

[Billing Code: 4710-06]

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 6676]

Foreign Officials: Definition of Immediate Family Members, As Amended.

AGENCY: State Department.

ACTION: Final Rule.

SUMMARY: As authorized the Immigration and Nationality Act this rule amends the definition of “immediate family” for the Foreign Government Official nonimmigrant visa category.

EFFECTIVE DATE: This rule is effective [insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Lauren A. Prosnik, Legislation and Regulations Division, Visa Services, Department of State, 2401 E Street, N.W., Room L-603D, Washington, D.C. 20520-0106, (202) 663-1202, e-mail (ProsnikLA@state.gov).

SUPPLEMENTARY INFORMATION:

Why is the Department promulgating this rule?

The Secretary of State has the authority and responsibility for the execution of the foreign policy of the United States. In the exercise of this authority and responsibility, this rule amends the definition of “immediate family” for the Foreign Government Official category of nonimmigrants as authorized by section 101(a)(15)(A) of the Immigration and Nationality Act [8 U.S.C 1101]. The term “immediate family” previously required that immediate family members other than the spouse and unmarried sons and daughters be related to the principal or spouse by blood, marriage or adoption. The definition now includes, upon authorization from the Department on a case by case basis, any other alien who is not a member of some other

household; will reside regularly in the household of the principal alien; and is recognized as a family member of the principal alien by the sending Government as demonstrated by eligibility for rights and benefits from that Government, such as the issuance of a diplomatic or official passport or travel or other allowances. This will allow the Department greater flexibility in responding to requests by foreign governments to issue a diplomatic visa to a person who regularly resides with and is a member of the household of a qualified principal alien and is considered by the principal alien and the sending Government to be a member of the immediate family of the principal alien.

REGULATORY FINDINGS

Administrative Procedure Act

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.

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth at sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. This regulation does not affect any small entities, as defined in 5 U.S.C. 601(6).

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Pub. L. 104-4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any

rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

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, Pub. L. 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.

Executive Order 12866

The Department of State has reviewed this regulation to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of the regulation justify its costs. The Department does not consider the regulation to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of \$100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities.

Executive Orders 12372 and 13132: Federalism

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 will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the legislation 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.

Paperwork Reduction Act

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

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

PART 41—[AMENDED]

1. Revise paragraph (a)(3) of §41.21 is to read as follows:

§41.21 Foreign Officials—General.

(a) * * *

(3) *Immediate family*, as used in INA 101(a)(15)(A), 101(a)(15)(G), and 212(d)(8), and in classification under the NATO–1 through NATO–5 visa symbols, means the spouse and unmarried sons and daughters, whether by blood or adoption, who are not members of some other household, and who will reside regularly in the household of the principal alien. Under the INA 101(a)(15)(A) and 101(a)(15)(G) visa classifications, “immediate family” also includes individuals who:

(i) Are not members of some other household;

- (ii) Will reside regularly in the household of the principal alien;
- (iii) Are recognized as immediate family members of the principal alien by the sending Government as demonstrated by eligibility for rights and benefits, such as the issuance of a diplomatic or official passport, or travel or other allowances; and
- (iv) Are individually authorized by the Department.

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July 14, 2009 _____

(Date)

Michael D. Kirby,
Acting Assistant Secretary for
Consular Affairs,
Department of State.

[FR Doc. 2009-17262 Filed 07/21/2009 at 8:45 am; Publication Date: 07/22/2009]