

# Rules and Regulations

Federal Register

Vol. 76, No. 95

Tuesday, May 17, 2011

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## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Part 204

[CIS No. 2502–11, DHS Docket No. USCIS–2011–0002]

RIN 1615–AB93

### Requiring Residents Who Live Outside the United States To File Petitions According to Form Instructions

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Final rule with a request for comments.

**SUMMARY:** The Department of Homeland Security (DHS) is amending its regulations to establish the location where a Petition for Alien Relative, Form I–130, or a Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360, may be filed, accepted, processed and approved through form instructions. DHS is promulgating this rule to reduce DHS costs by reducing filings of a Petition for Alien Relative at non-U.S. Citizenship and Immigration Services (USCIS) international locations, such as United States consulates and embassies, and to increase USCIS's flexibility in administering this program. DHS is removing references to offices, form numbers, approval authorities, and internal procedures from the regulation.

**DATES:** *Effective date:* This rule is effective on August 15, 2011.

*Comment period:* Written comments must be submitted on or before July 18, 2011.

**ADDRESSES:** You may submit comments, identified by DHS Docket No. USCIS–2011–0002 by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Sunday Aigbe, Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 5012, Washington, DC 20529–2020. To ensure proper handling, please reference DHS Docket No. USCIS–2011–0002 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.

- *Hand Delivery/Courier:* Sunday Aigbe, Chief Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 5012, Washington, DC 20529–2020. Contact Telephone Number (202) 272–8377.

**FOR FURTHER INFORMATION CONTACT:**

Adam Klein, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 1100, Washington, DC 20529–2020. Contact Telephone Number (202) 272–1474.

**SUPPLEMENTARY INFORMATION:**

#### I. Public Participation

All interested parties are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this final rule. To provide the most assistance to USCIS comments should refer to a specific portion of the final rule, explain the reason for any recommended change, and include data, information, or authority that support that recommended change.

*Instructions:* All submissions must include the agency name and DHS Docket No. USCIS–2011–0002 for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

#### II. Background

DHS is removing regulatory restrictions on where a Petition for Alien Relative, Form I–130, and a Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360, on behalf of a widow or widower may be

filed, as well as any prescription of the location or jurisdiction of the U.S. Citizenship and Immigration Services (USCIS) or the U.S. Department of State (DOS) with regard to the acceptance, processing, and approval of those petitions. A relative petition is used for a citizen or lawful permanent resident (LPR) of the United States to establish the relationship to certain alien relatives who wish to immigrate to the United States. A Petition for Amerasian, Widow(er), or Special Immigrant is used by an Amerasian, widow(er), or special immigrant to classify an alien as such where the alien wishes to immigrate to the United States. After approval of either petition, the eligible family member or alien may apply for an immigrant visa or for adjustment of status to that of an LPR once a visa number becomes available. *See* Immigration and Nationality Act, as amended (INA), section 203, 245(a), 8 U.S.C. 1153 and 1255(a); 22 CFR 42.41; 8 CFR 245.1(a). No changes are made to regulations pertaining to the eligibility of alien relatives to immigrate to the United States.

#### III. Reason for This Change

DHS regulations currently provide that certain petitioners residing in countries where USCIS does not have an international office may file a relative petition or petition by a widow or widower at a U.S. consulate abroad and that these petitions may be accepted and approved by a consular officer. *See* 8 CFR 204.1(e). DHS is amending the regulations to require that all petitioners who reside outside the United States file a relative petition or petition by a widow or widower according to the form instructions. *See* new 8 CFR 204.1(b). USCIS will amend the form instructions for relative petitions concurrently with this rulemaking to provide the option of either mailing the petition to the USCIS Chicago Lockbox, or filing at the USCIS international office if the petitioner resides in a country where USCIS has an office. USCIS will not be amending form instructions relative to a petition by a widow or widowers at this time. USCIS may change these form instructions in the future as the USCIS transformation progresses or as necessary to shift filings among USCIS offices for processing efficiency.

This rule represents another step DHS is taking to remove unnecessary internal USCIS procedures from regulations and to transition toward an electronic environment and away from the filing in a paper-based environment. *See Removing References to Filing Locations and Obsolete References to Legacy Immigration and Naturalization Service; Adding a Provision To Facilitate the Expansion of the Use of Approved Electronic Equivalents of Paper Forms*, 74 FR 26933 (June 5, 2009). Further, USCIS is modernizing its processes and systems to accommodate and encourage greater use of electronic data submission, including e-filing and electronic interaction. Regulations that prescribe filing locations and adjudicative jurisdictions undermine this transformation process, and this rule will help alleviate that problem.

DHS will achieve cost-savings by changing the location of filing Petitions for Alien Relatives. The current practice of requiring or permitting petitioners who live outside the United States to file a relative petition at DOS consular offices is inefficient and requires reimbursement. USCIS has reached an agreement, as required by law, with the DOS Consular Service for the provision of lockbox and receipting services and must reimburse DOS for the costs of those services. *See* 31 U.S.C. 1535.

USCIS is able to receive these petitions at a lower cost than DOS charges USCIS.

USCIS cannot realize these cost savings until the regulations eliminate the option of filing with DOS consular offices by petitioners who live outside the United States. *See* 8 CFR 204.1(e). This final rule removes those filing provisions. This change will reduce inefficiencies, improve the ability of USCIS to manage its workload, and reduce the burden on DOS. After this rule takes effect, petitioners residing outside of the United States will file their petitions as directed by the form instructions. USCIS will alter its form instructions to provide for the filing of Petition for Alien Relative with the in-country USCIS office or by mail to a lockbox in the United States if there is no in-country USCIS office. Filing locations and procedures will remain available on USCIS forms and the USCIS Web site. Customer service will remain available where USCIS has an international presence and through email. Internal USCIS procedures will govern who accepts, adjudicates, and approves petitions.

DHS is revising 8 CFR 204.1 to remove paragraphs (c), (d), and (e), and revising paragraph (b) to cross reference 8 CFR 103.2. New 8 CFR 204.1(b). DHS is removing current paragraphs (c), (d),

and (e), because they are redundant with 8 CFR 103.2 and contain unnecessary internal procedures. DHS is making those revisions to standardize what is considered proper filing among all benefit types, and increase flexibility by removing form numbers, form titles, USCIS and DHS job titles, specific duties assigned to personnel, and internal operational procedures. DHS is systematically removing references to form numbers and form titles in all USCIS regulations. Mandating a specific form number reduces USCIS's flexibility to modify its business processes to change filing procedures.

By removing 8 CFR 204.1(e) DHS is also removing the requirement in that section that a self-petitioning spouse or child of an abusive United States citizen or lawful permanent resident file the petition with a USCIS office in the United States. Nevertheless, DHS is making no substantive changes in this rule that affect potential filers of either alien relative or widow(er) petitions. USCIS may change the Petition for Amerasian, Widow(er) or Special Immigrant in the future after complying with the applicable public notice requirements and obtaining Office of Management and Budget (OMB) approval.

#### IV. Statutory and Regulatory Requirements

##### A. Administrative Procedure Act

The Administrative Procedure Act (APA) requires DHS to provide public notice and seek public comment on regulations with limited exceptions, including “\* \* \* rules of agency organization, procedure or practice.” 5 U.S.C. 553(b)(A). Under this rule, USCIS will no longer accept hand delivery of petitions at a United States consulate by DOS officers. International postal or delivery costs may slightly increase filing expenses for a relative petition filed by some individuals residing outside the United States. These minor changes, however, do not substantially affect a substantive right. *See, e.g., James V. Hurson Associates, Inc. v. Glickman*, 229 F.3d 277 (DC Cir. 2000) (“[A]n otherwise-procedural rule does not become a substantive one, for notice-and-comment purposes, simply because it imposes a burden on regulated parties.”); *see also JEM Broad. Co. v. FCC*, 22 F.3d 320, 326 (DC Cir. 1994). Nonetheless, DHS believes that public input may be valuable and invites the public to comment on this change.

##### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) mandates that DHS conduct a regulatory flexibility analysis when it publishes any general notice of proposed rulemaking. 5 U.S.C. 603(a). RFA analysis is not required when a rule is exempt from notice and comment rulemaking. DHS has determined that this rule is exempt from the notice-and-comment requirements in 5 U.S.C. 553(a), and, therefore, a regulatory flexibility analysis is not required. This procedural rule will impact only individuals, not small entities as defined by the Regulatory Flexibility Act.

##### C. Unfunded Mandates Reform Act of 1995

This rule will not result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one 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.

##### D. 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 Fairness Act of 1996. This rule will not result in an annual effect of \$100 million or more on the economy; a major increase in costs or prices; or significant 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 export markets.

##### E. Executive Order 12866 and Executive Order 13563

DHS does not consider this rule to be a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, as supplemented by Executive Order 13563. Accordingly, this rule has not been submitted to the OMB for review. DHS has considered the benefits and costs associated with the changes made in this rule and has determined that the benefits justify the potential costs.

DHS is taking this action to increase operational efficiency and to control USCIS costs for processing relative petitions. In fiscal year (FY) 2010, a total of 697,162 relative petitions were processed by USCIS, 8,135 of them by USCIS international offices. In that same year, DOS accepted and processed 9,497 relative petitions in countries where

USCIS has no overseas office and 6,576 in countries where USCIS is located.<sup>1</sup> In FY 2010, DOS began charging USCIS for services rendered in accepting or processing relative petitions. As a fee-funded agency, USCIS is statutorily authorized to collect fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including administrative costs and services provided without charge to certain applicants and petitioners. See INA section 286(m), 8 U.S.C. 1356(m). The current fee of \$420 for a relative petition does not cover the DOS charges. Therefore, DHS will adjust its internal processes to avoid the DOS charge, thereby maintaining the integrity of the current fee schedule for relative petitions.

Instructions for filing relative petitions will be amended concurrently with this final rule. Instructions for filing relative petitions will provide the option of either mailing the petition to the USCIS Chicago Lockbox, or filing at the USCIS international office if the petitioner resides in a country where USCIS has an office. Depending upon the unique circumstances of the United States citizen or lawful permanent resident petitioner, this rule could result in a cost savings or additional burden to the petitioner. Travel costs and mailing costs vary widely among individual petitioners. Thus, DHS cannot precisely estimate the costs or savings impacts of the rule. For example, when a petitioner resides in a country with no USCIS presence, the rule could provide a cost savings if mailing the petition is less expensive than the cost of traveling to the nearest DOS office, or vice versa. DHS believes that the benefits of streamlining USCIS operations in processing alien relative petitions to avoid DOS charges justifies the potential cost impact on petitioners residing in international locations.

#### F. Executive Order 13132

This rule 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, DHS has determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement.

#### G. Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), DHS submits to OMB for review and approval any reporting or recordkeeping requirements inherent in a regulatory action. 44 U.S.C. 3506. The information collection burden for the Petition for Alien Relative has been approved by OMB and assigned OMB control number 1615-0012. This rule does not impose any new reporting or recordkeeping requirements under the PRA. However, USCIS is making minor changes to the Petition for Alien Relative (Form I-130) instructions to instruct petitioners about where to file. Accordingly, USCIS will submit a Correction Worksheet, Form OMB 83-C, and amended instructions to OMB for review and approval in accordance with the PRA.

#### List of Subjects in 8 CFR Part 204

Administrative practice and procedures, Immigration, Reporting and recordkeeping requirements.

Accordingly, DHS is amending part 204 of chapter I of title 8 of the Code of Federal Regulations as follows:

#### PART 204—IMMIGRANT PETITIONS

- 1. The authority citation for part 204 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255; 1641; 8 CFR part 2.

#### Subpart A—Immigrant Visa Petitions

- 2. Section 204.1 is amended by revising paragraph (b) and removing and reserving paragraphs (c), (d), and (e).

The revision reads as follows:

#### § 204.1 General information about immediate relative and family-sponsored petitions.

\* \* \* \* \*

(b) *Proper filing.* A petition for alien relative and a petition for Amerasian, widow(er), or special immigrant must be filed on the form prescribed by USCIS in accordance with the form instructions, and will be considered properly filed when the petition is filed in accordance with 8 CFR 103.2. The filing date of a petition is the date it is

properly filed and received by USCIS. That date will constitute the priority date.

\* \* \* \* \*

**Janet Napolitano,**  
Secretary.

[FR Doc. 2011-11997 Filed 5-16-11; 8:45 am]

**BILLING CODE 9111-97-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2010-1264; Airspace Docket No. 10-AWP-23]

#### Amendment of Class D and Class E Airspace; Livermore, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends existing Class E airspace at Livermore, CA, to accommodate aircraft using new Instrument Landing System (ILS) Localizer (LOC) standard instrument approach procedures at Livermore Municipal Airport, and also corrects the airspace designation. This action also corrects a typographical error in the airspace description for Class D airspace. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** Effective date, 0901 UTC, August 25, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203-4537.

#### SUPPLEMENTARY INFORMATION:

##### History

On February 14, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Livermore, CA (76 FR 8322). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and Class E airspace designations are published in paragraph 5000 and 6005, respectively, of FAA Order 7400.9U dated August 18, 2010,

<sup>1</sup> It is not always clear to what extent DOS processes each alien relative petition from examining the volume data. In some cases, DOS is able to fully adjudicate and process the petition, while more complex adjudicative cases are forwarded to USCIS for processing and decision. Thus, DHS is hesitant to draw statistical comparisons between DOS and DHS processing data, especially in cases where there is a USCIS international office.