

U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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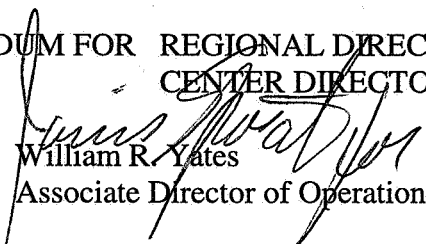
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Office of the Associate Director of Operations

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Washington, DC 20536

SEP 4 2003

MEMORANDUM FOR REGIONAL DIRECTORS  
CENTER DIRECTORS

FROM:   
William R. Yates  
Associate Director of Operations

SUBJECT: Alterations to the ADIT photograph requirements.

### Introduction

This memorandum clarifies the Alien Documentation, Identification and Telecommunication (ADIT) photograph requirements. In particular, per the policy set forth below, the requirements may be modified to accommodate an alien who is required to wear a headcovering due to his or her religious beliefs.

### Policy

This office has received inquiries from BCIS officers and the members of the public regarding the acceptability of photographs in which the alien, due to the requirements of his or her religious beliefs, is shown wearing a headcovering. The BCIS is conforming its policy to the policy of the Department of State set forth in the Foreign Affairs Manual (FAM) at 41.113 FN 2-1<sup>1</sup>.

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<sup>1</sup> FAM 41.113 FN 2-1 reads: *Head coverings and hats are only acceptable due to religious beliefs, and even then, may not obscure any portion of the applicant's face. Sunglasses or other paraphernalia which detracts from the face as defined above, are not acceptable, unless required for medical reasons (an eye patch, for example). A photograph depicting a person wearing a traditional facemask or veil that does not permit adequate identification is not acceptable. Photos of military, airline or other personnel wearing hats are not acceptable. Photographs of applicants wearing tribal, national costume or other headgear not specifically religious in nature are not acceptable. Consular officers are encouraged to use their discretion and knowledge of local conditions in evaluating the appropriateness of headgear in visa photos. Photos of applicants for A and G visas wearing head coverings as part of the national costume may be accepted at the discretion of the consular officer, provided the face, as defined above, is clearly identifiable.*

Pursuant to this memorandum, a photograph will not be considered unacceptable due to the sole fact that for religious reasons the subject of the photograph is wearing a headcovering covering the alien's hair and/or right ear. Such a photograph should be accepted provided the subject of the photograph otherwise remains clearly identifiable. For example, a headcovering that covers only the alien's hair and ears may be acceptable, whereas a headcovering that covers the alien's eyes or face is not acceptable. Along with the photograph, the alien must make a signed brief written statement explaining why he or she cannot submit a photograph that meets the standard requirements of an uncovered head and/or visible right ear.

## **Discussion**

Under the Religious Freedom Restoration Act of 1993 (RFRA), the Federal Government is restricted from substantially burdening a person's exercise of religion even if the burden results from a rule of general applicability. The exception to this rule is if there is a compelling governmental interest. In such cases, the Government must use the least restrictive means of furthering that compelling governmental interest. See Section 3 of the RFRA, 107 STAT. 1488, Pub. L. 103-141. In this instance, while the identification of the alien is a compelling government interest, the least restrictive means of furthering that interest is to require the alien to be identifiable in the photograph, despite his or her headcovering. We have determined that an alien is still identifiable even where, for religious reasons, the alien wears a headcovering that covers the alien's hair and/or right ear. However, there is a compelling government interest in keeping the eyes and face uncovered so that the alien is clearly identifiable.

Please note that as stated in a memorandum dated February 14, 2003, the regulations at 8 CFR 264.5(e)(iii) provide that no alien can obtain an out-right waiver of the photo requirement for aliens filing Form I-90, except in the limited "cases of confinement due to advanced age or infirmity." The policy in the February 14 memorandum remains effective and is not affected by the policy allowing limited modification to the ADIT requirements as set forth in this memorandum. This means that, except in those limited circumstances listed above, requests from aliens to be exempted from the photograph requirement in its entirety should be denied.

## **For more information**

The Form M-378, Color Photograph Specifications, is currently being reformatted to reflect the policy set forth in this memorandum. For more questions or more information related to permissible alterations to the ADIT photograph requirements, contact the HQ Office of Regulations and Program Development via email through proper channels.