

**PART 43—[REMOVED AND RESERVED]****PART 44—[REMOVED AND RESERVED]****PART 47—[REMOVED AND RESERVED]****PART 45—[AMENDED]**

24. The authority citation for part 45 continues to read as follows:

Authority: 8 U.S.C. 1104; 8 U.S.C. 1153.

25. Section 45.5 is amended by revising paragraph (e) to read as follows:

**PART 45 VISAS: DOCUMENTATION OF IMMIGRANTS UNDER SECTION 124 OF PUBLIC LAW 101-649.****§ 45.5 Redetermination of admissibility if visa validity extended.**

\* \* \* \* \*

(e) For the purposes of this section, "qualifying position" shall include both the position occupied by the alien at the time the petition in the alien's behalf was approved and any other position within the petitioning entity's organization, regardless of geographical location, which would otherwise meet the requirements for approval of such a petition in the alien's behalf. For the purposes of this section, *qualifying employment* shall mean any position in the United States of the kind required for approval of such a petition.

Dated: December 15, 1995.

Mary A. Ryan,

*Assistant Secretary for Consular Affairs.*

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**22 CFR Part 41****[Public Notice 2403]****Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended**

**AGENCY:** Bureau of Consular Affairs, Department of State.

**ACTION:** Interim final rule, with request for comments.

**SUMMARY:** The Violent Crime Control and Law Enforcement Act of 1994 created a new nonimmigrant visa classification by adding section 101(a)(15)(S) to the Immigration and Nationality Act. These regulatory amendments establish standards for the issuance of nonimmigrant visas under this classification.

**DATES:** Effective January 24, 1996. Written comments are invited and must be received on or before March 25, 1996.

**ADDRESSES:** Written comments may be submitted, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20522-0113, (202) 663-1204.

**SUPPLEMENTARY INFORMATION:** The Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, was signed by the President on September 13, 1994. Section 130003 of the Act amended the Immigration and Nationality Act by adding section 101(a)(15)(S), a new nonimmigrant visa classification. This visa classification provides for the admission into the United States of certain alien witnesses and informants.

The first of two paragraphs of the new section 101(a)(15)(S) provides for the admission of aliens determined by the Attorney General to possess critical reliable information concerning a criminal organization or enterprise. The alien must be willing to provide that information to federal and/or state authorities, and the Attorney General must determine that his/her presence is essential to the success of an authorized criminal investigation or prosecution. Pursuant to a new section 214(j)(i) of the INA also added by section 13003, no more than 100 visas are available in this category per fiscal year.

The second paragraph of 101(a)(15)(S) provides for nonimmigrant visas for aliens whom the Secretary of State and the Attorney General jointly determine possess critical reliable information about a terrorist organization, enterprise or operation, and who are willing to provide or have provided such information to federal law enforcement authorities, or a federal court, and who will be or have been placed in danger as the result of providing such information. They must also be eligible for an award under section 36(a) of the State Department's Basic Authorities Act of 1956. Pursuant to the new section 214(j)(i) of the INA referred to above, no more than 25 visas are available in this category per fiscal year.

The spouse, married and unmarried sons and daughters, and parents of aliens classified under subsection (S)(i) or (S)(ii) may be granted derivative status, if the Attorney General (or in the case of (S)(ii), the Secretary of State and the Attorney General jointly) consider it appropriate.

The enactment of this section provides a new mechanism to admit aliens into the U.S. as witnesses and informants. Under past law the only

means to admit such aliens were either in the B visa category or under parole.

This visa classification requires the Attorney General in the case of the first subsection and the Attorney General and the Secretary of State in the case of the second subsection to determine that all the statutory requirements are met prior to visa issuance. The Immigration and Naturalization Service (INS) has promulgated extensive regulations [60 FR 44260] on this classification, explaining how the law enforcement agencies interact with the Attorney General in order to meet the applicable legal requirements.

Under subsection (ii) of the S classification, the Secretary of State and the Attorney General act jointly in determining the alien's entitlement to classification. The initial stages of processing under (S)(ii) lie with the Department of State. When a potential (S)(ii) alien is identified, it must be determined that the alien is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956. The responsibility of carrying out this reward program under section 36(a) of that Act is delegated by the Secretary of State to the Assistant Secretary of State for Diplomatic Security. Section 226 of Volume 12 of the Foreign Affairs Manual sets forth the procedures established to carry out the requirements of section 36(a), processing of cases through the rewards committee. Determination of eligibility for receipt of a reward under section 36(a) made by the rewards committee is certified to the Assistant Secretary of State for Consular Affairs, to whom the Secretary has delegated the responsibility to implement the visa function under the Immigration and Nationality Act, which would necessarily include the recently added section 101(a)(15)(S). Acting on behalf of the Assistant Secretary for Consular Affairs, the Visa Office will then certify to the Attorney General the alien's eligibility for classification under subsection (s)(ii).

When determinations of entitlement to visa status under either section (S)(i) or (S)(ii) are completed, the INS, on behalf of the Attorney General, certifies such to the Visa Office which then communicates with the relevant consular post. The consular officer will process the visa application pursuant to guidance and instruction provided by the Visa Office. A visa may be authorized for the period necessary pursuant to the Attorney General's certification, but for a period not to exceed the three year statutory limit.

The implementation of the numerical limitation, as well as the adjustment of

status procedures, is addressed in the INS regulations, as that agency bears the responsibility for administering those provisions.

#### Interim Final Rule

Law enforcement agencies need access to the benefits provided in this legislation and, while the Department can administer the S visa on the basis of the INA, without regulations, use of the S visa by law enforcement agencies will be facilitated by prompt formulation of these regulatory provisions and the guidance, controls, and structure they afford. Moreover, given the unique characteristics of the S visa, as a classification available in the discretion of the Attorney General or Secretary of State for law enforcement and counter-terrorism purposes only, this regulation does not pertain to a visa classification that will be available to the general public. Prior notice and public comment with respect to this rule are therefore impracticable, unnecessary and contrary to the public interest. Under these conditions, there is good cause under 5 U.S.C. 553 to make the rule effective upon publication, with public comments to be considered thereafter.

In accordance with 5 U.S.C. 605(b) [Regulatory Flexibility Act], it is certified that this rule does not have a "significant adverse economic impact" on a substantial number of small entities. This rule is exempt from E.O. 12866, but has been coordinated with the Immigration and Naturalization Service because joint action of the Secretary of State and the Attorney General is required under INA 101(a)(15)(S), as amended. The rule imposes no reporting or recordkeeping action on the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act. This rule has been reviewed as required by E.O. 12778 and is certified to be in compliance therewith.

#### List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports and Visas, Witnesses and Informants.

Accordingly, title 22, part 41 of the Code of Federal Regulations, is amended as follows:

#### **PART 41—[AMENDED]**

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

Authority: 8 U.S.C. 1104.

2. Part 41, Subpart I is amended by revising the heading to read as follows:

#### **Subpart I—Fiance(e)s and Other Nonimmigrants**

3. A new § 41.82 is added to read as follows:

##### **§ 41.82 Certain Parents and Children of Section 101(a)(27)(I) Special Immigrants [Reserved]**

4. A new § 41.83 is added to read as follows:

##### **§ 41.83 Certain Witnesses and Informants.**

(a) *General.* An alien shall be classifiable under the provisions of INA 101(a)(15)(S) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2)(i) The consular officer has received verification from the Department of State, Visa Office, that:

(A) in the case of INA 101(a)(15)(S)(i) the INS has certified on behalf of the Attorney General that the alien is accorded such classification, or

(B) in the case of INA 101(a)(15)(S)(ii) the Assistant Secretary of State for Consular Affairs on behalf of the Secretary of State and the INS on behalf of the Attorney General have certified that the alien is accorded such classification;

(ii) and the alien is granted an INA 212(d)(1) waiver of any INA 212(a) ground of ineligibility known at the time of verification.

(b) *Certification of S visa status.* The certification of status under INA 101(a)(15)(S)(i) by the Attorney General or of status under INA 101(a)(15)(S)(ii) by the Secretary of State and the Attorney General acting jointly does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of Visa.* The period of validity of a visa authorized on the basis of paragraph (a) of this section shall not exceed the period indicated in the certification required in paragraph (b) and shall not in any case exceed the period of three years.

Dated: December 6, 1995.

Mary A. Ryan,

*Assistant Secretary for Consular Affairs.*

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#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[DE24-1-7156a; FRL-5401-2]

#### **Approval and Promulgation of Air Quality Implementation Plans; Delaware Ozone Emission Inventory**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Delaware State Implementation Plan (SIP) which pertains to the 1990 base year emission inventory for the marginal, moderate, and severe ozone nonattainment areas within the State. The ozone nonattainment areas consist of the counties of Sussex (marginal), New Castle and Kent (both severe). The SIP was submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) for the purpose of attaining the national ambient air quality standard (NAAQS) for ozone. This action is being taken under section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This action will become effective March 25, 1996, unless notice is received on or before February 23, 1996, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 597-3164, at EPA Region III address.

**SUPPLEMENTARY INFORMATION:** The Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to the Delaware SIP on May 27, 1994. The SIP revision consists of 1990 base year emission inventories for the ozone