internal agency management, it is exempt from the provisions of Executive Orders 12778 and 12866. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., do not apply. This rule supersedes the notice published in the Federal Register on May 18, 1988 (53 FR 17685).

List of Subjects in 7 CFR Part 510

Freedom of Information.

Accordingly, 7 CFR Part 510 is revised to read as follows:

PART 510—PUBLIC INFORMATION

Sec.
510.1 General statement.
510.2 Public inspection, copying, and indexing.
510.3 Requests for records.
510.4 Denials.
510.5 Appeals.

Authority: 5 U.S.C. 301, 552; 7 CFR Part 1, Subpart A and Appendix A thereto.

§ 510.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in Part 1, Subpart A of this title and Appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of the Agricultural Research Service (ARS) to the public.

§ 510.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. Members of the public may request access to such materials maintained by ARS at the following office: Information Staff, ARS, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770; Telephone (301) 344–2207. Office hours are 8:00 a.m. to 4:30 p.m.

§ 510.3 Requests for records.

Requests for records of ARS under 5 U.S.C. 552(a)(3) shall be made in accordance with § 1.6 of this title and submitted to the FOIA Coordinator, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770; Telephone (301) 344–2207; Facsimile (301) 344–2325; TDD (301) 344–2435. The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with § 1.3(a)(3) of this title.

§ 510.4 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with § 1.8(a) of this title.

§ 510.5 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with § 1.6(e) of this title and should be addressed as follows: Administrator, Agricultural Research Service, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, DC, this 18th day of December 1995.

K.D. Murrell,

Acting Associate Administrator, Agricultural Research Service.

[FR Doc. 95–31098 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–03–M

National Agricultural Library

7 CFR Part 4100

Availability of Information

AGENCY: National Agricultural Library, USDA.

ACTION: Final rule.

SUMMARY: This document removes the regulations of the National Agricultural Library (NAL) regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA) to reflect an internal reorganization of the Department of Agriculture (USDA).

EFFECTIVE DATE: December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, FOIA Coordinator, Information Staff, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770, Telephone (301) 344–2207.

SUPPLEMENTARY INFORMATION: The FOIA (5 U.S.C. 552(a)(1)) requires Federal agencies to publish in the Federal Register regulations describing how the public may obtain information from the agency. Part 4100 of Title 7, Code of Federal Regulations, was issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR Part 1, Subpart A, implementing FOIA.

Pursuant to an internal reorganization of USDA, NAL has been integrated into the Agricultural Research Service (ARS), USDA. This document removes 7 CFR Part 4100. Requests for information relating to NAL may be obtained through the FOIA Coordinator for ARS pursuant to 7 CFR Part 1, Subpart A, and 7 CFR Part 510.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12778 and 12866. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., do not apply. This rule supersedes the notice published in the Federal Register on May 19, 1988 (53 FR 17914).

List of Subjects in 7 CFR Part 4100

Freedom of Information Act.

Accordingly, under the authority of 5 U.S.C. 301, Part 4100 is removed and chapter XLI is vacated.

Done at Washington, DC, this 18th day of December 1995.

K.D. Murrell,

Acting Associate Administrator, Agricultural Research Service.

[FR Doc. 95–31097 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–12–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 242, 264, 274a, and 299

[INS No. 1414–91]

RIN 1115–AC39

Applicant Processing for Family Unity Benefits

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts with amendments the interim rule which was published by the Immigration and Naturalization Service on February 25, 1992, implementing the provisions of the Family Unity Program created by the Immigration Act of 1990 which provides a means by which certain eligible aliens may obtain permanent resident status. This rule also provides voluntary departure and work authorization for certain eligible immigrants.

EFFECTIVE DATE: December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Jack Hartsoch, Office of Service Center Operations, Immigration and

Naturalization Service, 425 I Street NW., Room 3040, Washington, DC 20536, telephone (202) 514–3156.

SUPPLEMENTARY INFORMATION: On November 29, 1990, the Immigration Act of 1990, Pub. L. 101–649 (IMMACT 90), was enacted. Section 301 of IMMACT 90 provides for relief from deportation, and the granting of employment authorization, to an eligible immigrant who is the spouse or unmarried child of a legalized alien granted temporary or permanent resident status pursuant to section 210 or 245A of the Immigration and Nationality Act (the Act), or permanent resident status under section 202 of the Immigration Reform and Control Act of 1986 (Cuban/Haitian Adjustment). This new program supersedes the administrative Family Fairness policy which began in November 1987. That policy allowed district directors to exercise the Attorney General's authority to defer deportation proceedings of certain family members of legalized aliens where compelling or humanitarian factors existed. On August 31, 1991, the Immigration and Naturalization Service (Service) published in the Federal Register at 56 FR 42948 a proposed rule to implement the provisions of section 301 of IMMACT 90, as it relates to the Family Unity Program. Subsequently, on February 25, 1992, the Service published in the Federal Register an interim rule at 57 FR 6457–6472 with request for comments. The interim rule as published on February 25, 1992 is adopted as final with amendments to 8 CFR parts 242 and 274a only. This final rule reflects the amendment to section 206 made by the Immigration and Nationality Technical Corrections Act of 1994, Public Law 103–416, § 206, 108 Stat. 4305, 4311–12 (1994). This rule also provides status under § 242.5 for children born to mothers granted status under the Family Unity Program who are authorized to depart and reenter the United States.

Comments

The discussion that follows summarizes the public comments submitted in response to the interim rule and explains the revisions adopted in the final rule.

Residency Since May 5, 1988

The interim rule provided that a qualifying family member would be eligible for Family Unity Program benefits if he or she had been in the United States on May 5, 1988, *and* had resided in the United States since that date. Several commenters asserted that no basis existed for the continuous residency requirement. They did not believe that this requirement had any statutory basis and that it was irrelevant whether an alien actually continued to remain in the United States after May 5, 1988.

Section 301(f) of IMMACT 90 states as follows:

> Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to obtain benefits under this section.

The statute now requires an applicant to have entered the United States before May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A), and also prohibits the admission of an alien for the purposes of obtaining Family Unity Program benefits. The Service interprets these two provisions as requiring an applicant for Family Unity Program benefits to have continuously resided in the United States since May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A). Further, the purpose of the Family Unity Program is to prevent the separation of families, and to provide a means by which qualifying family members already in the United States in illegal status can eventually apply for permanent resident status. The underlying administrative Family Fairness policy supports this premise. The Service created the Family Fairness policy as a means of precluding the separation of family members by deferring their deportation. The purpose of the policy was to allow family members to reside together in the United States until they could acquire legal status. Whether relating to the Family Fairness policy or the Family Unity Program, once a family member no longer resides with the family, the reason for which the status was granted no longer exists.

Therefore, the Service will retain the continuous residency requirement. In order to determine if the applicant has maintained a continuous residence in the United States since May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A), the Service will consider the factors set forth in *Matter of Huang,* 19 I&N 749, 753 (BIA 1988). In *Huang,* the Board of Immigration Appeals enumerated several factors which should be considered in determining whether an alien is returning from a temporary visit abroad, thereby retaining his continuous residency in the United States. These factors include the duration of the alien's absence from the United States; the location of the alien's family ties, the alien's property holdings, and job; and the intention of the alien with respect to both the location of his actual home and the anticipated length of his excursion. *Matter of Quijencio,* 15 I&N 95, 97 (BIA 1974); *Matter of Castro,* 14 I&N Dec. 492 (BIA 1973); *Matter of Montero,* 14 I&N 399, 400 (BIA 1973).

The Service will not interpret ''continuous residence'' as requiring ''continuous physical presence.'' A qualifying family member who meets the requirements of the Family Unity Program will be granted a 2-year period of voluntary departure. Voluntary departure is a form of relief from deportation and is available only to persons already in the United States.

Legalized Aliens/Applications After May 5, 1988

The interim rule provides that an alien who filed a legalization application on or before May 5, 1988, will be treated as having been a legalized alien as of May 5, 1988, for purposes of the Family Unity Program.

Section 301(a) of IMMACT 90 states as follows:

> The Attorney General shall provide that in the case of an alien who is [a qualified immigrant and the spouse or unmarried child of a legalized alien] as of *May 5, 1988* * * *. [Emphasis added]

Several commenters believe that the statute was never intended to exclude family members of legalized aliens who filed after May 5, 1988, from the Family Unity Program. They note that the filing deadline for the Special Agricultural Worker Program did not occur until November 30, 1988. They believe that an alien who filed a *timely* application after May 5, 1988, but before November 30, 1988, should also be treated as a legalized alien for purposes of the Family Unity Program.

Congress has acted to resolve this issue. Section 206(a) of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103–416, 108 Stat. at 4311, amends section 301 of IMMACT 90 to distinguish the legalization program under section 245A of the Act and the Cuban-Haitian adjustment provision in section 202 of

IRCA from the SAW program under section 210 of the Act. The Family Unity Program eligibility date for relatives of aliens legalized under the SAW program is now December 1, 1988, to correspond to the filing deadline for that program. This amendment is reflected in this final rule.

Children Born After May 5, 1988

The Service recognizes that the situation may arise where a child may be born abroad to an alien granted voluntary departure status and advance authorization to travel under the Family Unity Program. Although there is no provision in the statute to provide status to the child, it is also true that the intent of the statute was to enable specific family members to reside together in the United States.

Therefore, although the child cannot qualify for benefits under the Family Unity Program, the Service will provide for the granting of voluntary departure under 8 CFR 242.5, to a child of a legalized alien residing in the United States, who was born during an authorized absence of the mother who is currently either a legalized alien or a beneficiary of the Family Unity Program. This provision will also include children born to aliens residing in the United States, who were denied status in the Family Unity Program and granted voluntary departure status under 8 CFR 242.5, where the other parent is a legalized alien residing in the United States.

Waivers

Several commenters sought clarification regarding the availability of existing waivers of deportability for applicants for the Family Unity Program. The interim regulation reflects the statute in making aliens who are deportable under certain grounds ineligible for the Family Unity Program benefits. However, an alien who has been granted any available waiver is not deportable and is not ineligible for the Family Unity Program. The final rule is modified to clarify that existing waivers are applicable to applicants for the Family Unity Program.

Response to Notice of Intent To Deny

One commenter suggested that the Service should allow an applicant for Family Unity Program benefits to submit a good faith request for an extension of time to submit a response to a notice of intent to deny.

An applicant may request more time to respond to a notice to deny. However, the Service's decision whether or not to grant the request is discretionary. To ensure consistency with application procedures in other Service programs, the provisions in this rule are consistent with the general requirements and procedures for applications and petitions in 8 CFR part 103.

Denied Cases

The Service initially proposed an administrative appeal procedure. However, upon further review, this procedure was eliminated in the interim rule. One commenter believed that the Service should not have eliminated the administrative appeal process.

The Service set forth its reasons for eliminating the proposed administrative appeal process in the Supplementary Information to the interim rule published at 57 FR 6459–6460. The Service adheres to that reasoning and will not adopt an administrative appeal procedure.

Issuance of Orders To Show Cause (OSC)

A commenter was concerned that the Service would issue an OSC (Form I–221) while a Family Unity Program application is pending. The Service will not issue an OSC during the pending adjudication of an Application for Voluntary Departure Under the Family Unity Program (Form I–817), unless the OSC is based on a paragraph in section 241(a) of the Act which would render the applicant ineligible for the Family Unity Program.

Several commenters believed that having applicants placed in deportation proceedings as a result of a failure to meet basic eligibility requirements, such as residence by the required date, is a severely disproportionate consequence and a waste of Service resources, as the denied applicants are likely to be eligible for a second preference visa petition and will eventually be allowed to immigrate to the United States. The commenters recommended that the Service continue the policy under the administrative Family Fairness policy of not issuing OSCs in denied cases, except in egregious cases such as a serious criminal conviction.

However, as was discussed in the Supplementary Information to the interim rule, the Service must fulfill its enforcement responsibility under the Act. Therefore, this provision will remain as it is in the interim rule.

Several commenters proposed that the issuance of an OSC be delayed for 90 days after a second denial. They pointed out that the only way an alien may appeal a denial of Family Unity Program benefits would be to file a complaint against the Service in district court alleging abuse of discretion. Further, the commenters allege that the Service is making it difficult for the alien to bring these charges when it will only delay issuance of the OSC for the first denial. The commenters conclude that, in order to balance the removal of the proposed administrative appeals process, the Service should allow applicants more time after a second denial to seek judicial review.

The Service believes that granting a 90-day grace period after every denial before issuing an OSC might simply encourage a person to file repeated applications with the sole intent to protract the adjudication process and delay the issuance of an OSC. The Service believes that ample safeguards exist in the current procedure to enable an applicant to perfect an application and/or appeal a denial of benefits. Denied applicants will have at least 90 days from the first denial to refile a second application before the Service will issue an OSC. If the application is denied again, the applicant may still seek judicial review before the district court. Therefore, the final rule will not be amended to allow for a delayed issuance of an OSC after a second denial.

Release From Detention/Administrative Closure/Automatic Stay of Deportation

Several commenters suggested that the regulations provide that a demonstration of *prima facie* eligibility for Family Unity Program benefits should result in:

(1) The alien's release from detention on his or her own recognizance;

(2) Administrative closure of the deportation proceedings, provided a final administrative order of deportation has not been issued; and

(3) An automatic stay of deportation for a person with a final deportation order.

These commenters asserted that this would promote an efficient use of the budgets of the Service and the Executive Office for Immigration Review (EOIR) to be faithful to Congress' intent and would promote uniformity in national enforcement practice.

The Service may currently consider the requests of release from detention and stays of deportation on a case-by-case basis for Family Unity Program applicants under sections 242 and 243 of the Act. The Service is without authority to consider a request for administrative closure of a deportation proceeding.

Concurrent Jurisdiction of EOIR

Several commenters believe it would be helpful to have a provision stating that EOIR has concurrent jurisdiction with the Service in cases where an

applicant has been denied Family Unity Program benefits and is in deportation proceedings. The commenters suggest that the reference to judicial review in the interim rule includes the possibility of seeking review before an immigration judge.

The statute does not provide for administrative review of the Service's denial of Family Unity Program benefits. If an alien's application for Family Unity Program benefits is denied, he or she may still request relief from deportation in the form of voluntary departure in a deportation hearing before an immigration judge. Such a request would be made pursuant to section 244 of the Act and would be a separate determination from that made by the Service pursuant to section 301 of the Immigration Act of 1990. An immigration judge's denial of voluntary departure in deportation proceedings could then be appealed to the Board of Immigration Appeals and the Federal circuit court of appeals.

Employment Authorization

Several commenters proposed that the Service apply the same practice to the Family Unity Program as was applied to the Legalization Program and the administrative Family Fairness policy regarding employment authorization, for example, granting interim employment authorization for the time period between the granting of the application and the issuance of the employment authorization document (EAD) at a local Service office. Several commenters suggested that such interim work authorization should be stamped directly onto the receipt notice, with the period of validity to coincide with the EAD appointment date plus 90 days.

The Service's position regarding the issue of providing interim work authorization to Family Unity Program applicants remains unchanged. The Service has determined that a uniform procedure for issuance of EADs is necessary. Further, interim work authorization is less secure and presents enforcement problems. For the above reasons and those set forth in the interim rule, the Service will not authorize interim employment for the period between the granting of an application for Family Unity Program benefits and the issuance of an EAD. Instead, the applicant may apply on Form I–765 for issuance of an EAD, concurrently with Form I–817. To file Form I–765 at a Service Center, the applicant must include two (2) ADIT-style photographs.

Identify Document for Employment Authorization

The interim rule, at 8 CFR 242.6(e)(5), contained the language, ''issued by legitimate agency of the United States or a foreign government,'' when referring to an identity document the alien must present at the time of filing for an application for an EAD. Some commenters expressed concern that the language could be construed too narrowly to preclude State or local government-issued identification documents (whether domestic or foreign), and recommended that the final language of the rule clarify that identification documents will be accepted if they have been issued by smaller scale government sources, provided they are legitimate.

The intent of this requirement is to ensure that a person appearing at the local district office to obtain an EAD establish that he or she is the person granted Family Unity Program benefits before being given the EAD. The final rule clarifies this point.

Reference on Forms I–688B and I–551

One commenter requested that the Employment Authorization Card, Form I–688B, and the Alien Registration Receipt Card, Form I–551, include a reference to section 301 of IMMACT 90 to assist in identifying participants in this program.

The Form I–688B does have a reference to the Family Unity Program. Section 274a.12(a)(13) is used exclusively for the Family Unity Program. The Form I–551 reflects the section of law under which the alien immigrated but does not directly indicate the alien's previous participation in the Family Unity Program.

Continuing Relationship Requirement

One commenter requested a clarification regarding the continuing relationship requirement, specifically the definitions of ''child'' and ''spouse.''

The definition of ''child'' is the same as is defined in section 101(b)(1) of the Act, with the exception that the alien will not lose eligibility for the Family Unity Program by virtue of having attained the age of 21 after May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A). The definition of ''spouse'' includes the term as described in section 101(a)(35) of the Act. The term ''spouse'' is also described in decisions relating to the petitioning process for sections 201(b) and 203(a)(2) of the Act. There is no special definition of spouse associated with this rule.

In the interim rule, at § 242.6(c)(1)(ii), an eligible immigrant is required to also be eligible for family-sponsored second preference immigrant status under section 203(a)(2) of the Act *based on the same relationship*. One commenter believed that the ''based on the same relationship'' phrase should not be included in the promulgation of final regulations and that marital status on May 5, 1988, and not any time thereafter, be the relevant determination of eligibility. The commenter concluded that the disqualification is inconsistent with the purposes of the Family Unity Program.

Pursuant to section 301 paragraphs (a) and (b)(1) of the Immigration Act of 1990, the required relationship to a legalized alien must have existed on May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A). The issue is whether that relationship must continue in order for eligibility to continue, or whether the alien granted benefits under the Family Unity Program should be allowed to retain those benefits even if the required relationship changes.

The purpose of the Family Unity Program is to provide a transition for specific family members of legalized aliens to family-sponsored second preference immigrant status. If benefits under the Family Unity Program were retained even after a required relationship ended by marriage, divorce, or death, and the person became ineligible for family-sponsored second preference classification, the alien could potentially remain in the Family Unity Program without a means to become a permanent resident. This would go far beyond Congress' intent for the program and would be inconsistent with section 205 of the Act.

In essence, this regulation applies the same rules to the Family Unity Program which are applicable to persons with approved family-sponsored immigrant petitions in similar circumstances. If a marriage to a petitioner ends, or the unmarried son or daughter of a lawful permanent resident petitioner marries, approval of an immigrant petition based upon that relationship is automatically revoked, and that petition may no longer be used as a basis for immigration.

Therefore, if the legalized alien's child marries, or if the legalized alien's marriage to the spouse ends through divorce or death, neither the child nor the spouse can retain benefits under the Family Unity Program because of the termination of the relationship by which he or she qualified.

Petition/Extension Application

In order to obtain an extension of voluntary departure, section 242.6(e)(7) of the interim rule requires that a petition for family-sponsored immigrant status be filed on behalf of the applicant during the initial period of voluntary departure. Several commenters asserted that this requirement is unnecessary.

The Service recognizes that the statute does not specifically require that an immigrant petition be filed in order to obtain an extension of voluntary departure; however, since the intent of the program is to provide a bridge to permanent residence, it is reasonable to require the family member to at least file the second-preference petition. Further, this regulation will assist the Service in moving toward closure of the need for the Family Unity Program, and provide lawful permanent resident status for the participants of the Family Unity Program. The requirement continued from the interim rule is being modified so as to relate only to those applicants whose petitioning family member is a lawful permanent resident and thereby eligible to file the petition.

Extension/Demonstration of Continued Eligibility

Several other commenters suggested that the rule be modified to require a person seeking Family Unity Program benefits to demonstrate continued eligibility only from the date of execution of the prior Family Unity Program application. The commenters conclude that this would streamline the extension process and save time and resources for both the Service and the applicants. Several commenters also suggested that such simplification should result in a reduced fee.

The final rule will be amended to reflect that the applicant for an extension will not be required to submit evidence already submitted. However, the applicant will be required to submit evidence of continuing eligibility since the first application for the Family Unity Program was submitted. The applicant will also be required to notify the Service of any changes relating to the first application.

Two commenters suggested that an applicant for voluntary departure under the Family Unity Program only be required to submit a simple half-page extension form or a Form I–817 by itself, along with a reduced fee. Since activities such as mail distribution, fee receipting, data entry, records verification, adjudication, and notification are associated with the processing of any form, the fee will remain the same.

The Service is committed to charging a fee that accurately reflects costs. The Service will continue to use the form created for this program, Form I–817, Application for Voluntary Departure Under the Family Unity Program. The fee is consistent with 31 U.S.C. 9701 and the guidelines of the Office of Management and Budget in OMB Circular A–25, for an application for an initial grant of family unity benefits and for an application to extend family unity benefits.

Condition/Status

In the interim rule, an alien who is granted advance authorization to travel outside the United States and who returns to the United States in accordance with such authorization, and who is found not to be excludable under section 301(a)(1) of IMMACT 90, shall be *inspected and admitted in the same immigration condition the alien had at the time of departure for the remainder of the 2-year voluntary departure previously authorized under the Family Unity Program*. One commenter was troubled about the use of the term ''condition'' instead of ''status'' for persons who depart and return on advance parole.

To avoid an appearance that the Service is not following the statute, the word ''status'' will be used in the final rule. If the person was in status at the time of departure, the alien will be placed in status upon return to the United States. Conversely, if the person was out of status upon departure, the alien will be out of status upon his or her return. Thus, existing sections of the Act, such as section 245, are unaffected by section 301 of IMMACT 90. If an alien was ineligible to adjust status upon departure, the alien will be ineligible to adjust status upon return.

Visa Processing

One commenter requested clarification regarding the processing of immigrant petitions. Section 301 of IMMACT 90 is not affected by procedures relating to immigrant petitions.

Confidentiality

One commenter suggested that the Service adopt a relation providing for confidentiality for the Family Unity Program application, prohibiting the use of information gathered for the Family Unity program in establishing deportability.

The Immigration Reform and Control Act required confidentiality in clear statutory language. No such provision was made in the enabling statute for the Family Unity Program.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have significant economic impact on a substantial number of small entities because the rule relates solely to individual immigration benefits.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will enhance family well-being by providing for family unity of eligible persons.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations [Government agencies], Freedom of Information, Privacy, Reporting and

recordkeeping requirements, Surety bonds.

8 CFR Part 242

Administrative practice and procedure, Aliens, Crime.

8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment penalties, Report and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR parts 103, 242, 264, 274a and 299 which was published at 57 FR 6457–6462 on February 25, 1992, is adopted as a final rule with the following changes:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

2. In § 242.5, paragraph (a) is amended by:

a. Removing ''or'' before paragraph (a)(2)(viii);

b. Removing the ''.'' at the end of the paragraph and replacing it with a ''; or'';

c. Adding paragraph (a)(2)(ix); and

d. Revising paragraph (a)(3) to read as follows:

§ 242.5 Voluntary departure prior to commencement of hearing.

* * * * *

(a) * * *

(2) * * *

(ix) who is the child of a legalized alien currently residing in the United States, born during an authorized absence from the United States of the mother who is:

(A) A legalized alien; or

(B) An alien currently residing in the United States under voluntary departure pursuant to the Family Unity Program.

(3) *Periods of time/employment.* (i) Except for paragraphs (a)(2) (v) through (ix) of this section, any grant of voluntary departure shall contain a time limitation of usually not more than 30 days, and an extension of the original voluntary departure time shall not be authorized except under meritorious circumstances, as determined on a case-by-case basis. Upon failure to depart, deportation proceedings will be initiated. As an exception to the 30-day voluntary departure period, an eligible alien under:

(A) Paragraph (a)(2)(v) of this section may be granted voluntary departure in increments of 1 year conditioned upon the F–1 or J–1 alien maintaining a full course of study at an approved institution of learning, or upon abiding by the terms and conditions of the exchange program within the limitations imposed by 22 CFR 514.23; or

(B) Paragraphs (a)(2)(vi) (A), (B), and (C) of this section may be granted voluntary departure until the American Consul issues an immigrant visa and, at the discretion of the district director, issuance may be in increments of 30 days, conditioned upon continuing availability of an immigrant visa as shown in the latest Visa Office Bulletin and upon the alien's diligent pursuit of efforts to obtain the visa; or

(C) Paragraphs (a)(2)(vi) (D) and (E) of this section may be granted voluntary departure, conditioned upon the continued validity of the approved third- or sixth-preference petition, as appropriate, and the alien's retention of the status established in the petition for an indefinite period until an immigrant visa is available; or

(D) Paragraphs (a)(2) (vii) and (viii) of this section may be granted voluntary departure in increments of time, not to exceed 1 year, as determined by the district director to be appropriate in the case; or

(E) Paragraph (a)(2)(ix) of this section may be granted voluntary departure in increments of time, not to exceed 2 years.

(ii) An alien eligible for voluntary departure in paragraphs (a)(2) (v) through (viii) of this section may apply for employment authorization under the appropriate citation in § 274a.12 of this chapter.

* * * * *

3. Section 242.6 is revised to read as follows:

§ 242.6 Family Unity Program.

(a) *General.* Except as otherwise specifically provided in paragraph (b) of this section, the definitions contained in Title 8 of the Code of Federal Regulations shall apply to the administration of this section.

(b) *Definitions.* As used in this section:

Eligible immigrant means a qualified immigrant who is the spouse or unmarried child of a legalized alien.

Legalized alien means an alien who:

(i) Is a temporary or permanent resident under section 210 or 245A of the Act; or

(ii) Is a permanent resident under section 202 of the Immigration Reform and Control Act of 1986 (Cuban/Haitian Adjustment).

(c) *Eligibility*—(1) *General.* An alien who is not a lawful permanent resident is eligible to apply for benefits under the Family Unity Program if he or she establishes:

(i) That he or she entered the United States before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90)), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), and has been continuously residing in the United States since that date; and

(ii) That on May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), he or she was the spouse of unmarried child of a legalized alien, and that he or she has been eligible continuously since that time for family-sponsored second preference immigrant status under section 203(a)(2) of the Act based on the same relationship.

(2) *Legalization application pending as of May 5, 1988 or December 1, 1988.* An alien whose legalization application was filed on or before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), but not approved until after that date will be treated as having been a legalized alien as of May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), for purposes of the Family Unity Program.

(d) *Ineligible aliens.* The following categories of aliens are ineligible for benefits under the Family Unity Program:

(1) An alien who is deportable under any paragraph in section 241(a) of the Act, except paragraphs (1)(A), (1)(B), (1)(C), and (3)(A); *provided that* an alien

who is deportable under paragraph (1)(A) of such Act is also ineligible for benefits under the Family Unity Program if deportability is based upon an exclusion ground described in section 212(a) (2) or (3) of the Act;

(2) An alien who has been convicted of a felony or three or more misdemeanors in the United States; or

(3) An alien described in section 243(h)(2) of the Act.

(e) *Filing*—(1) *General.* An application for voluntary departure under the Family Unity Program must be filed at the Service Center having jurisdiction over the alien's place of residence. A Form I–817 (Application for Voluntary Departure under the Family Unity Program) must be filed with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. A separate application with appropriate fee and documentation must be filed for each person claiming eligibility.

(2) *Decision.* The Service Center director has sole jurisdiction to adjudicate an application for benefits under the Family Unity Program. The director will provide the applicant with specific reasons for any decision to deny an application. Denial of an application may not be appealed. An applicant who believes that the grounds for denial have been overcome may submit another application with the appropriate fee and documentation.

(3) *Referral of denied cases for consideration of issuance of Order to Show Cause.* If an application is denied, the case will be referred to the district director with jurisdiction over the alien's place of residence for consideration of whether to issue an Order to Show Cause (OSC). After an initial denial, an applicant's case will not be referred for issuance of an OSC until 90 days from the date of the initial denial, to allow the alien the opportunity to file a new Form I–817 application in order to attempt to overcome the basis of the denial. However, if the applicant is found not to be eligible for benefits under paragraph (d)(2) of this section, the Service reserves the right to issue an Order to Show Cause at any time after the initial denial.

(4) *Voluntary departure under § 242.5 and eligibility for employment under § 274a.12(c)(12).* Children of legalized aliens residing in the United States, who were born during an authorized absence from the United States of mothers who are currently residing in the United States under voluntary departure pursuant to the Family Unity Program may be granted voluntary departure under § 242.5(a)(2)(ix) for a period of 2 years.

(5) *Duration of voluntary departure under § 242.6.* An alien whose application for benefits under the Family Unity Program is approved will receive a 2-year period of voluntary departure. The 2-year period will begin on the date the Services approves the application.

(6) *Employment authorization.* An alien granted benefits under the Family Unity Program is authorized to be employed in the United States and may apply for an employment authorization document on Form I–765 (Application for Employment Authorization). The application may be filed concurrently with Form I–817. The application must be accompanied by the correct fee required by § 103.7(b)(1) of this chapter. The validity period of the employment authorization will coincide with the period of voluntary departure.

(7) *Travel outside the United States.* An alien granted Family Unity Program benefits who intends to travel outside the United States temporarily must apply for advance authorization using Form I–131 (Application for Travel Document). The authority to grant an application for advance authorization for an alien granted Family Unity Program benefits rests solely with the district director. An alien who is granted advance authorization and returns to the United States in accordance with such authorization, and who is found not to be excludable under section 212(a) (2) or (3) of the Act, shall be inspected and admitted in the same immigration status the alien had at the time of departure, and provided the remainder of the 2-year voluntary departure previously granted under the Family Unity Program.

(8) *Extension of voluntary departure.* An application for an extension of voluntary departure under the Family Unity Program must be filed by the alien on Form I–817 along with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. The submission of a copy of the previous approval notice will assist in shortening the processing time. An extension may be granted if the alien continues to be eligible for benefits under the Family Unity Program. However, an extension may not be approved if the legalized alien is a lawful permanent resident, and a petition for family-sponsored immigrant status has not been filed in behalf of the applicant. In such case the Service will notify the alien of the reason for the denial and afford him or her the opportunity to file another Form I–817 once the petition, Form I–130, has been filed in behalf of him or her. No charging document will be issued for a period of 90 days.

(9) *Supporting documentation for extension application.* Supporting documentation need not include documentation provided with the previous application(s). The extension application need only include changes to previous applications and evidence of continuing eligibility since the date of the prior approval.

(f) *Eligibility for Federal financial assistance programs.* An alien granted Family Unity Program benefits based on a relationship to a legalized alien as defined in paragraph (b) of this section is ineligible for public welfare assistance in the same manner and for the same period as the legalized alien is ineligible for such assistance under sections 245A(h) or 210(f) of the Act, respectively.

(g) *Termination of Family Unity Program benefits.*

(1) *Grounds for termination.* The Service may terminate benefits under the Family Unity Program whenever the necessity for the termination comes to the attention of the Service. Such grounds will exist in situations including, but not limited to, those in which:

(i) A determination is made that Family Unity Program benefits were acquired as the result of fraud or willful misrepresentation of a material fact;

(ii) The beneficiary commits an act or acts which render him or her inadmissible as an immigrant or ineligible for benefits under the Family Unity Program;

(iii) The legalized alien upon whose status benefits under the Family Unity Program were based loses his or her legalized status;

(iv) The beneficiary is the subject of a final order of exclusion or deportation issued subsequent to the grant of benefits on any ground of deportability or excludability that would have rendered the alien ineligible for benefits under § 242.6(d)(1) of this chapter, regardless of whether the facts giving rise to such ground occurred before or after the benefits were granted; or

(v) A qualifying relationship to a legalized alien no longer exists.

(2) *Notice procedure.* Notice of intent to terminate and of the grounds thereof shall be served pursuant to the provisions of § 103.5a of this chapter. The alien shall be given 30 days to respond to the notice and may submit to the Service additional evidence in rebuttal. Any final decision of termination shall also be served pursuant to the provisions of § 103.5a of the chapter. Nothing in this section

shall preclude the Service from commencing exclusion or deportation proceedings prior to termination of Family Unity Program benefits.

(3) *Effect of termination.* Termination of benefits under the Family Unity Program, other than as a result of a final order of deportation or exclusion, shall render the alien amendable to exclusion or deportation proceedings under sections 236 or 242 of the Act, as appropriate.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

4. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

5. Section 274a.12 is amended by revising paragraph (c)(12) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(12) A deportable alien granted voluntary departure, either prior to or after a hearing, for reasons set forth in § 242.5(a)(2) (v), (vi), (viii), or (ix) of this chapter, may be granted permission to be employed for that period of time prior to the date set for voluntary departure including any extension granted beyond such date, if the alien establishes an economic need to work. Factors which may be considered in adjudicating the application for employment authorization of such an alien granted voluntary departure include, but are not limited to, the following:

(i) The length of voluntary departure granted;

(ii) The existence of a dependent spouse and/or children in the United States who rely on the alien for support;

(iii) Whether there is a reasonable chance that legal status may ensure in the near future; and

(iv) Whether there is a reasonable basis for consideration of discretionary relief.

* * * * *

Dated: December 13, 1995.

Doris Meissner,

Commissioner.

[FR Doc. 95–30701 Filed 12–20–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–30]

Establishment of Class D Airspace and Amendment of Class E Airspace; Elko, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and amends Class E airspace areas at Elko Municipal-J.C. Harris Field, Elko, NV. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 5 and the establishment of a Airport Traffic Control Tower has made this action necessary. An intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Elko Municipal-J.C. Harris Field, Elko, NV.

EFFECTIVE DATE: 0901 UTC February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

On October 30, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D and amending Class E airspace at Elko, NV (60 FR 55222).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class D and Class E airspace designations are published in paragraphs 5000, 6002, and 6005 of FAA Order 7900.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes the Class D and amends the Class E airspace areas at Elko, NV. An intended effect of this action is to provide adequate controlled airspace for aircraft executing the GPS RWY 5 SIAP at Elko Municipal-J.C. Harris Field, Elko, NV.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP NV D Elko, NV [New]

Elko Municipal-J.C. Harris Field, NV
(lat. 40°49′31″N, long 115°47′28″W)

That airspace extending upward from the surface to including 7,700 feet MSL within a 4.3-mile radius of Elko Municipal-J.C. Harris Field and within 1.8 miles each side of the 248° bearing from the Elko Municipal-J.C. Harris Field, extending from the 4.3-mile radius to 6 miles southwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective