

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 4316]

Visas: Documentation of Immigrants—Victims of Terrorism

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Department's regulations concerning immigrant visas. Recent legislation, commonly known as the USA Patriot Act, permits certain victims of the September 11, 2001 terrorist attack to file petitions for classification as special immigrants. This rule implements these provisions by creating a new visa classification "SP" for these immigrants and sets forth the eligibility requirements for the issuance of an immigrant visa in that category.

DATES: *Effective date:* This interim rule is effective on May 8, 2003.

Comment date: The Department will consider written comments submitted on or before July 7, 2003.

ADDRESSES: Please submit comments to the Chief, Legislation and Regulations Division, Visa Services, Department of State, 20522-0106, e-mail VisaRegs@state.gov, or fax to (202) 663-3898.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522-0106, phone (202) 663-1206.

SUPPLEMENTARY INFORMATION:**What Is the Authority for This Rule?**

On October 26, 2001, the President signed into law the "Uniting and Strengthening America Act by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act)," Public Law 107-56. Section 421 of the USA Patriot Act provides special immigrant status for certain victims of the terrorist attack of September 11, 2001 who file petitions for classification under the Immigration and Nationality Act (INA) section 203(b)(4).

Who Is Entitled to the Special Immigrant "SP" Classification?*Principal Alien*

An alien is entitled to classification as an "SP" special immigrant if the alien can demonstrate to the Attorney General that

(1) He or she is the beneficiary of a petition, filed on or before September 11, 2001, for classification as an immigrant under INA 203(a) or (b) or as

a nonimmigrant under INA 101(a)(15)(K); or

(2) He or she is the beneficiary of a labor certification application filed on or before September 11, 2001.

Additionally, the alien must present evidence that the petition or labor certification application was revoked, terminated or rendered null, either before or after its approval, due directly to the attack of September 11, 2001, that resulted in the death or disability of the petitioner, beneficiary, or applicant; or caused loss of employment due to physical damage to, or destruction of, the business of the petitioner or the applicant.

Spouse or Child

The spouse or child of an alien who meets the description of a "principal alien" (whether the principal alien is living or deceased) may be classified as an "SP" if the familial relationship existed on September 10, 2001; and if the spouse or child is

(1) Accompanying the principal alien; or

(2) Following-to-join the principal alien no later than September 11, 2003. In the case of a deceased principal alien, the requirement for accompanying or following to join is disregarded.

Grandparent of an Orphan

The grandparent of a child may be classified as an "SP", if the child is left with no parents as a direct result of a terrorist attack on September 11, 2001, if either parent was a U.S. citizen, a U.S. national, or a lawful U.S. permanent resident on September 10, 2001. The grandparent must also demonstrate that he or she is coming to the U.S. to assume legal custody of the child.

What Evidence Must Be Presented To Show That the Alien Was the Victim of the September 11, 2001, Terrorist Attack?

To qualify for classification as an "SP" immigrant, the alien must demonstrate to the Secretary of Homeland Security that he or she is a "victim of a specified terrorist activity", defined in the USA Patriot Act as any terrorist activity conducted against the Government or the people of the United States on September 11, 2001. The INS is responsible for approval of the petition, and thus responsible for determining if the alien has presented satisfactory evidence that he or she is a victim of a September 11, 2001 terrorist attack.

Are Aliens in the "SP" Category Subject to the Grounds Visa Inadmissibility?

Aliens in the "SP" are subject to all grounds of ineligibility except INA 212(a)(4).

How Will Aliens in the "SP" Category Be Assigned a Priority Date?

The Immigration and Naturalization (INS) will assign a priority date at the time the fourth preference petition is filed. Consular officers will issue visas in the chronological order in which the petitions were submitted to the INS. However, if the annual limit under INA 203 is met, the alien may use the priority date of the revoked petition.

How Is the Department Amending Its Regulation?

The Department is amending 22 CFR 42.32(d) by adding a new fourth preference classification paragraph (9) clarifying entitlement to special immigrant status under the USA Patriot Act. This rule authorizes consular officers to accord fourth preference employment-based special immigrant classification to certain victims of the September 11, 2001, terrorist attacks. As with other classes of fourth preference employment-based immigrants, the alien must be the beneficiary of an approved petition.

Regulatory Analysis and Notices*Administrative Procedure Act*

The Department's implementation of this regulation as an interim rule is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). As the amendment to the regulation simply implements without interpretation a legislative mandate that provides a benefit to aliens by extending special immigrant status to a specific class of aliens, the Department has determined that it is unnecessary to publish a proposed rule. In view of this benefit and since the amendment applies to visas made available in any fiscal year beginning immediately, the rule will be made effective immediately upon publication in the **Federal Register**.

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 this rule is not expected to 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

Although this rule is being promulgated in conjunction with the Immigration and Naturalization Service, a domestic agency, the Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section (3)(f), Regulatory Planning and Review. Therefore, in accordance with the letter to the Department of State of February 4, 1994 from the Director of the Office of Management and Budget, it does not require 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 under the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 42

Aliens, Immigrants, Passports and visas.

■ For the reasons set forth in the preamble, the Department is amending the regulations at 22 CFR part 42 to read as follows:

PART 42—[AMENDED]

■ 1. The authority citation for part 42 is revised to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 107-56, sec. 421.

■ 2. Amend § 42.32(d) by adding a new paragraph (9) to read as follows:

§ 42.32 Employment-based preference immigrants.

* * * * *

(d) * * *

(9) Certain Victims of the September 11, 2001 terrorist attacks. (i) Entitlement to status. An alien shall be classifiable as a special immigrant under INA 203(b)(4) as specified in section 421 of Public Law 107-56, if:

(A) The consular officer has received a petition approved by the INS to accord such classification, or official notification of such an approval, and the consular officer is satisfied from the evidence presented that the alien is entitled to that classification; or

(B) The alien is the spouse or child of an alien so classified in paragraph (d)(9)(i) of this section and is accompanying or following to join the principal alien.

(ii) *Ineligibility exemption.* An alien classified under paragraph (d)(9)(i) of this section shall not be subject to the provisions of INA 212(a)(4).

(iii) *Priority date.* Aliens entitled to status under paragraph (d)(9)(i) of this section shall be assigned a priority date as of the date the petition was filed under INA 204 for classification under section INA 203(b)(4) and visas shall be issued in the chronological order of application submission. However, in the event that the annual limit for immigrants under INA 203 is reached, the alien may retain the earlier priority date of the petition that was revoked.

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Dated: January 3, 2003.

Maura Harty,

*Assistant Secretary for Consular Affairs,
Department of State.*

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BILLING CODE 4710-06-P

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****23 CFR Parts 140 and 646**

[FHWA Docket No. FHWA-97-2681]

FHWA RIN 2125-AD86

Railroad-Highway Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA adopts as final an interim final rule that amends the regulation on railroad-highway projects and reimbursement for railroad work on Federal-aid highway projects. The purpose of adopting the interim final rule as final is to reflect the statutory changes brought about by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and to provide State transportation departments with clarification and more flexibility in implementing current law.

EFFECTIVE DATE: June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Rudolph Umbs, Office of Safety (HSA-1), (202) 366-2177, or Mr. Raymond Cuprill, Office of the Chief Counsel (HCC-30), (202) 366-0791. Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Electronic Access**

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may also reach the Office of the Federal Register's home page at: <http://www.archives.gov> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>.

Background

The FHWA published an interim final rule on parts 140 and 646, on August 27, 1997, at 62 FR 45326. Interested persons were invited to submit comments to FHWA Docket No. FHWA-97-2681. The interim final rule amended the