VIA EMAIL

May 21, 2015

Honorable Charles Grassley
Chairman
United States Senate Committee on the Judiciary

Honorable Patrick Leahy
Ranking Member
United States Senate Committee on the Judiciary

RE: Comments on EB-5 Reform Recommendations from Secretary Jeh Johnson

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of Invest In the USA (IIUSA), I respectfully submit this letter about re-authorization and reform of the EB-5 Regional Center Program (the "Program") before its current "sunset" date of September 30, 2015. This letter first comments on the ideas set forth in the April 27, 2015, letter from U.S. Department of Homeland Security (DHS) Secretary Jeh Johnson to the Senate Committee on the Judiciary outlining a series of recommended reforms to the Program. See pages 2-6. The letter then outlines efforts IIUSA is already taking on its own to enhance Program integrity. See pages 6-10.

As background, IIUSA is the non-profit 501(c)(6) trade association for the EB-5 Regional Center industry. Our 270+ Regional Center members are an engine for economic growth. Our members are responsible for over 95% of EB-5 capital investment nationwide, which now annually accounts for billions of dollars of foreign direct investment (FDI), generates billions of dollars in gross domestic product (GDP), supports tens of thousands of American jobs, and generates over a billion dollars in federal/state/local tax revenue – all at no cost to the taxpayer.[1] The Program has become an essential tool for economic development in diverse communities across the country, projects big and small, and financial commitments to job-creating economic projects in the tens if not hundreds of billions of dollars.

EB-5 Reform Recommendations from Honorable Jeh Johnson, Secretary, DHS

Below are IIUSA's comments on the specific recommendations from DHS Secretary Johnson on enhancing the integrity of the EB-5 Regional Center Program.

[1] The last time the U.S. Congressional Budget Office (CBO) officially "scored" a five-year reauthorization of the Program in 2008, it was given a "neutral" score – meaning that user fees cover the costs of administering the Program. See: http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/92xx/doc9244/hr5569.pdf.

- **Authorize USCIS to Quickly Act on Criminal and Security Concerns**

IIUSA agrees that Congress should add statutory authority for USCIS to act on criminal and security concerns. However, it is critical that congress clearly define the applicable rules and also include robust and clear due-process measures, such as defined burden of proof, the right of access to the facts and documentation underlying any allegations, the right to cross-examine witnesses, and the right to appeal.

- **Protect Investors by Regulating Regional Center Principals and Associated Commercial Enterprises**

Generally, IIUSA supports background checks of Regional Center principals, including fingerprinting to conduct such checks. Equally important is what is done with such information. It is important to define what the standards would be to prohibit Program participation such as conviction type and time passed since the incident. The "bad actors" definition by the SEC may offer some guidance on this issue.[2] Furthermore, again, it is important that the burden of proof for such action be defined and that due process measures, such as right to appeal and to be aware of the information being used in such proceedings, are included.

IIUSA supports limiting Regional Center ownership to U.S. citizens and legal permanent residents. It is a position we have held since submitting a letter in 2010 to U.S. Citizenship & Immigration Services (USCIS) advocating for a regulatory solution to this issue. See Appendix A.

- **Enhance Reporting and Auditing**

IIUSA agrees that enhanced reporting and auditing of Regional Centers would enhance Program integrity by improving transparency. While we do not object to an appropriate annual fee for a Program integrity fund that enables site visits and other oversight, it is important that USCIS provide plans for how the funds will be used and provide regular reporting to the public for comment. The fee level also needs to be carefully considered taking into consideration organizations that operate multiple Regional Centers across the country to ensure the fees are not overly burdensome to the point of frustrating economic growth and resulting U.S. job creation.

Organizations can only be responsible for their own knowledge or for what a reasonable person should have known. IIUSA does not support requiring certification of securities law compliance by Regional Centers. As a general matter, anyone deemed to be selling securities is subject to U.S. securities law and the SEC should be in charge of enforcing such laws. IIUSA supports strong enforcement of U.S. securities law and has encouraged inter-agency collaboration between USCIS and SEC for years. Perhaps the clarification here is that the Secretary meant that issuers of securities in the context of the EB-5 Program should be prepared to make such certifications before the appropriate authorities, such as state and federal securities regulators like the SEC.

On disclosure of litigation, only material litigation should have to be disclosed and that which is material should be limited to matters relating to the investment and/or job creation parts of an EB-5 project. For example, the Financial Industry Regulatory Authority (FINRA) requires notification of litigation, but only that which is related to securities (See rule 4530).[3] Also, disclosure of material litigation should include the entities responsible for job creation and their directors and officers.

[2] See https://www.sec.gov/info/smallbus/secg/bad-actor-small-entity-compliance-guide.htm.
[3] See http://www.finra.org/industry/rule-4530.

Secretary Johnson also requests that USCIS be authorized to consider requiring several documents "as appropriate" as part of the annual reporting process. While it is important that USCIS have the discretion to require additional information in an annual report, it is important that the discretion be appropriately limited to ensure Regional Centers are not unduly burdened administratively.

IIUSA agrees that annual reports include details on how investor funds were used or are being used in the entities responsible for job creation. Including "or are being used" is a necessary distinction in case the project is mid-development while generating the necessary job creation for investors to qualify for the condition removal at the I-829 stage.

In terms of requiring an account of the direct and indirect jobs created, that information is already included in every I-829 filed with USCIS. This is therefore a duplicative requirement. Regional Centers should be able to provide receipt numbers for I-829s as a streamlined alternative option.

IIUSA agrees that these reports should be publicly disclosed, as long as proprietary information (such as receipt numbers for I-829 filings) is withheld consistent with the rules governing the Freedom of Information Act and the Privacy Act of 1974.

- **Provide Sanction Authority**

IIUSA agrees that enhanced statutory authority for USCIS to sanction Regional Centers is an important enhancement to Program integrity. However, it is critical that congress clearly define the applicable rules and also include robust and clear due-process measures, such as defined burden of proof, the right of access to the facts and documentation underlying any allegations, the right to cross-examine witnesses, and the right to appeal.

Also, IIUSA recommends that USCIS or Congress consider the J visa regulations on sanctions for J visa sponsoring organizations as an example for how to ensure that proportional sanctions are applied in a consistent manner, depending on the nature of an infraction by a Regional Center.[4]

Lastly, it is important that if a Regional Center is terminated or sanctioned, there be an opportunity for the new commercial enterprise to affiliate with a Regional Center in good standing (allowing investors to continue their immigration process) and/or for investors to re-invest in another project that gives them reasonable safeguards to protect themselves and their family members when harmed unwittingly by "bad actors".

- **Improve Integrity of Targeted Employment Areas (TEAs)**

IIUSA supports existing law on targeted employment areas (TEAs) and supports consistency in adjudication under the existing law. IIUSA also supported the language in Senator Leahy's amendment 1455 to S. 744 during the 113th Congress.[5]

- **Increase Minimum Investment Amounts**

IIUSA supports raising the minimal capital investment amount that takes into account remaining competitive in the global immigrant investor program market. More than 25 countries, including Australia,

[4] See http://j1visa.state.gov/sponsors/current/regulations-compliance/.
[5] See: https://www.congress.gov/amendment/113th-congress/senate-amendment/1455/text

Portugal, Spain, and the United Kingdom, use similar programs to attract foreign investments. The EB-5 program is more stringent than many others, requiring substantial risk for investors in terms of their financial investment, job creation requirements, and immigration status. Specifically:

- Investments made through the U.S. EB-5 Program must be "at risk." There is no guaranteed financial return or return of principal capital. If their applications are approved by USCIS, EB-5 investors receive a conditional immigrant visa (*i.e.*, "green card") that is valid for two years. To receive a permanent green card, these investors must demonstrate that the legally required economic benefits flowing from their investments have been achieved.

- Annually, the EB-5 Program accounts for less than one percent of the total number of visas issued by the U.S. Throughout the process, EB-5 investors are subject to the same background checks and national security screenings as applicants in any other immigrant visa category, and their ability to eventually apply for citizenship is subject to the same criteria as other green card holders. As with any other investment vehicle, EB-5 investment funds are subject to U.S. securities and anti-fraud laws and regulations.

Accordingly, it is important that the minimum capital investment amount be competitive in the global marketplace that is competing for the same immigrant investor dollars.

Congress should also make sure that any increase in the minimum investment applies prospectively, not to pending EB-5 projects. Any project that has started marketing based on a filed I-924 or has an I-526 petition filed should be allowed to fill remaining investor slots at the current investment level until it is fully subscribed. If the new amounts are retroactively applied, investors who have, in good faith, invested hundreds of millions of dollars of capital in job-creating U.S. projects would be unfairly and irreparably harmed, as would the project sponsors who are depending on that capital and are responsible for creating American jobs. It is critical that any legislation requiring an increased minimum investment also provide that I-526 and I-924 petitions filed for projects which commenced marketing prior to the legislation's effective date be adjudicated under the current rules, so as to avoid such harm.

Also, if the amount is going to be raised on an ongoing basis based on inflation, it is important there is a defined term of years at a particular level before it goes up again. IIUSA supported raising the amount every five years in S. 744 during the 113th Congress.

- **Require Business Plan Filings in Advance of Investor Filings**

IIUSA supports the language in the letter from Secretary Johnson which states that I-526 petitions could not be filed without first filing a business plan on Form I-924.

Others have suggested that I-526 petitions should not be filed until a business plan on Form I-924 has been approved. IIUSA does not support such a proposal. USCIS processing times have been so long and erratic over time that it is difficult to imagine this in practice. There would need to be a hard deadline for USCIS to adjudicate the I-924 before I-526 petitions could be filed, and if USCIS did not meet that deadline petitioners should be allowed to proceed with filing I-526 petitions without further agency delay. This could also be achieved through premium processing of business plans for an additional fee with deference accorded to such business in subsequent I-526 petitions.

- **Contacts with EB-5 Petitioners, Applicants, and Other Stakeholders**

Public engagement between USCIS and other relevant federal agencies and industry stakeholders is an essential component to Program integrity. These engagements are most productive when there is coordination with large stakeholder groups, such as IIUSA, so key issues can be addressed substantively and addressed in open forums that maximize efficiency.

It is important that Regional Centers, who are not seeking an immigration benefit from USCIS, have a channel to communicate – on record – with USCIS on issues that require clarification or further information about EB-5 projects. Regional Centers should have the right to be recognized in the administrative proceedings of I-526 petitions by filing a G-28 Notice of Attorney or Accredited Representative with USCIS along with the G-28 from the investor's representative. That way, questions about the project that reflect the interest of the Regional Center and affiliated entity (or entities) responsible for job creation could be directed towards the parties in the best position to respond to USCIS.

Furthermore, USCIS convened a "review board" more than once for EB-5 cases where additional information was needed from the Regional Center involved. USCIS records indicate multiple instances of the review board convening to review pending decisions on several different complex EB-5 cases, including on the following dates: 3/22/13, 8/22/13, 8/29/13, 9/5/13, 11/7/13, and 5/20/14.[6] Our members who participated in those review boards provided favorable feedback on the efficacy of these hearings. They should be continued in all cases prior to USCIS issuing a denial on a project, to ensure there is ample opportunity to address issues by those seeking to attract EB-5 capital to create jobs in their communities.

- **Contacts with Members of the U.S. Congress and Congressional Staff**

IIUSA agrees that it is important that records be maintained of contact between USCIS and Congressional offices inquiring about EB-5 applications or petitions. However, we also believe it is important that Congressional offices have the right to communicate with federal agencies on matters that impact their constituencies, including USCIS on matters related to the EB-5 Program. It is a fundamental First Amendment right.

- **Leadership Intervention in Specific EB-5 Cases**

IIUSA agrees that it is essential that USCIS leadership, under the appropriate advisement listed in Secretary Johnson's letter, be empowered to address specific cases. It is an essential part of federal agency integrity that leadership be empowered to ensure appropriate application of all laws, regulations, administrative interpretation, and internal policies.

A 2005 Government Accountability Office (GAO) report on the EB-5 Program found that uncertainty and inconsistent application of law/policy was responsible for the under-utilization of the Program at that time.[7] Capital investment requires reasonable certainty to have its intended economic impact. It is imperative that leadership within the federal agency be able to intervene when there is risk of this happening again, this time with exponentially more at risk if law/policy is inconsistently applied.

[6] IIUSA members provided these specific dates. However, USCIS officials discussed implementation of the "review board" system at several public stakeholder engagements before the first review board occurred.
[7] See http://www.gao.gov/products/GAO-05-256.

With that in mind, IIUSA recommends that USCIS deference policy – as articulated in its May 30, 2013 memorandum providing adjudications guidance be included in legislation to ensure there is reasonable certainty in the adjudications process that reflects the needs of attracting capital investment in the most efficient and effective way.[8] Currently, the application of USCIS policy is inconsistent at best, despite the intent of the policy to add certainty to the adjudications process.

Other Important Considerations

Effective date: The effective date of all provisions in new legislation needs to protect both investors and projects by applying prospectively only. Accordingly, reforms must not apply to any "actual" projects that have already been filed with USCIS either on an I-526 petition or I-924 application. These "actual" projects need to have the right to have all investors adjudicated under current rules.

Maximizing capacity for economic impact: It is also important that the intent of the Program to drive regional economic development and job creation be enhanced during this re-authorization process to maximize economic impact. Accordingly, only principal investors should be counted towards the visa cap. Dependent immediate family members (or "derivatives") should not be counted. This would allow for more capital investment and job creation through the Program at a time when the annual allocation of 10,000 visas is being used up, mostly by dependents rather than the source of the investment capital.

Permanent authorization: After over 20+ years in existence, nine re-authorizations, and the removal of "pilot" from the statute during the 2012 three year re-authorization, it is time to make the EB-5 Regional Center Program permanent. Such an act would make program integrity easier to maintain, as it would compel agencies to promulgate comprehensive regulations that set clear rules for the Program going forward. For example, a permanent program would provide the necessary mandate for USCIS to update its EB-5 regulations (which is hopefully already in the beginning stages, as the USCIS comment period is still open on EB-5 regulations).

Permanent authorization would also allow for specific and formal roles to be set between agencies to make for the most effective and ethical program possible. IIUSA understands that USCIS has some existing memoranda of understanding (MOUs) with relevant agencies and is working on finalizing others. IIUSA supports these efforts.

Background on IIUSA Commitment to Program Integrity

In addition to the support for enhancements to Program integrity articulated above, IIUSA has long supported administrative efforts to achieve other enhancements. In addition, IIUSA has been leading the way in developing industry best practices and other activities that support Program integrity.

Continued Support of Program Integrity Efforts

IIUSA also supported a number of integrity measures included in S.744 during the 113th Congress, as follows:

- enhanced USCIS authority for Regional Center denials/terminations, including background checks of principals via fingerprinting;

[8] See http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20%28Approved%20as%20final%205-30-13%29.pdf

- increased minimum investment amount with prospective, phased-in implementation; and

- evidence the required amount of capital was made available to the business or businesses most closely responsible for creating the employment.

Furthermore, IIUSA recently adopted a resolution that lists policy issues regarding program integrity that merit consideration and further deliberation as Congress reauthorizes the Program this year, including the following:

- site visits funded by annual fee from Regional Centers (similar to the USCIS Administrative Site Visit and Verification Program (ASVVP));

- increased minimum investment requirements tied to inflation with a regulated timeframe for raising the amount;

- evidence the required amount of capital was made available to the business or businesses most closely responsible for creating the employment;

- background checks of Regional Center principals with fingerprinting;

- enhanced USCIS authority to prohibit foreign ownership of Regional Centers and foreign government involvement in the Program; and

- consistent adjudication of targeted employment areas (TEAs) under existing law.

IIUSA believes that such measures – along with permanent authorization and other reforms to expand capacity for economic impact – have the potential to make the Program more secure and effective.

IIUSA also strongly supports the changes that have already been made at USCIS with the launch of the dedicated Immigrant Investor Program Office (IPO) – and supports continued strengthening of that office with the necessary in-house expertise and inter-agency support. In 2013, USCIS launched a new Immigrant Investor Program Office staffed by fraud and national security specialists as well as trained economists and experts in business and immigration law. The agency also clarified its guidance for adjudicators with a comprehensive policy memorandum in 2013 and has strengthened interagency relationships critical to program oversight and implementation, resulting in what IIUSA believes to be a new level of cooperation with enforcement and intelligence agencies including the SEC, Federal Bureau of Investigation (FBI), and Fraud Detection and National Security Directorate (FDNS).

The SEC appears to be much more engaged and involved in the past year, with increased oversight of the Program and enhanced inter-agency collaboration. As the Program matures, it is important that the SEC draw clear lines and regulations for relevant actors to follow so that the SEC's mission of facilitating capital formation by protecting capital market integrity is met. Interagency dialogue on how to share oversight responsibilities is essential for the integrity of the Program. IIUSA's advocacy platform encourages and supports this inter-agency collaboration to maintain Program integrity.

IIUSA believes the Committee for Foreign Investment in the U.S. (CFIUS), an interagency federal entity housed within the Department of Treasury, should have an active partnership with USCIS. According to its

website, CFIUS is an interagency committee authorized to review transactions that could result in control of a U.S. business by a foreign person, in order to determine the effect of such transactions on the national security of the United States. As the U.S. iteration of an immigrant investor program, the EB-5 Regional Center Program inherently involves foreign investment in the United States and has, according to documents released in 2013, been subject to CFIUS action in the past.

Industry Best Practices

At the most basic level, industry standards are established by law and by the relevant federal regulatory and oversight agencies. It is incumbent on each Regional Center to ensure that it complies with all relevant laws and regulations. The Program is complex and there are multiple agencies and entities with jurisdiction over certain activities within the Program. Relevant policies and procedures also change periodically to improve program integrity or efficiency. IIUSA works to ensure that its members are aware of the most up to date policies, rules and regulations.

IIUSA also regularly participates in public engagement sessions convened by regulatory and oversight agencies including the SEC, USCIS, and more. USCIS has hosted regular public engagements on the EB-5 Program since 2008, and IIUSA has attended each such engagement. IIUSA is also encouraged by the new series of public engagements on the EB-5 Program ("EB-5 Interactive") that are designed to cover one topic each engagement in detail. The first of these was conducted on 2/26/15 with a focus on documenting investor source of funds.

Furthermore, IIUSA has served as a speaker at these public engagements at times – such as the CIS Ombudsman public engagement in March 2013 – and invites experts in securities and immigration law (including representatives from federal and state regulatory agencies) to speak at IIUSA conferences, trade missions, and webinars. Issues discussed in these forums are part of the ongoing dialogue and educational efforts between IIUSA and its members and may also be considered by the Best Practices Committee. These public engagements are an essential aspect of the cross-sector collaboration that needs to occur for the Program to succeed.

In addition, IIUSA establishes internal industry standards and best practices through the work of its Best Practices Committee.[9] This Committee, at the direction of the IIUSA Board of Directors, periodically monitors the relevance and effectiveness of IIUSA's published best practices, code of ethics and standards of conduct. In addition to Regional Center owners/operators, Committee membership includes others with particular areas of expertise, including project developers, immigration lawyers, securities attorneys, economists, and insurance advisors.

These documents are updated as required, taking into account any technical, regulatory, economic or social changes, directly or indirectly, in or affecting the EB-5 Regional Center Program and industry. Best practices are shared through IIUSA's website, magazine, webinars, and panel discussions at IIUSA conferences.

IIUSA has developed an ever-evolving set of internal industry best practices. Some of these are recommended best practices on particular industry issues and processes. These recommended practices are the result of IIUSA's Code of Ethics for Professional Conduct and accompanying internal enforcement procedures – which have to do with ethical business practices that apply broadly and not just to EB-5. IIUSA's Code of Ethics and Standards for Professional Conduct, which have been developed to promote

[9] See www.iiusa.org/iiusa-approved-best-practices

responsible, professional and ethical behavior, are designed to be self-regulating in nature with internal enforcement procedures. However, it is important to note that IIUSA is a voluntary membership organization and IIUSA cannot dictate or control the behavior of any particular member or market participant. It is in the best interest of Regional Center operators and their consultants to maintain compliance with IIUSA's Code of Ethics and Standards for Professional Conduct to avoid potentially costly or time-consuming requests for evidence (RFEs), rejections of petitions or enforcement actions. It is in the best interest of the Program more broadly, and those who seek to invest in the United States along with those that stand to benefit stateside, to have confidence that the Program is administered effectively and that the administering agency has the tools it needs to ensure compliance. The immigrant investor and U.S. job creating projects exist in a marketplace that is very sensitive to the efficiency and effectiveness of Regional Centers.

- In the event of alleged violations of the IIUSA Code of Ethics and Standards for Professional Conduct, IIUSA members are encouraged to first discuss and provide evidence of alleged violations directly with the individual or regional center they suspect. Many times, supposed violations are simply factual misunderstandings.

- If the problem cannot be worked out directly, IIUSA's new Enforcement Procedures (adopted in May 2014) include a confidential complaint filing process to address allegations of violations by IIUSA members. Complaints may be lodged by both IIUSA members and nonmembers.

In addition to the Code of Ethics and its internal enforcement procedures, IIUSA has also developed other recommended best practices, including recommendations for Regional Center operations, engaging with foreign intermediaries, and a Know Your Customer ("KYC") document, which can apply to the industry at-large and is not specific to Regional Center operators. All of this information is detailed further at www.iiusa.org/en/iiusa-approved-best-practices.

While IIUSA's Code of Ethics and Standards of Professional Conduct are not designed to replace any legal processes – or oversight and enforcement by the appropriate state and federal agencies – we believe these efforts have contributed to a more transparent and ethical EB-5 Regional Center industry that is more effective in delivering capital and jobs to American communities around the country.

Cross-Sector Partnerships and Working Relationships

IIUSA works cooperatively with a range of government agencies and non-governmental organizations in the U.S., including: CDFA, North American Securities Administrators Association (NASAA), SEC, U.S. Department of Commerce, staffs of states and municipalities, and other public and industry interest group stakeholders. These working relationships seek to educate other relevant entities and their members on the EB-5 Program so they can consider it as an economic development tool and engage them as partners in deterring fraud and abuse. Starting in 2013, IIUSA expanded its efforts to educate foreign stakeholders on U.S. law and the importance of compliance. These efforts were undertaken in partnership and/or collaboration with organizations such as:

- American Chamber of Commerce in Shanghai;

- American Chamber of Commerce in South China;

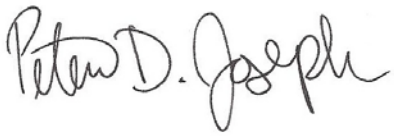
- China Exit & Entry Service Associations: Beijing, Chongqing, Fujian, Guangdong, Liaoning, Shanghai, Sichuan, and Wuhan; and

- SelectUSA, International Trade Administration, U.S. Department of Commerce.

Over the years, IIUSA has referred apparent violations of EB-5-related law or regulations to appropriate federal authorities and has publicly supported a number of enforcement actions taken by law enforcement authorities/regulatory agencies. For example, in 2013 a Nigerian advertisement by a nonmember Regional Center was brought to IIUSA's attention as being outwardly egregious. In its due diligence, IIUSA made a report to USCIS about its concerns. That Regional Center is now the subject of an SEC enforcement action. IIUSA has also supported U.S. government action to stop fraud by filing an amicus brief in the SEC enforcement action against a nonmember Regional Center that was indicted for committing fraud in 2013.

Thank you for the opportunity to provide this letter. I welcome any questions and appreciate your commitment to the re-authorization and integrity of the EB-5 Regional Center Program – something we all have a vested interest in enhancing.

Sincerely,



Peter D. Joseph
Executive Director

CC: Honorable Jeh Johnson, Secretary, U.S. Department of Homeland Security

Nicholas Colucci, Chief, IPO, U.S. Citizenship & Immigration Services

Enclosure: [IIUSA 2010 letter to USCIS re banning foreign ownership]

Appendix A

Main office:

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October 7, 2010

VIA PRIORITY MAIL

U.S. Citizenship and Immigration Services
Attn: Alejandro Mayorkas, Director
20 Massachusetts Avenue
Washington, DC 20529

RE: Foreign ownership of EB-5 Regional Centers

Dear Director Mayorkas:

The Association to Invest In the USA ("IIUSA") requests that the U.S. Citizenship and Immigration Services ("USCIS") bar from the EB-5 regional center program entities that are not owned and operated by U.S. citizens or permanent residents. IIUSA is the national trade association of EB-5 regional centers and maintains a website at www.iiusa.org, where extensive information about the organization is available. IIUSA has several missions, as follows:

- Stimulate economic development and job growth in the United States, while aiding to reduce foreign trade imbalances.
- Further immigration to the United States by qualified, educated, highly skilled and investment-oriented foreign nationals.
- Educate the public and government about the benefits derived by the Regional Centers through the EB-5 investment program.
- Help Regional Centers address administrative, regulatory and legislative issues.
- Advance and maintain Regional Center industry standards and best practices.
- Be a strong, unified voice for permanent authorization and improvement of the EB-5 Regional Center Program to enhance Regional Center activities.

A myriad of U.S. anti-fraud laws apply to the activities of Regional Centers. Effective compliance requires that the ownership and control be **resident** in the U.S. and subject to

prosecution and meaningful penalties for any violations of *inter alia* securities and immigration laws. This is particularly important in the context of the EB-5 Program, which was essentially shut down in the 1990s due to fraudulent activity. Since being revived in 2000, the Program has grown to its current level of usage: over 115 Regional Center and 4,200 EB-5 visas used in FY2009. According to USCIS statistics, more I-526 petitions were received in the first half of FY2010 than were all of FY2009. This Program is bringing capital and job creation to the U.S. at a time of national economic fragility and anemic job growth. Regional centers assist USCIS in ensuring that the parties involved in capital developments abide by USCIS' rules. For that reason, it is imperative that the integrity of the Program is maintained by implementation of sound policies that ensure any fraudulent activities are subject to the full set of US anti-fraud laws. The long term health of this Program is at stake without it.

This type of restriction of ownership would not be unique to the EB-5 visa program. The J visa program, in which program sponsors play a role with the State Department similar to the role regional centers play with USCIS in the EB-5 program, has an identical policy, which is outlined in an immigration law treatise as follows:

> **Citizenship Requirement for Private Sponsors.**
>
> For a private organization (i.e., anything but a U.S. federal, state, or local government or an international organization of which the U.S. is a member) to be a J-1 sponsor, it must be a U.S. citizen as defined in controversial State Department regulations.[1] To qualify as a citizen, the sponsor must be:
>
> (1) An individual who is a U.S. citizen or permanent resident;
> (2) A general or limited partnership created or organized under U.S. law of which a majority of the partners are citizens of the U.S.;
> (3) A for-profit corporation or other entity created under U.S. law which:
>
> (a) has its principal place of business in the United States; *and*
> (b) (i) has its shares or voting interests publicly traded on a U.S. stock exchange; *or*
> (ii) has citizens in the majority of its officers, Board of Directors, and shareholders;
>
> (4) A nonprofit corporation, association, or other legal entity created or organized under U.S. law which:
>
> (a) is a qualified § 501(c) tax exempt organization; *and*
> (b) which has its principal place of business in the U.S.; *and*
> (c) has citizens in the majority of its board of directors or similar management body;

[1] 22 CFR 62.2 (definition of "citizen") and 62.3(a)(3). See 52 Fed. Reg. 20097-98 (May 29, 1987); 54 Fed. Reg. 32964-67 (Aug. 11, 1989); 54 Fed. Reg. 40386-87 (Oct. 2, 1989); 54 Fed. Reg. 47976-78 (Nov. 20, 1989); and 55 Fed. Reg. 46943-47 (Nov. 8, 1990), for development of this portion of the rule.

(5) An accredited college, university, or other post-secondary educational institution created under U.S. law; *or*
(6) An agency of a U.S. federal, state, or local government or territory or possession.

"Responsible officers" and "alternates" (discussed below) must also be U.S. citizens or permanent residents.[2]

Attached are exhibits containing the language in the Code of Federal Regulations concerning the J program citizenship restrictions and containing the Federal Register publications by which the rules were developed.

IIUSA requests that USCIS consider whether foreign ownership of EB-5 Regional Centers is appropriate or healthy for the Program and issue rules and regulations accordingly. As stated in our timely-submitted comment on the proposed Forms I-924 and I-924A in connection with USCIS' fee rule, IIUSA believes these Forms provide the ideal opportunity to collect information about ownership of Regional Center for purposes of USCIS rejecting regional center applications or amendments for entities not owned and operated by Americans and for revoking existing designation of entities not still owned and operated by Americans. The above referenced restrictions for sponsors in the J visa program set a perfect example of the Immigration Service taking action to protect the integrity of our immigration system. The EB-5 Regional Center Pilot Program requires that same level of commitment from USCIS.

In requiring U.S. citizenship for exchange visitor sponsors, the State Department stated, "The agency believes that the person signing the Certificate of Eligibility Form IAP-66, as an agent of the United States Government, will better protect its interests, and will have a better understanding of the purposes of the exchange visitor program if he/she is a United States citizen. Likewise United States exchange organizations and corporations will better protect U.S. interests than foreign organizations and corporations."[3] This reasoning applies equally well to the USCIS EB-5 regional center program.

IIUSA thanks you for your time and attention. We await your reply and welcome any questions.

Sincerely,

Peter Joseph
Interim Executive Director

Enclosures: Appendix
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[2] 22 CFR 62.5(c)(5).
[3] 52 Fed. Reg 20097. Full language excerpted from several State Department rulemakings is attached.

APPENDIX

State Department Reasoning for to Limit Exchange Visitor Sponsors to U.S. Entities and Citizens

52 Fed. Reg 20097: In light of the concern with immigration procedures, the United States Information Agency is in the process of reviewing the regulations governing the issuance of J-1 visas found at 22 CFR 514. In the course of review, the Agency has discovered that there is no written requirement that Responsible Officers be United States citizens. However, it has been the practice of the Exchange Visitor Facilitative Staff for the past five years to restrict designations to United States citizens. The agency believes that the person signing the Certificate of Eligibility Form IAP-66, as an agent of the United States Government, will better protect its interests, and will have a better understanding of the purposes of the exchange visitor program if he/she is a United States citizen. Likewise United States exchange organizations and corporations will better protect U.S. interests than foreign organizations and corporations. Accordingly, the Agency proposes to modify the regulations by adding a requirement that the Responsible Officers be United States citizens and that all organizations other than international agencies be incorporated under the laws of the United States. Comments are sought from the Department of the State Consular Affairs and the Immigration and Naturalization Service as well as from the public.

54 Fed. Reg 32964: The Agency, in the exercise of its discretion, has determined that noncitizens should not be given excessive authority in making the foreign relations determination coupled with the strong visa issuance recommendation (which is inherent in the responsibility for filling out the IAP-66 forms) as to which aliens should be exchange visitors. The Agency has several reasons for its determination. First, the Agency believes that United States citizens are best equipped to further the purposes of the governmentally authorized exchange program. They are in a better position than aliens to understand and represent the United States and to "generat[e] goodwill for the United States abroad" (H.R. Rep. No. 130, 98th Cong., 1st Sess. 61, reprinted in 1983 U.S. Code Cong. & Admin. News 1484, 1544).[FN1]

> FN1: Even where the Agency's formal decision making process includes noncitizens, such as in a binational board, there is always representation of American citizens in an at least an equal number on the board. Furthermore, such input is undertaken only pursuant to a government to government agreement. The responsibility for signing the IAP-66 forms rests with the USIS officers at the Agency Posts abroad.

Second, United States citizens owe allegiance to the United States. Noncitizens do not owe allegiance to the United States. While the comments point out that sponsors and responsible officers are not agents of the United States Government, they are in the position of carrying out United States foreign policy in selecting individual participants in the exchange visitor program in the place of the Agency making the appointments. Additionally, they are in the position of signing a United States Government document. The act of signing that document confers on them a shared responsibility with the Agency

in carrying out its foreign relations obligations. As the University of Colorado at Boulder stated: "* * * it is not the job of a Responsible Officer to protect the interests of the United States Government. We are employed to protect the interests of our institutions, and it is our professional responsibility to serve our institutions, not the government."Since Responsible Officers are not serving the interests of ***32966** the United States Government but rather their institutions, and the interests of the institution may not always coincide with the interests of the United States Government, indeed may sometimes conflict, and these Responsible Officers are entrusted with review of participants in a foreign relations program to ensure that the selection conforms with the designation, the Agency must impose certain restrictions on the programs. Where the organization is foreign, the Agency runs too high a risk that the interests of the organization are not in concert with those of the United States Government, and that individuals selected to participate in exchange programs are not in keeping with the intent of the program, but rather that the participants are selected to further the interests of the foreign organization. With regard to Responsible Officers who are citizens, and who owe allegiance to the United States, the Agency believes that they are more likely than aliens to weigh their actions carefully when their employers' interests conflict with those of the United States Government.

Third, the designation of a sponsor confers a grave responsibility on that sponsor. Upon designation, the sponsor is issued blank controlled United States Government forms. The forms in the hands of the wrong persons can do great damage to the interests of the United States. Moreover, the scheme set forth in the Immigration and Nationality Act expresses the intent of Congress that it would define who could come to the United States, and under what circumstances. Because Congress provided that different terms and conditions would apply to the different visas, it is important that the Agency administer the exchange program in such a way as to limit its access to only those aliens Congress intended to be included in the program. The Agency believes it can best ensure the integrity of the program and the proper use of the forms if access to the forms is confined to United States citizens.

The Agency is concerned about preserving the integrity of the J visa program and maintaining control over the program itself, the sponsors, and the forms. The Agency apprehends that if certificates of eligibility for J visas are controlled by aliens who are in turn subject to control by aliens in other countries, the Agency will experience considerably diminished effective control over the administration of its exchange programs and over compliance by sponsors, their responsible officers and even exchange visitors with U.S. labor and immigration laws. The Agency questions whether the alien responsible officers and other officials of foreign corporate sponsors will be adequately motivated to observe the purpose and intent of the Exchange Visitor Program. Consequently, the Agency is persuaded that there exists a legitimate governmental purpose in restricting both sponsorship and the control of certificates of eligibility to American citizens.

54 Fed Reg. 40386: In response to the inquiries from designated sponsors of exchange visitor programs regarding required documentation, the Agency has determined that

sponsors may certify that they comply with the regulation rather than submitting full documentation at this time. However, in making such certification the sponsor must agree to supply supporting documentation when and as requested. Further, the sponsor must agree that failure to substantiate the representation of citizenship made in the certification will result in the immediate withdrawal of its designation and will require that the organization account for and return all IAP-66 forms transferred to it. It should be noted that false certification may subject the certifying official to criminal penalties found in 18 U.S.C. 1001. The definitions are amended to include the required certifying language.

54 Fed. Reg. 47976: The Agency, in the exercise of its discretion, has determined that noncitizens should not be given excessive authority in making the foreign relations determination coupled with the strong visa issuance recommendation (which is inherent in the responsibility for filling out the IAP-66 forms) as to which aliens should be exchange visitors.

55 Fed. Reg. 46943: The Agency has determined that, as a matter of law, consistent with the text of the Immigration and Nationality Act, the Mutual Educational and Cultural Exchange Act, and the legislative history of those statutes, designated sponsors must be United States citizens. Congress clearly intended that United States citizens would play the key role as sponsors of educational and cultural exchange programs. Consequently the Agency is adopting a definition which comports with the legal requirements. At the same time, the definition sets forth a minimum standard of what it would take to be considered a citizen. The Agency believes that any organization in which the majority of control resides in non-citizens would not be a United States controlled organization, and accordingly, could not be considered a citizen for these purposes.

Thus, from this legislative history it can be inferred that Congress contemplated that the assistance from the private sector would be assistance from the United States private sector. For the reasons stated above, the Agency finds that the exclusion of noncitizens from serving as sponsors is rationally related to a federal interest and that the federal interest is properly the concern of the USIA. Furthermore, the Agency has determined that such exclusion is necessary to ensure the integrity of the exchange visitor program

Definitions and Procedures

§ Sec. 62. 2 Definitions

Citizen of the United States means:

(1) An individual who is a citizen of the United States or one of its territories or possessions, or who has been lawfully admitted for permanent residence, within the meaning of section 101(a)(20) of the Immigration and Nationality Act; or
(2) A general or limited partnership created or organized under the laws of the United States, or of any state, the District of Columbia, or a territory or

possession of the United States, of which a majority of the partners are citizens of the United States; or

(3) A for-profit corporation, association, or other legal entity created or organized under the laws of the United States, or of any state, the District of Columbia, or a territory or possession of the United States, which:

(i) Has its principal place of business in the United States, and

(ii) Has its shares or voting interests publicly traded on a U.S. stock exchange; or, if its shares or voting interests are not publicly traded on a U.S. stock exchange, it shall nevertheless be deemed to be a citizen of the United States if a majority of its officers, Division of Directors, and its shareholders or holders of voting interests are citizens of the United States; or

(4) A non-profit corporation, association, or other legal entity created or organized under the laws of the United States, or any state, the District of Columbia, or territory or possession of the United States; and

(i) Which is qualified with the Internal Revenue Service as a tax-exempt organization pursuant to **§** 501(c) of the Internal Revenue Code; and

(ii) Which has its principal place of business in the United States; and

(iii) In which a majority of its officers and a majority of its Division of Directors or other like body vested with its management are citizens of the United States; or

(5) An accredited college, university, or other post-secondary educational institution created or organized under the laws of the United States, or of any state, including a county, municipality, or other political subdivision thereof, the District of Columbia, or of a territory or possession of the United States; or

(6) An Department of State [sic] of the United States, or of any state or local government, the District of Columbia, or a territory or possession of the United States.

Responsible officer means the employee or officer of a designated sponsor who has been listed with the Department of State as assuming the responsibilities outlined in **§** 62.11. The designation of alternate responsible officers is permitted and encouraged. The responsible officer and alternate responsible officers must be citizens of the United States or persons who have been lawfully admitted for permanent residence.

§ Sec. 62. 5 Application procedure.

(a) Any entity meeting the eligibility requirements set forth in Sec. 62.3 may apply to the Department of State for designation as a sponsor. Such application shall be made on Form IAP-37 ("Exchange Visitor Program Application") and filed with the Agency's Exchange Visitor Program Services.

(b) The application shall set forth, in detail, the applicant's proposed exchange program activity and shall demonstrate its prospective ability to comply with

Exchange Visitor Program regulations.

(c) The application shall be signed by the chief executive officer of the applicant and must also provide:

(1) Evidence of legal status as a corporation, partnership, or other legal entity (e.g., charter, proof of incorporation, partnership agreement, as applicable) and current certificate of good standing; (2) Evidence of financial responsibility as set forth at Sec. 62.9(e) ;

(3) Evidence of accreditation if the applicant is a post-secondary educational institution;

(4) Evidence of licensure, if required by local, state, or federal law, to carry out the activity for which it is be designated;

(5) Certification by the applicant (using the language set forth in appendix A) that it and its responsible officer and alternate responsible officers are citizens of the United States as defined at Sec. 62.2; and

(6) Certification signed by the chief executive officer of the applicant that the responsible officer will be provided sufficient staff and resources to fulfill his/her duties and obligations on behalf of the sponsor.

(d) The Department of State may request any additional information and documentation which it deems necessary to evaluate the application.

October 7, 2010

DOCUMENT INDEX

Exhibits

1. 52 Federal Register 20097
2. 54 Federal Register 32964
3. 54 Federal Register 40386
4. 54 Federal Register 47976
5. 55 Federal Register 46943

Westlaw Delivery Summary Report for WL WATCH F&P,

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PROPOSED RULES

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 3—Citizenship of Responsible Officers and Sponsorship]

Exchange Visitor Program; Citizenship of Responsible Officers and Sponsors

Friday, May 29, 1987

***20097** AGENCY: United States Information Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Information Agency proposes to amend Title 22, Code of Federal Regulations, Part 514 to provide that responsible Officers of designated sponsors be citizens of the United States and that designated sponsors be United States organizations and corporations.

DATES: Comments on the proposed rule will be accepted until July 28, 1987. All written communications received on or before the closing date will be considered by the Agency before taking action on a final rule.

ADDRESS: Interested persons should submit relevent views or arguments to Merry Lymn, Attorney Advisory, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485-7976.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Attorney Advisor, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485-7976.

SUPPLEMENTARY INFORMATION: Three new immigration bills became law in November, 1986: The Immigration Reform and Control Act of 1986, Pub. L. 99-603; The Immigration Marriage Fraud Amendments of 1986, Pub. L. 99-639; and ***20098** the Immigration and Nationality Act Amendments of 1986, Pub. L. 99-653.

(The State Department Efficiency Bill).

In light of the concern with immigration procedures, the United States Information Agency is in the process of reviewing the regulations governing the issuance of J-1 visas found at 22 CFR 514. In the course of review, the Agency has discovered that there is no written requirement that Responsible Officers be United States citizens. However, it has been the practice of the Exchange Visitor Facilitative Staff for the past five years to restrict designations to United States citizens. The agency believes that the person signing the Certificate of Eligibility Form IAP-66, as an agent of the United States Government, will better protect its interests, and will have a better understanding of the purposes of the exchange visitor program if he/she is a United States citizen. Likewise United States exchange organizations and corporations will better protect U.S. interests than foreign organizations and corporations.

Accordingly, the Agency proposes to modify the regulations by adding a requirement that the Responsible Of-

ficers be United States citizens and that all organizations other than international agencies be incorporated under the laws of the United States. Comments are sought from the Department of the State Consular Affairs and the Immigration and Naturalization Service as well as from the public.

The Agency has determined that this proposed rule is "non-major" under criteria set forth in Executive Order 12291. The rule not have an annual effect on the economy of $100 million or more; nor will it result in a major increase in costs or prices for consumers, individual industries, Federal, State or Local government agencies, or geographic regions. Furthermore, competition, employment investment, productivity, innovation, and the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets will not be adversely affected.

List of Subjects in 22 CFR Part 514

Cultural exchange programs.

The United States Information Agency proposes to amend the Regulations in Chapter V Part 514 of Title 22, Code of Federal Regulations as set forth below.

PART 514—[AMENDED]1. The authority citation for 22 CFR Part 514 is revised as follows:

Authority: U.S. Information and Educational Exchange Act of 1948, as amended, Pub. L. 80-402, as amended (22 U.S.C. 1431-1442); Mutual Educational and Cultural Exchange Act of 1961, as amended, Pub. L. 87-256, 75 Stat. 527, 534, 535 (8 U.S.C. 1101, 1104, 1182, 1258 and 22 U.S.C. 2451-2460); Pub. L. 97-241, 96 Stat. 291; 66 Stat. 166, 182, 184, 204 (8 U.S.C. 1101(a)(15)(j), 1182(e), 1182(j), 1258); Pub. L. 91-225, 84 Stat. 116, 117, (8 U.S.C. 1101, 1182); Pub. L. 97-116, 95 Stat. 1611, 1612, 1613 (8 U.S.C. 1101, 1182); Reorg. Plan No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85-5 (50 FR 27393).

22 CFR § 514.1

2. Section 514.1 is amended by revising the definitions of "Responsible Officer" and "Spondor" as set forth be- low.

22 CFR § 514.1

§ 514.1 Definitions.

* * * * *

"Responsible Officer" means the official of an organization sponsoring an Exchange-Visitor Program who has been listed with the Agency as being responsible for administering the program and carrying out the obligations which the organization assumes in undertaking to sponsor a program (see § 514.14). The designation of an Alternate Responsible Officers is permitted and encouraged. The Responsible Officer and all Alternate Responsible Officers must be United States citizens.

"Sponsor" means any reputable U.S. agency or organization or recognized international agency or organization having U.S. membership and offices which makes application as hereinafter prescribed to the Director for designation of a program under its sponsorship as an Exchange-Visitor Program and whose application is approved. Other corporations or organizations which are not incorporated under United States law may not be designated

as a sponsor.

* * * * *

Dated: April 22, 1987.

C. Normand Poirier,

Acting General Counsel and Congressional Liaison.

[FR Doc. 87-12280 Filed 5-28-87; 8:45 am]

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RULES and REGULATIONS

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 3]

Citizenship of Responsible Officers and Sponsors Exchange-Visitor Program

Friday, August 11, 1989

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: On May 29, 1987, the Agency published a notice of proposed rulemaking at 52 FR 20097 to provide that Responsible Officers of designated sponsors be citizens of the United States and that designated sponsors be United States organizations and corporations. By this notice a final rule is adopted wherein the long-standing requirement of United States citizenship is further defined.

The final rule shall become effective August 11, 1989. At that time the Agency will begin to review files of designated organizations and ask every designated organization to submit documentation that it is in compliance with this rule. Failure to come into compliance within 90 days of receipt of such request will result in withdrawal of the designation. Applications for new designations for organizations not meeting the requirements will not be approved.

EFFECTIVE DATES: August 11, 1989.

ADDRESS: Merry Lynn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT:Merry Lynn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485-8829.

SUPPLEMENTARY INFORMATION: The definition of “sponsor” was first published at 14 FR 4592, July 22, 1949. It appeared at 22 CFR 68.1 (b) as follows:

As used in this part, the term “sponsor” means any existing reputable United States agency or institution, public or private, which makes application, as hereinafter prescribed, to the Secretary of State for designation of a program under its sponsorship as an “Exchange-Visitor Program.”

The regulation was intended to mean and was interpreted to mean organizations of United States citizenship. The definition has been modified over the years, but the requirement that the sponsor be a United States agency or institution remained. (The only exception in the definition, which was inserted subsequently, is an interna-

tional organization of which the United States Government is a member, e.g. the United Nations.) While it has come to the Agency's attention that a few administrative errors were committed, and that some non United States organizations were designated, for the most part, the requirement that sponsors be United States organization was honored.

The Agency began to review its regulations shortly after the passage of three new immigration statutes in November, 1986: The Immigration Reform and Control Act of 1986, Pub. L. 99-603; The Immigration Marriage Fraud Amendments of 1986, Pub. L. 99-639: and The Immigration and Nationality Act Amendments of 1986, Pub. L. 99-653.

Upon reveiw of the exchange visitor regulations, the Agency found that there was no requirement that Responsible Officers of designated organizations be United States citizens. Additionally, because the definition of sponsor did not specify what was meant by United States organization, the Agency found that there was some confusion. Consequently, on May 29, 1987 the Agency published a notice of proposed rulemaking setting forth the following proposed definitions and seeking public comment:

“Responsible Officer” means the official of an organization sponsoring an Exchange-Visitor Program who has been listed with the agency as being responsible for administering the program and carrying out the obligations which the organization assumes in undertaking to sponsor a program (See § 514.14). The designation of an Alternate Responsible Officer is permitted and encouraged. The Responsible Officer and all Alternate Responsible Officers must be United States Citizens.

“Sponsor” means any reputable U.S. agency or organization or recognized international agency or organization having U.S. membership and offices which makes application as hereinafter prescribed to the Director for designation of a program under its sponsorship as an Exchange-Visitor Program and whose application is approved. Other corporations or organizations which are not incorporated under United States law may not be designated as a sponsor.

The Comments

The Agency received nine coments from the public. A list of the parties is found in appendix A. All comments were carefully considered, however, not all comments are specifically discussed. Comments received from the Department of State and the Immigration and Naturalization Service support the proposed modification. All of the other comments oppose either one or both of the provisions.

For the most part those opposing the requirement that only United States citizens be Responsible Officers argue that the sponsoring organization should have the right to appoint whomever it so chooses, and that this is especially important because the Responsible Officer often has duties unrelated to the exchange visitor program. Further, they assert that non citizens understand the exchange visitor program and can administer it. The National Association for Foreign Student Affairs (NAFSA) suggests that the proposal is unconstitutional. It also asserts that the Agency must document actual examples of problems arising because a Responsible Officer is a non citizen. One party states that there is no objection to the requirement, but suggests that it be amended to (1) allow permanent residents to serve as Responsible Officers, and (2) allow the Responsible Officer to appoint an alternate, who may be (and who, in many cases, is) stationed in a foreign country. Several parties point out that Agency's reference to Responsible Officers being agents of the United States Government is incorrect. They point out that the Responsible Officers are, in fact, employees and agents of the sponsoring organization. In the words of the University of Colorado at Boulder: “We are employed to protect the interests of our institutions,

and it is our professional responsibility to serve our institutions, not our government."

The University of Colorado at Boulder also objects to the requirement that organizations be incorporated in the United States as being impossible or redundant. First, it points out that corporations are incorporated under state laws not United States law. Second, some organizations, such as the universities, are not incorporated but chartered or established by state constitutions. One party contends that none of the other business visas, such as the E (Treaty Traders and Treaty Investors), H (Temporary Workers and Trainees), and L (Intracompany Transferees) require foreign corporations with a U.S. presence to be incorporated in the United States. It argues that foreign entities should qualify as sponsors if they have a bona fide U.S. presence. It asserts that failure to allow foreign entities to sponsor exchange visitors may conflict with numerous treaties of Friendship, Commerce and Navigation which were established to provide for reciprocal benefits to nationals of each country who invest in the other country or who conduct trade between the countries. Further, it argues that the modification ***32965** would undermine public and foreign policy goals of the United States Government. It suggests that the test of whether an organization should be designated should be whether it is subject to the jurisdiction of U.S. courts, tax laws, is stable, is registered to do business, and has bona fide offices in the United States. Additionally, this party asserts that designation is an "entitlement."

The Immigration and Naturalization Service and the Department of State support the proposed modification. However, the Department of State points out that the modification, as proposed, will not necessarily achieve its aim. It stated: "It has been the Department's experience that a corporation or other organization incorporated in the United States may, not infrequently, be controlled or wholly owned by foreign persons or entities."

Discussion

The statutory basis under which the United States Information Agency can designate programs as sponsors for a J-visa classification is found in 8 U.S.C. 1101(a)(15)(J). That subsection was added to the Immigration and Nationality Act in 1961 by section 109 of the Mutual Educational and Cultural Exchange Act of 1961. By placing the provision in the Immigration and Nationality Act, Congress intended to make it part of the overall statutory scheme. Consequently any interpretation of that section, must harmonize with that statute as a whole. No interpretation or application can be given which would undermine or circumvent the Immigration and Nationality Act, taken as a totality.

According to the legislative history (1961 U.S. Code Cong. & Admin. News, p. 2774) the new subsection "creates and incorporates into the basic law a special new nonimmigrant visa designed to serve solely the purposes of the Mutual Educational and Cultural Exchange Act of 1961."The purpose of that Act is to strengthen international understanding. The exchange program is an instrument of foreign policy. Decisions as to which exchange programs should be pursued is a foreign policy determination. Accordingly, it is not an "entitlement" program as alleged, but rather, subject to the Agency's discretion in its implementation of foreign policy. The exchange program was set up in the Department of State and later in USIA in order "to provide coordination with U.S. foreign relations" (1961 U.S. Cong. Code & Admin. News 2760). That the decision regarding the designation of exchange organizations is a foreign relations decision should be intuitively obvious, since the task has been conferred upon a foreign affairs agency.

* * * The Bureau of Educational and Cultural Affairs has been set up in the Department of State to provide coordination with U.S. foreign relations. (1961 U.S. Cong. & Admin. News 2760).

Congress determined that:

In modern international relations a positive U.S. Government program promoting educational and cultural cooperation is essential to the welfare of the American people. (1961 U.S. Cong. Code & Admin. News 2760.)

See also the testimony of Walter Laves, Chairman of the Department of Government of the University of Indiana, (Hearings before the Committee on Foreign Relations, United States Senate on S. 1154, March 29 and April 27, 1961 p. 74.) wherein he stated:

* * * the area which encompasses education, science, culture, knowledge, skills, technical assistance, and information * * * how significant this big area of foreign relations really is, and to what extent our welfare as a nation * * * may depend upon the effectiveness with which this aspect of our foreign relations is conducted.

Additionally, the exchanges (which are not conducted on a strictly reciprocal basis) are to be undertaken "only when it is considered that they will 'strengthen international cooperative relations'." (Senate Report o. 372, Report from the Committee on Foreign Relations to accompany S. 1154, June 1961, p. 8) Consequently, all persons entering the United States on A J-visa must enter pursuant to a program, the purpose of which is to strengthen international understanding and cooperation—as determined by the Agency. The Agency, in fulfilling its foreign relations obligations, is to promote exchange activities, when the exchange activities coincide with foreign relations determinations.

8 U.S.C. 1101(a)(15)(J) merely refers to the designation function of the Agency by describing an exchange visitor as a "participant in a program designated by the Director of the United States Information Agency."No criteria are set forth requiring the Agency to designate certain programs. The criteria are left to Agency discretion. Because of the nature of foreign relations, the agency has been given broad authority to implement its legislation. The courts have found that this authority is—broader than that given to domestic agencies. Promulgation of regulations consistent with the Act and its legislative history are not considered an abuse of agency discretion. (See Zemel v. Rusk, 381 U.S. 1 (1965) and Haig v. Agee, 453 U.S. 280 (1981). See also Slyper v. Attorney General, 827 F.2d 821, 823 (D.C. Cir. 1987) wherein the court stated: "The statute contains no standard or criterion upon which to make or withhold a favorable recommendation. This broad delegation of discretionary authority is 'clear and convincing evidence' of congressional intent to restrict judicial review in cases such as those we now face.")

The Agency, in the exercise of its discretion, has determined that noncitizens should not be given excessive authority in making the foreign relations determination coupled with the strong visa issuance recommendation (which is inherent in the responsibility for filling out the IAP-66 forms) as to which aliens should be exchange visitors. The Agency has several reasons for its determination. First, the Agency believes that United States citizens are best equipped to further the purposes of the governmentally authorized exchange program. They are in a better position than aliens to understand and represent the United States and to "generat[e] goodwill for the United States abroad" (H.R. Rep. No. 130, 98th Cong., 1st Sess. 61, reprinted in 1983 U.S. Code Cong. & Admin. News 1484, 1544).[FN1]

> FN1 Even where the Agency's formal decision making process includes noncitizens, such as in a binational board, there is always representation of American citizens in an at least an equal number on the board. Furthermore, such input is undertaken only pursuant to a government to government agreement. The responsibility for signing the IAP-66 forms rests with the USIS officers at the Agency Posts abroad.

Second, United States citizens owe allegiance to the United States. Noncitizens do not owe allegiance to the United States. While the comments point out that sponsors and responsible officers are not agents of the United States Government, they are in the position of carrying out United States foreign policy in selecting individual participants in the exchange visitor program in the place of the Agency making the appointments. Additionally, they are in the position of signing a United States Government document. The act of signing that document confers on them a shared responsibility with the Agency in carrying out its foreign relations obligations. As the University of Colorado at Boulder stated: "* * * it is not the job of a Responsible Officer to protect the interests of the United States Government. We are employed to protect the interests of our institutions, and it is our professional responsibility to serve our institutions, not the government."Since Responsible Officers are not serving the interests of ***32966** the United States Government but rather their institutions, and the interests of the institution may not always coincide with the interests of the United States Government, indeed may sometimes conflict, and these Responsible Officers are entrusted with review of participants in a foreign relations program to ensure that the selection conforms with the designation, the Agency must impose certain restrictions on the programs. Where the organization is foreign, the Agency runs too high a risk that the interests of the organization are not in concert with those of the United States Government, and that individuals selected to participate in exchange programs are not in keeping with the intent of the program, but rather that the participants are selected to further the interests of the foreign organization. With regard to Responsible Officers who are citizens, and who owe allegiance to the United States, the Agency believes that they are more likely than aliens to weigh their actions carefully when their employers' interests conflict with those of the United States Government.

Third, the designation of a sponsor confers a grave responsibility on that sponsor. Upon designation, the sponsor is issued blank controlled United States Government forms. The forms in the hands of the wrong persons can do great damage to the interests of the United States. Moreover, the scheme set forth in the Immigration and Nationality Act expresses the intent of Congress that it would define who could come to the United States, and under what circumstances. Because Congress provided that different terms and conditions would apply to the different visas, it is important that the Agency administer the exchange program in such a way as to limit its access to only those aliens Congress intended to be included in the program. The Agency believes it can best ensure the integrity of the program and the proper use of the forms if access to the forms is confined to United States cit- izens.

The assertion that the Agency's proposal is inconsistent with other visas used for business purposes is inapposite. The J visa is not a business visa. It is not to be used for business purposes. It is a visa exclusively for educational and cultural exchange. Furthermore, to qualify for the visas to which the party refers, the E, L, and H, the prospective sponsor must petition directly to the Immigration and Naturalization Service on behalf of the individual alien. The alien in possession of a form IAP-66, stating that he/she is eligible for a J visa is not subjected to the strenuous screening applicants for the other named visas are subjected. In the other visas, for example, each petition by a sponsor on behalf of an alien is put through several levels of review, on a case by case basis, in the United States before the alien abroad is issued a document which can be presented to the Consul abroad. In the exchange program, only the sponsor makes the determination prior to presentation to the Consul abroad. Consequently, a higher standard of review must be applied to the sponsor at the outset. Thus this assertion that the proposal will jeopardize other treaties is, again, inapposite. The referenced treaties are related to business and commerce. There are adequate visas for implementation of these treaties. The J visa implements educational and cultural agreements.

The Agency is concerned about preserving the integrity of the J visa program and maintaining control over the program itself, the sponsors, and the forms. The Agency apprehends that if certificates of eligibility for J visas

are controlled by aliens who are in turn subject to control by aliens in other countries, the Agency will experience considerably diminished effective control over the administration of its exchange programs and over compliance by sponsors, their responsible officers and even exchange visitors with U.S. labor and immigration laws. The Agency questions whether the alien responsible officers and other officials of foreign corporate sponsors will be adequately motivated to observe the purpose and intent of the Exchange Visitor Program. Consequently, the Agency is persuaded that there exists a legitimate governmental purpose in restricting both sponsorship and the control of certificates of eligibility to American citizens.

Some parties argue that such a proposal is unconstitutional. In order to pass constitutional muster, the proposed regulation must meet two tests: USIA may exclude noncitizens from designations as sponsors and Responsible Officers if (1) the justification for such an action is rationally related to a federal interest, and (2) that federal interest is properly the concern of the USIA. (See Mathews v. Diaz, 426 U.S. 67 (1976); Chevron U.S.A. v. Natural Resources Defense Council, 467 U.S. 837, 865 (1984); Hampton v. Mow Sun Wong, 426 U.S. 88 (1976); and 2 R. Rotunda, J. Nowak & J. Young, Treatise on Constitutional Law: Substance and Procedure section 18.12, at 481 (1986). The justification is rationally related to a federal interest. The Agency has shown that the involved decisions are the implementation of foreign policy. Foreign policy is indeed a federal interest. Further, that federal interest is properly the concern of the USIA. Under the Mutual Educational and Cultural Exchange Act of 1961 the Agency is required to strengthen international cooperative relations, by educational and cultural exchanges. Thus, the Agency has shown that the federal interest is properly the concern of the USIA. Accordingly, the Agency must exercise its discretion in determining “who” will best assist in its mission. Further, the Agency has given a rational basis for its decision to exclude aliens from designations. Consequently, the Agency believes its decision is constitutional.

This situation is distinguishable from that in Hampton v. Mow Sun Wong, 96 S.Ct. 1985, 1910 (1976) wherein the Court stated:

It is the business of the Civil Service Commission to adopt and enforce regulations which will best promote the efficiency of the federal civil service. That agency has no responsibility for foreign affairs, for treaty negotiations, for establishing immigration quotas or conditions of entry, or for naturalization policies. Indeed, it is not even within the responsibility of the Commission to be concerned with the economic consequences of permitting or prohibiting the participation by aliens in employment opportunities in different parts of the national market. On the contrary, the Commission performs a limited specific function.

On the contrary, the Agency does have responsibility for foreign affairs, for treaty negotiations, for establishing conditions of entry for participants in the exchange program. Indeed, it is even within the responsibility of the Agency to be concerned with the economic consequences of permitting or prohibiting the participation by exchange visitors in employment opportunities. Accordingly, the Agency believes it has met the test as to the protection of a national interest within the realm of the Agency's responsibility.

In researching the discover precedents to help the Agency define with greater precision what it means by the term “United States citizen,” the Agency discovered the following definition in the Federal Aviation Act (49 U.S.C. 1301 (13)):

(13) “Citizen of the United States” means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any state, territory, or possession of the United

States, of which the president and two-thirds or ***32967** more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

This definition responds closely to the Agency's perceived needs.

Findings and Conclusions

For the reasons stated above, the Agency finds that the exclusion of noncitizens from serving as sponsors and responsible officers is rationally related to a federal interest and that the federal interest is properly the concern of the USIA. Furthermore, the agency has determined that such exclusion is necessary to ensure the integrity of the exchange visitor program. Accordingly, the Agency is modifying the definition of citizen found in the Federal Aviation Act and inserting the modification into the Agency's regulations.

This decision does not significantly affect the quality of the human environment and is not a major or regulatory action under the Energy and Conservation Act of 1975.

This rule does not constitute a ‘major rule’ as that term is defined in section 1 (b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State of local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (42 U.S.C. 3501-3520) and have been assigned OMB Control Number 3116-0009.

List of Subjects in 22 CFR Part 514

Cultural exchange programs, Reporting and recordkeeping requirements.

Accordingly, 22 CFR part 514 is amended as follows:

PART 514—[AMENDED]1. The authority citation for 22 CFR part 514 continues to read:

Authority: U.S. Information and Educational Exchange Act of 1948, as amended, Pub. L. 80-402, as amended (22 U.S.C. 1431-1442): Mutual Educational and Cultural Exchange Act of 1961, as amended, Pub. L. 87-256, 75 Stat. 527, 634, 535 (8 U.S.C. 1101, 1104, 1182, 1258 and 22 U.S.C. 2451-2460); Pub. L. 97-241, 96 Stat. 1291; 66 Stat. 166, 182, 184, 204 (8 U.S.C. 1101(a)(15)(j), 1182(e), 1182(j), 1258); Pub. L. 91-225, 84 Stat. 116, 117, (8 U.S.C. 1101, 1182); Pub. L. 97-116, 95 Stat. 1611, 1612, 1613, (8 U.S.C. 1101, 1182); Reorg. Plan No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85-5 (50 FR 27393).

22 CFR § 514.1

2. Section 514.1 is amended by adding a definition of "Citizen of the United States" and revising the definitions of "Responsible Officer" and "Sponsor" as set forth below.

22 CFR § 514.1

§ 514.1 Definitions.

* * * * *

Citizen of the United States means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is a United States citizen, or (c) a corporation or association created or organized under the laws of the United States, of which the chief executive officer, president, chairman of the board of directors, and 75 per centum of the members of the board and its other managing officers are United States citizens and in which at least 75 per centum of the stock or voting interest in owned or controlled by persons who are citizens of the United States or of one of its possessions.

* * * * *

Responsible Officer means the official of an organization sponsoring an Exchange-Visitor Program who has been listed with the Agency as being responsible for administering the program and carrying out the obligations which the organization of an Alternate Responsible Officer is permitted and encouraged. The Responsible Officer and all Alternate Responsible Officers must be United States citizens.

Sponsor means any reputable United States federal, state or local government agency or recognized international agency or organization of which the United States government is a member and has offices in the United States or a reputable organization which is a "citizen of the United States" as that term is defined by this regulation which makes application as prescribed to the Director of the United States Information Agency for designation of a program under its sponsorship as an Exchange-Visitor Program and whose application is approved. Other corporations or organizations which are not citizens of the United States as herein defined may not be designated as a sponsor.

* * * * *

Dated: July 17, 1989.

R. Wallace Stuart,

Acting General Counsel.

Appendix A

Comments on Rulemaking No. 3—Citizenship for Responsible Officers and Sponsors

Jones, Day, Reavis & Pogue

Ohio University

National Association for Foreign Students Affairs

Liaison Group for International Educational Exchange

Department of Justice, Immigration and Naturalization Service

The University of Iowa

Tony Cook Associates

University of Colorado

Department of State

[FR Doc. 89-18820 Filed 8-10-89; 8:45 am]

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RULES and REGULATIONS

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 3]

Exchange-Visitor Program; Citizenship of Responsible Officers and Sponsors

Monday, October 2, 1989

AGENCY: United States Information Agency.

ACTION: Final rule; amendment.

SUMMARY: On August 11, 1989 at 54 FR 32964, (corrected at 54 FR 34503, August 21, 1989) the United States Information Agency adopted a final rule wherein the longstanding requirement of United States citizenship of sponsors and responsible officers of exchange-visitor programs is further defined.

The final rule became effective August 11, 1989, whereby the Agency required every designated organization to submit documentation that it is in compliance with this rule. Failure to come into compliance within 90 days of receipt of such request will result in withdrawal of the designation. Applications for new designations for organizations not meeting the requirements will not be approved.

Designated sponsors have asked for guidance regarding the documentation to be provided. This amendment sets forth such guidance.

EFFECTIVE DATES: October 2, 1989.

ADDRESS: Merry Lymn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 485-8829.

SUPPLEMENTARY INFORMATION: In response to the inquiries from designated sponsors of exchange visitor programs regarding required documentation, the Agency has determined that sponsors may certify that they comply with the regulation rather than submitting full documentation at this time. However, in making such certification the sponsor must agree to supply supporting documentation when and as requested. Further, the sponsor must agree that failure to substantiate the representation of citizenship made in the certification will result in the immediate withdrawal of its designation and will require that the organization account for and return all IAP-66 forms transferred to it. It should be noted that false certification may subject the certifying official to criminal penalties found in 18 U.S.C. 1001. The definitions are amended to include the required certifying language.

Findings and Conclusions

This decision does not significantly affect the quality of the human environment and is not a major or regulatory action under the Energy and Conservation Act of 1975.

***40387** This rule does not constitute a 'major rule' as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this regulation § 502.6(a)(3) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (42 U.S.C. 3501-3520) and have been assigned OMB Control Numbers.

List of Subjects in 22 CFR Part 514

Cultural exchange programs, Reporting and recordkeeping requirements.

Accordingly, 22 CFR part 514 is amended as follows:

PART 514—[AMENDED]1. The authority citation for 22 CFR part 514 continues to read:

Authority: U.S. Information and Educational Exchange Act of 1948, as amended, Pub. L. 80-402, as amended (22 U.S.C. 1431-1442): Mutual Educational and Cultural Exchange Act of 1961, as amended, Pub. L. 87-256, 75 Stat. 527, 634, 535 (8 U.S.C. 1101, 1104, 1182, 1258 and 22 U.S.C. 2451-2460); Pub. L. 97-241, 96 Stat. 1 291; 66 Stat. 166, 182, 184, 204 (8 U.S.C. 1101 (a)(15)(j), 1182(e), 1182(j), 1258); Pub. L. 91-225, 84 Stat. 116, 117, (8 U.S.C. 1101, 1182); Pub. L. 97-116, 95 Stat. 1611, 1612, 1613, (8 U.S.C. 1101, 1182); Reorg. Plan No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85-5 (50 FR 27393).

22 CFR § 514.1

2. Section 514.1 is amended by revising the definitions of "Responsible Officer" and "Sponsor" to read as fol- lows:

22 CFR § 514.1

§ 514.1 Definitions.

* * * * *

Responsible Officer means the official of an organization sponsoring an Exchange-Visitor Program who has been listed with the Agency as being responsible for administering the program and carrying out the obligations

which the organization assumes in undertaking to sponsor a program (See § 514.14). The designation of an Alternate Responsible Officer is permitted and encouraged. The Responsible Officer and all Alternate Responsible Officers must be United States Citizens. Responsible Officers must certify their citizenship to the Agency using the following language:

I hereby certify that I am the responsible (or alternate responsible officer, specify) for exchange visitor program number , and that I am a citizen of the United States. I understand that the United States Information Agency may request supporting documentation as to my citizenship at any time and that I must supply such documentation when and as requested. (Name of organization) agrees that my inability to substantiate the representation of citizenship made in this certification will result in the immediate withdrawal of its designation and the immediate return of or accounting for all IAP-66 forms transferred to it.

I also understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001 which reads:

“Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.”

Signed in ink by

—

(Name)

(Title)

This day of , 19 .

Subscribed and sworn to before me

this day of , 19 .

—

Notary Public

Sponsor means any reputable U.S. agency or organization or recognized international agency or organization having U.S. membership and offices which makes application as hereinafter prescribed to the Director for designation of a program under its sponsorship as an Exchange-Visitor Program and whose application is approved. Other corporations or organizations which are not incorporated under United States law may not be designated as a sponsor. Sponsors must certify their citizenship to the Agency using the following language:

I hereby certify that I am an officer of (Name of Organization) with the title of ; that I am authorized by the (Board of Directors, Trustees, etc.) to sign this certification and bind (Name of Organization); and that a true copy certified by (A Corporate Officer) of such authorization is attached. I further certify that (Name of Organ-

ization) is a citizen of the United States as that term is defined at22 CFR 514.1 which states:

" 'Citizen of the United States' means: (a) An individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is a United States citizen, or (c) a corporation or association created or organized under the laws of the United States, of which the chief executive officer, president, chairman of the board of directors, and 75 per centum of the members of the board and its other managing officers are United States citizens and in which at least 75 per centum of the stock or voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions."

I understand that the United States Information Agency may request supporting documentation at any time and that (Name of Organization) must supply such documentation when and as requested. (Name of Organization) consents to a visit (or visits) by the United States Information Agency to examine such documents as it deems necessary to verify the representation made in this certification. (Name of Organization) agrees that inability to substantiate the representation of citizenship made in this certification will result in the immediate withdrawal of its designation and the immediate return of or accounting for all IAP-66 forms transferred to it.

I also understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001 which reads:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Signed in ink by

—

(Name)

—

(Title)

This day of , 19.

Subscribed and sworn to before me this day of , 19.

—

Notary Public

Dated: September 19, 1989.

Alberto J. Mora,

General Counsel.

[FR Doc. 89-23148 Filed 9-29-89; 8:45 am]

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RULES and REGULATIONS

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 3]

Citizenship of Responsible Officers and Sponsors Exchange-Visitor Program; Citizenship of Responsible Officers and Sponsors

Monday, November 20, 1989

AGENCY: United States Information Agency.

ACTION: Postponement of compliance date and request for comments.

SUMMARY: The definition of “sponsor” was first published at 14 FR 4592, July, 1949. It required that all designated sponsors of exchange visitor programs be United States agencies or institutions. On May 29, 1987, the Agency published a notice of proposed rulemaking at 52 FR 20097 to provide that Responsible Officers of designated sponsors be citizens of the United States and that designated sponsors be incorporated in the United States. On August 11, 1989, at 54 FR 32964 (corrected at 54 FR 34503, August 21, 1989, and amended at 54 FR 40386 October 2, 1989), the Agency adopted a final rule wherein the longstanding requirement of the United States citizenship of sponsors of exchange visitor programs was further defined and documentation of United States citizenship was required to be furnished to the Agency. By this notice the date by which current sponsors and responsible officers must document their citizenship is postponed. Further public comment as to the scope and impact of the rule is sought as an aid to possible redefinition.

DATES: Comments on the rule will be accepted until January 19, 1990. All written communications received on or before the closing date will be considered by the Agency before further action is taken regarding the citizenship of exchange visitor sponsors. In the interim, the Agency will not designate new responsible officers or sponsors which do not meet the criteria for citizenship as published at 54 FR 40386, October 2, 1989.

ADDRESS: Interested persons should submit relevant views or arguments to Merry Lymn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485-8829.

SUPPLEMENTARY INFORMATION: In response to the May 29, 1987, notice of proposed rulemaking at 52 FR 20097, the Agency received nine comments from the public. These comments were discussed at length at 54 FR 32964, August 11, 1989, upon adoption of the final rule. Following that notice, which provides that current sponsors must comply with the definition of citizen, some sponsors complained that they did not have adequate

notice. While it categorically rejects this charge, the Agency, nonetheless, now postpones the compliance date and reopens the proceeding for additional comments regarding the wording of the definition.

At the outset it should be noted that the Agency is under no legal requirement or obligation to seek public comment on the regulation. The Administrative Procedure Act at 5 U.S.C. 553(a)(1) specifically exempts from application of the Act a "foreign affairs function of the United States."There is no question that designation of exchange visitor sponsors for international exchange programs is a foreign affairs function. The operation and administration of the exchange program is an instrument of foreign policy. The J-visa was created by section 109 of the Mutual Educational and Cultural Exchange Act of 1961 to "serve solely the purposes of [that Act]."1961 U.S. Code Cong. & Admin. News 2774. The Congressional intent behind the visa may be discerned from the statement that:

In modern international relations a positive U.S. Government program promoting educational and cultural cooperation is essential to the welfare of the American people.

1961 U.S. Code Cong. & Ad. News 2760. Accordingly, the decision regarding the designation of an exchange organization is a foreign relations decision.

Thus, even though it was not required to do so but because the Agency has a long history of cooperation with its designated sponsors, the Agency announced publicly in 1987 that it proposed to amend the regulations and invited comments. It was not the Agency's intention to waive the exemption, rather, the Agency wanted to preserve its valuable working relationship with the sponsors. It was in this spirit of cooperation that comments were invited. The public was notified that the Agency perceived that it was restricting and wanted to continue to restrict designation of sponsors to United States organizations. Further, the ***47977** public was notified that the Agency was concerned about the designation of foreign corporations and organizations. At least one member of the public understood the Agency's concern and submitted a comment attempting to convince the Agency that foreign corporations should be designated as exchange visitor sponsors.

Consequently, the Agency's query to the public was, and remains, limited to a very narrow question—how to define "United States organization" for the purpose of the regulations. The Agency finds that it is axiomatic that designations must be limited to United States entities. It is clear that Congress intended that designations be so limited; since 1949 the regulations have reiterated this requirement.

The Authority To Designate

Under the United States Information and Educational Exchange Act of 1948, two programs—information dissemination and educational exchange—were established to carry out the purposes of the Act. The authority of the Director of the United States Information Agency to designate exchange visitor programs derives from two sources, the Immigration and Nationality Act and the Mutual Educational and Cultural Exchange Act. The Immigration and Nationality Act at 8 U.S.C. 1101(15)(J) defines an exchange visitor as:

an alien * * * who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency * * * *

The description of the programs which the Director may designate is contained in section 102 of the Mutual Educational and Cultural Exchange Act of 1961.

Congress envisioned that "the private resources of this country and the cooperation of United States citizens abroad" would be enlisted to assist in the educational exchange. Id. at 1014 (emphasis added).

[I]t is vital that the Department of State can and should cooperate with the efforts of private citizens and with profit and non-profit organizations interested in promoting the better understanding of the United States abroad and lasting friendship. Also, the areas of cooperation, consultation, and separate activity between the Department of State and private industry (e.g., films, radio, press, magazines, books) are sufficiently great to expect fruitful and harmonious relationships * * * * The importance of worthy private United States activities in the foreign field cannot be exaggerated.

Id. at 1015 (emphasis added).

Thus, from this legislative history it can be inferred that Congress contemplated that the assistance from the private sector would be assistance from the United States private sector. Further, it can be inferred that it is necessary that a designated organization may fairly be described as an "organization interested in promoting the better understanding of the United States abroad and lasting friendship."Upon the passage of the Mutual Educational and Cultural Exchange Act of 1961, the exchanges program in the 1948 Act was adopted by the 1961 Act. However, there was no substantial change in the underlying character of the exchanges. Rather, the 1961 Act was intended to expand and strengthen the programs established under the previous Act. 1961 U.S. Code Cong. & Ad. News 2760.

The Mutual Educational and Cultural Exchange Act requires that the schools and institutions of learning designated to participate in educational exchange be United States "schools and institutions." Section 102(1)(B). Consequently, it is necessary to define "United States schools and institutions" for educational exchanges.

It should also be noted that Congress intended that foreign governments would participate in the exchange program. However, Congress did not contemplate that these governments would be designated J-1 visa sponsors and have direct access to United States Government controlled documents. Rather, it is clear that Congress envisioned government-to-government agreements whereby the two governments would cooperate in the field of exchange. Congress did not intend that another government would have virtual control over exchange visitors to this country, as is evidenced by Section 103, which provides for agreements with foreign governments. If Congress intended that the powers of the USIA Director to determine exchange program policy and participants be vested in foreign governments, this section of the Act would be unnecessary and redundant. The rules of statutory construction preclude interpretations which would render a section of a statute either redundant or unnecessary.

The Agency Was Given Complete Discretion To Decide When To Work With Private Industry

The legislative history of the Smith-Mundt Act (1948 U.S. Code Cong. & Ad. News 1019) states:

Section 1005 states the intention of Congress that the Department shall make use of the services of private agencies wherever practicable. The House committee report interprets this to mean that the Secretary of State should use a private agency "if a private agency can perform an activity as well as or better than a Government agency, and at no greater expense."This language should not, of course, enable any particular private agency to demand a contract or a grant of funds for participation in the purposes of this act. The discretion would seem to the committee to lie with the Secretary of State to determine what agencies should receive public funds through contracts or grants.

Similarly, the Agency has discretion to designate or to refuse to designate any private organization as an exchange visitor sponsor. The grant of discretionary power to the USIA Director is expressed in the broadest of terms. It provides only the barest standards or criteria by which the Agency is to administer educational and cultural exchanges.

As the Agency stated in its notice of August 11, 1989, 54 FR 32964, 32965:

8 U.S.C. 1101(a)(15)(J) merely refers to the designation function of the Agency by describing an exchange visitor as a "participant in a program designated by the Director of the United States Information Agency."No criteria are set forth requiring the Agency to designate certain programs. The criteria are left to Agency discretion. Because of the nature of foreign relations, the agency has been given broad authority to implement its legislation. The courts have found that this authority is—broader than that given to domestic agencies.

Promulgation of regulations consistent with the Act and its legislative history are not considered an abuse of agency discretion. (See Zemel v. Rusk, 381 U.S. 1 (1965) and Haig v. Agee, 453 U.S. 280 (1981). See also Slyper v. Attorney General, 827 F.2d 821, 823 (D.C. Cir. 1987) wherein the court stated: "The statute contains no standard or criterion upon which to make or withhold a favorable recommendation. This broad delegation of discretionary authority is 'clear and convincing evidence' of congressional intent to restrict judicial review in cases such as those we now face.")

The Agency, in the exercise of its discretion, has determined that noncitizens should not be given excessive authority in making the foreign relations determination coupled with the strong visa issuance recommendation (which is inherent in the responsibility for filling out the IAP-66 forms) as to which aliens should be exchange visitors.

The Agency, in the exercise of its discretion and in interpreting its statute and legislative history, has determined, since 1949, that it must limit the designation of exchange visitor sponsors to United States entities. The question is how to define what constitutes a United States entity.

Thus, the question before the public is how to define "United States citizen" for the purpose of the regulations. The ***47978** present definition as promulgated on August 11, 1989 is:

"Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is a United States citizen, or (c) a corporation or association created or organized under the laws of the United States, of which the chief executive officer, president, chairman of the board of directors, and 75 per centum of the members of the board and its other managing officers are United States citizens and in which at least 75 per centum of the stock or voting interest is owned or controlled by persons who are citizens of the United states or of one of its possessions.

The Agency is concerned that the control of the entities which are designated as exchange visitor sponsors be vested in United States citizens. If the definition promulgated by the Agency excludes entities which are controlled by United States interests, the Agency will consider a new definition, provided that such definition ensures that designated sponsors will not be controlled by foreign interests. On the other hand, the Agency is also concerned that entities which have performed valuable service in the international exchange field may be excluded from the field as a result of the new definition.

Comments should address the question of whether a new definition can be drafted that will balance the require-

ment for United States control of the J-1 visa process with the need to preserve the international character of many of the successful exchange organizations.

The Agency is aware that some entities, such as universities, are neither corporations nor associations. Accordingly, the Agency may add the term “entity” to the definition. On the other hand, the addition of “entity created by state or local law” to the definition, may be more appropriate.

The Agency is also aware that some United States corporations do not know the citizenship of all of their stockholders. Consequently, the Agency is interested in learning whether there is another way to determine that the controlling interest is vested in United States citizens.

Additionally, the Agency understands that there are some very large partnerships in which only a very small portion of the partners are not United States citizens. On the other hand, in a small partnership, that same proportion of partners may wield considerable control. Thus, the question is whether there is a way to redefine United States partnerships to address this problem.

Dated: November 13, 1989.

Alberto J. Mora,

General Counsel.

[FR Doc. 89-27164 Filed 11-17-89; 8:45 am]

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54 FR 47976-01, 1989 WL 292186 (F.R.)
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RULES and REGULATIONS

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 3]

Citizenship of Responsible Officers and Sponsors, Exchange-Visitor Program

Thursday, November 8, 1990

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: On May 29, 1987, the Agency published a notice of proposed rulemaking at 52 FR 20097 to provide that Responsible Officers of designated sponsors be citizens of the United States and that designated sponsors be United States organizations and corporations. Subsequently, on August 11, 1989, the Agency published a final rule at 54 FR 32964 (corrected at 54 FR 34503, August 21, 1989, and amended at 54 FR 40386, October 2, 1989) wherein the requirement of citizenship was further defined. The final rule was made effective August 11, 1989.

On November 20, 1989, the Agency postponed the compliance date of the final rule and sought further public comment as to the scope and impact of the rule, with a view to possible redefining it. (54 FR 47976, November 20, 1989). In response to public comment received by the Agency, the Agency has decided to revise the rule and set forth minimum requirements regarding the citizenship of sponsors and responsible officers.

By this notice the rule has been redefined and a final rule is adopted which requires that Responsible Officers and Alternate Responsible Officers of designated sponsors be United States citizens or permanent resident aliens and that sponsors be United States citizens, as that term is defined in the rule.

DATES: Effective Date: This final rule shall become effective November 8, 1990.

Compliance Date: By February 6, 1991, all designated sponsors and responsible officers must certify that they are in compliance with the final rule.

ADDRESSES: Merry Lymn, Assistant General Counsel, Office of the General Counsel, United States Information ***46944** Agency, room 700, 301 Fourth Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, United States Information Agency, room 700, 301 Fourth Street, SW., Washington, DC 20547, (202) 619-6829.

SUPPLEMENTARY INFORMATION: On August 11, 1989, the Agency published a final rule, effective that date requiring Sponsors and Responsible Officers to be U.S. citizens, as that term was defined in the rule (54 FR

32964). On November 20, 1989, the Agency postponed the compliance date of the final rule and sought further public comment, with a view to redefining the term (54 FR 47976). Upon consideration of the various comments filed with the Agency, the definition of “Citizen of the United States” has been modified. By this notice, the final rule is adopted.

It is noted that the Agency may request supporting documentation as to the citizenship of the designated sponsor or responsible officer at any time and that the designated sponsor or responsible officer must supply such documentation when and as requested by the Agency. It is further noted that the inability of a designated sponsor or responsible officer to substantiate the required citizenship will result in the immediate withdrawal of its designation and the immediate return of or accounting for all IAP-66 forms transferred to it.

Upon a showing of exceptional hardship, a designated sponsor may be granted an extension of time of up to one year from the effective date of the final rule in order to comply with said rule. Requests for extensions of time for compliance shall be made in writing to the Agency, no later than 90 days from the publication of this rule in the Federal Register, and the decision on whether or not to grant such an extension shall be in the sole discretion of the Agency.

The Comments

The Agency timely received sixty-four comments in response to the August 11, 1989 and November 20, 1990 Federal Register notices. Four additional comments were received by the Agency after the January 19, 1990 deadline for submitting comments. No objections were filed to the admission of the late-filed comments. Therefore, all of the comments have been reviewed and considered, although not all of the comments are specifically discussed herein. A list of the parties submitting comments appears in appendix A hereto.

In addition to the parties listed in appendix A, the Agency also received comments from the Department of State, the Department of Labor, and the Immigration and Naturalization Service, all of which supported the final rule as set forth in the August 11, 1989 Federal Register notice.

With respect to the requirement that a Responsible Officer or an Alternate Responsible Officer be a United States citizen, for the most part, those opposing the requirement argued that there has been no showing that the duties of a Responsible Officer can only be fulfilled by a U.S. citizen, and further, that such a requirement would unreasonably detract from a sponsor's ability to conduct its business. A number of parties suggested that if the U.S. citizenship requirement is adopted it should at least be amended to authorize a permanent resident alien to serve as a Responsible Officer or Alternate Responsible Officer.

Several Land Grant and State universities stated that they should not have to prove their citizenship or the citizenship of their officers and directors in order to serve as a sponsor. Upon consideration, the Agency has modified the final rule to provide that accredited colleges, universities or other institutions of higher education which are created or organized under the laws of the United States, or of a State or political subdivision thereof, are, by definition, citizens of the United States. [See subsection “(e)”].

A number of parties objected to the August 11, 1989 final rule's requirement that each partner of a partnership must be a U.S. citizen before the partnership could be designated a sponsor. It was pointed out that today's multinational partnerships, such as large public accounting firms, have offices in many countries and partners of many nationalities. These comments argued that a showing that a majority of the partners are U.S. citizens should be sufficient to meet the Agency's objectives. Upon consideration, the Agency has modified the final rule

to permit partnerships, a majority of whose partners are U.S. citizens, to be sponsors of designated Exchange-Visitor Programs.

A number of parties suggested that the Agency's requirement that 75 percent of the voting interests in corporations be U.S. citizens would eliminate many closely-held corporations and non-profit corporations as sponsors. Upon consideration, the Agency has modified the definition of citizenship to avoid that result. Under the modified definition provision is made for corporations whose stock is publicly traded on United States stock exchanges, for corporations whose stock is not publicly traded, and for non-profit corporations (which typically do not have stock). [See subsections "(c) (ii)" and "(d)"].

The final rule published in the August 11, 1989 Federal Register also included in its definition of "Citizen of the United States" the following language: "* * * (c) a corporation or association created under the laws of the United States * * *" Several comments correctly pointed out that most corporations are created or organized, not under the laws of the United States, but under the laws of a particular State. The definition adopted by the Agency in this Notice recognizes that fact by providing for corporations and partnerships which are created or organized "* * * under the laws of the United States, or of a State, territory or possession of the United States * * *" Similarly, the final rule adopted herein recognizes that colleges, universities or other institutions of higher education may be created or organized under the laws of the United States, a State, a county or a municipality or other political subdivision.

A number of parties stated that the Agency has cited no actual examples of abuses or problems which have arisen because a Responsible Officer or Sponsor was not a U.S. citizen, that the Exchange-Visitor Program has worked so well for so many years that a change in the rules is not warranted, and that the final rule may well be unconstitutional. These comments will be discussed below.

Comments were also received from the United States Departments of State and Labor and the Immigration and Naturalization Service (INS). All three agencies support the final rule requiring that sponsors be United States citizens. The Department of Labor and the INS also supported the final rule requiring that Responsible Officers be United States citizens. The Department of State questioned whether a permanent resident alien should be prohibited from serving as a Responsible Officer. As noted above, the Agency has modified the August 11, 1989 final rule to allow permanent resident aliens, as well as U.S. citizens, to serve as Responsible Officers.

Discussion

The statutory basis under which the United States Information Agency can designate programs as sponsors for a J-visa classification is found in 8 U.S.C. 1101 (a)(15)(J). That subsection was added to the Immigration and Nationality Act in 1961 by section 109 of the Mutual Educational and Cultural Exchange Act of 1961. By placing that provision in the Immigration and ***46945** Nationality Act, Congress intended to make it part of the overall scheme. Consequently, any interpretation of that section must harmonize with that statute as a whole. No interpretation or application can be given which would undermine or circumvent the Immigration and Nationality Act, taken as a totality.

According to the legislative history (1961 U.S. Code Cong. & Admin. News 2774), the new subsection [8 U.S.C. 1101 (a)(15)(J)] "creates and incorporates into the basic law a special new nonimmigrant visa designed to serve solely the purposes of the Mutual Educational and Cultural Exchange Act of 1961."The purpose of that Act is to strengthen international understanding. The exchange program is an instrument of foreign policy and decisions as to which exchange programs should be designated are, therefore, foreign policy determinations sub-

ject to the Agency's discretion. The exchange program was set up first in the Department of State and later moved to the Agency in order "to provide coordination with U.S. foreign relations."1961 U.S. Code Cong. Admin. News 2760. That the decision regarding the designation of exchange organizations is a foreign relations decision should be obvious, since the task has been conferred upon a foreign affairs agency. As stated in the legislative history, "the Bureau of Educational and Cultural Affairs has been set up in the Department of State to provide coordination with U.S. foreign relations and general policy guidance for all agencies handling educational and cultural exchanges. In modern international relations a positive U.S. Government program promoting educational and cultural cooperation is essential to the welfare of the American people."1961 U.S. Code Cong. & Admin. News 2760.

The importance of such exchange programs was highlighted in the testimony of Walter Laves, Chairman of the Department of Government at the University of Indiana, before the Senate Committee on Foreign Relations, in which he stated "the area which encompasses education, science, culture, knowledge, skills, technical assistance, and information * * * how significant this big area of foreign relations really is, and to what extent our welfare as a nation * * * may depend upon the effectiveness with which this aspect of our foreign relations is conducted."Hearings before the Committee on Foreign Relations, United States Senate, on S. 1154, March 29 and April 27, 1961, p. 74.

Consequently all persons entering the United States on a J-visa must enter pursuant to a program—the purpose of which is to strengthen international understanding and cooperation—as determined by the Agency. 8 U.S.C. 1101 (a)(15)(J) merely refers to the designation function of the Agency by describing an exchange visitor as a "participant in a program designated by the Director of the United States Information Agency."No criteria are set forth requiring the Agency to designate certain programs. The criteria are left to Agency discretion. Because of the nature of foreign relations, the Agency has been given broad authority to implement the legislation. It is not an abuse of Agency discretion to promulgate regulations consistent with the Act and its legislative history.

In Slyper v. Attorney General, 827 F2d. 821, 823 (DC Cir. 1987), a case involving the Exchange-Visitor program, the Court stated: "The statute contains no standard or criterion upon which to make or withhold a favorable recommendation. This broad delegation of discretionary authority 'is clear and convincing evidence' of congressional intent to restrict judicial review in cases such as those we now face."See also Zemel v. Rusk, 381 U.S. 1 (1965) and Haig v. Agee, 453 U.S. 280 (1981).

The Agency has determined that, as a matter of law, consistent with the text of the Immigration and Nationality Act, the Mutual Educational and Cultural Exchange Act, and the legislative history of those statutes, designated sponsors must be United States citizens. Congress clearly intended that United States citizens would play the key role as sponsors of educational and cultural exchange programs. Consequently the Agency is adopting a definition which comports with the legal requirements. At the same time, the definition sets forth a minimum standard of what it would take to be considered a citizen. The Agency believes that any organization in which the majority of control resides in non-citizens would not be a United States controlled organization, and accordingly, could not be considered a citizen for these purposes.

Congress envisioned that "the private resources of this country and the cooperation of United States citizens abroad" would be enlisted to assist in the educational exchange. 1948 U.S. Code Cong. & Admin News 1014—

"It is vital that the Department of State can and should cooperate with the efforts of private citizens and with profit and non-profit organizations interested in promoting the better understanding of the United States abroad

and lasting friendship. Also, the areas of cooperation, consultation, and separate activity between the Department of State and private industry (e.g., films, radio, press, magazines, books) are sufficiently great to expect fruitful and harmonious relationships. The importance of worthy private United States activities in the foreign field cannot be exaggerated."

Id. at 1015 (emphasis added).

Thus, from this legislative history it can be inferred that Congress contemplated that the assistance from the private sector would be assistance from the United States private sector. It can further be inferred that it is necessary that a designated organization may fairly be described as an "organization interested in promoting the better understanding of the United States abroad and lasting friendship".

The Mutual Educational and Cultural Exchange Act requires that the schools and institutions of learning designated to participate in educational exchange be United States "schools and institutions". Section 102 (1)(B). It is therefore necessary to define "United States schools and institutions" for educational exchanges.

It should also be noted that Congress intended that foreign governments would participate in the exchange program. However, Congress did not contemplate that these governments would be designated exchange-visitor sponsors and have direct access to United States Government controlled documents. Rather, it is clear that Congress envisioned government-to-government agreements whereby the two governments would cooperate in the field of exchange. Congress did not intend that another government would have virtual control over exchange visitors to this country, as is evidenced by section 103, which provides for agreements with foreign governments. If Congress intended that the powers of the USIA Director to determine exchange program policy and participants be vested in foreign governments, that section of the Act would be unnecessary and redundant. The rules of statutory construction preclude interpretations which would render a section of a statute either redundant or unnecessary.

With respect to responsible officers, however, the Agency has decided that a permanent resident may serve as a responsible officer. This decision was taken in part upon review of the Immigration and Naturalization Service's regulations which do not exclude a permanent resident from ***46946** signing a Form I-20 regarding the F-visa for students.

It should be noted that the Agency is under no legal requirement to seek public comment on this regulation. The Administrative Procedure Act, at 5 U.S.C. 553 (a)(1), specifically exempts from application of the Act a "foreign affairs function of the United States". There is no question that designation of exchange visitor sponsors for international exchange programs is a foreign affairs function. The operation and administration of the exchange program is an instrument of foreign policy. The J-visa was created by section 109 of the Mutual Educational and Cultural Exchange Act of 1961 to "serve solely the purposes of [that Act]".1961 U.S. Code Cong. & Admin. News 2774. The Congressional intent behind the visa may be discerned from the statement that: "In modern international relations a positive U.S. Government program promoting educational and cultural cooperation is essential to the welfare of the American people".1961 U.S. Code Cong. & Admin. News 2760.

Accordingly, the decision regarding the designation of an exchange-visitor organization is a foreign relations decision. Thus, although it was not required to do so, nor was it waiving the foreign affairs exemption in the Administrative Procedure Act, the Agency announced in 1987 and 1989 that it was proposing to amend the regulations, and, because it desired to preserve its valuable working relationship with program sponsors, invited comments on the proposed regulations. As is clear from the changes incorporated by the Agency, it gave a thorough

review and due consideration to the comments from the public.

Findings and Conclusions

For the reasons stated above, the Agency finds that the exclusion of noncitizens from serving as sponsors is rationally related to a federal interest and that the federal interest is properly the concern of the USIA. Furthermore, the Agency has determined that such exclusion is necessary to ensure the integrity of the exchange visitor program. Accordingly, after careful consideration of the comments filed with the Agency, a definition of "Citizen of the United States" and revised definitions of "Responsible Officer" and "Sponsor" are hereby adopted and will be part of the Agency's regulations which appear in part 514 of title 22 of the Code of Federal Regulations.

This decision does not significantly affect the quality of the human environment and is not a major regulatory action under the Energy and Conservation Act of 1975.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies or geographic regions; or, (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

There are no information collection requirements in this rulemaking subject to approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (42 U.S.C. 3501, et seq.).

List of Subjects in 22 CFR Part 514

Cultural exchange programs, Reporting and recordkeeping requirements. Accordingly, 22 CFR part 514 is amended as follows:

PART 514—[AMENDED]1. The authority citation for 22 CFR part 514 is revised to read:

Authority: U.S. Information and Educational Exchange Act of 1948, as amended, Pub. L. 80-402, as amended (22 U.S.C. 1431-1442); Mutual Educational and Cultural Exchange Act of 1961, as amended, Pub. L. 87-256, as amended, 75 Stat. 527, 534, 535, (22 U.S.C. 2451-2460 and 8 U.S.C. 1101, 1182, and 1258); Pub. L. 97-241, 96 Stat. 291; 66 Stat. 166, 182, 184, 204 [8 U.S.C. 1101(a)(15)(j), 1182(e), 1182(j), 1258]; Pub. L. 91-225, 84 Stat. 116, 117 (8 U.S.C. 1101, 1182); Pub. L. 97-116, 95 Stat. 1611, 1612, 1613 (8 U.S.C. 1101, 1182); Reorg. Plan. No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85-5 (50 FR 27393).

2. Section 514.1 is amended by revising the definitions of "Citizen of the United States," "Responsible Officer" and "Sponsor," as follows:

§ 514.1 Definitions.

Citizen of the United States means

(1) An individual who is a citizen of the United States or one of its territories or possessions; or,

(2) A general or limited partnership created or organized under the laws of the United States, or of any State, the District of Columbia, or territory or possession of the United States, of which a majority of the partners are citizens of the United States; or,

(3) A for-profit corporation, association, or other legal entity created or organized under the laws of the United States, or of any State, the District of Columbia, or territory or possession of the United States, which

(i) Has its principal place of business in the United States, and

(ii) Whose shares or voting interests are publicly traded on a U.S. stock exchange; or, if its shares or voting interests are not publicly traded on a U.S. stock exchange, it shall nevertheless be deemed to be a citizen of the United States if a majority of its officers, Board of Directors, and its shareholders are citizens of the United States; or,

(4) A non-profit corporation, association, or other legal entity created or organized under the laws of the United States, or any State, the District of Columbia, or territory or possession of the United States, and which is

(i) Qualified with the Internal Revenue Service as a tax-exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code; and,

(ii) Which has its principal place of business in the United States; and,

(iii) A majority of its officers and a majority of its Board of Directors or other body vested with its management are citizens of the United States; or,

(5) An accredited college, university or other institution of higher education created or organized under the laws of the United States, or of a State, including a county, municipality or other political subdivision thereof, the District of Columbia, or of a territory or possession of the United States; or,

(6) An agency of the United States, or of a State, the District of Columbia, or a territory or possession of the United States.

* * * * *

Responsible Officer means the official of an organization sponsoring an Exchange-Visitor Program who has been listed with the Agency as being responsible for administering the program and carrying out the obligations which the organization assumes in undertaking to sponsor a program. The designation of an Alternate Responsible Officer is permitted and encouraged. The Responsible Officer and any Alternate Responsible Officer must be a United States citizen or a person who has been lawfully admitted to the ***46947** United States for permanent residence. Responsible Officers must certify their citizenship to the Agency using the following language:

I hereby certify that I am the responsible officer [or alternate responsible officer, specify] for exchange visitor program [specify program number], and that I am a citizen of the United States [or a person lawfully admitted to the United States for permanent residence]. [Name of organization] agrees that my inability to substantiate my

citizenship or status as a permanent resident will result in the immediate withdrawal of its designation and the immediate return of or accounting for all IAP-66 forms transferred to it.

I also understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001, which reads:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact or makes any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Signed in ink by

(Name)

(Title)

Subscribed and sworn to

before me this day

of , 19.

—

Notary Public

Sponsor means any reputable United States federal, State or local government agency or recognized international agency or organization of which the United States is a member and has offices in the United States or a reputable organization which is a "citizen of the United States," as that term is defined by this regulation, which makes application as prescribed to the Director of the United States Information Agency for designation of a program under its sponorship as an Exchange-Visitor Program and whose application is approved. Other corporations or organizations which are not citizens of the United States may not be designated as sponsors must certify their citizenship to the Agency using the following language:

I hereby certify that I am an officer of [Name of organization] with the title of [specify]; that I am authorized by the [Board of Directors, Trustees, etc.] to sign this certification and bind [Name of organization]; and that a true copy certified by the [Board of Directors, Trustees, etc.] of such authorization is attached. I further certify that [Name of organization] is a citizen of the United States as that term is defined at 22 CFR 514.1. [Name of organization] agrees that its inability to substantiate its representation of citizenship made in this certification will result in the immediate withdrawal of its destination and the immediate return of or accounting for all IAP-66 forms transferred to it. I also understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001, which reads:

"Whoever, in any matter within jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or im-

prisoned not more than five years, or both.”

Signed in ink by

—

(Name)

—

(Title)

Subscribed and sworn to before

me this day of , 19.

—

Notary Public

* * * * *

Dated: November 1, 1990.

Alberto J. Mora,

General Counsel.

Appendix A

[Note: This Appendix will not appear in the Code of Federal Regulations]

Comments on the November 20, 1989 Federal Register Notice were received from the following parties:

Office of International Education, Montana State University

The International Exchange Association

Rotary International

International Student and Faculty Services, Ohio University

The Experiment In International Living

Office of International Student Services, Adelphi University

Office of International Education and Services, University of Iowa

UCSD International Center, University of California, San Diego

International Center, University of Michigan

University of Denver

American Immigration Lawyers Association

Kentucky Rotary Youth International Exchange, Inc.

Vanderbilt University

French American International School

Grand Metropolitan, Inc.

French-American Chamber of Commerce In The United States, Inc.

International Students and Scholars, Cornell University

Lankenau & Bickford

Credit Suisse

Office of International Education, University of Colorado at Boulder

International Affairs Services For International Students and Scholars, University of California, Berkeley

United States Senator John D. Rockefeller, IV

Spanish Heritage

Tony Cook Associates

Association for International Practical Training

Youth For Understanding International Exchange

BfG: New York

East-West Center

International Student Center, Kansas State University

SmithKline Beecham

Tampa Bay Research Institute, Teiko-Showa Universities Center

The Jesuit School of Theology at Berkeley

Mennonite Central Committee

The British-American Chamber of Commerce

Harris, Barrett, Mann & Dew

Lycee Francais de New York

The International Exchange Association

The French-American School of New York

University of Wisconsin-Madison

Coopers & Lybrand

Council on International Educational Exchange

The Liaison Group For International Educational Exchange

National Association For Foreign Student Affairs

The University of Wisconsin System

Patterson, Belknap, Webb & Tyler

Overseas Planning & Administration, Shell Oil Company

Baker & McKenzie

Haight, Gardner, Poor & Havens

Simmons, Ungar, Helbush, DiCostanza & Steinberg

American Council on International Personnel, Inc.

Center of International Studies, University of North Carolina at Charlotte

Office of International Affairs, University of Chicago

Council for International Exchange of Scholars

Wildes & Weinberg

Office of International Programs, Colorado State University

Office of International Programs, University of Pennsylvania

International Student Office, San Diego State University

EF Foundation

Gibney, Anthony & Flaherty

The American Scandanavian Foundation

Education Foundation for Foreign Study

Dechert Price & Rhoads

Hoffmann-LaRoche

Belgian American Educational Foundation, Inc.

Peat Marwick Main & Co.

United States Senator Daniel Patrick Moynihan

Badger Engineers, Inc.

Graduate School of Business, Columbia University

In addition to the above, comments were also received from the following U.S. Government agencies:

United States Department of State

Immigration and Naturalization Service, United States Department of Justice

United States Department of Labor

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55 FR 46943-01, 1990 WL 347624 (F.R.)
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