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DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 5422]
RIN 1400-AC06

Visas: Documentation of Nonimmigrants Under the Immigration and
Nationality Act, as Amended

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This rule amends the Department of State's regulations to
require the presentation of Mexican Federal passports as a necessary
condition for Mexican citizens applying for combined Border Crossing
Cards (BCC) and B-1/B-2 visas (laser visas). It also removes the
conditions under which certain beneficiaries of Immigration and
Nationality Act 212(d)(3)(A) waivers of ineligibility could receive
laser visas.

DATES: Effective Date: This rule is effective on May 30, 2006.

FOR FURTHER INFORMATION CONTACT: Charles E. Robertson, Legislation and
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SUPPLEMENTARY INFORMATION:

What Is a Laser Visa?

The biometric border-crossing card (BCC/B-1/B-2 NIV) is a
laminated, credit card-style document with many security features. It
has a ten-year validity period. The card is commonly called a ``laser
visa.'' Most Mexican visitors to the U.S., whether traveling to the
border region or beyond, receive a laser visa.

Who Has Authority Over the Issuance of Laser Visas?

The Department of State and the Bureau of Citizenship and
Immigration Services (BCIS) in the Department of Homeland Security
jointly administer the laser visa program. The Department of State
issues the BCC/B-1/2 as it possesses exclusive authority over visa
issuance.

How Was This Authority Derived?

In 1996, Congress established new procedures for issuing a more secure border-crossing document (Section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) Pub. L. 104-208, 110 Stat. 3546). The law required every border crossing identification card issued after April 1, 1998 to contain a biometric identifier such as a fingerprint, and be

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machine-readable. The law also mandated that all pre-April 1, 1998 BCCs expire effective October 1, 1999. In recognition of the magnitude of the task of replacing over five million existing cards, Congress subsequently extended the deadline to September 30, 2001.

How Was the Transitional Program Handled?

To deal with the transition to the new border-crossing document, BCIS handled the actual card production and our consular posts in Mexico coordinated the application process. As part of the transitional program, we opened a new consulate in Nogales and expanded our consulate in Nuevo Laredo. We also established U.S. government-owned contractor-operated Temporary Processing Facilities (TPFs) along the border. This transitional period is now over.

From April 1, 1998 through August 21, 2001, the American Embassy in Mexico City and our American Consulates adjudicated over 4.8 million applications, approving slightly more than 4.0 million. Somewhat less than half were for replacement cards; the rest were for first time applicants.

What Is the Basic Requirement for Obtaining a Laser Visa?

Applicants must demonstrate that they qualify for a visitor visa for business or pleasure under INA 101(a)(15)(B). Under INA 214(b), applicants for certain nonimmigrant visitor visas (including classification B-1 and/or B-2) are presumed by law to be applicants for immigrant visas until they satisfy the consular officer that they are qualified for the nonimmigrant visa sought. In order to be approved for a visitor visa, applicants must satisfy the interviewing officer that they are visiting the United States temporarily for business or pleasure for appropriate purposes and activities and that they have a residence in a foreign country that they have no intention of abandoning. For the latter, applicants must demonstrate strong social, economic and/or familial ties to a place outside the United States that will ensure their return.

Prior to This Final Rule What Identity Documents Were Required for Initially Obtaining a Laser Visa?

Section 41.32(a)(iii) has allowed Mexican nationals to present any of the following three identity documents as part of the BCC application process:

- (1) A valid Mexican Federal passport, or;
- (2) A Certificate of Mexican Nationality (as long as the Certificate of Mexican Nationality was supported by another form of

identification which included a photograph), or;

(3) A valid or expired United States visa, BCC, or B1/B2 visa which had been neither been voided by operation of law nor revoked by a consular or immigration officer.

Prior to This Final Rule What Identity Documents Were Required for Obtaining a Replacement Laser Visa?

Applicants with old-style BCCs did not need a passport in order to get a laser visa. In the absence of a Mexican Federal passport they were permitted to present their old BCC card and a recently produced photo identity card. For example, a Mexican voter registration card was often used as the identity document.

Prior to This Final Rule Were Beneficiaries of a 212(d)(3)(A) Waiver Eligible To Receive a Laser Visa?

Prior to this Final Rule applicants who were the beneficiaries of a waiver under INA 212(d)(3)(A), were eligible to receive laser visas. In such circumstances, the waiver was normally valid for multiple applications for admission into the United States and for a period of at least ten years and contained no restrictions as to extensions of temporary stay or itinerary.

How Does the New Rule Affect the Laser Visa Application Process?

Mexican Citizens now must present a Mexican Federal passport as part of their laser visa application and must be eligible for a B-1 or B-2 temporary visitor visa in order to obtain a laser visa.

What Is the Reasoning Behind this Change?

As mentioned above, from April 1, 1998 through August 21, 2001, the American Embassy in Mexico City and our American Consulates adjudicated over 4.8 million applications, approving slightly more than 4.0 million. Somewhat less than half were for replacement cards; the rest were for first time applicants. Because of the massive nature of the program, the fact that historically many applicants for BCCs had presented old BCCs or other Mexican nationality documents that do not fit the definition of a passport, and the perception at the time of a relatively low security risk among Mexican BCC applicants, the standard passport requirement for a visa was eliminated for BCC/B-1/2 processing. See 63 FR 16892.

The BCC replacement program required by IIRIRA is now complete. Additionally, in view of the continued national security concerns relating to foreign document identity, we believe the presentation of a Mexican Federal passport to be in the United States' national interest and, therefore, an appropriate and prudent BCC application requirement which can now be implemented with minimal inconvenience to the applicants. At the same time, there is currently no practical way to properly annotate the laser visa to indicate the conditions of an INA 212(d)(3)(A) waiver. Such applicants can receive a properly annotated B-1/B-2 MRV (visa) in their passport.

Regulatory Findings

Administrative Procedure Act

The Department's implementation of this regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rule making procedures set forth at 5 U.S.C. 553.

Regulatory Flexibility Act/Executive Order 13272: Small Business

This rule is not subject to the notice-and-comment rulemaking provisions of the Administrative Procedure Act or any other act, and, accordingly it does not require analysis under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) and Executive Order 13272, section 3(b).

The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law No. 104-121. 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.

The Unfunded Mandates Reform Act of 1995

This rule is not subject to the notice-and-comment rulemaking provisions of the Administrative Procedure Act or any other act, and, accordingly it does not require analysis under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). Moreover, this rule is not

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expected to result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. Nor will it significantly or uniquely affect small governments.

Executive Orders 12372 and 13132: Federalism

The Department finds that 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 does the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Executive Order 12866: Regulatory Review

The Department does not consider this rule to be a ``significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in this Executive Order.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

The Paperwork Reduction Act of 1995

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Foreign officials, Immigration, Nonimmigrants, Passports and visas, Students.

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For the reasons stated in the preamble, the Department of State amends 22 CFR part 41 as follows:

PART 41--[AMENDED]

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1. The authority citation for part 41 shall continue to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. No. 105-277, 112 Stat. 2681-795 through 2681-801. Additional authority is derived from Section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) Pub. L. 104-208, 110 Stat. 3546.

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2. In Sec. 41.32, revise paragraphs (a)(1)(iii) and (a)(2)(iii) to read as follows:

Sec. 41.32 Nonresident alien Mexican border crossing identification cards; combined border crossing identification cards and B-1/B-2 visitor visas.

(a) * * *

(1) * * *

(iii) Is otherwise eligible for a B-1 or a B-2 temporary visitor visa.

(2) * * *

(iii) A valid Mexican Federal passport.

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Dated: May 17, 2006.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

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