

41.27, respectively; (5) applicants who within twelve months of the expiration of their previous visa are seeking re-issuance of a nonimmigrant visa in the same classification at the consular post of the alien's usual residence, and for whom the consular officer has no indication of any noncompliance with U.S. immigration laws and regulations, and (6) aliens for whom a waiver of personal appearance is warranted in the national interest or because of unusual circumstances, as determined by the consular officer.

Experience shows that applicants in the first and second categories pose very little if any threat to our security. Persons in the third and fourth categories, diplomats and officers or employees of international organizations and their immediate families are ordinarily very well known to embassy staff members, or there is extensive background information available concerning them. In addition, international law, comity and reciprocity with regard to official personnel may appropriately be taken into account. In the fifth category, the previous personal appearance by and interview of the applicant would make it unlikely that further appearance and interview would reveal any basis for refusal. Applicants in the sixth category, except for those cases based on medical issues, will generally be important contacts of embassy officers and therefore well known to the embassy. It is important to understand, however, that, although the consular officer has discretion to waive personal appearance for an individual falling in one of the six categories, waiver is never required.

What Other Waiver Authority May Be Exercised?

In addition to the waiver authority granted to consular officers in the six specific categories listed above, as mentioned, the Deputy Assistant Secretary for Visa Services will have the authority to waive the requirement for personal appearance for a class of individuals when the Deputy Assistant Secretary is satisfied that the waiver is in the national interest or involves unusual circumstances.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as an interim rule, with a 60-day provision for post-promulgation public comments, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). It is dictated by the necessity of additional controls over the documentation and entry of

aliens at this time, in light of the continuing threat of terrorist attacks on the United States and, as noted, is bringing the Department's regulation into line with practices that are already generally in effect through the discretionary exercise of existing waiver authority.

Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Department of State hereby certifies that it is not expected to have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement 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 significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department does not consider this rule a "significant regulatory action" under Executive Order 12866, section 3(f) Regulatory Planning and Review. Nevertheless, the Department has submitted the rule to the Office of Management and Budget for its review.

Executive Order 13132

This regulation 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 section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or

warrant the preparation of a federalism summary impact statement.

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, Passports and Visas.

■ Accordingly, for the reasons discussed in the preamble, Part 41 is amended as follows:

PART 41—[AMENDED]

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

Authority: 8 U.S.C. 1104; Public Law 105–277, 112 Stat. 2681 *et seq.*

■ 2. Revise section 41.102 to read as follows:

§ 41.102 Personal appearance of applicant.

(a) *Personal* appearance before a consular officer is required except as otherwise provided in this section. Except when the requirement of personal appearance has been waived pursuant to paragraph (b) or (c) of this section, each applicant for a nonimmigrant visa must personally appear before and be interviewed by a consular officer, who shall determine on the basis of the applicant's representations, the visa application and other relevant documentation:

- (1) The proper nonimmigrant classification, if any, of the alien; and
- (2) The alien's eligibility to receive a visa.

(b) *Waivers of personal appearance by consular officers.* Unless otherwise instructed by the Deputy Assistant Secretary of State for Visa Services, a consular officer may waive the requirement of personal appearance in the case of any alien who the consular officer concludes presents no national security concerns requiring an interview and who:

- (1) Is a child 16 years of age or under;
- (2) Is a person 60 years of age or older;
- (3) Is within a class of nonimmigrants classifiable under the visa symbols A–1, A–2, C–2, C–3, G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, or NATO–6 and who is seeking a visa in such classification;
- (4) Is an applicant for a diplomatic or official visa as described in §§ 41.26 and 41.27 of this chapter, respectively;
- (5) Is an applicant who within 12 months of the expiration of the applicant's previously issued visa is seeking re-issuance of a nonimmigrant visa in the same classification at the consular post of the applicant's usual