

Congress of the United States

Washington, DC 20515

March 3, 2020

The Honorable Michael R. Pompeo
Secretary of State
2201 C Street, NW
Washington, DC 20037

RE: Final Rule
85 CFR 4219
Docket Number: Public Notice: 10930
RIN: 1400-AE96

Dear Secretary Pompeo:

We are writing to express our grave concerns with the U.S. Department of State, Bureau of Consular Affairs' final rule that restricts women and pregnant persons from obtaining a tourist visa if the consular officer deems they are visiting with the "primary purpose" of giving birth in the United States. [1] We are concerned that this regulation grants consular officers the ability to profile applicants based on their physical appearance, not medical merits, and does nothing to protect our national security.

Furthermore, the regulation places a higher burden of proof on the applicant to state credible reasons to seek medical care in the U.S. while pregnant.^[1] Under this new amendment to the regulation, the consular officer can deny a visa to applicants who they believe could give birth to a child during their visit to the United States. Consular officers, who are already provided with broad discretion on individual applicants, are now allowed to make new assumptions based on an immigrant's gender. In pursuing this policy, the department is proactively encouraging the consular officers to foster conscious bias against women. The regulation promulgates pregnancy as reason to deny an application on national security grounds. While the department argues that this final rule is necessary to resolve national security and law enforcement concerns with "Birth Tourism," the Department, by its own admission, indicates: "precisely estimating the number of individuals who give birth in the United States, after traveling to the United States on a B1/B2 nonimmigrant visa, is challenging." In other words, this final rule is being pursued by the Department with limited data to justify its claims.

We are also concerned that this regulation being applied to "B" nonimmigrant visas will not be equally applied worldwide. Applicants in the Visa Waiver Program do not need a "B" visa to travel to the U.S. for 90 days or less. Nearly 80% of the countries that benefit from this program are from Europe (thirty-one of thirty-nine countries.)^[2] As such, this final rule disproportionately and discriminately affects travelers from Africa, Asia, and Latin America.

¹ United States Department of State. January 24, 2020. Visas: Temporary for Business or Pleasure. Retrieved from <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-01218.pdf>

² U.S. State Department, "Visa Waiver Program" <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html>

Lastly, the Department intends to make it more difficult for persons to seek medical treatment. Previous policy allowed medical treatment as part of a nonimmigrant B classification. Previous guidance also provided the same rights to medically necessary or elective procedures. The Department now requires applicants to provide details on their expected duration and cost of treatment, while also providing a list of incidental expenses.³ Medical treatments, as you know, vary. Patients may have unexpected needs or complications that arise from treatment, and the Department's attempt to micromanage nonimmigrants is simply incognizant of potential complications arising from procedures. The Department also requires immigrants to have the means to pay for such treatment. It is unclear, in our view, how in-kind contributions would be treated by the Department. For example, the end of clause (ii)⁴ reads:

The applicant also shall be denied a visa under INA section 214(b) if unable to establish to the satisfaction of the consular officer that he or she has the means derived from lawful sources and intent to pay for the medical treatment and all incidental expenses, including transportation and living expenses, either independently or with the pre-arranged assistance of others.

While it can be argued that in-kind contributions would possibly qualify under the term "pre-arranged assistance of others," the term itself remains ill-defined and allows for consular officers to potentially discriminate against applicants who may have multiple legitimate, but informal (i.e. boarding arrangements, savings to pay for procedures, meals, etc.) from family members providing care or other forms of support to such immigrants. The lack of a clear definition is a symptom of serious oversight by the Department, and potentially imposes inappropriate and unnecessary risk for patients who seek entry into the United States for medically necessary procedures. Given the egregious nature of this rule, we are calling for its immediate rescission.

Sincerely,



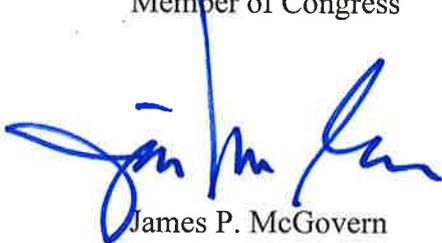
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³ See proposed 22 CFR Part 41 §41.31(b)(ii)

⁴ See note 1.



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