

the Commissioner of the date, time, and place of the arrival of the alien. The Commissioner will coordinate the arrival of the alien in parole status with the port director prior to the time of arrival.

(iii) Parole will be authorized for a period of thirty (30) days to commence upon the alien's arrival in the United States in order for the LEA to submit a completed Form I-854 to the Assistant Attorney General, Criminal Division. Upon the submission to the Assistant Attorney General of the Form I-854 requesting S classification, the period of parole will be automatically extended while the request is being reviewed. The Assistant Attorney General, Criminal Division, will notify the Commissioner of the submission of a Form I-854.

(b) *Termination of parole*—(1) *General*. The Commissioner may terminate parole for any alien (including a member of the alien's family) in parole status under this section where termination is in the public interest. A district director may also terminate parole when, in the district director's opinion, termination is in the public interest and circumstances do not reasonably permit referral of the case to the Commissioner. In such a case, the Commissioner shall be notified immediately. In the event the Commissioner, or in the appropriate case, a district director, decides to terminate the parole of an alien witness or informant authorized under the terms of this paragraph, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to terminate parole.

(2) *Termination of parole and admission in S classification*. When an LEA has filed a request for an alien in author-

ized parole status to be admitted in S nonimmigrant classification and that request has been approved by the Commissioner pursuant to the procedures outlined in 8 CFR 214.2(t), the Commissioner may, in the exercise of discretion:

(i) Terminate the alien's parole status;

(ii) Determine eligibility for waivers; and

(iii) Admit the alien in S nonimmigrant classification pursuant to the terms and conditions of section 101(a)(15)(S) of the Act and 8 CFR 214.2(t).

(c) *Departure*. If the alien's parole has been terminated and the alien has been ordered excluded from the United States, the LEA shall ensure departure from the United States and so inform the district director in whose jurisdiction the alien has last resided. The district director, if necessary, shall oversee the alien's departure from the United States and, in any event, shall notify the Commissioner of the alien's departure. The Commissioner shall be notified in writing of the failure of any alien authorized parole under this paragraph to depart in accordance with an order of exclusion and deportation entered after parole authorized under this paragraph has been terminated.

(d) *Failure to comply with procedures*. Any failure to adhere to the parole procedures contained in this section shall immediately be brought to the attention of the Commissioner, who will notify the Attorney General.

[60 FR 44265, Aug. 25, 1995]

§ 212.15 Certificates for foreign health care workers.

(a) *General certification requirements*. (1) Except as provided in paragraph (b) or paragraph (d)(1) of this section, any alien who seeks admission to the United States as an immigrant or as a nonimmigrant for the primary purpose of performing labor in a health care occupation listed in paragraph (c) of this section is inadmissible unless the alien presents a certificate from a credentialing organization, listed in paragraph (e) of this section.

(2) In the alternative, an eligible alien who seeks to enter the United

§212.15

8 CFR Ch. I (1-1-04 Edition)

States for the primary purpose of performing labor as a nurse may present a certified statement as provided in paragraph (h) of this section.

(3) A certificate or certified statement described in this section does not constitute professional authorization to practice in that health care occupation.

(b) *Inapplicability of the ground of inadmissibility.* This section does not apply to:

(1) Physicians;

(2) Aliens seeking admission to the United States to perform services in a non-clinical health care occupation. A non-clinical care occupation is one in which the alien is not required to perform direct or indirect patient care. Occupations which are considered to be non-clinical include, but are not limited to, medical teachers, medical researchers, and managers of health care facilities;

(3) Aliens coming to the United States to receive training as an H-3 nonimmigrant, or receiving training as part of an F or J nonimmigrant program.

(4) The spouse and dependent children of any immigrant or non-immigrant alien;

(5) Any alien applying for adjustment of status to that of a permanent resident under any provision of law other than under section 245 of the Act, or any alien who is seeking adjustment of status under section 245 of the Act on the basis of a relative visa petition approved under section 203(a) of the Act, or any alien seeking adjustment of status under section 245 of the Act on the basis of an employment-based petition approved pursuant to section 203(b) of the Act for employment that does not fall under one of the covered health care occupations listed in paragraph (c) of this section.

(c) *Covered health care occupations.* With the exception of the aliens described in paragraph (b) of this section, this paragraph (c) applies to any alien seeking admission to the United States to perform labor in one of the following health care occupations, regardless of where he or she received his or her education or training:

(1) Licensed Practical Nurses, Licensed Vocational Nurses, and Registered Nurses.

(2) Occupational Therapists.

(3) Physical Therapists.

(4) Speech Language Pathologists and Audiologists.

(5) Medical Technologists (Clinical Laboratory Scientists).

(6) Physician Assistants.

(7) Medical Technicians (Clinical Laboratory Technicians)

(d) *Presentation of certificate or certified statements.* (1) *Aliens required to obtain visas.* Except as provided in paragraph (n) of this section, if 8 CFR 212.1 requires an alien who is described in paragraph (a) of this section and who is applying for admission as a non-immigrant seeking to perform labor in a health care occupation as described in this section to obtain a non-immigrant visa, the alien must present a certificate or certified statement to a consular officer at the time of visa issuance and to the Department of Homeland Security (DHS) at the time of admission. The certificate or certified statement must be valid at the time of visa issuance and admission at a port-of-entry. An alien who has previously presented a foreign health care worker certification or certified statement for a particular health care occupation will be required to present it again at the time of visa issuance or each admission to the United States.

(2) *Aliens not requiring a nonimmigrant visa.* Except as provided in paragraph (n) of this section, an alien described in paragraph (a) of this section who, pursuant to 8 CFR 212.1, is not required to obtain a nonimmigrant visa to apply for admission to the United States must present a certificate or certified statement as provided in this section to an immigration officer at the time of initial application for admission to the United States to perform labor in a particular health care occupation. An alien who has previously presented a foreign health care worker certification or certified statement for a particular health care occupation will be required to present it again at the time of each application for admission.

(e) *Approved credentialing organizations for health care workers.* An alien may present a certificate from any

credentialing organization listed in this paragraph (e) with respect to a particular health care field. In addition to paragraphs (e)(1) through (e)(3) of this section, the DHS will notify the public of additional credentialing organizations through the publication of notices in the FEDERAL REGISTER.

(1) The Commission on Graduates of Foreign Nursing Schools (CGFNS) is authorized to issue certificates under section 212(a)(5)(C) of the Act for nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants.

(2) The National Board for Certification in Occupational Therapy (NBCOT) is authorized to issue certificates in the field of occupational therapy pending final adjudication of its credentialing status under this part.

(3) The Foreign Credentialing Commission on Physical Therapy (FCCPT) is authorized to issue certificates in the field of physical therapy pending final adjudication of its credentialing status under this part.

(f) *Requirements for issuance of health care certification.* (1) Prior to issuing a certification to an alien, the organization must verify the following:

(i) That the alien's education, training, license, and experience are comparable with that required for an American health care worker of the same type;

(ii) That the alien's education, training, license, and experience are authentic and, in the case of a license, unencumbered;

(iii) That the alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States. This verification is not binding on the DHS; and

(iv) Either that the alien has passed a test predicting success on the occupation's licensing or certification examination, provided such a test is recognized by a majority of states licensing the occupation for which the certification is issued, or that the alien has

passed the occupation's licensing or certification examination.

(2) A certificate issued under section 212(a)(5)(C) of the Act must contain the following:

(i) The name, address, and telephone number of the credentialing organization, and a point of contact to verify the validity of the certificate;

(ii) The date the certificate was issued;

(iii) The health care occupation for which the certificate was issued; and

(iv) The alien's name, and date and place of birth.

(g) *English language requirements.* (1) With the exception of those aliens described in paragraph (g)(2) of this section, every alien must meet certain English language requirements in order to obtain a certificate. The Secretary of HHS has sole authority to set standards for these English language requirements, and has determined that an alien must have a passing score on one of the three tests listed in paragraph (g)(3) of this section before he or she can be granted a certificate. HHS will notify The Department of Homeland Security of additions or deletions to this list, and The Department of Homeland Security will publish such changes in the FEDERAL REGISTER.

(2) The following aliens are exempt from the English language requirements:

(i) Alien nurses who are presenting a certified statement under section 212(r) of the Act; and

(ii) Aliens who have graduated from a college, university, or professional training school located in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, or the United States.

(3) The following English testing services have been approved by the Secretary of HHS:

(i) Educational Testing Service (ETS).

(ii) Test of English in International Communication (TOEIC) Service International.

(iii) International English Language Testing System (IELTS).

(4) Passing English test scores for various occupations.

(i) *Occupational and physical therapists.* An alien seeking to perform labor

in the United States as an occupational or physical therapist must obtain the following scores on the English tests administered by ETS: Test Of English as a Foreign Language (TOEFL): Paper-Based 560, Computer-Based 220; Test of Written English (TWE): 4.5; Test of Spoken English (TSE): 50. The certifying organizations shall not accept the results of the TOEIC, or the IELTS for the occupation of occupational therapy or physical therapy.

(ii) *Registered nurses and other health care workers requiring the attainment of a baccalaureate degree.* An alien coming to the United States to perform labor as a registered nurse (other than a nurse presenting a certified statement under section 212(r) of the Act) or to perform labor in another health care occupation requiring a baccalaureate degree (other than occupational or physical therapy) must obtain one of the following combinations of scores to obtain a certificate:

(A) ETS: TOEFL: Paper-Based 540, Computer-Based 207; TWE: 4.0; TSE: 50;

(B) TOEIC Service International: TOEIC: 725; plus TWE: 4.0 and TSE: 50; or

(C) IELTS: 6.5 overall with a spoken band score of 7.0. This would require the Academic module.

(iii) *Occupations requiring less than a baccalaureate degree.* An alien coming to the United States to perform labor in a health care occupation that does not require a baccalaureate degree must obtain one of the following combinations of scores to obtain a certificate:

(A) ETS: TOEFL: Paper-Based 530, Computer-Based 197; TWE: 4.0; TSE: 50;

(B) TOEIC Service International: TOEIC: 700; plus TWE 4.0 and TSE: 50; or

(C) IELTS: 6.0 overall with a spoken band score of 7.0. This would allow either the Academic or the General module.

(h) *Alternative certified statement for certain nurses.* (1) CGFNS is authorized to issue certified statements under section 212(r) of the Act for aliens seeking to enter the United States to perform labor as nurses. The DHS will notify the public of new organizations that are approved to issue certified state-

ments through notices published in the FEDERAL REGISTER.

(2) An approved credentialing organization may issue a certified statement to an alien if each of the following requirements is satisfied:

(i) The alien has a valid and unrestricted license as a nurse in a state where the alien intends to be employed and such state verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(ii) The alien has passed the National Council Licensure Examination for registered nurses (NCLEX-RN);

(iii) The alien is a graduate of a nursing program in which the language of instruction was English;

(iv) The nursing program was located in Australia, Canada (except Quebec), Ireland, New Zealand, South Africa, the United Kingdom, or the United States; or in any other country designated by unanimous agreement of CGFNS and any equivalent credentialing organizations which have been approved for the certification of nurses and which are listed at paragraph (e) of this section; and

(v) The nursing program was in operation on or before November 12, 1999, or has been approved by unanimous agreement of CGFNS and any equivalent credentialing organizations that have been approved for the certification of nurses.

(3) An individual who obtains a certified statement need not comply with the certificate requirements of paragraph (f) or the English language requirements of paragraph (g) of this section.

(4) A certified statement issued to a nurse under section 212(r) of the Act must contain the following information:

(i) The name, address, and telephone number of the credentialing organization, and a point of contact to verify the validity of the certified statement;

(ii) The date the certified statement was issued; and

(iii) The alien's name, and date and place of birth.

(i) *Streamlined certification process—(1) Nurses.* An alien nurse who has graduated from an entry level program accredited by the National League for Nursing Accreditation Commission

(NLNAC) or the Commission on Collegiate Nursing Education (CCNE) is exempt from the educational comparability review and English language proficiency testing.

(2) *Occupational Therapists.* An alien occupational therapist who has graduated from a program accredited by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association (AOTA) is exempt from the educational comparability review and English language proficiency testing.

(3) *Physical therapists.* An alien physical therapist who has graduated from a program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) of the American Physical Therapy Association (APTA) is exempt from the educational comparability review and English language proficiency testing.

(4) *Speech language pathologists and audiologists.* An alien speech language pathologists and/or audiologist who has graduated from a program accredited by the Council on Academic Accreditation in Audiology and Speech Language Pathology (CAA) of the American Speech-Language-Hearing Association (ASHA) is exempt from the educational comparability review and English language proficiency testing.

(j) *Application process for credentialing organizations—(1) Organizations other than CGFNS.* An organization, other than CGFNS, seeking to obtain approval to issue certificates to health care workers, or certified statements to nurses shall submit Form I-905, Application for Authorization to Issue Certification for Health Care Workers, and all accompanying required evidence, to the Director, Nebraska Service Center, in duplicate with the appropriate fee contained in 8 CFR 103.7(b)(1). An organization seeking authorization to issue certificates or certified statements must agree to submit all evidence required by the DHS and, upon request, allow the DHS to review the organization's records related to the certification process. As required on Form I-905, the application must:

(i) Clearly describe and identify the organization seeking authorization to issue certificates;

(ii) List the occupations for which the organization desires to provide certificates;

(iii) Describe how the organization substantially meets the standards described at paragraph (k) of this section;

(iv) Describe the organization's expertise, knowledge, and experience in the health care occupation(s) for which it desires to issue certificates;

(v) Provide a point of contact;

(vi) Describe the verification procedure the organization has designed in order for the DHS to verify the validity of a certificate; and

(vii) Describe how the organization will process and issue in a timely manner the certificates.

(2) *Applications filed by CGFNS.* (i) CGFNS shall submit Form I-905 to the Director, Nebraska Service Center, to ensure that it will be in compliance with the regulations governing the issuance and content of certificates to nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants under section 212(a)(5)(C) of the Act, or issuing certified statements to nurses under section 212(r) of the Act.

(ii) Prior to issuing certificates for any other health care occupations, CGFNS shall submit Form I-905, Application for Authorization to Issue Certification for Health Care Workers, to the Director, Nebraska Service Center with the appropriate fee contained in 8 CFR 103.7(b)(1) for authorization to issue such certificates. The DHS will evaluate CGFNS' expertise with respect to the particular health care occupation for which authorization to issue certificates is sought, in light of CGFNS' statutory designation as a credentialing organization.

(3) *Procedure for review of applications by credentialing organizations.* (i) After receipt of Form I-905, the Director, Nebraska Service Center shall, in all cases, forward a copy of the application and supporting documents to the Secretary of HHS in order to obtain an opinion on the merits of the application. The DHS will not render a decision on the request until the Secretary

§ 212.15

8 CFR Ch. I (1-1-04 Edition)

of HHS provides an opinion. The DHS shall accord the Secretary of HHS' opinion great weight in reaching its decision. The DHS may deny the organization's request notwithstanding the favorable recommendation from the Secretary of HHS, on grounds unrelated to the credentialing of health care occupations or health care services.

(ii) The DHS will notify the organization of the decision on its application in writing and, if the request is denied, of the reasons for the denial. Approval of authorization to issue certificates to foreign health care workers or certified statements to nurses will be made in 5-year increments, subject to the review process described at paragraph (l) of this section.

(iii) If the application is denied, the decision may be appealed pursuant to 8 CFR 103.3 to the Associate Commissioner for Examinations.

(k) *Standards for credentialing organizations.* The DHS will evaluate organizations, including CGFNS, seeking to obtain approval from the DHS to issue certificates for health care workers, or certified statements for nurses. Any organization meeting the standards set forth in paragraph (k)(1) of this section can be eligible for authorization to issue certificates. While CGFNS has been specifically listed in the statute as an entity authorized to issue certificates, it is not exempt from governmental oversight. All organizations will be reviewed, including CGFNS, to guarantee that they continue to meet the standards required of all certifying organizations, under the following:

(1) *Structure of the organization.* (i) The organization shall be incorporated as a legal entity.

(ii)(A) The organization shall be independent of any organization that functions as a representative of the occupation or profession in question or serves as or is related to a recruitment/place-ment organization.

(B) The DHS shall not approve an organization that is unable to render impartial advice regarding an individual's qualifications regarding training, experience, and licensure.

(C) The organization must also be independent in all decision making matters pertaining to evaluations and/

or examinations that it develops including, but not limited to: policies and procedures; eligibility requirements and application processing; standards for granting certificates and their renewal; examination content, development, and administration; examination cut-off scores, excluding those pertaining to English language requirements; grievance and disciplinary processes; governing body and committee meeting rules; publications about qualifying for a certificate and its renewal; setting fees for application and all other services provided as part of the screening process; funding, spending, and budget authority related to the operation of the certification organization; ability to enter into contracts and grant arrangements; ability to demonstrate adequate staffing and management resources to conduct the program(s) including the authority to approve selection of, evaluate, and initiate dismissal of the chief staff member.

(D) An organization whose fees are based on whether an applicant receives a visa may not be approved.

(iii) The organization shall include the following representation in the portion of its organization responsible for overseeing certification and, where applicable, examinations:

(A) Individuals from the same health care discipline as the alien health care worker being evaluated who are eligible to practice in the United States; and

(B) At least one voting public member to represent the interests of consumers and protect the interests of the public at large. The public member shall not be a member of the discipline or derive significant income from the discipline, its related organizations, or the organization issuing the certificate.

(iv) The organization must have a balanced representation such that the individuals from the same health care discipline, the voting public members, and any other appointed individuals have an equal say in matters relating to credentialing and/or examinations.

(v) The organization must select representatives of the discipline using one

of the following recommended methods, or demonstrate that it has a selection process that meets the intent of these methods:

(A) Be selected directly by members of the discipline eligible to practice in the United States;

(B) Be selected by members of a membership organization representing the discipline or by duly elected representatives of a membership organization; or

(C) Be selected by a membership organization representing the discipline from a list of acceptable candidates supplied by the credentialing body.

(vi) The organization shall use formal procedures for the selection of members of the governing body that prohibit the governing body from selecting a majority of its successors. Not-for-profit corporations which have difficulty meeting this requirement may provide in their applications evidence that the organization is independent, and free of material conflicts of interest regarding whether an alien receives a visa.

(vii) The organization shall be separate from the accreditation and educational functions of the discipline, except for those entities recognized by the Department of Education as having satisfied the requirement of independence.

(viii) The organization shall publish and make available a document which clearly defines the responsibilities of the organization and outlines any other activities, arrangements, or agreements of the organization that are not directly related to the certification of health care workers.

(2) *Resources of the organization.* (i) The organization shall demonstrate that its staff possess the knowledge and skills necessary to accurately assess the education, work experience, licensure of health care workers, and the equivalence of foreign educational institutions, comparable to those of United States-trained health care workers and institutions.

(ii) The organization shall demonstrate the availability of financial and material resources to effectively and thoroughly conduct regular and ongoing evaluations on an international basis.

(iii) If the health care field is one for which a majority of the states require a predictor test, the organization shall demonstrate the ability to conduct examinations in those countries with educational and evaluation systems comparable to the majority of states.

(iv) The organization shall have the resources to publish and make available general descriptive materials on the procedures used to evaluate and validate credentials, including eligibility requirements, determination procedures, examination schedules, locations, fees, reporting of results, and disciplinary and grievance procedures.

(3) *Candidate evaluation and testing mechanisms.* (i) The organization shall publish and make available a comprehensive outline of the information, knowledge, or functions covered by the evaluation/examination process, including information regarding testing for English language competency.

(ii) The organization shall use reliable evaluation/examination mechanisms to evaluate individual credentials and competence that is objective, fair to all candidates, job related, and based on knowledge and skills needed in the discipline.

(iii) The organization shall conduct ongoing studies to substantiate the reliability and validity of the evaluation/examination mechanisms.

(iv) The organization shall implement a formal policy of periodic review of the evaluation/examination mechanism to ensure ongoing relevance of the mechanism with respect to knowledge and skills needed in the discipline.

(v) The organization shall use policies and procedures to ensure that all aspects of the evaluation/examination procedures, as well as the development and administration of any tests, are secure.

(vi) The organization shall institute procedures to protect against falsification of documents and misrepresentation, including a policy to request each applicant's transcript(s) and degree(s) directly from the educational licensing authorities.

(vii) The organization shall establish policies and procedures that govern the length of time the applicant's records must be kept in their original format.

(viii) The organization shall publish and make available, at least annually, a summary of all screening activities for each discipline including, at least, the number of applications received, the number of applicants evaluated, the number receiving certificates, the number who failed, and the number receiving renewals.

(4) *Responsibilities to applicants applying for an initial certificate or renewal.* (i) The organization shall not discriminate among applicants as to age, sex, race, religion, national origin, disability, or marital status and shall include a statement of nondiscrimination in announcements of the evaluation/examination procedures and renewal certification process.

(ii) The organization shall provide all applicants with copies of formalized application procedures for evaluation/examination and shall uniformly follow and enforce such procedures for all applicants. Instructions shall include standards regarding English language requirements.

(iii) The organization shall implement a formal policy for the periodic review of eligibility criteria and application procedures to ensure that they are fair and equitable.

(iv) Where examinations are used, the organization shall provide competently proctored examination sites at least once annually.

(v) The organization shall report examination results to applicants in a uniform and timely fashion.

(vi) The organization shall provide applicants who failed either the evaluation or examination with information on general areas of deficiency.

(vii) The organization shall implement policies and procedures to ensure that each applicant's examination results are held confidential and delineate the circumstances under which the applicant's certification status may be made public.

(viii) The organization shall have a formal policy for renewing the certification if an individual's original certification has expired before the individual first seeks admission to the United States or applies for adjustment of status. Such procedures shall be restricted to updating information on licensure to determine the existence of

any adverse actions and the need to re-establish English competency.

(ix) The organization shall publish due process policies and procedures for applicants to question eligibility determinations, examination or evaluation results, and eligibility status.

(x) The organization shall provide all qualified applicants with a certificate in a timely manner.

(5) *Maintenance of comprehensive and current information.* (i) The organization shall maintain comprehensive and current information of the type necessary to evaluate foreign educational institutions and accrediting bodies for purposes of ensuring that the quality of foreign educational programs is equivalent to those training the same occupation in the United States. The organization shall examine, evaluate, and validate the academic and clinical requirements applied to each country's accrediting body or bodies, or in countries not having such bodies, of the educational institution itself.

(ii) The organization shall also evaluate the licensing and credentialing system(s) of each country or licensing jurisdiction to determine which systems are equivalent to that of the majority of the licensing jurisdictions in the United States.

(6) *Ability to conduct examinations fairly and impartially.* An organization undertaking the administration of a predictor examination, or a licensing or certification examination shall demonstrate the ability to conduct such examination fairly and impartially.

(7) *Criteria for awarding and governing certificate holders.* (i) The organization shall issue a certificate after the education, experience, license, and English language competency have been evaluated and determined to be equivalent to their United States counterparts. In situations where a United States nationally recognized licensure or certification examination, or a test predicting the success on the licensure or certification examination, is offered overseas, the applicant must pass the examination or the predictor test prior to receiving certification. Passage of a test predicting the success on the licensure or certification examination may be accepted only if a majority of states (and Washington, DC) licensing

the profession in which the alien intends to work recognize such a test.

(ii) The organization shall have policies and procedures for the revocation of certificates at any time if it is determined that the certificate holder was not eligible to receive the certificate at the time that it was issued. If the organization revokes an individual's certificate, it must notify the DHS, via the Nebraska Service Center, and the appropriate state regulatory authority with jurisdiction over the individual's health care profession. The organization may not reissue a certificate to an individual whose certificate has been revoked.

(8) *Criteria for maintaining accreditation.* (i) The organization shall advise the DHS of any changes in purpose, structure, or activities of the organization or its program(s).

(ii) The organization shall advise the DHS of any major changes in the evaluation of credentials and examination techniques, if any, or in the scope or objectives of such examinations.

(iii) The organization shall, upon the request of the DHS, submit to the DHS, or any organization designated by the DHS, information requested of the organization and its programs for use in investigating allegations of non-compliance with standards and for general purposes of determining continued approval as an independent credentialing organization.

(iv) The organization shall establish performance outcome measures that track the ability of the certificate holders to pass United States licensure or certification examinations. The purpose of the process is to ensure that certificate holders pass United States licensure or certification examinations at the same pass rate as graduates of United States programs. Failure to establish such measures, or having a record showing an inability of persons granted certificates to pass United States licensure examinations at the same rate as graduates of United States programs, may result in a ground for termination of approval. Information regarding the passage rates of certificate holders shall be maintained by the organization and provided to HHS on an annual basis, to the DHS as part of the 5-year reauthoriza-

tion application, and at any other time upon request by HHS or the DHS.

(v) The organization shall be in ongoing compliance with other policies specified by the DHS.

(l) *DHS review of the performance of certifying organizations.* The DHS will review credentialing organizations every 5 years to ensure continued compliance with the standards described in this section. Such review will occur concurrent with the adjudication of a Form I-905 requesting reauthorization to issue health care worker certificates. The DHS will notify the credentialing organization in writing of the results of the review and request for reauthorization. The DHS may conduct a review of the approval of any request for authorization to issue certificates at any time within the 5-year period of authorization for any reason. If at any time the DHS determines that an organization is not complying with the terms of its authorization or if other adverse information relating to eligibility to issue certificates is developed, the DHS may initiate termination proceedings.

(m) *Termination of certifying organizations.* (1) If the DHS determines that an organization has been convicted, or the directors or officers of an authorized credentialing organization have individually been convicted of the violation of state or federal laws, or other information is developed such that the fitness of the organization to continue to issue certificates or certified statements is called into question, the DHS shall automatically terminate authorization for that organization to issue certificates or certified statements by issuing to the organization a notice of termination of authorization to issue certificates to foreign health care workers. The notice shall reference the specific conviction that is the basis of the automatic termination.

(2) If the DHS determines that an organization is not complying with the terms of its authorization or other adverse information relating to eligibility to issue certificates is uncovered during the course of a review or otherwise brought to the DHS' attention, or if the DHS determines that an organization currently authorized to issue certificates or certified statements has

§212.15

8 CFR Ch. I (1–1–04 Edition)

not submitted an application or provided all information required on Form I-905 within 6 months of July 25, 2003, the DHS will issue a Notice of Intent to Terminate authorization to issue certificates to the credentialing organization. The Notice shall set forth reasons for the proposed termination.

(i) The credentialing organization shall have 30 days from the date of the Notice of Intent to Terminate authorization to rebut the allegations, or to cure the noncompliance identified in the DHS's notice of intent to terminate.

(ii) DHS will forward to HHS upon receipt any information received in response to a Notice of Intent to Terminate an entity's authorization to issue certificates. Thirty days after the date of the Notice of Intent to Terminate, the DHS shall forward any additional evidence and shall request an opinion from HHS regarding whether the organization's authorization should be terminated. The DHS shall accord HHS' opinion great weight in determining whether the authorization should be terminated. After consideration of the rebuttal evidence, if any, and consideration of HHS' opinion, the DHS will promptly provide the organization with a written decision. If termination of credentialing status is made, the written decision shall set forth the reasons for the termination.

(3) An adverse decision may be appealed pursuant to 8 CFR 103.3 to the Associate Commissioner for Examinations. Termination of credentialing status shall remain in effect until and unless the terminated organization re-applies for credentialing status and is approved, or its appeal of the termination decision is sustained by the Administrative Appeals Office. There is no waiting period for an organization to re-apply for credentialing status.

(n) *Transition—(1) One year waiver.* Under the discretion given to the Secretary, DHS, under section 212(d)(3) of the Act (and, for cases described in paragraph (d)(1) of this section, upon the recommendation of the Secretary of State), the Secretary has determined that until July 26, 2004 the DHS shall, subject to the conditions in paragraph (n)(2) of this section, exercise favorably the discretion given to the Secretary

under section 212(d)(3) of the Act and may admit, extend the period of authorized stay, or change the non-immigrant status of an alien described in paragraph (d)(1) or paragraph (d)(2) of this section to the United States temporarily, despite the alien's inadmissibility under section 212(a)(5)(C) of the Act and paragraph (a) of this section in any case, if the DHS admits the alien, or extends the alien's period of authorized stay, or changes the alien's status on or before July 26, 2004; and the alien is not inadmissible under any other provision of section 212(a) of the Act (or has obtained a waiver of that inadmissibility). On or after July 26, 2004, such discretion shall be applied on a case by case basis.

(2) *Conditions.* Until July 26, 2004, the temporary admission, extension of stay, or change of status of an alien described in paragraph (d)(1) or (d)(2) of this section that is provided for under this paragraph (n) is subject to the following conditions:

(i) The admission, extension of stay, or change of status may not be for a period longer than 1 year from the date of the decision, even if the relevant provision of 8 CFR 214.2 would ordinarily permit the alien's admission for a longer period;

(ii) The alien must obtain the certification required by paragraph (a) of this section within 1 year of the date of decision to admit the alien or to extend the alien's stay or change the alien's status; and,

(iii) Any subsequent petition or application to extend the period of the alien's authorized stay or change the alien's nonimmigrant status must include proof that the alien has obtained the certification required by paragraph (a) of this section, if the extension or stay or change of status is sought for the primary purpose of the alien's performing labor in a health care occupation listed in paragraph (c) of this section.

(3) *Immigrant aliens.* An alien described in paragraph (a) of this section, who is coming to the United States as an immigrant or is applying for adjustment of status pursuant to section 245 of the Act (8 U.S.C. 1255), to perform labor in a health care occupation described in paragraph (c) of this section,

must submit the certificate or certified statement as provided in this section at the time of visa issuance or adjustment of status.

(4) *Expiration of certificate or certified statement.* The individual's certification or certified statement must be used for any admission into the United States, change of status within the United States, or adjustment of status within 5 years of the date that it is issued.

(5) *Revocation of certificate or certified statement.* When a credentialing organization notifies the DHS, via the Nebraska Service Center, that an individual's certification or certified statement has been revoked, the DHS will take appropriate action, including, but not limited to, revocation of approval of any related petitions, consistent with the Act and DHS regulations at 8 CFR 205.2, 8 CFR 214.2(h)(11)(iii), and 8 CFR 214.6(d)(5)(iii).

[68 FR 43915, July 25, 2003]

§212.16 Applications for exercise of discretion relating to T non-immigrant status.

(a) *Filing the waiver application.* An alien applying for the exercise of discretion under section 212(d)(13) or (d)(3)(B) of the Act (waivers of inadmissibility) in connection with an application for T nonimmigrant status shall submit Form I-192, with the appropriate fee in accordance with §103.7(b)(1) of this chapter or an application for a fee waiver, to the Service with the completed Form I-914 application package for status under section 101(a)(15)(T)(i) of the Act.

(b) *Treatment of waiver application.* (1) The Service shall determine whether a ground of inadmissibility exists with respect to the alien applying for T nonimmigrant status. If a ground of inadmissibility is found, the Service shall determine if it is in the national interest to exercise discretion to waive the ground of inadmissibility, except for grounds of inadmissibility based upon sections 212(a)(3), 212(a)(10)(C) and 212(a)(10)(E) of the Act, which the Commissioner may not waive. Special consideration will be given to the granting of a waiver of a ground of inadmissibility where the activities rendering the alien inadmissible were caused by or incident to the victimization de-

scribed under section 101(a)(15)(T)(i) of the Act.

(2) In the case of applicants inadmissible on criminal and related grounds under section 212(a)(2) of the Act, the Service will only exercise its discretion in exceptional cases unless the criminal activities rendering the alien inadmissible were caused by or were incident to the victimization described under section 101(a)(15)(T)(i) of the Act.

(3) An application for waiver of a ground of inadmissibility for T non-immigrant status (other than under section 212(a)(6) of the Act) will be granted only in exceptional cases when the ground of inadmissibility would prevent or limit the ability of the applicant to adjust to permanent resident status after the conclusion of 3 years.

(4) The Service shall have sole discretion to grant or deny a waiver, and there shall be no appeal of a decision to deny a waiver. However, nothing in this paragraph (b) is intended to prevent an applicant from re-filing a request for a waiver of a ground of inadmissibility in appropriate cases.

(c) *Incident to victimization.* When an applicant for status under section 101(a)(15)(T) of the Act seeks a waiver of a ground of inadmissibility under section 212(d)(13) of the Act on grounds other than those described in sections 212(a)(1) and (a)(4) of the Act, the applicant must establish that the activities rendering him or her inadmissible were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i)(I) of the Act.

(d) *Revocation.* The Commissioner may at any time revoke a waiver previously authorized under section 212(d) of the Act. Under no circumstances shall the alien or any party acting on his or her behalf have a right to appeal from a decision to revoke a waiver.

[67 FR 4795, Jan. 31, 2002]

PART 213—ADMISSION OF ALIENS ON GIVING BOND OR CASH DEPOSIT

AUTHORITY: 8 U.S.C. 1103; 8 CFR part 2.