

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214 and 248

[INS No. 2195-02]

RIN 1115-AG60

Requiring Change of Status From B to F-1 or M-1 Nonimmigrant Prior to Pursuing a Course of Study**AGENCY:** Immigration and Naturalization Service, Justice.**ACTION:** Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (Service) regulations by eliminating the current provision allowing a B-1 or B-2 nonimmigrant visitor for business or pleasure to begin attending school without first obtaining approval of a change of nonimmigrant status request from the Service. This change will enhance the Service's ability to support the national security needs of the United States and is within the Service's authority under section 248 of the Immigration and Nationality Act (Act). The amendment will ensure that no B nonimmigrant is allowed to enroll in school until the alien has applied for, and the Service has approved, a change of nonimmigrant status to that of F-1 or M-1 nonimmigrant student.

DATES: Effective date: This interim rule is effective April 12, 2002.

Comment date: Written comments must be submitted on or before June 11, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW, Room 4034, Washington, DC 20536. To ensure proper handling, please reference the INS No. 2195-02 on your correspondence. Comments may also be submitted electronically to the Service at insregs@usdoj.gov. When submitting comments electronically, please include INS No. 2195-02 in the subject heading. Comments are available for public inspection at this location by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Craig Howie, Business and Trade Services Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3040, Washington, DC 20536, telephone (202) 353-8177.

SUPPLEMENTARY INFORMATION:**Background***What Is a B Nonimmigrant Alien?*

A B nonimmigrant is an alien whose admission to the United States is based on a temporary visit for business (B-1) or a temporary visit for pleasure (B-2). Section 101(a)(15)(B) of the Act, 8 U.S.C. 1101(a)(15)(B), defines the visitor classification as:

An alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

Based on the statutory language, the Service has long held a B-1 nonimmigrant to be one seeking admission for legitimate activities of a commercial or professional nature such as meetings, conferences, or consultations in the United States in connection with the conduct of international business and commerce. A B-2 nonimmigrant is one seeking admission for activities relating to pleasure such as touring, family visits, or for purposes of receiving medical treatment.

What Is the Service Changing in This Interim Rule?

The Service is eliminating the ability of an alien admitted to the United States as a B-1 or B-2 nonimmigrant to begin attending classes without first applying to the Service, and obtaining the Service's prior approval, for a change of nonimmigrant status to that of an F or M nonimmigrant student. This rule expressly prohibits a B nonimmigrant from enrolling in a course of study or taking other actions inconsistent with B nonimmigrant status unless and until the Service has approved the B nonimmigrant's change to an appropriate student nonimmigrant status.

Why Is the Service Instituting This Change?

The terrorist attacks of September 11, 2001, highlight the need of the Service to maintain greater control over the ability of an alien to change nonimmigrant status once the alien has been admitted to the United States. This interim rule will allow the Service to fully review any request from a B nonimmigrant to change nonimmigrant status to that of full-time student before allowing the alien to enroll in a Service-approved school. The elimination of the ability of a B nonimmigrant to begin classes before receiving the Service's

approval of the change of nonimmigrant status is also consistent with the Act's requirement in section 101(a)(15)(B) that a B nonimmigrant not be a person coming to the United States for the purpose of study.

Why Is This Change Limited to B Nonimmigrants?

In the process of drafting this rule, the Service considered making its requirements (*i.e.*, that nonimmigrants obtain a student visa before being able to take courses) apply to anyone in the United States not currently in student status. Such a requirement would be broader than the rule as presently drafted, which applies just to nonimmigrants in B-1 or B-2 visitor status.

B nonimmigrants generally enter the United States for purposes of tourism or for a business trip. Pursuing a course of study is inconsistent with these purposes, and thus inconsistent with B status. However, pursuit of studies generally is consistent with most other nonimmigrant statuses, and thus such a broader rule could have unintended and overly burdensome consequences for such nonimmigrants. For some, such as J-1 au pair or an H-3 trainee, the courses might be an integral part of the program for which they obtained their status. For many dependent spouses, such as H-4s, derivatives of A or G diplomats, or NAFTA TN-2s, studies may be their only permissible pursuit while accompanying their spouse who is working in the United States. Dependent children are, in fact, expected to attend school. Even some principals in nonimmigrant status (*e.g.*, H-1Bs, L-1s) may take courses incident to status to enhance their professional development. Requiring that these individuals change to F-1 or M-1 status in order to pursue studies would eliminate their ability to attend part-time, since by statute F-1s and M-1s must be pursuing a full course of study and since a nonimmigrant is prohibited from holding more than one nonimmigrant status while in the United States.

How Does This Interim Rule Affect B-1 or B-2 Nonimmigrants Previously Admitted to the United States?

This interim rule will accommodate B-1 or B-2 nonimmigrants who have already been admitted to the United States prior to April 12, 2002. In view of the Service's prior policy, this interim rule does not prevent such aliens from starting a course of study after filing an application for change of status, or require those aliens to stop taking

classes while the Service processes the change of nonimmigrant status request.

However, this interim rule applies to all aliens who are admitted as, or change their status to, a B-1 or B-2 nonimmigrant, on or after April 12, 2002. This interim rule also applies to all current B visitors who apply for an extension of their B nonimmigrant status on or after April 12, 2002.

Request for Comments

The Service is seeking public comments regarding this interim rule. The Service requests that parties interested in commenting on the provisions contained within this rule do so on or before June 11, 2002, as the Service will not extend the comment period.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reason and necessity for the immediate promulgation of this rule are as follows: The rule is necessary to ensure the national security of the United States by eliminating the ability of a B nonimmigrant to enroll in school until the Service has approved a change of nonimmigrant status application filed by the prospective alien student. The previous rule allowing such enrollment prior to adjudication of the application was used by some of the September 11th terrorists to obtain flight training in the United States. Closing this loophole is essential to efforts to prevent this abuse from recurring.

There is also reasonable concern that publication of this regulation as a proposed rule, one that would not take effect until after a final rule was promulgated, could lead to the counterproductive result of a surge of entries by individuals who have no intention of going through the consular screening process overseas and who would seek admission as a B nonimmigrant while having the intent of becoming an F or M nonimmigrant student after admission to the United States.

However, this interim rule takes account of the interests of those aliens currently admitted to the United States in B nonimmigrant status. Such aliens will continue to be governed by the Service's prior policy regarding change to F or M nonimmigrant status, for the remainder of their currently-authorized B nonimmigrant admission.

Accordingly, the Service believes that advance public notice and comment on this regulation would be impracticable

and contrary to the public interest. Therefore, there is good cause under 5 U.S.C. 553(b) and (d) for dispensing with the requirements of prior notice and to make this rule effective upon the date of publication in the **Federal Register**.

Regulatory Flexibility Act

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 B nonimmigrants applying to change to either F or M nonimmigrant status. It does not affect small entities as that term is defined in 5 U.S.C. 601(6).

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 one 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

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule 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.

Executive Order 12988, Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 248

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1101 note, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; sec. 643, Pub. L. 104-208, 110 Stat. 3009-708; Section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

2. Section 214.2 is amended by adding and reserving paragraph (b)(6) and by adding new paragraph (b)(7) to read as follows:

§ 214.2 Special requirements for admission, extension and maintenance of status.

* * * * *

(b) * * *

(6) [Reserved]

(7) *Enrollment in a course of study prohibited.* An alien who is admitted as, or changes status to, a B-1 or B-2

nonimmigrant on or after April 12, 2002, or who files a request to extend the period of authorized stay in B-1 or B-2 nonimmigrant status on or after such date, violates the conditions of his or her B-1 or B-2 status if the alien enrolls in a course of study. Such an alien who desires to enroll in a course of study must either obtain an F-1 or M-1 nonimmigrant visa from a consular officer abroad and seek readmission to the United States, or apply for and obtain a change of status under section 248 of the Act and 8 CFR part 248. The alien may not enroll in the course of study until the Service has admitted the alien as an F-1 or M-1 nonimmigrant or has approved the alien's application under part 248 of this chapter and changed the alien's status to that of an F-1 or M-1 nonimmigrant.

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PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

3. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184; 1258; 8 CFR part 2.

4. Section 248.1 is amended by revising paragraph (c) to read as follows:

§ 248.1 Eligibility.

* * * * *

(c) *Change of nonimmigrant classification to that of a nonimmigrant student.*

(1) Except as provided in paragraph (c)(3) of this section, a nonimmigrant applying for a change of classification as an F-1 or M-1 student is not considered ineligible for such a change solely because the applicant may have started attendance at school before the application was submitted. The district director or service center director shall deny an application for a change to classification as an M-1 student if the applicant intends to pursue the course of study solely in order to qualify for a subsequent change of nonimmigrant classification to that of an alien temporary worker under section 101(a)(15)(H) of the Act. Furthermore, an alien may not change from

classification as an M-1 student to that of an F-1 student.

(2) [Reserved]

(3) A nonimmigrant who is admitted as, or changes status to, a B-1 or B-2 nonimmigrant on or after April 12, 2002, or who files a request to extend the period of authorized stay as a B-1 or B-2 nonimmigrant on or after such date, may not pursue a course of study at an approved school unless the Service has approved his or her application for change of status to a classification as an F-1 or M-1 student. The district director or service center director will deny the change of status if the B-1 or B-2 nonimmigrant enrolled in a course of study before filing the application for change of status or while the application is pending before the Service.

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Dated: April 9, 2002.

James W. Ziglar,

*Commissioner, Immigration and
Naturalization Service.*

[FR Doc. 02-8926 Filed 4-9-02; 1:54 pm]

BILLING CODE 4410-10-P