

May 13, 2002

Via Electronic & Regular Mail

Mr. Richard Sloan
Director
Regulations and Forms Services Division
Immigration and Naturalization Service
Room 4034
425 I Street, NW
Washington, DC 20536
E-mail: insregs@usdoj.gov

Re: INS No. 2176-01: Proposed Rule on Limiting the Period of Admission for B Nonimmigrant Aliens

Dear Mr. Sloan:

By way of introduction, Congress established the Office of Advocacy of the U.S. Small Business Administration (SBA) under Pub. L. No. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is also required by Section 612 of the Regulatory Flexibility Act (RFA) (5 U.S.C. § 601-612) to monitor agency compliance with the RFA. In 1996, Congress enacted the Small Business Regulatory Enforcement Fairness Act which made a number of significant changes to the Regulatory Flexibility Act, the most significant being provisions to allow judicial review of agencies' regulatory flexibility analyses.

On April 12, 2002, the Department of Justice, Immigration and Naturalization Service (INS) published a proposed rule in the *Federal Register*, Vol. 67, p. 18065 on *Limiting the Period of Admission for B Nonimmigrant Aliens*. The proposal will eliminate the minimum admission period of B-2 visitors for pleasure; reduce the maximum admission period of B-1 and B-2 visitors from 1 year to 6 months; and establish greater control over a B visitor's ability to extend status or change status to that of a nonimmigrant student.¹ INS asserts that the changes are necessary to enhance its ability to support the national

¹ The Office of Advocacy's comments are limited to the aspects of the proposal that will eliminate the minimum admission period of B-2 visitors for pleasure and reduce the maximum admission period of B-1 and B-2 visitors from 1 year to 6 months. Advocacy is not addressing the aspects of the proposal which establish greater control over a B visitor's ability to extend status or change status to that of a nonimmigrant student.

security needs of the United States. *Id.* While the Office of Advocacy recognizes the importance of national security, Advocacy is concerned about the potential economic impact that this proposal may have on small entities in the travel and tourism industry.

International Travel and Tourism Industry

In 2000, approximately seven million travelers visited the United States with B-1 or B-2 visas. Foreign visitors to the United States provide a significant influx of income to the economy. In the year 2000 alone, foreign visitors spent \$70.1 billion in this country. The preliminary estimate for overseas spending within the United States in 2001 is \$61 billion. Tourists spend money on transportation, hotels, food, tours, attractions (e.g. monuments, museums, entertainment), and souvenirs.

Small businesses provide many of the goods and services to foreign travelers. For example, in the tour operators industry, 2,722 businesses out of 3,222 businesses, or 84.5 percent of the tour operators, are currently defined as small. Tour operators are responsible for ensuring that transportation, accommodation and facility providers, and lecturers (guides) are paid.² Advocacy asserts that it is reasonable to assume that a foreign visitor would utilize the services of a tour operator if only to overcome language and currency barriers. If a foreign visitor participates in an organized tour, there is a high probability that the tour operator will be a small business.

The Proposal Will Have A Foreseeable Economic Impact on the Travel and Tourism Industry

The RFA requires administrative agencies to consider the effect of their actions on small entities, including small businesses, small non-profit enterprises, and small local governments. See 5 U.S.C. §601, et. seq.; *Northwest Mining Association v. Babbitt*, 5 F. Supp. 2d 9, (D.D.C., 1998). When an agency issues a rulemaking proposal, the RFA requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis [IRFA]" which will "describe the impact of the proposed rule on small entities." 5 U.S.C. §603(a); *Id.*

The law states that an IRFA shall address the reasons that an agency is considering the action; the objectives and legal basis of the rule; the type and number of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the proposed rule; and all Federal rules that may duplicate, overlap or conflict with the proposed rule. The agency must also provide a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. 5 USC §603(c).

Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. If the head of the agency makes such a certification,

² Based on the North American Industry Classification System description of a "tour operator."

the agency shall publish such a certification in the *Federal Register* at the time of the publication of the general notice of proposed rulemaking along with a statement providing the factual basis for the certification.

The RFA portion of the proposal states:

“The Commissioner of the Immigration and Naturalization Service, 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 will not have a significant economic impact on a substantial number of small entities. This rule applies only to nonimmigrant aliens visiting the United States as visitors for business or pleasure. It does not affect small entities as that term is defined in 5 U.S.C. §601(6).”

The Office of Advocacy agrees that only nonimmigrant aliens will have to comply with the regulation. However, Advocacy disagrees with the assertion that it will not affect small entities. Advocacy asserts that this rule will have a foreseeable impact on the travel industry, even though they do not have to directly comply with the mandates under this rule.

If foreign visitors believe that they may not be able to enter the country for the intended length of their stay, they may take their vacation dollars and go elsewhere. As stated previously, foreign visitors added \$70.1 billion to the US economy in 2000. If the visitors decide to go elsewhere, the US travel industry may lose that money. Advocacy submits that a high-dollar loss to an industry that is still reeling from the impact of September 11, 2001, could be devastating.

INS Should Perform A RFA Analysis As A Matter of Public Policy

In that this rule will have foreseeable significant economic impact on a substantial number of small entities, Advocacy implores INS to perform an IRFA as a matter of good public policy. If INS were to perform an IRFA, it would not only explore fully the economic impacts of this rule, it would also need to consider less costly alternatives for the rule and solicit alternatives from the public that could address the safety concerns without unduly impacting the travel industry.

Conclusion

The travel and tourism industry suffered a significant decline in sales in the aftermath of September 11th. Reluctance to travel has had an overall negative impact on several aspects of the industry, made up almost entirely of small businesses. This proposal discourages foreign visitors at a time when the United States needs to be encouraging travel and tourism from abroad. Advocacy, therefore, submits that INS should withdraw the aspects of the proposal that would change the current rules regarding the length of stay by a foreign visitor. In the alternative, INS should conduct a full small business impact analysis and consider less

burdensome alternatives that may be incorporated into the final rule.

Thank you for the opportunity to comment on this important proposal. If you have any questions, please feel free to contact the Office of Advocacy at (202) 205-6533.

Sincerely,

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Assistant Chief Counsel
for Economic Regulation