

PUBLICATION UPDATE

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Bender's Immigration Regulations Service

Publication 695 Release 204

January 2010

HIGHLIGHTS

PLEASE NOTE:

- **THE LAST RELEASE PRIOR TO THIS RELEASE 204 WAS RELEASE 202. NO REL. 203 WAS ISSUED. ACCORDINGLY, THERE IS NO GAP IN COVERAGE BETWEEN REL. 202 AND REL. 204.**
- **THIS RELEASE INCLUDES CURRENT REGULATORY CHANGES PUBLISHED IN THE FEDERAL REGISTER AS OF DECEMBER 21, 2009.**
- **FOR TECHNICAL REASONS, THIS RELEASE ALSO INCLUDES ALL CONTENT PREVIOUSLY UPDATED IN RELEASES 197 THRU 202.**

**CURRENT REGULATORY
CHANGES (NOT APPEARING IN
PRIOR RELEASES)**

VOL. 1 CURRENT CHANGES

- **“No Match Rules”; Rescission of Safe-Harbor Procedures for Employers Who Receive a No-Match Letter.** DHS

final rule, 74 FR 51447, Oct. 7, 2009, eff. Nov. 6, 2009, rescinds amendments promulgated on August 15, 2007, and October 28, 2008. The preamble notes that implementation of the 2007 final rule was preliminarily enjoined by the United States District Court for the Northern District of California on October 10, 2007. DHS will focus enforcement efforts on increased compliance through improved verification, including participation in E-Verify, ICE Mutual Agreement Between Government and Employers (IMAGE), and other programs. See 8 CFR. § 274a.1(l), relating to the definition of “knowing”, as amended by the final rule.

- **Commonwealth of the Northern Mariana Islands Transitional Worker Classification; Preliminary Injunction.** DHS interim rule, 74 FR 55094, Oct. 27, 2009, eff. Nov. 27, 2009, added 8 CFR § 214.2(w) [“CNMI-Only Transitional Worker (CW-1)”], 8 CFR § 274a.12(b)(23), and made conforming amendments to 8 CFR § 103.7(b) (1) and (c)(5)(i), in relation to fees, and to 8 CFR

§§ 299.1 (Prescribed Forms) and 299.5 (Display of OMB Control Number). See Editor's Notes at 8 CFR § 214.2(w) and 8 CFR § 274a.12(b)(23) regarding the preliminary injunction issued against implementation of the interim final rule in *Commonwealth of the Northern Mariana Islands v. United States* (D.D.C. Nov. 25, 2009).

• **Application of Immigration Regulations to Commonwealth of Northern Mariana Islands.** An interim final rule was issued jointly by DHS and DOJ-EOIR, 74 FR 55726, Oct. 28, 2009, eff. Nov. 28, 2009, as corrected at 74 FR 62207, Nov. 27, 2009.

The DHS component of the rule made amendments to 8 CFR §§ 208.1(a), 208.2(c)(1), 208.4(a)(2)(ii), 208.5(a), (b)(1)(iii) [added], 208.30(a), (e)(2), 209.2(a), 212.1(e)(4)(i) & (q)(4)(i), 214.7(a)(3), (a)(4)(i), and (b), 214.11(a) [definition of *United States*], (b)(2), and (g) introductory text & (g)(1), 214.14(a)(11), 217.4(a)(1) & (b)(1), 235.6(a)(1)(ii) & (iii), 245.1(b)(7), 274a.1(c), 274a.2(b)(1)(v)(D) [added], 274a.5, 274a.7(a) & (b), 274a.12(b)(24) [added], 286.1(i) & (k), 299.1, and 299.5.

The DOJ-EOIR component of the rule made amendments to 8 CFR §§ 1001.1 [par. (bb) added], 1208.1(a), 1208.2(c)(1)(iii) & (iv), (vii) & (viii) [both added], 1208.4(a)(2)(ii), 1208.5(a), (b)(1)(iii) [added], 1208.30(a), 1209.2(a)(1), (a)(3) [added], 1212.1(e), (q) [added], 1235.5(a), 1235.6(a)(1)(ii) & (iii), 1245.1(b)(7).

VOL. 2 CURRENT CHANGES

• **Immigrant and Nonimmigrant Visa Classification Symbols.** DOS final rule, 74 FR 61517, Nov. 25, 2009, amended 22 CFR §§ 41.12 and 42.11:

- **New immigrant classification added:** A new immigrant classification

for qualifying family members of U1 Nonimmigrant Victim of Criminal Activity, adjustment of status cases for: Spouse, SU2; Child, SU3; and Parent, SU5.

- **Immigrant classification amended:** Certain Iraqis (and Afghans) employed by or on behalf of the United States Government in Iraq (and Afghanistan), SQ1; Spouse SQ2 and Child SQ3.
- **New nonimmigrant classification symbols added:** Temporary Commonwealth of the Northern Mariana Islands (CNMI)-only transitional workers (CW1, CW2); and Long-Term Investors in the Commonwealth of the Northern Mariana Islands (E2C).
- **T4 & T5 nonimmigrant visa classes:** Age restrictions amended and removed.
- **Nonimmigrant Visa class “Irish Peace Process Program Participant”:** Q2 and Q3 Classifications removed (section 1(d) of Public Law 108-449 repealed the Irish Peace Process Cultural and Training Program Act of 1998, Public Law 105-319, effective October 1, 2008).

• **Documentation Requirements of Aliens in Religious Occupations.** DOS final rule, 74 FR 51236, Oct. 6, 2009, was promulgated to comply with the Department of Homeland Security regulation (73 FR 72276, Nov. 26, 2008) requiring sponsoring employers to file petitions for all aliens for whom R-1 nonimmigrant status is sought. As declared in the preamble, the final rule establishes the requirement that consular officers ensure that R-1 visa applicants have obtained an approved U.S. Citizenship and Immigration Services Form

I-129 petition from the Department of Homeland Security before issuance of a visa. See 22 CFR § 41.58, as amended by the final rule.

- **Expedited Passport Processing.** DOS final 74 FR 47726, Sept. 17, 2009, revised the expedited passport process and changed the definition of expedited passport processing from three business days, beginning when the application arrives at a passport agency or when the request for expedited processing is approved, to the number of business days published on the Department's Web site at <http://www.travel.state.gov>. DOS states that this change ensures that the Department can continue to offer this service consistent with its regulations while maintaining sufficient flexibility to adapt to fluctuations in passport demand, and that it ensures that the public can easily determine the current standards for expedited passport processing. See 22 CFR § 51.56(b) as amended by the final rule. In addition, the Schedule of Fees for Consular Services at 22 CFR § 22.1 was amended (at Item 3, Expedited Processing) to conform to the change.

Temporary Agricultural Employment of H-2A Aliens. DOL interim final rule, 74 FR 59069, Nov. 17, 2009, purported to amend the section designated 20 CFR § 655.100 (Overview of subpart B and definition of terms) with respect to change of the referenced date from January 1, 2010, to June 1, 2010. This amendment was executed to 20 CFR § 655.1300, which was § 655.100 prior to the final rule of 29, 2009, 74 FR 25972, became subject to a preliminary injunction under *North Carolina Growers Assn v. Solis*, 2009 U.S. Dist. Lexis 54733 (MDNC June 9, 2009).

- **Medical Examination of Aliens; DHHS Removes HIV From Definition of**

Communicable Disease of Public Health Significance. Final rule, 74 FR 56547, Nov. 2, 2009 (effective Jan. 2, 2010) amends 34 CFR §§34.2(b)(6) [removed], 34.3(b)(1)(i), (2)(iv), (5), and (6). The regulations are amended to remove "Human Immunodeficiency Virus (HIV) infection" from the definition of communicable disease of public health significance and remove references to "HIV" from the scope of examinations for aliens. DHHS states that as a result of this final rule, aliens will no longer be inadmissible into the United States based solely on the ground they are infected with HIV, and they will not be required to undergo HIV testing as part of the required medical examination for U.S. immigration.

PRIOR RELEASE UPDATES RE-PUBLISHED IN THIS RELEASE 204

RELEASE 202

- **22 CFR Part 41 (Visas: Documentation of Nonimmigrants).** See Volume 2, DOS Regulations, 22 CFR § 41.21(a)(3), as amended by DOS final rule, July 22, 2009, 74 FR 36112, reflecting changes in the definition of immediate family members of foreign officials.

- **2009 Revised Exchange Visitors Skills List.** The 2009 Revised Exchange Visitors Skills List was added following the 1997 Revised List. The skills list materials are located in Volume 2, following the end of 22 CFR Part 62.

- **20 CFR Part 655; correction.** The Department of Labor corrected the omission of a paragraph from 20 CFR 655.731 (i.e., par. (a)(2)(ii)(C)) occurring in the rule published at 73 FR 78020, Dec. 19, 2008. The correction restoring the omitted paragraph was published at 74 FR 45560, Sept. 3, 2009, and the restored paragraph now appears in the text. See Volume 2, DOL Regulations, § 655.731 [PERM].

- **42 CFR Part 34 (Medical Examination of Aliens).** See Volume 2, DOHHS Regulations, updated to reflect changes at 42 CFR §§ 34.2 (Definitions) and 34.3 (Scope of Examination) in connection with the definition of “communicable disease of public health significance”. Please note that these changes were overridden by DHHS final rule, 74 FR 56547, Nov. 2, 2009, eff. Jan. 4, 2010, as reflected in Release No. 204.

- **2009 DOHHS Poverty Guidelines.** The 2009 Poverty Guidelines of the Department of Health and Human Services were added to the compilation of annual Guideline updates contained in Volume 2, DOHHS Regulations, following 42 CFR Part 34. Please note that the entire page group for the DOHHS Regulations (behind the DOHHS tab) is replaced. To improve accessibility of the content, the material has been reorganized. The CFR regulatory matter (42 CFR Part 34) is now in first position, followed by the annual updates to the Poverty Guidelines (the Guidelines consist of Federal Register “Notice” material, and are not part of the CFR as such).

RELEASES 200 AND 201

Releases 200 and 201 were not issued. Accordingly, there is no gap in coverage between Rel. 202 and Rel 199.

RELEASE 199

- **Documents Required for Travelers Departing From or Arriving in the U.S. at Sea and Land Ports-of-Entry From Within the Western Hemisphere.** Amendments made on April 3, 2008, by a joint DHS-DOS final rule at 73 FR 18384, effective June 1, 2009, previously carried in footnotes because of their delayed effective date, have been incorporated into the main text. See 8 CFR § 212.0 [new section], § 212(a)(1) & (2), (c)(1); 235.1(b), (d), & (e); 22 CFR § 41.0 [new section], § 41.1

[par. (b) now reserved], § 41.2, amendments made to section heading, introductory text, and pars. (a), (b), (g)(1), and (g)(2); § 52.2 [revised in its entirety].

- **Office Locations and Obsolete References to Legacy Immigration and Naturalization Service; New Provision Added To Facilitate the Expansion of the Use of Approved Electronic Equivalents of Paper Forms.** Interim rule, 74 FR 26933, June 5, 2009, amended DHS regulations in Title 8 CFR by eliminating certain references to the Immigration and Naturalization Service (INS) organizational structure and removing all references in the Code of Federal Regulations (CFR) to INS and U.S. Citizenship and Immigration Services (USCIS) Offices. The rule also removed all references in the CFR to filing locations, so that USCIS may provide such information on petition and application forms and through any other means. The amendments affected various provisions throughout 8 CFR Parts 1, 100, 103, 204, 207, 208, 211, 212, 214, 216, 236, 244, 245, 248, 264, 274a, 301, 316, 320, 322, 324, 327, 328, 329, 330, 334, and 392. The interim rule also added a new definition of the term *Form* at 8 CFR § 1.1(aa).

- **Guam-CNMI Visa Waiver Program Change of Implementation Date.** The implementation date of the Guam- CNMI Visa Waiver Program was changed from June 1, 2009 to November 28, 2009. See 8 CFR §§ 212.1, 215.1, & 235.5, as amended 74 FR 25387, May 28, 2009 (amending CBP interim final rule of January 16, 2009).

- **DOL Final H-2A Rule of May 29, 2009, Suspending Regulations Under December 2008 Final Rule & Reinstating Prior Regulations; Preliminary Injunction of June 29, 2009, Against Implementation.** Release 199 included changes made

by DOL's H-2A final rule of May 29, 2009, 74 FR 25972, effective June 29, 2009, along with Notes at the beginning of each affected section to advise that the force and effect of the final rule is subject to a preliminary injunction issued on June 29, 2009, by the U.S. District Court for the Middle District of North Carolina. The affected provisions are 20 CFR §§ 655.1, 655.5, 655.81, Subpart B (§§ 655.90 et seq.), Subpart C (§§ 655.200 et seq.), and Subpart N (§§ 655.1290 et seq.) For more information, see the Editor's Note at § 655.0.

RELEASE 198

• **Asylum and Withholding of Removal Forwarding of Affirmative Asylum Applications to the Department of State.** DHS-USCIS final rule, 74 FR 15387, April 6, 2009, revised 8 CFR § 208.11 in its entirety.

• **Exchange Visitor Program—Au Pairs (Repeat Participation).** DOS final rule, 74 FR 15844, April 8, 2009, adopted without change revisions to 22 CFR § 62.31 that were made by interim rule published at 73 FR 34861, June 19, 2008. The preamble noted this was a revision of existing regulations, permitting qualified au pairs to participate again in the au pair program after completing a period of at least two years of residency outside the United States following the end date of his or her initial exchange visitor program.

• **20 CFR Part 655—Temporary Agricultural Employment of H-2A Aliens in the United States.** DOL rule, 74 FR 17597, April 16, 2009, made revisions to 20 CFR § 655.100(b), in relation to extension of the transition period of the application filing procedures currently in effect for all H-2A employers with a date of need on or before July 1, 2009, as established in the H-2A Final Rule published on December 18,

2008 and in effect as of January 17, 2009. The transition period is extended to include all employers with a date of need on or before January 1, 2010.

RELEASE 197

• **Documents Acceptable for Employment Eligibility Verification; Amendment of Dec. 17, 2008, became effective on April 3, 2009.** An amendment to 8 CFR § 274a.2 made by DHS interim rule, 73 FR 76505, Dec. 17, 2008, became effective on April 3, 2009. The original effective date was February 2, 2009, but this was delayed until April 3, 2009, by publication in the Federal Register at 74 FR 5899, Feb. 3, 2009. In addition, a correction to the Interim Rule was made at 74 FR 10445, Mar. 11, 2009. Prior to the taking effect of the Interim Rule, the amended provisions were set forth in footnotes to the main text of the regulations. Having become effective on April 3, 2009, the amendments were incorporated into the main text. The changes made by the Interim Rule included the following:

- Section title changed from “Verification of employment eligibility” to “Verification of identity and employment authorization”;
- Under the amended regulations, it is no longer permissible for employers to accept expired documents to verify employment authorization on Form I-9. See revised § 294a.2(b)(1)(v);
- List of documents now includes documentation for citizens of Federated States of Micronesia and the Republic of the Marshall Islands. See § 294a.2(b)(1)(v), new par. (A)(6);
- Reference to temporary I-551 stamp has been revised to include temporary I-551 printed notation

on machine-readable immigrant visa. See revised § 294a.2(b)(1)(v)(A)(3);

- Reference to I-94A has been added to § 294a.2(b)(1)(v)(A)(5), (vi)(B) & (C);
- Reference to “Social Security number card” has been replaced with “Social Security account number card”;
- References to “employment eligibility” have been replaced with “employment authorization”;
- References to former INS re-

placed with references to DHS.

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FILING INSTRUCTIONS

BENDER'S IMMIGRATION REGULATIONS SERVICE

Publication 695 Release 204

January 2010

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- THIS RELEASE 204 FOLLOWS IMMEDIATELY AFTER RELEASE 202. RELEASE 203 WAS NOT ISSUED. ACCORDINGLY, THERE IS NO GAP IN COVERAGE BETWEEN REL. 202 AND REL. 204.
- FOR THE BENEFIT OF SUBSCRIBERS WHO MAY NOT HAVE RECEIVED RELEASE 197 OR ANY SUBSEQUENT RELEASE THROUGH RELEASE 202 (AS NOTED ABOVE, RELEASE 203 WAS NOT ISSUED), THIS RELEASE 204 INCLUDES ALL REVISIONS PREVIOUSLY PUBLISHED IN RELEASES 197 THROUGH 202. THEREFORE, YOU MAY FILE THIS RELEASE IF THE TITLE PAGE IN FRONT OF YOUR VOLUME 1 INDICATES THAT YOUR SET IS FILED THROUGH RELEASE 202, OR FILED THROUGH RELEASE 196 OR ANY SUBSEQUENT RELEASE NUMBER UP TO AND INCLUDING RELEASE 202.
- 1. Check the Title page in the front of your present Volume 1. It should indicate that your set is filed through Release Number 202 (or filed through Release 196 or any subsequent release number up to and including Release 202). If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 202 (or through Release 196 or any subsequent release number up to and including Release 202), DO NOT file this release. Please call Customer Services at 1-800-833-9844 for assistance in bringing your set up to date.
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