

**PUBLICATION UPDATE**

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# Bender's Immigration Regulations Service

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Publication 695      Release 235      October 2017

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**HIGHLIGHTS**

**REGULATORY DEVELOPMENTS**

- Release 235 of Bender's Immigration Regulations Services includes regulatory changes published in the Federal Register through August 31, 2017.
- See below for details of what is included.

**Joint DHS-DOL Rule on Exercise of Time-Limited Authority To Increase the Fiscal Year 2017 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program.** DHS and DOL collaborated in the issuance of a temporary rule published at 82 FR 32987, July 19, 2017. The rule stated that it was the decision of the Secretary of DHS, in consultation with the Secretary of Labor, to increase the numerical limitation on H-2B nonimmigrant visas to authorize the issuance of up to an additional 15,000 through the end of Fiscal Year (FY) 2017. The rule noted that this was a one-time increase based on a time-limited statutory authority and does not affect the H-2B program in future fiscal years. The DHS component of the rule added 8 CFR 214.2(h)(6)(x) [Special requirements for additional cap allocations under the Consolidated Appropriations Act, 2017, Public Law 115-31]. The DOL component of the rule added 20 CFR 655.64 (Special Eligibility Provisions for Fiscal Year 2017 under the Consolidated Appropriations Act) and 20 CFR 655.65

**VOLUME 1 – 8 CFR**  
**DEPARTMENT OF HOMELAND SECURITY**

**International Entrepreneur Rule.** A final rule of DHS published at 82 FR 5238, Jan. 17, 2017, added 8 CFR 103.7(b)(1)(i)(KKK), added 8 CFR 212.19, and amended 8 CFR 274a.2 & 274a.12. The effective date was July 17, 2017. However, a further final rule published at 82 FR 31887, July 11, 2017, delayed the effective date from July 17, 2017, to March 14, 2018, except for amendatory instruction 6.a revising 8 CFR 274a.2(b)(1)(v)(C)(2), which will go into effect on July 17, 2017.

[Special Document Retention Provisions for Fiscal Years 2017 through 2020 under the Consolidated Appropriations Act]. The rule is effective from July 19, 2017, through September 30, 2017, except for the addition of 20 CFR 655.65, which is effective from July 19, 2017 through September 30, 2020.

**Establishment of the Electronic Visa Update System (EVUS).** A final rule by DHS-CBP published at 82 FR 72481, Oct. 20, 2016, amended 8 CFR Part 215 (Documentary requirements: nonimmigrants; waivers; admission of certain inadmissible aliens; parole) by adding a new Subpart B (Electronic Visa Update). Related amendments were also made to 8 CFR § 273.3 (Screening procedures).

**U.S. Citizenship and Immigration Services Fee Schedule.** By final rule published at 81 FR 73292, Oct. 24, 2016, DHS adjusted the fee schedule for immigration and naturalization benefit requests processed by USCIS. Amendments were made to 8 CFR 103.2, 103.7, 103.16, 103.17, 204.6, and 205.1.

**Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers.** By final rule published at 81 FR 82398, Nov. 18, 2016 (eff. Jan. 17, 2017), DHS amended its regulations related to certain employment-based immigrant and nonimmigrant visa programs. DHS explains that the final rule provides various benefits to participants in those programs, including the following: improved processes and increased certainty for U.S. employers seeking to sponsor and retain immigrant and nonimmigrant workers; greater stability and job flexibility for those workers; and increased transparency and consistency in the application of DHS policy related to affected classifications.

Many of these changes are primarily aimed at improving the ability of U.S. employers to hire and retain high-skilled workers who are beneficiaries of approved employment-based immigrant visa petitions and are waiting to become lawful permanent residents, while increasing the ability of those workers to seek promotions, accept lateral positions with current employers, change employers, or pursue other employment options. The amended sections of Title 8 CFR included § 205.1 (Automatic revocation), § 214.1 (Requirements for admission, extension, and maintenance of status), § 214.2 (Special requirements for admission, extension, and maintenance of status), § 245.15 (Adjustment of status of certain Haitian nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA)), § 245.25 (Adjustment of status of aliens with approved employment-based immigrant visa petitions; validity of petition and offer of employment), § 274a.2 (Verification of identity and employment authorization), § 274a.12 (Classes of aliens authorized to accept employment), and § 274a.13 (Application for employment authorization).

**U.S. Asia-Pacific Economic Cooperation Business Travel Card Program.** By final rule published at 81 FR 84403, Nov. 23, 2016 (eff. Dec. 23, 2016), DHS-CBP adopted as final, with certain changes, the interim rule published at 79 FR 27161, May 13, 2014, which amended 8 CFR 103.7(b)(1)(ii)(N) and added a new 8 CFR 235.13.

**Definition of Form I-94 To Include Electronic Format.** A final rule by DHS-CBP published at 81 FR 91646, Dec. 19, 2016, adopted as final, without change, the interim final rule published at 78 FR 18457, March 27, 2013, which made amendments to various sections in 8 CFR Parts 1, 210, 212, 214, 215, 231, 235, 245, 245a, 247,

253, 264, 274a, and 286. Citation to the final adoption has been added to the histories of the sections involved.

**Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status.** An interim rule by DHS-USCIS, published at 82 FR 92266, Dec. 19, 2016 (eff Jan. 18, 2017), amended DHS’s regulations governing the requirements and procedures for victims of human trafficking seeking T nonimmigrant status. In this interim rule, DHS explained that it was amending its regulations to conform with legislation enacted after the initial rule was published in 2002: the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), and Titles VIII and XII of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). DHS also noted that it was streamlining procedures, responding to public comments on the 2002 interim final rule, and providing guidance for the statutory requirements for T nonimmigrants. In the preamble to the interim rule, DHS states that its intent is to make sure the T nonimmigrant status regulations are up to date and reflect USCIS adjudicative experience, as well as the input provided by stakeholders. Amendments were made to various sections in 8 CFR Parts 212, 214, 245, and 274a.

**Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air.** A final DHS rule published at 82 FR 4769, Jan. 17, 2017 (eff Jan. 13, 2017) revised DHS’s regulations to eliminate the categorical exception from expedited removal proceedings for Cuban nationals who arrive in the United States at

a port of entry by aircraft. DHS states that, as a result of these changes, Cuban nationals who arrive in the United States at a port of entry by aircraft will be subject to expedited removal proceedings commensurate with nationals of other countries. The revision was to 8 CFR 235.3(b)(1)(i).

**Removal of Regulations Relating to Special Registration Process for Certain Nonimmigrants.** A final DHS rule published at 81 FR 94231, Dec. 23, 2016, removed outdated regulations relating to an obsolete special registration program for certain nonimmigrants. The changes affected 8 CFR 214.1 (Requirements for admission, extension, and maintenance of status), and 8 CFR § 264.1 (Registration and fingerprinting). DHS explains that the removed regulations related to use of the National Security Entry-Exit Registration System (NSEERS) program, which DHS stopped using in 2011.

**Civil Monetary Penalty Adjustments for Inflation.** A final rule by DHS published at 82 FR 8571, Jan. 27, 2017, made inflation adjustments in the regulations of various sub-agencies within DHS, including immigration regulations under 8 CFR 8 CFR Parts 270, 274a, and 280.

**Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2017.** Notation of DHS’s announcement of the FY 2017 Numerical Limitation, published in the Federal Register at 81 FR 60581, Sept. 2, 2016, has been added to the footnote at 8 CFR 214.2(w)(1)(viii)(C).

**Technical Corrections Relating to Issuance of Notices To Appear, Warrants of Removal, Exercise of Power by Immigration Officers, and Standards for Enforcement Activities.** These technical corrections were made to various sections in 8 CFR Parts 236, 238, 239, 240, 241, and 287

by DHS-CBP final rule, 81 FR 62353, Sept. 9, 2016.

**Extension of and Addition to Employment Authorization for Syrian F-1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of Civil Unrest in Syria Since March 2011.** A notice by DHS-ICE, extending the authorization to March 31, 2018, was published in the Federal Register at 81 FR 62520, Sept. 9, 2016. Notation has been added to the footnote at 8 CFR 214.2(f)(9).

**Extension of Employment Authorization for Nepali F-1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the April 25, 2015 Earthquake in the Federal Democratic Republic of Nepal.** A notice by DHS-ICE, extending the authorization to June 24, 2018, was published at 81 FR 95161, Dec. 27, 2016. Notation has been added to the footnote at 8 CFR 214.2(f)(9).

## ***EXECUTIVE OFFICE FOR IMMIGRATION REVIEW***

**Recognition of Organizations and Accreditation of Non-Attorney Representatives.** A final rule by EOIR, published at 81 FR 92346, Dec. 19, 2016 (eff. Jan. 18, 2017), amended the regulations governing the requirements and procedures for authorizing representatives of non-profit religious, charitable, social service, or similar organizations to represent persons in proceedings before the Executive Office for Immigration Review (EOIR) and the Department of Homeland Security (DHS). The rule also amends the regulations concerning EOIR's disciplinary procedures. Amendments were made to various sections in 8 CFR Parts 1001, 1003, 1103, 1212, and 1292.

**Eliminating Exception to Expedited Removal Authority for Cuban Nationals**

**Arriving by Air.** A final EOIR rule published at 82 FR 4771, Jan. 17, 2017 (eff. Jan. 13, 2017) revised EOIR regulations to eliminate the categorical exception from expedited removal proceedings for Cuban nationals who arrive in the United States at a port of entry by aircraft, conforming to a parallel DHS regulation. The changed affected 8 CFR § 1235.3(b)(1)(i).

## **VOLUME 2—DOS REGULATIONS**

### **VISAS**

**Visa Information Update Requirements Under the Electronic Visa Update System (EVUS).** A final rule by DOS published at 81 FR 72522, Oct. 20, 2016 (eff. Nov. 29, 2016), amended 22 CFR 41.122 (Revocation of visas) in support of a joint program with the DHS that requires nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category to provide required information to DHS after the receipt of his or her visa of a designated category.

**Classification of Immediate Family Members as A, C-3, G, and NATO Nonimmigrants.** By final rule, 81 FR 88101, Dec. 7, 2016, DOS made amendments to 22 CFR §§ 41.21 (Foreign Officials—General), 41.22 (Officials of foreign governments), and 41.24 (International organization aliens).

**Diversity Immigrants; Photographs Submitted as Part of a Diversity Visa Lottery Entry Package.** A final rule by DOS published at 81 FR 63694, Sept. 16, 2016 (eff. Oct. 17, 2016), amended 22 CFR § 42.33 (Diversity immigrants) to clarify that photographs submitted as part of a diversity visa lottery entry package must have been taken no more than six months before the date the entry is made and prohibit applicants from wearing eyeglasses in photographs.

## **PASSPORTS**

**Denial and Restriction of Passports.** DOS final rule published at 81 FR 60608, Sept. 2, 2016, amended 22 CFR § 51.60 (Denial and restriction of passports). The final rule incorporates statutory passport denial and revocation requirements for certain covered sex offenders under the IML (International Megan’s Law), those persons with a seriously delinquent tax debt as defined by the FAST Act, and/or those application without a correct and valid Social Security number.

**Types of Passports.** An interim final rule of DOS published at 81 FR 67156, Sept. 30, 2016, amended 22 CFR § 51.1 (Definitions) and 22 CFR § 51.3 (Types of passports). The amendments add a definition for special issuance passports, and establish a new service passport. DOS explains that the new service passport may be approved for certain non-personal services contractors who travel abroad in support of and pursuant to a contract with the U.S. government. The amendments also make corresponding changes regarding official and diplomatic passports.

## **VOLUME 2—DOL REGULATIONS**

**Joint DHS-DOL Rule on Exercise of Time-Limited Authority To Increase the Fiscal Year 2017 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program.** See same entitled item above under “Volume 1 – 8 CFR – Department of Homeland Security”.

**Department of Labor Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2017.** A final rule by Department of Labor published at 82 FR 5373, Jan. 18, 2017 (eff Jan.13, 2017), made inflation adjustments in the regulations of various divisions within the De-

partment, including immigration-related regulations of the Employment and Training Administration under 20 CFR 655.620, 655.801, and 655.810.

**Workforce Innovation and Opportunity Act.** The Department of Labor published a final rule at 81 FR 56072, Aug. 19, 2016 (eff. Oct. 18, 2016) to implement titles I and III of the Workforce Innovation and Opportunity Act (WIOA). DOL explained that, through these regulations, it was reforming and modernizing the nation’s workforce development system. DOL noted that the rule provides the framework for changes for statewide and local workforce development systems to increase the employment, retention, earnings, and occupational skill attainment of U.S. workers, particularly those individuals with barriers to employment, so they can move into good jobs and careers and provide businesses with the skilled workforce needed to make the United States more competitive in the 21st Century global economy. In relevant part, the final rule revised in its entirety 20 CFR Part 658, Subpart E, which sets forth the regulations governing the Complaint System for the Wagner-Peyser Act Employment Service (ES) at the State and Federal levels.

## **VOLUME 2—DOJ REGULATIONS**

**Standards and Procedures for the Enforcement of the Immigration and Nationality Act.** A final rule by the Civil Rights Division of the Department of Justice, published at 81 FR 91768, Dec. 19, 2016 (eff Jan. 18, 2017), completely revised 28 CFR 0.53 Immigrant and Employee Rights Section, and also completely revised 28 CFR Part 44 (Unfair Immigration-Related Employment Practices).

**Revision of Department of Justice Freedom of Information Act Regula-**

**tions.** An interim rule by the Department of Justice, published at 82 FR 725, Jan. 4, 2017 (eff Feb. 3, 2017), amended the Department's regulations under the Freedom of Information Act (FOIA). DOJ explained that the amendments incorporate certain changes made to the FOIA by the FOIA Improvement Act of 2016. DOJ further explained that the rule amends certain provisions in the fee section to reflect developments in case law and to streamline the description of factors to be considered when making fee waiver determinations. The amendments were made to 28 CFR 16.1, 16.2, 16.4, 16.5, 16.6, 16.8, and 16.10.

## **VOLUME 2—DHHS REGULATIONS**

**Annual Update of the HHS Poverty Guidelines for 2017.** The annual update of

the HHS Poverty Guidelines for 2017 was published by DHHS at 82 FR 8831, Jan. 31, 2017. The new guidelines have been added at the end of the chronological collection of Annual Updates, at the end of the material following the "DOHHS" tab in Volume 2.

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October 2017

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*This volume contains 8 CFR and the Index  
for Volume 1.*

VOLUME 1

*PUBLISHER'S EDITORIAL STAFF*

2017

*Filed Through:*

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Regulations in Volumes 1 & 2

Current through Federal Register of August 31, 2017

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- Bender’s Immigration Regulations Service, 8 CFR § [section no.] (Matthew Bender)
  - Bender’s Immigration Regulations Service, DOS Regulations, § [section no.] (Matthew Bender)
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