

List of Subjects in 22 CFR Part 41

Aliens, Passports and visas.

■ Accordingly, the Department of State adopts as final the interim rule published on March 7, 2002 (67 FR 10322) that revised 22 CFR 41.112(d).

Dated: June 26, 2003.

Maura Harty,

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

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DEPARTMENT OF STATE**22 CFR Part 42**

[Public Notice 4446]

Documentation of Immigrants Under the Immigration and Nationality Act, As Amended: Electronic Petition for Diversity Immigrant Status

ACTION: Interim rule with request for comments.

SUMMARY: In this rule the Department changes the manner in which aliens may petition for the opportunity to participate in the Diversity Visa Program from a standard mail-in system, to an entirely electronic system that will utilize a specifically designated Internet website. This rule also makes minor technical and editorial changes to the existing rule for the purpose of greater clarity, uniformity and precision. The Department is implementing the new electronic system in order to make the process less prone to fraud, improve efficiency in the diversity visa petition process and significantly reduce the cost to the Government of the process. When the rule is published aliens petitioning to participate in the diversity visa program will be required to submit their petition to the Department exclusively via electronic means.

DATES: This rule becomes effective on August 18, 2003. Written comments must be received on or before October 17, 2003.

ADDRESSES: Written comments may be submitted to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520-0106, by fax to 202-663-3898, or by e-mail to VisaRegs@state.gov.

FOR FURTHER INFORMATION CONTACT: Ron Acker, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520-0106, 202-663-0102.

SUPPLEMENTARY INFORMATION:

What Is the Diversity Visa Program?

The Diversity Visa Program is an annual visa program administered by the Department of State pursuant to section 203(c) of the Immigration and Nationality Act (INA), 8 U.S.C. 1153(c). Aliens from eligible countries (as determined by the Department of Homeland Security) petition the Department for the opportunity to apply for one of 50,000* immigrant visas made available each year pursuant to section 201(e) of the INA, 8 U.S.C. 1151(e) (note that section 201(e) actually provides for 55,000 visas, however, the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA), Title II of P.L. 105-100, stipulated that 5,000 of the immigrant visas made available under section 201(e) would be set aside each year for aliens eligible to adjust their status to that of lawful permanent resident under that Act*). The Department selects and rank orders petitions at random from among those that meet all of the prescribed petition requirements. Aliens whose petitions are selected may then apply for visas in rank order on a first come, first served basis until all of the 50,000* visas for the fiscal year for which the petitions have been selected are issued, or the fiscal year ends, whichever comes first.

What Is the Current Petition Procedure for the Program?

Since the inception of the Diversity Visa Program, the Department has required that all petitions for acceptance of an alien into the program be submitted by mail during a thirty-day period in the fiscal year preceding the fiscal year for which petitioners seek eligibility for the program. To date, submission by any means other than regular mail has been prohibited.

According to the existing rule, individual petitioners have been instructed to include certain information about themselves and their family members on a sheet of paper and to submit that document, signed, along with signed photographs of themselves and family members to the Department at a specific mailing address. Petitions without the required information or signatures and those received before or after the dates of the mail-in period have been automatically disqualified from consideration. Further, the statute authorizing the program permits only one petition submission per applicant. Persons submitting multiple petitions also are disqualified from participation in the program. No fee has been charged at the time of submission of the petition, but recipients of diversity immigrant visas have been required at the time of

visa application to pay an additional processing fee beyond that paid by other classes of immigrant visa recipients.

How Will This Rule Change the Petition Procedure?

When this rule becomes effective, alien petitioners for the Diversity Visa Program will no longer be permitted to submit a petition by mail. Instead, the Department will require that all petitions be submitted to it in an electronic format, using an Internet website dedicated specifically to the submission and receipt of Diversity Visa Program petitions. The website will have contained in it a standard petition form which the petitioner, or someone acting for the petitioner, must fill out on-line and send electronically to the Department at a web address. The person completing the petition form will also be required to attach to the electronic petition individual digital photographs of the petitioner and the petitioner's spouse and unmarried children under 21 who will be seeking to accompany or follow to join the petitioner should the petitioner receive a diversity immigrant visa. The photographs will have specific requirements as to size, composition and quality. Fees will be handled as they are under the current rules for diversity program petitions. Because the petition must be submitted electronically, the current requirement that the petition and photographs be signed, is, necessarily, being eliminated.

Why Is the Department Changing the Petition Process in this Manner?

There are three principal reasons the Department believes an electronic petition process is preferable to the existing mail-in process.

Anti-fraud benefits: The Department believes that the electronic petition process will help eliminate the submission of multiple petitions, prohibited under INA section 204(a)(1)(I). Currently, despite the fact that only 50,000* visas are available each year, many millions of petitions are submitted. The Department uses its limited resources to crosscheck for multiple submissions and create records for only the number of correctly completed petitions sufficient to ensure a pool of visa applicants that will be large enough to guarantee use of all the visas. That number is only a small percentage of the overall total of petitions submitted. Therefore, the likelihood of an alien petitioner of being caught submitting more than one petition is much less than it would be if information from all of the petitions could be entered automatically into the

database and cross-checked for duplicates using name and address matching software. In addition, the use of a digitized photograph will further enhance the Department's anti-fraud capability by permitting facial recognition crosschecking and matching to eliminate multiple applications using false identities. By significantly reducing the amount of fraud to which the existing program is subject, the Department believes it will be helping to eliminate one possible avenue terrorists and other criminal aliens might seek to utilize in order to enter the U.S. Further, because all of the information from all petitions submitted would be stored in a retrievable format, it will also enable the Department to search the database for specific names and faces when asked to do so by intelligence or security agencies.

Cost: The electronic process will be considerably less expensive for the Department to operate than the current procedure. In recent years diversity immigrant program petition submissions have numbered up to thirteen million per year. The cost of receiving, storing and handling this volume of paper documentation has been considerable. In addition to simply opening and sorting this volume of petitions, data taken from the petitions must be entered into the diversity visa database by hand, consuming extensive resources and introducing inevitable human errors that must either be corrected at an additional cost in resources or that eventually will lead to confusion at the time of visa application, resulting in lost time while the truth of the matter is determined. The Department conservatively estimates that the elimination of the paper process can save one million dollars per year by reducing the cost of storage and eliminating the handling of and recording of information from the paper documentation.

Benefit to the petitioners: The new system will benefit the petitioners as well. Currently, under the mail-in system, persons submitting petitions from overseas have no real assurance that the Department will receive their petitions within the prescribed mail-in period. Nor has it been possible to notify them of the receipt of petitions, due to the great volume of submissions. This fact by itself has been an inducement for petitioners to submit multiple petitions in the hope that at least one petition would arrive at the Department in the correct timeframe. An electronic system will guarantee that petitioners are notified of petition receipt virtually simultaneously with the submission of the petition and thus

eliminate the incentive to submit multiple petitions.

Won't Some Potential Petitioners in Less-Developed Countries Be Disadvantaged Due to the Lack of Sufficient Internet Facilities in Those Countries?

The Department believes that the argument that some applicants would be disadvantaged, especially in poorer countries, because they would not have ready access to the necessary computer hardware and software to file a petition electronically is offset, especially after September 11, 2001, by the security advantages and cost-saving of the electronic procedure, as well as the benefit to the petitioners of the certain knowledge of receipt of the petitions by the Department within the prescribed application period. Furthermore, the growing use of Internet cafes and similar resources, even in less developed countries, makes on-line registration increasingly convenient. Those unable to access computers themselves would be able to submit applications with the assistance of computer service providers and third parties, which currently advertise their services for the DV program far and wide and could certainly adapt to the new filing procedures. Likewise, the procedures will be flexible enough to permit stateside computer service providers to receive paper petitions from abroad, which they could use to enter the necessary information into the electronic petition form on behalf of the petitioners. While there may be some risk that a few facilitators would overcharge, the Department's experience with the Diversity Visa Program leads it to the conclusion that brisk competition will likely keep charges from becoming cost-prohibitive for most potential petitioners.

What Other Changes Does the Department Propose Making to the Current Regulation?

In addition to minor grammatical and other changes for clarification, the Department is amending subsection (a)(3) regarding use of the Department of Labor's O*Net Online to determine the sufficiency of a petitioner's work experience where such experience is used to qualify the petitioner for participation in the Diversity Visa Program. Reference to the O*Net Online was added by an interim rule dated August 2, 2002 [67 FR 51752] at which time it was stated that the O*Net Online would be used only for the 2003 Diversity Visa Program. The change will make such use a permanent feature of the Diversity Visa Program. The

Department also has added gender to the list of required items on the new electronic petition form. That information will assist the Department in the use of facial recognition technology in order to more accurately identify individuals for security and other purposes.

Regulatory Findings

Administrative Procedure Act

The immediate implementation of this rule as an interim rule, with a 60-day provision for post-promulgation public comments, is based on findings of "good cause" pursuant to 5 U.S.C. 553(b) and 553(d)(3). The effective date of this rule on August 18, 2003 is necessary to allow the Department to eliminate as quickly as possible the considerable amount of fraud detected in the Diversity Visa Program and thus prevent the program from being used by aliens who could pose a security threat to the United States or otherwise violate the laws of the United States, including the immigration laws. Because diversity visa applicants must be selected far in advance of the actual date of their visa application in order that they have time to obtain the necessary documentation for their application and make arrangements to appear at an embassy or consulate to make the application, delay for notice and comment would jeopardize the Department's ability to successfully conduct the FY 2005 diversity selection, thus extending for another year the program's susceptibility to high levels of fraud. To prevent such a result, the Department has determined that prior notice and public comment on this rule would be impractical and contrary to the public interest. Accordingly, there is good cause to publish this interim rule and to make it effective upon its publication in the **Federal Register**.

Regulatory Flexibility Act/Executive Order 13272: Small Business

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 will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates 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 \$1 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 import markets.

Executive Order 12866

The Department of State considers this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, it has been reviewed by the Office of Management and Budget (OMB).

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 require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

The reporting or record-keeping action required from the public under the rule requires the approval of the Office of Management and Budget under the Paperwork Reduction Act. A form to be used for petitioning the Department electronically for participation in the Diversity Visa Program will be forwarded to OMB as required.

List of Subjects in 22 CFR Part 42

Aliens, Immigrants, Passports and visas.

■ Accordingly, for the reasons set forth in the preamble, 22 CFR part 42 is amended as follows:

PART 42—[AMENDED]

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

Authority: 8 U.S.C. 1104; 2651a.

■ 2. Revise § 42.33 to read as follows:

§ 42.33 Diversity immigrants.

(a) *General.* (1) *Eligibility to compete for consideration under section 203(c).* An alien will be eligible to compete for consideration for visa issuance under INA 203(c) during a fiscal year only if he or she is a native of a low-admission foreign state, as determined by the Secretary of Homeland Security pursuant to INA 203(c)(1)(E), with respect to the fiscal year in question; and if he or she has at least a high school education or its equivalent or, within the five years preceding the date of application for a visa, has two years of work experience in an occupation requiring at least two years training or experience. The eligibility for a visa under INA 203(c) ceases at the end of the fiscal year in question. Under no circumstances may a consular officer issue a visa or other documentation to an alien after the end of the fiscal year during which an alien possesses diversity visa eligibility.

(2) *Definition of high school education or its equivalent.* For the purposes of this section, the phrase high school education or its equivalent means the successful completion of a twelve-year course of elementary and secondary education in the United States or successful completion in another country of a formal course of elementary and secondary education comparable to completion of twelve years' elementary and secondary education in the United States.

(3) *Determinations of work experience.* For all cases registered for the 2003 Diversity Visa Program and Diversity Visa Programs occurring in subsequent fiscal years, consular officers must use the Department of Labor's O*Net On Line to determine qualifying work experience.

(4) *Limitation on number of petitions per year.* No more than one petition may be submitted by or on behalf of, any alien for consideration during any single fiscal year. If two or more petitions for any single fiscal year are submitted by, or on behalf of, any alien, all such petitions will be void pursuant to INA 204(a)(1)(I)(i) and the alien by or for whom the petition has been submitted will not be eligible for consideration for diversity visa issuance during the fiscal year in question.

(5) *Northern Ireland.* For purposes of determining eligibility to file a petition for consideration under INA 203(c) for a fiscal year, the districts comprising that portion of the United Kingdom of Great Britain and Northern Ireland, known as "Northern Ireland", will be treated as a separate foreign state. The districts comprising "Northern Ireland" are Antrim, Ards, Armagh, Ballymena,

Ballymoney, Banbridge, Belfast, Carrickfergus, Castlereagh, Coleraine, Cookstown, Craigavon, Down, Dungannon, Fermanagh, Larne, Limavady, Lisburn, Londonderry, Magherafelt, Moyle, Newry and Mourne, Newtownabbey, North Down, Omagh, and Strabane.

(b) *Petition requirement.* An alien claiming to be entitled to compete for consideration under INA 203(c) must file a petition with the Department of State for such consideration. At the alien petitioner's request, another person may file a petition on behalf of the alien. The petition will consist of an electronic entry form that the alien petitioner or a person acting on the behalf of the alien petitioner must complete on-line and submit to the Department of State via a Web site established by the Department of State for the purpose of receiving such petitions. The Department will specify the address of the Web site prior to the commencement of the 30-day or greater period described in paragraph (b)(3) of this section using the notice procedure prescribed in that paragraph.

(1) *Information to be provided in the petition.* The website will include the electronic entry form mentioned in paragraph (b) of this section. The entry form will require the person completing the form to provide the following information, typed in the Roman alphabet, regarding the alien petitioner:

- (i) The petitioner's full name;
- (ii) The petitioner's date and place of birth (including city and country, province or other political subdivision of the country);
- (iii) The petitioner's gender;
- (iv) The country of which the petitioner claims to be a native, if other than the country of birth;
- (v) The name[s], date[s] and place[s] of birth and gender of the petitioner's spouse and child[ren], if any, (including legally adopted and step-children), regardless of whether or not they are living with the petitioner or intend to accompany or follow to join the petitioner should the petitioner immigrate to the United States pursuant to INA 203(c), but excluding a spouse or a child[ren] who is already a U.S. citizen or U.S. lawful permanent resident;

(vi) A current mailing address for the petitioner;

(vii) The location of the consular office nearest to the petitioner's current residence or, if in the United States, nearest to the petitioner's last foreign residence prior to entry into the United States;

(2) *Requirements for photographs.* The electronic entry form will also

require inclusion of a recent photograph of the petitioner and of his or her spouse and all unmarried children under the age of 21 years. The photographs must meet the following specifications:

(i) A digital image of the applicant from either a digital camera source or a scanned photograph via scanner. If scanned, the original photographic print must have been 2" by 2" (50mm x 50mm). Scanner hardware and digital image resolution requirements will be further specified in the public notice described in paragraph (b)(3) of this section.

(ii) The image must be in the Joint Photographic Experts Group (JPEG) File Interchange Format (JFIF) format.

(iii) The image can be either in color or black and white.

(iv) The person being photographed must be directly facing the camera with the head neither tilted up, down, or to the side. The head must cover about 50% of the area of the photograph.

(v) The photograph must be taken with the person in front of a neutral, light-colored background. Photos taken with very dark or patterned, busy backgrounds will not be accepted.

(vi) The person's face must be in focus.

(vii) The person in the photograph must not wear sunglasses or other paraphernalia that detracts from the face.

(viii) A photograph with the person wearing a head covering or a hat is only acceptable if the covering or hat is worn specifically due to that person's religious beliefs, and even then, the hat or covering may not obscure any portion of the face. A photograph of a person wearing tribal, military, airline or other headgear not specifically religious in nature will not be accepted.

(3) *Submission of petition.* A petition for consideration for visa issuance under INA 203(c) must be submitted to the Department of State by electronic entry to an Internet website designated by the Department for that purpose. No fee will be collected at the time of submission of a petition, but a processing fee may be collected at a later date, as provided in paragraph (i) of this section. The Department will establish a period of not less than thirty days during each fiscal year within which aliens may submit petitions for approval of eligibility to apply for visa issuance during the following fiscal year. Each fiscal year the Department will give timely notice of both the website address and the exact dates of the petition submission period, as well as other pertinent information, through publication in the **Federal Register** and such other methods as will ensure the

widest possible dissemination of the information, both abroad and within the United States.

(c) *Processing of petitions.* Entries received during the petition submission period established for the fiscal year in question and meeting all of the requirements of paragraph (b) of this section will be assigned a number in a separate numerical sequence established for each regional area specified in INA 203(c)(1)(F). Upon completion of the numbering of all petitions, all numbers assigned for each region will be separately rank-ordered at random by a computer using standard computer software for that purpose. The Department will then select in the rank orders determined by the computer program a quantity of petitions for each region estimated to be sufficient to ensure, to the extent possible, usage of all immigrant visas authorized under INA 203(c) for the fiscal year in question. The Department will consider petitions selected in this manner to have been approved for the purposes of this section.

(d) *Validity of approved petitions.* A petition approved pursuant to paragraph (c) of this section will be valid for a period not to exceed Midnight of the last day of the fiscal year for which the petition was approved. At that time, the Department of State will consider approval of the petition to cease to be valid pursuant to INA 204(a)(1)(I)(ii)(II), which prohibits issuance of visas based upon petitions submitted and approved for a fiscal year after the last day of that fiscal year.

(e) *Order of consideration.* Consideration for visa issuance to aliens whose petitions have been approved pursuant to paragraph (c) of this section will be in the regional rank orders established pursuant to that paragraph.

(f) *Allocation of visa numbers.* To the extent possible, diversity immigrant visa numbers will be allocated in accordance with INA 203(c)(1)(E) and will be allotted only during the fiscal year for which a petition to accord diversity immigrant status was submitted and approved. Under no circumstances will immigrant visa numbers be allotted after midnight of the last day of the fiscal year for which the petition was submitted and approved.

(g) *Further processing.* The Department will inform applicants whose petitions have been approved pursuant to paragraph (c) of this section of the steps necessary to meet the requirements of INA 222(b) in order to apply formally for an immigrant visa.

(h) *Maintenance of certain information.* (1) The Department will compile and maintain the following

information concerning petitioners to whom immigrant visas are issued under INA 203(c):

- (i) Age;
- (ii) Country of birth;
- (iii) Marital status;
- (iv) Sex;
- (v) Level of education; and
- (vi) Occupation and level of occupational qualification.

(2) The Department will not maintain the names of visa recipients in connection with this information and the information will be compiled and maintained in such form that the identity of visa recipients cannot be determined therefrom.

(i) *Processing fee.* In addition to collecting the immigrant visa application fee and, if applicable, issuance fees, as provided in §42.71(b) of this part, the consular officer must also collect from each applicant for a visa under the Diversity Immigrant Visa Program such processing fee as the Secretary of State prescribes.

Dated: August 8, 2003.

Maura Harty,

Assistant Secretary of State, Bureau of Consular Affairs, Department of State.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP New Orleans-03-024]

RIN 1625-AA00

Safety Zone; Lower Mississippi River, Above Head of Passes, Mile Marker 88.1 to 90.4, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Lower Mississippi River (LMR), beginning at mile marker 88.1 and ending at mile marker 90.4, Above Head of Passes, extending the entire width of the river. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with the weekly upbound and downbound transit of the C/S CONQUEST beneath the Entergy Corporation power cables located at mile marker 89.2, LMR. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port New Orleans or a designated representative.