of State. It is essential, therefore, that the standards be the same. To ensure that the regulatory standards were indeed the same, the publication of the Department's interim rule was delayed until the publication on December 27, 1991 of INS' final rule relating to the "R" visa. A comparison of the two regulations reveals that the language of the portions common to both agencies is almost identical.

Comments

One commenter objected to the rule being published as an interim rule rather than as a proposed rule. The commenter expressed concern that the interim rule was published prior to the solicitation of public comments rather than afterward. He saw this as a violation of the Administrative Procedure Act, 5 U.S.C. 551 et seq. Section 553(b)(3) of the Administrative Procedure Act exempts Federal agencies from the more extensive notice requirements of proposed rule making when such notice is "impracticable * * * or contrary to the public interest." As the commenter correctly pointed out, however, where a Federal agency finds that proposed rule making is "contrary to the public interest," section 553(b)(3)(B) requires the Federal agency to provide a statement of reasons for that finding. Although the Department failed to provide such a statement when it published the interim rule, the Department believes that the public interest standard was, in fact, met. The Department sought to publish a regulation governing the issuance of R visas as soon as possible as the INS final rule on R visas (upon which our regulations are dependent) had been published on December 27, 1991. The Department sought prompt publication of this rule to ensure consistency. This interim rule also called for public comment, soliciting comments for any possible amendments in the final rule.

comment concerning the definition of religious denomination at § 41.58(b). The commenter made the point that the use of the word "interdenominational" may cause ambiguity. Consequently, it was suggested that either "interdenominational" be deleted or that the sentence be amended to read "interdenominational as well as religious organizations." The purpose of the use of the term "interdenominational" is to be expansive and to include not just single.

The Department received one

"interdenominational" is to be expansive and to include not just single religious groups, i.e., denominations, but also, those entities which consist of two or more religious groups. As the language of the interim rule conveys the intended meaning, it will be retained in the final rule.

One commenter suggested that the definition of "bona fide nonprofit religious organization in the United States" is too narrow. The interim rule defines such organization as one which has been found to be tax exempt as described in section 501(c)(3) of the Internal Revenue Code of 1986, as it relates to religious organizations, or as an organization which would in the opinion of a consular officer be eligible for such tax exempt status had application been made. The commenter stated that the definition was overly restrictive for four reasons: first, the statute does not require that definitional standard; secondly, the rule conflicts with agency policy; thirdly, the rule conflicts with legislative history; and fourthly, the tax exempt status is not a viable means to determine nonprofit status. The Immigration Act of 1990 amended the definition of a religious organization by adding a specific reference to the tax exempt provisions of the Internal Revenue Code. Formerly, INA 101(a)(27)(C) required the applicant to submit proof of tax exempt status as accorded by the IRS. Practice has found that this is the most viable way to address the issue of qualifying organizations. The definition of religious organization in connection with the Internal Revenue Code is, therefore, entirely consistent with the plain language of INA 101(a)(15)(R). Consequently, the regulation has not been amended in this regard.

A commenter objected to language in the supplementary information preceding the interim rule that an affiliated organization to the religious organization, defined in § 41.58(d), be "subordinate or dependent." It should be noted that the language of the final rule is consistent with INS' final rule and does not include this requirement. The supplementary information inaccurately characterized the definition of an affiliated organization.

One commenter objected to the requirement that a professional religious worker (§ 41.58(f)) possess at least a U.S. baccalaureate degree or its foreign equivalent. The commenter claimed that because there is no degree requirement in the Act, there can be no statutory basis for instituting such a requirement. The commenter also contended that the "R" classification encompasses credentials and experience that are less quantifiable than their counterparts in other nonimmigrant visa categories. The thrust of the argument is that degree equivalence in the form of experience, etc. should be permitted for religious workers. On the other hand, a

commenter opined that the proposed definition of professional capacity was not restrictive enough.

The INS addressed these same issues in the supplementary information to their final rule. We are in accord with that agency's reasoning and conclusion and retain the language in the final rule. This language is consistent with INS regulations for the "R" visa as well as the immigrant religious worker visa category. In addition to ministers of religion the statute provides for two classes of religious workers; those working in a religious vocation or occupation and those working in a religious vocation or occupation in a professional capacity. The distinguishing feature between these two classes of religious workers lies obviously in the element of "professional capacity". By making this distinction, it is assumed that Congress intended that there be a difference in meaning. The only reasonable meaning lies in defining professional capacity in the manner that is reflected in the regulation. The statute has defined "profession" in INA 101(a)(32) and has defined "professional" at INA 203(b)(3)(A). In the latter provision the statute requires the professional to have a baccalaureate degree, thus shedding light on congressional intent in the religious worker context. To accept the proposal about equivalency would remove any meaningful distinction between these two classes of religious workers. Religious workers who have experience in lieu of a baccalaureate degree would qualify under the general class of religious workers involved in a religious vocation or occupation. It should be noted that foreign degrees equivalent to the U.S. baccalaureate are recognized and accepted.

One commenter suggests that the 'traditional' religious function should be liberally construed. The commenter is apparently referring to § 41.58(g) and is not requesting any regulatory change but is merely expressing the view that in implementing this subsection the Department interpret this concept "liberally." Consular officers will be instructed to interpret this term contextually. The occupational activity must be reviewed in the context of the particular religion to determine if it is a "traditional" activity for that religion. No change in the regulation is, therefore, necessary.

The Department received a comment stating that the definition of "religious occupation" (at § 41.58(g)) was overly broad, specifically citing the list of the activities in subsection (g). It is crucial to note that the list of activities set forth in the regulation exactly mirrors the list