

Section 808(b)(2) of the FD&C Act requires FDA to develop model accreditation standards that recognized accreditation bodies shall use to qualify third-party certification bodies for accreditation, and in so doing, to look to existing standards for certification bodies (as of the date of enactment of FSMA) to avoid unnecessary duplication of efforts and costs. This guidance constitutes the model accreditation standards referred to in section 808(b)(2) of the FD&C Act. The guidance contains FDA recommendations on third-party certification body qualifications for accreditation to conduct food safety audits and to issue food and/or facility certifications under an FDA program required by FSMA.

FDA was guided in developing this guidance, in part, by the National Technology Transfer and Advancement Act of 1995, which directs Federal Agencies to use voluntary consensus standards in lieu of government-unique standards, except where inconsistent with law or otherwise impractical.

In developing the guidance, FDA considered several voluntary consensus standards for their relevance to the qualifications of third-party certification bodies that would certify foreign food facilities and/or their foods for conformance with the requirements of the FD&C Act. FDA also sought to identify the standards most commonly used by stakeholders (*e.g.*, other governments, public and private accreditation bodies, the food industry, and the international standards community) in qualifying third-party certification bodies for conducting food safety audits. As a result, FDA was guided in developing the model accreditation standards guidance document by International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) ISO/IEC 17021: *Conformity Assessment—Requirements for bodies providing audit and certification management systems* (2015) (ISO/IEC 17021:2015) and ISO/IEC 17065: *Conformity Assessment—Requirements for bodies certifying products, processes and services* (2012) (ISO/IEC 17065:2012).

We received several comments on the draft guidance and have modified the final guidance where appropriate. We revised the guidance for clarity and conformance with the final rule. We also updated references to the ISO/IEC standards. The guidance announced in this notice finalizes the draft guidance dated July 2015.

## II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collection of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information regarding “Accreditation of Third Party Certification Bodies to Conduct Food Safety Audits and Issue Certifications,” have been approved under OMB control number 0910–0750.

## III. Electronic Access

Persons with access to the Internet may obtain the guidance at either <http://www.fda.gov/FoodGuidances> or <http://www.regulations.gov>. Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: December 1, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

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## DEPARTMENT OF STATE

### 22 CFR Part 41

**RIN 1400–AD96**

**[Public Notice: 9638]**

### **Visas: Classification of Immediate Family Members as A, C–3, G, and NATO Nonimmigrants**

**AGENCY:** State Department.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the definition of immediate family for purposes of A, C–3, G, and NATO visa classifications in two ways: It revises the eligibility requirements for unmarried adult sons and daughters age 21 or older for these visa classifications, and clarifies for purposes of G–4 visa classification that the international organization employing the principal alien must recognize an individual as immediate family to be eligible for derivative U.S. visa status. Furthermore, this rule permits qualified immediate family members of A–1, A–2, G–1, G–2, G–3, and G–4 nonimmigrants to be independently classified as NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, and NATO–6.

**DATES:** This final rule is effective on December 7, 2016.

**FOR FURTHER INFORMATION CONTACT:** Paul-Anthony L. Magadia, U.S. Department of State, Office of

Legislation and Regulations, CA/VO/L/R, 600 19th Street NW., SA–17, Room 12–526B, Washington, DC 20522, 202–485–7641 or [magadiapl@state.gov](mailto:magadiapl@state.gov).

**SUPPLEMENTARY INFORMATION:** Prior to this amendment, an unmarried adult son or daughter who is not part of any other household and resides regularly in the household of the principal alien must be classified in A or G visa classifications, even if otherwise eligible for another nonimmigrant classification and regardless of age or the intention of the sending government or international organization. Yet for purposes of privileges and immunities, the Department of State accepts only unmarried children under the age of 21, or unmarried sons and daughters under the age of 23 and in full-time attendance as students at post-secondary educational institutions, as dependents. Similarly, under 8 CFR 214.2(a)(2) and (g)(2) for employment authorization purposes, Department of Homeland Security (DHS) regulations generally only consider unmarried children under the age of 21, or unmarried sons and daughters under the age of 23 and in full-time attendance as students at post-secondary educational institutions, to be dependents. (Under certain circumstances, DHS, under its regulations, may also recognize as dependents sons and daughters up to the age of 25 or of any age if physically or mentally challenged.) In practice, requiring A or G classification for sons and daughters above these age limits precludes them from obtaining a nonimmigrant classification that would enable them to accept employment in the United States.

This rule narrows the definition of immediate family in the A, C–3 (aliens in transit under section 212(d)(8) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(8)), G, and relevant NATO nonimmigrant visa classifications so that only unmarried sons and daughters residing with the principal who are under the age of 21, or under the age of 23 and in full-time attendance as students at post-secondary educational institutions, will continue to be considered immediate family. Any other unmarried son or daughter residing with the principal will only qualify if he or she meets the same criteria the rule imposes on other family members. In particular, he or she must be recognized as an “immediate family member” by the sending government or international organization for purposes of eligibility for rights and benefits and also is individually authorized by the Department. An adult son or daughter

who is no longer recognized as an immediate family member would have to apply, and be eligible for, another visa classification or seek a change of status to another nonimmigrant status. This rule also amends 22 CFR 41.21(a)(3)(iii)(C) to clarify that for purposes of G-4 visa classification, the employing international organization must recognize individuals as immediate family members, before they may be treated as such for U.S. visa purposes, similar to the requirement that a sending government must recognize an individual as immediate family.

Finally, prior to this amendment, 22 CFR 41.22(b) and 41.24(b) required that an alien entitled to classification as an A-1, A-2, or G-1 through G-4 nonimmigrant must be classified as such, even those who would otherwise be eligible for another nonimmigrant classification. This rule allows immediate family members of A-1s, A-2s, and G-1s through G-4s to be instead independently classified as a principal in NATO-1 through NATO-6 visa classifications, but not other nonimmigrant classifications.

### Regulatory Findings

#### *Administrative Procedure Act*

The Department of State is of the opinion that regulating visa categories involves a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act. Since the Department is of the opinion that this rule is exempt from 5 U.S.C. 553, it is the view of the Department that the provisions of Section 553(d) do not apply. Therefore, this rule is effective upon publication.

#### *Regulatory Flexibility Act/Executive Order 13272: Small Business*

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may

result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule does not require the Department to prepare a statement because it will not result in any such expenditure, nor will it significantly or uniquely affect small governments. This rule involves visas, which involves individuals, and does not affect, state, local, or tribal governments, or businesses.

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined in 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness 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 adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets. This rule involves visas, which involves individuals, and does not affect, state, local, or tribal governments, or businesses.

#### *Executive Orders 12866 and 13563*

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These Executive Orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has examined this rule in light of Executive Order 13563, and has determined that the rulemaking is consistent with the guidance therein.

#### *Executive Orders 12372 and 13132: Federalism*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

#### *Executive Order 12988: Civil Justice Reform*

The Department has reviewed the rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

#### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

#### *Paperwork Reduction Act*

This rule does not impose or revise any reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

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

Aliens, Immigration, Nonimmigrant visas.

For the reasons stated in the preamble, 22 CFR part 41 is amended as follows:

#### **PART 41—[AMENDED]**

- 1. The authority citation for part 41 continues to read as follows:

**Authority:** 22 U.S.C. 2651a; 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295).

- 2. Section 41.21 is amended by revising paragraph (a)(3) to read as follows:

#### **§ 41.21 Foreign Officials—General.**

(a) \* \* \*

(3) Immediate family, as used in INA 101(a)(15)(A), 101(a)(15)(G), and 212(d)(8), and in classification under the NATO visa symbols, means:

(i) The spouse who resides regularly in the household of the principal alien and is not a member of some other household;

(ii) Unmarried sons and daughters, whether by blood or adoption, who reside regularly in the household of the principal alien and who are not members of some other household, and provided that such unmarried sons and daughters are:

(A) Under the age of 21, or

(B) Under the age of 23 and in full-time attendance as students at post-secondary educational institutions; and

- (iii) Other individuals who:
  - (A) Reside regularly in the household of the principal alien;
  - (B) Are not members of some other household;
  - (C) Are recognized as dependents of the principal alien by the sending government or international organization, as demonstrated by eligibility for rights and benefits, such as the issuance of a diplomatic or official passport, or travel or other allowances; and
  - (D) Are individually authorized by the Department.

\* \* \* \* \*

■ 3. Section 41.22 is amended by revising paragraph (b) to read as follows:

**§ 41.22 Officials of foreign governments.**

\* \* \* \* \*

(b) *Classification under INA section 101(a)(15)(A).* An alien entitled to classification under INA section 101(a)(15)(A) shall be classified under this section even if eligible for another nonimmigrant classification. An exception may be made where an immediate family member is classifiable as A-1 or A-2 under paragraph (a)(2) of this section is also independently classifiable as a principal under INA section 101(a)(15)(G)(i), (ii), (iii), (iv) or in NATO-1 through NATO-6 classification.

\* \* \* \* \*

■ 4. Section 41.24 is amended by revising paragraph (b)(4) to read as follows:

**§ 41.24 International organization aliens.**

\* \* \* \* \*

(b) \* \* \*

(4) An alien not classifiable under INA section 101(a)(15)(A) or in NATO-1 through NATO-6 classification but entitled to classification under INA section 101(a)(15)(G) shall be classified under section 101(a)(15)(G), even if also eligible for another nonimmigrant classification. An alien classified under INA section 101(a)(15)(G) as an immediate family member of a principal alien classifiable G-1, G-2, G-3 or G-4, may continue to be so classified even if he or she obtains employment subsequent to his or her initial entry into the United States that would allow classification under INA section 101(a)(15)(A). Such alien shall not be classified in a category other than A or

G, even if also eligible for another nonimmigrant classification.

\* \* \* \* \*

**Michele Thoren Bond,**  
*Assistant Secretary for Consular Affairs,*  
*Department of State.*

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**BILLING CODE P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[TD 9800]**

**RIN 1545-BM75**

**Covered Asset Acquisitions**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary Income Tax Regulations under section 901(m) of the Internal Revenue Code (Code) with respect to transactions that generally are treated as asset acquisitions for U.S. income tax purposes and either are treated as stock acquisitions or are disregarded for foreign income tax purposes. These regulations are necessary to provide guidance on applying section 901(m). The text of the temporary regulations also serves in part as the text of the proposed regulations under section 901(m) (REG-129128-14) published in the Proposed Rules section of this issue of the **Federal Register**.

**DATES:** *Effective date:* These regulations are effective on December 7, 2016.

*Applicability dates:* For dates of applicability, see §§ 1.901(m)-1T(b), 1.901(m)-2T(f), 1.901(m)-4T(g), 1.901(m)-5T(i), and 1.901(m)-6T(d).

**FOR FURTHER INFORMATION CONTACT:** Jeffrey L. Parry, (202) 317-6936 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

**I. Section 901(m)**

Section 212 of the Education Jobs and Medicaid Assistance Act (EJMAA), enacted on August 10, 2010 (Public Law 111-226), added section 901(m) to the Code. Section 901(m)(1) provides that, in the case of a covered asset acquisition (CAA), the disqualified portion of any foreign income tax determined with respect to the income or gain attributable to relevant foreign assets (RFAs) will not be taken into account in determining the foreign tax credit

allowed under section 901(a), and in the case of foreign income tax paid by a section 902 corporation (as defined in section 909(d)(5)), will not be taken into account for purposes of section 902 or 960. Instead, the disqualified portion of any foreign income tax (the disqualified tax amount) is permitted as a deduction. See section 901(m)(6).

Under section 901(m)(2), a CAA is (i) a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies; (ii) any transaction that is treated as an acquisition of assets for U.S. income tax purposes and as the acquisition of stock of a corporation (or is disregarded) for purposes of a foreign income tax; (iii) any acquisition of an interest in a partnership that has an election in effect under section 754; and (iv) to the extent provided by the Secretary, any other similar transaction.

Section 901(m)(3)(A) provides that the term “disqualified portion” means, with respect to any CAA, for any taxable year, the ratio (expressed as a percentage) of (i) the aggregate basis differences (but not below zero) allocable to such taxable year with respect to all RFAs; divided by (ii) the income on which the foreign income tax referenced in section 901(m)(1) is determined. If the taxpayer fails to substantiate the income on which the foreign income tax is determined to the satisfaction of the Secretary, such income will be determined by dividing the amount of such foreign income tax by the highest marginal tax rate applicable to the taxpayer’s income in the relevant jurisdiction.

Section 901(m)(3)(B)(i) provides the general rule that the basis difference with respect to any RFA will be allocated to taxable years using the applicable cost recovery method for U.S. income tax purposes. Section 901(m)(3)(B)(ii) provides that, except as otherwise provided by the Secretary, if there is a disposition of an RFA, the basis difference allocated to the taxable year of the disposition will be the excess of the basis difference of such asset over the aggregate basis difference of all prior taxable years. The statute further provides that no basis difference with respect to such asset will be allocated to any taxable year thereafter.

Section 901(m)(3)(C)(i) provides that basis difference means, with respect to any RFA, the excess of (i) the adjusted basis of such asset immediately after the CAA, over (ii) the adjusted basis of such asset immediately before the CAA. If the adjusted basis of an RFA immediately before the CAA exceeds the adjusted basis of the RFA immediately after the CAA (that is, where the adjusted basis