

the recommendation of the Waiver Review Division shall constitute the recommendation of the Department of State.

(f) *Changed circumstances.* An applicant for a waiver on the grounds of extreme hardship or probable persecution on account of race, religion, or political opinion, has a continuing obligation to inform the Immigration and Naturalization Service of changed circumstances material to his or her pending application.

(g) *The Exchange Visitor Waiver Review Division.* (1) The Exchange Visitor Waiver Review Division (“Division”) shall consist of Department of State positions equivalent to the following positions:

(i) The Associate Director of the Bureau of Educational and Cultural Affairs, or his or her designee;

(ii) The Director of the geographic area office responsible for the geographical area of the waiver applicant, or his or her designee;

(iii) The Director of the office of Congressional and Intergovernmental Affairs, or his or her designee;

(iv) The Director of the Office of Academic Exchange, or his or her designee; and

(v) The Director of the Office of Research, or his or her designee.

(2) A person who has had substantial prior involvement in a particular case referred to the Division may not be appointed to, or serve on, the Division for that particular case unless the Bureau of Consular Affairs determines that the individual’s inclusion on the Division is otherwise necessary or practicably unavoidable.

(3) The State Department official equivalent to the Associate Director of the Bureau of Educational and Cultural Affairs, or his or her designee, shall serve as Division Chairman. No designee under paragraph (g)(3) shall serve for more than 2 years.

(4) Cases will be referred to the Division at the discretion of the Chief, Waiver Review Division, of the Department’s Office of Exchange Visitor Program Services. The Waiver Review Division shall prepare a summary of the particular case referred and forward it along with copy of the relevant file to the Division Chairman. The Chief,

Waiver Review Division, or his or her designee may, at the Chairman’s discretion, appear and present facts related to the case but shall not participate in Division deliberations.

(5) The Chairman of the Division shall be responsible for convening the Division and distributing all necessary information to its members. Upon being convened, the Division shall review the case file and weight the request against the program, policy, and foreign relations aspects of the case.

(6) The Bureau of Consular Affairs shall appoint, on a case-by-case basis, from among the attorneys in the Office of the Bureau of Consular Affairs, one attorney to serve as legal advisor to the Division.

(7) At the conclusion of its review of the case, the Division shall make a written recommendation either to grant or to deny the waiver application. The written recommendation of a majority of the Division shall constitute the recommendation of the Division. Such recommendation shall be promptly transmitted by the Chairman to the Division Chief, Waiver Review Division.

(8) The recommendation of the Division in any case reviewed by it shall constitute the recommendation of the Department of State and such recommendation shall be forwarded to the Commissioner by the Division Chief, Waiver Review Division.

[58 FR 15196, Mar. 19, 1993; 58 FR 18305, Apr. 8, 1993; 58 FR 48448, Sept. 16, 1993; 60 FR 16787, 16788, April 3, 1995; 60 FR 53125, Oct. 12, 1995; 62 FR 19222, Apr. 21, 1997; 62 FR 28803, May 28, 1997. Redesignated and amended at 64 FR 54539, 54540, Oct. 7, 1999; 67 FR 77160, Dec. 17, 2002]

Subpart H—Transit Aliens

§ 41.71 Transit aliens.

(a) *Transit aliens—general.* An alien is classifiable as a nonimmigrant transit alien under INA 101(a) (15) (C) if the consular officer is satisfied that the alien:

(1) Intends to pass in immediate and continuous transit through the United States;

(2) Is in possession of a common carrier ticket or other evidence of transportation arrangements to the alien's destination;

(3) Is in possession of sufficient funds to carry out the purpose of the transit journey, or has sufficient funds otherwise available for that purpose; and

(4) Has permission to enter some country other than the United States following the transit through the United States, unless the alien submits satisfactory evidence that such advance permission is not required.

(b) *Certain aliens in transit to United Nations.* An alien within the provisions of paragraph (3), (4), or (5) of section 11 of the Headquarters Agreement with the United Nations, to whom a visa is to be issued for the purpose of applying for admission solely in transit to the United Nations Headquarters District, may upon request or at the direction of the Secretary of State be issued a nonimmigrant visa bearing the symbol C-2. If such a visa is issued, the recipient shall be subject to such restrictions on travel within the United States as may be provided in regulations prescribed by the Attorney General.

Subpart I—Fiance(e)s and Other Nonimmigrants

§ 41.81 Fiancé(e) or spouse of a U.S. citizen and derivative children.

(a) Fiancé(e). An alien is classifiable as a nonimmigrant fiancé(e) under INA 101(a)(15)(K)(i) if:

(1) The consular officer is satisfied that the alien is qualified under that provision and the consular officer has received a petition filed by a U.S. citizen to confer nonimmigrant status as a fiancé(e) on the alien, which has been approved by the INS under INA 214(d), or a notification of such approval from that Service;

(2) The consular officer has received from the alien the alien's sworn statement of ability and intent to conclude a valid marriage with the petitioner within 90 days of arrival in the United States; and

(3) The alien has met all other qualifications in order to receive a nonimmigrant visa, including the requirements of paragraph (d) of this section.

(b) Spouse. An alien is classifiable as a nonimmigrant spouse under INA 101(a)(15)(K)(ii) when all of the following requirements are met:

(1) The consular officer is satisfied that the alien is qualified under that provision and the consular officer has received a petition approved by the INS pursuant to INA 214(p)(1), that was filed by the U.S. citizen spouse of the alien in the United States.

(2) If the alien's marriage to the U.S. citizen was contracted outside of the United States, the alien is applying in the country in which the marriage took place, or if there is no consular post in that country, then at a consular post designated by the Deputy Assistant Secretary of State for Visa Services to accept immigrant visa applications for nationals of that country.

(3) If the marriage was contracted in the United States, the alien is applying in a country as provided in part 42, § 42.61 of this chapter.

(4) The alien otherwise has met all applicable requirements in order to receive a nonimmigrant visa, including the requirements of paragraph (d) of this section.

(c) Child. An alien is classifiable under INA 101(a)(15)(K)(iii) if:

(1) The consular officer is satisfied that the alien is the child of an alien classified under INA 101(a)(15)(K)(i) or (ii) and is accompanying or following to join the principal alien; and

(2) The alien otherwise has met all other applicable requirements in order to receive a nonimmigrant visa, including the requirements of paragraph (d) of this section.

(d) Eligibility as an immigrant required. The consular officer, insofar as is practicable, must determine the eligibility of an alien to receive a nonimmigrant visa under paragraphs (a), (b) or (c) of this section as if the alien were an applicant for an immigrant visa, except that the alien must be exempt from the vaccination requirement of INA 212(a)(1) and the labor certification requirement of INA 212(a)(5).

[66 FR 19393, Apr. 16, 2001]