, and G-1s through G-4s to be instead independently classified as a principal in NATO-1 through NATO-6 visa classifications, but not other nonimmigrant classifications.

REGULATORY FINDINGS

Administrative Procedure Act .

The Department of State is of the opinion that regulating visa categories involves a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act. Since the Department is of the opinion that this rule is exempt from 5 U.S.C. 553, it is

the view of the Department that the provisions of Section 553(d) do not apply. Therefore, this rule is effective upon publication.

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 by 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, 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 does not require the Department to prepare a statement because it will not result in any such expenditure, nor will it significantly or uniquely affect small governments. This rule involves visas, which involves individuals, and does not affect, state, local, or tribal governments, or businesses.

Small Business Regulatory Enforcement Fairness Act of 1996.

This rule is not a major rule as defined in 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness 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 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. This rule involves visas, which involves individuals, and does not affect, state, local, or tribal governments, or businesses.

Executive Orders 12866 and 13563.

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These Executive Orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has examined this rule in light of Executive Order 13563, and has determined that the rulemaking is consistent with the guidance therein.

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. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 12988: Civil Justice Reform.

The Department has reviewed the rule 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.

Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments.

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 Section 5 of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act.

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

List of Subjects in 22 CFR Part 41

Aliens, Immigration, Nonimmigrant visas.

For the reasons stated in the preamble, 22 CFR part 41 is amended as follows:

PART 41 – [AMENDED]

1. The authority citation for part 41 continues 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 (section 7209 of Pub. L. 108-458, as amended by section 546 of Pub. L. 109-295).

2. Section 41.21 is amended by revising paragraph (a)(3) to read as follows:

§ 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:

(i) The spouse who resides regularly in the household of the principal alien and is not a member of some other household;

(ii) Unmarried sons and daughters, whether by blood or adoption, who reside regularly in the household of the principal alien and who are not members of some other household, and provided that such unmarried sons and daughters are:

(A) Under the age of 21, or

(B) Under the age of 23 and in full-time attendance as students at post-secondary educational institutions; and

(iii) Other individuals who:

(A) Reside regularly in the household of the principal alien;

(B) Are not members of some other household;

(C) Are recognized as dependents of the principal alien by the sending government or international organization, as demonstrated by eligibility for rights and benefits, such as the issuance of a diplomatic or official passport, or travel or other allowances; and

(D) Are individually authorized by the Department.

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3. Section 41.22 is amended by revising paragraph (b) to read as follows:

§ 41.22 Officials of foreign governments.

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(b) *Classification under INA section 101(a)(15)(A).* An alien entitled to classification under INA section 101(a)(15)(A) shall be classified under this section even if eligible for another nonimmigrant classification. An exception may be made where an immediate family member is classifiable as A-1 or A-2 under paragraph (a)(2) of this section is also independently

classifiable as a principal under INA section 101(a)(15)(G)(i), (ii), (iii), (iv) or in NATO-1 through NATO-6 classification.

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4. Section 41.24 is amended by revising paragraph (b)(4) to read as follows:

§ 41.24 International organization aliens.

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(b) * * *

(4) An alien not classifiable under INA section 101(a)(15)(A) or in NATO-1 through NATO-6 classification but entitled to classification under INA section 101(a)(15)(G) shall be classified under section 101(a)(15)(G), even if also eligible for another nonimmigrant classification. An alien classified under INA section 101(a)(15)(G) as an immediate family member of a principal alien classifiable G-1, G-2, G-3 or G-4, may continue to be so classified even if he or she obtains employment subsequent to his or her initial entry into the United States that would allow classification under INA section 101(a)(15)(A). Such alien shall not be classified in a category other than A or G, even if also eligible for another nonimmigrant classification.

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

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