

## DEPARTMENT OF STATE

## 22 CFR Part 41

[Public Notice 2976]

RIN 1400-AA90

**Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Border Crossing Cards**

AGENCY: Department of State, Bureau of Consular Affairs.

ACTION: Final rule.

**SUMMARY:** This is a final rule adopting and/or amending Department of State regulations pertaining to the nonimmigrant border crossing identification card (BCC) and those pertaining to the requirements for entry of Mexican nationals into the United States. The rule is necessitated, in part, by a change in the law, which now specifies that regulations pertaining to the BCC contain a requirement for the inclusion of a machine-readable biometric identifier in such cards.

The rule provides authority for consular officers to issue to Mexican citizens who are residents of Mexico a combined B-1/B-2 visa and border crossing card (B-1/B-2 Visa/BCC) as a stand-alone card containing a machine-readable biometric identifier; specifies the conditions under which the new stand-alone card will be considered invalidated; waives the requirements for the presentation of a passport for all applicants for the card, provided the applicant presents other acceptable documentation of nationality and identity; includes a waiver of the visa and passport requirement for Mexican nationals entering the United States for the purpose of obtaining official Mexican documents from a Mexican consular office in the United States side of the border; and adopts changes to the regulations pertaining to the issuance and revocation of Canadian border crossing cards made necessary by the same change in the law.

EFFECTIVE DATE: August 19, 1999.

**FOR FURTHER INFORMATION CONTACT:** H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520-0106, (202) 663-1204, odomhe@state.gov.

**SUPPLEMENTARY INFORMATION:** The Department published an interim rule with request for comments [63 FR 16895] on April 7, 1998. The Department received one timely comment in response to the interim rule. This final rule adopts without changes the revisions made in the

interim rule to sections 41.2(g) and 41.122(a)(4). The rule adopts, with minor word changes, the revisions to sections 41.32 and 41.33.

**Analysis of Comment**

The comment received expressed a concern that requiring the biometric reader in the card could cause significant time increases for processing the large volume of traffic that crosses the land borders between the United States and Canada and the United States and Mexico. The commentator specifically focused on the negative effect the BCC would have on time-sensitive commercial trade flows between the United States and its two largest trading partners.

The Department's regulations, however, deal with the content and issuance of the BCC, and not the processing of the cards at land borders between the United States, Canada and Mexico. Those procedures are left to the Immigration and Naturalization Service. Further, both the information on the face of the card and the biometric data contained in the card have been designed to ensure rapid processing of traffic on land-borders. The Department believes, therefore, that the design of the card has been tailored in a fashion that meets both the Congressional directive to include a biometric identifier in the BCC/NIV, in an effort to ameliorate the incidence of fraud associated with the card, and the commentator's concern of ensuring ease of commerce between the United States and its neighbors. Finally, the commentator suggested that the BCC/NIV biometric program be delayed pending a study of its potential effect on land border traffic. The Department, however, was constrained by IIRIRA § 104 to begin issuance of biometric inclusive cards as of April 1, 1998. The Department, therefore, does not deem it necessary to comply with the commenter's request.

**Passport Requirement**

When originally published, the interim rule contained an amendment to 22 CFR 41.2(g)(4) reflecting an agreement pursuant to INA 212(d)(4) between the Department of State and the INS to waive the passport requirement contained in INA 212(a)(7)(B)(i)(I) for certain applicants for the new B-1/B-2 Visa/BCC. This agreement also was reflected in the language of 22 CFR 41.32(a)(2)(iii) in the interim rule. Since that time, however, the Department and INS have agreed to a further change in policy regarding the documentation necessary for the BCC application process.

Recently, the Department gained information that Mexican authorities adjudicate the application for a Certificate of Mexican Nationality (CMN) as rigorously as a Mexican passport application. In addition, if a consular officer has a question regarding the validity of a CMN, the means to investigate the situation has been shown to be similar to that of investigating a questionable passport. The Department has determined, therefore, that the CMN, when used in conjunction with another piece of identification that includes a photo, will be sufficient for consular officers to adjudicate a BCC application. Section 41.32(a)(2), as contained in the interim regulation, has been amended to reflect this concept. The Department believes that this change does not significantly alter the substance or intent of the regulation and that it is, therefore, not necessary to open the change to public comment.

**Photo Requirement**

The interim rule, at section 41.42(a)(2)(ii), required that all applicants for the BCC provide one photograph of the size specified in the application, Form OF-156. This photo was to be used for record keeping purposes because it was not necessary for the production for the card itself. Because the BCC/NIV uses a digitized image on the card, the Department has decided it is no longer necessary for the applicant to submit a photo. This change has been reflected in the final regulation.

The remaining sections of the regulations were discussed in detail at **Federal Register** Public Notice 2773 and will be adopted as originally published, except for the minor changes indicated below.

**The Regulatory Flexibility Act**

Pursuant to sec. 605(b) of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule and it has been determined, and the Assistant Secretary for Consular Affairs hereby certifies, that it will not have a significant economic impact on a substantial number of small entities. The rule has no economic effect beyond that of the statutory requirements already in effect, which it implements.

**5 U.S.C. Chapter 8**

As required by 5 U.S.C. chapter 8, the Department has screened this rule and determined that it is not a major rule, as defined in 5 U.S.C. 80412.

### Paperwork Reduction Act

The Department of State, Bureau of Consular Affairs, Visa Services has received OMB emergency clearance for the information collection instrument, Nonimmigrant Visa Application (OF-156), that underlies the nonimmigrant border crossing identification card (BCC) contained in this rule. It is estimated that 1,800,000 OF-156s will be completed annually to support the issuance of BCCs, and that (at 10 minutes per OF-156) this will require 300,000 hours of the time of aliens. Comments regarding OF-156 information collections in support of this rule should be identified as such and should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, D.C. 20520, (202) 647-0596. Such comments should be received within 60 days of publication of this rule.

### E.O. 12988 and E.O. 12866

This rule has been reviewed as required by E.O. 12988 and determined to meet the applicable regulatory standards it describes. Although exempted from E.O. 12866, this rule has been reviewed to ensure consistency with it.

### List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas, Temporary visitors.

Accordingly, the interim rule published on April 7, 1998 at 63 FR 16892 is adopted as final with the following changes:

### PART 41—[AMENDED]

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

**Authority:** 8 U.S.C. 1104.

2. Revise Section 41.32 to read as follows:

#### § 41.32 Nonresident alien Mexican border crossing identification cards; combined border crossing identification cards and B-1/B-2 visitor visas.

(a) *Combined B-1/B-2 visitor visa and border crossing identification card (B-1/B-2 Visa/BCC).* (1) *Authorization for issuance.* Consular officers assigned to a consular office in Mexico designated by the Deputy Assistant Secretary for Visa Services for such purpose may issue a border crossing identification card, as that term is defined in INA 101(a)(6), in combination with a B-1/B-2 nonimmigrant visitor visa (B-1/B-2 Visa/BCC), to a nonimmigrant alien who:

(i) Is a citizen and resident of Mexico;

(ii) Seeks to enter the United States as a temporary visitor for business or pleasure as defined in INA 101(a)(15)(B) for periods of stay not exceeding six months;

(iii) Is otherwise eligible for a B-1 or B-2 temporary visitor visa or is the beneficiary of a waiver under INA 212(d)(3)(A) of a ground of ineligibility, which waiver is valid for multiple applications for admission into the United States and for a period of at least ten years and which contains no restrictions as to extensions of temporary stay or itinerary.

(2) *Procedure for application.* Mexican applicants shall apply for a B-1/B-2 Visa/BCC at any U.S. consular office in Mexico designated by the Deputy Assistant Secretary of State for Visa Services pursuant to paragraph (a) of this section to accept such applications. The application shall be submitted on Form OF-156. The application shall be supported by:

(i) Evidence of Mexican citizenship and residence;

(ii) The applicant's digitized photographic image taken at the time of the application; and

(iii) A valid Mexican Federal passport or a Certificate of Mexican Nationality (as long as the Certificate of Mexican Nationality is supported by another form of identification which includes a photograph) unless the applicant is the bearer of a currently valid or expired United States visa or BCC or B-1/B-2 Visa/BCC which has neither been voided by operation of law nor revoked by a consular or immigration officer. BCCs that, after October 1, 2001, or such other date as may be enacted, are no longer useable for entry due only to the absence of a machine readable biometric identifier shall not be considered to have been voided or revoked for the purpose of making an application under this section.

(iv) A digitized impression of the prints of the alien's index fingers taken at the time of the application.

(3) *Personal appearance.* Each applicant shall appear in person before a consular officer to be interviewed regarding eligibility for a visitor visa, unless the consular officer waives personal appearance.

(4) *Issuance and format.* A B-1/B-2 Visa/BCC issued on or after April 1, 1998, shall consist of a card, Form DSP-150, containing a machine-readable biometric identifier. It shall contain the following data:

(i) Post symbol;

(ii) Number of the card;

(iii) Date of issuance;

(iv) Indicia "B-1/B-2 Visa and Border Crossing Card";

(v) Name, date of birth, and sex of the person to whom issued; and  
(vi) Date of expiration.

(b) *Validity.* A BCC previously issued by a consular officer in Mexico on Form I-186, Nonresident Alien Mexican Border Crossing Card, or Form I-586, Nonresident Alien Border Crossing Card, is valid until the expiration date on the card (if any) unless previously revoked, but not later than the date, currently October 1, 2001, on which a machine-readable, biometric identifier in the card is required in order for the card to be usable for entry. The BCC portion of a B-1/B-2 Visa/BCC issued to a Mexican national pursuant to provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998 is valid until the date of expiration, unless previously revoked, but not later than the date, currently October 1, 2001, on which a machine-readable, biometric identifier in the card is required in order for the card to be usable for entry.

(c) *Revocation.* A consular or immigration officer may revoke a BCC issued on Form I-186 or Form I-586, or a B-1/B-2 Visa/BCC under the provisions of § 41.122, or if the consular or immigration officer determines that the alien to whom any such document was issued has ceased to be a resident and/or a citizen of Mexico. Upon revocation, the consular or immigration officer shall notify the issuing consular or immigration office. If the revoked document is a card, the consular or immigration officer shall take possession of the card and physically cancel it under standard security conditions. If the revoked document is a stamp in a passport the consular or immigration officer shall write or stamp "canceled" on the face of the document.

(d) *Voidance.* (1) The voiding pursuant to INA 222(g) of the visa portion of a B-1/B-2 Visa/BCC issued at any time by a consular officer in Mexico under provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, also voids the BCC portion of that document.

(2) A BCC issued at any time by a consular officer in Mexico under any provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, is void if a consular or immigration officer determines that the alien has violated the conditions of the alien's admission into the United States, including the period of stay authorized by the Attorney General.

(3) A consular or immigration officer shall immediately take possession of a card determined to be void under paragraphs (d) (1) or (2) of this section

and physically cancel it under standard security conditions. If the document voided in paragraphs (d) (1) or (2) is in the form of a stamp in a passport the officer shall write or stamp "canceled" across the face of the document.

(e) *Replacement.* When a B-1/B-2 Visa/BCC issued under the provisions of this section, or a BCC or B-1/B-2 Visa/BCC issued under any provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, has been lost, mutilated, destroyed, or expired, the person to whom such card was issued may apply for a new B-1/B-2 Visa/BCC as provided in this section.

3. Revise section 41.33 to read as follows:

**§ 41.33 Nonresident alien Canadian border crossing identification card (BCC).**

(a) *Validity of Canadian BCC.* A Canadian BCC or the BCC portion of a Canadian B-1/B-2 Visa/BCC issued to a permanent resident of Canada pursuant to provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, is valid until the date of expiration, if any, unless previously revoked, but not later than the date, currently October 1, 2001, on which a machine readable biometric identifier is required in order for a BCC to be usable for entry.

(b) *Revocation of Canadian BCC.* A consular or immigration officer may revoke a BCC or a B-1/B-2 Visa/BCC issued in Canada at any time under the provisions of § 41.122, or if the consular or immigration officer determines that the alien to whom any such document was issued has ceased to be a permanent resident of Canada. Upon revocation, the consular or immigration officer shall notify the issuing consular office and if the revoked document is a card, the consular or immigration officer shall take possession of the card and physically cancel it under standard security conditions. If the revoked document is a stamp in a passport the consular or immigration officer shall write or stamp "canceled" on the face of the document.

(c) *Voidance.* (1) The voiding pursuant to INA 222(g) of the visa portion of a B-1/B-2 Visa/BCC issued at any time by a consular officer in Canada under provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, also voids the BCC portion of that document.

(2) A BCC issued at any time by a consular officer in Canada under any provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, is void if a consular or immigration officer finds

that the alien has violated the conditions of the alien's admission into the United States, including the period of stay authorized by the Attorney General.

(3) A consular or immigration officer shall immediately take possession of a card determined to be void under paragraphs (c) (1) or (2) of this section and physically cancel it under standard security conditions. If the document voided under paragraphs (c) (1) or (2) is in the form of a stamp in a passport the officer shall write or stamp "canceled" across the face of the document.

Dated: August 10, 1999.

**Mary A. Ryan,**

*Assistant Secretary for Consular Affairs.*

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**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**29 CFR Part 1610**

**RIN 3046-AA67**

**Availability of Records**

**AGENCY:** Equal Employment Opportunity Commission (EEOC or Commission).

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission is adopting as final without change an interim rule revising its Freedom of Information Act (FOIA) regulations to conform to the Electronic Freedom of Information Act Amendments of 1996, and to implement a delegation of the Regional Attorney's FOIA responsibilities, update office addresses and correct typographical errors.

**EFFECTIVE DATE:** This rule is effective on August 19, 1999.

**FOR FURTHER INFORMATION CONTACT:** Nicholas M. Inzeo, Deputy Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel, or Kathleen Oram, Senior Attorney, at (202) 663-4669 or TDD (202) 663-7026. This rule is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this rule in an alternative format should be made to EEOC's Publications Center at 1-800-669-3362.

**SUPPLEMENTARY INFORMATION:** On January 9, 1998, at 63 FR 1339-1342, the Equal Employment Opportunity Commission published an interim final rule implementing the Electronic Freedom of Information Act Amendments of 1996 (Public Law 105-

231). The interim rule also revised the regulation to reflect a delegation of FOIA responsibilities by the Regional Attorneys, update field office addresses, and correct some typographical errors. Comments on the revisions were invited from the public, to be received by EEOC on or before March 10, 1998. No comments were received and EEOC has determined that no changes are needed to the interim rule. Therefore, EEOC is adopting the interim rule, without change, as final.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The Commission, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant impact on a substantial number of small entities.

*Executive Order 12866*

This regulation has been reviewed in accordance with Executive Order 12866. The Office of Management and Budget has determined that this rule is not a "significant regulatory action" as defined in Executive Order 12866 because the revisions contained in this final rule incorporate only those changes required by the Electronic FOIA Amendments of 1996, a provision allowing regional attorneys to delegate their FOIA responsibilities, updated field office addresses, and corrections of typographical errors.

*Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.