

(6) The tomatoes must be packed within 24 hours of harvest. They must be safeguarded by a fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packed in fruit fly-proof containers for transit to the airport and subsequent shipping to the United States. The tomatoes must be pink at the time of packing. Transit through other fruit fly supporting areas is prohibited unless the fruit fly-proof containers are sealed by the Moroccan Ministry of Agriculture, Fresh Product Export (EACCE), before shipment and the official seal number is recorded on the phytosanitary certificate; and

(7) EACCE is responsible for export certification inspection and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by EACCE and bearing the declaration, "These tomatoes were grown in registered greenhouses in El Jadida or Safi Province, Morocco, and were pink at the time of packing" or "These tomatoes were grown in registered greenhouses in Dahkla Province, Western Sahara and were pink at the time of packing."

(d) *Tomatoes from Chile.* Tomatoes (fruit) (*Lycopersicon esculentum*) from Chile, whether green or at any stage of ripeness, may be imported into the United States only under the following conditions:

(1) The tomatoes must be treated in Chile with methyl bromide in accordance with the PPQ Treatment Manual, which is incorporated by reference at § 300.1 of this chapter. The treatment must be conducted in facilities registered with the Servicio Agrícola y Ganadero (SAG) and with APHIS personnel monitoring the treatments;

(2) The tomatoes must be treated and packed within 24 hours of harvest. Once treated, the tomatoes must be safeguarded by a fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and be packed in fruit fly-proof containers under APHIS monitoring for transit to the airport and subsequent shipping to the United States; and

(3) Tomatoes may be imported into the United States from Chile only if SAG has entered into a trust fund agreement with APHIS for that shipping season. This agreement requires SAG to pay in advance all costs that APHIS estimates it will incur in providing the preclearance services prescribed in this section for that shipping season. These costs will include administrative expenses incurred in conducting the

preclearance services; and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in providing these services. The agreement requires SAG to deposit a certified or cashier's check with APHIS for the amount of these costs for the entire shipping season, as estimated by APHIS based on projected shipment volumes and cost figures from previous inspections. The agreement further requires that, if the initial deposit is not sufficient to meet all costs incurred by APHIS, SAG must deposit with APHIS another certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the inspections will be completed. The agreement also requires that, in the event of unexpected end-of-season costs, SAG must deposit with APHIS a certified cashier's check sufficient to meet such costs as estimated by APHIS, before any further preclearance services will be provided. If the amount SAG deposits during a shipping season exceeds the total cost incurred by APHIS in providing preclearance services, the difference will be returned to SAG by APHIS at the end of the shipping season.

(Approved by the Office of Management and Budget under control number 0579-0131)

Done in Washington, DC, this 15th day of July, 1998.

**Charles Schwalbe,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 211

[INS No. 1920-98]

RIN 1115-AE47

#### Waiver of Inadmissibility for Certain Applicants for Admission as Permanent Residents

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule makes a technical correction to the Immigration and Naturalization Service (Service) regulations that govern the documentary requirements for immigrants and corresponding waivers. The regulations at 8 CFR 211.1(b)(3) permit District Directors, in individual cases, to waive

the inadmissibility of aliens seeking admission for permanent residence or as returning residents who fail to present the appropriate travel documents. This rule will clarify that aliens granted waivers pursuant to 8 CFR 211.1(b)(3) are not exempt from the visa requirement, and that carriers remain liable for fines imposed under section 273(a) of the Act for bringing these aliens to the United States, even if the District Director grants a waiver of inadmissibility to the alien at the time of admission into the United States as a returning resident. This change is necessary to conform the language of the regulations with the statutory authority which exists to impose a fine when an alien is transported to the United States without the proper documentation.

**DATES:** This rule is effective July 22, 1998.

**FOR FURTHER INFORMATION CONTACT:** Una Brien, Immigration and Naturalization Service, 1400 Wilson Blvd., Suite 210, Arlington, Virginia 22209, telephone (202) 305-7018.

**SUPPLEMENTARY INFORMATION:** Section 273 of the Immigration and Nationality Act (the Act) imposes a fine on any carrier who brings to the United States any alien who lacks the passport or visa required by law. Section 211(b) of the Act permits the Attorney General to waive the inadmissibility of aliens seeking admission as returning residents who lack the necessary travel documents. Under the jurisprudence developed by the Board of Immigration Appeals (BIA), whether granting a waiver of inadmissibility relieves the carrier of liability for a fine depends on how the regulation governing the exercise of this waiver authority is written. See e.g., *Matter of "Flight SR-4"*, 10 I&N Dec. 197 (BIA 1963). The BIA has treated regulations that provide for a "blanket" waiver as also relieving the carrier of fine liability. The carrier remains liable, however, if the regulations provide for waivers only in individual cases. See *Matter of Plane "CUT-604"*, 7 I&N Dec. 701, 702 (BIA 1958) citing *Matter of PAA Plane "Flight 204"*, 6 I&N Dec. 810 (BIA 1955).

On March 22, 1996, the Service published a final rule in the **Federal Register** at 61 FR 11717, which amended the regulations governing granting waivers of inadmissibility to nonimmigrants. The purpose of the amendment was to ensure that when the Service grants a waiver of inadmissibility, the carrier is not relieved from fine liability. On September 30, 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,

Pub. L. 104-208, which required the Service to amend major portions of its regulations. On January 3, 1997, the Service published a proposed rule in the **Federal Register**, at 62 FR 444, and a subsequent interim rule on March 6, 1997, at 62 FR 10312, implementing the provisions of Pub. L. 104-208.

In addition, the proposed and interim rules also restructured major portions of 8 CFR, including part 211 to make it easier to understand. However, as contained in the proposed and interim rule, the exceptions to the visa documentary requirements referenced in Section 211.1(a) should have been limited to those circumstances listed in "paragraph (b)(1)" and not all of "paragraph (b)." The classes of aliens listed in section 211.1(b)(1), e.g., a child born after the issuance of an immigrant visa to the child's accompanying parent or a child born during the temporary visit abroad of a mother who is a lawful permanent resident or a national of the United States, are identical to those specifically excepted from the visa documentary requirement prior to the restructuring of the regulation. See 8 CFR 211.1(a) (1997). The erroneous reference to "paragraph (b)" may mislead some readers into thinking that returning lawful permanent residents who apply for and are granted a waiver of the visa requirement on a case by case basis, i.e., the class of aliens described in 8 CFR 211.1(b)(3), are exempt from presenting entry documents and, by extension, that a carrier which transports such as alien to the United States no longer incurs liability under section 273(b) of the Act. This ambiguity in the meaning of the interim rule was the result of an administrative oversight rather than a deliberate policy decision.

Accordingly, this final rule amends § 211.1(a) to revise the reference to "paragraph (b)" to read "paragraph (b)(1)". This is intended to clarify, once again, that a waiver of inadmissibility does not relieve the carrier of fine liability for carrying an alien passenger without the required documents.

#### **Good Cause Exception**

The amendment made by this rule corrects an inadvertent error which was included in a proposed rule published by the Service in the **Federal Register** on January 3, 1997, at 62 FR 444, and in the subsequent interim rule published in the **Federal Register** on March 6, 1997, at 62 FR 10312. As stated in the supplemental portion of

the proposed rule, 62 FR 452, the Service was engaged in a comprehensive review of all of its regulations in an effort to reduce them and make them more readable and understandable. It was the Service's intention to restructure 8 CFR part 211 to make it easier to comprehend. It was never the Service's intention to undermine the Service's ability to impose fines for violations under section 273 of the Act. Although the Service intended to correct this technical error when a final rule was published, the Service believes that good cause exists to issue a separate final rule to amend § 211.1(a) to correct the error immediately. This rule has been published as a proposed and interim rule as part of a larger rule with opportunity for public comment, therefore, it is unnecessary to issue it now as a proposed rule.

#### **Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner has reviewed this regulation, and by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities, as defined by 5 U.S.C. 601(6). This rule merely removes any ambiguity between the current regulations and section 273 of the Act by correcting an inadvertent error in its regulations that is addressed in the supplemental portion of this final rule.

#### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, or by the private sector, of \$100 million or more, in the aggregate, in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Commissioner determined that no actions were 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 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 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.

#### **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, section 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 rule adopted herein will not have substantial direct effects on the States, on the relationship between the Federal 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 12988 Civil Justice Reform**

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

#### **List of Subjects in 8 CFR Part 211**

Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, part 211 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

#### **PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS**

1. The authority citation for part 211 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257; 8 CFR part 2.

##### **§ 211.1 [Amended]**

2. In § 211.1 paragraph (a) introductory text is amended by revising the reference to "paragraph (b)" to read "paragraph (b)(1)".

Dated: May 26, 1998.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

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