

(f) *Professional capacity.* Working in a professional capacity means engaging in an activity in a religious vocation or occupation which is defined by INA 101(a)(32) or for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required for entry into that field of endeavor.

(g) *Religious occupation.* A religious occupation is the habitual employment or engagement in an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

(h) *Religious vocation.* A religious vocation is a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to nuns, monks, and religious brothers and sisters.

(i) *Alien not entitled to classification under INA 101(a)(15)(R).* An alien who has spent 5 years in the United States under INA 101(a)(15)(R) is not entitled to classification and visa issuance under that section unless the alien has resided and been physically present outside the United States, except for brief visits to the United States for business or pleasure, for the immediate prior year.

[60 FR 42036, Aug. 15, 1995]

**§ 41.59 Professionals under the North American Free Trade Agreement.**

(a) *Requirements for classification as a NAFTA professional.* An alien shall be classifiable under the provisions of INA 214(e) if:

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

(2) In the case of citizens of Mexico, the consular officer has received from INS an approved petition according

classification as a NAFTA Professional to the alien or official confirmation of such petition approval, or INS confirmation of the alien's authorized stay in such classification; or

(3) In the case of citizens of Canada, the alien shall have presented to the consular officer sufficient evidence of an offer of employment in the United States requiring employment of a person in a professional capacity consistent with NAFTA Chapter 16 Annex 1603 Appendix 1603.D.1 and sufficient evidence that the alien possesses the credentials of that profession as listed in said appendix; or

(4) The alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Visa validity.* The period of validity of a visa issued pursuant to paragraph (a) of this section may not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section. The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa. The period of validity of a visa issued pursuant to subparagraph (a)(3) of this section may not exceed the period established on a reciprocal basis.

(c) *Temporary entry.* Temporary entry means an entry into the United States without the intent to establish permanent residence. The alien must satisfy the consular officer that the proposed stay is temporary. A temporary period has a reasonable, finite end that does not equate to permanent residence. The circumstances surrounding an application should reasonably and convincingly indicate that the alien's temporary work assignment in the United States will end predictably and that the alien will depart upon completion of the assignment.

(d) *Labor disputes.* Citizens of Canada or Mexico shall not be entitled to classification under this section if the Attorney General and the Secretary of Labor have certified that:

(1) There is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment; and

(2) The alien has failed to establish that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout.

[58 FR 68527, Dec. 28, 1993, as amended at 63 FR 10305, Mar. 3, 1998]

### Subpart G—Students and Exchange Visitors

#### §41.61 Students—academic and non-academic.

(a) *Definitions*—(1) *Academic*, in INA 101(a)(15)(F), refers to an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution, or a language training program.

(2) *Nonacademic*, in INA 101(a)(15)(M), refers to an established vocational or other recognized nonacademic institution (other than a language training program).

(b) *Classification*. (1) An alien is classifiable under INA 101(a)(15)(F) (i) or (iii) or INA 101(a)(15)(M) (i) or (iii) if the consular officer is satisfied that the alien qualifies under one of those sections, and:

(i) The alien has been accepted for attendance for the purpose of pursuing a full course of study, or, for students classified under INA 101(a)(15) (F)(iii) and (M)(iii) Border Commuter Students, full or part-time course of study, in an academic institution approved by the Attorney General for foreign students under INA 101(a)(15)(F)(i) or a nonacademic institution approved under 101(a)(15)(M)(i). The alien has presented a SEVIS Form I-20, Form I-20A-B/I-20ID, Certificate of Eligibility For Nonimmigrant Student Status—For Academic and Language Students, or Form I-20M-N/I-20ID, Certificate of Eligibility for Nonimmigrant Student Status—For Vocational Students, properly completed and signed by the alien and a designated official as prescribed in regulations found at 8 CFR 214.2(F) and 214.2(M);

(ii) The alien possesses sufficient funds to cover expenses while in the United States or can satisfy the consular officer that other arrangements have been made to meet those expenses;

(iii) The alien, unless coming to participate exclusively in an English language training program, has sufficient knowledge of the English language to undertake the chosen course of study or training. If the alien's knowledge of English is inadequate, the consular officer may nevertheless find the alien so classifiable if the accepting institution offers English language training, and has accepted the alien expressly for a full course of study (or part-time course of study for Border Commuter Students) in a language with which the alien is familiar, or will enroll the alien in a combination of courses and English instruction which will constitute a full course of study if required; and

(iv) The alien intends, and will be able, to depart upon termination of student status.

(2) An alien otherwise qualified for classification as a student, who intends to study the English language exclusively, may be classified as a student under INA 101(a) (15) (F) (i) even though no credits are given by the accepting institution for such study. The accepting institution, however, must offer a full course of study in the English language and must accept the alien expressly for such study.

(3) The alien spouse and minor children of an alien who has been or will be issued a visa under INA 101(a) (15) (F) (i) or 101(a) (15) (M) (i) may receive nonimmigrant visas under INA 101(a) (15) (F) (ii) or 101(a) (15) (M) (ii) if the consular officer is satisfied that they will be accompanying or following to join the principal alien; that sufficient funds are available to cover their expenses in the United States; and, that they intend to leave the United States upon the termination of the status of the principal alien.

(c) *Posting of bond*. In borderline cases involving an alien otherwise qualified for classification under INA 101(a) (15) (F), the consular officer is authorized to require the posting of a bond with the Attorney General in a sum sufficient to ensure that the alien will depart upon the conclusion of studies or in the event of failure to maintain student status.