

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 4316]

Visas: Documentation of Immigrants—Victims of Terrorism**AGENCY:** Department of State.**ACTION:** Interim rule with request for comments.

SUMMARY: This rule amends the Department's regulations concerning immigrant visas. Recent legislation, commonly known as the USA Patriot Act, permits certain victims of the September 11, 2001 terrorist attack to file petitions for classification as special immigrants. This rule implements these provisions by creating a new visa classification "SP" for these immigrants and sets forth the eligibility requirements for the issuance of an immigrant visa in that category.

DATES: *Effective date:* This interim rule is effective on May 8, 2003.

Comment date: The Department will consider written comments submitted on or before July 7, 2003.

ADDRESSES: Please submit comments to the Chief, Legislation and Regulations Division, Visa Services, Department of State, 20522-0106, e-mail VisaRegs@state.gov, or fax to (202) 663-3898.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522-0106, phone (202) 663-1206.

SUPPLEMENTARY INFORMATION:**What Is the Authority for This Rule?**

On October 26, 2001, the President signed into law the "Uniting and Strengthening America Act by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act)," Public Law 107-56. Section 421 of the USA Patriot Act provides special immigrant status for certain victims of the terrorist attack of September 11, 2001 who file petitions for classification under the Immigration and Nationality Act (INA) section 203(b)(4).

Who Is Entitled to the Special Immigrant "SP" Classification?*Principal Alien*

An alien is entitled to classification as an "SP" special immigrant if the alien can demonstrate to the Attorney General that

(1) He or she is the beneficiary of a petition, filed on or before September 11, 2001, for classification as an immigrant under INA 203(a) or (b) or as

a nonimmigrant under INA 101(a)(15)(K); or

(2) He or she is the beneficiary of a labor certification application filed on or before September 11, 2001.

Additionally, the alien must present evidence that the petition or labor certification application was revoked, terminated or rendered null, either before or after its approval, due directly to the attack of September 11, 2001, that resulted in the death or disability of the petitioner, beneficiary, or applicant; or caused loss of employment due to physical damage to, or destruction of, the business of the petitioner or the applicant.

Spouse or Child

The spouse or child of an alien who meets the description of a "principal alien" (whether the principal alien is living or deceased) may be classified as an "SP" if the familial relationship existed on September 10, 2001; and if the spouse or child is

(1) Accompanying the principal alien; or

(2) Following-to-join the principal alien no later than September 11, 2003. In the case of a deceased principal alien, the requirement for accompanying or following to join is disregarded.

Grandparent of an Orphan

The grandparent of a child may be classified as an "SP", if the child is left with no parents as a direct result of a terrorist attack on September 11, 2001, if either parent was a U.S. citizen, a U.S. national, or a lawful U.S. permanent resident on September 10, 2001. The grandparent must also demonstrate that he or she is coming to the U.S. to assume legal custody of the child.

What Evidence Must Be Presented To Show That the Alien Was the Victim of the September 11, 2001, Terrorist Attack?

To qualify for classification as an "SP" immigrant, the alien must demonstrate to the Secretary of Homeland Security that he or she is a "victim of a specified terrorist activity", defined in the USA Patriot Act as any terrorist activity conducted against the Government or the people of the United States on September 11, 2001. The INS is responsible for approval of the petition, and thus responsible for determining if the alien has presented satisfactory evidence that he or she is a victim of a September 11, 2001 terrorist attack.

Are Aliens in the "SP" Category Subject to the Grounds Visa Inadmissibility?

Aliens in the "SP" are subject to all grounds of ineligibility except INA 212(a)(4).

How Will Aliens in the "SP" Category Be Assigned a Priority Date?

The Immigration and Naturalization (INS) will assign a priority date at the time the fourth preference petition is filed. Consular officers will issue visas in the chronological order in which the petitions were submitted to the INS. However, if the annual limit under INA 203 is met, the alien may use the priority date of the revoked petition.

How Is the Department Amending Its Regulation?

The Department is amending 22 CFR 42.32(d) by adding a new fourth preference classification paragraph (9) clarifying entitlement to special immigrant status under the USA Patriot Act. This rule authorizes consular officers to accord fourth preference employment-based special immigrant classification to certain victims of the September 11, 2001, terrorist attacks. As with other classes of fourth preference employment-based immigrants, the alien must be the beneficiary of an approved petition.

Regulatory Analysis and Notices*Administrative Procedure Act*

The Department's implementation of this regulation as an interim rule is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). As the amendment to the regulation simply implements without interpretation a legislative mandate that provides a benefit to aliens by extending special immigrant status to a specific class of aliens, the Department has determined that it is unnecessary to publish a proposed rule. In view of this benefit and since the amendment applies to visas made available in any fiscal year beginning immediately, the rule will be made effective immediately upon publication in the **Federal Register**.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule is not expected to have a significant economic impact on a substantial number of small entities.