[Billing Code: 4710-06]

DEPARTMENT OF STATE

22 CFR Part 41

RIN: 1400-AD29

[Public Notice 8627]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, As Amended; TN Visas from NAFTA Countries

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: The Department of State amends its regulation pertaining to The North American Free Trade Agreement (NAFTA), by removing the petition requirement for citizens of Mexico applying for nonimmigrant visa classification as NAFTA professionals. The rule reflects changes to documentary requirements authorized under the Immigration and Nationality Act, in implementation of NAFTA.

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

FOR FURTHER INFORMATION CONTACT: Paul-Anthony L. Magadia, U.S. Department of State, Office of Legislation and Regulations, CA/VO/L/R, 600 19th Street, N.W., SA-17, Room 12-526B, Washington, D.C. 20522, 202-485-7641 or magadiapl@state.gov

SUPPLEMENTARY INFORMATION: The United States, Canada, and Mexico entered into The North American Free Trade Agreement, (NAFTA) (Section D of Annex 1603) in 1994, following enactment of the NAFTA Implementation Act (19 U.S.C. 21). NAFTA includes provisions for the entry of certain citizens of each respective signatory

country into the country of either of the two others as "professionals." To gain entry as "professionals," such citizens must meet the qualification criteria for a profession listed in Appendix 1603.D.1, and be seeking temporary entry to engage in a business activity pursuant to that profession.

Section 214(e)(2) of the Immigration and Nationality Act (INA) provides for a citizen of Canada or Mexico, and the spouse and children, if accompanying or following to join, to be treated as if seeking classification, or classifiable, as a nonimmigrant under INA section 101(a)(15). Section 214(e)(3) of the INA incorporates commitments made in NAFTA Appendix 1603.D.4, directing the Attorney General to establish an annual numerical limit for citizens of Mexico seeking temporary entry to engage in such business activity in the United States. INA section 214(e)(4) establishes conditions to be satisfied before the Secretary of Homeland Security, as successor to the Attorney General, may eliminate the numerical limit. At midnight, on December 31, 2003, the Secretary exercised this authority, and, as of January 1, 2004, eliminated the limitation of 5,500 and the requirement for a petition, which was needed solely for purposes of enforcing the limitation. This change to 22 CFR part 41 will provide consistency in the regulations of both departments governing temporary entry of NAFTA professionals.

A citizen of Mexico wishing to come to the United States in TN classification no longer needs an approved petition to meet the qualification requirements, but may apply directly to the embassy or consulate abroad for a visa. The consular officer will adjudicate eligibility for TN classification and, upon approval and issuance of a visa, the applicant may apply to the Department of Homeland Security for admission to the United States under TN status.

Regulatory Findings

Administrative Procedure Act

The Department of State is of the opinion that a rulemaking that implements treaty provisions (in this case, NAFTA) is a foreign affairs function of the United States Government and is exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act. Since this rule is exempt from 5 U.S.C. 553, the provisions of section 553(d) do not apply to this rulemaking.

In addition, this rulemaking conforms the Department of State rule to the corresponding rule administered by the Department of Homeland Security, 8 CFR 214.6(e). This eliminates ambiguity; therefore, a notice and comment period for this rule would be impractical and unnecessary. This rule is effective upon publication.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 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.

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. 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 rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of this final regulation justify its costs. The Department of State does not consider this rule 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 rule 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 any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Immigration, Nonimmigrant Visas.

For the reasons stated in the preamble, 22 CFR part 41 is amended as follows:

PART 41 – [AMENDED]

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

AUTHORITY: 8 U.S.C. 1104; Pub. L. 105-277, 112 Stat. 2681-795 through 2681-801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458, as amended by section 546 of Pub. L. 109-295).

2. Section 41.59 is amended by revising paragraphs (a)(2), (a)(3), and (b) and removing paragraph (a)(4).

The revisions read as follows:

§ 41.59 Professionals under the North American Free Trade Agreement.

(a) * * *

(2) The alien shall have presented to the consular officer sufficient evidence of an offer of employment in the United States requiring employment of a person in a professional capacity consistent with NAFTA Chapter 16 Annex 1603 Appendix 1603.D.1 and sufficient evidence that the alien possesses the credentials of that profession as listed in said appendix; or

(3) The alien is the spouse or child of an alien so classified in accordance with paragraph (a)(2) of this section and is accompanying or following to join the principal alien.

(b) *Visa validity.* The period of validity of a visa issued pursuant to paragraph (a) of this section may not exceed the period established on a reciprocal basis.

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Dated: January 22, 2014.

Janice L. Jacobs,
Assistant Secretary for
Consular Affairs,
Department of State.

[FR Doc. 2014-02674 Filed 02/07/2014 at 8:45 am; Publication Date: 02/10/2014]