

March 13, 2002

Director  
Regulations & Forms Services Division  
Immigration and Naturalization Service  
425 I Street, N.W., Room 4034  
Washington, DC 20536

RE: INS No. 2176-01

Dear Director:

The National Association of REALTORS respectfully submits the following comments in response to the Immigration and Naturalization Service's (INS) proposed rule to change the length of stay for B-1 and B-2 visa holders. The National Association of REALTORS represents over 800,000 real estate professionals engaged in all aspects of the real estate business, including residential and commercial brokerage as well as property management. A significant percentage of our members represent foreign clients who purchase or lease vacation property in the United States. Therefore, any changes to the current rules is of great concern to our members, whose customers require a certain level of certainty that they will have access to their property.

**NAR supports the effort to enhance security of the United States.**

First, let me state NAR's firm support for all efforts to protect our country in these trying times. The events of September 11 have changed the world forever and we are fully supportive of the government's initiatives to make our country and its citizens safe. However, we are very concerned that the approach taken by the INS in this proposed rule does very little to further the goal of increased homeland security but could be devastating to our economy.

**The current rules should be retained for foreigners who own property in the U.S.**

It is clear the INS recognizes property ownership as a legitimate reason foreigners visit the United States for long periods of time. It is especially true for retirees who own property in warmer climates such as Florida and spend the entire winter there. This is confirmed in the following excerpt from the Supplemental Information section of the proposed rule.

**Will B Visitors be able to file requests for extensions of stays?**

**In addition, this proposed rule recognizes that few B nonimmigrants enter for specific, legitimate reasons that, by their very nature, can require a stay of longer than 6 months. Those nonimmigrants, enumerated at proposed 214.2(b) (6), which are lawfully continuing in those activities, may also apply for extension of status. Included among acceptable reasons for requesting an extension include,**  
**(G) The alien owns a home in the United States and occupies that home on a seasonal or occasional basis only.**

Not only does the above language recognize property ownership as a legitimate reason for a nonimmigrant's visitation to exceed the initial 6 months, it implies that it is also a legitimate reason to approve an extension of up to 6 months. This could optimally result in a foreign owner

being permitted to stay in the U.S. for a period of at least one year.

This interpretation is reiterated in the April 10, 2002 INS Fact Sheet on the Proposed Rule which includes the following language:

**INS does recognize that some visitors, such as certain retirees who own vacation homes in the U.S. may wish to remain longer than six months. The proposed rules will allow for extensions of stay in such cases.**

While this interpretation is encouraging to our members who represent foreign homeowners, the proposed language changes do not offer that same certainty. The current minimum length of stay is repealed for all visitors, including homeowners, and replaced by an arbitrary process that places the final decision-making in the hands of immigration officers at points of entry. This results in an inconsistency between the informal interpretations and the actual language of the proposed rule. Therefore, we seek your support in retaining the current rules for foreign travelers who own property in the United States or at least clarifying that property ownership will permit an initial length of stay for at least 6 months and will also be recognized as a legitimate condition for being granted an extension.

**This proposal in its current form threatens small business in the United States.**

Most directly at risk in this proposal are the real estate and tourist markets in the United States, especially in resort and retirement communities. Whether for retirement, vacation, or investment purposes, foreigners come to the United States and spend money on real estate. They make the commitment to purchase knowing they can visit for at least 6 months to a year under today's rules and the likelihood of an approved extension of stay if necessary. This proposal removes this certainty and replaces it with a moving target, one that is controlled by an inspection officer at the point of entry, and an INS adjudicator during the extension application process. This new process is not only unworkable, but it places these foreign owners and visitors in jeopardy of not knowing for certain how long they will be permitted to visit their properties.

When foreigners visit and purchase property in the U.S., they contribute significantly to the local, state and national economy. As visitors they dine in restaurants, rent cars, take taxis, attend shows, and generally spend money in our communities. As investors in real estate, they pay property taxes, buy furniture, cars, televisions and boats, as well as other products and services that usually accompany homeownership. Small businesses that provide these products and services will certainly be the losers when the number of foreign visitors decline due to perceived barriers to entering the U.S. Florida, proud of its small business rate of 98% will be one of the hardest hit by this proposal.

Many foreign property owners have already expressed concern to their real estate professionals about the future use of their property. Many have threatened to sell and go elsewhere. Investors in the rental market also share doubts about the future for their business if there is a decline in foreign tourists due to this proposal. As foreign property owners sell and the number of visitors dwindles, all of the local business that thrives on the business generated by this segment of the market will suffer. This proposal will remove any incentive for a foreigner to purchase or to rent property in the United States.

**Other options should be explored for non-property owner visitors.**

Even those visitors not seeking long term stays may hesitate to include the United States in their travel plans due to the perceptions created by this rule such as uncertainty of length of stay, the likely backlog at points of entry, and potential arbitrary decision making by inspectors absent clear standards. The following provision in the proposed rule is especially troublesome.

**If it is not clear whether a shorter or longer period would be fair and reasonable under the circumstances, in light of the stated purpose of the alien's visit, the alien will be admitted for a period of 30 days.**

It is questionable how decisions will be made as to whether a length of stay is "fair and reasonable" absent clear standards or criteria. In addition, the proposal does not provide any guidance as to what circumstances would result in a denial of the requested length of stay or default to 30 days. How will visitors know they have met the burden of proof before they arrive in the U.S.? Given the vagueness of the rule, it is very likely that 30 days will become the new standard for visitation. For some visitors, this will be more than enough, unless of course it is determined that the approved length of stay should be shorter than requested. For the rest, this

will cause tremendous anxiety about future travel to the United States. Retirees and students on summer break in particular plan vacations for periods longer than 30 days.

This proposal will create new obstacles for foreign travelers and as such will serve as a disincentive to foreign travelers. Absent certainty, visitors will simply choose to travel elsewhere.

If the INS feels that revising the rules for visitor and business visas will enhance security, additional options should be pursued. Moving forward with this proposal will cause great harm to the very industry that suffered the most by the events of September 11.

**Is this a Major Rule?**

For the reasons already discussed, NAR feels this proposal has far reaching consequences. Unfortunately, the Service does not consider this a major rule and claims the result will not have an annual effect on the economy of \$100 million or more. While we do not possess specific quantitative evidence to the contrary, we disagree with the assessment of the INS. According to a recent study analyzing the economic impact of the German property owner in Southwest Florida, this population segment contributes \$115 million in local spending and pays \$9 million in property taxes. It is also estimated that foreign visitors to New York City spent \$337 million in 2000. This is just a small sample of the overall significant contribution to the economy foreign homeowners make. Assuming this data is correct, it is likely the overall impact of this rule will far exceed \$100 million and should therefore warrant more consideration than a 30-day comment period.

**Conclusion**

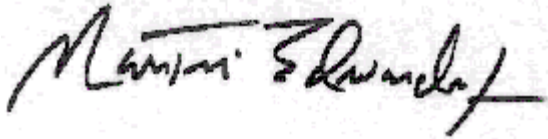
We believe the overall changes are unworkable and will present obstacles to foreigners wishing to visit the U.S. It will result in a dramatic decrease in tourism in our resort communities and

other popular tourist destinations.

Therefore if the current rules cannot be maintained, then we urge you to clarify that owning a home in the U.S. meets the test for the maximum length of stay of 6 months as well as a condition for granting an extension. Further, if the proposed rule must be adopted, it should clearly state what information a foreign national homeowners should present in order to qualify for the 6 month admission period, as well as provide specific guidance to the INS adjudicators at points of entry to endure a fair and consistent application of the relevant admission requirements for these persons.

I thank you for the opportunity to comment on this very important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin Edwards, Jr.", written in a cursive style.

Martin Edwards, Jr., CCIM  
President